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U.S. TENTH CIRCUIT COURT OF APPEALS RULES IN FAVOR OF THE UTE TRIBE AND REQUIRES EXHAUSTION OF THE TRIBE’S LAWSUIT AGAINST LYNN BECKER IN THE UTE INDIAN TRIBAL COURT *BECKER V. UTE TRIBE*

Ft. Duchesne, UT (August 3, 2021)—For the third time in four years, the U.S. Court of Appeals for the Tenth Circuit has struck down an injunction issued by U.S. District Court Judge Clark Waddoups, enjoining the Tribe’s pending tribal court lawsuit against Lynn Becker, the former director of the Tribe’s Energy and Minerals Department. In its latest ruling, issued on Tuesday, August 3, 2021, the Tenth Circuit ordered Waddoups to dismiss Becker’s federal court action against the Ute Tribe.

In its ruling, the Tenth Circuit explained that the United States Supreme Court “has recognized ‘that Congress is committed to a policy of supporting tribal self-government and self-determination.’” The Tenth Circuit then quoted from a Supreme Court decision, stating that “Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty,” and that under controlling Supreme Court precedent, civil jurisdiction over the activities of non-Indians on reservation lands “presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute.”

The Tenth Circuit ruling allows the Tribe’s pending lawsuit against Becker in the Ute Indian Tribal Court to proceed. In that lawsuit, the Tribe is alleging that Becker’s contract with the Ute Tribe is void *ab initio* under federal and tribal law. The Tribe is also seeking damages from Becker for breach of fiduciary duty, constructive fraud, theft and/or conversion of tribal assets, unjust enrichment and/or equitable disgorgement and restitution.

Chairman Shaun Champoos, speaking on behalf of the Ute Tribe Business Committee, said while the Tribe is gratified by the Tenth Circuit ruling, it is disappointed that it has to return the Tenth Circuit “repeatedly on this same issue.” He noted that the Tenth Circuit has twice before had to stay and reverse orders entered by Waddoups enjoining the Tribe’s suit against Becker in the Ute Indian Tribal Court.

“It has been very expensive for the Ute Tribe to relitigate this same issue over and over before the Tenth Circuit,” Champoos said.

Becker sued the Ute Tribe on September 14, 2016, seeking a federal court injunction against the Tribe’s still-pending tribal court suit against Becker. That same day, Waddoups conducted a telephonic hearing, and over the Tribe’s objection, issued a temporary restraining order enjoining the Tribe’s tribal court suit against Becker. On December 30, 2016, the Tenth Circuit issued an order staying the district court injunction and allowing the tribal court suit to proceed. Then, on August 25, 2017, the Tenth Circuit reversed the injunction and remanded the case to Waddoups for further proceedings.

On April 30, 2018, Waddoups again enjoined the Tribe’s suit against Becker in tribal court, and for a second time, the Tribe appealed the injunction order. This second appeal is the appeal from

which today's Tenth Circuit ruling stems. As part of its second appeal, the Ute Tribe also asked the Tenth Circuit to recuse Waddoups for evident judicial bias and to reassign the case to a different federal district court judge. The Tribe's motion contended that Waddoups had also demonstrated apparent implicit or explicit racial bias in his rulings against the Tribe. Today's Tenth Circuit ruling denied the Tribe's motion for recusal and reassignment, stating that the Tribe's motion for recusal was rendered "moot" as a result of the Court's decision ordering Waddoups to dismiss the federal suit altogether.

Chapoose said the Tribal Business Committee is evaluating other possible avenues of recourse for what the Tribe perceives as long-standing "intransigent bias" against the Tribe by the federal bench in Utah.

In August 2016, in a decision authored by then-Circuit Judge Neil Gorsuch—now a Justice on the U.S. Supreme Court—the Tenth Circuit removed U.S. District Court Judge Bruce S. Jenkins from presiding over another federal lawsuit involving the Tribe, *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 835 F.3d 1255 (10th Cir. 2016).

Chapoose said the Ute Tribe sent a letter to President Biden earlier this year outlining the lack of impartiality shown to the Ute Tribe by federal judges in Utah. Chapoose also said the Tribe may press its complaints over the federal bench in Utah with the Judiciary Committee of the United States Senate.

About the Ute Indian Tribe - The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band, and the Uintah Band. The Ute Indian Tribe operates its own tribal government and oversees significant oil and gas deposits on its 4.5 million acre Reservation. The Tribal Business Committee is the governing council of the Tribe.

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