Nos. 08-1298; 08-1305; 08-1317

IN THE UNITED STATES COURT OF APPEAL

FOR THE TENTH CIRCUIT

BREAKTHROUGH MANAGEMENT GROUP, INC., a Colorado corporation,

Plaintiffs/Appellee/Cross-Appellant,

v.

CHUKCHANSI GOLD CASINO AND RESORT, an entity organized under the laws of the Picayune Rancheria of the Chukchansi Indians; CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY, an entity organized under the laws of the Picayune Rancheria of the Chukchansi Indians; and RYAN STANLEY, an adult individual,

Defendants/Appellants/Cross-Appellees,

On Appeal from the United States District Court for the District of Colorado
The Honorable Judge Marcia S. Krieger
D.C. No. 06-CV-01596 MSK-KLM

APPELLANTS' JOINT RESPONSE TO APPELLEE'S PETITION FOR REHEARING *EN BANC*

SNR Denton US LLP
Paula M. Yost
Ian R. Barker
525 Market Street, 26th Floor
San Francisco, CA 94105-2708
Telephone: (415) 882-5000
Facsimile: (415) 882-0300

Attorneys for Defendants/Appellants/Cross-Appellees Chukchansi Economic Development Authority and Chukchansi Gold Resort and Casino

Webb & Walton, LLP
Lenden F. Webb
466 W. Fallbrook Avenue, Suite 102
Fresno, CA 93711-6267
Telephone: (559) 431-4888
Facsimile: (559) 821-4500

Attorney for Defendant/Appellant/Cross-Appellee Ryan Stanley

Table Of Contents

Table Of Authorities ii

Background 1

Argument 2

I. BMG Concedes The Panel Decision Does Not Conflict With Decisions Of The Supreme Court, This Court, Or Other Circuits. 2

A. The Factors The Panel Identified For Evaluating Whether Tribal Economic Entities Are Immune Are Consistent With Supreme Court And Tenth Circuit Precedent. 3

B. The Panel's Application Of The Factors To The Authority And Casino Confirms It Properly Applied Controlling Law. 7

II. BMG Has Not Shown The Panel Decision Implicates An Issue Of "Exceptional Importance" Requiring *En Banc* Review. 9

III. Conclusion 14

Table Of Authorities

Page(s)

CASES

California v. Cabazon Band of Mission Indians,
480 U.S. 202 (1987) 5

Cook v. AVI Casino Enters., Inc.,
548 F.3d 718 (9th Cir. 2008) 10

Kiowa Tribe of Okla. v. Mfg. Techs., Inc.,
523 U.S. 751 (1998) ..... passim

Native American Distributing v. Seneca-Cayuga Tobacco Co.,
546 F.3d 1288 (10th Cir. 2008) 5, 6, 10, 12

Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.,
207 F.3d 21 (1st Cir. 2000) 10

Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Tribe of Okla.,
498 U.S. 505 (1991) 4, 7, 8, 13

Ramey Constr. Co. v. Apache Tribe of the Mescalero Reservation,
673 F.2d 315 (10th Cir. 1982) 12

Santa Clara Pueblo v. Martinez,
436 U.S. 49 (1978) 12

United States v. USF&G Co.,
309 U.S. 506 (1940) 8

STATUTES

25 U.S.C. §§ 2702 5

25 U.S.C. § 2702(1) 7

28 U.S.C. § 1605(a)(2) 9

RULES

10th Cir. R. 35.1(A) 2

Fed. R. App. P. 35(b)(1)(A) 7

Fed. R. App. P. 35(b)(1)(A), (B) 2, 6, 7, 14

Fed. R. App. P. 35(b)(1)(B) 9

Fed. R. App. P. 40(a)(2) 2, 6

OTHER AUTHORITIES

Anna-Emily C. Gaupp, *Indian Tribal Economic Development and Contracts Encouragement Act of 2000*, 33 CONN. L. REV. 667 (2001) 9

Background

The Picayune Rancheria of the Chukchansi Indians ("the Tribe") is a federally recognized Indian tribe possessing sovereign immunity from suit. Pursuant to its tribal constitution, the Tribe created the Chukchansi Economic Development Authority ("the Authority") to own and operate the Tribe's gaming facility, Chukchansi Gold Resort & Casino ("the Casino"). The Casino operates under the Indian Gaming Regulatory Act ("IGRA"). Pursuant to IGRA, the Tribe has adopted, and the United States Secretary of the Interior has approved, a Gaming Revenue Allocation Plan, assigning all of the Casino's revenue for distribution by the Tribe's government for specific, identified uses.

Plaintiff Breakthrough Management Group, Inc. ("BMG") sued the Tribe, the Authority, the Casino, and a former Casino employee, Ryan Stanley (collectively "Appellants"), alleging federal copyright infringement and other federal and state law claims. Appellants moved to dismiss on sovereign immunity grounds. The District Court dismissed only the claims against the Tribe itself. The District Court found the Casino and Authority lacked the Tribe's sovereign immunity because a judgment against them would not affect the Tribe's right to Casino profits, but would only affect the amount of such profits.

On appeal, a unanimous panel of this Court ("Panel") reversed, holding the District Court erred by treating as dispositive the issue of whether a judgment would reach the Tribe's monetary assets. (Slip Op. at 25.) Instead, the Panel analyzed six factors bearing on whether the Casino, the Authority, and their employees possess the Tribe's immunity and determined they do. (*Id.* at 25-26, 34-45.)

Argument

En banc review is "an extraordinary procedure." 10th Cir. R. 35.1(A). Requests for such review are disfavored, and will not be granted unless the requesting party demonstrates that a panel decision conflicts with a decision of the Supreme Court or another decision of this Court, or that the panel decision involves a question of "exceptional importance," such as a conflict with a decision from another circuit. Fed. R. App. P. 35(b)(1)(A), (B); 10th Cir. R. 35.1(A). Unlike a petition for panel rehearing, a petition for rehearing *en banc* is not an appropriate vehicle to address a "point of law or fact that the petitioner believes the court has overlooked or misapprehended." *Compare* Fed. R. App. P. 40(a)(2) *with* Fed. R. App. P. 35(b)(1)(A), (B).

BMG's petition fails to identify any Supreme Court or Tenth Circuit authority with which the Panel's decision conflicts, raises long-repudiated arguments of no "exceptional importance," and amounts to nothing more than an attempt to re-litigate the case. The Court should deny it.

I. BMG Concedes The Panel Decision Does Not Conflict With Decisions Of The Supreme Court, This Court, Or Other Circuits.

In the course of rearguing its case in its Petition, BMG contends the Panel "created a new test" when deciding the Casino and Authority possess the Tribe's immunity. (Petition at 3.) To the contrary, the Panel did not purport to announce a "test" but, rather, held the facts of this case presented "no need to define the *precise* boundaries of the appropriate test…." (Slip Op. at 25 (Panel's emphasis).) Instead, the Panel simply "identified factors we believe to be most helpful in this particular instance," expressly

disclaiming any holding "that those factors constitute an exhaustive listing or that they will provide a sufficient foundation in every instance for addressing the tribal-immunity question related to subordinate economic entities." (*Id.* at 26 n.10.)

Crucially, BMG at no point contends the Panel's decision contradicts any Supreme Court or Tenth Circuit precedent—or precedent of any United States Court of Appeals, for that matter. Indeed, the factors the Panel considered in this case accord with those decisions. Furthermore, BMG's attacks on the Panel decision, which are not grounds for rehearing *en banc* in any event, only reinforce the decision's harmony with settled federal Indian law.

A. The Factors The Panel Identified For Evaluating Whether Tribal Economic Entities Are Immune Are Consistent With Supreme Court And Tenth Circuit Precedent.

Although BMG's Petition challenges the results of the Panel's decision, it nowhere suggests the Panel erroneously omitted any factors. In fact, in earlier briefing, BMG endorsed four of the six factors the Panel analyzed: specifically, factor number five (*see* BMG's Answering Brief & Opening Brief at 21); and factors number two, three, and six. (*See id.* at 28.)

BMG's basic disagreement with the Panel is that the "financial relationship" factor should have been dispositive. Of course, as the Panel recognized, the policies behind sovereign immunity are not so monolithic, and derive broadly from "Congress' desire to promote the 'goal of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development.'" (Slip Op. at 17

(quoting *Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Tribe of Okla.* ("*Potawatomi*"), 498 U.S. 505, 510 (1991)).)

Moreover, BMG asks the Court to view this purported dispositive factor narrowly against the tribal entity. Specifically, BMG asks the Court to be the first federal appellate court to impose a strict rule it dubs "the Reaching the Tribe's Assets test." BMG's proposal would categorically bar immunity where—because of insurance coverage or methods of tribal accounting—a judgment against the entity would not be paid directly out of the tribal government's coffers.

BMG provides no reason—and certainly no legal authority—supporting the proposition that Indian self-government and self-sufficiency are affected only where a judgment reaches assets already in the hands of the tribal government. Indeed, it is naive—or self-serving—for BMG to suggest that immunity does not fulfill the policies of tribal self-government and economic development where it bars a potentially insured claim. (Petition at 11.) Insurance is not free. Nor in pricing a policy would any competent insurer ignore the potential defenses an insured might raise, including sovereign immunity. It seems poor policy, indeed—not to mention at odds with the policies behind sovereign immunity—to discourage Indian tribes from insuring sources of crucial revenue, and to instead force them to blindly trust every tribunal to properly apply the immunity doctrine in every instance.

Nor does it make sense to pretend that immunity does not "encourag[e] tribal self-sufficiency and economic development" (*Potawatomi*, 498 U.S. at 510) where it safeguards revenue of a tribally owned and operated entity bound for, but not yet paid

into, the tribal government's sovereign treasury. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 219 (1987) ("Self-determination and economic development are not within reach if the Tribes cannot *raise revenues* and provide employment for their members." (emphasis added)). This is especially true where, as here, federal law dedicates the entities' revenue to tribal purposes. 25 U.S.C. §§ 2702; 2710(b)(2)(B).

BMG complains of the subjectivity of the factors the Panel analyzed, suggesting that any tribe-owned business entity could qualify by "including certain gratuitous statements in the entity's charter." (Petition at 11-12.) BMG opines that "[b]estowing tribal immunity should not be so effortless."[1] (*Id*. at 12.) To the extent BMG is urging the Court to make running tribal economic enterprises more costly, this is certainly out of step with the Supreme Court's jurisprudence. A goal of sovereign immunity is to facilitate tribal enterprises and thereby enable self-determination and economic development, not stymie them with red tape and procedural pitfalls that potentially imperil the tribe's revenue.

Unable to identify precedent of this Court supporting its proposed "test," BMG asks the full Court to second guess the Panel's decision to follow *Native American Distributing v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288 (10th Cir. 2008). Of course, a petition for rehearing *en banc*, in contrast to a petition for panel rehearing, is not the

[1] One must wonder how the Tribe's persistence as a sovereign government predating the United States, continually resisting efforts to eradicate it and strip it of its land base, can be properly characterized as "effortless." (*See generally* Appellants' Reply & Answering Brief at 2-3 nn.1-2.)

proper vehicle to address a "point of law or fact that the petitioner believes the court has overlooked or misapprehended." *Compare* Fed. R. App. P. 40(a)(2) *with* Fed. R. App. P. 35(b)(1)(A), (B).[2] In any event, the Panel's decision is in harmony with *Native American Distributing*, where this Court held that "[t]ribal immunity extends to subdivisions of a tribe, and even bars suits arising from a tribe's commercial activities." 546 F.3d at 1292 (citing *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 759 (1998)). In the course of reaching that holding, the *Native American Distributing* Court considered (1) the purpose of the tribal entity, (2) whether it was created under tribal law, and (3) whether the tribe intended for the entity to have tribal immunity. *Id.* at 1293-94; Slip Op. at 24. The Court gave no weight, however, to the factor BMG insists must be dispositive: the financial relationship between the tribal entity and the tribe and whether a judgment against the entity would reach monetary assets already in the tribe's government accounts. *Id.* at 1293-94; Slip Op. at 24-25.

BMG questions whether the rule announced in *Native American Distributing* is the law of this Circuit, suggesting it merely reflects "a test that was stipulated by the parties." (Petition at 9.) BMG presents no authority for the proposition that this Court can announce a rule of law, inconsistent with its precedents, merely because the parties stipulate that it do so. Still, even if the Panel had erred in following *Native American*

[2] For this reason, BMG's petition is also an inappropriate vehicle to reargue that Appellants waived their ultimately successful arguments about the proper standard for evaluating the immunity of tribal business entities.

Distributing, BMG fails to identify any conflicting authority, raising no basis for *en banc* rehearing. Fed. R. App. P. 35(b)(1)(A).

B. The Panel's Application Of The Factors To The Authority And Casino Confirms It Properly Applied Controlling Law.

Next, BMG argues at length that the Panel erred when applying the law to the facts, essentially restating unsuccessful arguments from its briefs about the nature of the Authority and Casino. BMG's effort is futile, since *en banc* rehearing is unavailable to review alleged errors in panel decisions. Fed. R. App. P. 35(b)(1)(A), (B). While an exhaustive reargument is unnecessary here given the Panel's thoughtful treatment of the relevant factors (Slip Op. at 34-45), certain errors in BMG's attacks on the Panel's analysis reveal the harmony of its decision with Supreme Court and Tenth Circuit law.

For instance, BMG suggests that the Panel's analysis of the second factor, regarding the purpose of the entities, means that any financial benefit to an Indian tribe satisfies this factor. (Petition at 13.) Not so. In fact, the Panel carefully considered the allocation of the revenue from the Authority and Casino to fulfill various tribal government functions. (Slip Op. at 37-38.) It also considered IGRA's purposes (*id.* at 36-37 n.14), which include furthering "tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). The purposes of IGRA-authorized gaming operations, existing solely to support and strengthen tribal governments, thus align seamlessly with the established policies behind sovereign immunity. *Potawatomi*, 498 U.S. at 510.

BMG suggests that the fourth factor, regarding the Tribe's intent, could hypothetically be met by a "calculated statement in a corporate charter." (Petition at 14.) Sovereign immunity serves to foster self-government and self-determination (*Potawatomi*, 498 U.S. at 510), and tribal abrogation of immunity depends upon the Tribe's consent. *United States v. USF&G Co.*, 309 U.S. 506, 514 (1940) ("Consent alone gives jurisdiction to adjudge against a sovereign. Absent that consent, the attempted exercise of judicial power is void."). Accordingly, it is eminently reasonable to consider the Tribe's intent in creating the entity, including intent expressed in an entity's organic documents.

BMG's criticism of the fifth factor, regarding the financial relationship between the Tribe and the entities, also misses the point. The Authority paid all the Casino's revenue over to the Tribe, as federal law and the Tribe's law required. Indeed, the Tribe's control over the Authority's governing body also ensured protection of the revenue stream to the Tribe's government. BMG's hyperbole aside, the Panel did not decide—and, indeed, had no reason to decide—whether an entity incorporated under state law, or one diverting profits for nontribal purposes, should possess sovereign immunity. In any event, the Panel's analysis of the financial relationship between the Tribe and its subordinate entities comports with settled federal law.

In criticizing the Panel's application of its sixth factor, regarding the purposes of sovereign immunity, BMG cites a nineteenth century case criticizing foreign sovereign immunity. (Petition at 14-15.) Of course, as the Supreme Court has confirmed, Congress has left intact immunity for Indian tribes' commercial activities, despite taking specific

action to abrogate immunity for foreign sovereigns. *Kiowa*, 523 U.S. at 758-59; *see* 28 U.S.C. § 1605(a)(2).

BMG also suggests the Panel misconceived the purposes of sovereign immunity by failing to recognize that immunity actually harms Indian tribes by deterring third-parties from entering commercial relationships with them. (Petition at 15.) Essentially, BMG is asking this Court deny immunity to Indian tribes' business entities for the tribes' own good. Of course, BMG itself seems to acknowledge that Indian tribal businesses are doing just fine, complaining about the "ever-increasing number [sic] tribe-owned businesses engag[ing] in significant commerical [sic] activities." (*Id.* at 4.) Furthermore, like any business operating in a global marketplace comprising governmental and private participants, BMG was free to negotiate with the Casino and Authority for a waiver of sovereign immunity, or for another mutually agreeable financial assurance, as a condition for doing business. *See* Anna-Emily C. Gaupp, *The Indian Tribal Economic Development and Contracts Encouragement Act of 2000*, 33 CONN. L. REV. 667, 685-86 (2001) ("By breaching contracts without permitting remedy, the Tribal Party is effectively pricing its contracts beyond their market elasticity. . . . An obvious market-driven solution is to negotiate waivers of sovereign immunity, and thereby provide Non-Tribal Party access to remedy for breach.").

II. BMG Has Not Shown The Panel Decision Implicates An Issue Of "Exceptional Importance" Requiring *En Banc* Review.

Rather than explaining the "exceptional importance" of any particular issue, as the Federal Rules require (Fed. R. App. P. 35(b)(1)(B)), BMG spends most of its brief

expressing disagreement with the Panel's decision. BMG asks the entire Court to supplant the Panel's consideration of multiple relevant factors with "the Reaching the Tribe's Assets test," to categorically bar immunity where—because of insurance coverage or methods of tribal accounting—a judgment against the entity would not be paid directly out of the Indian tribal government's coffers.

Plainly, it is not exceptionally important for the entire Court to entertain BMG's assertion that this Court ought to impose limits on tribal immunity not countenanced in any opinion of the Supreme Court or any Court of Appeals. *See, e.g.*, *Kiowa*, 523 U.S. at 759; *Native American Distributing*, 546 F.3d at 1292; *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 724-25 (9th Cir. 2008); *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 29 (1st Cir. 2000). Rather, the harmony between the Panel's decision and settled federal precedent belies BMG's assertion that any issue is of "exceptional importance."

BMG asserts that "[t]he extension of the judicially-created tribal immunity doctrine to business entities will have perilous consequences," and warns of "grave dangers inherent in a license to ignore U.S. laws." (Petition at 2, 4.) It further warns that "an ever-increasing number [sic] tribe-owned businesses engage in significant commerical [sic] activities outside of the reservation." (*Id.* at 4.)

Of course, the proliferation of tribal enterprises is nothing new, and Supreme Court jurisprudence has already accounted for Indian tribes' ubiquitous role "[i]n our interdependent and mobile society." *Kiowa*, 523 U.S. at 758. Fortunately, the "peril" BMG forecasts has not come to pass, and as the Panel and the Supreme Court have

recognized, "Congress has consistently reiterated its approval of the immunity doctrine." (Slip Op. at 16 n.7 (quoting *Potawatomi*, 498 U.S. at 510).)

Thus, while BMG tries to frame its concerns with the Panel's opinion as reasons to judicially abrogate the immunity of "separately-incorporated" tribal entities, BMG is simply advancing long-repudiated arguments against tribal immunity generally—arguments the Supreme Court has already considered and rejected. BMG provides no reason why these arguments take on new force where the tribal entity is "separately-incorporated" so as to merit the entire Tenth Circuit revisiting the settled legal landscape of tribal immunity.

For instance, BMG warns the Panel's decision means "separately-incorporated" tribal entities could possess immunity "while engaging in purely commercial activities outside of Indian lands." (Petition at 2.) Of course, the Supreme Court confirmed over a decade ago in *Kiowa* that tribal business enterprises possess immunity for governmental or commercial activities both on and off a reservation. 523 U.S. at 758-60. Thus, BMG's objection to immunity for "separately-incorporated" tribal entities is really a complaint about the immunity of tribal entities in general.

BMG also argues that extension of immunity to tribal business entities is unwarranted here because BMG "did not knowingly accept the risk of doing business with a tribe as it was unaware that the Resort was tribe-owned." (Petition at 3.) BMG suggests this scenario is different from one where "people enter into business transactions with a governmental unit that is affirmatively held out as being part of a tribe." (*Id.* at 2.) It is settled, however, that a plaintiff's unawareness of an entity's tribal status in no way

diminishes tribal immunity. *Kiowa*, 523 U.S. at 758. Over a decade ago, the Supreme Court noted that "Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians," recognizing that, "[i]n this economic context, immunity can harm those who are unaware that they are dealing with a tribe." *Id.* Nevertheless, in the absence of Congressional action, the Court rejected the invitation to abrogate tribal immunity, or to "confine it to reservations or to noncommercial activities." *Id.*

Nothing about BMG's proposed test would preclude Indian tribes from doing business under names other than their official tribal names. *See Native American Development*, 546 F.3d at 1295 (tribal entity possesses immunity regardless of "[w]hether a tribal entity has affirmatively led or passively permitted another party to believe it is amenable to suit" (citing *Kiowa*, 523 U.S. at 758)); *see also Ramey Constr. Co. v. Apache Tribe of the Mescalero Reservation*, 673 F.2d 315, 320 (10th Cir. 1982) (tribal sub-entity operating under the name "Inn of the Mountain Gods" possessed tribal immunity). Even if this Court announced a rule stripping immunity from what BMG calls "separately-incorporated" tribal entities, under settled Supreme Court law, tribes could still operate under any business name they wished without diminishing their sovereign immunity at all. *Kiowa*, 523 U.S. at 758; *Native American Development*, 546 F.3d at 1295.

The Supreme Court has also rejected BMG's argument that immunity should give way to permit suits by states or private individuals to compel tribes to comply with applicable laws. (Petition at 1-2, 4.) *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 & n.8 (1978) (Although the Indian Civil Rights Act expressly applies to an "Indian tribe . . . exercising powers of self-government," absent an express waiver, "[s]uits

against the tribe under the ICRA are barred by its sovereign immunity from suit."); *Potawatomi*, 498 U.S. at 512-14 (sovereign immunity prohibited state's suit to collect tax lawfully assessed against Indian tribe); *Kiowa*, 523 U.S. at 755 ("There is a difference between the right to demand compliance with state laws [by an Indian tribe] and the means available to enforce them."). Importantly, BMG provides no reason to believe "separately-incorporated" tribal business entities present any unique law enforcement issues apart from the concerns the Supreme Court has already considered and dismissed. Congress is aware that tribes and their businesses possess immunity to all private suits. Despite possessing plenary power to abrogate that immunity—either completely or with respect to the statutes at issue here—Congress has preserved it.

Even if the distinction BMG proffers here—between "separately-incorporated" tribal entities and other tribal entities—were of exceptional importance, this case, involving no "separately incorporated" tribal entity, would be a poor vehicle to reexamine it. In the Panel's words, the record shows:

- "that the Tribe created the Authority under tribal law" (Slip Op. at 35);
- "that the Tribe created [the Authority and the Casino] under its constitution" (*id.*);
- "that the Casino is wholly owned by the Authority" (*id.* at 39 n.15);
- that the tribal ordinance establishing and governing the Authority "emphasize[d] that [the Authority and the Casino] are subordinate entities of the Tribe and *not separate corporations*" (*id.* at 36 (emphasis added)); and
- that "whatever immunity is enjoyed by the Authority and the Casino is shared by Mr. Stanley." (*Id.* at 10 n.6.)

Thus, even if the existence of "separately-incorporated" tribal entities' immunity was an issue of "exceptional importance," the record in this case simply does not put this issue before the Court.

III. Conclusion

BMG's asks the entire Tenth Circuit to entertain a reargument of its case inappropriate on a petition for rehearing *en banc*. Fed. R. App. P. 35(b)(1)(A), (B). Because the Panel's decision is in harmony with the precedents of this Court and the Supreme Court and does not present any issue of "exceptional importance," Appellants respectfully urge the Court to deny BMG's petition for rehearing *en banc*.

Dated: January 28, 2011

s/ Paula M. Yost
Paula M. Yost
Ian R. Barker
SNR Denton US LLP
525 Market Street, 26th Floor
San Francisco, CA 94105-2708

Attorneys for Defendants/Appellants/ Cross-Appellees Chukchansi Economic Development Authority and Chukchansi Gold Resort and Casino

s/ Lenden F. Webb
Lenden F. Webb
Webb & Walton, LLP
466 W. Fallbrook Avenue, Suite 102
Fresno, CA 93711-6267

Attorney for Defendant/Appellant/Cross-Appellee Ryan Stanley

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with (1) the page limitation of Fed. R. App. P. 35(b)(2) because it contains fourteen pages (excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii)), and (2) the typeface requirements of Fed. R. App. P. 32(a)(5) and 10th Cir. R. 32(a) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in thirteen-point Times New Roman font.

s/ Paula M. Yost
SNR Denton US LLP
525 Market Street, 26th Floor
San Francisco, CA 94105-2708
Telephone: (415) 882-5000
Facsimile: (415) 882-0300

Attorneys for Defendants/Appellants/
Cross-Appellees Chukchansi Economic
Development Authority and Chukchansi
Gold Resort and Casino

CERTIFICATE OF DIGITAL SUBMISSION

I, Paula M. Yost, hereby certify on this 28th day of January, 2011, that:

(1) All required privacy redactions have been made and with the exception of those redactions, every document submitted in Digital Form or Scanned PDF format is an exact copy of the written document filed with the Clerk, and;

(2) The digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, and according to the program, are free of viruses.

Dated this 28th day of January, 2011

s/ Paula M. Yost
SNR Denton US LLP
525 Market Street, 26th Floor
San Francisco, CA 94105-2708
Telephone: (415) 882-5000
Facsimile: (415) 882-0300

Attorneys for Defendants/Appellants/
Cross-Appellees Chukchansi Economic
Development Authority and Chukchansi
Gold Resort and Casino

CERTIFICATE OF SERVICE

I, Paula M. Yost, hereby certify that I sent via Federal Express Mail [also via CM/ECF] a copy of the foregoing APPELLANTS' RESPONSE TO APPELLEE'S PETITION FOR REHEARING EN BANC to:

Neil Leslie Arney neil.arney@kutakrock.com Kutak Rock LLP 1801 California Street Suite 3100 Denver, Colorado 80202 Attorney for Plaintiff BMG (2 Copies)	Marc F. Pappalardo marcp@bmgi.com Breakthrough Management Group International, Inc. 1921 Corporate Center Circle, 3F Longmont, Colorado 80501 Attorney for Plaintiff BMG (2 Copies)
Lenden F. Webb, Esq. LWebb@WebbWalton.com Webb & Walton, LLP 466 West Fallbrook Avenue Suite 102 Fresno, California 93711 Attorney for Defendant/Appellant/Cross–Appellee Ryan Stanley (2 Copies)	Clerk of the Court United States Court of Appeals Tenth Circuit Byron White United States Courthouse 1823 Stout Street Denver, Colorado 80257 (18 Copies)

/s Paula M. Yost
Signature

January 28, 2011
Dated signed

27361322