

7 Cherokee councilors sue tribe - By Donna Hales - Phoenix Staff Writer

Seven Cherokee Nation Tribal Councilors are suing the chief, the CEO of Cherokee Nation Industries Inc., and a tribal business adviser, alleging securities fraud.

A Tulsa firm, Commercial Litigation Group, filed the suit on the council's behalf late Friday in federal court in Muskogee.

The suit stems from CNI's investment of \$2.5 million from a federally funded line of credit into Global Energy Group Inc. The suit alleges the money went to certain Global Energy insiders and not into the operation of the business, which the councilors claim violates the antifraud provisions of the Securities Exchange Act.

The suit also alleges the investment was at a time when Global Energy had generated about \$12 million in losses and had no assets. On June 30, 2005, Global Energy had more than \$4 million in current liabilities and less than \$100,000 in current assets, the suit states.

Targets of the suit: Principal Chief Chad Smith, CNI's Jim Majewski of Tahlequah (who was put on administrative leave earlier this month by the CNI board) and Benjamin "Benny" Dixon of Haskell, a tribal business team adviser who is the executive in charge of economic development for CNI.

Dixon and Smith did not return calls to their cell phones and Majewski did not return a call to his home phone.

Cherokee Nation spokesman Mike Miller sent the Phoenix quotes from Smith and Councilor Meredith Frailey, chair of the Council's rules committee. Frailey also serves as temporary speaker of the council.

"You know this whole thing is politically motivated when it is sent to the press before it is served on the parties," Smith said, claiming the suit is political grandstanding.

Such suits become a matter of public record immediately after they are filed, which is before service is made on parties.

Smith contends if Crittenden

and O'Leary, as CNI advisory board members (without a vote), would have raised their concerns "as this deal unfolded, CNI would not be in the situation it is in today."

The other Councilor on the advisory board is Jackie Bob Martin of Stilwell.

Smith also contends O'Leary scarcely attended CNI board meetings.

Tulsa attorney James Clinton Garland, who filed the suit on behalf of tribal Councilors, said although Dixon and Smith knew of the Global Energy purchase, the CNI board didn't know about it for three months.

"The purchase was misrepresented to the Business Advisory Team and completed without the due diligence necessary ...," the suit states.

"Global Energy is a firm that controls patents on air conditioning and lighting systems.

Garland said Saturday that one short of the majority of the council "has decided this is the only way to go" since documents have been denied to council members since last November.

"There's a lot of things we don't know, but enough things collected to give a clear view of wrongdoing. We've got to get to the bottom of this," he said, adding Council members have a right to be informed.

The suit alleges a scheme and course of deceptive conduct by Smith, Majewski and Dixon was intended to, and did, cover up the failure of CNI management personnel and the true business and financial condition of Global Energy and its impact on CNI.

The suit also alleges unlawful deceptions included the public dissemination of misleading statements of material fact about Global Energy in the company's SEC filings.

"You couldn't find one in 1,000 businessmen or financial people to look at this deal and say that they would make that investment," Garland said. "Their business judgment is out the window. It never looked like a good deal. No way could they make it look like a good deal.

"When you go around giving strangers \$2.5 million — this is such a blatant deal. These people are trustees of every dollar these people are throwing away.

"When they may be making \$300 million a year and throwing away \$6 to \$10 million they don't want anyone to know about and won't give out any information, you can't expect (Councilors) to pat them on the back and say, 'Better luck next time.'

"These folks (defendants) think they can do anything."

The suit alleges a laundry list of deceptive and improper accounting devices and business practices causing Global Energy public financial statements to present an inaccurate account of the company's actual condition.

The suit states defendants acted with others to create a fictitious goodwill entry on the balance sheet of Global Energy, a penny stock company, by multiplying the number of shares outstanding times 16 cents. The 16 cents was derived from an arranged trade at that price.

"Thereafter, the defendants represented to the plaintiffs that its investment was already worth much more than what was paid for it based upon its fictitious trading value," the suit states.

In addition to fraud, the suit alleges corporate waste, mismanagement and violations of fiduciary duties owed the tribe and its members.

The suit states that in May 2005, Majewski committed to purchase the stock from the sellers although CNI's board had not yet approved the purchase.

It wasn't until July 13 that the Business Advisory Team of the tribe authorized conditional approval subject to 17 items related to due diligence required.

Such due diligence was never completed, the suit alleges, although \$500,000 already had been paid to the sellers in May 2005 with the knowledge and consent of Chief Smith and Dixon. On Aug. 19, the balance of \$2

million was paid to close the transaction.

"From its inception, Chief Smith knew of and consulted in the (Global Energy) transactions as well as the concealment and deception practiced by defendant Majewski," the suit states.

But Smith contends including him in the lawsuit is a "raw, political attack that ignores the reality of how our corporations operate."

Smith said CNI's board was approved by the council members who filed the lawsuit. Smith makes all board appointments, which then have to be approved by the tribal council.

Dixon participated in all acts involved in the acquisition of Global Energy, under the direction of Majewski, and assisted in the cover up of the true nature of the transactions, the suit alleges.

Records obtained by the Phoenix show Smith assigned all voting power of the shares to Majewski. The suit alleges that bypassed the control exercised by CNI's board of directors and violated Smith's fiduciary duty to the Cherokee Nation.

On June 27, 2005, outside securities counsel for CNI wrote a comment letter on the acquisition, which the suit alleges was largely ignored by defendants and that they concealed from the CNI board and the tribal council. The final payment was made and the deal closed Aug. 19.

The CNI board has requested an investigation through the tribal administration and the tribal marshal's service. Councilors have been denied access to documents "under every excuse they could dream up," Garland said.

Smith contends CNI's board was prompted to seek an investigation because of his inquiries.

Several Councilors have sought an SEC investigation into alleged wrongdoing.

Miller said Frailey questioned how a minority of the Council members could constitutionally commit the tribe to a lawsuit and risk its assets particularly when the issue for resolution was under "careful and thorough investigation. It is surprising that the lawsuit was filed against individuals only. Generally, an approach to correct a wrong is to seek resolution from a governing board of a corporation. Therefore, I am perplexed as to the full intent of the lawsuit."

Garland said although Cherokees are tribal members they also are citizens of the United States, and "if the Cherokee Nation won't protect them, then the U.S. laws will."

Reach reporter Donna Hales at 684-2923 or dhales@muskogeejournal.com.

Seven Cherokee councilors suing on behalf of the Cherokee Nation:

- Linda Hughes O'Leary, of Jay, chair of the Executive and Finance Committee and a member of the CNI advisory board.
• Bill John Baker, of Tahlequah, co-chair of the Executive and Finance Committee.
• S. Joe Crittenden, of Stilwell, a member of the CNI advisory board and chair of the council's Health Services Committee.
• David Thornton Sr., of Vian.
• Charles Hoskin, of Vinita, chair of the council's Education Committee.
• Melvina Shotpouch, of Jay, chair of the council's Community Services Committee.
• John F. Keener, of Salina, chair of the council's Language, History and Cultural Committee.

The short list - my thoughts and opinions

July 3 2006 - David Cornsilks

Known Chaddywhackers

Ross - Cut from the same cloth as Cara Cowan-Watts, Ross is a vicious backstabber whose cares little for the real Cherokee people and has spent a good deal of her professional life promoting her books and defending wannabes. She thinks nothing of verbally attacking Cherokee elders who have chastised her for turning her back on the Cherokee people and criticizing her so-called "Cherokee stories" borrowed from the black slaves her ancestors owned.

Cobb - A protege' of Cara Cowan-Watts, Cobb is just like her, bitter about his lack of Indian blood and virulent in his hatred of the Freedmen. Cara criticizes anyone appearing at her meetings she does not know as being "uninvolved," yet she embraces Cobb, whose face have NEVER been seen before at any Cherokee function. He is an optometrist with a practice in the Bartlesville area.

Baker - A close friend of Chad Smith and major contributor to his political campaigns, Baker was appointed to the Registration Committee by Smith. He never publicly questions the actions of Smith or his slate. Baker serves on the Executive Board of the Cherokee Heritage Center but has done little to stem the tide of wannabeism that controls that place. While Jack Baker is my friend, I don't think he could be an independent voice on the Council, because he has not been one in his private life.

Voice of the full bloods

Nordwall - closely aligned with the United Keetoowah Band and a very intelligent young man, Nordwall is nearly a full blood Indian and would bring an authentic Cherokee perspective to the council. The sad and ridiculous attacks against the UKB by Chad Smith might be slowed to some degree by having a voice on the Council which could speak intelligently about the Band so that current council members can vote on related issues with some degree of knowledge.

Reformed Mankillerites

Leach - A first cousin to Wilma Mankiller, Leach was instrumental in organizing the Outlander vote in New Mexico for the previous Chiefs (except Joe Byrd). He was the "red herring" plaintiff in a lawsuit challenging a residency requirement to run for chief; working hand in hand with now Chief Justice Matlock and Chad Smith, so that Smith, who lived outside the Cherokee Nation, could run for chief in 95. Leach later admitted what he had done and has since openly left the Smith camp. He continues to work with the New Mexico Cherokees and would bring real outlander experience and representation to the seat. He is a full blood, raised in the traditional Cherokee ways, and would bring an authentic Cherokee perspective to the Council. He has lived and worked as an outlander for many years and can bring that perspective as well.

Self-serving

Martens - Failing to gain enough support for her proposed policies in the homeland where people know her best and refused to elect her to Cherokee office, Martens now seeks to be appointed to a seat in order to gain the momentum of incumbency necessary to court the Outlanders. She wants to be Chief of the Cherokee Nation, but her proposed policies and plans are little different from any other previous administration (except Joe Byrd). She is closely aligned with the incumbent machine, having supported Swimmer and Mankiller in office. She has not been vocal in any way regarding the Smith regime and his slate and I suspect she would simply fall in line with the slate, just as Frailey did.

Gourd - An arrogant man with a lot of brains, but way too much ego, Gourd would be "odd man out" in the Council and would probably end up impeached. He tends to "talk down" to people and rarely listens when

spoken too. He was one of the main architects of the Byrd administration and was, unfortunately, one of its biggest problems. He had the ear of Joe Byrd and could have helped him to listen to other voices outside the regime, but instead, he insisted Byrd close ranks and listen only to his small circle of advisors headed by Gourd, which ultimately led to Byrd's failed administration and defeat in 99 by Chad Smith.

Star Scott - I once trusted Starr-Scott implicitly. I campaigned for her in the run-off against John Ketcher for Deputy Chief in 1987. But after observing her for the past 20 years, I have found her to be interested mostly in lining her own pockets. She thinks nothing of using her position for personal gain, turning her position on the tribal council into some pretty lucrative smoke shops. She and another councilor, Wathene Young, purchased a company that allegedly competed with CNI for contracts while they both served on the Council. She has proven untrustworthy in her word, saying one thing to your face and doing something completely different later. She has no set political philosophy, her votes would probably be, for the most part, against the Smith slate, unless there was something that would benefit her personally. During the past few years, the only concern she has shown in Cherokee affairs is whether or not she can turn a profit at her smokeships.

Intellectuals

Keen - A very intelligent young man with long-time ties to the Mankiller family and administration, Keen currently works for the Cherokee Nation in the Brad Carson office (whatever that is) and would be required to quit his job and take about a 50 percent pay cut to serve on the Council. He is versed in Cherokee history and law and open to learning new truths and dispelling old myths. He has openly supported the rights of the Freedmen, even saying so in his interview last week. He has also opposed any effort to deny the outlanders the right to vote, saying, "I would fight that with everything I have, they are citizens." His father was the first Chief Justice of the Judicial Appeals Tribunal and had formerly served as tribal attorney for W.W. Keeler. Keen is a quarter blood Cherokee and half Omaha Indian. He is one of those rare individuals who actually thinks in two worlds, with a very good head for business, ethics and law, tempered by his very Indian upbringing. He is the ex-boyfriend of Cara Cowan-Watts, who has, from time to time, attempted to undermine him professionally after he dumped her. I believe he would be a swing vote on the Council, bringing independence to the office and an authentic voice for the outlanders.

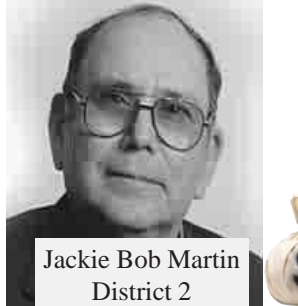
Grassroots

Raymond Vann - A man of integrity and action, Vann is one of those men who moves easily in the world of Indians and white men. He is intelligent, but not arrogant. He is a man who does for others, even when it takes from his own pockets. He ran for office in the Cherokee Nation and was defeated, but his drive for action was not defeated. Unlike others who have been turned down for public office by the Cherokee vote, Vann simply went to work helping Cherokees pay their bills, heat and cool their homes and put clothes on their backs. He served on the Election Commission, probably appointed by Smith, but I'm not sure, and he made some major mistakes while on there. His greatest mistake was in not investigating Smith's residency more closely. However, his position was vindicated by the JAT, so what can you say, I think they both were wrong, but the ruling is law. I know Raymond has a good heart and the best interest of the Cherokees at heart. He lived as an outlander most of his adult life and would bring an authentic understanding of their position to the office. He is a full blood with ties to both the Chewey and Oaks communities.

These are the tribal councilors slate that Chief Chad Smith's has full control of . . .and they will do whatever Chad tells them to do!



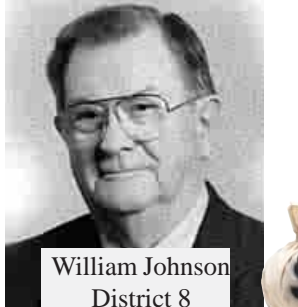
Buel Anglen District 8



Jackie Bob Martin District 2



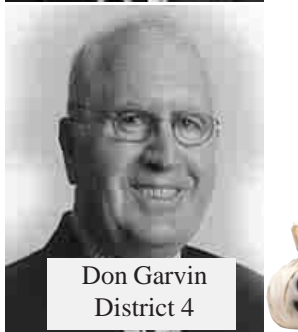
Meredith Swimmer Frailey



William Johnson District 8



Cara Cowan District 7



Don Garvin District 4

So Who are They Protecting?

Note: If only one of these councilors had voted yes to overturn Chief Smith veto of the Act, well they would not - "They are bought & Paid for" by Chad!

"Is stealing a crime in the Cherokee Nation"

These six voted not to Increase of Punishment on Serious Crimes.

"Frailey an attorney, who serve as Chair on the Rules Committee where all new law must originate, stated she didn't understand the Act and voted against it. Since becoming Councilor in 2003 to represent Cherokees in Mayes County, District 6, Frailey has voted straight down the line with the Chief's political slate.

Keener, who also represents District 6, has voted consistently to create better law and more accountability in the tribe however Frailey has voted opposite on almost every important issue." from the article Slate Decides No Increase In Punishment On Serious Crimes in May 2006 issue.

It should be noted that 9 councilors voted to increase punishment on serious crimes, they were; Joe Crittenden of Adair County, Johnny Keener of Mayes County, David Thorton of Sequoyah County, Bill John Baker and Audrey Connors of Tahlequah, Linda O'Leary and Melvina Shotpouch of Delaware County, Phyllis of Sequoyah County, and Chuck Hoskins of Craig County.



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