

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

OGLALA SIOUX TRIBE,

CASE NO. _____

Plaintiff,

vs.

**COMPLAINT
AND JURY DEMAND**

JASON SCHWARTING, LICENSEE OF
ARROWHEAD INN, INC.; JASON
SCHWARTING D/B/A ARROWHEAD
INN, INC.; SANFORD HOLDINGS, LLC,
LICENSEE OF D & S PIONEER SERVICE;
SANFORD HOLDINGS, LLC D/B/A D & S
PIONEER SERVICE; STUART J. KOZAL,
LICENSEE OF JUMPING EAGLE INN;
STUART J. KOZAL D/B/A JUMPING
EAGLE INN; CLAY M. BREHMER,
PARTNER, LICENSEE OF STATE LINE
LIQUOR; CLAY M. BREHMER, PARTNER
D/B/A STATE LINE LIQUOR; DANIEL J.
BREHMER, PARTNER, LICENSEE OF
STATE LINE LIQUOR; DANIEL J.
BREHMER, PARTNER D/B/A STATE
LINE LIQUOR; PIVO, INC. D/B/A HIGH
PLAINS BUDWEISER; DIETRICH
DISTRIBUTING CO., INC.; ARROWHEAD
DISTRIBUTING, INC.; COORS
DISTRIBUTING OF WEST NEBRASKA,
INC.; D/B/A COORS OF WEST
NEBRASKA; ANHEUSER BUSCH INBEV
WORLDWIDE, INC.; SAB MILLER D/B/A
MILLER BREWING COMPANY;
MOLSON COORS BREWING COMPANY;
MILLERCOORS, LLC.; PABST BREWING
COMPANY,

Defendants.

COMES NOW the Plaintiff and alleges the following:

PLAINTIFF

1. The Plaintiff Oglala Sioux Tribe (OST) is the Federally recognized tribe of the Lakota

people.

DEFENDANTS

2. The Defendants are all in the business of Brewing, distribution and sales of beer and or other alcohol. More specifically:

RETAIL DEFENDANTS

3. Jason J. Schwarting, an individual, is licensed by the State of Nebraska as a retail seller of beer and other alcohol and does business as the Arrowhead Inn, Inc. in Whiteclay, Nebraska.

4. Sanford Holdings, LLC, a Nebraska limited liability company, is licensed as a retailer seller of beer and other alcohol by the State of Nebraska and does business as D & S Pioneer Service in Whiteclay, Nebraska.

5. Stuart J. Kozal, an individual, is licensed as a retail seller of beer and other alcohol by the State of Nebraska and does business as Jumping Eagle Inn in Whiteclay, Nebraska.

6. Clay M. Brehmer and Daniel J. Brehmer, partners, are licensed as retail sellers of beer and other alcohol by the State of Nebraska and doing business as State Line Liquor in Whiteclay, Nebraska.

DISTRIBUTOR DEFENDANTS

7. Pivo, Inc., d/b/a High Plains Budweiser is a Nebraska licensed distributor of alcoholic products for Anheuser-Busch InBev and supplies such products to the previously described Retail Defendants.

8. Dietrich Distributing Co., Inc., is a Nebraska licensed distributor of alcoholic products for Pabst Brewing Company and Miller and supplies such products to the previously described Retail Defendants.

9. Arrowhead Distributing, Inc., is a Nebraska licensed distributor of alcoholic products for Anheuser-Busch InBev, Pabst, Coors and supplies such products to the previously described Retail Defendants.

10. Coors Distributing of West Nebraska d/b/a/ Coors of West Nebraska, Inc., is a Nebraska licensed distributor of alcoholic products for Coors, and Miller and supplies such products to the previously described Retail Defendants.

BREWER MANUFACTURING DEFENDANTS

11. Anheuser-Busch InBev Worldwide, Inc. is based in Belgium and is in the business of brewing, selling and supplying alcoholic beverages to Distributors and Retailers including the Defendants previously described. Anheuser-Busch InBev and various subsidiaries are permitted to and do business in the State of Nebraska.

12. SAB Miller is a United Kingdom Company and owner of Miller Brewing Company which in turn is a United States Corporation engaged in the brewing sale and distribution of alcoholic beverages. Miller Brewing Company formed a joint venture with Molson Coors. This joint-engaged venture is the MillerCoors, LLC and is engaged in the brewing, sale and distribution of alcoholic beverages to Retailers and Distributors including the previously named Defendants. These companies are permitted to and are doing business in the State of Nebraska.

13. Molson Coors Brewing Company is a United States Corporation with headquarters in Montreal, Canada. It is in the business of brewing, selling and supplying alcoholic beverages to Distributors and Retailers including the previously described Defendants. It is permitted to and is doing business in the State of Nebraska.

14. MillerCoors, LLC, is a Delaware limited liability company, and which resulted from

a joint venture between Miller Brewing Company and Molson Coors Brewing Company. It is in the business of brewing, selling and supplying alcoholic beverages to Distributors and Retailers including the previously described Defendants. It is permitted to and is doing business in the State of Nebraska.

15. Pabst Brewing Company, is a United States Corporation with headquarters in Woodridge, Illinois. It is in the business of brewing, selling and supplying alcoholic beverages to Distributors and Retailers including the previously described Defendants. It is permitted to and is doing business in the State of Nebraska.

JURISDICTION

16. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1362 and 28 U.S.C. § 1332(a).

GENERAL ALLEGATIONS

17. The Oglala Sioux Tribe is one of the successor entities to the Sioux tribes who entered into treaties with the federal government establishing the Great Sioux Reservation of 1868, and should therefore properly have jurisdiction over all the lands in the Great Sioux Reservation which were unlawfully taken and to which the Tribe still lays claim. In addition, the Tribe believes certain other lands have been illegally annexed, both in Nebraska and in South Dakota, and should be rightfully considered part of the Pine Ridge Indian Reservation (“PRIR”). At present, the federal government recognizes only the lands within the PRIR, the vast majority of which is located in South Dakota, as the reservation of the Oglala Sioux Tribe. PRIR has a population of about 40,000, approximately half of whom are Tribal members.

18. Whiteclay, Nebraska is a village of approximately 12 people and is located on land

claimed by the Lakota people and the OST. This claim is disputed by the US Government and the State of Nebraska, therefore the OST cannot currently exercise its jurisdiction over, and is unable to enforce Tribal laws in Whiteclay.

19. The PRIR is, and except for a brief period in the early 1970's, always has been “dry” in that within its borders the sale, possession and consumption of alcohol is illegal. Because the OST is unable to enforce Tribal law in Whiteclay, the sale of alcohol is permitted in Whiteclay.

20. Whiteclay is geographically very close to the federally recognized boundaries of PRIR. It is also less than 250 feet away from the Reservation border and the village of Pine Ridge. The village of Pine Ridge has a population of 5,700 and is the largest community within a thirty (30) mile radius of Whiteclay. The town of Pine Ridge is entirely contained within the PRIR.

21. The area around Whiteclay and outside of the PRIR where the sale, possession and consumption of alcohol is allowed, albeit regulated, is sparsely populated. The total population within many miles of Whiteclay, excluding the PRIR, is minimal.

22. Despite a population of only 12 persons, four retail only outlets for beer sales are licensed to and doing business in Whiteclay. The total volume of sales of beer from Whiteclay in the past years are: in 2004, 433,993 gallons or 4,629,258 12-ounce servings; in 2005, 421,470 gallons or 4,495,680 - 12- ounce servings; in 2006, 412,140 gallons or 4,396,160 - 12-ounce servings; in 2007, 399,466 gallons or 4,260,970 - 12-ounce servings; in 2008, 426,586 gallons or 4,550,250 - 12 oz. servings; in 2009, 431,207 gallons or 4,599,541 - 12-ounce servings; in 2010, the total was 465,092 gallons or 4,960,981 - 12-ounce servings.

23. There is no publically accessible place to lawfully consume alcohol in Whiteclay under the governing laws of Nebraska. The resale of alcohol purchased at a retail outlet like those

located in Whiteclay is unlawful in Nebraska. Sale of alcohol to intoxicated persons is unlawful in Nebraska. Exchanging sex, pornographic photos or food assistance vouchers for alcohol is unlawful in Nebraska. Transportation into, sale, or possession of alcohol in the PRIR is unlawful.

24. Despite the applicable laws, vast amounts of beer are sold in Whiteclay and/or illegally transported, possessed, resold and consumed in the PRIR. The volume of alcohol sold in Whiteclay far exceeds the amount that could be legally sold and consumed.

25. The illegal sale and trade in alcohol in Whiteclay is open, notorious and well documented by news reports, legislative hearings, movies, public protests and law enforcement activities such as road blocks set up between Whiteclay and the PRIR. All of the above have resulted in the publication of the facts of the illegal trade in alcohol and its devastating effects on the Lakota people, especially its children, both born and unborn.

26. The above described publicity and efforts have been unsuccessful in impeding the flood of alcohol which mortally threatens the Lakota people, their culture and future. OST has the obligation to and attempts to provide healthcare for its members, social services for families, foster care for at risk children, education for its children and a judicial system for all residents of the PRIR.

27. The Defendants who are in the business of making and distributing the alcohol sold in Whiteclay actually knew or at the very least should have known of the facts described above for over ten years.

28. Alcohol is a devastating drug to the Lakota people. On the PRIR the dominant type of alcohol consumed is malt beverages. Beer is in fact regularly described as the “crack cocaine” of the PRIR. The vast majority of beer consumed in the town of Pine Ridge and the PRIR is sold in Whiteclay establishments.

29. The devastating and horrible effects of alcohol on the OST and the Lakota people cannot be overstated. One (1) in four (4) children born on the PRIR are diagnosed with either fetal alcohol syndrome (FAS) or Fetal Alcohol Spectrum Disorder (FASD).

30. The average life expectancy on the PRIR is estimated to be between 45 and 52 years. Only in Haiti is there a shorter life expectancy in North America. The average American life expectancy is 77.5 years.

31. Approximately fifty percent (50%) of the adults on the Reservation over the age of 40 have diabetes. Tuberculosis rates among the Lakota people run at 800 percent higher than America as a whole.

32. Teen suicide among the Lakota people is 150% higher than America as a whole.

33. Infant mortality among the Lakota people is 300% higher than America as a whole.

34. Approximately 85% of Lakota families are affected by alcoholism.

35. Approximately 58% of grandparents of Lakota families are raising their grandchildren.

36. In 2008, the OST tribal police made 1,854 juvenile arrests and 25,437 adult arrests. Approximately 90 percent of all of these arrests were alcohol related.

37. In November of 2009, the OST tribal police made 1,263 arrests of adults. Of those arrested, 1,199 had at least one alcohol related charged offense.

38. The adverse impact on social services such as foster care, educational and medical treatment for fetal alcohol syndrome, and health care caused by alcohol has been immense. The OST does not have the resources to properly address families which have been torn apart by alcohol. There are not sufficient resources available to place children in safe homes. There is a shortage of

beds for detoxification and treatment of alcohol addiction. The schools and social workers in the PRIR are over burdened by the demands of children with learning and behavioral disorders caused by fetal alcohol syndrome and living environments poisoned by excessive consumption of alcohol.

39. The police, jails and court systems of the OST are overwhelmed by crimes caused, in whole or in part, by the illegal transport, sale and consumption of alcohol sold out of Whiteclay.

40. The Defendants and each of them knew or should have known that the ultimate sale of alcohol sold in Whiteclay would occur in the PRIR. The Defendants and each of them knew or should have known that the vast majority of the alcohol initially sold at retail in Whiteclay would in fact be smuggled into and resold on the PRIR in violation of both the OST Tribal Law and under the laws of the State of Nebraska.

41. All of the above have, and will for years to come, cost the OST millions of dollars to provide services to address the damages caused by the illegal sale, transport and consumption of alcohol. The OST does not have sufficient resources to meet the needs of the Lakota people and mitigate the damages caused by the illegal transportation, sale and consumption of alcohol on the PRIR.

42. The illegal trade in alcohol could not occur without the knowing cooperation and assistance of every Defendant in the chain of supply. Each and all of the Defendants have profited over the years by supplying vast volumes of alcohol that they knew or should have known was the essential element in an on-going illegal activity. The effects of their common enterprise and cooperation have made that illegal trade in alcohol possible and have caused devastating injuries to the Lakota people and massive financial damages to the OST.

CAUSE OF ACTION

PERSONS ACTING IN CONCERT

43. Plaintiff restates each and every previous allegation in support of this Cause of Action as if fully set forth herein.

44. As part of a common enterprise, the Defendants and each of them, have knowingly acted in concert to manufacture, distribute and sell beer through the Whiteclay retail outlets in amounts that cannot be legally sold, consumed or possessed under the laws of the State of Nebraska and the OST.

45. The Defendants and each of them, know or should know that the Retail Defendants' conduct in the sale of the vast amount beer which is smuggled into and resold in the Reservation is in breach of their duties under the law of the State of Nebraska and the OST.

46. The Defendants and each of them give substantial assistance and encouragement to the Retail Defendants by supplying and transporting volumes of beer far in excess of an amount that could be sold in compliance with the laws of the State of Nebraska and the OST. The Defendants and each of them, also give further substantial assistance and encouragement to the Retail Defendants through advertisements, marketing materials, and other business accommodations to promote the consumption of beer in the PRIR.

47. The Defendants and each of them have the duty to make reasonable efforts to ensure their products are distributed and sold in obedience to the laws of the State of Nebraska and the OST. The Defendants and each of them have breached that duty by cooperating and engaging in a common enterprise which is focused on assisting and participating in the illegal sale of alcohol.

48. The Defendants and each of them have thereby caused the OST to suffer massive

damages in an amount yet to be determined.

WHEREFORE, Plaintiff prays for an award of money fully compensating it for all damages it has suffered in the past and is reasonably likely to suffer in the future caused by the actions of the Defendants and as established at trial.

OGLALA SIOUX TRIBE, Plaintiff,

BY: s /Thomas M. White
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ATTORNEYS FOR PLAINTIFF

DEMAND FOR JURY AND LOCATION OF TRIAL

The Plaintiff hereby demands a trial by jury and designates Lincoln, Lancaster County, Nebraska as the place of trial.

s/ Thomas M. White