

ML Marzulla Law Legal Report

When it's Inverse Condemnation, We Help Property Owners Get Paid



Marzulla Law, LLC is the nation's leading law firm for takings claims against the federal government. ML represents landowners, developers, water districts, Indian tribes, business, and corporate interests in litigation of property rights and contract claims. ML also represents clients in environmental enforcement actions, and litigation involving natural resources and permitting issues, in federal district courts and courts of appeal.



We hope that this Newsletter will serve as a resource for you and help you get to know us better.

Sincerely,

Nancie and Roger Marzulla
Marzulla Law, LLC
Tel.: 202.822.6760
www.marzulla.com

Follow us on 

A Proud Member of
INBLF | International Network
of Boutique Law Firms

MARZULLA LAW LLC LISTED IN
Best Lawyers®
THE WORLD'S PREMIER GUIDE



Restoring Dignity to the Members of the Quapaw (O-Gah-Pah) Tribe of Oklahoma



Testimonials

"It was the honor of a lifetime to act as co-counsel with Marzulla Law in the trial of the mining rights case in the Complex Litigation Division of Broward County Circuit Court. The Marzullas' trial preparation, skill and experience were a marvel to watch, and were the reasons for the excellent results in favor of the client. We would

A Brief History

For over four centuries the original inhabitants of the region where the Arkansas and Mississippi Rivers meet—the people known as the Quapaw (O-Gah-Pah), or the "Downstream People"—have endured unending hardships, abuses, and inequities. In the 1600s and 1700s, when Europeans arrived, their population was decimated by disease. As American interests moved westward during the 1800s, the Quapaw suffered forced relocations, prejudice, and even starvation. After their reservation in northeastern Oklahoma was devastated during the Civil War, they were forced to cede and sell more of their land to the U.S. government for reconstruction funds so as to restore living conditions. Finally, as the 20th century approached, pressure from the U.S. government forced the Quapaw Nation to self-allot the land within its reservation to individual members of the Tribe in order to ensure the lands remained in Quapaw hands.

Present Day

Since the Tribe was removed to Oklahoma, the U.S. government has been the trustee of the Tribal members' lands and other assets. Recently, an investigation and accounting of the government's management of the Tribal members' assets was conducted. The analysis was completed in 2010 and determined that the government had breached its fiduciary duty by having mismanaged Tribal members' monetary and non-monetary assets.

In January 2011, nine individual members of the Quapaw Tribe, each of whom are successors-in-interest to tribal allotments, filed a class action breach of trust lawsuit on behalf of individual tribal members against the U.S. government in the U.S. Court of Federal Claims. The lawsuit, *Goodeagle vs. United States* (named for Grace M. Goodeagle, the first-named of the nine Plaintiffs) claims that the government breached its fiduciary duty by mismanaging amounts due from property leases, permits, and agreements; mismanaging Tribal members' Individual Indian Money Accounts, trust accounts, and other monetary assets; mismanaging natural resources; among other breaches.

However, the government's expansive view of an April 2011 Supreme Court ruling on an entirely separate and unrelated case now threatens potentially devastating effects on the *Goodeagle* case and the ability of the Quapaw Tribal members to obtain any relief.

The Supreme Court Decision in *United States v. Tohono O'Odham Nation*

In April 2011, the Supreme Court ruled that the U.S. Court of Federal Claims did not have jurisdiction to hear a case brought by the Tohono O'Odham Nation against the U.S. government. The

recommend Marzulla Law without hesitation, and look forward to working with the firm again on another case and towards another victory for the good guys!"

**Craig B. Sherman and
Drew B. Sherman of
Sherman & Sherman,
P.A., Boca Raton, Florida**

Marzulla Law Teams up with Florida Law Firm to Win Mining Case



The experienced litigators of **Sherman & Sherman, P.A., in Boca Raton, Florida**, recently teamed up with Marzulla Law to help win a successful post-trial ruling against Florida Power & Light (FPL) earlier this year. Father-and-son attorneys, the Shermans are well-known in the Florida legal community for their courtroom skills.

Craig B. Sherman began practicing law over 40 years ago in Chicago, Illinois, after he earned his law degree from Northwestern University School of Law in Chicago. He also holds a B.A. in accounting from

ruling was based on an interpretation of a law passed in 1868 ([28 U.S.C. § 1500](#)) which states that the Court of Federal Claims "shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States." In this instance, the Tohono O'Odham Nation had a case pending at the same time in Federal District Court based on the same operative facts as their case in the Court of Federal Claims, although the case in the District Court sought entirely different relief from that sought in the Court of Federal Claims because the two courts have very different jurisdictions. The Supreme Court, however, held that Section 1500 applies regardless of whether the relief sought is different. In short, Section 1500 deprives the Court of Federal Claims of jurisdiction to hear any lawsuit where another claim has previously been filed arising from "the same operative facts."

The *Tohono* Decision, the *Cobell* Settlement, and the Government's Motion to Dismiss *Goodeagle*

Now pending in the U.S. District Court for the District of Columbia is a massive nationwide lawsuit on behalf of more than a million Native Americans. The case, *Cobell v. United States*, has been pending for over 15 years. Congress has now approved a settlement of that case that would provide some Native Americans—including members of the Quapaw Tribe—far less than they are entitled to. For that reason, *Goodeagle* and 1,080 other members of the Quapaw Tribe have asked the district court to exclude them from the case so they can pursue their existing lawsuit.

But now the Government has filed a motion to dismiss the *Goodeagle* case claiming that the court "lacked subject-matter jurisdiction" because *Cobell* asserts the same claims for all Native Americans—even though *Goodeagle* and more than a thousand Quapaw do not want to participate in the *Cobell* case. More specifically, the Government's motion states that:

Plaintiff's claims herein are currently pending before the District Court for the District of Columbia in *Cobell, et. al. v. Salazar, et. al.* ...Plaintiffs are members of the certified "Historical Accounting Class" and "Trust Administration Class" in *Cobell*. The class plaintiffs in *Cobell* allege the United States failed to provide a historical accounting of trust assets, mismanaged trust funds, and mismanaged non-monetary trust assets.

The Government's motion to dismiss the *Goodeagle* lawsuit is based on an expansive reading of Section 1500 in the *Tohono* decision and has nothing to do with the merits of the *Goodeagle* lawsuit. The Government argues that members of the Quapaw Tribe are also members of two settlement classes that have been certified by the District Court in *Cobell v. Salazar*. Both *Cobell* and *Goodeagle*, according to the Government, are based on the same

University of Wisconsin-Madison. He moved to Miami, Florida in 1975, to become the head of the litigation department at the law firm of Broad & Cassel, which eventually grew to become one of the largest and most prominent firms in Florida.

Craig founded his own law firm in Miami in 1984, and his current law firm in August of 1999. His practice consists of general corporate matters, transactional and real estate (commercial and residential), banking, municipal law and commercial litigation. Craig has been Town Attorney for Bay Harbor Islands, FL, since 1976, has been attorney for Dan Marino (former Miami Dolphins quarterback and NFL Hall of Famer) since his rookie year in 1983, and has served on the Board of Directors for various organizations and charitable causes in South Florida.

Craig is admitted to practice in Florida and Illinois, and before the Federal Courts. Before becoming a practicing attorney, Craig played bass fiddle in a band fronted by the actress, Ann-Margret (of "Bye Bye Birdie" fame).

Drew B. Sherman earned his J.D. at Nova Southeastern University in 1995, and his B.A. from Tulane University in New

operative facts, and thus 28 U.S.C. § 1500 requires that the *Goodeagle* lawsuit be dismissed. Never mind that no Quapaw filed the *Cobell* case, and that the *Goodeagle* Plaintiffs want nothing to do with it. Fearing that any potential claims might be extinguished by the *Cobell* settlement, over 1,080 tribal members filed opt-out forms with the *Cobell* administrator and expressed interest in participating in the *Goodeagle* case if claims attributable to their family have survived.

The *Goodeagle* case is far from over. Nancie Marzulla, counsel for Quapaw Tribal members in the *Goodeagle* litigation, explains that "the *Goodeagle* Plaintiffs exercised their right to opt out of the *Cobell* settlement. Section 1500 has no logical application to the *Goodeagle* situation. There is likewise no good reason why people who didn't want to be members of another lawsuit should be deprived of their right to seek relief in the Court of Federal Claims. "

The Implications For The Quapaw Nation

The Quapaw people have a rich culture whose heritage hails them as remarkable agriculturalists, and wholly inoffensive and peaceable. Their heritage now sadly includes a centuries-long struggle of endurance against continuing injuries and injustices at the hands of the American government. For their steadfastness they deserve our honor. But more importantly, they deserve the justice that is owed to them.

"If *Goodeagle* is dismissed, the Quapaw Tribal members will be robbed of their ability to have a remedy for decades of federal government mismanagement of their lands, mineral rights, and money accounts," says Nancie Marzulla, the attorney representing *Goodeagle*. "Congress approved the *Cobell* settlement, which allocates a small payment for each individual class member, far less than the Quapaw tribal members' damages should be. The Quapaw had extremely valuable mineral rights, which is why they tried to opt out of the *Cobell* class and filed their own lawsuit."

John L. Berrey, Chairman of the Quapaw Tribe, put it this way: "The *Goodeagle* case stands for more than just a monetary settlement for the Quapaw people—it is an inherent part of restoring the dignity that almost 100 years of [federal government] mismanagement of our property has taken from us."



Orleans, LA. He began his career as an Assistant Public Defender in Broward County (Fort Lauderdale), FL, and later practiced Entertainment Law as in-house counsel for PolyGram Records/Universal Music Group in New York, NY, through 1999.

Since then, Drew has been in private practice with his father, Craig, and handles general corporate matters, transactional and real estate (commercial and residential), and commercial litigation for the firm's business clients.

Drew is admitted to practice in Florida, New York, the District of Columbia, and before the Federal Courts. When Drew is not practicing law, he is the lead singer in a local rock band called "Hangin' With Brodie," which performs at major venues and attracts a large following.

Spotlight:

Quapaw Tribe Opens Its Arms To Joplin Tornado Victims

On May 22, 2011 a category 5 (EF-5) tornado—the most

powerful and most devastating of tornadoes—hit the town of Joplin, Missouri. A great portion of the town was utterly leveled, many were left homeless, many others missing, and over 140 people were killed. It was the deadliest single tornado in over fifty years.

The Quapaw Tribe, whose reservation in Oklahoma is about thirty miles southwest of Joplin, is opening its arms to victims. Many of the employees at its Downstream Casino and Resort were among those left homeless by the tornado. According to the [Native American Times](#), "To deal with the situation, the casino established home- and ride-sharing programs for employees who are trying to rebuild."

"There's been a strong response from the employees," said Sean Harrison, Downstream Casino and Resort's public relations manager. "About 60 employees and their families lost everything and we've had team members pitch in by offering to share their houses, apartments and rides to work."

But Downstream is doing more than helping only its own employees. It has become a collection point for donated clothes, food and household supplies for tornado victims, turning a room at the golf course annex into a secondhand store of sorts. Harrison said the casino is giving first priority to employees of Downstream Casino and Joplin Workshops, a non-profit that provides job opportunities for disabled people. However, donations are coming in at such a swift rate that Downstream may be able to help more people who were disaffected by the tornado.

"We want to help as many people as we can," Harrison said.



About Our Law Firm

Marzulla Law, LLC is a Washington D.C.-based law firm. Nancie G. Marzulla and Roger J. Marzulla help property owners get paid just compensation when the Government takes their property through inverse condemnation.

ML lawyers practice in the federal courts, especially the U.S. Court of Federal Claims, the Federal Circuit Court of Appeals, and the U.S. District Court for District of Columbia, as well as other federal district courts, appellate courts, and the U.S. Supreme Court. ML also represents clients in administrative agencies, such as the District of Columbia Office of Administrative Hearings or the Interior Board of Indian Appeals.

Chambers has recognized Marzulla Law as one of the top ten water rights litigation firms in the country. Nancie Marzulla and Roger Marzulla have been selected by their peers to be included on the list of Best Lawyers in America, and their firm has the highest AV-rating from Martindale-Hubbe. Nancie and Roger Marzulla are listed in Best Lawyers for environmental law, and Marzulla Law is a member of the International Network of Boutique Law Firms.



Disclaimer: The information you obtain in this newsletter is not, nor is it intended to be, legal advice. Results are not guaranteed. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established

