Ryan Montgomery-Sythe

From:	Ryan Montgomery-Sythe
Sent:	Wednesday, September 8, 2021 10:11 AM
To:	'Fred Triem'
Cc:	Michael Heiser; Misulich, Robert J.; ZBerne@SCHWABE.com; Todd Araujo; Huston, Jeanine; Budd Simpson; Kaitlin D'Eimon
Subject:	RE: S-17767 and S-17846 -- Sending Appellants' Second Motion for Leave to File an Over-Length Reply Brief
Attachments:	S17767_2021-09-07_S1.pdf

Mr. Triem,

The reply brief submitted on August 31, 2021 has already been checked by a law clerk for compliance with the Appellate Rules, and the brief was returned for correction on September 7, 2021. It appears this revised reply brief and second motion for leave to file overlength were filed before you received our order returning the reply brief for correction.

Since this revised reply brief still contains contentions not previously raised in the appellant's or appellee's brief, namely arguments related to the relation back doctrine and whether KTC failed to request abstentions or removal, we will not be accepting the revised reply brief and second motion to accept overlength for filing.

You will still need to submit a corrected reply brief by September 21, 2021. If the reply brief is still overlength following correction, you will also need to submit another motion to accept overlength reply brief along with the corrected brief.

Thank you,

Ryan Montgomery-Sythe
Chief Deputy Clerk
Appellate Courts
303 K Street
Anchorage, AK 99501
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From: Fred Triem <triemlaw@alaska.net>
Sent: Tuesday, September 7, 2021 3:56 PM
To: Pleadings <Pleadings@akcourts.us>; Kaitlin D'Eimon <kdeimon@akcourts.gov>
Cc: Michael Heiser <mphesq@kpunet.net>; Misulich, Robert J. <rmisulich@schwabe.com>; ZBerne@SCHWABE.com; Todd Araujo <taraujo@stsl.com>; Huston, Jeanine <JHuston@SCHWABE.com>; Budd Simpson <bsimpson@stsl.com>; Ryan Montgomery-Sythe <rjmontgomery@akcourts.gov>; Ryan Montgomery-Sythe <rjmontgomery@akcourts.gov>
Subject: S-17767 and S-17846 -- Sending Appellants' Second Motion for Leave to File an Over-Length Reply Brief
Importance: High

Dear Ms. D'Eimon and Mr. Montgomery:

Please take note of the attached documents, which are the Appellants' Second Motion for Leave to File an Over-Length Reply Brief (3 pgs), and the proposed over-length brief (22 pages)

Regards, *Fred Triem*

Attachments (2):

1. ***S-17767 and S-17846--Second-Mtn-Over-Length-Brf.pdf***
2. ***S-17767 and S-17846--Appellants' Reply-Brf.pdf (revised and shortened to 22 pgs)***

IN THE SUPREME COURT FOR THE STATE OF ALASKA

FRED W. TRIEM, *Appellant,* *vs.* KAKE TRIBAL CORPORATION [KTC], *Et al.,* *Appellees.*	:	Supreme Court No. **S-17767**
CLIFFORD W. TAGABAN, *Appellant,* *vs.* KAKE TRIBAL CORPORATION [KTC], *Et al.,* *Appellees.*	:	Supreme Court No. **S-17846** Superior Court Case No. 1PE-90-00072CI Superior Court Case No. 1PE-95-00001CI

APPELLANTS' SECOND MOTION FOR LEAVE TO FILE AN OVER-LENGTH REPLY BRIEF

(Submitting a new, shorter reply brief and asking the court to accept this replacement version; KTC has filed 115 pages of briefing for its side, appellants should be allowed 22 pages to reply.)

Pursuant to Appellate Rule 212(c)(4),[1] appellants move for leave to file a reply brief that exceeds the limit of 20 pages. Their proposed new replacement brief is 22 pages long, shorter than their original reply brief that was 23 pages. *See* attachment.

(1) Asking to withdraw their original, timely-filed reply brief and replace it with a new, shorter version: On the due date, appellants filed a 23-page reply brief and followed it with a motion to accept an over-length brief. Here, they ask to withdraw the

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[1] Appellate Rule 212(c)(4) provides: "A motion for leave to file a brief longer than [is] permitted by this paragraph must be accompanied by a copy of the over-length brief [that is] proposed to be filed."

previous version of their reply brief and to replace it with a new, shorter version. The principal change is in the final five pages, which have been shortened to four pages.

(2) Four grounds for this motion – Multiple issues with two cases consolidated into one brief, complicated core legal issue, future significance for the Alaska Court System and Alaska Native Corporations, and three appellees' briefs: This is a case about a corporate debtor that refused to pay a money judgment that it owes to a group of its own shareholders, who are the judgment creditors. The original Judgment was entered in 1994 [Exc.673] and was affirmed on appeal: *Hanson v. KTC,* 939 P.2d 1320 (Alaska 1997). [Exc.923] After remand, a new, Final Judgment was entered. [Exc.690] KTC still owes more than $1.7 million on the unpaid Final Judgment. [Exc.216, *but see* Exc.1227 (much higher unpaid balance if the per diem is $305.22 instead of only $184.30 — depends on whether KTC has defaulted on The Plan).]

The principal issue here on appeal is: Does the superior court have subject matter jurisdiction to discharge the judgment debts, after the Bankruptcy Court has expressly refused to discharge them and instead required full payment in its approval of KTC's Chapter 11 Plan of Reorganization: [Exc.1075 at ¶ 5.2.14, 1078 at ¶ 5.2.15; 1081 at ¶ 9.2, 1082 at ¶¶ 9.4 - 9.8; 1222-32]

Four reasons for allowing a longer reply brief of 22 pages:

1. *Two Cases:* There are two different cases that are consolidated here, each with a different supporting predicate and set of documents in the excerpts of record. It requires more pages than usual to discuss a wider range than if only one case.
2. *Complicated Core Issue:* The central topic in these two cases is the *exclusive* jurisdiction of the bankruptcy court to perform its core functions, a topic which requires a detailed explanation. Please see the attached brief at pgs. 1 – 12.

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3. *Future Expense to the Court System:* This case is important to the Alaska Court System because KTC has consumed the System's resources for 31 years. The superior court once noted: "Both sides were excessive in their advocacy, especially Kake Tribal, which appeared bent on exhausting the plaintiffs rather than allowing a resolution of the case on the merits" [Exc.687, at ¶ F/G]
4. *Briefing Space:* There are three appellees' briefs on the side of KTC, the appellee. Only one brief is allowed in reply to those three briefs. Symmetry and fairness support an equal voice here for the shareholder-appellants.

Table of 5 briefs that have been filed in consolidated Case Nos. S-17767 and S-17846:

Party's Brief	***Attorney Author***	***No. Pgs***
Appellants' Opening Brief	Triem	50
KTC's Appellee Brief	Misulich and Berne	51
Arlene Hanson Appellee Brief	Heiser	42
Martin Class Appellee Brief	Araujo and Simpson	22
Appellants' Reply Brief (2nd proposed)	Triem	22
Total number of pages in party briefing:	Appellants = **72** —— Appellees = **115**	

(3) Relief requested – 2 extra pages in a 22-page reply brief: Not asking for a lot of extra space. This is a complicated case that deserves two extra pages. This brief cannot cause any actual prejudice to the appellees, who have no more deadlines.

Respectfully submitted this 7th day of September in 2021.

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Fred W. Triem, No. 7912140
Attorney for Appellants

Attachment: [new] Appellants' Reply Brief (22 pages)

CERTIFICATE OF SERVICE

I certify that on 7 Sep 2021, I am sending this memo by E-mail to: Zachery Berne, Esq., Robert J. Misulich, Esq., Michael Heiser, Esq. Todd Araujo, Esq., and E. Budd Simpson, Esq. attorneys for appellees. *Fred Triem*

IN THE SUPREME COURT OF THE STATE OF ALASKA

FRED W. TRIEM, *Appellant,* *vs.* KAKE TRIBAL CORPORATION [KTC], *Et al.,* *Appellees.*	:	Supreme Court No. **S-17767**
CLIFFORD W. TAGABAN, *Appellant,* *vs.* KAKE TRIBAL CORPORATION [KTC], *Et al.,* *Appellees.*	:	Supreme Court No. **S-17846**

Superior Court Nos. 1PE-90-00072CI and 1PE-95-00001CI

APPEALS FROM THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT PETERSBURG
THE HONORABLE DANIEL SCHALLY

APPELLANTS' REPLY BRIEF

Filed in the Supreme Court of the State of Alaska on this 7th day of September 2021. Meredith L. Montgomery the Clerk of the Appellate Courts.

By: Kaitlin D'Eimon, Deputy Clerk

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