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DOI Says Potawatomi Suit Should Be Heard In Wisconsin

By **Caroline Simson**

Law360, New York (May 22, 2015, 2:16 PM ET) -- The federal government asked a District of Columbia federal court on Thursday to transfer a Wisconsin Native American tribe's suit accusing the U.S. Department of the Interior of wrongly rejecting an amendment to its state gaming compact to a venue in the Badger state.

The suit was filed by the Forest County Potawatomi Community in January, and accuses the DOI of improperly **rejecting an amendment** to the tribe's gaming compact with the state of Wisconsin that would have allowed the tribe to be compensated for lost revenue from its Milwaukee casino, as a result of a competing casino that was **slated to be built** by the Menominee Indian Tribe of Wisconsin in nearby Kenosha.

In its Thursday motion, the government argued that a Wisconsin venue would be more well-suited to address the "significant issues of local controversy" raised in the litigation. Specifically, the Eastern District of Wisconsin has experience dealing with both the Potawatomi and Menominee tribes' efforts to obtain off-reservation gaming in both Milwaukee and Kenosha.

Moreover, the Potawatomi tribe is located in the state and the basis of its claim is the DOI's rejection of the gaming compact amendment, which directly impacts the tribe's gaming operations. There was no real reason to file the suit in D.C. federal court, according to the government, because that venue has no substantial connection to the litigation's subject matter.

"Central to this court's determination should be the fact that this dispute is a matter of significant interest to the state of Wisconsin and, in particular, communities within the Eastern District," the government said. "FCPC's claims are directed at an agency action whose effects will be felt almost entirely within Wisconsin, and, therefore, should appropriately be decided in Wisconsin."

The Kenosha proposal was **rejected earlier this year** by Wisconsin Gov Scott Walker after he concluded that the deal would put too much of a financial burden on the state's taxpayers, and the site is not currently eligible for gaming, according to court records.

Though the Kenosha proposal is **off the table** for the moment, the proposed amendment would require the state to pay the Potawatomi tribe's annual revenue loss for any casino within 50 miles of the the tribe's Milwaukee casino.

The DOI rejected the Potawatomi tribe's proposed gaming compact amendment when the Kenosha project was still in the works, after concluding that it violated the Indian Gaming Regulatory Act because it obligated the Menominee tribe to compensate the Potawatomi tribe for lost revenue

resulting from the Kenosha casino, according to the government's Thursday brief.

The government said that the DOI found that a provision in the amendment to "protect the Potawatomi Hotel & Casino's revenue stream" violates IGRA because it contemplates payments to the state from the Menominee for purposes other than defraying the state's cost of regulating Class III gaming activities. Moreover, the amendment was "ultimately designed to shift the burden of compensating for potential decreased revenues to the Menominee," the government said.

But in its suit, the Potawatomi tribe said that the amendment is "carefully crafted" to not impose any contractual duty on the Menominee.

The proposed 2014 amendment is the product of a mandatory amendment process established in a 2005 amendment to the gaming compact, according to the tribe's suit.

According to the government's Thursday brief, the 2005 amendment prohibited Wisconsin's governor from signing off on a gaming facility within 30 miles of the Potawatomi tribe's Milwaukee casino with the tribe's consent, or unless the tribe and the state negotiated an amendment to the gaming compact.

The tribe contends that IGRA allows states and tribes to account for adverse economic impacts on existing gaming activities during compact negotiations, and in denying the amendment, the DOI deprived the Potawatomi of the ability to negotiate with states for revenue sharing and market exclusivity.

Attorneys representing the Potawatomi tribe were not immediately available for comment on Friday.

Forest County Potawatomi Community is represented by Scott Crowell of the Crowell Law Office - Tribal Advocacy Group, David Longly Bernhardt and Ryan Anthony Smith of Brownstein Hyatt Farber Schreck LLP, and its internal counsel, Jeffrey A. Crawford.

The government is represented by John C. Cruden and Jody H. Schwarz of the U.S. Department of Justice and Andrew S. Caulum of the Office of the Solicitor - Div. of Indian Affairs, U.S. Department of the Interior.

The case is Forest County Potawatomi Community v. United States Of America et al, case number 1:15-cv-00105, in the U.S. District Court for the District of Columbia.

--Editing by Philip Shea.

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