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Mass. Says Gaming Deal Defeats Martha's Vineyard Casino

By **Jessica Corso**

Law360, New York (August 7, 2015, 5:10 PM ET) -- Massachusetts is continuing to fight a Native American tribe's attempt to build a gambling facility in Martha's Vineyard, telling a federal judge Thursday that the Indian Gaming Regulatory Act does not trump a 1980s-era settlement agreement that prohibits gambling on the land.

Massachusetts was joined by the town of Aquinnah and its community association in asking for summary judgment in a case the state hopes will stop the Wampanoag Tribe of Gay Head from moving forward with an electronic bingo facility, for which the state has not given a building permit.

The tribe contests it is permitted to build without state authorization under the IGRA, but Massachusetts says otherwise, arguing that Congress acknowledged in 1987 that the tribe can't authorize gaming on the territory when it approved a court settlement between the two parties.

The state also pointed to a First Circuit ruling on a similar issue in Maine to bolster its case. According to Massachusetts, the federal appeals court determined that the IGRA did not defeat a settlement entered into between the state of Maine and a Native American tribe in a conflict not involving gaming.

The state also reiterated arguments that it found unpersuasive a recent letter backing the tribe by the general counsel of the U.S. Department of the Interior's National Indian Gaming Commission.

"This court should disregard [the DOI's] weakly reasoned, result-driven opinion," the state wrote.

Massachusetts recently won a victory in the suit when U.S. District Judge F. Dennis Saylor IV told the tribe late in July that it **could not move forward** with facility construction while the suit is ongoing.

The tribe **said in a memorandum** opposing the injunction that its members will be irreparably harmed by the town's roadblocks because revenue from the proposed casino is meant to provide essential tribal government services that are "desperately underfunded."

"It is important to note that this is not lost profit to a private venture; this is lost governmental revenue," the tribe said. "Every day of delay is a delay in funding essential health services, housing, social services, cultural protection, police and fire protection, judiciary, infrastructure development and a multitude of other governmental services."

Massachusetts is represented by Attorney General Maura Healey and Assistant Attorneys General Juliana deHaan Rice, Carrie Benedon and Bryan Bertram.

The town is represented by Ronald H. Rappaport and Michael A. Goldsmith of Reynolds Rappaport Kaplan & Hackney LLC.

Intervenor Aquinnah/Gay Head Community Association is represented by Felicia H. Ellsworth, Oramel H. Skinner and James L. Quarles III of WilmerHale.

The Wampanoag Tribe is represented by Scott Crowell of Tribal Advocacy Group LLP, Bruce Singal and Elizabeth McEvoy of Donoghue Barrett & Singal PC and Lael R. Echo-Hawk of Garvey Schubert Barer.

The case is Commonwealth of Massachusetts v. The Wampanoag Tribe of Gay Head (Aquinnah) et al., case number 1:13-cv-13286, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Andrew Westney, Maya Rajamani and Vidya Kauri. Editing by Mark Lebetkin.

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