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Tribe Blasts Mass. Suit Over Martha's Vineyard Gaming Plan

By **Linda Chiem**

Law360, New York (August 28, 2014, 1:30 PM ET) -- A Native American tribe pursuing a gambling project in Martha's Vineyard fired back on Wednesday at the state of Massachusetts' federal suit alleging the project violates a decades-old agreement between the two governments, saying it's not bound to the accord.

The Wampanoag Tribe of Gay Head, also known as the Aquinnah Tribe, blasted the Commonwealth of Massachusetts' efforts to interfere with the project by alleging that the tribe's plans violate a 1983 memorandum of understanding executed between the Commonwealth of Massachusetts, Wampanoag Tribal Council of Gay Head Inc., the Town of Aquinnah and the Aquinnah Taxpayers Inc. over a dispute involving 400 acres of land on Martha's Vineyard.

The Wampanoag Tribe said it was not federally recognized when that 1983 settlement — upon which the state's breach of contract claim rests — was hammered out. And as a sovereign nation, the tribe is therefore not bound by the terms of that settlement agreement, according to a response and counterclaim filed with the Massachusetts federal court Wednesday. The tribe received its federal recognition in 1987.

"In addition, the MOU was never intended to be, and was not, a contractually enforceable agreement, as only the United States, which was not a party, could provide the consideration sought by the plaintiff: the extinguishment of the tribe's claim of aboriginal title and the imposition of limitations on the tribe's jurisdiction over the 400 acres the tribe would purchase in return," the tribe said.

The tribe also moved to dismiss an intervening suit from Aquinnah/Gay Head Community Association Inc. for lack of an effective waiver of tribal sovereign immunity and failure to state a claim, according to court documents filed with the Massachusetts federal court Wednesday.

The Wampanoag Tribe maintains that the Massachusetts federal court has previously held that neither the Sept. 1983 memorandum of understanding nor the Massachusetts Land Claim Settlement Act of 1987 that's at issue in the intervening suit waived or abrogated the tribe's sovereign immunity from suit.

The tribe asked the court for declaratory and injunctive relief barring the state from interfering with the project, according to court documents.

"The Commonwealth's complaint, which frames the dispute as a matter of contract law, is deficient in resolving the actual dispute the Commonwealth has with both the tribal government

and the federal government," the tribe said.

The 1983 agreement at issue in the instant suit was reached to settle a 1974 suit in which the tribe sued the town of Aquinnah, claiming aboriginal title to certain land tracts, according to court documents. Under that settlement deal, the town and a taxpayers association handed over 400 acres to the tribe, which were taken into trust by the U.S. Department of the Interior.

The state of Massachusetts first **launched the instant suit** in Suffolk County state court in December 2013, which was later removed to federal court, maintaining that while the tribe has federal approval to conduct gaming on those lands, it does not have state approval and is barred from conducting gaming by the terms of the 1983 settlement agreement.

The Wampanoag Tribe has been moving forward with plans to develop a Class II gambling project on a portion of those 400 acres of land that have been held in trust. The tribe nabbed approval from the National Indian Gaming Commission in 2013 for the project.

Representatives for the parties could not be immediately reached for comment on Thursday.

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

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 and defendants are represented by Scott Crowell of Tribal Advocacy Group LLP, Bruce Singal and Elizabeth McEvoy of Donoghue Barrett & Singal PC, Lael R. Echo-Hawk of Garvey Shubert Barer and John Duffy and John R. Casciano of Steptoe & Johnson LLP.

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

--Additional reporting by Natalie Rodriguez. Editing by Emily Kokoll.

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