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Tribe Moves For Quick Win In Martha's Vineyard Gambling Row

By **Kat Greene**

Law360, Los Angeles (May 29, 2015, 5:24 PM ET) -- A Native American tribe on Thursday urged a Massachusetts federal judge to shut down the commonwealth's suit over a gambling project the tribe is pursuing on Martha's Vineyard, arguing it doesn't need state government approval now that it has the federal go-ahead on the project.

The Wampanoag Tribe of Gay Head, also known as the Aquinnah Tribe, argued that the Indian Gaming Regulatory Act granted it — and not the Massachusetts government — jurisdiction over the land, thereby allowing the gambling project to move forward, according to a motion for summary judgment filed Thursday.

The commonwealth **contends in its suit** against the tribe that it must obtain a gaming license from the state government before opening its gambling facility, but the tribe called upon the court to follow suit on rulings from the National Indian Gaming Association and the Department of the Interior that found the land belonged to the tribe, and that the tribe could run gambling operations according to tribal law, according to the motion.

"The legal and factual reality is that the tribe exercises jurisdiction over its settlement lands as a robust, functioning tribal government," the tribe wrote in its motion. "This court should issue an opinion consistent with the Department of the Interior's thorough and well-reasoned opinion that IGRA impliedly repealed the commonwealth's gaming jurisdiction."

The commonwealth in December 2013 filed a lawsuit in state court against the Aquinnah Tribe alleging the project violated a decades-old settlement agreement between the two governments. With Thursday's motion, the tribe is seeking summary judgment on its counterclaims against Massachusetts as well as the commonwealth's claims against it, according to the filing.

Massachusetts, contending a breach of contract and of state law, asked the court for a declaratory judgment ruling that the tribe is prohibited under the terms of the settlement agreement from conducting gaming on its lands.

The **1983 agreement at issue** in the instant suit — which has since been moved to federal court — 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.

Massachusetts maintains 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.

In November 2013, the tribe **received a legal opinion** from the general counsel of the National Indian Gaming Commission stating that its lands on the western edge of the island — as well as any future land it may take into trust — qualify for gaming under the IGRA.

The tribe has contended that the nod allows it to build a Class II facility, with bingo, related bingo-based electronic games and card games that are not played against the house. It was planning to temporarily locate the facility in a converted community center and to build a permanent facility that blends in with the rest of the island and works with other local businesses, the Aquinnah have said.

Representatives for the parties didn't immediately respond to requests for comment on Friday.

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 Linda Chiem and Natalie Rodriguez. Editing by Philip Shea.

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