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Tribe Sues New Mexico Over Gambling Pact Impasse

By **Lance Duroni**

Law360, Chicago (July 20, 2015, 3:43 PM ET) -- The Pueblo of Pojoaque on Saturday sued to force the state of New Mexico to strike a new gaming compact for its two casinos, seeking hundreds of millions of dollars in damages and accusing the state of failing to negotiate in good faith.

The state is demanding an improper tax on the pueblo's gross gaming revenue and attempting to shoehorn into the compact provisions that aren't directly related to Class III gaming, among other alleged demands that violate the Indian Gaming Regulatory Act and the tribe's sovereignty, the pueblo said in a complaint filed in New Mexico federal court.

The tribe, which has been operating the casinos for several weeks under an expired deal with the state, claims that a new compact is needed to ensure funding for the tribe's \$43 million budget and some 1,500 employees.

"The state's failure to conclude compact negotiations in good faith places those services, programs, jobs and payroll in jeopardy," the tribe said. "The Pueblo will not acquiesce to the state's illegal demands."

After the compact expired on June 30, the tribe **reached an agreement** with the U.S. attorney's office for the District of New Mexico to continue operating its Buffalo Thunder Resort & Casino and Cities of Gold Casino Hotel under the same terms as its previous gaming compact from 2001.

U.S. Attorney Damon P. Martinez said at the time that he decided not to bring an enforcement action against the tribe to allow separate litigation to play out in the Tenth Circuit among the state, the U.S. Department of the Interior and the tribe that seeks to outline the parties' rights and their authority to enter into lawful gaming compacts.

In Saturday's complaint, the tribe asked the court for a declaration that the state hasn't negotiated in good faith, which would trigger certain remedies under the IGRA forcing the state to come to terms on a new compact. In the alternative, the suit could also force the state and the tribe to submit to mediation or to procedures governing Class III gaming activity set forth by the Secretary of the Interior, according to the suit.

The biggest sticking point in the negotiations has been the state's gross revenue, or "net win," tax. Under the pueblo's 2001 gaming compact, the tax rate was 8 percent, but the 2015 compact with other tribes approved by the New Mexico Legislature provided for the rate to rise as high as 10 percent in 2018.

On Saturday, the tribe said that it is no longer seeking "exclusivity" provisions to protect its casinos from competition, which had been granted under the previous compacts in exchange for the revenue-sharing tax.

"Rather than correct the illegal taxation schemes of prior state administrations, the state instead demands that an increased gaming tax on net win or gross gaming revenue be included in any negotiated compact, and demands that the Pueblo accept illusory exclusivity provisions," the complaint said. "Such demand by the state is evidence of bad faith, providing sufficient basis to implement the remedial provisions of IGRA."

In addition to its bid to force the state back to the negotiating table, the tribe seeks at least \$500 million in punitive damages against New Mexico Gov. Susana Martinez and several other state officials for allegedly violating tribe members' civil rights by illegally attempting to assert state control over tribal business.

A spokesman for Martinez said Monday that the lawsuit was "frivolous" and designed to intimidate state regulators from doing their jobs.

"The simple truth is that Pojoaque Pueblo is operating in violation of state and federal law, and they want to play by a different set of rules than other New Mexico tribes," said Michael Lonergan, Martinez's press secretary. "Neither the state, nor the governor, are going to be bullied into a position that would harm the state and punish every single other gaming tribe that has chosen to negotiate in good-faith and operate legal gaming establishments in accordance with an adopted compact."

Counsel for the tribe could not be reached for comment.

The Pueblo of Pojoaque are represented by Steffani A. Cochran, the tribe's general counsel, and Scott Crowell of Crowell Law Offices Tribal Advocacy Group.

Counsel information for the state was not immediately available.

The case is Pueblo of Pojoaque, et al. v. State of New Mexico, et al., case number 1:15-cv-00625, in the U.S. District Court for the District of New Mexico.

--Additional reporting by Caroline Simson. Editing by Christine Chun.

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