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## Wis. Tribe Asks To Intervene In Rival Tribe's Gaming Suit

By **Vidya Kauri**

Law360, New York (September 10, 2015, 2:57 PM ET) -- A Wisconsin tribe asked a D.C. federal court Wednesday for permission to intervene in a rival tribe's suit accusing the U.S. Department of the Interior of improperly rejecting an amendment to its gaming compact with the state, saying that its own gaming interests and ability to be self-sufficient are at stake in the suit.

The Menominee Indian Tribe of Wisconsin and its chartered gaming authority said in their motion to intervene that the 2014 amendment to the gaming compact between the state of Wisconsin and the Forest County Potawatomi Community contains provisions for FCPC to be compensated by the state for revenue losses at its Milwaukee casino if the Menominee were to obtain approval for a competing Class III gaming facility nearby, but unlawfully shifts the burden of state compensation to the Menominee tribe.

"FCPC attempted for years to use its own gaming compact as a back channel to thwart Menominee's efforts," the Menominee tribe said. "The 2014 amendment creates an extrastatutory requirement that the state guarantee a minimum level of profits to FCPC for business activities that include, but extend far beyond, Class III gaming."

The Menominee tribe, which claims to have one of the highest rates of poverty and unemployment in Wisconsin, said it has been pursuing a casino project and hotel complex in Kenosha, about 50 miles away from FCPC's casino, since 1999 to create jobs for its members and boost tourism. The DOI **granted consent** for the proposed \$800 million facility in 2013, but Gov. Scott Walker rejected it in January, citing the possible "cost of indemnifying FCPC" in a press release.

The FCPC sued the federal government in Washington federal court in January seeking to overturn the **rejection of the 2014 amendment**.

According to court documents, the DOI's Assistant Secretary of Indian Affairs Kevin Washburn said in his letter rejecting the 2014 amendment that although the amendment purports to make the state ultimately responsible for collecting mitigation payments to offset Potawatomi's revenue losses, the Menominee would, in fact, be responsible for making those payments in violation of the Indian Gaming Regulatory Act.

The Menominee tribe said it has a vested interest in the outcome of the 2014 amendment, but it was not represented in the negotiation process between the state and FCPC to draft its text, and that its ongoing efforts to develop tribal gaming in Kenosha are being impacted by the uncertainty caused by litigation over the 2014 amendment.

The tribe said in its motion that the FCPC is opposed to its intervention in the suit.

A representative for the FCPC could not be reached for comment Thursday.

The Menominee tribe and the Menominee Kenosha Gaming Authority are represented by Michael L. Roy and Caroline P. Mayhew of Hobbs Straus Dean & Walker LLP.

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, Division of Indian Affairs, U.S. Department of the Interior.

The Forest County Potawatomi Community is represented by David Longly Bernhardt and Ryan Anthony Smith of Brownstein Hyatt Farber Schreck LLP, Scott Crowell of Crowell Law Offices Tribal Advocacy Group PLLC and Jeffrey A. Crawford, attorney general with the Forest County Potawatomi Community Legal Department.

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 Katherine Rautenberg.

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