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Wis. Tribe Says Gaming Suit Does Not Concern Rival

By **Vidya Kauri**

Law360, New York (October 15, 2015, 8:48 PM ET) -- A Wisconsin tribe on Wednesday opposed a rival tribe's request to intervene in its suit accusing the federal government of improperly rejecting an amendment to its gambling compact with the state, arguing that any intervention would only serve to distract from the real issues.

The Forest County Potawatomi Community rebutted arguments from the Menominee Indian Tribe of Wisconsin and told a D.C. federal court that the lawsuit is about whether the Department of the Interior exceeded its authority under the Indian Gaming Regulatory Act to disapprove changes to its gambling compact and does not make any claims with respect to contracts to which the Menominee tribe is a party.

"Allowing intervention by Menominee, in its current status and with its current speculative financial 'interest,' would set a dangerous precedent for tribes to assert themselves in the compact approval processes of other tribes, thus making a mockery of the government-to-government relationship between the federal government and a tribe, as well as the government-to-government relationship between the state government and a tribe, two foundational elements of IGRA," the Potawatomi said.

The Potawatomi, which sued the federal government in January seeking to overturn the **rejection of the 2014 amendment**, also said the Menominee tribe aims to uphold the DOI's action and so its interests are adequately represented by the U.S. government.

The Menominee tribe and its chartered gaming authority told the court last month that the 2014 amendment to Potawatomi's gambling compact **contained provisions** for Potawatomi 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 shifted the burden of state compensation to the Menominee tribe.

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 its proposed off-reservation \$800 million facility in 2013, but Gov. Scott Walker rejected it in January, citing the possible "cost of indemnifying FCPC" in a press release.

According to court documents, DOI 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.

However, the Potawatomi challenged the Menominee tribe's contention that the amendment required the Menominee to make payments to either the state or Potawatomi, arguing instead that the amendment merely provided that the state may meet its compact obligation to Potawatomi by distributing funds received from Menominee and did not expressly prohibit the governor from signing off on the Kenosha casino.

In any case, the Potawatomi contended, there are documents that point to many other reasons why the governor rejected the Kenosha casino and the Menominee tribe's unsuccessful history in starting a casino is irrelevant to the suit at hand.

"This lawsuit is not over the legal and political hurdles Menominee faced when seeking to locate a casino on lands proposed to be taken into trust status in Kenosha, Wisconsin," the Potawatomi said.

A representative for the Menominee tribe could not be reached for comment.

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 Jody H. Schwarz of the U.S. Department of Justice. Andrew S. Caulum of the Office of the Solicitor, Division of Indian Affairs, U.S. Department of the Interior, is of counsel.

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

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 Aaron Pelc.

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