

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

NAVAJO NATION, and
NAVAJO NATION GAMING ENTERPRISE,

Plaintiffs,

Vs.

No. Civ. _____

HONORABLE ROBERT A. ARAGON,
District Judge, New Mexico
Eleventh Judicial District,
in his Official Capacity;
ROSEMARIE VANDEVER,
Personal Representative of
the ESTATE OF LARA SANDERS,

Defendants.

**COMPLAINT FOR DECLARATION,
PRELIMINARY RESTRAINING ORDER,
AND FOR TEMPORARY AND PERMANENT INJUNCTIONS**

Plaintiffs Navajo Nation and Navajo Nation Gaming
Enterprise ("NNGE"), allege as follows:

INTRODUCTION

This is an action for injunctive and declaratory relief by which Plaintiffs seek, pursuant to 42 U.S.C § 1983, and 28 U.S.C. § 2201, (1) an order prohibiting Defendant Judge Robert A. Aragon from exercising jurisdiction over the Plaintiffs in the case captioned *Rosemarie Vandiver vs. New Mexico Department of Transportation, Board of County Commissioners for the County of McKinley, Navajo Nation Gaming Enterprise, et al.*, D-1113-CV-

2012-00556; and (2) a declaration that the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., does not permit the shifting of jurisdiction from tribal courts to state courts over private personal injury lawsuits brought against tribes or tribal entities, and that thus the New Mexico state courts do not have jurisdiction over the Vandever lawsuit.

JURISIDTION AND VENUE

1. This Court has jurisdiction over this case under 28 U.S.C. § 1331 (federal question), § 1362 (action brought by Indian tribe), and 28 U.S.C. § 1343 (protection of civil rights).

2. Venue is proper under 28 U.S.C. § 139(b), inasmuch as all the actions from which the claims arise occurred or are occurring within the District of New Mexico.

PARTIES

3. Plaintiff Navajo Nation is a federally recognized Indian tribe located in various counties in New Mexico.

4. Plaintiff NNGE is a government enterprise of the Navajo Nation, doing business in the State of New Mexico.

5. Defendant Judge Robert A. Aragon is a New Mexico state district court judge of the Eleventh Judicial District (McKinley County), who is currently presiding over a civil lawsuit

captioned *Rosemarie Vandiver vs. New Mexico Department of Transportation, Board of County Commissioners for the County Of McKinley, Navajo Nation Gaming Enterprise, et al.*, D-1113-CV-2012-00556, (the "Vandever Lawsuit").

6. Defendant Rosemarie Vandever (the "Vandever Plaintiff") is the plaintiff in the Vandever Lawsuit.

STATEMENT OF FACTS

7. NNGE operates Firerock Casino, located on Navajo Nation land in McKinley County, under the terms of a class III gaming compact entered into between the Navajo Nation and the State of New Mexico (the "Compact") pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1994) ("IGRA"), specifically § 2710(d), which Compact was approved by the Secretary of the Interior and in effect at the time of the accident alleged by the Vandever Plaintiff.

8. The Vandever Plaintiff alleges that the Negligence of the NNGE, its employees, and its agents caused the wrongful death of Lara Sanders on February 8, 2011. See Vandever Plaintiff's Complaint, attached hereto as Exhibit 1.

9. The Vandever Plaintiff filed the Vandever Lawsuit against NNGE pursuant to Section 8 of the Compact. Exhibit 1 at ¶¶ 10, 12, and 25.

10. In Section 8 of the Compact, the Navajo Nation agreed to waive its sovereign immunity for personal injury claims alleged to have been proximately caused by the conduct of the NNGE, brought by visitors to the casino, and agreed to proceed with such claims in state or tribal court. Section 8(A) provides, in part, that "any such claim [for personal injury] may be brought in state district court, including claims arising on tribal land, *unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.*" Compact, § 8(A) (emphasis added).

11. In September of 2013, Judge C. Leroy Hansen ruled that "[t]he IGRA only authorizes the extension of state jurisdiction to enforce criminal and civil laws and regulations 'directly related to, and necessary for, the licensing and regulation' of tribal gaming activities", and "that a waiver of tribal sovereign immunity, in a compact entered into pursuant to the IGRA, can be valid only in the narrow category of cases where compliance with the IGRA's provisions is at stake. For these reasons, the non-tribal Defendants' effort to invoke Section 8 of the Compact as a basis for state-court jurisdiction in this matter fails." *Pueblo of Santa Ana v. Nash*, 972 F. Supp. 2d 1254 (D.N.M. 2013), appeal dismissed (Mar. 13, 2014), attached hereto

as Exhibit 2; See also *Santana v. Muscogee (Creek) Nation*, No. 12-5046, 2013 WL 323223 (10th Cir. Jan. 29, 2013) (unpublished order and judgment holding based on Oklahoma compact that tribal immunity was not waived for civil tort suits brought in state or federal court); and *Mescalero Apache Tribe v. New Mexico*, 131 F.3d 1379, 1385-1386 (10th Cir. 1997).

12. The IGRA does allow the parties to a class III gaming compact to agree to apply "the criminal and civil laws and regulations of the ... State that are directly related to, and necessary for, the licensing and regulation of [gaming]," and it further allows the parties to allocate "criminal and civil jurisdiction between the tribe and the state necessary for the enforcement of such laws and regulations." 25 U.S.C. § 2710(d)(3)(C)(i) and (ii). There is no other language in IGRA permitting the shifting of jurisdiction between the tribe and the state, and in particular nowhere does IGRA permit the shifting of jurisdiction over private personal injury suits to the state court.

13. Absent congressional legislation to the contrary, state courts may not exercise jurisdiction over suits against Indian tribes, tribal members or tribal entities arising from alleged wrongs committed within Indian country; nor may a tribe, whether unilaterally or by agreement with a state, validly agree

to any such shift in jurisdiction, and the attempted exercise of such jurisdiction by state courts directly undermines "the authority of tribal courts over Reservation affairs," and thus infringes on "the right of [the Pueblo] to govern [itself]." *Williams v. Lee*, 358 U.S. 217,223 (1959).

14. Accordingly, New Mexico state courts do not have subject matter jurisdiction over lawsuits against tribes or tribal entities, including the state court suit brought by the Vandever Plaintiff against NNGE.

COUNT I: VIOLATION OF CIVIL RIGHTS

15. Judge Aragon, in presiding over the *Vandever Lawsuit*, is acting under color of state law, and without jurisdiction over the subject matter of the lawsuit.

16. Judge Aragon's action in presiding over the *Vandever Lawsuit* has deprived NNGE of its liberty interest secured by the due process clause of the 14th Amendment to the U.S. Constitution to have the *Vandever Lawsuit* tried in a court that has jurisdiction over the subject matter.

17. The deprivation of NNGE's right to have its case heard in a court that has subject matter jurisdiction constitutes and injury for which injunctive relief is the only suitable remedy.

COUNT II: DECLARATORY JUDGMENT

18. Judge Aragon, in presiding over the *Vandever Lawsuit*, and the Vandever Plaintiff, in pursuing her claims in state court, are infringing on the right of the Navajo Nation to exercise jurisdiction over reservation affairs through its tribal court.

19. Therefore, an actual and justiciable controversy exists between the Navajo Nation on one side and Judge Aragon and the Vandever Plaintiff on the other.

**TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

20. Jury Trial in the Vandever Lawsuit, is set to begin on November 3, 2014.

21. Plaintiffs have suffered harm at the hands of the Defendants in that Defendants have allowed this case to proceed in State Court despite the clear language in the Compact, the IGRA, and the *Nash* case cited above. If the Vandever Lawsuit is permitted to proceed to trial, Plaintiff will suffer extreme hardship and irreparable harm in that they could be found liable for monetary damages in a Court which has no valid jurisdictional basis over them.

22. Plaintiffs have no adequate or speedy remedy at law for the conduct of Defendants, and this action for injunctive

relief is Plaintiffs' only means for securing relief.

WHEREFORE, Plaintiffs respectfully request that this Court issue:

A. A temporary restraining order and a preliminary injunction pursuant to Fed. R. Civ. P. 65, ordering Defendants, and all those in active concert or participation with them to refrain immediately from holding the jury trial presently scheduled in the Vandever Lawsuit until the final hearing and determination of this action.

B. An order declaring that Indian Gaming Regulatory Act does not permit the shifting of jurisdiction from tribal courts to state courts over personal injury lawsuits brought against tribes or tribal gaming enterprises, and that thus the New Mexico state courts do not have jurisdiction over lawsuits such as the Vandever Lawsuit;

C. An order permanently enjoining Defendant Judge Aragon from exercising jurisdiction over the NNGE in the Vandever Lawsuit, and enjoining the Vandever Plaintiff from pursuing such claims in state court; and

D. Granting such other and further relief as the Court deems just and appropriate in the premises.

MASON & ISAACSON, P.A.

By /S/Patrick T. Mason
Patrick T. Mason
P.O. Box 1772
Gallup, New Mexico 87305
(505) 722-4463
Attorneys for the Plaintiffs
110 W. Aztec Ave
Gallup, New Mexico 87301