

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

NAVAJO NATION,  
And NORTHERN EDGE NAVAJO CASINO;

Plaintiffs,

Vs.

Case No: 1:15-cv-00799

HONORABLE DAYLENE MARSH,  
District Judge, New Mexico  
Eleventh Judicial District,  
in her Official Capacity;  
HAROLD McNEAL;  
And MICHELLE McNEAL;

Defendants.

COMPLAINT FOR DECLARATION

Plaintiffs Navajo Nation and Northern Edge Navajo Casino, allege as follows:

INTRODUCTION

This is an action for declaratory relief by which Plaintiffs seek, pursuant to 42 U.S.C § 1983, and 28 U.S.C. § 2201, an order declaring (1) 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 (2) that there exists a lack of jurisdiction over the Plaintiffs in the case captioned *Harold McNeal and Michelle McNeal vs. Navajo Nation, Northern Edge Navajo Casino, and John and Jane Does 1-*

10, No. D-1116-Cv-2014-00786.

### JURISDICTION 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 Northern Edge Navajo Casino, is a government enterprise of the Navajo Nation, doing business in the State of New Mexico.

5. Defendant Judge Daylene Marsh is a New Mexico state district court judge of the Eleventh Judicial District (San Juan County), who is currently presiding over a civil lawsuit captioned *Harold McNeal and Michelle McNeal vs. Navajo Nation, Northern Edge Navajo Casino, and John and Jane Does 1-10*, No. D-1116-Cv-2014-00786 (the “*McNeal Lawsuit*”).

6. Defendants Harold McNeal and Michelle McNeal (the “McNeal Plaintiffs”) are the plaintiffs in the *McNeal Lawsuit*.

STATEMENT OF FACTS

7. The Navajo Nation, through the Navajo Nation Gaming Enterprise (“NNGE”), operates the Northern Edge Navajo Casino, located on Navajo Nation land in San Juan 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). The Compact was approved by the Secretary of the Interior and in effect at the time of the accident alleged by the McNeal Plaintiffs. *See* Gaming Compact between the Navajo Nation and the State of New Mexico, attached hereto as Exhibit 1

8. The McNeal Plaintiffs alleges that the negligence of the Navajo Nation, its employees, and its agents caused the slip and fall injuries sustained by Harold McNeal, and the loss of consortium of his wife Michelle McNeal. *See* McNeal Plaintiffs Complaint, attached hereto as Exhibit 2.

9. The McNeal Plaintiffs have presumably filed the *McNeal Lawsuit* against the Navajo Nation pursuant to Section 8 of the Compact.

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 its casinos, 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.” See Exhibit 1, § 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 3; 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. *Williams v. Lee*, 358 U.S. 217,223 (1959).

14. 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 tribe] to govern [itself].” *Id.*

15. 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 McNeal Plaintiffs against the Navajo Nation.

### **COUNT I: DECLARATORY JUDGMENT**

16. Judge Marsh, in presiding over the *McNeal Lawsuit*, is acting under color of state law, and without jurisdiction over the subject matter of the lawsuit.

17. Judge Marsh’s action in presiding over the *McNeal Lawsuit* has deprived the

Navajo Nation of its liberty interest secured by the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution to have the McNeal Lawsuit tried in a court that has jurisdiction over the subject matter.

18. Judge Marsh, by presiding over the McNeal Lawsuit, and the McNeal Plaintiffs, by pursuing their 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 Marsh and the McNeal Plaintiffs on the other.

20. Trial in the *McNeal Lawsuit* is to be set shortly.

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 *McNeal 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.

WHEREFORE, Plaintiffs respectfully request that this Court issue:

A. 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 the New Mexico state courts do not have jurisdiction over lawsuits such as the *McNeal Lawsuit*;

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

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