

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

SEMINOLE TRIBE OF FLORIDA,

Plaintiff,

v.

Case No.

STATE OF FLORIDA,

Defendant.

VERIFIED COMPLAINT

Jurisdiction and Venue

1. The Seminole Tribe of Florida (the Tribe) is a federally-recognized American Indian tribe whose reservations and trust lands are located in the State of Florida. The Tribe has its headquarters in Broward County, Florida.

2. Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C., Section 2710 (the IGRA), the Tribe entered into a gaming Compact with the State of Florida (the State) on April 7, 2010 (the Compact), a copy of which is attached hereto as Exhibit A.

3. This is an action seeking declaratory and other relief arising from breach of the Compact and failure of the State to negotiate in good faith as required by the IGRA. An actual controversy exists between the parties. This Court has jurisdiction pursuant to subsection to 25 U.S.C., Section 2710(d)(7); and 28 U.S.C.

Sections 1331, 1362, and 2201.

4. Venue is proper under 28 U.S.C. § 1391(e), because a substantial part of the events or omissions giving rise to the claims set forth in this complaint occurred in the Northern District of Florida.

The Indian Gaming Regulatory Act

5. As a result of the Tribe's sovereign status, state gambling laws are inapplicable on Seminole lands except to the extent expressly otherwise provided by federal law. Congress has provided in the IGRA a framework for the states and Indian tribes to enter into compacts providing for class III (casino style) gaming on Indian lands. 25 U.S.C. § 2710(d).

6. The IGRA authorizes Indian tribes to request the State to commence negotiations for the purpose of entering into a Tribal-State compact governing the conduct of Class III gaming activities on Indian lands. Upon receiving such a request, the State must negotiate with the Indian tribe in good faith to enter into such a compact. 25 U.S.C. § 2710(d)(3)(A).

7. Compacts between Indian tribes and states entered into pursuant to the IGRA must comply with the provisions of the IGRA, including limitations on the subjects that can be included and other conditions.

8. The IGRA provides that, with the exception of amounts necessary to defray the cost of regulating class III gaming:

[N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity.

25 U.S.C. § 2710(d)(4).

9. The IGRA further provides that a state may not refuse to enter into compact negotiations with an Indian tribe based upon the lack of authority to impose a tax, fee, charge or other assessment. *Id.*

10. The United States Department of the Interior, the agency charged with the authority and responsibility to interpret and implement the IGRA, has interpreted the IGRA to permit an Indian tribe to share revenue with a state in return for meaningful concessions by the state that provide a substantial and proportional economic benefit to the tribe. The Department has found that an agreement for a tribe to enjoy a degree of exclusivity for the operation of class III games is sufficient to support revenue sharing so long as the amount of the revenue to the state is proportional to the economic value to the tribe of the exclusivity.

The Seminole-Florida Gaming Compact

11. The Tribe formally requested the State to commence negotiations pursuant to the IGRA in January 1991. After years of unsuccessful efforts to negotiate a compact with the State and extensive litigation, the Tribe and the State agreed upon a compact that was signed by the Tribe and the Governor of Florida

on April 7, 2010 and ratified by the Florida Legislature by Chapter 2010-29, Laws of Florida. The Compact was approved by the United States Department of the Interior on June 24, 2010 and became effective upon publication in the Federal Register on July 6, 2010.

12. The Compact authorized the Tribe to operate class III slot machines and banking or banked card games, including baccarat, chemin de fer, and blackjack. (Part III, Paragraph F, and Part IV)

13. In addition to the authorization for class III games specifically defined in the Compact, the Compact authorized the Tribe to operate any additional game authorized by Florida law “for any person for any purpose” (except for banked card games authorized for other federally recognized Indian tribes pursuant to the IGRA). (Part III, Paragraph F.4)

14. The Compact provided the Tribe with a substantial degree of exclusivity, both geographically and with respect to the nature of the class III games permitted. (Part XII) The Compact provided that, in consideration for such exclusivity, the Tribe agree to pay the state a significant share of net revenue received by the Tribe from its class III gaming operations. (Part XI)

15. Based upon the revenue sharing formula set forth in the Compact, the Tribe has paid the state in excess of \$1 billion dollars since the Tribe began to conduct class III gaming in Florida.

Banking or Banked Card Games

16. The term of the Compact runs until July 1, 2030. However, the provision authorizing the Tribe to exclusively operate banking or banked card games, including baccarat, chemin de fer, and blackjack, terminated on July 31, 2015. Subsequent to a 90-day grace period thereafter, the continued operation of banking or banked card games by the Tribe would not be authorized by the Compact unless "the authorization to conduct such games is renewed by the parties or the State permits any other person, organization or entity [except for another tribe pursuant to the IGRA] to conduct such games." (Part XVI.B)

17. The Compact provides that the Tribe may not offer banking or banked card games at its Brighton or Big Cypress gaming facilities "unless and until the State of Florida permits any other person, organization or entity to offer such games." (Part III.F.2)

The State's Authorization for Other Persons to Operate Banking or Banked Card Games

18. On February 17, 2011, the Florida Department of Business and Professional Regulation (DBPR), the agency responsible for interpreting, implementing and enforcing Florida pari-mutuel gambling laws, for the first time interpreted Florida law to authorize pari-mutuel facilities in Miami-Dade and Broward Counties to operate house-banked card games such as blackjack and

baccarat using a live dealer and electronic cards and such facilities have operated those games.

19. In January 2011, DBPR for the first time interpreted Florida law to authorize pari-mutuel facilities throughout Florida to operate player-banked card games and a number of such facilities have operated those games. DBPR promulgated regulations for such games in 2014. (Fla. Admin. Code Ann. R. 61D-11.001(17) (2014)).

20. The State-authorized card games described in paragraphs 18 and 19 are “banking or banked card games” within the meaning of the Compact. The State has thus authorized another person, organization or entity to operate banking or banked card games, and the Tribe is entitled under the Compact to continue to operate banking or banked card games, and to begin offering banking or banked card games at its Brighton and Big Cypress gaming facilities.

21. If the Tribe’s authorization to conduct banked card games were to expire, it would mean over 3,000 lost jobs as well as billions of dollars in lost revenues to the State and the Tribe over the remaining term of the Compact.

Count I Breach of Compact

22. Paragraphs 1 through 21 are re-alleged.

23. The Compact sets forth a dispute resolution process to address disputes between the parties. (Part XII) By letter dated and delivered to the state

on June 24, 2015, the Tribe initiated that process to confirm its right to continue offering banking or banked card games for the remaining term of the Compact and for other relief. A copy of the letter is attached as Exhibit B.

24. On July 27, 2015, the Secretary of DBPR, the agency responsible for carrying out the State's administrative responsibilities under the Compact, sent a letter to the Tribe requesting the Tribe to provide DBPR with "your plan and proposed timeline for the closure of banked card games at your Tribal facilities." A copy of the letter is attached as Exhibit C.

25. The State's authorization of banking or banked card games by persons other than the Tribe as described above, and the failure of the State to recognize the Tribe's consequent right to continue to operate banking or banked card games, constitutes a breach of the Compact.

26. All conditions precedent to filing this action provided for in the Compact have been met. In particular:

a. The Tribe served written notice upon the State on June 24, 2015, as provided in Part XIII, Paragraph A of the Compact. The parties met on July 16, 2015, but failed to resolve the dispute.

b. The Tribe called for mediation on July 25, 2015, as provided in Part XIII, Paragraph C of the Compact. The parties mediated with a mediator

assigned by the American Arbitration Association, but failed to resolve the dispute within 60 days.

c. If mediation is unsuccessful, the Compact allows either party to initiate suit in any United States District Court having venue regarding any dispute under the Compact. (Part XIII.C) The Compact also provides that the Tribe and the State expressly waive their right to assert sovereign immunity from any such suit. (Part XIII.D)

Count II Violation of the IGRA

27. Paragraphs 1 through 26 are re-alleged.

28. The negotiations that led to the Compact contemplated that the five year authorization for banking or banked card games was an interim agreement and that the parties would enter into good faith negotiations for renewal prior to the end of the five-year period if there was then a history of successful implementation and compliance.

29. The Compact has been implemented flawlessly and the Tribe has fully complied with its provisions.

30. The IGRA mandates that a state, upon request of an Indian tribe, shall engage in good faith negotiations toward an agreement authorizing the tribe to offer class III gaming on its lands. (25 U.S.C. § 2710(d)(3)(A))

31. On December 30, 2014, the Tribe sent a letter to the Governor of Florida requesting commencement of negotiations toward renewal of the banked card games agreement. A copy of the letter is attached as Exhibit D.

32. On May 1, 2015, the Tribe sent a letter to the Governor, President of the Senate, and Speaker of the House of Florida renewing its request for negotiations toward renewal of the banked card games agreement or for a new compact to authorize such games. A copy of the letter is attached as Exhibit E.

33. The Tribe has made continuing efforts to negotiate a renewal of the banked card games agreement with the State, but such efforts have been unsuccessful due to the State's failure to negotiate in good faith as required by the IGRA. The State's failure to negotiate in good faith is demonstrated by the following actions by the State, among others:

a. As a condition of negotiating toward a renewal of the banked card games agreement, the State has demanded that the Tribe agree to a modification of the other provisions of the Compact to substantially increase the Tribe's payments to the State.

b. The State has demanded that the Tribe agree to a substantial increase in its payments to the State without a proportionate increase in economic benefit to the Tribe in violation of the IGRA.

c. The State directed the Tribe to negotiate with DBPR regarding the banked card games agreement during the mediation process, but DBPR has informed the Tribe that it has no authority to negotiate a renewal of the card games agreement and will not do so.

34. The IGRA grants United States District Courts jurisdiction over a cause of action initiated by an Indian tribe arising from the failure of a State to negotiate in good faith as required by the IGRA. (25 U.S.C. § 2710(d)(7)(A))

35. The IGRA authorizes an Indian tribe to initiate an action in a United States district court for failure of a State to negotiate in good faith. Such an action may be commenced after 180 days has elapsed since the Indian tribe first requested negotiations. (25 U.S.C. § 2710(d)(7)(B))

WHEREFORE, Plaintiff seeks judgment:

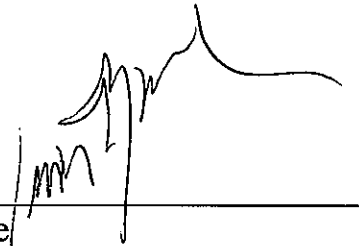
(1) Declaring that the Tribe is entitled to conduct banking or banked card games for the full term of the Compact in the seven locations listed in Part IV of the Compact.

(2) Declaring that the State has failed to negotiate in good faith as required by the IGRA, and ordering the State and the Tribe to proceed with negotiations as provided in the IGRA, 28U.S.C., § 2710(d)(7)(B).

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that I have read this Complaint, that I have personal knowledge of the facts alleged in the Complaint, and that the facts alleged are true and correct.

Executed this 19TH Day of October, 2015.



Jim Shore
General Counsel
Seminole Tribe of Florida

/s Barry Richard

BARRY RICHARD

Florida Bar Number 0105599

GREENBERG TRAUIG, P.A.

101 East College Avenue

Tallahassee, FL 32301

Telephone (850) 222-6891

Facsimile (850) 681-0207

richardb@gtlaw.com

trammellc@gtlaw.com

flservice@gtlaw.com

JOSEPH H. WEBSTER

HOBBS STRAUS DEAN & WALKER, LLP

2120 L Street NW, Suite 700

Washington, DC 20037

Telephone (202) 822-8282

Facsimile (202) 296-8834

jwebster@hobbsstrauss.com

Attorneys for Plaintiff

TAL 451998106v2