

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION

MONSTER TECHNOLOGY)
GROUP, LLC)
3708 Las Vegas Boulevard)
Suite 2102W)
Las Vegas, Nevada 89109)
)
Petitioner,)
)
v.)
)
IOWA TRIBE OF OKLAHOMA)
335588 East 750 Road)
Perkins, Oklahoma)
)
Respondent.)
_____)

AAA Case No. 01-20-0019-3927
mail to: rjgrellner@hotmail.com

FIRST AMENDED PETITION

1. Petitioner Monster Technology Group, LLC (“Petitioner”), hereby petitions for commercial arbitration of a dispute with the Iowa Tribe of Oklahoma (“the Tribe” or “Iowa Tribe”) deriving from breach of the covenant of good faith inherent in any contract entered in the State of Oklahoma.

I. ARBITRABILITY

2. The Tribe agreed in writing to arbitrate before the American Arbitration Association (“AAA”) “any dispute or difference arising out of or in connection with” an Agreement entered in November 2016 between the Tribe and Petitioner’s predecessor in interest Universal Entertainment Group (“UEG”) (Exhibit 1), an Agreement entered for the purpose of a unique undertaking, offering online Indian gaming to an exclusively

international market.

II. PARTIES

3. Petitioner is a corporation organized under the laws of the State of Nevada and headquartered in Las Vegas. Petitioner is successor in interest to UEG, whose efforts laid the requisite technical foundation for Indian gaming to be offered online.

4. Respondent Iowa Tribe of Oklahoma (“Tribe”) is a federally recognized Tribe headquartered in Perkins, Oklahoma. The Iowa are the first American Indian Tribe to have offered online gaming: It directed such online gaming to an exclusively international market from operations licensed and based in the Isle of Man, but has repudiated solemn commitments calling for the Tribe to share in revenues with UEG, which developed the software, technical aids, and other assets which made it possible for the Tribe to conduct online gaming operations from the Isle of Man.

Upon information and belief, Petitioner alleges the following:

III. FACTS

A. ONLINE INDIAN GAMING DIRECTED TO AN EXCLUSIVELY INTERNATIONAL MARKET

1. BACKGROUND/HISTORY

5. UEG formerly partnered with the Cheyenne and Arapaho Tribes of Oklahoma (“CNA”) in an extraordinarily complex and difficult effort to develop software and related technical aids – together with the legal framework – necessary for a website devoted to online Indian gaming consistent with State and federal law, a project

eventually called *pokertribes.com* (“*pokertribes*”).

6. The CNA eventually invested some \$9.4 million in *pokertribes*, a figure dwarfed by a reported \$37 million in development costs incurred by UEG in developing the software and technical support necessary for the project.

7. In or about June 2012 the CNA began offering *pokertribes* on a “free play” basis to qualified individual players without any geographic restrictions.

8. The CNA, Iowa Tribe and more than twenty other federally recognized Tribes in Oklahoma have negotiated State-Tribal Compacts on the basis of the “Model State Tribal Gaming Compact” (or Compact) prescribed by the Oklahoma State-Tribal Gaming Act of 2004. The terms of the Compacts govern Tribal gaming operations in Oklahoma.

9. The State objected to operation of *pokertribes* on the ground that online Indian gaming (whether free play or not) was in violation of the Compact.

10. The CNA authorized their attorney – who developed the legal framework necessary for *pokertribes* to take place consistent with State and federal law and regulation – to enter negotiations with legal representatives of the State for settlement of the controversy.

11. In April 2013, negotiations culminated in a ground breaking Settlement. The parties agreed the CNA could begin offering *pokertribes* to international markets where such gaming is otherwise lawful consistent with the Compact. The Settlement also provided that 20% of any net revenue go to the State as an “exclusivity fee.”

12. The CNA's Settlement with the State also served to permit other Oklahoma Tribes to negotiate for authorization of similar online gaming operations directed to exclusively international markets.

13. A study of the world-wide online gaming market projected that *pokertribes* could mean \$132 million in gross annual revenue to the CNA by the year 2018, if by that time its website was attracting just 2% of the market worldwide.

14. In August 2013, the U.S. Department of the Interior's Assistant Secretary for Indian Affairs (Assistant Secretary) objected to the Settlement permitting the CNA to offer *pokertribes* to an international market, on the ground that a 20% exclusivity fee was a material change in the Compact, and therefore inconsistent with the exclusivity fees to the State otherwise prescribed.

15. The CNA went back to the drawing board with the State's representatives. In 2013, the parties agreed to revisions incorporated in an Amended Settlement addressing the Assistant Secretary's purported concerns, by prescribing the same exclusivity fees called for by the Compact.

16. However, in November 2013, the Assistant Secretary continued to object to any online gaming operation, even if directed solely to an international market, on the ground that any extra added benefit to the CNA in consideration of the exclusivity fee to the State was "illusory."

17. The CNA disagreed, as did the State of Oklahoma, which continued to assert that the Amended Settlement was fully consistent with the Compact and existing law.

18. By this time, *pokertribes* had become a controversial subject in a CNA Tribal election season. Opponents of the Governor made an issue of the cost involved, while ignoring the promising revenue projections. When the Governor ultimately lost the election – in large part because of the *pokertribes* controversy – her opponents were virtually bound to repudiate the project despite its tremendous economic promise.

2. IOWA TRIBE PICKS UP FALLEN POKERTRIBES EFFORT

19. In September 2015, the Iowa Tribe entered a “Software Licensing Agreement” (“Licensing Agreement”) with the CNA’s former partner UEG (Exhibit 2 hereto) relating to assets including “software, translations, and modifications, support materials and documents ...”, *id.*, § 1.2, all plainly necessary for any viable project to bring online Indian gaming to an international market for the benefit of Licensee/Respondent.

20. A “Delivery and Acceptance Testing” section of the Licensing Agreement affirmed in part that “[t]he Licensed Software has been tested by Licensee to determine that the program performs according to Licensor’s general descriptions of its capabilities.” *Id.*, § 3.2.

21. A “Termination” section of the Licensing Agreement said in part that “Licensee may terminate this Agreement by intentionally destroying the Licensed Software and documentation and all copies thereof, or by returning the same to Licensor.”

Id., 7.1.

22. The Tribe agreed to a “License Issue Fee” of \$500,000, *id.*, § 4.1; and to “Sales-based Royalties” of “Twenty-Nine Percent (29%) of the net revenues received by the Licensee in the business operation” *Id.*, § 4.2.

23. Armed with software and other technical aids, numerous trade secrets and other assets licensed from UEG, all demonstrating that online Indian gaming was indeed a viable enterprise, the Tribe sought arbitration before the AAA of a “dispute” between the Tribe and the State of Oklahoma (which actually supported the Tribe) as to the legality of an Oklahoma Tribe conducting online gaming directed to an exclusively international market.

24. The Tribe prevailed in the arbitration. In April 2016, the U.S. District Court for the Western District of Oklahoma confirmed the arbitration award in favor of the Tribe, thereby freeing the Iowa to continue the effort to begin offering online gaming to an exclusively international market.

B. CREATION OF TRIBAL ENTITY INTENDED TO REAP ALL THE BENEFITS OF ONLINE GAMING, PURCHASE OF ASSETS LICENSED FROM UEG, SUBSEQUENT RECOUPMENT OF CASH OUTLAY AND OTHER CONSIDERATION FOR THE PURCHASE, AND REPUDIATION OF ANY OBLIGATION TO SHARE IN REVENUES

1. CREATION OF TRIBAL ENTITY INTENDED TO REAP ALL THE BENEFITS OF ONLINE GAMING

25. In January 2016, while the litigation to confirm the arbitration award was still underway, the Tribe proceeded to incorporate the Ioway Internet Gaming Enterprise

Limited pursuant to Tribal law; and to enact the Iowa Tribe of Oklahoma Ioway Gaming Enterprise Act (“Ioway Gaming Enterprise Act” or “Act”) through a Resolution of the Tribe’s Business Committee adopted January 27, 2016. (Exhibit 3 is the Tribe’s eventual application for licensure in the Isle of Man and accompanying Iowa Gaming Enterprise Act).

26. Section 8 of the Act, “Ownership and Revenues”, provided in part as follows:

(a) *Ownership.* The Enterprise and all personal property assets used in the operation of the Enterprise and **the revenues generated by the Enterprise shall be and continue to owned by the Tribe** but shall be administered for the Tribe by the Enterprise for the benefit of the Tribe (emphasis added).

2. PURCHASE OF ASSETS LICENSED FROM UEG, AND DECEPTIVE EFFORT TO ASSURE UEG IT WOULD HAVE A CENTRAL ROLE, AND RIGHTS IN, ANY ONLINE GAMING OPERATION

27. In or about November 2016 the Tribe entered an “Intellectual Property and Other Assets Purchase Agreement” (“November 2016 Agreement”, Exhibit 1) with UEG relating to “Online Gaming Assets” and “Online Gaming Intellectual Property”, including “any and all copyright, trademarks, and patents either owned by or applied for on behalf of UEG.” *Id.*, ¶ 1.b. The Agreement called for the Tribe to pay \$10 million to UEG in exchange for 51% of the “Online Gaming Assets.” *Id.*, ¶ 2; **and provided for arbitration of “[a]ny dispute or difference arising out of or in connection with this Agreement ...”** *Id.*, § 8.e. (emphasis added).

28. The Tribe made payments to UEG totaling \$1,950,000, and agreed to pay the balance of the purchase price from eventual revenues derived from the gaming

operation, a commitment plainly inconsistent with Ioway Gaming Enterprise Act’s provision that “revenues generated by the Enterprise shall be and continue to be owned by the Tribe” *id.*, § 8, which the enactment of the Ioway Gaming Enterprise Act in January 2016 and subsequent events show the Tribe never intended to honor. The Agreement also provided for arbitration of “[a]ny dispute or difference arising out of or in connection with this Agreement” *Id.*, § 8.e. (emphasis added).

29. In December 2016, the Tribe organized Iowa Tribe Online Gaming Software LLC under the laws of Oklahoma (“Oklahoma LLC”) , designating the Tribe and UEG its sole members.

30. In January 2017, the Tribe and UEG transferred to the Oklahoma LLC their respective interests in any “Online Gaming Assets” – defined by the Intellectual Property and Other Assets Purchase Agreement of September 2016 – while providing that the LLC would be entitled to recover the balance of the purchase price from any eventual revenues, together with royalties in the amount of 49% of any revenues.

31. However, the Tribe never intended that Oklahoma LLC would ever recover the balance of the purchase price, or any royalties from any eventual gaming revenue: At the end of the initial registration period, the Tribe allowed the Oklahoma LLC to become “inactive” and essentially defunct.

32. In February 2017, the Tribe made application for a gaming license in Isle of Man on behalf of the Ioway Internet Gaming Enterprise Limited, the wholly owned

corporation organized under Tribal law in January 2016, whose revenues were to be “owned by the Tribe” Ioway Gaming Enterprise Act, § 8(a). (2).

3. RECOUPMENT OF CASH OUTLAY AND OTHER CONSIDERATION FOR TRIBE’S PURCHASE OF UEG ASSETS

32. In September 2017, the Tribe, UEG and the Oklahoma LLC signed onto an “Intellectual Property and Other Assets Purchase Agreement” (“September 2017 Agreement”, Exhibit 4) providing in part that the Tribe convey to UEG the interest in “Online Gaming Assets” the Tribe had acquired from UEG in November 2016. *Id.* at 1. The transfer meant the sole member of the LLC would be UEG, *ibid.*, whose officials plainly and reasonably anticipated the LLC would have a major role in the online gaming project going forward. As for purchase price, the agreement called for UEG to repay \$1,650,000, the amount UEG received from the Tribe under the November 2016 Agreement.

33. On the same day, and as additional consideration for UEG’s payment of \$1,650,000 to the Tribe and agreement to recover the balance of the purchase price from eventual gaming revenues, the Tribe also agreed that UEG would be also entitled to an increase in the percentage of any net gaming revenue from 29% to 49%. Amended Software Licensing Agreement (Exhibit 5).

34. In September 2017, Petitioner also acquired UEG’s right, title and interest in any eventual online Indian gaming operation.

**4. REPUDIATION OF ANY OBLIGATION TO
SHARE IN REVENUES DERIVED FROM ONLINE
GAMING OPERATIONS MADE POSSIBLE BY UEG**

35. Some time after September 2017 unknown to Petitioner, the Tribe obtained the requisite licensure for its wholly owned corporation Ioway Internet Gaming Enterprise Limited to begin conducting online gaming operations directed to an international market from the Isle of Man.

36. However, the Tribe then repudiated any obligation to share in revenues with Petitioner, on false grounds that the software, technical aids and other assets created by UEG were somehow inadequate to the purpose, and that the Tribe was therefore compelled to acquire the requisite software and technical aids from another developer,

37. Yet the Tribe signed on to a Licensing Agreement in September 2015 affirming in part that “[t]he Licensed Software has been tested by Licensee to determine that the program performs according to Licensor’s general descriptions of its capabilities.” *Id.*, § 3.2.

38. Moreover, the Tribe never invoked the “Termination” section of the Licensing Agreement providing that “Licensee may terminate this Agreement by intentionally destroying the Licensed Software and documentation and all copies thereof, or by returning the same to Licensor.” *Id.*, 7.1.

39. The Tribe never intended to adhere to the terms of the Agreement entered in November 2016; but rather, intended (a) to secure the return of the \$1,650,000 it paid UEG under

the Agreement; (b) to allege the software, technical aids and other assets acquired from UEG was somehow defective; and (c) then to repudiate commitments to pay UEG the \$8,050,000 balance of the purchase price from online gaming operations, and to pay UEG 49% of any net revenues derived from the same operations going forward.

IV. CLAIM

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING (NOVEMBER 2016 AGREEMENT)

40. Petitioner incorporates paragraphs 1 through 39 herein by reference.

41. In Oklahoma “[e]very contract ... implies an implied duty of good faith and fair dealing.” *Wathor v. Mutual Assurance Adm’rs, Inc.*, 87 P.3d 559, 561(Okla. 2004). A party held in violation is liable in damages for breach of contract. *Ibid.*

42. Events both prior and subsequent to the November 2016 Agreement between the Tribe and UEG – providing in most relevant part that UEG sell the Tribe a 51% stake in the assets of the venture for \$10,000,000, including an immediate payment of \$1,650,000, in exchange for an increased percentage of the eventual revenue stream – show the Tribe never intended to abide by the terms, in fundamental breach of the implied duty of good faith and fair dealing inherent in the November 2016 Agreement.

43. In January 2016, the Iowa Tribe organized a wholly owned corporation to secure licensure outside the United States, which would enable online gaming operations to take place through a Tribal corporation that was to have exclusive rights to any eventual revenues.

44. In very short order the Tribe recovered the \$1,650,000 paid over to UEG in November 2016, induced UEG to defer recovery of the \$8,050,000 balance of the purchase price, on purported promises (a) that a single member Oklahoma LLC – with UEG as sole member – would have ownership of “Online Gaming Assets” necessary for online Indian gaming to take place; and (b) that the percentage of net revenue from any eventual gaming operation to UEG would increase from 29% to 49%.

45. Yet the Oklahoma LLC lapsed into inactive status immediately after its initial registration period ended. The Tribe gained licensure in the Isle of Man of its wholly owned Tribal corporation, without regard to UEG’s interest in any eventual gaming operation; and then repudiated any and all contractual obligations to UEG and its successor in interest Monster, all without legal justification or excuse, and all consistent with a scheme (a) to acquire the assets necessary to conduct online gaming, and then (b) to repudiate any contractual obligations by reference to false assertions that the software, technical aids and other assets were somehow defective.

46. The Tribe breached the implied duty of good faith and fair dealing inherent in the November 2016 Agreement, as a direct and proximate result of which Petitioner has suffered (a) injury in the amount of \$10,000,000, the purchase price for software; and (b) injury for the continuing failure to pay Petitioner the agreed percentage of net revenue derived from online gaming operations made possible by UEG.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that the Arbitrator:

- A. Uphold the arbitrability of the controversy;
- B. Hold that the Iowa Tribe of Oklahoma entered into the Agreement of November 2016 with no intention of abiding by its terms, in breach of the duty of good faith and fair dealing inherent in any contract entered in the State of Oklahoma;
- C. Hold Petitioner entitled to recover economic injury attributable to the breach of the duty of good faith and fair dealing inherent in the Agreement of November 2016;
- D. Direct that the Tribe render an accounting to Petitioner of any and all revenues generated by online gaming operation(s) of the Iowa Tribe made possible by UEG.
- E. Hold Petitioner entitled to recover the agreed percentage of any net revenues generated by online gaming operation(s) of the Iowa Tribe made possible by Petitioner's predecessor in interest UEG;
- F. Award Petitioner attorney fees and costs; and
- G. Grant such additional relief as may be appropriate.

Respectfully submitted this 29th day of January, 2021,

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2021 I caused the foregoing ***Amended Petition for Arbitration*** and accompanying ***Exhibits (5)*** to be transmitted via Electronic Mail to the following counsel for Respondent Tribe:

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