

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IOWA TRIBE OF OKLAHOMA,

Plaintiff,

vs.

STATE OF OKLAHOMA,

Defendant.

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Case No. _____

COMPLAINT

(Certification of Arbitration Award)

Plaintiff, Iowa Tribe of Oklahoma, by and through its counsel, hereby alleges and states as follows:

NATURE OF THE ACTION

1. The Iowa Tribe of Oklahoma (“Tribe”) seeks certification and enforcement of the Arbitration Award entered November 24, 2015 styled *In the Matter of the Referral to Binding Arbitration by the Iowa Tribe of Oklahoma and the State of Oklahoma of Disputes Under and/or Arising From the Iowa Tribe – State Gaming Compact* (“Arbitration Award”). A copy of the Arbitration Award is attached as Exhibit 1.

2. On September 23, 2015, the Tribe notified the State of Oklahoma (“State”) of the Tribe’s intent to operate an internet gaming website, PokerTribe.com and PokerTribe.gov, from the Tribe’s Indian lands consistent with

the Gaming Compact between the Tribe and State. A copy of the September 23rd Letter is attached as Exhibit 2.

3. On September 30, 2015, the State responded to the Tribe's September 23rd Letter, stating the State was exercising its right under the Gaming Compact to submit to arbitration the issue of the Tribe's right to operate internet gaming from the Tribe's Indian lands under the Gaming Compact between the parties. A copy of the September 30th Letter is attached as Exhibit 3.

4. On October 14, 2015, the Tribe and the State agreed to a *Joint Engagement of Charles Chapel to Arbitrate Dispute Between the Iowa Tribe of Oklahoma and State of Oklahoma Arising Under the Gaming Compact* ("Arbitration Engagement Letter"). A copy of the Arbitration Engagement Letter is attached as Exhibit 4. Charles Chapel ("Arbitrator") accepted the engagement set out in the October 14th Letter.

5. The Arbitrator entered the Arbitration Award on November 24, 2015.

PARTIES

6. Plaintiff, Iowa Tribe of Oklahoma, is a federally recognized Indian tribe with Indian lands located within the exterior boundaries of the State of Oklahoma.

7. Defendant, State of Oklahoma, is a state of the United States.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362 because this is a civil action brought by an Indian tribe arising from an agreement between the Tribe and the State.

9. This Court also has subject matter jurisdiction under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701 *et seq.*) (“IGRA”) because this action involves the Tribe’s right to conduct gaming consistent with its Gaming Compact with the State.

10. This Court also has subject matter jurisdiction because the Tribe’s claim arises under Part 12 of the Gaming Compact which as the force and effect of federal law pursuant to 25 U.S.C. § 2710(d)(2)(C).

11. This Court also has jurisdiction over this action pursuant to the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*).

12. Venue is proper under 28 U.S.C. § 1391(b) because both the Tribe and the State are located within the jurisdictional boundaries of this Court.

FACTUAL BACKGROUND

13. In 1988, Congress enacted IGRA which authorized the Tribe and the State to must negotiate a Gaming Compact which would allow the Tribe to conduct gaming activity on tribal lands.

14. On November 2, 2004, State Questions No. 712 (Legislative Referendum No. 335) was approved by the people of the state of Oklahoma. The State-Tribal Gaming Act (“Gaming Act”), enacted by the vote of the people approving State Question No. 712, is codified at 3A O.S. §§ 261-282. Section 280 of the Gaming Act is styled “Offer of Model Tribal Gaming Compact,” and authorizes any tribe to execute the Model Tribal Gaming Compact “Model Compact” found in Section 281 which is styled “Provisions of the Model Tribal Gaming Compact.”

15. As contemplated in the Gaming Act, the Iowa Tribe executed the Model Compact on February 1, 2005 and submitted it to the Department of the Interior for approval. On March 26, 2005, the Secretary of Interior approved the Model Compact. On June 1, 2005, the Secretary published in the Federal Register a “Notice of Class III Gaming Compacts taking effect.”

16. The Tribe currently conducts gaming as authorized under IGRA and the Gaming Compact at three locations on Iowa Tribe Indian lands.

17. The Gaming Compact provides the following definition of “covered games” at Part 3(5):

“Covered game” means the following games conducted in accordance with the standards, as applicable, set forth in sections 270 through 277 of the State-Tribal Gaming Act: an electronic bonanza-style bingo game, an electronic amusement game, an electronic instant bingo game, nonhouse-banked card games; any other game, if the operation of such game by a tribe would require a compact and if such game has

been: (i) approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, (ii) approved by state legislation for use by any person or entity, or (iii) approved by amendment of the State-Tribal Gaming Act; and upon election by the tribe by written supplement to this Compact, any Class II game in use by the tribe, provided that no exclusivity payments shall be required for the operation of such Class II game.

18. The Gaming Compact further provides (Part 4.B) that “a tribe shall not operate [a covered game] pursuant to this Compact until such game has been certified by an independent testing laboratory and the [Tribal Compliance Agency] as meeting the standards set out in the State-Tribal Gaming Act.”

19. In 2012, the Cheyenne and Arapaho Tribes of Oklahoma (“C&A”) launched an online website offering a free play site for certain specified games to qualified individual players.

20. The State subsequently notified C&A that it believed the website materially violated the C&A - State Gaming Compact.

21. Consistent with Part 12 of the Gaming Compact, the State and C&A began a process of resolving that dispute.

22. One of the central issues in the dispute was whether the specific games offered on the C&A website were “covered games” as defined under the Gaming Compact.

23. To resolve their dispute, the State and C&A entered into a settlement agreement which provided in part that:

all forms of internet and/or electronic gaming by individual players, who are not physically present at all times in a facility located on Indian lands as defined by IGRA, is covered conduct under the State Tribal Gaming Compact, and is permissible if the individual player is located or resides outside the boundary of the United States or its territories during the entirety of a gaming transaction.

24. In 2015, the Iowa Tribe began to explore the option of pursuing internet gaming in the same form as that which the State had agreed with the C&A constituted a “covered game” under the Gaming Compact.

25. The Iowa Tribe began developing websites known as PokerTribe.com and PokerTribe.gov from which internet gaming would be offered.

26. On September 23, 2015, the Chairman of the Iowa Tribe sent a letter to Jeffrey Cartmell, Deputy Director and Counsel for the Gaming Compliance Unit of the Office of Management and Enterprise Services, to serve as notice to the State of the Tribe’s intent to pursue internet gaming consistent with the terms the State had agreed to in the settlement agreement between the State and the C&A. See Exhibit 2.

27. On September 30, 2015, Cartmell responded to the Tribe on behalf of the State, stating that it was the State’s “intent to refer this matter to arbitration for a determination on whether or not the internet gaming [the Tribe] described is permissible under the terms of the Compact.” See Exhibit 3.

28. On October 14, 2015, the Tribe and the State engaged an arbitrator to resolve the dispute. See Exhibit 4.

29. On November 24, 2015, the Honorable Charles Chapel, formerly judge on the Oklahoma Court of Criminal Appeals, rendered the Arbitration Award.

30. Part 12 of the Gaming Compact (Dispute Resolution) provides that arbitration of Gaming Compact disputes (including “all” disputes over the proper interpretation of the terms and conditions of the Gaming Compact) is "subject to enforcement or pursuant to review as provided in paragraph 3 of this Part by a federal district court."

31. Part 12(2) of the Gaming Compact states that “[t]he parties consent to the jurisdiction of such arbitration forum and courts” for those purposes, and that “each waives immunity with respect thereto.”

32. Part 12(2) of the Gaming Compact further states that such enforcement or review may be brought by either party against the other party in a federal district court.

33. Part 12(3) of the Gaming Compact states that “[e]ach of the parties hereto waives immunity and consents to suit therein for such limited purposes, and agrees not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver."

34. Part 13(B) of the Gaming Compact provides that “[t]his Compact shall constitute a binding agreement between the parties . . .”

COUNT I

(Certification and Enforcement of the Arbitration Award)

35. The Tribe realleges the allegations set forth in Paragraphs 1 through 34 and same are incorporated as if fully set forth herein.

36. Pursuant to the Arbitration Engagement Letter and Parts 12(2) and 12(3) of the Gaming Compact, the Tribe seeks certification and enforcement of the Arbitration Award rendered by the Arbitrator on November 24, 2015.

37. The Tribe is entitled to a judgment certifying and enforcing the Arbitration Award rendered by the mutually agreed sole arbitrator, the Honorable Charles Chapel, on November 24, 2015.

PRAYER FOR RELIEF

38. The Tribe realleges the allegations set forth in Paragraphs 1 through 37 and same are incorporated as if fully set forth herein.

39. The Tribe and State executed the Arbitration Engagement Letter on September 14, 2015.

40. All parties have agreed to be bound by the Arbitration Award.

41. The Iowa Tribe respectfully requests a judgment certifying and enforcing the Arbitration Award dated November 24, 2015, confirming the Iowa

Tribe may operate internet gaming websites known as PokerTribe.com and PokerTribe.gov.

42. The Tribe further requests any additional relief to which it may be entitled.

Respectfully submitted,

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