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Mich. Hits Back On Tribe's Bid To Join Rival's Casino Suit

By **Andrew Westney**

Law360, New York (February 8, 2017, 4:36 PM EST) -- The state of Michigan urged a federal judge Wednesday to reject the Nottawaseppi Huron Band of the Potawatomi's bid to intervene in the Bay Mills Indian Community's suit seeking to establish that it can operate a casino away from its reservation, saying the state is adequately representing the Potawatomis' opposition to off-reservation gaming.

On **Jan. 25**, the NHBP, which operates its own casino in Michigan that it claims could be threatened by Bay Mills' off-reservation casino plans, asked to intervene in the Bay Mills suit against Michigan Gov. Rick Snyder. The NHBP argued that the governor appeared to be negotiating a deal with the Bay Mills tribe and that the NHBP's interests are therefore not being adequately represented by the state.

Snyder shot back Wednesday that he opposes illegal off-reservation gaming in the state, and that if his recent bid for summary judgment on the central issue in the case is granted, the dispute will be resolved in the way the NHBP wishes.

"Pursuing and achieving a prospective intervenor's desired result in litigation is the essence of adequate representation," Snyder said. "There has been no settlement entered in this case and the suggestion that there might be a future settlement that does not advocate that result is purely speculative."

The Bay Mills Indian Community opened its casino in Vanderbilt in 2010, Michigan having bought the land for the project using earnings from the Bay Mills Land Trust established by the Michigan Indian Land Claim Settlement Act.

The Bay Mills tribe has asked the court for a declaration that the Vanderbilt property, located about 100 miles from the tribe's reservation, was eligible for gambling because the tribe had made the purchase with MILCSA trust funds.

Additionally, the tribe has asked for a declaration that the parcel of land in Vanderbilt for its casino project is "Indian lands" as defined in the Indian Gaming Regulatory Act.

Snyder **moved for summary judgment** in the case in January, arguing the MILCSA does not automatically allow the tribe to conduct gambling on the property in Vanderbilt.

In its motion to intervene, the NHBP argued that a December letter from the National Indian Gaming Commission "confirmed rumors" that the governor is negotiating a possible agreement with the Bay Mills related to gambling on the property in Vanderbilt.

"The governor has at least contemplated a settlement that would allow gaming on the Vanderbilt parcel, which, under state and federal law, is illegal," the NHBP said. "Unless NHBP is allowed to intervene, there will be ambiguity in the adversarial posture of the litigation."

The Nottawaseppi Huron asserted that it had met the standard to intervene, noting that its request is timely given that it was filed shortly after becoming aware of the settlement discussion.

The Saginaw Chippewa Indian Tribe of Michigan, which also operates its own casino in the state, has similarly asked to intervene in the case, citing the same NIGC letter indicating settlement negotiations are taking place.

Snyder has since opposed that request, saying that it was untimely, that the tribe failed to demonstrate a significant interest in the case and that it has no common claims in it.

Snyder's filing Wednesday similarly argued that the NHBP's intervention bid came too late, since the Bay Mills case is "high profile" and the NHBP recently negotiated an amendment to its own gaming compact with Michigan.

"If the mere possibility of a settlement is sufficient to trigger intervention, NHBP had every reason to act much more swiftly than it actually did," Snyder said.

In addition, the NHBP hasn't stated a property interest that could be affected by the case, and its casino, which lies about 230 miles away from Vanderbilt, wouldn't be affected by daily operations of a casino there, Snyder said.

The NHBP's bid to intervene about two weeks after the Saginaw Chippewa did "strongly suggests that it is also attempting to influence" negotiation of compact negotiations originally negotiated in 1993, but NHBP "does not have a place in those negotiations because its compact term extends to 2030."

"The potential that the state and Bay Mills may reach favorable compact terms based on the outcome of this case is driving NHBP's interest in this litigation," Snyder said.

The Bay Mills tribe filed its own response Wednesday opposing the NHBP's bid to intervene, saying that the resolution of the MILCSA issue is the only one remaining in the case, and "NHBP has no legitimate interest in the interpretation of MILCSA."

A representative for the Saginaw Chippewa tribe declined to comment Wednesday.

Representatives for the NHBP and the state were not immediately available for comment Wednesday.

The Bay Mills Indian Community is represented by Chad P. DePetro and Kathryn L. Tierney of the tribe.

Snyder is represented by Bill Schuette, Margaret Bettenhausen and Jaclyn Shoshana Levine of the state attorney general's office and John J. Bursch of Bursch Law PLLC.

The Nottawaseppi Huron Band of the Potawatomi is represented by David J. Gass and D. Andrew Portinga of Miller Johnson PLC, William J. Brooks of the Nottawaseppi Huron Band of the Potawatomi and Donald R. Pongrace, Allison C. Binney and Merrill C. Godfrey of Akin Gump Strauss Hauer & Feld LLP.

The Saginaw Chippewa tribe is represented by Jessica S. Intermill, Melissa L. Lorentz and William A. Szotkowski of Hogen Adams PLLC.

The case is Bay Mills Indian Community v. Snyder, case number 1:11-cv-00729, in the U.S. District Court for the Western District of Michigan.

--Additional reporting by Andrew Westney. Editing by Rebecca Flanagan.