

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

THE CHEROKEE NATION,)
a federally-recognized Indian tribe,)
THE CHICKASAW NATION,)
a federally-recognized Indian tribe, and)
THE CHOCTAW NATION,)
a federally-recognized Indian tribe,)

Plaintiffs,)

Case No. CIV-19-1198-D

THE CITIZEN POTAWATOMI NATION,)
a federally-recognized Indian tribe, and)
THE MUSCOGEE (CREEK) NATION,)
A federally-recognized Indian tribe,)

Plaintiffs-in-Intervention,)

v.)

J. KEVIN STITT, in his official capacity)
as the Governor of the State of Oklahoma,)

Defendant.)

COMPLAINT IN INTERVENTION OF THE PLAINTIFF DELAWARE NATION

The Delaware Nation, a federally-recognized Indian tribe (the “Delaware Nation”), asserts claims and causes of action against Defendant J. Kevin Stitt, in his official capacity at the Governor of the State of Oklahoma (the “Governor), as follows:

1. The Delaware Nation adopts, ratifies, and incorporates herein by reference, as if originally pleaded, the averment and authorities listed in the Complaint filed by the Cherokee, Chickasaw, and Choctaw Nations on December 31, 2019, and in the Intervenor’s Complaints filed by the Citizen Band Potawatomie Nation and the Muscogee (Creek) Nation on February 7, 2020, and the Intervenor’s Complaints filed

by the Quapaw Nation on February 12, 2020, to the extent the averments and authorities are not inconsistent with or contradicted by the statements contained herein.

NATURE OF THE ACTION

2. In 2004, the State of Oklahoma offered to the Delaware Nation the option to enter into a tribal-state gaming compacted under the terms of a Model Tribal Gaming Compact (the “MTGC”) whereby the Delaware Nation could lawfully engage in Class III gaming activities on their tribal lands pursuant to the Indian Gaming Regulatory Act (the “IGRA”), 25 U.S.C. §§ 2701-2721. *See* Okla. Stat. tit. 3A, §§ 280-281.
3. The Delaware Nation accepted the State’s offer under the terms of the MTGC, and the Tribal-State Gaming Compact between the Delaware Nation and the State of Oklahoma (the “Delaware Gaming Compact”) was approved by the United States Department of Interior on May 18, 2005, and published in the Federal Register on June 1, 2005 with an effective date of June 1, 2005.
4. Part 15(B) of the Delaware Nation Gaming Compact states that:

“This Compact shall have a term which will expire on January 1, 2020, and at that time, if organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or court order following the effective date of this Compact, the Compact shall automatically renew for successive additional fifteen-year terms...”

See Delaware Gaming Compact, § 15(B)
5. The Delaware Gaming Compact has the force of federal law, 25 U.S.C. §2710, and such vests the Delaware Nation with rights protected by federal law, including the right to automatic renewal as is expressly set forth in Part 15(B) of the Delaware Nation Gaming Compact.

6. The Delaware Nation seeks declaratory judgment affirming that the Delaware Nation Gaming Compact automatically renewed on January 1, 2020.

INTERVENOR

7. The Delaware Nation is an Indian tribe that is duly recognized by the United States Department of the Interior. *See* Bureau of Indian Affairs, Indian Entities Recognized by and Eligible to Receive Servs. from the U.S. BIA, 85 *Fed. Reg.* 5462, 5463 noted as “Delaware Nation, Oklahoma” (January 30, 2020).

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1362 because it is brought by the Delaware Nation, a federally-recognized Indian tribe, which seeks to protect and enforce rights held by it under the IGRA pursuant to the Delaware Gaming Compact, which was approved by the U.S. Department of Interior and properly published in the Federal Register, and thus has the force of federal law.
9. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendant resides in rural southwestern Oklahoma north of Anadarko, Oklahoma, within the United States District Court for the Western District of Oklahoma, and substantial events giving rise to the Nation’s claims against Defendant occurred within this judicial district.

FACTUAL BACKGROUND

10. The Delaware Nation conducts Class III gaming at two facilities – Gold River Casino located north of Anadarko, Oklahoma, and Casino Oklahoma, located north of Hinton, Oklahoma – both under the Delaware Gaming Compact that is in full force and effect

- under federal law, which secures the Delaware Nation's right to conduct Class III gaming in accordance with the terms of the Delaware Gaming Compact and the IGRA.
11. The effective date of the Delaware Gaming Compact was June 1, 2005. *See* Bureau of Indian Affairs, Notice of Approved Class III Gaming Compacts, 70 Fed. Reg. 31499 (June 1, 2005).
 12. The Delaware Nation enacted a gaming ordinance by resolution of the Nation's duly elected Executive Committee that has been approved by the Chairman of the National Indian Gaming Commission (the "NIGC") which is consistent with the IGRA and NIGC regulations.
 13. The Class III gaming activities of the Delaware Nation are lawful because they are conducted on Indian lands, are conducted pursuant to an authorized ordinance, are in a state that permits gaming, and are conducted in conformance with the Delaware Gaming Compact. *See* 25 U.S.C. § 2710(d).
 14. The Delaware Gaming Compact expressly provides that "[t]his Compact shall not alter tribal, federal, or state civil adjudicatory or criminal jurisdiction." Delaware Gaming Compact § 9.
 15. The Delaware Gaming Compact authorizes the Delaware Nation to conduct Class III gaming, specifically those defined under Part 3.5 as a "covered game." *See* Delaware Gaming Compact § 3.5.
 16. The Delaware Gaming Compact automatically renews for successive 15-year terms if "organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any

governmental action of the state or court order following the effective date of this Compact...” *See* Delaware Gaming Compact § 15(B).

17. Part 15(C) of the Delaware Gaming Compact states that Compact will remain in effect until either its term expires or is terminated by a mutual consent of the parties. *See* Delaware Gaming Compact § 15(C).

18. Because the condition in Part 15(B) has been satisfied, the Delaware Gaming Compact automatically renewed on January 1, 2020, for a successive 15-year term and remains in effect under Part 15(C).

19. Contrary to federal law and the express terms of the Delaware Gaming Compact, the Defendant sent a letter to the Delaware Nation on or about July 5, 2019, which stated that the Delaware Gaming Compact would expire on January 1, 2020, “since there has been no action of the State, or court order authorizing electronic gaming in the State, since the effective date of the Compact,” and has since maintained the position that all tribal-state gaming compacts under the MTGC expired on January 1, 2020 since that time.

DECLARATORY RELIEF

20. The Delaware Nation incorporates by reference all allegations of the preceding paragraphs and those in the Complaint filed by the Cherokee, Chickasaw, and Choctaw Nations on December 31, 2019, and in the Intervenor’s Complaints filed by the Citizen Band Potawatomi Nation and the Muscogee (Creek) Nation on February 7, 2020, and in the Intervenor’s Complaint filed by the Quapaw Nation on February 12, 2020 to the extent the averments and authorities are not inconsistent with or contradicted by the statements contained herein.

21. For the Delaware Nation to lawfully conduct Class III gaming activities on Indian lands, the IGRA requires the Class III gaming activities to be: (a) authorized by a tribal ordinance compliant with the IGRA; (b) “located in a State that permits such gaming for any purpose by any person, organization, or entity;” and (c) “conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State... that is in effect.” *See* U.S.C. § 2710(d)(1).
22. The terms and conditions of the Delaware Gaming Compact provide that it “shall automatically renew” on January 1, 2020, if, at that time, “any organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or a court order following the effective date of this Compact.” *See* Delaware Gaming Compact, § 15(B).
23. The Delaware Gaming Compact automatically renews if the condition in Part 15(B) has been satisfied, meaning that no further action of the parties to the Compact is necessary to effectuate the renewal.
24. The Delaware Nation seeks a judicial declaration that the Delaware Gaming Compact automatically renewed on January 1, 2020, for a successive 15-year term and that the Delaware Nation has the right under federal law to continue conducting Class III gaming activities under the Delaware Gaming Compact.
25. The Delaware Nation is entitled to declaratory and, if necessary, injunctive relief to remedy the Defendant’s ongoing violation of federal law and intrusion upon the Delaware Nation’s sovereignty.

PRAYER FOR RELIEF

WHEREFORE, the Delaware Nation respectfully requests this Honorable Court for a judgment in its favor as follows:

1. The Delaware Nation seeks a declaration that:
 - a. The Delaware Nation possesses a right under federal law to conduct Class III gaming pursuant to 25 U.S.C. § 2710(d) and under the Delaware Gaming Compact;
 - b. The Delaware Gaming Compact provides in Part 15(B) that it “shall automatically renew” on January 1, 2020, if at that time “organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or a court order following the effective date of this Compact;”
 - c. The condition for automatic renewal in Part 15(B) of the Delaware Nation Gaming Compact has been met;
 - d. The Delaware Gaming Compact automatically renewed under Part 15(B) for another 15-year term; and
 - e. The Defendant’s actions which contradict or are otherwise contrary to the automatic renewal of the Delaware Nation Compact and the Delaware Nation’s rights to operate Class III gaming activities thereunder, either through direct or indirect actions of the Defendant or the Defendant’s agents, officers, employees, or representatives, are without authority of the law, have no legal effect and are thereby null and void; and
2. Such further relief as the Court may deem just and appropriate.

Respectfully submitted,

s/ Leslie D. Taylor

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Attorney for the Delaware Nation, Plaintiff-Intervenor

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2020, I electronically transmitted the above and foregoing document to the Clerk of the Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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s/ Leslie D. Taylor

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