



September 6, 2013

Via e-mail: john.witherspoon@harrang.com
and First Class Mail

John T. Witherspoon, Esq.
Harrang Long Gary Rudnick P.C.
1001 SW Fifth Avenue, 16th Floor
Portland, OR 97204

**Re: Review of Restructuring Documents for the Confederated Tribes of Coos,
Lower Umpqua and Siuslaw Indians**

Dear Attorney Witherspoon:

This letter responds to your July 16, 2013 request on behalf of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians ("Tribes") for the Office of the General Counsel ("OGC"), National Indian Gaming Commission ("NIGC"), to review the documents listed below. The Tribes ask for my opinion as to whether the submitted amended restructuring documents are management contracts requiring the NIGC Chair's approval pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). The Tribes also ask for my opinion as to whether the amended documents violate IGRA's requirement that a tribe have sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Restructuring Documents"):

- *Indenture Between Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and Wells Fargo Bank, National Association, as Trustee, Dated as of October 27, 2006, As amended by that certain First Supplemental Indenture dated as of April 15, 2010, and as amended and restated pursuant to that certain Second Supplemental Indenture dated as of August __, 2013, and marked at bottom left as "A/75503599.6" ("Amended Indenture"; received by the NIGC on 8/30/2013);*
- *Second Supplemental Indenture, dated September __, 2013, and marked at bottom left as "A/75412154.7" (received by the NIGC on 8/07/2013);*

The Restructuring Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found at http://www.nigc.gov/Reading_Room/Management_Review_Letters_Declination_Letters.aspx.

Applying the same analysis here, it is my opinion that, collectively, the Restructuring Documents are not management contracts and do not require the approval of the NIGC Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

I will, however, take this opportunity to note that while OGC's stance on the appointment of a receiver as a default remedy has evolved to the present point where we will not issue declination letters for financing agreements that provide for receivership of gross gaming revenue, the limiting language contained in the Amended Indenture allays our concerns. While the Restructuring Documents expressly contemplate the appointment of a receiver, they limit the authority granted to a receiver by prohibiting the exercise of management activities. Specifically, the Amended Indenture provides that "the rights of the receiver shall be limited to the extent set forth in Section 15.15 hereof." *Amended Indenture*, § 10.4. Section 15.15 requires the receiver to first distribute funds necessary to pay the operating expenses:

(viii) budgeting, allocating, or conditioning payments of the Tribe's operating expenses (it being understood that the collection and disbursement of the Tribe's revenues by a receiver shall not constitute Management Activities under this clause (viii) so long as such receiver disburses to the Operating Account, from funds received by the receiver and legally available therefor, amounts necessary to fund the Operating Costs Set Aside Amount each month and, if there has been a shortfall in the amount transferred to the Operating Account in the previous month, the amount of such shortfall; ...);

Id. at § 15.15. The Restructuring Documents define the "Operating Costs Set Aside Amount" as:

the projected cash flow reasonably required for payment of Operating Costs ... plus a reasonably determined operating cash flow reserve in an amount no greater than (b) (4) of the projected Operating Costs past due or payable during such month in the operating budget for the Gaming Operations, as approved by the Tribe

Id. at § 1.1 (definition of "Operating Costs Set Aside Amount"). In short, the Restructuring Documents contemplate that even in the event of default and the appointment of a receiver, the Tribes alone determine the monthly budget for their gaming operation that is then deposited into the Operating Account that the receiver is required to disburse each month. Thus, the Restructuring Documents prohibit the receiver from exercising authority over operating expenses. Although these documents permit the receivership of all collateral, which includes the gross gaming revenue, this limitation gives the provision essentially the same practical effect as an allowance of receivership over net gaming revenues. It is therefore my opinion that limited in this manner, the receivership provision herein will not lead to a management activity.

It is my understanding that the Restructuring Documents are represented to be in substantially final form, and any further changes will not be material to OGC's analysis. This opinion shall not apply if the Restructuring Documents: (i) change in any material way prior to

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closing; (ii) are not executed; or (iii) are inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned Restructuring Documents and does not include or extend to any other agreements not submitted for review.

I anticipate that this letter will be posted on the NIGC's website. Prior to posting, the NIGC FOIA Officer will notify you and provide you with an opportunity to identify and request that information subject to the exemptions under the Freedom of Information Act ("FOIA") be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. 552(b).

I am also sending a copy of the submitted Restructuring Documents to the Office of Indian Gaming, Department of the Interior, for review under 25 U.S.C. 81. If you have any questions, please contact Armando Acosta, OGC Staff Attorney, at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Shepard", with a long horizontal line extending to the right.

Eric Shepard
Acting General Counsel

cc: Bob Garcia, Chairman of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

(via e-mail: bgarcia@ctclusi.org)

Townsend Hyatt, Orrick, Herrington & Sutcliffe LLP

(via e-mail: thyatt@orrick.com)

Christopher Lawrence, Bingham McCutchen LLP

(via e-mail: chris.lawrence@bingham.com)