

SA/NOV/CO 99-10 Shoalwater Bay Indian Tribe

IN THE MATTER OF)	Docket No. NIGC 99-2
SHOALWATER BAY)	(NOV/CO 99-10)
INDIAN TRIBE)	
)	Indian Gaming Regulatory Act
)	25 U.S.C. Sections 2701 et seq.
_____)	

SETTLEMENT AGREEMENT

This Agreement is entered into by and between the Shoalwater Bay Tribe of Indians (“Tribe”) through its duly authorized representative and the Chairman of the National Indian Gaming Indian Commission (“Chairman”) to resolve various matters in dispute between the Tribe and the Chairman regarding the play of certain games in the Tribe’s gaming facilities.

Recitals

1. The Tribe is a federally recognized Indian Tribe with tribal headquarters located in Tokeland, Washington. The Tribe operates the Shoalwater Bay Bingo and Casino facility (“Casino”) located on the Shoalwater Bay Indian Reservation, on lands held in trust by the United States for the benefit of the Tribe.
2. On August 11, 1999, the Chairman issued a Notice of Violation to the Nation after determining that a certain electronic games played in the Tribe’s gaming facilities required a Tribal-State compact under the Indian Gaming Regulatory Act (“IGRA” or the “Act”) to-wit: (a) “Native Treasures,” (b) “Catch a Dream,” (c) “Sheriff’s Round Up,” (d) “Pirate’s Loot,” (e) American Game Technology Cash Key Video gaming devices (collectively the “gaming devices”). The Tribe also offered table and card games which, according to the Chairman’s determination, also required a compact, including (a) pai gow poker, (b) roulette, and (c) blackjack.
3. The Tribe acknowledged that it did not have a Tribal-State compact with the State of Washington for the play of these games but maintained that such compact was not required for play of the games at issue.
4. In conjunction with the Notice of Violation, the Chairman issued an Order of Temporary Closure directing the Nation to discontinue play of the gaming devices and other table and games at issue.
5. The Nation timely filed a Notice of Appeal of the Chairman’s Notice of Violation and Order of Temporary Closure with the National Indian Gaming Commission (“NIGC”) asserting that the game at issue was not subject to regulation by the IGRA or to enforcement actions by the Chairman, and that a Tribal-State compact is not required for its play. As part of its appeal of the Chairman’s enforcement action, the Nation requested a hearing on the matter to be conducted

before a presiding official appointed by the Commission. 25 C.F.R. Part 577. By agreement between the Chairman and the Tribe, the Tribe was allowed to continue play of the games, with the exception of the American Game Technology Cash Key Video gaming devices, pai gow poker, and roulette, while the Tribe's appeal was pending before the Commission.

6. Under regulations of the Commission, the Chairman may issue a Civil Fine Assessment as a further financial penalty. 25 U.S.C. § 2713(a). Before issuing a Civil Fine Assessment, the Chairman will consider written information about the violation that a respondent wishes to submit. 25 C.F.R. § 575.5. Should the Chairman issue a Civil Fine Assessment, a respondent has the right to file a request that the Civil Fine be waived or that the amount of the fine be reduced. 25 C.F.R. § 575.6. A respondent also has the right to appeal the Civil Fine Assessment to the Commission. 25 C.F.R. Part 577.

7. The Chairman has not issued a Civil Fine Assessment in this matter but intended to do so following a decision on the characterization of the games at issue by the National Indian Gaming Commission assuming that the Commission, after considering the Tribe's appeal, upheld his determination that the games required a Tribal-State compact.

8. Following negotiations with the State of Washington, the Tribe has now obtained a Tribal-State compact for the play of certain gaming devices, not part of the Chairman's Notice of Violation, and for play of the table and card games listed in paragraph two. The Assistant Secretary of Indian Affairs approved this compact on October 24, 2002, and the Tribe has made the necessary arrangements to install the gaming devices described in the Tribal-State Compact. The Tribe and the Chairman now wish to resolve their dispute and avoid further litigation regarding the Notice of Violation, the Order of Temporary Closure, and the potential Civil Fine Assessment.

Terms of Settlement

9. The Tribe is aware of its right to a hearing under 25 C.F.R. Part 577. Acknowledging this right, and in consideration for the agreement set forth below and to resolve this dispute, the Tribe hereby waives its right to a hearing, agrees to withdraw its appeal of the Notice of Violation and Order of Temporary Closure issued by the Chairman, and consents to settlement of a civil fine assessment. The Tribe also waives its rights specified in paragraph six (6) above to submit written information for a civil fine assessment or to file a request under 25 C.F.R. § 575.6. The Tribe will not further contest the Notice of Violation and Order of Temporary Closure and the determination by the Chairman that the lawful play of these games must be pursuant to a Tribal-State compact. This Notice of Violation and Order of Temporary Closure shall be deemed final agency action pursuant to 25 C.F.R. § 577.9(d) and this agreement is intended to resolve all matters in dispute.

10. The Tribe agrees, in the absence of a Tribal-State compact authorizing the play of the games, that the Tribe will not play any of the gaming devices listed in paragraph two, or similar gaming devices, and that it will remove all equipment on which those games are played, including all cabinets and video monitors, and all other games played thereon, from the gaming

floors of its gaming facilities on or before December 1, 2003; and (2) that it will not reconfigure or use that equipment in any way.

11. In settlement of the claims herein and without admitting liability, or that it has engaged in any wrongful conduct, the Nation agrees that it will pay a civil fine assessment in the amount of \$27,500 to the Treasurer of the United States. Payment is in consideration of settlement of the dispute and the Chairman's agreement not to proceed with the proposed assessment of a civil fine against the Nation premised on play of the gaming devices. Payment of this amount shall be in three installments, the first due on or before January 2, 2004, in the amount of \$9,500; the remainder shall be due in two installments in the amount of \$9,000 each, to be paid on or before the first days of May 2004 and November 2004. Payment shall be by check payable to the Treasurer of the United States, and submitted to the Administrative Officer, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, D.C. 20005.

Additional Covenants

12. The parties acknowledge that this agreement may be submitted to the Presiding Official hearing the Appeal in this case for his certification under the provisions of 25 C.F.R. §577.9(c).

13. The parties acknowledge that this settlement will resolve all outstanding issues between the parties. By entering into this Settlement Agreement, the Nation waives its right to take any further procedural or substantive appeal of issues involving the games before the NIGC or a federal court; waives its right to challenge or contest the validity of the order and decision entered into in accordance with the agreement, and acknowledges that, with the withdrawal of its appeal pursuant to this Agreement, the Notice of Violation and Order of Temporary Closure shall be deemed a final order of the Commission and shall constitute final agency action pursuant to 25 C.F.R. 577.9(d).

14. This Agreement may be executed in one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purposes of this Agreement.

For the Shoalwater Bay Tribe of Indians

/s/ Doug Davis

Date: 10/15/03

Doug Davis

Vice Chairman

For the National Indian Gaming Commission

/s/ Philip N. Hogen

Date: Nov 12, 2003

Philip N. Hogen, Chairman