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NM Supreme Court rules that a personal injury lawsuit against a tribal casino cannot be brought in state court

SANTA FE – The New Mexico Supreme Court ruled today that an employee of an electrical company cannot sue a pueblo and its tribal-owned enterprises in state court for damages for injuries allegedly suffered while making a delivery at a tribal casino.

In a unanimous opinion, the Court concluded that New Mexico state courts no longer have the authority to decide bodily injury and property damage lawsuits by casino visitors. Rulings in two federal court cases have the effect of terminating a provision in tribal-state gaming compacts that previously allowed such tort claims to be brought in state court rather than a tribal court, the justices held.

The Court reversed a state Court of Appeals decision that would have permitted Jeremiah Sipp, also known as Sage Rader, and his wife, Hella Rader, to proceed with a lawsuit in state court against Buffalo Thunder Inc., Pojoaque Pueblo and other tribal enterprises. The couple sought damages for injuries Sipp allegedly suffered in 2014 when a loading dock door struck his head while he delivered lights at Buffalo Thunder Resort for a parking lot. A district court dismissed the lawsuit in 2017 for lack of jurisdiction, and the couple appealed. After the Court of Appeals reversed the district court, Buffalo Thunder asked New Mexico’s highest court to review the decision.

A provision in gaming compacts with Pojoaque and other New Mexico Indian tribes waived tribal sovereign immunity to allow jurisdiction to be moved from tribal court to state court for some damage claims, unless a state or federal court determined that the federal Indian Gaming Regulatory Act (IGRA) “does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court.” IGRA established the regulatory framework for Indian tribes to operate casinos and other forms of gaming on tribal land.

In today’s opinion by Chief Justice C. Shannon Bacon, the Court concluded that under contract law the jurisdiction shifting of claims to state court ended because federal court rulings in two

cases involving New Mexico Indian tribes triggered the termination clause in Section 8(A) of the compact. The Court interpreted the gaming compacts “as contracts between the State and the Tribe.”

In one case – *Pueblo of Santa Ana v. Nash* – a federal district court concluded in 2013 that New Mexico state courts lacked the jurisdiction to hear a personal injury claim involving the over-serving of alcohol at a casino.

“By its plain language, this conclusion within the federal district court’s final determination of the issue constitutes the qualifying event that terminates the Tribe’s duty to provide its ‘limited waiver of . . . immunity from suit.’ Accordingly, we hold that *Nash* triggered the termination clause in Section 8(A), thereby rendering jurisdiction shifting to state court improper ‘with respect to claims for bodily injury or property damage,’ including for Respondents’ claims here,” the Court wrote.

In another case – *Navajo Nation v. Dalley* – a final determination by the U.S. Court of Appeals for the Tenth Circuit in 2018 “that relevant jurisdiction shifting is *not authorized* under IGRA is functionally equivalent to determining that IGRA *does not permit* such jurisdiction shifting,” the justices reasoned. “Accordingly, we conclude that *Dalley*, like *Nash*, constitutes the qualifying event under Section 8(A) to trigger the Compact’s termination clause.”

In the *Nash* case, Santa Ana Pueblo asked the federal court for a determination about jurisdiction shifting under IGRA after the New Mexico Supreme Court had issued an opinion in 2011 that allowed a lawsuit in state court against the pueblo’s casino for allegedly serving alcohol to two intoxicated patrons, who died in a vehicle crash after leaving a wedding reception at the casino. The *Dalley* case involved a slip-and-fall lawsuit brought in state court by a visitor to a Navajo Nation casino in San Juan County.

In resolving the legal issues concerning Sipp’s lawsuit, the Supreme Court explained, “the question here is whether either of those cases triggered the termination clause in Section 8(A), not whether we concur with the holding or reasoning of either case.”

The justices ordered the lower court to dismiss the lawsuit by Sipp and his wife.

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To read the decision in *Sipp v. Buffalo Thunder Inc.*, No. S-1-SC-39169, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/522296/index.do>