

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Case No. 17-10304-CC

SEMINOLE TRIBE OF FLORIDA,
Plaintiff/Appellee

v.

STATE OF FLORIDA,
Defendant/Appellant.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF FLORIDA
Case No. 4:15-cv-516-RH-CAS

STATE OF FLORIDA, and
FLORIDA DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,
Plaintiffs/Appellants

v.

SEMINOLE TRIBE OF FLORIDA,
Defendant/Appellee.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF FLORIDA
Case No. 4:15-cv-588-RH-CAS

SETTLEMENT AGREEMENT AND STIPULATION

THIS SETTLEMENT AGREEMENT AND STIPULATION ("Settlement") is entered into by and between the Appellants, STATE OF FLORIDA and FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION (collectively "the State"), and the Appellee, SEMINOLE TRIBE OF FLORIDA ("the Tribe").

WHEREAS, the State and the Tribe entered into a tribal-state compact pursuant to the Indian Gaming Regulatory Act on April 7, 2010, which became effective on July 6, 2010, 75 Fed. Reg. 38,833 ("2010 Compact").

WHEREAS, this Settlement is not intended to amend Florida law, as interpreted by the opinion on the merits entered in the consolidated cases, or modify any of the provisions of the 2010 Compact.

WHEREAS, the Florida Legislature designated the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation as the State Compliance Agency having the authority to carry out the State's oversight responsibilities under the 2010 Compact on behalf of the State. § 285.710(7), Fla. Stat.

WHEREAS, Part XVI, Section B, of the 2010 Compact provided that ". . . the authorization for the Tribe to conduct banking or banked card games as defined in Part III, Section F(2) shall terminate on the last day of the sixtieth (60th) month

after this Compact becomes effective unless the authorization to conduct such games is renewed by the parties or the State permits any other person, organization or entity, except for any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the State as of February 1, 2010, to conduct such games. In the event that the Tribe's authorization to conduct banking or banked card games terminates, the Payments due the State pursuant to Part XI, Sections B.1.(b) and D of this Compact shall be calculated by excluding the Net Win from the Tribe's Facilities in Broward County."

WHEREAS, after July 31, 2015, the Tribe continued making Revenue Share Payments to the State based on calculations that did not exclude the Net Win from the Tribe's Facilities in Broward County, The State deposited each Revenue Share Payment into the General Revenue Fund pursuant to § 285.710(9), Florida Statutes, and then administratively segregated out the portion that was based on the Net Win from the Tribe's Facilities in Broward County (the "Administratively Segregated Funds"). The State has not allocated the Administratively Segregated Funds to any portion of the State's budget.

WHEREAS, on October 26, 2015, in the United States District Court for the Northern District of Florida, the Tribe sued the State in case number 4:15-cv-

588. On October 30, 2015, in the United States District Court for the Middle District of Florida, the State sued the Tribe in case number 8:15-cv-2568. Case No: 17-10304-CC. Thereafter, the State's suit against the Tribe was transferred from the Middle District of Florida to the Northern District of Florida and consolidated with the Tribe's suit against the State. The consolidated cases include a dispute regarding the rights and obligations under the 2010 Compact.

WHEREAS, in the consolidated cases, the Tribe and the State filed a pretrial stipulation that the Tribe's obligation to make periodic "Revenue Share Payments" (as such term is defined in the 2010 Compact) was not at issue for determination in the consolidated cases.

WHEREAS, during a bench trial of the consolidated cases, the Tribe presented evidence of pari-mutuel facilities' operation of (a) player-banked card games which use a designated player ("Designated Player Games"), and electronic table games ("Electronic Table Games").

WHEREAS, after the bench trial, the district court entered an opinion on the merits in which the district court concluded that regulation permitting Designated Player Games triggered an exception, in Part XVI, Section B, of the 2010 Compact, to the five-year limitation on the Tribe's right to conduct banking or banked card games.

WHEREAS, pursuant to the opinion on the merits, the district clerk entered a judgment in case number 4:15-cv-588 declaring that “the Seminole Tribe of Florida has the right under the 2010 Compact to provide banked card games for the Compact’s entire 20-year term at the seven locations listed in Part IV.B. of the Compact.”

WHEREAS, pursuant to the opinion on the merits, the district clerk entered a judgment in case number 8:15-cv-2568 dismissing the State’s claim for declaratory and injunctive relief.

WHEREAS, on January 19, 2017, the State appealed to the United States Court of Appeals for the Eleventh Circuit from the judgments entered in case number 4:15-cv-588 and case number 8:15-cv-2568.

WHEREAS, the Tribe has informed the State that it claims the right to suspend payments or pay into an escrow account, under Part XII of the 2010 Compact, its Revenue Share Payments.

WHEREAS, the Tribe and the State affirm that it is in the best interests of the Tribe and the State for the Tribe to forbear, until after the Florida Legislature’s 2018 session, any action to suspend payments or pay into an escrow account, under Part XII of the 2010 Compact, its Revenue Share Payments.

NOW THEREFORE, the Tribe and the State enter this Settlement and agree to the following terms:

1. On the date of the execution of this Settlement (the "Effective Date"), the State will file a motion with the Eleventh Circuit Court of Appeals to dismiss this Appeal, and upon issuance of a final order dismissing the Appeal, the Tribe will release the State from any and all claims that under Part XII of the 2010 Compact the Tribe is entitled, based on the operation of Designated Player Games or Electronic Table Games in the State of Florida, to recover past Revenue Share Payments.

2. After the Appeal is dismissed, the State is entitled to the unencumbered use of the Administratively Segregated Funds, and the Tribe will not seek the return of the Administratively Segregated Funds.

3. During the time period beginning on the Effective Date through and including the last day of the month in which the Florida Legislature adjourns its 2018 session (the "Forbearance Period"), the Tribe will not suspend Revenue Share Payments or begin making Revenue Share Payments into an escrow account pursuant to the procedures set forth in Part XII of the 2010 Compact; nor will the Tribe initiate an action asserting that it is entitled, based on the continued operation

of Designated Player Games or Electronic Table Games in the State of Florida, to begin making Revenue Share Payments into an escrow account pursuant to the procedures set forth in Part XII of the 2010 Compact, provided that the State takes aggressive enforcement action against the continued operation of banked card games, including Designated Player Games that are operated in a banked game manner, as described in the opinion on the merits entered in the consolidated cases, and no other violations of the Tribe's exclusivity occur during the Forbearance Period. If a new violation of the Tribe's exclusivity occurs during the Forbearance Period due to a court decision or administrative agency ruling or decision, the Tribe will follow the process set forth in Part XII.A of the Compact.

4. The Tribe will continue to make, and the State may continue to deposit into the General Revenue Fund, pursuant to § 285.710(9), Florida Statutes, all of the Revenue Share Payments for the Forbearance Period, provided that the State takes aggressive enforcement action against the continued operation of banked card games, including Designated Player Games that are operated in a banked game manner, as described in the opinion on the merits entered in the consolidated cases, and no other violations of the Tribe's exclusivity occur during the Forbearance Period. The State will be entitled to the unencumbered use of such payments, and the Tribe will not seek the return of such payments.

5. The Tribe and the State agree that the findings of fact and conclusions of law in the opinion on the merits entered in the consolidated cases are binding on the parties.

6. The Tribe and the State agree that this Settlement shall not amend Florida law, as interpreted by the opinion on the merits entered in the consolidated cases, or modify any of the provisions of the 2010 Compact. Specifically, this Settlement shall not modify Part XII, Section A of the 2010 Compact, which provides that: "If, after February 1, 2010, Florida law is amended by action of the Florida Legislature or an amendment to the Florida Constitution to allow (1) the operation of Class III gaming or other casino-style gaming at any location under the jurisdiction of the State that was not in operation as of February 1, 2010, or (2) new forms of Class III gaming or other casino-style gaming that were not in operation as of February 1, 2010, the Payments due to the State pursuant to Part XI, Sections B. and D. of this Compact shall cease when the newly authorized gaming begins to be offered for public or private use. The cessation of payments due to the State pursuant to Part XI, Sections B. and D. of this Compact shall continue until such gaming is no longer operated, in which event the Payments shall resume. . . ."

7. The Director of the Division of Pari-Mutuel Wagering affirms that (a) the Division of Pari-Mutuel Wagering has authority to act as the State Compliance Agency under the 2010 Compact, (b) the Director of the Division of Pari-Mutuel Wagering is duly authorized and has the authority to execute this Settlement on behalf of the State of Florida and the Department of Business and Professional Regulation, (c) the Division of Pari-Mutuel Wagering will take all appropriate steps to defend its authority to execute this Settlement on behalf of the State and the Department of Business and Professional Regulation and to defend the validity of this Settlement, and (d) the Division of Pari-Mutuel Wagering will take all appropriate steps to effectuate this Settlement's purposes and intent.

8. The Chairman of the Tribal Council of the Seminole Tribe of Florida affirms that (a) he is duly authorized and has authority to execute this Settlement on behalf of the Tribe, (b) the Seminole Tribe of Florida will take all appropriate steps to defend the validity of this Settlement, and (c) he will take all appropriate steps to effectuate this Settlement's purposes and intent.

Seminole Tribe of Florida v. State of Florida
Case No. 17-10304-CC

APPROVED:

**Appellants, STATE OF FLORIDA and FLORIDA DEPARTMENT OF
BUSINESS AND PROFESSIONAL REGULATION**



Date: 7/5, 2017
Anthony J. Glover
Director of the Florida Division of Pari-Mutuel
Wagering



Date: 7/5, 2017
Jason Maine
Counsel for Florida Department of Business and Professional Regulation

Appellee, SEMINOLE TRIBE OF FLORIDA



Date: 7/3, 2017
Marcellus W. Osceola Jr.
Chairman of the Tribal Council



Date: 7/5, 2017
Barry Richard
Counsel for Seminole Tribe of Florida

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