

Tribal suit a USD 2.8B problem for Harrah's

Las Vegas (AP) – It garners a mere one-paragraph mention in the quarterly earnings report, but the private equity buyers of Harrah's Entertainment Inc. could have a colossal USD 2.8 billion problem on their hands.

The world's largest casino company by revenue inherited a legal quagmire that dates back to 2000.

That's when Arthur Goldberg, then chief executive of Park Place Entertainment Corp., signed a deal with the St. Regis Mohawk Tribe to acquire the exclusive rights to jointly develop a casino in the Catskills in upstate New York, just a 90-minute drive from Manhattan.

The tribe's current leaders say the deal was a sham, only meant to protect profits at four casinos in Atlantic City, N.J., now owned by Park Place's successor company, Harrah's.

It also pushed aside a deal the tribe had to build a casino in the Catskills, which seven years later, still has not been built.

Members of the tribe sued Park Place for its interference in 2000 and won a USD 1.8 billion default judgment in a tribal court mainly because Park Place lawyers did not show up. In July, the tribal court affirmed the judgment and tacked on USD 1 billion in interest owed.

The tribe sued again this summer, this time in U.S. federal court, to enforce the tribal judgment.

That could add a huge liability to the USD 13.9 billion in debt that Harrah's private equity buyers, Apollo Management and Texas Pacific Group, agreed to take on in the USD 17.1

billion deal expected to close by early next year.

Analysts say it could make the buyout less viable.

,If you're paying out the lawsuit in cash in one lump sum, it makes it very difficult to get your investment returns to work,' said casino analyst Dennis Farrell of Wachovia Securities.

The tribe's lead lawyer, Dennis Vacco, the former attorney general for New York state, says Harrah's has treated the case frivolously, by failing to respond to tribal court summonses and lobbying the government behind the scenes to have the tribal court annulled.

,The risk that they run in continuing to treat it as a frivolous matter is that they lose,' Vacco said. ,If they lose, the judgment is growing by USD 440,000 a day.'

Harrah's had no comment, citing its policy of not talking about pending litigation. It said in its earnings report it believed the case was without merit and would ,vigorously contest' any attempt to enforce the judgment.

Part of what led to the tribe's exclusivity deal with Park Place in 2000 was its money-losing Akwesasne Mohawk Casino in Hogansburg, N.Y.

The year-old casino was reportedly losing as much as USD 500,000 a month, plagued by cost overruns and too few customers.

Park Place's Goldberg approached the tribe with a bailout deal, and the Akwesasne casino operator, Ivan Kaufman, was all in favor.

Kaufman even bragged to Park Place general counsel Clive Cummis on Feb. 16, 2000, that he was manipulating the finances of the casino to push the tribe into Park Place's hands, according to a tape he made of the phone call.

,I have kind of delayed their payrolls and slowed it down so badly that, you know, they're looking at Arthur as the savior,' he said in the tape.

When the tribe signed the exclusivity deal on April 14, 2000, Park Place agreed to pay , \$ 3 million for use by the Tribe in its discretion.'

Former Chief Hilda Smoke denied the USD 3 million was a bribe. She said it was used to pay debts and keep the casino going.

,The casino was almost going under,' she said. ,We did the right thing. We never did anything against the tribe's best interest.'

The problem with the deal became apparent in the following months and years.

Instead of a site at a racetrack in Monticello, N.Y., that had received a rare Interior Department approval for off-reservation gaming, Park Place suggested Kutsher's Country Club, the last of the big, old-style Catskills resorts. The site would need all regulatory approvals from square one.

Brad Waterman, then the tribe's lawyer, pointed out the dangers of the switch in a May 9, 2000, memo: ,Worst and perhaps most realistic case scenario: no Catskills casino, ever,' he wrote.

,In the meantime, Park Place benefits – no competition for its Atlantic City casinos.'

But clouding the tribe's claim is its own long-standing self-governance dispute.

The tribe tried to enact a constitution in 1995, but it narrowly failed to get 51 percent support in a referendum, sparking a crisis in which two sets of governments – the constitutional one and the traditional elected three-chief system – operated at the same time.

The turmoil put in jeopardy the tribal court system that was established in late 1994 – a weakness that Harrah's lawyers sought to exploit, Vacco said.

In a letter to Harrah's lawyer George Carpinello on Sept. 14, Interior Department regional solicitor Horace Clark said the Bureau of Indian Affairs would determine which government to recognize by the end of October.

If the bureau fails to recognize the three chiefs system, the court set up by the chiefs may be seen as illegitimate, potentially reducing the billion-dollar judgment to worthless paper. Regardless, the federal case will continue, Vacco said.

Today, the tribe is moving ahead with a USD 600 million casino at Monticello with the former partner it once spurned for Park Place, a company called Empire Resorts Inc. The 125-table, 3,500-slot machine casino would best nearby slots parlors because of the variety of action and its proximity to New York, says Chief Lorraine White.

But White says her people missed years worth of gambling profits that are now being spread around racetrack casinos in Pennsylvania and Indian casinos, such as Foxwoods and Mohegan Sun in Connecticut.

,Seven years ago, we would have been the casino and resort destination in the Northeast,' White said. ,That may or may not still be the case.'

Ironically, it's not Indian casinos in the Catskills that are now jeopardizing profits at Atlantic City casinos – it's legalized slot machine parlors that have recently popped up closer to New York in Pennsylvania and Delaware.

Through September, Atlantic City's 11 casinos have taken in USD 3.8 billion, down 4.8 percent from the same period last year. It will likely mark the first annual revenue decline in the city's 29-year history of gambling.

Other jurisdictions in the northeastern U.S. are also flirting with gambling, including Massachusetts, the home state of Las Vegas Sands Corp. magnate Sheldon Adelson. Sands also is leading construction of a casino complex in Bethlehem, Pa., even closer to New York.

White, though, remains positive.

,The Mohawks' time has come,' she said. ,We're going to get what we should have had in 2000.'