

Conn. Tribe Blasts State's Bid To Dodge \$610M Suit

By **Christine Powell**

Law360, New York (May 16, 2017, 9:56 PM EDT) -- The Schaghticoke Tribal Nation on Monday blasted Connecticut's attempt to toss the tribe's \$610 million state court lawsuit seeking compensation for the alleged unconstitutional taking of its land and mismanagement of its funds, rejecting the contention that it lacks standing to pursue the case.

The Schaghticoke Tribal Nation was responding to Connecticut's **bid to dismiss** the lawsuit accusing the state of whittling away the tribe's reservation from from 2,400 acres to just 400 between 1801 and 1918 and making promises that it would eventually compensate the tribe for the land but never doing so.

Although Connecticut had argued that multiple courts have recognized a "hotly contested dispute over who has authority to bring claims on behalf of the Schaghticoke tribe" among at least three factions competing for control and that the tribe has failed to show that it has the authority to represent all tribe members, STN shot back that it does, in fact, have standing to bring the suit.

"While the state points to dicta referencing a 'hotly contested' leadership dispute between STN and a splinter group, the state has never argued, nor even considered, the Schaghticoke Tribe's leadership to be disputed — until it was sued for \$610 million," the tribe said. "In fact, when STN sued the state last year, challenging a state gaming statute, the state never challenged STN's standing based on a 'hotly contested' tribal leadership."

Should the court choose not to reject Connecticut's challenge on standing, however, the STN argued that "an evidentiary hearing must be held" on the matter prior to dismissing the case.

According to the **STN's complaint**, the Connecticut General Assembly granted the tribe 2,400 acres for a reservation in the township of Kent in 1736. In 1757, the General Assembly appointed an overseer for the Schaghticoke Tribal Nation, which was supposed to have a custodial duty over their affairs and lands.

The first alleged taking of land described in the complaint was done by resolution in 1801, when the General Assembly recommended that the overseer at the time sell part of the tribe's land to compensate him for a purported \$400 he had paid to support the tribe. But the new overseers, authorized to sell \$400 worth of land, instead sold nearly half the reservation to generate \$4,332.99 in proceeds, according to the lawsuit, "far in excess of what was purportedly needed to discharge STN's alleged debt to the state."

The tribe says that at least 91 mortgages, totaling more than \$45,000, were issued during the 1800s, and that the tribe did not receive any benefit from them. Based on the principal amount of \$4,332.99, adding compounded interest "at a conservative rate" of 6 percent totals up to well over \$600 million, according to the suit.

In its February dismissal motion, Connecticut also argued that its sovereign immunity bars any claims for money against it and that the STN "cannot avoid sovereign immunity by clothing

monetary claims in the garb of declaratory or injunctive relief," including its request that the court order Connecticut to pay \$610 million in damages or order the placement of that amount into an account for the tribe.

Further, the state said that its sovereign immunity bars the court from ordering an accounting of any funds for the tribe "that would be a prelude to a monetary claim," especially since there is no private right of action to force the state to report on tribal funds.

While takings claims can provide an exception to the rule that sovereign immunity bars any claims for monetary relief, the STN doesn't have a protected property interest that would support a takings claim and its claims are based on events that predate relevant portions of the federal and Connecticut constitutions, according to the state.

Connecticut's sovereign immunity also blocks the STN's claims for damages based on an alleged violation of the tribe's constitutional due process rights and on a purported breach of the state's fiduciary duty to the tribe, the state said.

But the STN shot back Monday that the question of whether it has a protective interest in its land to bolster a takings claim is not appropriate for a motion to dismiss and, regardless, it was granted such an interest by the General Assembly and the state incorrectly relies on a U.S. Supreme Court ruling to argue otherwise.

As for Connecticut's challenges to its claims for breach of fiduciary duty and for equitable relief, STN said that "courts have recognized that money damages for a breach of fiduciary duty are not barred in the context of Native American claims. Even if they are, however, STN is entitled to plead in the alternative, and under Connecticut law, requests for an accounting or a resulting or constructive trust are not dressed-up claims for money damages, but proper claims for equitable relief which are not barred by sovereign immunity."

Austin Tighe of Nix Patterson & Roach LLP, who represents the tribe, told Law360 in an emailed statement Tuesday that "the state's motion to dismiss is just another instance in a 300-year history of Connecticut attempting to avoid its legal and moral responsibilities to one of its first families. STN's response yesterday demonstrates that the State's motion is without merit. We look forward to the court hearing the motion and resolving our claims."

Representatives for the state did not respond immediately to requests for comment.

The Schaghticoke Tribal Nation is represented by Austin Tighe and Michael Angelovich of Nix Patterson & Roach LLP and Mark Lerner, Joseph I. Lieberman and Christine A. Montenegro of Kasowitz Benson Torres & Friedman LLP.

Connecticut is represented by Robert J. Deichert, Sharon Melissa Seligman and David H. Wrinn of the state attorney general's office.

The case is Schaghticoke Tribal Nation v. State of Connecticut et al., case number HHD-CV16-6072009-S, in the Superior Court of the Judicial District of Hartford at Hartford.

--Additional reporting by Stan Parker and Andrew Westney. Editing by Jill Coffey.