

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 45

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WELLS FARGO BANK, N.A., AS TRUSTEE,

Plaintiff,

-against-

CHUKCHANSI ECONOMIC DEVELOPMENT  
AUTHORITY, THE BOARD OF THE CHUKCHANSI  
ECONOMIC DEVELOPMENT AUTHORITY, THE  
TRIBE OF PICAYUNE RANCHERIA OF THE  
CHUKCHANSI INDIANS, THE TRIBAL COUNCIL OF  
THE TRIBE OF PICAYUNE RANCHERIA OF THE  
CHUKCHANSI INDIANS, THE PICAYUNE  
RANCHERIA TRIBAL GAMING COMMISSION,  
RABOBANK, N.A., GLOBAL CASH ACCESS, INC.,  
NANCY AYALA, TRACEY BRECHBUEHL, KAREN  
WYNN, CHARLES SARGOSA, REGGIE LEWIS,  
CHANCE ALBERTA, CARL BUSHMAN, and BANK  
OF AMERICA, N.A.,

Defendants.  
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Index No. 652140/13

AMENDED ORDER

**MELVIN L. SCHWEITZER, J.:**

This amended order shall replace the court's order filed October 1, 2013.

In response to requests that the Court appoint an independent third-party to assist with respect to vendor payment disputes, the Court issues the following ORDER pursuant to CPLR 4001 and Part 36 of the Rules of the Chief Judge:

The Indenture gives the court the authority to protect the revenues of the Chukchansi Gold Resort & Casino (Casino), where they go and how they are allocated. A Referee is necessary to break deadlocks created by the parties' disputes, to ensure the Casino's fiscal health and its ability to make the requisite payments under the Indenture. Accordingly, Joseph A. Fusco, Esq. is appointed to assist the Court as Referee with respect to disputes over payments to

vendors of the Casino. Mr. Fusco is uniquely qualified to serve as Referee in this matter as he was Executive Vice President for Government Affairs for Trump Entertainment Resorts, Inc. for fifteen years with responsibilities, among others, for agency regulations, gaming regulatory licensing and other approvals and investigations. Prior to that, from 1977 through 1981, he was appointed as one of the first two employees of the newly created New Jersey Casino Control Commission, serving as its Special Counsel for Licensing and Director of its License Division and responsible for drafting many of its regulations, supervising approval of the physical facilities of the Atlantic City casinos and analyzing the corporate and organizational structure of casino license applicants. He left the Commission to accept an appointment by the governor to a five year term as Atlantic County Prosecutor, the chief law enforcement officer of the venue of all New Jersey casinos. Therefore, good cause exists for appointment of a Referee who is not currently on the list maintained by the Supreme Court of New York State.

Mr. Fusco will first consider the ten disputed vendor payments set forth on the schedule provided as Exhibit 1 to the letter of Brian Koosed, Esq. submitted to the court on September 19, 2013. In so doing, and in considering and determining any future disputes over vendor payments, Mr. Fusco's authority will be to determine whether there is an agreement between the Casino and a vendor; whether the vendor has provided services to the Casino under that agreement; whether the vendor has been paid, in whole or in part, for those services; and whether the Casino has any legitimate legal defense to a disputed payment, such as a bona fide, provable claim against the vendor for breach of contract. Mr. Fusco will not consider whether other agreements exist with regard to the same services as those provided by the disputed vendor; the existence or nature of the Casino's past relationship with, and treatment of other vendors; nor any

other facts or issues regarding vendors that could serve as the basis for a civil or tribal court action under law or equity. In the event the Referee determines there is a legitimate legal defense to a disputed vendor payment, or the parties determine that other facts or issues could serve as the basis for a civil or tribal court action, the parties will have to go to a local court with jurisdiction over such matters.

Appropriate counsel may present the Referee with vendor payment issues as described herein by mailing the original and two copies of their appropriate submission to him at:

Joseph A. Fusco, Referee  
Cooper Levenson Law Firm  
1125 Atlantic Avenue  
Atlantic City, New Jersey 08401  
**Attention:** Kathy Roach, Paralegal

A copy of each such submission shall be contemporaneously filed with the Court and provided to all counsel of record in this matter. The Referee will then review the submissions and report his determination to the court in writing, with service on the parties.

Compensation will be paid to the Referee and to his paralegal Kathy Roach at the hourly rates of \$400 and \$150 respectively, plus reasonable expenses. The Referee shall submit to the court for its approval, and serve on the parties' counsel, a monthly invoice setting forth the services rendered and the compensation to be paid. On being approved by the court, the Referee's invoice shall be paid promptly by the Chukchansi Economic Development Authority.

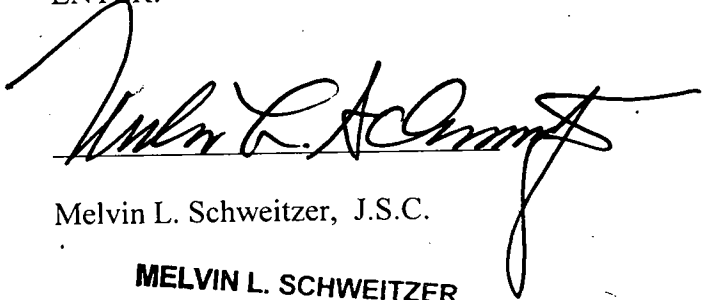
The Referee may be contacted by e-mail to [jfusco@cooperlevenson.com](mailto:jfusco@cooperlevenson.com) with a contemporaneous copy to Ms. Roach at [kroach@cooperlevenson.com](mailto:kroach@cooperlevenson.com). He may also be reached

Monday through Thursday from 9am to 4pm (EST) by telephone through Ms. Roach at 609-572-7790.

This Order does not constitute the court's decision on the motion to modify its July 2, 2013 order (Mot. Seq. No. 6), made on order to show cause, which remains pending.

Dated: October 16, 2013

ENTER:



Melvin L. Schweitzer, J.S.C.

**MELVIN L. SCHWEITZER**