

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

PUEBLO OF POJOAQUE and  
BUFFALO THUNDER, INC.,

Plaintiffs,

vs.

No.: 1:20-CV-00166-KRS-GBW

HONORABLE BRYAN BIEDSCHEID in  
his official capacity as District Judge,  
New Mexico First Judicial District Division  
VI; and RUDY PENA,

Defendants.

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

Pursuant to Fed. R. Civ. P. 15(a)(1) and for their First Amended Complaint,  
Plaintiffs, Pueblo of Pojoaque and Buffalo Thunder, Inc., state as follows:

**INTRODUCTION**

Pursuant to 28 U.S.C. §2201, Plaintiffs seek an Order from this Court  
declaring (1) that the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*,  
does not permit the shifting of jurisdiction from tribal courts to state courts over  
private personal injury lawsuits brought against tribes or tribal entities with respect  
to claims arising in Indian Country, even when the lawsuit alleges that the acts of  
tribal employees were a cause of the alleged harm, and; (2) that the Hon. Bryan  
Biedscheid, Division VI District Judge of the First Judicial District Court, lacks  
jurisdiction over the Plaintiffs in the case captioned *Rudy Pena v. Buffalo Thunder,  
Inc.*, No. D-101-CV-2017-00216.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331,  
1362, and 1342.

2. Venue is proper under 28 U.S.C. § 1391 (b) inasmuch as all the actions from which the claims arise occurred or are occurring within the District of New Mexico.

### **PARTIES**

3. Plaintiff Pueblo of Pojoaque ("Pojoaque") is a federally recognized Indian tribe located in Santa Fe County, New Mexico.

4. Plaintiff Buffalo Thunder, Inc. (BTI) is a tribally-chartered for-profit corporation wholly owned by Pojoaque, whose purpose is to operate and manage the Buffalo Thunder Resort & Casino ("BTR") located on the Pueblo of Pojoaque in the State of New Mexico.

5. Defendant Bryan Biedscheid is a New Mexico State District Court judge sitting in Division VI of the First Judicial District Court (Santa Fe) who is currently presiding over a civil lawsuit captioned *Rudy Pena v. Buffalo Thunder, Inc.*, No. D-101-CV-2017-00216 (the "Pena lawsuit").

6. Defendant Rudy Pena is the plaintiff in the Pena lawsuit.

### **STATEMENT OF FACTS**

7. BTI operates the BTR located on the Pueblo of Pojoaque in the State of New Mexico and thus within Indian country (as defined by 18 U.S.C. §1151 (b)), under the terms of a class III gaming compact entered into between Pojoaque and the State of New Mexico (the "Compact") pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701-2721 (1994) ("IGRA"), specifically section 2710(d), which Compact was approved by the Secretary of the Interior and in effect at the time of the accident alleged in the Pena lawsuit.

8. The Pena lawsuit alleges that on or about February 1, 2015, Rudy Pena was sitting at a BTR machine when BTI employees or agents approached him and asked him to move aside. Plaintiff replied that he had muscular dystrophy and could not comply. BTI employees or agents repeated the request and in his haste to comply, Pena fell backwards and alleges he suffered injuries.

9. Rudy Pena filed the Pena lawsuit against BTI alleging waiver of sovereign immunity pursuant to the Compact.

10. Pojoaque agreed in Section 8(a) of the Compact to waive its sovereign immunity for personal injury claims alleged to have been proximately caused by the conduct of the Pueblo's Gaming Enterprise, brought by BTR visitors, and agreed to proceed with such claims in binding arbitration or "in a court of competent jurisdiction.

11. Section 8(a) provides in pertinent part that "any such claim [for personal injury] may be brought in state district court, including claims arising on tribal land, *unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.*"

12. In *Pueblo of Santa Ana v. Nash*, 972 F.Supp.2d 1254 (D. N.M. 2013), the District Court for the District of New Mexico held that IGRA does not authorize an allocation of jurisdiction from tribal court to state court over a personal injury claim arising from the allegedly negligent serving of alcohol on Indian land, and that the New Mexico State District Court did not have jurisdiction over the subject tort action.

13. IGRA only allows the parties to a class III gaming compact to agree to apply “the criminal and civil laws and regulations of the ... State that are *directly related to, and necessary for, the licensing and regulation of [gaming],*” and it further allows the parties to allocate “criminal and civil jurisdiction between the tribe and the state necessary for the enforcement of such laws and regulations.” 25 U.S.C. § 2710(d)(3)(C)(i) and (ii) (*emphasis added*).

14. In *Navajo Nation v. Dalley*, 896 F.3d 1196 (10<sup>th</sup> Cir. 2018), the Tenth Circuit ruled that Congress authorized waiver of sovereign immunity under IGRA only for the regulation of activities that are directly related to the regulation and licensing of Indian gaming, *which authorization did not extend to slip and fall claims*.

15. Absent congressional legislation to the contrary, state courts may not exercise jurisdiction over suits against Indian tribes, tribal members or tribal entities arising from alleged wrongs committed within Indian Country, nor may a tribe, whether unilaterally or by agreement with a state, validly agree to any such shift in jurisdiction, and the attempted exercise of such jurisdiction by state courts directly undermines “the authority of tribal courts over Reservation affairs, “ and thus infringes on “the right of [Pojoaque] to govern [itself].” *Williams v. Lee*, 358 U.S. 217, 223 (1959).

16. Accordingly, Judge Biedscheid and Division VI of the First Judicial District Court does not have subject matter jurisdiction over lawsuits against tribes or tribal entities that arise on tribal land, including the Pena lawsuit.

**COUNT I – DECLARATORY JUDGMENT**

17. Judge Biedscheid, in presiding over the Pena lawsuit, is acting without jurisdiction over the subject matter of the lawsuit.

18. Judge Biedscheid asserts that BTI waives its sovereign immunity under IGRA and the Compact in circumstances where it is alleged that the actions of a BTR employee caused or contributed to causing the alleged accident and injuries.

19. The deprivation of BTI's right to have its case heard in a court that has subject matter jurisdiction constitutes an injury for which injunctive relief is the only suitable remedy.

20. Judge Biedscheid, in presiding over the Pena lawsuit, and Rudy Pena, in pursuing his claims in state court, are infringing on Pojoaque's right to exercise jurisdiction over reservation affairs through its tribal court.

21. Therefore, an actual and justiciable controversy exists between Pojoaque on the one side and Judge Biedscheid and Rudy Pena on the other.

WHEREFORE, Plaintiffs respectfully request that the Court issue an order:

A. Declaring that the IGRA does not permit the shifting of jurisdiction from tribal courts to state courts over personal injury lawsuits brought against tribes or tribal gaming enterprises for alleged wrongs arising or occurring within Indian country, even when the lawsuit alleges that the acts of tribal employees were a cause of the alleged harm, and;

B. Declaring that the New Mexico state courts do not have jurisdiction over lawsuits such as the Pena lawsuit even when such lawsuits allege that the acts of tribal employees were a cause of the alleged harm.

C. Enjoining Judge Biedscheid from exercising jurisdiction over the Pena lawsuit, and enjoining Rudy Pena from pursuing such claims in state court, and;

D. Granting such other and further relief as the Court deems proper under the circumstances.

Respectfully submitted,

**RIPLEY B. HARWOOD, P.C.**

/s/

By: \_\_\_\_\_

RIPLEY B. HARWOOD, ESQ.  
Attorneys for Defendant Buffalo  
Thunder  
201 Third Street NW Suite 1300  
Albuquerque, NM 87102  
505-299.6314  
505-944-9091 fax

I HEREBY CERTIFY that on the 13th day of August, 2020, a true and correct copy of the foregoing *First Amended Complaint for Declaratory Judgment* was filed electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Attorneys for Defendant Rudy Pena:

LINDA J. RIOS, ESQ.

MICHAEL SOLON, ESQ.

[linda.rios@lrioslaw.com](mailto:linda.rios@lrioslaw.com)

[michael.solon@lrioslaw.com](mailto:michael.solon@lrioslaw.com)

Gregory A. Chakalian, Esq.

Assistant Attorney General for the State  
of New Mexico

[gchakalian@nmag.gov](mailto:gchakalian@nmag.gov)

/s/

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RIPLEY B. HARWOOD