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Tribe's \$107M lawsuit returns to trial

State high court refuses to hear appeal

Sacramento Business Journal - by [Mark Anderson](#) Staff writer

A lawsuit seeking more than \$100 million filed three years ago against the **Shingle Springs Band** of Miwok Indians is set to return to trial following a decision by the California Supreme Court.

The tribal government that owns the **Red Hawk** Casino in Shingle Springs has been arguing for years that it has sovereignty and therefore cannot be sued in El Dorado County Superior Court. The tribe's argument has lost over and over again, and has been appealed each time.

On Tuesday, the tribe ran out of appeals when the state Supreme Court denied the tribe's request to review the lower court's decisions.

Sharp Image Gaming Inc., a Chatsworth-based video gaming company, signed a contract with the **Shingle Springs Rancheria** to bankroll and supply machines for its casino in 1996.

Sharp Image built a concrete pad, hoisted a permanent 20,000-square-foot white tent and filled it with 400 slot machines.

The Crystal Mountain Casino was very short-lived. In fact, it closed on its opening day. The tribe's access to the rancheria was only over private roads, and the neighbors got court orders to limit access to non-commercial uses.

That stifled economic development there for about a decade.

The tribe then chose to work with Minneapolis-based **Lakes Entertainment Inc.** to develop Red Hawk Casino and build an interchange from Highway 50 to the rancheria.



Dennis McCoy | Sacramento Business Journal

The Shingle Springs Band of Miwok Indians built the Red Hawk Casino in Shingle Springs years after an attempt to open in a tent in the 1990s was quashed due to lack of road access.

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With Lakes backing the project, the tribe built a \$200 million casino and parking garage as well as the \$45 million interchange. It also signed a 20-year, \$87 million contract with the county and agreed to fund \$104 million in carpool lane construction.

But Sharp Image Gaming argues that it still has the valid contract to be the tribe's gaming partner and the supplier of its slot machines. The lawsuit demands the return of \$7 million it invested in the effort and \$100 million in damages.

Sharp Image is suing for damages because a management contract with a casino can be lucrative. The contracts can run up to seven years and allow companies managing the casino for a tribe to take a cut of profits, often up to a quarter. In good economic times, a 200,000-square-foot casino can generate about \$200 million annually.

Red Hawk, however, opened during a recession. It has already changed executive management at the casino and went through a round of layoffs. Red Hawk agreed to the most generous revenue-sharing deal with the county of the three largest casinos in the region. The interchange and the local agreements saddle Red Hawk with almost \$235 million in extra debt over 20 years.

Since Sharp Image filed its suit in May 2007, the tribe's attorneys have sought to have the suit dismissed on the grounds that the company had no standing to sue a sovereign Native American nation, maintaining that the suit should have been filed in federal court.

That plea was denied by an El Dorado County judge in January 2008. The tribe appealed and was denied, again.

In January, it lost yet another appeal in the Third District Court of Appeals, so it took its case to the California Supreme Court. On Tuesday, the state's high court denied the tribe's petition for review.

"This is no shock. The California Supreme Court takes less than 1 percent of the cases presented to it. This isn't a case that breaks any new ground or settles differing opinions for other jurisdictions," said Howard Dickstein, attorney and partner in **Dickstein & Zerbi**. He is not involved in the case, but he has specialized in Native American and gaming issues for decades.

The tribe will have to deal with the original case on the facts and the merits of the case, rather than relying on trying to get the case thrown out for procedural reasons, Dickstein said.

"They are attempting to paper us to death with all these appeals. We will fight them through all the paper, and we will prevail," said Matt Jacobs, an attorney representing Sharp Image and a partner in the Sacramento law firm **Stevens, O'Connell & Jacobs** LLP.

The tribe, in a written statement, said Sharp Image Gaming is claiming "rights to revenues from the tribe's Red Hawk Casino, a facility in which Sharp had no involvement."

"It is always difficult to get appellate review of a lower court decision before a case has been tried," said Paula Yost, attorney representing the

tribe with **Sonnenschein Nath & Rosenthal** LLP. “So, while we are not surprised by the Supreme Court’s ruling, we are disappointed, particularly since there was amicus support for granting the petition for review, and since the court had issued a stay of the proceedings while it considered the tribe’s petition.”

Nicholas Fonseca, tribal chairman with the Shingle Springs Band of Miwok Indians, said Tuesday’s decision “does not mean we will have lost our jurisdictional defense. It just means it will not be resolved now.”

He is confident of the tribe’s chances, saying “the tribe will vigorously defend against Sharp’s overreaching claims on the merits as well. We believe the tribe will ultimately prevail in this case, whether by judge or by jury.”

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