

Lewis Roca Rothgerber Christie Assists Indian Tribe in Saving \$400 Million by Negotiating Innovative New Gaming Compact with State of California

Client Issue

Since 1996, the Shingle Springs Band of Miwok Indians has sought to provide for the needs of its members through revenue generated at its Red Hawk Casino, under a gaming compact with the State of California. For just as long, the Tribe's efforts have been plagued by a myriad of problems ranging from political and legal opposition, to flawed compact provisions and being denied access to a state-sponsored highway expansion. The cost of overcoming these obstacles caused the Tribe to go deeply into debt. Tribal Chairman Nick Fonseca said that its compact with California was "terribly unfair and illegal."

Desperate to improve its financial situation, the Tribe entered into an amended gaming compact with the state, but the crippling revenue sharing percentages of this compact made it impossible for the Tribe to meet all of its financial obligations and still provide services for the Tribe. The compact resulted in revenue distribution which allocated \$38 to the state and local governments for every \$2 the Tribe received.

The Indian Gaming Regulatory Act (IGRA) requires that a tribe be the primary beneficiary of its gaming operations and prohibits states from imposing taxes on tribes. Even though the Tribe's Red Hawk Casino operation employs hundreds, entertains thousands, and generates millions every year, the Tribe itself receives a pittance after the wages, debt payments, and revenue sharing percentages are paid out.

Our Approach

Leveraging our previous success in *Rincon v. Schwarzenegger*, lead negotiator Steve Hart argued that the Tribe's creditors and State of California were the primary beneficiaries of the Tribe's gaming operations and that, because the state failed to provide meaningful value to the Tribe equal to or exceeding the revenue sharing being paid, the revenue sharing requirements of the amended gaming compact amounted to a tax on the Tribe. Steve Hart's legal credibility on compact issues within California was a major asset for the Tribe.

In addition to Hart, a team of attorneys was formed to support the Tribe through its entire process. Partner Kerry Patterson was the primary drafter of the Amended Compact and exchanged multiple drafts with the State until a final form of Amended Compact was agreed upon. Brooklynn Blood first brought to light the Tribe's hardship through a detailed Meet and Confer letter. Bryant Barber focused on the financial provisions of the matter, handling the necessary workout and restructuring needs. Peter Larson also provided financial insight, pulling from his extensive experience working with tribal regulatory matters.



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Practice Areas

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Results

The Lewis Roca Rothgerber Christie team worked together seamlessly with tribal leaders to move through the complex legal, financial, political and public demands to obtain:

- a successful deal with Governor Brown and El Dorado County,
- a passage of the amended compact through the legislature, and
- an unprecedented new deal for the Tribe with the State of California that reduces its revenue sharing requirement from 25% to 15%.

This new arrangement requires the Tribe to restructure its financial obligations to its bondholders and its previous management company, Lakes Entertainment, Inc. (Lakes). Not only was Lewis Roca Rothgerber Christie able to help secure the new deals with the State of California and El Dorado County, we were also able assist the Tribe with the Debt Termination Agreement between the Tribe and Lakes.

This is one of the first compacts created to both address fiscal challenges of a tribe and meet the requirements of the federal law. "It's innovative," said Nelson Rose, Whittier College's Gaming Law expert. He further confirmed that he's never heard of a state rewriting a tribal gaming compact to ease a tribe's financial burdens.