

TITLE 12. CIVIL ACTIONS

CHAPTER 1. CIVIL ACTIONS LAW

12 M.P.T.L. ch. 1 § 1

§ 1. Tribal Forum

a. The Mashantucket Pequot Tribal Council recognizes that it is in the best interest of the Tribe to provide a forum to address civil causes of action, including civil actions by or against the Tribe, tribal enterprises, tribal members and any other person or entity who, through their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with the Tribe or on tribal lands, are entitled to civil redress or incur civil obligations. For purposes of this law, "tribal lands" means Indian country, as that term is defined in 18 U.S.C. § 1151. The intent of this law is that the jurisdictional powers of the Mashantucket Pequot Tribal Court shall be exercised to the fullest extent possible and construed to serve the ends of justice.

b. Jurisdiction. Except as may be limited by tribal or federal law, the tribal court shall have jurisdiction over all civil causes of action and the tribal court shall have the power to fashion any equitable or legal remedy reasonably required to enforce judgments, including but not limited to, attachments, garnishments and executions. The Tribal Court shall have jurisdiction to hear and decide, through a declaratory judgment action, matters pertaining to the legal sufficiency or validity of a petition presented pursuant to Articles VII, VIII, and XI of the Mashantucket (Western) Pequot Constitution, and the sovereign immunity of the Tribe is hereby waived for the limited purpose of such a declaratory judgment action in Tribal Court provided such action is commenced within 20 days from the time the Tribal Council does not accept the validity or sufficiency of the petition.

c. Personal Jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, the tribal court may exercise personal jurisdiction over any person, Indian or non-Indian, or any entity:

- (1) who is served with process on tribal lands;
- (2) who consents to such jurisdiction;
- (3) who in person or through an agent;
 - (a) transacts any business or activity on tribal lands;
 - (b) commits a tortious act on tribal lands;
 - (c) commits a tortious act outside tribal lands causing injury to person or property within tribal lands if the person either regularly does or solicits business, or engages in any other regular course of conduct, or derives substantial revenue from goods used or consumed or services rendered on tribal lands, or otherwise expects or should reasonably expect the act to have consequences on tribal lands;
 - (d) owns, uses, or possesses any property real or personal, or any interest therein, within tribal lands;

- (e) enters into any contract made on tribal lands or to be performed on tribal lands;
- (f) engages in any business solicited on tribal lands by mail, telecommunication, or otherwise if the person has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without tribal lands; or
- (g) engages, directly or indirectly, in the production, manufacture or distribution of goods by a person with the reasonable expectation that such goods are to be used or consumed on tribal lands and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers.
- (h) who violates the civil rights of any person, as defined in the 20 M.P.T.L. Civil Rights Code. None of the foregoing bases of jurisdiction is exclusive or exhaustive, and jurisdiction may be established upon any one or more bases as applicable.

d. Limitation on Jurisdiction.

- (1) As provided in the tribal law establishing the Tribal Court, 1 M.P.T.L. ch. 1, § 2(c), the tribal court shall not exercise civil jurisdiction over any action arising from a contract or agreement to which the Tribe is a party or by which it may be bound if such contract contains an express provision prohibiting the exercise of jurisdiction by the tribal court, whether approved prior to or subsequent to the enactment of this law, provided that the tribal court shall have jurisdiction to enforce an agreement to arbitrate or an arbitration award relating to such contract if the contract provides for such action.
- (2) Nothing provided in this law shall be deemed to be a waiver of the sovereign immunity of the Tribe or a tribal enterprise unless such immunity has been waived in the context of the particular case before the tribal court, or has been expressly waived by this law. Nothing contained in this law shall be construed to be a waiver of the sovereign immunity of the Tribe or any tribal enterprise from suit in state or federal court or in any action before any state or federal agency, or in any other forum or context.
- (3) There shall be no cause of action in the tribal court for alleged gaming losses, the jurisdiction of which has been specifically reserved for consideration by the Mashantucket Pequot Gaming Commission. For purposes of this section, "gaming loss" means any claim brought to recover damages for pecuniary loss resulting from the engagement by any person in activities classified as "class I gaming," "class II gaming," or "class III gaming," as those terms are defined in the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721.
- (4) There shall be no cause of action in the tribal court relating to, or which may affect, banishments or exclusions, except that this provision shall not prohibit the tribal court from

imposing civil or criminal penalties for the violation of a banishment or exclusion order.

12 M.P.T.L. ch. 1 § 2

§ 2. Tort Actions to which the Tribe is a Party

a. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for actions founded upon a tort of the Tribe or its agents, servants, or employees acting within the scope of their employment.

b. In any judgment under this law against the Tribe, the court may award damages as hereinafter provided:

- (1) The court may enter an award for actual damages.
- (2) For any injury resulting in death, the court may enter an award for actual damages, but in no event shall the award be less than \$100,000.
- (3) In addition to an award for actual damages, the court may enter an award for any injury resulting in permanent significant disfigurement or permanent significant scar of the face, head, or neck, or, on any other area of the body only if the resulting permanent significant disfigurement or permanent significant scar handicaps the claimant in obtaining or continuing to work. In determining an appropriate damage award for a permanent significant disfigurement or permanent significant scar, the court shall calculate such an award pursuant to Title 13 M.P.T.L. ch. 4, §§ 12(c) and 12(d); except that when the claimant is not employed, the court shall use the rate of \$200 per week, without deduction.
- (4) In addition to an award for actual damages, the court may enter an award for pain and suffering or mental anguish in an amount which shall not exceed 200% of the actual damages sustained.
- (5) "Actual Damages" means the ascertainable loss of money or property sustained as a result of an injury without any reduction for collateral sources.
- (6) For purposes of calculating pain and suffering or mental anguish, actual damages shall include the reasonable value of expenses or losses incurred, notwithstanding offsets resulting from adjustments or write offs based on contractual relationships or other arrangements between third party payors, including but not limited to Medicare or private insurance carriers
- (7) In causes of action based on negligence, contributory negligence shall not bar recovery in an action by any person or the person's legal representative to recover damages resulting from personal injury, wrongful death or damage to property if the negligence was less than or equal to the combined negligence of the person or persons against whom recovery is sought. Any award for damages to a person shall be

reduced in proportion to the person's contributory negligence. However the person shall recover nothing if claimant's contributory negligence is determined to be greater than fifty (50) percent.

- (8) In causes of action based on personal injuries resulting from the negligence of a healthcare provider no award or judgment shall exceed Five Million (\$5,000,000.00) Dollars. A "healthcare provider" is defined as any physician, dentist, pharmacist, nurse, physical therapist, clinical psychologist, clinical social worker, professional counselor or emergency medical care attendant or technician, and includes any individuals who provide substantially similar services to those provided by the individuals described above. Healthcare providers shall include anyone who assists any of the above individuals in providing the services and any employer, facility or institution either employing said individuals or engaging them as consultants, independent contractors or otherwise. The limit provided for herein shall be the maximum aggregate recovery for any injury resulting from negligence of a healthcare provider. In the event there are multiple defendants, the total judgment against all defendants combined shall not exceed the maximum provided. Nothing in this Section 2(b)(8) shall alter the method of calculating damages as provided otherwise in this Section 2 subject to the maximum award provided herein.

c. Nothing in this law shall affect the provisions of the tribal law applicable to the Gaming Enterprise, 4 M.P.T.L. ch. 1, which shall remain in full force and effect.

d. The amendments to this law pursuant to TCR052907-06 of 09 shall be applicable to claims accruing after May 29, 2007, the date of the enactment of TCR052907-06 of 09.

12 M.P.T.L. ch. 1 § 3

§ 3. Contract Actions to which the Tribe is a Party

Except as provided in Section 1(d)(1) of this law, the Tribe hereby expressly waives its sovereign immunity from suit in the tribal court and the immunity of its tribal enterprises for actions upon written contracts or agreements in which the Tribe or a tribal enterprise is a party, and which have been approved and executed by a duly authorized tribal officer or official acting within the scope of his or her actual authority and in the ordinary course of business. This law shall be deemed an "other instrument" as used and referenced in the Arbitration Law, 10 M.P.T.L.

12 M.P.T.L. ch. 1 § 4

§ 4. Limitations on Civil Actions

a. Statute of Limitations.

- (1) Actions upon contract. No action upon any contract may be brought but within one year after the right of action accrues, except as provided in subsection (3) of this Section, and

further, except for actions based on a credit instrument which shall be instituted within six years from the date the cause of action arises. "Credit Instrument" means any writing which evidences a debt owed to the Tribe at the time the debt is created, and includes counter checks, markers, personal checks, cash equivalents, and any writing taken in consolidation, redemption or payment of a prior credit instrument, which are cashed in conformity with procedures governing the issuance of credit at the Tribe.

- (2) Action founded upon a tort. No action to recover damages caused by negligence or founded upon a tort shall be brought but within one year from the date of the act or omission complained of. All claims brought pursuant to this law shall be deemed to accrue on the date when the injury is sustained. The defendant must present the issue of failure to file a claim as stated herein to the court as an affirmative defense. Such defense shall not be considered jurisdictional in nature.
- (3) Limitations of action by or against architects, professional engineers, land surveyors, contractors and other construction entities.
 - (a) For purposes of this subsection (3), no action, whether in contract, in tort, or otherwise, (i) to recover damages (a) for any deficiency in the planning, design, engineering, construction, repair or alteration, construction administration, management, supervision or inspection, or land surveying, in connection with an improvement to real property; (b) for injury to property, real or personal, arising out of any such deficiency; (c) for injury to the person or for wrongful death arising out of any such deficiency, or (ii) for contribution or indemnity which is brought as a result of any such claim for damages shall be brought against any architect, professional engineer, contractor, construction manager, inspector or land surveyor furnishing or performing such services, more than seven years after substantial completion of such improvement.
 - (b) Notwithstanding the provisions of subsection (a)(3)(a), in the case of such an injury to property or the person or such an injury causing wrongful death, which injury occurred during the seventh year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than eight years after the substantial completion of construction of such an improvement.
 - (c) Any person, firm or corporation which has entered into a contract with the Tribe or tribal enterprises, for the performance of work, services or activities of the nature described in subsection (a)(3)(a) may, in the event of any disputed claims under such contract, bring an action in tribal court for the purpose of having such claims determined; provided, however, that no such

action shall be brought more than three years after substantial completion of such improvement.

- (d) For purposes of subsections (a)(3)(a), (b) and (c) of this law, an improvement to real property or any discrete portion thereof, shall be considered "substantially complete" when: (i) the Mashantucket Pequot Tribal Land Use Commission has issued a final Certificate of Occupancy for the entire improvement or any discrete portion thereof or, in the event that no such certificate is issued, (ii) when the entire improvement or any discrete portion thereof is occupied or beneficially used by the owner or tenant thereof or, in the event that it is not occupied, (iii) when the entire improvement is first available for use after having been completed in accordance with the contract or agreement covering the improvement, including any punch list or agreed changes to the contract or agreement.
- (e) Notwithstanding any other provision of tribal law, the limitation periods prescribed herein shall apply both prospectively and retroactively to all claims, as described in subsections (a)(3)(a), (b) and (c) herein, accruing prior or subsequent to the date of passage of this provision.
- (f) The provisions of this subsection (3) shall not modify the statute of limitations provisions of Title 4. Any claim for injury occurring at the Gaming Enterprise based upon a deficiency as described in subsection (a) shall be limited to a claim against the Gaming Enterprise under Title 4.

b. Written Agreements; Statute of Frauds. No action on a contract may be maintained in the following cases unless the contract, or memorandum of the agreement, is made in writing and signed by the party, or the agent of the party, to be charged:

- (1) against any person upon any special promise to answer for the debt, default, or miscarriage of another;
- (2) upon any agreement made upon the consideration of marriage;
- (3) upon any agreement for the sale of real property or any interest in or concerning real property;
- (4) upon any agreement that is not to be performed within one year from the making thereof; or
- (5) upon any agreement for a loan in an amount which exceeds \$50,000. In all actions against the Tribe founded upon a contract, the contract to be enforced must be in writing as provided in Section 3 of this law.

c. Notwithstanding any provision of tribal law to the contrary, the Tribe, its subdivisions and instrumentalities, including, without limitation, any officers, agents and employees thereof shall not be held liable for any losses arising from, or in any way related to, the failure of a computer, software program, database, network information system or any other device containing a computer processor to accurately or properly recognize, calculate, display, sort, or

otherwise process dates or times, including, but not limited to, dates occurring before, on or after December 31, 1999; provided, however, that nothing contained herein shall limit the Tribe's right(s) to bring an action against any person alleging a loss or failure described herein.

d. Defenses in Actions on a Credit Instrument.

- (1) When Presented. Every defense, in law or in fact, to a claim for relief shall be affirmatively set forth in particularity in the answer.
- (2) Types Recognized. The court shall recognize only these affirmative defenses:
 - (i) accord and satisfaction;
 - (ii) discharge in bankruptcy;
 - (iii) fraud or duress;
 - (iv) incapacity;
 - (v) lack of service of process;
 - (vi) lack of in personam jurisdiction;
 - (vii) lack of subject matter jurisdiction;
 - (viii) payment or release;
 - (ix) res judicata; and
 - (x) statute of limitations.

12 M.P.T.L. ch. 1 § 5

§ 5. Miscellaneous

a. All actions against the Tribe or a tribal enterprise shall be tried to the tribal court and not to a jury. No costs shall be taxed against the Tribe or its enterprises.

b. In all actions where it is alleged that the liability of the Tribe is based upon the action of an agent, servant, or employee of the Tribe acting within the scope of his or her employment there shall be no separate cause of action existing against said agent, servant, or employee, and nothing in this Law shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to such individual and such sovereign immunity is waived only for purposes of an action against the Tribe as specifically permitted in tribal court pursuant to Section 2 of this law.

c. The following shall not apply to claims against the Tribe or its enterprises:

- (1) any rule of law imposing absolute or strict liability;
- (2) any award or other judgment imposing punitive or exemplary damages;
- (3) any award for loss of consortium; and
- (4) any order for injunctive relief, provided that the Court may order injunctive or prospective relief against the Tribe or its enterprises when a claim arises from a written contract in which the Tribe or a tribal enterprise is a party and the contract is signed by a duly authorized tribal representative acting within the scope of his or her actual authority and in

the ordinary course of business, and the contract expressly provides for injunctive relief.

d. When interpreting this Law, the court shall follow tribal law and precedent and may be guided by the common law of other jurisdictions.

12 M.P.T.L. ch. 1 § 6

§ 6. Application of Law

This law shall apply to:

- a. all civil causes of action which accrue on or after its enactment;
- b. all civil causes of action in which suit has not been brought and which had accrued within one year prior to the enactment of this law, provided a suit shall have been commenced within one year from the enactment of this law, and notice of said suit, if required, shall be sufficient if given within 180 days from the enactment of this law; and
- c. all civil causes of action which may be pending in any court on the effective date of the original enactment of this law. This law shall not apply to any civil causes of action that have gone to final judgment. Final judgment, for the purposes of this section, shall include the disposition of an entire cause of action or the dismissal of any count of the complaint or theory of recovery in such pending action.

12 M.P.T.L. ch. 1 § 7

§ 7. Amendments

- a. Notwithstanding Section 6 of this law, any amendment made to this law shall apply only to claims filed subsequent to the date of enactment of the amendment. (June 4, 2002)
- b. The amendments to this law made pursuant to TCR122702 of 02 shall be applicable to claims pending and accruing as of the enactment date of the Resolution.

12 M.P.T.L. ch. 1 § 8

§ 8. Waiver of Tribal Sovereign Immunity for Off-Reservation Automobile Accidents

Any person injured through the negligence of any Mashantucket Pequot Tribal employee while acting within the scope of his/her employment and while operating a motor vehicle shall have a right of action against said employee to recover damages for injuries to person or property sustained in an accident occurring outside the Mashantucket Pequot Reservation. The Mashantucket Pequot Tribe hereby expressly waives its immunity from suit for such claims; provided that the suit is brought in the courts of the state of Connecticut and the suit names the employee, not the Mashantucket Pequot Tribe, as a defendant. This waiver of tribal sovereign immunity from suit is expressly limited to the extent of the Tribe's commercial automobile policy, and is further limited to claims arising after the enactment of this Resolution [TCR021303-01 of 09] and to claims that are pending in the courts of the State of Connecticut on the date of enactment of this Resolution [on February 13, 2003].

CHAPTER 2. FALSE CLAIMS ACT

12 M.P.T.L. ch. 2 § 1

§ 1. Title

This law shall be known and may be cited as the False Claims Act.

12 M.P.T.L. ch. 2 § 2

§ 2. Definitions

a. "Claim" includes any request, application, or demand for money, property, or services made to any employee, officer, or agent of the Mashantucket Pequot Tribe (the "Tribe") and any of its instrumentalities or political subdivisions (including but not limited to Foxwoods Resort & Casino). A Claim may, but need not be made, pursuant to a contract.

b. "Indian" shall mean any person as defined by the same term in 2 M.P.T.L., Chapter 1, Section 2(d) (Criminal Law) of the Mashantucket Pequot Tribal Laws as it may be amended from time to time.

c. "Knowing" and "knowingly" means that a person, with respect to information, does any of the following:

- (1) Has actual knowledge of the information or;
- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required under this definition.

d. "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

12 M.P.T.L. ch. 2 § 3

§ 3. False Claims

a. The term to make a "False Claim(s)" means:

- (1) to knowingly present, or cause to be presented to the Tribe, a false or fraudulent claim for payment or approval;
- (2) to knowingly make, use, or cause to be made or used, a false record, statement, pay application or Change Order request, to get a false or fraudulent claim paid or approved by the Tribe;
- (3) to knowingly conspire to defraud the Tribe by getting a false or fraudulent claim allowed or paid by the Tribe;
- (4) has possession, custody, or control of property or money used, or to be used, by the Tribe and knowingly delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

- (5) is authorized to make or deliver a document certifying receipt of property on behalf of the Tribe, and knowingly makes or delivers a receipt that falsely represents that the property was received without reasonably knowing that the information on the receipt is true;
- (6) knowingly buys, or receives as a pledge of an obligation or debt of the Tribe from an officer, tribal member, or employee of the Tribe who lawfully may not sell or pledge the property;
- (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Tribe;
- (8) is a beneficiary of an inadvertent submission of a false or fraudulent claim to the Tribe, and who subsequently discovers the falsity of the claim, and who fails to disclose the false or fraudulent claim to the Tribe within a reasonable time after discovery thereof; or
- (9) knowingly makes a false statement that reasonably causes the Tribe to investigate or expend funds to prove or disprove the statement.

12 M.P.T.L. ch. 2 § 4

§ 4. Investigation, Civil Action and Criminal Prosecution

a. The Office of Inspector General or the Internal Audit Department (the "Investigator") of the Tribe shall diligently investigate an alleged violation of this law.

b. In the event that the investigator finds that it is more likely than not that a person has violated or is violating this law then the investigator shall make a full report to the Office of Legal Counsel. The Office of Legal Counsel, or their designee, may bring a civil action on behalf of the Tribe against the person who allegedly made the False Claim, may decline to bring an action or may require additional investigation to support an action. The Office of Legal Counsel may also refer the matter to the tribal prosecutor with the recommendation that a separate criminal action be brought.

c. In the event that a False Claim has been made by an Indian, then the Office of the Tribal Prosecutor, may, in addition to the remedy provided by subsection (b) of this section, may bring a separate criminal action.

d. Individuals may not bring an action to enforce the provisions of this law.

12 M.P.T.L. ch. 2 § 5

§ 5. Jurisdiction

a. The Mashantucket Pequot Tribal Court (the "Court") shall have exclusive jurisdiction to hear matters arising under this law.

b. There shall be no right to trial by jury for civil actions brought under this law.

c. In any civil action brought under this law, the Tribe shall be required to prove the cause of action, including damages, by a preponderance of the evidence.

d. No civil action may be brought under this law more than 6 years after the date on which the False Claim was allegedly made.

12 M.P.T.L. ch. 2 § 6.

§ 6. Civil Penalties

The Court may assess a civil penalty, which shall include the amount of actual damages, of not less than two times and not more than ten times the amount of damages which the Tribe sustained or likely would have sustained because of the False Claim.

12 M.P.T.L. ch. 2 § 7

§ 7. Criminal Penalties

a. If an Indian files a False Claim in an amount greater than \$5,000 they may, in addition to any civil action, be incarcerated for a term not to exceed one year for each False Claim. A finding of guilt shall be supported by a finding that the False Claim was made beyond a reasonable doubt. In the event that the person incarcerated is a member of the Mashantucket Pequot Tribal Nation then the penalty and/or cost of incarceration shall be deducted from that tribal member's future incentive payment or payroll in an amount not to exceed one third of the said compensation until the amount of the penalty and/or cost of incarceration is paid in full.

b. Upon a plea of guilty or no contest the Court may modify or otherwise limit any penalty based upon the fact that the person committing a violation of this subsection:

- (1) fully cooperated with tribal authorities charged with investigation of False Claims against the Tribe (provided that a prosecution for the False Claim has not occurred at the time the information is first offered);
- (2) provides restitution to the Tribe in double the amount of the False Claim within 30 days of notice of an investigation into a False Claim; and
- (3) has submitted a False Claim in an amount less than \$10,000.

c. Liability under this section shall be joint and several for any act committed by two or more persons.

12 M.P.T.L. ch. 2 § 8

§ 8. Reward

a. Any person who supplies direct information to the Tribe, which is not already known to the Tribe, and which results in a successful prosecution of any person filing a False Claim, provided that the recovery is in excess of \$5,000, such person shall be entitled to a

reward equal to 15% percent of any amount actually recovered by the Tribe, including but not limited to the amount of any fine or other levy imposed by the Tribal Court. The maximum amount that may be awarded pursuant to this provision is \$20,000.

b. In the event that two or more persons supply the initial information the reward provided in this section shall be equitably awarded by the Court. In no event will the reward paid by the Tribe exceed 15% as provided in this section.

c. The Office of Legal Counsel may settle any action brought under this law and any such determination of the Office of Legal Counsel shall be final. Individuals who are or may be entitled to a reward under this law shall have no standing to challenge or otherwise object to the decision of the Office of Legal Counsel regarding any such settlement.

d. No person shall be eligible for a reward if:

- (1) the information supplied is a part of an audit, report or other investigation commenced by the Tribe;
- (2) the claimant has participated in the development, submission, approval, or attempted approval of the False Claim; or
- (3) if the claimants are an employee or consultant of the Tribe and, as a normal part of their duties, they would reasonably be required to guard against the False Claim.

e. No person who collects a reward or otherwise assists in the development of the prosecution of a False Claim pursuant to this law may be retaliated against as a result of assisting in the investigation or testifying in any hearing to establish the existence of a False Claim.

LEGISLATIVE HISTORY TO THE CIVIL ACTIONS LAW

13 M.P.T.L. Leg. History

TITLE 12 M.P.T.L. ch. 1 (Enacted February 4, 1997)

Background

According to the Constitution of the Mashantucket Pequot Tribe, the Tribal Council is the legislative body of the Tribe. Constitution, Article VI, § 1. The Judicial Committee is the standing committee of the Tribal Council with responsibility for the initial development and continued review of the laws of the Tribe. Constitution, Article VI, § 8. In determining the meaning of a law and discerning the intent of the legislature, a court will first look to the words of the statute, and, if there is any ambiguity, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same subject matter. In drafting the Civil Actions Law, the Committee reviewed several issues about the scope of the proposed law's application, particularly with respect to the jurisdiction of the court, the Tribe's sovereign immunity, the types of cases which could be brought, and potential awards and damages authorized thereunder. The purpose of this legislative history is to

provide insight into the Committee's discussions and deliberations, and to articulate the intent of the law so that it may be properly interpreted and applied.

A. Jurisdiction of the Tribal Court

The foundation of a court system is its jurisdiction. The federal court system has its jurisdictional foundation in the federal Constitution—likewise with state court systems and the constitutions. The Constitution of the Mashantucket Pequot Tribe, however, does not specifically address the exercise of the Tribe's judicial authority, and, until recently, the Tribal Council had exercised all the judicial powers to the Tribe.

In 1992 the Tribal Council formally established the Mashantucket Pequot Tribal Court "to adjudicate civil disputes that arise on the Reservation involving all persons." Mashantucket Pequot TCR011092-02, codified at 1 M.P.T.L. ch. 1. The Tribal Council provided in that law that tribal court shall have "original and general jurisdiction over all causes of action except as may be limited by the Tribal Council and by federal law." *Id.* The Tribal Council then enacted the Sovereign Immunity Waiver Law which, as indicated by its name, waived the immunity of the Mashantucket Pequot Gaming Enterprise, operating as an arm of the tribal government, for certain negligence and personal injury claims arising on the Gaming Enterprise site. 4 M.P.T.L. ch. 1.

The tribal court's jurisdiction has gradually been expanded to include criminal, traffic, child welfare, family relations, debt collection, and probate matters. Through these legislative actions, the Tribal Council seeks to protect important tribal interests such as promoting the goal of self-government and the overriding goal of encouraging tribal self-sufficiency, accountability and economic development.

The Tribal Council had not previously provided a forum for other civil causes of actions or had specifically authorized the tribal court to hear any cases brought directly against the Tribe. Such cases have been brought in state and federal courts where those courts' jurisdiction over the Tribe and ability to provide a remedy are being tested in light of the Tribe's sovereign immunity and the doctrine of exhaustion of tribal remedies. This immunity is rooted in the unique relationship between the United States government and Indian tribes whose sovereignty substantially predates the federal Constitution. Such immunity is necessary to preserve the autonomous political existence of the Tribe and to preserve tribal assets. The Mashantucket Pequot Tribe considers its sovereignty as a necessary corollary to self-government and further considers the jurisdiction of its tribal court as a principle element of self-government.

Accordingly, the Civil Actions Law establishes several significant jurisdictional components:

a. Subject Matter Jurisdiction. The tribal court will have jurisdiction over all civil causes of action involving any party who has had certain defined significant contacts with the Tribe or on tribal lands, except those causes of action specifically prohibited by tribal or federal law.

b. In Personam Jurisdiction. The Tribal Council will be authorized to exercise jurisdiction over any person or entity who is served with process on the Reservation or who, by presence or activities on tribal lands, is deemed to have consented to the Tribe's jurisdiction. "Tribal lands" is defined as "Indian country" pursuant to 18 U.S.C. § 1151, which includes the Reservation, trust lands, and dependent Indian communities.

c. Sovereign Immunity. The Civil Actions Law provides a limited waiver of the Tribe's sovereign immunity for cases brought against the Tribe in tribal court. This includes cases involving bodily injury or physical harm to a person, loss of personal property caused by the negligence or other tortious acts of the Tribe or of a tribal law enforcement officer, civil rights violations, and any written contract executed by a tribal official within the scope of his or her authority.

B. Negligence and Torts

The Civil Actions Law does not attempt to define the parameters of the court's jurisdiction over particular kinds of civil actions except to the extent they must be founded on negligence or tortious conduct or on a written contract. It is difficult to define all such actions particularly from a policy perspective. Nonetheless, the scope and extent of the tribal court's jurisdiction over these causes of action have been defined to a great extent by the developing body of tribal common law. As a court of general jurisdiction, the tribal court will be available to all litigants who have significant contacts with the Tribe or on tribal lands and to all causes of action founded on negligence or other tortious acts arising from such contacts.

C. Civil Rights

The tribal court will have jurisdiction to adjudicate matters involving the violation of a person's civil rights as defined in the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303 ("ICRA"). The ICRA imposes certain restrictions somewhat similar to the Bill of Rights and the Fourteenth Amendment of the United States Constitution upon Indian tribes when exercising powers of self-government.

D. The Doctrine of Sovereign Immunity

Indian tribes exercise inherent sovereign authority over their members and their territory. Tribal sovereign immunity protects the Tribe from suit without its consent. The Tribe may waive its immunity from suit and allow itself to be sued, but that waiver must be unequivocally expressed by the Tribe and cannot be implied by the judicial branch. Moreover, such waivers or conditional limitations on the Tribe's immunity from suit must be strictly construed and interpreted liberally in favor of the Tribe. The Gaming Enterprise, as an arm of the tribal government, is cloaked with the same immunity from suit as the tribe itself. By waiving the Gaming Enterprise's immunity from suit, however, the Tribe does not waive its governmental immunity from suit.

Tribal officials also generally enjoy the government's immunity from suit when they act within the scope of the government's authority. Thus, where a tribal officer or official has been duly authorized to act, that official is cloaked with the same immunity from suit as the Tribe itself.

The Tribe has previously provided an express waiver of the Gaming Enterprise's immunity from suit for certain negligence claims arising on the Gaming Enterprise site and specifically for certain employee rights claims against the Gaming Enterprise. The Civil Actions Law provides a further waiver of the Tribe's sovereign immunity and consent to suit in the tribal court for particular subject matters.

Thus, in keeping with the strict construction of tribal law, waivers of sovereign immunity must be clearly and unequivocally expressed. Such expression is only by action of the Tribal Council through Resolution and cannot be effected by any other independent action. The Tribe has intentionally limited its waiver of immunity from suit to the tribal court and has specifically retained its immunity in any other matters which may be brought against it in any other forum.

E. Damages and Awards

The Civil Actions Law allows for damages to be awarded against the Tribe and maintains the same limits on those damages as those applicable to the Gaming Enterprise.

Consistent with current tribal law, there is no jury trial for actions against the Tribe. In addition, the Civil Actions Law prohibits any award against the Tribe based on strict liability, punitive or exemplary damages, loss of consortium or injunctive relief. The Civil Actions Law also maintains the tribal law applicable to the Gaming Enterprise as the exclusive authority under which to bring an action against the Gaming Enterprise for torts committed on Gaming Enterprise property.

The Civil Actions Law establishes a different statute of limitations than provided by previous tribal law. All written contract actions must be brought within one year after the right of action accrues and for any tort action, the injured party must bring his claim within one year from the date of the act or omission complained of, and for torts the party must file a written notice of the claim with the tribal clerk within 180 days from the date of injury. The Civil Actions Law requires that any contract action in tribal court must be founded on a written agreement, and not an oral agreement. It is also specifically authorizes the tribal court to fashion remedies reasonably required to enforce a judgment. These remedies include attachments, garnishments and execution. The tribal court is expressly prohibited, however, to hear any action relating to a banishment or exclusion. Those actions have been left to the authority of the tribal government. The Tribe will enact a comprehensive enforcement of judgment and remedies law in the near future.

Conclusion

The intent of the Civil Actions Law is to provide a forum to adjudicate any right and provide a remedy for any aggrieved party with significant contacts with the Tribe or tribal lands. The court should employ a strong presumption of tribal court jurisdiction wherever the facts and circumstances indicate such significant contacts. The United States Supreme Court has firmly established a policy of abstention in favor of tribal court jurisdiction. The requirement of exhaustion of tribal remedies is necessary as a matter of comity and respect for tribal forums. Tribal authority over the activities on or relating to tribal lands is an important part of tribal sovereignty. Thus, civil

jurisdiction over all such activities presumptively lies in the tribal court unless affirmatively limited by specific treaty provision or by federal statute or tribal law. Tribal courts play a vital role in tribal self-government. Through this law's expression of the tribal court's jurisdiction as to civil actions, the Tribe further recognizes and achieves an important attribute of its sovereignty.

Historical and Statutory Notes

Derivation.

Effective February 4, 1997, TCR020497-05 enacted the "Civil Actions Law," authorizing certain contract and tort claims to be adjudicated in Tribal Court.

Amendments

Effective April 15, 1998 - TCR041598-04 approved the codification of the Legislative History to the Civil Actions Law to illustrate the purpose and intent of the Law to aid in the Tribal Court's deliberations.

Effective May 16, 2000, TCR051600-03 amended ch. 1, § 1(b) to establish that the Tribal Court has the power to fashion any remedy reasonably required to enforce judgments, consistent with concurrent amendments to the Tribal Court's jurisdiction in Title 1 M.P.T.L.

Effective October 5, 2000, TCR100500-03 amended ch. 1, § 1(b) to include the following language: "Except as may be limited by Tribal or Federal Law, the Tribal Court shall have jurisdiction over all causes of action" to clarify the scope of Tribal Court jurisdiction as addressed in TCR051600-05 and to be consistent with Title 1 M.P.T.L.

Effective June 4, 2002, TCR060402-05 amended ch. 1, § 1(b) to clarify that the Tribal Court has jurisdiction over all civil causes of action and has the power to fashion any equitable or legal remedy.

Effective December 26, 2002, TCR122602-01 amended ch. 1, § 1(b), granting the Tribal Court jurisdiction to determine through a declaratory judgment action the legal sufficiency or validity of a petition presented pursuant to Article VIII, § 1 of the Mashantucket (Western) Pequot Constitution.

Effective November 8, 2012, TCR110812-05 of 05 amended ch. 1 § 1(b), granting the Tribal Court Jurisdiction to hear and decide, through a Declaratory Judgment, matters pertaining to the legal sufficiency or validity of petitions presented pursuant to Articles VII, VIII, and XI of the Constitution.

Effective March 14, 2013, TCR031413-02 of 12 amended ch. 1 §2(b) by adding subsection (8) which imposes a limitation on damages for medical malpractice actions.