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Tribe Says Fed. Contract Hinges On Recognition By NJ

Share us on: By **Andrew Westney**

Law360, New York (February 8, 2016, 9:08 PM ET) -- The Nanticoke Lenni-Lenape Tribal Nation urged a New Jersey federal judge Monday to quickly consider the tribe's suit seeking explicit state recognition, saying the federal government has questioned the tribe's eligibility for an ongoing contract that depends on the tribe's recognition status.

The tribe provided an email to the court in which a Bureau of Alcohol, Tobacco, Firearms and Explosives official said that a tribal business, NLT Management Services LLC, needed to verify its eligibility in order to be recognized under a special program for tribally owned small businesses so it can continue under an agency contract.

The state's wrongful repudiation of the tribe's state recognition status puts the tribe's "economic fate" in the balance by threatening NLT Management's so-called Section 8(a) status under the [Small Business Administration](#) program, according to the tribe's letter to U.S. District Judge Renee Marie Bumb.

"The Nation's members rely heavily on the employment opportunities created by its 8(a) contracts for

their livelihood and dozens of jobs are in immediate peril, along with the numerous other immediate harms articulated in the court filings,” according to the letter.

The Nanticoke Lenni-Lenape, the second-largest Native American tribe in New Jersey after the Ramapough Mountain Indians, [filed its complaint in July](#) over its loss of rights and benefits under the state and federal constitutions following the state's repudiation of the tribe's recognition status.

The tribe, which has received federal benefits and economic protections since the 1980s based on state recognition, claimed state officials have failed to rectify an employee's denial of the existence of three state-recognized tribes to the federal [Government Accountability Office](#) for a 2012 report on the status of Native Americans in the U.S.

Acting New Jersey Attorney General John J. Hoffman [asked the court to toss the tribe's suit against him in October](#), arguing that the claims were barred by state sovereign immunity under the Eleventh Amendment and that the suit presents a clear political question that only the state legislature can resolve.

Hoffman said that a 1982 legislative resolution under which the tribe provided its evidence of self-governance to the state was created only to help tribes qualify for appropriate federal funding.

In [November](#), the nation urged the judge to deny Hoffman's bid to escape the suit, saying that he improperly relied on federal recognition standards in his dismissal bid, that sovereign immunity didn't bar the suit against state officials like Hoffman when sued in an individual capacity and that the tribe properly claimed he violated its equal protection and due process rights.

The tribe on Monday asked the court to promptly consider the case so that the “economic fate of the Nation may be timely clarified.”

In a Feb. 1 email attached to the tribe's letter, ATF official John L. Allen asked an NLT representative, “I hear the NLT may not actually have Tribal status with the Federal government? If that is the case then this contract is illegal and will have to be terminated. Have you verified the Tribal 8A status with SBA?”

NLT has had its Section 8(a) status as a tribally owned, disadvantaged small business certified by the Small Business Administration, the tribe said. A tribally owned business is any business that is at least 51 percent owned by a tribe that is eligible for federal programs for Indians because of their Indian status or by state recognition, according to the letter.

NLT Management is a management and staffing company completely owned by the Nanticoke Lenni-Lenape Tribal Nation that supports construction services, electrical and plumbing contracting, and medical services for military families, among other services, according to the company's website.

The nature of the services provided by NLT to the ATF wasn't discussed in the letter or attached emails.

Representatives for the parties were not immediately available for comment Monday.

Nanticoke Lenni-Lenape Tribal Nation is represented by Frank L. Corrado of Barry Corrado & Grassi PC and Gregory A. Werkheiser and L. Eden Burgess of Cultural Heritage Partners PLLC.

The state is represented by Acting New Jersey Attorney General John J. Hoffman, Assistant Attorney General Stuart M. Feinblatt and Deputy Attorney General Laura M. Console.

The case is Nanticoke Lenne-Lenape Tribal Nation v. John Jay Hoffman, case number [1:15-cv-05645](#), in the U.S. District Court for the District of New Jersey.

--Additional reporting by Christine Powell, Vidya Kauri and Jeannie O'Sullivan. Editing by Patricia K. Cole.

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