UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MULTIMEDIA GAMES,	*	
Appellant,	*	
v.	*	No. 02-5161
UNITED STATES, ex rel. NATIONAL INDIAN GAMING COMMISSION, and NIGC CHAIRMAN, MONTIE DEER,	*	
Appellees.	*	

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Multimedia Games, Inc. (Appellant) and the United States ("the Appellees").

I. TERMS OF AGREEMENT

A. Appellant Multimedia Games, Inc. (MGAM) shall submit to the National Indian Gaming Commission (NIGC) by February 3, 2003, a game for classification that might be used by MGAM as a substitute for MegaNanza in the Class II tribal gaming operations it serves. That submission shall include a written description, a video tape and demonstration of the game as the game is presently played, and a laboratory report that explains how the game works, how the game determines pay outs for winners, and such other information that is required to classify the game. This deadline may be extended by agreement of the parties.

B. MGAM shall contract with at least one laboratory(s) that is acceptable to the NIGC. All expenses for preparation of the laboratory reports shall be borne by MGAM.

C. During the 30 days following receipt of the game submission, the MGAM and the NIGC shall participate in informal discussions designed to clarify the workings of the game and identify issues that may preclude classification of the game as Class II. These discussions will be made in an open and candid atmosphere designed to identify aspects of the game that may result in a Class III classification.

D. Within 30 days after the informal discussion period, the Office of the General Counsel

(OGC) of the NIGC will issue a game classification advisory opinion on the substitute game for MegaNanza. The NIGC is not bound or committed in any way as to the contents or conclusions to be expressed in the classification opinion. This deadline may be extended by agreement of the parties.

E. Simultaneously with issuance of the advisory opinion, the OGC or the NIGC shall issue guidance to gaming tribes explaining some of the components that make bingo-type games with predrawn balls to be Class III.

F. MGAM shall withdraw all play of the current MegaNanza family of games within 45 days of the issuance of the game classification opinion.

G. MGAM shall immediately withdraw its appeal in this action pending before the Tenth Circuit upon signing this agreement.

H. After issuance of the game classification opinion on the substitute game, MGAM will not modify the game without ninety (90) days notice to the NIGC including a complete submission for the modifications. After the expiration of the ninety (90) days, if there is no action from NIGC, MGAM may implement the modifications. However, NIGC reserves the right to later issue an opinion concerning the modifications if it concludes that the modifications change the classification of the game.

I. The Parties shall agree to abide by the terms of this Agreement.

II. OTHER PROVISIONS

A. Governing Law. The validity, effect, and construction of this Agreement and any dispute relating to or arising from the negotiation and execution of this Agreement, shall be governed by the laws of the State of Louisiana, without regard to conflicts of laws provisions.

B. Attorneys' Fees, Costs, and Expenses. Each party shall bear all of his own attorneys' fees, costs and expenses, including, but not limited to, those incurred in prosecuting or defending the litigation and in the negotiation and execution of this Agreement, including court costs.

C. Additional Documents. The Parties or their counsel shall execute all such further and additional documents that shall be reasonable, convenient, and necessary to carry out the provisions and intent of this Agreement.

D. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

E. Titles. The titles of the paragraphs of this Agreement are inserted for convenience only and shall not affect the meaning or construction of any of the terms of this Agreement.

F. Entire Agreement; Amendment. The Parties understand, acknowledge, and agree that this Agreement contains and constitutes the entire agreement and understanding among the Parties, that no other representation, promise, or covenant of any kind has been made to induce or cause any party to execute this Agreement, and that all the understandings and agreements of the Parties are embodied and expressed herein. The Parties also agree that this Agreement may not be amended, except in a writing signed by each and every party to this Agreement.

G. Representation by and Consultation with Counsel. Each Party to this Agreement acknowledges that he has been represented by counsel of his own choosing in connection with the litigation and the negotiation and execution of this Agreement and that he has had a reasonable and sufficient opportunity to consult with counsel to the extent he desires before executing this Agreement.

H. Acknowledgment. Each of the Parties acknowledges that it has read this Agreement and that it fully knows, understands and appreciates this Agreement, and executes this Agreement and makes the settlement provided for herein voluntarily and of its own free will, and by executing this Agreement signifies its assent to and willingness to be bound by the terms of this Agreement.

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