Settlement Explanation Column

An Open Letter To The Membership from Sault Tribe General Counsel Aaron Schlehuber:

For almost a year the Kewadin Casino and Sault Tribe governments have had to be pretty quiet about what has been called the "JLLJ litigation," sometimes referred to as "the Lansing case" or simply and pointedly "the $88 million." When any organization is involved in litigation of this magnitude, the best practice from a legal standpoint is to not discuss the case publicly so that nothing can be used against you in court. Now that the case has moved onto settlement, we can more openly discuss what occurred and the steps we are taking to get through it.

Before going into the details of the settlement, I was to start by stating that no one is happy that it had to proceed so quickly. Typically, on an issue as impactful as this we would want to allow for ample opportunity for member input. The reality is sometimes litigation and business matters do not mesh well with the goal of transparent governance and constituent dialogue. This, unfortunately, is one of those times. The speed required to settle this case simply did not allow for the kind tribe-wide participation that we normally hope to see. Put simply, had we not moved quickly and, due to a recent Court decision, had we not settled, JLLJ could have begun collecting money from our bank accounts on Monday. Now for the details of the settlement.

It's no secret that the law firm the casino was using to provide legal services did a bad job defending us. They did such a bad job that the casino was defaulted, meaning we never even got to litigate the case. As a result, we have spent months trying to get out from an $88 million judgement against us and are now filing a lawsuit against our former law firm for their poor work that landed us in this position.

The settlement we have reached with JLLJ is both simple and complicated. Simply put, we were able to settle the case for $25 million dollars. That's a 75% reduction from the original judgement. The more complex part of the settlement involves our agreement to turn over up to $10 million of any money we are able to collect from the law firm that got us into this predicament after we file a malpractice lawsuit against them. If we are not able to collect anything from the law firm, we will have to pay out another $5 million over a five-year period. In the end, our former development partner JLLJ will have received anywhere from $30-35 million instead of the $88 million judgement that was ordered, plus the additional millions of dollars in interest per year.

The obvious question, and one that leadership asked of its new legal team, was why settle? Why pay anything if we truly think we are in the right? First, we already lost the case, which is why we use the word "default." This means that in the very near future our former partner was going to be able to start collecting their judgement. The payments on an $88 million judgement would have put a significant strain on casino operations and ultimately on the tribe itself.

Second, while we had a great deal of faith in winning a number of key points on appeal, the case would be another significant expense. We estimated that an eventual win was going to cost anywhere from $15-25 million. That figure includes the relative certainty that we would be

ordered to pay back what our former partners put into the project plus interest and possibly attorney fees. Those numbers add up to nearly $20 million dollars on their own.

On top of the financial considerations of a settlement, we knew it would be several more years of having the case hang over our head. This negatively impacts morale and the ability of the tribe and casino to properly plan for the future. There is a real cost to assign to those impacts that also had to be weighed.

So, if a win was going to cost us up to $20 million and we could settle for $25 million with the possibility of $5 million more over a few years…it became fairly obvious that was a deal we needed to take.

A final consideration in the settlement was the continued financial cloud would negatively impact banking, regulatory and audit issues at the casino. Any attempt by Kewadin or the tribe to secure financing would have been seriously hampered, if even possible at all. The audits, that serve an important role in all manner of financial relationships, would reflect Kewadin as having a significant debt and would perhaps even go so far as to declare the casino no longer "a going concern." That is an accounting term that means an organization is not financially stable enough to meet its obligations and continue its business. That would likely cause the National Indian Gaming Commission to sit up and take notice, which is a regulatory door we did not want to go anywhere near.

To be clear, settlement was not an easy decision – for anybody. The legal team brought in to replace our previous firm are exceptional and were very much looking forward to setting the trial judge straight on a number of matters in the appeals court. Ultimately, they advised that settling was in fact the best path forward, and I wholeheartedly agreed for the reasons laid out above.

The Management Board of the Gaming Authority, having been presented this position over several long grueling days, finally pushed past their unhappiness with the idea and agreed as well. Again, their decision was based very much on the reality that a win was going cost almost as much as the settlement and decided accepting the settlement was the prudent thing to do.