

# Harrah's Can't Use Tribe's Immunity, Ex-Casino Worker Says

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Law360, New York (December 8, 2017, 5:39 PM EST) -- A man who worked at a pair of North Carolina tribal casinos urged a federal judge Thursday not to toss his proposed class and collective action alleging that employees weren't paid for all the time they worked, saying the casino operator can't shake the suit by claiming the tribe has sovereign immunity.

Joseph Clark blasted a bid by Harrah's NC Casino Co. LLC to nix his North Carolina federal suit alleging it violated the Fair Labor Standards Act and state law by failing to properly pay table games dealers, dual rate dealers and floor supervisors, contending there is no legal or factual basis to extend the [Eastern Band of Cherokee Indians](#)' sovereign immunity to the company that manages and operates a pair of casinos owned by the tribe.

"Harrah's cannot obtain [the tribe's] immunity (which plaintiffs accept for purposes of this motion only) through the transitive property, and the claims against Harrah's and its employee — the only defendants in this case — cannot be dismissed pursuant to Rule 12(b)(1) because this court has subject matter jurisdiction over Harrah's, a privately owned LLC registered with the North Carolina secretary of state that is not asserted to be owned by an Indian tribe let alone owned by the EBCI," Clark said.

Harrah's operates Harrah's Cherokee Valley River Casino & Hotel in Murphy and Harrah's Cherokee Casino Resort in Cherokee, according to the [September lawsuit](#). Both casinos are Eastern Band of Cherokee Indians enterprises.

Clark worked at Harrah's Cherokee Casino Resort from 2014 to 2015 and at Harrah's Cherokee Valley River Casino from 2015 to January 2017, he said. During that time, he held various roles, including table games dealer and floor supervisor.

However, he alleged, the casino operator didn't properly pay gaming floor employees, regularly requiring them to start work around half an hour before their scheduled shifts began without compensating them for the extra time. The workers were also denied an uninterrupted half-hour meal period each shift, according to the suit.

The suit brought collective action allegations for the purported FLSA violations and class claims pertaining to the North Carolina Wage and Hour Act.

Harrah's [moved to toss the claims](#) last month, contending that Clark didn't actually name his correct employer in the suit — the tribe's Tribal Casino Gaming Enterprise — which the company said was a clear attempt to avoid tribal sovereign immunity.

The tribal enterprise is a necessary and indispensable party to the litigation, Harrah's argued, saying the suit should be tossed under the tribal exhaustion doctrine because the allegations directly implicate the tribe's economic interests and welfare and should thus proceed in tribal court.

But Clark fought back Thursday, contending, for one, that the issue of whether Harrah's is his employer doesn't implicate the court's subject-matter jurisdiction. Regardless, he said, the company doesn't contest Clark's well-pled allegations establishing that Harrah's was his employer, including the fact that the casino operator has hiring and firing power and controls employee work schedules.

Clark also asserted the tribal exhaustion doctrine doesn't apply to non-tribe members. Harrah's hasn't pointed to a single case where a non-tribal entity successfully forced a non-tribal plaintiff into tribal court in an action in which the tribe wasn't a party, he noted, saying he simply doesn't have to exhaust his remedies in tribal court before asking the federal court for relief.

The company hasn't shown the tribe and its enterprise are essential parties to the suit either, Clark argued, contending that Harrah's hasn't explained the tribe's interests in the dispute in anything more than a conclusory way.

Representatives for the parties didn't immediately return requests for comment Friday.

Clark is represented by Philip J. Gibbons Jr. and James B. Zouras of [Stephan Zouras LLP](#) and Jeffrey A. Leon of [Quantum Legal LLC](#).

Harrah's is represented by Tracy L. Eggleston, Patrick M. Aul, Jennifer T. Williams and Susan N. Eisenberg of [Cozen O'Connor](#).

The suit is Clark v. Harrah's NC Casino Co. LLC, suit number [1:17-cv-00240](#), in the U.S. District Court for the Western District of North Carolina.

--Additional reporting by Christine Powell and Adam Lidgett. Editing by Kelly Duncan.