

NEW MEXICO INJURY ATTORNEY BLOG

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Scope of Waiver of Tribal Immunity Under New Mexico Indian Gaming Compact

New Mexico is home to many Indian Casinos. They are very popular. Like any other business, particularly casinos, there are countless ways for patrons to be injured. When a personal injury occurs at or near an Indian Casino, the first and most important question is whether or not there is sovereign immunity protecting the tribe or pueblo from suit in New Mexico State courts.

For the most part, tribes and pueblos enjoy sovereign immunity against any kind of legal action. This includes everything from personal injury claims to contract disputes. Sovereign immunity means that suits against the tribes or pueblos must be brought in tribal court. This poses a very significant and often overwhelming challenge to plaintiffs.

In case of Indian Casinos or gaming, there is qualified immunity. Under the Indian Gaming Compact, the tribes and pueblos waive immunity for suits by visitors or patrons for personal injuries suffered in relation to the gaming enterprise.

Often times, when personal injuries occur at or near a gaming facility, the tribe or pueblo will attempt to argue that the accident and consequent injuries and damages were unrelated to the gaming enterprise. Many times, the connection is clear such as when a casino patron is injured while gambling at the casino, or while entering or exiting the casino prior to or following gambling activities.

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Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.newmexicoinjuryattorneyblog.com/>

However, there is most definitely some gray area.

The New Mexico courts have generally shown great deference to the sovereign immunity claims of the State's many tribes and pueblos. The New Mexico Court of Appeals significantly curtailed tribal immunity in the case of *Mendoza v. Tamaya Enterprises*. This case involved a wrongful death suit against Tamaya by the guests of the Indian resort killed in a drunken driving accident following a wedding reception. There was no indication that the guests were there for gaming purposes but the New Mexico Court of Appeals found that there was no immunity for the tribe allowing the wrongful death suit to proceed in state court. The case is now on appeal to the New Mexico Supreme Court.

The case will have significant implication for guests and patrons of Indian resorts centered around Indian gaming, which is New Mexico is generally the case. As it stands, guests of the many truck stops, gas stations and restaurants adjacent to Indian Casinos face very difficult immunity issues in case of personal injury. Clearly, it is in the tribes' interest to extend the reach of immunity to all activities that do not actually occur inside the gaming facility itself.

Indian casino based resorts play host to countless visitors, many of which are there for events other than gaming. The position of the tribes and pueblos would leave little or no recourse for guests injured at weddings, parties, fundraisers, conventions, hotels, and bars on Indian casino grounds. This is clearly in the financial interests of these hugely profitable casino based resorts. Unfortunately, the interests of the visiting public are directly opposed to tribal immunity which will often bar recovery for claims no matter how great the negligence of the tribal enterprise and no matter how great the injuries

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