

1 one of its instrumentalities in order to enjoin the expenditure of public funds for other than public purposes
2 or for a breach of fiduciary duty.” N.M.I. Const. art. X, § 9. Pacific Amusement and its co-Plaintiffs
3 alleged that the Government had done both in failing to adequately and effectively enforce the law and
4 regulations concerning the operation of poker machines. Subsequent to the filing of the original suit, the
5 Government reached settlements with all Plaintiffs except Pacific Amusement. These agreements require
6 the Government to make a number of changes in the way it regulates the operation of poker machine
7 industry. The agreements also have the effect of giving Pacific Amusement all the relief it seeks in the instant
8 matter, with the exception of reimbursement of attorney fees and costs.¹

9 Normally each party in litigation is required to bear its own costs. However, Pacific Amusement
10 argues that it is entitled to fees under N.M.I. Const. art. X, § 9, which requires the Court to “award costs
11 and attorney fees to any person who prevails in [a taxpayer suit] in a reasonable amount relative to the
12 public benefit of the suit.” Specifically, Pacific Amusement argues that it has prevailed, because the
13 Government made substantial changes in its policy and procedures as a result of the suit. By contrast, the
14 Government disputes that the policy changes were a result of the lawsuit and challenges the legal basis for
15 Pacific Amusement’s claim that it is a “person who prevails.” Thus the Court must decide what to do when
16 the substantive issues in a taxpayer suit have been effectively settled, but a potentially valid constitutional
17 claim for attorney fees remains. The Court concludes that proceeding to trial would be a waste of
18 resources, as Pacific Amusement’s substantive claims for relief have been mooted by the actions of the
19 Government. Therefore, Plaintiff’s complaint must be and is DISMISSED.²

20 However, the Court still must consider whether fees and costs should be awarded in this case. To
21 help decide the matter (and having already received sufficient written briefing on the relevant issues), the
22 Court will hear arguments on August 5, 2003 at 9:00 a.m. on the following questions:

- 23 1. Can a plaintiff be considered a “person who prevails” under N.M.I. Const. art. X, § 9 where its
24 complaint is dismissed, but the substantive relief sought is nonetheless obtained through settlement

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26 ¹ In the settlements with the other three Plaintiffs, the Government apparently agreed to pay fees to the settling
27 Plaintiffs only if Pacific Amusement was successful in obtaining such fees in the instant action.

28 ² The Government sought to dismiss the complaint on a number of other grounds. Finding mootness to be
sufficient, the Court will not address these other grounds.

1 between the Government and other plaintiffs?

2 2. In deciding whether a non-settling plaintiff is a “person who prevails,” what significance, if any,
3 should the Court attach to evidence that the Defendant would have initiated some or all of the relief
4 eventually obtained even in the absence of the lawsuit?

5 As these are strictly questions of law, no use of witnesses or other evidence will be permitted. If the Court
6 later concludes that fact-finding is necessary, the Court will schedule an evidentiary hearing with appropriate
7 time for discovery.

8 **CONCLUSION**

9 For the reasons stated above, Defendant’s motion to dismiss Plaintiff’s Second Amended
10 Complaint is GRANTED and the complaint is DISMISSED.

11 A hearing on the questions above shall be held on August 5, 2003 at 9:00 a.m.

12 SO ORDERED this 25th day of July 2003.

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/s/
JUAN T. LIZAMA, Associate Judge

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