

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 13-C-334

HO-CHUNK NATION,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action by plaintiff State of Wisconsin (“the State”) pursuant to the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2710(d), to enjoin certain Class III gaming activities being conducted by defendant Ho-Chunk Nation (“the Nation”) at its DeJope facility in violation of the tribal-state Class III gaming compact between the parties.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii) of IGRA, which states:

The United States district courts shall have jurisdiction over—

....

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect[.]

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) and pursuant to Section XXIV(A) of the compact between the parties.

PARTIES

4. Plaintiff the State is one of the fifty sovereign states of the United States of America, with its seat of government located in Madison, Dane County, Wisconsin.

5. Defendant the Nation is a federally recognized Indian tribe whose offices are located at W9814 Airport Road, Black River Falls, Wisconsin 54615. The Nation is the beneficial owner of and exercises jurisdiction over land held in trust for it by the United States of America, such land being located throughout a 14-county area of the State of Wisconsin.

FACTUAL BACKGROUND

6. In 1992, the State and the Nation entered into a gaming compact (“the Compact”) defining the rights and duties of the parties regarding Class III gaming conducted by the Nation in Wisconsin. The Compact was approved by the Secretary of the Interior. The Compact was amended in 1998 (“Second Amendment”). The First Amendment was approved by the Secretary of the Interior. The Compact was amended again in 2003. The Second Amendment was approved by operation of law a result of the Secretary of the Interior not taking action to approve or disapprove the Second Amendment within 45 days of its submission for approval. The Compact

was amended once more in 2008, and these amendments were approved by the Secretary of the Interior.

7. The 1992 Compact contained restrictions defining the locations at which the Nation could conduct Class III gaming. Section XXVII.B. of the Compact restricted the operation of class III gaming to Sauk, Jackson, and Wood Counties, and also stated “[t]he State has offered to include a fourth location in this Compact, subject to certain conditions which are not now acceptable to the Tribe. This section may be amended at a later date to enumerate the fourth location.”

8. The Second Amendment provided that Class III gaming could be conducted at a fourth location (the DeJope facility, located in Dane County) upon the passage of a local referendum approving such Class III gaming.

9. Specifically, the Compact states: “the Parties agree that, rather than pursue an off-reservation site at this time, as its fourth location, the Nation’s Site at DeJope can be the Nation’s fourth location for conducting Class III gaming, subject to the following conditions[.]” (Second Amendment, Section XXVII.B.).

10. The conditions referenced in the Compact included the passage of a 2004 Dane County referendum approving Class III gaming at DeJope.

11. The referendum was on the ballot for the spring primary election in Dane County on February 17, 2004, and it failed, with 93,530 voting against allowing Class III gaming at DeJope and 51,543 voting in favor.

12. Because the conditions in the Compact were not met, the DeJope facility was not and is not authorized as a Class III gaming facility under the Compact.

13. Pursuant to 25 U.S.C. § 2710(d)(1), Class III gaming cannot be conducted on tribal lands unless the tribe and the state have entered into a compact authorizing such Class III gaming and such gaming is conducted in conformance with the Compact.

14. A dispute arose between the parties when the Nation began offering electronic, non-banked poker at its DeJope gaming facility located in Madison, Wisconsin.

15. The Nation asserts that the poker being offered at DeJope is not a Class III game, but rather is a Class II game and can therefore be offered at DeJope.

16. The relevant IGRA clause (25 U.S.C. § 2703(7)(A)(ii)(I) and (II)) defines Class II card games as ones that are either:

(I) explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and

are played at any location in the State[.]

If a card game falls within this definition it must also meet the requirements of 25 U.S.C. § 2710(b)(1)(A), which is applicable to card games and all other Class II games, that it be “located within a State that permits such gaming for any purpose by any person, organization or entity.” *Id.*

17. Poker, including the form of poker being offered at DeJope, is not explicitly authorized and is explicitly prohibited by the laws of the State of Wisconsin.

18. Poker, including the non-banked electronic poker being offered at DeJope, is a Class III game.

19. In addition, the plain language of the Compact specifies that “All forms of Poker” are Class III games. (Second Amendment, Section IV.A.6.).

20. The offering of a Class III game at a location not authorized by a compact between the parties constitutes a violation of the Compact and is therefore unlawful pursuant to 25 U.S.C. § 2710(d)(1).

21. Such a violation of the Compact may be enjoined by this Court pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii).

WHEREFORE, the State of Wisconsin respectfully requests that the Court enter an order declaring that the poker being offered by the Ho-Chunk Nation at the DeJope facility is a Class III game, that the Compact between the parties to this action prohibits Class III gaming at the DeJope facility, and that pursuant to federal law such Class III gaming is permanently enjoined at the DeJope facility or

until such time as the parties enter into a Compact authorizing Class III gaming at the DeJope facility.

Respectfully submitted this 14th day of May 2013.

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AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, (except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.