

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA (SOUTHWESTERN DIVISION)**

JAY MEILSTRUP,)	
)	
Plaintiff,)	Case No. 1:25-cv-00162
)	
v.)	ORAL ARGUMENT REQUESTED
)	
STANDING ROCK SIOUX TRIBE,)	
STANDING ROCK TRIBAL COUNCIL)	
And RYAN HERTLE,)	
)	
Defendants.)	

MOTION TO STAY

Defendants (hereinafter “the Tribe”) move to stay this matter based upon comity and the federal court’s duty to respect courts of other sovereigns who have proper jurisdiction over matters. This motion is based upon the discussion of law below, and based upon the fact that Plaintiff Meilstrup has chosen to plead the sole issues in this case into a closely related case in the Standing Rock Sioux Court.

DISCUSSION OF PROCEDURAL HISTORY

Plaintiff Meilstrup filed this suit in July 2025. The Tribe filed a motion to dismiss the suit based upon Plaintiff’s failure to exhaust tribal court remedies, failure to plead or to prove a waiver of sovereign immunity from suit, lack of federal question, forum selection, and failure to state a claim upon which relief can be granted.

This Court denied the Tribe’s motion to dismiss, holding that it has jurisdiction, and that exhaustion of tribal court remedies was not required.

The Tribe respectfully disagrees with this Court’s decision, but the present motion raises separate legal issues, based in part upon Meilstrup’s decision to plead his ERISA issue in the Tribe’s Court, and Meilstrup pleading the inextricably intertwined issues of whether Meilstrup’s multiple and serious violations of the Tribe’s gaming regulatory law constitute “gross misconduct” as that term is used under COBRA.

Subsequent to this Court denying the Tribe’s motion to dismiss, Plaintiff Meilstrup (as Tribal Court Defendant) filed counterclaims in the Tribal Court matter. In his counterclaims, Meilstrup admits that he was the manager of the Tribe’s Casinos. He had to hold the Tribe’s highest-level gaming license, and had fiduciary duties to the Tribe. In his counterclaims he specifically pled a request that the Tribal Court issue declaratory relief that the Tribe “violated ERISA standards, procedures and requirements.” Ex. 1 at ¶65. As part of that, Meilstrup alleges he did not commit gross misconduct as that term is used in COBRA. *Ex. 1, passim; e.g. id.* at 44, 61, 62, 64. Based upon Meilstrup’s own pleading, the Standing Rock Sioux Court must now decide whether he committed that gross misconduct as that term is used in COBRA.

Meilstrup further asked the Tribal Court to determine that he had not committed the breaches of the Tribe’s gaming laws which the Tribe alleges constitute gross misconduct. *E.g.*, Ex. 1 at ¶20 (denying that he violated tribal gaming law); ¶22 (alleging that he had not wrongfully taken money from the Casino—one of the most serious violations of tribal gaming law one can commit—because, he claimed (falsely and frivolously) he had sufficient accrued PTO under the Tribe’s laws.); ¶23 (denying the very serious gaming licensing violation of delegating casino management duties to someone without the requisite license. His denial of this serious gaming

licensing violation is directly contrary to Meilstrup's own emails in which he expressly delegated the authority to the unlicensed individual).¹

Even where a federal court refuses to dismiss based upon the doctrine of exhaustion of tribal court remedies, the question of whether the federal court should stay its case based upon more general principles of comity raises separate issues. These include, but are not limited to: *Pullman* abstention, *Thibodaux* abstention; *Burford* abstention; *Colorado River* abstention, and abstention based upon general principles of comity.

The first element for these abstentions is that there must be a parallel proceeding in the Court of another sovereign.

[T]he requirement is of parallel suits, not identical suits. A "suit is 'parallel' when substantially the same parties are contemporaneously litigating substantially the same issues in another forum," *Calvert Fire Insurance Co. v. American Mutual Reinsurance Co.*, 600 F.2d 1228, 1229 n. 1 (7th Cir.1979); see also *Landis v. North American Co.*, 299 U.S. 248, 254

Interstate Material Corp. v. Chicago, 847 F.2d 1285, 1288 (7th Cir. 1988).

Based upon Meilstrup's counterclaims, this element is plainly met. He has affirmatively pled in the Standing Rock Sioux Court the sole merits issue in this Court. He has further pled the core, complex issues of Standing Rock Sioux gaming law that the Tribe alleges show Meilstrup's gross misconduct.

¹ The Tribe's position is that Meilstrup's actions were serious violations and gross misconduct under the Tribe's gaming laws. SRST Code §23-206 (Defining primary management official) 23-501 (anyone exercising primary management official must hold a primary management official license) 23-502 (barring, under the undisputable fact here, Plaintiff from transferring his license to anyone), 23-302 (providing the Tribe's Gaming Commission with authority to conduct and remedy violations of the Tribe's gaming laws or regulations); 23-317 (providing a forum for employee grievances and requiring exhaustion of those remedies). The interpretation and application of these gaming laws to Meilstrup's wrongs is within the Tribe's exclusive jurisdiction. *Prescott, supra*; *Koopman v. Forest Co. Potawatome Member Benefit Plan*, 2006 WL 1785769 (E.D. Wis. 2006); *Geroux v. Assurant, Inc.*, 2010 WL 1032648 W.D. Mich. 2010).

Based upon Meilstrup's Tribal Court counterclaims, the parties in this case must now litigate, in the Standing Rock Sioux Court, the sole issue left in the current case. The Standing Rock will be deciding that issue, and the Tribe expects that the Standing Rock Sioux Court will issue a decision on that issue long before this Court reaches the merits of the current case.

In *Burford v. Sun Oil, Co.*, 319 U.S. 315, 318 (1943), the Court stated: "While many other questions are argued, we find it necessary to decide only one: Assuming that the federal district court had jurisdiction, should it, as a matter of sound equitable discretion, have declined to exercise that jurisdiction here?" On that sole question, the Supreme Court held that even where the federal district court has jurisdiction, it should abstain when the federal court is being asked to decide a question of foreign law which would disrupt the ability of the foreign jurisdiction to establish a coherent policy on a matter of substantial importance to the foreign jurisdiction.

Thibodaux abstention, *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 29-30 (1959), is very similar to *Burford* abstention. *E.g.*, *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976) (discussing similarities). Under *Thibodaux*, a federal court should abstain where a case presents state law questions in areas of particularly local concern. The Supreme Court noted that in such cases, "the local courts may find meaning not discernable to the outsider." *Id.* at 30.

Thibodaux and *Burford* abstention apply in this case. As the Tribe discussed in its prior motion to dismiss, its position is that this Court had the non-discretionary duty to dismiss or stay this case. While this Court rejected that argument, the predominance of tribal law issues, including tribal gaming law issues (for which the Tribe has exclusive jurisdiction) and Meilstrup's counterclaims in the Standing Rock Sioux Court come within *Thibodaux* and *Burford*. *E.g.*, *Prescott v. Little Six, Inc.*, 387 F.3d 753 (8th Cir. 2004); *Potaluck Corp. v. Prairie Band of*

Potawatomi Indians, 2000 WL 1721797 at *2 (D.Kan.2000) (discussing that a case that “concerns performance of contracts relating to a gaming operation located on the Tribe's reservation,” is a “reservation affair” (citing *Calumet Gaming Group–Kans., Inc. v. Kickapoo Tribe of Kansas*, 987 F. Supp. 1321, 1329 (D.Kan.1998))).

Under Colorado River Abstention, where there are concurrent proceedings in a federal court and a foreign court, the Court must consider abstention in “a pragmatic, flexible manner with a view to the realities of the case at hand.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983). Colorado River Abstention applies general comity abstention principles to a specific context. The Tribe’s position is that Colorado River Abstention or those underlying general comity principles must now result in this Court staying the current federal court case pending resolution of Meilstrup’s identical claim in the Tribal Court.

The practical realities relevant to these abstention doctrines include the desire to avoid piecemeal litigation, whether the foreign proceeding will resolve all of the issues presented in the federal court litigation, whether a decision based upon foreign law will resolve the federal law issue, and whether the foreign proceeding will adequately protect the rights of the federal litigant. *Id.* Here, these factors favor abstention. Meilstrup himself pled in Standing Rock Sioux Court the issues of whether or not he was terminated for gross misconduct and whether or not the Tribe terminating him for gross misconduct violated ERISA. Moreover, Meilstrup expressly consented to Tribal Court adjudication of all of those issues. He did so expressly in his employment agreement and then did so again by pleading into the Tribal Court the ERISA issue and by pleading the underlying question of whether his violations of tribal gaming law are gross misconduct under COBRA. Meilstrup’s Tribal Court counterclaims include the sole issue in this case and numerous other issues and claims. This Court’s adjudication would not resolve all of the issues in the tribal

court, but the Tribal Court's adjudication will resolve the sole issue in this Court. Meilstrup made that choice to plead those issues in the Tribal Court, and the consequence is that this Court now should abstain.

As an additional practical issue, the Tribe expects the Tribal Court case to proceed much faster than this Court, and therefore as a practical issue, the Tribal Court will have resolved the sole issue presented in this Court when it resolves the pending Tribal Court matter. This Court cannot enjoin the Tribal Court matter, since Meilstrup consented to Tribal Court jurisdiction and then, redundantly, pled his sole claim in this Court into the Tribal Court case. As a practical matter, this Court's judicial resources will be for naught once the Tribal Court issues its decision on Meilstrup's claims.

CONCLUSION

For all of the reasons stated above, this Court should stay this case pending resolution of the pending, broader, Tribal Court suit.

Respectfully submitted January 15, 2026.

/s/ Jeffrey Rasmussen
Jeffrey S. Rasmussen
Erin Shanley
Patterson Real Bird & Rasmussen LLP
1900 Plaza Drive
Louisville, CO 80027
Phone: 303-916-5292
jrasmussen@nativelawgroup.com
Attorneys for Defendants