

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

THE STOCKBRIDGE-MUNSEE
COMMUNITY,

a federally recognized Indian tribe,

Plaintiff,

v.

STATE OF WISCONSIN,

and

SCOTT WALKER, in his official capacity

as the Governor of Wisconsin,

and

THE HO-CHUNK NATION,

a federally recognized Indian tribe,

Defendants.

**STOCKBRIDGE-MUNSEE
COMMUNITY COMPLAINT FOR
ENFORCEMENT OF CLASS III
GAMING COMPACT AND
DECLARATORY AND INJUNCTIVE
RELIEF**

17-cv-249

Plaintiff Stockbridge-Munsee Community (the “Tribe”), is a federally recognized Indian tribe located in Wisconsin, and brings this action against the State of Wisconsin (the “State” or “Wisconsin”), Wisconsin Governor Scott Walker (the “Governor”), and the Ho-Chunk Nation (“Ho-Chunk”), and states:

INTRODUCTION

The Stockbridge-Munsee Community is a federally recognized Indian tribe, with a reservation located in Shawano County, Wisconsin. The Tribe is governed by its Tribal Legislature, which is comprised of seven individuals elected from the Tribe's members. The Tribe's government provides a wide range of services to tribal members, including health care, housing, and education. The Tribe's government programs and services are funded primarily by its one and only gaming facility, which is located on trust land in Shawano County.

In 1992, the Tribe entered into a class III gaming compact with the State of Wisconsin to govern the Tribe's class III gaming activities pursuant to federal law. The Tribe and the State have amended their compact three times since 1992. As amended, that compact requires the Tribe to make annual payments to the State in exchange for the protection of certain interests. The compact also protects the Tribe from arbitrary enforcement of its terms by the State.

The State has violated its class III gaming compact with the Tribe by allowing the Ho-Chunk Nation to operate a gaming facility in Shawano County in violation of its own class III gaming compact and federal law, and by demanding that the Tribe continue to make annual payments to the State without protecting the Tribe's interests as required by its compact.

The Tribe is seeking to enforce the terms of its own class III gaming compact, and to ensure that Ho-Chunk conducts its own gaming activities in accordance with federal law.

NATURE OF THE CASE

1. The Tribe is seeking a declaration that the State and the Governor have violated the class III gaming compact with the Tribe, which is in effect pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* ("IGRA").

2. The Tribe is seeking a declaration that Ho-Chunk's gaming facility in Shawano County, Wisconsin violates the Wisconsin – Ho-Chunk Nation Class III Gaming Compact.
3. The Tribe is seeking a declaration that Ho-Chunk's gaming activities in Shawano County, Wisconsin violate the Indian Gaming Regulatory Act's prohibition against conducting gaming activities on lands acquired in trust after October 17, 1988 at 25 U.S.C. § 2719(a).
4. The Tribe is seeking injunctive relief to prevent the State and the Governor from continuing to violate its class III gaming compact with the Tribe.
5. The Tribe is seeking injunctive relief to prevent Ho-Chunk from continuing to violate its class III gaming compact with the State, and from continuing to violate the Indian Gaming Regulatory Act.
6. In the alternative, in the event that Ho-Chunk is allowed to expand its gaming activities in Shawano County, Wisconsin, the Tribe is seeking declaratory relief that the payments made by the Tribe to the State are an illegal tax and equitable relief requiring return of all such monies paid by the Tribe to the State.

PARTIES

7. Plaintiff Stockbridge-Munsee Community is a federally recognized Indian tribe with a reservation located in Shawano County, Wisconsin.
8. Defendant State of Wisconsin is a State of the United States.
9. Defendant Scott Walker (the "Governor") is sued in his official capacity as the Governor of the State of Wisconsin. The Governor is the elected chief executive of the State of Wisconsin, and is vested with numerous powers and responsibilities to negotiate and enforce class III gaming compacts with Indian tribes.

10. Defendant Ho-Chunk Nation is a federally recognized Indian tribe with its headquarters located in Black River Falls, Wisconsin.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the Tribe's claims against the State and the Governor under 25 U.S.C. §§ 1361 and 1362, as it is a claim brought by an Indian tribe arising under federal law, including IGRA, 25 U.S.C. §§ 2701, *et seq.*; and, this Court has jurisdiction under 28 U.S.C. § 2201, as the Tribe also seeks declaratory relief.

12. This Court has jurisdiction over the Tribe's claims against Ho-Chunk under 25 U.S.C. § 2710(d)(7)(A), as it is a complaint brought by an Indian tribe to enjoin class III gaming in violation of a gaming compact that is in effect.

13. The State has agreed to waive its sovereign immunity from suit through Section XXII.E.2 of its class III gaming compact with the Tribe, which permits suits for declaratory and injunctive relief.

14. The United States Congress has abrogated Ho-Chunk's sovereign immunity from the Tribe's suit by expressly vesting United States District Courts with jurisdiction over "any cause of action brought by a State or Indian tribe to enjoin a class III gaming activity on Indian lands and conducted in violation of any Tribal-State compact entered into under [IGRA]" pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii).

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to the claims have occurred in this District, and the Defendants are located in this District.

GENERAL ALLEGATIONS

16. The Tribe is a federally recognized Indian tribe with a reservation located in Shawano County, Wisconsin and approximately 25,000 acres of land holdings.
17. The Tribe entered into a class III gaming compact with the State in 1992 to govern the Tribe's conduct of class III gaming activities on its Indian lands in accordance with IGRA (the "Stockbridge Compact") (Exhibit A).
18. The Tribe began operating class III gaming activities at a single location on its reservation in 1992, in accordance with the Stockbridge Compact.
19. The Tribe and the State amended the Stockbridge Compact in 1998 (the "First Stockbridge Amendment"). The First Stockbridge Amendment extended the initial term of the agreement, and required the Tribe to make annual payments to the State (the "Stockbridge Revenue Sharing Payment"). In exchange for the Stockbridge Revenue Sharing Payment, the State agreed to protect the Tribe from some forms of expanded gaming in the State of Wisconsin.
20. The Tribe and the State amended the Stockbridge Compact again in 2003 (the "Second Stockbridge Amendment").
21. In the Second Stockbridge Amendment, (Exhibit B) the State agreed to further protections for the Tribe's existing gaming operations in exchange for the Stockbridge Revenue Sharing Payment. That agreement is reflected in Paragraph 17 of the Second Stockbridge Amendment:

[XXXII.B.] If any Indian tribe ("tribe"), other than the Stockbridge-Munsee Tribe ("Tribe"), submits an application to the Secretary of the Interior ("Secretary"), under 25 U.S.C. § 2719(b)(1)(A), and receives a determination ("Determination") after January 1, 2003 that a proposed gaming establishment ("Establishment") on off-reservation trust lands acquired by the

United States for the tribe, is in the best interest of that tribe and its members and is not detrimental to the surrounding community, and the Governor concurs in that determination, then during any period in which the Establishment conducts Class III gaming within seventy (70) miles of a Class III gaming facility of the Tribe that is within the boundaries of its reservation, the Tribe's obligation to make payments to the State pursuant to subsection C.3. shall be modified as follows. If the Tribe's annual net win from all Class III gaming operations in the previous fiscal year is less than \$80,000,000.00, it shall pay to the State 2.25% of the net win from \$0 to \$50,000,000.00. If the Tribe's annual net win from all Class III gaming operations in the previous fiscal year is greater than \$80,000,000.00, it shall pay to the State 4.5% of all of its net win. If the Tribe's annual net win from all Class III gaming operations is greater than \$200,000,000.00, it shall pay to the State 5% of all of its net win.

22. Paragraph 17 of the Second Stockbridge Amendment also relieves the Tribe of its revenue sharing obligations if the State is authorized to impose a tax fee, assessment, or other charge on the Tribe's class III gaming revenues.
23. In reliance on the protections included in the Stockbridge Compact, the Tribe secured \$48 million in financing and cash flowed \$62 million for a total investment of \$110 million to modernize its only class III gaming facility – the North Star Casino Resort – which is located in Shawano County.
24. The Tribe's North Star Casino Resort employs more than 460 people, including 56 members of the Tribe.
25. The North Star Casino Resort is the single largest source of revenue for the Tribe's government. Revenues from the North Star Casino Resort constitute more than ninety-five percent (95%) of the tribal government's non-grant funding.
26. The Tribe distributes only a nominal amount of its gaming revenues directly to members of the Tribe. The Tribe has chosen to use its gaming revenues to fund essential

government services in accordance with IGRA's purpose of "promoting...strong tribal governments." 25 U.S.C. § 2702.

27. The Tribe's government provides essential government services to tribal members, including: educational support programs; emergency medical services; public works programs; medical, dental, and wellness programs; natural resource conservation and protection; and others.

THE STATE'S COMPACT ENFORCEMENT ACTION AGAINST THE TRIBE

28. In 1995, the United States Bureau of Indian Affairs (the "BIA") acquired the Pine Hills Golf and Supper Club ("Pine Hills") in trust status for the benefit of the Tribe within what the Tribe believed was its existing reservation.

29. In August 1998, the Tribe began operating approximately 166 class III gaming machines at its Pine Hills Golf and Supper Club ("Pine Hills") under the good faith belief that Pine Hills was located within the Tribe's reservation, and was therefore on lands eligible for class III gaming under IGRA pursuant to 25 U.S.C. § 2719(a)(1).

30. In 1998, the State filed a lawsuit against the Tribe in the United States District Court for the Eastern District of Wisconsin alleging that the Tribe's class III gaming activities at Pine Hills were conducted in violation of IGRA and the Stockbridge Compact. *See Wisconsin v. Stockbridge Munsee Community*, 366 F. Supp. 2d 698 (E.D. Wis. 2004).

31. The United States District Court for the Eastern District of Wisconsin ultimately held that Pine Hills was not within the Tribe's existing reservation, because the reservation had been diminished.

HO-CHUNK'S GAMING OPERATIONS

32. On June 28, 1969, a local chapter of the Native American Church conveyed a parcel of land near the Village of Wittenberg, Wisconsin in Shawano County to the United States in trust for the Ho-Chunk Nation (the "Wittenberg Parcel). The Deed of Transfer (the "1969 Deed") (Exhibit C): expressly stated that the conveyance was subject to a reversionary interest:

The south 330 feet of the NE fr ¼ of the NE ¼ Section 4, Township 27 North, Range 11 E., Fourth Principal Meridian, containing 10 acres, more or less, subject to valid rights-of-way of record and existing easements of record; ***also subject to Housing construction which must commence within 5 years from date of approval of this deed or the land will revert to the grantor.*** (emphasis added)

33. Ho-Chunk never commenced housing construction on the Wittenberg Parcel within 5 years of the 1969 conveyance.

34. On August 29, 1989, the Native American Church approved a resolution stating that its President and Secretary were "authorized to deliver to the Wisconsin Winnebago Tribe a Quit-Claim Deed which removes the aforementioned reversionary clause" with respect to the Wittenberg Parcel. (Exhibit D).

35. The "Wisconsin Winnebago Tribe" is the former name of the Ho-Chunk Nation.

36. Ho-Chunk entered into a class III gaming compact with the State of Wisconsin in 1992 (the "Ho-Chunk Compact") to govern its class III gaming activities in accordance with IGRA. The Ho-Chunk Compact defines the term "Primary Business Purpose" as "the business generating more than fifty percent (50%) of the net revenue of the facility." Ho-Chunk Compact at § III(H). The Ho-Chunk Compact also stated that Ho-Chunk may not conduct class III gaming activities on lands not eligible for gaming under IGRA. *See id.*

at § III(J) and § IV(B). The Ho-Chunk Compact authorized Ho-Chunk to operate class III gaming activities in Sauk, Jackson, and Wood Counties. *Id.* at § XXVII.

37. The Native American Church executed a Quitclaim Deed on April 15, 1993 claiming to transfer “All right, title and interest, [the Native American Church] may have under the reversionary clause in the Warranty Deed dated June 28, 1969....” with respect to the Wittenberg Parcel. (The “1993 Deed”) (Exhibit E). The BIA certified the 1993 Deed and acquired the Wittenberg Parcel in trust for the benefit of Ho-Chunk.
38. The State and Ho-Chunk executed an amendment to the Ho-Chunk Compact (the “First Ho-Chunk Amendment”) in 1998.
39. The State and Ho-Chunk executed another amendment to the Ho-Chunk Compact in 2003 (the “Second Ho-Chunk Amendment”), which authorized Ho-Chunk to operate an “Ancillary Facility” in Shawano County.
40. The Second Ho-Chunk Amendment emphasizes the difference between the terms “Gaming Facility” and “Ancillary Facility,” and defines the term “Ancillary Facility” to mean a gaming facility “where fifty percent or more of the lot coverage of the trust property upon which the facility is located, is used for a Primary Business Purpose other than gaming.” Ho-Chunk Compact at § XVI(E).
41. In 2008, Ho-Chunk began construction of its Ancillary Facility on the Wittenberg Parcel without providing notice to the National Indian Gaming Commission, as required by federal regulations. Ho-Chunk opened its class III Ancillary Facility on the Wittenberg Parcel (the “Wittenberg Casino”) later that year.
42. On August 16, 2016, Ho-Chunk issued a press release (Exhibit F) announcing plans to expand the Wittenberg Casino as part of a \$153 million investment in its casinos (the

“August 16th Press Release”). The August 16th Press Release outlined plans to install a total of nearly 800 slot machines and 10 table games at the Wittenberg Casino, and to construct an 86-room hotel, and a restaurant, bar, and high-limit gaming area.

43. On August 29, 2016, the Tribe issued a letter to Ho-Chunk expressing concerns about its plans to expand the Wittenberg Casino and requesting a meeting between the leaders of the Tribe and Ho-Chunk to resolve those concerns. Ho-Chunk did not respond to the Tribe’s letter.

44. Ho-Chunk has continued efforts to construct the expansion of its Wittenberg Casino, and those efforts are presently ongoing as of the filing of this complaint.

45. If the Wittenberg Casino is expanded according to the specifications contained in the August 16th Press Release, it will contain more slot machines and hotel rooms than presently exist at Ho-Chunk’s class III gaming facility at Black River Falls, Wisconsin, which is not classified as an “Ancillary Facility.”

46. Ho-Chunk presently operates 6 gaming facilities across the State of Wisconsin, including three full-scale class III casino resorts, and has submitted an application to the BIA for the development of an additional class III gaming facility in Beloit, Wisconsin.

47. Ho-Chunk distributes a significant portion of its gaming revenues to its tribal members on a per capita basis, according to a revenue allocation plan approved by the BIA.

COUNT I: THE STATE’S VIOLATION OF THE STOCKBRIDGE COMPACT’S REVENUE SHARING PROVISIONS

48. The Tribe repeats and re-alleges the allegations set forth in paragraphs 1 through 47 in their entirety.

49. The Tribe and the State have agreed to protect the Tribe’s interests and rights through the Stockbridge Compact, including the Tribe’s interest in avoiding another Indian tribe

developing a nearby class III gaming facility on lands acquired in trust after October 17, 1988.

50. Section XXIII of the Ho-Chunk Compact authorizes the State to initiate dispute resolution procedures to enforce the terms of the Ho-Chunk Compact if Ho-Chunk is in violation of that agreement.

51. The State and the Governor have refused to initiate the dispute resolution procedures in the Ho-Chunk Compact or take other actions to prevent Ho-Chunk from operating the Wittenberg Casino on lands not eligible for gaming under IGRA.

52. The State and the Governor have refused to initiate the dispute resolution procedures in the Ho-Chunk Compact or take other actions to prevent Ho-Chunk from operating the Wittenberg Casino in violation of the Ho-Chunk Compact's restrictions applicable to Ancillary Facilities.

53. The State's and the Governor's refusal to enforce the terms of the Ho-Chunk Compact, including the land restrictions in IGRA, constitutes a violation of Section XXXII.B. of the Stockbridge Compact.

COUNT II: THE STATE'S UNLAWFUL TAX OF THE TRIBE'S GAMING REVENUES

54. The Tribe repeats and re-alleges the allegations set forth in paragraphs 1 through 53 in their entirety.

55. Section XIII.E of the Stockbridge Compact states that the Tribe is not obligated "to make any payments [to the State] unless mutually agreed to by the parties, or otherwise set forth in this Compact.

56. Federal law generally prohibits the State from imposing a direct tax on the Tribe, or its gaming revenues.

57. The State's and the Governor's demand that the Tribe continue to pay a portion of its gaming revenues to the State, without providing a corresponding benefit to the Tribe, constitutes a tax of the Tribe's gaming revenues in violation of Section XIII.E of the Stockbridge Compact.
58. The Tribe's continued payment of a portion of its gaming revenues to the State, without a corresponding benefit provided by the State, would constitute an unlawful tax of the Tribe's gaming revenues by the State in violation of federal law, including IGRA at 25 U.S.C. § 2710(d)(4).

COUNT III: THE STATE'S VIOLATION OF THE COMPACT'S PROHIBITION AGAINST ARBITRARY ENFORCEMENT

59. The Tribe repeats and re-alleges the allegations set forth in paragraphs 1 through 58 in their entirety.
60. Section XX.C of the Stockbridge Compact prohibits the State from enforcing the terms of the agreement in an arbitrary or capricious manner.
61. The State took action to enforce the terms of the Stockbridge Compact, as well as IGRA's prohibition against tribal gaming on lands acquired in trust after October 17, 1988, in 1998 when the Tribe began conducting limited class III gaming activities on lands it acquired in trust in 1995 that were believed to be within the Tribe's reservation.
62. The State expressed uncertainty regarding the status of the Wittenberg Parcel, including whether it was eligible for gaming under IGRA, as early as 2008.
63. Neither the State nor the Governor have taken any action to enforce the terms of the Ho-Chunk Compact, or IGRA's prohibition against tribal gaming on lands acquired in trust after October 17, 1988, with respect to the Wittenberg Casino.

64. The State's and the Governor's refusal to enforce the Ho-Chunk Compact on a similar basis as the State's action to enforce the Stockbridge Compact is arbitrary and capricious, and constitutes a violation of Section XX.C. of the Stockbridge Compact.

COUNT IV: HO-CHUNK'S VIOLATION OF ITS OWN CLASS III GAMING COMPACT AND IGRA'S INDIAN LANDS RESTRICTIONS

65. The Tribe repeats and re-alleges the allegations set forth in paragraphs 1 through 64 in their entirety.

66. Title to the Wittenberg Parcel reverted to the Native American Church by operation of law, when Ho-Chunk did not satisfy the requirements in the 1969 Deed.

67. The Wittenberg Parcel was not placed back into trust status until 1993, when the Native American Church conveyed its remaining interests in the Wittenberg Parcel back to the BIA for the benefit of Ho-Chunk.

68. IGRA generally prohibits Indian tribes from conducting gaming activities on lands acquired in trust after October 17, 1988. *See* 25 U.S.C. § 2719(a).

69. Ho-Chunk's class III gaming activities on the Wittenberg Parcel constitute a violation of IGRA's prohibition against tribal gaming activities on lands acquired in trust after October 17, 1988. *See* 25 U.S.C. § 2719(a).

70. Sections III and IV of the Ho-Chunk Compact prohibit Ho-Chunk from conducting class III gaming activities on lands that are not eligible for gaming under IGRA.

71. Ho-Chunk's class III gaming activities on the Wittenberg Parcel also constitute a violation of Sections III and IV of the Ho-Chunk Compact.

COUNT VI: HO-CHUNK'S VIOLATION OF THE "ANCILLARY FACILITY" RESTRICTIONS IN ITS COMPACT

72. The Tribe repeats and re-alleges the allegations set forth in paragraphs 1 through 71 in their entirety.
73. The Ho-Chunk Compact allows Ho-Chunk to operate an "Ancillary Facility" within Shawano County, and defines an "Ancillary Facility" as a gaming facility "where fifty percent or more of the lot coverage of the trust property upon which the facility is located, is used for a Primary Business Purpose other than gaming." Ho-Chunk Compact at § XVI(E).
74. The Ho-Chunk Compact also defines the term "Primary Business Purpose" to mean "the business generating more than 50 percent of the net revenue of the facility." Ho-Chunk Compact at § III(H).
75. The Wittenberg Casino presently includes approximately 502 slot machines, a snack area and a small bar within a stand-alone facility on the Wittenberg Parcel and a separate stand-alone convenience store on the parcel with no gaming.
76. Ho-Chunk intends to develop a full-scale casino resort on the Wittenberg Parcel, which will include a hotel, restaurant, bar, high-limit gaming area, and approximately 800 slot machines and 10 table games.
77. Ho-Chunk's present gaming activities on the Wittenberg Parcel constitute the Primary Business Purpose of the gaming facility, as the 502 slot machines certainly generate more than fifty percent (50%) of the net revenue of the facility as compared to the snack area and small bar.
78. Ho-Chunk's present gaming activities on the Wittenberg Parcel also violate the size restriction for an Ancillary Facility as the size of the facility dedicated to gaming far

exceeds the size of the facility dedicated to the non-gaming purpose of a snack area and small bar.

79. Ho-Chunk's present gaming activities on the Wittenberg Parcel squarely fit the definition of a Gaming Facility under the Ho-Chunk Compact, which is not allowed in Shawano County. A Gaming Facility is defined as a facility with gaming as its Primary Business Purpose, because the majority of the revenue of the present facility is generated by gaming. Ho-Chunk Compact § XVI.E.

80. Ho-Chunk's additional gaming activities on the Wittenberg Parcel at the expanded Wittenberg Casino will continue to define the Primary Business Purpose of the facility because gaming activities are certain to continue to generate more than fifty percent (50%) of the net revenue of the facility.

81. Because the Primary Business Purpose of the Wittenberg Casino is gaming, it violates the Ho-Chunk Compact's requirement that any gaming facility owned by Ho-Chunk within Shawano County be limited to an Ancillary Facility.

REQUEST FOR RELIEF

The Tribe respectfully requests that this Court grant the following relief:

1. Declare that the State and the Governor are in violation of XXXII.B. of the Stockbridge Compact, which protects the Tribe's interest in limited exclusivity in its gaming market.
2. Declare that the State and the Governor are in violation of federal law, and XIII.E of the Stockbridge Compact, because it is attempting to impose an unlawful tax, fee, charge, or assessment on the Tribe's gaming revenues.
3. Declare that the State and the Governor have engaged in arbitrary and capricious enforcement of the Stockbridge Compact in violation of Section XX.C of that agreement.

4. Declare that Ho-Chunk is operating the Wittenberg Casino in violation of 25 U.S.C. § 2719(a), and Sections III and IV of the Ho-Chunk Compact, because it is conducting gaming activities on lands not eligible for gaming.
5. Declare that Ho-Chunk is in violation of Section XVI(E) of the Ho-Chunk Compact, because it is operating the Wittenberg Casino outside the restrictions placed on Ancillary Facilities.
6. Enjoin the State and the Governor from continuing to violate the Stockbridge Compact.
7. Enjoin Ho-Chunk from continuing to violate the Ho-Chunk Compact and IGRA.
8. Any other relief that the Court deems appropriate.

DATED: April 19, 2017

Respectfully Submitted,

s/ Scott D. Crowell
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