

Stockbridge-Munsee Community: Files lawsuit against state of Wisconsin and Ho-Chunk Nation

Posted on Wednesday, Apr 19, 2017

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Motion submitted for preliminary injunction to prevent new gaming activities at Ho-Chunk Wittenberg until matter is resolved

BOWLER, WISCONSIN (April 19, 2017) - The Stockbridge-Munsee Community (“the Tribe” or “Stockbridge-Munsee”) announced today that it has filed a lawsuit against the State of Wisconsin (“the State”) and the Ho-Chunk Nation (“Ho-Chunk”) in the United States District Court Western District of Wisconsin. The Tribe also submitted a motion for a preliminary injunction to prevent the Ho-Chunk Nation from adding new gaming activities at its Wittenberg ancillary facility - where a multi-million dollar expansion to add 250 slot machines, a new high-limit gaming area and 10 table games is currently underway - until this matter is resolved.

The Stockbridge-Munsee is seeking to enforce the terms of its own class III gaming compact, and to ensure that Ho-Chunk conducts its own gaming in accordance with federal law. Specifically, the complaint filed today asserts that the State of Wisconsin has violated its class III gaming compact with the Stockbridge-Munsee by:

- Allowing the Ho-Chunk Nation to unlawfully operate gaming activities at its

Wittenberg Casino since 2008, despite being in violation of the Indian Gaming Regulatory Act's (IGRA) prohibition against conducting gaming activities on lands acquired in trust after October 17, 1988.

- 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. The 2003 Ho-Chunk compact amendment explicitly limited the size and scope of Ho-Chunk Nation's gaming activities in Shawano County and required that any gaming facility be ancillary to another primary business that generates more than 50 percent of the revenue of the entire enterprise. The Ho-Chunk Nation's ongoing expansion of its non-compliant Wittenberg Casino into a full-blown casino-resort exacerbates this violation.
- Demanding that the Stockbridge-Munsee continue to make annual payments to the State without protecting the Stockbridge-Munsee's interests, as required by its compact.

The Stockbridge-Munsee Community and the State of Wisconsin entered into a class III gaming compact in 1992 to ensure proper regulation of the Tribe's gaming activities. In 2003, the Stockbridge-Munsee and the State amended the compact to require the Tribe to share a large portion of its gaming revenues with the State in exchange for protection from another Indian tribe operating a nearby gaming facility under the Section 20 Exception of the Indian Gaming Regulatory Act (IGRA). Because this protection has not occurred, the Stockbridge-Munsee notified the State of Wisconsin on March 6, 2017, of its intent to withhold its revenue sharing payment of \$923,000 and invoke its right to dispute resolution procedures. If the court affirms that the State is out of compliance with its gaming compact with the Stockbridge-Munsee, the Tribe's previous revenue sharing payments may be refunded.

"How can an 'ancillary' gaming facility be larger than a class III gaming facility? That clearly does not match the definition of an ancillary gaming facility, and former Department of Administration officials are on record saying as much," said Shannon Holsey, president of the Stockbridge-Munsee Tribal Council. "The State's perplexing refusal to enforce compact terms and its surprising reversal of its past positions is allowing one tribe to broadly reinterpret its compact to the detriment of other tribes and the sanctity of state gaming laws. We don't relish having to take this step, but do so to protect our sovereign right to self-determination. Moreover, it comes after trying all other options, including imploring the State for months to uphold their duty to fairly enforce state gaming compacts. We had hoped that Governor Walker

and this Administration would heed our and other tribes' requests for fair compact enforcement so that this matter could be resolved without litigation, but we now have no other option."

The Stockbridge-Munsee's decision to withhold its revenue sharing payment comes after the Tribe has exhausted all other options available to stop the unlawful Ho-Chunk Wittenberg expansion, including:

- Repeatedly sharing detailed legal and contractual analyses with the State that clearly demonstrate the Ho-Chunk Nation has been operating the Wittenberg Casino on lands not eligible for gaming under IGRA since 2008, putting it in direct violation of its compact with the State.
- Repeatedly sharing detailed legal and contractual analyses and on-record descriptions by former Department of Administration leadership of the intent of ancillary gaming facilities with the State, which clearly demonstrate that Ho-Chunk Nation has been operating the Wittenberg Casino beyond the scope permitted in Ho-Chunk's compact since 2008, putting it in direct violation of its compact with the State. In a November 2003 article in the *Wittenberg Enterprise*, then State Administration Secretary Marc Marotta made it clear the 2003 amendment to the Ho-Chunk compact that allowed for a Shawano County ancillary facility was meant to "do no more than lock in current practice" since several other tribes had operated mini-marts with slot machines for some time.
- Requesting that the Governor and his Administration follow previously used criteria when determining whether or not to allow Ho-Chunk to expand its Wittenberg facility outside of the terms of its compact.
- Requesting fair treatment and consistent compact enforcement for all tribes. While the State has claimed it is powerless to act in this case, it enforced nearly identical legal requirements in similar circumstances on the Stockbridge-Munsee in the past. This arbitrary pattern of enforcement calls into question the State's commitment to treating each tribe with equal respect under the law, and destabilizes the tribal gaming industry in Wisconsin.
- Calling for the State follow its own precedent when gaming compliance is in question and hire an outside Indian gaming expert to review the matter.
- Demonstrating the devastating economic impact the State's inaction will have not only on the Stockbridge-Munsee, but multiple other tribes throughout the State.
- Demonstrating that the Stockbridge-Munsee's concerns are shared among other tribal nations. The Oneida Nation of Wisconsin, Menominee Indian Tribe

of Wisconsin, Bad River Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians and the Mole Lake Sokaogon Chippewa Community have all urged Governor Walker and his Administration to fairly enforce state gaming compacts for all tribes.

- Requesting a meeting with the Ho-Chunk Nation to discuss the matter.

Each of the above requests were either ignored or rebuffed. Clear facts, data and opposition have not compelled the State to take a second look, forcing the Stockbridge-Munsee to pursue litigation.

Crippling Impact:

If the \$27 million Ho-Chunk Wittenberg Casino expansion is completed this year, the Ho-Chunk Nation will operate five of the state's 10 largest casinos. In contrast, the Stockbridge-Munsee operate one gaming facility, the North Star Mohican Casino Resort, which accounts for 96 percent of the Stockbridge-Munsee's earned revenue. The impact of the Ho-Chunk Wittenberg's illegal expansion will be devastating, with projections estimating seven tribal nations facing a combined \$37 million annual loss should it be allowed to proceed. The Stockbridge-Munsee will bear the largest brunt of the impact, with an estimated \$22 million annual reduction in machine revenue, according to a recent economic impact study commissioned by the Tribe. This equates to a 74 percent reduction in total profits at the North Star Mohican Casino Resort - the Stockbridge-Munsee Community's main source of earned revenue.

"The North Star Mohican Casino Resort - our only gaming facility - is the economic lifeblood for our Tribe and the largest employer in Shawano County," said Holsey. "We are now being forced to pursue all legal remedies available to protect our 1,470 tribal members, hundreds of employees and the various local organizations who rely on our support, such as the Shawano County Sheriff's Department, area towns and municipalities, the Bowler and Gresham School Districts, and local parks departments."

Fueled through gaming revenue from its one casino, the Stockbridge-Munsee broke ground in late 2016 on a new \$1.3 million retail center near Highways 29 and 22 in Shawano, the only strip mall near a major highway between Wittenberg and Green Bay. In February 2017, the Tribe opened a new \$1.7 million elderly care center. In addition, the Stockbridge-Munsee Tribe contributes:

- More than \$25.8 million in gross wages for employees of the Mohican North Star Casino Resort, Tribal Government, Pine Hills Golf Course and Little Star Convenience Store
- Nearly \$3 million to city and county road projects since 2010 (with \$1.2 million in the pipeline)
- More than \$100,000 each year in funding to the area's two largest school districts
- More than \$200,000 each year to support neighboring communities and other Wisconsin Indian tribes

This is now all at grave and unnecessary risk, with the self-sustainability and broader economic impact of the Stockbridge-Munsee and a number of tribes put into serious question.

Call for Fair Enforcement:

As previously announced, The Stockbridge-Munsee Band of Mohican Indians and other tribes are calling upon Governor Walker and his Administration to fairly enforce state gaming compacts for all tribes. For decades, the State has placed clear restrictions on the size, number and nature of gaming facilities across the state, establishing a distinction between full-scale casinos and much smaller ancillary facilities. However, in a perplexing and surprising reversal on its past position, the State is allowing the Ho-Chunk Nation to broadly reinterpret its compact terms so that it can turn its ancillary gaming facilities into full-scale casino-resorts.

According to the State's own definition, an ancillary gaming facility is restricted in both size and scope in order to clearly differentiate it from a full-scale casino. First, the non-gaming business (such as a gas station) and the gaming business must be located in the same building. Second, the gaming business must generate less than 50 percent of the combined facility's net revenue. Finally, the non-gaming portion of the building must be physically larger than the gaming portion of the building. Neither the Ho-Chunk's current Wittenberg facility nor its planned expansion adheres to those terms. Moreover, the Ho-Chunk compact does not allow for a full gaming facility in Shawano County. That means the current Wittenberg facility is already out of compliance with its compact as it clearly generates more than 50 percent of its revenue from gaming as it stands today.

Furthermore, longstanding questions persist regarding whether the Ho-Chunk Nation may lawfully operate any gaming facility on its lands in Shawano County. The Ho-Chunk Wittenberg Casino is operating on land that has not been determined eligible for gaming by the National Indian Gaming Commission. The refusal of State and Federal regulators to enforce the land restrictions on Indian gaming on the Ho-Chunk Nation's land in Wittenberg essentially allows any tribe to operate any type of gaming on any land it wants.

If the unlawful expansion of the Ho-Chunk Wittenberg ancillary facility is allowed to continue, all tribal/State gaming compacts will be rendered meaningless, destabilizing Wisconsin's carefully negotiated gaming environment, increasing the likelihood of widespread and costly litigation, and creating uncertainty about the future of State tribal gaming revenues.

The in-progress \$27 million expansion of the Ho-Chunk Wittenberg ancillary facility includes 750 slot machines, a new high-limit gaming area, 10 table games, an 86-room hotel and conference center facility, and an 84-seat restaurant/bar. While still being called an "ancillary facility," it will in fact become one of the State's top 10 casinos, containing more slot machines and hotel rooms than presently exist at Ho-Chunk's class III gaming facility in Black Rivers Falls, Wisconsin.

About the Stockbridge-Munsee Tribe

The Stockbridge-Munsee Mohican Tribe is one of 11 tribes in Wisconsin and has approximately 1,470 tribal members throughout the state, 34 percent of whom live on the Tribe's reservation in Shawano County. The Stockbridge-Munsee Tribe is the largest employer in Shawano County and operates the North Star Mohican Casino Resort, which features 1,200 slot machines and 16 table games. The Tribe is committed to being a good steward of economic, environmental and intellectual resources in the region and strongly believes in the power of education. Each year, the Stockbridge-Munsee Tribe contributes more than \$100,000 in funding to the area's two largest school districts and more than \$200,000 to support neighboring communities and other Wisconsin Indian tribes. For more information about the Tribe, visit the website at <http://www.mohican.com/> or the tribal Facebook page at <https://www.facebook.com/smcMohican/>.