

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

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STATE OF WISCONSIN,

Plaintiff,

v.

HO-CHUNK NATION,

Defendant.

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MEMORANDUM AND ORDER  
05-C-632-S

Plaintiff commenced this action to compel arbitration pursuant to provisions of the gaming compact between the parties and the Federal Arbitration Act. The Court compelled arbitration and defendant appealed arguing, among other things, that this Court lacked subject matter jurisdiction. The Court of Appeals determined on appeal that the Court lacked jurisdiction and remanded the case with instructions to dismiss.

On remand, plaintiff moved to amend its complaint to add claims which it believed would establish jurisdiction. On November 8, 2006 a hearing was held on the motion to amend. At the conclusion of the hearing the Court denied the motion to amend, at least in part because it believed that the matter was more expeditiously pursued by the filing of a new action. Accordingly, judgment was entered dismissing the complaint. The matter is

presently before the Court on defendant's motion to vacate the judgment pursuant to Rule 59(e), Fed. R. Civ. P., and grant leave to amend the complaint.

There was never a question that this Court had authority to grant a motion to amend. See Wisconsin v. Ho-Chunk Nation, 463 F.3d 655, 661 (2006) (apparently leaving the issue of amendment to the Court's discretion). Rather, the motion was denied on the basis that a separate action would be the more appropriate procedure. However, based upon the materials submitted in connection with the present motion, it is now apparent that the filing of a second action will only precipitate further unnecessary delay by the parties.

Specifically, plaintiff suggests in its supporting materials the possibility that a subsequent complaint may be precluded by res judicata. Whatever the merits of this proposition, defendant's response, considered in light of the history of this litigation, leaves absolutely no doubt that defendant will vigorously pursue this line of argument in response to the filing of a new complaint thereby guaranteeing further delay and expense. Because the issue can be avoided entirely by permitting the amendment, it is apparent that reconsidering the prior order, vacating the judgment of

dismissal and granting leave to amend will best serve the interests of justice.

ORDER

IT IS ORDERED that plaintiff's motions to vacate judgment and for leave to file an amended complaint are GRANTED.

IT IS FURTHER ORDERED that judgment of dismissal is VACATED.

IT IS FURTHER ORDERED that a telephone status conference is scheduled for January 17, 2007 at 8:30 A.M. Said conference to be initiated by plaintiff's counsel.

Entered this 22nd day of December, 2006.

BY THE COURT:

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JOHN C. SHABAZ  
District Judge