

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

STATE OF WISCONSIN,

Plaintiff,

v.

HO-CHUNK NATION,

Defendant.

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. Wisconsin v. Ho-Chunk Nation, 463 F.3d 655, 661 (7th Cir. 2006). However, the Court of Appeals suggested the possibility of permitting amendment of the complaint on remand, Id., a suggestion which this Court adopted on December 22, 2006.

Defendant moved to dismiss the amended complaint for lack of subject matter jurisdiction and in the alternative for summary judgment on a variety of claims. On March 9, 2007 the Court denied defendant's motion to dismiss holding, among other things, that the

Court had jurisdiction over the controversy and that defendant was not immune from suit. Defendant took an immediate appeal from the order on March 14, 2007, based on the denial of its immunity defense.

On March 19, plaintiff filed a motion in the Court of Appeals to dismiss the appeal for lack of appellate jurisdiction. Pursuant to a Court of Appeals order, defendant responded to that motion in the Court of Appeals on April 2, 2007.

On March 27, 2007 plaintiff moved for summary judgment. The matter is presently before the Court on defendant's motions to enlarge time to respond to the summary judgment motion and to deny the pending motion on the basis that this Court lacks jurisdiction to consider the summary judgment motion during the pendency of the appeal.

Defendant's motion to delay briefing on the summary judgment motion is based on inefficiencies which may result if defendant prevails on appeal and therefore the issue never comes before the Court on the merits. In order to avoid this possible unnecessary expense the following modified schedules are ordered.

ORDER

IT IS ORDERED that plaintiff shall have until April 23, 2007 to respond to defendant's position that the Court lacks jurisdiction to address the pending motion for summary judgment.

IT IS FURTHER ORDERED that defendant's brief on the merits in opposition to plaintiff's motion for summary judgment shall be due five days after the earlier of (1) a ruling by this Court that it has jurisdiction to decide the summary judgment motion or (2) a decision by the Court of Appeals dismissing defendant's pending appeal or remanding the matter for proceedings on the merits.

Entered this 11th day of April, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge