

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF CONNECTICUT, ET AL.)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	No. 1:17-cv-02564-RC
)	
UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.,)	
)	
<i>Defendants.</i>)	
)	

FIRST JOINT STATUS REPORT

In response to this Court’s request, the Mashantucket Pequot Tribe and the Federal Defendants hereby file this Joint Status Report outlining recent developments and their implications for the case and respectfully suggesting how this Court might proceed.¹ On June 1, 2018, the Department of Interior published in the Federal Register a notice stating that “The Secretary took no action on the Amendment to the compact between the Mohegan Tribe of Indians of Connecticut and the State of Connecticut within 45 days of its submission,” and thus “the Amendment is considered to have been approved, but only to the extent the Amendment is consistent with IGRA.” As a result, the Mohegan Tribe has obtained all the relief it sought in this case. On Friday, June 25, 2018, the Parties filed a stipulation under Fed. R. Civ. P. 41(a)(1)(A)(ii) stipulating to the dismissal of the Mohegan Tribe’s claims against all Defendants.

¹ Counsel for Plaintiff the State of Connecticut was unavailable to review certain last minute edits made to the Joint Status Report and thus is not a party to this filing.

The Federal Register notice applied only to the compact Amendment between the Mohegan Tribe and the State of Connecticut. The filed Stipulation of Dismissal did not apply to the claims of Plaintiffs Mashantucket Pequot Tribe and the State of Connecticut.

There are several outstanding motions before the Court. The Federal Defendants' Motion for Partial Dismissal ("Motion to Dismiss") (ECF No. 18), seeking dismissal of claims with regard to the Mashantucket Pequot Tribe, is fully briefed (except Plaintiffs have a related motion for leave to file a surreply pending that is also fully briefed (ECF No. 34)). Plaintiffs also filed a motion for summary judgment (ECF No. 9) shortly after filing their Complaint. Based on the initial recommendation of the Parties, the Court on January 8, 2018, stayed briefing on that motion until the Court decides Defendants' Motion to Dismiss (ECF No. 17). Plaintiffs have a pending motion to lift the stay and amend the briefing schedule (ECF No. 31). Federal Defendants have opposed that motion. In addition, MGM Resorts International Global Gaming Development has a pending motion to intervene (ECF No. 11) for which briefing has been completed and the Parties all agree should be denied.

Despite their best efforts, the Parties are unable to agree on recommending to the Court a schedule for further proceedings. The Parties outline their respective positions below.

Plaintiff Mashantucket Pequot Tribe's Position

More than six months ago, when this case stood in a wholly different posture, this Court entered a scheduling order – based on the Parties' Stipulation – staying the briefing of Plaintiffs' summary judgment motion. Since then, much has changed, most notably, Defendants' admission, through their conduct, that if the timing requirements of the Indian Gaming Regulatory Act ("IGRA") and related regulations apply, then the compact amendments are deemed approved. After all, as noted above, that is precisely what Defendants determined with respect to the

substantively identical Mohegan compact. Accordingly, if the Court denies the Motion to Dismiss, Plaintiffs' Motion for Summary Judgment should be granted without further delay. The only way to ensure there is no further delay and resulting prejudice to Plaintiffs is to consider the Motion for Summary Judgment at the same time the Court considers the Motion to Dismiss. Defendants argue that the Motion for Summary Judgment should not be considered because they have not yet filed an opposition to that motion or the administrative record. There is no reason, however, that Defendants cannot file an opposition brief or administrative record now. Moreover, if the Motion to Dismiss is denied, then by Defendants' own admission, the compact amendments are deemed approved by law. The only issues before the Court will be purely legal and no administrative record is needed to resolve them. Defendants are unable to articulate any legitimate basis why the Court should not consider these two closely related motions simultaneously.

Moreover, in light of Defendants' recent publication of approval of the amendments to the Mohegan compact in the Federal Register, it would be arbitrary and capricious for the Defendants to treat differently a compact amendment that is substantively identical in all material respects. This is true regardless of whether the timelines of IGRA and the relevant regulations apply. If the Defendants' Motion to Dismiss is granted, Plaintiffs respectfully request that this Court permit Plaintiffs an opportunity to amend and supplement their Complaint to include a count alleging that the Defendants' failure to approve the Pequot-State's compact amendments is arbitrary and capricious and potentially other counts.

While the Plaintiffs could seek leave to amend the Complaint now, such amendment would by operation of law moot the pending Motion to Dismiss and Motion for Summary Judgment. Because time is of the essence (*see, e.g.*, ECF No. 27, at 20; No. 31 at 7), given IGRA's strict timing deadlines and the admission by the Defendants regarding Mohegan's substantively identical

compact amendment, it would best conserve judicial resources and accommodate the Plaintiffs' interest for this Court to decide the pending motions that could dispose of this case without delay. This course of action would conserve party and judicial resources, because the issues raised in the pending motions would almost certainly be raised again in the aftermath of any amended complaint. Of course, if the Court would rather the Plaintiffs file their motion to leave to amend the complaint now, Plaintiffs will do so with all deliberate haste.

Federal Defendants' Position

Federal Defendants agree that the Court should decide the issues in the pending Motion to Dismiss. The Court's decision may dispose of the case in its entirety, and may make any amendment of Plaintiffs' Complaint futile. Defendants cannot take a position on any motion to amend Plaintiffs' Complaint until they consider the Court's decision on the Motion to Dismiss and have an opportunity to view and consider any proposed Complaint amendments that Plaintiffs' may seek.

In addition, the Federal Defendants do not agree with Plaintiffs' various representations above and submit that they are not necessary to this filing. Federal Defendants will respond to any arguments submitted by Plaintiffs at the appropriate time in the course of the litigation. Federal Defendants do note, however, that nothing has changed with respect to the claims related to the Mashantucket Pequot Tribe. Plaintiffs stipulated to suspend adjudication of their premature motion for summary judgment and should not now be permitted to reverse their position. Further, this Court should not decide Plaintiffs' Motion for Summary Judgment simultaneously with the Motion to Dismiss, as Federal Defendants have not responded to the Motion for Summary Judgment or filed the administrative record upon which the Court's decision should be based in this Administrative Procedure Act (APA) case. As explained further in the Federal Defendants'

Opposition to Plaintiffs' Motion to Amend Briefing Schedule (ECF No. 35), Plaintiffs' Motion for Summary Judgment was filed prematurely before Federal Defendants had filed an answer or the administrative record. The normal procedures for APA cases — where the agency files an administrative record and the case is decided on cross-motions for summary judgment — should be followed here.

If this Court denies Defendants' Motion to Dismiss, Federal Defendants propose that the Court give Federal Defendants an opportunity to assess their next steps after consideration of this Court's order and work with the other parties to propose a schedule or other disposition of the case at that time. Accordingly, Federal Defendants respectfully submit that the appropriate next step in the litigation should be the adjudication of Federal Defendants' Motion to Dismiss.

Dated: June 18, 2018

Respectfully submitted,

/s/ Keith M. Harper

Keith M. Harper, Bar No. 451956
KHarper@kilpatricktownsend.com
Catherine F. Munson, Bar No. 985717
cmunson@kilpatricktownsend.com
KILPATRICK TOWNSEND &
STOCKTON LLP
607 14th Street, N.W., Suite 900
Washington, D.C. 20005
Telephone: 202-508-5800
Facsimile: 202-508-5858

Counsel for the Mashantucket Pequot Tribe

/s/ Devon Lehman McCune

Devon Lehman McCune
Senior Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
999 18th St., South Terrace, Suite 370

Denver, CO 80202
(303) 844-1487
devon.mccune@usdoj.gov

*Counsel for Ryan Zinke, in his official capacity
as Secretary of the Interior, and the Department
of Interior*

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2018, I electronically filed the foregoing Stipulation of Dismissal with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Keith M. Harper
Keith M. Harper, Bar No. 451956
KHarper@kilpatricktownsend.com
KILPATRICK TOWNSEND &
STOCKTON LLP
607 14th Street, N.W., Suite 900
Washington, D.C. 20005
Telephone: 202-508-5800