

1 documents by personal service to the defendants. *See Ho-Chunk Nation Rules of Civil*
2 *Procedure* (hereinafter *HCN R. Civ. P.*), Rule 5(C)(1)(a)(i), (c). The *Summons* informed the
3 defendants of the right to file an *Answer* within twenty (20) days of the issuance of the *Summons*
4 pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also cautioned the defendants that a *default*
5 *judgment* could result from failure to file within the prescribed time period.
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7 The defendants, Brian and Barbara Newlun, filed their *Answer & Affirmative Defenses to*
8 *Complaint* (hereinafter *Defendants' Answer*) on October 13, 2005. The defendant, Corvettes on
9 the Isthmus, by and through Brian Newlun, filed its *Answer & Affirmative Defenses to Complaint*
10 on the same date. The Court reacted by mailing *Notice(s) of Hearing* to the parties on October
11 27, 2005, informing them of the date, time and location of the *Scheduling Conference*. The
12 Court convened the *Conference* on November 15, 2005 at 10:00 a.m. CST. The following
13 parties appeared at the *Scheduling Conference*: DOJ Attorney Michelle M. Cleveland, plaintiff's
14 counsel, and Brian Newlun, defendant. The Court entered the *Scheduling Order* on November
15 15, 2005, setting forth the timelines and procedures to which the parties should adhere prior to
16 trial.
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19 On February 23, 2006, the defendants, Brian and Barbara Newlun, filed their *Motion to*
20 *Dismiss*. In response, the Court entered the February 27, 2006 *Order (Motion Hearing)*. The
21 order informed the parties of the Court's decision to convene a hearing for the purpose of
22 entertaining the motion. The order set forth the date, time and location of the *Motion Hearing*,
23 which the Court scheduled in conjunction with the *Pre-Trial Conference*, and alerted the
24 plaintiffs to its right to respond.
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26 Prior to convening the *Motion Hearing*, the plaintiffs filed a timely response entitled,
27 *Plaintiffs' Response in Opposition to Motion to Dismiss & Counterclaims* (hereinafter *Plaintiffs'*
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1 *Response*). *Id.*, Rule 19(B). The Court convened the *Pre-Trial Conference/Motion Hearing* on
2 March 15, 2006 at 9:00 a.m. CST. The following parties appeared at the *Conference/Hearing*:
3 DOJ Attorney Michelle M. Cleveland, plaintiff's counsel, and Brian Newlun, defendant.
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5 **APPLICABLE LAW**

6 **CONSTITUTION OF THE HO-CHUNK NATION**

7 **Article VI - Executive**

8 **Sec. 1. Composition of the Executive.**

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10 (b) The Executive Branch shall be composed of any administrative Departments created by
11 the Legislature, including a Department of the Treasury, Justice, Administration, Housing,
12 Business, Health and Social Services, Education, Labor, and Personnel, and other Departments
13 deemed necessary by the Legislature. Each Department shall include an Executive Director, a
14 Board of Directors, and necessary employees. The Executive Director of the Department of
15 Justice shall be called the Attorney General of the Ho-Chunk Nation. The Executive Director of
16 the Department of Treasury shall be called the Treasurer of the Ho-Chunk Nation.

17 **DEPARTMENT OF BUSINESS ESTABLISHMENT AND ORGANIZATION ACT OF 2001, 18 1 HCC § 3**

19 **Sec. 5. Internal Organization.**

20 c. The Department shall maintain a current Organizational Chart. The
21 Organizational Chart shall accompany its annual budget submission and any budget
22 modifications during the fiscal year in accordance with the Nation's *Appropriations and Budget
23 Process Act*.

24 **HO-CHUNK NATION RULES OF CIVIL PROCEDURE**

25 **Rule 5. Notice of Service of Process.**

26 **(A) Definitions.**

27 2. Summons - The official notice to the party informing him/her that he/she is identified
28 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See
HCN R. Civ. P. 6*) and that a *Default Judgment* may be entered against them if they do not file an
Answer in the prescribed time. It shall also include the name and location of the Court, the case
number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and
shall be served with a copy of the filed *Complaint* attached.

1 (C) Methods of Service of Process.

2 1. Personal Service. The required papers are delivered to the party in person by the
3 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
4 other person not a party to the action who is eighteen (18) years of age or older and of suitable
5 discretion.

6 a. Personal Service is required for the initiation of actions in the following:

7 i. Relief requested is over \$5,000.00, excluding the enforcement of foreign
8 child support orders

9 c. Service upon a Business, Corporation or Entity. Service may be made upon an
10 agent of a business, corporation or governmental agency.

11 Rule 19. Filing and Responding to Motions.

12 (B) Responses. A *Response* to a written *Motion* must be filed at least one (1) day before the
13 hearing. If no hearing is scheduled, the *Response* must be filed with the Court and served on the
14 other parties within ten (10) calendar days of the date the *Motion* was filed. The party filing the
15 *Motion* must file any *Reply* within three (3) calendar days.

16 Rule 31. Required Disclosures.

17 (A) Disclosures. Except to the extent otherwise stipulated or directed by order, a party shall,
18 without waiting for a discovery request, provide to other parties:

19 1. the name and, if known, the address and telephone number of each individual likely to
20 have discoverable information relevant to disputed facts alleged with particularity in the
21 pleadings, identifying the subjects of the information;

22 2. a copy or a description by category and location, of all documents, data, complaints,
23 and tangible things in the possession, custody, or control of the party that are relevant to disputed
24 facts alleged with particularity in the pleadings;

25 3. a computation of any category of damages claimed by the disclosing party, made
26 available for inspection, and copying the documents or other evidentiary material, not privileged
27 or protected from disclosure, on which such computation is based, including materials bearing on
28 the nature and extent of injuries suffered; and

4. for inspection and copying any insurance agreement under which any person carrying
on an insurance business may be liable to satisfy part or all of a judgment that may be entered in
an action or to indemnify or reimburse for payments made to satisfy the judgment.

5. judicial notice shall be taken of and required disclosures shall be made of official
documents, public documents, documents subject to public inspection, documents and materials

1 of non-executive session, governmental minutes and recordings of a governmental body pursuant
2 to the OPEN MEETINGS ACT, 2 HCC § 2.

3 (B) Time of Disclosure. Unless otherwise stipulated or directed by the Court, these disclosures
4 shall be received by the Court within ten (10) calendar days after the scheduling conference. A
5 party shall make its initial disclosures based on the information then reasonably available to it
6 and is not excused from making its disclosures because it has not fully completed its
investigation of the case or because it challenges the sufficiency of another party's disclosures or
because another party had not made its disclosures.

7 Rule 32. Interrogatories.

8 A party may submit interrogatories (written questions) to other parties. The requesting party
9 must receive the responding party's written answers, under oath, within twenty-five (25) calendar
10 days of receiving them. The responding party must include facts he/she knows, facts available to
him/her, and give opinions, if requested.

11 Rule 34. Requests for Documents and Things.

12 A party may request another party to produce any documents or things within his/her possession
13 or control for the purpose of inspection and/or copying. This includes permission to enter onto
14 land for testing. The responding party must make the documents or things available to the
requesting party within twenty-five (25) calendar days of the date of receiving the request.

15 Rule 42. Scheduling Conference.

16 *Scheduling Order.* The Court may enter a scheduling order on the Court's own motion or on the
17 motion of a party. The *Scheduling Order* may be modified by motion of a party upon showing of
18 good cause or by leave of the Court.

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20 **FINDINGS OF FACT**

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22 1. The parties received proper notice of the March 15, 2006 *Pre-Trial Conference/Motion*
23 *Hearing.*

24 2. The plaintiff, Ho-Chunk Nation (hereinafter HCN or Nation), is a federally recognized
25 Indian Tribe with principal offices located on trust lands at HCN Headquarters, W9814 Airport
26 Road, P.O. Box 667, Black River Falls, WI. *See* 70 Fed. Reg. 71194 (Nov. 25, 2005). The
27 plaintiff, HCN Department of Treasury, is an executive department with principal offices
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1 likewise located at HCN Headquarters. See CONSTITUTION OF THE HO-CHUNK NATION, ART. VI,
2 § 1(b). The plaintiff, Ho-Chunk Casino Hotel & Convention Center Casino, is a division within
3 the HCN Department of Business, located at S3214 Highway 12, Baraboo, WI 53913. See DEP'T
4 OF BUS. ESTABLISHMENT & ORG. ACT OF 2001, 1 HCC § 3.5c; [http://www.ho-chunknation.com](http://www.ho-chunknation.com/government/executive/org_chart.htm)
5 /government/executive/org_chart.htm (last visited Mar. 31, 2006) (on file with Bus. Dep't).

7 3. The defendants, Brian and Barbara Newlun, are officers of Corvette's on the Isthmus,
8 WI-Dells, LLC d/b/a Corvette's on the Isthmus. *Defs.' Answer* at 1-2; *Compl.* at 2-3. The
9 defendants are non-members, reside at 300 Progress Drive #B, Cottage Grove, WI 53527, and
10 maintain a mailing address of P.O. Box 7515, Madison, WI 53707. *Id.*; *Change of Address*, CV
11 05-82 (Feb. 23, 2006). The defendant, Corvettes on the Isthmus, is a State of Wisconsin
12 Corporation that maintains the same addresses as the above defendants. *Id.*

14 4. Representatives of the parties appeared at the November 15, 2005 *Scheduling Conference*
15 and consented to the procedural timeframes that the Court accurately reflected in its *Scheduling*
16 *Order*. The *Scheduling Order* includes the following provisions relevant to this judgment:
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18 Parties must exchange mandatory discovery disclosures within ten (10)
19 calendar days after the scheduling conference regardless of an incomplete
20 investigation. Accordingly, the required disclosures must be filed on or
before Nov. 28, 2005. . . .

21 Parties must conclude all discovery activities on or before Feb. 17, 2006.
22 Therefore, parties *must receive* interrogatories and requests for production
on or before Jan. 23, 2006, to ensure a response.

23 *Scheduling Order* at 3-4 (citation omitted).

24 5. Neither party exchanged mandatory discovery disclosures as required by *HCN R. Civ. P.*
25 31(A-B).
26

27 6. Mr. Newlun indicated that he deposited the *Defendants [sic] Request for Admissions,*
28 *Written Interrogatories & Request for Production of Documents* (hereinafter *Defendant's*

1 *Discovery Request*) in a Madison, WI Federal Express receptacle on Friday, January 20, 2006,
2 for overnight delivery. *Pre-Trial Conference/Mot. Hr'g* (LPER at 6, Mar. 15, 2006, 09:15:02
3 CST).

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5 7. On Tuesday, January 24, 2006, the plaintiffs received the discovery request one (1) day
6 after the deadline. *Id.*; see also *Scheduling Order* at 3 (citing *HCN R. Civ. P.* 32, 34).

7 8. The plaintiffs consented to dismissing Mr. and Ms. Newlun as named defendants. *Id.* at
8 4, 09:10:29 CST.

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10 9. The plaintiffs expanded its December 2, 2005 *Preliminary Witness List* through the
11 addition of eleven (11) witnesses in the March 3, 2006 *Amended Final Witness List* despite
12 participating in no discovery, including mandatory discovery disclosures.

13 10. The defendants declined the option of filing a final witness list, relying on the December
14 1, 2005 *Preliminary Witness List* that includes 1,200 potential witnesses. *Id.* at 14, 09:38:08
15 CST.

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17 11. Due to a complete lack of discovery, the parties have not limited the scope of trial.

18 19 **DECISION**

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21 The Court finds two (2) independent grounds representing good cause to amend the
22 November 15, 2005 *Scheduling Order*. See *HCN R. Civ. P.* 42. First, the parties neglected to
23 exchange mandatory discovery disclosures. This exchange is intended to aid in focusing the
24 scope of discovery or determining that discovery proves unnecessary. For example, the parties
25 are directed to reveal "the name and, if known, the address and telephone number of each
26 individual likely to have discoverable information relevant to disputed facts alleged with
27 particularity in the pleadings, identifying the subjects of the information." *Id.*, Rule 31(a)(1). In
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1 the absence of discovery, supplementing a final witness list is patently unfair if parties fail to
2 abide by the mandatory disclosure rule. Second, the Court finds that the defendants' explanation
3 for the late discovery filing is credible. To find otherwise would require the Court to disbelieve
4 the proffered excuse. The Court recognizes that the parties remain wholly responsible for the
5 timeliness of filings, and the Court shall not permit any future variances. However, in the
6 interest of judicial economy, the Court shall not conduct a trial without any acknowledged scope.
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8 **THEREFORE**, the Court grants the uncontested motion to strike the individually named
9 defendants from the instant case, and all subsequent filings and decisions shall reflect this
10 modification within the caption. The Court, however, denies the defendants' request to dismiss
11 the action on the basis of the plaintiffs' failure to answer the untimely received discovery request,
12 and instead enters the following modifications to the *Scheduling Order*:
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- 14 1) The parties' mandatory discovery disclosures must be exchanged on or before
15 Monday, March 27, 2006;
- 16 2) Plaintiffs' response to *Defendant's Discovery Request* due on or before Monday,
17 April 10, 2006;
- 18 3) Plaintiffs' initial or defendant's supplemental discovery requests must be received
19 on or before Friday, April 21, 2006;
- 20 4) Responses to above discovery requests due within twenty-five (25) days of
21 receipt;
- 22 5) Defendant's response to plaintiffs' March 13, 2006 request to deny October 13,
23 2005 *Counterclaim* due on or before Friday, May 12, 2006;
- 24 6) Dispositive motions due on or before Wednesday, May 17, 2006;
- 25 7) Plaintiffs' reply to defendant's response due on or before Thursday, May 18, 2006;
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- 8) Final witness lists, including revised versions, due on or before Friday, May 19, 2006;
- 9) *Pre-Trial Conference/Motion Hearing* will convene on Tuesday, May 23, 2006 at 9:00 a.m. CDT; and,
- 10) *Trial* will convene on Tuesday, June 13, 2006 at 9:00 a.m. CDT, and extend to Wednesday, June 14, 2006, if necessary.

IT IS SO ORDERED this 3rd day of April 2006, but *nunc pro tunc* March 15, 2006, by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

Honorable Todd R. Matha
Chief Trial Court Judge