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**IN THE
HO-CHUNK NATION TRIAL COURT**

Ho-Chunk Nation,
Plaintiff,

v.

Case No.: **CV 10-54**

**Money Centers of America, Inc. and MCA
of Wisconsin, Inc.,**
Defendants.

**ORDER
(Denying Motion to Stay Civil Proceedings)**

INTRODUCTION

The Court must determine whether or not to grant the defendants' *Motion to Stay Civil Proceedings*. The defendants argued that issues in the instant civil matter significantly overlap with the issues of an ongoing criminal investigation by the Federal Bureau of Investigation and a grand jury. *Mot. to Stay Civil Proceedings* at 5, 6. However, the defendants failed to provide sufficient documentation showing the scope and status of the Federal criminal investigation. Therefore, the Court denies the defendants' *Motion to Stay Civil Proceedings* without prejudice.

PROCEDURAL HISTORY

The Court recounts the procedural history in significant detail within a previous decision. *Order (Mot. to Dismiss for Lack of Jurisdiction: Granting in Part and Denying in Part)*, CV 10-54 (HCN Tr. Ct., Dec. 28, 2010) at 2, 3. For the purposes of this decision, the Court notes that on February 28, 2011, the defendants filed and served a *Motion to Stay Civil Proceedings* along with a *Motion for Expedited Consideration*. Also on February 28, 2011, the Court denied the

1 defendants' *Motion for Expedited Consideration* and scheduled a *Motion Hearing* for March 8,
2 2011, at 10:00 a.m. CST, to allow the defendants to present the remaining motion. *Order*
3 (*Denial of Mot. for Expedited Consideration*), CV 10-54 (HCN Tr. Ct., Feb. 28, 2011) at 2. The
4 plaintiff filed and served *Plaintiff's Memorandum of Law in Opposition to Defendants' Motion*
5 *to Stay Civil Proceedings Pending Resolution of Ongoing Parallel Criminal Investigation* on
6 March 4, 2011. The defendants filed and served their *Reply in Further Support of MCA's*
7 *Motion to Stay Civil Proceedings* on March 7, 2011.

9 On March 8, 2011, at 10:00 a.m., the Court convened a *Motion Hearing*. Attorney James
10 L. Beausoleil appeared personally on behalf of the defendants, and Attorney Christianna L.
11 Finnern appeared personally on behalf of the plaintiff. Due to the parties' interest in a timely
12 decision, the Court indicated on the record that it would attempt to issue an order within seven to
13 ten days. *Mot. Hr'g* (LPER, Mar. 8, 2011, 10:27:05 CDT).¹ The Court requested documentation
14 concerning the scope and status of the criminal investigation at the March 8, 2011 *Motion*
15 *Hearing*. *Mot. Hr'g* (LPER, Mar. 8, 2011, 10:27:57 CDT). On March 14, 2011, the defendants
16 filed an *Affidavit in Support of Motion to Stay* along with copies of several subpoenas issued by
17 the United States District Court for the Western District of Wisconsin.

21 APPLICABLE LAW

22 CONSTITUTION OF THE HO-CHUNK NATION

23 Article VII – Judiciary

24 Sec. 4. Powers of the Judiciary. The judicial power of the Ho-Chunk Nation shall be vested in
25 the Judiciary. The Judiciary shall have the power to interpret and apply the Constitution and
26 laws of the Ho-Chunk Nation.

27 Sec. 5. Jurisdiction of the Judiciary.

28 ¹ A copy of the *Motion Hearing* transcript is available upon request.

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(a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of the Nation’s sovereign immunity.

Sec. 6. Powers of the Trial Court.

(a) The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and in equity including injunctive and declaratory relief and all writs including attachment and mandamus.

Sec. 7. Powers of the Supreme Court.

(b) The Supreme Court shall have the power to establish written rules for the Judiciary, including qualifications to practice before the Ho-Chunk courts, provided such rules are consistent with the laws of the Ho-Chunk Nation.

HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT

5. Rules and Procedures.

- c. The Judiciary shall have exclusive authority and responsibility to employ personnel and to establish written rules and procedures governing the use and operation of the Courts.
- d. All matters shall be tried in accordance with the Ho-Chunk Rules of Procedures And the Ho-Chunk Rules of Evidence which shall be written and published by the Supreme Court and made available to the public.

HO-CHUNK RULES OF CIVIL PROCEDURE

Rule 1. Scope of Rules.

CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, sec. 7(B) requires that the Supreme Court establish written rules for the Judiciary. These rules, adopted by the Supreme Court, shall govern the procedure of the Trial Court in all actions and proceedings. The judges of the Trial Court may look to Ho-Chunk customs and traditions for guidance in applying justice and promoting fairness to parties and witnesses.

Rule 2. Liberal Construction.

1 These rules shall be liberally construed to secure a just and speedy determination of every action.

2 Rule 45. Postponement.

3 The Court may postpone a trial upon the request of a party, upon agreement of all parties, or at
4 the Court's discretion for good cause and on such terms as the Court deems just.

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6 **FINDINGS OF FACT**
7

8 1. The Court hereby incorporates findings of fact 1-3 of *Order (Motion to Dismiss for Lack*
9 *of Jurisdiction: Granting in Part and Denying in Part)*, CV 10-54 (HCN Tr. Ct., Dec. 28, 2010)
10 at 5.

11 2. The defendants moved to stay the instant action pending resolution of the ongoing
12 criminal investigation. *Mot. to Stay Civil Proceedings*.

13 3. The plaintiff objected to staying the instant action. *Pl.'s Mem. of Law in Opposition to*
14 *Defs.' Mot. to Stay Civil Proceedings Pending Resolution of Ongoing Parallel Criminal*
15 *Investigation*.

16 4. The plaintiff and the defendants received proper notice of the March 8, 2011 *Motion*
17 *Hearing*.
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20 **DECISION**
21

22 Granting a stay of a civil case in light of criminal proceedings is a matter of first
23 impression for this Court. The phrase "stay of civil proceedings" does not explicitly appear in
24 the CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), the laws of the
25 Ho-Chunk Nation, or the procedural rules promulgated by the Supreme Court. However, the
26 Court believes it has the power to issue such a stay. The Court previously acknowledged that
27 "the power to stay proceedings is incidental to the power inherent in every court to control the
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1 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
2 for litigants.” *HCN et al. v. HCN GRB, et al.*, CV 10-07, -12, -28, -33 (HCN Tr. Ct., Aug. 5,
3 2010) at 2, citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Furthermore, the General
4 Council delegated “the judicial branch the authority to interpret and apply the laws and
5 Constitution of the Nation in accordance with Article VII.” CONST., ART. IV, § 2. The
6 CONSTITUTION vests in the Trial Court the right to “have original jurisdiction over all cases and
7 controversies.” *Id.*, ART. VII, § 5. The CONSTITUTION also grants to the Supreme Court “the
8 power to establish written rules for the Judiciary.” *Id.* ART. VII, § 7(b). The Legislature
9 acknowledged the Judiciary’s inherent constitutional authority to follow its own procedural rules
10 in the HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT. 1 HCC §
11 1,5c, d.

14 The *Ho-Chunk Nation Rules of Civil Procedure* indicates that the Court has the authority
15 to issue stays. The aforementioned rules require the Court to construe all procedural rules
16 liberally “to secure a just and speedy determination of every action.” *HCN R. Civ. P. 2.*
17 Furthermore, the Court may postpone a trial “at the Court’s discretion for good cause and on
18 such terms as the Court deems just.” *HCN R. Civ. P. 45.* Based on these rules, and the Court’s
19 inherent constitutional authority, the Court holds that it has the power to issue a stay of civil
20 proceedings pending the resolution of an ongoing parallel criminal proceeding. However, just
21 because the Court has the power to issue such a stay, does not mean that it should issue a stay in
22 every circumstance.

25 Both parties agree that when deciding whether to stay a civil case pending the resolution
26 of criminal proceedings, other courts generally consider six factors. *Mot. to Stay Civil*
27 *Proceedings* at 4; *Pl.’s Mem. of Law in Opposition to Defs.’ Mot. to Stay Civil Proceedings*
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1 *Pending Resolution of Ongoing Parallel Criminal Investigation.* Those six factors include: (1)
2 the extent to which the issues in the criminal and civil cases overlap; (2) the status of the criminal
3 proceedings, including whether the defendants have been indicted; (3) the plaintiff's interest in
4 proceeding expeditiously weighed against the prejudice to plaintiff caused by a delay; (4) the
5 private interests of and burden on defendants; (5) the interests of the court; and (6) the public
6 interest. *Walsh Sec., Inc. v. Cristo Prop. Mgmt., Ltd.*, 7 F.Supp.2d 523, 527 (D.N.J. 1998). This
7 Court is not bound by outside case law. However, the Court is persuaded that considering these
8 factors will assist it in determining whether "good cause" exists, and whether it is just to delay
9 trial by means of a stay. *HCN R. Civ. P. 45.*

12 Upon considering the above-referenced six factors, the Court immediately ran into
13 trouble analyzing the extent to which the criminal and civil proceedings overlap, and the status of
14 the criminal proceedings. The defendants state that a grand jury is actively investigating
15 payments made by the defendants to Mr. Tim White Eagle, and that subpoenas have been issued
16 to several of the defendants' key witnesses. *Mot. to Stay Civil Proceedings* at 2. Several of
17 those witnesses have in fact refused to answer questions at a recent deposition, asserting their
18 *Fifth Amendment* right to remain silent. *Id.* at Ex. B, C. However, the defendants have not
19 submitted sufficient documentation (*e.g.*, indictments, affidavits, subpoenas, warrants, etc.)
20 indicating the scope and status of the grand jury investigation.

23 The defendants provided several copies of subpoenas attached to their *Affidavit in*
24 *Support of Motion to Stay.* The first subpoena demanded any records the defendants had of
25 business dealings with Mr. Timothy White Eagle. *Aff. in Support of Mot. to Stay*, Ex. A.
26 However, the subpoena was dated July 28, 2009, and demanded the production of the documents
27 for August 26, 2009. *Id.* Subpoenas from over a year ago are not indicative of the current status
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1 of the criminal investigation. The subpoenas for Mr. Kevin McDonald and Ms. Lauren
2 Anderson commanded them to testify on March 23, 2011, but were devoid of any further
3 information. *Id.*, Ex. C, D. Noticeably absent are any subpoenas for Mr. Christopher
4 Wolfington, Mr. White Eagle, Ms. Summer White Eagle, or any information regarding the FBI
5 interviews of Mr. Wolfington, or the raid on Mr. White Eagle's house.
6

7 The Court is concerned about the lack of information provided by the referenced
8 subpoenas. The Court is left with little evidence of the criminal proceedings to analyze. The
9 defendants have neither provided additional documentation from the U.S. government, nor have
10 they provided any affidavits from relevant witnesses regarding the criminal proceedings. The
11 Court understands that witnesses may have concerns about self-incrimination, but affidavits
12 explaining the scope and status of the investigation could be made without making admissions.
13

14 In *Walsh*, the U.S. District Court for the District of New Jersey granted a stay of civil
15 proceedings despite the fact that an indictment had not yet been issued. *Walsh*, 7 F.Supp.2d at
16 527. However, the District Court had a sealed, *in camera* affidavit from the U.S. government
17 "elaborating on the status of the criminal investigation" at its disposal. *Id.* at 526. Presently, the
18 Court only has assertions made by the defendants and copies of depositions and subpoenas that
19 provide little to no illustration as to the scope and status of the criminal investigation. The Court
20 cannot justly analyze the extent to which the two cases overlap or the status of the criminal
21 proceedings without more substantial information. Without a sound consideration of the first
22 two factors, any analysis of the remaining factors would be largely speculative. The interests of
23 the parties, the Court, and the public will certainly be impacted by the extent the two cases
24 overlap and the status of the criminal proceeding.
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1 To be clear, the Court is not accusing the defendants of misleading the Court. However,
2 without more information as to the scope and status of the criminal proceedings, the Court
3 cannot justly find good cause to issue a stay of the civil proceeding. Therefore, the Court hereby
4 denies the defendants' *Motion to Stay Civil Proceedings* without prejudice.
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6 The parties retain the right to file a timely post-judgment motion with this Court in
7 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
8 Otherwise, "[t]he time for taking an appeal shall begin from the date the judgment is filed with
9 the [Trial Court] Clerk [of Court]." *HCN R. Civ. P. 57*. Since this decision represents a nonfinal
10 judgment, "[a]n appeal from [this] interlocutory order maybe [*sic*] sought by filing a petition for
11 permission to appeal with the Supreme Court Clerk within ten (10) calendar days after the entry
12 of such order with proof of service on all other parties to an action." *Ho-Chunk Nation Rules of*
13 *Appellate Procedure*, Rule 8.²
14

15 **IT IS SO ORDERED** this 14th day of March, 2011, by the Ho-Chunk Nation Trial
16 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

17
18  SgPlus1
19 03/14/2011 02:44:04 pm

20 Honorable Amanda L. Rockman³
21 Associate Trial Court Judge
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28 ² Parties can obtain a copy of the applicable rules by contacting the Ho-Chunk Nation Judiciary at (715) 284-2722 or (800) 434-4070 or visiting the judicial website at www.ho-chunknation.com.

³ The Court appreciates the assistance of Law Clerk Zachary H. Atherton-Ely in the preparation and drafting of this opinion.

Ho-Chunk Nation Court System
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 or 800-434-4070

