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Husch Blackwell Prevails in Seventh Circuit for Ho-Chunk Nation

Husch Blackwell secured a victory before the U.S. Court of Appeals for the Seventh Circuit on behalf of Ho-Chunk Nation in a lawsuit brought by the Stockbridge-Munsee Community (SMC), another federally recognized tribe. SMC challenged the Nation's plans to install additional slot machines and gaming tables and to operate a restaurant, a bar, and a hotel at a gaming facility in Wittenberg, Wisconsin.

SMC relied on provisions in the federal Indian Gaming Regulatory Act, which establishes the framework for gambling activities on land held in trust by Indian tribes. Under the Act, a tribe may conduct class III gaming—which includes slot machines and table games such as blackjack—only in states that allow at least some non-Indian groups to conduct similar gaming, and then only if tribe and state enter into a compact governing the operation. SMC's lawsuit claimed that the Nation's plans to expand its Wittenberg casino violated the Act and the tribes' respective compacts with the State of Wisconsin.

In 2017 the U.S. District Court for the Western District of Wisconsin determined that SMC's lawsuit was untimely and dismissed it. SMC appealed, asserting that it is not subject to any time limit based both on its status as a sovereign entity and because it was seeking relief against an ongoing violation of law.

The Seventh Circuit affirmed the lower court ruling on the untimeliness of the lawsuit, but also noted limits to the scope of the Indian Gaming Regulatory Act, which is of great importance to tribes. In particular, the Court considered whether SMC's claims fell within the "zone of interests" protected by the Act. Writing for the majority, Judge Frank Easterbrook wrote, "The Act's provisions concern rights that tribes may assert against states and circumstances under which states may block gaming that tribes want to offer.

But none of the Act's substantive rules seems to protect one tribe from competition by another." Ultimately, the Court concluded that "one tribe's demand to close or fetter a casino operated by another tribe is not within the Act's zone of interests."

The Husch Blackwell team included Joseph Diedrich and Joslyn Benrud.