

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

S.V.,

Plaintiff,

v.

Case No. 10-cv-919

KENNETH KRATZ,

Defendant.

STATE OF WISCONSIN'S MOTION TO INTERVENE IN THIS ACTION
AND MOTION TO BIFURCATE

The State of Wisconsin, by the undersigned Assistant Attorneys General Carrie Benedon and Monica A. Burkert-Brist, respectfully asks the court pursuant to Rule 24(a) and (b) of the Federal Rules of Civil Procedure for permission to intervene in this action to protect the interests of the State of Wisconsin as set forth herein and in the Proposed Intervenor's Answer to the Plaintiff's Complaint. The State of Wisconsin further asks the court to bifurcate this case for the reasons set forth herein.

The interests of the State of Wisconsin in this matter include the right to challenge whether the Defendant Kenneth Kratz was acting within the scope of his employment pursuant to Wis. Stats. § 895.45 Wis. Stats. during the times referenced in Plaintiff's Complaint, whether the State of Wisconsin is responsible to the plaintiff in this action, and whether the State of Wisconsin is subject to pay damages on behalf of the defendant.

The undersigned also appear to challenge whether the defendant was involved in any act growing out of or committed in the course of the discharge of his duties as an employee of the State of Wisconsin. The undersigned also challenge whether the State of Wisconsin is responsible to reimburse and/or represent Defendant Kratz for the incidents alleged in Plaintiff's Complaint.

If this Court grants the State of Wisconsin's request to intervene in this action, the State of Wisconsin further requests that the Court bifurcate this case for the sake of judicial economy and efficiency to all parties. Specifically, the State of Wisconsin requests that the Court first decide the issue of whether the actions of defendant Kratz, upon which the plaintiff's complaint is based, occurred in the scope of his employment such that the State of Wisconsin is obligated to provide representation and indemnification to defendant Kratz, pursuant to Wis. Stats. § 895.46(1)(a). There are obvious and significant financial implications for both the State of Wisconsin and defendant Kratz personally if the issue of the State's obligation to provide representation and indemnification is not resolved early.

The undersigned does not, by appearing in this action on behalf of the State of Wisconsin, waive the state's sovereign immunity to suit.

WHEREFORE, the State of Wisconsin respectfully asks this Court to permit the State of Wisconsin to intervene in this action and further respectfully asks this Court to bifurcate the action.

Dated this 18th day of January, 2011

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General

s/Carrie Benedon
CARRIE BENEDON
Assistant Attorney General
State Bar #10055436

s/Monica Burkert-Brist
MONICA BURKERT-BRIST
Assistant Attorney General
State Bar #1009882

Attorneys for the State of Wisconsin,
Proposed Intervenor

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608)-266-9231
(608) 267-8906 (Fax)
benedoncm@doj.state.wi.us
burket-bristm@doj.state.wi.us