

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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John H. Reuer and Larry R. Maetzold,

Case No.: 09-CV-1798 (MJD/RLE)

Plaintiffs,

vs.

Grand Casino Hinckley and Grand  
Casino's, Inc.,

Defendants.

**MEMORANDUM IN SUPPORT OF  
DEFENDANT THE CORPORATE  
COMMISSION OF THE MILLE LACS  
BAND OF OJIBWE INDIANS D/B/A  
GRAND CASINO HINCKLEY'S  
MOTION TO DISMISS**

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**INTRODUCTION**

Plaintiffs John Reuer and Larry Maetzold were employed as table games dealers by The Corporate Commission of the Mille Lacs Band of Ojibwe Indians d/b/a Grand Casino Hinckley (the Corporate Commission) from approximately March 1993 until their respective terminations on or about June 27, 2008. Following their termination, Plaintiffs commenced the present litigation alleging that they were terminated based on their alleged disabilities in violation of the Americans with Disabilities Act (ADA). However, Plaintiffs cannot proceed with this lawsuit because the Court does not have jurisdiction. First, the Corporate Commission enjoys sovereign immunity from Plaintiffs' claims in federal court. Second, the ADA does not apply to the Corporate Commission so there is no federal question presented to this Court. For these reasons, Plaintiffs' lawsuit against the Corporate Commission must be dismissed. Plaintiff Maetzold's claim against the Corporate Commission must be dismissed for the independent and additional reason that he lacks standing to assert his claim.

### **PROCEDURAL AND FACTUAL BACKGROUND**

The Mille Lacs Band of Ojibwe Indians (the Mille Lacs Band) is a federally recognized, sovereign constituent of the Minnesota Chippewa Tribe. 73 FR 18553-01 (attached as *Exhibit A* to *Affidavit of John J. McDonald, Jr.*) (McDonald Aff.) (acknowledging that the Mille Lacs Band has “the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such tribes”); *Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota* pg. 1 (attached as *Exhibit B* to *McDonald Aff.*). The Mille Lacs Band possesses and exercises all inherent sovereign powers of a tribal government. *Exhibit A; Exhibit B* pg. 1.

The Mille Lacs Band established the Corporate Commission “as a Corporate Body Politic” to manage the Mille Lacs Band’s corporate interests. *Title 16 of the Mille Lacs Band Statutes Annotated* at §101 (attached as *Exhibit C* to *McDonald Aff.*). “As a Corporate Body Politic, the Corporate Commission is both a political subdivision [of the Mille Lacs Band] . . . and a separately chartered corporation.” *Id.* As a political subdivision of the Mille Lacs Band, the Corporate Commission is entitled to the same privileges and immunities as the Mille Lacs Band: “The Corporate Commission shall be clothed by federal and tribal law with all the privileges and immunities of the [Mille Lacs] Band . . . , including sovereign immunity from suit in any state, federal or tribal court.” *Id.* at §109(a). *See also Id.* at §101 (“As a Corporate Body Politic, the Corporate Commission is . . . clothed by federal and tribal law with all the privileges and

immunities of the [Mille Lacs] Band.”); *Id.* at §1101(b)(1) (“Such Corporate Body Politic shall also be a political subdivision of the [Mille Lacs] Band conferred with all privileges and immunities contained as such.”). The Corporate Commission’s sovereign immunity may only be waived by a formal resolution of the Corporate Commission’s Board of Directors. *Id.* at §109(b)(1).

The Corporate Commission is one arm of the executive branch of the Mille Lacs Band government, and is responsible for and the means through which the Mille Lacs Band engages in business and economic development endeavors. *Id.* at §106; *Title 4 of the Mille Lacs Band Statutes Annotated* at §4 (attached as *Exhibit D* to *McDonald Aff.*). The purposes of the Corporate Commission include controlling and monitoring the economic affairs of the Mille Lacs Band and establishing and operating commercial enterprises as the Corporate Commission may deem to be for the benefit of the Mille Lacs Band. *Exhibit C* at §102(b) and (c). The specifically enumerated powers of the Corporate Commission include engaging “in business and economic development endeavors” and regulating the Mille Lacs Band’s gaming enterprises. *Id.* at §106(a) and (e).

One of the gaming enterprises the Corporate Commission conducts business as is the Grand Casino Hinckley. *Affidavit of Michael B. Wacker* at ¶2. *See also Title 15 of the Mille Lacs Band Statutes Annotated* at §3(cc) (Excerpts of *Title 15 of the Mille Lacs Band Statutes Annotated* are attached as *Exhibit E* to *McDonald Aff.*) (defining “gaming enterprise” under the Mille Lacs Band Statutes as “the Grand Casino Mille Lacs, the Grand Casino Hinckley and any other commercial facility or business owned by the

[Mille Lacs] Band through the Corporate Commission and operated, in whole or in part, for the conduct of [g]aming or related to [g]aming [a]ctivities within the jurisdiction of the [Mille Lacs] Band”). Therefore, all individuals working at Grand Casino Hinckley are employed by the Corporate Commission. *Affidavit of Michael B. Wacker* at ¶3.

Plaintiffs began their employment as table games dealers at the Corporate Commission in approximately March 1993. *Amended Complaint* at ¶4; *Affidavit of Michael B. Wacker* at ¶4. On or about June 27, 2008, Plaintiffs were terminated from their employment at the Corporate Commission. *Amended Complaint* at ¶4.

Following their terminations, Plaintiffs filed charges of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC), which were cross-filed with the Minnesota Department of Human Rights (MDHR). *Charges of Discrimination* (attached as *Exhibit F* to *McDonald Aff.*). In their charges, Plaintiffs alleged that they were subjected to unlawful discrimination in violation of the ADA. *Id.* Plaintiff Maetzold also alleged that he was subject to retaliation in violation of the ADA. *Id.*

On April 15, 2009, the EEOC issued a Dismissal and Notice of Rights to both Plaintiffs, dismissing their respective charges of discrimination because the EEOC was “unable to conclude that the information obtained establish[ed] [a] violation[] of the statutes.” *Dismissal and Notice of Rights* (attached as *Exhibit G* to *McDonald Aff.*). The MDHR dismissed Plaintiffs’ charges of discrimination on May 14, 2009. *MDHR’s Notice of Dismissal* (attached as *Exhibit H* to *McDonald Aff.*).

Plaintiffs filed a Complaint in this matter on July 13, 2009. *Complaint* (on file). On August 24, 2009, Plaintiffs filed an Amended Complaint. *Amended Complaint* (on

file). In their Amended Complaint, Plaintiffs allege that their employment at the Corporate Commission was terminated based on their respective alleged disabilities in violation of the ADA. *Id.* at ¶3.

On September 3, 2009, the Corporate Commission received the following documents via certified mail: (1) Notice of a Lawsuit and Request to Waive Service of a Summons; (2) Waiver of the Service of Summons; (3) Summons in a Civil Action; (4) Civil Cover Sheet; and (5) an unsigned copy of the Amended Complaint. *Affidavit of Michael B. Wacker* at ¶5. Pursuant to Rule 4(d) of the Federal Rules of Civil Procedure, on September 30, 2009, the Corporate Commission signed the Waiver of the Service of Summons and returned it to Plaintiffs. *Waiver of the Service of Summons* (on file).

Because the Corporate Commission has sovereign immunity and the ADA does not permit a claim against the Corporate Commission, this Court does not have jurisdiction of Plaintiffs' claims against the Corporate Commission in this matter. Therefore, Plaintiffs' lawsuit against the Corporate Commission must be dismissed. Plaintiff Maetzold's claim against the Corporate Commission must be dismissed for the independent and additional reason that he lacks standing to assert his claim

### **LEGAL STANDARD**

The federal court's jurisdiction is limited to that which is recognized by the United States Constitution or federal statute: "Federal courts are not courts of general jurisdiction and have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Marine Equip. Mgmt. Co. v. United States*, 4 F.3d 643, 646 (8th Cir. 1993) (citing *Bender v. Williamsport Area Sch.*

*Dist.*, 475 U.S. 534, 541, 106 S. Ct. 1326, 1331 (1986)). Thus, “[s]ubject-matter jurisdiction is a threshold requirement which must be assured in every federal case.” *Kronhom v. Fed. Deposit Ins. Corp.*, 915 F.2d 1171, 1174 (8th Cir. 1990) (citing *Barclay Square Properties v. Midwest Fed. Sav. & Loan*, 893 F.2d 968, 969 (8th Cir. 1990)). A party may challenge the court’s subject matter jurisdiction at any time because the defense may not be waived. *Bueford v. Resolution Trust Corp.*, 991 F.2d 481, 485 (8th Cir. 1993) (stating, “Lack of subject matter jurisdiction, unlike many other objections to the jurisdiction of a particular court, cannot be waived.”). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

“In order to properly dismiss an action [for lack of subject matter jurisdiction], the challenging party must successfully attack the [c]omplaint, either upon its face or upon the factual truthfulness of its averments.” *Moubry v. Ind. Sch. Dist. No. 696*, 951 F. Supp. 867, 882 (D. Minn. 1996) (citing *Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993) and *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990)). “If the defendant brings a facial challenge – a challenge that, even if truthful, the facts alleged in a [c]omplaint are insufficient to establish jurisdiction – the [c]ourt reviews the pleadings alone, and ‘the non-moving party [is afforded] the same protections that it would receive under a Rule 12(b)(6) motion to dismiss.’” *Coleman v. Duluth Police Dept.*, 2009 WL 921145, \*8 (D. Minn. Mar. 31, 2009)<sup>1</sup> (quoting *Carlson Holdings, Inc. v. NAFCO Ins.*

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<sup>1</sup> A copy of the unpublished decision in *Coleman v. Duluth Police Dept.*, 2009 WL 921145 (D. Minn. Mar. 31, 2009) is attached as *Exhibit I* to *McDonald Aff.*

*Co.*, 205 F. Supp.2d 1069, 1073 (D. Minn. 2001)). Thus, “[t]he court presumes that all of the factual allegations in the complaint concerning jurisdiction are true and will not dismiss the claims unless the plaintiff fails to allege an element necessary for subject matter jurisdiction.” *Coleman*, 2009 WL 921145 at \*8 (quoting *Carlson Holdings, Inc.*, 205 F. Supp.2d at 1073).

“In a factual challenge to jurisdiction, the court may consider matters outside the pleadings.” *Brown v. Medtronic, Inc.*, 619 F. Supp.2d 646, 649 (D. Minn. 2009). Further, “no presumptive truthfulness attaches to the plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of the jurisdictional claims.” *Osborn*, 918 F.2d at 730 (citing *Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3rd Cir. 1977)).

Regardless of the nature of the challenge to jurisdiction, it is well-settled that the “plaintiff has the burden of establishing that subject matter jurisdiction exists.” *Jones v. Gale*, 470 F.3d 1261, 1265 (8th Cir. 2006). Plaintiffs are unable to meet their burden in this case. Rather, it is clear that the Court does not have jurisdiction to hear Plaintiffs’ claims against the Corporate Commission. Therefore, Plaintiffs’ lawsuit against the Corporate Commission must be dismissed.

### **ARGUMENT**

#### **I. The Corporate Commission Enjoys Sovereign Immunity from Plaintiffs’ Claims in Federal Court.**

The Court does not have jurisdiction to hear Plaintiffs’ claims against the Corporate Commission because the Corporate Commission enjoys sovereign immunity.

“Indian tribes are distinct, independent political communities, retaining their original natural rights in matters of local self-government.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55, 98 S. Ct. 1670 (1978) (citations omitted). “Indian tribes have long been recognized as possessing . . . immunity from suit traditionally enjoyed by sovereign powers.” *Id.* at 58 (citations omitted). “[A]n Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998). “[A]bsent either a clear waiver of immunity by the Tribe itself, or congressional abrogation of that immunity, Tribes are immune from suit.” *Coleman*, 2009 WL 921145 at \*25. “Ultimately, we adhere to a ‘strong presumption in favor of tribal sovereign immunity.’” *Id.* (quoting *Smith v. Babbit*, 875 F. Supp. 1353, 1359 (D. Minn. 1995) (further quotation omitted)).

The Mille Lacs Band is a federally recognized Indian tribe. *Exhibit A*. As such, the Mille Lacs Band possesses sovereign immunity from suit. The Corporate Commission also enjoys sovereign immunity from Plaintiffs’ claims because “a tribe’s sovereign immunity extends to its agencies.” *Ferguson v. SMSC Gaming Enter.*, 475 F. Supp.2d 929, 930-931 (D. Minn. 2007) (holding that the Gaming Enterprise responsible for operating the Indian tribe’s casino is a branch of the tribal government) (citing *Hagen v. Sisseton-Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1044 (8th Cir. 2000) (holding that a community college chartered by the Sisseton-Wahpeton Sioux Tribe to provide post-secondary education to tribal members on the reservation was an arm of the tribe and entitled to sovereign immunity); *Dillon v. Yankton Sioux Tribe Hous. Auth.*, 144 F.3d 581, 583 (8th Cir. 1998) (holding that “a housing authority, established by a tribal council



pursuant to its powers of self-government, is a tribal agency” and therefore, entitled to sovereign immunity)). *See also Kiowa Tribe*, 523 U.S. at 754-755 (stating that the Supreme Court has not “yet drawn a distinction between governmental and commercial activities of a tribe”). “Case law establishes that a corporation organized under tribal laws, controlled by the tribe, and operated for governmental purposes can assert the tribe’s immunity as a defense.” *Dillon*, 144 F.3d at 583. *See also Hagen*, 205 F.3d at 1044; *EEOC v. Fond du Lac Heavy Equip. & Constr. Co.*, 986 F.2d 246, 248 (8th Cir. 1993) (holding that the Age Discrimination in Employment Act did not apply to a construction company wholly-owned and chartered by the Fond du Lac Band of Lake Superior Chippewa, a federally recognized Indian tribe); *Ferguson*, 475 F. Supp.2d at 930-931 (holding that the Gaming Enterprise responsible for operating the Indian tribe’s casino is a branch of the tribal government).

Here, the Corporate Commission is organized under the Mille Lacs Band Statutes and established by the Mille Lacs Band “as a Corporate Body Politic” to manage the Mille Lacs Band’s corporate interests. *Exhibit C* at §101. “As a Corporate Body Politic, the Corporate Commission is both a political subdivision [of the Mille Lacs Band] . . . and a separately chartered corporation.” *Id.* The Mille Lacs Band Statutes also expressly provide that the Corporate Commission is responsible for and the means through which the Mille Lacs Band engages in business and economic development endeavors. *Id.* at §106; *Exhibit D* at §4. In addition, the purposes of the Corporate Commission include controlling and monitoring the economic affairs of the Mille Lacs Band and establishing and operating commercial enterprises as the Corporate Commission may deem to be for

the benefit of the Mille Lacs Band. *Exhibit C* at §102(b) and (c). One of the enterprises the Corporate Commission conducts business as – for the benefit of the Mille Lacs Band – is Grand Casino Hinckley. Thus, based on the plain language of the Mille Lacs Band Statutes, the Corporate Commission is both a political subdivision of the Mille Lacs Band and a separate “corporation organized under tribal laws, controlled by the tribe, and operated for governmental purposes.” *Dillon*, 144 F.3d at 583. As such, the Mille Lacs Band’s sovereign immunity extends to the Corporate Commission.

Moreover, the Mille Lacs Band Statutes expressly confer the Mille Lacs Band’s sovereign immunity on the Corporate Commission: “The Corporate Commission shall be clothed by federal and tribal law with all the privileges and immunities of the [Mille Lacs] Band . . . , including sovereign immunity from suit in any state, federal or tribal court.” *Exhibit C* at §109(a). *See also Id.* at §101 (“As a Corporate Body Politic, the Corporate Commission is . . . clothed by federal and tribal law with all the privileges and immunities of the [Mille Lacs] Band.”); *Id.* at §1101(b)(1) (“Such Corporate Body Politic shall also be a political subdivision of the [Mille Lacs] Band conferred with all privileges and immunities contained as such.”). The Corporate Commission’s sovereign immunity may only be waived by a formal resolution of the Corporate Commission’s Board of Directors. *Id.* at §109(b)(1). The Corporate Commission has not waived its sovereign immunity with regard to this action, but rather, specifically asserts its sovereign immunity against the exercise of jurisdiction by this Court.

Simply, the Corporate Commission enjoys sovereign immunity from Plaintiffs’ claims in federal court. Rather, the jurisdiction of this matter lies exclusively with the

Mille Lacs Band's Court of Central Jurisdiction. *Title 5 of the Mille Lacs Band Statutes Annotated* at §111 (attached as *Exhibit J* to *McDonald Aff.*). Therefore, Plaintiffs' lawsuit against the Corporate Commission must be dismissed.

## **II. The ADA Does Not Permit Plaintiffs' Claims Against the Corporate Commission.**

The only claim asserted against the Corporate Commission in Plaintiffs' Amended Complaint is a claim of disability discrimination in violation of the ADA. *See generally, Amended Complaint.* However, the ADA does not permit a claim against the Corporate Commission. Therefore, there is no federal question presented to this Court and Plaintiffs' lawsuit against the Corporate Commission must be dismissed because the Court lacks jurisdiction in this matter. *See Ferguson*, 475 F. Supp.2d at 931-932 (stating that because Title VII does not apply to defendants, there is no federal question presented and the court does not have jurisdiction over the subject matter of the lawsuit); *Charland v. Little Six, Inc.*, 198 F.3d 249 (8th Cir. 1999) (per curiam)<sup>2</sup> (affirming dismissal of plaintiff's claims under Title VII and the ADA for lack of subject matter jurisdiction because Title VII and the ADA explicitly exempt Indian tribes from the definition of employer).

The ADA forbids "employers" from engaging in discrimination based on disability. 42 U.S.C. § 12112(a); 42 U.S.C. § 12111(2). The ADA expressly excludes Indians tribes from the definition of "employer," stating: "The term 'employer' does not

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<sup>2</sup> A copy of the unpublished decision in *Charland v. Little Six, Inc.*, 198 F.3d 249 (8th Cir. 1999) (per curiam) is attached as *Exhibit K* to *McDonald Aff.*

include - - (i) . . . an Indian tribe.” 42 U.S.C. § 12111(5)(B). This exclusion includes not only Indian tribes, but also all tribal entities.

The case law relating to the exclusion of Indian tribes from the definition of employer under the ADA is limited. However, Title VII of the Civil Rights Act also specifically excludes Indian tribes from the definition of employer: “The term ‘employer’ . . . does not include (1) . . . an Indian tribe.” 42 U.S.C. § 2000e(b). The Supreme Court has explained that, “[t]his exception reveals a clear congressional recognition, within the framework of Title VII, of the unique legal status of tribal and reservation-based activities.” *Morton v. Mancari*, 417 U.S. 535, 545-46, 94 S. Ct. 2474 (1974). This exclusion has consistently been held to mean that “Title VII claims cannot be brought against Indian tribes or their agencies or businesses.” *Ferguson*, 475 F. Supp.2d at 931. *See also Bruns v. Leech Lake Reservation Hous. Auth.*, 1997 WL 882911, \*4 (D. Minn. Sept. 29, 1997)<sup>3</sup> (holding that an Indian tribe and its political subdivisions “are entirely immune from suit under Title VII”).

Because the ADA is patterned after Title VII, and the definition of “employer” under both the ADA and Title VII specifically excludes “Indian tribes,” case law interpreting the exclusion of Indian tribes under Title VII is relevant to interpreting the ADA. *Skomsky v. Speedway SuperAmerica, LLC*, 267 F. Supp.2d 995, 1000 (D. Minn.

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<sup>3</sup> A copy of the unpublished decision in *Bruns v. Leech Lake Reservation Hous. Auth.*, 1997 WL 882911 (D. Minn. Sept. 29, 1997) is attached as *Exhibit L* to *McDonald Aff.*

2003) (stating, “Federal anti-discrimination law such as the ADA are patterned after Title VII, and as such should be evaluated similarly”).

In *Ferguson*, the plaintiff, a former casino employee, brought an employment discrimination claim under Title VII of the Civil Rights Act of 1964 against his former employer, SMSC Gaming Enterprise, which operated Mystic Lake Casino. *Ferguson*, 475 F. Supp.2d at 930. As a threshold matter, the court determined that as an agency of the Shakopee Mdewakanton Sioux Community of Minnesota, SMSC Gaming Enterprise was entitled to sovereign immunity. *Id.* at 930-931. The court also found that “even if the tribe had waived its sovereign immunity,” the plaintiff could not establish that the court had jurisdiction over his claims because Title VII does not apply to SMSC Gaming Enterprise. *Id.* at 931-932. Therefore, the court dismissed the plaintiff’s lawsuit for lack of jurisdiction. *Id.*

In addition, in *Charland*, the Eighth Circuit upheld the dismissal of the plaintiff’s claims under both Title VII and the ADA against a corporation wholly owned by the Indian tribe. In *Charland*, the plaintiff, a former employee at Mystic Lake Casino, brought a lawsuit against the Shakopee Mdewakanton Sioux Community, a federally recognized Indian tribe, and Little Six, Inc., a corporation wholly-owned by the Shakopee Mdewakanton Sioux Community. *Id.* at 249 n.1. In the lawsuit, the plaintiff alleged various claims, including disability discrimination in violation of the ADA and Title VII. The Eighth Circuit affirmed the district court’s order adopting the magistrate judge’s report and recommendation finding that “both Title VII and the ADA explicitly exempted Indian tribes from the definition of employer” and dismissing plaintiff’s claims against

both the Shakopee Mdewakanton Sioux Community and Little Six, Inc. under Title VII and the ADA for lack of jurisdiction. *Id.* at 249 n.1.

In opposition to the defendants' subsequent motion for sanctions, the plaintiff argued that her claims against Little Six, Inc. were not frivolous because the phrase "Indian tribe" in the ADA and Title VII "should not be construed in such a way as to include Indian Casinos as those which are excluded from the statutory definition of employer." *Charland v. Little Six, Inc.*, 112 F. Supp.2d 858, 865 (D. Minn. 2000). However, the court stated that the plaintiff's argument "has not been accepted when it has been presented to other courts" and would require a modification to existing law. *Id.* (citing *Giedosh v. Little Wound Sch. Bd., Inc.*, 995 F. Supp. 1052, 1055-56 (D. S. D. 1997) (holding that Congress intended to include a school board established and controlled by individuals of tribe in the definition of "Indian tribe" under Title VII and the ADA exemption); *Setchell v. Little Six, Inc.*, 1996 WL 162560, \*2 (Minn. App. Apr. 9, 1996)<sup>4</sup> (stating, "[i]f it is doubtful that 'Indian tribes' in the ADA means tribally owned corporations, a construction in favor of [Little Six, Inc. d/b/a Mystic Lake Casino, a corporation wholly owned by the Mdewakanton Sioux Community] should be adopted"); *Wardle v. Ute Indian Tribe*, 623 F.2d 670, 672 (10th Cir. 1980) (stating "Indian tribes and businesses operating on or near Indian reservations are excluded from the employment prohibitions of Title VII"))).

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<sup>4</sup> The decision in *Setchell v. Little Six, Inc.*, 1996 WL 162560 (Minn. App. Apr. 9, 1996) is attached as *Exhibit M* to *McDonald Aff.*

As a federally recognized Indian tribe, it is clear that Plaintiffs would not be able to assert a claim under the ADA against the Mille Lacs Band itself. Neither can Plaintiffs escape the ADA's express exclusion of the Indian tribe by bringing a lawsuit against the Corporate Commission, which is a political subdivision of the Mille Lacs Band and an arm of the executive branch of the Mille Lacs Band's government. *Exhibit C* at §101; *Exhibit D* at §4.

Moreover, "it is a settled principle of statutory construction that statutes passed for the benefit of dependent Indian tribes are to be liberally construed, with doubtful expressions being resolved in favor of the Indians." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g, P.C.*, 467 U.S. 138, 104 S. Ct. 2267, 2275 (1984). Thus, even if it is doubtful that the Corporate Commission is excluded from the ADA, the Court must resolve that doubt in favor of the Corporate Commission.

Because the Corporate Commission is a tribal entity excluded from the ADA, there is no federal question presented to this Court. Therefore, Plaintiffs' lawsuit against the Corporate Commission must be dismissed because the Court lacks jurisdiction in this matter.

### **III. Plaintiff Maetzold Lacks Standing to Assert His Claim Against the Corporate Commission.**

On March 30, 2009, Plaintiff Maetzold filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the Western District of Wisconsin. *Voluntary Petition* (on file). "As a consequence of his bankruptcy filing, all of [Plaintiff Maetzold's] nonexempt personal assets, including his claims in . . . this action, became

the property of the Bankruptcy Estate, under the administration of [the] Bankruptcy Trustee.” *Kemp v. Tyson Seafood Group, Inc.*, 19 F. Supp.2d 961, 964 (D. Minn. 1998).

Plaintiff Maetzold identified his claim against the Corporate Commission as an asset in Schedule B of his Voluntary Petition, and in Schedule C of his Voluntary Petition, Plaintiff Maetzold claimed his claim against the Corporate Commission as exempt pursuant to 11 U.S.C. § 522(d)(11)(D). *Schedules B and C of Larry R. Maetzold’s Voluntary Petition in United States Bankruptcy Court, Western District of Wisconsin*, filed on March 30, 2009 (attached as *Exhibit N* to *McDonald Aff.*). Section 522 provides that an individual may claim as exempt “a payment, not to exceed \$20,200, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is dependent.” 11 U.S.C. § 522(d)(11)(D).

In his Amended Complaint, Plaintiff Maetzold seeks damages in the amount of \$75,000 for “physiological and emotional suffering.” While the nature of Plaintiff Maetzold’s alleged damages for “physiological and emotional suffering” is unclear, to the extent that this claim for damages is based on personal bodily injury in excess of \$20,200, Plaintiff Maetzold’s claimed exemption is inappropriate.

To the extent that Plaintiff Maetzold’s claimed exemption is inappropriate, he lacks standing to assert his claim against the Corporate Commission. Rather, “[b]y operation of his Chapter 7 bankruptcy filing, [Plaintiff Maetzold] has forfeited his standing to litigate [his claim] in this action,” as his claim has “become the property of the Bankruptcy Estate, which is represented by . . . the Bankruptcy Trustee. *Kemp*, 19 F.



Supp.2d at 965. “The trustee in a case under Chapter 7 is the sole representative of the estate,” and “it is the trustee of the [estate] who ‘has the capacity to sue and be sued.’” *Id.* (citing *Harris v. St. Louis Univ.*, 114 B.R. 647, 648-49 (E.D. Mo. 1990); 11 U.S.C. § 323(a); *Vreugdenil v. Hoekstra*, 773 F.2d 213, 215 (8th Cir. 1985)). “[A]fter appointment of a trustee, a Chapter 7 debtor no longer has standing to pursue a cause of action which existed at the time the Chapter 7 petition was filed.” *Id.* (quoting *Cain v. Hyatt*, 101 B.R. 440, 442 (E.D. Pa. 1989) (further citations omitted)). Rather, only the trustee of the bankruptcy estate has the authority to prosecute such causes of action. *Id.* (quoting *Cain*, 101 B.R. at 442 (further citations omitted)).

To the extent that Plaintiff Maetzold seeks damages in excess of \$20,200 for personal bodily injury in this matter, his claimed exemption of his claim against the Corporate Commission is inappropriate. In the event that his claimed exemption is inappropriate, Plaintiff Maetzold lacks standing to assert his claim against the Corporate Commission.

### **CONCLUSION**

For the reasons set forth above, Defendant The Corporate Commission of the Mille Lacs Band of Ojibwe Indians d/b/a Grand Casino Hinckley respectfully requests that this Court issue an Order dismissing Plaintiffs’ lawsuit against Defendant The Corporate Commission of the Mille Lacs Band of Ojibwe Indians d/b/a Grand Casino Hinckley in its entirety.

Dated: November 2, 2009

s/John J. McDonald, Jr.  
John J. McDonald, Jr. (#136815)  
Margaret R. Ryan (#0331181)  
Meagher & Geer, P.L.L.P.  
33 South Sixth Street, Suite 4400  
Minneapolis, Minnesota 55402  
(612) 338-0661

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*Attorneys for Defendant The Corporate  
Commission of the Mille Lacs Band of  
Ojibwe Indians d/b/a Grand Casino  
Hinckley*