

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

STATE OF MICHIGAN,

Plaintiff,

Case No. 1:10-cv-1273

v.

HONORABLE PAUL L. MALONEY

BAY MILLS INDIAN COMMUNITY,

Defendant

and

LITTLE TRAVERSE BAY  
BANDS OF ODAWA INDIANS,  
Plaintiff,

Case No. 1:10-cv-1278

v.

HONORABLE PAUL L. MALONEY

BAY MILLS INDIAN COMMUNITY  
Defendant.

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**MOTION TO STAY INJUNCTION PENDING APPEAL OF RIGHT**

**EXPEDITED CONSIDERATION REQUESTED**

Now Comes Defendant Bay Mills Indian Community, by its attorneys, and pursuant to Fed. R. Civ. P. 7(b) and 62(c) moves to stay this Court's March 29, 2011 Order preliminarily enjoining the Defendant Bay Mills Indian Community from continuing to operate the casino on its lands in Vanderbilt, Michigan, pending appeal. In support of its motion, Defendant submits its Brief pursuant to W.D. Mich. LCivR 7.1.

Pursuant to U.S.C. §1292(a)(1), Defendant has appealed by right the March 29, 2011 Order. ECF No. 39. There is a substantial likelihood of success on the merits of the appeal for

two reasons. First, Plaintiff Little Traverse Bay Bands of Odawa Indians has failed to properly invoke the jurisdiction of the Court. It is Defendant's position that this Court's holding that it has subject matter jurisdiction and that the sovereign immunity enjoyed by Defendant has been abrogated by 28 U.S.C. §1331 and/or 28 U.S.C. §1362 are errors of law. Therefore, Defendants believe there is a significant possibility that the United States Court of Appeals for the Sixth Circuit will find that there is no subject matter jurisdiction and reverse as a result. Second, even assuming, *arguendo*, that the Court has jurisdiction, the extraordinary remedy of a preliminary injunction was improperly granted due to the failure of Plaintiff to establish the necessary prerequisites for a grant of injunction and the general rule that injunctions are to maintain the status quo pending litigation not, as was the case here, to significantly alter the status quo at the early stages of a litigation. For these reasons as well, there is a significant chance of reversal by the Sixth Circuit.

In addition, the injunction is causing irreparable harm to Defendant and others. Most significantly, should the injunction not be stayed, the employees at the Vanderbilt facility will be deprived of the opportunity to earn a living. Local governments will similarly be harmed by the deprivation of critical income in the form of their respective shares of gaming revenues. It is for these reasons as well that expedited consideration of this motion is necessary.

In support of this Motion, Defendant Bay Mills Indian Community incorporates by reference its Answer (ECF No. 12), and its Response to Plaintiff's Motion for Preliminary Injunction ECF Nos. 14-18), as well as the attached Brief in Support of Defendant's Motion to Stay Injunction Pending Appeal of Right as if fully stated herein.

Pursuant to L.R. 7.1(d) counsel for Defendant attempted to obtain concurrence in the instant motion from Plaintiff's counsel. Plaintiff's counsel opposes such motion.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that the Court issue an Order **Staying** the March 29, 2011 preliminary injunction pending a decision on Defendant's appeal to the Sixth Circuit and any further appeals.

Respectfully submitted,

BAY MILLS INDIAN COMMUNITY

By /s/ Chad P. DePetro

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 5<sup>th</sup>, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

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