

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

**Attorney's Process and Investigation
Services, Inc.,**

Plaintiff,

vs.

Sac and Fox Tribe of the Mississippi in Iowa,

Defendant.

Case No. 1:05-CV-168LRR

**BRIEF IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

ARGUMENT

The Eighth Circuit Court of Appeals remanded this case for consideration of a single issue: does the Tribe's claim API converted tribal funds bring it within the jurisdiction of the Tribal Court under the first Montana exception? The Court of Appeals stated, "The operative question for jurisdictional purposes is whether the conversion claim has a sufficient nexus to the consensual relationship between Walker and API," to provide for Tribal Court jurisdiction. Attorney's Process and Investigation Services, Inc. v. Sac and Fox Tribe of the Mississippi in Iowa, 609 F.3d 927, 941 (8th Cir. July 7, 2010) ("API Fed. App.").

The Court of Appeals said that “the starting point for the jurisdictional analysis is to examine the specific conduct the Tribe’s legal claim would seek to regulate,” and that “[t]he Montana exceptions focus on ‘the activities of nonmembers’ or the ‘conduct of non-Indians.’” Id. at 937 (internal citations omitted). The Eighth Circuit directed that each claim must be analyzed individually, applying the Montana principles to determine whether the Tribal Court

has subject matter jurisdiction over API based on a specific claim, and that this Court must “rely on the record developed in the tribal courts and the allegations of the Tribe’s complaint.” Id. at 937. The record developed in the Tribal Court includes the allegations of the Tribe’s complaint, and, because the Eighth Circuit accepted as proven facts those allegations API did not dispute in the Tribal Court, the Tribe’s allegations are now the facts of this case.¹

The Eighth Circuit also held that in considering the jurisdictional question, one cannot focus strictly on the “abstract elements of the tribal claim at issue, but must focus on the specific nonmember conduct alleged,” and must take a “functional view of the regulatory effect on the nonmember.” Id. at 938. This is because “the context [of the claim] is also significant, and other aspects of the conduct the claims seek to regulate are pertinent to the extent they demonstrate encroachment upon sovereign tribal interests recognized by Montana and its progeny.” Id., at 938. Consequently, when analyzing whether the Tribal Court has jurisdiction of the conversion claim, one cannot simply focus on the abstract elements of the claim, or the facts stated in that specific Count of the Complaint, but proper consideration must also be given to how the Tribe’s sovereign interests were harmed by API’s conversion. Here, as both this Court and the Eighth Circuit have held, the “encroachment on the Tribe’s sovereign interests” was an attempted coup d’état. API illegally converted tribal funds in violation of the Constitution of the Sac & Fox Tribe of the Mississippi in Iowa to plan and execute the coup *on the Tribe’s trust land*.

The context in which conversion of the Tribe’s funds occurred was the Tribe’s leadership dispute, to further efforts by ex-Chairman, Alex Walker, to seize by force of arms what democratic elections denied him; control of the Tribe’s government and the Tribe’s Meskwaki · Bingo · Casino · Hotel (the “Casino”). Walker, like a tinhorn dictator of a third world country,

¹ The Eighth Circuit Court of Appeals stated, “API has not contested any of the allegations made by the Tribe, and we therefore take them as true for present purposes.” API Fed. App. at 937.

refused to accept the democratically expressed will of the Sac and Fox people, and API readily inserted itself into the Tribe's internal relations and self-governance to accomplish Walker's aims, supplying surveillance, reconnaissance, investigations, planning, and most significantly, the armed force that executed the attempted coup d'état.

Other aspects of non-member conduct the Tribe seeks through its conversion claim to regulate (besides the direct conversion of its funds to bankroll an attempt to illegally overthrow the Tribe's duly elected governing body) are, broadly speaking, the activities of non-member businesses conducted on the Tribe's Settlement, and the manner in which tribal funds can be received by the non-member for such activities. More specifically, the Tribe seeks to regulate activities (by non-members who have converted tribal funds), directed at fomenting violence against the Tribe's government on its lands. It also seeks to regulate non-members converting tribal funds to conduct investigations, on its lands, of members of its duly elected governing body, and the use of tribal funds by nonmembers to conspire with tribal members to use force of arms and threats of violence in an attempt to take over the Tribe's government and Casino.

Particularly significant is the fact that throughout this litigation, in both the tribal and federal court systems, API has consistently argued that its receipt of tribal funds (i.e., its conversion of tribal funds) had everything to do with its consensual relationship with Walker. As this Court knows, API has always acknowledged that it received every dollar of the funds at issue here from Walker, pursuant to its consensual relationship with him, and that it knew the funds it took were tribal funds. E.g., Sac and Fox Tribe of the Mississippi in Iowa v. Attorney's Process and Investigation Services, Inc. S&F App. Ct. (Dec. 23, 2008) (hereinafter API Appeal I) at 3 (S&F 0105); API Reply To the Tribe's Statement of Undisputed Facts ¶7 (S&F 0053); API Fed. Ct. Complaint ¶¶3, 12, 16 (S&F 0062-0065); API Federal Court Memorandum of

Authority in Support of API's Resistance to the Tribe's Motion to Dismiss at 19-20 (March 1, 2009); API Federal Appellate Court Brief at 36 (S&F 0074). In fact, the only significant benefit that API obtained from acting as Walker's mercenary force was access to millions of dollars in tribal funds. It appears virtually impossible to imagine a nexus between the Tribe's conversion claim against API and its consensual relationship with Walker more inextricably intertwined than this. Through its consensual relationship with Walker, API converted tribal funds in payment for investigations it conducted *on the Settlement* of Tribal Council members, and for planning and executing, *on the Settlement*, a coup d'état against the duly elected governing body of the Tribe. Without question, the Tribe's conversion claim has a sufficient nexus to the consensual relationship between Walker and API to support tribal court jurisdiction over API.

It is settled law that the Tribe was not a party to the contract API entered into with Walker. Therefore, API will need to repay the Tribe the money it illegally converted and used to fund its mercenary activities. Nor can API complain that the Tribal Court will enter a judgment on the Tribe's conversion claim given it was API who asked the Tribal Court to determine whether its contract with Walker bound the Tribe. API Motion to Dismiss Tribal Court Proceedings; API Appeal I slip op. at 6 (S&F 0108). The Meskwaki Tribal Court has jurisdiction over API under the first Montana exception, and judgment should be entered for the Tribe.

I. STANDARD FOR SUMMARY JUDGMENT.

On a motion for summary judgment, the moving party bears the initial burden of demonstrating that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. Proc. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). When determining whether the movant has fulfilled its burden, the court must view

the evidence in the light most favorable to the non-moving party. Barry v. Barry, 78 F.3d 375, 379 (8th Cir. 1996); Michalski v. Bank of America Ariz., 66 F.3d 993, 995 (8th Cir. 1995).

While the moving party bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law; to avoid summary judgment the nonmoving party must demonstrate the existence of specific facts in the record that create a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials and must do more than simply show that there is some metaphysical doubt as to the material facts. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” Anderson, 477 U.S. at 247-48. A genuine issue of material fact only exists if: (1) there is a disputed fact; (2) the disputed fact is material to the outcome of the case; and (3) the dispute is genuine, that is, a reasonable jury could return a verdict for either party. RSBI Aerospace, Inc. v. Affiliated FM Ins. Co., 49 F.3d 399, 401-402 (8th Cir. 1995).

Therefore, a disputed fact is material if it will affect the outcome of the suit, and a dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 248.

Under the specific procedural posture of this case, the facts alleged by the Tribe in its complaint, taken with the factual findings of the Tribe’s trial and appeals courts, supplemented by facts of which this Court can take judicial notice, constitute the undisputed facts here. The Eighth Circuit’s decision on API’s appeal established the facts here, consequently there are no disputed material facts, and this matter is ripe for summary judgment.

II. THE TRIBAL COURT HAS JURISDICTION UNDER THE “CONSENSUAL” PRONG OF THE MONTANA TEST.

In Montana, the Supreme Court discussed two independent grounds for tribal civil regulatory jurisdiction over non-members:

To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

450 U.S. at 565 (citations omitted, emphasis added). See also Nevada v. Hicks, 533 U.S. 353 (2001) (reiterating the validity of both “Montana exceptions”).

In Strate v A-1 Contractors, 520 U.S. 438 (1997), the Supreme Court held that the Montana Rule, including both of its exceptions, defines the scope of a Tribe’s adjudicatory power:

Regarding activity on non-Indian fee land within a reservation, Montana delineated--in a main rule and exceptions--the bounds of the power tribes retain to exercise "forms of civil jurisdiction over non-Indians." As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction.

520 U.S. 438, 453 (citation omitted). Under the consensual prong of the test, the Meskwaki Tribal Court therefore has jurisdiction related to “activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.”

A. THE COURT OF APPEALS REMANDED TO ALLOW THIS COURT TO DETERMINE WHETHER THERE IS A SUFFICIENT NEXUS BETWEEN THE TRIBE’S CONVERSION CLAIM AND API AND WALKER’S CONSENSUAL AGREEMENT TO SUSTAIN TRIBAL COURT JURISDICTION.

In its July 7, 2010 Opinion, the Court of Appeals for the Eighth Circuit instructed that the Tribal Court has jurisdiction under the first Montana exception if: 1) API entered into a consensual relationship with the Tribe or a tribal member, and 2) “the conversion claim has a sufficient nexus to the consensual relationship”. API Fed. App., 609 F.3d at 941 (emphasis added). Its holding is consistent with the precedent from the Supreme Court and federal appeals courts. E.g., Montana (expressly stating that the qualifying consensual relationship can be with a tribal member); Plains Commerce Bank v. Long Family Land and Cattle Co., Inc., 544 U.S. 316 (2008) (holding that the bank had a consensual relationship with a tribal member and analyzing whether that consensual relationship provided sufficient nexus for the Tribe to regulate specified activities of the tribal court defendant); Plains Commerce Bank v. Long Family Land and Cattle Co., Inc., 491 F.3d 878 (8th Cir. 2007) (same); Smith v. Salish Kootenai College, 434 F.3d 1127 (9th Cir. 2006) (in upholding tribal court jurisdiction, the Court held that the College was a “tribal member” for purposes of Montana analysis); Allstate Indem. Co v. Stump, 191 F.3d 1071 (9th Cir. 1999) (in requiring exhaustion of tribal court remedies, the Court held that the insurer’s commercial relationship with a tribal member met the consensual relationship requirement for tribal jurisdiction).

The Eighth Circuit Court of Appeals reversed that part of this Court’s June 18, 2009 Order of finding the Tribe’s conversion claim came within the second Montana exception, and that the tribal court therefore had jurisdiction over API. Although this Court stated, in dicta, that it would not have upheld Tribal Court jurisdiction under the first Montana exception, the Eighth Circuit clarified that under the first exception the consensual relationship did not have to be with

the Tribe, but could also be with a tribal member, and noted this Court had not decided the issue. It therefore remanded to allow this Court to determine whether there is sufficient nexus between the Tribe's conversion claim and the contract between API and Walker (the consensual relationship) to sustain an exercise of jurisdiction over API by the Meskwaki Tribal Court.

As it has in prior proceedings in this Court, API argued on appeal to the Eighth Circuit that the first Montana exception did not apply, because the Tribe did not plead in its Tribal Court complaint that API had entered into a consensual relationship with the Tribe or Walker. The Tribe responded by showing that API pled, obtained discovery on, and litigated - in the tribal court - the existence and legal status of its consensual relationship, and the tribal court determined that the consensual relationship was not with the Tribe, but that it was with Walker, an individual tribal member.

The Tribe's position - that the boundaries of tribal court jurisdiction must be determined based upon the allegations of the complaint, supplemented by the findings of fact on issues the parties litigated in the Tribal Court, and that the context in which the claims arose is particularly important - was confirmed by the court of appeals. API Fed. App., 609 F.3d at 937. The appeals court also held that, under the present record, API *did* have a consensual relationship with Walker, a tribal member. API Fed. App., 609 F.3d at 941. Consequently, settled law in this case holds that a consensual relationship exists between API and Walker, a tribal member, and this aspect of the jurisdictional analysis under the first Montana exception is satisfied.

In their briefs to the Eighth Circuit, API and the Tribe agreed that the Sac & Fox Tribal Court had adjudicatory jurisdiction *if* the Tribe possessed regulatory authority over API.² E.g.,

² The Tribe's position is that API cannot disavow its own prior assertion - that if the Tribe has regulatory jurisdiction it also has adjudicatory jurisdiction. The record upon which the appeals court based its decision is one in which API equated tribal adjudicatory and regulatory power. In its petition to the United States Supreme Court, API's new attorneys sought to disavow API's prior assertion that

API App. Ct. Br. at 14 (asserting that this Court erred because “the Tribe has no power to regulate API’s conduct”) (S&F 0072); API App. Ct. Br. at 29 (“Since the Tribe may not lawfully regulate API through the tribal civil laws invoked in the Tribe’s Complaint, the tribal court has no civil jurisdiction to adjudicate the Tribe’s claims.”) (S&F 0073). The Court of Appeals confirmed the parties’ position on this issue, clarifying that a “sufficient nexus” exists if, based upon its consensual relationship with Walker, API engaged in conduct (i.e. converting tribal funds) the Tribe had authority to regulate, and stating that jurisdiction “turns upon whether the actions at issue in the litigation are regulable by the Tribe.” API Fed. App., 609 F.3d at 937, quoting Strate v. A-1 Contractors, 520 U.S. 438, 453 (1997). See also Plains Commerce Bank, 554 U.S. 316, 331-32 (holding that tribal tort law is a form of regulation, and that the issue is whether the tribe has the authority to regulate the activities which it is seeking to regulate or remedy through the tort law claim). Consequently, if the Tribe can regulate API’s actions – the conversion of funds from the Tribe’s treasury - its courts can exercise jurisdiction over API to remedy the damage caused by API’s conduct.

The Eighth Circuit Court of Appeals also stated that the Tribe’s authority to adjudicate is strongest where the conduct of nonmembers the Tribe seeks to regulate encroaches “upon the tribal sovereign interests recognized by Montana and its progeny.” API Fed. App., 609 F.3d at 938. Here the Tribe’s sovereign interest in protecting its treasury from plunder by mercenary forces acting at the direction of a deposed former Chairman is sufficiently strong, by itself, to sustain an exercise of jurisdiction by the Tribal Court.

As in its argument to this Court, API’s primary argument on appeal was that the Tribe’s failure to plead in the tribal court that API had a consensual relationship with Walker was fatal to

legislative and adjudicatory power were coextensive, but it is simply too late for API to make the leap this change in its position would require.

any exercise of tribal court jurisdiction. The court rejected API's argument and remanded with clear instructions that this Court must consider API's consensual relationship with Walker. API Fed App., 609 F.3d at 941, 946. The obvious answer to the question whether there is sufficient nexus between the Tribe's conversion claim and the consensual relationship between Walker and API to sustain tribal court jurisdiction is that the Tribe's claim arises entirely out of, and exists exclusively because of API's consensual relationship with Walker, and is inextricably intertwined with it.

The Tribe clearly has authority to control tribal funds, and to regulate unlawful use of its funds, including wrongful conversion of its funds. E.g., Pembina Treaty Committee v. Lujan, 980 F.2d 543 (8th Cir. 1992) (in analyzing whether a tribe is an indispensable party to a suit, the Court recognized the Tribe's significant interest in controlling tribal funds and held that "any order purporting to affect [tribal funds] would impact the tribe's right to self governance," (citing Confederated Tribes of Chehalis Indian Reservation v. Lujan, 928 F.2d 1496, 1499 (9th Cir. 1991); Wichita and Affiliated Tribes v. Hodel, 788 F.2d 765, 774, 777-78 (D.C. Cir. 1986) for this self-apparent rule of law). The Tribe likewise retains inherent sovereign power to regulate disbursements of its funds to ensure disbursements are made in accordance with the Tribe's organic documents, such as its Constitution. API cannot seriously argue the Tribe, as a sovereign, lacks authority to use a tort claim to preclude, define, limit, or otherwise regulate the possession and use of the Tribe's funds. Nor can API argue that the Tribe lacks the authority to prohibit conversion of its funds by nonmembers for their use in conducting a coup d'état, or to prevent government funds from being used illegally by nonmembers to investigate duly elected and validly serving Tribal Council members for actions taken in their official capacity. In short,

the Tribe's conversion claim is a legitimate means through which to regulate use of its funds and to prevent illegal conversion of its funds by mercenaries seeking to overthrow its government.

The Tribe's complaint alleges API's actions, including converting the Tribe's funds, occurred within the Tribe's jurisdiction. Sac and Fox Tribe of the Mississippi in Iowa v. Attorneys Process and Investigation, Inc., Complaint ¶35-37 (Aug. 3, 2005) (S&F 0006). The Tribe has jurisdiction of its trust lands, including all Settlement lands. Consequently, the conversion occurred on the Settlement. The context here, which emanates from the Tribe's leadership dispute, includes a consensual relationship between API and a Sac & Fox tribal member. Walker and API entered their consensual relationship for purposes of conducting investigations of Tribal Council members, and planning and executing an armed attack on the Tribe's Government Center, Gaming Commission, and Casino - all of which occurred on the Settlement. The Tribe alleged, and API did not challenge, that the conversion claim (and all of the Tribe's other claims) "arose within the jurisdiction of the Tribe" and that API "committed torts against the Tribe and harm to tribal real property and to other tribal property on the Settlement." See Plains Commerce Bank, 554 U.S. 316 (the Supreme Court discusses at length the importance of the location of the tort for Montana analysis, and notes that in almost every case a tribal court has jurisdiction over a claim on tribal trust land but rarely has jurisdiction for a tort on fee land). That the conversion of the Tribe's funds occurred on the Settlement (i.e., on the Tribe's trust land) is therefore an established fact for purposes of the Tribe's current motion.

In Plains Commerce Bank, the Supreme Court summarized the nexus required by the first Montana exception as follows: "We cited four cases in explanation of Montana's first exception. Each involved regulation of non-Indian activities on the reservation that had a discernable effect on the tribe or its members." 554 U.S. 316, 332. Plains Commerce quoted with approval the

Court's own prior analysis in Hicks, 533 U.S. 353 that "tribal assertions of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them." The Court stated, "Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. . . . [Tribes] may regulate nonmember behavior that implicates tribal governance and internal relations." 554 U.S. 316, 335. Here, the non-member behavior at issue in the conversion claim is that of API taking tribal funds without tribal permission for purposes of mounting an armed attack on the Tribe's government. API cannot dispute that converting over \$1,000,000 of the Tribe's funds to its own use does have a "discernable effect" on the Tribe. API's conversion strikes at the heart of the Tribe's sovereign interest in regulating the Tribe's treasury, and ensuring nonmembers do not convert tribal funds in violation of the Tribe's federally approved constitutional provisions regulating disbursement of its funds.

**B. THE CONSTITUTION OF THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA
REGULATES PROCEDURES FOR THE DISBURSAL OF TRIBAL FUNDS.**

The Tribe grounds its conversion claim in its retained inherent sovereign authority to determine, as a matter of internal governance, how to control expenditures of funds from the Tribe's treasury and to define the process by which expenditures of tribal funds must be authorized. The Tribe's expression of regulatory authority in this regard is contained in Article X, Section 1(j) of the Tribe's Constitution, which grants the Tribal Council the power "to receive, appropriate and expend for public purposes funds coming within the control of the Tribal Council." It is also contained in Article I, Section 3 of the Tribe's Bylaws, which imposes limits on disbursement of tribal funds, stating, "No money shall be disbursed without the consent of the Tribal Council and without the signature of the Chief and the Treasurer."

The Bear Council never authorized payment of any funds to API; e.g., API Appeal I at 3, 13 (S&F 0105 and S&F 0115); API Fed. App., 609 F.3d at 946, API Reply to the Tribe's Statement of Undisputed Facts at ¶6 (S&F 0052), and neither Tribal Chairman, Homer Bear, Jr., nor Tribal Treasurer, Harvey Davenport, signed any checks or otherwise authorized disbursements to API. API Appeal I at 3-4 (S&F 0105-0106); API Reply to the Tribe's Statement of Undisputed Facts at ¶6 (S&F 0052). See also Bear Aff. ¶8 (S&F 0031); Based on the decisions of the Tribal Court, this Court and the Eighth Circuit Court of Appeals, API took tribal funds in violation of the Tribe's Constitution and Bylaws. E.g., API Fed. App., 609 F.3d at 946 ("Walker simply lacked authority to act on behalf of the Tribe in *any* capacity. . . . The Tribe did not enter into any agreement with API.") (emphasis in original).

As the Tribal Court, this Court and the federal Court of Appeals have each held, the person who purported to enter into the contract with API on behalf of the Tribe lacked *any* authority to bind the Tribe. These established facts lead to the inescapable conclusion that API is legally required to return the tribal funds, and, under the Tribe's Constitution, is subject to the regulatory control the Tribe is imposing through its tort claim for conversion.

As the United States Supreme Court explained in Federal Crop Ins. Corp. v Merrill, 332 U.S. 380 (1947) "anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority," and that this rule applies even if the government agent "may have been unaware of the limitations upon his authority." Id. at 384. Here, rather than ascertain Walker's true authority, API apparently chose to gamble on whether Walker actually possessed the authority API claims he did.

This Court and the Tribe's Appellate Court noted API took a very large risk when it agreed to take tribal funds, based upon its assertion that the former Walker Council was the Tribe's governing body. API took "the risk of having accurately ascertained that he who purported to act for the government stays within the bounds of his authority," *id.* at 384, and as the Tribe's Court of Appeals and this Court have both held, API cannot now be heard to complain that it gambled and lost. API Appeal I at 10 (S&F 0112); Attorney's Process and Investigation, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa, case no. 05-CV-168-LRR slip Op. at 22 (N. D. Iowa June 18, 2009).

API must now face the obvious consequences of its ill-advised bet. It must now also face the fact that the Tribe has the regulatory authority to control the disbursement of funds from tribal accounts. The Tribe's Constitution regulates expenditures by requiring approval of them by the Tribe's governing body, its Tribal Council. As an additional procedural safeguard against theft of tribal funds, the Tribe's Bylaws require the signature of the Chairman and Treasurer on any checks issued by the Tribe for those checks to be valid. These substantive and procedural safeguards are the means by which the Tribe regulates expenditures of its funds. Failure to adhere to them, or allowing them to be violated with impunity, strikes at the very core of the Tribe's ability to make its own laws governing conduct affecting such vital interests as the public treasury, and protecting the integrity of its internal governance. API's conversion affected the Tribe sufficiently to justify tribal court jurisdiction over API under the first Montana exception to hear the Tribe's conversion claim, because the Tribe has the regulatory authority to control the expenditure of tribal funds and to prevent theft of such funds by tribal members or non-members. Plains Commerce Bank, 128 554 U.S. 316, 335. The Tribe therefore respectfully requests this

Court enter judgment holding that the Meskwaki Tribal Court has jurisdiction over API to hear the Tribe's conversion claim.

III. IF THIS COURT WERE TO HOLD THAT THE TRIBAL COURT LACKS JURISDICTION OVER THE CONVERSION CLAIM, IT SHOULD ISSUE A JUDGMENT ON THAT CLAIM AND REMAND ALL REMAINING CLAIMS TO THE TRIBAL COURT FOR DISPOSITION.

As discussed in Section II of this brief, this Court should hold that the Meskwaki Tribal Court has jurisdiction over API to hear the Tribe's conversion claim. If this Court were to reject the Tribe's argument on that issue, however, the settled law and the undisputed facts of this matter establish that API is currently and wrongfully in possession of \$1,022,171.26 of the Tribe's funds. If the Court holds that the Tribal Court lacks jurisdiction, this Court should enter the judgment requiring API to return the tribal funds that API currently, unlawfully, holds.

As discussed above, the established law is that API took the Tribe's funds without authorization from the Tribe and it took those funds in violation of the Tribe's Constitution. It is undisputed that the amount of funds API took is \$1,022,171.26.

While the Tribe's position is that the Tribe's own court should enter the judgment requiring return of the stolen tribal funds, if this Court rejects that argument, then it should conclude the Tribe is entitled to a judgment for return of its funds, and enter judgment requiring API to repay the Tribe \$1,022,171.26, plus interest in an amount to be determined by post judgment proceedings. Fed. R. Civ. Proc. 54(c) (Other than when entering a judgment by default the Court "should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings").


CONCLUSION

For all of the reasons stated in this brief, the Tribe respectfully requests that the Court hold the Tribe does have the authority to regulate use of tribal funds, that there is sufficient nexus

between API and Walker's consensual relationship and the Tribe's conversion claim such that the Tribe can exercise its authority to regulate how its funds will be disbursed and define the legitimate purposes for which its funds can be used, and that the Court enter a judgment dismissing Plaintiff's remaining claims. In the alternative, the Tribe requests that the Court enter a judgment ordering Plaintiff to return to the Tribe, with interest, the \$1,022,171.26 of tribal funds that Plaintiff currently, illegally, possesses.

Respectfully submitted,

February 7, 2011



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