

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

CORPORATE COMMISSION OF THE MILLE:  
LACS BAND OF OJIBWE INDIANS,

Plaintiff,

v.

MONEY CENTERS OF AMERICA, INC.,  
MCA OF WISCONSIN, INC., CHRISTOPHER:  
WOLFINGTON, AND MARK  
WOLFINGTON,

Defendants.

---

No. 0:12-cv-01015-RHK-LIB

**DEFENDANTS' MEMORANDUM**  
**OF LAW IN OPPOSITION TO**  
**MELANIE BENJAMIN'S MOTION**  
**TO QUASH**

**DUANE MORRIS LLP**

James L. Beausoleil, Jr., Esq.

Luke P. McLoughlin, Esq.

Erin M. Carter, Esq.

30 S. 17<sup>th</sup> St.

Philadelphia, PA 19103

215.979.1000

**PATTERSON LAW OFFICE, P.A.**

Robert B. Patterson, Jr., #169146

5101 Thimsen Avenue, Suite 200

Minnetonka, MN 55345

952.224.2851

*Counsel for Defendants Money Centers of  
America, Inc., MCA of Wisconsin, Inc.,  
Christopher Wolfington, and Mark  
Wolfington*

Defendants Money Centers of America, Inc. and MCA of Wisconsin, Inc. (collectively, “MCA”), Christopher Wolfington, and Mark Wolfington (together, “Defendants”) by and through their undersigned counsel, respectfully submit this Memorandum in Opposition to Melanie Benjamin’s Motion to Quash Defendants’ deposition subpoena.

## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

Ms. Benjamin’s Motion to Quash this garden-variety deposition subpoena can be swiftly denied. The basis for the subpoena can be summarized succinctly:

- Plaintiff Corporate Commission of the Mille Lacs Band of Ojibwe Indians (“Commission”) is the corporate body politic of the Mille Lacs Band. See id. at ¶ 6; 16 MLBSA § 101 (“The Corporate Commission of the Mille Lacs Band of Chippewa Indians is established as a Corporate Body Politic.”).<sup>1</sup>
- Mille Lacs’ statutes specifically dictate that the corporate body politic has five members, of which Ms. Benjamin is one as Chief Executive. See 16 MLBSA § 104 (“As a Corporate Body Politic the Corporate Commission shall have membership who will consist of the Chief Executive, the Speaker of the Band Assembly. . . .”).
- Ms. Benjamin is believed to possess facts relevant to Plaintiff’s claims, as well as facts relevant to Defendants’ defenses and counterclaims, due to her contacts with Defendant Christopher Wolfington and her role as Commission member.
- Specifically, Ms. Benjamin is believed to possess facts regarding, among others, MCA’s business performance, the credibility of the individual defendant Christopher Wolfington, the Commission’s eviction of MCA and replacement with competitor Multi-Choice Cash, and the Commission’s subsequent conversion of MCA’s employees into the Commission’s direct employees.

---

<sup>1</sup> The Mille Lacs statutes are available at [www.millelacsband.com/Page\\_BandStatutes.aspx](http://www.millelacsband.com/Page_BandStatutes.aspx).

- As Ms. Benjamin was a member of the Commission in 2008, when the Second Amended Complaint alleges that MCA submitted a fraudulent bid to the Commission, Ms. Benjamin is likely to have knowledge of MCA's winning bid and the facts surrounding it.

In sum, this is a garden-variety subpoena served on a party, not a third party.<sup>2</sup>

There is no "sovereign immunity" defense to a deposition notice for one of Plaintiff's own corporate officials.<sup>3</sup> The notice of appearance filed by the Mille Lacs Band attorneys on behalf of Ms. Benjamin, Dkt. 196, is a red herring; there is no third-party here, only the Commission and its statutorily defined member, Ms. Benjamin. For these reasons and for the reasons set forth below, the Motion to Quash should be denied.

## II. FACTUAL AND PROCEDURAL HISTORY

As the Court is aware, MCA's counterclaims seek to recover for the improper eviction of MCA from the two Mille Lacs casinos (the Grand Casino Hinckley and the Grand Casino Mille Lacs), and the related unlawful acts by the Commission. MCA contends that Plaintiff anticipatorily breached the contract, contrived a purported contractual breach by MCA, unlawfully ejected MCA, and sought to benefit itself by converting MCA's employees into the employees of a third-party competitor (Multi-Choice Cash). See MCA Feb. 26, 2013 Answer & Counterclaims, Dkt. 151.

---

<sup>2</sup> As described more fully *infra*, Defendants initially served the Commission with a notice of deposition to obtain the testimony of this Commission member, Ms. Benjamin. See Exhibit A, hereto.

<sup>3</sup> The Commission itself has only offered a partial claim of sovereign immunity in this case, limited to MCA's tort claims. Dkt. 169. The Agreement expressly permits MCA to recover from the Commission for its breaches and intentional acts. See Dkt. 1-2, Agreement, ¶¶ 27-29. For the reasons set forth in MCA's prior briefing, the claims by the Commission of tort-related immunity are misplaced. See Dkt. 182, at 29.

To further bolster its allegations and to gather additional facts in support of them, MCA has taken the depositions of a corporate representative of the Corporate Commission and of the chief financial officers of each of the two casinos (Vernon Robertson and Roxanne Hemming). However, several gaps in the overall fact pattern have been identified, and Ms. Benjamin's deposition is intended to fill in those gaps. Specifically, it is believed that Ms. Benjamin has knowledge (due to her professional relationship with Defendant Christopher Wolfington dating back to 1995) of MCA's business performance, of the credibility of Christopher Wolfington, of the Commission's eviction of MCA and replacement with competitor Multi-Choice Cash, and of the Commission's subsequent conversion of MCA's employees into direct employees of the Commission. Upon information and belief, Ms. Benjamin was not a tribal official between 2009 and April 2012 (the period MCA contracted with the Commission).

Ms. Benjamin also is believed to have, through her role as Commission member, additional information about Plaintiff's involvement with Multi-Choice Cash, the third-party vendor that immediately replaced Money Centers on April 4, 2012 and converted MCA's employees into Multi-Choice employees working for the Commission's benefit. Based on these facts and others, and because Ms. Benjamin's testimony is likely to lead to the discovery of relevant evidence, Fed. R. Civ. P. 26(b)(1), MCA identified Ms. Benjamin long ago as a potential witness (see, e.g., Gail Kulick, October 22, 2012 Deposition Tr., Dkt. 183-3, identifying Ms. Benjamin as the individual who relieved Ms. Kulick of her duties as corporate commissioner).

Defendants served their deposition notice on May 2, 2013 via delivery to the Commission. Four days later (May 6), counsel for the Commission informed Defendants' counsel that the Commission would not accept service for this Commission member. When a settlement conference was scheduled by the Court the next day (May 7) for June 5, 2013, Defendants held back further notices to Ms. Benjamin, in the hopes that her deposition would not be necessary. Defendants similarly offered to delay two depositions of other Commission witnesses that had already been noticed (for Mel Towle and Julie Habeck) until after settlement discussions took place in early June 2013. That offer was accepted and these depositions are still outstanding.

On June 12, 2013, once it was agreed by all sides that the parties had been unable to reach a settlement, see Joint Letter to Magistrate Judge Brisbois, June 12, 2013, Defendants re-noticed Ms. Benjamin's deposition through a new subpoena. Counsel for the Mille Lacs Band (Todd Matha) – indicating that he represented Ms. Benjamin – subsequently contacted counsel for Defendants.<sup>4</sup> Defendants' counsel explained certain of the reasons why Ms. Benjamin's deposition was noticed, explained that three other party depositions had already been taken in advance of Ms. Benjamin's notice, and assured counsel for Ms. Benjamin (on two separate occasions) that every effort would be made to make her deposition as time-efficient as possible.

---

<sup>4</sup> Defendants refer to Mr. Matha as counsel for Ms. Benjamin because he conducted the meet-and-confer calls. The Electronic Case File system subsequently issued an order concerning Mr. Matha being a non-admitted attorney in this action. Dkt. 196.

Counsel for Ms. Benjamin declined to accept these olive branches and then took action to file the instant motion. Notably, counsel for Ms. Benjamin scheduled her motion to be heard on the very day that Christopher Wolfington is set to be deposed in Philadelphia: July 18, 2013.<sup>5</sup>

### III. ARGUMENT

#### A. **Legal Standard: Discovery In Aid of Obtaining Relevant Evidence Is Expressly Permitted by Federal Statute**

Discovery of relevant evidence is the foundation for free and fair trials. Parties are entitled to discovery of relevant information in the possession of the other party and even third parties. Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. . .”); Roberts v. Albright-Roberts Chevrolet, Inc., 352 F.3d 358, 360-62 (8th Cir. 2003). Evidence need not be admissible to be relevant. Fed. R. Civ. P. 26(b)(1).

A party seeking to quash a subpoena bears “a particularly heavy” burden. DatCard Sys. v. PacsGear, Inc., No. 11-mc-0025, 2011 U.S. Dist. LEXIS 67648 (D. Minn. Apr. 25, 2011) (citation omitted); St. Jude Packaging & Specialities, Inc. v. World Color, Inc., No. 06-01717, 2007 U.S. Dist. LEXIS 53977 (E.D. Ark. July 24, 2007) (“The burden of proving that a subpoena is oppressive is on the party moving to quash and is a heavy one.”) (citation and quotation omitted).

---

<sup>5</sup> The deposition of Ms. Benjamin, like the others Defendants have noticed, was noticed good faith to obtain discoverable evidence. The memorandum in support of Ms. Benjamin’s Motion contains several instances of groundless speculation and accusation that the deposition was noticed for some improper purpose. But the movant adduces no facts adduced in support of this baseless charge, see Mem. at 1-9, and there are none.

The sum total of Ms. Benjamin's memorandum ("Mem.") is (1) the misplaced suggestion that Ms. Benjamin, a Commission member, is a third party protected by sovereign immunity, Mem. at 6-9, and (2) her non-specific contention that she would be burdened by this deposition. Mem. at 2-6, 9-10. Neither of these points is accurate or justifies quashing Defendants' subpoena.

**B. Ms. Benjamin Is Undisputedly A Commission Member, And Thus Her Deposition May be Taken**

It is undisputed that Ms. Benjamin is a full member of the corporate body politic that is the Commission. See 16 MLBSA § 104. Thus, the authorities provided by her counsel regarding discovery of third-party tribes are completely off-point. This deposition notice is for a statutorily defined member of the Plaintiff, with knowledge of the instant facts. Id. This is, again, garden-variety discovery subject to the normal limitations set forth in Fed. R. Civ. P. 26(b)(1).

In particular, Alltel Communications, LLC v. DeJordy, 675 F.3d 1100, 1102-05 (8th Cir. 2012), upon which Ms. Benjamin heavily relies, is not on point or analogous to the instant facts, because there was no contention in the DeJordy case that the third party individual officer who had been subpoenaed was in fact a member of the plaintiff. See id. at 1101 (referring to Joseph Red Cloud, the tribal Administrator who represented the Oglala Sioux Tribe in telecommunications matters). In DeJordy, the tribe and one of its officers, Joseph Red Cloud, had been subpoenaed as third parties. There was no contention that Red Cloud was a member of the plaintiff in that case (as is the case here). DeJordy is the only case that Ms. Benjamin cites from the Eighth Circuit in support of its

motion, and without it, Ms. Benjamin has no governing authority whatsoever to point to in support of her novel assertion that despite being a Commission member she should be prohibited from testifying. Compare Mem. at 7-8 (and cases cited therein) with Fed. R. Civ. P. 26(b)(1).

Nor is it of any moment that Ms. Benjamin's official powers as Commission member do not consist of the same day-to-day duties as of the previously deposed Commission CFOs. See Mem. at 5-6 (statement that Chief Executive has "no ability to control the daily functions of either the Commissioner or the Corporate Commission"). As should be obvious, a witness need not "control" others to have discoverable evidence. And Ms. Benjamin's testimony need not concern day-to-day duties to be relevant to the claims at hand. See Pointer v. DART, 417 F.3d 819, 822 (8th Cir. 2005) ("The district court assumed that the testimony was not relevant because the Office employees had no control over DART's personnel decisions. Pointer, however, intimated that he sought the testimony for impeachment purposes, not to establish the Office's influence on personnel decisions. . . . The potential testimony thus fell within the broad scope of Rule 26. Accordingly, we conclude that the district court abused its discretion in denying the motion to enforce the subpoenas.") (reversing quashing of subpoena for abuse of discretion). Defendants' subpoena is valid.



**C. The Deposition of Ms. Benjamin Will Not Be Burdensome**

The movant has the burden of showing any undue burden or expense, and in this case counsel for Defendants has made clear to Mr. Matha that they intend to keep this deposition narrow, economical, and limited to where the facts take it. If Ms. Benjamin has a limited recollection of the facts as they pertain to Defendants and Multi-Choice Cash, among others, it will likely be a short deposition. But that cannot preempt Defendants' right to take the deposition at all.

The party asserting objections to a request for discovery must specifically show how the request is vague or overly broad. Ms. Benjamin has not met that burden. Here, the only "burden" alleged is the contention that Ms. Benjamin's most recent tenure as Chief began after MCA was evicted. But as explained above, that is no obstacle to her deposition – a party cannot, by taking a new position as an official with a Native American tribe, obtain retroactively any immunity the tribe might possess. See generally United States v. Menominee Tribal Enters., No. 07-C-316, 2008 U.S. Dist. LEXIS 64607, at \*34 (E.D. Wis. May 30, 2008) (rejecting contention that deposition of third party tribe official Lisa Waukau should be quashed, because "[a]t the time of the interview, Waukau was not a tribal officer," she was only a legislator). Ms. Benjamin was not a tribal official, upon information and belief, between 2009 and 2012, nor does she assert that she was. Testimony regarding that period cannot be retroactively immunized, nor can Ms. Benjamin's separate role within the Mille Lacs Band alter the discoverability of facts known to her due to her position as Commission member.

Defendants plan to use their time efficiently at Ms. Benjamin's deposition to, as described above, inquire of the facts supporting their claims and defenses, including the facts bearing on MCA's business performance, the credibility of Christopher Wolfington, the circumstances of the Commission's eviction of MCA and replacement with competitor Multi-Choice Cash, and the Commission's subsequent conversion of MCA's employees into direct employees of the Commission.

Ironically, Ms. Benjamin herself is very familiar with the situation of a party being improperly evicted from its rightful place. Ms. Benjamin was in 2008 voted out of office in disgrace in an unprecedented act by the tribal council. See MPR News, Oct. 15, 2008, *Mille Lacs judges uphold Benjamin's ouster*, available at <http://minnesota.publicradio.org/display/web/2008/10/15/benjaminout>. Ms. Benjamin was removed because it was alleged that she had "used nearly \$36,000 of Band monies for personal use and illegally profited from the Band's gaming enterprises." MPR News, Oct. 15, 2008, *Benjamin removed as Mille Lacs chief executive*, MPR News, Oct. 8, 2008, available at [http://minnesota.publicradio.org/display/web/2008/10/08/mille\\_lacs](http://minnesota.publicradio.org/display/web/2008/10/08/mille_lacs). Ms. Benjamin was subsequently restored to her office in 2012 by the votes of her constituents. Ms. Benjamin knows better than anyone how important it is for the truth to be uncovered.

Ms. Benjamin was able to obtain her redemption when she was restored to her current role in the 2012 election. It is that same type of redemption that MCA seeks through the judicial process, and which necessitates the discovery of relevant evidence, including this deposition.

**IV. CONCLUSION**

For the reasons set forth above, Defendants respectfully request that the Court deny Ms. Benjamin's Motion.

Respectfully submitted,

**DUANE MORRIS LLP**

*s/Luke P. McLoughlin*

Date: July 8, 2013

---

James L. Beausoleil, Jr., Esq.

Luke P. McLoughlin, Esq.

Erin M. Carter, Esq.

30 S. 17th St.

Philadelphia, PA 19103

215.979.1000

**PATTERSON LAW OFFICE, P.A.**

Robert B. Patterson, Jr., #169146

5101 Thimsen Avenue, Suite 200

Minnetonka, MN 55345

952.224.2851

*Counsel for Defendants*