

No. 16-1636

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IN THE UNITED STATES OF COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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Annette Nawls and Adrian Nawls

Petitioner – Appellant,

Vs.

Shakopee Mdewakanton Sioux Community

Gaming Enterprise – Mystic Lake Casino,

Respondent – Appellee,

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Filed: April 27, 2016  
Office of Appellate Courts

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BRIEF OF APPELLANT ANNETTE NAWLS AND ADRIAN NAWLS  
A COUPLE AND AS REPRESENTATIVE

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Pro se

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**U.S. Court of Appeals  
Eighth Circuit-St. Paul, MN**

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### **Preface**

In this Brief, the Petitioner Annette Nawls and Adrian Nawls both will be referred to as Nawls. The Respondent Shakopee Mdewakanton Sioux Community Gaming Enterprise- Mystic Lake Casino will be referred to as Mystic Lake Casino.

### ISSUES PRESENTED REVIEW

Shakopee Mdewakanton Sioux Community Gaming Enterprise, Mystic Lake Casino, turned a blind eye on the sexual attack that happened to Ms. Nawls while working in the VIP room. This attack was caused by negligence by their security and management. In retribution, Adrian and Annette Nawls have also lost their employment at Mystic Lake Casino. Employees of Mystic Lake are not protected by civil rights or Mystic Lake Casino for the employment rights. The Nawls are asking that the United States Supreme Court and congress to grant broad general power to restrict tribal sovereignty and relax the restrictions of the treaty agreement in order for justice to be served for the Nawls, as done in other federal cases.

### STATEMENT OF FACTS AND ISSUES

On August 9<sup>th</sup>, 2013, the attacker Mr. Scott McCaffrey was invited by the Mystic Lake casino board members to a concert which was being held at Mystic Lake casino in Prior Lake, Minnesota. Ms. Nawls was assigned to work as a waitress in one of the VIP suites where the attacker was present. Mr. McCaffrey was in the VIP suite where only the Mystic Lake owners, their families and friends are allowed.

Throughout the evening Mr. McCaffrey made unwanted and offensive contact with Ms. Nawls, including slapping her buttocks. The first time, Ms. Nawls asked him not to do that. The second time Nawls told him that it was not appropriate and again told him to stop. At that point she spoke to her manager, John Ventura, because she was extremely uncomfortable and felt threatened by Scott McCaffrey. Nawls was told by management, John Ventura, that she “needed to continue doing her job and serving the guest because he was brought by one of the owners”. John then fixed another drink and asked her to continue serving Scott McCaffrey. Nawls tried her best to avoid him the remainder of the evening.

After the concert was over, security escorted guest’s downstairs and told Nawls to go ahead and clean and that all of the guests were gone. She went back into the suites to clean up. While Nawls was cleaning up beer bottles, glasses, and picking trash up from the floor, she felt someone slap her buttock with both hands. She turned around and saw the same man, Mr. Scott McCaffrey. He grabbed her shoulders, turned her around and started forcibly kissing her on the lips. During this assault, he forced his hands into her pants pocket and ripped them off of her.

Nawls was then trapped in the corner of the room balcony and could not break loose. Testimony from Nawls: "I was very frightened and started crying and screaming. I told him to stop leave me alone. He told me I was "not going to get past him." He choked me and held me over the balcony, causing major injury to my back. He cornered me, and threatened my life. He aggressively kicked me numerous times on the back of my leg to make me stop screaming. Thankfully I saw one of my coworkers, Jonathan, pass the room and I waved for help. My coworker returned with the manager, Jodi, and they escorted Mr. McCaffrey out of the room.

After the attack, the Prior Lake Police were called. The Defendant Mr. Scott McCaffrey was charged with Gross Misdemeanor Fifth Degree Assault, Indecent Exposure and Disorderly Conduct. The physical injuries happened when Nawls was attacked, many times during the sexual assault. This is about a sexual attack at work not jurisdiction. There has not been an apology from Shakopee Mdewakanton Sioux. The Nawls believe that time barred and lack of jurisdiction is another way of not being held responsible for the negligence on Shakopee Mdewakanton Sioux's behalf to provide a safe and secure workplace.

Some of the policies and rules at Mystic Lake Casino:

- A waitress must follow the rules and policies or be terminated.
- All waitresses cannot take cash tips home and must give it to the manager on duty.
- A guest who appears over 40 years old must not be asked for ID.
- Waitress must watch the guest's behavior while serving them alcohol.
- Waitress must report any guest that is drunk and misbehaving to the manager on duty.



**Facts:**

- Nawls reported the behavior to management.
- Mr. Scott McCaffrey did not invite himself in the VIP suites. Scott McCaffrey was invited by Shakopee Mdewakanton Sioux and was escorted into the VIP room by the Mystic lake security.
- McCaffrey had alcohol in a glass and he was already drunk. Mr. Scott McCaffrey's I.D. was on restriction for no alcohol.
- Ms. Nawls was forced to serve McCaffrey which was illegal but, because, the guest was brought by one of the board members and with the direction of management she had to serve him.
- Scott McCaffrey should not have been served alcohol at all. If he would have been driving and killed someone Nawls would be held responsible.
- (c) Shakopee Mdewakanton put her life in danger, by allowing McCaffrey to be served alcohol. The Shakopee Mdewakanton Sioux have turned a blind eye against the Nawls 8/9/2013 until now.

Nawls: "Since I was attacked from behind I had been experiencing extreme anxiety. I am chronically fearful; unable to shake it off. My body is on edge and I am reactive and sensitive in daily living. Things I used to do as a normal part of my day are shrouded in fear and anxiety. I have heard the voices of suicide that have manifested in my head as a result of the attack and fear instilled within me. The lack of support in my work environment made me doubt in myself and also attributed to the thought of suicide. This is very serious, as I have

acted on those voices and have considered suicide. This is extremely frightening and serious to my family and I. As a result of the attack, I sustained extreme emotional distress and physical injuries. In particular, since the attack, I have suffered constant flashbacks and panic attacks from the incident and live in fear of a repeated attack. I have been hospitalized for my attacks”.

Ms. Nawls has suffered deeply and sustained severe and permanent injuries mentally. Since the incident, Nawls has not been able to return to a work environment. The Nawls demand justice regarding her injury of sexual attack. Mystic lake casino is responsible for the attack because of failure to provide a safe environment for their employee(s). The Nawls need answer to this question: If Tribal Mystic Lake Casino my employer is immune from suits. Then who is accountable for the sexual attack that occurred in the private VIP suites?

The Nawls’ life have been changed forever. She now finds herself with permanent disabilities.

#### Standard of review

The District Court ruled in Mystic Lake casino’s favor and dismissed the Nawls’ complaint. But, Judge Ann D. Explained to Defendants Lawyer, Mr. Greg Paulson, that it’s an important part of tribal sovereign to have a remedy for Ms. Nawls. After the hearing Mr. Greg Paulson spoke to Ms. Nawls and stated that he is going to talk to Mystic Lake to address the issue. The Nawls’ have reached out to Mr. Greg Paulson several times by Phone. However, Greg Paulson has failed to follow up with Ms. Nawls.

#### Issue reviewed in the District Court.

The federal court jurisdiction remains silent on the dispositive issue of the Gaming Enterprise's sovereign immunity. Accordingly, the court must dismiss this lawsuit for lack of jurisdiction. The issue, in this case, was not only who has jurisdiction and who does not. The Nawls believe that the case was wrongfully determined and misled. The incident occurred on Indian land in the VIP suites which holds owners of Mystic Lake casino and their families responsible. The Mystic Lake Casino has failed to provide fair justice and to be accountable for the sexual attack that occurred in the VIP suites on Aug 8, 2013.

Nawls has been paying federal and state taxes while employed by Mystic Lake Casino, yet she is not protected by Title VII of Civil Rights. While employed at Mystic Lake she was forced to sign away her employment rights as an American Citizen. According to "Competing Sovereigns: Circuit Courts' Varied Approaches to Federal Statutes in Indian Country (by Jessica Intemill, dated September 2015, page 65) the following is true:

- The constitution "grants Congress broad general powers to legislate in respect to Indian tribes. The Supreme Court has described this congressional power as "plenary and exclusive". Using this power, Congress can both restrict tribal sovereignty and relax those restrictions. With the stroke of a pen, Congress can affect "major changes in the metes and bounds of tribal sovereignty".
- The National Labor Relations Act never mentions Indian tribes in its text or legislative history and states that it does apply to tribes in the Indian nation. Their right to exclude would be impaired because they could not regulate employees and labor organizations entering their reservations.

She has suffered major emotional, mental, and physical injury due to the negligence of Mystic Lake. Her medical coverage has been terminated by Mystic Lake and the State Insurance and she is left with nothing. The state insurance will not cover expenses since it happened at work, and Mystic has failed to provide coverage for her health issues.

## **VI. FEDERAL CRIMINAL JURISDICTION ON NON-PUBLIC LAW 280 TRIBES**

### **A. As to "Indians" – Major Crimes Act, 18 U.S.C. § 1153**

#### **1. Sec.1153. Offenses committed within Indian country**

- a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.
- b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

### **Jurisdiction**

Judicial jurisdiction over matters involving Indians or Indian tribes is a function both of territory--where the matters arise--and of subject matter--what the nature of the claim is. "A court's jurisdiction may depend not only on the location of events but also on the race of the parties or the subject matter of the case." Cohen, *Federal Indian Law*, supra, at 281. Given the pervasive sweep of federal law in Indian matters and the deference to Indian sovereignty within that law, jurisdiction of state courts over both civil and criminal matters involving Indians is governed by federal statute or case law. In *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 561 (1832), the U.S. Supreme Court held that, absent federal action, Indian tribes are not subject to the jurisdiction asserted over them by a state. The Court reaffirmed this holding over 100 years later in *Bryan v. Itasca County Minnesota*, 426 U.S. 373, 392 (1976) (quoting *Oklahoma Tax Commission v. United States*, 319 U.S. 598, 613-14 (1943) (Murphy, J., dissenting)), when it said: "Indians stand in a special relation to the federal government from which the states are excluded unless the Congress has manifested a clear purpose to terminate \* \* \* immunity and allow states to treat

Indians as part of the general community." Thus, absent a grant of federal authority, state courts have no jurisdiction over Indians, Indian tribes or other Indian entities. See, e.g., *National Farmers Union Ins. Co. v. Crow Tribe of Indians of Montana*, 471 U.S. 845, 855-56 (1985); *Fisher v. District Court of the Sixteenth Judicial Dist. of Montana*, 424 U.S. 382, 387 (1976); *Williams v. Lee*, 358 U.S. 217, 220 (1959); *United States v. Kagama*, 118 U.S. 375, 384 (1886).

In some states, including Minnesota, Congress has provided for state court criminal jurisdiction for matters occurring within Indian country, 18 U.S.C. § 1162 (1994), and for civil jurisdiction in

actions to which Indians are parties. 28 U.S.C. § 1360 (1994). However, the reach of congressionally authorized state court jurisdiction provided in so-called Public Law 280 [4] states does not extend to tribes or tribal entities. See *Bryan*, 426 U.S. at 389.

Jurisdiction over federally recognized tribes themselves, or tribal entities, is governed by federal case law. The U.S. Supreme Court has determined that state court jurisdiction over tribal activities that took place within Indian country would undermine the congressional aim of encouraging self-government and self-determination by the dependent tribes and "infringe on the right of the Indians to govern themselves." *Williams*, 358 U.S. at 223. However, the Court found no such infringement where the tribal activities took place off the reservation.

Specifically, the Court has said "[a]bsent express federal law to the contrary, [Indian business entities] going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973). In those circumstances, the Court has held that state courts may have jurisdiction to hear the cause of action.

This case is, of course, complicated by the fact that some of the alleged tortious acts took place within Indian country, while others did not. Since controlling federal common law turns largely on the location of the alleged tortious activity, it provides no clear guidance as to which court system may assert jurisdiction. Because this case involves non-Indian individuals and Indian tribal business entities and because it involves acts occurring both within Indian country and outside, it may be one of those cases where "both the tribe and the State could fairly claim an interest in asserting [our] respective jurisdictions." *Duluth Lumber and Plywood Co. v. Delta*

Development, 281 N.W.2d 377, 382 n.3 (Minn. 1979) (quoting *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164, 179 (1973)).

Thus, in some respects, this jurisdictional puzzle is best considered as an issue of concurrent jurisdiction. Concurrent jurisdiction describes a situation where two or more tribunals are authorized to hear and dispose of a matter and the choice of which tribunal is up to the person bringing the matter to court. Black's Law Dictionary 291 (6th ed. 1990). Such a jurisdictional overlap is common between the federal and state courts as both courts are empowered to hear certain claims, such as those arising under 42 U.S.C. § 1983 (1994), *Allen v. McCurry*, 449 U.S. 90, 99-100 (1980), or the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2084 (1994), *Swenson v. Emerson Elec. Co.*, 374 N.W.2d 690, 697 (Minn. 1985), cert. denied, 476 N.W.2d 1130 (1986). Concurrent jurisdiction conflicts are not limited to the courts of two sovereigns. Indeed, this court has held that the various district courts across the state operate as independent tribunals and, thus, have concurrent jurisdiction. *State, ex rel. Minnesota Nat. Bank of Duluth v. District Court, Fourth Judicial District, et al.*, 195 Minn. 169, 173, 262 N.W. 155, 157 (1935).

When a concurrent jurisdiction problem arises, the proceedings of one court will usually be stayed or dismissed, often through the use of the abstention doctrine. See *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 806, reh'g denied, 426 U.S. 912 (1976). Abstention is a "narrow exception to the duty of a District Court to adjudicate a controversy properly before it." *Id.* at 813. It is appropriate only in limited circumstances, when continuing federal proceedings would be improper or moot, given the anticipated outcome of state

proceedings. Id. at 814-16. Generally, however, comity between courts will resolve instances "[w]here two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction, the court which first acquires jurisdiction \* \* \* may dispose of the whole controversy \* \* \*." Minnesota National Bank of Duluth, 195 Minn. at 173, 262 N.W. at 157. Although, unlike some concurrent jurisdiction cases, there are not two competing lawsuits here--one in tribal court and one in state court--we think that concept provides a useful framework for discussion.

In this matter, we find no federal prohibition on state court consideration of civil claims arising out of the acts of Indian business entities occurring outside of Indian country. Further, we believe Gavle would ordinarily be expected to try all her claims in one judicial proceeding; that is, it would be highly inappropriate to allow her to proceed against LSI in two judicial fora, with some allegations of tortious conduct arising within Indian country to be considered in tribal court and those arising outside to be considered in state court. Thus, we conclude that state courts have jurisdiction of Gavle's claims, including those arising within Indian country (although, of course, tribal courts, may have jurisdiction, as well). [5]

However, as in cases involving concurrent jurisdiction, instances of jurisdictional disputes between tribal and state courts also raise the question of whether that jurisdiction should be exercised. The abstention doctrine and the "first to file" rule are not truly rules at all, but principles, a "blend of courtesy and expediency." Medtronic, Inc. v. Catalyst Research Corp., 518 F. Supp. 946, 955 (D.Minn. 1981), aff'd, 664 F.2d 660 (8th Cir. 1981). These "principles" "should be applied in a manner serving sound judicial administration." Orthmann v. Apple River



Campground, Inc., 765 F.2d 119, 121 (8th Cir. 1985). In Indian law matters, the related concept is identified as "infringement," which brings us to our next issue.

### **SUMMARY OF ARGUMENT**

The Nawls' have worked at Mystic Lake for 8 & 9 years totaling 17 years of service. Neither of them are at fault and do not deserve to be ignored and humiliated by Mystic Lake Casino tribe.

Title VII. Employment discrimination statutes should apply to the tribally owned companies and tribes. This statute would protect all citizens that are working on tribal land. The Defendant argued the federal level does not have jurisdiction unless congress waives tribal sovereign immunity to hear Nawls' case. The Nawls' have been working on Indian land for 8, and 9 years paying state and federal taxes as responsible citizens. Mystic Lake Casino has continued ongoing charges, and ignoring/avoiding crimes arising on tribal land. Including but not limited legitimate legal claims simply by claiming sovereign immunity. The Nawls demand that Mystic Lake casino to be held accountable for Nawls' sexual attack. In turn, congress to use its plenary power over tribal immune to eliminate the doctrine partially or entirely for Civil Rights protection to the citizens who are employed on the tribal casino.

### **ARGUMENT**

## **First Amendment: Freedom of Speech.**

The Nawls disagree by saying the individual rights of all citizens are too important to ignore as we reevaluate the relationship among the states, the federal government, Indian tribes and individuals. As part of the United States of America, individual citizens and Indian tribes are all subject to the Constitution of the United States of America. Nawls' request to the Court of Appeal is that individual citizens should be able to take their grievances with tribes to neutral courts.

Sovereign immunity and sovereignty are two separate issues. Is it necessary for a governmental body to be free litigation in order to carry out its governmental functions? If so, then the United States is no longer a sovereign nation because it can be sued on a wide range of issues. It should also be noted that the doctrine of sovereign immunity is not protected directly or indirectly by any Indian treaty. The United States citizens should not strive for equal application of their Civil Rights for justice to be served, because individuals and all citizens are subject to the Constitution of the United States.

The intent here is not rearguing the merits of Ms. Nawls case, as Appellants Mystic Lake Casino never intended to resolve the merit in this case. Instead, Mystic Lake demanded Ms. Nawls to resign her position first, before tribal review or for it to be qualified as a tort claim, or any resolution of her claim. However, when such severe sanction is levied under faulty reasoning, objections must be raised and raised loudly. This is an extremely serious matter to the appellants. The allegations contained in the Judge's final judgement adopted by the District Court herein, without explanation, Nawls have had attorneys on this case, but the Shakopee

Mdewakanton Sioux kept stretching this case and claiming that tribal is immune from suits. The law is not static. Indian law in particular is developing rapidly to meet the challenges presented by gaming and other tribal expansions. The Appellants and other similarly situated must be afforded the opportunity to pursue legitimate claims. The District Court decision to sanction Appellants over jurisdiction argument sets a very dangerous precedent which this court must reverse.

### **Sovereign Immunity and Indian Civil Rights**

A February 7, 1997 story “**The Ojibwe News**” reported that Jill Gavle, a former security guard for the Mystic Lake Casino could not pursue her allegations of sexual assault, harassment, racial discrimination, and pregnancy discrimination during her employment at the Shakopee Mdewakanton Sioux Community casino in a neutral court because of tribal sovereign immunity.

Quoting “**The Ojibwe News**”, the Minnesota Supreme Court had ruled in a divide opinion that tribal casino are like tribal government agency, not a for-profit business, and that tribal sovereign immunity prevents anyone from pressing charges against a tribal casino for wrongdoing.....in effect, the Minnesota Supreme Court has ruled that the 15,000 Minnesotans who work at tribal casinos, and the hundreds of thousands who go to casinos as customers, give up their Civil Rights when they accept employment or step on tribal land.

The Nawls seek an answer to these questions:

1. How does the doctrine of sovereign immunity fit into the 20<sup>th</sup> century world of Endangered Species Act listings, private property rights, Supreme Court rulings on tribal tax evasion, and Indian Civil rights?
2. Why are we not considered U.S. citizens and offered our civil rights when we are working to live and support our families on tribal land? If not, why are we paying state and federal taxes? Protection is only offered to people in their own tribe, and excludes tax paying citizens.
3. How can tribal Indians have jurisdiction and consent to be sued over the crimes that occurred on their own land when the crime is 100% their fault?
4. The Nawls are asking the Appeal Court, Congress and Constitution of United States to look deeply in their hearts and feel the Nawls' pain and reconsider in good faith.

Nawls was given a review of the paper work to sign by Antonio Tejada. In tribal court Nawls' claim was under the tribal law, Nawls had suffered a non-compensable injury.

Ms. Nawls has never had a chance to pursue any tort claim by Mystic Lake, instead they offer an unknown number of settlement and demand that Ms. Nawls must resign her position first.

On December 23, 2014 Ms. Nawls was forced to resign her position but Nawls did not sign the paper work because: (A) Shakopee Mdewakanton Sioux, work compensation denied Nawls' claim December 24, 2014; (b) Nawls believe that Mystic Lake community advantage of Ms. Nawls by making an attempt for her to sign the paper work to resign her position while Ms. Nawls had just been discharged from the hospital still on heavy medications. Ms. Nawls felt

humiliated by Shakopee Mdewakanton Sioux. The Mystic Lake casino failed to be responsible and find the solution of the issue that occurred on tribal Land.

Sovereign immunity is an ancient legal doctrine protecting governments from being sued by citizens. Our federal government, as well as every state and local government in the United States, has substantially abolished sovereign immunity so that people who are wronged by the government can have their day in court. Tribal governments have retained sovereign immunity and are protected from being sued.

The Nawls believe that the issue of sovereign as it relates to local, state, and tribal government can be best illustrated by the following example:

Imagine that you have been the victim of police brutality by your local police officer or your county government has just backed out on a business contract with you- what do you do? If you're like most people, you claim your constitutional rights of due process and take your local government to court and sue for damage incurred.

Now imagine similar scenarios occurring on the Indian reservation. If you suffer injuries at the hands of tribal security negligence or if the tribal government breaks a business contract with you, do have a legal resource? No, if you attempt to take your case to court, the tribal government can invoke sovereign immunity and prevent your case from being heard by a court. This is the same thing that Nawls have been going through since the sexual attack occurred in VIP private suites at Mystic Lake casino while on her duty working. Nawls has been tremendously abused, rejected, humiliated, and manipulated. Is there nothing that Nawls can

do because Mystic lake is immune from been sued? Nawls believe our justice system can apply equally to tribal governments without inhibiting opportunities for Native Americans. But Nawls also believe there should be no more compelling reason than to ensure that our justice system works for all citizens. The Nawls believe that current federal Indian policy coupled with tribal government behavior is taking a bigger toll on tribal members than most people admit. The Nawls are citizens of U.S. On reservation there is no guarantee the United Constitution and the Bill of Rights will control. There are no guarantees the Civil Rights Acts or legislation against age or gender discrimination will be honored. There are no guarantees of the Veterans Preference Act, no Civil Service classification to protect tribal government employees, no guarantees of the Americans with Disabilities Act, no guarantees against blanket nepotism or a fair and orderly process concerning access to reservation housing, and no guarantee of freedom of press or freedom of speech. In other words, basic Human Rights other Americans take for granted, that allow people to live in dignity with their neighbor, are not guaranteed on Indian reservations under the present version of "sovereignty."

## **II. Shifting Law and Policy**

United States v. Kagama, 118 U.S. 375 (1886)- affirming Congress' power to enact the Major Crimes' Act, this is a seminal case signaling a clear shift away from tribal sovereignty. The Court appears to deny the existence of tribal sovereignty, and affirms Congress' power to regulate tribes, not through the Commerce Clause, but because "the Indians are within the geographical limits of the United States." This case appears to create the congressional plenary power

doctrine, wherein Congress' authority over Indian tribe's flow from the guardian/ward relationship and exists because such a relationship has "never existed anywhere else."

### **III. Tribal Sovereignty and Jurisdiction**

United States v. Lara, 541 U.S. 193 (2004) – the Court affirmed Congress's authority to enact the "Duro fix," finding that under the Constitution's "plenary grants of authority over Indian affairs, Congress has the power "to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority."

### **IV. Tribal and State Conflicts over Civil Regulatory and Adjudicatory Jurisdiction**

Nat'l Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985)- the Supreme Court held that exhaustion of tribal remedies is required before a federal court may entertain a claim that a tribal court has exceeded its jurisdiction. The existence and extent of tribal court's jurisdiction "will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions," the Court felt that the long-standing federal policy of supporting tribal self-government favored allowing the tribal court to conduct this examination first. Congress has provided that state workers compensation laws may apply to lands "which the Federal Government own or holds..." 40 U.S.C. 1372. This Act has been interpreted to include trust lands. See, e.g., Begay v. Kerr-McGee Corp., 682 F. 2d 1311, 1319 (9<sup>th</sup> Cir. 1982). In exchange for

ceded land, the federal government gave Indian tribes special status that only Congress may remove.

### Judicial Toolkit on Indian Law

How does sovereign immunity affect civil cases?

In some cases, the doctrine of sovereign immunity may prevent a person from bringing an action against an Indian tribe in state court, because of its status as a government. For example, *Gavle v. Little Six, Inc.* involved a lawsuit by a non-Indian employee of a casino alleging sexual harassment, pregnancy and race discrimination, civil rights violations, and related torts.

Although the Minnesota Supreme Court held that the state court had jurisdiction to consider the claims, it found that tribal sovereign immunity protected the tribe itself from being sued in the matter. Most significantly, the court held that the fact that the tribe was involved in a private or commercial enterprise, such as gambling, rather than a more traditional government activity, did not affect its sovereign immunity. However, as an example of how complicated these issues are, two of the seven justices filed dissenting opinions, arguing that a huge for-profit business such as a casino should not be able to rely upon the same sovereign immunity defense that is available to a tribe.

The Shakopee Mdewakanton Sioux Community (the Community is a federally recognized Indian tribe. A tribal business entity incorporated under the Community corporate ordinance in 1991, has issued one share of stock owned by all voting members of the Community. LSI is registered



with the State of Minnesota as a foreign corporation transacting business within the State. LSI owns a gambling casino which is in Mdewakanton Indian Country. (1)

The Community has through the corporate ordinary, granted certain privileges and protection to LSI:

4:11 A Corporation wholly owned by the Community may assume any or all the Community's rights, privileges and immunities (including, without limitation, sovereign immunity) concerning federal, state or local \* \* \* jurisdiction to the same extent that the Community would have such rights, privileges, and immunities if it engaged in the activities undertake by the Corporation.

4.12 A corporation wholly owned by the Community, shall have the power to sue and is authorized to consent to be sued in the Judicial Court of the community, and other courts of competent jurisdiction.

Shakopee Mdewakanton Sioux Community Corporation Ordinance ??4.11, 4.12 (amended, July 27, 1994). In turn, LSI's articles of incorporation set out the purpose of the corporation and limit both the each of immunity extended by community and the extended of the corporation's ability to consent to be sued:

3.0 Purposes and powers. The purpose for which the corporation is organized are to engage in any lawful act or activity \* \* \* [which seeks] to improve the business, financial or general welfare of the corporation, the Members of the Corporation, and the community.

3.1 Sovereign Immunity of Corporation. The Shakopee Mdewakanton Sioux Community confers on the corporation all of the Community's rights, privileges and immunities concerning federal,

state and local \* \* \* Jurisdiction, and sovereign immunity from suit \* \* \*. Such immunity shall not extend to actions against the Corporation by the Community or Member of the Corporation.

3.2 Consent to Sue and be Sued Required. The Corporation shall have the power to sue and is authorized to consent to be sued in the Judicial Court of the Shakopee Mdewakanton Sioux Community or another court of competent jurisdiction; \* \* \*. Consent to suit by the Corporation shall in no way extend to the Community, nor shall a consent to suit by the Corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the Community."

Articles of Incorporation of Little Six, Inc. §§ 3.0, 3.1, 3.2 (Mar. 18, 1991) (hereinafter Articles of Incorporation).

LSI employed Gavle as a security from m 2007 to Octo 2015. Her job included casino (in Indian Country) and at LSI's temporary administrative offices at the Canterbury Downs complex in Shakopee, Minnesota. While Gavle's complaint details many incidents, alleged to be tortious, that occurred at the casino, it also contends that some of the allegedly tortious acts took place away from the casino, in or near Shakopee. [2]

At the heart of this case is the issue of whether tribal business entities are subject to the application of state civil law in state court. To answer this question, we must analyze two related legal concepts--jurisdiction and sovereign immunity. Though it is sometimes said that state or federal courts are deprived of jurisdiction through the application of tribal sovereign

immunity, the concept is more properly thought of as an affirmative defense, to be asserted by a tribe, tribal official or tribal entity as a bar to a particular lawsuit. Further, there are instances when a state or federal court may have jurisdiction over a matter involving a tribe or tribal entity, but may choose to stay its action, deferring to the concurrent jurisdiction of a tribal court. Thus, we must consider four related yet discrete issues: (a). Do Minnesota courts have jurisdiction over a tribal business entity in a civil tort matter involving actions occurring both within and outside of Indian country?

(b). If Minnesota courts have such jurisdiction, must they stay their exercise of that jurisdiction in consideration of concurrent tribal court jurisdiction, under the doctrine of "infringement"?

(c). If Minnesota courts have such jurisdiction and choose to exercise it, is such a suit nevertheless barred by tribal sovereign immunity?

(d). If sovereign immunity would otherwise be available in this case, has it been waived by LSI's registration with Minnesota's Secretary of State as a foreign corporation?

Felix S. Cohen, Handbook of Federal Indian Law 49 (1982 Ed.) (Hereafter Cohen, Federal Indian Law).

In general, the federal government has viewed the Native American more as a "political entity" than as a racial minority. [3] Thus, until 1871 the United States recognized Indian tribes as possessed of the attributes of nationhood and, accordingly, concluded treaty agreements with them. *Cherokee Nation v. Hitchcock*, 187 U.S. 294, 305-06 (1902). For over one hundred years however, this country has systematically brought the various Indian tribes under the

auspices of the federal government as "domestic dependent nations." *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). In exchange for ceded land, the federal government gave Indian tribes special status that only Congress may remove. Indian tribes are not states; nevertheless, they possess a kind of sovereignty superior to that of states but inferior to that of the federal government. *Stephens v. Cherokee Nation*, 174 U.S. 445, 484-86 (1899); see *Colliflower v. Garland*, 342 F.2d 369, 374-76 (9th Cir. 1965). They are "subordinate and dependent nations possessed of all powers as such" and limited only "to the extent that they have expressly been required to surrender [their powers] by the superior sovereign, the United States." *Native American Church of North America v. Navajo Tribal Council*, 272 F.2d 131, 134 (10th Cir. 1959). Thus federally recognized tribes hold certain powers and privileges allowed other sovereigns; jurisdiction over certain judicial matters and sovereign immunity are two such Characteristics.

### Infringement

The Supreme Court's reasoning in many of the infringement cases turns upon the vital role that tribal courts play in tribal self-government, especially where the question to be considered is, in the first instance, the jurisdictional limits of the tribal courts themselves. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332-333 (1983); *United States v. Wheeler*, 435 U.S. 313, 332 (1978). However, the infringement doctrine has also been considered in contexts other than questions of the tribal court's jurisdiction. For example, the question of the validity of certain claims alleged to arise under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461 (1994), has been held to require exhaustion of tribal court remedies

before a federal district court will take jurisdiction. *Prescott v. Little Six, Inc.*, 897 F. Supp. 1217, 1224 (D. Minn. 1995); see also *Reservation Telephone Cooperative v. Three Affiliated Tribes of Fort Berthold Reservation*, 76 F.3d 181 (8th Cir. 1996) (validity of tribal taxation of telephone lines and rights-of-way); *Pittsburgh & Midway Coal Mining Co. v. Watchman*, 52 F.3d 1531 (10th Cir. 1995), reh'g denied (May 23, 1995) (validity of tribal taxation of coal mining "source gains"). It should also be noted that the application of the infringement doctrine occurs largely in federal court. There are few instances of a state court deferring to the jurisdiction of a tribal court, where they shared concurrent jurisdiction. Further, we have found few cases in which a state court has been asked to require exhaustion of tribal court remedies when the underlying question to be resolved is whether a tribal business entity may assert the tribe's sovereign immunity. See, e.g., *Padilla v. Pueblo of Acoma*, 107 N.M. 174, 754 P.2d 845 (1988), cert. denied, *Pueblo of Acoma v. Padilla*, 490 U.S. 1029 (1989); *S. Unique, Ltd. v. Gila River Pima-Maricopa Indian Community*, 138 Ariz. 378, 674 P.2d 1376 (Ariz. Ct. App. 1983); *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 480 P.2d 654 (1971). The opinions in these cases do not address the question of the jurisdiction of the state court to decide the sovereign immunity issue because jurisdiction was, apparently, assumed to exist. Therefore, we are left without controlling precedent or even persuasive case law on the issue of whether a state must defer to the tribal court on the question of whether a tribal business entity may assert the defense of sovereign immunity.

Although the question is a close one, we conclude that the consideration by Minnesota state courts of whether LSI may assert the defense of sovereign immunity does not "undermine the authority of the tribal courts" nor "infringe on the ability of Indian tribes to govern

themselves." Williams, 358 U.S. at 223. Minnesota state courts have a strong interest in determining for our citizens the nature of the legal claims that they may assert against tribal business entities and the defenses that may be raised in response. See Myers v. Government Employees Ins. Co., 302 Minn. 359, 366, 225 N.W.2d 238, 243 (1974). Furthermore, contrary to LSI's assertions, we do not seek to change the tribal laws, to reduce the community's ability to govern itself, or to remove the tribal court's jurisdictional claims to actions involving on-reservation activities. Instead, we choose to take jurisdiction only to establish Minnesota law on the issue of sovereign immunity for tribal business entities, in the hope that in so doing, we may avoid future disputes and pave the way to better understanding between the judicial systems.

### Sovereign Immunity

Because we have jurisdiction to hear Gavle's claim, and we choose to exercise it, we now address the issue of sovereign immunity. It is settled law that tribes have the privilege of sovereign immunity, granted to them by Congress and existing at the sufferance of Congress.

Rice v. Rehner, 463 U.S. 713, 719 (1983). "Indian tribes enjoy immunity because they are sovereigns predating the Constitution, and because immunity is thought necessary to promote federal policies of tribal self-determination, economic development, and cultural autonomy."

American Indian Agricultural Credit Consortium, Inc., v. Standing Rock Sioux Tribe, 780 F.2d 1374, 1378 (8th Cir. 1985) (citations omitted). Sovereign immunity has been successfully asserted as an affirmative defense to suit in federal or state court by tribes and their officers acting within the scope of their authority, and by some tribal entities. See, e.g., United States v.

Kagama, 118 U.S. 375, 383-84 (1886); Weeks Construction, Inc. v. Oglala Sioux Housing Authority, 797 F.2d 668, 671 (8th Cir. 1986); Snow v. Quinault Indian Nation, 709 F.2d 1319, 1321 (9th Cir. 1983), cert denied, 467 U.S. 1214 (1984).

The question before us today is whether LSI is the kind of tribal entity, analogous to a governmental agency, which should benefit from the defense of sovereign immunity, or whether it is more like a commercial business enterprise, instituted solely for the purpose of generating profits for its private owners. Gavle argues that LSI is a mere commercial activity, a corporation organized to generate profits, which happens to have its principal place of business on the reservation and whose owners happen to be Indians. Relying on the Arizona state supreme court decision in Dixon v. Picopa Constr. Co., 160 Ariz. 251, 772 P.2d 1104 (1989), she contends that LSI serves no function akin to that of tribal government and thus cannot benefit from the sovereign immunity possessed by the tribe. Referring to its earlier case of, White Mountain Apache Indian Tribe v. Shelley, 107 Ariz. 4, 480 P.2d 654 (1971), which extended sovereign immunity to a tribal owned business entity, the Dixon court held that Picopa Construction Co., a tribal-owned corporation, was not a "subordinate economic organization" and thus did not have sovereign immunity. Dixon, 160 Ariz. at 258, 772 P.2d at 1111.

LSI, in turn, argues that the corporation was organized under the tribal ordinances and empowered with the same rights and privileges as the tribe. LSI points to a number of cases in which courts have extended the reach of a tribe's sovereign immunity to entities that were, in some way, subordinate organizations of the tribe. The Eighth Circuit has, for example, held that immunity existed for a tribal-chartered housing authority. Weeks Construction, 797 F.2d at 671;

Namekagon Development Co., Inc. v. Bois Forte Reservation Housing Auth., 395 F. Supp. 23, 28 (D. Minn. 1974), aff'd, 517 F.2d 508 (8th Cir. 1975). The New York Court of Appeals recently found sovereign immunity extended to a non-profit, state-chartered corporation. In re Ransom v. St. Regis Mohawk Education & Community Fund, Inc., 86 N.Y.2d 553, 560, 658 N.E.2d 989, 993, 635 N.Y.S.2d 116, 120 (1995). Finally, the Seventh Circuit Court of Appeals has held that a contract with a wholly-owned tribal corporation, whose manufacturing facility was located within the boundaries of a reservation, was to be treated as a contract with the tribe itself. Altheimer & Gray v. Sioux Mfg. Corp., 983 F.2d 803, 809-10 (7th Cir. 1993), cert. denied, Sioux Mfg. Corp. v. Altheimer & Gray, 510 U.S. 1019 (1993).

In re Ransom, 86 N.Y.2d at 559, 658 N.E.2d at 992, 635 N.Y.S.2d at 119.

Taking into account the reasoning of these cases, we conclude that the principal factors to be considered in determining whether tribal sovereign immunity extends to a tribal business entity are three:

- (1) Whether the business entity is organized for a purpose that is governmental in nature, rather than commercial;
- (2) Whether the tribe and the business entity are closely linked in governing structure and other characteristics; and
- (3) Whether federal policies intended to promote Indian tribal autonomy are furthered by the extension of immunity to the business entity.



Applying these factors to the facts at hand, we conclude that, as a tribal business entity, organized for the general benefit of the Community and closely linked to the governing structure of the Community, LSI is entitled to sovereign immunity from civil action in state court.

First, we note that LSI was created for the specific purpose of "improv[ing] the business, financial or general welfare of the Corporation, the Members of the Corporation, and the Community." Articles of Incorporation, *supra*, at § 3.0. While Gavle may argue that LSI's economic activity serves no governmental purpose, the U.S. Supreme Court, in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), relied upon the Bureau of Indian Affairs' view that "tribal bingo enterprises are an appropriate means by which tribes can further their economic self-sufficiency, the economic development of reservations and tribal self-determination." *Id.* at 217-18 n.21 (quoting an affidavit submitted to the court by the Director of Indian Services for the Bureau of Indian Affairs). This seems to recognize the unique role that Indian gaming serves in the economic life of here-to-fore impoverished Indian communities across this country.

As noted by the Fifth Circuit Court of Appeals, "[t]he fact that the [tribe] was engaged in an enterprise private or commercial in character, rather than governmental, is not material [to the availability of sovereign immunity]. It is in such enterprises and transactions that the Indian tribes and the Indians need protection." *Maryland Cas. Co. v. Citizens Nat. Bank of West Hollywood*, 361 F.2d 517, 521 (5th Cir.), cert. denied, *Maryland Cas. Co. v. Seminole Tribe of Florida, Inc.*, 385 U.S. 918 (1966).

Further, LSI is owned wholly by the Community, as a governmental unit, unlike business enterprises organized under the corporate laws of Minnesota, the ownership of which is typically vested in private citizens, for their personal benefit. LSI's Board of Directors must include at least three members of the Community Business Council and a majority of the Board of Directors must be members of the Community. Articles of Incorporation, *supra*, at §§ 7.3 and 7.41 Also, directors may be removed from office in a proceeding commenced by 10% of the corporation (who are all of the members of the Community) in the Mdewakanton Sioux Community Court. *Id.* at § 7.152. There is, therefore, a close link between the Community and the management of LSI. [6]

We also note that federal statutory law supports the notion that gaming activity is closely linked to the well-being of the tribe. All Indian gaming is conducted pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721 (1994). Under the provisions of IGRA, only tribal entities can engage in Indian gaming and gaming by Indian tribes is recognized as a "means of promoting tribal economic development, self-sufficiency and strong tribal governments." 25 U.S.C. § 2702 (1994). Thus, as a matter of federal law, LSI must be a tribal entity in order to conduct gaming authorized by the statute. A mere commercial activity, incorporated by Indian individuals for the ostensible purpose of conducting gaming in Indian country, would be prohibited from doing so under federal law. This seems to us a strong recognition of the close link between the tribe itself and LSI, the gaming business entity, and also of the federal policy encouraging tribal economic well-being through the operation of such gaming businesses.

The dissent seems to be influenced by the fact that LSI is a "for-profit, multi-million dollar" enterprise and therefore contends that our analysis under each of these factors is mistaken. With regard to the first factor, the purpose for which the business entity is organized, the dissent asserts that this factor would favor immunity for LSI if LSI were engaged in activity, such as providing housing or educational services, that directly benefited the tribe. This point ignores the force of *Cabazon*, which found that gaming activities could further tribal economic development and self-determination. *Cabazon*, 480 U.S. at 217-19. The dissent also argues that the tribe is not involved in the day-to-day management of LSI and, therefore, LSI is more a private corporation than an extension of the tribal government. However, control of a corporation need not mean control of business minutiae; the tribe can be enmeshed in the direction and control of the business without being involved in the actual management. Lastly, the dissent asserts that granting sovereign immunity to LSI would be neutral, or possibly detrimental towards the federal goal of preserving tribal sovereignty and cultural heritage. We do not see how being successful in business and immune from suit necessarily undermines these goals. There is simply no way to avoid the fact that LSI is different from other corporations, regardless of how much money it makes--it is integrally related to the Shakopee Mdewakanton Sioux Community, a federally recognized Indian tribe, and is, therefore, different, despite surface similarities to other for-profit enterprises.

A further concern, if this court were to reject LSI's claim of sovereign immunity, is the intrusion by this court into matters of century's old common law [7] and federal policy, without the slightest suggestion from Congress or the United States Supreme Court that sovereign immunity for tribal corporations is now to be abandoned. We are reminded of the

importance of the plenary role of Congress in determining the scope and application of the sovereign immunity doctrine in *United States vs. Wheeler* where the Supreme Court stated:

The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.

435 U.S. 313, 323 (1978).

Gavle's appeal here is not unlike that of the State of Oklahoma in *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Oklahoma*, 498 U.S. 505 (1991). In relation to the collection of state tax on the sale of cigarettes to tribal members on tribal land, the state argued that "tribal business activities \* \* \* are now so detached from traditional tribal interests that the tribal sovereignty doctrine no longer makes sense in this context," and that "no purpose is served by insulating tribal business ventures from the authority of the States to administer their laws." *Id.* at 510. The Supreme Court rejected this argument, reaffirming again the unique role of Congress in determining circumstances where the doctrine of sovereign immunity should be modified:

*Oklahoma Tax Comm'n*, 498 U.S. at 510 (citations omitted). While the time may well come, or even be upon us now, that a tribal owned corporation, operated for profit as is LSI, should as a matter of fairness and equity be subject to the same liabilities as a non-tribally

owned corporation, it is not for this court to make that decision in the absence of some change in Congressional policy or direction from the U.S. Supreme Court indicating that under such circumstances elimination of the tribal corporation's sovereign immunity is appropriate.

Thus, we conclude that as a tribal business entity, formed to enhance the well-being of the Community and closely linked to it in governance, LSI has sovereign immunity from suit, unless it has waived that immunity by express and unequivocal action. We address the issue of waiver next.

### Waiver

The Nawls with the basic tenet of Indian law that tribal sovereign immunity may be waived, but such a waiver must be express and unequivocal and may not be implied. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Gavle here argues that the Articles of Incorporation allow LSI to waive any immunity from suit, relying upon the language of section 3.2 providing that

The Corporation shall have the power to sue and is authorized to consent to be sued in the Judicial Court of the Shakopee Mdewakanton Sioux Community or another court of competent jurisdiction;

However, to be effective, the Corporation must, by action of the Board of Directors, explicitly consent to be sued in a contract or other commercial document in which the Corporation shall also specify the terms and conditions of such consent. Articles of Incorporation, *supra*, at § 3.2.

Based on these provisions it is clear that LSI was legally authorized to waive its sovereign immunity defense by "explicit consent," contained in a "contract or other commercial document" and "specifying the terms and conditions of such consent."

Gavle next asserts that these three requirements are met through LSI's registration with the Secretary of State as a foreign corporation, pursuant to Minn. Stat. § 303.01-.25 (1994). LSI's application to do business in Minnesota provides that the corporation irrevocably consents to service of process, as provided by Minn. Stat. § 303.13 (1994), and was signed by Allene Ross, vice-chair of LSI.

Thus, the issue before us is whether such a corporate registration and consent to service is the kind of "express and unequivocal" waiver of sovereign immunity that is called for under the Articles of Incorporation and that Santa Clara Pueblo and its progeny require. Like the court of appeals, we conclude that it is not. Quite simply, consent to service of process, and thus to personal jurisdiction, cannot be construed as an automatic waiver of an otherwise available affirmative defense. Presumably foreign corporations that register to do business in Minnesota do not understand that they are waiving their right to assert affirmative defenses, based, for example upon a statute of limitations, failure of consideration, accord and satisfaction and the like. See Minn. R. Civ. P. 8.03 (1996). Similarly, we conclude that LSI, by agreeing to service of process, cannot be said to have waived the affirmative defense of sovereign immunity.

This conclusion is fully in accord with controlling federal case law. While it is true, as Gavle argues, that no "magic words" are necessary to operate as a waiver of sovereign

immunity, *Rosebud Sioux Tribe v. Val-U Const. Co. of South Dakota, Inc.*, 50 F.3d 560, 563 (8th Cir.), reh'g denied (Apr. 21, 1995), cert. denied, 116 S. Ct. 78 (1995), there are simply **no** words here, magic or otherwise, that articulate the kind of clear abandonment of this powerful affirmative defense mandated by the Supreme Court. That kind of particularity is found, by contrast, in a tribal council resolution expressly waiving sovereign immunity. *Merrion v. Jicarilla Apache Tribe*, 617 F.2d 537, 540 (10th Cir. 1980), aff'd, 455 U.S. 130 (1982).

Furthermore, the New York Court of Appeals, in the face of an even more explicit state statutory provision, has recently held that the St. Regis Mohawk tribe did not waive its sovereign immunity merely by qualifying to do business as a foreign corporation in the state of New York. [T]he mere fact that a tribal corporation, by statute, has designated an agent for service of process or is empowered to "sue and be sued" does not automatically subject that corporate entity to any court's jurisdiction where jurisdiction is otherwise lacking. \* \* \*

[E]xpress invocation of the power to sue and be sued and submission to a particular forum by official tribal action is required. *Ransom*, 86 N.Y.2d at 563, 658 N.E.2d at 995, 635 N.Y.S.2d at 122. We agree with this analysis. Gavle also argues from cases which find the needed specificity in "sue and be sued clauses" contained in tribal contracts or other business documents. See, e.g., *Fontanelle v. Omaha Tribe of Neb.*, 430 F.2d 143, 147 (8th Cir. 1970). If there were such a provision at issue here, our conclusion might indeed be different. LSI's articles of incorporation do indeed allow for a "consent to be sued," but they require that it be "explicit" and detailed as to "terms and conditions of the consent." We have no "sue or be sued" clause before us nor anything that specifies "terms and conditions of consent" and thus, there is no waiver of immunity based on this provision of the charter.

Finally, we also find inapposite Gavle's reliance on cases standing for the proposition that a foreign corporation that appoints an agent for service under Minn. Stat. § 303.13 necessarily consents to be sued. See, e.g., *Beales v. L.D. Schreiber & Co.*, 56 F. Supp. 814, 815 (D. Minn. 1944) (citing *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165 (1939)); *Rykoff-Sexton, Inc. v. American Appraisal Associates, Inc.*, 469 N.W.2d 88, 90 (Minn 1991). It is enough to note that none of these cases dealt with the issue of a waiver of Indian tribal immunity, for which, as noted above, the Supreme Court has identified specific requirements. Further, at most, they represent the proposition that appointment of an agent may serve as a concession on the issue of personal jurisdiction.

The Supreme Court's holding in *Santa Clara Pueblo* created a high threshold on the issue of a tribe's waiver of its sovereign immunity and manifested strong public policy protective of tribal independence. We cannot conclude that a mere agreement to accept service of process rises to meet that threshold, and therefore, we hold that LSI did not waive its immunity from suit.

We note for the record that the dissent and other state judicial brethren have expressed displeasure that we find that sovereign immunity may extend to a tribal business entity. However, we find no statute or congressional mandate that denies Indian tribes their sovereign status. As recently as 1991, the Supreme Court noted that "[a] doctrine of Indian sovereign immunity was originally enunciated by this Court and has been reaffirmed in a number of cases. Congress has always been at liberty to dispense with such tribal immunity or limit it. \* \* \* Instead, Congress has consistently reiterated its approval of the immunity



doctrine." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Oklahoma*, 498 U.S. 505, 510 (1991) (citations omitted). So, too, do we reiterate and reaffirm that doctrine by our holding today.

Affirmed.

See 25 U.S.C. §§ 476, 477 (1994). The tribal government is not involved in the day-to-day operations of LSI's business ventures, does not select or supervise the board of directors, nor is tribal property threatened by judgments against the corporation. As the court of appeals found, LSI "was created as a separate economic entity, not subject to governmental control, incorporated under tribal law and not merely as an authorized tribal activity." *Gavle v. Little Six, Inc.*, 534 N.W.2d 280, 284 (Minn. App. 1995).

And finally, the majority claims that extending sovereign immunity to LSI will follow federal policy encouraging the tribe's autonomy and general welfare. However, denying sovereign immunity to LSI, a corporation whose primary responsibilities consist of running a casino, would not infringe upon the federal government's laudable goals of cultural preservation, conservation of natural resources owned by the tribe, or promotion of tribal self-government. The assets of the Community would not be jeopardized by court judgments against LSI, and in fact there is a persuasive argument that extending sovereign immunity to corporations like LSI could be potentially detrimental to the tribe's business interests. As the Arizona Supreme Court noted in *Dixon v. Picopa Construction Co.*, 160 Ariz. 251, 259, 772 P.2d 1104, 1112 (Ariz. 1989), "an Indian corporation's successful assertion of immunity, even in a negligence case, may deter persons or entities from entering into contractual relationships with that Indian corporation or

any other Indian corporation. Non-Indians will undoubtedly think long and hard before entering into business relationships with Indian corporations that are immune from suit."

I find substantial similarities between the facts at issue in this case and those considered by the Arizona court in Dixon. In that case, the court held that a construction company incorporated by an Indian tribe was not a "subordinate economic organization," and therefore was not entitled to assert the tribe's sovereign immunity defense in a tort action brought by an automobile driver following an off-reservation automobile accident. *Id.*, 772 P.2d at 1108-10 (citing *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 480 P.2d 654 (Ariz. 1971)). Like LSI, the Picopa Construction Company involved in the Dixon case had a board of directors separate from the tribal government and with exclusive administrative control of the corporation's day-to-day operations, was instituted as a for-profit business venture with the Community as the sole shareholder, was not organized under Section 17 of the Indian Reorganization Act, and was not intended to carry out the Community's governmental functions. *Id.* at 1107-11. I would follow the Arizona court's reasoning in Dixon and Shelley, and require that a business incorporated under tribal law show itself to be an extension of the tribal government in order to take advantage of the tribe's sovereign immunity defense. In this case, it is clear that LSI does not meet this test. In conclusion, I believe that Gavle should be permitted to pursue her claims against LSI in state court because LSI is not an economic organization subordinate to the tribal government.

## DISSENT

COYNE, Justice (dissenting).

I dissent. Little Six, Inc., applied for and was granted a certificate of authority to transact business in Minnesota as a foreign corporation in accordance with Chapter 303 of Minnesota Statutes. For more than 50 years before the incorporation of Little Six, Inc., Minnesota has accorded registered foreign corporations the following powers:

After the issuance of a certificate of authority by the secretary of state and until cancellation or revocation thereof or issuance of a certificate of withdrawal, the corporation shall possess within this state the same rights and privileges that a domestic corporation would possess if organized for the purposes set forth in the articles of incorporation of such foreign corporation pursuant to which its certificate of authority is issued, and shall be subject to the laws of this state. Minn. Stat. § 303.09 (1994) (emphasis added). Gavle complains of violation of the Minnesota Human Rights Act, Minn. Stat. ch. 363 (1994). The requirements of the Minnesota Human Rights Act are applicable to the state and its political subdivisions as well as to private employers, and I can see no earthly reason for permitting a foreign corporation to depart the Shakopee Mdewakanton Sioux (Dakota) reservation and to violate with impunity the human rights of Minnesota citizens while transacting business in Minnesota.

That Indian tribes retain a unique sovereignty is beyond dispute. When the members of the tribe reside on the reservation and confine their commercial activities to the reservation, the State of Minnesota may not and does not subject the tribe's members to the state's tax laws.

Brun v. Commissioner of Revenue, 549 N.W.2d 91 (Minn. 1996). When, however, the sovereign becomes a merchant, his license to carry on his commercial activity on foreign soil and to carry on his trade with the inhabitants of the foreign state is expressly subject to the laws of the licensor. Little Six, Inc., like any other foreign corporation, must be deemed to have accepted the certificate of authority to transact business in Minnesota subject to its express limitations.

As Chief Justice John Marshall put it in 1812, although the "military force which supports the sovereign power and maintains the dignity and independence of a nation" is not subject to the jurisdiction of another sovereign nation whose borders the military force crosses under license to do so, "[a] prince, by acquiring private property in a foreign country, \* \* \* may be considered as so far laying down the prince, and assuming the character of a private individual," that he subjects the property to the territorial jurisdiction. *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116, 145 (1812).

In modern parlance that statement means that if a commercial entity enters a commercial arena outside its own territory pursuant to a Minnesota certificate of authority to transact business as a foreign corporation, the foreign corporation is subject not merely to Minnesota's jurisdiction, but it is subject to the laws of Minnesota and the defense of sovereign immunity is, at the very least, of no more avail to the foreign corporation than it is to the state and its political subdivisions.

Therefore, I would reverse the lower courts and remand for vacation of the summary judgment in favor of Little Six, Inc.

## Footnotes

[1] "Indian Country" includes land within Indian reservations, dependent Indian communities, and Indian allotments. 18 U.S.C. § 1151 (1994).

[2] Gavle's allegations of injury involve actions by defendants Leonard Prescott, Allene Ross and William Johnson, corporate officers of LSI, but those individual claims are not at issue here.

[3] Getches, et al., Federal Indian Law at 8.

[4] Public Law 280, now codified as 28 U.S.C. § 1360 (1994), identified six original states whose state courts would have jurisdiction over "civil causes of action between Indians or to which Indians are parties which arise in \* \* \* Indian country \* \* \*." This law was later modified by the law now codified as 25 U.S.C. § 1322 (1994) to give state courts jurisdiction over civil matters in Indian country "with the consent of the tribe." However, the original six states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin) all retained original civil jurisdiction even without the consent of the tribes.

[5] The Supreme Court has repeatedly recognized that tribal courts have inherent power to exercise civil jurisdiction over non-Indians in disputes affecting the interests of Indians which are based upon events occurring in Indian country. *Montana v. United States*, 450 U.S. 544, 566, reh'g denied, 452 U.S. 911 (1981). We note further that the Judicial Court of the Shakopee Mdewakanton Sioux Community has previously ruled that LSI enjoys the same sovereign immunity as the tribe itself. See, e.g., *Culver Security Systems v. Little Six, Inc.*, Court File No. 026-92, slip op. at 3-4 (Shakopee Mdewakanton Sioux (Dakota) Tribal Court June 14, 1995).

[6] We note also that an amended Community Corporation Ordinance and restated Articles of Incorporation of LSI, filed after the commencement of this litigation, provide an even closer link between the members of the Community and the management of LSI. See Articles of Incorporation of Little Six, Inc. (amended, Feb. 28, 1995).

[7] See *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116 (1812). [8] See, e.g., *Ransom v. St. Regis Mohawk Educ. & Community Fund, Inc.*, 86 N.Y.2d 553, 658 N.E.2d 989, 635 N.Y.S.2d 116 (N.Y. 1995) (non-profit tribal corporation organized to provide education and health services to tribe enjoyed tribe's sovereign immunity); *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 480 P.2d 654 (Ariz. 1971) (tribal agency empowered with management of tribe's timber resources was "subordinate economic organization" and therefore was immune from suit); *S. Unique, Ltd. v. Gila River Pima-Maricopa Indian Community*, 138 Ariz. 378, 674 P.2d 1376 (Ariz. Ct. App. 1983) (agricultural venture created to promote economic welfare of Indian community and whose property was entirely owned by community was "subordinate economic organization" of tribal government and therefore entitled to tribal sovereign immunity).

## V. Conclusion

The Appellant respectfully requests this court:

- A) Allow federal jurisdiction of this case by granting broad general power to restrict tribal sovereignty and relax the restrictions of the treaty agreement in order for the court to hear this case and justice to be served.

Mystic Lake failed to provide merit for this case; therefore, the Nawls are asking to be heard in a federal court.

- B) Casino in the United States provide entertainment to millions of customers every year who enjoy visiting these establishments. The operators of casinos, however, need to be constantly aware that the mixture of alcohol, gambling, and other adult-oriented entertainment they provide can create an atmosphere in which the possibility of sexual attack of their staff by a small minority of customers can be a problem. Such third-part sexual assault can leave employers open to liability under Title VII. In order to protect themselves from lawsuit, casinos need to ensure that when allegations of sexual assault by customers are reported by employees, these complaints are dealt with quickly and appropriately. This requires casinos to develop training schemes and employment policies in order to make managers and other staff members aware of the problem. Such measure are a relatively inexpensive way for casinos to protect both themselves and their employees from the action of abusive customer and it's a wakeup call to the Shakopee Mdewakanton Sioux Community. (C). Nawls conclude by demanding justice for the Mystic Lake casino's negligence for Ms. Nawls' attack.

### **Certificate of Service**

I certify that on April 26, 2016, the foregoing Brief was filed electronically using the Court's CM/ECF system, which will give notice of the filing to counsel for the Appellee. In addition, a copy of the Brief was served on the Appellee by First-Class Mail, addressed as follows:

/s/Greg S. Paulson

Greg S. Paulson (#0250478)

Greg.paulson@bpslawfirm.com

5001 American Boulevard West  
BlueDog Paulson & Small, P.L.L.P.  
Southgate Office Plaza, Suite 500  
Minneapolis, MN 55437.  
Telephone: (952)893-1813

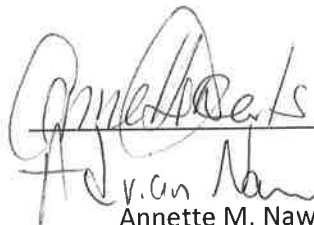
Certificate of Compliance



I hereby certify that appellant's brief in case no. 16-1636 complies with Minnesota Rules of Appellate Procedure 132.01 Subd.3(a)(1) and that the brief contains 11,974 words and uses a 12 point font. It was prepared using Microsoft Office Word, 2016.

4/27/2016

Date 4/27/2016

  
Annette M. Nawls  
Appellant (Pro Se)  
PO Box 3078  
Burnsville, MN 55337  
(612) 225-8966

# EXHIBIT A

## PRIOR LAKE POLICE DEPARTMENT

**OFFENSE OR INCIDENT:** 5<sup>TH</sup> DEGREE ASSAULT  
DISORDERLY CONDUCT  
**DATE & TIME REPORTED:** 08-09-13, 2253 hours/10:53 p.m.  
**CASE FILE NUMBER:** 13006911  
**OFFICER ASSIGNED:** Chris Schaefer, #33

### I. SYNOPSIS:

Nawls was assaulted by McCaffrey while the two were alone in a suite. McCaffrey was arrested and transported to jail.

### II. PERSONS/PROPERTY:

#### A. Complainant(s)/Victim(s):

1. ANNETTE (NMN) NAWLS  
17945 Jubilee Way, #C  
Lakeville, MN 55044  
DOB/ 08-01-79  
Res/ 612-860-9929  
Cell/ 952-255-8480
2. BARRY WOOD  
*Security Supervisor*  
Mystic Lake Casino  
2700 Mystic Lake Boulevard  
Prior Lake, MN 55372

#### B. Suspect(s):

1. TIMOTHY SCOTT MCCAFFREY  
5128 34<sup>th</sup> Avenue South  
Minneapolis, MN 55417  
DOB/ 02-04-62

#### C. Vehicle(s):

1. NONE

#### D. Witness(es)/Principle(s):

1. ERIN MAUREEN DELMORE  
*Casino Host*  
Mystic Lake Casino  
2400 Mystic Lake Boulevard  
Prior Lake, MN 55372  
DOB/ 03-11-81

**Prior Lake Police Department  
Case File #13006911  
Report of Officer Chris Schaefer, #33**

2. NATHAN AASNESS  
*Audio/Video Supervisor*  
Mystic Lake Casino  
2400 Mystic Lake Boulevard  
Prior Lake, MN 55372
3. OFFICER ADAM BOSER, #31  
Prior Lake Police Department

**E. Property:**

1. Digital recorded statement – Nawls
2. Digital recorded statement – Delmore
3. Digital recorded statement – Aasness

**III. STATUS:**

Cleared by Arrest

cc: Mailed to Court – 09/05/13 (cak)  
E-mailed to SJPA – 09/05/13 (cak)  
E-mailed to Hennepin County Community Corrections – 09/05/13 (cak)  
E-mailed to 360 Communities/Lewis House – 01/10/14 (kso)  
Faxed to Crime Victim Reparations 01/14/14 (des)  
E-mailed to SCAO – 11/30/15 (cak)

**Prior Lake Police Department  
Case File #13006911  
Report of Officer Chris Schaefer, #33**

**IV. ORIGINATING OFFICER'S REPORT:**

**Officer:** Chris Schaefer, #33

**Date & Time of Report:** 08-10-13, 2034 hours/8:34 p.m.

On Friday, 08-09-13, at approximately 2253 hours/10:53 p.m., Officer Adam Boser, #31, and I were dispatched to Mystic Lake Casino for the report of an assault.

When I arrived at the casino, along with Officer Boser, we were met by Security Supervisor Barry Wood. Wood informed me of the following:

- The casino was hosting a concert in a suite at the casino.
- A waitress in the suite reported being assaulted.
- The female wanted to press charges.
- The male was being detained in the security supervisor's office.

Wood then lead Officer Boser and I to the first aid room, where Officer Boser made contact with the victim, identified as Annette (NMN) Nawls, DOB 08-01-79.

(SEE OFFICER BOSER'S SUPPLEMENTAL REPORT FOR FULL DETAILS ON NAWLS STATEMENT.)

I went with Wood to the security supervisor's office, where I met the suspect, identified by his Minnesota ID card as Timothy Scott McCaffrey, DOB 02-04-62. I noticed immediately while speaking with McCaffrey that he was talking very loudly and appeared to be under the influence of alcohol. I was able to detect a strong odor of an alcoholic beverage coming from him. McCaffrey also admitted to having a couple "fresh ones". McCaffrey has a no alcohol restriction on his driver's license. I questioned McCaffrey about what had occurred up in the suite. He denied anything ever happening.

I left the security supervisor's office and spoke with Supervisor Wood further. I learned that there was no surveillance coverage of the incident inside of the suite. However, there was a casino host, as well as an audio/video employee that had seen the incident occur. I requested Supervisor Wood to bring the employees to the security supervisor's office so I could speak with them further.

A short time later, Casino Host Erin Maureen Delmore, DOB 03-11-81, responded to our location and gave me a statement about what she observed.

(SEE STATEMENT FOR FULL DETAILS)

In summary, Delmore told me the following:

- She was working as a host in all four suites at the casino that night.

**Prior Lake Police Department  
Case File #13006911  
Report of Officer Chris Schaefer, #33**

- She had observed McCaffrey throughout the night being loud and obnoxious.

After everyone had left the suite areas, the audio/video supervisor came out of the suite and requested her assistance. He was later verbally identified as Nathan Aasness.

Delmore said after she went with Aasness to the suite, she observed the following:

- Nawls was cornered in the room.
- McCaffrey was standing inches away from Nawls.
- Nawls appeared frightened and fearful.
- She stepped in between McCaffrey and Nawls to intervene.
- She told McCaffrey he needed to leave.
- McCaffrey put up a verbal argument.
- She had to physically escort him out of the suite.
- Nawls told her she was frightened, and thanked her.
- Nawls said McCaffrey kissed her.

I then concluded my statement with Delmore.

I requested to speak with the Audio/Video Supervisor Aasness. I later learned that he had already ended his shift for the night. However, he was available via telephone. I spoke with Aasness over the telephone, and he gave me a statement.

(SEE RECORDING FOR FULL DETAILS.)

In summary, Aasness told me that he was working in the suite and observed McCaffrey cornering Nawls. He went and got Delmore for help. Aasness said that he believes he saw McCaffrey kiss Nawls and was 100% sure he saw McCaffrey motioning to kiss Nawls. However, he did not see the actual physical contact.

I concluded my statement with Aasness and talked with Officer Boser further. It was determined, based on the information we received, McCaffrey was going to be cited for 5<sup>th</sup> Degree Assault.

While speaking with Officer Boser, I heard McCaffrey inside the security supervisor's office yelling, screaming in a loud tone, and cursing. Officer Boser and I went into the security supervisor's office, where we saw security staff restraining McCaffrey on the ground. It was learned that McCaffrey had attempted to leave the office and became combative. McCaffrey was then placed in handcuffs by Officer Boser and placed under arrest.

(SEE OFFICER BOSER'S SUPPLEMENTAL REPORT FOR FULL DETAILS.)

McCaffrey was ultimately transported to the Scott County Jail and booked on 5<sup>th</sup> Degree Assault and Disorderly Conduct.

**Prior Lake Police Department  
Case File #13006911  
Report of Officer Chris Schaefer, #33**

I spoke with Nawls further about the process going forward and the court case. She was satisfied with the information I had given her.

I did request any surveillance coverage that the casino had from any portion of this incident, and I obtained a citizen's arrest form.

A driver evaluation form will be sent to the State of Minnesota in regards to McCaffrey violating his alcohol restriction on his driver's license.

**By: Officer Chris Schaefer, #33  
Prior Lake Police Department**

/sl

cc: Mailed to Court – 09/05/13 (cak)  
E-mailed to SJPA – 09/05/13 (cak)  
E-mailed to Hennepin County Community Corrections – 09/05/13 (cak)  
E-mailed to 360 Communities/Lewis House – 01/10/14 (kso)  
Faxed to Crime Victim Reparations – 1/14/14 (des)  
E-mailed to SCAO – 11/30/15 (cak)



**PRIOR LAKE POLICE DEPARTMENT  
SUPPLEMENTAL REPORT**

**DATE & TIME REPORTED:** 08-09-13, 2253 hours/10:53 p.m.  
**CASE FILE NUMBER:** 13006911  
**OFFICER ASSIGNED:** Adam Boser, #31

**DATE & TIME OF REPORT:** 08-10-13, 0045 hours/12:45 a.m.

On 08-09-13 at approximately 2252 hours/10:52 p.m., Scott County Dispatch advised Prior Lake officers that there was an assault report with no known injuries at Mystic Lake Casino, 2400 Mystic Lake Boulevard. Dispatch also advised officers that security was out with suspect involved at the supervisor's office.

Approximately 2302 hours/11:02 p.m., officers arrived on scene. Upon arrival, I met with the victim involved, later identified as Annette (NMN) Nawls, DOB 08-01-79, in the first aid office at Mystic.

During my conversation with Nawls, she stated that she was serving a male drinks in one of the showrooms, and when she'd bring the drinks to him, he would slap her on the butt. She said that after the room was supposedly cleared out, she went in to clean things up. She was approached from behind by the same male, but this time he slapped her on the butt with both hands. He then turned her around and kissed her on the lips. After repeated attempts trying to get him away from her verbally, he cornered her in the room, not allowing her to exit by placing his hands on both the shelf and trash can to his right and left.

Nawls stated that she wanted to press charges against him for the assault because she didn't want this to happen to somebody else.

A short time later, I digitally recorded and received a statement from Nawls. She stated in summary the following:

- I was serving the male Stella Beer.
- The first time that I came in, when I served him a beer, he slapped me on the butt. I told him not to do that.
- I came back later to serve him another beer, after he had called for one, and he again slapped me on the butt when I served him his beer. I again told him that it was not appropriate and to not do that.
- When I got back into the room to clean it after everybody had left after the show, the same male approached me from behind and slapped my butt with two hands.
- The male turned me around and kissed me on the lips.
- He backed me into a corner of the room and was not allowing me to leave.
- I told him that the show was over; he needed to leave and to leave me alone.
- He said that I wasn't gonna get away from him.
- I saw one of the IT guys walk past the room so I waved to him to come in and help me.
- The IT guy made a gesture that he would be right back.



**Prior Lake Police Department  
Case File #13006911  
Report of Officer Adam Boser, #31**

- The manager came back and escorted the male out of the room and downstairs.
- During the incident, when I was cornered, I felt very scared and unsure of what was going to happen next.
- I felt that my life might be in danger.
- I want to press charges against him because I don't want this to happen to somebody else.

A short time later, I ended the statement with Nawls.

After ending the statement, I went to speak with Officer Schaefer, who had arrived at the same time I did and was going to get a statement from the witness and the suspect, who would later be identified as Timothy Scott McCaffrey, DOB 02-04-62.

While speaking with Officer Schaefer out in the hallway, outside the supervisor's office, I could hear McCaffrey in the office yelling at the security staff in there.

While waiting out in the hallway with Officer Schaefer to speak with him, security advised us that the male was getting disorderly. When we went to open up the door to the security office, two of the security supervisors were taking McCaffrey down to the ground. I spoke with Security Supervisor Wood, who stated that McCaffrey was getting loud and violent verbally towards us. When he was told several times to stop getting up and, after making the statement that he was going to leave, and he got up, that was when we went to place him in cuffs. He resisted, so we were forced to take him to the ground to restrain him.

(FOR MORE INFORMATION REGARDING BARRY'S STATEMENT, SEE CITIZEN'S ARREST FORM.)

At this time, when we entered the security office, I assisted in placing McCaffrey into handcuffs behind his back, which were checked for proper tightness and double locked. McCaffrey was then patted down for any contraband or weapons. All of his belongings that were in his pockets were placed in a bag, which came along with me to the Scott County Jail. He was then escorted to my squad car where he was secured.

A short time later, I transported McCaffrey to Scott County Jail from Mystic Lake Casino.

Upon arrival at the jail, I completed a citation and detainer for 5<sup>th</sup> Degree Assault and Disorderly Conduct. Prior to me leaving the jail, McCaffrey gave jail staff a breath sample of a .097 BAC.

For more information regarding this incident, see Officer Schaefer's and Mystic Lake Casino's reports and surveillance.

**By: Officer Adam Boser, #31  
Prior Lake Police Department**

/sl

**Prior Lake Police Department  
Case File #13006911  
Report of Officer Adam Boser, #31**

cc: Mailed to Court – 09/05/13 (cak)  
E-mailed to SJPA – 09/05/13 (cak)  
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Faxed to Crime Victim Reparations – 1/14/14 (des)  
E-mailed to SCAO – 11/30/15 (cak)

State of Minnesota  
County of Scott

District Court  
1st Judicial District

Prosecutor File No. 140011-13  
Court File No. 70-CR-13-20203

State of Minnesota,  
Plaintiff,  
vs.

COMPLAINT  
Summons

TIMOTHY SCOTT MCCAFFREY · DOB: 02/04/1962  
5128 34th Avenue South  
Minneapolis, MN 55417  
Defendant.



The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Assault-5th Degree-Gross Misdemeanor  
Minnesota Statute: 609.224.2  
Maximum Sentence: 1 year / \$3,000 fine or both.  
Offense Level: Gross Misdemeanor

Offense Date (on or about): 08/09/2013

Control #(ICR#): 13006911

Charge Description: On or about August 9, 2013, in the City of Prior Lake, Scott County, Minnesota, Defendant, Timothy Scott McCaffrey, 2/4/1962, committed an act with intent to cause fear in another of immediate bodily harm or death or intentionally inflicted or attempted to inflict bodily harm upon another, and the offense occurred within three years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

COUNT II

Charge: Indecent Exposure-Engage In Lewd/Indecent Behavior  
Minnesota Statute: 617.23.1(3), with reference to: 617.23.1  
Maximum Sentence: 90 days in jail, or \$1,000 fine, or both  
Offense Level: Misdemeanor

Offense Date (on or about): 08/09/2013

Control #(ICR#): 13006911

Charge Description: On or about August 9, 2013, in the City of Prior Lake, Scott County, Minnesota, Timothy Scott McCaffrey, DOB: 2/4/1962, in any public place or in any place where others are present engaged in any open or gross lewdness or lascivious behavior, or any public indecency.

COUNT III

Charge: Disorderly Conduct-Offensive/Abusive/Noisy/Obscene  
Minnesota Statute: 609.72.1(3), with reference to: 609.72.1

SCANNED

JUN 22 2015

U.S. DISTRICT COURT ST. PAUL

Maximum Sentence: 90 days in jail, or \$1,000 fine, or both  
Offense Level: Misdemeanor

Offense Date (on or about): 08/09/2013

Control #(ICR#): 13006911

Charge Description: On or about August 9, 2013, within the City of Prior Lake, County of Scott, State of Minnesota, Timothy Scott McCaffrey, DOB: 2/4/1962, did wrongfully and unlawfully engage in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others in a public or private place, knowing, or having reasonable grounds to know that it would, or would tend to, alarm, anger or disturb others or provoke an assault or breach of the peace.

## SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:  
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or  
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

**Complainant**

Josh Rozga  
Detective  
4649 Dakota Street SE  
Prior Lake, MN 55372  
Badge: 21

Electronically Signed: 10/21/2013

Subscribed and sworn to before the undersigned.

**Notary Public or  
Judicial Official**

Cheryle S. Ostlie  
Records Clerk, County of Scott  
4649 Dakota Street SE  
Prior Lake, MN 55372  
Notary ID: 20131973

Commission expires: 01/31/2015  
Electronically Signed: 10/21/2013

Being authorized to prosecute the offenses charged, I approve this complaint.

**Prosecuting Attorney**

Pamela J Converse  
Assistant City Attorney  
200 4th Avenue W  
Shakopee, MN 55379-1220  
(952) 496-8240

Electronically Signed: 10/21/2013



### FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

### ☒ SUMMONS

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on December 16, 2013 at 8:30 AM before the above-named court at 200 4th Avenue W, Shakopee, MN 55379 to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

### ☐ WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ Execute in MN Only

☐ Execute Nationwide

☐ Execute in Border States

### ☐ ORDER OF DETENTION

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$  
Conditions of Release:

This complaint is issued by the undersigned Judge as of the following date: October 21, 2013.

Judicial Officer

Rex Stacey

Electronically Signed: 10/21/2013.

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF SCOTT  
STATE OF MINNESOTA

Clerk's Signature or File Stamp:

State of Minnesota

Plaintiff

vs.

Timothy Scott McCaffrey

Defendant

### RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this Summons upon the Defendant herein named.

Signature of Authorized Service Agent:

## DEFENDANT FACT SHEET

Name: Timothy Scott McCaffrey  
DOB: 02/04/1962  
Address: 5128 34th Avenue South  
Minneapolis, MN 55417  
  
Alias Names/DOB:  
SID: MN91003232  
Fingerprints Needed: Yes  
Fingerprinted: Yes  
Handgun Permit: No  
Driver's License #: N624142898012 (MN)  
Alcohol Concentration:

# STATUTE AND OFFENSE GRID

Cnt. Nbr	Statute Type	Offense Date(s)	Statute Nbrs and Descriptions	Offense Level	MOC	GOC	Controlling Agencies	Case Numbers
1	Charge	8/9/2013	609.224.2 Assault-5th Degree-Gross Misdemeanor	Gross Misdemeanor	AD503	N	MN0700900	13006911
2	Charge	8/9/2013	617.23.1(3) Indecent Exposure-Engage in Lewd/Indecent Behavior	Misdemeanor	O3692	N	MN0700900	13006911
	Penalty	8/9/2013	617.23.1 Indecent Exposure-Public/Any Place-Others Present-Misdemeanor	Misdemeanor	O3692	N	MN0700900	13006911
3	Charge	8/9/2013	609.72.1(3) Disorderly Conduct-Offensive/Abusive/Noisy/Obs cene	Misdemeanor	N3030	N	MN0700900	13006911
	Penalty	8/9/2013	609.72.1 Disorderly Conduct	Misdemeanor	N3030	N	MN0700900	13006911



9/9/15

To Whom It May Concern:

I am writing to confirm that Annette Nawls has been participating in therapeutic services since her attack at work in August 2013.

I completed an intake with Annette on 10/03/13 after she was hospitalized for PTSD symptoms related to the attack at work. We have been working together since this time. However, from April 2014 to October 2014 we were unable to meet because she was evicted from her apartment. Annette and her husband had to move to Chicago to live with her husband's family. When she moved back to the Minneapolis area at the end of October 2014, we resumed treatment.

Annette and I have been working together one to two times per week. Our treatment goals are focused on decreasing her PTSD symptoms stemming from her attack at work.

If you have any further questions, you can reach me at 952-892-7690 ext. 123.

Thank you,



Mackenzie Shiell, M.A.

Healing Connections Therapy Center



OFFICE OF THE  
SCOTT COUNTY ATTORNEY

GOVERNMENT CENTER JC340 • 200 FOURTH AVENUE WEST • SHAKOPEE, MN 55379-1220  
Main Number: (952) 496-8240 • Fax: (952) 496-8775 • [www.co.scott.mn.us](http://www.co.scott.mn.us)  
Civil Division: (952) 496-8656 • Civil Fax: (952) 496-8607 • TTY/TDD: 952-496-8170

**RON HOCEVAR**  
County Attorney

**NEIL NELSON**  
Chief Deputy

**TODD ZETTLER**  
First Assistant

**CRIMINAL/JUVENILE**  
Sarah Wendorf – Div. Head

**CIVIL**  
Jeanne Andersen – Div. Head

**VICTIM/WITNESS COORDINATOR**  
Tera Portinga

**OFFICE MANAGER**  
Lori Lambrecht

June 9, 2015

Annette Mirembe Nawls  
PO Box 3078  
Burnsville, MN 55337

Re: State of Minnesota v. Timothy Scott McCaffrey  
County Attorney File #: 140011-13

Dear Ms. Nawls:

This letter is to inform you of the sentencing results regarding the defendant in the above-entitled case. Sentencing took place on June 8, 2015. The defendant plead guilty to **Gross Misdemeanor Fifth Degree Assault and Disorderly Conduct**. The results of the sentencing are as follows:

Stay of Imposition  
Probation 2 years to Scott County Community Corrections  
Serve 90 days in the Scott County Jail beginning forthwith  
Pay \$85.00 surcharge  
Pay \$2,771.27 restitution to Crime Victim Reparation Board  
Complete a Chemical Use Assessment and follow all recommendations  
Complete Chemical Dependency Treatment and all after care  
No use of alcohol or non-prescribed drugs & submit to testing  
No contact with victim, Annette Nawls  
No same or similar  
Remain Law Abiding

Thank you for the cooperation you have given the Scott County Attorney's Office. If you have any questions, please feel free to contact me.

Sincerely,

Caari C. Dueffert  
Senior Legal Assistant  
Direct Dial: 952-496-8803  
Email: [cdueffert@co.scott.mn.us](mailto:cdueffert@co.scott.mn.us)



ABBOTT NORTHWESTERN HOSPITAL  
800 E 28th St  
Minneapolis MN 55407  
612-863-4000

Annette Nawls  
17888 A Jubilee Way  
Lakeville MN 55044

10/1/2013

### CERTIFICATE TO RETURN TO WORK

Annette Nawls has been under my care from 9/24/13 through 10/1/2013. I do not believe patient is ready to return to work yet, and return to work date should be determined by outpatient providers, who will be following her closely after discharge.

Sincerely,  
J.A Avila

A handwritten signature in dark ink, appearing to read "J.A. Avila", written over a light blue horizontal line.

# EXHIBIT B

11/08/2013

To Whom It May Concern:

I am writing in regards to my client, Annette Nawls. I have been treating her mental health symptoms since 10/03/2013. Given the status of her current mental health symptoms she is unable to work due to mental health related functional impairments.

I anticipate that Annette will need up to 6 months of treatment before being able to fully return to work without functional limitations associated to her mental health symptoms.

Sincerely,



Mackenzie Shiell, MA, Mental Health Practitioner

# EXHIBIT C

# MINNESOTA DEPARTMENT OF PUBLIC SAFETY

## OFFICE OF JUSTICE PROGRAMS CRIME VICTIMS REPARATIONS BOARD

April 9, 2014

Annette Nawls  
17888 A Jubilee Way  
Lakeville, MN 55044

Re: Claim File # 038458

Dear Ms. Annette Nawls:


I am pleased to inform you that the Crime Victims Reparations Board has approved your claim for payment. The total amount of your award is \$2,483.17. Of this amount, \$2,483.17 will be paid directly to you, and \$0.00 will be paid directly to your service providers. Enclosed is an explanation of the benefits which are included in this award. This will provide further details on how your award was calculated.

If you have further losses as a result of the crime that are not included in this award, please submit those to our office. Approval of this award does not guarantee payment of all losses you submit in the future. Each expense submitted will be reviewed to determine if it is reasonable and directly related to the crime.

You are required to notify us if you receive other funds for losses related to the crime from another source. Other sources may include a civil lawsuit, insurance settlement, restitution from the offender, or donations. Under Minnesota Statutes, 611A.61, the Board may be entitled to receive a portion of your other benefits, up to the amount awarded by the Board. If you have retained an attorney to assist you with recovering other benefits, you should immediately provide him with a copy of this letter and the attached explanation of benefits. Also, if you have not already done so, please provide us with your attorney's name and phone number.

If you are dissatisfied with your award or have any questions, please contact your claims specialist, Alcenya Ajayi at (651) 201-7301 or 1-888-622-8799.

Sincerely,

  
Gloria Passer  
Office/Admin. Specialist

ENC: EOB

445 Minnesota Street, Suite 2300 • St. Paul, Minnesota 55101-1515 • [www.dps.state.mn.us/ojp](http://www.dps.state.mn.us/ojp)  
Phone: 651-201-7300/Fax: 651-296-5787/TTY: 651-205-4827/1-888-622-8799



MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
(E1 Rev. 4/03)



**Copy B To Be Filed With Employee's  
FEDERAL Tax Return**

**2013** OMB No. 1545-0008

a Employee's social security number	1 Wages, tips, other comp.	2 Federal income tax withheld
468-11-1833	841.78	
b Employer ID number	3 Social security wages	4 Social security tax withheld
935	239.61	52.19
	5 Medicare wages and tips	6 Medicare tax withheld
	841.78	12.21

c Employer's name, address, and ZIP code

Kelber Catering, Inc.  
Minneapolis Convention Center 1301 2nd Avenue  
Minneapolis, MN 55403

d Control Number  
T881 7426 Mirembe Annette 742

e Employee's first name and initial Last name

Annette Mirembe  
17888 A Jubilee Way Apt A  
Lakeville, MN 55044

f Employee's address, and ZIP code

7 Social security tips 602.17

8 Allocated tips

10 Dependent care benefits

11 Nonqualified plans

12a Code

13 Statutory employee

14 Other

12b Code

12c Code

12d Code

15 State Empl.'s state I.D. # MN 9343178

16 State wages, tips, etc. 841.78

17 State income tax 4.00

18 Local wages, tips, etc.

19 Local income tax

20 Locality name

Form W-2 Wage and Tax Statement  
This information is being furnished to the Internal Revenue Service

Dept. of the Treasury - IRS

**Copy 2 To Be Filed With Employee's State,  
City, or Local Income Tax Return**

**2013** OMB No. 1545-0008

a Employee's social security number	1 Wages, tips, other comp.	2 Federal income tax withheld
468-11-1833	841.78	
b Employer ID number	3 Social security wages	4 Social security tax withheld
935	239.61	52.19
	5 Medicare wages and tips	6 Medicare tax withheld
	841.78	12.21

c Employer's name, address, and ZIP code

Kelber Catering, Inc.  
Minneapolis Convention Center 1301 2nd Avenue  
Minneapolis, MN 55403

d Control Number  
T881 7426 Mirembe Annette 742

e Employee's first name and initial Last name

Annette Mirembe  
17888 A Jubilee Way Apt A  
Lakeville, MN 55044

f Employee's address, and ZIP code

7 Social security tips 602.17

8 Allocated tips

10 Dependent care benefits

11 Nonqualified plans

12a Code

13 Statutory employee

14 Other

12b Code

12c Code

12d Code

15 State Empl.'s state I.D. # MN 9343178

16 State wages, tips, etc. 841.78

17 State income tax 4.00

18 Local wages, tips, etc.

19 Local income tax

20 Locality name

Form W-2 Wage and Tax Statement

Dept. of the Treasury - IRS

**Copy C For EMPLOYER'S RECORDS  
(See Notice to Employee on back of Copy B.)**

**2013** 1545-0008

a Employee's social security number	1 Wages, tips, other comp.	2 Federal income tax withheld
468-11-1833	841.78	
b Employer ID number	3 Social security wages	4 Social security tax withheld
935	239.61	52.19
	5 Medicare wages and tips	6 Medicare tax withheld
	841.78	12.21

c Employer's name, address, and ZIP code

Kelber Catering, Inc.  
Minneapolis Convention Center 1301 2nd Avenue  
Minneapolis, MN 55403

d Control Number  
T881 7426 Mirembe Annette 742

e Employee's first name and initial Last name

Annette Mirembe  
17888 A Jubilee Way Apt A  
Lakeville, MN 55044

f Employee's address, and ZIP code

7 Social security tips 602.17

8 Allocated tips

10 Dependent care benefits

11 Nonqualified plans

12a Code

13 Statutory employee

14 Other

12b Code

12c Code

12d Code

15 State Empl.'s state I.D. # MN 9343178

16 State wages, tips, etc. 841.78

17 State income tax 4.00

18 Local wages, tips, etc.

19 Local income tax

20 Locality name

Form W-2 Wage and Tax Statement  
This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty/other sanction may be imposed on you if this income is taxable and you fail to report it.

Dept. of the Treasury - IRS

**Extra Employee Copy**

**2013** OMB No. 1545-0008

a Employee's social security number	1 Wages, tips, other comp.	2 Federal income tax withheld
468-11-1833	841.78	
b Employer ID number	3 Social security wages	4 Social security tax withheld
935	239.61	52.19
	5 Medicare wages and tips	6 Medicare tax withheld
	841.78	12.21

c Employer's name, address, and ZIP code

Kelber Catering, Inc.  
Minneapolis Convention Center 1301 2nd Avenue  
Minneapolis, MN 55403

d Control Number  
T881 7426 Mirembe Annette 742

e Employee's first name and initial Last name

Annette Mirembe  
17888 A Jubilee Way Apt A  
Lakeville, MN 55044

f Employee's address, and ZIP code

7 Social security tips 602.17

8 Allocated tips

10 Dependent care benefits

11 Nonqualified plans

12a Code

13 Statutory employee

14 Other

12b Code

12c Code

12d Code

15 State Empl.'s state I.D. # MN 9343178

16 State wages, tips, etc. 841.78

17 State income tax 4.00

18 Local wages, tips, etc.

19 Local income tax

20 Locality name

Form W-2 Wage and Tax Statement

Dept. of the Treasury - IRS



# 2013 W-2 and EARNINGS SUMMARY

accurate, Visit the IRS Web Site  
 TI Use **e-file** at [www.irs.gov/efile](http://www.irs.gov/efile)

## Employee Reference Copy V-2 Wage and Tax Statement 2013

Control number Dept. Corp. Employer use only  
 03698 CHIC/1LZ 211020 A 2553

Employer's name, address, and ZIP code  
 SMSC GAMING ENTERPRISE  
 2400 MYSTIC LAKE BLVD  
 PRIOR LAKE MN 55372

Batch #03302

Employee's name, address, and ZIP code

ANNETTE NAWLS  
 411 W 141ST ST  
 011  
 SAVAGE MN 55378

Employer's FED ID number a Employee's SSA number

Wages, tips, other comp. 2 Federal income tax withheld  
 16458.23 1213.99

Social security wages 4 Social security tax withheld  
 17906.84 1111.65

Medicare wages and tips 6 Medicare tax withheld  
 17929.85 259.98

Social security tips 8 Allocated tips  
 23.01

10 Dependent care benefits

Nonqualified plans 12a See instructions for box 12  
 D 1471.62

12b  
 12c  
 12d

13 Stat emp. Ret. plan Ind party sick pay  
 X

5 State Employer's state ID no. 16 State wages, tips, etc.  
 MN 1212654 16458.23

7 State income tax 18 Local wages, tips, etc.  
 645.36

19 Local income tax 20 Locality name

This blue Earnings Summary section is included with your W-2 to help describe portions in more detail. The reverse side includes general information that you may also find helpful.

1. The following information reflects your final 2013 pay stub plus any adjustments submitted by your employer.

Gross Pay	17929.85	Social Security Tax Withheld Box 4 of W-2	1111.65	MN. State Income Tax Box 17 of W-2	645.36
Fed. Income Tax Withheld Box 2 of W-2	1213.99	Medicare Tax Withheld Box 6 of W-2	259.98	SUI/SDI Box 14 of W-2	

2. Your Gross Pay was adjusted as follows to produce your W-2 Statement.

	Wages, Tips, other Compensation Box 1 of W-2	Social Security Wages Box 3 of W-2	Medicare Wages Box 5 of W-2	MN. State Wages, Tips, Etc. Box 16 of W-2
Gross Pay	17,929.85	17,929.85	17,929.85	17,929.85
Less 401(k) (D-Box 12)	1,471.62	N/A	N/A	1,471.62
Less Taxable Tips	N/A	23.01	N/A	N/A
Reported W-2 Wages	16,458.23	17,906.84	17,929.85	16,458.23

3. Employee W-4 Profile. To change your Employee W-4 Profile Information, file a new W-4 with your payroll dept.

ANNETTE NAWLS  
 4011 W 141ST ST  
 #4011  
 SAVAGE MN 55378

Social Security Number: 469-41-4063  
 Taxable Marital Status: MARRIED

Exemptions/Allowances:

FEDERAL: 0  
 STATE: 0

© 2013 ADP, INC.

1 Wages, tips, other comp. 2 Federal income tax withheld  
 16458.23 1213.99

3 Social security wages 4 Social security tax withheld  
 17906.84 1111.65

5 Medicare wages and tips 6 Medicare tax withheld  
 17929.85 259.98

d Control number Dept. Corp. Employer use only  
 036698 CHIC/1LZ 211020 A 2553

e Employer's name, address, and ZIP code  
 SMSC GAMING ENTERPRISE  
 2400 MYSTIC LAKE BLVD  
 PRIOR LAKE MN 55372

b Employer's FED ID number a Employee's SSA number

7 Social security tips 8 Allocated tips  
 23.01

10 Dependent care benefits

11 Nonqualified plans 12a See instructions for box 12  
 D 1471.62

14 Other 12b  
 12c  
 12d

13 Stat emp. Ret. plan Ind party sick pay  
 X

eff Employee's name, address and ZIP code

ANNETTE NAWLS  
 4011 W 141ST ST  
 #4011  
 SAVAGE MN 55378

15 State Employer's state ID no. 16 State wages, tips, etc.  
 MN 1212654 16458.23

17 State income tax 18 Local wages, tips, etc.  
 645.36

19 Local income tax 20 Locality name

MN. State Reference Copy  
 W-2 Wage and Tax Statement 2013

Copy 2 to be filed with employee's State Income Tax Return.

1 Wages, tips, other comp. 2 Federal income tax withheld  
 16458.23 1213.99

3 Social security wages 4 Social security tax withheld  
 17906.84 1111.65

5 Medicare wages and tips 6 Medicare tax withheld  
 17929.85 259.98

d Control number Dept. Corp. Employer use only  
 036698 CHIC/1LZ 211020 A 2553

e Employer's name, address, and ZIP code  
 SMSC GAMING ENTERPRISE  
 2400 MYSTIC LAKE BLVD  
 PRIOR LAKE MN 55372

b Employer's FED ID number a Employee's SSA number

7 Social security tips 8 Allocated tips  
 23.01

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11 Nonqualified plans 12a See instructions for box 12  
 D 1471.62

14 Other 12b  
 12c  
 12d

13 Stat emp. Ret. plan Ind party sick pay  
 X

eff Employee's name, address and ZIP code

ANNETTE NAWLS  
 4011 W 141ST ST  
 #4011  
 SAVAGE MN 55378

15 State Employer's state ID no. 16 State wages, tips, etc.  
 MN 1212654 16458.23

17 State income tax 18 Local wages, tips, etc.  
 645.36

19 Local income tax 20 Locality name

MN. State Reference Copy  
 W-2 Wage and Tax Statement 2013

Copy 2 to be filed with employee's State Income Tax Return.

1 Wages, tips, other comp. 2 Federal income tax withheld  
 16458.23 1213.99

3 Social security wages 4 Social security tax withheld  
 17906.84 1111.65

5 Medicare wages and tips 6 Medicare tax withheld  
 17929.85 259.98

d Control number Dept. Corp. Employer use only  
 036698 CHIC/1LZ 211020 A 2553

e Employer's name, address, and ZIP code  
 SMSC GAMING ENTERPRISE  
 2400 MYSTIC LAKE BLVD  
 PRIOR LAKE MN 55372

b Employer's FED ID number a Employee's SSA number

7 Social security tips 8 Allocated tips  
 23.01

10 Dependent care benefits

11 Nonqualified plans 12a See instructions for box 12  
 D 1471.62

14 Other 12b  
 12c  
 12d

13 Stat emp. Ret. plan Ind party sick pay  
 X

eff Employee's name, address and ZIP code

ANNETTE NAWLS  
 4011 W 141ST ST  
 #4011  
 SAVAGE MN 55378

15 State Employer's state ID no. 16 State wages, tips, etc.  
 MN 1212654 16458.23

17 State income tax 18 Local wages, tips, etc.  
 645.36

19 Local income tax 20 Locality name

MN. State Filing Copy  
 W-2 Wage and Tax Statement 2013

Copy 2 to be filed with employee's State Income Tax Return.

Form <b>W-2 Wage and Tax Statement 2013</b>		7 Social security tips	1 Wages, tips, other compensation	2 Federal income tax withheld
c Employer's name, address, and ZIP code <b>TALENT SERVICES INT'L CORP.</b> P.O. BOX 2306 LYNNWOOD, WA 98036-2306		8 Allocated tips	3 Social security wages	4 Social security tax withheld
		9	5 Medicare wages and tips	6 Medicare tax withheld
		10 Dependent care benefits	11 Nonqualified plans	12a See instructions for box 12
e Employee's name, address, and ZIP code <b>ANNETTE A NAWLS</b> 17888 A. JUBILEE WAY LAKEVILLE, MN 55044		13 Statutory employee Retirement plan Third-party sick pay	14 Other	12b
		b Employer identification number (EIN) <b>91-1881235</b>		12c
		a Employee's social security number <b>469-41-4063</b>		12d
15 State <b>MN</b>	Employer's state ID number <b>3735007</b>	16 State wages, tips, etc. <b>340.51</b>	17 State income tax <b>0.00</b>	18 Local wages, tips, etc.
			19 Local income tax	20 Locality name

Copy B-To Be Filed With Employee's FEDERAL Tax Return

This information is being furnished to the Internal Revenue Service.  
OMB No. 1545-0008

Dept. of the Treasury - IRS  
Visit the IRS website at [www.irs.gov/efile](http://www.irs.gov/efile).

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Form <b>W-2 Wage and Tax Statement 2013</b>		7 Social security tips	1 Wages, tips, other compensation	2 Federal income tax withheld
c Employer's name, address, and ZIP code <b>TALENT SERVICES INT'L CORP.</b> P.O. BOX 2306 LYNNWOOD, WA 98036-2306		8 Allocated tips	3 Social security wages	4 Social security tax withheld
		9	5 Medicare wages and tips	6 Medicare tax withheld
		10 Dependent care benefits	11 Nonqualified plans	12a See instructions for box 12
e Employee's name, address, and ZIP code <b>ANNETTE A NAWLS</b> 17888 A. JUBILEE WAY LAKEVILLE, MN 55044		13 Statutory employee Retirement plan Third-party sick pay	14 Other	12b
		b Employer identification number (EIN) <b>91-1881235</b>		12c
		a Employee's social security number <b>469-41-4063</b>		12d
15 State <b>MN</b>	Employer's state ID number <b>3735007</b>	16 State wages, tips, etc. <b>340.51</b>	17 State income tax <b>0.00</b>	18 Local wages, tips, etc.
			19 Local income tax	20 Locality name

Appellate Case: 16-1636 Page: 74 Date Filed: 05/02/2016 Entry ID: 4394585



# 2013 W-2 and EARNINGS SUMMARY

## Employee Reference Copy W-2 Wage and Tax Statement 2013

OMB No. 1545-0048  
Copy C for employee's records  
d Control number 611200 DALL/VE1  
Dept 624520 Corp. A Employer use only 126

e Employer's name, address, and ZIP code  
**INTERSTATE MANAGEMENT  
COMPANY LLC  
300 E JOHN CARPENTER 700  
IRVING TX 75062**

Batch #01530

ef Employee's name, address, and ZIP code

**ANNETTE MIREMBE  
17945 JUBILEE WAY  
LAKEVILLE MN 55044**

1 Wages, tips, other comp. 3880.71	2 Federal income tax withheld 66.43
3 Social security wages 3880.71	4 Social security tax withheld 240.60
5 Medicare wages and tips 3880.71	6 Medicare tax withheld 56.27
7 Social security tips	8 Allocated tips
10 Dependent care benefits	
11 Nonqualified plans	12a See instructions for box 12
12b	12c
12d	13 Stat emp Ret plan 3rd party sick pay
14 Other	
15 State Employer's state ID no. MN 3859016	16 State wages, tips, etc. 3880.71
17 State income tax 52.67	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

This blue Earnings Summary section is included with your W-2 to help describe portions in more detail. The reverse side includes general information that you may also find helpful.

1. The following information reflects your final 2013 pay stub plus any adjustments submitted by your employer.

Gross Pay	3880.71	Social Security Tax Withheld Box 4 of W-2	240.60	MN. State Income Tax Box 17 of W-2 SUI/SDI Box 14 of W-2	52.67
Fed. Income Tax Withheld Box 2 of W-2	66.43	Medicare Tax Withheld Box 6 of W-2	56.27		

2. Your Gross Pay was adjusted as follows to produce your W-2 Statement.

Gross Pay	Wages, Tips, other Compensation Box 1 of W-2	Social Security Wages Box 3 of W-2	Medicare Wages Box 5 of W-2	MN. State Wages, Tips, Etc. Box 16 of W-2
Reported W-2 Wages	3,880.71	3,880.71	3,880.71	3,880.71
	3,880.71	3,880.71	3,880.71	3,880.71

3. Employee W-4 Profile. To change your Employee W-4 Profile Information, file a new W-4 with your payroll dept.

**ANNETTE MIREMBE  
17945 JUBILEE WAY  
LAKEVILLE MN 55044**

Social Security Number: 469-41-4063  
Taxable Marital Status: MARRIED

Exemptions/Allowances:

FEDERAL: 0  
STATE: 0

© 2013 ADP, INC.

— Fold and Detach Here —

1 Wages, tips, other comp. 3880.71	2 Federal income tax withheld 66.43
3 Social security wages 3880.71	4 Social security tax withheld 240.60
5 Medicare wages and tips 3880.71	6 Medicare tax withheld 56.27
Control number 11200 DALL/VE1	Dept 624520 Corp. A Employer use only 126

e Employer's name, address, and ZIP code  
**INTERSTATE MANAGEMENT  
COMPANY LLC  
300 E JOHN CARPENTER 700  
IRVING TX 75062**

7 Social security tips	8 Allocated tips
10 Dependent care benefits	
11 Nonqualified plans	12a See instructions for box 12
12b	12c
12d	13 Stat emp Ret plan 3rd party sick pay

ef Employee's name, address and ZIP code  
**ANNETTE MIREMBE  
17945 JUBILEE WAY  
LAKEVILLE MN 55044**

15 State Employer's state ID no. MN 3859016	16 State wages, tips, etc. 3880.71
17 State income tax 52.67	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

Federal Filing Copy  
**N-2 Wage and Tax Statement 2013**

1 Wages, tips, other comp. 3880.71	2 Federal income tax withheld 66.43
3 Social security wages 3880.71	4 Social security tax withheld 240.60
5 Medicare wages and tips 3880.71	6 Medicare tax withheld 56.27
d Control number 611200 DALL/VE1	Dept 624520 Corp. A Employer use only 126

c Employer's name, address, and ZIP code  
**INTERSTATE MANAGEMENT  
COMPANY LLC  
300 E JOHN CARPENTER 700  
IRVING TX 75062**

7 Social security tips	8 Allocated tips
10 Dependent care benefits	
11 Nonqualified plans	12a
12b	12c
12d	13 Stat emp Ret plan 3rd party sick pay

ef Employee's name, address and ZIP code  
**ANNETTE MIREMBE  
17945 JUBILEE WAY  
LAKEVILLE MN 55044**

15 State Employer's state ID no. MN 3859016	16 State wages, tips, etc. 3880.71
17 State income tax 52.67	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

MN. State Filing Copy  
**W-2 Wage and Tax Statement 2013**

1 Wages, tips, other comp. 3880.71	2 Federal income tax withheld 66.43
3 Social security wages 3880.71	4 Social security tax withheld 240.60
5 Medicare wages and tips 3880.71	6 Medicare tax withheld 56.27
d Control number 611200 DALL/VE1	Dept 624520 Corp. A Employer use only 126

c Employer's name, address, and ZIP code  
**INTERSTATE MANAGEMENT  
COMPANY LLC  
300 E JOHN CARPENTER 700  
IRVING TX 75062**

7 Social security tips	8 Allocated tips
10 Dependent care benefits	
11 Nonqualified plans	12a
12b	12c
12d	13 Stat emp Ret plan 3rd party sick pay

ef Employee's name, address and ZIP code  
**ANNETTE MIREMBE  
17945 JUBILEE WAY  
LAKEVILLE MN 55044**

15 State Employer's state ID no. MN 3859016	16 State wages, tips, etc. 3880.71
17 State income tax 52.67	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

MN. State Filing Copy  
**W-2 Wage and Tax Statement 2013**