

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Bankruptcy Case Number: 20-42761 MER  
Brenda Jo Musel, Chapter 7 Case

Debtor

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**MEMORANDUM OF LAW IN SUPPORT OF DEBTOR'S  
RESPONSE TO TRUSTEE'S MOTION FOR TURNOVER OF PROPERTY**

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**Facts**

The debtor filed the petition for relief under Chapter 7 of the Bankruptcy Code on December 8, 2020. Debtor is a citizen of the Pokagon Band of Potawatomi Indians and receives per capita payments under the Band's Gaming Revenue Allocation Plan (RAP). Trustee filed a motion for turnover post-filing per capita payments received and any future payments made to the debtor. The parties filed Stipulation of Facts and Exhibits on April 1, 2021.

**Argument**

**1. Any future per capita payment received by debtor is not property of the estate.**

Pursuant to Section 541(a)(1) of the Bankruptcy Code the bankruptcy estate is comprised of all legal or equitable interests of the debtor held at the commencement of this case, with several exclusions. Debtor's argument is not grounded on an exclusion, but instead rests on the strict interpretation of legal and equitable interest. The trustee succeeds in property interest only as the debtor would, subject to the same limitations and may not be expanded beyond what they were at the commencement of the case. *See In re Graham Square, Inc.*, 126 F.3d 823, 831(6<sup>th</sup> Cir. 1997), *citing Calvert v. Bongards Creameries*, 835 F.2d 1222, 1225 (8<sup>th</sup> Cir. 1987).

The per capita funds received debtor are derived through and regulated by the Indian Gaming Regulatory Act 25 U.S.C. § 2701-1721 which requires each tribe engaging in casino gaming to adopt an ordinance on the allocation of revenues and obtain approval from the Secretary of the Interior. *See In re Barth*, 485 B.R. 919 (2013). The Pokagon Band of Potawatomi Indians RAP agreement explicitly states that "[n]othing contained in this Code shall be construed to give any person a vested property right or interest in Band gaming revenues. All Band gaming revenues shall be held by the Band until disburse pursuant to Band law and this Code." This provision is factually distinct from cases holding that a debtor's receipt of per capita payments were property

of the estate in that the RAP agreement does not hold these funds in trust for the debtor's future enjoyment, but instead states that debtor has no right future per capita payments.

The Supreme Court of the United States held in *Segal v. Rochelle* that there are limitations to the term 'property' based in the purpose of the Act such as "to leave the bankrupt free after the date of his petition to accumulate new wealth in the future. Accordingly, the court held that "future wages of the bankruptcy do not constitute 'property' at the time of filing nor, analogously does an intended bequest to him or a promised gift- even though state law might permit all of these to be alienated in advance." 86 S.Ct. 511, 515.

Ignoring the limitation on future property rights contained in the RAP agreement would be akin to requiring a debtor to turn over all future bonuses to be received by an employee at the discretion of their employer. Courts have held that "if a debtor at the time of filing her petition has a bare expectation and hope of receiving a bonus payment then there is no property right to become property of the estate, even if that hope or expectation is ultimately realized." *See In re Gonzalez*, 559 B.R. 326 (2016). Debtor's eligibility to receive per capita payments and the amount to be received is determined by tribal code and the amount of money available each month in the Tribe's Per Capita Account. The global pandemic has been a reminder that future per capita payments cannot be relied upon or anticipated as it relies upon profits generated by gaming.

### Conclusion

Based upon the foregoing analysis, the debtor has no right to per capital payments and any future payments received by debtor should not be considered property of the estate. The trustee's motion to compel the debtor to turn future per capita payments should be denied.

Date: March 8, 2021

HOGLUND & MROZIK PLLC

/e/ Alyssa F. George

Alyssa F. George #396799

Attorney for Debtor

1781 West County Road B

Roseville, Minnesota 55113

(651) 628-9929

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Brenda Musel

Bkry Case No: 20-42761

Chapter 7

Debtor(s).

**UNSWORN CERTIFICATE  
OF SERVICE**

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I, Alyssa George, employed by Hoglund & Mrozik, P.L.L.C., attorneys licensed to practice law in this Court, with office address of 1781 West County Road B, Roseville, Minnesota 55113, declare that on April 16, 2021, I served Debtor's Memorandum of Law to each of the entities named below by first class mail postage prepaid and to any entities who are Filing Users, by automatic e-mail notification pursuant to the Electronic Case Filing System.

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Electronic Mail Notice List

Julia A. Christians jchristians@lapplibra.com,  
lfrey@lapplibra.com; MNOA@ecfcbis.com; sgelhar@lapplibra.com

Robert J. Hoglund bankruptcy@hoglundlaw.com, hoglundlaw@ecf.courtdrive.com

United States Trustee ustregion12.mn.ecf@usdoj.gov

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I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: April 16, 2021

Signed: Alyssa George

Attorney at Law