

UNITED STATES DISTRICT COURT
 DISTRICT OF NORTH DAKOTA
 SOUTHWESTERN DIVISION

Jay Meilstrup,)
 Plaintiff,) Case No. 1:25-cv-00162
 vs.)
)
 Standing Rock Sioux Tribe,)
 Standing Rock Tribal Council,)
 and Ryan Hertle,)
 Defendants.)

**PLAINTIFF'S RESPONSE TO
 DEFENDANTS' MOTION FOR STAY**

Preliminary Statement

The Defendant, Standing Rock Sioux Tribe's ("Tribe"), Motion to Stay is a transparent attempt to circumvent this Court's jurisdiction and stall the adjudication of the Plaintiff's federal rights under the **Employee Retirement Income Security Act (ERISA)**. Having already participated in, and lost, a state-level adjudications, including the finding of no cause by the North Dakota Department Job Service, the Tribe now seeks to retreat to a tribal forum that patently lacks subject matter jurisdiction over the federal **Consolidated Omnibus Budget Reconciliation Act (COBRA)** claims at issue. The Tribe's recent tribal court filing constitutes a retaliatory response to this Court's prior jurisdictional ruling and because tribal exhaustion is both futile and motivated by bad faith, this Court should deny the stay. To hold otherwise would allow the Tribe to use the exhaustion doctrine as a sword to harass a former employee and evade uniform federal standards during a profound family medical crisis.

Generally, a stay of a proceeding, like injunctive relief, is an extraordinary remedy. *Cottrell v. Duke*, 737 F.3d 1238 (8th Cir. 2013); *Packard Elevator v. Interstate Commerce Commission*, 782 F.2d 112 (8th Cir. 1986)

Allowing tribal courts to determine their own jurisdiction is not absolute when there is an

express authorization by federal statute. *Malaterre v. Amerind Risk Management*, 373 F. Supp. 2d 980 (2005).

Statement of Facts

- October 21 2024: Plaintiff, Jay Meilstrup (Meilstrup) enters into an employment agreement with the Tribe, providing full disclosure of his wife's ongoing cancer treatments.
- February 27, 2025: Meilstrup's wife is unexpectedly hospitalized. Tribal representatives explicitly approve a 30-day unpaid leave of absence.
- March 25, 2025: Seven days before the approved leave expires, the Tribe votes to terminate the Meilstrup's contract. The reason given in the termination letter is, "The Tribe deems your extended leave of absence without Tribal Council approval a breach of your contract." In the same letter the tribe offers COBRA coverage to the plaintiff.
- April 28, 2025: The Tribe's benefits administrator notifies the Plaintiff that his COBRA coverage is denied due to "Gross Misconduct."
- July 8, 2025: Meilstrup files the instant action in this Court for ERISA and COBRA violations.
- July 29, 2025: Job Service North Dakota issues a formal ruling that the Tribe failed to prove misconduct, granting Meilstrup unemployment benefits. Under N.D.C.C. § 52-06-02, the state finds no "willful or wanton disregard" of the employer's interest.
- October 9, 2025: This Court issues its Order Denying Dismissal, ruling that federal jurisdiction is proper because the casino is a commercial enterprise and ERISA abrogates tribal immunity.
- October 24, 2025: Only 15 days after this Court's jurisdictional ruling, the Tribe files a "Declaratory Action" in Standing Rock Tribal Court, seeking a ruling on the same "Gross

"Misconduct" issue already under review by this Court, the State of North Dakota, The Department of Labor and the Internal Revenue Service.

- January 15, 2026: The Tribe files the instant Motion to Stay, attempting to use the Tribal Exhaustion Doctrine as a shield to halt federal discovery.

As the timeline illustrates, the Tribe did not seek tribal court intervention when the termination occurred. They only invoked tribal jurisdiction after a state agency and this court rejected their legal positions. This "forum shopping" is a hallmark of bad faith harassment.

Argument

A. The tribe argues that the Federal Court should stay or defer in cases where the Federal Court would be ruling on foreign or state law.

These arguments do not apply as the US District Court of North Dakota has already ruled they have exclusive jurisdiction on ERISA matters which include deciding whether the employer has proven misconduct. This makes the ruling on Gross Misconduct with regard to ERISA compliance the exclusive subject matter of the Federal Court. As Gross Misconduct is applied in ERISA matters the Federal Standards are higher in proving Gross Misconduct and allowing a lower court to decide would allow for inconsistent interpretations and rulings.

B. The tribe argues that "The Tribe's position is that Colorado River Abstention or those underlying general comity principles must now result in this Court staying the current federal court case pending resolution of Meilstrup's identical claim in the Tribal Court."

Meilstrup's claim in Federal court is not "identical" to the claim in Tribal Court, although the issues are related. In the Federal Court Meilstrup is claiming that he was wrongfully denied COBRA due to a misapplication of Gross Misconduct as a reason to deny COBRA. In the tribal case, Meilstrup is responding to a false allegation of misconduct in a general sense and the tribe did not

have cause for termination of the contract, although the tribe had the option to terminate the contract without cause. In the Federal case, the definition of Gross Misconduct is far more specific and germane to the wrongful denial of COBRA. Whereas, the reason for terminating Meilstrup's contract in the tribal counter claim is more general in use and application and did not originally include Gross Misconduct. Gross Misconduct was not present at the time of termination and only appeared in an effort to deny COBRA coverage after the termination was administered.

C. Tribal Exhaustion is Not Required Where the Tribal Court Patently Lacks Jurisdiction

Requiring exhaustion would be futile because Tribal Courts are not courts of general jurisdiction and have no authority to adjudicate ERISA claims. *Nevada v. Hicks* 533 US 353 2001.

ERISA (29 U.S.C. § 1132(e)) grants exclusive jurisdiction to federal courts for most claims. Courts have held that because Congress did not explicitly grant tribal courts jurisdiction over ERISA, they "patently lack" the power to hear them.

In *Nevada v. Hicks*, 533 U.S. 353 (2001) exhaustion is not required when a tribal court lacks jurisdiction, as it would "serve no purpose other than delay".

Furthermore, A federal judge denied a motion to dismiss based on sovereign immunity, holding that ERISA unequivocally abrogates tribal immunity for commercial enterprises (like casinos). *David Jones et. al. v. Turning Stone Enterprises LLC et. al.*, 5:2024:cv:01596 (N.D.N.Y. 2025).

D. The Tribe's Assertion of Tribal Jurisdiction is Motivated by Bad Faith and a Desire to Harass and Discriminate.

The Tribal Exhaustion Doctrine is not a jurisdictional bar but a matter of comity; it does not apply where "an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith." *Nat'l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 856 n.21 (1985). The **Eighth**

Circuit has clarified that federal courts should not defer to tribal forums when the tribal action is a "patently violative" attempt to bypass federal law. *Blue Legs v. U.S. Bureau of Indian Affairs*, 867 F.2d 1094 (8th Cir. 1989).

In this case, the timeline of the Tribe's conduct reveals a textbook example of tactical harassment:

- **The State Loss:** The Tribe first attempted to argue "misconduct" before Job Service North Dakota, where a neutral fact-finder ruled that the Tribe failed to meet even the broad state standard for misconduct.
- **The Federal Rejection:** After Meilstrup filed this action, the Tribe moved to dismiss, asserting sovereign immunity. This Court has already rejected that argument, finding that ERISA abrogates immunity for the Tribe's commercial casino activities.
- **The Retaliatory Filing:** It was only *after* losing at the state level and failing to secure a dismissal in this Court that the Tribe initiated a parallel declaratory action in Standing Rock Tribal Court. This filing, seeking a declaratory ruling on "Gross Misconduct," a federal statutory term, is not a good-faith pursuit of tribal justice; it is a retaliatory maneuver designed to undermine this Court's jurisdiction and stall the Department of Labor's ongoing investigation.

Requiring exhaustion in this context would reward the Tribe for forum shopping and subject the Plaintiff to "vexatious and duplicative litigation" while he is already managing the financial and emotional toll of his wife's cancer treatments. *See Fort Yates Pub. Sch. Dist. No. 4 v. Murphy ex rel.*, 786 F.3d 662 (8th Cir. 2015). Under these circumstances, the bad faith exception is clearly met, and a stay should be denied.

E. Exhaustion is Futile Given the Preclusive Effect of the North Dakota Ruling.

While state administrative rulings are not always binding on federal courts, they carry significant weight in the Eighth Circuit:

<https://mitchellhamline.edu/minnesota-administrative-procedure/chapter-12-collateral-estoppel-res-judicata-stare-decisis-and-the-equitable-defenses/>

- **Collateral Estoppel:** The Jobs Service North Dakota agency determined there was no "misconduct" after an investigation where the Tribe had a "full and fair opportunity" to present evidence. We contend that the tribe is collaterally estopped from re-litigating the same factual issue in any court.

https://scholarship.richmond.edu/cgi/viewcontent.cgi?params=/context/law-faculty-publications/article/1240/&path_info=ThePreclusiveEffectOfUnemployment.pdf

- **Lower Standard for Unemployment:** Because the Standing Rock Sioux Tribe failed to establish even 'simple misconduct' under the permissive standards of **N.D.C.C. § 52-06-02**, it is legally impossible for them to establish the 'Gross Misconduct' required by **ERISA**. To stay these proceedings in favor of a newly-minted tribal court action, initiated only after the Tribe's defeat at the state level, would reward forum shopping and facilitate the bad faith harassment of a former employee during a family medical crisis.

Therefore, allowing the tribe to attempt to resolve the Gross Misconduct issue in tribal court is a waste of judicial resources as they have already failed to prove misconduct in State review which is a much lower bar than gross misconduct at the federal level.

F. The Federal Court has Exclusive Jurisdiction regarding Gross Misconduct.

The Tribe argues that the Federal Court should stay or defer in cases where the Federal Court would be ruling on foreign or state law. These arguments do not apply as the US District Court of North Dakota has already ruled they have exclusive jurisdiction on ERISA matters which includes

deciding whether the employer has proven misconduct. This makes the ruling on Gross Misconduct with regard to ERISA compliance the exclusive subject matter of the Federal Court. As Gross Misconduct is applied in ERISA matters the Federal Standards are higher in proving Gross Misconduct and allowing a lower court to decide would allow for inconsistent or contradictory interpretations and rulings.

G. The Tribe has not been responsive to preliminary requests for Discovery or information

The motion to stay the federal proceeding is another attempt to delay and harass Meilstrup. At every opportunity, the tribe has attempted to delay proceeding in an attempt to avoid or usurp federal jurisdiction or authority. The Tribe was uncooperative during scheduling of a court ordered early settlement conference, They failed to bring authorized representation to the settlement conference who had the authority to negotiate a settlement, they have failed to provide requested evidence or documentation and now they are requesting the stay of the Federal proceeding. This is all done in bad faith. The claim filed against the plaintiff in tribal court was done well after the employment contract was terminated. The tribe has repeatedly introduced new or additional allegations against the plaintiff after the termination was administered.

H. A Stay Would Cause Irreparable Harm to the Plaintiff.

Delaying the proceeding any further will only increase the hardships and stress placed on the Meilstrup and his wife. The tribe's failure to respond to requests for information related to his flexible spending account have only added to the damage their actions have caused and increased the financial stress for the family medical environment. Despite the Tribe's unlawful denial of COBRA based on a fabricated 'gross misconduct' charge, Meilstrup took immediate steps to secure alternative coverage to protect his wife's life. Meilstrup has fulfilled his duties; it is now time for the Tribe to fulfill its statutory obligations. The Tribal Court cannot award federal statutory penalties under 29

U.S.C. § 1132(c). Therefore, staying the case only serves to "freeze" the accrual of a penalty that the tribal court has no power to adjudicate anyway.

I. The Tribes motion for a stay does not demonstrate hardship or inequality.

The Tribe has not established a valid reason for granting a stay, *Landis v. North American Co.*, 299 U.S. 248 (1936) factors for a stay, which require the Tribe to prove hardship or inequity.

J. The Tribes motion seeks an indefinite timeline.

By granting the Tribe an "indeterminate timeline" for tribal exhaustion that effectively functions as a denial of justice on matters which the Tribal Court does not have jurisdiction.

K. Exhaustion is Not Required for Non-Members in Commercial Contexts.

The Eighth Circuit has limited the exhaustion doctrine in cases involving non-tribal members and commercial enterprises.

- *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087 (8th Cir. 1998): The court ruled that exhaustion is not required when the underlying activity does not occur on tribal lands or significantly affects the "political integrity" or "health and welfare" of the tribe.
- A casino employee's COBRA benefits are a commercial employment matter, not a core tribal governing issue. Therefore, the federal court's interest in uniform ERISA application outweighs the need for tribal court input. *Coppe v. The Sac & Fox Casino Healthcare Plan*, Case No. 14-2598-RDR, 2015 WL 1137733 (D. Kan. Mar. 13, 2015):

In *Coppe v. The Sac & Fox Casino Healthcare Plan*, Case No. 14-2598-RDR, 2015 WL 1137733 (D. Kan. Mar. 13, 2015): The United States District Court for the District of Kansas held that tribal courts do not have jurisdiction over ERISA actions. In *Coppe*, a non-member of the Sac and Fox Nation alleged that the defendants refused to pay her medical expenses under the provisions of the

Sac & Fox Casino Healthcare Plan, which was an employee benefit she received while working for the casino and which is governed by ERISA. The court first noted that the Healthcare Plan was not considered a “governmental plan” under ERISA, which is a plan established and maintained by an Indian tribe for employees of a non-commercial tribal entity. See 29 U.S.C. § 1002(32). “Governmental plans” are not regulated by ERISA, so the fact that the Plan was a nongovernmental plan brought it within ERISA’s reach.

Relying on the United States Supreme Court’s decision in *Nevada v. Hicks*, the Kansas federal district court held that tribal courts are not courts of general jurisdiction, and without an explicit grant of jurisdiction over ERISA claims by Congress, tribal courts lack jurisdiction over such claims. Moreover, the court reasoned that a tribe’s right to govern its members and regulate activity on its reservation “does not exclude federal authority as expressed in ERISA to occupy and preempt the field of ERISA rights enforcement for nongovernmental plans.” **The court thus held that exhaustion of tribal court remedies was not required**, allowing the case to proceed in federal court. Unlike Title VII and the ADEA, courts have held that tribal sovereign immunity is waived for ERISA claims for non-governmental plans.

A stay is not required if the tribal court’s jurisdiction is being asserted in bad faith or for the purpose of harassment or retaliation or to delay federal proceedings. *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 105 S. Ct. 2447, 85 L.Ed. 2d 818 (n. 21) (1985)

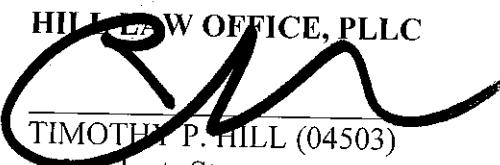
L. Eight Circuit Direct Precedent on Staying Proceedings

Fort Yates Pub. Sch. Dist. No. 4, v. Murphy ex rel., 786 F.3d 662 (8th Cir. 2015): This case (also involving the Standing Rock area) established that a stay is an extraordinary remedy. The Tribe cannot meet the high burden of showing that “comity” requires a stay when the tribal court is being used as a retaliatory tool to delay a federal adjudication.

Conclusion

FOR THE FOREGOING REASONS, the Plaintiff, **JAY MEILSTRUP**, respectfully requests that this Honorable Court deny the Tribe's Motion to Stay. The Tribal Exhaustion Doctrine was never intended to facilitate retaliatory forum shopping or to permit a commercial employer to evade exclusive federal jurisdiction under ERISA.

Dated this 28th day of January, 2026.

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