IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Rose B. Prescott, Louise B. Smith, Winifred S. Feezor, Cecelia M. Stout, Tina M. Hove, Alan M. Prescott, Cynthia L. Prescott, Leonard L. Prescott, Patricia Prescott, Todd D. Brooks, Mary Jo Gustafson, Robert M. Prescott, and Jay C. Hove, as individuals and as shareholders of Little Six, Inc. and for others similarly situated,

Plaintiffs,

vs.

The Board of Directors of Little Six, Inc., and Raymond Crooks, Susan Totenhagen, Valentina Quilt, Charles Vig, Kenneth Thomas, Ronald Welch, and Darlene McNeal in their official capacities as members of the Board of Directors of Little Six, Inc. and as individuals,

Defendants.

Court File No. 061-95

MEMORANDUM OF LAW

I.

INTRODUCTION AND FACTUAL BACKGROUND

This matter involves a request by members of the Shakopee Mdewakanton Sioux (Dakota) Community (the Community), who hold a beneficial interest in the Community's single share of stock in Little Six, Inc. (LSI), for a Court order directing LSI to permit them to review and

copy LSI documents to which they requested access between October 28, 1994 and July 6, 1995. The Plaintiffs also seek an order removing the members of the Board of Directors for wrongfully withholding financial information duly requested by a shareholder. The Defendants contend that six of the named Plaintiffs are without standing to bring this action because they did not request access to LSI records in writing, and that the remaining seven Plaintiffs were rightfully denied access to LSI documents because their requests did not comply with the requirements of the Community's Amended and Restated Corporation Ordinance (the Ordinance).

The Defendants further contend that without the Plaintiffs who have not made written requests to review documents, the seven remaining Plaintiffs lack standing to request removal of the members of the Band because they do not constitute 10% of eligible voting members as is required by the Ordinance.

A. THE ORDINANCE

On July 27, 1994, the Community adopted Ordinance 7-27-94-001, entitled the Shakopee Mdewakanton Sioux (Dakota) Community Amended & Restated Corporation Ordinance. The Ordinance is a lengthy document and a description of all its provisions would be both cumbersome and unnecessary for the purpose of this opinion. In this case two sections of the Ordinance, 25 and 68, are directly at issue.

Section 25 relates to actions for removal of Directors. Section 25.3 is specifically invoked by the Plaintiffs herein. It provides as follows:

> If a corporation is wholly owned and operated by the Shakopee Mdewakanton Sioux (Dakota) Community, a director may be removed for cause in a proceeding in the Shakopee Mdewakanton Sioux (Dakota) Community Court. The Shakopee Mdewakanton Sioux (Dakota) Community shall remove a director from office, in a proceeding commenced by the corporation, or in a proceeding commenced by at least ten percent (10%) of eligible voting Members of the General Council, or in a proceeding commenced

commenced by the Business Council, where the Court finds that the director has engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, or has violated in any way the director's fiduciary duty to corporation or its shareholders (whether through commission or omission of an act), or where the Court finds the director has violated any law of the Community, or where a director withholds financial information of whatever kind from the Members, or where a director is responsible for failure by the corporation to provide monthly financial information to the Business Council as required by Section 69, or where a director fails to comply with the provisions of the articles or bylaws of the corporation or this Corporation Ordinance, or where a director has his/her gaming license revoked, or where the director is convicted of a felony while in office.

Section 68 relates to shareholder requests to inspect corporate records. Section 68.1(1) and (2) are relevant to this case as they related to the requirements for shareholder requests to inspect LSI's documents. These sections provide as follows:

> 68.1 **Inspection of Records by Shareholders.** Shareholders shall have the following inspection rights:
>
> (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 68.0(4) if s/he gives the corporation written notice of her of his demand at least five (5) business days before the date on which he wishes to inspect and copy, and if the requirements of subsection (2) are met.
>
> (2) A shareholder may inspect and copy the records described in subsection 68.0(4) only if:
>
> (a) her/his demand is made in good faith and for a proper purpose;
>
> (b) s/he describes with reasonable particularity her/his purpose and the records s/he desires to inspect; and
>
> (c) the records are directly connected with her/his purpose.

> It shall be presumed that a shareholder has demonstrated a prima facie case of good faith where the shareholder makes a written request which is reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

B. SHAREHOLDER REQUESTS FOR INSPECTION AND COPYING OF CORPORATE DOCUMENTS

Seven of the thirteen Plaintiffs have made at least one written request to review and copy documents. Six of the thirteen Plaintiffs have not made a written request to review and copy corporate documents. (Trans. p. 16, 14-20). On October 28, 1994, Plaintiffs Feezor and Brooks wrote to Raymond Crooks, Chairman of the Board of Directors of LSI, requesting that they be allowed to inspect and copy various corporate records. Feezor and Brooks' letters are identical, but for the signature, and both request the following documents:

(1) All financial statements prepared for or upon the authorization of the Board for fiscal years 1993 and 1994;

(2) All accounting records and audit reports (whether regular or special, external or internal) for the corporation for fiscal years 1993 and 1994;

(3) All cancelled checks, bank statements and balance sheets for the fiscal years 1993 and 1994; and,

(4) All financial records of funds set aside for, or committed to and/or paid out as per capita payments to tribal members for the fiscal years 1990 through 1994.

LSI's counsel, by letter dated November 7, 1994, responded to those October 28, 1994 letters, indicating that Feezor and Brooks were not entitled to inspect and copy corporate records because: (1) the demand was not made in good faith; (2) the demand did not state the documents sought with requisite particularity; and (3) the records sought allegedly were not related to the purpose for which they were sought. (Exhibit B to Defendants' Memorandum in Support of Motion to Dismiss.)

On July 6, 1995 Mrs. Feezor wrote to each of the members of the LSI Board of Directors, again requesting to review and copy corporate records. Mrs. Feezor also requested documents regarding an alleged proposal to purchase Canterbury Inn, an alleged proposal to build a cultural center and an alleged proposal to acquire Chinese artifacts from a corporation known as China Wind, U.S.A. Mrs. Feezor provided a copy of her July 6, 1995 letter to Ms. Patricia Prescott, Assistant Commissioner of Gaming for the Shakopee Mdewakanton Sioux Community (Exhibit D to the Defendants' Memorandum in Support of Motion to Dismiss). Ms. Prescott then also wrote to Mr. Raymond Crooks requesting copies of the documents requested in Mrs. Feezor's July 6, 1995 letter.[1]

Also on July 6, 1995; Ms. Cecelia Stout, Mr. Leonard Prescott, Ms. Cynthia Prescott, Ms. Louise Bluestone Smith, Mr. Leonard Smith sent letters to Mr. Raymond Crooks, which are identical in substance to Mrs. Feezor's July 6, 1995 letter. All of the July 6, 1995 letters requested that production and inspection of the documents occur on July 12, 1995. (See Exhibit F to the Defendants' Memorandum in Support of Motion to Dismiss).

Mr. Raymond Crooks provided identical responses to each of these letters, indicating the following: (1) the requests were untimely since they were not received by him until July 12, 1995, which was not five days prior to the requested inspection date; (2) no documents existed with respect to the alleged acquisition of Canterbury Inn, Chinese Artifacts or the development of a cultural center since none of those matters had ever been considered by LSI. (See Exhibit

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[1] It is not clear whether Ms. Prescott was requesting the documents in her official or individual capacity. If in her official capacity, there is a question both as to whether she was properly named as a plaintiff and whether the Commission needed to be joined as Plaintiff. If she requested the documents as an individual, there remains a question of her authority to request, as she did in her letter, the production of corporate documents on behalf of the "other commissioners".

G to the Defendants' Memorandum in Support of Motion to Dismiss).

The seven Plaintiffs making written requests for corporate documents filed suit in this Court on October 18, 1995. In their suit, the Plaintiffs were joined by six additional persons, all of whom are eligible voting members of the General Council and shareholders in LSI, and none of whom made written requests to inspect LSI documents. The six Plaintiffs not having made written requests to LSI are Ms. Rose Prescott, Ms. Tina M. Hove, Mr. Alan M. Prescott, Ms. Mary Jo Gustafson, Mr. Robert M. Prescott, and Mr. Jay C. Hove. The Plaintiffs collectively requested an order compelling production of the records requested in the various letters dated October 28, 1994 and July 6, 1995, an injunction against any action by LSI which might lead to the loss or destruction of the requested documents, the immediate removal of all members of the Board of Directors of LSI, actual damages of at least $25,000.00, punitive damages and attorneys fees and costs.

On January 9, 1995, the Defendants moved to Dismiss the Plaintiffs' Complaint. The Plaintiffs filed an Amended Complaint which is similar in all respects to their original Complaint, except that the Plaintiffs' requests for actual and punitive damages were dropped from their Amended Complaint. The Court has not received a Motion to Dismiss the Amended Complaint.

II.

ISSUES PRESENTED

There are three distinct issues raised by this Motion: First, have the seven Plaintiffs who made written requests to review corporate records stated a cause of action upon which this Court may grant relief? Second, have the six Plaintiffs who did not make written requests to review corporate records stated a cause of action upon which this Court may grant relief? Third, does

the ten percent provision, found at §25.3 of the Ordinance, require actual injury as a standing prerequisite to all those persons composing the ten percent?

III.

STANDARDS ON A MOTION TO DISMISS

On a Motion to Dismiss, this Court will construe the pleadings in light most favorable to the non-moving party, and will take the allegations contained in the non-moving party's pleadings as true. Dover Electric Co. v. Arkansas State University, 64 F.3d 442, 445 (8th Cir. 1995); Vizenor, et al. v. Babbitt, et al., Civil No. 6-95-230 (D. Minn., April 19, 1996 decided). Ambiguities concerning the sufficiency of the non-moving party's claims will be resolved to the benefit of the non-moving party, and the non-moving party will be given the benefit of every reasonable inference. Ossman v. Diana Corp., 825 F.Supp. 870, 880 (D. Minn. 1993) Vizenor, at p. 6.

IV.

RULES REGARDING STANDING

Unless relevant Community law provides to the contrary, this Court applies the federal court's interpretation of the "case" or "controversy" requirement found in Article III of the United States Constitution in determining a Plaintiff's standing to sue. Federal courts have found that standing is an essential prerequisite to a person's right to pursue a cause of action. Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 471-476 (1982); Whitmore v. Arkansas, 495 U.S.149, 155 (1990) ("Standing" serves to identify "cases" and "controversies" which appropriately are resolved through the judicial process"); Allen v. Wright, 468 U.S. 737, 750 (1984). In order to establish standing, the Plaintiff must demonstrate all three of the following: injury in fact; causal connection and

redressability. Lujan v. Defenders of Wildlife, _____ U.S. _____, 112 S.Ct. 2130, 2136 (1992). "Injury in fact" has been judicially defined as "an invasion of a legally-protected interest which is concrete and particularized" Allen v. Wright, 468 U.S. 737, 756 (1984); Warth v. Seldin, 422 U.S. 490, 508 (1975); Sierra Club v. Morton, 405 U.S. 727, 749-51 n. 16 (1972). "Injury in fact" must be "actual or imminent, not 'conjectural' or 'hypothetical'". Whitmore v. Arkansas, 495 U.S. 149, 155 (1990) (*quoting* Los Angeles v. Lyons. 461 U.S. 95, 102 (1983)); As to causal connection, the Supreme Court has noted that "the injury has to be fairly trace[able] to the challenged action of the defendant, and not...th[e] result [of] the independent action of some third party not before the court." Lujan v. Defenders of Wildlife, 112 S.Ct. 2130, 2136 (1992) (*quoting* Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 41-42 (1976). Finally, a Plaintiff must demonstrate that it is "likely", as opposed to merely "speculative", that the injury will be "redressed by a favorable decision." Id.

V.

ROSE PRESCOTT, TINA HOVE, ALAN PRESCOTT, MARY JO GUSTAFSON, ROBERT PRESCOTT, AND JAY HOVE'S REQUEST FOR ORDER COMPELLING INSPECTION OF RECORDS

Section 68.1 establishes two separate threshold requirements which must be met before a shareholder may inspect corporate documents: First, his or her request must be made in writing and must provide at least five days notice prior to the proposed inspection date (§68.1(1)).[2] Second, the requestor must make a good faith request, which request describes the documents sought with reasonable particularity, and the request is to be "directly connected with

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[2] The Court interprets the notice provision to mean that request must be received no fewer than five days before the proposed inspection. *See*, pp. 10-11, *infra*.

his or her purpose". §68.1(2)(a)-(c).[3]

These two thresholds must be met before a party properly can petition this Court to compel inspection of corporate documents. The Court only will evaluate the substance of a request if the requesting party clearly demonstrates that his or her request was made in writing and was received by LSI at least five days prior to the proposed inspection. The Plaintiffs, Mrs. Rose Prescott, Ms. Tina Hove, Mr. Alan Prescott, Ms. Mary Jo Gustafson, Mr. Robert Prescott, and Mr. Jay Hove, have not made written requests for inspection of documents. Not having formally requested documents as is required by §68.1(1), the Court's analysis is at an end, and those Plaintiffs lack standing to request that this Court compel that inspection. Accordingly, LSI's Motion to Dismiss as to the Plaintiffs; Mrs. Rose Prescott, Ms. Tina Hove, Mr. Alan Prescott, Ms. Mary Jo Gustafson, Mr. Robert Prescott, and Mr. Jay Hove's request for an order compelling inspection of LSI records is granted.

VI.

WINIFRED FEEZOR, PATRICIA PRESCOTT, CECELIA STOUT, LEONARD PRESCOTT, CYNTHIA PRESCOTT, LOUISE BLUESTONE SMITH, AND LEONARD SMITH'S REQUEST FOR AN ORDER COMPELLING DOCUMENTS REQUESTED IN THE JULY 6, 1995 LETTERS

The Plaintiffs, Winifred Feezor, Patricia Prescott, Cecelia Stout, Leonard Prescott, Cynthia Prescott, Louise Bluestone Smith, and Leonard Smith, made identical requests for inspection of documents in a series of letters dated July 6, 1995. LSI responded to each of those letters contending that the requests failed to meet the five day notice requirement §68.1(1), and also did not meet the good faith, reasonable particularity, and direct connection requirements of

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[3] Because §68.1(1) contains plainly-stated, easily-met technical requirements for document requests, the Court will strictly construe a member's compliance with its provision. Because §68.1(2)(a)-(c) are more subjective in nature and relate to the substance of a member's request, the Court will liberally construe a member's compliance with this section.

§68.1(2)(a)-(c).

The Court does not reach the question of the appropriateness of the requests in light of §68.1(2)(a)-(c), because the requests did not provide timely notice as required by §68.1(1). As noted above, the Court interprets the five day notice provision to mean that requests for inspection must be received by LSI at least five days prior to the proposed inspection date. Were notice effective on mailing, LSI's ability to collect and produce the documents requested would be subject to the vagaries of the United States Mail. This could mean that LSI could have actual notice of the request anywhere from four days prior, to any number of days after, the proposed inspection date. Since the notice provision contains such a short time span, to be workable, it must be interpreted to provide that notice is effective upon receipt.

Although these Plaintiffs' letters were dated July 6, 1995, they were not received by the Chairman of the Board of LSI until July 12, 1995. Since the proposed inspection date, likewise, was July 12, 1995, the five-days notice, required by §61.1(1), was not provided. Accordingly, the Plaintiffs' failure to provide timely notice for inspection is fatal to their request to compel inspection. Accordingly, LSI's Motion to Dismiss as to the July 6, 1995 requests of the Plaintiffs, Winifred Feezor, Patricia Prescott, Cecelia Stout, Leonard Prescott, Cynthia Prescott, Louise Bluestone Smith and Leonard Smith has been granted.

The Court notes, with some frustration, that the six-day delay between the date of the letters and their receipt by the Chairman of the Board of LSI was not explained by any of the parties. Without evidence explaining or controverting the date of receipt of those letters, the Court is compelled to find that the Plaintiffs did not provide timely notice. The Court will not countenance the manufacture of tardy requests and hopes that, in the future, the dates on which requests are received by LSI will be noted on the request, or will be testified to by the proper

corporate official. The shareholders, likewise, may consider using certified mail or overnight delivery services when making such significant requests, so as to better document the mailing and delivery of their requests to LSI.

VII.

WINIFRED FEEZOR AND TODD BROOK'S REQUEST FOR AN ORDER COMPELLING DOCUMENTS REQUESTED IN THE OCTOBER 28, 1994 LETTERS

On October 28, 1994, the Plaintiffs, Feezor and Brooks, requested the same documents as were requested in the July 6, 1995 letters discussed above. The two October 28, 1994 letters were received by LSI on November 4, 1994, and they requested that inspection occur on November 10, 1994. Accordingly, there exists no question of these requests compliance with Section 68.1(1). In its November 7, 1994 response to those requests, and at the hearing on this matter, counsel for LSI, rather, contends that inspection is not required because the Plaintiffs, Feezor and Brooks, failed to establish any of the three requirements (good faith, reasonable particularity, and connection with purpose) of §68.1(2)(a)-(c). For the purpose of this Motion, the Court is unpersuaded that LSI has carried its burden as to any of the three contentions.

A. GOOD FAITH

As to good faith, the Ordinance provides that there is a presumption "that a shareholder has demonstrated a primafacie case of good faith where the shareholder makes a written request which is reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the Corporation". Accordingly, based on the Ordinance, it is LSI's burden to rebut this presumption, not the requesting party's burden to prove proper purpose, as LSI suggests in its November 4, 1994 letter and its Brief. The Court determines that LSI has failed to rebut the presumption created by the Ordinance.

In the November 7, 1994 letter, LSI's counsel indicates that good faith and proper purpose have been defined by Court's as relating to advancing the *interests of the corporation*. While that may be so, or it may not, the Ordinance does not impose this showing on shareholders. Rather, it plainly provides that the presumption is based on the requesting party's interest as a shareholder. As such, this interest could be based on purely selfish motivations or platonic notions of promoting the corporate good. The Ordinance does not distinguish with regard to what the shareholder's "interest" must be, and the Court determines that LSI has not demonstrated that Feezor and Brooks' request lacks good faith.

LSI argues that the Plaintiffs' request was not in good faith because their interests, purportedly, were adverse to the best interests of LSI. However, there is no evidence supporting this contention. The Court finds that simply because the requesting parties have stated a concern of improper disbursements, which arguably are based on the community's well-documented membership dispute does not mean that the request for documents is per se bad faith. The Court determines that lack of good faith has not been demonstrated sufficiently to overcome the presumption given these Plaintiffs pursuant to both the Ordinance and the presumptions afforded the Plaintiffs at this stage of the litigation.

B. REASONABLE PARTICULARITY

LSI also contends that Feezor and Brooks' requests were not sufficiently particular. The Court disagrees. The Ordinance requires that the Plaintiffs' requests be reasonably particular, not absolutely detailed. The Court finds that the Plaintiffs requests for two years of financial statements, two years of accounting records and auditing reports, two years of cancelled checks and bank statements, and four years of records relating to per capita monies are sufficiently particular to enable production. Moreover, the requests fall within the permissible limits

provided for in §68.0(4). Given that the requesting party is not in possession of that which is sought for inspection, the Court will not require minute detail in such requests. These Plaintiffs' October 28, 1994 requests are sufficiently particular to withstand LSI's Motion To Dismiss.

C. RELATION TO PURPOSE

Finally, LSI contends that Feezor and Brooks' requests are unrelated to their purpose. The Court is likewise unconvinced of this fact. The Plaintiffs stated that the primary purpose of their request was to determine whether LSI may be improperly disbursing funds. While there may be no basis in fact for their concern, LSI may not reject their request to review documents because it disagrees with, or discounts, the requesting party's concern. At bottom, these Plaintiffs expressed a concern that corporate funds are being improperly disbursed; as shareholders in LSI, such a concern is clearly connected with their interest as shareholders since their interest is to maximize return, and improper disbursements may reduce that return. The Court, therefore, determines that these Plaintiffs expressed the requisite connection between their request and their purpose so as to withstand LSI's Motion.

The Court makes the above determinations while acknowledging LSI's concern with regard to being unduly burdened by such requests. While it is true that an efficiently run corporation benefits all shareholders, it must also be noted that this is a unique corporate-shareholder relationship. This unique setting requires that the Board be especially responsive to shareholder requests and concerns. The universe of possible shareholders begins and ends with the qualified members of the Shakopee Mdewankanton Sioux (Dakota) Community. The number of community members is small, even with the most liberal interpretation of membership, and so the concerns expressed by LSI and noted in State ex rel. Pillsbury v. Honeywell, Inc., 191 N.W.2d 406 (Minn. 1971) that "thousands of stockholders" will roam

through records and damage the efficient functioning of the corporation do not exist here.

Accordingly, LSI's Motion to Dismiss as to the October 28, 1994 requests of Plaintiffs Winifred Feezor and Todd Brooks has been denied.

VIII.

THE PLAINTIFFS' REQUEST FOR REMOVAL OF LSI'S BOARD OF DIRECTORS

The final issue before the Court relates to the Plaintiffs' request for removal of the members of LSI's Board of Directors. As has been noted above, Section 25.3 of the Ordinance provides, in part, that such actions may be commenced by a group of at least ten percent of the eligible voting members of the General Council.[4] The parties agree on the number of persons required to commence such an action, but disagree on whether each of the persons comprising the ten percent must independently demonstrate an "injury in fact". LSI submits that Section 25.3 only creates a cause of action, and that each of the Plaintiffs must have been denied access to records or otherwise "wronged" by the Board's conduct. LSI fashions this distinction as one between the creation of a cause of action and standing (Defendants' Reply Brief p. 2). The Plaintiffs, in turn, contend that the plain language of the Ordinance does not require an injury to each of the persons comprising the ten percent. Rather, they submit that the Ordinance merely requires that a set percentage of General Council members must join a suit against the Board for a wrong against even a single member. (Plaintiffs' Response to Motion to Dismiss at 4-5; Trans. p. 16, 22; p. 17, 6).

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[4] Counsel for LSI indicated that for the purpose of this action there are 111 community members (members of the General Council). This figure was not disputed, and so the Court determined that to fulfill the ten percent requirement, there must be at least 11 Plaintiffs.

The Court will determine standing, to the extent possible, based on Tribal law. In this case, the relevant Tribal law is the Ordinance. In the context of requests for production and inspection, the Court looked to the plain language of Section 68.1 and determined what that section requires of a party who petitions this Court for an Order compelling production and inspection of LSI documents. So too, here, the Court looks to Section 25.3 to determine what is required of parties who bring an action to remove Board members. Although Section 25.3 is not as clear and plain as the parties or the Court might like, the Court has determined that Section 25.3 of the Ordinance does not require "injury in fact" as a prerequisite to joining an action to remove a member of LSI's Board of Directors.

Section 25.3 provides that an action for the removal of a director from office may be brought by members of the General Council if the case is "commenced by at least ten percent (10%) of eligible voting Members of the General Council... where a director withholds financial information of whatever kind from the Members..." Accordingly, the relevant analysis is to what is meant by "the Members" in the latter portion of Section 25.3. If "the Members" means ten percent of the eligible voting members of the General Council, then a conclusion may be drawn that the director must have withheld financial information from each of the members comprising the ten percent, essentially requiring "injury in fact" to each of the persons comprising the ten percent. If "the Members" means the eligible voting members of the General Council, then a conclusion may be drawn that the denial of any member's access to documents constitutes a wrong which may be pursued in Court if ten percent of the eligible voting members of the General Council will join the suit, thus not require "injury in fact" to each of the persons composing the ten percent.

The Court has determined that the latter construction is more reasonable for a number of reasons. First, the latter reference to "the members" does not limit that term to ten percent as is previously done in the same section. The Court considers this omission to be indicative of intent, especially given its previous inclusion. In short, based on the omission of the ten percent limitation, the Court interprets the reference generally to "the Members" to be most sensibly referred back to the previously-stated "eligible voting members of the General Council" since "the members" means, in the Court's view, the members of the Shakopee Mdewakanton Sioux (Dakota) Community, not ten percent of those members. If the reference is to the Members of the General Council generally, then the ten percent requirement is not dependent on the withholding of information from "the Members", thus indicating that the ten percent need not be comprised of members who have been denied access to records.

Second, the Court's construction avoids an unnecessarily burdensome and confusing result, which could well flow from interpreting an "injury in fact" requirement into the ten percent provision. If the Court were to interpret "the Members" to mean ten percent of the members, the result could well be that denials of requests for inspection from years ago could be resurrected once LSI allegedly wrongfully denies access to a member who would finally constitute ten percent of the voting members. In a sense, the "injury in fact" requirement could well lead to the stockpiling of independent claims over the course of a number of years. As a result, members with stale claims could be denied immediate redress or perceived wrongs and could well be denied redress if, during their thwart, the responsible director or directors retire or are replaced. Likewise, stale decisions of directors could be and brought against LSI years after LSI denies access once a sufficient number of people are demonstrated find each other and bring suit.

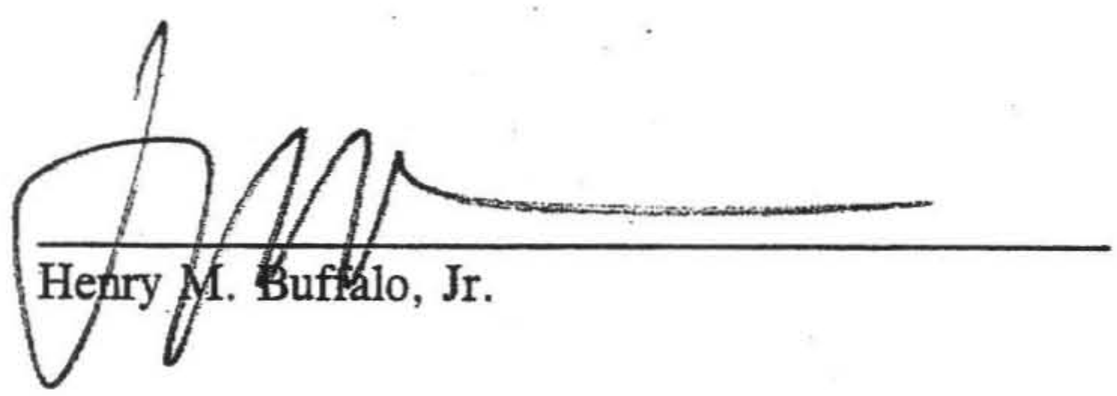
Neither of these results make sense: The former, at best, delays and, at worst, defeats a shareholder's right to seek timely redress for an alleged wrong by a director; the latter could result in LSI being subject to suit years after decisions are made and memories fade. The Court feels that this result effectively thwarts an individual shareholder's attempt to police corporate conduct and could be tremendously disruptive of LSI's efficiency and productivity. The construction accepted by this Court, to the contrary, allows both General Council members and LSI directors to have disputes over documents production handled in a timely manner. Moreover, this interpretation better insures that shareholders' interests in meaningful access to corporate documents will be addressed even where they have not themselves been denied access, since the wrongful denial of one member's request actually is a wrongful denial of all members' access, as well as a breach of the access provisions to which the majority of members have agreed were reasonable and prudent.

Based on the Court's construction of Section 25.3, the ten percent provision is more akin to a referendum provision, whereby if one person feels that documents have been wrongfully denied he or she must convince at least ten percent of the eligible voting members of the General Council that his or her claim has merit, and that they should join a legal action to compel the production. The ten percent threshold imposes a peer review stage which precedes and very necessarily determines the fate of litigation. The provision does not require that all of the persons must have been wronged, only that ten percent agree even a single member has been wronged. Although this mechanism will not always convey merit to such causes of action, it will, and does, present a meaningful peer review of a member's proposed litigation.

Since the Court has determined that LSI is not entitled to dismissal as to the October 28, 1994 requests of the Plaintiffs' Feezor and Brooks, there remains the possibility that the Court

could ultimately determine that the denial of access to those records was wrongful. Given this possibility, the Plaintiffs' request for removal, likewise, cannot be dismissed based on the substance of the request. Further, given the Court's foregoing analysis of Section 25.3, it finds that all of the named Plaintiffs have standing to pursue this discreet claim. Accordingly, LSI's Motion to Dismiss regarding their request for removal has been denied.

Dated: April 30, 1996.



Henry M. Buffalo, Jr.

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY

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FILED MAY 01 1996

CARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Rose B. Prescott, Louise B. Smith, Winifred S. Feezor, Cecelia M. Stout, Tina M. Hove, Alan M. Prescott, Cynthia L. Prescott, Leonard L. Prescott, Patricia Prescott, Todd D. Brooks, Mary Jo Gustafson, Robert M. Prescott, and Jay C. Hove, as individuals and as shareholders of Little Six, Inc. and for others similarly situated,

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Defendants.

Court File No. 061-95

ORDER

The above-entitled matter came on for hearing before the undersigned Judge of the Court of the Shakopee Mdewakanton Sioux (Dakota) Community on the 11th day of January, 1996, at 2330 Sioux Trail Northwest, on the Shakopee Mdewakanton Sioux Reservation, in the City of Prior Lake, County of Scott, State of Minnesota pursuant to the Defendants' Motion to Dismiss based on Rule 12(b)6 of the Shakopee Mdewakanton Sioux (Dakota) Community Rules of Civil Procedure.

Arnie H. Frishman, Esq. and James H. Cohen, Esq. appeared on behalf of the Plaintiffs.

Steven F. Olson, Esq. and Janet Erickson, Esq. appeared on behalf of the Defendants.

The Court, being fully advised of the premises, and based on the files, records and evidence herein, as well as the arguments of counsel, IT IS HEREBY ORDERED,

1. That the Defendants' Motion to Dismiss the Request to Compel Inspection of Corporate Records as to Mrs. Rose Prescott, Ms. Tina Hove, Mr. Alan M. Prescott, Ms. Mary Jo Gustafson, Mr. Robert M. Prescott, and Mr. Jay C. Hove be, and hereby is, GRANTED WITH PREJUDICE;

2. That the Defendants' Motion to Dismiss the Request to Compel Inspection of Corporate Records as to the Plaintiffs; Mrs. Winifred Feezor, Ms. Patricia Prescott, Ms. Cecelia Stout, Ms. Louise Bluetone Smith, and Mr. Leonard Smith's July 6, 1995 requests be, and hereby is, GRANTED WITH PREJUDICE;

3. That the Defendants' Motion to Dismiss the Request to Compel Inspection of Corporate Records as to the Plaintiffs', Winifred Feezor and Todd Brooks, October 28, 1994 request be, and hereby is, DENIED;

4. That the Defendants' Motion to Dismiss the Request of all Plaintiffs for the removal of the members of the Board of Directors of LSI be, and hereby is, DENIED; and

5. That the attached memorandum of law be, and hereby is, incorporated into, and made a part of, this Order.

Date: April 30, 1996

Henry M. Buffalo, Jr.