

FILED MAY 23 1996

CARRIE L. SVENDAHL  
CLERK OF COURT

COURT OF THE SHAKOPEE MDEWAKANTON  
SIOUX (DAKOTA) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Little Six, Inc., et al.  
Plaintiffs,

vs.

Leonard Prescott, et al.,  
Defendants.

File No. 048-94

MEMORANDUM ORDER

The discovery dispute which this Memorandum Order discusses and resolves has had a considerable life. It began when the Defendant F. William Johnson ("Johnson") served upon the Plaintiffs a Request for the Production of Documents, dated November 23, 1994. After requesting and receiving a short extension of the time in which to respond, the Plaintiffs provided responses on January 5, 1995. The Plaintiffs provided certain documents, objected to the production of other documents variously on grounds that the requested records were not in the possession of parties to the proceedings, or were not relevant, or were overbroadly described, and expressed concerns with respect to mechanisms to ensure the confidentiality of certain of the materials being produced.

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There followed a period during which the parties negotiated and, in July and August, 1995, resolved the confidentiality questions by stipulation. The objections stated by the Plaintiffs in their January 5, 1995 responses were not thereby resolved, however; but it was not until January 8, 1996, that Johnson filed a Motion to Compel Production of Documents. Johnson did not identify the Rule of this Court which he was invoking, but clearly his motion was filed under our Rule 24, which incorporates Rule 37 of the Federal Rules of Civil Procedure. Johnson also sought the attorneys fees which he incurred in pursuing his motion.

Johnson's motion was briefed by the parties and--after a hiatus in the proceedings, requested by the parties, failed to produce an overall settlement of this litigation, and after feeble attempts by this Court to resolve the discovery dispute proved to be unsuccessful--Johnson's motion was argued on May 10, 1996.

Parties Subject to the Request for Production

Distilled to its essence, Johnson's argument with respect to the persons and entities that are properly subject to his request for production is that, for purposes of records requested in this litigation, the Court should recognized no distinction between LSI, the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"), officials of the Community, and agencies of the Community, and therefore all documents in the possession of any official, agency, or body of the Community are subject to Johnson's request for production.

Distilled to its essence, the Plaintiffs' argument is that LSI



has an entirely separate existence, and the only records which are subject to Johnson's requests for production are the records presently in the possession of Little Six, Inc. ("LSI"). The Plaintiffs hold this position despite the fact that the Community is a named party Plaintiff in these proceedings, because, in the Plaintiffs' view, the Community is participating only as "sole shareholder of Little Six, Inc."

The view of this Court falls somewhere between these two positions.

Clearly, LSI is an entity separate from the Community and separate from Community officers and agencies, and the separate records of the Community are not records of LSI merely by virtue of the fact that the Community owns LSI. But LSI is not the only Plaintiff in this matter. The Community has chosen to participate as a named Plaintiff. That is proper: the Complaint denominates the Community as the corporation's sole shareholder, and that status certainly gives the Community standing to sue. But once an entity or a person has chosen to participate in proceedings before this Court, that person or entity is fully subject to the Rules of this Court, including the rules relating to discovery. Therefore, any records held by the Community which otherwise would be discoverable--that is, records which are not privileged, and which either are relevant to a claim or defense in this matter, or are reasonably calculated to lead to the discovery of admissible evidence--should be produced in response to Johnson's request.

A similar holding is required for records of the General



Council of the Community. The Community's Constitution provides that the Community acts through, and only through, its General Council. It therefore is difficult for the Court to see how any action initiated and prosecuted in the name of the Community is not also an action initiated and prosecuted by the General Council. The formal records of the General Council--such as the General Council's minutes, agendas, and similar materials--are, in fact, the records of the Community in this proceeding, and are equally subject to production.

Likewise for records of the Business Council of the Community: under the Community's Constitution, the Business Council is not established as a separate entity with special and separate powers. Rather, under Article III of the Constitution, the Business Council carries out "such duties as may be authorized by the general council"; and when the Community has chosen to participate in litigation, the records of the Business Council should be subject to discovery to the extent that they are relevant and not privileged.

Matters stand differently, however, for the Community's Gaming Commission ("the Commission"). Article V, section 1(n) of the Constitution (as amended) gives the General Council the authority to create "autonomous boards and agencies". The parties have not discussed the nature of the Commission; and the Gaming Ordinance by which the Commission was created does not specify the section or subsection of the Constitution under which the Commission was established. But it seems clear that when the General Council



adopted the Gaming Ordinance, it intended to create an gaming licensing and regulatory entity with considerable independence from the other branches of the Community's government. Therefore , I conclude that the Commission cannot be deemed to be a party to these proceedings merely because the Community is a party; so, if records of the Commission are to be sought in these proceedings, our Rule 23 will govern.

As a consequence of the foregoing determinations, the Community is hereby directed to produce its records, the records of the General Council, and the records of the Business Council, to the same extent and with the same limitations as LSI's records have been and will be produced.

#### LSI's Objections to Johnson's Requests

Having determined which entities' records properly are subject to Johnson's requests for production, it is necessary for the Court to rule on the LSI's specific objections to production.

Johnson's Request No. 3. Johnson's Request No. 3 dealt with all the minutes of meetings held by various entities for the periods from June, 1991 through November, 1994. LSI objected the request as being overly broad and burdensome, but agreed to provide such minutes to the extent it possessed them. The Court agrees that the request is broad; but the allegations in the Complaint in this matter are broad as well, and the minutes requested appear to the Court to fall within the ambit of our Rule 23, which incorporates Federal Rule of Civil Procedure No. 34. Therefore, the Plaintiffs' objections to Requests N. 3.a., 3.b., 3.c, and 3,d



are overruled. The Plaintiffs' objection to Request No. 3.e. is sustained.

Johnson's Request No. 4. Johnson's Request No. 4 sought the production of all resolutions, ordinances and codes of the Community, from June, 1991 through November, 1994,\* that were associated with gaming, licensing, or LSI. The Plaintiffs objected that these documents were of public record and available to Johnson through the Secretary of the Community in the normal course of the Community's business. The Plaintiffs therefore contended that they were under no obligation to collect and produce the documents for Johnson. The Court agrees. Plaintiffs' objection is sustained.

Johnson's Request No. 7. Johnson requested copies of all documents which the Plaintiffs intend to introduce at trial, and the Plaintiffs objected on the grounds that the request sought material protected by the work product doctrine, and that the documents which they will seek to introduce had not yet been ascertained. The Court intends to issue a pre-trial scheduling order, which will specify dates by which the parties should exchange exhibit and witness lists, after it has ruled upon Johnson's pending motion to dismiss; and the Court's ruling on the foregoing request and objection will be dealt with at that time.

Johnson's Request No. 8. Johnson requested copies of any job descriptions in effect at any time for the positions he held with LSI or the Community, and the Plaintiffs objected on the grounds of overbreadth, but also stated that they had been unable to locate any such documents, and that, if such documents were located in the



future, they would be produced. In the view of the Court, Johnson's request is not overbroad, and the Plaintiffs' objection is overruled: to the extent that such documents are located within the records of the parties, they should be produced in response to Johnson's request.

Johnson's Requests No. 10 and No. 11. Johnson requested transcripts of license revocation hearings which Johnson asserts were held by the Commission; and the Plaintiffs objected on the grounds that the request sought documents that were not within the Plaintiffs' custody or control, and that the records should be sought from the Commission. The Plaintiffs' objection is sustained, because the Commission is not a party to these proceedings.

Johnson's Request No. 12. Johnson requested all memoranda, notes, agenda, and copies of all documents distributed, associated with all meetings and actions undertaken without meetings, that in any manner relate to the subject matter of the Plaintiffs' Complaint, from the General Council, Business Council, Commission, and LSI's Board of Directors and Executive Committee. The Plaintiffs objected on the grounds that it sought documents outside their custody and control; but the Plaintiffs agreed to provide such documents, to the extent they were within their custody and control, provided appropriate confidentiality protection was obtained. The Court understands that the confidentiality matters now have been resolved, and for the reasons discussed, supra, the Court sustains the Plaintiffs' objections with respect to the



Commission and overrules the objections with respect to the General Council and the Business Council. In so doing, the Court wishes to make it clear that it is not directing the production of any notes or materials that were prepared by individual members of the General Council. The materials to be produced are limited to (i) documents that were distributed to or generally available to the General Council, or Business Council, or the LSI Board of Directors or Executive Committee, and (ii) notes kept by members of the Business Council and the LSI Board and Executive Committee.

Johnson's Request No. 13. Johnson sought all documents reflecting salary or compensation levels, including bonuses, for all corporate officers of LSI from June, 1991 through November, 1994. The Plaintiffs objected on the grounds of relevance and overbreadth, but agreed to produce the records, subject to confidentiality restrictions. In the view of the Court, the documents requested are not overbroad or irrelevant, given the claims in the Complaint. The appropriateness of the compensation paid to the Defendants Johnson and Prescott are directly at issue in this matter, and it is not impossible that comparisons of their compensation to the amounts paid to others could be relevant to the merits. Therefore, the Plaintiffs' objections are overruled.

Johnson's Request No. 15. Johnson requested all documents which tend to support or refute, or otherwise relate to, any of Plaintiffs' allegations. The Plaintiffs objected that the request was overbroad. The Court agrees: Plaintiffs' objection is sustained.



Johnson's Request No. 20. Johnson requested all documents which in any manner support, present, or particularize the damages which Plaintiffs claim in this manner. The Plaintiffs objected on the ground that the request sought work product materials, and asserted that they were unaware of any such documents. To the extent such documents exist and are not attorney work product or otherwise privileged, the Plaintiffs' objection is overruled; to the extent that such documents exist or may be created and are privileged, the objection is sustained.

ORDER

1. The Defendant Johnson's Motion to Compel is granted in part and denied in part, in accordance with the foregoing discussion;

2. The Defendant Johnson's Motion for Attorneys Fees is denied; and

3. The Court will conduct a telephone conference with counsel, at a time to be arranged by the Clerk, to discuss the scheduling implications of this Order.

May 23, 1996

  
John E. Jacobson  
Judge