

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

FILED JUN 07 1999

CARRIE L. SVENDAHL

CLERK OF COURT
STATE OF MINNESOTA

COUNTY OF SCOTT

In Re: Trust under Little Six, Inc.
Retirement Plans

Court File No. 055-95

MEMORANDUM AND ORDER

On May 28, 1999, a conference in this matter was held by telephone, not on the record, for scheduling purposes. Jan Stuurmans, Esq. participated on behalf of Robert A. Burns and John Somers; Steven Olson, Esq. participated on behalf of Little Six, Inc. ("LSI"); and Steven Wolter, Esq. participated on behalf of Leonard Prescott, F. William Johnson, and Peter Riverso.

During the conference, agreement was reached among the parties that an evidentiary hearing on the issue of whether the Trust Under Little Six, Inc. Retirement Plans (the "Trust") was validly created would be held on September 22, 1999, commencing at 9:00 a.m.. It also was agreed that the parties would exchange witness lists and exhibit lists not later than ten days before the hearing. However, as the Court began to put pen to paper in drafting this Order it dawned on me that "ten days before the hearing" would be Sunday, September 12, 1999. So, that portion of the scheduling order is herewith modified: witness lists and lists of exhibits will be exchanged not later than Friday, September 10, 1999.

At the conclusion of the conference, Mr. Wolter asked the Court how, in light of the unusual nature of these proceedings, the burden of proof would be allocated, and in what order

the parties would proceed during the hearing. Those questions were sufficiently interesting that the Court asked for a bit of time to reflect on them.

Reflection has led me down the following path. As I observed in my January 19, 1999 Memorandum Opinion and Order, I think it is likely that the question as to whether the Trust was validly created and the question as to whether this Court has jurisdiction over this action actually are one and the same. If the Trust was validly created under the law of the Shakopee Mdewakanton Sioux (Dakota) Community (the "Community"), then I think it probably will be subject to the basic requirements of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1001 - 1500 (1994), and the Federal Courts will have exclusive jurisdiction over disputes relating to it. Conversely, if the Trust was not validly created under Community law, then I think the jurisdiction which the Community has given this Court is broad enough for me to hear and decide the issues raised herein. And since the party who asks a court to hear a case generally has the burden of proving that the court has jurisdiction to do so -- cf., Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375 (1994), and Moog World Trade Corp. v. Bancomer, S.A., 90 F.3d 1382 (8th Cir. 1996) -- I believe that the parties who ask this Court to hear this case bear the burden of proving the contention that is central to the Court's jurisdiction: that the Trust was not validly created under Community law. Therefore, at the hearing Messrs. Burns and Somers and LSI will have that burden, and will put in their case first.


Based on the foregoing, it is ORDERED:

1. That an evidentiary hearing on the issue of the validity of the creation of the Trust Under Little Six, Inc. Retirement Plans will be held on September 22, 1999;
2. That the parties will exchange lists of their witnesses and exhibits not later than

September 10, 1999; and

3. That at the hearing, Robert A. Burns, John Somers, and Little Six, Inc., will have the burden of proceeding and of proving that the Trust Under Little Six, Inc. Retirement Plans was not validly established under the laws of the Shakopee Mdewakanton Sioux (Dakota) Community.

June 7, 1999



John E. Jacobson
Judge