

FILED OCT 26 1999

TRIBAL COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY
MICHAEL L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

File No. 374-99

In the Matter of:

The Children's Trust Funds Created
Under Shakopee Mdewakanton Sioux
Community Ordinance Number 12-29-88-002
With Trust Agreement Dated
September 9, 1992

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The above-entitled matter came on for hearing before the undersigned on October 26, 1999, at 9:00 a.m. The Shakopee Mdewakanton Sioux (Dakota) Community (the "Community") filed a petition in this Court on June 16, 1999. Subsequently, the Community amended its petition on August 13, 1999. The Community's Amended Petition requests an order: (1) confirming its appointment of Merrill Lynch Trust Company of America ("Merrill Lynch") as trustee; (2) construing the trust document; (3) settling and allowing the accounts of Merrill Lynch dated December 31, 1992, December 31, 1993, December 31, 1994, December 31, 1995, December 31, 1996, December 31, 1997, Final Account Dated December 31, 1998, and an account for the period from and after December 31, 1998; (4) confirming the appointment of a successor trustee; (5) approving the transfer of Children's Trust Fund assets to the successor trustee; (6) ordering Merrill Lynch to transfer trust assets and administration of the trust to the successor trustee; and (7) discharging Merrill Lynch as trustee.

Steven F. Olson, Esq. and Brad S. Jolly, Esq. of BlueDog, Olson & Small, P.L.L.P., appeared on behalf of the Community.

James G. Bullard and Joshua Jay Kanassatega of Leonard, Street and Deinard, P.A., appeared on behalf of Merrill Lynch;

The Court, having considered the Petition and arguments of counsel herein, reviewed the accounts as to the assets which Merrill Lynch received and maintained pursuant to the Trust Agreement and as to distributions made in accordance with the Trust Agreement, and being fully advised in the premises, hereby enters the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Pursuant to Community Ordinance Number 12-29-88-002, the Business Proceeds Distribution Ordinance, the Community and Merrill Lynch executed an eight-page Trust Agreement, dated September 9, 1992 creating separate revocable trusts, each trust bearing the name of an individual who could become a beneficiary.

2. Subsequently, the Community enacted Ordinance Number 10-27-93-002, the Gaming Revenue Allocation Amendments to the Business Proceeds Distribution Ordinance ("Gaming Revenue Allocation Amendments"), which amended and superseded various provisions of Ordinance No. 12-29-88-002, including the provisions regarding the establishment of a trust for minor Community members.

3. Merrill Lynch was the original and only trustee under the Trust Agreement prior to December 30, 1998, when Merrill Lynch was replaced.

4. Merrill Lynch invested the assets of the Children's Trust in accordance with the Trust Agreement and made various distributions from the Children's Trust until December 30, 1998. Such distributions were made pursuant to orders of this Court issued pursuant to Section 14.6 of the Gaming Revenue Allocation Amendments or otherwise in accordance with appropriate directions

from the Business Council, or its authorized agent. Since December 30, 1998, no authorized distributions have been made from the trust assets held by Merrill Lynch.

5. On December 30, 1998, the Business Council, in accordance with the powers reserved to it under the Trust Agreement, executed a First Amendment to the Trust Agreement.

6. Also on December 30, 1998, the Business Council removed Merrill Lynch as trustee, appointed the person acting from time to time as Community Controller as ex-officio trustee, and directed that Merrill Lynch transfer title to and custody of the Children's Trust Fund assets to the Community Controller as successor trustee.

7. On February 15, 1999, the Community ceased placing any additional trust assets with Merrill Lynch. From that date, the Community Controller, as ex-officio trustee, deposited the funds required by Section 14.6 of Ordinance Number 10-27-93-002 into a new trust account under his control.

8. The person currently acting as Community Controller is Joseph Dean.

9. On January 27, 1999, Merrill Lynch filed a petition in Minnesota District Court seeking release and discharge as trustee.

10. On June 16, 1999, the Community filed its petition for release and discharge of Merrill Lynch as trustee with this Court. In addition, the Community requested that the record in this case be sealed to protect the non-vested potential future beneficiaries and prevent disclosure of other matters.

11. On July 23, 1999, the Court held a telephone conference on this matter and requested the Petitioner to prepare a proposed amended order to seal the file which would permit certain individuals to view the record.

12. On July 29, 1999, the Court entered the amended order to seal the record.

13. On August 13, 1999, the Community amended its petition, removing some allegations. The Amended Petition made no new substantive allegations and requested no materially different prayers for relief, but provided a more up-to-date and accurate accounting.

14. Pursuant to stipulation filed with this Court, Merrill Lynch consented to this Court's exercise of special personal jurisdiction over Merrill Lynch for the sole purpose of hearing this Petition and issuing an order as requested herein.

15. Without deciding which beneficiaries are entitled to notice or whether any beneficiary has a vested interest in the Children's Trust Fund, the court ordered that all beneficiaries, whether present or future, vested or contingent, be notified of these proceedings.

16. Waivers of notice executed by certain beneficiaries who have attained the statutory age of 18, but not the statutory age of 25 were submitted by the Community and such notices are a proper waiver of notice of the hearing and proceedings on the Petition of the Community.

17. Notice of these proceedings, including all continuances, was mailed by the Community to all other beneficiaries who did not otherwise waive notice, as evidenced by the affidavit of mailing by the Community's attorney filed herein, and such notice was proper notice of the hearing and proceedings on the Petition of the Community.

18. No beneficiary or other person who could claim an interest in the Children's Trust Fund appeared to challenge the proceedings.

19. Both the original Petition and the Amended Petition were personally served upon Merrill Lynch. Merrill Lynch has had actual notice of the Community's Petition and all proceedings incidental thereto.

20. Merrill Lynch has provided accountings to the Community and this Court for the period up to and including September 1999. Merrill Lynch has represented to the Community and this Court that it has followed essentially the same trust administration practices in October of 1999 as it has followed during the preceding months of 1999.

21. The parties dispute the amount Merrill Lynch is entitled to be reimbursed out of the Children's Trust Fund for legal fees paid to Leonard, Street and Deinard, P.A. for services provided in these proceedings and the parallel proceedings in Minnesota District Court.

22. The parties also dispute the amount Merrill Lynch is entitled to be paid out of the Children's Trust Fund from and after December 30, 1998, to the date of discharge, for services provided to the Children's Trust Fund.

23. The parties have asked the Court to determine the amounts due Merrill Lynch as reimbursement for legal fees paid to Leonard, Street and Deinard, P.A., as well as the amounts due Merrill Lynch for services provided to the Children's Trust Fund. Upon proper submissions, in accordance with this Order, the Court shall determine appropriate amounts to be paid to Merrill Lynch from the Children's Trust Fund for both reimbursement for legal fees paid to Leonard, Street and Deinard, P.A. and for services provided by Merrill Lynch to the Children's Trust Fund.

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction over this matter as an exercise of the Community's inherent sovereignty and pursuant to Community Ordinance No. 2-13-88-01, Section II and Community Ordinance No. 11-14-95-003, Sections I, II, III, IV, and VI.

2. The Court has personal jurisdiction over the Community, the Business Council and all Community members who do or may claim an interest in the trust assets under Community

Ordinance Numbers 2-13-88-01 and 11-14-95-003 and the inherent authority of this Court over members of the Community. The Court has special personal jurisdiction over Merrill Lynch pursuant to and in accordance with its consent reflected in the stipulation filed herein.

3. The Court makes no determination or ruling on the rights of any beneficiary to notice of these proceedings or their rights or interests under the Children's Trust Fund.

4. Notice of these proceedings has been provided to or written waivers of such notice have been executed by all persons entitled to notice of these proceedings and the Court finds such notices and waivers sufficient.

5. The Business Council's removal of Merrill Lynch as trustee was a proper exercise of that authority retained by the Business Council pursuant to the Trust Agreement, Article I, §1.03(1).

6. The Business Council's appointment of the Community Controller as successor trustee, *ex-officio*, is appropriate given the governmental nature of the position and that it is not uncommon for governmental officials to act in such capacities.

7. The provision of section 1.03 of the Trust Agreement providing:

The trustee shall not be liable to the Business Council, the General Council, the Shakopee Mdewakanton Sioux (Dakota) Community of Minnesota or the beneficiary of any trust for any action taken or not taken at the Business Council's direction or solely because any action was taken or not taken before the trustee received actual notice of the exercise of reserved power pursuant to this Paragraph [1.03]. The trustee shall be fully indemnified by the Business Council, the General Council, the Shakopee Mdewakanton Sioux (Dakota) Community of Minnesota and the applicable trusts for any action taken or not taken under these circumstances,

survives the discharge of Merrill Lynch as trustee for the period of the applicable statute of limitations for claims arising from actions or events occurring prior to February 15, 1999, the date the Community ceased providing additional trust funds to Merrill Lynch.

8. This Court concludes that the Community has demonstrated that it is entitled to all the relief requested in its Amended Petition.

NOW, THEREFORE, it is hereby ORDERED that:

1. The appointment of Merrill Lynch as trustee is confirmed.
2. The notices and waivers of notice provided to all beneficiaries, whether present or future, vested or contingent, are sufficient for all purposes, and all persons who, or who may claim an interest in these proceedings, the assets of the trust, the performance by Merrill Lynch of its duties as trustee, or any other matter relating to or arising out of the Children's Trust, the administration thereof, or these proceedings has received notice and been given an opportunity to be heard, and such notice is, therefore, deemed approved and confirmed.
3. The accounts of Merrill Lynch, as trustee, provided to this Court in this matter up to and including September 1999 and its acts therein recorded are approved and confirmed.
4. Merrill Lynch is directed to provide a final accounting to the successor trustee, within a reasonable period of time, which shall cover the period from and including October 1999 to the date of the final transfer of the trust assets to the successor trustee in accordance with this Order.
5. The investment of the trust assets is hereby approved and confirmed.
6. The distributions by Merrill Lynch, in accordance with instructions from the Business Council and otherwise in accordance with order of this Court, as set forth in the Petition, are approved and confirmed.

7. Based on the certified invoice filed with this Court, payment to Deloitte & Touche, LLP in the amount of \$28,145.00 from the trust assets for services provided to the Children's Trust Fund, including out-of-pocket expenses, is approved and permitted.

8. The Court shall determine, after further proceedings, the amounts Merrill Lynch is entitled to be paid out of the Children's Trust Fund as reimbursement for legal fees paid to Leonard, Street and Deinard, P.A. for their services to Merrill Lynch in matters related to these proceedings and parallel proceedings in Minnesota District Court, as well as fees, if any, due Merrill Lynch for the period from December 30, 1998, through the date of discharge. To that end, Merrill Lynch is directed to provide the Court, no later than November 2, 1999, with a detailed invoice of the services provided and the fees charged by Leonard, Street and Deinard, P.A. as well as the a detailed statement of the fees charged by Merrill Lynch from December 30, 1999, through the date of discharge. In addition, both parties shall submit letter briefs, not to exceed three (3) pages in length, to the Court by November 2, 1999, explaining the amounts they feel Merrill Lynch is entitled to be paid out of the Children's Trust Fund for its services and those of Leonard, Street and Deinard, P.A. Notwithstanding the Courts reservation of jurisdiction to decide this issue, the balance of the relief in this Order shall be effective immediately.

9. The person acting from time to time as Community Controller is hereby approved as the successor trustee, *ex-officio*, and Merrill Lynch is directed to transfer the trust assets, within 10 days of the date of this Order, to the following account established by the successor trustee for the purpose of depositing and maintaining the trust assets therein:

Account Name

Shakopee Mdewakanton Sioux Community of Minnesota Children's Trust Fund

Account Number

13580500

Financial Institution

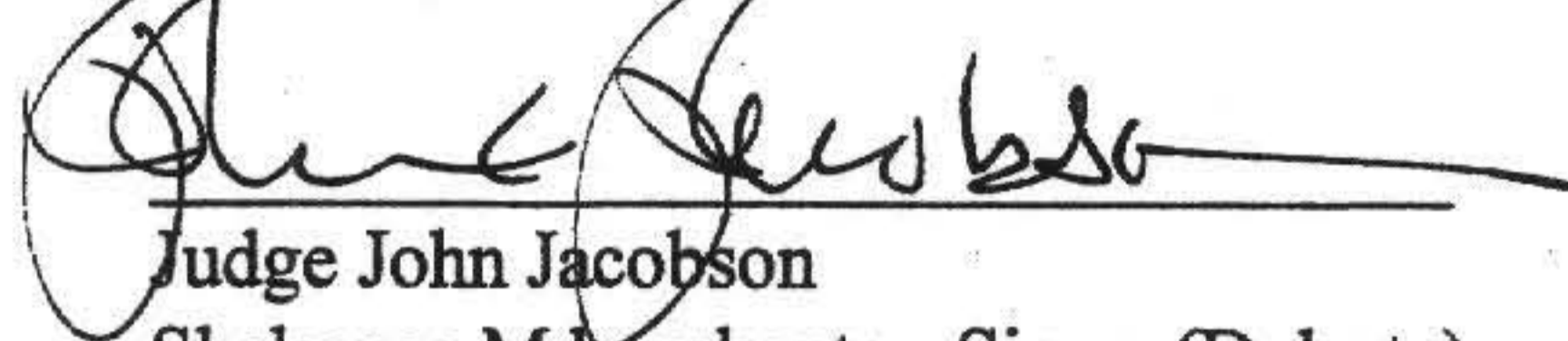
Norwest Bank Minnesota, N.A.

10. The indemnification of Merrill Lynch provided in Section 1.03 of the Trust Agreement is reaffirmed and survives the discharge of Merrill Lynch as trustee for the period of the applicable statute of limitations for claims arising from actions or events occurring prior to February 15, 1999, the date the Community ceased providing additional trust funds to Merrill Lynch.

11. On acknowledgment of receipt of trust assets by the Community Controller, Merrill Lynch, Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Asset Management, L.P., and their affiliates, predecessors, successors, parents, subsidiaries, assigns, officers, partners, stockholders, attorneys, directors, agents, employees, past and present, are hereby released and discharged from all liability and responsibility under the trust to the Shakopee Mdewakanton Sioux (Dakota) Community, the vested beneficiaries, any non-vested potential future beneficiaries, and any and all other persons now or hereafter claiming any interest with respect to any of the trust which is the subject of this action, except for claims of liability arising out of Merrill Lynch's failure to comply with this Court's Order.

Dated this 26th day of October, 1999.

BY THE COURT:



Judge John Jacobson
Shakopee Mdewakanton Sioux (Dakota)
Community Tribal Court Judge