

FILED
COURT OF APPEALS
DIVISION II
08 NOV 24 AM 9:55
STATE OF WASHINGTON
BY [Signature]
DEPUTY

83745-7
NO. 36751-3

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

WASHINGTON STATE GAMBLING
COMMISSION,

Appellant/Cross Respondent,

v.

ZDI GAMING, INC.,

Respondent/Cross Appellant.

ADDITIONAL
STATEMENT OF
AUTHORITIES

Appellant/Cross Respondent Washington State Gambling Commission, by and through its attorneys of record, submit the following additional authority for the Court's review:

Mudarri v. State, __ Wn. App. __, __ P.3d __, 2008 WL 4916562 (November 18, 2008) (upholding dismissal of claims directly and indirectly challenging State/Tribal gaming compacts based on plaintiff's inability to join Indian tribes as indispensable parties under CR 19(b)) (gambling activities are constitutionally prohibited absent affirmative grant of authority by supermajority of legislature) (for purposes of constitutional analysis, a non-tribal gambling operation subject to the laws of the State of Washington is not similarly situated to a tribal gambling operation authorized to conduct gambling activities pursuant to State/Tribal gaming compacts) (court rejects substantive due process

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argument that was unsupported by reasoned argument) (entering into State/Tribal gaming compacts with Indian tribes pursuant to state and federal law does not confer a "privilege" within the meaning of the Privileges and Immunities Clause) (a party who has not substantially prevailed is not entitled to recover attorneys fees and costs under RCW 4.84.350).

DATED this 21st day of November, 2008.

ROB MCKENNA
Attorney General

for: Jerry A. Ackerman WSBA #
H. BRUCE MARVIN, WSBA #25152 6535
Assistant Attorney General
Counsel for the Appellant/Cross-Respondent

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STATE OF WASHINGTON
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NO. 36751-3-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON
GAMBLING COMMISSION,

Appellant and Cross-Respondent,

v.

ZDI GAMING, INC.,

Respondent and Cross-Appellant.

CERTIFICATE OF
SERVICE

I certify that on June 16, 2008, I caused a true and correct copy of the State's Supplemental Reply Brief of Appellant/Cross Respondent in the above-referenced matter to be served upon the parties herein, as indicated below:

COURT OF APPEALS, DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402

U.S. Mail
 Hand Delivered
 Overnight Express

JOAN MELL
III BRANCHES LAW FIRM
1033 REGENTS BLVD., SUITE 101
FIRCREST, WA 98466

U.S. Mail
 Hand Delivered
 Overnight Express

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16th day of June 2008.


MARLENA MULKINS
Legal Assistant

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Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

November 21, 2008

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Clerk of the Court
Court of Appeals, Division II
950 Broadway, Suite 300
MS TB-06
Tacoma, WA 98402-4454

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

RE: *Washington State Gambling Commission v. ZDI Gaming, Inc.*
Thurston County Superior Court No. 06-2-02293-9
Court of Appeals No. 36751-3-II

Dear Clerk:

Enclosed for filing are the original Declaration of Service, one copy and one original State's Additional Statement of Authorities in the above-referenced matter.

Thank you for your assistance.

Sincerely,

MARLENA MULKINS
Legal Assistant to
H. BRUCE MARVIN
Assistant Attorney General

/mm

Enclosures

cc: Joan Mell, Attorney for Respondent
WSGC

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DIVISION II
08 NOV 24 AM 11:17
STATE OF WASHINGTON
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DEPUTY

NO. 36751-3-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON
GAMBLING COMMISSION,

Appellant and Cross-Respondent,

v.

ZDI GAMING, INC.,

Respondent and Cross-Appellant.

AMENDED
CERTIFICATE OF
SERVICE

[Amendments are in
Italics]

I certify that on *November 21, 2008*, I caused a true and correct copy of the State's *Additional Statement of Authorities* of Appellant/Cross Respondent in the above-referenced matter to be served upon the parties herein, as indicated below:

COURT OF APPEALS, DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402

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- Via Facsimile

JOAN MELL
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1033 REGENTS BLVD., SUITE 101
FIRCREST, WA 98466

- U.S. Mail
- Hand Delivered
- Via Facsimile

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this *24th* day of *November* 2008.


MARLENA MULKINS
Legal Assistant



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
Government Compliance & Enforcement Division
PO Box 40100 • Olympia, WA 98504-0100 • (360) 664-9006

FAX COVER SHEET

Date: November 24, 2008
Time: 11:12 AM

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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Please deliver the following 1 page(s)

TO: Sandy
Court of Appeals Division II

Fax Number: 253-593-2806

Joan Mell
III Branches Law Firm

Fax Number: 281-664-4643

COMMENTS:

Re: State of WA v. ZDI
36751-3-II

Sandy and Ms. Mell,

Attached is an Amended Certificate of Service on the State's Additional Statement of Authorities.

Please let me know if you have any questions.

FROM: Marlena Mulkins *MM*

Fax Number: 360-664-0229
Voice Number: 360-586-2296

If there is a problem receiving this fax, please call Marlena Mulkins at 360-586-2295.

NOTE: THIS FAX TRANSMISSION IS INTENDED ONLY FOR THE ADDRESSEE SHOWN ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, OR OTHERWISE PROTECTED FROM DISCLOSURE. ANY REVIEW, DISSEMINATION, OR USE OF THIS TRANSMISSION OR ITS CONTENTS BY PERSONS OTHER THAN THE ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND MAIL THE ORIGINAL TO US AT THE ABOVE ADDRESS. THANK YOU.

THE ATTORNEY GENERAL'S OFFICE DOES NOT ACCEPT SERVICE BY FAX.