

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 07-C-316

MENOMINEE TRIBAL ENTERPRISES,
the principal business arm of the Menominee Indian
Tribe of Wisconsin, MARSHALL PECORE, and
CONRAD WANIGER,

Defendants.

**UNITED STATES' RESPONSE TO DEFENDANT MENOMINEE TRIBAL
ENTERPRISES' NINTH SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS**

The United States serves these responses to defendant Menominee Tribal Enterprises' ("MTE") Ninth Set of Requests for Production of Documents, served upon the United States on January 16, 2008, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure.

Introductory Statement and General Objections

The Introductory Statement and General Objections set forth in the United States' Responses to defendant MTE's Interrogatories (Sets 1-3) and Requests for Production of Documents (Sets 1-4) are incorporated by reference as if fully set forth below.

Responses and Objections to Document Requests

SET 9, REQUEST NO. 1: *The handheld global positioning device or unit used by David Congos in connection with any "spot-check" or "field inspection" of any activity described in the Complaint. To the extent the device or unit no longer exists, provide a description of the following: (1) the make, model, serial number, and instructions for use of the device or unit; (2) the date on which the device or unit was found to be missing, presumed lost, or destroyed; (3) the identity of the person(s) in whose possession, custody or control the device or unit was in prior to discovery that it was missing and/or presumed lost; (4) the identity of the person(s) in whose possession, custody or control the device or unit was in prior to its destruction; (5) the identity of the person(s) who*

destroyed the device or unit; (6) the identity of the person(s) who authorized destruction of the device or unit; and (7) the date on which the device or unit was destroyed.

The GPS device used by Mr. Congos and Mr. Magnuson (a Model Garmin III) belonged to MTE. To the best of the government's current knowledge, Thomas Magnuson returned the device to MTE in approximately the summer of 2002.

SET 9, REOUEST NO. 2: *The handheld global positioning device or unit used by Thomas Magnuson in connection with any "spot-check" or "field inspection" of any activity described in the Complaint. To the extent the device or unit no longer exists, provide a description of the following: (1) the make, model, serial number, and instructions for use of the device or unit; (2) the date on which the device or unit was found to be missing, presumed lost, or destroyed; (3) the identity of the person(s) in whose possession, custody or control the device or unit was in prior to discovery that it was missing and/or presumed lost; (4) the identity of the person(s) in whose possession, custody or control the device or unit was in prior to its destruction; (5) the identity of the person(s) who destroyed the device or unit; (6) the identity of the person(s) who authorized destruction of the device or unit; and (7) the date on which the device or unit was destroyed.*

See the Government's Response to Set 9, Document Request No. 1.

SET 9, REOUEST NO. 3: *Any document related to any recognition, award, commendation, reprimand, disciplinary, or other adverse employment action involving David Congos, including, but not limited to any document located in the official personnel file maintained by BIA or any file maintained at BIA's Midwest West Regional Office.*

The United States objects to the production of the matters described above on public policy grounds. Any arguable relevance to the contents of Mr. Congos' personnel files is outweighed by the employee's privacy interests as well as the employer's interests in producing frank but confidential written employee evaluations. Cf. 5 U.S.C section 552(b)(6).

SET 9, REOUEST NO. 4: *Any document related to any education or training of any legal nature in David Congos' educational and employment background, including, but not limited to education or training that involves the interpretation or construction of federal laws and regulations or written agreements including, but not limited to any document located in the official personnel file maintained by BIA or any file maintained at BIA's Midwest West Regional Office.*

Mr. Congos' personnel file contains documents relating to his training to function as a Contract Officer's Representative. This course included training of a legal nature on contract issues. See the documents attached as USA0018995 – USA0018998.

Respectfully submitted,

STEVEN M. BISKUPIC
United States Attorney



CHRIS R. LARSEN
Assistant United States Attorney
(United States' Responses)

Dated: 2-19-08