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October 9, 2007

JOSHUA JAY KANASSATEGA
BRYANT D. TCHIDA
FIRM'S DIRECT DIAL NUMBER
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VIA ELECTRONIC AND FACSIMILE TRANSMISSION AND UNITED STATES MAIL

Christian R. Larsen, Esq.
Assistant United States Attorney
United States Department of Justice
Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

***Re: United States of America v. Menominee Tribal Enterprises, et al.:
Case No. 07-cv-00316, United States District Court – Eastern
District of Wisconsin – Green Bay Div.
Discovery Issues (Review of BIA Documents)***

Dear Mr. Larsen:

I write in regard to the insufficiency of the United States' production of, and apparent further spoliation of, evidence currently and formerly in the possession, custody or control of Bureau of Indian Affairs ("BIA") and its employees (collectively "BIA Documents"). In particular, this letter addresses issues that arose last week in the course of our review of BIA Documents at the BIA's Midwest Regional Office ("MRO") on Wednesday, October 3, 2007, Thursday, October 4, 2007, and Friday, October 5, 2007.

First, with respect to David Congos's ("Congos") files, you revealed for the first time on Friday, October 5, 2007 that those documents were not produced to Menominee Tribal Enterprises ("Menominee") as they were kept in the "usual course of business" (in contrast to the representation made to us in your September 26, 2007 letter to

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EXHIBIT 4

Christian R. Larsen, Esq.
October 9, 2007
Page 2

Joshua Jay Kanassatega, namely, that "the records are being produced for inspection as they were maintained in the usual course of BIA business"). In particular, you revealed that the original invoices and supporting documentation (including certain maps) at issue in this litigation were removed from Congos's files by investigators Joe Schwartz ("Schwartz") and Todd Bucci ("Bucci") some time ago. You stated that you could not identify the date on which those documents were removed. You also revealed that Messrs. Schwartz and Bucci, in your words, "reorganized" the original invoices and supporting documentation after those materials were removed from Congos's files.

During an October 5, 2007 telephone conference, Bryant Tchida requested further information from you about the documents removed from Congos's files and "reorganized" by Schwartz and Bucci (and related questions about other files produced by the BIA MRO). You took the position the production of BIA Documents with originals removed and "reorganized" is entirely proper, and that the "reorganized" invoices and supporting documents will be produced in connection with "OIG's document production." You also took the position that the "chronology" prepared by Congos should provide an adequate overview of the invoicing process. Bryant explained to you that Congos's chronology is not an adequate substitute for factual proof, that the order in which these documents appear in Congos's files is important evidence in this litigation, and that production of "reorganized" documents in a separate production is improper. Bryant also explained that Menominee needs additional information before its review of the BIA Documents could continue. You took the position that suspension of our review of BIA Documents would be unreasonable, even without first having answers to the serious questions implicated by your October 5, 2007 revelation. Bryant informed you that Menominee disagrees with your position, and informed you that our review of the BIA Documents was being suspended pending further discussion with you to get to the bottom of this and other issues.

At a minimum, the following information must be disclosed to Menominee before it can consider resuming review of the BIA Documents: (1) identify each and every document removed from any of the BIA files produced for Menominee's inspection (including all boxes designated as "BIAK," "BIAF," "BIAR," and "BIAC"); (2) for each document removed from those files, identify (a) who removed it, (b) when it was removed, (c) what was done with the document when removed (including, without limitation, whether any such document was "reorganized"), (d) the chain of custody for any such document, and (e) the current location of any such document.

Second, please confirm in writing the representation that you made to Bryant that the BIA Documents will not be further altered pending final resolution of the above-identified issues. This includes, without limitation, your representation that no documents will be removed or added to the BIA Documents produced for inspection.

Christian R. Larsen, Esq.
October 9, 2007
Page 3

Third, the BIA Documents have not been produced in a form that allows Menominee to either (1) determine what the documents are or in whose files the documents are located, or (2) locate relevant documents without incurring substantial unnecessary time and expense. (This problem is obviously compounded by the fact that a substantial number of documents have been admittedly removed from these files and "reorganized.")

For example, with respect to the files designated "BIAK," you have indicated that perhaps as many as "95%" of those documents are David Congos's documents, but that you are unable to identify which documents in fact are from Congos's files, and which documents are from others' files. With respect to files designated "BIAF," you were unable to provide us with any information about whose files are in those boxes, or where particular individuals' files are located. As we understand your position, however, you may be willing to travel to Minneapolis and, with the assistance of BIA personnel, identify and label which files belong to whom, as well as identify how those files are organized, and what those files contain (for example, identification of the transmission record with respect to the invoices at issue, the transmission record with respect to the Forms SF269A at issue, and the contracts and proposals at issue (including any amendments)). Please confirm your willingness to undertake this travel to Minneapolis and to make these identifications. Please also provide us with a written description of your proposal for identification of these files and their contents, so that we may attempt to identify and resolve any obvious problems in advance of your travel to Minneapolis.

Fourth, the BIA Documents contain a number of blue sheets, pink sheets, and post-it notes that were apparently inserted into the files and records only in connection with the BIA Document production. Many of these materials contain cryptic notes which make no sense. Please let us know whether you will identify what these sheets and notes are meant to indicate, who inserted the sheets and notes, who gave any instruction to insert and sheet or note and when, why the sheets and notes were inserted, and identify any handwriting and interpret the cryptic comments contained on these sheets and notes. Please also provide us with a written description of your proposal for identification of what these materials indicate, so that we may attempt to identify and resolve any obvious problems in advance of your travel to Minneapolis.

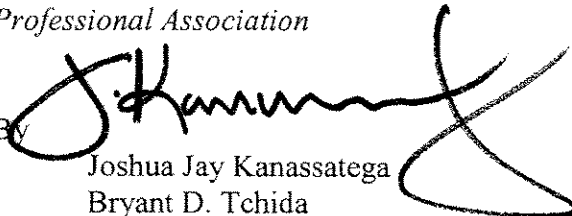
Fifth, with respect to color maps, we understand that BIA apparently may be able to reproduce some color maps, but unable to reproduce others. Please let us know your proposed solution, if any, for making production of all color maps contained in the BIA Documents. Please also let us know your proposed solution for identifying who created each of these maps, in whose file each of these maps is located, and whether each map constitutes an attachment to any other document(s) and, if so, to what document(s).

Christian R. Larsen, Esq.
October 9, 2007
Page 4

Menominee awaits your prompt response to the issues raised in this letter.

Very truly yours,

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BY 
Joshua Jay Kanassataga
Bryant D. Tchida

JJK/BDT/js

cc: Glenn Reynolds, Esq. (via Facsimile Transmission and United States Mail)