

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

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**UNITED STATES OF AMERICA,**

Plaintiff,

v.

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

Defendants.

Civil Action No. 07-C-316

Honorable William C. Griesbach

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**ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM,  
AND CROSSCLAIM OF MARSHALL PECORE**

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The Defendant, Marshall Pecore, through his attorney, Glenn C. Reynolds, hereby answers the Complaint as follows:

1. The Defendant admits Paragraphs 1, 9, 10, 11, 13, 26, 27, 31, 32, 51, 55, and 59 of the Complaint.

2. The Defendant denies the allegations in Paragraphs 2, 3, 4, 5, 6, 7, 8, 12, 15, 16, 17, 18, 19, 20, 35, 36, 37, 38, 39, 45, 46, 48, 49, 50, 53, 54, 57, 58, 65, 69, 71, 72, 73, 74, 75, 76, 77, 79, 80, 82, 85, 91, 92, 93, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 123, 124, 125, 127, 128, 129, 130, 131, 134, 135, 136, 137, 138, 139, 140, 144, 145, 146, 147, 153, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, and 187 of the Complaint. The Defendant adopts the answers of Co-Defendant Menominee Tribal Enterprises to the Complaint to explain the basis for these denials.

3. The Defendant has insufficient knowledge to admit or deny paragraphs 22, 23, 24, 25, 28, 29, 30, 33, 34, 40, 41, 42, 43, 44, 47, 52, 56, 60, 61, 62, 63, 64, 66, 67, 68, 70, 78, 81, 83, 84, 86, 87, 88, 89, 90, 94, 95, 96, 97, 119, 121, 122, 126, 132, 133, 141, 142, 143, 149, 150, 151, 152, 154, 155, 156, 157, 158, and 159 of the Complaint as these

allegations pertain to transactions between Plaintiff and Co-Defendant Menominee Tribal Enterprises. The Defendant, Marshall Pecore, therefore denies these allegations.

4. Paragraphs 14, 21, and 148 of the Complaint state a conclusion of law to which no response is required, and they are therefore denied.

### **AFFIRMATIVE DEFENSES**

Defendant Marshall Pecore asserts the following affirmative defenses:

1. The Government has sustained no damages as a result of any mistakes made on the invoices.
2. The Government has failed to mitigate the damages, if any.
3. The Government has no factual or legal basis to allege a False Claim violation against Defendant Marshall Pecore and has brought this action for an improper motive.
4. The Government has delayed bringing this case to trial for such a long time that it has prejudiced the Defendant's ability to prepare a defense.
5. Defendant Marshall Pecore, as an employee of MTE, enjoys the benefits of MTE's sovereign immunity.
6. Defendant Marshall Pecore further adopts all of MTE's affirmative defenses.

### **COUNTERCLAIM**

For Counterclaims against Plaintiff, United States of America, Defendant Marshall Pecore alleges as follows:

1. Plaintiff, United States of America, through its agency, the Bureau of Indian Affairs (the "BIA") and its agents assisted Defendant, Menominee Tribal Enterprises ("MTE") since the 1970s to manage its forest lands and sawmill.
2. Recently, Plaintiff, through the BIA, concluded that MTE cannot efficiently run the timber harvest and sawmill operation, and that it should hire outside contractors for the harvest of timber and receive stumpage fees rather than operate MTE as a for-profit business.
3. When Defendant Marshall Pecore learned that the BIA questioned the accuracy of the invoices, he made good faith efforts to resolve any discrepancies so that

MTE could continue to work with the Plaintiff cooperatively on forest management issues.

4. Plaintiff, through its agents, knew or should have known that any mistakes the Defendant Pecore may have made in preparing the invoices were unintentional and not for the purpose of defrauding Plaintiff or for obtaining funds that were not properly obtained pursuant to the BIA grants.

5. Plaintiff has no factual basis to conclude that any mistakes in invoices submitted to the BIA were the result of Defendant Pecore's fraud or an intentional disregard for the truth.

6. Plaintiff has no legal or factual basis to proceed individually against the Defendant for violating the False Claims Act.

7. Given the lack of reasonable basis to proceed against Marshall Pecore individually, Plaintiff will be required to pay the reasonable attorneys fees and costs required for Defendant Pecore's defense pursuant to 28 U.S.C. § 2412(b).

### **CROSSCLAIM**

For Crossclaims against Co-Defendant Menominee Tribal Enterprises, Defendant Marshall Pecore alleges as follows:

1. For all times material to this Complaint, Defendant Marshall Pecore was the employee of MTE.

2. Defendant has worked as the Chief Forester for MTE for over 30 years.

3. Defendant Pecore has at all times acted in good faith and within the scope of his employment in all its dealings with the BIA with respect to submitting the invoices which are the subject of this Complaint.

4. MTE has no factual basis to conclude that any errors or omissions made by Marshall Pecore in reviewing or signing invoices for the BIA was done fraudulently, in bad faith, or with a reckless disregard for the truth.

5. MTE has no factual basis to conclude that any errors or omissions committed by Marshall Pecore justify a claim under the False Claims Act or the common law against Marshall Pecore individually.

6. As Defendant Pecore's employer, MTE has the lawful duty and obligation to take responsibility for damages caused by its employees' negligent acts.

7. MTE has refused to defend Marshall Pecore as an employee of Menominee Tribal Enterprises in the above-captioned case.

8. MTE has the duty under common law principles of respondeat superior, its Company Policies, its liability insurance contract, and other bases to defend, hold harmless, and indemnify Defendant Marshall Pecore for his negligent acts and omissions.


9. MTE has no reasonable basis to refuse to defend Marshall Pecore in this action.

10. MTE is defending the case on the grounds that any mistakes made in invoicing Plaintiff were not the result of bad faith, fraud, or reckless indifference to the truth on the part of MTE and its employees.

WHEREFORE, Defendant Marshall Pecore claims reasonable attorneys fees and costs required for his defense against Plaintiff, pursuant to 28 U.S.C. § 2142(b) and against Menominee Tribal Enterprises as his former employer.

Dated this 6<sup>th</sup> day of September, 2007.

**REYNOLDS & ASSOCIATES**



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