

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

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UNITED STATES OF AMERICA,	:	CIVIL ACTION No. 07-C-316
	:	
Plaintiff,:	:	
v.	:	
	:	DEFENDANT
MENOMINEE TRIBAL ENTERPRISES,	:	MENOMINEE TRIBAL ENTERPRISES’
the principal business arm	:	RULE 7.4 EXPEDITED NON-
of the Menominee Indian Tribe of Wisconsin,	:	DISPOSITIVE MOTION FOR
MARSHALL PECORE, and	:	DISCOVERY AS TO SPOILIATION OF
CONRAD WANIGER,	:	EVIDENCE AND VIOLATION OF
	:	MENOMINEE’S ATTORNEY-CLIENT
Defendants.:	:	PRIVILEGE
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Defendant Menominee Tribal Enterprises (“Menominee”) moves pursuant to L.R. 7.4 for emergency relief permitting it to take immediate and complete discovery of the nature and scope of spoliation of evidence and violations of attorney-client privilege by the United States:

1. David Congos (“Congos”) was the Bureau of Indian Affairs (“BIA”) Trust Forester for the Menominee Reservation at all relevant times. The United States took no steps to preserve Congos’s communications when it first foresaw (and even when it directly threatened) litigation. Affidavit of Joshua Jay Kanassataga dated October 25, 2007, Ex. 3B, 39 (exhibits thereto are cited hereafter as “Ex. ___”). Communications on Congos’s (and other BIA personnel’s) computer hard drives have been destroyed repeatedly and corrupted as recently as May 3, 2007. Ex. 41, 3B. Congos believed that the forest management and mill operation structure established by the Management Plan between the Menominee Indian Tribe of Wisconsin and the United States of America, dated April 22, 1975 (“Management Plan”) and the Menominee Constitution (“Constitution”) created a “conflict of interest” for Menominee. Ex. 17, 31, 33. Fundamental to Congos’s belief was his position that Menominee is required to pay “stumpage,” which Menominee disputed. Ex. 4, 5, 6, 7, 8, 9, 11, 17, 18, 25, 26, 27, 31, 32, 33. Congos’s belief was so intense that he repeatedly requested that the Field Solicitor issue an

opinion, decreeing that Menominee is required to pay stumpage. Ex. 4, 6, 7, 9, 32. The Field Solicitor, however, apparently shared neither Congos's views nor his concerns. *See id.* and Ex. 25. Congos simultaneously initiated a series of actions directed to the Menominee Tribal Legislature ("MTL") to (1) amend Article 12 of the Constitution, (2) amend the Management Plan, and (3) require Menominee to pay stumpage. Ex. 10, 11, 17, 18, 25, 26, 31. Congos's interference in tribal affairs was so troublesome his resignation was demanded (though not received). Ex. 33, 34. Failing to convince the Field Solicitor to support his position or to achieve his aims through interference with tribal politics, Congos – aided by certain Menominee employees, Menominee board members, and MTL employees – sought excuses to engage in, and then involve The United States Attorney for the Eastern District of Wisconsin ("USA-EDW") in, a criminal and then administrative investigation of Menominee. Ex. 12, 21, 22, 23, 27, 28, 29, 30, 38. To create a predicate for this investigation, Congos abandoned a 5-year course of dealing with Menominee by questioning invoicing procedures he had long accepted. *Id.* Apparently, USA-EDW initially recognized that the "investigation" revealed no basis for legal action. Ex. 22. Undaunted, Congos pursued means to foment the continuation of this investigation, with the admitted goal of forcing changes in "the organizational structure/interrelationships [between Menominee Managers, Menominee, the Menominee Board, MTL and the BIA] . . . ," such that MTL could "ultimately exercise their governmental authority over their tribal enterprise" *Id.* and Ex. 21, 23. In and of itself, Congos's "investigation" partially achieved his goal of undermining Menominee's authority when, with Congos's support, Menominee was placed in the position of subcontractor under MTL's direction. Ex. 20, 21. The foregoing confirms that Congos's communications are critical and likely: (1) to demonstrate that the investigation was pursued for improper motives; (2) to confirm Menominee and the other defendants' innocent states of mind; (3) to establish extreme bias of witnesses relied on by the United States; and

