

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.

**PLAINTIFF'S EXPEDITED RULE 7.4 MOTION
TO AMEND SCHEDULING ORDER**

The Plaintiff, United States of America, by its attorneys, moves to amend the Scheduling Order to provide for a thirty-day extension of the deadline for completion of fact and expert discovery, and to modify the dates for filing dispositive motions and briefs, pursuant to Rules 7 and 16(b) of the Federal Rules of Civil Procedure, and Civil Local Rules 7.4., 16.1(b) and 26.2. In support of this motion, the United States alleges as follows:

1. At the joint request of the parties, on February 21, 2008, this Court entered an Amended Scheduling Order establishing a deadline of May 15, 2008, for the completion of fact and expert discovery, and a deadline of June 1, 2008 for filing and serving dispositive motions. (Docket Entry No. 57).

2. As the Court was advised during the April 15, 2008, hearing on the Plaintiff's Motion for a Protective Order, the United States recently scanned approximately 80,000

pages of BIA records in response to MTE's numerous discovery requests. However, as noted during the hearing, it recently became apparent that despite a previous privilege review, the government inadvertently disclosed certain privileged documents to the parties. MTE chose to file these privileged documents in open court rather than contacting the government to determine whether the disclosure was inadvertent or intentional. MTE also continues to maintain its intent to publically disclose, by way of its internet website, all of the voluminous discovery materials produced to it in this case.

3. In light of these facts, on April 23, 2008, the United States informed counsel for the defendants that before the government could release additional BIA records, it would be necessary for the government to conduct a second privilege review of the BIA records to ensure that no further inadvertent (and public) disclosures of privileged materials occurs. In an effort to narrow the scope of the privilege review, the United States offered to acquiesce in MTE's initial request that it produce the subset of documents marked by MTE's counsel (consisting of approximately 25,000 documents) rather than the entire set of records. The United States informed counsel that to expedite the privilege review, it intended to devote significant resources to this effort, including assigning three to four attorneys to work full time on the review. The government estimated that it could accomplish this review in approximately two weeks.

4. Because of the necessity of conducting a second privilege review, the United States proposed that the parties agree to a thirty-day extension of the current discovery and dispositive motion deadlines. This would allow the United States two weeks to complete the review, while also affording MTE two weeks to use those documents as it prepares for its final round of depositions. MTE counsel informed the government that they need at least

two weeks to review the marked documents in order to proceed with MTE's remaining depositions. Government counsel, likewise, need to devote their full-time resources to conducting this privilege review before the United States will be in a position to conduct its final round of depositions. Accordingly, the United States proposed that the parties bring a joint motion for a thirty-day extension of the discovery and dispositive motion deadlines. To give the Court sufficient time to rule on those motions prior to trial, the United States anticipates that a thirty-day extension of the trial date, from September 8, 2008 to October 6, 2008, will be required.

5. During the parties' telephonic discovery conference on April 23, 2008, counsel for defendants Pecore and Waniger stated that he agreed with the reasonableness of the government's suggested approach. MTE stated that it would take the government's proposal under advisement. Later that evening, the government received an email from MTE counsel opposing any extension of the discovery, dispositive motion, or trial deadlines. A copy of the email received from counsel on April 23, 2008, is attached as Exhibit A.

WHEREFORE, the United States requests that the Court grant its motion for a modification of the current Scheduling Order. A Proposed Order is attached.

Respectfully submitted,

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By:

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