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RE: 05/18/2011 Tribal Court Decision by Judge Pro Tempore David D. Raasch in Case No. 03/CV/09

July 1, 2011

To MITW & Whom It Concerns:

Nearly six years after the final 10/20/05 hearing, Judge Pro Tempore **David D. Raasch** (member of the Stockbridge-Munsee Tribe) has at long last (05/20/11) filed a verdict in the matter of **Leah S. Dodge vs. Menominee Indian Tribe of Wisconsin (03/CV/09)**. The length of time it took Mr. Raasch to do so obviously raises serious concerns about his abilities as a jurist, compounded by the glaring omissions, false accusations and unjust determination contained in his curiously delayed decision (copies of which are available from MITW Tribal Clerk of Courts in Keshena, WI).

Mr. Raasch acknowledges that Level 3 Administrative Review Officer Atty. **Thomas R. Marlier** (who is not a Tribe member) found in the Plaintiff's favor by ordering the dismissal of an original disciplinary action and, *"If there exists a second (2) Written Warning to the Grievant, dated 4/02/03, and, if such Written Warning involved the same or very similar issues, this Written Warning must also be treated as above."*

Rather than follow that order or submit evidence, oral testimony or findings regarding the 2nd warning to the readily available Mr. Marlier, MITW instead hired another ARO (who is a Tribe member) to uphold the retaliatory act, likely due to the fact MITW was unhappy with Mr. Marlier's decision which was not the outcome MITW desired.

Mr. Raasch understates the facts by saying, *"At the July 31, 2003, Level 2 Hearing, where the Plaintiff felt threatened and left the hearing before its completion, the Plaintiff took the tape cassettes that were being used to record the hearing."*

In point of fact, the Plaintiff left the hearing room with a tape only after MITW Program Attorney **Mercedes Martin (Swimmer)** verbally threatened the Plaintiff and her Employee Advocate by yelling, *"I don't care what happens in here! I'll take care of you myself!"*

After Ms. Martin barked that threat, the Plaintiff's Employee Advocate turned on the Tribe's tape recorder and repeatedly asked Ms. Martin to clarify her threat. Ms. Martin refused to deny that a threat of physical violence was her intent, as seen in the transcript below.

Concerned about their safety, the Plaintiff and her advocate left the premises with the tape recording, contacted FBI Agent **Ray Greco** about Ms. Martin's threat and made copies in case MITW destroyed or 'lost' the tape after it was returned. Ms. Martin's threat was also reported to her supervisor, MITW Program Attorney **John Wilhelmi**, but no disciplinary action was taken to the Plaintiff's knowledge. Notably, Mr. Raasch did not review the Tribe's copy of the exchange following Ms. Martin's threat, nor did he submit it to forensic examination to verify the fact that it had not been tampered with.

Mr. Raasch damningly fails to cite Ms. Martin's repeated perjury during the trial he presided over, where she shockingly denied multiple times having acted as Program Attorney during a 02/18/04 Grievance Hearing, despite the fact it was tape-recorded by MITW. Only during cross-examination by MITW Program Attorney **Robert Orcutt** did Ms. Martin defeatedly admit she had indeed acted as MITW's Program Attorney in the 02/18/04 hearing.

Perhaps her resistance was due to MITW Prosecuting Attorney **William Kussel Jr.**'s 04/09/04 letter stating that, because Ms. Martin had been working for the Office of the Prosecutor since 02/04/04, for her to act as a Program Attorney in a Grievance Hearing "*would unfairly blur the line between the Prosecutor's Office and Program Attorney's Office,*" thus forbidding her from participating in any Grievance Hearings. Currently, Ms. Martin is not an active member of the Wisconsin Bar.

Ms. Martin's threats and her blurring of the legal lines goes to the very heart of the Plaintiff's contention that MITW's execution of its grievance policy/procedure was unfair, as does Mr. Raasch's conspicuous omission of Ms. Martin's refusal to answer the Plaintiff honestly while under oath in his presence.

To add injury to insult, Mr. Raasch makes the ludicrous assertion that the Plaintiff sent "*threatening emails,*" citing no evidence whatsoever to support his defamatory claim. Given that the Plaintiff received unrepentant threats from MITW's legal representative, Mr. Raasch's absurd and abusive contention epitomizes the supremely unjust nature of MITW's employee grievance process, and its Courts.

This is further substantiated by considering the two Administrative Review Officers (both of whom are Tribe members) hired by MITW instead of Mr. Marlier after he found in the Plaintiff's favor, much to the dismay of MITW:

- **Joan Marie Boyd** was hired as ARO regarding the retaliatory 3rd & 4th disciplinary actions. Public records show that Ms. Boyd has faced multiple reprimands and suspensions of her law license for several types of unprofessional misconduct before and after she was hired by MITW and delivered verdicts they desired: <http://www.wicourts.gov/services/public/lawyerreg/statuspublic/boyd.pdf> Ms. Boyd now serves as a Secretary to the MITW Chairperson.
- **Robert Kitecon** found in MITW's favor as ARO on 09/24/03 regarding a retaliatory 2nd disciplinary act, and was named MITW Supreme Court Justice on 09/30/03. Thus, MITW either kept him as ARO as he was being considered for Chief Justice or took him into consideration only after he issued a ruling MITW desired. Appeals of ARO decisions must be made in Tribal Court, creating a clear conflict of interest. It was only after the Plaintiff noted this fact that MITW Judge Stephen Grochowski properly recused herself and MITW hired Mr. Raasch as Judge Pro Tempore.

It should be noted that Tribe member **Lorena Thoms** enthusiastically agreed to represent the Plaintiff as an Employee Advocate in a 10/17/03 Grievance Hearing, for which Ms. Thoms received payment from the Plaintiff in the amount of \$300. Strangely, on the day before the scheduled hearing, Ms. Thoms returned the payment with a note stating she could not represent the Plaintiff due to personal matters. Ms. Thoms is now an MITW Judge.

As Mr. Raasch admits in his decision, "*several of the witnesses felt the Plaintiff was a very good and valued employee,*" and that, "*MITW lost an effective grant writer[.]*"

Hence, MITW's persistent denial of due process to a valuable employee, including supervisory lying to the Plaintiff regarding the Chairperson, bogus and retaliatory disciplinary actions, failure to abide by the orders of an impartial adjudicator as well as his exclusion from related matters, verbal threats and perjury by a Tribal legal representative, the unnecessary creation of conflicts of interest including the appearance of quid pro quo, and the inexplicable delay of an indefensible verdict by Mr. Raasch, should be seriously considered by anyone who might seek employment with MITW, as well as anyone – citizen or public official – who might advocate for MITW expanding its power and influence through off-reservation enterprises in which it can export its deplorable record of injustice.

To that end, the Plaintiff will make related documents available to interested parties and the media. An unedited recording of the exchange following Ms. Martin's verbal threat is now available online: <http://www.zshare.net/audio/9217576509d47c16/>

In sum, for exercising her right to contact MITW Police Chief **Judy Duquaine** about the investigation of a burglary at the Plaintiff's home on the Menominee reservation, and for the proper use of MITW email to challenge (as Mr. Raasch concedes) deceitful discipline admitted to under oath by Head Grant Writer **Sigrid Congos** (who is not a Tribe member) regarding her admitted false claims about Chairperson **Joan Delabreau**, the Plaintiff suffered a systemic vendetta of bullying and perverted due process.

That it took Mr. Raasch more than five years to deliver what appears to be a made-to-order verdict desired by MITW may indicate he tried to run out the clock on related legal matters, or may simply result from judicial incompetence. Objective observers should be able to see that MITW created and sustained a hostile work environment and determine that MITW should not be allowed to extend such blatant mistreatment to other Wisconsin workers, whether on the Menominee reservation or elsewhere.

Sincerely,

Leah S. Dodge

CC:

MITW Supreme Court Justice Stephan Grochowski

MITW Tribal Judge Lorena Thoms

MITW Tribal Chairperson Randal Chevalier

MITW Secretary to the Chair Joan Boyd

MITW Vice Chair Myrna Warrington

MITW Tribal Secretary Rebecca Alegria

MITW Legislature: Laurie Boivin, Lisa Waukau, Craig Corn, David Miller, Orman Waukau Jr., Bruce Pecore

MITW Program/Prosecuting Attorney William Kussel, Jr.

MITW Prosecuting Attorney Joseph Martin

Stockbridge-Munsee Chief Judge of Tribal Court Robert Miller, Jr.

Stockbridge-Munsee President Kimberly Vele

Oneida Tribe of Wisconsin Senior Attorney Robert Orcutt

FBI Agent Ray Greco

Thomas R. Marlier

Various media organizations

Attachment: Transcript of the 07/31/03 exchange in the Gordon Dickie Conference Room

Transcript of the 07/31/03 exchange between MITW Program Attorney Mercedes Martin (Swimmer) [MS], the Plaintiff [P], and the Plaintiff's Employee Advocate, Jason Fitzgerald [EA]:

EA: "You just made the comment that you're a Menominee, and you're under a Menominee roof, and that you don't like me accusing you of libel – which I'm not sure I did – but you say that if I did so, you'll 'deal with it yourself.' What do you mean by that?"

MM: "I don't have to explain it anymore than that."

EA: "Okay, but you did say it though, right?"

MM: "Yes I just said it! And I'll say it any other place, too!"

EA: "Say it on the tape."

P: "Say it again."

MM: "We're off the record here! This is between you and me."

EA: "So, what do you mean by that?"

MM: "I don't... I don't owe..."

EA: "You'll say it anywhere else. Let's say it in front of the Human Resources Director, shall we?"

MM: "I don't owe... I don't owe you an explanation."

EA: "Let's say it in front of Tribal Court."

P: "Is this a threat that we need to take to the Police station right now and lodge a complaint against you?"

EA: "Is this a threat? Are you making a physical threat against me? Clarify?"

MM: "I'm just telling you I'm not going to put up with..."

EA: "What did you say? How are you going to deal with it?"

MM: "I'm not going to put up with..."

EA: "Are you going to deal with it legally or illegally?"

MM: "I'm not going to put up with being called a libeler."

EA: "I think that comment was directed at Sigrid [Congos, who admitted under oath she lied to the Plaintiff claiming MITW Chairperson Joan Delabreau requested disciplinary action against the Plaintiff, and issued bogus discipline after the Plaintiff sought clarification from Ms. Delabreau]."

MM: "You can take that..."

EA: "That comment was directed at Sigrid."

MM: "You can take that any way you want to. You can deal..."

EA: "Okay, but if you make a threat against me, I will report you to the Police."

MM: "You can deal with it any way you want to."

EA: "I'm just asking you, are you making a threat against me? You said..."

MM: "I don't care how you take that! That's what I'm saying. I will not put up with being called a libeler."

EA: "Do you think that [the Plaintiff] ought to put up with being lied about and libeled?"

MM: "That's up to her. I'm talking about me."

EA: "And so, again, I just want to make sure I get your threat straight here, you said that you're going to take action..."

MM: "I'm not going to put up with you calling me a libeler."

EA: "And when did I call you a libeler? I don't think I referred to you as a libeler."

MM: "The level of disrespect you two are showing here is sickening."

EA: "You don't think that Sigrid disrespected [the Plaintiff] by lying to her, and disrespected the Chairperson?"

MM: [slams the hearing room door leaving]

[End of recording]