UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, on its own behalf and as *parens patriae* for its members,

Plaintiff,

and

THE UNITED STATES,

Plaintiff-Intervener

vs.

JENNIFER GRANHOLM, Governor of the State of Michigan; MIKE COX, Attorney General of the State of Michigan; JAY B. RISING, Treasurer of the State of Michigan; and the STATE OF MICHIGAN, each in his/her official capacity,

Defendants.

and

CITY OF MT. PLEASANT,

Proposed Defendant-Intervenor,

and

COUNTY OF ISABELLA,

Proposed Defendant-Intervenor.

Case No. 05-10296-BC

Hon. Thomas L. Ludington

REPLY TO SAGINAW CHIPPEWA RESPONSE TO CITY OF MT. PLEASANT'S MOTION TO INTERVENE

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REPLY TO THE SAGINAW CHIPPEWA INDIAN TRIBE'S RESPONSE TO THE CITY OF MT. PLEASANT'S MOTION TO INTERVENE

The Saginaw Chippewa Indian Tribe takes the position that the City of Mt. Pleasant should not be permitted to intervene. It urges the court to reject the intervention because the suit has progressed to an advanced stage and it would somehow be prejudiced by the intervention and therefore the Motion to Intervene is not timely.

The simple passage of time is only one of the factors to be considered by a court in determining timeliness. Timeliness is to be considered from all of the circumstances, including the point to which a suit has progressed, the purpose for which intervention is sought, the length of time preceding the application for intervention, the prejudice to the original parties due to the proposed intervenor's failure to intervene and the existence of unusual circumstances mitigating against or in favor of intervention.

Any analysis of this issue should not be reviewed in isolation, but should be reviewed in light of the previous suit. In that suit, the United States filed suit against the State of Michigan, the City of Mt. Pleasant and others in 1991. (*United States on behalf*

of the Saginaw Chippewa Indian Tribe v. State of Michigan, et al., 882 Fed. Sup. 659 (ED. Mich 1995)) It was the Saginaw Chippewa Indian Tribe that was permitted to enter the suit as a Plaintiff/Intervenor. That case was pending in the district court until March 23, 1995 when a judgment was entered by the court. The case was later appealed to the United States District Court of Appeals for the 6th Circuit and the decision of the United States District Court of Appeals for the 6th Circuit reversed and remanded with instructions that it was remanding for further proceedings, including adjudication of the defendants' claim that "the land at issue is not reservation land and that the Saginaw Chippewa Tribe has been dissolved." *United States on behalf of the Saginaw Chippewa Indian Tribe v. State of Michigan, et al.*, 106 Fed. 3rd 130, 135 (6th Cir. 1997)

That is the issue that is before the court today. The issue should have been decided in 1998. At that time, the parties had retained experts who had issued reports and the matter had been fully briefed. Instead the Plaintiff chose, to leave this very critical issue undecided. In the meantime, the City of Mt. Pleasant has acted as it always had with jurisdiction within its city boundaries to enforce its zoning, civil laws and criminal laws.

It is in this context that the Plaintiff now seeks to assert that it has suffered "extreme prejudice" as a result of this motion to intervene. In *Stupak-Thrall v. Glickman*, 226 F. 3d 467 (6th Cir. 2000), the court refused to allow intervention where the court had placed the case on an expedited case management plan, the motion was filed to intervene after expert reports were produced, the parties had identified all witnesses and discovery was closed. The *Stupak* court evaluated the request to intervene to circumstances in cases where intervention had been permitted. The court recognized that the absolute measure of timeliness should be ignored and a more critical factor was what steps occurred "along

the litigation continuum during this period of time." *Stupak* at 475.

The court noted that intervention was permitted, in a suit where four years had passed between the filing of a complaint and the motion to intervene where there were no depositions taken, dispositive motions filed or decrees entered. *Stupak* at 475 citing *Mountain Town Top Condo Association v. Fabert Master Builder, Inc*., 32 F. 3d 361, 370 (3rd Cir 1995) Intervention was allowed in a case after ten months had passed where the suit had not advanced beyond "early discovery". *Stupak* at 475 citing *Usery v. Brandel*, 87 F.R.D. 670, 675 (WD Mich. 1980)

The purpose of the City's intervention is not "pretextual" as asserted. As the City has indicated previously, it has a real and substantial interest in the present suit. The effects of the filing of this suit are already apparent as indicated by the letter from the U.S. Census Bureau dated June 20, 2007. A decision in this case will affect the ability of the City of Mt. Pleasant to govern the people within its boundaries. A determination by the court that a portion of the City is Indian country would result in a situation where the City of Mt. Pleasant's zoning ordinances which provide for a uniform plan of the zoning and authorized land uses could not be applied to all individuals within its boundaries and any members of the Saginaw Chippewa Indian Tribe would not be bound by any zoning ordinances. The City of Mt. Pleasant has a real and significant interest in assuring that all of its laws and rules will be applied consistently and fairly to those within the city limits.

The Plaintiff has argued prejudice asserting that there would be "extreme prejudice" to the original parties. In reviewing the court's docket, it is clear that the United States' unopposed intervention was permitted on November 1, 2006. The intervenor's complaint was filed on November 29, 2006 and the answer filed on November 30, 2006. The

extreme prejudice can not be the mere passage of time while this case has been pending given that status quo that has existed for many years.

WHEREFORE, for the reason set forth herein, the City of Mt. Pleasant requests that this court allow it to intervene as a Defendant as a matter of right or in the alternative, by permission without restriction.

Date: October 8, 2007

Respectfully submitted,

LYNCH, GALLAGHER, LYNCH,
MARTINEAU & HACKETT, P.L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2007, I electronically filed **REPLY TO THE SAGINAW CHIPPEWA INDIAN TRIBE'S RESPONSE TO THE CITY OF MT. PLEASANT'S MOTION TO INTERVENE** with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: William A. Szotkowski, 1360 Energy Park Drive, Suite 210, St. Paul, MN 55108-5252; Patricia Miller, L'Enfant Plaza Station, P.O. Box 44378, Washington, DC 20026-4378; Larry Burdick, 200 N. Main Street, Mt. Pleasant, MI 48858; and Todd B. Adams, 525 W. Ottawa St., Fl. 6, P.O. Box 30755, Lansing, MI 48909.

I hereby certify that on October 8, 2007, I served by first class mail **REPLY TO THE SAGINAW CHIPPEWA INDIAN TRIBE'S RESPONSE TO THE CITY OF MT. PLEASANT'S MOTION TO INTERVENE** on Sean J. Reed, 7070 E. Broadway Road, Mt. Pleasant MI 48858.

Date: October 8, 2007

Respectfully submitted,

LYNCH, GALLAGHER, LYNCH,
MARTINEAU & HACKETT, P.L.L.C.

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