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Tribal Ogema
Little River Band of Ottawa Indians
375 River Street
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Steve Parsons
Tribal Council
Little River Band of Ottawa Indians
375 River Street
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Dear Sirs:

Based upon the actions of the Little River Band of Ottawa Indians ("Tribe") and its Tribal Court, I am hereby submitting this Demand Letter ("Letter") in order to avoid proceeding to the United States District Court for the Western District of Michigan to resolve any and all claims against the Tribe based on my Contract and other issues. My assertions herein are based upon my own review and the review of experts across the country whom I have contacted (including friends on the federal bench to whom I have presented the facts in hypothetical form), all of whom agree that my duty to exhaust my tribal court remedies has been abrogated by the exception where an assertion of tribal jurisdiction "is motivated by a desire to harass or is conducted in bad faith," as espoused in *National Farmers Union Insurance Companies 27 v. Crow Tribe of Indians*, 471 U.S. 845 (1985), and its progeny, and thus continuing to proceed in Tribal Court is futile. In this instance, it's not even a close case.

First and foremost, it will be my contention that, by shortening the time-frame of payment from 60 days to 30 days for an alleged breach of the Contract in the absence of any provisions contained therein, the Tribe went outside the four corners of the Contract, outside of Tribal law in contravention of the Contract, and made a harmful legal determination outside of the Tribal Court system, which in itself is a further violation of my civil rights and a breach of the Tribe's separation of powers. It will also serve to show the Tribe took matters into its own hands by determining that a breach had occurred even

though there was a process already commenced in the court system to answer that very question. For the Tribe to then step into federal courts and argue that I am required to keep my remedies in Tribal Court will be laughable at best. I and others will be interested (and admittedly amused) to see the Tribe try to argue with a straight face that while I am duty- and legally-bound to strict adherence to the four corners of the Contract and to keep my remedies in the Tribal Court and that I am forbidden from citing Tribal laws such as the Legal Counsel Reform Act (which calls for a one-year period to obtain Michigan licensure), that the Tribe can simply cite any legal authority and act as it alone deems relevant outside of Tribal Court, all while I am prohibited from seeking relief in the federal courts.

The assertions are further based Article XIII of the Tribe's Constitution, which is deemed a waiver of Tribal Court jurisdiction and states:

ARTICLE XIII – SEVERABILITY

If for any reason any provision of this Constitution shall be held to be invalid or unconstitutional by the Tribal Court *or any federal court of competent jurisdiction*, the validity and effect of all other provisions shall not be affected thereby.

It will be my contention in federal court that, by allowing numerous lawsuits for money damages against the Tribe, including suits by at least one sitting member of the Tribal Council and a former contract attorney, and by allowing lawsuits against the Tribal Council as a body despite the fact that it is not allowed by Article XI, Section 2, again including suits by at least one sitting member of Tribal Council and the Tribal Ogema, the Tribal Court has judicially invalidated the sovereign immunity clause of the Tribe's Constitution, particularly as it relates to money damages, which is a jurisdictional issue ripe for federal review.

Finally, I will be arguing in good faith at the federal level that the entire court has been compromised and any assertions by the Tribe that I must allow the appellate court to weigh in before exhaustion occurs is thwarted by the fact that *there will be no trial court decisions upon which to mount an appeal and further no legally functioning appellate court*. As a named defendant in a case filed by me, Judge Sherigan has personal bias and cannot get anywhere near any of these cases. Also, Judge Bailey's use of the "Clarifying Order" in deciding that Judge Sherigan could continue on as the judge of record in the breach of contract case means that he as well cannot get near any of these cases, nor can he appoint an outside judge fairly and impartially because of his personal interest or bias in these cases. Similarly, the appellate court cannot legally or ethically appoint a trial court judge to any case where they will hold sway over that judge's decisions and/or orders. The federal court will be easily convinced that the Tribal Court clerks cannot be entrusted with such an important decision, especially in light of their recent conduct in handling these cases. And finally, when the federal court sees how dysfunctional and illegal the appellate court is vis-à-vis the continuing Ryan Champagne fiasco (whose removal was opposed by sitting members of Tribal Council because they "don't trust that Tribal Court" despite Justice Champagne's conviction of attempted fraud), it will agree that there really is no real chance of meaningful appeal, thus ensuring futility.

The Tribe has engaged in a series of tactics, the so-called Emergency Hearing on a Motion to Extend the Time to Answer (with the full unethical and possibly illegal cooperation of the Tribal Court) held on December 7, 2009, being the latest, in an effort to delay these cases and harass me. When David Giampetroni stated on the record that he requested in an *ex parte* manner over the phone to have an emergency hearing that was likely granted by a Court clerk in violation of every known canon of attorney and/or judicial ethics, it clearly showed that the Court is in cahoots with the defendants in these cases, which is not an outlandish claim considering that the Tribe already met in private with the Court and came away with a total change of an order in an already-decided and closed case without pleadings, a hearing, and a record of the proceedings.

To be sure, this was not the only episode by Mr. Giampetroni which shows bad faith by the Tribe. By opposing both Angela Sherigan's and Dan Bailey's disqualification as judges in these cases *based on instant reviews of the facts* and in light of blatant ethical violations by the judges, Mr. Giampetroni has showed that the Tribal Council is acting further in concert with the Tribal Court to violate my civil rights, has seriously weakened the Tribe's defense of exhaustion of tribal remedies, and has exposed the Tribe to federal court review. (According to experts I have consulted, by exposing his clients based on snap judgments to further and additional exposure in a different forum, Mr. Giampetroni's actions border on malpractice, if they are not in fact malpractice.)

Mr. Giampetroni has also claimed in his pleading that he "expects" a new scheduling order in the breach of contract case to be issued any day now. However, the Court staff said it has no knowledge of it happening, which shows that Mr. Giampetroni has been having more *ex parte* discussions with the judge of record in the case (who if she even sniffs in the direction of this case is inviting even more damaging action). And, that the Tribe has steadfastly refused to even discuss the possibility of negotiations seriously begs the question of the Tribe's motives in these cases (and to be sure, courts are not too friendly to parties who offer a blanket refusal to even discuss negotiations). Finally, in the civil rights case, Judge Sherigan had not even been properly served after 27 days, which is an egregious violation of my rights in proceeding with this case and which experts have said is unfathomable, especially since she is mere steps away from the police department offices.

However, let there be no mistake. The above defenses to any assertions are not exhaustive, and every assertion of tribal sovereignty and jurisdiction will be vigorously opposed by bringing out ALL facts in a forum and lawsuit where there can be no claims of attorney-client privilege and confidentiality. As I am sure your legal staff and Mr. Giampetroni have told you, in a breach of contract lawsuit between attorney and client, any and all claims of privilege and confidentiality are deemed waived, and therefore EVERYTHING I learned and/or advised the Tribe of during my tenure, including Commercial Fishing, the Casino, illegal payments to members, lawsuits, personnel, boundary disputes, etc., is fair game in any court of law. And, because of this Tribe's stunning failure to tamp down the staggering amount of information leaked to third parties by certain Tribal Council members and the Ogema, including legal advice, whether by e-mail to the Karol Ann Chabot's of the world and her followers or by other

means, all of that information is not privileged and/or confidential and can be shared with anybody at my discretion, including federal and state authorities, those opposing the Tribe's efforts in any venture, etc. By the way, a little word of advice: you might want to advise Mr. Giampetroni of all that is relevant and/or out there that you don't want let out before you ask for his advice. When asked, Mr. Giampetroni didn't even know that the Tribal Offices are not on trust land (which would have been one of my first questions) and are subject to concurrent tribal-state jurisdiction.

I can only presume that the Tribe desires to obfuscate the issues and delay, presumably in the thinking that if the Tribe delays long enough, I will go away. I can assure this Tribe that I will not go away, and my resolve is strengthening every single day. In any event, a 28 day extension of the time will not give the Tribe any defense to this lawsuit because it has no defense and everybody knows it, including the Tribe, all experts, John Wernet (with whom I met on November 12 and who, after presented with copies of the lawsuits, offered his own doubts about Muskegon), Jeff Davis, and soon Atty. General Eric Holder and my other close friends in the federal government to whom the Tribe will go to request a land-into-trust transfer.

However, even if we were to assume, *arguendo*, that some magic defense existed and that Mr. Giampetroni is the only person in the world who knows what it is, the reasoning given by Mr. Giampetroni in asking for the extension, that he was too busy and that he had conferences and family events to attend to, obviously did not come to light in the last few days before the deadline to respond and thus his protestations are highly specious in nature. He had to know of these things when he took on the case. If an attorney is too busy to take on a case, then he owes a duty to his prospective client, the opposing parties, and the court to decline taking the case. His duty is to the cases he takes, and not to conferences. In the meantime, the Ogema and Tribal Council both have in-house attorneys, and the defendants can point to no conflict whereby the in-house attorneys couldn't have taken on the cases and answered the complaint. It is therefore clear that this is just another tactic of delay and harassment by the defendants.

Also, if the Tribe thinks that I will not file in federal court in order to preserve my reputation in Indian Country because it's an "attack" on tribal sovereignty, it had better think again. I really don't care what others think, which is why my good friend and now Deputy Assistant Secretary Del Laverdure (who had me speak at conferences on numerous occasions) has repeatedly said, "that is why I like you so much; you say what the tribes need to hear, whether they like it or not." Further, as another friend at Interior has said, the rest of the tribes in the country will be circling the Tribe with their guns drawn and aimed at the Tribe's head instead "for the Tribe being so stupid to let it get this far" because of the possible legal ramifications to ALL tribes, not to mention the Administration.

In my opinion, the lawsuits speak for themselves, and I am 100% confident of prevailing in each of them, particularly after the interview with the FEPI on December 8, 2009. Needless to say, proceeding to a fact-finding conclusion will prove to be particularly damaging, legally and politically, to the Tribe, the State, and the federal government (in

part because of its funding of justice in Indian Country in a time of stricter scrutiny of where tax dollars are going), although the filing itself will be highly damaging as *all three cases will be filed since it will show acts by the Tribe in furtherance of the violation of civil rights*. This is especially true in the civil rights case (in Tribal and/or federal court), of which a friend I have on the federal bench said "the Tribe would get laughed right out of court" and (facetiously) "one wonders why tribal courts aren't taken seriously." The judge finally opined that even had Judge Sherigan not changed the rights of each party, but instead stated the same holding in a different way, it still would have resulted in a blatant violation of equal protection of the law and/or due process.

I also remind you that in federal court you will not be arguing before the likes of Dan Bailey or Angela Sherigan, and the Tribe will have to stick to the clear legal aspects and timelines of each case. Further, the federal court will not allow the Ogema and Tribal Council to share an attorney since a lawsuit between the two is one of the main issues in the case(s). It will matter little if the attorney advises the parties of possible conflicts as David Giampetroni should have done *in each and every case thus far*, and which I assert on information and belief he has not. This is also true since each party will be required to testify against each other and there exist competing claims, defenses, liabilities, settlement powers, constitutional powers, etc. The experts that I have spoken to have wondered in amazement whether in-house counsel had advised their respective clients of the need for separate counsel, and if not why their necks aren't on the chopping block.

Unfortunately for the Tribe, Mr. Giampetroni's assertions that this is one big happy Tribe don't hold water, and in the words of one federal judge, "don't even pass the smell test" because of the numerous lawsuits against each other on the issues in this case dating back to before my time with the Tribe. Additionally, because Mr. Giampetroni and his firm have had a hand in breaching the "Chinese wall" between the Ogema and Tribal Council in all three cases in tribal court, I can assure you that Kanji & Katzen WILL NOT be allowed to represent either party in federal court. It may not matter in any event because no matter the Tribe's decision in answering this Demand Letter, Mr. Giampetroni will be answering to the Michigan State Bar and will likely have to forego representing both parties no matter the forum. Finally, in federal court, all of my legal fees incurred, in tribal and federal court, will likely be awarded.

As an aside, if I were advising a tribe with its eyes on a second site, I would tell them that a lawsuit in federal court which has merit and shows not only the gross incompetence of certain tribal entities, but also possible corruption in its justice system, is the absolute last thing that it would want, and the reasoning is simple. What will it say when the tribe asks a state and federal government to put more of its non-native citizens under a jurisdiction that thinks nothing of breaching contracts with its employees, discharges those who report violations of law, and blatantly violates civil rights by denying equal protection of the laws and due process of law with the full cooperation of the tribal court (and is less than two years removed from giving out tens of millions of dollars in illegal payments to its members)? Further, this was done to a person who possesses expert knowledge of the law, not the class of average workers which will comprise the vast majority of workers subjected to the Tribe's jurisdiction by Tribal and State action. Finally, the simple act of

the filing of the suit is most damaging (and I have good faith arguments for doing so), and it matters not at all if the tribe asserts *legal* defenses for its actions (actually, some have opined that it is worse because the tribe would be saying that it can do all these things but you can't touch it, even in a federal court of law).

Additionally, if I were trying to unionize the tribe's existing casino, what better way than to show workers that if the tribe is going to blatantly violate the Whistleblower Protection Act by firing a person intimately familiar with the rule of law, what is the tribe willing to do with the average worker? And finally, when this filing gets out to the press, tribes and other entities opposing the tribe's plans for a second site, legislators in the state who will need to ratify any compact changes, unions, and members of Congress opposing any expansion of gaming, etc., the state and the feds will be backtracking from any second site talk in no time.

How do I know that these entities will be contacted in this case? The reason is simply that confidentiality at the Tribe is a joke, and I have already been contacted by persons connected to several entities whose interests don't exactly jibe with the State's and the Tribe's interests in Muskegon. They have urged me not to settle the cases, because win or lose on legal grounds the *facts* brought out in a filing in federal court will constitute pennies-on-the-dollar advertising against the Muskegon project and against federal and State approval, although with what is at stake, I would venture to say that it is *percentages* of pennies on the dollar. One person connected to an entity has stated that I may even get remuneration to continue the fight should I run short of funds. (If you're wondering how this can be accomplished legally and above board, so was I; but then I just figured that they could draft a contract for unnamed services commencing in September of 2011, and pay the money upon execution of the contract.)

Thus, based on all of the above and much, much more, in return for voluntarily dropping all lawsuits and a confidentiality agreement covering all knowledge, confidential or not, gained during the employment with the Tribe, the Tribe will agree to pay me the sum of \$225,000.00, will promise to work with the Tribal Court on serious and meaningful Tribal Court reform, and will allow me to collect all of my possessions it has been keeping from me (which, while it seems like a small detail, is huge in showing bad faith and harassment, and was reported to the FEPI as signifying the Tribe's harassment, bad faith, and malice towards me).

This demand is based on the fact that it is approximately what I am owed in salary alone on the balance of my contract and/or that it represents approximately one-half of the Tribe's exposure in this case (approx. \$300,000.00 in salary and benefits plus three counts at \$50,000.00 pursuant to the Whistleblower Protection Act, although a labor law expert has stated that the keeping of my personal belongings by the Tribe constitutes a fourth count, and another expert said that I could file a small, but highly embarrassing, lawsuit in state court, which would also severely test the Tribe's jurisdiction). This is a ridiculously low demand considering the idea that the Tribe may have hundreds of millions, if not billions, of dollars at stake in the long run.