assistance in connecting with the appropriate parties within DOI. Thomson did not immediately respond, but called Berger on Aug. 8 to assure Berger that he had not forgotten about him. Berger ultimately had a substantive conversation with Thomson on Aug. 15. As memorialized by Berger in an Aug. 16 memo to Havenick, Thomson cited three reasons motivating the denial: strong community opposition, the need to take off-reservation land into trust and, to a lesser degree, tribal opposition based on fears of competition and over-saturation of the market. In what Berger characterized as an "off-the-record" conversation, Thomson stressed to Berger that this last reason would not have been sufficient, by itself, to warrant the denial.[486] Thomson has no recollection of speaking with Berger or anyone on the Hudson matter, though he vaguely recalls speaking with Berger on some issue in this time frame.

From what he had learned to this point, Berger was inclined to work on softening tribal and community opposition and negotiating a solution. Havenick, however, was "much more litigious."[487] Berger testified that Havenick felt he had been wronged, and thus felt justified in taking an aggressive approach in seeking redress.

Berger made one last attempt at contacting DOI, speaking with Heather Sibbison on Aug. 25. As noted in an Aug. 28 letter from Berger to Havenick, Sibbison informed Berger that the denial was considered final for the Department, but that it could be appealed in federal district court. Based in part upon his conversation with Sibbison, Berger informed Havenick that Gov.

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[486]Memorandum from Mitchell Berger to Fred Havenick, Aug. 16, 1995.

[487]M. Berger G.J. Test. at 122.