

Oneida Tribal Law Office

P. O. BOX 129 • ONEIDA, WISCONSIN 54155

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MEMORANDUM

TO: Oneida Business Committee

FROM: Francis R. Skenandore *F.R.S.*
Attorney

DATE: November 4, 1983

RE: Oneida Indians of Wisconsin vs. Counties of Oneida and Madison

I had previously informed the Business Committee that Attorney Arlinda Locklear was directed to oppose the motion filed by Attorney Allan Van Gestel in the above mentioned case.

The Counties lost their appeal in the Second Circuit Court of Appeals on their attempt to reverse Judge Port's decision in favor of the Oneida Tribe's land claim against the Counties, rendered in the Federal District Court for the Northern District of New York.

Attorney Van Gestel in the Counties appeal for a writ of certiorari to the United States Supreme Court filed a motion to stay the issuance of the mandate by the Second Circuit Court directing Judge Port to recalculate the damage issue for the Oneidas. We prefer that Judge Port proceed on the Second Circuit Court mandate. Attached you will find a copy of the Oneida's "Opposition to Motion to Stay."

If you have any further questions, please feel free to call this office. Thank you for your time and attention in this matter.

FRS/psm

Attachment

cc: Attorney Gerald L. Hill

Attorneys
Richard Dauphinals
Arlinda F. Locklear
Henry J. Sockbeson

Native American Rights Fund

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RECEIVED

October 25, 1983

OCT 31 1983

ONEIDA LAW OFFICE

BY FEDERAL EXPRESS

A. Daniel Fusaro, Clerk
U.S. Court of Appeals
for the Second Circuit
U.S. Courthouse
Foley Square
New York, New York 10007

RECEIVED

1983

ONEIDA LAW OFFICE

Re: Oneida Indian Nation of
New York v. County of
Oneida, Nos. 82-7436, 82-
7486, 82-7526

Dear Mr. Fusaro,

Enclosed for filing are an original and three (3) copies of the Oneida Indian Nations of Wisconsin's and New York's opposition to the Motion to Stay the Mandate in the above appeals. As appears in the attached certificate of service, counsel of record have been served with copies this date.

Sincerely,


Arlinda Locklear

AL/mb
Enclosures
cc: Counsel of Record

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Oneida Indian Nation of New York, et al.)

Plaintiffs-Appellants,)
Cross-Appellees,)

v.)

County of Oneida, New York, and)
County of Madison, New York,)

Defendants-Third Party)
Plaintiffs, Appellees,)
Cross-Appellants,)

v.)

State of New York,)

Third Party Defendant-)
Appellant.)

Appeal No.)
82-7436,)
82-7486,)
82-7526)

Opposition to)
Motion to Stay)

The Oneida Indian Nation of Wisconsin and Oneida Indian Nation of New York, plaintiffs-appellants, cross-appellees herein, oppose through their undersigned counsel the motion to stay the issuance of the mandate in the above appeals pending application for writ of certiorari to the Supreme Court made by defendants-appellants Counties of Madison and Oneida. As grounds for their opposition, the plaintiffs-appellants state as follows:

1. Movants fail to demonstrate that the issues remanded to the district court, which are relatively minor and straightforward, cannot be resolved well before the expiration of the ninety (90) days within which the defendants-appellants must

file their application for certiorari. Considerations of judicial economy, then, counsel in favor of issuance of the mandate so that all issues may be the subject of a single application for certiorari.

2. Movants fail to show cause sufficient to justify delaying issuance of the mandate for more than thirty (30) days as required by F.R.A.P. 41(b). Even though the issues which movants intend to raise in their application for certiorari are important and complex, movants do not demonstrate (or even maintain) that proceedings on the minor issues remanded would interfere with or impair their ability to prepare their application for certiorari. Stay of the mandate, of course, is not necessary to allow a party to petition for certiorari absent some such demonstration.

Therefore, the Oneida Indian Nation of Wisconsin and Oneida Indian Nation of New York respectfully request that the motion to stay for ninety (90) days be denied.

Bertram Hirsch
at,
Bertram Hirsch
81-33 258th Street
Floral Park, New York 11004
(212) 347-3022

Attorney for Oneida Indian
Nation of New York

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Attorneys for Oneida Indian
Nation of Wisconsin


CERTIFICATE OF SERVICE

I, Arlinda Locklear, hereby certify that copies of the foregoing Opposition to Motion to Stay were mailed by United States first class mail, postage prepaid, to the following:

Allan van Gestel
Goodwin, Procter & Hoar
28 State Street
Boston, Mass. 02109

Lew A. Millenbach
Assistant Attorney General
Office of the Attorney General
The Capitol
Albany, New York 12224

Robert T. Coulter
Indian Law Resource Center
601 E Street, S.E.
Washington, D.C. 20003


Arlinda Locklear

DATED: October 25, 1983