

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

Oneida Nation,

Plaintiff,

Case No. 16-CV-1217

v.

Village of Hobart, Wisconsin,

Defendant.

STIPULATED PROTECTIVE ORDER

Based on the Stipulation of the parties and the factual representations set forth therein, the Court finds that exchange of sensitive information between or among the parties and/or third parties other than in accordance with this Order may cause unnecessary damage and injury to the parties or to others. The Court further finds that the terms of this Order are fair and just and that good cause has been shown for entry of a protective order governing the confidentiality of documents produced in discovery, answers to interrogatories, answers to requests for admission, and deposition testimony.

IT IS THEREFORE ORDERED THAT, under Fed. R. Civ. P. 26(c) and Civil L. R. 26(e):

(A) **DESIGNATION OF CONFIDENTIAL INFORMATION.** Designation of information under this Order must be made by placing or affixing the word “CONFIDENTIAL” on the document or material in a manner that will not interfere with its legibility.

(1) One who produces information, documents, or other material may

designate them as CONFIDENTIAL when the person in good faith believes they contain nonpublic CONFIDENTIAL information including, but not limited to, research, technical, commercial, or financial information, medical information concerning any individual, personal-identity information, non-public law-enforcement records, personnel records, or other records that the respective parties customarily maintain in confidence. Counsel for the entity producing the CONFIDENTIAL information is responsible for designating such information as CONFIDENTIAL.

(2) Except for information, documents, or other materials produced for inspection at the party's facilities, the designation of confidential information as CONFIDENTIAL must be made prior to, or contemporaneously with, their production or disclosure. If information, documents, or other materials are produced for inspection at the party's facilities, such information, documents, or other materials may be produced for inspection before being marked CONFIDENTIAL. Once specific information, documents, or other materials have been designated for copying, any information, documents, or other materials containing confidential information will then be marked CONFIDENTIAL after copying but before delivery to the party who inspected and designated them. There will be no waiver of confidentiality by the inspection of confidential information, documents, or other materials before they are copied and marked CONFIDENTIAL using this procedure. A party may designate a document as CONFIDENTIAL by placing or affixing the word "CONFIDENTIAL" on the document and on all copies in a manner that will not interfere with the legibility of the document. "Copies" includes electronic images, duplicates, extracts, summaries, or descriptions that contain the confidential information. In the case of electronically

stored information produced in native format, the term “CONFIDENTIAL” will be placed in a suitably revised file name for the document, on a disc associated with the documents, or on a separate list designated by Bates number ranges or designated by file names and associated locations.

(3) Portions of depositions of a party’s present and former officers, directors, employees, agents, experts, and representatives will be deemed confidential only if designated as such when the deposition is taken or within 30 days of receipt of the deposition transcript. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material had not been designated as CONFIDENTIAL.

(4) If a party inadvertently produces information, documents, or other material containing CONFIDENTIAL information without marking or labeling it as such, the information, documents, or other material shall not lose its protected status through such production, and the parties shall take all steps reasonably required to assure its continued confidentiality if, within 10 days of the discovery of the inadvertent production, the producing party provides written notice of the corrected confidential designation to the receiving party identifying the information, document, or other material in question. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material had not been designated as CONFIDENTIAL.

(B) DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION.

Information, documents, or other material designated as CONFIDENTIAL under this Order must not be used or disclosed by the parties or counsel for the parties or any persons identified

in subparagraphs (B)(1) and (2) below for any purposes whatsoever other than preparing for and conducting the litigation in which the information, documents, or other material were disclosed (including appeals).

(1) **CONFIDENTIAL INFORMATION.** The parties and counsel for the parties must not disclose or permit the disclosure of any information, documents or other material designated as **CONFIDENTIAL** by any other party or third party under this Order, except that disclosures may be made in the following circumstances:

(a) Disclosure may be made to employees of counsel for the parties or, when the party is a government entity, employees of the government, who have direct involvement in preparing for or conducting the litigation. Any such employee to whom counsel for the parties makes a disclosure must be advised of, and become subject to, the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(b) Disclosure may be made only to employees of a party required in good faith to provide assistance in the conduct of the litigation. Any such employee to whom counsel for the parties makes a disclosure must be advised of, and become subject to, the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(c) Disclosure may be made to court reporters and recorders engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making copies of documents or other material, or for organizing or processing documents, either electronically or in hard-copy form.

(d) Disclosure may be made to consultants, investigators, or experts

(collectively “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit, as well as associates, assistants, and other personnel employed by those experts. Before disclosure to any expert, the expert must be informed of and agree to be subject to the provisions of this Order requiring that the information, documents, or other material be held in confidence.

(e) Disclosure may be made to deposition and trial witnesses in connection with their testimony in the lawsuit and to the Court and the Court's staff.

(f) Disclosure may be made to persons already in lawful and legitimate possession of CONFIDENTIAL information.

(g) Disclosure may be made to other persons by written consent of the producing party or upon order of Court and on such conditions as may be agreed or ordered.

(C) MAINTENANCE OF CONFIDENTIALITY. Except as provided in subparagraph (B), counsel for the parties must keep all information, documents, or other material designated as CONFIDENTIAL that are received under this Order secure within their exclusive possession and must place such information, documents, or other material in a secure area.

(1) All copies, duplicates, extracts, summaries, or descriptions (collectively, “copies”) of information, documents, or other material designated as confidential under this Order, or any portion thereof, must be immediately affixed with the word “CONFIDENTIAL” if they do not already contain that

designation.

(2) To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, or any other papers filed or to be filed with the Court reveal or tend to reveal information claimed to be confidential, these papers or any portion thereof must be filed under seal by the filing party with the Clerk of Court using the procedures set forth in General L. R. 79(d). If a Court filing contains information, documents, or other materials that were designated CONFIDENTIAL by a third party, the party making the filing shall provide notice of the filing to the third party.

(D) CHALLENGES TO CONFIDENTIALITY DESIGNATION. A party may challenge the designation of confidentiality by motion. The movant must accompany such a motion with the statement required by Civil L. R. 37. The designating party bears the burden of proving that the information, documents, or other material at issue are properly designated as CONFIDENTIAL. The Court may award the party prevailing on any such motion actual attorney fees and costs attributable to the motion.

(E) SUBPOENA OR DISCOVERY FROM THIRD PARTY. If a party to this action is served with a subpoena, discovery, or an order issued outside this litigation that would compel disclosure of any material or document designated in this action as CONFIDENTIAL, the party receiving such a subpoena, discovery, or order must notify the party responsible for designating the material or document as CONFIDENTIAL promptly and in writing. Such notification must include a copy of the subpoena, discovery, or court order. The party that receives the subpoena,

discovery, or order outside this litigation must also promptly inform, in writing, the party who caused the subpoena, discovery, or order to issue outside this litigation that some or all of the material covered by the subpoena or order is the subject of this Order. The purpose of imposing these duties is to notify the third party of the existence of this Order and to allow the party responsible for designating the material or document as CONFIDENTIAL a reasonable opportunity to seek to protect the CONFIDENTIAL information from disclosure. The party that receives the subpoena, discovery, or order from outside this litigation has no further obligations under this Order beyond giving the notices described above.

(F) CONCLUSION OF LITIGATION. Within 60 days of final disposition of the litigation, all CONFIDENTIAL information furnished by a producing party under this Order, and all copies thereof, shall be either returned to the producing party or destroyed by counsel for the receiving party, unless the receiving party first obtains the producing party's permission to dispose of the CONFIDENTIAL information in a different manner. Counsel for the receiving party shall, no later than 60 days after final disposition of the litigation, either return all CONFIDENTIAL information or provide a written certification to counsel for the producing party that destruction of all CONFIDENTIAL information has taken place. Notwithstanding the foregoing, counsel may maintain archival copies of all CONFIDENTIAL information.

SO ORDERED this 10th day of July, 2017.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court