

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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ONEIDA NATION,

Plaintiff,

v.

Case No. 16-C-1217

VILLAGE OF HOBART, WISCONSIN,

Defendant.

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**PLAINTIFF ONEIDA NATION  
MOTION TO CLARIFY BURDEN OF PROOF**

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In accordance with this Court's order of August 11, 2017, Plaintiff Oneida Nation ["Nation"] moves this Court for an order clarifying the parties' respective burdens of proof in this matter, in particular with regard to the upcoming exchange of expert reports. *See* ECF No. 58. To ensure a fair and complete analysis of all issues and for the further reasons set out in the Memorandum of Law in Support of Oneida Nation Motion to Clarify Burden of Proof, the Nation moves the Court for an order specifying the following allocation of the burden of proof:

(1) the Nation carries the burden of proof on the creation of the Oneida Reservation in the Treaty of 1838, 7 Stat. 566, and the applicability of the Indian Reorganization Act ["IRA"], 25 U.S.C. § 5123, in 1934 to the Nation and its Reservation in opening expert reports due October 31, and otherwise, except for the Nation's actual title to the trust parcels at issue;

(2) Defendant Village of Hobart ["Hobart"] carries the burden of proof that the Oneida Reservation has been diminished or disestablished by an act of Congress or otherwise, any claim that the Nation does not hold trust or fee title to the parcels at issue, and other

affirmative defenses it has or may raise in pleadings, specifically including any claimed exceptional circumstances that would allegedly justify the exercise of its jurisdiction over the Nation on the Reservation, notwithstanding the absence of express congressional authorization to do so, in opening experts reports due October 31, or otherwise;

(3) in responsive expert reports due November 30, the Nation and Hobart may respond to opening expert reports and on December 31, the Nation and Hobart may exchange rebuttal reports, consistent with the above allocated burden of proof.

Dated this 31<sup>st</sup> day of August, 2017.

Respectfully submitted,

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**[PROPOSED] ORDER CLARIFYING BURDEN OF PROOF**

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Upon consideration of motions made by the parties and supporting memoranda of law, the Court grants Plaintiff Oneida Nation's Motion to Clarify the Burden of Proof. In particular, the Court orders that the parties bear the following burdens of proof, whether such matters are the subject of expert reports or otherwise:

- (1) Plaintiff Oneida Nation carries the burden of proof on the creation of the Oneida Reservation in the Treaty of 1838, 7 Stat. 566, and the applicability of the Indian Reorganization Act ["IRA"], 25 U.S.C. § 5123, in 1934 to the Nation and its Reservation, except for the Nation's actual title to the trust parcels at issue;
- (2) Defendant Village of Hobart carries the burden of proof that the Oneida Reservation has been diminished or disestablished by an act of Congress or otherwise, any claim that the Nation does not hold trust or fee title to the parcels at issue, and other affirmative defenses it has or may raise in pleadings, specifically including any claimed exceptional circumstances that would allegedly justify the exercise of its jurisdiction over the Nation on the Reservation, notwithstanding the absence of express congressional authorization to do so;
- (3) This allocation of the burden of proof governs the exchange of opening expert reports due on October 31, 2017, and responsive and rebuttal reports due November 30 and December 31, 2017, respectively.

SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2017.

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William C. Griesbach, Chief Judge  
United States District Court