

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

Oneida Nation,

Plaintiff,

v.

Case No. 16-CV-1217

Village of Hobart, Wisconsin,

Defendant.

**DEFENDANT’S CIVIL L.R. 7(h) EXPEDITED, NON-DISPOSITIVE MOTION TO
STRIKE PLAINTIFF’S RESPONSIVE EXPERT REPORT**

Defendant, Village of Hobart (“Village”), moves for an order to strike the filing by Plaintiff, Oneida Nation (“Nation”), of one if its responsive expert reports. Specifically, the Village requests that the Court strike the expert report prepared by Douglas M. Kiel, Ph.D. as not being a responsive report and in violation of the Scheduling Order set by this Court and Fed. R. Civ. P. 26(a)(2)(D) (party must make expert disclosures “at the time and in the sequence that the court orders.”). In further support of its Motion, the Village states as follows:

1. By order of the Court, the deadline to disclose responsive experts and reports was December 15, 2017.

2. On December 15, 2017, the Nation filed three separate responsive expert reports. One of these responsive expert reports was authored by Douglas M. Kiel, Ph.D. and titled *A History of the Oneida Reservation Boundaries, 1934-1984*. Dr. Kiel did not previously file an initial expert report on behalf of the Nation in this matter. Frank Kowalkowski Decl. at ¶ 3.

3. Aside from one sentence in the opening pages of Dr. Kiel's report which states "I have read the report of Dr. Greenwald filed in this case and disagree with her conclusion that allotment resulted in the diminishment of the Oneida Reservation," Dr. Kiel's report is devoid of any other reference to, or analysis of, Dr. Greenwald's report, and appears to merely serve as a mechanism by which the Nation has attempted to introduce evidence that it did not present in its two initial expert reports or other responsive expert reports. Kowalkowski Decl. at ¶ 4.

4. Dr. Kiel's report is in no way a direct response to Dr. Greenwald's report. This is evidenced by the fact that Dr. Kiel's responsive report contains only one sentence that even mentions Dr. Greenwald's report, and nearly half (41.66% -- 15 out of 36 pages -- pages 20-34) of Dr. Kiel's report discusses events during later time periods of the 20th century not addressed in Dr. Greenwald's initial expert report or the initial expert reports filed by the Nation. Kowalkowski Decl. at ¶¶ 5-6.

5. The Nation will not be prejudiced or harmed by the Court striking Dr. Kiel's responsive report considering that the Nation's two other experts, Drs. Hoxie and Edmunds, have filed responsive reports which are both replete with actual responses to Dr. Greenwald's initial report. Unlike Dr. Kiel's responsive report, the responsive reports of Drs. Hoxie and Edmunds are not simply broad research papers regarding the purported Oneida Reservation.

6. Alternatively, if the Court is unwilling to strike Dr. Kiel's report in full, the Village would ask that the Court enter an order striking pages 20-34 of Dr. Kiel's report as they discuss the history of the purported Oneida Reservation during the time period of 1946-1984, a time period that is not discussed or mentioned in Dr. Greenwald's report. *Id.* Dr. Kiel's discussion of facts and his introduction of evidence pertaining to a time period not discussed in

Dr. Greenwald's initial report cannot be construed as being responsive to Dr. Greenwald's report.

7. Furthermore, the treatment of the purported Oneida Reservation during the time period of 1946-1984 is simply not relevant to this case. This is supported by that fact that both of the Nation's initial expert reports do not discuss a time period beyond 1938. Kowalkowski Decl. at ¶ 3. As argued by Dr. Greenwald in her initial expert report and responsive expert report, if the purported Oneida Reservation was either disestablished or diminished, it occurred long before the time period of 1946-1984.

For the reasons stated above, the Court should strike Dr. Kiel's responsive expert report submitted by the Nation, as it is non-responsive to Dr. Greenwald's report. To the extent the Court is unwilling to strike Dr. Kiel's expert report in its entirety; the Court should strike pages 20-34 of Dr. Kiel's report, as they do not respond to any argument or evidence presented by the Village in Dr. Greenwald's initial expert report.

Dated this 11th day of January 2018.

von BRIESEN & ROPER, s.c.
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