

SHORT RECORD

NO. 19-1981

FILED 5/23/19

APPEAL,ATTYOPEN,CLOSED,PROTO

**United States District Court  
Eastern District of Wisconsin (Green Bay)  
CIVIL DOCKET FOR CASE #: 1:16-cv-01217-WCG**

Oneida Nation v. Village of Hobart WI  
Assigned to: Chief Judge William C Griesbach  
Cause: 25:640 Indian Tribal Rights

Date Filed: 09/09/2016  
Date Terminated: 04/26/2019  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff****Oneida Nation**

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V.

**Defendant**

**Village of Hobart WI**

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**Interested Party**

**United States**

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Date Filed	#	Page	Docket Text
09/09/2016	<u>1</u>		COMPLAINT for Declaratory and Injunctive Relief against Village of Hobart WI by Oneida Nation. ( Filing Fee PAID \$400 receipt number 0757-2420252)

		(Attachments: # <u>1</u> Summons, # <u>2</u> Civil Cover Sheet)(Locklear, Arlinda)
09/09/2016	<u>2</u>	MOTION for Preliminary Injunction by Oneida Nation. (Locklear, Arlinda)
09/09/2016		NOTICE Regarding assignment of this matter to Chief Judge William C Griesbach ;Consent/refusal forms for Magistrate Judge Joseph to be filed within 21 days;the consent/refusal form is available on our website ;pursuant to Civil Local Rule 7.1 a disclosure statement is to be filed upon the first filing of any paper and should be filed now if not already filed (jcl)
09/09/2016	<u>3</u>	AFFIDAVIT of Nathaniel S. King <i>in Support of Motion for Preliminary Injunction</i> . (Attachments: # <u>1</u> Exhibit Ex A – Deputization Agreement, # <u>2</u> Exhibit Ex B – Sept 3, 2015 Letter)(Locklear, Arlinda)
09/09/2016	<u>4</u>	AFFIDAVIT of Richard L. Figueroa <i>in Support Motion for Injunctive Relief</i> . (Attachments: # <u>1</u> Exhibit Ex A – Map of Individual Parcels, # <u>2</u> Exhibit Ex B – Green Bay Parcel, # <u>3</u> Exhibit Ex C – Green Bay 3 Parcels, # <u>4</u> Exhibit Ex D – Hobart 5 Parcels, # <u>5</u> Exhibit Ex E – Hobart 2 Parcels, # <u>6</u> Exhibit Ex F – Hobart Parcel, # <u>7</u> Exhibit Ex G – Hobart Parcel, # <u>8</u> Exhibit Ex H – Emergency Management & Homeland Security Safety Law, # <u>9</u> Exhibit Ex I – Oneida Safety Law, # <u>10</u> Exhibit Ex J – Oneida Vendor Licensing, # <u>11</u> Exhibit Ex K – Oneida Food Service Code, # <u>12</u> Exhibit Ex L – Oneida On-Site Waste Disposal Ordinance, # <u>13</u> Exhibit Ex M – Oneida Recycling & Solid Waste Disposal, # <u>14</u> Exhibit Ex N – Oneida Sanitation Ordinance, # <u>15</u> Exhibit Ex O – Oneida Tribal Regulation of Domestic Animals Ordinance, # <u>16</u> Exhibit Ex P – Randy Bani E-mail, # <u>17</u> Exhibit Ex Q – WI DOT Closure Permit, # <u>18</u> Exhibit Ex R – Map of Road Closure & Detour, # <u>19</u> Exhibit Ex S – Randy Bani E-mail, # <u>20</u> Exhibit Ex T – Atty. Kowalkowski Letter)(Locklear, Arlinda)
09/09/2016	<u>5</u>	BRIEF in Support filed by Oneida Nation re <u>2</u> MOTION for Preliminary Injunction . (Locklear, Arlinda)
09/09/2016	<u>6</u>	DISCLOSURE Statement by Oneida Nation. (Locklear, Arlinda)
09/12/2016		Summons Issued as to Village of Hobart WI. (lh)
09/12/2016		NOTICE of Hearing: (cc: all counsel) Telephone Conference set for 9/13/2016 at 09:00 AM in By Telephone before Chief Judge William C Griesbach. The Court will initiate the call. (lh)
09/13/2016	<u>7</u>	NOTICE of Appearance by Frank W Kowalkowski on behalf of Village of Hobart WI. Attorney(s) appearing: Frank W. Kowalkowski (Kowalkowski, Frank)
09/13/2016	<u>8</u>	RETURN OF SERVICE EXECUTED as to Village of Hobart filed by Oneida Nation (Locklear, Arlinda) Modified event text on 9/14/2016 (lh).
09/13/2016	<u>9</u>	Minute Order. Proceedings held before Chief Judge William C Griesbach: <u>2</u> MOTION for Preliminary Injunction filed by Oneida Nation denied. (Tape #091316.) (lh)
09/14/2016		NOTICE of Electronic Filing Error re <u>8</u> Certificate of Service filed by Oneida Nation ; The incorrect event was chosen, the docket entry has been modified; Please refer to the policies and procedures for electronic case filing and the user manual found at <a href="http://www.wied.uscourts.gov">www.wied.uscourts.gov</a> (lh)
09/28/2016	<u>10</u>	

		AMENDED COMPLAINT against Village of Hobart WI filed by Oneida Nation. (Attachments: # <u>1</u> Exhibit Ex. 1 – Citation No. 7R80F51TJS)(Locklear, Arlinda)
09/29/2016	<u>11</u>	TRANSCRIPT of TELEPHONIC STATUS CONFERENCE held on 9/13/2016 before Judge William Griesbach Court Reporter/Transcriber John Schindhelm, Contact at WWW.JOHNSCHINDHELM.COM to order directly... Or. Transcripts may be purchased using the Transcript Order Form found <u>on our website</u> or viewed at the court public terminal. <b>NOTICE RE REDACTION OF TRANSCRIPTS:</b> If necessary, within 7 business days each party shall inform the Court of their intent to redact personal identifiers by filing a Notice of Intent to Redact. Please read the policy located on our website <u>www.wied.uscourts.gov</u> Redaction Statement due 10/24/2016. Redacted Transcript Deadline set for 11/3/2016. Release of Transcript Restriction set for 1/1/2017. (Schindhelm, John)
10/03/2016	<u>12</u>	ANSWER to Complaint AND COUNTERCLAIM against Plaintiff, Oneida Nation filed by Village of Hobart WI <i>and Affirmative Defenses</i> . (Kowalkowski, Frank)
10/04/2016	<u>13</u>	NOTICE of Hearing: (cc: all counsel)TELEPHONE RULE 16 Scheduling Conference set for 11/3/2016 09:15 AM in By Telephone before Chief Judge William C Griesbach. As the court will initiate the call, Counsel are to provide the number at which they can be reached to the Office of the Clerk. Notice may be provided by telephone at 920-455-7381 or by email at <u>wied_clerks_gb@wied.uscourts.gov</u> PRIOR to the date of the hearing.(lh)
10/17/2016	<u>14</u>	<i>Plaintiff's</i> ANSWER to <u>12</u> Counterclaim <i>and Affirmative Defenses</i> filed by Oneida Nation. (Locklear, Arlinda)
10/27/2016	<u>15</u>	<i>Plaintiff's</i> REPORT of Rule 26(f) Plan by Oneida Nation. (Locklear, Arlinda)
10/27/2016	<u>16</u>	DOCUMENT REFILED. See <u>17</u> REPORT of Rule 26(f) Plan <i>and Discovery Plan</i> by Village of Hobart WI. (Kowalkowski, Frank) Modified on 10/27/2016 as re-filed (mac).
10/27/2016	<u>17</u>	<i>Revised</i> REPORT of Rule 26(f) Plan <i>and Discovery Plan</i> by Village of Hobart WI. (Kowalkowski, Frank)
11/03/2016	<u>18</u>	Minute Entry for proceedings held before Chief Judge William C Griesbach: Scheduling Conference held on 11/3/2016, Amended Pleadings due by 2/28/2017, Discovery due by 8/28/2017, Partying Carrying Burden of Proof Expert Witness List due by 4/28/2017, Responding Party Expert Witness List due by 6/28/2017, Motions due by 10/2/2017, Rule 26(a) Disclosures to be exchanged by 11/28/2016. (Tape #110316) (mac)
11/03/2016	<u>19</u>	SCHEDULING ORDER (cc: all counsel)(Griesbach, William)
11/28/2016	<u>20</u>	DISCLOSURE Statement by Village of Hobart WI. (Kowalkowski, Frank)
12/02/2016	<u>21</u>	MOTION for Protective Order by Oneida Nation. (Locklear, Arlinda)
12/02/2016	<u>22</u>	BRIEF in Support filed by Oneida Nation re <u>21</u> MOTION for Protective Order . (Locklear, Arlinda)
12/02/2016	<u>23</u>	DUPLICATE ENTRY. SEE <u>29</u> <del>DECLARATION of Arlinda F. Locklear in Support of Plaintiff's Motion for Protective Order</del> (Locklear, Arlinda)
12/02/2016	<u>24</u>	MOTION for Summary Judgment by Oneida Nation. (Locklear, Arlinda)

12/02/2016	<u>25</u>		BRIEF in Support filed by Oneida Nation re <u>24</u> MOTION for Summary Judgment . (Locklear, Arlinda)
12/02/2016	<u>26</u>		STATEMENT OF FACT by Oneida Nation <i>Proposed Material Facts</i> . (Attachments: # <u>1</u> Exhibit A – Affidavit of Sharon Blackwell)(Locklear, Arlinda)
12/02/2016	<u>27</u>		STATEMENT by Oneida Nation of <i>Stipulated Facts</i> . (Locklear, Arlinda)
12/02/2016	<u>28</u>		DECLARATION of Arlinda F. Locklear in Support of <u>24</u> Plaintiff's Motion for Summary Judgment (Locklear, Arlinda)
12/02/2016	<u>29</u>		DECLARATION of Arlinda F. Locklear in Support of <u>21</u> Plaintiff's Motion for Protective Order (Attachments: # <u>1</u> Exhibit A – Defendant's First Set of Interrogatories & Request for Production of Documents)(Locklear, Arlinda)
12/13/2016	<u>30</u>		Joint MOTION for Extension of Time <i>Local Rule 7(h) Expedited Non-Dispositive</i> by Village of Hobart WI. (Attachments: # <u>1</u> Text of Proposed Order)(Kowalkowski, Frank)
12/15/2016			TEXT ONLY ORDER GRANTING <u>30</u> Joint 7h MOTION for Extension of Time filed by Village of Hobart WI, signed by Chief Judge William C Griesbach on 12/15/2016. Defendants Response to Plaintiffs Motion for Protective Order (Dkt. 21) is due 1–23–17. Plaintiffs reply, if any, is due 14 days later. Defendants opposition to Plaintiffs Motion for Summary Judgment (Dkt. 24) is due 2–2–17. Plaintiffs reply, if any, is due 14 days later. Plaintiffs response to outstanding discovery requests is stayed pending the Courts decision on the Plaintiffs Motion for Protective Order. (cc: all counsel)(Griesbach, William)
12/23/2016	<u>31</u>		BRIEF in Support filed by Village of Hobart WI re <u>24</u> MOTION for Summary Judgment ( <i>Motion to Allow Time for Discovery Under Rule 56(d)</i> ). (Kowalkowski, Frank)
12/23/2016	<u>32</u>		DECLARATION of Frank W. Kowalkowski in Support of Defendants Memorandum in Support of Motion to Allow Time for Discovery Under Rule 56(d) (Attachments: # <u>1</u> Exhibit A: Treaty With the First Christian and Orchard Parties, dated February 3, 1838, # <u>2</u> Exhibit B: Petition to the President by Oneida Indians, dated October 23, 1838, # <u>3</u> Exhibit C: J. Rhodes Letter to Chauncey Doxdater, dated November 19, 1931, # <u>4</u> Exhibit D: Constitution and By-Laws for the Oneida Tribe of Indians of Wisconsin, dated December 21, 1936, # <u>5</u> Exhibit E: Letter to Commissioner John Collier, dated January 7th, 1935, # <u>6</u> Exhibit F: Memorandum to Secretary Ickes, dated February 24, 1934, # <u>7</u> Exhibit G: Public Records Request sent to the Brown County Clerks Office, dated November 29, 2016, # <u>8</u> Exhibit H: Public Records Request sent to the Brown County Sheriffs Department, dated November 29, 2016, # <u>9</u> Exhibit I: Brown Countys reply to Public Records Request, dated December 20, 2016, # <u>10</u> Exhibit J: Brown County Sheriffs Department reply to Public Records Request, dated December 5th, 2016)(Kowalkowski, Frank)
12/27/2016	33		NOTICE of Hearing: (cc: all counsel) Telephone Conference set for 1/3/2017 09:00 AM in By Telephone before Chief Judge William C Griesbach. The court will initiate the call. Counsel are to provide the telephone number at which they can be reached (direct dial preferred) at least two days prior to the telephone conference. In the event counsel are unavailable at the scheduled time of the telephone conference, the conference may be rescheduled and counsel may be required to appear in person. Please provide your telephone number to the Office



			of the Clerk at wied_clerks_gb@wied.uscourts.gov(lh)
01/03/2017	<u>34</u>		MOTION for Order <i>to Allow Time for Discovery Under Rule 56(d)</i> by Village of Hobart WI. (Kowalkowski, Frank)
01/03/2017	<u>35</u>		Minute Entry for proceedings held before Chief Judge William C Griesbach: Telephone Conference held on 1/3/2017. The Court will make a ruling on the motion for protective order and motion to defer ruling on motion for summary. The briefing on the motion for summary judgment is stayed pending the Court's ruling on these motions. (Tape #010317) (cav)
01/23/2017	<u>36</u>		BRIEF in Opposition filed by Village of Hobart WI re <u>21</u> MOTION for Protective Order . (Kowalkowski, Frank)
01/23/2017	<u>37</u>		DECLARATION of Frank W. Kowalkowski <i>in Support of Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Protective Order</i> (Attachments: # <u>1</u> Exhibit A – Abstract of Opinion of Professor James A. Clifton, # <u>2</u> Exhibit B – Stevens v. County of Brown, # <u>3</u> Exhibit C – U.S. v. Hall)(Kowalkowski, Frank)
01/23/2017	<u>38</u>		DECLARATION of Emily Greenwald <i>in Support of Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Protective Order</i> (Attachments: # <u>1</u> Exhibit A – Curriculum Vitae)(Kowalkowski, Frank)
01/24/2017	<u>39</u>		BRIEF in Opposition filed by Oneida Nation re <u>34</u> MOTION for Order <i>to Allow Time for Discovery Under Rule 56(d)</i> . (Locklear, Arlinda)
02/06/2017	<u>40</u>		REPLY BRIEF in Support filed by Oneida Nation re <u>21</u> MOTION for Protective Order . (Locklear, Arlinda)
02/07/2017	<u>41</u>		REPLY BRIEF in Support filed by Village of Hobart WI re <u>34</u> MOTION for Order <i>to Allow Time for Discovery Under Rule 56(d)</i> . (Kowalkowski, Frank)
02/07/2017	<u>42</u>		DECLARATION of Frank W. Kowalkowski <i>in Support of Defendant's Reply to Plaintiff's Memorandum in Opposition to Defendant's Rule 56(d) Motion</i> (Attachments: # <u>1</u> Exhibit A – Email Exchange Relating to 56(d) Motion Filing)(Kowalkowski, Frank)
03/24/2017	<u>43</u>		ORDER FOR ORAL ARGUMENT. (cc: all counsel)(Griesbach, William)
03/27/2017			NOTICE of Hearing on Motion <u>24</u> MOTION for Summary Judgment , <u>21</u> MOTION for Protective Order , <u>34</u> MOTION for Order <i>to Allow Time for Discovery Under Rule 56(d)</i> : (cc: all counsel) Motion Hearing set for 4/11/2017 02:30 PM in Courtroom 201, 125 S. Jefferson St., Green Bay, WI 54301 before Chief Judge William C Griesbach. (cav)
04/11/2017	<u>44</u>		Minute Entry for proceedings held before Chief Judge William C Griesbach: Motion Hearing held on 4/11/2017 re <u>34</u> MOTION for Order <i>to Allow Time for Discovery Under Rule 56(d)</i> filed by Village of Hobart WI. (Tape #041117) (cav) (Entered: 04/12/2017)
04/13/2017	<u>45</u>		LETTER from Arlinda F Locklear submitting relevant precedent. (tlf) (Entered: 04/17/2017)
04/19/2017	<u>46</u>		DECISION AND ORDER signed by Chief Judge William C. Griesbach on 4/19/17. The Nation's <u>24</u> Motion for summary judgment is DENIED as premature. The Nation's <u>21</u> Motion for protective order is GRANTED–IN–PART and

		DENIED-IN-PART and the Village's <u>34</u> MOTION for order to allow time for Discovery under Rule 56(d) is GRANTED. Pursuant to the scheduling order the Village shall have until August 28, 2017 to conduct discovery consistent with this Order. (cc: all counsel)(Griesbach, William)
04/21/2017	<u>47</u>	NOTICE of Appearance by Paul R Jacquart on behalf of Oneida Nation. Attorney(s) appearing: Paul R. Jacquart and Jessica C. Mederson (Jacquart, Paul)
04/25/2017	<u>48</u>	NOTICE of Appearance by Vanya S Hogen on behalf of Oneida Nation. Attorney(s) appearing: Vanya S. Hogen (Hogen, Vanya)
04/25/2017	<u>49</u>	NOTICE of Appearance by William A Szotkowski on behalf of Oneida Nation. Attorney(s) appearing: William A. Szotkowski (Szotkowski, William)
05/23/2017	<u>50</u>	RULE 5 REPLACED AMENDED DOCUMENT by Oneida Nation. <i>Initial Disclosure</i> (McAndrews, Kelly) (Main Document 50 replaced on 5/24/2017) (cav). Modified on 5/24/2017 (cav).
05/24/2017		NOTICE of Electronic Filing Error re <u>50</u> Amended Document Initial Disclosures filed by Oneida Nation ; Certain discovery documents should not be filed. Please see Fed. R. Civ. P. 5(d) for further information. The document has been replaced with a copy of Rule 5. Discovery documents should be served on opposing counsel in paper format; Please refer to the policies and procedures for electronic case filing and the user manual found at www.wied.uscourts.gov (cav)
06/29/2017	<u>51</u>	NOTICE of Appearance by Joseph M Russell on behalf of All Defendants. Attorney(s) appearing: Joseph M. Russell (Russell, Joseph)
07/06/2017	<u>52</u>	STIPULATION for <i>Protective Order</i> by All Plaintiffs. (Attachments: # <u>1</u> Text of Proposed Order)(Jacquart, Paul)
07/10/2017	<u>53</u>	Stipulated PROTECTIVE ORDER signed by Chief Judge William C Griesbach on 7/10/2017. (cc: all counsel)(Griesbach, William)
07/31/2017	<u>54</u>	Joint Rule 7(h) MOTION for Order re <i>Production of Documents and Electronic Data</i> by Village of Hobart WI. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Appendix)(Kowalkowski, Frank) Modified on 8/1/2017 to add Rule 7(h) language and correct duplicate text (mac).
08/02/2017	<u>55</u>	ORDER REGARDING PRODUCTION OF DOCUMENTS AND ELECTRONIC DATA signed by Chief Judge William C Griesbach on 8/2/2017. (cc: all counsel) (Griesbach, William)
08/07/2017	<u>56</u>	NOTICE of Change of Address by Frank W Kowalkowski (Kowalkowski, Frank)
08/10/2017	<u>57</u>	Joint MOTION to Amend/Correct Scheduling Order by Oneida Nation. (Jacquart, Paul) (Additional attachment(s) added on 8/11/2017: # <u>1</u> Text of Proposed Order) (mac).
08/11/2017	<u>58</u>	ORDER granting <u>57</u> Motion to Amend Scheduling Order. Discovery due by 3/12/2018. Dispositive motions are due thirty days following the close of discovery on March 12, 2018, or thirty days following any extension of the close of the discovery date. (cc: all counsel) (Griesbach, William)
08/11/2017		Set/Reset Deadlines: Motions due after close of discovery. 4/12/18 deadline set in CM/ECF. (cav)



08/31/2017	<u>59</u>		MOTION to Clarify by All Plaintiffs. (Attachments: # <u>1</u> proposed order)(Locklear, Arlinda)
08/31/2017	<u>60</u>		BRIEF in Support filed by All Plaintiffs re <u>59</u> MOTION to Clarify . (Locklear, Arlinda)
09/26/2017	<u>61</u>		ORDER DIRECTING RESPONSE re <u>59</u> MOTION to Clarify filed by Oneida Nation (cc: all counsel)(Griesbach, William)
10/02/2017	<u>62</u>		RESPONSE to Motion filed by Village of Hobart WI re <u>59</u> MOTION to Clarify <i>Burden of Proof</i> . (Kowalkowski, Frank)
10/06/2017	<u>63</u>		Joint MOTION to Amend/Correct <i>58 Scheduling Order</i> by Village of Hobart WI. (Attachments: # <u>1</u> Text of Proposed Order [Proposed] Amended Scheduling Order)(Kowalkowski, Frank)
10/10/2017	<u>64</u>		ORDER granting <u>63</u> Joint MOTION to Amend <i>58 Scheduling Order</i> filed by Village of Hobart WI. The expert witness disclosure deadline for the party carrying the burden of proof is November 15, 2017. The deadline to disclose responsive experts and reports is December 15, 2017. Rebuttal reports, if any, are due January 15, 2018. (cc: all counsel)(Griesbach, William)
10/12/2017	<u>65</u>		REPLY BRIEF in Support filed by All Plaintiffs re <u>59</u> MOTION to Clarify . (Locklear, Arlinda)
10/23/2017	<u>66</u>		DECISION AND ORDER signed by Chief Judge William C Griesbach on 10/23/2017 Granting <u>59</u> Motion to Clarify. Opening expert reports due on November 15, 2017. Responsive and rebuttal reports due December 15, 2017 and January 15, 2018. (cc: all counsel) (Griesbach, William)
11/01/2017	<u>67</u>		Rule 7(h) Expedited Non–Dispositive MOTION to Clarify <i>the Court's October 23, 2017 Decision and Order on Burden of Proof</i> by Village of Hobart WI. (Kowalkowski, Frank)
11/02/2017	<u>68</u>		ORDER signed by Chief Judge William C Griesbach on 11/2/2017 DENYING <u>67</u> Motion to Clarify. (cc: all counsel) (Griesbach, William)
11/29/2017	<u>69</u>		7(h) Expedited Non–Dispositive MOTION Foreclose Further Opening Expert Reports by All Plaintiffs. (Attachments: # <u>1</u> Affidavit)(Locklear, Arlinda) Modified text on 11/30/2017 (lh).
11/30/2017			NOTICE of Electronic Filing Error re <u>69</u> 7(h) Expedited Non–dispositive MOTION Foreclose Further Opening Expert Reports filed by Oneida Nation ; Certain attachments to this document (Affidavit) should have been filed as separate entries. This document does not need to be re–filed; Please refer to the policies and procedures for electronic case filing and the user manual found at <a href="http://www.wied.uscourts.gov">www.wied.uscourts.gov</a> (lh)
12/05/2017	<u>70</u>		BRIEF in Opposition filed by Village of Hobart WI re <u>69</u> 7(h) Expedited Non–dispositive MOTION Foreclose Further Opening Expert Reports (Kowalkowski, Frank)
12/05/2017	<u>71</u>		DECLARATION of Frank W. Kowalkowski <i>in Support of Defendant's Memorandum Opposing Oneida Nation's Motion for an Order Foreclosing Further Opening Expert Reports</i> (Attachments: # <u>1</u> Exhibit A – Excerpts from Frederick E. Hoxie Report, # <u>2</u> Exhibit B – Excerpts from R. David Edmunds

		Report)(Kowalkowski, Frank)
12/06/2017	<u>72</u>	ORDER denying <u>69</u> Motion to foreclose further opening expert reports. (cc: all counsel) (Griesbach, William)
01/11/2018	<u>73</u>	Expedited MOTION to Strike <i>Plaintiff's Responsive Expert Report</i> by Village of Hobart WI. (Kowalkowski, Frank)
01/11/2018	<u>74</u>	DECLARATION of Frank W. Kowalkowski <i>in Support of Defendant's Civil L.R. 7(h) Expedited, Non-Dispositive Motion to Strike Plaintiff's Responsive Expert Report</i> (Kowalkowski, Frank)
01/17/2018	<u>75</u>	RESPONSE to Motion filed by All Plaintiffs re <u>73</u> Expedited MOTION to Strike <i>Plaintiff's Responsive Expert Report</i> . (Attachments: # <u>1</u> Declaration)(Locklear, Arlinda)
01/18/2018		NOTICE of Electronic Filing Error re <u>75</u> Response to Motion filed by Oneida Nation; Certain attachments to this document should have been filed as separate entries. This document does not need to be re-filed. Please refer to the policies and procedures for electronic case filing and the user manual found at <a href="http://www.wied.uscourts.gov">www.wied.uscourts.gov</a> (mac)
01/19/2018	<u>76</u>	ORDER signed by Chief Judge William C Griesbach on 1/18/2018 Denying <u>73</u> Motion to Strike Plaintiff's Responsive Expert Report. (cc: all counsel) (Griesbach, William)
02/13/2018	<u>77</u>	NOTICE of Appearance by Matthew J Thome on behalf of Village of Hobart WI. Attorney(s) appearing: Matthew J. Thome (Thome, Matthew)
03/02/2018	<u>78</u>	Joint MOTION to Amend/Correct Discovery Schedule by Oneida Nation. (Jacquart, Paul)
03/05/2018	79	TEXT ONLY ORDER GRANTING <u>78</u> Joint Motion to Amend Discovery Schedule by Oneida Nation, signed by Chief Judge William C Griesbach on 03/05/2018. All discovery is to be completed no later than April 13, 2018. Dispositive motions are to be filed no later than May 29, 2018. (cc: all counsel)(Griesbach, William)
05/14/2018	<u>80</u>	Joint MOTION for Extension of Time by Oneida Nation. (Locklear, Arlinda)
05/18/2018	81	TEXT ONLY ORDER GRANTING <u>80</u> Joint MOTION for extension of time by Oneida Nation, signed by Chief Judge William C Griesbach on 05/18/2018. Dispositive motions for this matter shall be filed on or before June 29, 2018, with a memorandum of law in support thereof not to exceed 55 pages, and expert witness affidavits in the form of signed expert reports and depositions taken under oath. The parties' opposition memoranda on dispositive motions shall be filed on or before August 15, 2018, not to exceed 55 pages. The parties' reply memoranda on dispositive motions shall be filed on or before September 7, 2018, not to exceed 30 pages. (cc: all counsel) (Griesbach, William)
05/30/2018	<u>82</u>	Unopposed MOTION to Amend/Correct ECF No. 81 by Village of Hobart WI. (Kowalkowski, Frank)
06/01/2018	83	TEXT ONLY ORDER GRANTING <u>82</u> MOTION to Amend scheduling order, ECF No. 81, filed by Village of Hobart WI, signed by Chief Judge William C Griesbach on 06/01/2018. Dispositive Motions due by 7/19/2018 not to exceed 55

		pages and expert witness affidavits in the form of signed expert reports and depositions taken under oath; briefs in opposition due 9/5/18 not to exceed 55 pages, and any reply due 09/28/18 not to exceed 30 pages. (cc: all counsel)(Griesbach, William)
07/19/2018	<u>84</u>	MOTION for Summary Judgment by Village of Hobart WI. (Kowalkowski, Frank)
07/19/2018	<u>85</u>	MOTION for Summary Judgment by Oneida Nation. (Locklear, Arlinda)
07/19/2018	<u>86</u>	STIPULATION – <i>Joint Stipulated Statement of Material Facts</i> by Oneida Nation. (Attachments: # <u>1</u> Exhibit 1 – Special Event Ordinance, # <u>2</u> Exhibit 2 – Sept. 2, 2016 Letter, # <u>3</u> Exhibit 3 – Sept. 7, 2016 WIDOT Application, # <u>4</u> Exhibit 4 – Sept. 21, 2016 Citation)(Locklear, Arlinda)
07/19/2018	<u>87</u>	DECLARATION of Richard Van Boxtel <i>in Support of Plaintiff Oneida Nation's Motion for Summary Judgment</i> (Locklear, Arlinda)
07/19/2018	<u>88</u>	DECLARATION of Richard L. Figueroa <i>in Support of Plaintiff Oneida Nation's Motion for Summary Judgment</i> (Attachments: # <u>1</u> Exhibit A – Emergency Management and Homeland Security, # <u>2</u> Exhibit B – Oneida Safety Law, # <u>3</u> Exhibit C – Oneida Vendor Licensing, # <u>4</u> Exhibit D – Oneida Food Service Code, # <u>5</u> Exhibit E – On-Site Waste Disposal, # <u>6</u> Exhibit F – Recycling and Solid Waste Disposal, # <u>7</u> Exhibit G – Sanitation ordinance, # <u>8</u> Exhibit H – Domestic Animals)(Locklear, Arlinda)
07/19/2018	<u>89</u>	DECLARATION of Frank W. Kowalkowski <i>in Support of Defendant's Motion for Summary Judgment</i> (Attachments: # <u>1</u> Exhibit The Iroquois and the New Deal, Laurence M. Hauptman, # <u>2</u> Exhibit Chapter 119, 49 Congress, Session 2, # <u>3</u> Exhibit Census of Oneida Indians in Wisconsin; Sept. 16, 1887, # <u>4</u> Exhibit Petition of Oneida Indians, 1888, # <u>5</u> Exhibit John W. Noble to the President; May 20, 1889, # <u>6</u> Exhibit Annual Report of the Commissioner of Indian Affairs; 1889, # <u>7</u> Exhibit The Oneida Indians in the Age of Allotment, 1860–1920; Laurence M. Hauptman & L. Gordon McLester III, # <u>8</u> Exhibit 69 Cong. Rec. 5876, # <u>9</u> Exhibit Commission or Indian Affairs to Secretary of Interior; Jan. 22, 1909, # <u>10</u> Exhibit Records of the Bureau of Indian Affairs, Central Classified Files, 1907–39, Oneida, # <u>11</u> Exhibit Secretary of the Interior to Walter Watkins, Mar. 13, 1934, # <u>12</u> Exhibit Commission or Indian Affairs to Secretary of Interior; Mar. 19, 1900, # <u>13</u> Exhibit Commission or Indian Affairs to Hon. H.J. Huntington; Jan. 31, 1901, # <u>14</u> Exhibit Commission or Indian Affairs to Superintendent Indian Schools; Jan. 11, 1904, # <u>15</u> Exhibit Public Law 57–125, Chap. 888, 57 Congress, # <u>16</u> Exhibit Report of the Commissioner of Indian Affairs, 1902, # <u>17</u> Exhibit Public Law 59–149, Chap. 2348, 59 Congress, # <u>18</u> Exhibit 40 Cong. Rec. 3599–3601, # <u>19</u> Exhibit Report of Superintendent in Charge of Winnebago, Aug. 10, 1903, # <u>20</u> Exhibit Report of Superintendent in Charge of Winnebago, Aug. 15, 1904, # <u>21</u> Exhibit Petition of Oneida Indians, Feb. 5, 1906, # <u>22</u> Exhibit Brown County Reporter, Feb. 10, 1905, # <u>23</u> Exhibit Petition of Oneida Indians to Commissioner of Indian Affairs; Jan. 27, 1906, # <u>24</u> Exhibit Petition of Oneida Indians to Commissioner of Indian Affairs; Feb. 5, 1906, # <u>25</u> Exhibit Commissioner of Indian Affairs to Oneida, Feb. 26, 1906, # <u>26</u> Exhibit Oneida to Commissioner of Indian Affairs, Feb. 26, 1906, # <u>27</u> Exhibit Report on Petition of Oneida Indians, Feb. 14, 1906, # <u>28</u> Exhibit 34 Stat. 325, # <u>29</u> Exhibit Act authorizing the sale of trust patents held by noncompetent allottees, Mar. 1, 1907 34 Stat. 1015 at 1018, # <u>30</u> Exhibit Act authorizing issuance of fee patents to purchasers of Indian

allotments, May 29, 1908. 35 Stat. 444, # 31 Exhibit Report of Supervisor of Indian Schools Re: issuance of fee patents, Oct. 16, 1909, # 32 Exhibit The Oneida Indians in the Age of Allotment, 1860–1920; Laurence M. Hauptman & L. Gordon McLester III, # 33 Exhibit The Oneida Indians in the Age of Allotment, 1860–1920; Laurence M. Hauptman & L. Gordon McLester III, # 34 Exhibit Supervisor to Secretary of Interior Re: allotment, Aug. 31, 1917, # 35 Exhibit LaFollette to Commissioner of Indian Affairs, May 10, 1917, # 36 Exhibit Exec. Order No. 2623, # 37 Exhibit Supervisor to Secretary of Interior Re: allotment, Aug. 31, 1917, # 38 Exhibit Central Classified Files, 1907–39, 83738–1917–127 Part 1 to 81728–1919–130, # 39 Exhibit Exec. Order No. 2856, # 40 Exhibit Commissioner Sells to Browne, Jun. 20, 1918, # 41 Exhibit Exec. Order No. 4600, # 42 Exhibit Laws of Wisconsin, 1903, # 43 Exhibit Ord. creating Town of Hobart, Mar. 13, 1908, # 44 Exhibit Edmunds Ex. 84, # 45 Exhibit Stevens v. Brown, Opinion, Nov. 3, 1933, # 46 Exhibit Tax Suit Against County Dismissed article, Nov. 9, 1933, # 47 Exhibit Indian Claims Heard by Geiger article, June 15, 1933, # 48 Exhibit Oneida Indian Tax Case Report by Special Council, Nov. 14, 1933, # 49 Exhibit State v. Brown, Amended Bill of Complaint., # 50 Exhibit Towers to Commissioner of Indian Affairs, June 20, 1933, # 51 Exhibit State May be Part in Indian Suit, De Pere Journal Democrat, Jan. 12, 1933, # 52 Exhibit State v. Brown, Answer of Town of Hobart, # 53 Exhibit State v. Brown, Order, May 11, 1933, Joint Motion to Dismiss, May 4, 1933, # 54 Exhibit State v. Brown, Decree, Jan. 13, 1934, # 55 Exhibit Kiel Ex. 6, # 56 Exhibit U.S. Atty. Hustling to U.S. Attorney General, Oct. 11, 1934, # 57 Exhibit Name Two Counties in Second Action, De Pere Journal Democrat, May 24, 1934, # 58 Exhibit Skenandore v. USA, Order Dismissing Complaint, # 59 Exhibit Chief Clark to A.S. Baird, May 5, 1909, # 60 Exhibit Supervisor to Oneida Indians, Oct. 14, 1909, # 61 Exhibit Hauke to Hon. Konop, May 6, 1911, # 62 Exhibit Annual Narrative and Statistical Report of Oneida School, 1911, # 63 Exhibit Annual Narrative and Statistical Report of Oneida School, 1912, # 64 Exhibit Hauke to Skanadoah, Jun. 7, 1915, # 65 Exhibit Merriti to Duxtator, May 17, 1915, # 66 Exhibit Report of Supervisor Rosenkrans re: Oneida School, Jun. 28, 1915, # 67 Exhibit Act authorizing the sale of Oneida School land, Mar. 17, 1917 39 Stat. at 992, # 68 Exhibit The Oneida Indians in the Age of Allotment, 1860–1920, # 69 Exhibit Commissioner Sells to Secretary of the Interior, Jun. 3, 1919, # 70 Exhibit Secretary to Commissioner of Indian Affairs, May 5, 1920, # 71 Exhibit Assistant Commissioner Merett to Diener, Oct. 5, 1920, # 72 Exhibit Report of Keshena School, Aug. 22, 1921, # 73 Exhibit Report of Keshena School, 1922, # 74 Exhibit Commissioner Burke to Smith and Duxtator, May 10, 1922, # 75 Exhibit Superintendent Farver to Commissioner of Indian Affairs, Dec. 17, 1938, # 76 Exhibit Superintendent to Commissioner of Indian Affairs, Sept. 29, 1922, # 77 Exhibit Superintendent to Commissioner of Indian Affairs, Oct. 16, 1922, # 78 Exhibit Report of Keshena School, 1924, # 79 Exhibit Report of Keshena School, 1926, # 80 Exhibit Report of Keshena School, 1925, # 81 Exhibit Commissioner to Smith and Duxtator, Jan. 15, 1926, # 82 Exhibit Commissioner Burke to Browne, May 17, 1926, # 83 Exhibit Superintendent Donner to Duxtator, Nov. 11, 1926, # 84 Exhibit Report of Keshena School, 1927, # 85 Exhibit Report of Keshena School, 1927 re: allotment, # 86 Exhibit 69 Cong. Rec. 5876, # 87 Exhibit Commissioner Burke to Chairman Skenanders, Oct. 9, 1928, # 88 Exhibit 1929 Annual Report of the Commissioner of Indian Affairs, # 89 Exhibit Superintendent to Commissioner of Indian Affairs, April 9, 1930, # 90 Exhibit Commissioner Rhodes to Secretary of Indian Affairs, Feb. 19, 1931, # 91 Exhibit WI Atty. Gen. Opinions 1133 (1931), # 92 Exhibit Commissioner Rhoads to Atty.

Gen. of WI, Nov. 13, 1931, # 93 Exhibit Commissioner Rhoads to Doxtator, Nov. 19, 1931, # 94 Exhibit Commissioner Rhoads to Schneider, Jun. 1, 1932, # 95 Exhibit Superintendent Beyer to Commissioner of Indian Affairs, Sept. 8, 1932, # 96 Exhibit Assistant Commissioner to Watkins, Sep 20, 1932, # 97 Exhibit Commissioner Rhoads to Stevens, Dec. 17, 1932, # 98 Exhibit Commissioner Rhoads to Attorneys re: allotment, Apr. 20, 1933., # 99 Exhibit Superintendent to Commissioner of Indian Affairs, Oct. 25, 1933, # 100 Exhibit Superintendent to Commissioner of Indian Affairs, Nov. 4, 1933, # 101 Exhibit Secretary of Interior to Governor of WI, Dec. 29, 1933, # 102 Exhibit Memo from Commissioner to Secretary of the Interior, Feb. 24, 1934, # 103 Exhibit Collier to Smith, Apr. 7, 1934, # 104 Exhibit Collier to Doxtator et al, Jun. 4, 1934, # 105 Exhibit Collier to Doxtator, Dec. 3, 1934, # 106 Exhibit Burns & Christy to Commissioner, May 11, 1935, # 107 Exhibit Report of Keshena School, 1935, # 108 Exhibit Survey of Conditions of the Indians in the United States, Aug. 16, 1937, # 109 Exhibit Stewart to Skenadore, Jul. 29, 1937, # 110 Exhibit Superintendent Farver to Commissioner of Indian Affairs, Mar. 27, 1942, # 111 Exhibit A Nation Within a Nation, xi–xvii, McLester and Hauptman, # 112 Exhibit Rhoads to Metoxen, Jan. 31, 1933, # 113 Exhibit The Oneidas in the Age of Allotment, Hauptman & McLester, # 114 Exhibit Superintendent to Commissioner of Indian Affairs, Jun. 8, 1936, # 115 Exhibit De Pere Journal Democrat, Mar. 25, 1935, # 116 Exhibit Bureau of Indian Affairs, Tomah Agency, Correspondence files 1926–1950, # 117 Exhibit An Economic Survey of the Oneida Indian Reservation of Wisconsin, 1937, # 118 Exhibit Survey of Conditions of the Indians of the United States, 1937, # 119 Exhibit 1939 letters regarding Oneida School, # 120 Exhibit Superintendent to Commissioner of Indian Affairs, Oct. 20, 1941, # 121 Exhibit 1956 BIA Report, # 122 Exhibit Minneapolis Office of Bureau of Indian Affairs re: Wisconsin Indians, 1961, # 123 Exhibit A map of Wisconsin prepared by the United States Department of the Interiors General Land Office in 1931 shows various Indian reservations but does not show an Oneida reservation., # 124 Exhibit A map produced by the State of Wisconsin Conservation Department in 1934 showed various Indian reservations, but it did not show an Oneida reservation., # 125 Exhibit A U.S. Department of the Interior map from 1935 Showing Activities of the Office of Indian Affairs identifies a number of reservations but does not show an Oneida reservation., # 126 Exhibit A Wisconsin state road map published by Rand McNally in 1939 shows Indian reservations such as Menominee and La Pointe, but it does not show an Oneida reservation. 1939 Rand McNally Map., # 127 Exhibit A 1939 map prepared by the U.S. Department of Agriculture Bureau of Public Roads shows various Indian reservations in Wisconsin, but does not show an Oneida reservation., # 128 Exhibit Archiquette to Sen. Wiley, Jun. 12, 1957, # 129 Exhibit A Rural Indian Community in an Urban Setting, # 130 Exhibit Handbook on Wisconsin Indians, 1966, # 131 Exhibit Letters re: Oneida Tribe not having designated more funds for development of industrial park, Oct. 23, 1969–Nov. 21, 1969, # 132 Exhibit Provisional Overall Economic Development Plan for the Oneida Indian Reservation, 1966, # 133 Exhibit Indians of the Great Lakes Area, # 134 Exhibit History of the Oneida Indians, 1973, # 135 Exhibit Ethnic Identity and Boundary Maintenance in Three Oneida Communities, Campisi, Jack, # 136 Exhibit Statistical Data Planning, Oneida Reservation, 1976, # 137 Exhibit 1977–79 Overall Economic Development Plan, Oneida Tribe of Indians, # 138 Exhibit Handbook of North American Indians, William Sturtevant, # 139 Exhibit Oneida Timeline <https://exploreoneida.com/oneida-timeline/>, # 140 Exhibit Village of Hobart census data



<https://www.census.gov/quickfacts/fact/table/hobartvillagewisconsin/PST045217>, # 141 Exhibit Oneida 2033 Land Acquisition Plan, # 142 Exhibit Bani to Vanboxtel email re: Applefest, Sept. 30, 2015, # 143 Exhibit Vanboxtel email to DOT re: Applefest, Oct. 1, 2015, # 144 Exhibit Figueroa email to DOT re: Applefest, Sept. 6, 2016, # 145 Exhibit Applefest road closure map, # 146 Exhibit Van Lanen email to Vanboxtel re: Applefest Traffic, Sept. 14, 2016, # 147 Exhibit Vanboxtel email re: Applefest, Sept. 14, 2016, # 148 Exhibit Plaintiffs Answer and Affirmative Defenses to Counterclaims, # 149 Exhibit Skenandore email to Walschinski re: Kalihwisks article, # 150 Exhibit Kalih Sept. Doc., # 151 Exhibit Metoxen to Scofield re: Applefest info, Oct 20., # 152 Exhibit Big Apple Security Report 2016, # 153 Exhibit Expert report from Greenwald dated 11 15 17., # 154 Exhibit Expert report from Greenwald dated 12 15 17., # 155 Exhibit Expert report from Greenwald dated 01 15 18., # 156 Exhibit Expert report from Edmunds dated 11 15 17., # 157 Exhibit Expert report from Edmunds dated 01 15 18., # 158 Exhibit Expert report from Edmunds dated 12 15 17., # 159 Exhibit Expert report from Hoxie dated 11 15 17., # 160 Exhibit Expert report from Hoxie dated 12 15 17., # 161 Exhibit Expert report from Hoxie dated 01 15 18., # 162 Exhibit Special Indian Agent to Secretary of Interior, March 24, 1917, # 163 Exhibit 40 Cong. Rec 3599–3601, # 164 Exhibit Chairman of Board of Indian Commissioners to Board of Indian Commissioners, Jun. 30, 1922, # 165 Exhibit 7 Stat. 566, # 166 Exhibit Written responses from the Nation in responses to Villages first discovery requests., # 167 Exhibit Written responses from the Nation in responses to Villages second discovery requests., # 168 Exhibit Written responses from the Nation in responses to Villages third discovery requests., # 169 Exhibit Excerpts of Edmunds deposition 85, 109, 114., # 170 Exhibit Hoxie Tr. 106, 107, 108, 109, 115, 116, 124, 127, # 171 Exhibit Transcript excerpts of Maxam deposition, # 172 Exhibit Transcript excerpts of Mehojah deposition, # 173 Exhibit Transcript excerpts of Metoxen deposition, # 174 Exhibit Transcript excerpts of Hill deposition, # 175 Exhibit Transcript excerpts of Smith deposition, # 176 Exhibit Transcript excerpts of Van Boxtel deposition, # 177 Exhibit Transcript excerpts of Figueroa deposition, # 178 Exhibit Transcript excerpts of Danforth deposition, # 179 Exhibit Transcript excerpts of Bani deposition, # 180 Exhibit Expert report from Kiel dated 12 15 17., # 181 Exhibit Comm. of Indian Affairs Ann Rep 5 1892, # 182 Exhibit Comm. of Indian Affairs Ann Rep p. 3–4 1889, # 183 Exhibit Comm. of Indian Affairs Ann Rep VI 1890, # 184 Exhibit Comm. of Indian Affairs Ann Rep 5pXXXIX 1890, # 185 Exhibit Comm. of Indian Affairs Ann Rep v 1 p 3–9, # 186 Exhibit Comm. of Indian Affairs Ann Rep v 1 p IV X 1887, # 187 Exhibit Comm. of Indian Affairs Ann Rep v 1 p 26 1891, # 188 Exhibit Cong. Rec. 779 (Sen. Vest), # 189 Exhibit Cong. Rec. 782 (Sen. Coke), # 190 Exhibit Cong. Rec. 783–784 (Sen. Saunders), # 191 Exhibit Cong. Rec. 785–787 (Sen. Morgan), # 192 Exhibit Cong. Rec. 875–876 (Sens. Morgan and Hoar), # 193 Exhibit Cong. Rec. 877–878 (Sens. Hoar and Coke), # 194 Exhibit Cong. Rec. 881–882 (Sen. Brown), # 195 Exhibit Cong. Rec. 905 (Sen. Butler), # 196 Exhibit Cong. Rec. 907–908 (Sen. Call), # 197 Exhibit Cong. Rec. 939 (Sen. Teller), # 198 Exhibit Cong. Rec. 1064–1066 (Sen. Plumb), # 199 Exhibit Cong. Rec. 1002–1003 (Sen. Morgan), # 200 Exhibit Cong. Rec. 1028 (Sen. Hoar), # 201 Exhibit Cong. Rec. 1067 (Sens. Edmunds and Williams), # 202 Exhibit Sec. of Inter. Ann. Rep. vol. 1 p 4 1886, # 203 Exhibit Sec. of Inter. Ann. Rep. vol. 1 p 25–28 1885, # 204 Exhibit Sec. of Inter. Ann. Rep. vol. 1 p IV 1894, # 205 Exhibit Sec. of Inter. Ann. Rep. vol. 1 p xxix–xxxii 1888, # 206 Exhibit Chain of Title Search HB–1356, # 207 Exhibit Chain of Title Search HB–1391, # 208 Exhibit Chain of Title Search HB–1396, # 209 Exhibit 45–3 House Rpt 165



		<p>1886, # <u>210</u> Exhibit Annual Report Board of Indian Comm. 1881, # <u>211</u> Exhibit 48 Cong. S. 48 1883, # <u>212</u> Exhibit 48 Cong. S. 48 1884, # <u>213</u> Exhibit 15 Cong. Rec. 2235–2274, # <u>214</u> Exhibit 15 Cong. Rec. 2274–2318, # <u>215</u> Exhibit 48 Cong. S 48 May 31, 1884, # <u>216</u> Exhibit 16 Cong. Rec. 204–228, # <u>217</u> Exhibit 16 Cong. Rec. 559–607, # <u>218</u> Exhibit 49 Cong S. 54 Dec 8, 1885, # <u>219</u> Exhibit 48 H Rpt 2247, # <u>220</u> Exhibit Annual Report pf Indian Comm. 1885, # <u>221</u> Exhibit 49 Cong. S. 54 Jan 28, 1886, # <u>222</u> Exhibit 17 Cong. Rec. 1630–1635, # <u>223</u> Exhibit 17 Cong. Rec. 1762–1764, # <u>224</u> Exhibit 49 Cong S. 54 Apr. 20, 1886, # <u>225</u> Exhibit 32 Cong. Rec. 189, # <u>226</u> Exhibit 32 Cong. Rec. 224, # <u>227</u> Exhibit 49 Cong S. 54 Dec. 17, 1886, # <u>228</u> Exhibit 49 H Rpt 1835, # <u>229</u> Exhibit 32 Cong. Rec. 772, # <u>230</u> Exhibit 32 Cong. Rec. 534, # <u>231</u> Exhibit 32 Cong. Rec. 772, # <u>232</u> Exhibit 32 Cong. Rec. 972, # <u>233</u> Exhibit 24 Stat. 388, # <u>234</u> Exhibit The Dawes Act and Allotment of Indians, D.S. Otis, # <u>235</u> Exhibit Uncle Sams Stepchildren, Priest, # <u>236</u> Exhibit Americanizing the American Indians, # <u>237</u> Exhibit The Assault on Indian Tribalism, # <u>238</u> Exhibit Documents of United States Indian Policy)(Kowalkowski, Frank)</p>
07/19/2018	<u>90</u>	<p>STIPULATION <i>Joint Stipulated Statement of Material Facts</i> by Village of Hobart WI. (Attachments: # <u>1</u> Exhibit Special Event Ordinance, # <u>2</u> Exhibit Sept. 2, 2016 Letter, # <u>3</u> Exhibit Sept. 7, 2016 WIDOT Application, # <u>4</u> Exhibit Sept. 21, 2016 Citation)(Thome, Matthew)</p>
07/19/2018	<u>91</u>	<p>STATEMENT by Village of Hobart WI of <i>Proposed Undisputed Material Facts in Support of Defendant's Motion for Summary Judgment</i>. (Kowalkowski, Frank)</p>
07/19/2018	<u>92</u>	<p>DECLARATION of Paul R. Jacquart <i>in Support of Plaintiff Oneida Nation's Motion for Summary Judgment</i> (Attachments: # <u>1</u> Exhibit 1 – Defendants Supplemental Objections and Responses to Plaintiffs First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions, # <u>2</u> Exhibit 2 – Fredrick E. Hoxie, Ph.D., A History of Relations Between The Oneida Nation and The United States of America 1776–1934 (Nov. 15, 2017), # <u>3</u> Exhibit 3 – Fredrick E. Hoxie, Ph.D., Historical Perspectives on Emily Greenwalds History of the Oneida Land Base, 1889–1936 (Dec. 15, 2017), # <u>4</u> Exhibit 4 – Fredrick E. Hoxie, Ph.D., Reply to Response to Reports of R. David Edmunds and Frederick E. Hoxie, by Emily Greenwald (Jan. 15, 2018), # <u>5</u> Exhibit 5 – R. David Edmunds, Ph.D., The Oneida Indian Reservation in Wisconsin – Its Land, Its People, and its Governance, 1838–1938 (Nov. 15, 2017), # <u>6</u> Exhibit 6 – R. David Edmunds, Ph.D., Rebuttal of History of the Oneida Land Base, 1889–1936, Written by Emily Greenwald (Dec. 15, 2017), # <u>7</u> Exhibit 7 – R. David Edmunds, Ph.D., Reply to Response to Reports of R. David Edmunds and Frederick E. Hoxie, Submitted by Emily Greenwald (Jan. 15, 2018), # <u>8</u> Exhibit 8 – Deposition of Fredrick Hoxie, Ph.D., # <u>9</u> Exhibit 9 – Deposition of R. David Edmunds, Ph.D., # <u>10</u> Exhibit 10 – Treaty with the Menominee, 1831, signed Feb. 8, 1831, # <u>11</u> Exhibit 11 – Treaty with the Menominee, 1831, signed Feb. 17, 1831, # <u>12</u> Exhibit 12 – Treaty with the Menominee, 1832, signed Oct. 27, 1832, # <u>13</u> Exhibit 13 – Treaty with the Oneida, 1838, signed Feb. 3, 1838, # <u>14</u> Exhibit 14 – John Suydam Survey, Map of Oneida Reservation, Dec. 1838, # <u>15</u> Exhibit 15 – John Suydam, Field Notes of Survey of Oneida Reserve, Dec. 15, 1838, # <u>16</u> Exhibit 16 – Letter from Commissioner of Indian Affairs J.D.C. Atkins to the Secretary of the Interior (Sep. 16, 1887), # <u>17</u> Exhibit 17 – Letter from Secretary of Interior John W. Noble to President Benjamin Harrison (May 20, 1889), # <u>18</u> Exhibit 18 – excerpt from FIFTY–EIGHTH ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS TO THE SECRETARY OF THE</p>

INTERIOR (1889) (ARCIA), # 19 Exhibit 19 – excerpt from SIXTIETH ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS TO THE SECRETARY OF THE INTERIOR (1891) (ARCIA), # 20 Exhibit 20 – excerpt from ANNUAL REPORTS OF THE COMMISSIONER OF INDIAN AFFAIRS TO THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1900, # 21 Exhibit 21 – excerpt from 1903 ARCIA, # 22 Exhibit 22 – excerpt from 1904 ARCIA, # 23 Exhibit 23 – excerpt from 1905 ARCIA, # 24 Exhibit 24 – excerpt from 1906 ARCIA, # 25 Exhibit 25 – excerpt from 1907 ARCIA, # 26 Exhibit 26 – excerpt from 1908 ARCIA, # 27 Exhibit 27 – excerpt from 1909 ARCIA, # 28 Exhibit 28 – excerpt from 1911 ARCIA, # 29 Exhibit 29 – excerpt from 1912 ARCIA, # 30 Exhibit 30 – excerpt from 1913 ARCIA, # 31 Exhibit 31 – excerpt from 1914 ARCIA, # 32 Exhibit 32 – excerpt from 1915 ARCIA, # 33 Exhibit 33 – excerpt from 1916 ARCIA, # 34 Exhibit 34 – excerpt from 1917 ARCIA, # 35 Exhibit 35 – excerpt from 1920 ARCIA, # 36 Exhibit 36 – Laws of Wisconsin, Ch. 339 (1903), # 37 Exhibit 37 – Letter from Superintendent of Oneida Indian School Joseph C. Hart to the Commissioner of Indian Affairs (Mar. 16, 1908), # 38 Exhibit 38 – Letter from Secretary Franklin K. Lane to the President of the United States (May 3, 1918), # 39 Exhibit 39 – 68–a CONG. REC. 5876–77 (1927) (Letter from Commissioner Chas. A. Burke to Henry Doxtater and Joseph Smith (Jan. 6 16, 1926)), # 40 Exhibit 40 – Letter from Acting Commissioner of Indian Affairs to the Secretary of the Interior (Jan. 22, 1909), # 41 Exhibit 41 – Letter from O.M. McPherson, Special Indian Agent and Member Competency Board, to the Secretary of the Interior (Mar. 24, 1917), # 42 Exhibit 42 – Executive Order No. 2,326 (May 19, 1917), # 43 Exhibit 43 – Letter from Commissioner of Indian Affairs Cato Sells to Major James McLaughlin, Special Inspector, Department of the Interior, and Frank E. Brandon, Special Supervisor, Indian Service (Jul. 24, 1917), # 44 Exhibit 44 – Letter from Inspector James McLaughlin, et al. to the Secretary of the Interior (Aug. 31, 1917), # 45 Exhibit 45 – Executive Order No. 2,856 (May 4, 1918), # 46 Exhibit 46 – Executive Order No. 4,600 (Mar. 1, 1927), # 47 Exhibit 47 – Tally of Voting by State and Reservation on IRA, 1935, John Collier Papers, Yale University, New Haven, Connecticut., # 48 Exhibit 48 – Letter from Tomah Indian School Superintendent Frank Christy to the Commissioner of Indian Affairs (Dec. 7, 1935), # 49 Exhibit 49 – Criticisms of Wisconsin Oneida Constitution, Felix Cohen Papers, Yale University, New Haven Connecticut (Dec. 14, 1935), # 50 Exhibit 50 – Letter from Judge Morris Wheelock, et al. to the Commissioner of Indian Affairs (Nov. 14, 1936), # 51 Exhibit 51 – Letter from Tomah Indian School Superintendent Frank Christy to the Commissioner of Indian Affairs (Nov. 16, 1936), # 52 Exhibit 52 – UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS, CONSTITUTION AND BY-LAWS FOR THE ONEIDA TRIBE OF INDIANS OF WISCONSIN APPROVED DECEMBER 21, 1936, # 53 Exhibit 53 – Letter from Wisconsin Attorney General Bronson C. La Follette to Wisconsin Secretary of Department of Natural Resources Carroll Besadny (Aug. 21, 1981), # 54 Exhibit 54 – Trust Deed conveying property with Brown County Tax Parcel Nos. HB–1355 and HB–1355–1 to the United States of America in trust for the Oneida Tribe of Indians of Wisconsin (approved by United States of America on Mar. 6, 1996), # 55 Exhibit 55 – Deed conveying property with Brown County Parcel Identification Nos. HB–1343, HB–1349, HB–1350, and HB–1356 to the Oneida Tribe of Indians of Wisconsin (recorded Oct. 17, 1996), # 56 Exhibit 56 – Trust Deed conveying property with Brown County Parcel Identification Nos. 6H–766–1 and 6H–765–2–1 to the United States of America in trust for the

		<p>Oneida Tribe of Indians of Wisconsin (accepted by United States of America on Sep. 29, 2006), # <u>57</u> Exhibit 57 – Trust Deed conveying property with Brown County Tax Parcel Nos. 6H-765-1, 6H-765-1-1, and 6H-765-2 to the United States of America in trust for the Oneida Tribe of Indians of Wisconsin (accepted by United States of America on Sep. 29, 2006), # <u>58</u> Exhibit 58 – Trust Deed conveying property with Brown County Parcel Identification Nos. HB-745, HB-746, HB-746-3, HB-753, and HB-753-2 to the United States of America in trust for the Oneida Tribe of Indians of Wisconsin (accepted by United States of America on Jul. 26, 2006), # <u>59</u> Exhibit 59 – excerpt from 1927 ARCIA, # <u>60</u> Exhibit 60 – Letter from Commissioner of Indian Affairs Crawford to Hon. J. R. Poinsett, Secretary of War (Feb. 7, 1839), # <u>61</u> Exhibit 61 – Act Granting Right-of-Way Across the Oneida Reservation, Act of Mar. 3, 1871, # <u>62</u> Exhibit 62 – Charles L. Davis, Supervisor of Indian Schools, Report on Complaints of Amos Baird and Paul Doxtator (Oct. 16, 1909), # <u>63</u> Exhibit 63 – Basic Memorandum on Drafting Tribal Constitutions, Section 4, Felix Cohen Papers, Yale University, New Haven Connecticut (1934), # <u>64</u> Exhibit 64 – Letter from Assistant Commissioner William Zimmerman, Jr. to Superintendent Frank Christy (Mar. 6, 1936), # <u>65</u> Exhibit 65 – Letter from Tomah Indian School Superintendent Frank Christy to the Commissioner of Indian Affairs (Mar. 30, 1936), # <u>66</u> Exhibit 66 – Letter from the Commissioner of Indian Affairs to the Secretary of the Interior (Apr. 23, 1936), # <u>67</u> Exhibit 67 – Letter from Secretary of the Interior Harold L. Ickes to Tomah Indian School Superintendent Frank Christy (May 6, 1936), # <u>68</u> Exhibit 68 – excerpt from 1919 ARCIA, # <u>69</u> Exhibit 69 – excerpt from THEODORE H. HAAS, UNITED STATES INDIAN SERVICE, TEN YEARS OF TRIBAL GOVERNMENT UNDER I.R.A. (1947), # <u>70</u> Exhibit 70 – excerpt from 1919 ARCIA)(Locklear, Arlinda)</p>
07/19/2018	<u>93</u>	STATEMENT OF FACT by Oneida Nation . (Locklear, Arlinda)
07/19/2018	<u>94</u>	BRIEF in Support filed by Village of Hobart WI re <u>84</u> MOTION for Summary Judgment . (Kowalkowski, Frank)
07/19/2018	<u>95</u>	FILED IN ERROR – DISREGARD. <del>MOTION for Summary Judgment by Oneida Nation.</del> (Locklear, Arlinda) Modified on 7/20/2018 (mac).
07/19/2018	<u>96</u>	BRIEF in Support filed by Oneida Nation re <u>85</u> MOTION for Summary Judgment . (Locklear, Arlinda)
07/24/2018	<u>97</u>	LETTER from Frank Kowalkowski . (Kowalkowski, Frank)
09/05/2018	<u>98</u>	NOTICE of Appearance by Derek J Waterstreet on behalf of Village of Hobart WI. Attorney(s) appearing: Derek J. Waterstreet (Waterstreet, Derek)
09/05/2018	<u>99</u>	Expedited MOTION for Leave to File <i>Amended Answer</i> by Village of Hobart WI. (Attachments: # <u>1</u> Attachment – Defendant's Amended Answer and Affirmative Defenses to Plaintiff's Amended Complaint)(Kowalkowski, Frank)
09/05/2018	<u>100</u>	STATEMENT OF FACT by Village of Hobart WI of <i>Additional Proposed Undisputed Material Facts in Opposition to Plaintiff's Motion for Summary Judgment.</i> (Kowalkowski, Frank)
09/05/2018	<u>101</u>	RESPONSE (non-motion) by Village of Hobart WI to <i>Plaintiff's Statement of Proposed Undisputed Material Facts.</i> (Kowalkowski, Frank) Modified event on 9/6/2018 (lh).

09/05/2018	<u>102</u>		BRIEF in Opposition filed by Village of Hobart WI re <u>85</u> MOTION for Summary Judgment . (Kowalkowski, Frank)
09/05/2018	<u>103</u>		DECLARATION of Frank W. Kowalkowski <i>in Response to Plaintiff's Motion for Summary Judgment</i> (Attachments: # <u>1</u> Exhibit Exhibit 1 – Transcript of treaty negotiations held 8/30/1836–9/6/1836 re Menominee Indians, # <u>2</u> Exhibit Exhibit 2 – 12/5/1837 letter from Cyrus Curtis to J.W. Edwards, # <u>3</u> Exhibit Exhibit 3 – 07/17/1838 letter from seven Oneida Chiefs to Superintendent Henry Dodge, # <u>4</u> Exhibit Exhibit 4 – 10/23/1838 Petition to President by Oneida Indians, # <u>5</u> Exhibit Exhibit 5 – Annual Report of the Commissioner of Indian Affairs 1838, # <u>6</u> Exhibit Exhibit 6 – November 21, 1838 letter from R.H. Gillet to commission of Indian Affairs regarding possible new treaty with Oneida, # <u>7</u> Exhibit Exhibit 7 – December 4, 1838 letter from Commissioner Crawford to R.H. Gillet authorizing him to proceed with treaty negotiations., # <u>8</u> Exhibit Exhibit 8 – December 17, 1838 treaty signed by R.H. Gillet and Oneida representatives., # <u>9</u> Exhibit Exhibit 9 – January 1839 letter from R.H. Gillet to commissioner of Indian Affairs regarding 12/17/1838 treaty., # <u>10</u> Exhibit Exhibit 10 – January 25, 1839 letter from Commissioner Crawford to J.R. Poinsett, # <u>11</u> Exhibit Exhibit 11 – March 1839 letter from Commissioner Crawford to J.R. Poinsett indicating proposed December 1838 treaty was not approved., # <u>12</u> Exhibit Exhibit 12 – Transcript of Emily Greenwald 03/28/18 deposition., # <u>13</u> Exhibit Exhibit 13 – Excerpt from deposition transcript of Van Noie, # <u>14</u> Exhibit Exhibit 14 – Excerpt from deposition transcript of Kola, # <u>15</u> Exhibit Exhibit 15 – Excerpt from deposition transcript of Mehoja, # <u>16</u> Exhibit Exhibit 16 – Excerpt of deposition transcript of Maxam, # <u>17</u> Exhibit Exhibit 17 – List of Tribally Owned Tracts – Oneida)(Kowalkowski, Frank) (Exhibits contain illegible pages)(lh).
09/05/2018	<u>104</u>		BRIEF in Opposition filed by Oneida Nation re <u>84</u> MOTION for Summary Judgment . (Locklear, Arlinda)
09/05/2018	<u>105</u>		DECLARATION of Paul R. Jacquart <i>in Opposition to Defendant's Motion for Summary Judgment</i> (Attachments: # <u>1</u> Exhibit 1 – Emily Greenwald, Ph.D., History of the Oneida Land Base, 1889–1936 (Nov. 15, 2017), # <u>2</u> Exhibit 2 – Douglas M. Kiel, Ph.D., A History of the Oneida Reservation Boundaries, 1934–1984 (Dec. 15, 2017), # <u>3</u> Exhibit 3 – Emily Greenwald, Ph.D., Rebuttal Report (Jan. 15, 2018), # <u>4</u> Exhibit 4 – excerpt from the transcript of the Deposition of Cristina Danforth, taken in the above-captioned action on Apr. 3, 2018., # <u>5</u> Exhibit 5 – excerpt from the transcript of the Deposition of Randy Bani, taken in the above-captioned action on Jan. 25, 2018, # <u>6</u> Exhibit 6 – excerpt from the transcript of the Deposition of Angel Van Noie, taken in the above-captioned action on Jan. 29, 2018, # <u>7</u> Exhibit 7 – excerpt from the transcript of the Deposition of Emily Greenwald, Ph.D., taken in the above-captioned action on Mar. 28, 2018, # <u>8</u> Exhibit 8 – Brief for Petitioners, Nebraska v. Parker, 136 S. Ct. 1072 (Nov. 16, 2015), # <u>9</u> Exhibit 9 – Brief for the United States, Nebraska v. Parker, 136 S. Ct. 1072 (Dec. 16, 2015), # <u>10</u> Exhibit 10 – Brief for Amicus Curiae Village of Hobart, Wisconsin and Pender Public Schools in Support of Petitioners, Nebraska v. Parker, 136 S. Ct. 1072 (Nov. 23, 2015), # <u>11</u> Exhibit 11 – Brief of Petitioner, Carpenter v. Murphy, No. 17–1107 (U.S. S. Ct. Jul. 23, 2018), # <u>12</u> Exhibit 12 – Brief for the United States as Amicus Curiae Supporting Petitioner, Carpenter v. Murphy, No. 17–1107 (U.S. S. Ct. Jul. 23, 2018), # <u>13</u> Exhibit 13 – excerpt from ANNUAL REPORTS OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR ENDED JUNE 30, 1900 (ARCIA), # <u>14</u> Exhibit 14 – Letter from Joseph C. Hart,



Superintendent Oneida Indian School to the Commissioner of Indian Affairs (Aug. 8, 1906), # 15 Exhibit 15 – Letter from Joseph C. Hart, Superintendent Oneida Indian School to the Commissioner of Indian Affairs (Oct. 4, 1906), # 16 Exhibit 16 – United States Department of Commerce and Labor, Bureau of the Census, Thirteenth Census of the United States: 1910 – Population, State of Wisconsin, County of Brown, Town of Hobart, # 17 Exhibit 17 – United States Department of Commerce, Bureau of the Census, Fifteenth Census of the United States: 1930 – Population, State of Wisconsin, County of Brown, Town of Hobart, # 18 Exhibit 18 – Letter from Joseph C. Hart, Superintendent of Oneida Indian School, to the Commissioner of Indian Affairs (Jan. 14, 1911), # 19 Exhibit 19 – Letter from Joseph C. Hart, Superintendent of Oneida Indian School, to the Commissioner of Indian Affairs (Mar. 1912), # 20 Exhibit 20 – Letter from John C. Hart, Superintendent of Oneida Indian School, to the Commissioner of Indian Affairs (May 13, 1914), # 21 Exhibit 21 – excerpt from 1911 4 ARCIA, # 22 Exhibit 22 – excerpt from 1912 ARCIA, # 23 Exhibit 23 – excerpt from 1915 ARCIA, # 24 Exhibit 24 – Letter from Solicitor to Secretary of the Interior (Aug. 1920), # 25 Exhibit 25 – Warranty Deed conveying abandoned Oneida Indian Boarding School Plat (Rerecorded Dec. 1, 1928), # 26 Exhibit 26 – Letter from Superintendent of Keshena Indian Agency to Commissioner of Indian Affairs (Apr. 11, 1921), # 27 Exhibit 27 – Letter from Chief Clerk C.F. Hauke to Benjamine J. Powless (Jan. 20, 1921), # 28 Exhibit 28 – Letter from Chief Clerk C.F. Hauke to Edgar A. Allen, Superintendent of Keshena School (Mar. 30, 1921), # 29 Exhibit 29 – Letter from Superintendent Edgar A. Allen to the Commissioner of Indian Affairs (Jan. 20, 1922), # 30 Exhibit 30 – Letter from Chief Clerk C. F. Hauke to Secretary of the Interior (Oct. 1, 1925), # 31 Exhibit 31 – Letter from Chief Clerk C.F. Hauke to Wilard Archiquette (Jan. 25, 1926), # 32 Exhibit 32 – Letter from Assistant Commissioner E.B. Meritt to William Donner, Superintendent of Keshena Agency (Apr. 13, 1926), # 33 Exhibit 33 – Letter from C.F. Hauke to Elijah John, Jr. (Aug. 7, 1926), # 34 Exhibit 34 – Letter from Commissioner C.J. Rhoads to Oscar Archiquette (Nov. 13, 1931), # 35 Exhibit 35 – excerpt from 1931 ARCIA, # 36 Exhibit 36 – United States Department of the Interior, Office of Indian Affairs, Census Recapitulation Sheet (Apr. 1, 1931), # 37 Exhibit 37 – Letter from Wisconsin Attorney General Bronson C. La Follette to Department of Natural Resources Secretary Carroll Besadny (Aug. 21, 1981), # 38 Exhibit 38 – Memorandum by Attorney Naomi Woloshin to Wisconsin Attorney General Bronson C. La Follette (May 31, 1984), # 39 Exhibit 39 – Bureau of Indian Affairs, 1932 Indian Census Roll, Census of the Oneida Reservation (Apr. 1, 1932), # 40 Exhibit 40 – Bureau of Indian Affairs, 1932 Annual Statistical Report, # 41 Exhibit 41 – excerpt from 1932 ARCIA, # 42 Exhibit 42 – excerpt from Survey of Conditions of the Indians of the United States (1932), # 43 Exhibit 43 – Letter from Law Offices of Staidl, Schmiede & Hoeffel to Office of Indian Affairs (Apr. 4, 1933), # 44 Exhibit 44 – Letter from Commissioner John Collier to Andrew Beechtree (Aug. 7, 1933), # 45 Exhibit 45 – Letter from Assistant Commissioner William Zimmerman, Jr. to Secretary of the Interior (Oct. 11, 1933), # 46 Exhibit 46 – Letter from Commissioner C.J. Rhoads to Electa S. Metoxen (Jan. 31, 1933), # 47 Exhibit 47 – Annual Check Being Paid to Oneida, DE PERE JOURNAL DEMOCRAT, Dec. 7, 1933, # 48 Exhibit 48 – excerpt from GREEN BAY PRESS GAZETTE, Jan. 2, 1930, # 49 Exhibit 49 – Louis Klin, Oneida, Freezes to Death on His Way Home, DE PERE JOURNAL DEMOCRAT, Feb. 21, 1929, # 50 Exhibit 50 – Oneida, DE PERE JOURNAL DEMOCRAT, Nov. 3, 1927, # 51 Exhibit 51 – Bureau of Indian Affairs, 1934 Annual Statistical Report, # 52 Exhibit 52 – Problems of Oneidas

Will be Tribal Meeting Topic, GREEN BAY PRESS-GAZETTE, Jun. 28, 1938, # 53 Exhibit 53 – excerpt from APPLETON POST-CRESCENT, May 28, 1937, # 54 Exhibit 54 – More Cars Needed for Reservation Trip, APPLETON POST-CRESCENT, Jun. 21, 1937, # 55 Exhibit 55 – Bureau of Indian Affairs, 1935 Annual Statistical Report for the Oneida Indians, # 56 Exhibit 56 – Letter from Commissioner of Indian Affairs to Secretary of the Interior (Sep. 15, 1939), # 57 Exhibit 57 – Letter from Commissioner to Attorney George Baird (Oct. 30, 1939), # 58 Exhibit 58 – Letter from Commissioner to Sen. Robert M. La Follette, Jr. (Feb. 19, 1941), # 59 Exhibit 59 – Letter from Assistant Secretary C. Girard Davidson to Attorney General of the United States (Aug. 12, 1946), # 60 Exhibit 60 – Memorandum of Information from Assistant Secretary of the Interior Dale E. Doty to Hon. Frederick J. Lawton, Director of Bureau of the Budget (Aug. 15, 1950), # 61 Exhibit 61 – Letter from Assistant Secretary of the Interior Harry R. Anderson to Hon. Eugene P. Foley, Assistant Secretary of Department of Commerce (May 16, 1966), # 62 Exhibit 62 – Tomah Indian Agency, Overall Reservation Program for the Oneida Community, Mar. 29, 1944, # 63 Exhibit 63 – United States Department of the Interior, Bureau of Indian Affairs, Map of "Minneapolis Area 1952", # 64 Exhibit 64 – excerpt from Joyce M. Erdman, HANDBOOK ON WISCONSIN INDIANS (1966), # 65 Exhibit 65 – excerpt from Joyce M. Erdman, HANDBOOK ON WISCONSIN INDIANS (1966), # 66 Exhibit 66 – excerpt from Joyce M. Erdman, HANDBOOK ON WISCONSIN INDIANS (1966), # 67 Exhibit 67 – Bureau of Indian Affairs, STATISTICAL DATA FOR PLANNING: ONEIDA RESERVATION (Dec. 1975), # 68 Exhibit 68 – Letter from Chief Clerk C.F. Hauke to Secretary of the Interior (Jul. 21, 1923), # 69 Exhibit 69 – Letter from Chief Clerk C.F. Hauke to Superintendent of Keshena School E.A. Allen (Apr. 7, 1925), # 70 Exhibit 70 – Letter from Kenesha Indian Agency Superintendent to Commissioner of Indian Affairs (Feb. 26, 1930), # 71 Exhibit 71 – Letter from Assistant Commissioner William Zimmerman, Jr. to Secretary of the Interior (Apr. 7, 1937), # 72 Exhibit 72 – Tomah Indian Agency, Minutes of Staff Meeting (Dec. 11, 1941), # 73 Exhibit 73 – George Hendrix and Peter Walz, Report of Field Trip by George Hendrix and Peter Walz to the Oneida Reservation, October 1956, # 74 Exhibit 74 – Oneida Indians Incorporated, Resolution of March 18, 1935, # 75 Exhibit 75 – CONSTITUTION AND BY-LAWS FOR THE ONEIDA TRIBE OF INDIANS OF WISCONSIN (Approved Dec. 21, 1936), # 76 Exhibit 76 – Oneida Tribe of Indians of Wisconsin, Executive Committee, Resolution of November 23, 1940, # 77 Exhibit 77 – Oneida Tribe of Indians of Wisconsin, General Tribal Council, Ordinance No. IV – Membership (Feb. 6, 1942), # 78 Exhibit 78 – Oneida Tribe of Indians of Wisconsin, Minutes of meeting held by Tribal Council (Executive Board) (May 21, 1958), # 79 Exhibit 79 – Oneida Tribe of Indians of Wisconsin, Minutes of meeting held by Executive Council (Jun. 23, 1958), # 80 Exhibit 80 – Oneida Indians Inc., Minutes of meeting held by Executive Committee (May 13, 1959), # 81 Exhibit 81 – Oneida Tribe of Indians of Wisconsin, Resolution # 3-22-88-B To Regulate the Conduct and Operation of all Lottery Games on the Oneida Indian Reservation (March 22, 1988), # 82 Exhibit 82 – Oneida Tribe of Indians of Wisconsin, Resolution # 6-10-88-C (Jun. 10, 1988), # 83 Exhibit 83 – Oneida Tribe of Indians of Wisconsin, Resolution # 04-21-99A, HUD Rural Housing and Economic Development Resolution (Apr. 21, 1999), # 84 Exhibit 84 – Oneida Tribe of Indians of Wisconsin, Business Committee, Resolution 5-31-00-B, Authorization to Enter into Indian Health Service Agreements for Sanitation Facilities (May 31, 2000), # 85 Exhibit 85 – Oneida Tribe of Indians of Wisconsin, BC Resolution 10-12-11-B, Rescinding and Replacing B Resolution



		#2-20-08-C Regarding Government-to-Government Relations with the Village of Hobart (Oct. 12, 2011), # <u>86</u> Exhibit 86 – Letter Commissioner of Indian Affairs Chas. H. Burke (Dec. 8, 1921))(Locklear, Arlinda) (Exhibits contain illegible pages) (lh).
09/05/2018	<u>106</u>	STATEMENT OF FACT by Oneida Nation <i>Responses to Defendant's Statement of Proposed Undisputed Material Facts</i> . (Locklear, Arlinda)
09/06/2018		NOTICE of Electronic Filing Error re <u>101</u> Statement of Fact filed by Village of Hobart WI. The incorrect event was chosen. AND <u>103</u> Declaration, the description of the attachments contains duplicate text. In the future, when attaching documents to the main document you may select a description from the category drop-down list but then you should not repeat that word in the description text box. For example, if you choose Exhibit from the drop-down list, then you may simply type A in the description text box and Exhibit A will appear on the docket. These documents do not need to be re-filed. Please refer to the policies and procedures for electronic case filing and the user manual found at <a href="http://www.wied.uscourts.gov">www.wied.uscourts.gov</a> (lh)
09/07/2018	<u>107</u>	TEXT ONLY ORDER GRANTING <u>99</u> Expedited MOTION for Leave to File an Amended Answer, filed by Village of Hobart WI, signed by Chief Judge William C Griesbach on 09/07/2018. The Clerk is directed to detach and efile the Amended Answer attached at [99-1]. (cc: all counsel)(Griesbach, William)
09/10/2018	<u>108</u>	AMENDED ANSWER to <u>10</u> Amended Complaint by Village of Hobart WI.(mac)
09/24/2018	<u>109</u>	NOTICE by United States of <i>Potential Amicus Curiae Participation and Motion to File any Amicus Curiae Brief by October 12, 2018</i> (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Setting Deadline for Any US Amicus Brief)(Ross, Rebecca) Modified on 9/25/2018 (mac).
09/25/2018	<u>110</u>	ORDER granting re <u>109</u> MOTION for Participation and Amicus Curiae brief. Amicus Curiae brief due by 10/2018, any response is due 30 days thereafter. (cc: all counsel)(Griesbach, William)
09/26/2018	<u>111</u>	ANSWER to Counterclaim re <u>108</u> filed by Oneida Nation. (Locklear, Arlinda)
09/26/2018	<u>112</u>	MOTION for Reconsideration by Village of Hobart WI. (Kowalkowski, Frank)
09/26/2018	<u>113</u>	BRIEF in Support filed by Village of Hobart WI re <u>112</u> MOTION for Reconsideration of <i>Order Granting the United States' Motion to File an Amicus Curiae Brief by October 12, 2018</i> . (Kowalkowski, Frank)
09/26/2018	<u>114</u>	NOTICE of Appearance by Rebecca Michelle Ross on behalf of United States. Attorney(s) appearing: Rebecca M. Ross (Ross, Rebecca)
09/27/2018	<u>115</u>	TEXT ONLY ORDER DIRECTING the Government to respond on or before October 5, 2018 to <u>112</u> MOTION for Reconsideration, filed by Village of Hobart WI, signed by Chief Judge William C Griesbach on 09/27/2018. (cc: all counsel)(Griesbach, William)
09/28/2018	<u>116</u>	REPLY BRIEF in Support filed by Oneida Nation re <u>85</u> MOTION for Summary Judgment . (Locklear, Arlinda)
09/28/2018	<u>117</u>	RESPONSE filed by Oneida Nation re <u>100</u> Statement of Fact of <i>Additional Proposed Undisputed Material Facts in Opposition to Plaintiff's Motion for</i>

			<i>Summary Judgment</i> (Locklear, Arlinda)
09/28/2018	<u>118</u>		DECLARATION of Paul R. Jacquart in Support of Plaintiff Oneida Nation's Summary Judgment Reply (Attachments: # <u>1</u> Exhibit 1 – LAURENCE M. HAUPTMAN & L. GORDON MCLESTER III, CHIEF DANIEL BREAD AND THE ONEIDA NATION OF INDIANS OF WISCONSIN (2002), # <u>2</u> Exhibit 2 – LAURENCE M. HAUPTMAN & L. GORDON MCLESTER III, CHIEF DANIEL BREAD AND THE ONEIDA NATION OF INDIANS OF WISCONSIN (2002), # <u>3</u> Exhibit 3 – Memorial to Congress by Oneida Indians (Feb. 8, 1844), # <u>4</u> Exhibit 4 – ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS 1839 (1839 ARCIA), # <u>5</u> Exhibit 5 – Opinion of the Commission, Oneida Tribe of Indians of Wisconsin v. United States, 12 Indian Cl. Comm. 1 (Decided Dec. 6, 1962), # <u>6</u> Exhibit 6 – Cong. Globe, 40th Cong., 2d Sess., Ex. Doc. No. 72, Letter of the Secretary of the Interior (Jul. 6, 1868), # <u>7</u> Exhibit 7 – Brief for the United States, United States v. Cook, 81 U.S. 591 (1873), # <u>8</u> Exhibit 8 – Defendants Brief and Argument, United States v. Cook, 81 U.S. 591 (1873))(Jacquart, Paul)
09/28/2018	<u>119</u>		REPLY BRIEF in Support filed by Village of Hobart WI re <u>84</u> MOTION for Summary Judgment . (Kowalkowski, Frank)
09/28/2018	<u>120</u>		DECLARATION of Frank W. Kowalkowski <i>in Support of Defendant's Reply in Support of Motion for Summary Judgment</i> (Attachments: # <u>1</u> Exhibit 1– Oct. 1, 1927 DePere Journal Democrat(partially illegible), # <u>2</u> Exhibit 2– Oct. 27, 1927 DePere Journal Democrat, # <u>3</u> Exhibit 3 – July 8, 1929 Survey of Conditions of the Indians of the United States, # <u>4</u> Exhibit 4– Dec. 21, 1931 Green Bay Press Gazette, # <u>5</u> Exhibit 5– Act of Congress of Aug. 15, 1894, ch. 290, 28 Stat. 286, # <u>6</u> Exhibit 6– June 30, 1939 ARCIA, # <u>7</u> Exhibit 7– July 20, 2018 Letter from Paul Jacquart, # <u>8</u> Exhibit 8– A Rural Indian Community in an Urban Setting)(Kowalkowski, Frank) Modified exhibit illegible on 10/1/2018 (lh).
10/03/2018	<u>121</u>		RESPONSE to Motion filed by United States re <u>112</u> MOTION for Reconsideration . (Ross, Rebecca)
10/04/2018	<u>122</u>		ORDER denying <u>112</u> Motion for Reconsideration. (cc: all counsel) (Griesbach, William)
10/11/2018	<u>123</u>		Unopposed MOTION for Leave to File <i>an Amicus Curiae Memorandum of No More Than 50 Pages</i> by United States. (Attachments: # <u>1</u> Text of Proposed Order)(Ross, Rebecca)
10/12/2018	<u>124</u>		ORDER granting <u>123</u> Motion for Leave to File Amicus Curiae Brief. (cc: all counsel) (Griesbach, William)
10/12/2018	<u>125</u>		NOTICE of Appearance by Daron T Carreiro on behalf of United States. Attorney(s) appearing: Daron T. Carreiro (Carreiro, Daron)
10/12/2018	<u>126</u>		BRIEF in Support filed by United States re <u>85</u> MOTION for Summary Judgment . (Ross, Rebecca)
10/17/2018			NOTICE of Oral Argument on <u>84</u> , <u>85</u> MOTIONS for Summary Judgment : Motion Hearing set for 11/29/2018 01:30 PM in Courtroom 201, 125 S. Jefferson St., Green Bay, WI 54301 before Chief Judge William C Griesbach. (cc: all counsel)(tlf)
11/12/2018	<u>127</u>		

		RESPONSE filed by Village of Hobart WI re <u>85</u> MOTION for Summary Judgment <i>in Response to Brief Filed by United States</i> (Kowalkowski, Frank)
12/03/2018	<u>128</u>	Minute Entry for proceedings held before Chief Judge William C Griesbach: Motion Hearing held on 12/3/2018 re <u>84</u> MOTION for Summary Judgment filed by Village of Hobart WI, <u>85</u> MOTION for Summary Judgment filed by Oneida Nation. The Court takes the matter under advisement. (Tape #112918 and Court Reporter: Rich Ehrlich) (cav)
12/27/2018	<u>129</u>	TRANSCRIPT of Hearing on Motion for Summary Judgment held on November 29, 2018 before Judge William C. Griesbach Court Reporter/Transcriber Richard Ehrlich, Contact at (414) 290–2642. Transcripts may be purchased using the Transcript Order Form found <u>on our website</u> or viewed at the court public terminal. <b>NOTICE RE REDACTION OF TRANSCRIPTS:</b> If necessary, within 7 business days each party shall inform the Court of their intent to redact personal identifiers by filing a Notice of Intent to Redact. Please read the policy located on our website <u>www.wied.uscourts.gov</u> Redaction Statement due 1/22/2019. Redacted Transcript Deadline set for 1/31/2019. Release of Transcript Restriction set for 4/1/2019. (Ehrlich, Richard)
03/29/2019	<u>130</u>	DECISION AND ORDER signed by Chief Judge William C Griesbach on 3/28/19. The Nations <u>85</u> motion for summary judgment is therefore GRANTED–IN–PART and DENIED–INPART and the Villages <u>84</u> motion for summary judgment is accordingly GRANTED. The Clerk is directed to set the matter for a telephone conference to address the need for further proceedings as well as the form of the judgment to be entered. (This opinion may be subject to further editing.) (cc: all counsel) (Griesbach, William) Modified text on 3/29/2019 (lh).
03/29/2019		NOTICE of Hearing: (cc: all counsel) Telephone Conference set for 4/26/2019 10:00 AM in By Telephone before Chief Judge William C Griesbach to address further proceedings and judgment form. The court will initiate the call. Counsel are to provide the telephone number at which they can be reached (direct dial preferred) at least two days prior to the telephone conference. In the event counsel are unavailable at the scheduled time of the telephone conference, the conference may be rescheduled and counsel may be required to appear in person. Please provide your telephone number to the Office of the Clerk at <u>wied_clerks_gb@wied.uscourts.gov(lh)</u>
04/10/2019		NOTICE of RESCHEDULED Hearing: (cc: all counsel) Telephone Conference previously set for 4/26/2019 is RESCHEDULED to 4/18/2019 02:00 PM By Telephone before Chief Judge William C Griesbach. The court will initiate the call. Counsel are to provide the telephone number at which they can be reached (direct dial preferred) at least two days prior to the telephone conference. In the event counsel are unavailable at the scheduled time of the telephone conference, the conference may be rescheduled and counsel may be required to appear in person. Please provide your telephone number to the Office of the Clerk at <u>wied_clerks_gb@wied.uscourts.gov(cav)</u>
04/12/2019	<u>131</u>	BILL OF COSTS Proposed by Village of Hobart WI (Attachments: # <u>1</u> Information Sheet Attachments to Bill of Costs)(Kowalkowski, Frank)
04/15/2019	<u>132</u>	STAYED SEE <u>133</u> Minute Order – BRIEFING LETTER re Bill of Costs to Parties (cav) Modified on 4/18/2019 (cav).

04/17/2019			NOTICE by the Clerk. The telephone conference scheduled for 4/18/2019 is converted to an AT&T Conference call. Please see the instructions to participate in the conference call. Instructions: Participants are to call in to 1-888-273-3658, using Access Code 4416978, and Security Code 1234. Please contact the Office of the Clerk at 920-455-7381 if you should have any questions. (cav)
04/18/2019	<u>133</u>		Minute Order. Proceedings held before Chief Judge William C Griesbach: Status Conference held on 4/18/2019. The parties will submit a proposed judgment to the Court. The briefing on the bill of costs is stayed pending appeal. (Tape #041819.) (cav)
04/24/2019	<u>134</u>		PROPOSED Judgment filed by Village of Hobart WI. (Kowalkowski, Frank) Modified on 4/24/2019 to correct filing attorney (tlf).
04/24/2019	<u>135</u>		PROPOSED Judgment filed by Oneida Nation. (Jacquart, Paul)
04/24/2019	<u>136</u>		OBJECTIONS by Village of Hobart WI to <i>Plaintiff's Proposed Judgment</i> . (Kowalkowski, Frank)
04/26/2019	<u>137</u>		JUDGMENT entered by Deputy Clerk; approved by Chief Judge William C Griesbach on 4/26/2019. Plaintiff's claims for declaratory and injunctive relief are denied and Defendant's counterclaim is dismissed. (cc: all counsel)(tlf)
05/22/2019	<u>138</u>		NOTICE OF APPEAL by Oneida Nation. Filing Fee PAID \$505, receipt number AWIEDC-3116946 (cc: all counsel) (Jacquart, Paul)
05/22/2019	<u>139</u>		Docketing Statement by Oneida Nation re <u>138</u> Notice of Appeal (cc: all counsel) (Jacquart, Paul)
05/23/2019	<u>140</u>		Attorney Cover Letter re: <u>138</u> Notice of Appeal (lh)

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

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ONEIDA NATION,

Plaintiff,

v.

Case No. 16-CV-1217

VILLAGE OF HOBART, WISCONSIN,

Defendant.

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**NOTICE OF APPEAL**

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Notice is hereby given that Oneida Nation, Plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment of the United States District Court for the Eastern District of Wisconsin, entered in this action on April 26, 2019 (ECF No. 137), as well as all prior interlocutory orders, including the District Court's March 28, 2019 Decision and Order, which was filed March 29, 2019, (ECF No. 130).

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Dated this 22nd day of May 2019.

Respectfully submitted,

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

---

ONEIDA NATION,

Plaintiff,

v.

Case No. 16-CV-1217

VILLAGE OF HOBART, WISCONSIN,

Defendant.

---

**DOCKETING STATEMENT OF PLAINTIFF-APPELLANT ONEIDA NATION**

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**I. JURISDICTION OF THE DISTRICT COURT.**

The District Court for the Eastern District of Wisconsin had subject-matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1362. The Plaintiff, Oneida Nation (the “Nation”), is a federally recognized Indian tribe. The Defendant, the Village of Hobart, Wisconsin (the “Village”), is an incorporated municipality in Brown County, Wisconsin. The dispute underlying this case arises from the Village’s attempts to enforce a municipal ordinance against the Nation to regulate the Nation’s conduct of an annual event on the lands within the boundaries of its Reservation.

The Nation maintains a government-to-government relationship with the United States and has a governing body duly recognized by the Secretary of the Interior. 84 Fed. Reg. No. 22, at 1202 (“Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin”)), Feb. 1, 2019. The Nation asserted two claims arising under the

Constitution, laws and treaties of the United States, including but not limited to Art. I, § 8, cl. 3, Art. II, § 2, cl. 2 and Art. VI of the United States Constitution; the Treaty with the Oneidas, February 3, 1838, 7 Stat. 566 (the “1838 Treaty”); the Indian Reorganization Act of 1934, 25 U.S.C. §§ 5123, *et seq.*; and the federal common law. The Nation’s first claim sought a judgment declaring that federal preemption under Art. VI, cl. 2 of the United States Constitution prohibits the Village from enforcing its ordinance against the Nation within the boundaries of its Reservation, which constitutes Indian country. The Nation’s second claim sought preliminary and permanent injunctive relief to enjoin the Village from enforcing its ordinance against the Nation in violation of the Nation’s federally protected rights of self-governance and sovereign immunity.

The Village asserted two claims against the Nation, each of which purportedly arose for purposes of subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 2201. The Village’s first claim sought a judgment declaring that the Village was entitled to impose its ordinance on the Nation. The Village’s second claim sought a money judgment in the amount of the citation the Village issued to the Nation for its alleged violation of the Village’s ordinance on September 17, 2016.

## II. JURISDICTION OF THE COURT OF APPEALS.

The Court of Appeals for the Seventh Circuit has jurisdiction over this appeal under 28 U.S.C. § 1291. This appeal is taken from the final judgment of the District Court for the Eastern District of Wisconsin (the Honorable William C. Greisbach

presiding) entered on April 26, 2019 (ECF No. 137.) The judgment stayed enforcement of the Village's ordinance against the Nation for its conduct of the annual event on the same terms previously agreed upon by the parties, pending an appeal and final determination thereon. The District Court previously entered a Decision and Order on the parties' cross-motions for summary judgment on March 28, 2019 (filed March 29, 2019) ("Summary Judgment Order"). (*See* ECF No. 130.)

In its Summary Judgment Order, the District Court held that the Nation's Reservation, constituting Indian country, was created in the 1838 Treaty but that the Nation's Reservation had been diminished from its original boundaries to "those portions of the original Reservation held in trust by the United States for the benefit of the Nation, as well as any allotments still under trust patents." (*Id.* at 37.) The District Court further held that, based on the foregoing holding, the Village is entitled to enforce its ordinance against the Nation for the annual event on land that is not held by the United States in trust for the Nation. (*Id.* at 36.) Finally, the District Court held that the Nation's sovereign immunity bars the Village's counterclaim for money judgment. (*Id.* at 37.)

Based on the holdings it made in its Summary Judgment Order, the District Court entered final judgment. (ECF No. 137.) The District Court's final judgment denied the Nation's claims for declaratory and injunctive relief. (*Id.*) The District Court's final judgment dismissed the Village's counterclaim for money judgment and dismissed the

case with prejudice. (*Id.*) No motion for a new trial or to alter or amend the District Court's final judgment under Fed. R. Civ. P. 59 or any other motion that would or is claimed to toll the time within which to appeal the District Court's final judgment has been filed in this case. The Nation filed a timely notice to appeal the District Court's April 26, 2019 final judgment on May 22, 2019.

### III. STATEMENT OF PRIOR OR RELATED APPELLATE PROCEEDINGS.

There are no prior or related appellate proceedings.

Dated this 22nd day of May 2019.

Respectfully submitted,

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*Counsel for Plaintiff Oneida Nation*



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

ONEIDA NATION,

Plaintiff,

v.

Case No. 16-C-1217

VILLAGE OF HOBART, WISCONSIN,

Defendant.

---

**DECISION AND ORDER**

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This case represents another episode in the ongoing dispute between the Oneida Nation and the Village of Hobart over land use regulation and control. The Oneida Nation filed this action for declaratory and injunctive relief challenging the legal authority of the Village to enforce its Special Events Permit Ordinance, Chapter 250 of the Village Code, against the Nation, its officers, and its employees within the Village, which lies entirely within the 1838 boundaries of the Oneida Reservation. The action arises out of the Village's effort to enforce the Ordinance by requiring the Nation to obtain a permit for its annual Big Apple Fest. The Nation argues that as a federally recognized Indian tribe, it is immune from state and local regulations within its reservation and not subject to the Ordinance. The Village, on the other hand, challenges the Nation's claim that the boundaries of the original Oneida Reservation remain intact and contends that it is entitled to enforce the Ordinance to the extent necessary to protect the health, safety, and welfare of its residents and the public. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362.

Presently before the court are the parties' cross-motions for summary judgment. The Nation moves for summary judgment, claiming that its reservation was created by its Treaty of February



3, 1838, with the United States and that the original Reservation boundaries remain intact. It thus follows, the Nation contends, that the Nation and its officials and employees are not subject to the Ordinance as a matter of law and the Village should be enjoined from attempting to enforce it against them. The Village filed a cross-motion for summary judgment in which it argues that the 1838 Treaty under which the Oneida received their land did not create a reservation. Even if the Treaty did create a reservation, the Village argues that a 1933 decision by this court held that the Oneida Reservation was disestablished and that the Nation is collaterally estopped from relitigating its status. Alternatively, the Village argues that, even aside from the 1933 decision, this court should find that the Oneida Reservation has been disestablished or, at a minimum, diminished. The United States filed a brief in support of the Nation as *amicus curiae*. The motions have been fully briefed and argued by the parties.

Having fully considered the arguments set forth, I conclude that the Treaty of 1838 created a reservation that has not been disestablished. But the Nation's reservation has been diminished such that the Village may enforce the Ordinance on those lands not held in trust by the United States for the benefit of the Nation. In addition, I conclude that the Nation's sovereign immunity forecloses the Village's counterclaim for monetary damages. Accordingly, and for the reasons set forth below, the Nation's motion will be only partially granted as to the Village's counterclaim for damages. The Village's motion for summary judgment dismissing the Nation's claims for declaratory and injunctive relief will be granted. Summary judgment on the Village's counterclaim for declaratory relief that the Ordinance may be enforced as to covered activities on fee land owned by the Nation, as well as activities on public roadways, rights-of-way, and neighboring properties is also granted.

## BACKGROUND

### A. The Present Dispute

The Nation is a federally-recognized Indian tribe and is listed in the Notice of the Indian Entities Recognized and Eligible to Receive Services from the United States Department of the Interior, Bureau of Indian Affairs. Joint Stipulated Statement of Material Fact (SSOMF) ¶ 1, ECF No. 86; Pl.'s Statement of Proposed Undisputed Material Facts (PSUMF) ¶ 1, ECF No. 93. The Village is an incorporated municipality in Brown County, Wisconsin and is located wholly within the boundaries of the area set aside for the Nation by the Treaty of February 3, 1838. SSOMF ¶ 2; PSUMF ¶ 2. According to U.S. Census Bureau population estimates, as of July 1, 2017, the total Village population was 8,896, of which "White alone" residents comprise 79.9% and "American Indian and Alaska Native alone" comprise 12.2%. Def.'s Statement of Proposed Undisputed Material Facts (DSUMF) ¶ 127, ECF No. 91.

The Nation has conducted an annual event known as the Big Apple Fest since 2009. PSUMF ¶ 52. The event is held on the Nation's Cultural Heritage Grounds and Apple Orchards and includes activities such as apple picking, an apple pie contest, an apple press demonstration, a petting zoo, children's games, face painting, cardboard cow painting, hay rides, horse demonstrations, pottery and corn husk doll making, basket weaving, Indian and non-Indian food and produce vendors, and tours of the preserved historic Oneida homes. *Id.* ¶ 53. The 2016 Apple Fest drew as many as 8,128 attendees to the event. DSUMF ¶ 140.

Richard Figueroa, the Nation's Special Events Coordinator in the Tourism Division, is responsible for planning the Big Apple Fest. Figueroa coordinates the event with the Oneida Compliance Division, the Oneida Risk Management Department, the Oneida Environmental Health

and Safety Division, Oneida Conservation, the Oneida Utilities Department, the Oneida Public Works Department, Oneida Security, and the Oneida Police Department to ensure compliance with the Nation's laws. PSUMF ¶ 56. The Nation conducts the Big Apple Fest in conformity with its laws, specifically the Emergency Management and Homeland Security Ordinance; the Oneida Safety Law; the Oneida Vendor Licensing Ordinance; the Oneida Food Service Code; the Nation's On-Site Waste Disposal Ordinance; the Recycling and Solid Waste Disposal Law; the Sanitation Ordinance; and Oneida Tribal Regulation of Domestic Animals Ordinance. *Id.* ¶ 55.

On March 1, 2016, the Village adopted amended Ordinance No. 03-2016, Special Events Permit Ordinance. *Id.* ¶ 17; Chapter 250, Village of Hobart Municipal Code, ECF No. 86-1. The Ordinance provides:

No person shall conduct a special event within the Village of Hobart without first having obtained a rental and/or special event permit. A special event permit may be issued to any person that the Village Administrator or his/her designee find appropriate.

ECF No. 86-1 at 3. The Ordinance defines "person" as "[a]ny person, firm, partnership, association, corporation, company, governmental entity, or organization of any kind." *Id.*

On September 2, 2016, counsel for the Village informed the Nation that it needed to apply for a permit under the Ordinance or the Village would enforce the Ordinance's penalty provisions. SSOMF ¶ 18. Although it submitted an Application by Municipality for Permission to Detour State Trunk Highway Traffic to the Wisconsin Department of Transportation and Brown County Public Works Director, *id.* ¶ 20, the Nation declined to apply for a permit from the Village and, on September 9, 2016, filed a motion for a preliminary injunction seeking to enjoin the Village from requiring that the Nation's 2016 Big Apple Fest comply with the provisions of the Ordinance. The

court denied the Nation's motion on September 13, 2016, finding that the Nation did not demonstrate that it would suffer irreparable harm since the Village agreed it would not seek to prevent the event from going on. The Nation held the Big Apple Fest as planned on September 17, 2016. *Id.* ¶ 19.

Some activities associated with the 2016 Big Apple Fest occurred on non-trust land owned by the Nation in fee simple, including parking and apple picking. DSUMF ¶ 134. During the Apple Fest, security officers, six Oneida Nation police officers, and a registered nurse were on site. PSUMF ¶¶ 58, 60. Two officers of the Hobart-Lawrence Police Department attended the 2016 Big Apple Fest. SSOMF ¶ 22. The Nation contracted with a third-party vendor to place road closure barricades for the event at the intersection of North Overland Road and Riverside Drive and to block both lanes of traffic for the portion of North Overland Road between the North Overland Road/Highway 54 intersection. DSUMF ¶¶ 135–36.

On September 21, 2016, the Village's Chief of Police issued Citation No. 7R80F51TJS against the Nation for failing to act in accordance with the Ordinance. The Nation filed an amended complaint on September 28, 2016, asserting that it, its officials, and its employees are immune from the Ordinance in the conduct of special events on the Nation's trust land and Reservation and that the Village lacks the authority to enforce the Ordinance against the Nation, its officials, and its employees. It seeks to enjoin the Village's attempt to impose the Ordinance on the Nation, its officials, and its employees and to enforce the Ordinance through citation or municipal court proceedings. It also seeks to enjoin the Village from enforcing Citation No. 7R80F51TJS against the Nation.

While the present dispute between the parties arises out of these recent events, its resolution requires consideration of the Nation's history in Wisconsin and the various shifts in federal Indian policy in the United States over the last 150 years. For this reason, both parties sought a significant period of time for discovery and have submitted extensive documentation and briefing in support of their respective positions. Recognizing the importance of the issues raised to both parties, the court begins its analysis with a consideration of the history to which both appeal.

### **B. Historical Background**

The Oneida Tribe of Indians was one of six Iroquois Nations living in the area that later became the State of New York. In the years following the Revolutionary War, encroachment by the new Americans on their ancestral lands, as well as other factors, gave rise to a plan for the Oneida to move west to the Wisconsin Territory. On February 8, 1831, the United States entered into a treaty with the Menominee Tribe, which was already located in the Wisconsin Territory, under which the Menominee agreed to cede a tract of land to be set apart as a home to the several tribes of the New York Indians, including the Oneida. The tract of land was to be apportioned among the New York tribes "so as not to assign any tribe a greater number of acres than may be equal to one hundred for each soul actually settled upon the lands." PSUMF ¶ 3 (quoting Treaty with the Menominee, 1931, signed Feb. 8, 1831, 7 Stat. 342, ECF No. 92-10 at 4). The Treaty stated that ceded lands "are to be held by those tribes, under such tenure as the Menomonee [sic] Indians now hold their lands, subject to such regulations and alteration of tenure, as Congress and the President of the United States shall, from time to time, think proper to adopt." *Id.* ¶ 4 (quoting Treaty with the Menominee, 1931, signed Feb. 8, 1831, 7 Stat. 342, ECF No. 92-10 at 4). The Treaty with the Menominee was amended on February 17, 1831, to extend the three-year deadline by which the

New York tribes were to relocate to the ceded Menominee lands. *Id.* ¶ 6. On October 27, 1832, the United States entered into a third treaty with the Menominee to amend the February 8, 1831 Treaty to alter the boundaries of the tract ceded to the United States for the benefit of the New York tribes. The October 27, 1832 treaty provided that the terms of the February 8, 1831 Treaty, as amended, were otherwise confirmed. *Id.* ¶ 7.

Then, on February 3, 1838, the Oneida entered into a treaty with the United States in which it ceded to the United States their title and interest in the 1831 Menominee cession in return for reserving “to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual, and the lines of which shall be so run as to include all their settlements and improvements in the vicinity of Green Bay.” *Id.* ¶ 8 (quoting Treaty with the Oneida, 1838, signed Feb. 3, 1838, 7 Stat. 566, Arts. 1 and 2, ECF No. 92-13 at 3). The number of Oneida who had emigrated to the Duck Creek area totaled 654, resulting in a tract of land consisting of approximately 65,400 acres. DSUMF ¶ 1. The United States agreed to survey the reserved tracts as soon as practicable. PSUMF ¶ 9. In December 1838, John Suydam surveyed the tract of land set aside in the Treaty of 1838. *Id.* ¶ 10. The map he created of the survey, labeled “Oneida Reservation,” consisted of land in what would later become parts of Brown and Outagamie Counties in the State of Wisconsin. ECF No. 92-14. Commissioner of Indian Affairs Crawford wrote to Secretary of War Poinsett on February 7, 1839, advising that the terms of the Treaty of 1838 had been carried out. PSUMF ¶ 11.

Federal Indian policy changed dramatically as the nation grew, and in the late 19th century, Congress terminated the treaty-making process with individual tribes, 25 U.S.C. § 71, and moved toward a policy of allotment and assimilation. In 1887, Congress enacted the General Allotment



Act, commonly referred to as the Dawes Act, 25 U.S.C. § 331, *et seq.*, the purpose of which was the eventual assimilation of tribal members into the general population and the elimination of Indian reservations through the allotment of the land in severalty to the Indians residing on those reservations. The allotted lands were to be held in trust by the United States for a period of at least 25 years, after which Indian allottees were to receive fee patents, which removed all restraints on alienation and allowed transfer of the land to non-Indians. *See* 25 U.S.C. § 348. Once allottees received their patents, they were to “have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside.” Act of February 8, 1887, 24 Stat. 388 at 390. It was believed that, within a generation or two, “the tribes would dissolve, their reservations would disappear, and individual Indians would be absorbed into the larger community of white settlers.” *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 335 (1998) (citing Hearings on H.R. 7902 before the House Committee on Indian Affairs, 73rd Cong., 2d Sess., 428 (1934)).

On September 16, 1887, Commissioner of Indian Affairs J.D.C. Atkins recommended to Secretary of the Interior John Noble that “the President be asked to authorize allotments in severalty to be made to the Indians on the Oneida Reservation, in Wisconsin, under the Act of February 8, 1887.” PSUMF ¶ 14 (quoting ECF No. 92-17); DSUMF ¶ 5. The Secretary concurred and relayed the recommendation to President Benjamin Harrison in May 1889. PSUMF ¶ 17; DSUMF ¶ 5. The allotment of the Oneida Reservation to tribal members began in 1889. By 1891, with the exception of approximately eighty acres reserved for boarding school and day school purposes, as well as the small allotments of land for use in the satisfaction of additional claims to entitlement, a schedule containing 1,530 allotments with no surplus land remaining was submitted for approval. PSUMF ¶¶ 19, 22; DSUMF ¶ 6. In accordance with the provisions of the Dawes Act, trust patents dated

June 13, 1892, were issued to Oneida allottees, to remain in trust for twenty-five years. PSUMF ¶ 21; DSUMF ¶ 8.

After the individual tribal members, including members of the Oneida Tribe, received their allotments, but before the twenty-five-year trust period expired, they repeatedly petitioned the federal government for legislation granting the individual members fee simple title to their land. In response to such requests, Congress amended the Dawes Act through the Burke Act, 34 Stat. 182, 25 U.S.C. § 349, on May 8, 1906. The Burke Act gave the Secretary of the Interior the discretion to immediately issue fee patents to competent Indian allottees before the expiration of the twenty-five-year trust period required under the Dawes Act. Section 6 of the Burke Act provided that, upon issuance of the patent conveying the allotment in fee simple, “all restrictions as to sale, incumbrance, or taxation of said land [would] be removed.” 25 U.S.C. § 349. During the same year, Congress passed an act making “appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes.” Act of June 21, 1906, 34 Stat. 325 ch. 3504. The June 21, 1906 Act included a provision authorizing the Secretary of the Interior to issue fee patents to fifty-six named Oneida allottees and, in the Secretary’s discretion, “to issue a patent in fee to any Indian of the Oneida Reservation in Wisconsin for the lands heretofore allotted him.” *Id.* The issuance of the patents would operate as a “removal of all restrictions as to the sale, taxation, and alienation of the lands so patented.” *Id.*

In response to the allotment process, the Wisconsin state legislature in 1903 enacted legislation creating the towns of Hobart and Oneida in the area within the boundaries of the Oneida reservation in Brown County and Outagamie County. DSUMF ¶ 37. In 1908, the Brown County

Board of Supervisors vacated the town of Hobart as created in 1903 and reorganized the town from “all that portion of the Oneida reservation, situated in Brown County, Wisconsin.” *Id.* ¶ 38 (quoting ECF No. 89-43).

Over the years that followed, Congress authorized the sale of trust patents held by non-competent allottees for their benefit, 34 Stat. 1015, at 1018, and authorized the issuance of fee patents to allotment purchasers, 35 Stat. 444, resulting in the issuance of fee patents for much of the allotted land. The twenty-five-year trust period for those allotments that remained in trust was set to expire on June 12, 1917. DSUMF ¶ 33. On March 24, 1917, a three-person competency commission recommended that fee patents be issued immediately to ten named Oneida allottees, that fee patents be issued to an additional twenty-two named Oneida allottees upon the expiration of the trust period on June 12, 1917, and that the trust period for all other allottees still holding allotments in trust on the area set aside in the Treaty of 1838 be extended. PSUMF ¶ 29; DSUMF ¶ 32. By 1917, over 50,000 acres of the 65,400-acre reservation fell out of Indian ownership. DSUMF ¶ 30. On May 4, 1918, President Woodrow Wilson signed an executive order extending the trust period by nine years for thirty-five named Oneida allottees. PSUMF ¶ 34; DSUMF ¶ 35. President Calvin Coolidge signed an executive order on March 1, 1927, extending the trust period for twenty-one named Oneida allottees. PSUMF ¶ 38; DSUMF ¶ 36. By the early 1930s, the Oneida Tribe owned less than 90 acres of the approximately 65,400 acres within the original boundaries of the area set aside in the 1838 treaty. DSUMF ¶ 98. Several hundred additional acres of individual allotments continued to be held in trust. *Id.* At least 95% of the land was no longer owned by Indians. *Id.* ¶ 95.

In 1934, Congress once again changed federal policy toward tribes through the passage of the Indian Reorganization Act (IRA), 25 U.S.C. § 450, *et seq.* The IRA put an end to the allotment process, 25 U.S.C. § 461; continued periods of trust upon Indian lands and restrictions on alienation indefinitely, 25 U.S.C. § 462; authorized the Secretary of the Interior to restore to tribal ownership the remaining surplus lands of any Indian reservation previously opened for public sale, acquire through purchase or otherwise any lands within or without existing reservations, and place them in trust for the purpose of providing land for Indians, 25 U.S.C. §§ 463, 465; and authorized tribes to adopt constitutions and by-laws, and organize their own governments under the supervision of the Secretary, 25 U.S.C. § 476. In 1936, less than two years after the enactment of the IRA, the Nation adopted its Constitution and Bylaws. PSUMF ¶ 49.

### LEGAL STANDARD

Summary judgment is appropriate when the moving party shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The fact that the parties filed cross-motions for summary judgment does not alter this standard. In evaluating each party's motion, the court must "construe all inferences in favor of the party against whom the motion under consideration is made." *Metro. Life Ins. Co. v. Johnson*, 297 F.3d 558, 561–62 (7th Cir. 2002) (quoting *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 692 (7th Cir. 1998)). The party opposing the motion for summary judgment must "submit evidentiary materials that set forth specific facts showing that there is a genuine issue for trial." *Siegel v. Shell Oil Co.*, 612 F.3d 932, 937 (7th Cir. 2010) (citations omitted). "The nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* Summary judgment is properly entered against a party "who fails to make a showing

sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Austin v. Walgreen Co.*, 885 F.3d 1085, 1087–88 (7th Cir. 2018) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

## ANALYSIS

### A. The 1838 Treaty and the Creation of a Reservation

The court begins with the parties' dispute regarding the origin and creation of the Oneida Reservation. In 1831, the United States entered into a treaty with the Menominee Tribe to acquire a 500,000-acre tract of land to be set apart as a home to several New York tribes, including the Oneida Tribe of Indians. This tract of land was to be apportioned among the emigrating New York tribes "so as not to assign any tribe a greater number of acres than may be equal to one hundred for each soul actually settled upon the lands." ECF No. 92-10 at 4. The treaty indicated further that the ceded lands were to be held by the New York Indian tribes "under such tenure as the Menomonee [sic] Indians now hold their lands, subject to such regulations and alteration of tenure as Congress and the President of the United States shall, from time to time, think proper to adopt." *Id.* Although the treaty was amended twice to extend the three-year deadline by which the New York tribes were to relocate to the ceded lands and to alter the boundaries of the ceded tract of land, the original terms of the 1831 treaty were otherwise confirmed.

The United States entered into a treaty with the Oneida on February 3, 1838. The Oneida ceded to the United States its interest in the 1831 Menominee land set apart for them in return for reserving "to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual." ECF No. 92-13 at 3. The land was subsequently surveyed by the United States. The survey, labeled "Oneida Reservation," consisted of 65,400 acres of land. The Nation asserts that this treaty created a reservation held in common by the Tribe. The

Village maintains that the Treaty provides for the reservation of individual 100-acre tracts for each member, rather than one reservation held in common by the Tribe.

In determining whether a reservation has been created, courts “ask whether the area has been validly set apart for the use of the Indians as such, under the superintendence of the Government.” *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991) (citation omitted). When a party asserts that a treaty created a reservation, the “treaty is to be construed as the Indians would have understood it, as disclosed by the practices and customs of the Indians at the time the treaty was negotiated, and by the history of the treaty, the negotiations that preceded it, and the practical construction given the treaty by the parties.” *United States v. Top Sky*, 547 F.2d 486, 487 (9th Cir. 1976) (internal citations omitted); *see also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999) (noting that courts must look “beyond the written words to the larger context that frames the treaty, the negotiations, and the practical construction adopted by the parties”).

Here, the history leading up to the Treaty of 1838 demonstrates that the United States, the Menominee, and the Oneida engaged in negotiations regarding the relocation of the Oneida from New York to the ceded Menominee territory. The Treaty of 1838 provides that “there shall be reserved to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual.” ECF No. 92-13 at 3. The Village argues that the reference in the Treaty of 1838 to “a tract of land containing one hundred (100) acres for each individual” means that the Treaty allotted land to individual members of the tribe rather than creating a reservation held in common. Yet, a reading of the Treaty in its entirety and consideration of the surrounding circumstances indicates that the language simply conveys how the United States



would calculate the amount of land that would be apportioned to the Oneida Tribe from the 500,000 acres of ceded Menominee land set apart for the New York tribes. Indeed, the 1831 Menominee Treaty stated that the ceded land was to be apportioned among the tribes “so as not to assign any tribe a greater number of acres than may be equal to one hundred for each soul actually settled upon the lands” and that those tracts would be held “as the Menomonee [sic] Indians hold their lands,” which the 1831 Menominee treaty described as a “reservation.” ECF No. 92-10 at 4. Although it is true that certain individual members of the Oneida Tribe sought to trade their participation in the Oneida Reservation in favor of more land elsewhere, the principal tribal leaders intended to establish a permanent home for the Tribe in Wisconsin and ultimately entered into a treaty with the United States to do so. The United States’ December 1838 survey labels a single tract of land, totaling 65,400 acres, as the Oneida Reservation. Both the United States and the Tribe agreed that the survey satisfactorily reflected the parties’ understanding of the Treaty. In short, the language of the 1838 Treaty, the history of the Treaty, the negotiations that preceded it, and the practical construction given the Treaty by the parties compel the conclusion that the lands were ceded to the Oneida Tribe as a reservation and not as individual allotments to its members. For these reasons, the court holds that the Treaty of 1838 created the Oneida Reservation.

## **B. Current Boundaries of the Reservation**

### **1. Issue Preclusion**

The Village contends that, even if the Treaty of 1838 created a reservation, Congress disestablished, or at the very least, diminished, the Oneida Reservation by legislative act. In support of its disestablishment argument, the Village argues at the outset that the Nation is collaterally estopped from relitigating the status of the Oneida Reservation by virtue of the 1933 decision of this

court which held that the Reservation was discontinued and ceased to exist. *See Stevens v. County of Brown* (E.D. Wis. Nov. 3, 1933) (unpublished decision), ECF No. 89-45. The court's decision in *Stevens*, the Village contends, has preclusive effect in this case.

Collateral estoppel, or issue preclusion, prevents the relitigation of issues resolved in an earlier lawsuit. "Issue preclusion . . . bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (internal quotation marks omitted). The doctrine "has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979) (citation omitted). The prerequisites for applying the doctrine are satisfied when "(1) the issue sought to be precluded is the same as an issue in the prior litigation; (2) the issue must have been actually litigated in the prior litigation; (3) the determination of the issue must have been essential to the final judgment; and (4) the party against whom estoppel is invoked must have been fully represented in the prior action." *Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (citation omitted).

The Nation maintains that it is not bound by the decision in *Stevens* because the Village has not satisfied the elements of issue preclusion. More specifically, the Nation asserts that it was not a party to the *Stevens* case and that there is no identity of issues between the issue in this case and the issue decided in *Stevens*. In *Stevens*, a plaintiff class consisting of Oneida tribal members and representatives brought an action against the counties of Brown and Outagamie as well as the townships of Hobart and Oneida to recover local property taxes that had been levied and assessed

on their lands as well as the lands of other Oneida tribal members. The plaintiffs also sought an injunction against any further assessment, levy, or collection of property taxes. The defendants moved to dismiss the case on four grounds: (1) the plaintiffs did not pursue the remedy outlined in Wis. Stat. § 74.73; (2) more than twenty years had elapsed since the creation of the towns without questioning their creation by a writ of certiorari or other appropriate proceeding as prescribed in the state statute; (3) the Oneida Reservation was lawfully discontinued; and (4) the doctrine of laches barred the plaintiffs from questioning the legality of the organization of the towns and their assumption of authority over the Oneida Reservation. ECF No. 89-45 at 3. The court concluded that, because the reservation had been discontinued through the implementation of the Dawes Act, the plaintiffs were bound by the state statute governing the procedure to recover taxes.

The Village asserts that, even though the Tribe was not a named party in the litigation, the complaint in that action indicates that the plaintiffs were duly authorized and empowered to act for and on behalf of the Oneida Tribe. But the fact that the lawsuit was brought by members of the Tribe, rather than the Tribe itself, suggests that the Tribe was not fully represented in *Stevens* and did not itself participate in the proceedings. Indeed, there is no evidence that the Tribe exercised a sufficient degree of control in *Stevens*. See 18A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 4451 (2017) (“Lesser measures of participation without control do not suffice.”).

In addition, issue preclusion does not apply here because this case raises different factual and legal questions than those raised in *Stevens*. “Identity of the issue is established by showing that the same general legal rules govern both cases and that the facts of both cases are indistinguishable as measured by those rules.” WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 4425. Again,

the question raised in *Stevens* was whether individual members of the Tribe were required to pay local property taxes upon the issuance of fee patents for their allotments. The underlying issue in this case is whether the Nation is subject to the regulations of a local municipality in the conduct of its special events. Although similar issues regarding the reservation's status were raised in *Stevens*, that action was not a comprehensive adjudication of the true status of the reservation. In addition, the issue of whether the Nation itself is immune from local regulatory authority was not litigated in *Stevens* to any extent. *See Bernstein v. Bankert*, 733 F.3d 190 (7th Cir. 2013) (holding issue preclusion did not apply because the issues involved facts that were not "identical in all material aspects"). Because this case presents different facts and legal foundation, issue preclusion does not apply. The court will therefore turn to the Village's alternative argument that, even apart from the 1933 decision in *Stevens*, the Oneida Reservation was disestablished or diminished.

## **2. Disestablishment or Diminishment**

At its core, the dispute between the Village and the Nation is over whether all or only some of the original Oneida Reservation constitutes "Indian country." "Although the term 'Indian country' has been used in many senses, it is most usefully defined as country within which Indian laws and customs and federal laws relating to Indians are generally applicable." COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 3.04[1], at 183 (Nell, Jessup Newton ed. 2012). "Generally speaking, primary jurisdiction over land that is Indian country rests with the federal Government and the Indian tribe inhabiting it, not with the States." *Alaska v. Native Vill. of Venetie*, 522 U.S. 520, 527 n.1 (1998).

In 1948, Congress codified the definition of Indian country. That definition, which includes three different categories of land, reads as follows:

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1151. Although located within the federal criminal code, “the Court has recognized that it generally applies as well to questions of civil jurisdiction.” *DeCoteau v. Dist. Cty. Court for Tenth Judicial Dist.*, 420 U.S. 425, 427 n.2 (1975).

Prior to the enactment of § 1151, land within a reservation’s boundaries was held to be no longer Indian country when Indian title was extinguished. *See, e.g., Clairmont v. United States*, 225 U.S. 551 (1912) (vacating conviction for selling or giving intoxicating liquor to Indian on ground that railroad right-of-way, where offense occurred, had been conveyed in fee to railroad and thus was no longer Indian country). But § 1151 “abrogated this understanding of Indian country and, with respect to reservation lands, preserves federal and tribal jurisdiction even if such lands pass out of Indian ownership.” *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994, 1007 (8th Cir. 2010) (citing *Seymour v. Superintendent of Wash. State Penitentiary*, 368 U.S. 351, 357–58 (1962)); *see also Solem v. Bartlett*, 465 U.S. 463, 468 (1984) (“Only in 1948 did Congress uncouple reservation status from Indian ownership, and statutorily define Indian country to include lands held in fee by non-Indians within reservation boundaries.”). Thus, the question before the court is whether the Oneida Reservation was disestablished or diminished before § 1151 became effective.

“Although the terms ‘diminished’ and ‘disestablished’ have at times been used interchangeably,” as the court explained in *Yankton Sioux Tribe v. Gaffey*, 188 F.3d 1010, 1017 (8th

Cir. 1999), “disestablishment generally refers to the relatively rare elimination of a reservation while diminishment commonly refers to the reduction in size of a reservation.” The Nation correctly observes that “[b]ecause the Reservation was created by a treaty, only Congress can diminish or disestablish it.” Pl.’s Br. in Supp. of Mot. for Summ. J., ECF No. 96, at 36. This follows from the Supremacy Clause of the United States Constitution, under which the Constitution, laws, and treaties of the United States are the supreme law of the land and control over the enactments of states and local governments. U.S. Const. art. VI.

Moreover, courts will not lightly conclude that an Indian reservation has been disestablished or diminished. *DeCoteau*, 420 U.S. at 444 (“This Court does not lightly conclude that an Indian reservation has been terminated.”); *Solem*, 465 U.S. at 470 (“Diminishment, moreover, will not be lightly inferred.”). The congressional intent to disestablish or diminish a reservation must be clear. This is because of the general rule that doubtful expressions are to be resolved in favor of the Indian tribes “who are the wards of the nation, dependent upon its protection and good faith.” *McClanahan v. Ariz. State Tax Comm’n*, 411 U.S. 164, 174 (1973) (quoting *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930)). Accordingly, “[o]nce a block of land is set aside for an Indian Reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise.” *Solem*, 465 U.S. at 470.

To determine whether an Indian reservation has been disestablished or diminished, the court must look first to the statutory text of the relevant statute, reasoning that it is “[t]he most probative evidence of congressional intent.” *Id.* at 469; *see also Nebraska v. Parker*, 136 S. Ct. 1072, 1079 (2016) (“[W]e start with the statutory text, for ‘[t]he most probative evidence of diminishment is, of course, the statutory language used to open Indian lands.’” (citation omitted) (second alteration



in original))). Courts next examine the circumstances surrounding the passage of the act, “particularly the manner in which the transaction was negotiated with the tribes involved and the tenor of legislative reports presented to Congress.” *Solem*, 465 U.S. at 471; *Parker*, 136 S. Ct. at 1079. Finally, courts “look to the subsequent treatment of the area in question and the pattern of settlement there.” *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 351–52 (1998); *see also Parker*, 136 S. Ct. at 1079. “When both an act and its legislative history fail to provide substantial and compelling evidence of a congressional intention to diminish Indian lands, we are bound by our traditional solicitude for the Indian tribes to rule that diminishment did not take place and that the old reservation boundaries survived the opening.” *Solem*, 465 U.S. at 472.

In cases where disestablishment or diminishment is alleged to have resulted from surplus land acts, such as *Solem* and *Parker*, the Court has observed that common “hallmarks of diminishment” include “[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests’ or ‘an unconditional commitment from Congress to compensate the Indian tribe for its opened land.’” *Parker*, 136 S. Ct. at 1079 (quoting *Solem*, 465 U.S. at 470–71) (alteration in original). Examples of termination language contained in surplus land acts found to show congressional intent to diminish or disestablish include: “the Smith River reservation is hereby discontinued,” *Mattz v. Arnett*, 412 U.S. 481, 505 n.22 (1973); “the reservation lines of the said Ponca and Otoe and Missouri Indian reservations . . . are hereby, abolished,” *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 618 (1977); “the . . . Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest,” *DeCoteau*, 420 U.S. at 455–56; and “[t]he said Indians belonging to the Shoshone or Wind River Reservation, Wyoming, for the consideration hereinafter named, do hereby cede, grant, and relinquish to the United States, all right,

title, and interest which they may have to all the lands embraced within the said reservation, except the lands within and bounded by the following lines,” *Wyoming v. United States Envt’l Prot. Agency*, 875 F.3d 505, 518 (10th Cir. 2017).

But this case does not arise under a surplus land act. There was no surplus land act passed in connection with the Oneida Reservation because it was not contemplated that there would be surplus land remaining after the land within the Reservation was allotted to individual tribal members and fee patents finally issued. It would make no sense for an allotment act to contain the type of cession language that is found in surplus land acts or terms like “surrender, grant, or convey.” Those terms have no place in the context of allotment. In the process of allotment, the tribes were not conveying surplus lands to the United States; instead, the United States was conveying its interest in the lands it had held in trust for the benefit of the tribes to the individual tribal members and terminating the restrictions that had previously applied to it. For the same reason, allotment acts would not contain language indicating that the Indian tribes would be compensated for the allotted lands. The land was not being conveyed to outsiders by the tribe, but instead divided among the tribal members free of all federal restrictions.

Notwithstanding the absence of such language, the intent of the allotment policy in general and the Dawes Act in particular is unmistakable. It was “to hasten the demise of the reservation system and to encourage Indian assimilation into the white system of private property ownership.” *Podhradsky*, 606 F.3d at 999. As noted above, “[w]ithin a generation or two, it was thought, the tribes would dissolve, their reservations would disappear, and individual Indians would be absorbed into the larger community of white settlers.” *Yankton Sioux Tribe*, 522 U.S. at 335. But even though complete assimilation of the Indians and the elimination of the reservation system was the

ultimate intent of the Dawes Act and related legislation, those acts did not themselves abolish the reservations. In fact, they assumed the reservations would continue at least until the trust patents were replaced with fee patents giving individual tribal members complete control over their own land. Before that process was complete, however, Congress changed its mind as reflected in the IRA of 1934.

The purpose of the IRA was to stop the loss of Indian lands through the allotment process and re-establish tribal governments and land holdings. COHEN, § 1.05, at 81–82. As noted above, among other steps taken to achieve these goals, the IRA terminated the further allotment of reservation lands, extended unexpired trust periods on allotted lands, and empowered the Secretary of the Interior to acquire lands to be placed into trust status and thus exempt from state and local taxation. 25 U.S.C. §§ 463, 465. The IRA also “permitted tribes to organize and adopt constitutions with a congressional sanction of self-government, and it permitted tribes to form business committees or business corporations.” 25 U.S.C. § 476.

Within two years of the passage of the IRA, the Oneida Tribe adopted its Constitution and By-Laws, and the Oneida tribal government was formed. Since that time the Oneida Tribe, now known as the Oneida Nation, has remained in existence with a functioning tribal government. Although the precise number of acres may be in question, it is undisputed that at least some amount of land remained under tribal ownership or otherwise in trust status at the time the IRA was enacted, putting a complete stop to the further alienation of tribal lands. DSUMF ¶ 98. It thus follows that the Oneida Reservation has not been disestablished.

But while it has not been disestablished, the size of the Reservation has been significantly diminished as a result of the issuance of fee patents to tribal members who then conveyed their

interests to non-tribal members. This is because Congress's intent to diminish, if not disestablish, the Reservation, which was explicit in the Dawes Act, the Burke Act, and the Act of 1906, became effectuated with the issuance of fee patents to tribal members and the subsequent sale of the land to non-Indians. The intent to diminish was born out by Congress singling out the Oneida Reservation, in particular, and allowing the Secretary to quickly issue fee patents at his discretion.

The Nation argues that the Dawes Act and the Burke Act have never been construed to alter reservation boundaries. Indeed, the mere act of dividing the Reservation into individual allotments for each member, by itself, is insufficient to divest the land of its reservation status. *See United States v. Celestine*, 215 U.S. 278, 287 (1909) ("It is clear that the allotment alone could not [revoke the reservation]."). After all, the lands allotted to a tribe's members were set apart for the tribe and remained under the federal government's care and control. *United States v. Pelican*, 232 U.S. 442, 449 (1914) ("[W]e are unable to find ground for the conclusion that [Indian lands] became other than Indian country through the distribution into separate holdings, the Government retaining control."). But we are not talking here about allotment, by itself. Once the allotment trust period had run its course or was otherwise terminated, the Secretary, acting under the authority granted him by Congress, issued patents conveying the land in fee, free of all restrictions, to the individual tribal members. Once the fee patents were issued, the federal government no longer retained control of the land, as the land was converted into fee simple and owned by the individual tribal member. At that point, the intent unequivocally expressed by Congress in its enactment of the allotment acts was realized and either then or with the further conveyance of the land to non-Indians, the original reservation was diminished.

These facts distinguish this case from both *Celestine* and *Pelican*. In *Celestine*, the Indian defendant challenged his federal murder conviction on the ground that the United States district court lacked jurisdiction because the crime occurred on land within the exterior boundaries of the reservation, but which had been allotted to him and for which he had been granted a patent. 215 U.S. at 280. Notwithstanding the issuance of a patent, the Court held that the land remained part of the reservation because Congress had taken no steps to exclude the allotted land from the reservation. *Id.* at 284. Unlike this case, the patent issued to the defendant in *Celestine* contained “conditions against alienation or leasing, exemption from levy, sale, or forfeiture, not to be disturbed by the state without the consent of Congress . . . .” *Id.* at 286. And unlike this case, the defendant Indian had remained in possession of the property.

Similarly, in *Pelican*, the Indian defendant challenged his federal indictment for murder on the same ground, claiming that the crime occurred on another Indian’s allotment and was therefore not within Indian country. 232 U.S. at 444. The district court agreed and sustained the defendant’s demurrer. However, the Supreme Court reversed, holding that “[a]lthough the lands were allotted in severalty, they were to be held in trust by the United States for twenty-five years for the sole use and benefit of the allottee, or his heirs, and during this period were to be inalienable.” *Id.* at 447. Explaining further, the Court stated, “[t]hat the lands, being so held, continued to be under the jurisdiction and control of Congress for all governmental purposes relating to the guardianship and protection of the Indians, is not open to controversy.” *Id.* Again, unlike this case, no fee patent had been issued and the original tribal member remained in possession.

The conclusion that the issuance of fee patents and sale of the land following allotment diminished the reservation is also consistent with, if not compelled by, the Seventh Circuit’s

decision in *Wisconsin v. Stockbridge-Munsee Community*, 554 F.3d 657 (7th Cir. 2009). In that case, the State of Wisconsin sued the Stockbridge-Munsee Tribe seeking an injunction enjoining the Tribe's gambling operation and a declaration of the current boundaries of the Tribe's reservation. The Tribe counterclaimed for a declaration that the golf course and supper club complex it had purchased was within the boundaries of the reservation created by its 1856 treaty with the United States such that it could operate slot machines at that location under a contract with the State of Wisconsin entered into pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* The golf course and supper club complex were located within the boundaries of the Tribe's original reservation, but it was in a section that had been sold to timber companies in 1871. 554 F.3d at 661. The unsold land within the reservation boundaries was later allotted to tribal members pursuant to a 1906 act of Congress, and eventually sold off. After passage of the IRA, the Department of the Interior had worked with the Tribe in the 1930s to reacquire parts of the land described in the 1856 treaty, rededicating the property as the Tribe's reservation. *Id.* Based on the previous history, however, the State argued that the 1856 reservation was diminished by the 1871 Act's sale of reservation land to timber companies, and then extinguished by the 1906 Act. The district court agreed, granting the State's motion for summary judgment, and the Seventh Circuit affirmed. Notwithstanding the absence of "the hallmark language" suggesting that Congress intended to disestablish or diminish the reservation in the 1906 Act, the court concluded that the circumstances surrounding it and the manner in which the reservation was treated in the aftermath of the Act made clear Congress's intent to extinguish the reservation:

The intent to extinguish what remained of the reservation is born out by the act's provision for allotments in fee simple. This provision sets the 1906 Act apart from most allotment acts, like the 1871 Act, which restricted the Indian owners from



selling their land or required that it be held in trust by the United States. 3 *Cohen's Handbook of Federal Indian Law* § 3.04.3; see, e.g., Dawes Act, ch. 119, 24 Stat. 388, 389 (1887). Why include this peculiar provision? Because the reservation could only be abolished if the tribal members held their allotments in fee simple. See *Mattz*, 412 U.S. at 496 (“When all the lands had been allotted and the trust expired, the reservation could be abolished.”). By 1910, all the land in the 1856 reservation was sold to non-Indians or allotted in fee simple, which meant that Congress paved the way for non-Indians to own every parcel within the original reservation and ensured that the reservation could be immediately extinguished.

*Id.* at 664–65. As for the manner in which the reservation was treated after the Act, the court noted that “the land became subject to state taxes, and the Department of the Interior refused to intervene in alcohol-related problems within the original reservation.” *Id.* at 665. And when in the 1930s, the Department of Interior worked with the Tribe to reacquire parts of its 1856 reservation, it declared the newly reacquired land to be the Tribe’s reservation. *Id.* Though “there were exceptions to this understanding,” the court held, “the aberrational statements are not enough to overcome the clear record showing Congress’s intent to extinguish the reservation and the otherwise consistent treatment of the reservation as disestablished.” *Id.*

Strong support for the conclusion that the sale of fee patented land to non-Indians resulted in a diminishment of the reservation can also be found in the series of cases involving the Yankton Sioux Tribe of South Dakota. The dispute there initially arose out of an effort by the Yankton Sioux Tribe to regulate a landfill within the boundaries of its original reservation, over which the State of South Dakota claimed jurisdiction. The original boundaries of the Yankton Sioux Reservation were defined in an 1858 treaty between the United States and the Yankton Sioux Tribe to include approximately 430,000 acres of land in what is now Charles Mix County, South Dakota. *South Dakota v. Yankton Sioux Tribe*, 522 U.S. at 334. Under the Dawes Act, about 167,325 acres of the reservation were allotted and patented, and then an additional 95,000 acres were allotted after the

passage of an Act of February 28, 1891. The allotments, which totaled approximately 262,300 acres, were not contiguous parcels and were interspersed with approximately 168,000 acres of unallotted surplus land. The 168,000 acres of unallotted lands were then ceded to the United States through an Act of August 15, 1894. *Id.* at 336–38. The landfill at the center of the dispute was located on non-Indian fee land within the ceded portion of the original reservation boundaries. *Id.* at 333. The Tribe and the federal government claimed that, because the site was located within the reservation’s original 1858 boundaries, it remained part of the reservation and was therefore subject to federal environmental regulations. The State of South Dakota, on the other hand, argued that the 1894 divestiture of Indian property resulted in the disestablishment, or at least the diminishment, of the Tribe’s reservation, such that the ceded lands no longer constituted “Indian country” under 18 U.S.C. § 1151(a) and thus the State had primary jurisdiction over the facility. *Id.* at 340–41.

Although the Tribe prevailed in the lower courts, the Supreme Court reversed. Finding that the plain language of the 1894 Act of Congress ratifying the agreement between the Tribe and the Yankton Indian Commission for the ceding of unallotted lands to the United States evinced a congressional intent to diminish the reservation, the Court concluded that the site for the facility was not within the reservation boundaries and thus the State had jurisdiction over it. *Id.* at 351. The Court limited the scope of its decision to the status of the ceded lands, however, and remanded the case for further proceedings. It explicitly avoided deciding whether Congress had disestablished the reservation altogether. *Id.* at 358.

On remand, the district court consolidated the case with an action brought by the Tribe to challenge state criminal jurisdiction over acts of tribal members on nonceded land within the original reservation boundaries. *Yankton Sioux Tribe v. Gaffey*, 188 F.3d at 1013. After an

evidentiary hearing, the district court held that the reservation had not been disestablished and still included all land within the original exterior boundaries that was not ceded to the United States by the 1894 Act. It then issued a permanent injunction enjoining state officials from exercising criminal jurisdiction over tribal members on “allotted or reserved lands.” *Id.* On appeal, the Eighth Circuit Court of Appeals affirmed the district court’s conclusion that the reservation had not been disestablished. But it reversed the court’s conclusion that the original exterior boundaries of the reservation continued to have effect and that all nonceded lands remained as part of the reservation. *Id.* In so ruling, the court recognized at the outset that the 1894 Congress operated on a set of assumptions that conflicted with modern definitions of Indian country. It observed that “Indian lands were defined to include ‘only those lands in which the Indians held some form of property interest: trust lands; individual allotments, and, to a more limited degree, opened lands that had not yet been claimed by non-Indians.’” *Id.* at 1022 (quoting *Solem*, 465 U.S. at 468). “Lands to which the Indians did not have any property rights were never considered Indian country,” the court observed. *Id.* The court also acknowledged that because Congress in the late nineteenth century operated on the assumption that reservations would soon cease to exist, the “1894 Congress would have felt little pressure to specify how far a given act went toward diminishing a reservation and would have had no reason to distinguish between reservation land and other types of Indian country.” *Id.* (citing *United States v. S. Pacific Transp. Co.*, 543 F.2d 676, 695 (9th Cir. 1976)). Though the court observed that this background informed the court’s inquiry into whether Congress intended to eliminate the reservation through the 1894 Act, it noted that “courts have not been willing to extrapolate from general legislative assumptions and expectations of the late nineteenth century to find in each surplus land act a specific congressional purpose to remove all lands not

under Indian control from reservation status.” *Id.* at 1024 (citing *Solem*, 465 U.S. at 468–69). After reviewing the record and the arguments of the parties, the court found that neither the text of the 1894 Act nor the evidence of the parties’ contemporaneous understandings established a clear congressional intent to disestablish the Yankton Sioux Reservation. *Id.* at 1027.

The court did conclude, however, that the 1894 Act “intended to diminish the reservation by not only the ceded land, but also by the land which it foresaw would pass into the hands of the white settlers and homesteaders.” *Id.* at 1028. The court explained that approximately three-fifths of the Yankton Sioux Reservation was allotted under the Dawes Act and the 1891 Act. Until the Indian allottees would receive their lands in fee and the trust period over them would end, they could not convey land to non-Indians. *Id.* The court noted that at least eighty-five percent of the allotted land eventually passed out of trust status and most of that land was sold in fee to non-Indians; by 1930, tribal members held only 43,358 acres of the 262,300 acres that had been originally allotted. *Id.* at 1016.

“The Act could not foresee all that would happen in the future with population movement, state development, and changing Indian policy,” the court explained, “but it contained provisions showing concern for future interests of the Indians in common, as well as provisions recognizing that conditions were sure to change as white settlers moved in to the opened reservation with the expectation of state support.” *Id.* at 1028. And “as more white settlers came on to the opened lands,” the court explained, “increased state involvement on their behalf was expected, and the jurisdiction of the State was expected to increase over time.” *Id.* In addition, “some articles of the Act reflect the parties’ assumption that an allottee who received full title at the end of the trust period would become subject to the civil and criminal laws of the State or territory in which he

resided.” *Id.* The court found that “nothing in its text or the circumstances surrounding its passage suggests that any party anticipated that the Tribe would exercise jurisdiction over non Indians who purchased land after it lost its trust status.” *Id.* Though the court determined that the 1894 Act intended to diminish the reservation, it concluded that it could not define the precise limits of the remaining reservation and remanded the case to the district court with instructions to further develop the record and to determine what categories of land comprised the diminished reservation. *Id.* at 1030.

On remand, the district court found that four categories of trust lands remained part of the reservation and thus within the definition of Indian country: land which was reserved to the federal government in the 1894 Act and was subsequently returned to the Tribe, land which had been allotted to individual Indians and was still held in trust, land which was taken into trust under the IRA, and land which had been continuously owned in fee by individual Indians. *Yankton Sioux Tribe v. Podhradsky*, 529 F. Supp. 2d 1040, 1058 (D.S.D. 2007). Non-Indian fee lands, consisting of lands ceded to the United States or allotted to tribal members and transferred in fee to non-Indians and which had not been reacquired in trust, were excluded. Both sides appealed.

On this last appeal, the Eighth Circuit vacated the district court’s holding that fee lands that had continuously remained in Indian ownership were still part of the reservation. In all other respects, the district court’s decision was affirmed. 606 F.3d at 1015. In upholding the district court’s determination that allotted lands that retained their trust status were still part of the Yankton Sioux Reservation, the Eighth Circuit observed that the “simple act of dividing the Yankton Sioux Reservation into individual allotments was insufficient to divest the allotted lands of their reservation status” and that there was “no indication in the historical record that either Congress or

the Tribe expressly intended to eliminate the reservation status of the Yankton allotted lands immediately upon allotment or upon the sale of the Tribe's surplus holdings." *Id.* at 1008. "It thus follows," the court concluded, that "the allotted lands held in trust retained the same reservation status they had enjoyed since the original 1858 Treaty." *Id.* at 1008–09. As for lands within the original boundaries of the reservation that were taken back into trust by the United States after the enactment of the IRA, the court noted that "[b]y taking former Yankton Sioux Reservation lands back into trust under the IRA, the Secretary effectively exercised his authority to consolidate the Tribe's land base by restoring reservation status to former pieces of a reservation in existence since 1858." *Id.* at 1012. With respect to fee lands continuously owned in fee by Indians, the court found no evidence in the record that any such land existed and therefore vacated the district court's conclusion that such lands would remain part of the reservation. *Id.* at 1015. That fee lands lawfully sold to non-Indians were no longer part of the reservation was virtually unquestioned.

I find this line of cases instructive for the issues before me here. Just as the Eighth Circuit concluded in *Gaffey* and *Podhradsky* that fee lands conveyed to non-Indians were no longer part of the Yankton Sioux Reservation, so also I conclude that the fee lands within the original boundaries of the Oneida Reservation that were sold to non-Indians, unless reacquired and placed into trust by the federal government, are no longer a part of that Reservation. The loss of that land has necessarily resulted in the diminishment of the Reservation from its original boundaries. Nothing in the text of the Dawes Act or the Act of 1906 suggest that Congress anticipated that the Nation would exercise jurisdiction over non-Indians who purchased land after it lost its trust status. Congress knew based on the Burke Act, which was enacted less than one month before the Act of 1906, that allottees who were issued fee patents would become subject to the civil and criminal laws

of the State or territory in which they resided. *See* 25 U.S.C. § 349 (“[A]t the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee . . . then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside.”). It thus follows that as more non-Indian settlers purchased lands held in fee from Oneida members, increased involvement by the state on the settlers’ behalf was expected, thereby increasing the State’s jurisdiction over time. *See Montana v. United States*, 450 U.S. at 559 n.9 (1981) (“It defies common sense to suppose that Congress would intend that non-Indians purchasing allotted lands would become subject to tribal jurisdiction when an avowed purpose of the allotment policy was the ultimate destruction of tribal government.”); *see also Solem*, 465 U.S. at 471 n.12 (“When an area is predominately populated by non-Indians with only a few surviving pockets of Indian allotments, finding that the land remains Indian country seriously burdens the administration of State and local governments.”). By distributing reservation land through allotment and taking a definitive and considered step in allowing the Secretary to expedite the issuance of fee patents to Oneida members, Congress understood that the Nation would be divested of its authority once the allotment process was complete. In short, a reading of the Dawes Act and the Act of 1906 and an examination of the historical context in which they were enacted establish that Congress intended to diminish the Oneida Reservation by the land which it foresaw would become fee simple patents and would subsequently pass out of Indian ownership into the hands of white settlers. The issuance of fee patents and the subsequent transfer of fee title to those lands effectuated that intent.

The remaining evidence regarding the subsequent treatment of the land after the enactment of the Act of 1906 supports this conclusion. The parties have presented volumes of material



evidencing the subsequent treatment of the land after the passage of the Act of 1906. As noted above, to a lesser extent, courts should consider “Congress’s own treatment of the affected areas, particularly in the years immediately following the opening,” as well as “the manner in which the Bureau of Indian Affairs and local jurisdictional authorities dealt with unallotted open lands.” *Solem*, 465 U.S. at 471. “[A]s one additional clue as to what Congress expected would happen,” courts also “look to the subsequent demographic history of opened lands.” *Id.* at 471–72. At the same time, it is not uncommon for the subsequent treatment evidence to be “so rife with contradictions and inconsistencies as to be of no help to either side.” *Id.* at 478.

That appears to be the case here on the issue of disestablishment. For instance, the Village, on the one hand, asserts that certain federal officials in the Office of Indian Affairs as well as superintendents of the Keshena Agency repeatedly referred to the area as a former reservation and note that the Oneida lost almost all of their land. The Nation, on the other, asserts that these views did not represent a consensus among federal officials on the status of the Oneida Reservation and that the remaining documents are ambiguous on disestablishment. References to the “former reservation,” for example, could simply mean the “original reservation,” as opposed to the substantially diminished reservation that resulted from the sale of their allotments by tribal members and that continued to exist up until the passage of the IRA. Such language could also reflect the common assumption during the allotment era that reservations were in the process of becoming extinct. But as noted above, before that process was complete, Congress enacted the IRA and ended it. The Village’s evidence of the aftermath of the 1906 Act does not overcome this undisputed fact, especially considering that subsequent treatment is the “least compelling evidence” in the court’s diminishment analysis. *Parker*, 136 S. Ct. at 1082.

The subsequent treatment of the land in question does support the conclusion that the Oneida reservation was diminished, however. The numerous statements of federal officials referring to the “former reservation,” even if ambiguous as to disestablishment, at least manifest the view that the original boundaries were no longer intact. Just as in *Stockbridge-Munsee*, “the land became subject to state taxes, and the Department of the Interior refused to intervene in alcohol-related problems within the original reservation.” 554 F.3d at 665. In 1903, the Wisconsin legislature enacted legislation to create the towns of Hobart and Oneida “from the territory now embraced within the Oneida Reservation in said counties” and conferred upon them “all the rights, powers and privileges conferred upon and granted to other towns in the state of Wisconsin.” DSUMF ¶ 37. Soon thereafter, each town formed its own government. This court’s decision in *Stevens*, though not entitled to preclusive effect, also constitutes evidence of the manner in which the Reservation was viewed by federal officials prior to the enactment of the IRA and demonstrates that once fee patents were granted, local property taxes were assessed.

Other state and federal officials also viewed the Oneida Reservation as at least diminished. In 1919, the Office of Indian Affairs, the predecessor to the Bureau of Indian Affairs, closed the Oneida Agency and transferred jurisdiction over the Oneida to the Keshena Agency, located on the Menominee Reservation. *Id.* ¶ 53. In 1931, the Attorney General of the State of Wisconsin wrote a letter addressing jurisdiction with respect to the Oneida in which he stated:

There is very little tribal land left, and most of the individual allotments have passed from the control of the United States and are therefore subject to the unquestioned jurisdiction of the state. However, in the case of the small amount of tribal land remaining and the individual allotments which are still held in trust, the federal courts would have jurisdiction . . . . Most of the Oneidas have received a fee patent discharged of any trust. Many of them have sold their lands. The state has jurisdiction over those Indians that have a fee patent.

*Id.* ¶ 76. On November 19, 1931, C.J. Rhoads, the Commissioner of Indian Affairs, wrote to a member of the Tribe concerning hunting and fishing rights:

Generally speaking, the State game laws apply to the Indians except when exercising their hunting and fishing privileges on tribal Indian land within their reservation or, if allotted, within the limits of their own allotments still held in trust or under restricted patents.

There are only a few small tracts of tribal Indian land within the limits of what was formerly the Oneida Indian Reservation. The ceded land to which the Indian title has been extinguished no longer belongs to the Indians, and as you have received a fee patent to your . . . land and the Oneida Indian Reservation has been broken up, you would have no special hunting or fishing privileges thereon because of the fact that you are an Indian. Under the circumstances you should comply with the state laws and regulations as to season, license, etc.

*Id.* ¶ 78.

This and other similar evidence cited by the Village supports the conclusion that in the aftermath of the 1906 Act and up until the enactment of the IRA, the Oneida Reservation was substantially diminished, though not completely disestablished. In 1975, the United States Department of the Interior's Bureau of Indian Affairs issued a report entitled "Statistical Data for Planning Oneida Reservation," which stated that "the total acreage of this reservation is 2,581 acres—2,108 acres are tribally owned and 473 acres are allotted." *Id.* ¶ 123. The report noted that "by 1930 only a thousand acres remained. In 1934, through a series of land purchases, the acreage was increased to the present amount." *Id.*

As the Village points out, and as this court noted in a previous case between the parties, in more recent years the Nation has made substantial purchases of land within the original reservation boundaries. *Id.* ¶¶ 128–29; *Oneida Tribe of Wis. v. Vill. of Hobart*, 542 F. Supp. 2d 908, 913 (E.D. Wis. 2008). But the Nation's purchase of property on the open market does not by itself increase

the size of its Reservation. *See City of Sherrill, N.Y. v. Oneida Nation of N.Y.*, 544 U.S. 197, 202–03 (2005) (“Given the longstanding, distinctly non-Indian character of the area and its inhabitants, the regulatory authority constantly exercised by New York State and its counties and towns, and the Oneidas’ long delay in seeking judicial relief against parties other than the United States, we hold that the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The Oneidas long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders.”). As of December 28, 2017, however, 14,078.612 acres of the original Reservation are held in trust on behalf of the Nation. Def.’s Statement of Additional Proposed Undisputed Material Facts ¶ 12, ECF No. 100. The record is silent, however, as to how much of the total acreage held in trust is within the Village, but this acreage reflects the current size and location of the Oneida Reservation.

### **C. Enforcement of the Ordinance**

It follows from the foregoing that the Village may enforce the Ordinance on those lands not held in trust by the United States for the benefit of the Nation. There is no dispute that the activities associated with the Big Apple Fest take place at least in part on land that is not part of the Oneida Reservation but instead is non-trust land owned by the Nation in fee simple. It is also undisputed that in order to conduct its festival, the Nation closes off, in whole or in part, streets and highways that are also not part of the current reservation. As the Village notes, the stated purpose of the Ordinance is “to address potential impacts on the general public of a special event, including without limitation noise, light, dust, traffic, parking, and other public health safety and welfare concerns,” as well as “to promote the economic welfare and general prosperity of the community by safeguarding and preserving property values by addressing potential impacts of a special event.”

Def.'s Mem. in Supp. of Mot. for Summ. J., ECF No. 94, at 48 (citing ECF No. 86-1, § 250-2). These are lawful purposes under the Village's police power, Wis. Stat. § 61.34 (2017–18), and the Nation does not contend that they are not. Nor does the Nation contend that compliance would create a hardship or that the Village would unreasonably deny it a permit. Instead, the Nation's sole argument is that it is immune and not subject to the Ordinance because its special event occurs within the boundaries of its 1838 Reservation boundaries, the entirety of which it claims constitutes Indian country. For the reasons set forth above, the court concludes that it does not and instead holds that only those portions of the original Reservation held in trust by the United States for the benefit of the Nation, as well as any allotments still under trust patents, constitute Indian country.

In truth, the implications of the Nation's argument are quite breathtaking. If accepted, then not only are the Nation and its members immune from the regulatory measures of the Village, but also those of a substantial portion of the City of Green Bay, Brown and Outagamie Counties, and the State of Wisconsin. To hold in its favor would mean that the Nation has primary jurisdiction over land largely populated by people who have no say in its governing body. Because the Oneida Reservation has been diminished, however, and does not include land held in fee, the Nation's argument fails. The Nation is therefore not entitled to the relief it seeks, and the Village's motion for summary judgment will be granted.

#### **D. The Nation's Sovereign Immunity**

As a final matter, the Nation asserts that its sovereign immunity bars the Village's counterclaim for enforcement of the Ordinance against the Nation and the payment of the \$5,000 fine issued through the citation. It is well established that Indian tribes possess immunity from suit traditionally enjoyed by sovereign powers. *See, e.g., Okla. Tax Comm'n v. Citizen Band*

*Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991). In other words, tribes are protected from suits for monetary damages. See *Quinault Indian Nation v. Pearson for Estate of Comenout*, 868 F.3d 1093, 1096 (9th Cir. 2017). “[A]n Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived immunity.” *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). The Village acknowledges that the Supreme Court has held tribal immunity bars claims against an Indian Tribe arising from commercial activity outside Indian lands. See *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014). It nevertheless argues that the bar is not complete if an alternative mechanism is not available for the enforcement of its Ordinance. See *id.* at 795.

But as the Court suggested, the Village in this case may have other tools that it can use to enforce its laws on its own lands, for example, bringing a suit against tribal officers responsible for unlawful conduct. *Id.* As an extreme measure, the Village could presumably act to shut down the event if the Nation again sought to hold it without a permit, but there is no reason to believe that such an extreme measure will be necessary. The Nation brought this action to vindicate its sincerely held belief that it is not subject to the authority of the Village in the enforcement of the Ordinance. Should it not ultimately prevail, there is no reason to believe that the Nation will not comply with the Ordinance. In any event, the Nation is immune and the Village’s counterclaim for monetary damages must be dismissed.

### CONCLUSION

For the reasons set forth above, I conclude that the Treaty of 1838 created the Oneida Reservation. I also conclude that, while there is no evidence of congressional intent to disestablish the Reservation, Congress’s intent to at least diminish the Reservation is manifest in the Dawes Act and the Act of 1906, and that intent was effectuated with the issuance of unrestricted fee patents for

the allotted land within the Reservation. To the extent the Nation's special event was held on property not held in trust by the United States, it is subject to the Ordinance. In addition, the Village's counterclaim for monetary damages is barred and must be dismissed. The Nation's motion for summary judgment (ECF No. 85) is therefore **GRANTED-IN-PART** and **DENIED-IN-PART** and the Village's motion for summary judgment (ECF No. 84) is accordingly **GRANTED**. The Clerk is directed to set the matter for a telephone conference to address the need for further proceedings as well as the form of the judgment to be entered.

**SO ORDERED** at Green Bay, Wisconsin this 28th day of March, 2019.

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



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

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Oneida Nation,

Plaintiff,

v.

Case No. 16-CV-1217

Village of Hobart, Wisconsin,

Defendant.

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**DEFENDANT'S OPPOSITION TO PLAINTIFF'S PROPOSED JUDGMENT**

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On April 18, 2019, the Court held a telephonic hearing relative to the form of the judgment. The parties were not in agreement as to the exact wording of the judgment. The Court recommended each party submit their proposed judgment with the Court and the Court would thereafter decide on the final wording of the judgment.

Each side has now submitted a proposed judgment to the Court. In addition to the Village's implied objection to the Nation's proposed judgment, as evidenced by its submission of competing language, the Village deems it necessary to object more specifically to that portion of the Nation's proposed judgment which states:

The effect and enforcement of this judgment are stayed pending exhaustion of all appeals on the same terms stipulated between the parties regarding the 2017 and 2018 Big Apple Fests, except that no roads of Defendant Village of Hobart shall be closed for the conduct of a special event by Plaintiff Oneida Nation in accordance with terms of a permit from State of Wisconsin or otherwise without the consent of the Defendant Village of Hobart.

(ECF No. 135.)

The Federal Rules of Civil and Appellate Procedure provide the applicable mechanism for seeking a stay via a motion to the court, if the parties are unable to reach a stipulation. Simply inserting a sentence into the judgment itself is not contemplated by those rules. If that were allowed, the opposing party would have no ability to object to the scope and nature of the stay.

Additionally, such a stay would not address all of the Village's concerns relative to certain aspects of the 2019 Big Apple Fest and raises questions relative to how the stay applies to other matters, if at all. Moreover, the Village, has for many years, well before the March 29, 2019 Decision and Order, taken the position the reservation was diminished or disestablished and has always asserted its jurisdiction accordingly. A stay of both the effect and the enforcement of the Decision and Order, to the extent the stay has any effect on matters other than the Nation's Apple Fest, would alter the status quo in terms of how the Village has treated the land in question for years.

In conclusion, the Village requests that the Court sign the proposed judgment submitted by the Village. To the extent the Village's judgment is not adopted, the Village separately objects to any judgment which creates an automatic stay by the wording of the judgment itself. If the parties cannot reach an agreement, the Nation should be required to file a motion for a stay. Either way the stay should be addressed separate from the judgment.

Dated this 24th day of April 2019.

Respectfully submitted,

By: s/ Frank W. Kowalkowski

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*Counsel for Defendant, Village of Hobart*

# United States District Court

EASTERN DISTRICT OF WISCONSIN

ONEIDA NATION,

Plaintiff,

## JUDGMENT IN A CIVIL CASE

v.

Case No. 16-C-1217

VILLAGE OF HOBART, WISCONSIN,

Defendant.

- 
- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict
- ☒ **Decision by Court.** This action came before the Court for consideration.

**IT IS HEREBY ORDERED AND ADJUDGED** that the Nation's claim for declaratory relief holding that the Nation's Big Apple Fest is not subject to the Village's Special Event Ordinance is denied. Its request for injunctive relief enjoining enforcement of the Village's Ordinance is likewise denied. The Village's counterclaim for the \$5,000.00 forfeiture is dismissed. This case is DISMISSED with prejudice.

The stay of the enforcement of the Village's Ordinance against the Nation for its conduct of the Big Apple Fest, previously agreed upon by the parties, shall remain in effect until the time for appeal has expired or, if an appeal is taken, a final determination is rendered.

Approved:

s/ William C. Griesbach

William C. Griesbach, Chief Judge  
United States District Court

Dated: April 26, 2019

STEPHEN C. DRIES  
Clerk of Court

s/ Terri Lynn Ficek  
(By) Deputy Clerk

## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
www.ca7.uscourts.gov

## NOTICE OF CASE OPENING

May 23, 2019

No. 19-1981	ONEIDA NATION, Plaintiff - Appellant  v.  VILLAGE OF HOBART, WI, Defendant - Appellee
<b>Originating Case Information:</b>	
District Court No. 1:16-cv-01217-WCG Eastern District of Wisconsin District Judge William C. Griesbach Clerk/Agency Rep Stephen C. Dries  Case filed: 05/23/2019 Case type: cv/us Fee status: Paid Date of Judgment: 04/26/2019 Date NOA filed: 05/22/2019	

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

**Deadlines:**

<u>Appeal No.</u>	<u>Filer</u>	<u>Document</u>	<u>Due Date</u>
19-1981	Oneida Nation	Transcript information sheet	06/06/2019
19-1981	Oneida Nation	Appellant's brief	07/02/2019

**NOTE:** This notice is issued to counsel of record, in furtherance of the revised *Circuit Rule 3(d)*, to provide necessary information regarding this appeal. Please verify this notice for accuracy. Counsel are encouraged to provide a fax and/or e-mail address to the court. If any corrections are necessary, please indicate those corrections on this notice and return it to the Clerk's Office within ten (10) days.

**THIS NOTICE SHALL NOT ACT AS A SUBSTITUTE FOR MOTIONS FOR NON-INVOLVEMENT /  
SUBSTITUTION OF COUNSEL. COUNSEL ARE STILL REQUIRED TO FILE THE APPROPRIATE MOTIONS.**

**Important Scheduling Notice!**

Hearing notices are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals are scheduled after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your appeal might be scheduled, please write the clerk advising him of the time period and the reason for your unavailability. The court's calendar is located at <http://www.ca7.uscourts.gov/cal/argcalendar.pdf>. Once an appeal has been scheduled for oral argument, it is very difficult to have the date changed. See Cir.R. 34(e).

form name: c7\_Docket\_Notice(form ID: 108)

**UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

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Chicago, Illinois 60604



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Phone: (312) 435-5850  
[www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)

**NOTICE OF DOCKETING - Short Form**

May 23, 2019

**To:** Stephen C. Dries  
Clerk of Court

The below captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit:

Appellate Case No: 19-1981

Caption:  
ONEIDA NATION,  
Plaintiff - Appellant

v.

VILLAGE OF HOBART, WI,  
Defendant - Appellee

District Court No: 1:16-cv-01217-WCG  
District Judge William C. Griesbach  
Clerk/Agency Rep Stephen C. Dries

Date NOA filed in District Court: 05/22/2019

If you have any questions regarding this appeal, please call this office.