

No. 19-1981

**In the
United States Court of Appeals
For the Seventh Circuit**

ONEIDA NATION,

Plaintiff-Appellant,

v.

VILLAGE OF HOBART, WISCONSIN,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Wisconsin, No. 1:16-cv-01217-WCG
The Honorable **William C. Griesbach**, Judge Presiding

**UNOPPOSED MOTION FOR EXTENSION OF TIME AND
FOR LEAVE TO FILE OVERSIZED BRIEF OF DEFENDANT-APPELLEE
VILLAGE OF HOBART WISCONSIN**

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Counsel for Defendant-Appellee

Defendant – Appellee, Village of Hobart, WI (“Hobart”), by undersigned counsel, respectfully moves the Court pursuant to Fed. R. App. P. 26 and 7th Cir. R. 26 for an extension of time to file its principal brief and for leave to file an oversized brief. Under the Court’s Order: Circuit Rule 33-Briefing, dated July 3, 2019, Hobart’s brief is currently due by October 15, 2019 and the reply brief of the Plaintiff – Appellant Oneida Nation (the “Nation”) is due by November 5, 2019. This Motion requests that the Court amend the briefing schedule so that Hobart’s brief is due by November 4, 2019 and the reply brief of the Nation is due by December 9, 2019. In addition, Hobart requests leave to file an overlength brief not to exceed 50 pages unless the brief contains no more than 23,000 words (excluding the parts of the brief exempted by Fed. R. App. 32(f)). Hobart has not previously requested any extension of the briefing scheduling in this matter. Counsel for Hobart has conferred with Counsel for the Nation regarding these requests. Counsel for the Nation does not oppose Hobart’s requests, but has informed counsel for Hobart that the Nation may seek leave to file its own overlength reply brief if it determines that such a request is warranted. Hobart reserves the right to object to any such request if it believes that such a request is not warranted.

The bases for Hobart’s requests are as follows and as set forth in the supporting affidavit of attorney Frank W. Kowalkowski:

This appeal involves complex issues of law and fact that were the subject of over 300 pages of briefing by the parties and amicus curiae on summary judgment before the court below. On appeal, the Nation has filed a principal brief totaling

13,325 words. In addition, three amici briefs totaling 18,533 words, which raise new arguments or expand on arguments made by the Nation, have been filed in support of the Nation. Hobart respectfully requests an extension of time and an increase in the size of its principal brief so that it can adequately address the issues raised in these briefs.

In addition, counsel for Hobart was recently retained in an already ongoing matter, *Scholz Design Texas, LLC, et al. vs. Lampert Yards – US LBM, LLC, et al.*, No. 18-cv-04074 (N.D. Iowa), with a number of imminent deadlines, including an expert deadline on September 30, 2019, a discovery deadline on October 18, 2019, and a deadline for dispositive motions on November 1, 2019. Multiple depositions are already scheduled with several more contemplated. Opposing counsel in the new matter has informed counsel for Hobart that it opposes an extension of these deadlines, and counsel for Hobart is currently contemplating whether to file a motion for an extension of deadlines in this new matter. Given the schedule in this new matter, an adequate brief within the word limit cannot be reasonably prepared by counsel in the instant matter by the date the brief is due; even with Hobart's due diligence and giving priority to the preparation of the brief.

For the foregoing reasons, Hobart respectfully asks the Court to enter an order setting the following revised briefing schedule, which has been proposed to and accepted by the Nation:

- The brief of the appellee is due by November 4, 2019;
- The reply brief of the appellant, if any, is due by December 9, 2019.

In addition, Hobart respectfully asks the Court enter an order allowing Hobart to file an overlength brief not to exceed 50 pages unless the brief contains no more than 23,000 words (excluding the parts of the brief exempted by Fed. R. App. 32(f)).

Dated this 3rd day of October 2019.

Respectfully submitted,

Electronically signed by:
s/ Frank W. Kowalkowski
FRANK W. KOWALKOWSKI
State Bar No. 1018119

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Frank W. Kowalkowski
FRANK W. KOWALKOWSKI

Attorney for Defendant-Appellee, Village of Hobart, WI

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**AFFIDAVIT OF FRANK KOWALKOWSKI IN SUPPORT OF UNOPPOSED
MOTION FOR EXTENSION OF TIME AND
FOR LEAVE TO FILE OVERSIZED BRIEF OF DEFENDANT-APPELLEE
VILLAGE OF HOBART WISCONSIN**

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Counsel for Defendant-Appellee

I, Frank W. Kowalkowski, being duly sworn, say:

1. I am an attorney admitted to practice before this Court. I am partner in the law firm of von Briesen & Roper, s.c., and I am counsel of record for Hobart in this matter. The following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto.

2. Pursuant to the Court's briefing schedule, Hobart's principal brief in this matter is currently due by October 15, 2019 and the reply brief of the Oneida Nation (the "Nation") is due by November 5, 2019.

3. The Nation filed its principal brief, which totaled 13,325 words in 50 pages, on September 13, 2019. The Nation's brief set forth arguments relating to Supreme Court precedent, historical Congressional acts, statutory interpretation, and historical evidence.

4. The United States filed an amicus curiae brief in support of the Nation, which totaled 6,960 words in 30 pages, on September 19, 2019. The United States presented additional legal and factual arguments relating to federal jurisdiction and the district court's decision.

5. The State of Wisconsin also filed an amicus curiae brief in support of the Nation, which totaled 4,604 words in 20 pages, on September 20, 2019. The State of Wisconsin's brief presented additional issues relating to the state, local, and tribal territorial jurisdiction as well as the legal status of tribal gaming compacts and revenue-sharing.

6. The National Congress of American Indians and the Indian Land

Tenure Foundation also filed an amici curiae brief in support of the Nation, which totaled 6,969 words in 30 pages, on September 20, 2019. The National Congress of American Indians and the Indian Land Tenure Foundation also presented similar arguments relating to land tenure.

7. The combination of the complex legal and factual issues, including historical congressional acts, case law, and evidence, involved in this appeal, as well as Hobart's need to respond to four briefs make it infeasible and unreasonably difficult to prepare and file its brief by October 15, 2019 and within the standard word / page limits even with counsel for Hobart's due diligence and giving priority to the preparation of the brief.

8. In addition, I was very recently retained in an already ongoing matter, *Scholz Design Texas, LLC, et al. vs. Lampert Yards – US LBM, LLC, et al.*, No. 18-cv-04074 (N.D. Iowa), with a number of imminent deadlines I did not create or have any input in establishing, including an expert deadline on September 30, 2019, a discovery deadline on October 18, 2019, and a deadline for dispositive motions on November 1, 2019. Multiple depositions are already scheduled for October 10th in West Des Moines, Iowa, and several more contemplated within the next two weeks also in Iowa and potentially in Texas and Nebraska as a result of the October 18, 2019 discovery cutoff date. An oral argument hearing regarding discovery is scheduled for October 9, 2019 in Cedar Rapids, Iowa. I requested an extension of these deadlines from opposing counsel in that matter, but opposing counsel informed

me that they oppose any extension. I am currently contemplating whether to file a motion for an extension of deadlines in this new matter, but such a request may not be heard before the October 9th oral argument and such a request may be impacted by the outcome of that oral argument.

9. Given the schedule of the new matter and the additional 80 pages contained in amici briefs, an adequate brief within the word limit cannot be reasonably prepared by counsel in the instant matter by the date the brief is due; even with due diligence and giving priority to the preparation of the brief.


10. I and my co-counsel have conferred with counsel for the Nation regarding the briefing schedule and word / limits in this appeal. Counsel for the Nation informed us that the Nation does not oppose Hobart's motion, but has informed counsel for Hobart that the Nation may seek leave to file its own over length reply brief if it determines that such a request is warranted. Hobart reserves the right to object to any such request if it believes that such a request is not warranted.

Dated this 2 day of October 2019.



Frank W. Kowalkowski
State Bar No. 1018119

Subscribed and sworn to before me
this 2 day of October 2019.



Notary Public, State of Wisconsin
My commission expires: 10-16-20

