

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

ONEIDA TRIBE OF INDIANS)
 OF WISCONSIN,)
)
 Plaintiff,)
)
 v.)
)
 VILLAGE OF HOBART, WISCONSIN,)
)
 Defendant/Third-Party Plaintiff,)
)
 v.)
)
 UNITED STATES OF AMERICA, et al.,)
)
 Third-Party Defendants.)
 _____)

Case No. 1:10-cv-00137-WCG

Affidavit of Rebecca M. Webster

Rebecca M. Webster, being first duly sworn on oath, deposes and states as follows:

1. I am employed as Senior Staff Attorney by the Oneida Tribe of Indians of Wisconsin (the “Tribe”), am admitted to practice before this Court, and have appeared in this matter. I make this affidavit in in opposition to the Village of Hobart’s Motion to Amend Stipulation or Amend Judgment or Order. I have personal knowledge of the facts set forth in this affidavit and, if called upon, could and would testify as to these facts.

2. I have been employed as a staff attorney by the Tribe since May 2003. My duties include working with the Tribe’s administrative agencies that manage the Tribe’s fee and trust lands. As a result, I am familiar with the Tribe’s laws and records relating to management of the Tribe’s fee and trust lands. I am also familiar with the land records maintained by Brown and Outagamie Counties.

3. On March 8, 2006, the Village of Hobart filed a Complaint in the Circuit Court for Brown County, Wisconsin, seeking a declaration of interest in real property with respect to the land underlying an abandoned railroad right-of-way which traverses the Oneida Reservation and the Village of Hobart. (Brown County Case Number 2006CV000480). Exhibit A to the Village's Complaint consisted of a metes and bounds legal description of the section of the former railroad right-of-way located within the Village, and a series of land survey maps depicting this section of the right-of-way and specifically identifying the county tax parcel numbers of the right-of-way parcels. (A copy of Exhibit A to the Village's Complaint is attached hereto as Attachment A).

4. On April 20, 2006, the Tribe filed a Motion to Dismiss the Village's Complaint. In its Brief in Support of the Motion to Dismiss, the Tribe explained the history of the title to the land underlying the former railroad right-of-way, and concluded: "The import of this legal history is clear: the United States holds title to the property at issue pursuant to the cession granted by the Menominee Indians in the 1831 Treaty with the Menominee, and the United States has permanently reserved the property for the use and occupancy of the Oneida Tribe pursuant to the 1838 Treaty with the Oneida." (Tribe's Brief in Support of Motion to Dismiss, at p. 3). (A copy of the Tribe's Brief is attached hereto as Attachment B). The Circuit Court dismissed the Village's Complaint on the grounds that the Village did not claim an interest in the property and therefore lacked standing. The Wisconsin Court of Appeals affirmed, and noted, "The Tribe contends the right-of-way is trust property...." *Village of Hobart v. Oneida Tribe of Indians of Wisconsin*, 303 Wis.2d 761, 770 (2007).

5. In October of 2007, I prepared an Affidavit of Easement Cancellation which outlines the history of the former railroad right-of-way and documents the trust title to the land

underlying the right-of-way. On October 12, 2007, then-Chairman Gerald Danforth executed the Affidavit of Easement Cancellation on behalf of the Tribe for the purpose of recording the cancellation of the federally approved right-of-way over treaty-reserved trust land with Brown County and Outagamie County. On October 18, 2007, the Tribe recorded the Affidavit of Easement Cancellation with the Brown County Register of Deeds Office, and on November 5, 2007, with the Outagamie County Register of Deeds Office.

6. In December of 2006, the Tribe filed suit against the Village in the United States District Court for the Eastern District of Wisconsin seeking a declaration that the Village lacks authority to condemn tribally-owned fee land on the Oneida Reservation. (Oneida Tribe of Indians of Wisconsin v. Village of Hobart, Case No. 06-cv-01302 (E.D. Wis.)). In the fall of 2007, I prepared an Affidavit for filing in this lawsuit. On November 30, 2007, that Affidavit was filed with the Court and served on counsel for the Village via the Electronic Court Filing system. Paragraph 23 of the Affidavit reads as follows:

The Reservation was established pursuant to the 1838 Treaty with the Oneida, 7 Stat., 566. In 1870, the Chiefs of the Tribe granted an easement for a railroad right-of-way to the Green Bay and Lake Pepin Railway Company. By an Act dated March 3, 1871, 16 Stat., 588, the United States Congress approved the grant of the easement, and the railroad company constructed a railroad line across the Reservation. This land was not subsequently allotted. In 2003, the Fox Valley & Western Ltd., the successor in interest of the Green Bay and Pepin Railway Company, abandoned the majority of the railroad line within the Reservation boundaries, and relinquished the easement across this land. A true and correct copy of the Affidavit of Easement Cancellation recorded with Brown and Outagamie Counties and the Oneida Register of Deeds is attached to this affidavit as Exhibit F. The total amount of land which was formerly subject to the railroad right of way easement is approximately 120 acres. Approximately 3 acres remain subject to the railroad right-of-way easement.

Case No. 06-cv-01302, ECF No. 64 ¶ 23. As indicated in the Affidavit, the Affidavit of Easement Cancellation recorded with the Brown County Register of Deeds and the

Outagamie County Register of Deeds was attached to the Affidavit as Exhibit F. Case
No. 06-cv-01302, ECF No. 64-2, pp. 21-94.

FURTHER AFFIANT SAYETH NOT.

s/ Rebecca M. Webster
Rebecca M. Webster

State of Wisconsin)
)ss
County of Brown)
Subscribed and sworn to before me
this 17th day of June, 2015.

s/ Heidi M. Wennesheimer
Notary Public, State of Wisconsin
My commission expires: June 20, 2017