

DATE: May 12, 2018
FROM: Gary Rentrop, ECLA President
RE: Odawa Lawsuit

This past month, the parties concluded depositions of the twelve experts in this case who produced expert reports and rebuttal reports, containing thousands of pages of analysis and exhibits. Depositions involved hundreds of exhibits, and required the parties to travel to Minnesota, Michigan, Illinois, and Kentucky. In total, depositions of experts consumed a full 26 days of actual deposition time, and many, many more days of preparation.

In late March, the Tribe filed a significant dispositive motion asking the court to disallow one of the key defenses raised by all defendants in the case – that even if a reservation was created by the 1855 Treaty, it was disestablished when Congress in the 1870’s restored lands to the public market. The Tribe claims that the 1994 Act of Congress reaffirming the Tribe’s status nullified any action the federal government might have taken to abrogate or diminish any right or privilege of the Tribe. Defendants have filed briefs responding to this motion, and are awaiting the Tribe’s reply. We expect the Court to hear arguments on the motion probably in June.

Because the Tribe’s motion could eliminate some issues for trial, the Tribe requested an extension for discovery, since it won’t depose some lay witnesses if it wins the motion. The Court agreed, and extended the deadline for discovery to September 29. Given the volume of lay witnesses depositions (as many as 80), Defendants are still moving forward with some depositions, starting this month.

In the meantime, discovery disputes continue, including the Associations filing a Motion to Quash the Tribe’s subpoena to the Association’s expert witness, and responding to a Motion to Compel. The Tribe is seeking virtually every report the Association’s expert has ever written – even for other clients, under confidentiality agreements, and for completely unrelated issues. The Court has directed further briefing on those motions.

As the level of ongoing activity demonstrates, the case is demanding significant resources. The Tribe has continued to add lawyers, drawing upon the Tribe’s in-house and regular counsel, an Indian-law specialty firm from Minneapolis, and an Indian-law professor from the Hamline Law School. All told, the Tribe’s legal team now numbers twelve attorneys who have filed appearances with the Court (and possibly others behind the scenes), with four tribal lawyers attending a single deposition. It continues to be apparent that the Tribe is sparing no expense in this case.

The defense team of lawyers for the Associations, the State, and the affected counties, cities and townships continued to mount a coordinated defense, with experts, lay witnesses and attorney arguments all emphasizing different points and issues in responding to the Tribe.