

Law Offices of
LEON R. KOZIOL, Esq.
1518 Genesee Street
The Tower Building
Utica, NY 13502
(315)-735-2271

Adirondack Office
4601 Lake Shore Drive
Bolton Landing, NY 12814

Kurt D. Schultz, Esq.
David Giglio, Esq.

Bolton: (518) 644-3300
Fax: (315) 735-0991
Mobile: (315) 796-4000
attyleonkoziol@aol.com

May 7, 2004

Honorable James W. McCarthy
Justice of the Supreme Court
Oswego County Courthouse
25 E. Oneida Street
Oswego, New York 13126

RE: Peterman v Pataki, et al
Index No.: 99-533

Dear Judge McCarthy:

I am once again appalled by the last minute tactical maneuvering of the non-party Oneida Nation. In post argument documents styled as "supplemental affirmation" and "supplemental memorandum of law" the non-party seeks to assert a new argument contradictory to the one made during oral argument on April 22, 2004 in the above matter. On the one hand, it seeks to argue that there are factual distinctions which bring the Oneida compact outside the scope of the high court ruling in the Saratoga case which the state allegedly failed to argue vigorously on its behalf (a false, frivolous and infinitely self serving position). Then it follows, after argument, with a new theory claiming that the factual settings are now in complete harmony so as to require the court to actually "dismiss" this case as "nonjusticeable". Armed with such an order, their principals would then be able to continue boasting publicly and falsely that their casino compact was valid all along (as they have been for more than five years).

In the first place, contrary to the non-party's assertions, our answering affidavit was timely faxed per court order before 5:00 PM on April 20, 2004. Because of the Oneida motion's initial tardiness, faxed only one day earlier, personal or mail service was dispensed with by the court. The exploitation of such a non-issue is remarkable to say the least. Yet all of the last minute maneuvering sends the unequivocally wrong message and an ultimate injustice to the thousands of innocent victims of the Oneida land claim in central New York, namely, that money buys results in our courts of law. My client is committed to pursuing justice on this issue, despite the inordinate financial burdens placed upon us by the non-party. But this is nothing more than an ego assault upon the court and existing parties, and I cannot believe that the non-party would be permitted to

Judge McCarthy
page 2

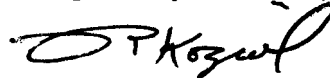
dictate its way around our state courts in this manner. As argued, this litigation is not, and cannot, at least in this court, be designed to "shut down" the casino, regardless of the future speculations of the Oneidas before other tribunals. Through the order sought from this court, we are seeking to have justice achieved on a fact specific controversy so that a renegotiated compact might lead to a revenue sharing arrangement to rehabilitate our ever depleting tax base in Oneida and Madison counties.

Once again, I refer the court to CPLR 2221, conveniently excluded from the text of the non-party's last minute show cause order (filed on May 3, 2004). None of the procedural prerequisites of the law were satisfied here as I stated during oral argument only hours following the receipt of the Oneida papers. Nothing was separately identified (i.e. reargument, renewal or reconsideration, etc.), no "matters of fact" or "law" were identified or demonstrated as "misapprehended", previously "unavailable" to the court or the parties, or otherwise justifying any departure from settled precedent. Moreover, the case law overwhelming precludes any grant of the Oneida motion here.

As a final desperate maneuver, the non-party is seeking to influence the outcome by placing new ideas into the court's analysis through the back door which it cannot otherwise do legally by the front door. There were certainly no extensions granted by the court for these new submissions, the Oneidas have not been granted party status to do so, and the Oneida Nation has not even graced us with the courtesy of seeking leave of court to deposit these further belated "supplementals". In short, this entire maneuver is an outrage and affront to our hard working, law abiding citizenry who have placed their good faith in these proceedings.

Thank you for your attention to this matter.

Respectfully submitted,



Leon R. Koziol, Esq.

LRK;jll

cc: Robert A Siegfried, Esq.
Peter D. Carmen, Esq.
David Vickers UCE Pres.
Scott Peterman ✓