

New York Law Journal

ALM Properties, Inc.

Page printed from: [New York Law Journal](#)

[Back to Article](#)

Circuit Upholds Reduction of Attorney Fees in Indian Case

Joel Stashenko

New York Law Journal

01-23-2013

A Syracuse law firm is entitled to only \$5,174 in fees for its role in a 12-year legal fight that it says ultimately helped the Oneida Indian Nation attain great wealth from casino-related enterprises, the U.S. Court of Appeals for the Second Circuit has decided.

The panel said the retainer agreement that Bond, Schoeneck & King (BSK) had with the Oneida nations of New York and Wisconsin limited the firm's fee award to a percentage of the amount the tribes recovered from the state through land claim litigation.

"The retainer agreement provides for BSK to recover a percentage of 'amounts recovered by the Nation from the State of New York' or other governmental bodies, 'on account of [a] claim' in connection with which BSK represented the Oneidas or rendered them advice," the circuit ruled in [Oneida Indian Nation v. Bond, Schoeneck & King](#), 11-cv-3272. "There is no suggestion in that language that BSK's fee could be based on the Oneidas' business revenues, simply because those revenues arguably have some attenuated relationship with BSK's prior representation."

The panel rejected the law firm's argument that its true contribution to the land claim litigation should be valued according to the principles of quantum meruit because the firm's efforts brought success to the Oneidas down the road.

The unsigned decision by Judges Richard Wesley ([See Profile](#)), Denny Chin ([See Profile](#)) and Western District Judge David Larimer ([See Profile](#)), sitting by designation, affirmed a [July 2011 determination](#) by Northern District Judge Lawrence Kahn ([See Profile](#)), who had adopted [a report and recommendation](#) by Magistrate Judge Randolph Treece ([See Profile](#)) issued in February 2011.

Bond Schoeneck began representing the Oneidas in 1966 when they sought rent for the use of land that was part of 100,000 acres they alleged was illegally purchased by New York in 1795.

The Oneidas have contended for generations that the purchase did not receive federal authorization and was thus illegal under the Non-Intercourse Act of 1790.

In 1974, the U.S. Supreme Court in [Oneida Indian Nation of New York v. County of Oneida](#), 414 U.S. 661, ruled that the Oneidas could challenge the purchase of tribal lands they maintained was in violation of the act.

Bond Schoeneck withdrew from all litigation involving the Oneidas in 1978, saying it was potentially conflicted because some of the properties in the disputed land claim region were occupied by the firm's attorneys, their relatives or clients.

Oneida and Madison counties ultimately entered into a stipulation in 2004 before Northern District Judge Neal McCurn ([See Profile](#)) in which they paid \$57,494 to compensate the Oneidas for use of their lands. That case has been known since as the "test case" because it was designed to be the first of many seeking compensation for use of the properties in the Utica area.

After considering its retainer agreement with the nations and its contribution overall to representation of the Oneidas, Treece and then Kahn said Bond Schoeneck was entitled to recover 9 percent, \$5,714, of the \$57,494 "amount recovered" by the tribes. Treece cut the award from the 10 percent called for under the firm's contract with their clients, finding the firm was disloyal to the tribes after withdrawing from the case by later seeking to represent a Canadian-based Oneida faction.

Bond Schoeneck argued that the real significance of the outcome of the land claim litigation began in 1993, when the Oneidas purchased properties within the boundaries of the land claim and received federal authorization under the Indian Gaming Regulatory Act to open the Turning Stone casino.

The federal gaming act allows Indian nations to operate gambling enterprises on tribal lands even if the surrounding state prohibits casino table gaming, as New York does.

Bond Schoeneck noted that Turning Stone, and the resort hotels, championship golf courses and other Oneida enterprises that grew up around it, now employ about 4,500 people and have generated a total of about \$4.7 billion in revenues and wages since the 1990s.

"Today, the Oneida Nation of New York is the largest employer in Oneida and Madison Counties, and the Oneida Nation of New York enjoys prosperity and riches undreamed of in 1966," the firm argued in [an objection](#) to Treece's report.

The notion of getting the federal courts to recognize the validity of Indian land claims in 1966 was "quixotic," the firm said, adding that the firm's efforts resulted in unimaginable success for the tribes.

"Opportunity knocked for the Oneidas only after Bond, Schoeneck & King opened the door," the firm argued. "The Oneidas answered the knock and have made much of that opportunity. BS&K does not seek compensation for what the Oneidas have built. BS&K, however, should be compensated for opening the door so opportunity could knock."

The law firm did not quantify what it considered fair compensation. But it said a value can be placed on the crucial finding that "reservation land is Indian land" and all that has transpired since the Oneidas won that recognition in the courts.

"That value can be determined through an evidentiary hearing," the firm said. "That it may be difficult to determine value does not in any way preclude finding that value, and calculating BS&K's fee based upon that value."

The Second Circuit said "an evidentiary hearing was not necessary to interpret the plain language of the agreement."

The summary order was issued on Dec. 20, 2012, and posted by the Northern District on Jan. 18.

Both the New York and Wisconsin Oneida nations had opposed Bond Schoeneck's attempt to recover fees in excess of the amount recovered by the tribes.

Joel Barkin, a spokesman for the Oneida Indian Nation, said the nation was pleased by the ruling.

"Every judge that considered Bond's theory rejected it," Barkin said. "It was overreaching and unwarranted."

@Joel Stashenko can be contacted at jstashenko@alm.com.

One place to find it all
LAW.COM



Copyright 2013. ALM Media Properties, LLC. All rights reserved.