

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JOHN THORPE, an individual;** :  
**RICHARD THORPE, an individual;** :  
**WILLIAM THORPE, an individual;** :  
**and the SAC AND FOX NATION,** :  
**OF OKLAHOMA, a federally** :  
**recognized Indian tribe** :  
**Plaintiffs,** :

**vs.** :

**BOROUGH OF JIM THORPE, PA,** :  
**MICHAEL SOFRANKO, RONALD CONFER,** :  
**JOHN McGUIRE, JOSEPH MARZEN,** :  
**W. TODD MASON, JEREMY MELBER,** :  
**JUSTIN YAICH, JOSEPH KREBS,** :  
**GREG STRUBINGER, KYLE SHECKLER** :  
**& JOANNE KLITSCH,** :  
**Defendants.** :

**Case No.: 3:10-cv-01317-ARC**  
**(Judge A. Richard Caputo)**  
  
**Jury Trial Demanded**

**BRIEF IN SUPPORT OF DEFENDANT, BOROUGH OF JIM THORPE, PA'S MOTION  
FOR SUMMARY JUDGMENT**

AND NOW, comes the Defendant, Borough of Jim Thorpe, Pennsylvania, by and through its counsel, William G. Schwab & Associates, and respectfully submits its Brief in Support of its Motion for Summary Judgment in the above captioned matter:

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

This instant matter began on June 24, 2010 as a Complaint filed by John Thorpe, a son born of James Francis Thorpe's second marriage, against the Defendant Borough of Jim Thorpe of Pennsylvania (hereinafter "Borough") seeking monetary damages under 42 U.S.C. § 1983 for the Borough's non-compliance with a federal law enacted by the U.S. Congress on November 16, 1990, known as the Native American Grave

Protection and Repatriation Act (hereinafter "NAGPRA"). John Thorpe had alleged that the Borough had repeatedly refused to turnover over Jim Thorpe's body (Pl.'s Comp. Docket Entry # 1). This lawsuit came as quite the shock to the Borough because it was never informed of any formal request to return the remains of Jim Thorpe under NAGPRA or otherwise by any lineal heir of Jim Thorpe for over the 55 years it has been maintaining Jim Thorpe's memorial site pursuant to an Agreement with Jim Thorpe's surviving spouse Patricia Thorpe, until the filing of the instant suit (See Statement of Facts ¶¶ 3, 25-32, 53).

The 2010 lawsuit was not filed until after the children of Jim Thorpe's first marriage had passed away. The children of his first marriage were in favor of letting their father, Jim Thorpe, rest in peace and in not disturbing his remains (Def. Statement of Facts ¶¶ 20, 35, 41, 51). Moreover, there were at least three Indian Burial Ceremonies conducted at Jim Thorpe's final resting place, beginning in the late 1950's, 1998, and 2001, which included a ceremony performed by Grace Thorpe, a daughter of Jim Thorpe's first marriage and who was also a tribal judge with the Sac & Fox Nation (Def. Statement of Facts ¶¶ 32, 35, 37, 40, 41, 45-46, 49-50).

On February 4, 2011, this Honorable Court granted the Defendant's Motion to Dismiss the John Thorpe's Section 1983 claim and ruled that John Thorpe was only permitted to sue only under NAGPRA. Subsequently, the original Plaintiff John Thorpe passed away on February 22, 2011 (See Pls.' Motion to Stay Proceedings, Docket Entries ## 24 at ¶¶ 4, 26, 30). On May 2, 2011, a First Amended Complaint was filed by the deceased John Thorpe, Richard Thorpe, William Thorpe, and the Sac and Fox Nation of Oklahoma (Docket Entry # 32). Given that the three (3) new parties to the

Plaintiffs' First Amended Complaint were not a party at the time when the Court Order was entered on February 4, 2011 dismissing the Section 1983 claim, the Plaintiffs realleged their Section 1983 count to preserve their ability to appeal it and also raised a new claim under the Equal Access to Justice Act. On November 23, 2011, this Honorable Court dismissed the Plaintiffs' claims again under Section 1983 for the same reasons as before and dismissed the Plaintiffs' new claim under the Equal Access to Justice Act.

On December 13, 2011, the Plaintiffs filed a Second Amended Complaint seeking a permanent injunction against the Borough to comply with NAGPRA, a declaratory judgment that the Borough is a museum and that the Plaintiffs have a right of possession to the remains of Jim Thorpe under NAGPRA (Docket Entry # 68). The Borough filed its answer on January 25, 2012 (Docket Entry # 75).

Among the Affirmative Defenses raised by the Borough was (a) NAGPRA is preempted by state law which governs the disinterment of remains of a deceased individual to his family members at the time of his death, and (b) the doctrine of laches due to the delay in waiting over twenty years to make a claim to the remains of Jim Thorpe under NAGPRA (Id.).

As reflected in the California Death Certificate, Jim Thorpe passed away on March 28, 1953 in Lomita, California (Def.'s Statement of Facts, ¶ 9, Ex. "A"). At the time of his death, Jim Thorpe was married to his third wife, Patricia Thorpe, and was a legal resident of California (Id., at ¶¶ 10-12, 16, Ex. "C" p. 66-67). Jim Thorpe was survived by four daughters of his first marriage to Iva Thorpe: Patricia Thorpe, Charlotte Thorpe, and Grace [Thorpe] Steely (Id., at ¶ 14). Jim Thorpe also had four sons from

his second marriage with Freeda Thorpe: Carl Thorpe, William Thorpe, Richard Thorpe, and John Thorpe (Id., at ¶ 15).

An estate for Jim Thorpe was raised in the Los Angeles Superior Court of California on May 26, 1953 (Id., at ¶ 13, Ex. "C"). Notice of the Estate was made on the Plaintiffs, William Thorpe and Richard Thorpe on June 15, 1953 (Id., at ¶ 17, Ex. "C", p. 60). By Court Order dated August 10, 1953 in the California probate proceeding, it decreed that "the whole of the estate of James Francis Thorpe, also known as Jim Thorpe, deceased, is hereby assigned and that the title thereof shall vest absolutely in Patricia G. Thorpe, the surviving spouse of said deceased." (Id., at ¶ 18, Ex. "C", p. 10). The probate file shows no evidence that any heir or descendant took any action to contest the disposition of Jim Thorpe's remains in California probate proceedings (Id., at ¶ 19, Ex. "C"). Pursuant to California law at the time, the right to control the disposition of remains of a decedent vested first with the surviving spouse (Id., at ¶ 12, Ex. "B").

On May 19, 1954, Patricia Thorpe entered into an Agreement with the boroughs of Mauch Chunk and East Mauch Chunk which set forth certain terms and conditions for the unification of the two completely separate Boroughs under a new name of Jim Thorpe and for the interment of Jim Thorpe's remains at a memorial site (hereinafter the "Agreement") (Id., at ¶ 20, Ex. "D"). The residents of the two boroughs voted and the two boroughs merged as one Borough under the new name of Jim Thorpe (Id., at ¶ 22). This included the consolidation of all previously separate borough departments into one unifying Borough department for the Borough of Jim Thorpe, including one single fire department, one single police department, and one single Borough council (Id., at ¶ 31). The Agreement provided "That said obligation shall be binding upon the first party and

her heirs, administrators and executors only for so long as the boroughs of East Mauch Chunk and Mauch Chunk, parties hereto, are officially known and designated as “Jim Thorpe.”” (Id., Ex. “D”, p. 2).

Pursuant to the Agreement, Jim Thorpe was buried in the Borough of Jim Thorpe in 1957 (Id., at ¶¶ 25-26). The Borough has undertaken the expense and task of changing all its street signage to Jim Thorpe (Id., at ¶ 27). Since Jim Thorpe’s remains came to the Borough, the Borough has permanently changed its identity and lost the names of East Mauch Chunk and Mauch Chunk on mapping services (Id., at 30). The Borough has provided the memorial site tax free for the last 55 years and foregone any tax revenue for real estate taxes (Id., at ¶ 28). At its own expense, for the last 55 years, the Borough has maintained the interment site, including trash removal, grass cutting, and snow removal (Id., at ¶ 29). There has also been conducted at least three (3) Indian Burial Ceremonies at Jim Thorpe’s memorial site, one in the late 1950’s, one in 1998, and another one in 2001 (Id., at 32). The Indian Ceremony conducted in the late 1950’s at Jim Thorpe’s gravesite was performed by his daughter Grace, who was a leader and tribal judge with the Sac and Fox Nation (Id., at ¶¶ 37, 49-50)

The Plaintiff William Thorpe admitted that he never contested the probate proceedings in California (Id., at ¶ 33). He also acknowledged in the 1950s that he was aware that Jim Thorpe was buried in the Borough; and thought about a lawsuit in the late 1950’s and 1960’s but did not follow through with it due to a difference of opinion with his half-sisters from Jim Thorpe’s first marriage (Id., at ¶ 34-35). William Thorpe also personally visited the gravesite of Jim Thorpe in the late 1960’s and early 1970s (Id., at ¶ 38). William Thorpe also has knowledge of the existence of NAGRPA since

the early 1990s but decided not to bring a NAGPRA claim because of his half-sister Grace, as the then surviving daughter of Jim Thorpe's first marriage (Id., at ¶¶ 39, 41).

The Plaintiff Richard Thorpe first learned his father was buried in the Borough from reading the newspapers sometime in the 1950's-1960's (Id., at ¶ 42). Richard Thorpe visited the burial site of his father at the Boroguh about 15-16 year ago (Id., at ¶ 43). The Plaintiff Richard Thorpe agreed that Patsy Thorpe [Jim Thorpe's third wife] had the legal right to the body and the right to dispose of the body as she wished (Id., at ¶ 44, Ex. "H", p. 25, line 22). He further believes that a surviving spouse has the right over the tribe to determine burial location (Id., at ¶ 44, Ex. "H", p. 37, line 9). Richard Thorpe does not dispute that his half-sister Grace was a judge for the Sac and Fox Nation nor that she conducted an Indian burial ceremony (Id., at ¶¶ 45-46). Richard Thorpe has at least known of NAGPRA for the past ten (10) years (Id., at ¶ 48).

The Plaintiff Sac and Fox Nation has been aware of Jim Thorpe's burial in the Borough, as Grace was a tribal judge for the Sac and Fox Nation and performed an Indian burial ceremony to sanctify the grounds Jim Thorpe was buried in, which imparts knowledge to the Tribe (See Id., ¶¶ 14, 32, 40, 45-46, 49, 50).

Neither Plaintiffs, nor any other lineal heir, has brought a state law action under the Pennsylvania Interment Act, 9 P.S. § 1, *et seq.*, to disinter the remains of Jim Thorpe (Id., at ¶¶ 36, 53). The Plaintiffs Richard Thorpe and William Thorpe did not bring suit against the Borough until they were contacted by an attorney to join in John Thorpe's Complaint after he passed away (Id., at ¶ 52). The Plaintiffs are seeking repatriation to inter Jim Thorpe's remains not in an Indian burial ground or where Jim

Thorpe's father is buried, but rather at the tribal offices of the Sac and Fox Nation for security reasons (*Id.*, at ¶ 54).

## II. ISSUES PRESENTED

- A. Whether the federal probate exception to federal jurisdiction applies when a state court proceeding exercised in rem jurisdiction over remains of a decedent and this matter should be dismissed under the Federal probate Exception?

SUGGESTED ANSWER: Yes

- B. Whether this Honorable Court should dismiss the within matter under the Doctrine of Laches for failure to timely bring this matter before the Court?

SUGGESTED ANSWER: Yes

## III. ARGUMENT

### A. **This matter should be dismissed under the Probate Exception to Federal Jurisdiction.**

The Supreme Court has long noted that a “probate exception” exists, thereby barring federal courts from interfering with state court matters involving the valid probate of a will or administration of an estate. See *Brodericks Will*, 88 U.S. 503 (1874); *Farrel v. O'Brien*, 199 U.S. 89 (1905); *Markham v. Allen*, 326 U.S. 490 (1946); In *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006) the Supreme Court noted that “the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is the custody of a state probate court.” *Marshall*, 547 U.S. at 311-12. In analyzing the holding of *Markham*, an earlier case in which the Supreme Court upheld the validity of the probate exception, the Supreme Court stated that *Markham* “proscribes ‘disturb[ing] or affect[ing] the possession of property in the custody of a state court.’” *Id.* at 311. Finally, the Supreme Court noted that “the

language in Markham [is] essentially a reiteration of the general principal that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*.” *Id.* In this case we are not talking about grave robbers stealing the remains of Native Americans, but a situation where a state court, in accordance with state law, gave to the surviving spouse the right to determine how to dispose of the remains of a decedent and his property. Patricia Thorpe did what any wife would do when her husband passed—namely she arranged for the best burial that could honor her husband.

The Supreme Court historically has analyzed the power, or more accurately, the lack of power, of federal courts to exercise *in rem* jurisdiction over probate property (including remains by extension) that had previously been validly adjudicated by another court. This is the same issue facing this Court. In *Broderick’s Will* the Supreme Court noted that the “constitution of a succession of a deceased person’s estate partakes, in some degree, of the nature of a *proceeding in rem*, in which all persons in the world who have any interest are deemed parties, and are concluded as upon *res judicata* by the decision of the court having jurisdiction.” *Brodericks Will*, 88 U.S. at 509 (emphasis added). The Supreme Court further noted that “[t]he public interest requires that the estates of deceased persons, being deprived of a master, and subject to all matters of claims, should at once devolve to a new and competent ownership; and, consequently, that there should be some convenient jurisdiction and mode of proceeding by which this devolution may be effected with at least a chance of injustice and fraud; *and that the result obtained should be firm and perpetual.* *Id.* (emphasis added).



Finally, the Supreme Court noted that the above listed “objects are generally accomplished by the constitution and powers which are given to the probate courts, and the modes provided for reviewing their proceedings” and that “probate courts themselves have all the powers and machinery necessary to give full and adequate relief.” *Id.* at 509-510. In this case the Plaintiffs have never attempted to raise issues of repatriation in either the courts of the State of California or the Commonwealth of Pennsylvania (dealing with disinterment). The Plaintiffs are making a collateral attack on a jurisdictionally valid and uncontested state court proceeding by using NAGPRA as a red herring.

The broader principle behind the probate exception, that a valid judgment in rem cannot be later attacked by a different court, has also been applied to other matters outside of probate. In *United States v. Beasby*, officials for the County of Bergen obtained a formal decree in a state court proceeding holding that \$127,000.00 seized by police officers from an alleged bookkeeper was forfeited to said county. *United States v. Beasby*, 257 F.2d 278 (3rd Cir. 1958). The United States Government was given notice of the proceedings and instructed to show cause why the forfeiture should not be granted. *Id.* at 281. The United States failed to do so, but afterwards filed suit in federal court to perfect a tax lien on the funds. *Id.* at 279-80. The District Court granted the lien and the County of Bergen appealed. *Id.* at 279. In holding that the United States “must respect the bidding force of [a] judgment in rem by a court with jurisdiction over the res” the Third Circuit stated the following:

A valid judgment in rem cannot be collaterally attacked. It is in accordance with public policy that when the rights have once been finally determined, the question of the existence of the rights cannot be again litigated. It is in the interest of the successful party and of the public that the matter should be finally determined in the proceeding in which it is decided. It is immaterial whether the persons whose rights in the thing were affected did or did not avail themselves of an opportunity to object to judgment.

*Id.* at 280-81.

The current dispute falls within this Federal “Probate Exception” and the broader principle that a valid judgment in rem cannot be later attacked by a second court. At the time of James Francis Thorpe’s (hereinafter “Jim Thorpe”) death, he was married to Patricia Thorpe and had his last usual residence in Lomita, Los Angeles, California. (See Exhibit “A” to Statement of Facts). As such, at the time of Jim Thorpe’s death, the right to control disposition and the remains of a deceased person vested with the surviving spouse. (Cal. Health & Safety Code Section 7100) (1952) (See Exhibit “B” to Statement of Facts). An estate was dutifully raised in the Los Angeles Superior Court on May 26, 1953, and Service of Notice was made on William Thorpe and Richard Thorpe on or about June 15, 1953 (See Statement of Facts, ¶¶13-17).

Ultimately, California Superior Court Judge Paul Nourse, by Order dated August 10, 1953, decreed that “the whole of the estate of James Francis Thorpe, also known as Jim Thorpe, deceased, is hereby assigned and that the title thereof shall vest absolutely in Patricia G. Thorpe”, (See Statement of Facts ¶ 18). The Probate file is devoid of any evidence that any of the Plaintiffs ever appealed the actions of the Los Angeles Superior Court. In addition, Plaintiff William Thorpe admitted he, like the United States in *Beasby*, never contested any action in that court. See Exhibit “F” to Statement of Facts, p. 51, line 5).

The Los Angeles Superior Court held valid *in rem* jurisdiction over the probate estate of Jim Thorpe at the time of his death. As a result of its Order dated August 10, 1953, the whole of Jim Thorpe's estate vested in his surviving spouse, Patricia Thorpe. The Plaintiffs failed to appeal this decision and waited until over fifty (50) years later, long after the case had been adjudicated in the probate court, to pursue any type of legal action.

As such, and in keeping with the principles espoused by the Supreme Court above, namely that the results obtained by a valid probate court should be firm and perpetual, Plaintiffs' Complaint should be dismissed with prejudice and this matter should, more than half-a-century after Jim Thorpe's burial, finally be laid to rest.

**B. This matter should be dismissed under the Doctrine of Laches.**

Basically when one strips away all the pleadings and the legal arguments, this case is simply a case where the Plaintiffs at best waited over 20 years to bring this action. At worst, the Plaintiffs waited sixty years to do so. The Plaintiffs waited until the widow died. The Plaintiffs waited until the last sister died who also was an official with the Sac and Fox Nation.<sup>1</sup>

It is important to note that it is not unique for Courts to have to consider the Doctrine of Laches when reviewing and interpreting federal statutes. Laches is an equitable doctrine founded upon the maxim that "equity aids the vigilant and not those who slumber on their rights." *Pro-Football Inc. v. Harjo*, 415 F.3d 44, 47 (D.C. Cir. (2005)) (hereinafter *Harjo 1*). Aside from the passage of time, in order to prove that laches applies, a proponent must show that the opposing party's delay was

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<sup>1</sup> Part of the reason for this is, as the brothers testified in their depositions, was that they were contacted to maintain this action by the law firm involved to litigate this matter when, previously, they had taken no action. See Statement of Facts, Para 52.

unreasonable and the proponent has suffered prejudice as a result of the opposing party's unreasonable delay. *In re Time Sales Finance Corp.* 474 F.2d 1197, 1200 (3rd Cir. 1971).

The *Harjo* case is similar to the current matter in that it involved the name of an entity and the complaint was based on a federal statute. In *Harjo*, seven Native Americans petitioned the Trademark Trial and Appeal Board (hereinafter "TTAB") to cancel the registrations of six trademarks used by the National Football League team based in Washington known as the "Redskins". *Harjo 1*, 415 F.3d at 46. The basis for the petition was that, pursuant to 15 U.S.C. § 1052, the name "Redskins" violated the Federal Lanham Trademark Act in that it is disparaging and/or contemptible. *Id.* The TTAB held for the petitioners and cancelled the registrations for the team's name. *Id.* at 47.

Pro-Football appealed the decision of the TTAB by filing suit in the U.S. District Court for the District of Columbia and argued, in part, that the defendants' claims were barred by the doctrine of laches. *Id.* The court found that the first prong of laches, that of unreasonable delay, had been met because defendants had notice of the name for twenty-five years. *Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96, 142 (D.D.C. 2003) (hereinafter "*Pro-Football 1*"). Here the delay depending on how viewed is between 20 and fifty-five years.

As to the prejudice prong of proving laches, the court noted that in instances where the length of time is great in bringing the claim, "prejudice is more likely to have occurred and less proof of prejudice will be required." *Id.* at 135. It then went on to hold

that, in the context of a copyright case, economic prejudice was found because of the investment and the development of the trademark, as well as the commercial use and economic promotion over a prolonged period. *Id.* The court also noted that common-sense dictates the Plaintiff will suffer some economic hardship if it loses its copyright. *Id.* at 137.

The defendants appealed to the D.C. Circuit Court. While the Circuit Court declined to comment on the doctrine of laches as applied to six of the seven defendants, it remanded the case of the seventh down to the District Court on the basis that this seventh Defendant was only a year old in 1967, the year in which the District Court stated the clock on laches had begun to run. *See Harjo*, 415 F.3d at 49-50.<sup>2</sup>

On remand, the District Court concluded that laches also applied to the seventh defendant and the Circuit Court affirmed. *See Pro-Football, Inc. v. Harjo*, 567 F. Supp. 2d 46 (D.D.C. 2008) (hereinafter *Harjo 2*); *Pro-Football, Inc. v. Harjo*, 565 F.3d 880 (D.C. Cir. (2009)) (hereinafter *Pro-Football 2*). In affirming the decision of the District Court, the Circuit Court echoed the lower court's assertion that if the delay is lengthy, a lesser showing of prejudice is required. *Pro-Football 2*, 565 F.3d at 884. The Circuit Court also noted that eight years, the amount of time the seventh defendant had to file suit, is "a long time." *Id.* at 885.

It is particularly instructive that the Circuit Court viewed the delay in bringing the action from a practical viewpoint that the longer the time frame less evidence was needed, but more importantly it judicial notice that witnesses die and evidence is lost. The lost evidence of contemporaneous public opinion is surely not irrelevant and weighing same is in the District Court's discretion. *Id.* At 883.

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<sup>2</sup> Here the only minor in 1953 when the probate was brought was John who died in 2011.

The facts of the current case show that Plaintiff's complaint should be barred under the doctrine of laches. Some of the items the Court should consider are:

Length of Time-Unreasonable Delay

1. At least two of the Plaintiffs had knowledge of NAGPRA since the 1990's (See Statement of Facts ¶¶ 39 and 41).
2. Despite this, Plaintiffs failed to bring suit under NAGPRA until 2010, twenty years after the Act had been passed and well over fifty-five years after Jim Thorpe had died (See Statement of Facts ¶ 3).
3. Furthermore, all Plaintiffs had knowledge since at least the 1960's and probably the 1950's that Jim Thorpe was buried in the Borough of Jim Thorpe (See Statement of Facts ¶¶ 34 and 42. This passage of time is longer than the eight years the minor in *Harjo* waited until filing suit.
4. Death of half sister, Grace, a potential witness.
5. Death of Patricia Thorpe, Jim Thorpe's Spouse, a potential witness.
6. Loss of documentation and records.<sup>3</sup>

Substantial Prejudice

7. The Borough will suffer substantial prejudice if the remains are removed in that it has relied on the language of the Agreement entered into between it and the Petitioner of Jim Thorpe's estate.
8. In particular, the Borough has changed all the street signs upon changing its names pursuant to the agreement (See Statement of Facts ¶ 27).

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<sup>3</sup> The Court has been involved in discovery dispute in this case where the Borough has raised the issue of the PA Document Retention Act that prevents them from responding to all discovery seeking documents going back twenty plus years, let alone any records indicating what, if anything, was buried with Jim Thorpe's remains over fifty-five years ago that would have to be included in any inventory under NAGPRA.

9. The Borough has also provided a suitable site for Jim Thorpe's remains for the past fifty-five years, and has done so at the expense of revenue from real estate taxes (See Statement of Facts ¶ 28).
10. The Borough has, at its own expense, maintained the interment site for the past fifty-five years including, but not limited to, trash removal, grass cutting and snow removal (See Statement of Facts ¶ 29).
11. On mapping services, including both printed and on-line services, the Borough has lost the name of East Mauch Chunk and Mauch Chunk and is known as Jim Thorpe (See Statement of Facts ¶ 30).
12. In addition, all these acts were done only after the vote of the electorate in 1954 and again in reliance upon the agreement entered into between the Boroughs and the executrix of Jim Thorpe's estate (See Statement of Facts, ¶ 21).

As such, the Borough would be prejudiced at length if the body of Jim Thorpe would be removed. Considering the above listed repercussions, as well as the extended period of time in which Plaintiffs had failed to bring suit under NAGPRA, Plaintiffs' Complaint should be dismissed with prejudice as it is barred by the doctrine of laches.

#### **IV. CONCLUSION**

Wherefore in consideration of the Motion for Summary Judgment, the Statement of Facts and Exhibits attached thereto and the arguments herein, the Defendant Borough of Jim Thorpe prays this Honorable Court to dismiss the Plaintiffs' action.

Respectfully submitted,

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Dated: December 31, 2012

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