

Media Release for Immediate Release
January 29, 2010

MI Supreme Court Rules in Favor of Plaintiff – Sault Ste. Marie Tribe of Chippewa Indians
In case of Sault Ste. Marie Tribe of Chippewa Indians v.
Bernard Bouschor; and Miller Canfield, Paddock and Stone, P.L.C.; Daniel T. Green; Paul W.
Shagen; Joseph M. Paczkowski; David E. Scott; Jolene M. Nertoli; James M. Jannetta; Daniel J.
Weaver, jointly and severally
C/A CASE NO.: 276712 – L/C CASE NO.: 04-7606-CC

Lansing, MI – Today, the Michigan Supreme Court ruled in favor of the Sault Ste. Marie Tribe of Chippewa Indians in the so-called 7+1+1 case which was originally filed in Chippewa County (50th Circuit Court) but presented to Judge Charles Johnson, 57th Circuit Court, in Emmet County as visiting judge when Judge Lambros recused himself. At the lower court level, Judge Johnson ruled back in 2007, that the defendants were not terminated, that Bouschor did not have the authority to grant severances (in the amount exceeding \$2.66 million), and that contrary to Bouschor's claim, Bouschor did not hold 'executive immunity' a status typically held for State Governors or the President of the United States. This latter filing by Bouschor is what qualified the defendants for an automatic appeal in the Michigan Court of Appeals and has delayed the case since the initially filing in 2004. At that level, the MI Court of Appeals threw out the legal malpractice and conspiracy claim. The MI Supreme Court's ruling today reinstates the Sault Tribe's complaint with regard to malpractice and may qualify the Sault Tribe for injunctive relief to recover not only the amount Bouschor and defendants conspired to take on election night of 2004, but also 'treble damages' which is up to three times the amount. Given the Tribe filed jointly and severally, once a final judgment is granted (possibly via a summary disposition given there now appear to be no facts in dispute) there may not even be a need to go to trial at the district court level. Judge Johnson could, instead, rule in the Tribe's favor and award damages and legal fees. In the Supreme Court's ruling, the justices ruled that Bernard Bouschor did not have executive immunity and as such, reinforced Judge Johnson's earlier ruling that Bouschor is individually liable in this case. If Judge Johnson does not grant a summary disposition judgment, the case will go to trial in the 50th Circuit Court with Judge Johnson presiding as visiting judge. In a prepared statement, former Chairperson Aaron Payment said,

"With all of the legal wrangling by Bouschor and the defendants over the last 5 ½ years, it is no wonder tribal members are dispirited. The rulings by the MI Supreme Court and the prosecution of Paquin give tribal members hope that the rule of law will prevail and justice will be served. Those who would steal from their own people, need to be held accountable. Maybe 2010 will be the year of tribal justice.

[DOWNLOAD SUPREME COURT RULING HERE](#)

Order

Michigan Supreme Court
Lansing, Michigan

January 27, 2010

Marilyn Kelly,
Chief Justice

137986 & (109)

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

SAULT STE. MARIE TRIBE OF CHIPPEWA
INDIANS,

Plaintiff/Counter-Defendant/
Appellee,

v

SC: 137986
COA: 276712
Chippewa CC: 04-007606-CC

BERNARD BOUSCHOR,
Defendant/Appellee,

and

DANIEL T. GREEN, DAVID E. SCOTT, JAMES
M. JANNETTA, and DANIEL J. WEAVER,
Defendants/Counter-Plaintiffs/
Appellants,

and

PAUL W. SHAGEN, JOSEPH M. PACZKOWSKI,
and JOLENE M. NERTOLI,
Defendants/Counter-Plaintiffs,

and

MILLER, CANFIELD, PADDOCK & STONE,
P.L.C.,
Defendant/Appellee.

On order of the Court, the motion to file a supplemental brief is GRANTED. The application for leave to appeal the November 18, 2008 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



p0120

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 27, 2010

Corbin R. Davis
Clerk

Order

Michigan Supreme Court
Lansing, Michigan

January 27, 2010

Marilyn Kelly,
Chief Justice

137988

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

SAULT STE. MARIE TRIBE OF CHIPPEWA
INDIANS,

Plaintiff/Counter-Defendant/
Appellant,

v

SC: 137988
COA: 276712
Chippewa CC: 04-007606-CC

BERNARD BOUSCHOR,
Defendant/Appellee,

and

DANIEL T. GREEN, DAVID E. SCOTT, JAMES
M. JANNETTA, and DANIEL J. WEAVER,
Defendants/Counter-Plaintiffs/
Appellees,

and

PAUL W. SHAGEN, JOSEPH M. PACZKOWSKI,
and JOLENE M. NERTOLI,
Defendants/Counter-Plaintiffs,

and

MILLER, CANFIELD, PADDOCK & STONE,
P.L.C.,
Defendant/Appellee.

On order of the Court, the application for leave to appeal the November 18, 2008 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals as to the plaintiff's claim of legal malpractice against the defendant law firm and we REINSTATE the judgment of the Chippewa Circuit Court denying the defendant law firm's motion for summary disposition. We agree with the trial court that there were outstanding issues of material fact with regard to the defendant firm's potential legal malpractice liability. In all other respects, leave to appeal is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



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Michigan Supreme Court
Lansing, Michigan

January 27, 2010

Marilyn Kelly,
Chief Justice

137990 & (113)

Michael F. Cavanagh
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Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

SAULT STE. MARIE TRIBE OF CHIPPEWA
INDIANS,

Plaintiff/Counter-Defendant/
Appellee,

v

SC: 137990
COA: 276712
Chippewa CC: 04-007606-CC

BERNARD BOUSCHOR,
Defendant/Appellant,

and

DANIEL T. GREEN, DAVID E. SCOTT, JAMES
M. JANNETTA, and DANIEL J. WEAVER,
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Appellees,

and

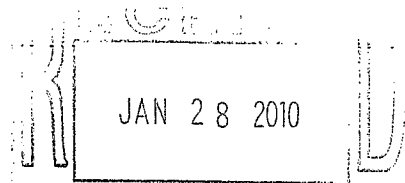
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and JOLENE M. NERTOLI,
Defendants/Counter-Plaintiffs,

and

MILLER, CANFIELD, PADDOCK & STONE,
P.L.C.,
Defendant/Appellee.

By order of September 18, 2009, we directed the parties to provide supplemental briefs. On order of the Court, the briefs having been received, the application for leave to appeal the November 18, 2008 judgment of the Court of Appeals is again considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we AFFIRM on alternative grounds the Court of Appeals affirmance of the trial court's denial of defendant Bernard Bouschor's motion for summary disposition. MCL 691.1407(5) provides immunity to "elective . . . executive official[s]" of the *state of Michigan* "acting

within the scope of [their] . . . authority,” not to those of a sovereign Indian nation. The defendant, as a former executive official of a sovereign Indian nation, is therefore not entitled to governmental immunity under the law of the state of Michigan. MCL 691.1407(2) provides qualified immunity to an “officer . . . of a governmental agency” who “reasonably believes he or she is acting within the scope of his or her authority.” Similar to MCL 691.1407(5), MCL 691.1407(2) applies only to officers of “the state or a political subdivision.” See MCL 691.1401(c), (d). Accordingly, the defendant is not entitled to qualified immunity under Michigan’s governmental tort liability act. In incorporating Michigan’s governmental tort liability act into its own tribal code, as it did for all laws of the state of Michigan that do not conflict with the tribal code, the plaintiff tribe has only provided immunity to *Michigan* governmental employees and officers, not to its own employees and officers.



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BERNARD BOUSCHOR,
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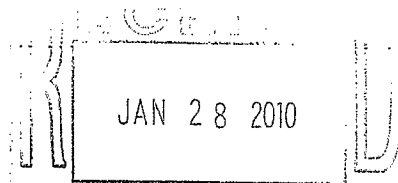
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