

FILE COPY

Supreme Court, U.S.

FILED

DEC 30 1970

E. ROBERT SEAYEN, CLERK

No. 50 Original

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

STATE OF VERMONT, A sovereign state,  
Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, A sovereign state,  
Albany, New York

and

INTERNATIONAL PAPER COMPANY, A corporation  
existing under the laws of the State of  
New York, located at New York, New York,

Defendants.

---

JAMES M. JEFFORDS  
Attorney General of Vermont  
JOHN D. HANSEN  
Assistant Attorney General  
State Library Building  
Montpelier, Vermont 05602

---



RU8  
75  
2337

## TABLE OF CONTENTS

MOTION FOR LEAVE TO FILE COMPLAINT .....	1
COMPLAINT .....	3
BRIEF IN SUPPORT OF MOTION .....	11
Jurisdiction .....	11
Justiciability .....	12
Conclusion .....	13

## CITATIONS

### Cases:

<i>Georgia v. Tennessee Copper Co.</i> (1907), 206 U.S. 230.....	12
<i>Michigan v. Wisconsin</i> (1926), 270 U.S. 295 .....	12
<i>Missouri v. Illinois</i> (1901), 180 U.S. 208 .....	12
<i>New York v. New Jersey</i> (1921), 256 U.S. 296 .....	12
<i>North Dakota v. Minnesota</i> (1923), 263 U.S. 365 .....	12

### Statutes:

28 U.S.C. §1251 .....	12
-----------------------	----

### Other:

Constitution of the United States, Article III, Section 2, Clause 2 .....	11
--	----



IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1970

No. ...., Original

STATE OF VERMONT, A sovereign state,  
Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, A sovereign state,  
Albany, New York

and

INTERNATIONAL PAPER COMPANY, A corporation  
existing under the laws of the State of  
New York, located at New York, New York,

Defendants.

---

MOTION FOR LEAVE TO FILE COMPLAINT

Pursuant to Rule 9 of the Revised Rules of the United States Supreme Court, the State of Vermont, a sovereign state, by its Attorney General, James M. Jeffords, respectfully requests leave to file its complaint, submitted herewith, against the State of New York, a sovereign state, and International Paper Company, a corporation organized and existing under the laws of the State of New York.

STATE OF VERMONT

By

JAMES M. JEFFORDS

Attorney General of Vermont  
State Library Building  
Montpelier, Vermont, 05602

December, <sup>29</sup> 1970



IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No....., Original

STATE OF VERMONT, A sovereign state,

Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, A sovereign state,

Albany, New York

and

INTERNATIONAL PAPER COMPANY, A corporation existing

under the laws of the State of New York, located at New York,  
New York,

Defendants.

---

COMPLAINT

---

The State of Vermont, Plaintiff herein, by its Attorney General brings this civil action against the State of New York and International Paper Company, Defendants herein, and for its cause of action complains and alleges as follows:



## 1

Plaintiff is a sovereign state of the United States of America acting for itself, and in its quasi sovereign capacity, and as *parens patriae* for its citizens and inhabitants.

## 11

Defendant State of New York is a sovereign state of the United States of America.

## III

Defendant International Paper Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and has its principal office at New York, New York.

## IV

The original jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States of America and 28 U. S. C. §1251.

## V

Since time immemorial, Lake Champlain has been and now is a natural body of fresh water, it being the largest body of fresh water lying east of the Great Lakes and, as such, an irreplaceable natural resource.

## VI

Lake Champlain is a navigable body of water lying within the States of New York and Vermont and Canada which flows northerly across the boundary between the United States of America and Canada and is an interstate and boundary water, and to the extent that it lies within the State of Vermont contains boatable and public waters of the Plaintiff State of Vermont.

## VII

Insofar as it is pertinent in this action, the interstate boundary between the States of New York and Vermont is the middle of the deepest channel of Lake Champlain.

## VIII

At all times herein material, Plaintiff State of Vermont was and now is the legal owner, in trust for its citizens and inhabitants, of the waters of Lake Champlain and the lands lying thereunder from the Vermont shoreline to the aforesaid interstate boundary.



## IX

At all times herein material, Defendant State of New York was and is the legal owner of the lands underlying the waters of Lake Champlain from the New York shoreline to the aforesaid interstate boundary.

## X

At all times herein material, Defendant State of New York had and has the exclusive authority to regulate and control the use of the waters of Lake Champlain from the New York shoreline to the aforesaid interstate boundary.

## XI

As the owner and exclusive regulator of said lands and waters, Defendant State of New York has a duty to use and manage them in such a manner as not to injure the property of others.

## XII

For approximately forty-five years, Defendant International Paper Company has operated a pulp and paper making plant in the Village of Ticonderoga, New York adjacent to Ticonderoga Creek, a navigable water, which flows from Lake George in the State of New York into Lake Champlain.

## XIII

During the period of approximately forty-five years, Defendant International Paper Company has discharged pulp and paper making waste and untreated domestic or sanitary sewage into Ticonderoga Creek about two miles above its confluence with Lake Champlain.

## XIV

Such waste has been discharged by Defendant International Paper Company on a daily basis in volumes up to and possibly exceeding 15.6 million gallons per day and consists of putrescible oxygen-consuming material, both in suspension and in solution, as well as coliform organisms contained in approximately 33,000 gallons per day of untreated domestic or sanitary sewage discharged from the plant.

## XV

Defendant International Paper Company continues to discharge such waste in such volumes into Ticonderoga Creek in spite of the severely destructive consequences hereinafter alleged and in spite of the repeated objections of Plaintiff State of Vermont and others.

## XVI

Defendant State of New York has long had knowledge of such discharges by Defendant International Paper Company and of the effects and consequences thereof and has given its consent and approval thereto.

## XVII

As each of the defendants knew, or should have known, the enormous volume and severely degrading nature of the aforesaid pulp and paper making wastes and domestic or sanitary sewage far exceeds the capacity of Ticonderoga Creek and Lake Champlain to assimilate them, and, as a consequence and a proximate result, such wastes are transported naturally by said creek and deposited on the banks thereof and in and under the waters of Lake Champlain including that portion within the State of Vermont.

## XVIII

As a proximate result of the aforementioned actions by Defendants, a massive sludge blanket or bed consisting of approximately 1,430,000 cubic yards has formed in Ticonderoga Creek, in the marsh adjacent to the confluence, and on the bottom of Lake Champlain.

## XIX

The sludge bed that has formed on the bottom of Lake Champlain covers an area of approximately 300 acres and contains approximately 802,000 cubic feet of wood chips, cinders and organic material in state of anaerobic (septic) decay.

## XX

In portions of the waters and lands thereunder controlled or owned by Defendant State of New York, the sludge bed has accumulated in depths up to twelve feet and are such as to impede navigation over and in these interstate waters.

## XXI

The actions of the Defendant State of New York in maintaining this impediment to navigation on its lands and in its waters, and in permitting Defendant International Paper Company to continue to discharge waste thereto and thereby increase the size of such impediment violates the rights of the citizens and inhabitants of the State of Vermont including the right to freely pass in and upon navigable waters, and to freely travel in interstate commerce without let or hindrance.

## XXII

The continuous and continuing discharge of wastes and sewage by Defendant International Paper Company and the resultant increasing accumulation of sludge on the bottom of Lake Champlain and the maintenance of the sludge bed in said lake by Defendant State of New York as well as the intentional neglect and refusal by Defendant State of New York to remove or confine such sludge bed has caused portions of the aforementioned sludge to be deposited permanently on lands underlying Lake Champlain owned by the State of Vermont, thus constituting a continuing trespass and an unlawful alteration of the interstate boundary. The Plaintiff State of Vermont has repeatedly requested and demanded of defendants that this continuing trespass and public nuisance be abated and that steps be taken to prevent their recurrence in the future. Defendants have refused and neglected to comply with these requests and demands and will continue to do so unless ordered otherwise by this Court.

## XXIII

Gaseous emissions from the sludge bed and the waters polluted thereby and from the Defendant International Paper Company pulp and paper making plant cause noxious and nauseous odors carried by the prevailing westerly winds to pervade the air over the waters and lands of and in the State of Vermont thus adversely affecting the health, safety and comfort of the citizens and inhabitants of Vermont.

## XXIV

As each of the defendants knew, or should have known, the proximate result of the acts and omissions is that the waters of the State of Vermont in Lake Champlain would be, have been, and will continue to be severely polluted. Such waters have become dark grey to black in color and are covered by scum and sludge particles. Dissolved oxygen in these Vermont waters has been depleted and at times is almost non-existent. Coliform bacteria levels are extremely high and these waters have become and continue to be unfit for drinking, fishing, swimming, boating and all other reasonable uses.

## XXV

Severe anaerobic gasification in the underlying sludge deposits causes extensive sludge mats to raise from the bottom and, due to the prevailing westerly winds, float into waters of the State of Vermont and on to the shorelines owned by citizens and inhabitants of the State of Vermont, thus constituting a trespass and a public nuisance.

## XXVI

The aforesaid actions by Defendants are wilful, intentional and unreasonable and are in reckless and wanton disregard of the rights of Plaintiff State of Vermont and its citizens and inhabitants.

## XXVII

Each of the defendants knew or should have known that the acts and omissions herein complained of were unlawful and contrary to the rights of Plaintiff and its citizens and inhabitants.

## XXVIII

Each of the defendants knew or should have known that the acts and omissions herein complained of would and will continue to result in injury and damage to the Plaintiff State of Vermont and its citizens and inhabitants and would and will continue to deprive plaintiff and its citizens and inhabitants of rights and privileges guaranteed to them under the Constitution and laws of the United States of America and the State of Vermont.

## XXIX

Notwithstanding the knowledge of each of the defendants that the acts and omissions herein complained of were unlawful, wilful, wanton and in reckless disregard of the rights of the Plaintiff State of Vermont and its citizens and inhabitants, each of the said defendants knowingly and intentionally have persisted in said acts and omissions for their respective pecuniary gain and will continue to do so unless prevented by this Court.

## XXX

The aforesaid actions by Defendants have and will continue to alter adversely the natural condition and ecological balance of Lake Champlain and have and will continue to accelerate the eutrophication of said lake.

## XXXI

The aforesaid actions by Defendants have created and will continue to create a gross public nuisance and a trespass onto the waters and lands of Plaintiff State of Vermont and its citizens and inhabitants.

## XXXII

The aforesaid actions by Defendants have adversely affected businesses and property values of the citizens and inhabitants of the State of Vermont.

## XXXIII

The aforesaid actions by Defendants have damaged the Vermont waters of Lake Champlain as a common fishery and a place for sport, recreation and relaxation and have caused and will continue to cause great and substantial economic losses to the tourist and recreation industry of the State of Vermont and its citizens and inhabitants.

## XXXIV

As a result of the aforesaid acts of Defendants, the Plaintiff State of Vermont and its citizens and inhabitants have sustained substantial damages in an amount not yet ascertained but to be determined in this action.

## XXXV

The harm caused by Defendants to the Plaintiff State of Vermont and its citizens and inhabitants is and will continue to be irreparable and Plaintiff has no plain, speedy and adequate remedy at law nor any other suitable forum in which to obtain relief.

WHEREFORE, Plaintiff State of Vermont prays:

1. That a decree be entered adjudging that the conduct of Defendant International Paper Company in discharging pulp and paper plant waste and sanitary sewage into Lake Champlain through its tributary, Ticonderoga Creek, in such volumes and of such a degrading nature constitutes a public nuisance and ordering that such nuisance be abated.

2. That a decree be entered adjudging that the conduct of Defendant State of New York in permitting Defendant International Paper Company to discharge pulp and paper plant waste and sanitary sewage into Lake Champlain and in maintaining and failing to remove or confine the sludge bed on its property and in its waters of Lake Champlain constitutes a public nuisance and ordering that such a nuisance be abated.

3. That a decree be entered adjudging that the Defendant State of New York and Defendant International Paper Company have caused a continuing trespass to be committed upon lands and waters of the State of Vermont and ordering the Defendants, and each of them, to cease and desist from such trespass, and to abate the same by removing the sludge bed.

4. That a decree be entered perpetually enjoining the Defendant International Paper Company from discharging or otherwise introducing pulp and paper plant waste and sanitary sewage from its plant in the Village of Ticonderoga, New York into the waters of Lake Champlain or its tributary Ticonderoga Creek.

5. That a decree be entered requiring Defendants State of New York and International Paper Company and each of them to remove from Lake Champlain and its tributary Ticonderoga Creek the sludge bed that has accumulated therein and to take such other necessary and proper steps as determined by the court to restore the navigability and the quality of waters in Lake Champlain.

6. That a decree be entered adjudging that the Plaintiff recover from Defendants and each of them compensatory damages in an amount not yet ascertained but to be determined in this action for the wrongs and injuries done to the Plaintiff State of Vermont as set forth herein.

7. That a decree be entered adjudging that the Plaintiff State of Vermont recover from Defendants and each of them punitive damages in an amount to be determined by the Court for the wilful, intentional, reckless and wanton conduct of such Defendants.

8. That Plaintiff State of Vermont be awarded its costs of suit and such other and further relief as the Court may deem proper and necessary.

STATE OF VERMONT

By.

JAMES M. JEFFORDS

Attorney General of Vermont  
State Library Building  
Montpelier, Vermont

December 29, 1970

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1970

---

No. ...., Original

STATE OF VERMONT, A sovereign state,  
Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, A sovereign state,  
Albany, New York  
and

INTERNATIONAL PAPER COMPANY, A corporation existing  
under the laws of the State of New York, located at New York, New  
York,

Defendants.

BRIEF IN SUPPORT OF MOTION

---

JURISDICTION

This is an action by the State of Vermont against the State of New York and International Paper Company, a corporation and citizen of the State of New York, instituted in this Court pursuant to Article III, Section 2, Clause 2 of the Constitution of the United States of America and 28 U. S. C. §1251 which provide respectively as follows:

Article III, Sec. 2, Clause 2:

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.



§1251:

(a) The Supreme Court shall have original and exclusive jurisdiction of:

(1) All controversies between two or more States;

(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings brought by ambassadors or other public ministers of foreign states or to which consuls or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

Since this Court has exclusive jurisdiction over suits between two states and since this Court also has original jurisdiction over suits between a state and citizens of another state, this Court provides the only proper forum in which to litigate the issues raised in Plaintiff's complaint.

## JUSTICIABILITY

In its complaint, Plaintiff seeks the abatement of alleged public nuisances, the termination of alleged continuing trespasses and compensatory and punitive damages for the alleged tortious conduct of Defendants. It is elementary that these matters are and have long been proper subjects of adjudication in the courts of this country. Furthermore, in numerous original jurisdiction cases in the past, this Court has entertained suits by states seeking similar relief under similar circumstances. See e. g. *Missouri v. Illinois*, 180 U. S. 208 (1901); *New York v. New Jersey*, 256 U. S. 296 (1921); *North Dakota v. Minnesota*, 263 U. S. 365 (1923); *Michigan v. Wisconsin*, 270 U. S. 295 (1926). The rationale for entertaining such cases was best expressed by Mr. Justice Holmes in *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907), where he stated at p. 237:

The caution with which demands of this sort, on the part of a State, for relief from injuries analogous to torts, must be examined, is dwelt upon in *Missouri v. Illinois*, 200 U.S. 429, 420, 521. But it is plain that some such demands must be recognized, if the grounds alleged are proved. When the States by their union made

the forcible abatement of outside nuisance impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining *quasi*-sovereign interests; and the alternative to force is a suit in this court. *Missouri v. Illinois*, 180 U. S. 208, 241. (at 237)

The instant suit is almost identical in many respects to the case in which these famous words were written and it is submitted that this Court stands as the only forum in which Plaintiff having foreclosed its right to use self help may obtain plain, speedy and adequate relief from the alleged continuing tortious conduct of Defendants.

### CONCLUSION

The Court having original and exclusive jurisdiction over this justiciable matter, the motion for leave to file the complaint should be granted.

Respectfully submitted.

STATE OF VERMONT  
By  
JAMES M. JEFFORDS  
Attorney General of Vermont  
JOHN D. HANSEN  
Assistant Attorney General  
State Library Building  
Montpelier, Vermont, 05602

December, <sup>29,</sup> 1970

