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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 50, Original

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

Plaintiff,

against

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

and

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

Defendants.

ANSWER

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ANSWER

The State of New York by its Attorney General, Louis J. Lefkowitz, answering the complaint herein, alleges as follows:

FIRST: Admits each and every allegation contained in paragraphs "I" through "VII" of the complaint herein.

SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "VIII" of the complaint.

THIRD: Denies each and every allegation in paragraph "IX" of the complaint except admits that the State of New

York was and now is the legal owner, in trust for its citizens and inhabitants, of the lands lying under Lake Champlain from the New York shoreline to the middle of the deepest channel of Lake Champlain.

FOURTH: Denies each and every allegation contained in paragraphs "X" and "XI" of the complaint.

FIFTH: Admits each and every allegation contained in paragraph "XII" of the complaint, except denies that such plant is presently operating, and that Ticonderoga Creek is a navigable body of water.

SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "XIII" and "XIV" of the complaint, except admits that defendant International Paper Company discharged some wastes into Ticonderoga Creek while its plant was in operation.

SEVENTH: Denies each and every allegation contained in paragraphs "XV" and "XVI" of the complaint.

EIGHTH: Denies each and every allegation contained in paragraph "XVII" of the complaint, except denies knowledge or information sufficient to form a belief as to what defendant International Paper Company "knew, or should have known."

NINTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "XVIII" and "XIX" of the complaint, except denies that the State of New York took any action which resulted in the formation of a sludge bed on the bottom of Lake Champlain.

TENTH: Denies each and every allegation contained in paragraphs "XX" through "XXXV" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANT
STATE OF NEW YORK ALLEGES:

ELEVENTH: The State of New York did not acquiesce in the discharge of wastes into Ticonderoga Creek by defendant International Paper Company. In 1965 the State of New York commenced proceedings through its Department of Health, charging International Paper with violating applicable stream standards and seeking an order requiring removal of the sludge. In December, 1966 International Paper consented to an order containing an abatement schedule which required it to end its pollution of the creek by December 1, 1970. In May, 1968, International Paper, pursuant to this order of New York's Health Department, submitted its plans for waste treatment facilities, a permit for which was issued the following year by New York. In August, 1970, New York commenced an action against International Paper in its courts, demanding that it cease its pollution in accordance with the administrative order. This suit was prompted by evidence received by New York that International Paper had fallen behind its schedule and therefore would not terminate its pollution of the creek on the agreed date. This suit was terminated by consent judgment entered March 12, 1971, directing International Paper to terminate its pollution on or before April 24, 1971. A copy of this consent judgment is marked Exhibit "A" annexed hereto. On April 12, 1971, International Paper Company ceased all operations at its Ticonderoga plant, and is no longer causing any pollution of the creek or of Lake Champlain or discharging any untreated effluent into the creek or lake.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, DEFENDANT
STATE OF NEW YORK ALLEGES:

TWELFTH: The sludge bed in the area of Ticonderoga Bay contains only inert, non-toxic matter which is not polluting the lake, emitting offensive odors or otherwise

causing a public nuisance. In order to determine the most appropriate method of coping with the sludge bed from the environmental viewpoint, the State of New York and the International Paper Company entered into a contract with the highly respected engineering and consulting firm of Quirk, Lawler & Matusky of Tappan, New York, on or about March 26, 1971. This study was conducted in the area surrounding Ticonderoga Creek in the summer of 1971. A copy of the "Summary of Findings, Conclusions and Recommendations" of the Quirk, Lawler & Matusky report is set forth in Appendix "B" of the Answer of defendant International Paper.

THIRTEENTH: The study found that the sludge did not interfere with maintenance of dissolved oxygen in the area, and that the dissolved oxygen concentration in and around Ticonderoga Bay was at all times substantially above the established water quality standards for dissolved oxygen of both Vermont and New York. The Department of Environmental Conservation of the State of New York also conducted a study of the area which resulted in the Report of the New York State Department of Environmental Conservation on Ticonderoga sludge area surveillance, a copy of which is annexed as Appendix "D" to the Answer of defendant International Paper. The Surveillance study found that the dissolved oxygen concentration was 5.0 mg/l or higher at the New York-Vermont State line, well above the 4.0 mg/l standard of both Vermont and New York. During the summer of 1971 neither the New York Department of Environmental Conservation nor Quirk, Lawler & Matusky observed any floating mats of sludge in the area.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, DEFENDANT
STATE OF NEW YORK ALLEGES:

FOURTEENTH: Defendant International Paper Company is not discharging any wastes into Ticonderoga Creek, and

has not done so since April 17, 1971. Plaintiff's demand for an injunction against further discharge is therefore moot.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
DEFENDANT STATE OF NEW YORK ALLEGES:

FIFTEENTH: The sludge bed has not created an impediment to navigation.

SIXTEENTH: The State of New York has never received any complaint or other notice from plaintiff as to any asserted impediment to navigation.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
DEFENDANT STATE OF NEW YORK ALLEGES:

SEVENTEENTH: There has not been any alteration of the interstate boundary.

EIGHTEENTH: The State of New York has never received any complaint or other notice from plaintiff as to any alteration of such boundary.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
DEFENDANT STATE OF NEW YORK ALLEGES:

NINETEENTH: The cause of action alleged against defendant State of New York is barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,
DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTIETH: The cause of action alleged against defendant State of New York is barred, in whole or in part, by plaintiff's laches. During the entire period of operation

of defendant International Paper Company's plant, except for the last year or two, plaintiff was never heard to complain of the allegations it has now presented to this Court. Having acquiesced in the acts of defendant International Paper Company, plaintiff cannot now be heard to complain of the consequences.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE,
DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTY-FIRST: As to Vermont's claim for money damages, defendant State of New York, as a sovereign State, is immune from any such claim.

WHEREFORE, defendant State of New York demands judgment dismissing plaintiff's complaint, together with the costs and disbursements of this action.

Dated: New York, New York, June 16, 1972

LOUIS J. LEFKOWITZ
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State of New York
Attorney for the State
of New York
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80 Centre Street
New York, New York 10013
Tel. (212) 488-7560

Certificate of Service Under Rule 33.

PHILIP WEINBERG attorney for Defendant State of New York and a member of the Bar of this Court, certifies that all parties required to be served with said Defendant's Answer dated June 16, 1972 were served the 19th day of June, 1972, three copies having been mailed this day respectively to the Honorable Deane C. Davis, Governor of the State of Vermont, National Life Drive, Montpelier, Vermont 05602; the Honorable James M. Jeffords, Attorney General of the State of Vermont, State Library Building, Montpelier, Vermont 05602, attorney for plaintiff and Taggart Whipple, One Chase Manhattan Plaza, New York, New York 10005; attorney for defendant International Paper Company by causing the same to be deposited in a mail box maintained by the United States Post Office at 80 Centre Street, New York, New York 10013, with first class postage prepaid.

June 16, 1972

PHILIP WEINBERG

