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July 20, 1978

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Gentlemen:

This is to bring you up-to-date as to the status of the cases and the legal steps, with your concurrence, which we plan to take.

Judge Port's Case

Oneida Nation of New York, et al. v. Oneida and Madison Counties

As you are aware, this case which involved only the 1795 State Treaty, was bifurcated on the issues of liability and damages. Judge Port ruled in our favor on the question of liability in 1976. We are now preparing for trial on the issue of damages. This week, George Shattuck resigned as counsel in this case and substituted the Native American Rights Fund (Arlinda F. Locklear and myself) as attorneys for the Thames Band and the Oneida Indian Tribe of Wisconsin. George also substituted

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Bertram Hirsch for himself as attorney for the Oneida Nation of New York. Pre-trial discovery on the question of damages is expected to continue for several months.

1974 Companion Case to Judge Port's Case

You will recall that in 1974 George Shattuck filed a second case against Madison and Oneida Counties involving the lands ceded to the State by the Oneida Nation in 23 treaties following the 1795 Treaty. This case has been held in abeyance pending the final outcome of Judge Port's case. Although there is no immediate rush, within the next several weeks we plan to file an amended complaint in this case, which will include two additional treaties which the present complaint excluded because federal representatives were present. We have since concluded that, the mere presence of federal representatives is not sufficient to constitute the federal consent required by the Non-Intercourse Act. Congressional ratification is required for compliance with that act. We also will expand the prayer for relief, to include ejectment and trespass damages for the period of the Oneidas dispossession.

Oneida Indian Nation of New York, et al.
v. The New York State Thruway Authority (78-CV-104)

This is the case filed by Jake Thompson and the Elective Faction in New York on March 3, 1978. It is filed solely on behalf of the Oneida Nation of New York, and the State is the sole defendant. The State has been given an extension until July 31, 1978, to respond to this complaint. We anticipate the State's response will be in the form of a motion to dismiss which will raise every conceivable defense.

It is important that when we commence negotiations with respect to our claims, we start from a position of strength. We, therefore, want to postpone any decision on the merits -- which might go against us -- until after negotiations have either succeeded or failed.

We, therefore, intend to seek a postponement of any hearing in Jake Thompson's case for as long as possible. When a hearing becomes inevitable, it is essential that we are in a position to oppose the State's motion. We, therefore, intend to

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intervene in Jake Thompson's case or file an independent suit and then move to consolidate our case with Jake's case. We are doing further research as to the adviseability of these alternatives.

In any event, shortly following the filing of the State's response, we intend to file a complaint or complaints (either in intervention or separately) involving our pre-1790 claims and all our post-1790 claims which are not already covered by Judge Port's case and the 1974 companion case. We intend to name as defendants the State, the counties, the larger towns, and several of the largest private property owners (probably corporations). We also intend to assert that these defendants represent a class composed of all property "owners" within the claim area -- in other words, a defendant class action. The court will eventually determine whether we can properly proceed by way of a defendant class action and, if not, we will then have the enormous and expensive task of serving complaints on all property "owners". We do not, however, have to worry about this problem for the present. When, and if, we have to come up with the money to serve complaints upon several hundred thousand people, I trust we will do it somehow.

Status of the Bureau of Indian Affairs'
Plan to Hold an Election in New York

Les Gay, of the Bureau of Indian Affairs, tells me that the Bureau has compiled a "list" of Oneidas which it believes are qualified to receive federal services. The Bureau of Indian Affairs plans to publish this list locally in New York for receipt of comments, objections, or additions in the near future. Following publication, the Bureau intends to hold some form of an election, poll, or survey to determine which government to recognize. The precise procedure for making such a determination has not yet been decided upon, but whatever procedure is adopted, the Bureau plans to have it completed this fall. Whether it meets this deadline, however, remains to be seen.

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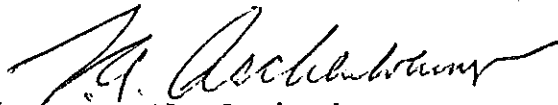
Supplementary Memorandum in Support of our
Litigation Request to the Department of the Interior
With Respect to our Pre-1790 Claims

This memorandum, which is now quite lengthy, will be finished within a few days. We will send you all copies at the time we forward it to Interior.

It would probably be beneficial to all of us if we held a meeting in the not too distant future in order to insure that we all are in agreement on the course to take and to prevent any misunderstandings. Arlinda and I will be happy to meet with you at a mutually convenient time from August 14th on. As there are more of you, I suggest you select the time and place and Arlinda and I will make every effort to arrange our schedules to accommodate yours.

Meanwhile, if you have any questions, suggestions, or objections to the plans we have outlined above, please let us know.

Best regards,



Lawrence A. Aschenbrenner
Attorney



Arlinda F. Locklear
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LAA/AFL/tmws