

Native American Rights Fund

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Dear Marv:

As we all discussed over the phone, it appears that the Oneidas' interest would be best served by a postponement of further proceedings in Docket 301. The following information is provided to assist you in that attempt:

I. There are now pending three cases challenging the legality of post-1790 treaties between the Oneida Nation and New York State. The first such case [Oneida v. Oneida Co., Civ. No. 70-CV-35] is generally referred to as the "test case" or "Judge Port's case" and was filed in 1970 by George Shattuck. The complaint challenges the validity of only one of the post-1790 state treaties -- the treaty of 1795 -- and seeks as relief trespass damages for two years from Madison and Oneida Counties, the only defendants. The second case [Oneida v. Oneida Co., Civ. No. 74-CV-187], filed in 1974 by George Shattuck, challenges the validity of all other post-1790 treaties between the Oneida Nation and New York State. The third case, [Oneida Tribe of N.Y. v. Abrahams Williams, Civ. No. 74-CV-167], filed by NARF and known as the Abraham Williams case, was filed on behalf of the Oneida Nation of New York and challenges the loss through tax foreclosure and otherwise of some 750 acres of land reserved for the New York Oneidas.

Because all three post-1790 cases involve many of the same legal issues, the 1974 case and the Abraham Williams case were held in abeyance while the 1970 test case was tried. The liability issue in the test case has been tried and Judge Port ruled for the Oneidas. The parties have been conducting discovery in preparation for the damages trial.

Marvin S. Chapman, Esq.
June 6, 1979
Page Two

On April 2, however, Madison County moved for summary judgment in both the test case and the 1974 case on the theory that the post-1790 state treaties had been ratified for purposes of the Nonintercourse Act by proceedings before the Indian Claims Commission involving those same treaties. Judge Port denied the motion for summary judgment on May 17 and certified his order for interlocutory appeal. On May 23, Madison County petitioned the Second Circuit for permission to appeal. To date, the Second Circuit has not responded to the petition.

II. In November 1977, NARF filed a litigation request on behalf of the Wisconsin Oneidas and the Oneida of the Thames Band Council asking that the United States initiate litigation to recover land purportedly sold by the Oneidas to New York State in 1785 and 1788. The United States has not yet formally responded to the pre-1790 litigation request.

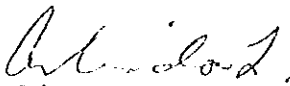
In March of last year, Jake Thompson filed a lawsuit on behalf of the New York Oneidas to recover land lost before 1790 and now held by the New York Throughway Authority. The plaintiffs therein have granted a series of extensions for the defendant to answer the complaint in the hope that the leadership problem in New York would be resolved.

III. In 1977, the Department of the Interior announced that the Oneidas' post-1790 claim was a credible one that should be pursued by the United States on the Oneidas' behalf. Nonetheless, the United States has not filed suit and, for a variety of reasons, has not attempted to settle the case. In May, however, the Oneidas received a letter from the Solicitor's Office indicating their willingness to begin settlement negotiations. The Solicitor's Office suggested that the Oneidas designate a seven member negotiating committee to represent them in settlement talks. The Oneidas have not responded to the invitation to negotiate but are preparing a counter-proposal on the make-up of the negotiating committee. We understand that the Oneidas plan to meet June 16, after which they will submit their own proposal for a negotiating committee to Leo Krulitz. I have enclosed a copy of Mr. Krulitz's letter.

Marvin S. Chapman, Esq.
June 6, 1979
Page Three

I hope this information is sufficient for your purposes. If not, I would be happy to supplement it in any respect.

Sincerely,


Arlinda Locklear

AL:jeh

Enc.

cc: Irv Chrisjohn
Howard Cannon ✓
Bert Hirsch
Tim Coulter