INDIAN LAW RESOURCE CENTER
601 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 • (202) 547-2800

June 29, 1981

Francis Skenandore
Tribal Attorney
Oneida Land Office
P. O. Box 129
Oneida, Wisconsin 54155

Arlinda Locklear
Native American Rights Fund
1712 N Street, N. W.
Washington, D. C. 20036

Dear Francis and Arlinda:

My client, the Houdenosaunee, has asked that I exchange views with you about possible resolution of our clients' conflict in Oneida Indian Nation of Wisconsin v. New York, 79-CV-798.

At this time, the fundamental problem is that both our clients claim the same land. In my own view, the conflict can be resolved if our clients can come to some accord as to (1) who owns the land, or (2) who shall share in any return of land and in what way. Perhaps we can facilitate an accord by sharing views. } A

Would you please answer the following questions in writing:

1. Does the Oneida Tribe of Wisconsin definitely desire to hold title to land in New York in its own name or as a beneficiary of a trust?

At the June 28th meeting, Francis proposed (it was reported to me) that the motion to intervene be withdrawn, that the Oneida Nation (as constituted as part of the Houdenosaunee) become a plaintiff in the case, and that the interest of the rest of the Six Nations be accommodated.

2. Last year your client refused to make a motion to join the Oneida Nation (my client) and opposed their motion to intervene. Has that position changed? What is your client's position about this?

3. Can you suggest a procedural framework for doing what Francis proposed?

4. How would the interest of the rest of the Houdenosaunee be protected under Francis' proposal?

For purposes of discussion, and without suggesting any commitment by anyone, let me set out one possible idea.

1. Our clients would have an agreement (a) to take no action in the case without the consent of the other and (b) to refrain from any attack upon the other in proceedings.

2. The Houdenosaunee and constituent nations would stipulate to the right of the Oneida Tribe of Wisconsin to participate in any award of damages.

3. The Oneida Tribe of Wisconsin would stipulate that any present title to land continue to be in the name of the Oneida Nation as part of the Houdenosaunee as it was in 1785 and 1788.

4. The Oneida Tribe of Wisconsin would withdraw its ppposition to the pending motion to intervene.

5. Appropriate amendments to our respective legal papers would be made to conform to the above.

Another possibility might be to stipulate that the Oneida entities now before the court constitute all the known entities having any possible interest in the subject lands as the Oneida Nation or successors to it. We would then be in a position to proceed on the liability phase--delaying until later the question of what plaintiffs actually are entitled to damages, title and so on. This would make it more difficult for van Gestal to destroy us separately. Naturally, we can't be sure the court would agree to such a phased approach. B

Frankly, I believe that unless we bring about an accord and a unified front, that we will tear each other apart with the defendants helping each of us to destroy the other. The seriousness and immediacy of this danger has not been made fully clear, I'm afraid. C

Finally, the Oneida Nation and Houdenosaunee decided long ago to take action to dismiss Docket 301. We are continuing our effort to develop an effective legal means for doing that. Does the Oneida Tribe of Wisconsin still intend to seek dismissal of Docket 301? If so, can't we agree to work together on that?

I would appreciate receiving your written answers and any other suggestions as soon as possible.

Sincerely,

Robert T. Coulter

Attorneys
Lawrence A. Aschenbrenner
Arlinda F. Locklear

Legislative Liaison
Ada Deer
Suzan Shown Harjo

(202) 785-4166

...dive American Rights Fur...
1712 N Street, N.W. • Washington, D.C. 20036

Director
John E. Echohawk

Main Office
1506 Broadway
Boulder, Colorado 80302
(303) 447-8760

July 8, 1981

Robert T. Coulter
Indian Law Resource Center
601 E Street, S.E.
Washington, D.C. 20003

Dear Tim:

We agree that the fundamental difference between the Oneida Indian Nation of Wisconsin and the Six Nations is that both are claiming the same land. We are not prepared, however, to compromise on that point. In our view, Oneida land is just that, Oneida land. Our claim rests on aboriginal title, i.e. exclusive use and occupancy of the land since time immemorial. In addition, the Oneidas' interest in the land was acknowledged by the United States in the 1784 Treaty of Fort Stanwix which states: "The Oneidas and the Tuscaroras shall be secured in the possession of the lands on which they are settled." Admittedly, other Six Nations' members may have occupied Oneida land at times, but only with Oneida consent. However, the Oneidas did not relinquish Oneida land to the Confederacy any more than it relinquished title to the non-Indians who now occupy Oneida land. D

In response to your specific question, we offer the following additional comments:

1. The Oneida Tribe of Wisconsin wishes to establish the legal principle that the Oneidas, all Oneidas, are the present owners of the land described in our complaint. Individual members of the Wisconsin tribe may wish to move to New York, but the Oneida Tribe of Wisconsin does not intend to relocate to New York; neither does the tribe expect to be an absentee landlord over lands occupied by other Oneidas. However, the tribe is not prepared to commit itself on any other details of the final outcome of the litigation at this point. E

2. The Oneida Tribe of Wisconsin did not refuse to allow the Oneida people in New York to participate in the Oneida litigation. For three weeks before the litigation was filed, we worked closely with your Oneida clients and Birt Hirsch's Oneida clients in an effort to get all Oneidas together as plaintiffs in the same lawsuit. Our efforts failed because the New York Oneidas would not agree to work together. Ray Halbritter then asked to join the litigation representing the New York Oneidas. Other New York Oneidas objected to that proposal and, because we insist on remaining neutral in the current split in New York, we could not accept Mr. Halbritter's proposal. Nonetheless, we felt we had no choice but to file the lawsuit without the New York Oneidas to protect our own people's interest. F

Even though the New York Oneidas did not join the litigation as original plaintiffs, we left the door open by inviting the New York Oneidas to intervene through their respective leaders. (See paragraph five of our complaint.) In fact, when you first proposed to intervene on your clients' behalf, we informed the Court that we would not oppose the motion. As stated in our opposing memorandum, we changed our position when you moved to intervene on behalf of the Six Nations as well as your Oneida clients and asserted a claim against us by the Six Nations. We do not oppose participation in the lawsuit by any Oneidas, but your complaint in intervention asserts a claim against us on behalf of your non-Oneida clients. Therefore, we had no choice but to oppose your motion. And as your motion now stands, we still oppose it.

3. The procedural framework for implementing Francis' proposal appears simple to us. It would require that a new motion to intervene on behalf of only your Oneida clients be filed and the pending motion be withdrawn. At that point, we will advise the Court that we do not oppose the intervention of the New York Oneidas. We would, of course, do the same should Robert Burr file a motion to intervene on behalf of the New York Oneidas he represents. It was our understanding at the end of the June 28 meeting that your Oneida clients agreed with Francis' proposal, i.e. that the claim is an Oneida one, that all Oneidas should pursue the claim together, that the Six Nations would support the Oneida claim and withdraw its motion to intervene. We also believed that the Six Nations Council supported this resolution of our differences.

4. Our proposal does not protect the asserted interest of the Six Nations' to our land, but only that of your Oneida clients. We do not believe that the Six Nations has title to Oneida land and are, therefore, not prepared to make an accommodation for their claimed interest.

Your proposal with respect to resolving our differences is unacceptable for several reasons. First, we will not give veto power over conduct of the litigation to parties who assert a claim against us, i.e. the Six Nations. Second, we will not relegate ourselves to an award of money damages only. Third, we will not agree that title to Oneida land should be held by anyone other than the Oneidas.

In short, we are willing, indeed, are anxious to accommodate your Oneida clients. However, we are not willing to accommodate the Six Nations' claim to Oneida land. We are saddened by the prospect of facing the Six Nations in court, but we will do what we must to protect and preserve our people's interest.

Sincerely,

Arlinda Locklear

Francis Skenandore

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