

SPECIAL REPORT  
5/10/83

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ATTENTION

TO: ONEIDA GENERAL TRIBAL COUNCIL

Enclosed you will find materials referred to in the April 28, 1983 issue regarding the Oneida Land Claims in New York. This material is provided for your information and understanding about the position of the Wisconsin Oneidas regarding these Oneida Land Claims.

-Oneida Business Committee-





Oneidas bringing several hundred bags of corn to Washington's marching army at Valley Forge, since the colonists had consistently refused to aid them.

# Oneida Tribe of Indians of Wisconsin

Phone: 868-2771



Oneida, WI 54185



USWA DENOLUN TATEHE

Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

## WISCONSIN ONEIDAS LAND CLAIMS MEMORANDUM

TO: Oneida General Tribal Council

FROM: Oneida Business Committee

DATE: April 28, 1983

RE: Wisconsin Oneidas New York Land Claims

Recently, there has been discussion in the Oneida Community regarding cases now pending in the New York Federal District Court in which the Wisconsin Oneidas are the plaintiffs. The land claims which were first filed in 1970 by the Wisconsin Oneidas have been very successful. In order to advise the Oneida General Tribe Council, the Business Committee participated in several land claims meetings, at which our attorneys explained on March 6, 1983 the Wisconsin Oneidas position and at another meeting on March 12, 1983 representatives of the Six Nations presented their position on the Oneida New York Land Claims. At all times, the Business Committee has encouraged full discussion on these important Oneida New York Land Claims and attempted to be accommodating to all parties. Therefore, it is important to inform the Oneida General Tribal Council of the correspondence which has occurred between the Oneidas of the Thames, Robert T. Coulter, Attorney for the Six Nations and Wisconsin Oneidas. The issue in this matter concerns the Six Nations motion to intervene in the case filed by the Wisconsin Oneidas wherein the Six Nations claims to own exclusive title to the land the Wisconsin Oneidas are seeking to recover.

Specifically, the motion to intervene by Attorney Coulter on behalf of the Six Nations does not recognize the government of the Wisconsin Oneidas nor the interest of the Oneida people in Wisconsin to assert any land claim in New York. The motion to intervene by the Six Nations was accompanied by a complaint in intervention stating that the Wisconsin Oneidas have no formal, legal relationship with the Six Nations. The complaint in intervention further stated that the complaint was brought by each nation individually and by the Six Nations as a whole. The Six Nations further allege

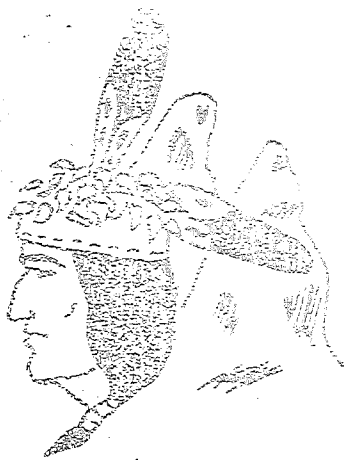
Memorandum  
Oneida General Tribal Council  
April 28, 1983

-2-

they are the owners of and have right of possession of every portion of the land claim and that legal title and possession be restored to the Six Nations is a rival claimant to the Wisconsin Oneidas and that the Wisconsin Oneidas are claiming land in their own right which properly belongs to the Six Nations. In short, the papers filed on behalf of the Six Nations, by Attorney Robert T. Coulter, if successful would exclude the Wisconsin Oneidas from participating in either the return of land or money damages awarded, because the Wisconsin Oneidas are rival claimants and have no formal legal relationship with the Six Nations.

It should be noted here that the Cayuga Nation objected to Attorney Robert T. Coulter's motion to intervene in the Wisconsin Oneidas case. The Cayuga Nation motion brought to the Court's attention serious misrepresentation of facts regarding the tribal entities on whose behalf Attorney Coulter purported to represent. As a result, Attorney Coulter stated to the Court that the papers filed were on behalf of the Six Nations and each of the Nations individually, but not in behalf of the Cayuga Nation.

Correspondence will be mailed to each individual tribal members for your further information. You will note in the correspondence that the Wisconsin Oneidas have at all times, attempted to be accommodating to the interest of all other Oneidas and to the Six Nations. You will also note, that the Six Nations has at no time, directly communicated with the Business Committee as they had in the past, but have chosen to do so through their attorney. Furthermore, at no time has the Wisconsin Oneidas attempted to assert the non-existence of the Six Nations. However, because of the notice from the Attorney for the Six Nations to renew his motion to intervene, the Business Committee found it necessary to direct the attorneys for the Wisconsin Oneidas to take specific legal action to protect the interest of the Wisconsin Oneidas in the New York Land Claims.



Traditional Council of the Thames  
 OFFICE: R.R. 2  
 SOUTHWOLD, ONTARIO.  
 NBL-260



TELEPHONE  
 652-3244  
 CODE: 519

*Copies to BC  
 Law Office*

March 24, 1963

Mr. Percy Powless  
 Oneida Tribe of Indians of Wisconsin, Inc.  
 Oneida Route 1  
 Wisconsin U.S.A. 54155

Dear Mr. Powless:

Greetings from the Oneidas of the Thames. This is written in the spirit of goodwill and friendship and in it, I will attempt to explain our position regarding the New York land rights and our unique relationship with the Traditional Council here.

After the election held in June of last year, I initiated contact with our traditional council. This was done, because I felt that over the years misinformation and resultant mistrust had built up barriers between our people. The primary causes of these barriers originated in the non-Indian dominated governments of the day; as you well know one way to crush a race is to divide and then assimilate them into the mainstream of the dominant society. In Canada the goal of assimilation was stated publically by the government in 1969, this goal has taken on different forms but nevertheless is still desired by the Canadian Government. I feel that to combat this policy we must become more united as a people, be willing to exchange information, ideas and have clear understanding, that although our approaches might be different, the ultimate goal is that our Oneida people benefit from all our efforts, be it education, medical, housing, self-government, etc.

The result of this initial contact was that a series of meetings were held between representatives of the two councils. There was an agreement that better communications between us would lead to better understanding and this communication and understanding would break down these barriers. We came to an agreement that we would try to approach on one particular subject in this manner to see if it would work and also if the Oneida people as a whole would agree to the councils working together.

The subject we chose to concentrate on was the New York land rights issue. The two councils exchanged viewpoints as to how they saw this issue being resolved and what type of settlement they would be satisfied with. The aspirations were

different, so we then had a meeting where we attempted to explain and also understand each other's position. From that meeting we came to an agreement to form a united front that included twelve points (see enclosed document) that would govern and guide us in our approach to the New York land issue. We felt that before we could proceed any further, the Oneida people would have to give us a mandate. To that end, in our weekly newsletter we included a series of articles telling the Oneida People what was happening in an attempt to involve them. The culmination of this was the special issue I have enclosed.

This issue was delivered two to three days in advance of the general council meeting (Nov. 27, 1982). The people that attended the meeting agreed with our approach; we did not want to rush or overwhelm in one meeting, therefore we scheduled another meeting two weeks later on Saturday, December 11, 1982. At that meeting the people in attendance gave us the mandate to proceed in this United Front approach regarding New York land rights.

Our elected council feels that the primary goal of any settlement should be the acquisition of land and any monetary compensation would be of secondary importance. We further felt that the approach to this land issue should be through the Hohenosaunee Grand Council based in Onondaga, New York; we do not feel that a particular group, in this case, Oneidas, should place themselves in a position where their approach comes into conflict with the approach taken by the Grand Council. Also we are very leary of arguing in the white man's courts, our principles and interpretations of past treaties. In Canada anytime Indians try to use their treaties and their understanding of these treaties as bases to justify their claims, the courts have proven to be very strict in their interpretation. Consequently, the vast majority of grievances that have been taken to these courts have been denied.

I hope that your understanding is more complete now that you have read this letter, if not, feel free to contact me at our office.

Yours truly,

*Al Day*

Al Day, Chief  
Oneidas of the Thames Band

/ve

Encl.

Attorneys  
Richard Dauphinais  
Arinda F. Locklear

Legislative Liaison  
Suzan Shown Harjo

Indian Rights Fund

1100 15th St., N.W., Washington, D.C. 20036-2976 / (202) 785-4166

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Boulder, Colorado 80302-6296  
(303) 447-8760

March 31, 1983

RECEIVED

APR 4 1983

ONEIDA LAW OFFICE

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

Re: Oneida Indian Nation of Wisconsin, et al. v. State of New York, et al., 79-CV-798

Dear Tim,

As you are aware, the time within which the defendants could petition the Supreme Court for review of the Second Circuit's decision in the pre-1790 Oneida cases expired on March 21. No pre-trial conference or other proceeding on remand is yet scheduled, but I would expect that we will shortly hear from either the district court or the defendants about further proceedings. One of the first matters the court will consider on remand, of course, is the Six Nations' motion to intervene in the case.

When the court first considered the Six Nations' motion, my clients registered their opposition primarily on the ground that the proposed complaint in intervention asserts a claim against them as well as against the non-Indian defendants. In the interest of avoiding a renewed dispute among our clients on remand, I'd like to propose a simple compromise to you -- I will advise my clients against renewing their opposition to the intervention of the Six Nations if you will advise the Six Nations to amend its complaint by dropping its claim against the Oneidas. As I understand it, the Six Nations has no substantive difference with the Oneidas about the claims made against the non-Indian occupants. If that is the case, the Six Nations' interest vis-a-vis the defendants will not be prejudiced by their proposal. In addition, I think we can all agree that it is inappropriate and unseemly for the Six Nations and the Oneida plaintiffs to litigate our differences about the land in a federal district court. Those differences should be aired and compromised, if possible, in private discussions among ourselves. For those reasons, I think this proposed compromise on the intervention issue is in all our best interests.

Robert F. Coulter, Esq.

March 31, 1988

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Time, of course, is short. I would expect that a pre-trial conference in the case will be held in the near future and we should either resolve this matter or satisfy ourselves that it cannot be resolved by compromise by that time. Please advise me of your intentions sometime next week. If you will urge the Six Nations to consider this compromise favorably, I will do likewise with my Oneida clients.

Sincerely,

  
Arlinda Locklear

RL/mib

# INDIAN LAW RESOURCE CENTER

501 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 \* (202) 547-2800

April 6, 1983

Arlinda Locklear, Esq.  
Native American Rights Fund  
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Washington, D.C. 20036

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Richard D. Davidson, Esq.  
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& Barclay  
Financial Plaza  
Syracuse, New York 13221

Bertram Hirsch, Esq.  
81-35 258th Street  
Floral Park, New York 11004

Re: Oneida Indian Nation of Wisconsin, et al. v.  
State of New York, et al., 79-CV-798

Dear Counsel:

As you know, the Houdenosaunee participated in the district court's consideration of the motions to dismiss in the above-captioned action through the submission of two memoranda opposing the motions. Because it claims an interest in the subject land, the Houdenosaunee also moved in the district court to intervene in this action. That motion was denied by the district court in its Memorandum - Decision and Order dismissing the action on July 24, 1981. By order of September 10, 1981, the court amended its earlier order to clarify that the denial of the motion was without prejudice. The Houdenosaunee also participated in the case on appeal by the submission of a brief as amicus curiae.

Accordingly, this is to let you know that the Houdenosaunee intends to renew its motion to intervene. We ask that in the meantime we be kept informed of any developments in the case.

With best regards.

Sincerely,

Robert T. Coulter

Attorney for the Houdenosaunee. **RECEIVED**

RTC/pb

cc: Hon. Neal P. McCurn  
U.S. District Judge



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

## Oneida Tribe of Indians of Wisconsin

Phone: 868-2771



Oneida, WI 54155



USGWA DENOLUN YATENE

Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

April 18, 1983

Mr. Al Day  
Chief and Councillors  
Oneida of the Thames Band  
R.R. 2  
Southwold, Ontario, Canada  
NOL - 2G0

Dear Chief Day, and Councillors:

This letter is in response to Al Day's letter of April 6, 1983 inviting the Oneida Business Committee to a meeting of the Traditional and Elective Councils on April 20, 1983. Your letter further indicated that Attorney Robert Coulter of the Indian Law Resource Center, who is the attorney for the Six Nations at Onondaga, New York, would be in attendance to discuss the Oneidas New York land claims.

The Oneida Business Committee upon considering your request to attend this meeting as observers has decided after consultation with our attorneys on the Oneida New York land claims to inform you that we will not attend the meeting on April 20, 1983. This decision does not preclude a future meeting at which the Wisconsin Oneidas can freely participate to explain their position and stance on the Oneida land claims in the State of New York. We will, of course, at this proposed meeting have our attorneys present and would request that your attorney who proposes an opposing and different legal claim and solution to the Oneida New York land claims be present at such meeting as well.

Mr. Al Day  
April 18, 1983

-2-

We find it regrettable that the Elective Council is considering termination of the legal services of Attorney Arlinda Locklear without prior notice to her and/or consultation with the Wisconsin Oneidas. We also find it regrettable that the Elected Council would determine to change the entire Oneida New York land claims legal position to the stated Six Nations position which specifically excludes the Wisconsin Oneidas. We firmly believe in our position that this is an Oneida claim for Oneida people. As you know, legal documents purporting to exclude the Wisconsin Oneidas and assert the Six Nation's claim have already been filed by Attorney Coulter on behalf of the Six Nations in the United States Federal District Court for the Northern District of New York.

Furthermore, we have an obligation to protect this land claim which the Wisconsin Oneidas have asserted for the past 200 years. We would regard any change in the legal position of the Wisconsin Oneidas to a Six Nations' position as presented in the legal documents filed by Attorney Coulter and as presented in your letter, to be a breach of our responsibility to the Wisconsin Oneidas.

We will continue to pursue this as an Oneida Claim. But at the same time welcome the Canadian Oneidas to continue as co-plaintiffs, should your council desire to continue to proceed with us on this as an Oneida claim. If you do change your legal position and attorney, please notify our council of such changes.

Your response to this position would be appreciated, but in the meantime, we will continue to proceed against the named defendants and anyone else who may oppose the position of the Wisconsin Oneidas that this is an Oneida land claim. We thank you for your council's attention to this matter of extreme importance to all Oneida people.

Cordially,

15/  
PURCELL POWLESS  
Chairman, Oneida Tribe  
of Indians of Wisconsin

PP/psm

cc: Arlinda Locklear

RECEIVED

April 22, 1983

APR 25 1983

ONEIDA LAW OFFICE

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

Dear Tim,

By letter dated March 31, I proposed to you that we consider compromising the differences between my Oneida clients and the Six Nations respecting the land claims in New York State. Since that time, I have received written notification of a decision by the Thames Band to terminate our services in those cases. The Thames Band has, I understand, decided after several meetings with the Six Nations to adopt the Six Nations' position in the claims and retain you as their counsel. In addition, the Thames Band chairman recently proposed to the Oneida Tribe of Wisconsin that it sit in as an observer at a scheduled meeting with you to discuss the claims. In the view of the Business Committee of the Oneida Tribe of Wisconsin, these events reflect a clear purpose on the part of the Six Nations to impair the Tribe's relationship with N.A.R.F., to press its claim to Oneida land as its own, and to undermine the Oneidas' efforts to recover the land. As a result, the Business Committee has decided that it would be inimical to the Oneidas' self-interest to continue efforts to compromise its differences with the Six Nations and I have been instructed to advise you that the Oneida Tribe of Wisconsin will not henceforth consider or offer any such proposal.

Sincerely,

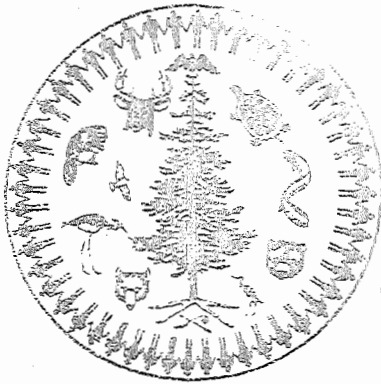
Arlinda Locklear

AL/mb

RECEIVED BY TRIBAL  
SECRETARY

MAY 02 1983

ONEIDA TRIBE OF  
INDIANS OF WISCONSIN



# HAUDENOSAUNEE

MOHAWK - ONEIDA - ONONDAGA - CAYUGA - SENECA - TUSCARORA  
Oneida Council of Chiefs Southwold P.O. Ont. Can. NOL2GO

April 27, 1983.

Mr. Percy Powless,  
Tribal Chairman,  
Oneida Tribe of Wisconsin,  
Oneida, Wisconsin 54155.

Dear Mr. Powless:

Your letter, which was received on April 19, 1983, has been read with considerable concern. It brings to light several points which in our opinion, amounts to a misunderstanding of information and a disinterpretation of history.

To begin with, Mr. Al Day's letter of April 6, 1983, provided you and the Business Committee with the option of attending the April 20th meeting as either observer, or, as participants if you so desired. It is unfortunate that you decided to interpret the letter as limiting your participation to an observers role.

In regards to the termination of Arlinda Locklear, and therefore the Native American Rights Fund (NARF) in any representative position, for the Oneidas of the Thames Band Council, we point out that an attempt to consult with your Business Committee was made on March 12 and 13, 1983. There were representatives of the Band Council and the Traditional Council present at the Haudenosaunee Land Rights presentation in your community and it was presented then the possibility of terminating our relationship with NARF. It was an attempt on our part to generate discussion with your Business Committee and local attorneys. Unfortunately there was no response from your people to our overtures for a discussion.

Further in the third paragraph of your letter you indicate - "legal position to the stated Six Nation position which specifically excluded Wisconsin Oneidas." No where do you detail your present evidence of this statement. We feel you should be reminded that it is the position advocated by NARF that has excluded non-Wisconsin and non-Band Council Oneidas from the position they entered into the courts. It is our understanding that the briefs submitted by the Haudenosaunee were done to protect the interests of those Oneidas excluded in the NARF briefs.

Mr. Perc

April 17, 1966.

We are not interested in pursuing a unilateral position that may be detrimental to other Oneidas or our brother nations of the Hodenosaunee. We are not interested in a massive change in the present legal position, but rather continuing in these cases with the strongest possible arguments and options, to insure that all Oneidas have a voice - especially those who have been excluded in the past.

You state that Wisconsin has been carrying on its obligations for 200 years. Two hundred years ago there was no such entity as a - "Wisconsin Oneida." There was the unfragmented participation of the Oneida Nation in the Hodenosaunee. It is unfortunate that you need to be reminded that your ancestors began an active migration from the Homelands in the 1830's and that a "Wisconsin Oneida" interest in these homelands is a recent phenomenon of this century.

We are dismayed by the present animosity you state towards the Hodenosaunee. The historical record shows an active participation by Oneidas from Wisconsin in Hodenosaunee councils during the 1920's. The Grand Council of the Hodenosaunee has recognized the participation of former members of your Litigation Committee and past Administrations as members of the Hodenosaunee Land Rights Committee.

This recent history raises concerns as to whether your current animosity to the Hodenosaunee is authentic, or contrived by outside forces for some unknown reasons. In any event, it is a major issue that needs to be resolved.

We deeply resent the implied threats you level in your letter at the United Front of the Oneida Band Council and the Chiefs Council plus the Hodenosaunee, and others who may have an interest in this process. We are open to meaningful discussions but not under the pressure that if one does not side with the "Wisconsin position" - one is then an enemy. At this time we are not in a position to be supportive of the "Wisconsin position" since we do not fully understand it. Also we have seen no evidence of you ever articulating it clearly enough for anyone to be supportive of it.

What we are clear about and disturbed by, is the divisionary tactics that have been used by the application of a paranoic lobbying effort to create dissension and confusion in our community. Also, we do not understand why you hold such a deeply guarded secrecy toward your position on resolving the issues that surround all of us.


We stand prepared to meet with you at a time convenient to you during the next two weeks. We also wish it to be clear that any failure to begin these talks rests fully with the Business Committee of the Oneida Wisconsin Tribe.

Mr. Perry

11/27, 1983.

Since you have not formally recognized the Chiefs Council here at Oneida, any correspondence concerning the United Front for Hodelosaunee Land Rights and related issues should be directed to the Oneida Band Council.

  
\_\_\_\_\_  
Mr. Al Day  
Oneida Band Council

  
\_\_\_\_\_  
Mr. Robert Antone  
Oneida Land Rights Committee  
Oneida Nation Chiefs Council

c.c. Artly Skenandore  
Member  
Oneida Nation Land Rights Committee

OCT 16 Recd

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OCT 10 1980

K.A.R.I.  
WASHINGTON

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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THE ONEIDA INDIAN NATION OF WISCONSIN, also  
 known as the ONEIDA TRIBE OF INDIANS OF  
 WISCONSIN, INC., and the ONEIDA OF THE  
 THAMES BAND,  
  
 Plaintiffs,  
  
 HOUDENOSAUNEE, and THE MOHAWK NATION, THE  
 ONEIDA NATION, THE ONONDAGA NATION, THE  
 CAYUGA NATION, THE SENECA NATION and THE  
 TUSCARORA NATION, individually and as Nations  
 of the HOUDENOSAUNEE,  
  
 Plaintiffs-Intervenors,  
  
 v.  
  
 THE STATE OF NEW YORK, et al.,  
  
 Defendants.

---

Civil Action  
No. 79-CV-798

COMPLAINT IN  
INTERVENTION

I. Introduction

1. This action was originally brought by the Oneida Indian Nation of Wisconsin and the Oneida of the Thames Band against a large class of defendants. The plaintiffs claim ownership of and right to possess an area of land shown on a map annexed as Exhibit A to the original complaint. Plaintiffs seek possession of portions of the lands, damages and declaratory relief. The

5. This Complaint in Intervention, so far as possible, follows the original Complaint. The corresponding numbered paragraphs of the original Complaint are shown in brackets, [], below.

## II. Jurisdiction

6. [2] The jurisdiction of the court is invoked pursuant to 28 U.S.C. sections 1331, 1337, 1343(3), and section 1362. The amount in controversy exceeds \$10,000 exclusive of interest and costs with respect to each member of defendant class.

7. [3] Intervenors' claims for relief arise under Article IX of the Articles of Confederation, the Continental Congress' Proclamation of September 22, 1783, the Treaty of Fort Stanwix (7 Stat. 15, 1784), the Treaty of Canandaigua of November 11, 1794, 7 Stat. 44, the Commerce Clause, the Fourteenth Amendment, and Art. I, Secs. 8 and 10 of the United States Constitution, 28 U.S.C. §177, 42 U.S.C. §1983, Article 37 of the 1777 New York Constitution, the common law, and the law of nations.

## III. Parties

8. The Houdenosaunee, also known as the Six Nations or Six Nations Iroquois Confederacy, is a native nation-state made up of the Mohawk Nation, Oneida Nation, Onondaga Nation, Cayuga Nation, Seneca Nation and Tuscarora Nation. The seat or central council fire of the Houdenosaunee is at Onondaga, near Syracuse, New York.

9. The Houdenosaunee, called the Six Nations, was and continues to be recognized as a matter of law by the United States by virtue of two treaties between the Six Nations and the United States duly ratified by the United States Senate, namely the Treaty of Fort Stanwix of 1784, 7 Stat. 15, and the Treaty of Canandigua of 1794, 7 Stat. 43. Each of the constituent nations is also recognized by the United States as a matter of law.

10. This intervention is brought by each constituent nation individually as well as by the Houdenosaunee as a whole.

11. [4] Plaintiff Oneida Indian Nation of Wisconsin is an Indian nation or tribe recognized by the United States with its reservation and principal situs in the State of Wisconsin. Plaintiff Oneida of the Thames Band Council is an Indian nation or tribe recognized by Canada with its reserve and principal situs in Southwold, Ontario.

12. Plaintiffs have no formal, legal relationship with intervenors.

13. The named defendants are those certified as representatives of the defendant class by order of this Court dated March 4, 1980, as subsequently amended: the State of New York, the Counties of Broome, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida,

WHEREFORE, intervenors pray that this court:

① [2] Declare that intervenors are the owners of and have the right of possession of every portion of the subject land, including all surface and subsurface rights and all water, mineral and hunting and fishing rights pertaining to the subject land which is held or claimed by any defendant or member of the defendant class; or in the alternative declare that intervenors have equitable title, or a reversionary or beneficial interest in that part of the subject land ostensibly conveyed to defendant New York State in 1788 and order the State of New York to restore legal title and possession to intervenors, including restoration of all surface and subsurface rights, and all water, mineral and hunting and fishing rights pertaining to the subject land.

2. [3] Restore intervenors to immediate possession of all portions of the subject land claimed by any defendant or member of the defendant class.

3. [4] Award intervenors damages in the amount of the fair rental value with interest for all of the subject land claimed by any defendant or member of the defendant class for the entire period of intervenors' dispossession.

4. In the alternative to the relief requested in paragraph 3, award intervenors damages against the State of New York for breach of its fiduciary obligations in the amount of the fair rental value, with interest, of the sub-

ject land for the entire period of intervenors' dis-  
possession.

5. Award intervenors damages, with interest, for  
the value of all minerals and other resources removed from  
the subject land by defendants and members of the defendant  
class.

6. Award intervenors damages, with interest for  
all waste, destruction, degradation, pollution or other  
damage done by any of the defendants or members of the defen-  
dant class to the subject land.

7. [5] Award intervenors attorneys' fees and  
the costs of this action.

8. [6] Award such other and further relief as  
the court deems just.

Respectfully submitted,

---

Robert T. Coulter

Attorney for Intervenor

Dated: \_\_\_\_\_



plaintiffs in 1807-1808. The Oneida Nation is the same entity which has existed as part of the Confederacy since time immemorial.

Likewise the other movant nations are the same native nations which have existed since time immemorial, and which are well-known historically. Each of these nations appears as a member of the Confederacy, but also appears in its individual capacity.

The movants are the same legal entity which entered into the Treaty of Fort Stanwix with the United States in 1784. The right of the movants to the land in question was guaranteed by that and later treaties, and it continues to be their property.

Thus, movants are in the position of rival claimants. Plaintiffs are claiming property in their own right which properly belongs to the Hondsasaunee, the Six Nations Confederacy.

Because this action will adjudicate the right to that property and effectively determine the legal rights of movants, intervention is sought. These are distinct Indian governmental entities, with distinct legal rights to the land in question.

### III. Complaint in Intervention

The Complaint in Intervention tracks the original Complaint very closely. The same defendants are sued and

the same land is claimed. Substantially the same relief is requested.

There are certain material differences, however. Intervenor, of course, set out their own interest and ownership of the subject land and their right to relief. There are also certain significant differences in the historical facts alleged and in the facts which will be subsequently asserted in support of the Complaint in Intervention. These differences are important because they have an important bearing on the likelihood of success and an important bearing on the nature of the intervenors' right to the land. These differences, however, do not set up any fundamentally new claim nor do they vastly alter the theory of the case.

The principal new material in the Complaint in Intervention is the allegation that the land in question belongs to the Houdenosaunee as a confederacy, that the land is not the separate property of the Oneidas alone. The Complaint in Intervention alleges that the Tuscaroras actually lived on the land in question, evidencing their special interest and their interest as one of the nations of the Confederacy.

The Complaint in Intervention also alleges, alternatively, that even if the confederate land were viewed as lands of each nation separately, the subject land includes large portions of Onondaga territory, Mohawk territory, and perhaps

adverse to the claims and interests of the Houdenosaunee.\* In their complaint the present plaintiffs assert that the Oneidas of New York have an interest "identical to that of plaintiffs." (Complaint, para. 5). The Houdenosaunee contest that assertion and claim a superior title and interest in the property and claims at issue. Plaintiffs' claims also conflict with claims of various of the constituent nations of the Houdenosaunee. Moreover, the legal and factual theories presented by plaintiffs in opposition to the pending motion to dismiss undermine the legal and factual claims of the Houdenosaunee.

Given this marked adversity, the parties plaintiff could not be fairly deemed to represent the interests of the Houdenosaunee, and counsel for parties plaintiff could not ethically represent both the Houdenosaunee and their present clients.

V. The Houdenosaunee Are Entitled to Permissive Intervention Under Rule 24(b).

Should intervention of right be deemed improper, the

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\* Counsel for the "Oneida Indian Nation of New York" in the companion case (78-CV-104) represents only the "elective faction" of New York Oneidas as described in paragraph 5 of the complaint in the present action. Neither he nor his clients are in the present action, so they could not represent the Houdenosaunee. Moreover, the complaint in 78-CV-104 presents a theory of "conquered" Iroquois nations which denies the existence of the Six Nations and which is manifestly adverse to the facts and theories asserted by the Houdenosaunee. The Houdenosaunee could not conceivably be adequately represented through that faction and that counsel.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION OF  
WISCONSIN, et al.,

Plaintiffs,

v.

THE STATE OF NEW YORK,  
et al.,

Defendants.

Civil Action No. 79-CV-798

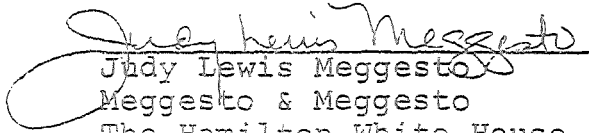
MOTION FOR LEAVE TO FILE  
A MEMORANDUM AS AMICUS CURIAE

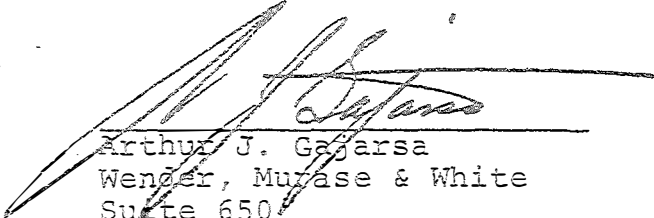
The Cayuga Indian Nation hereby moves this Court for leave to file a memorandum as amicus curiae with respect to the Houdensannee or Six Nations Iroquois Confederacy's motion to intervene in this case. The purpose of the present motion is to bring to the Court's attention serious misrepresentations of fact regarding the tribal entities on whose behalf the Six Nations Iroquois Confederacy purports to intervene.

*Shirley D. Court*

This motion is based upon the accompanying memorandum and supporting affidavits.

Respectfully submitted,

  
Judy Lewis Meggesto  
Meggesto & Meggesto  
The Hamilton White House  
Suite 100  
One Fayette Park  
Syracuse, New York 13202  
(315) 471-1664

  
Arthur J. Gajarsa  
Wender, Muzase & White  
Suite 650  
1120 Twentieth Street, N.W.  
Washington, D. C. 20036  
(202) 452-8950

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION OF )  
WISCONSIN, et al., )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. 79-CV-798  
 )  
THE STATE OF NEW YORK, )  
et al., )  
 )  
Defendants. )

MEMORANDUM OF  
THE CAYUGA INDIAN NATION  
AS AMICUS CURIAE

Statement

It has recently come to the attention of the Cayuga Indian Nation that the Six Nations Iroquois Confederacy, acting by and through its attorney of record, Robert T. Coulter, has moved to intervene in this lawsuit alleging that it represents the individual member nations of the Six Nations Iroquois Confederacy. (See Complaint-in-Intervention ¶10; Supplemental Motion to Intervene by the Houdensaunee and Its Constituent Nations at 1; Memorandum in Support of the Motion and Supplemental Motion to Intervene at 1, 2 and 3). Since the Cayuga

Indian Nation is one of the tribal entities Mr. Coulter and the Confederacy purport to represent, the Cayuga Indian Nation deems it essential to point out to the Court that such allegations, as they relate to the Cayuga Indian Nation, are utterly false.

1. Federal Law Requires That Tribal Attorneys Have Contracts Approved by the Department of the Interior

An attorney may not validly act on behalf of an Indian tribe unless he or she has complied with the protective measures afforded to Indians by federal law. 25 U.S.C. §81 et seq., 25 C.F.R. §72.1 et seq. The importance attached by the federal government to compliance with these statutory and regulatory provisions is evidenced by the fact that one who accepts any money in contravention of said statutes is guilty of a federal offense. 18 U.S.C. §438.

As is stated in the supporting affidavit submitted by the Chiefs of the Cayuga Indian Nation, Mr. Coulter is not the legal counsel or representative of the Cayuga Indian Nation. (See Exhibit A attached hereto). Nor has Mr. Coulter been given any express or implied authority by the Cayuga Indian Nation to move to intervene in this proceeding on its behalf. Id. Furthermore, Mr. Coulter does not have an attorney contract approved by the Department of the Interior, as does its truly

RECEIVED  
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WASHINGTON

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
THE ONEIDA INDIAN NATION OF :  
WISCONSIN, et al., :  
 :  
 Plaintiffs, :  
 :  
 v. :  
 :  
 THE STATE OF NEW YORK, et al., :  
 :  
 Defendants. :  
-----X

CIVIL ACTION NO.  
79-CV-798

NOV 14 RECD

AFFIRMATION IN RESPONSE  
TO THE MOTION AMICUS CURIAE  
OF THE CAYUGA NATION

ROBERT T. COULTER, under penalty of perjury, states  
as follows:

1. Since 1975 I have served as counsel to the  
Houdenosaunee or Six Nations Iroquois Confederacy.  
The decision to retain me was made by the Council of  
Chiefs of all the Nations, including the Cayuga Nation,  
setting in Council at Onondaga according to the Great  
Law of the Houdenosaunee.

2. Since that time I have met with the Chiefs in  
Council countless times to review my work with them and to  
consult with them on the legal affairs of the Houdenosaunee.  
I have conducted litigation in the federal courts in behalf

9. On November 2, 1980, the Chiefs of the Houdenosaunee in Council at Onondaga formally approved of the papers filed by me in their behalf, except that, for the time being, the Cayuga Nation will not appear. I have declined to represent the Cayuga Nation in this case, as a part of the Confederacy or otherwise, unless each of the Chiefs of the Nation authorize me to do so in writing. An Affirmation showing the action of the Houdenosaunee is submitted herewith.

10. Therefore, until further notice, the papers filed in behalf of the Houdenosaunee must be regarded as having been filed in behalf of the Houdenosaunee and each of the other Nations individually, but not in behalf of the Cayuga Nation.

November 3, 1980

Robert T. Coulter

Certificate of Service

I HEREBY certify that a copy of the foregoing Affirmation in Response to the Motion Amicus Curiae of the Cayuga Nation was mailed first class this day to the following:

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

Arnold Bauman, Esq.  
Shearman & Sterling  
53 Wall Street  
New York, New York 10005

AFFIDAVIT OF THE CHIEFS OF THE CAYUGA INDIAN NATION OF NEW YORK

Franklin Patterson, James Leaffe, Kenneth W. John, and Vernon Isaac being duly sworn, state;

- (1) That we are four (4) of the five (5) Chiefs recognized by the Cayuga Indian Nation;
- (2) That the General Counsel of the Cayuga Indian Nation is Arthur J. Gajarsa, Esq. of Wender, Murase, and White, whose offices are located at 1120 20th Street, N. W., Suite 650, Washington, D. C., 20036;
- (3) That Robert T. Coulter, Esq. is not legal counsel for the Cayuga Indian Nation; and
- (4) That any statements contained in the Complaint in Intervention, in the Supplemental Motion to Intervene and in the Memorandum in Support of the Motion and Supplemental Motion to Intervene filed on October 10, 1980 by the Haudenosaunee or Six Nations Iroquois Confederacy in the case of Oneida Indian Nation of Wisconsin, et al. v. The State of New York, et al., civil number 79-CV-798, United States District Court, Northern District of New York, which indicates that the Cayuga Indian Nation is a moving party with respect to said motion are false.

Franklin Patterson  
Franklin Patterson, Heron Chief

James Leaffe  
James Leaffe, Heron Chief

Kenneth W. John  
Kenneth W. John, Turtle Chief

Vernon Isaac  
Vernon Isaac, Bear Chief

Sworn to before me this 17<sup>th</sup> day  
of October 19 80

Burdene I. Vance  
My commission expires 3/30/81

BURDENE I. VANCE  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1981.

authorized legal counsel, Arthur J. Gajarsa. (See Affidavit of Mr. Patrick Hayes of the Bureau of Indian Affairs, attached hereto as Exhibit B).<sup>1/</sup> As a result, Mr. Coulter is without authority to represent the Cayuga Indian Nation in this or any other legal proceeding.

In view of the supporting affidavits presented by the Cayuga Indian Nation in this motion, if Mr. Coulter continues to assert that he represents the Cayuga Indian Nation, we respectfully request that the Court require him to produce evidence of his legal authority to do so, including evidence of his compliance with federal law. We have no hesitation in stating to this Court that Mr. Coulter is unable to do so.

---

1/ Mr. Gajarsa's attorney contract with the Cayuga Indian Nation was entered into while he was a member of the firm of Gajarsa, Liss & Conroy. Subsequent to the execution of that contract, Mr. Gajarsa has become a member of the firm of Wender, Murase & White.

2. Mr. Coulter's Representations are  
Serious Violations of his Ethical  
and Professional Responsibilities

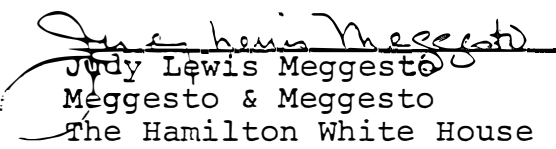
Mr. Coulter's representations that he is representing the Cayuga Indian Nation as an individual tribal entity in the present case is a serious violation of his ethical and professional responsibilities as an attorney and as an officer of this Court. It is beyond our comprehension how he can make such representations to this Court. We sincerely hope that the Court will take appropriate action to investigate this matter.

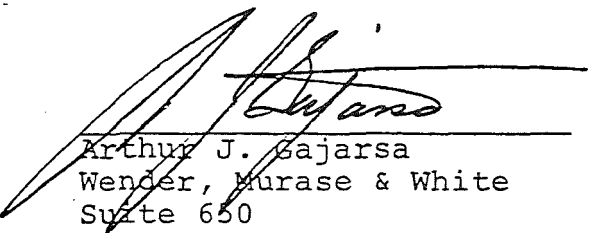
Conclusion

The Cayuga Indian Nation has moved for leave to file this memorandum as amicus curiae in order to bring to the Court's attention serious misrepresentations regarding the true legal representative of the Cayuga Indian Nation. The Cayuga Indian Nation has presented ample evidence in support of this motion to demonstrate the accuracy of its assertions. Based upon all of the foregoing, the Cayuga Indian Nation believes that the present motion should be granted and

that the Court should take appropriate action to investigate the basis for the unauthorized representations that have been presented to it.

Respectfully submitted,

  
~~Judy Lewis Meggesto~~  
Meggesto & Meggesto  
The Hamilton White House  
Suite 100  
One Fayette Park  
Syracuse, New York 13202  
(315) 471-1664

  
~~Arthur J. Gajarsa~~  
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