NO. 03-855

IN THE

SUPREME COURT OF THE UNITED STATES

CITY OF SHERRILL, NEW YORK
Petitioner,

-against-

ONEIDA INDIAN NATION OF NEW YORK, RAY HALBRITTER, KELLER GEORGE, CHUCK FOUGNIER, MARILYN JOHN, CLINT HILL, DALE ROOD, DICK LYNCH, KEN PHILLIPS, BEULAH GREEN, BRIAN PATTERSON, AND IVA ROGERS,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

JOINT APPENDIX

Ira S. Sacks *Counsel of Record* Esther S. Trakinski Gursky & Partners, LLP 1350 Broadway New York, New York 10018 (212) 904-1234 *Counsel for Petitioner*	Michael R. Smith *Counsel of Record* William W. Taylor, III David A. Reiser Zuckerman Spaeder LLP 1201 Connecticut Ave., NW Washington, DC 20036 (202) 778-1800 Peter D. Carmen Mackenzie Hughes LLP 101 South Salina Street Syracuse, NY 13221-4967 (315 233-8386) *Counsel for Respondents*

Petition for Certiorari Filed December 11, 2003
Certiorari Granted June 28, 2004

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Appendix to the Petition for a Writ of Certiorari at the pages indicated

Relevant Docket Entries, *Oneida Indian Nation v. City of Sherrill*, U.S. District Court, Northern District of New York, 00-CV-223-DNH-GS

Filing Date	Docket Text
February 4, 2000	COMPLAINT filed
February 25, 2000	ANSWER to Complaint and COUNTERCLAIMS by City of Sherrill against Oneida Nation NY
March 14, 2000	ANSWER by Oneida Nation NY to counterclaim
June 14, 2000	ORDERED, that Civil Actions 00-cv-223 and 00-cv-327 are Consolidated; that 00-CV-223 is designated the Lead Action and further reassigning this action from Mag/Judge DiBianco to Mag/Judge Sharpe.
July 14, 2000	MOTION by Ira S. Sacks, Esq for City of Sherrill for Summary Judgment , or in the Alternative for Preliminary Injunction . Hearing set for 9:30 on 2/23/01. Motion returnable before Mag. Judge Hurd.

	This Motion was received by the Court on 1/30/01, but is considered filed as of 7/14/00, pursuant to the CJRA Reporting requirements instituted March 1, 2000.
September 11, 2000	CROSS MOTION by Peter D. Carmen, Esq for Oneida Indian Nation for Summary Judgment . Hearing set for 9:30 on 2/23/01 before Judge Hurd. This Cross Motion was received by the Court on 1/30/01, but is considered filed as of 9/11/00, pursuant to the CJRA Reporting requirements instituted March 1, 2000.
September 20, 2000	ORDER reassigning case to Judge Hurd for all further proceedings
October 30, 2000	MOTION by Peter D. Carmen, Esq for defendants Halbritter, George, Fougnier, John, Hill, Rood, Lynch, Phillips, Rodgers, Green, Burr, and Patterson to Stay action 5:00-cv-1106 (member case) pending adjudication of 5:00-cv-223,

	and to Dismiss this action 5:00-cv-223 for failure to state a claim and for lack of jurisdiction . Hearing set for 9:30 on 2/23/01. Motion returnable before Judge Hurd. This Motion was received by the Court on 1/12/01, but is considered filed as of 10/30/00, pursuant to the CJRA Reporting requirements instituted March 1, 2000.
November 13, 2000	MEMORANDUM of Law Order by State of New York in opposition to Plaintiff's Motion for Summary Judgment and in Support of City of Sherrill's Motion for Summary Judgment.
November 13, 2000	MEMORANDUM of Law of Proposed Amici Curiae in opposition to the Oneida Indian Nation's Motion for Summary Judgment and In Support of the City of Sherrill's Motion for Summary Judgment by Madison County, Oneida County
November 13, 2000	AFFIDAVIT of David M. Schraver, Esq. on behalf of

	Madison County, Oneida County Re: in support of Memorandum of Law of Proposed Amici Curiae in support of City of Sherrill's Motion for Summary Judgment and in Opposition to Oneida Indian Nation of New York's Summary Judgment with Exhibits A through V.
November 13, 2000	Letter application received from Oneida LTD., requesting leave to appear amicus curiae and to file the "Memorandum of Law and Addendum in opposition to the Oneida Indian Nation's Motion for Summary Judgment and in Support of the City of Sherrill's Motion for Summary Judgment or in the alternative for a preliminary injunction.
November 13, 2000	MEMORANDUM of Law by Oneida LTD. in support of application to appear as an amicus curiae and for leave to file Memorandum of Law and Addendum in Opposition to Oneida Indian Nation's motion for summary judge and in

	support of the City of Sherrill's motion for summary judgment.
November 13, 2000	MEMORANDUM of Law and Addendum of Proposed Amicus Curiae, Oneida Limited in Opposition to the Oneida Indian Nation's Motion for Summary Judgment and In Support of the City of Sherrill's Motion for Summary Judgment or in the alternative for a preliminary injunction by Oneida LTD.
November 13, 2000	AFFIDAVIT of Charles G. Curtis on behalf of Oneida LTD.
November 13, 2000	AFFIDAVIT of Catherine H. Suttmeir on behalf of Oneida LTD.
December 6, 2000	LETTER RESPONSE dated 12/6/00 by Ira Sacks, Esq for City of Sherrill in opposition to the motion to stay discovery filed pursuant to 12/6/00 order of Judge Hurd.
December 12, 2000	LETTER REPLY dated 12/12/00 by Peter D.

	Carmen, Esq for Oneida Indian Nation in response to the City of Sherrill's letter brief opposing a stay of discovery while cross-motions for summary judgment are pending before Judge Hurd with Exhibits 1-9 attached.
December 15, 2000	LETTER SUR-REPLY dated 12/14/00 by Ira S. Sacks, Esq for City of Sherrill in response to the Letter Reply by Oneida Indian Nation regarding the Stay of Discovery motion.
January 12, 2001	MEMORANDUM of LAW by Peter Carmen, Esq for defendants Halbritter, George, Fougnier, John, Hill, Rood, Lynch, Phillips, Rodgers, Green, Burr, Patterson in support of motion to Stay action 5:00-cv-1106 (member case) pending adjudication of motion to Dismiss this action 5:00-cv-223 for failure to state a claim and for lack of jurisdiction
January 12, 2001	AFFIDAVIT of Peter D. Carmen, Esq on behalf of

	defendants Halbritter, George, Fougnier, John, Hill, Rood, Lynch, Phillips, Rodgers, Green, Burr, and Patterson Re: motion to Stay action 5:00-cv-1106 (member case) pending adjudication of 5:00-cv-223, motion to Dismiss this action 5:00-cv-223 for failure to state a claim and for lack of jurisdiction
January 12, 2001	MEMORANDUM of Law by Ira S. Sacks, Esq The City of Sherrill in opposition to motion to Stay action 5:00-cv-1106 (member case) pending adjudication of 5:00-cv-223, motion to Dismiss this action 5:00-cv-223 for failure to state a claim and for lack of jurisdiction
January 12, 2001	AFFIDAVIT of Albert Shemmy Mishaan on behalf of The City of Sherrill. Re: In Opposition to the motion to Stay action 5:00-cv-1106 (member case) pending adjudication of 5:00-cv-223, motion to Dismiss this action 5:00-cv-223 for failure to state a claim and

	for lack of jurisdiction with Exhibits 1-5 attached.
January 12, 2001	REPLY by David Garber, Esq on behalf of defendants Halbritter, George, Fougnier, John, Hill, Rood, Lynch, Phillips, Rodgers, Green, Burr, and Patterson to response to motion to Stay action 5:00-cv-1106 (member case) pending adjudication of 5:00-cv-223, motion to Dismiss this action 5:00-cv-223 for failure to state a claim and for lack of jurisdiction
January 30, 2001	MEMORANDUM by Ira Sacks, Esq for City of Sherrill in support of motion for Summary Judgment, and motion for Preliminary Injunction
January 30, 2001	Statement of Material Facts in Support of motion for Summary Judgment, motion for Preliminary Injunction filed by Ira Sacks, Esq for City of Sherrill
January 30, 2001	AFFIDAVIT of David O. Barker on behalf of City of Sherrill. Re: In Support of

	the defendant's motion for Summary Judgment, motion for Preliminary Injunction
January 30, 2001	MEMORANDUM by Peter D. Carmen, Esq for Oneida Indian Nation in support of cross motion for Summary Judgment
January 30, 2001	MEMORANDUM by Peter D. Carmen, Esq for Oneida Indian Nation in opposition to motion for Summary Judgment, motion for Preliminary Injunction (incorporated into Memo in Support of Motion).
January 30, 2001	Statement of Material Facts in Support of cross motion for Summary Judgment filed by Peter D. Carmen, Esq for Oneida Indian Nation
January 30, 2001	RESPONSE Statement of Material Facts in Opposition to the motion for Summary Judgment, motion for Preliminary Injunction filed by Peter D. Carmen, Esq for Oneida Indian Nation
January 30, 2001	DECLARATION of Paul A.

	Thomas, Jr., on behalf of Oneida Indian Nation. Re: In Support of plaintiff's cross motion for Summary Judgment
January 30, 2001	AFFIDAVIT of Peter D. Carmen, Esq for Oneida Indian Nation. Re: In Support of plaintiff's cross motion for Summary Judgment, and In Opposition to the defendant's motion for Summary Judgment, or in the alternative the motion for Preliminary Injunction
January 30, 2001	REPLY MEMORANDUM of LAW by Ira Sacks, Esq for City of Sherrill to response to motion for Summary Judgment, and the motion for Preliminary Injunction, and In Opposition to the plaintiff's cross motion for Summary Judgment
January 30, 2001	Statement of Material Facts in Response to the plaintiff's cross motion for Summary Judgment filed by Ira Sacks, Esq for City of Sherrill
January 30, 2001	REPLY AFFIDAVIT of Ira

	S. Sacks, Esq for City of Sherrill. Re: In Opposition to the plaintiff's cross motion for Summary Judgment
January 30, 2001	REPLY AFFIDAVIT of David O. Barker on behalf of City of Sherrill. Re: In Further Support of defendant's motion for Summary Judgment, motion for Preliminary Injunction
January 30, 2001	REPLY by Peter D. Carmen, Esq for Oneida Indian Nation to City of Sherrill's response to cross motion for Summary Judgment
January 30, 2001	REPLY AFFIDAVIT of Peter D. Carmen, Esq for Oneida Indian Nation. Re: In Further Support of the plaintiff's cross motion for Summary Judgment
February 6, 2001	Scheduling Notice: Pending motions are adjourned from 2/23/01 to 3/9/01 at 10:"30 in Utica, NY. ORAL ARGUMENT IS MANDATORY
April 9, 2001	TRANSCRIPT filed of

	motion hearing for dates of March 9, 2001 held in Utica, NY before Judge Hurd.
June 4, 2001	ORDER granting motion to Dismiss this action 5:00-cv-223 for failure to state a claim and for lack of jurisdiction, granting cross motion for Summary Judgment, denying motion for Summary Judgment, denying motion for Preliminary Injunction, denying motion to Amend answer, counterclaims against the Oneida Indian Nation of NY brought by the City of Sherrill in the lead case 00-cv-223 are DISMISSED, judgment on the pleadings in favor of the Oneida Indian Nation of NY and against Madison County is GRANTED in the Related Case 00-cv-506 Attorneys fees pursuant to 42 USC Section l988 are DENIED; the properties at issue, known by tax identification as City of Sherrill parcels are Indian reservation land immune from state and local property taxation while in the possession of the Oneida

	Indian Nation of NY, etc and the City of Sherrill, etc. are ENJOINED and RESTRAINED from taking any act to impose property taxes upon or to collect with respect to the properties known by tax identification numbers; Madison County, etc are ENJOINED and RESTRAINED from taking any act to impose or collect property taxes with respect to the properties known by tax identification numbers and clerk directed to enter separate judgments in each case in accordance with this Memorandum-Decision and Order (signed by Judge David N. Hurd)
June 4, 2001	JUDGMENT for Oneida Indian Nation against City of Sherrill pursuant to the Memorandum Decision and Order of the Hon. David N. Hurd dated 6/4/01.
June 4, 2001	Case closed
June 29, 2001	NOTICE OF APPEAL by City of Sherrill from Order & Judgment entered 6/4/01.

Relevant Docket Entries, *City of Sherrill v. Oneida Indian Nation*, U.S. District Court, Northern District of New York, 00-CV-00327-DNH-GS

Filing Date	Docket Text
February 22, 2000	NOTICE OF REMOVAL; from City Court of Sherrill
February 22, 2000	COMPLAINT filed; copy of complaint filed.
March 6, 2000	ANSWER to Complaint by Oneida Indian Nation
June 14, 2000	ORDER, to Consolidate Cases, consolidating this action under 5:00-CV-223 and directing all further docketing to occur in civil action 5:00-CV-223, and further reassigning case 5:00-CV-223 to Mag/Judge Sharpe (signed by Magistrate Judge Gary L. Sharpe)
September 25, 2000	ORDER transferring this case to Judge Hurd for all further proceedings.
June 4, 2001	ORDER granting the Oneida Indian Nation of New York's motion for summary judgment and the petition for eviction is

	DISMISSED, etc. (signed by Judge David N. Hurd)
June 4, 2001	JUDGMENT for Oneida Indian Nation against City of Sherrill pursuant to the Memorandum Decision and Order of the Hon. David N. Hurd dated 6/4/01. Petition for eviction is dismissed.
June 4, 2001	Case closed

Relevant Docket Entries, *Oneida Indian Nation v. City of Sherrill, et al*, Second Circuit Court of Appeals, Docket 01-7795

July 9, 2001	Copy of notice of appeal and district court docket entries on behalf of Appellant City of Sherrill, filed.
December 3, 2001	Appellant City of Sherrill, in 01-7795 brief filed
December 3, 2001	Appellant City of Sherrill, in 01-7795 brief filed
December 10, 2001	Amicus Curiae Oneida County in 01-7795, Madison County brief filed
December 10, 2001	Appellant Madison County in 01-7795 defective Appellant's brief cured.
December 11, 2001	Amicus Curiae State of New York in 01-7795 brief filed
January 18, 2002	Appellee Oneida Indian Nation in 01-7795 brief filed
February 20, 2002	Appellant City of Sherrill, Ne in 01-7795 reply brief filed
May 13, 2002	Case heard before VAN GRAAFEILAND, MESKILL, B. PARKER, C.JJ
July 21, 2003	Judgment of the district court is AFFIRMED & VACATED by published signed opinion filed.

July 21, 2003	Judge EVG DISSENTING in a separate opinion filed.
July 21, 2003	Judgment filed.
July 30, 2003	Appellant City of Sherrill, Petition for rehearing, petition for rehearing en banc
September 15, 2003	Order FILED DENYING petition for REHEARING by Appellant City of Sherrill, endorsed on motion dated 7/30/03 and DENYING petition for rehearing in banc
October 10, 2003	Judgment MANDATE ISSUED.
December 18, 2003	Notice of filing petition for writ of certiorari for Appellant City of Sherrill, in 01-7795 dated 12/11/03 filed. Supreme Ct#: 03-855.

Complaint and Selected Other Pleadings, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY)

Complaint, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), February 4, 2000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION
Route 5
Vernon, New York 13476,

Plaintiff,

-vs- Civil Action No. _____

CITY OF SHERRILL
377 Sherrill Road
Sherrill, New York 13461,

Defendant.

COMPLAINT

A. Nature of Action

1. The Oneida Indian Nation sues the City of Sherrill to stop Sherrill from further efforts to enforce its property tax laws with respect to Nation lands located in Sherrill. Sherrill has notified the Nation that, unless the Nation pays property taxes by February 8, 2000, Sherrill will take title to the Nation's lands and will evict the Nation from possession of such lands. These lands are Oneida reservation lands in the Nation's actual possession, are Indian country,

and are restricted against alienation. Sherrill's efforts to tax such lands and to interference with the Nation's possession of them violates federal law.

B. Subject Matter Jurisdiction and Venue

2. Jurisdiction regarding the Nation's federal claims exists pursuant to 28 U.S.C. §§ 1331 & 1362 and 42 U.S.C. § 1983. Those claims arise under, and seek to preserve rights and immunities secured by, the Indian Commerce Clause (Art. I, § 8) and the Due Process Clause (Amend. XIV) of the United States Constitution, the Non-Intercourse Act, 25 U.S.C. § 177, the 1794 Treaty of Canandaigua, and federal common law protections of tribal sovereignty and prohibitions against taxation of tribal reservation land by states and their political subdivisions.

3. Jurisdiction regarding the Nation's state-law claims exists pursuant to 28 U.S.C. § 1367. Sherrill is in this district. The events giving rise to the Nation's claims occurred in this district. The real property that is the subject of this action is in this district.

C. Parties

5. Plaintiff Oneida Indian Nation is a federally recognized Indian tribe. 63 Fed. Reg. 71941 (Dec. 30, 1998).

6. Defendant City of Sherrill is a municipal corporation organized under the laws of the State of New York.

D. Facts

7. The Nation has two properties fronting on Route 5 in Sherrill. On one, the Nation has a textile

manufacturing and distribution facility. On the other, the Nation has a gas station and convenience store. Sherrill has divided these properties into the following ten tax parcels. 322.014-1-23, 322.014-1-24, 322.014-1-25, 322.014-1-26. 322.015-2-1, 322.015-2-64, 322.015-2-65, 322.015-2-40.3, 322-015-2-45.1, 322-015-2-47.

8. These properties are located within and are part of the Oneida reservation recognized in the 1794 Treaty of Canandaigua. Neither the Congress of the United States, nor any other part of the Government of the United States, ever has modified the reservation status of these properties or made them subject to taxation by a state or local government.

9. Although the Nation's properties in Sherrill always have been part of the Oneida reservation, the Nation has not always had actual possession of them. In 1805, the State of New York caused these properties, which were part of a 100-acre parcel, to be transferred to an individual Nation member named Cornelius Dockstader. In 1807, the New York Legislature purported to grant Dockstader the right to sell the land, and Dockstader thereafter sold the land to a non-Indian named Peter Smith. Thereafter, the land was subdivided. The subdivided parcels, including the properties that are the subject of this action, were sold by one non-Indian to another over the years, such that, from 1805 until about 1997-98, the parcels were out of the Nation's actual possession.

10. None of the transactions, transfers or sales described in the previous paragraph complied with any of the federal participation and approval requirements of 25 U.S.C. § 177, and none was approved by any branch of the Government of the United States. All such transactions and transfers were in violation of federal law and were void ab

initio, including the transactions and transfers involving the Sherrill properties, and the Nation never lost its possessory rights with respect to the Sherrill properties.

11. In 1997 and 1998, the Nation re-acquired actual possession of its properties in Sherrill by voluntary, free market transactions. Pursuant to these transactions, those non-Indians who were in actual possession agreed to leave and to give to the Nation possession and any other rights they had claims in the properties.

12. The Nation's properties constitute reservation land and, therefore, Indian country within the meaning of 18 U.S.C. § 1151. Further, the properties are subject to restrictions on alienation and encumbrance by virtue of the Non-Intercourse Act, 25 U.S.C. § 177. As reflected in Exhibit A, the United States Department of Interior has reviewed the status of a gas station on similar lands and has determined in response to an inquiry from the New York State Police that the lands "are owned by the Oneida Tribe of New York, cannot be alienated without the express approval of the United States, and are subject to Oneida tribal governmental power."

13. Notwithstanding the status of the Nation's properties as described in the previous paragraph, Sherrill, acting under color of state law, has sought to collect property taxes from the Nation with respect to its properties. The Nation has refused to pay those taxes on the ground that Sherrill's imposition of the taxes is illegal under federal law. The Nation has proposed a standstill agreement that would avoid the need for immediate litigation, without prejudice to the legal positions of the parties. Sherrill has ignored the Nation's objections, has rejected a standstill agreement, and

has purported to auction the Nation's properties, which Sherrill itself has claimed to purchase at auction.

14. Sherrill is now seeking to bring the dispute to an immediate culmination by engaging in self-help and evicting the Nation from its properties. Specifically, Sherrill has notified the Nation that it will be evicted from three of the tax parcels if property taxes are not paid by February 8, 2000. As to each of these parcels, Sherrill's notice was in the form attached as Exhibit B. It states:

> In accordance with Section 94.h of the City Charter, your property will be conveyed to the City of Sherrill on February 8, 2000, if you do not redeem this property by the date specified in the enclosed notice.
>
> After the execution of the conveyance to the City, the Charter provides that the occupants of such land be removed therefrom and possession thereof delivered to the City.

E. First Claim; Federal Prohibition of Property Taxation and Eviction

15. Paragraphs 1 through 14, above, are incorporated herein by reference pursuant to Fed. R. Civ. P. 10(c).

16. The Nation's properties in Sherrill (specifically identified in paragraph 7, above) are in the actual possession of the Nation, and the Nation has had a possessory right to those properties from time immemorial.

17. The Nation's properties are within the Oneida reservation that was confirmed and guaranteed by the 1794 Treaty of Canandaigua. The Treaty confirms the Nation's possessory right and guarantees the Nation the "free use and enjoyment" of its reservation. It precludes taxation of the Nation's reservation land.

18. The Nation's properties constitute reservation land and are Indian country within the meaning of 18 U.S.C. § 1151.

19. The Nation's properties are subject to the restrictions against alienation imposed by the Non-Intercourse Act, 25 U.S.C. § 177.

20. The Nation's properties in Sherrill are not subject to taxation by Sherrill. Article I, Section 8 of the United States Constitution reposes authority over commerce with Indians in the Congress of the United States. This authority is exclusive, it preempts the authority of states and their political subdivisions to impose taxes on tribal land within Indian country, including reservation land possessed by an Indian tribe. Further, in the absence of Congressional authorization to impose such taxes, efforts by states and their political subdivisions to do so is a violation of an Indian tribe's sovereign immunity.

21. Sherrill's efforts to impose property taxes on the Nation's properties and to coerce payment of these taxes by the Nation by encumbering and conveying those properties and by eviction the Nation from them:

a. violate the 1794 Treaty of Canandaigua;

b. violate Article I, Section 8 of the United States Constitution and federal

common law, which give exclusive authority to Congress with respect to taxation of Indian land;

c. violate the Nation's sovereign immunity, which derives from Article I, Section 8 of the United States Constitution and from federal common law.;

d. violate the Non-Intercourse Act, 25 U.S.C. § 177, in that Sherrill has not complied with any provision of the Act for federal involvement in and approval of a conveyance of an interest in the Nation's properties or of eviction of the Nation from them; and

e. violate 42 U.S.C. § 1983, in that, under color of state law, they deprive the Nation of rights, privileges and immunities secured by the United States Constitution and by the laws of the United States.

22. Accordingly, Sherrill has no right to tax, auction, transfer or sell the Nation's properties or to evict the Nation from its properties in Sherrill, and Sherrill's action are null and void.

F. Second Claim: Federal and State Due Process

23. Paragraphs 1 through 14, above, are incorporated herein by reference pursuant to Fed. R. Civ. P. 10(c).

24. Throughout Sherrill's efforts, taken under color of state law, to enforce its property tax laws with respect to the Nation's properties, Sherrill has failed to provide the Nation with the notices required to afford due process under the laws of the United States and under the laws of the State of New York.

25. Sherrill's initial notices of tax delinquency to the Nation referred to a tax delinquency but failed to identify the properties subject to the claimed delinquency.

26. Sherrill failed to serve the Nation with written notice with respect to Sherrill's tax sales of the Nation's properties that occurred on November 5, 1997, November 5, 1998 and November 10, 1999. Instead, Sherrill relied upon notice by publication, which was not sufficient.

27. Sherrill also failed to provide the Nation with two years' notice of the Nation's right to redeem its properties, although the Sherrill Charter provides for a two-year redemption period. Instead, Sherrill gave the Nation only three months' notice of its right to redeem, threatening to evict the Nation at the end of that three-month period. This belated notice of a truncated redemption period eliminated twenty-one months of the required two-year redemption period.

28. By virtue of the foregoing notice defects, Sherrill's efforts to deprive the Nation of its properties and to evict the Nation from them deprives the Nation of the due process rights secured by the constitution and laws of the United Stats and the laws of New York and are illegal, void and in violation of 42 U.S.C.§ 1983.

G. Prayer for Relief

WHEREFORE, the Nation prays for entry of judgment in its favor and against Sherrill, awarding the Nation:

a. a declaration that Sherrill may not impose or seek to collect property taxes from the Nation based on the lands owned and possessed by the Nation within Sherrill, that the Nation and its lands are not subject to property taxation by Sherrill, that all of Sherrill's efforts heretofore to tax such lands are null and void, that all of Sherrill's purposed conveyances, sales and auctions of – and notices of delinquency and liens on – such lands are null and void, that all of Sherrill's efforts to interfere with the Nation's ownership and possession of such land are null and void, and that Sherrill may not evict the Nation from or dispossess the Nation of its lands;

b. an injunction prohibiting Sherrill, its officers, agents, servants, employees and persons in active concert or participation with them, including Mayor Dwight Evans, City Manager David Barker and City Clerk Michael Holmes, from subjecting the Nation and its lands to property taxation, prohibiting them from any interference with the Nation's ownership and possession of its lands and from any effort to evict the Nation from such lands, and mandating that they void and rescind all notices, liens, sales, auctions, conveyances and other officials documents or acts taken with respect to enforcement of the property tax laws as against the Nation and its lands;

c. attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

d. such other relief to which the Nation may be entitled at law or inequity.

Dated: February 4, 2000 Respectfully submitted,

MACKENZIE SMITH LEWIS MICHELL & HUGHES, LLP
BY:_____
Peter D. Carmen
Bar Roll No. 501504
101 South Salina Street,
Suite 600
P.O. Box 4967
Syracuse, New York 13221-4967
Telephone: (315) 233-8386
Facsimile: (315) 426-8358

-and-

ZUCKERMAN, SPAEDER, GOLDSTEIN, TAYLOR & KOLKER, LLP
BY: William W. Taylor, III
Bar Roll No. 102710
Michael R. Smith
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1201 Connecticut Ave., NW
Washington, DC 20036
Telephone: (202) 778-1832
Facsimile: (202) 822-8106

Attorneys for Plaintiff Oneida Indian Nation

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Eastern Area Office
Suite 260
3701 North Fairfax Drive
Arlington, Virginia 22203

March 17, 1999

Mr. Lloyd R. Wilson, Jr.
Staff Inspector
New York State Police
Building 22
1220 Washington Avenue
Albany, New York 12226-2252

Dear Inspector Wilson

Thank you for your letter asking whether lands owned by the Oneida Tribe of New York (specifically the SavOn gas station at 354 N. Peterboro Street, Canastota, New York) are "Indian lands" as defined under 25 U.S.C. 2703.

Section 2703(4)(B) provides in pertinent part that Indian lands are "any lands title to which is … held by any Indian tribe … subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power."

The lands in question meet this definition because they are owned by the Oneida Tribe of New York, cannot be alienated without the express approval of the United States, and are subject to Oneida tribal governmental power.

Should you have any further questions, please let me know.

Sincerely,

Franklin Keel
Director, Eastern Area

CITY OF SHERRILL
377 Sherrill Rd.
Sherrill, N.Y. 13461
Telephone: (315) 363-2440
Fax: (315) 363-0031

CITY OF SHERRILL

NOTICE OF REDEMPTION

FROM 1997

To: Oneida Indian Nation of New York
Tax Map # 322.014-1-26

PLEASE TAKE NOTICE that a sale of said lands, reputedly owned by you, for unpaid taxes was held by the undersigned on November 5, 1997, such lands were sold to the City of Sherrill, the highest bidder, and a tax sale certificate issued to the City. The last date for you to redeem such lands is February 8, 2000.

Dated: November 8, 1999

MICHAEL D. HOLMES
CITY CLERK

CITY OF SHERRILL
377 Sherrill Rd.
Sherrill, N.Y. 13461
Telephone: (315) 363-2440
Fax: (315) 363-0031

January 10, 2000

Oneida Indian Nation of New York
Attn: Ray Halbritter
P.O. Box 1
Vernon, N.Y. 13476

Dear Mr. Halbritter:

In accordance with Section 94.h of the City Charter, your property will be conveyed to the City of Sherrill on February 8, 2000, if you do not redeem this property by the date specified in the enclosed notice.

After the execution of conveyance to the City, the Charter provides that the occupants of such land be removed therefrom and possession thereof delivered to the City.

Sincerely,

Michael D. Holmes
City Clerk

ZUCKERMAN, SPAEDER, GOLDSTEIN, TAYLOR & KOLKER, L.L.P.
Attorneys at Law
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036-2636
(202) 778-1800
Telecopier
(202) 822-8106

February 4, 2000

VIA FACSIMILE & FIRST CLASS MAIL

Mr. Michael D. Holmes
City Clerk
City of Sherrill
377 Sherrill Road
Sherrill, MY 13461

Dear Mr. Holmes:

I am writing to request that the City's counsel contact me about the tax case just filed in federal court by the Oneida Indian Nation.

I would like to pursue with counsel our request for a standstill agreement that would not prejudice the legal position of any party.

I also would like to confirm our expectation that the City of Sherrill will not take further action to evict the Nation while the federal litigation concerning the rights of Sherrill and the Nation is pending.

Finally, I would ask that copies of any further notices concerning this matter also be sent to me. Thank you.

Sincerely,

/s/ Michael R. Smith

Michael R. Smith

Answer and Counterclaims, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), February 24, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA INDIAN NATION, Route 5 Vernon, New York 13476, Plaintiff, vs. CITY OF SHERRILL, 377 Sherrill Road Sherrill, New York 13461, Defendant.	:	ANSWER AND COUNTERCLAIMS Civil Action No. 00-CV-223

Defendant the City of Sherrill, by its attorneys, Fried, Frank, Harris, Shriver & Jacobson, as and for its answer and counterclaim, states and alleges upon knowledge as to itself and upon information and belief as to all other matters, as follows:

1. Denies each and every allegation of paragraph 1 of the complaint, except admits the City of Sherrill notified the Oneida Indian Nation that, unless it paid its property taxes on tax parcels 322.014-1-23, 322.014-1-25, and 322.014-1-26 by February 8, 2000, Sherrill would take title to these lands and evict plaintiff from possession of said lands.

2. Denies each and every allegation of paragraph 2 of the complaint, except admits that plaintiff purports to

predicate its claims and assertions as to jurisdiction upon the statutes and legal principles referred to therein.

3. Denies each and every allegation of paragraph 3 of the complaint, except admits that plaintiff purports to predicate its claims and assertions as to jurisdiction upon the statutes and legal principles referred to therein.

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 4 of the complaint, except admits that the City of Sherrill is located within the Northern District of New York and admits that the real property that is the subject of this action is located within the Northern District of New York.

5. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 5 of the complaint, except admits that the Oneida Indian Nation is a federally recognized Indian tribe.

6. Admits the allegations of paragraph 6 of the complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 7 of the complaint, except admits that these properties have been divided by the Oneida County Department of Taxation into the following ten tax parcels: 322.014-1-23; 322.014-1-24; 322.014-1-25; 322.014-1-26; 322.015-2-1; 322.015-2-40.3; 322.015-2-45.1; 322.015-2-47; 322.015-2-64; 322.015-2-65; except denies that the properties referred to as tax parcels 322.014-1-23, 322.014-1-25, and 322.014-1-26 are currently owned by the Oneida Indian Nation.

8. Denies each and every allegation of paragraph 8 of the complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 9 of the complaint, except denies that plaintiff currently owns the Sherrill properties referred to as tax parcels 322.014-1-23, 322.014-1-25, and 322-014-1-26, and denies that any of the ten tax parcels enumerated in full in paragraph 7 always have been a part of the Oneida reservation, except admits that the Oneida Indian Nation has not always had possession of these properties.

10. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 10 of the complaint, except denies that since 1805 the sale of all Sherrill properties described in paragraph 9 of the complaint were in violation of federal law and were void ab initio, and denies that plaintiff never lost its possessory rights with respect to said properties.

11. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 11 of the complaint, except denies that plaintiff re-acquired actual possession of its own properties.

12. Denies each and every allegation of paragraph 12 of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Exhibit A and respectfully refers any legal issues purportedly raised by Exhibit A to the Court.

13. Denies each and every allegation of paragraph 13 of the complaint, except admits that Sherrill has sought to collect property taxes from the Oneida Indian Nation with respect to its current and former properties and that the Oneida Indian Nation has refused to pay those taxes.

14. Denies each and every allegation contained in paragraph 14 of the complaint, except admits that defendant sent plaintiff notices in the form and language of that specified in paragraph 14, and admits that Sherrill is seeking to evict the Oneida Indian Nation from the properties referred to as tax parcels 322.014-1-23, 322.014-1-25, and 322.014-1-26, which properties were formerly owned by it.

ANSWERING THE FIRST CLAIM OF THE COMPLAINT

15. Answering paragraph 15 of the complaint, repeats and realleges each of its responses to paragraph 1 through 14 of the complaint as if fully set forth herein.

16. Denies each and every allegation of paragraph 16 of the complaint, except admits plaintiff is wrongful possession of the properties referred to therein.

17. Denies each and every allegation of paragraph 17 of the complaint, and respectfully refers the document referenced therein and any issues of law raised by it to the Court.

18. States that paragraph 18 of the complaint contains only legal conclusions as to which no responsive pleading is required, and otherwise denies each and every allegation in paragraph 18 of the complaint.

19. States that paragraph 19 of the complaint contains only legal conclusions as to which no responsive pleading is required, and otherwise denies each and every allegation in paragraph 19 of the complaint.

20. States that paragraph 20 of the complaint contains only legal conclusions as to which no responsive pleading is required, and otherwise denies each and every allegation in paragraph 20 of the complaint.

21. States that paragraph 21 of the complaint contains only legal conclusions as to which no responsive pleading is required, and otherwise denies each and every allegation of paragraph 21 of the complaint.

22. Denies each and every allegation of paragraph 22 of the complaint.

ANSWERING THE SECOND CLAIM OF THE COMPLAINT

23. Answering paragraph 23 of the complaint, repeats and realleges each of its responses to paragraphs 1 through 22 of the complaint as if fully set forth herein.

24. Denies each and every allegation of paragraph 24 of the complaint.

25. Denies each and every allegation of paragraph 25 of the complaint.

26. Denies each and every allegation of paragraph 26 of the complaint.

27. Denies each and every allegation of paragraph 27 of the complaint.

28. Denies each and every allegation of paragraph 28 of the complaint.

COUNTERCLAIMS AGAINST PLAINTIFF

29. Counterclaim Plaintiff the City of Sherrill ("Sherrill") repeats and realleges each of its responses to paragraph 1 through 28 of the complaint as if fully set forth herein.

30. On or about February 7, 1997, Counterclaim Defendant the Oneida Indian Nation purchased the following three tax parcels in Sherrill: 322.014-1-23, 322,014-1-25, and 322.014-1-26 (collectively, the "Foreclosed Property"). Later, Counterclaim Defendant purchased seven additional tax parcels in Sherrill: tax parcels 322.015-2-64 and 322.015-2-65 were purchased on June 3, 1997; tax parcel 322.014-1-24 was purchased on June 10, 1997; tax parcel 322.015-2-1 was purchased on October 1, 1997; and tax parcels 322.015-2-40.3, 322.015-2-45.1, and 322.015-2-47 were purchased on August 31, 1998 (collectively, the "Additional Property"). The Foreclosed Property and the Additional Property were neither reservation land nor Indian country.

31. Sherrill's City Charter specifically requires that all property owners in Sherrill pay property taxes and that the city clerk shall collect such taxes. Once Counterclaim Defendant purchased the Foreclosed Property and the Additional Property, it was legally obligated, just like all other Sherrill property owners, to pay property taxes. From the time Counterclaim Defendant owned the Foreclosed Property and the Additional Property, however, it has steadfastly refused to pay property taxes, in violation of Sherrill law.

32. Pursuant to Section 94 of Sherrill's Charter, the city clerk caused to be published a notice in The Oneida Daily Dispatch newspaper on February 28, 1997, to all Sherrill residents regarding their tax bills. The notice stated that the taxes could be paid to the city clerk at his office within thirty days from the publication of the first notice with no fee, and that the said taxes could also be paid during the next sixty days after the expiration of the first thirty days with a payment of a fee of two cents upon the dollar of tax and that after the expiration of ninety days from the first

publication of such notice such tax would become delinquent and would bear interest.

33. Additionally, on February 28, 1997, Sherrill sent tax bills to its residents. Enclosed with the tax bill was a notice setting forth the same payment schedule as that published in The Oneida Daily Dispatch. Counterclaim Defendant did not pay any of its taxes on the Foreclosed Property or the Additional Property within ninety days of the publication or of receiving its bill. The taxes on those properties then become delinquent.

34. Pursuant to Section 94-a of Sherrill's Charter, after the expiration of ninety days from the first publication of the notice described above, the city clerk served Counterclaim Defendant by mail on or about August 7, 1997, a written notice requiring it to pay the delinquent taxes. Although the Sherrill Charter requires payment within ten days of the service of such notice, Sherrill afforded the counterclaim defendant until September 2, 1997, or 26 days, to tender payment. This is the only demand of payment of the delinquent tax required under the law.

35. Pursuant to Section 94-b of the Sherrill Charter, whenever tax, penalty or interest, or any part of either of them, shall remain unpaid on the first day of August, the city clerk may proceed to advertise and sell the lands upon which the same was imposed for the payment of such tax, penalty or interest, or the part that remains unpaid. By September 16, 1997, one month longer than the statute required, there still was no payment by Counterclaim Defendant of its taxes, penalty or interest, and the city clerk proceeded to advertise the sale of the Foreclosed Property.

36. Section 94-c of the Charter requires that, when the city clerk proceeds to advertise the sale of lands for unpaid taxes, he must caused to be published a notice of the

sale containing a description of the lands to be sold and specifying the time and place of the sale in the official newspaper of Sherrill, once a week for at least six consecutive weeks, immediately prior to the day of the sale. The Sherrill Charter also requires the city clerk to post such notice of the sale in at least three public places in the city at least forty-two days before the day of the sale. Accordingly, Sherrill's city clerk published notice of the sale once a week for seven consecutive weeks, on or about September 17 and 24, 1997, and October 1, 8, 15, 22, and 29, 1997, and advertised and published notice of the sale of the Foreclosed Property in The Oneida Daily Dispatch, and posted such notice at Sherrill City Hall, the Sherrill Police Station, and the Sherrill Post Office on September 17, 1997, in accordance with Section 94-b of the Charter.

37. Counterclaim Defendant never paid taxes on the Foreclosed Property. In compliance with Section 94-d of Sherrill's Charter, the Foreclosed Property was sold to Sherrill at a public auction held on November 5, 1997. Pursuant to Section 94-f of the Charter, Counterclaim Defendant had two years from the date of the sale to redeem the Foreclosed Property by paying all taxes, penalty and interest owed on the Foreclosed Property. It never did.

38. In addition, Section 94-g of the Charter requires that, before the redemption period runs out, even if it is longer than the two year statutory minimum, the city clerk must also commence the publication of the notice of the redemption from the sale, which shows the year when the sale took place, and the last day for the redemption of the property, without other or further description, and such notice shall be published at least twice in three months in the official newspaper of the city. Accordingly, the city clerk published such notice in The Oneida Daily Dispatch on November 8, 1999, December 8, 1999, and January 7, 2000.

39. Section 94-g also requires that a copy of the notice be served personally on the owner or the occupant of the property, or, if unoccupied, posted on the premises at least twenty days before the expiration of the redemption period. Accordingly, for tax parcel 322.014-1-23 such service was made on both William Hervey, whose title is the Director of Intergovernmental Relations for the Oneida Indian Nation, and Kathy Perham, the Executive Assistant to the General Manager of the Oneida Textile Designs, on January 10, 2000. For tax parcels 322.014-1-25 and 322.014-1-26, a copy of the notice was posted on each of the unoccupied parcels.

40. Prior to the expiration of the redemption period on February 8, 2000, Sherrill made on final attempt to resolve the tax dispute with Counterclaim Defendant. Sherrill wrote a letter to Counterclaim Defendant on February 8, 2000, suggesting that it could pay its taxes under protest. Such a payment would have clearly enabled it to retain possession of the Foreclosed Property and preserve its legal options to contest such payment. Counterclaim Defendant rejected this suggestion, and did not pay the taxes owed prior to the expiration of the redemption period.

41. On February 9, 2000, pursuant to section 94-h of the Charter, Sherrill received a conveyance of the Foreclosed Property, and is recorded as the owner of the Foreclosed Property on the deed located at the Oneida County Clerk's Office. Counterclaim Property remains in wrongful possession of the property, on which it runs a retail outlet as well as a factory that prints silkscreens on clothing. On February 15, 2000, Sherrill commenced eviction proceedings in the City Court of Sherrill.

42. Although Counterclaim Defendant has not paid its property taxes, it has received and continues to receive valuable municipal benefits provided to all property

owners in Sherrill. These benefits include police and fire protection, garbage removal, road maintenance, and zoning enforcement and planning.

43. Counterclaim Defendant has never paid any part of the property taxes it owes on the Foreclosed Property or the Additional Property. If the counterclaim defendant purchases additional real property in the City of Sherrill, it will likewise refuse to pay property taxes on any newly-acquired property and, consequently, the amount of money the City of Sherrill receives in property taxes will be significantly diminished. As a result, the City of Sherrill's law abiding, tax-paying citizens will suffer as the quality and availability of municipal services decrease.

FIRST COUNTERCLAIM

(Declaratory Judgment)

44. Counterclaim Plaintiff Sherrill repeats and realleges paragraphs 29 through 43 with the same force and effect as if fully set forth herein.

45. The Foreclosed Property and the Additional Property are within the City of Sherrill, located in the State of New York and are a part of the United States of America. As such, any property owner of the Foreclosed Property and the Additional Property must abide by all applicable local, state, and federal laws, including the payment of local property taxes. The local property tax law is codified in Sections 90 – 98 of the Sherrill City Charter, which sections set forth the procedures by which residents owning real property in Sherrill shall be assessed and shall pay property taxes.

46. Counterclaim Defendant is in violation of Sherrill's local property tax law, as codified in Sherrill's Charter, due to its failure to pay local property taxes.

47. Counterclaim Plaintiff Sherrill therefore requests a declaration that Sherrill may lawfully impose and seek to collect property taxes from Counterclaim Defendant on the properties it once owned (the Foreclosed Property), it now owns (the Additional Properties), or it may own in the future, and that appear on the tax rolls of Sherrill.

48. Counterclaim Plaintiff Sherrill further requests a declaration that Sherrill's Charter applies to all such properties described in paragraph 47, above.

SECOND COUNTERCLAIM

(Eviction)

49. Counterclaim Plaintiff Sherrill repeats and realleges paragraphs 29 through 43 with the same force and effect as if fully set forth herein.

50. Pursuant to the Section 94 of the Sherrill Charter, the Foreclosed Property is currently owned by Sherrill and Sherrill has a possessory right to the Foreclosed Property.

51. Because Counterclaim Defendant did not pay the property taxes on the Foreclosed Property in the time prescribed within the Sherrill Charter, it has lost all property rights with respect to the Foreclosed Property. Accordingly, Counterclaim Defendant has no right to remain on the Foreclosed Property, or act as if the Foreclosed Property in any way belongs to it.

52. Counterclaim Plaintiff Sherrill therefore requests a judgment evicting the counterclaim defendant from the Foreclosed property.

THIRD COUNTERCLAIM

(Unjust Enrichment)

53. Counterclaim Plaintiff Sherrill repeats and realleges paragraphs 29 through 43 with the same force and effect as if fully set forth herein.

54. The money Sherrill collects in property taxes is used to fund a number of municipal services which benefit the entire community. Sherrill's city managers and department heads initially determine how much money should be allocated for each of the municipal services provided to Sherrill residents. Thereafter, Sherrill's city commissioners must approve the budget and a public hearing must be held before the budget is finalized. The timely collection of property taxes by Sherrill is crucial in order to ensure that municipal service programs are adequately funded.

55. Sherrill residents who own real property are obligated by the Sherrill Charter to pay property taxes each year. In return, those residents receive the benefits of a plethora of municipal services, such as police and fire protection, garbage removal, road maintenance, and zoning enforcement and planning.

56. Notwithstanding the fact that Counterclaim Defendant refuses to pay the property taxes it owes on either Foreclosed Property or Additional Property in Sherrill, it nonetheless accepts, without objection, the services that Sherrill provides to it. As a result of Counterclaim Defendant's conduct described above, Counterclaim Defendant has been, and continues to be, enriched at the expense of Sherrill's citizens.

57. Counterclaim Plaintiff Sherrill therefore requests a judgment in an amount to be determined at trial to

reimburse Sherrill for services provided to Counterclaim Defendant but not paid for by it via property taxes.

FOURTH COUNTERCLAIM

(Injunction)

58. Counterclaim Plaintiff Sherrill repeats and realleges paragraphs 29 through 43 with the same force and effect as it fully set forth herein.

59. Counterclaim Defendant has never paid the property taxes it owes to Sherrill on either the Foreclosed Property or the Additional Property. Furthermore, it is

apparent that should Counterclaim Defendant acquire additional property in Sherrill, it will likewise refuse to pay property taxes on the newly-acquired property. If Counterclaim Defendant is allowed to purchase additional property in Sherrill without paying taxes, the quality of life of law-abiding, tax-paying citizens of Sherrill will irreparably suffer due to a decrease in property tax revenue by Sherrill and the corresponding negative effect such a decrease in revenue will have on the quality and availability of critical municipal services. This injury is not compensable in money damages and Counterclaim Plaintiff has no adequate remedy at law.

60. Counterclaim Plaintiff Sherrill, therefore, requests a preliminary and permanent injunction prohibiting Counterclaim Defendant from purchasing additional properties, any part of which are located within the boundaries of Sherrill.

FIFTH COUNTERCLAIM

(Injunction)

61. Counterclaim Plaintiff Sherrill repeats and realleges paragraphs 29 through 43 with the same force and effect as if fully set forth herein.

62. On February 9, 2000, pursuant to section 94-h of the Charter, Sherrill received a conveyance of the Foreclosed Property, and is recorded as the owner of the Foreclosed Property on the deed located at the Oneida County Clerk's Office. Counterclaim Defendant remains in wrongful possession of the property, on which it runs a retail outlet as well as a factory that prints silkscreens on clothing. On February 15, 2000, Sherrill commenced eviction proceedings in the City Court of Sherrill.

63. If Counterclaim Defendant is permitted to build and/or expand upon the existing building structure, or erect new structures on the Foreclosed Property, the quality of life for law-abiding, tax-paying citizens of Sherrill will necessarily suffer when resources that would otherwise be utilized to provide critical services to those citizens will be used to correct the unauthorized expansion discussed above once Sherrill evicts Counterclaim Defendant and takes possession. This injury is not compensable in money damages and counterclaim plaintiff has no adequate remedy at law.

64. Counterclaim Plaintiff Sherrill, therefore, requests a preliminary and permanent injunction prohibiting Counterclaim Defendant from expanding and/or building upon the existing structure of the Foreclosed Property, and/or erecting new structures on said property.

REQUEST FOR RELIEF

65. Wherefore, Counterclaim Plaintiff the City of Sherrill respectfully requests that the Court enter judgments:

(a) dismissing the complaint;

(b) declaring that Sherrill may lawfully impose or seek to collect property taxes from Counterclaim Defendant based on the lands that appear on the tax rolls of Sherrill and that Sherrill's Charter applies to such properties, and declaring that Sherrill currently owns the Foreclosed Property;

(c) evicting Counterclaim Defendant from the Foreclosed Property;

(d) awarding an amount to Counterclaim Plaintiff, to be determined at trial, to reimburse it for Counterclaim Defendant's use and benefit of municipal services;

(e) preliminarily and permanently enjoining Counterclaim Defendant, its officers, agents, servants, employees and persons in active concert with it from purchasing any additional property within the boundaries of Sherrill;

(f) preliminarily and permanently enjoining Counterclaim Defendant, its officers, agents, servants, employees and persons in active concert with it from expanding or adding additional structures on the Foreclosed Property;

(g) attorneys' fees and costs; and

(h) such other and further relief which the court deems just and proper.

Respectfully submitted,

Dated: February 24, 2000
New York, New York

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
(A Partnership Including Professional Corporations)

By: _____
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Attorneys for the City of Sherrill
Of Counsel
Laura Sulem (admission pending)

CERTIFICATE OF SERVICE

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that on February 24, 2000 I caused to be served upon the following by First Class U.S. Mail, postage prepaid, a true copy of the attached Answer and Counterclaim by Defendant City of Sherrill:

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-and-

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Attorneys for Plaintiff Oneida Indian Nation

Dated: New York, New York
February 24, 2000

/s/ Laura Sulem
Laura Sulem

Reply to Counterclaims, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), March 14, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION,

Plaintiff. Civil Action No.
00-CV-223 (NPM/GJD)

v.

CITY OF SHERRILL,

Defendant.

REPLY TO COUNTERCLAIMS

Plaintiff Oneida Indian Nation, by counsel and pursuant to Fed. R. Civ. P. 12(a)-(b), submits this reply to the counterclaims filed by defendant City of Sherrill.

A. Preliminary Statement

1. Plaintiff denies that defendant is entitled to tax or to take plaintiff's land, to receive damages for the non-receipt of taxes or to prohibit plaintiff from the possession and development of land. Plaintiff has acquired possession of its lands in Sherrill from willing sellers for fair market value and thus is in possession of lands reserved to it by long-standing federal treaties. These lands are restricted against alienation by 25 U.S.C. § 177 and are Indian Country within the meaning of federal law. Congress never authorized the taxation of these lands, their

alienation from plaintiff, any change in their reservation status or any change in plaintiff's right to possess them. Thus, federal law forbids state and local taxation of these lands, and Sherrill is obligated to comply with this federal law. Plaintiff's tax immunity notwithstanding, plaintiff makes Silver Covenant Chain payments, usually far exceeding any taxes in dispute, and also makes payments for services, but defendant will not request or accept such payments because they are not labeled as tax payments and, accordingly, defendant has deprived Sherrill citizens of the benefits of these funds.

B. Specific Responses to Numbered Paragraphs in Counterclaims

2. Paragraph 29 incorporates paragraphs 1 through 28 of defendant's answer and, therefore, does not contain allegations requiring admission or denial. To the extent that paragraph 29 alleges that defendant is entitled to tax plaintiff's lands and to affect plaintiff's ownership of or right to possess those lands, that allegation is denied. To the extent that paragraph 29 contains any other allegations, those allegations are denied.

3. Plaintiff admits that it entered into transactions to reacquire actual possession of its properties but otherwise denies the allegations in paragraphs 30.

4. Plaintiff admits the allegations in paragraph 31 that the Nation has refused to pay property taxes and that defendant's Charter sets forth a property tax and enforcement scheme. Plaintiff denies that the Charter addresses or applies to taxation of Indian lands and denies that it requires plaintiff to pay property taxes. Plaintiff denies all other allegations in paragraph 31.

5. Plaintiff is without sufficient information to admit or deny the allegations in paragraph 32; further, the alleged publication, if it exists, speaks for itself. Plaintiff denies that defendant was authorized to take the acts alleged with respect to plaintiff.

6. Plaintiff admits the allegation in paragraph 33 that it has not paid property taxes. Plaintiff denies the allegation that it owed or owes property taxes and that it is delinquent with respect to such taxes. Plaintiff is without sufficient information to admit or deny the allegations in paragraph 33 concerning the contents of the alleged notice, which speaks for itself, or concerning the recipients of that notice.

7. Plaintiff admits the allegation in paragraph 34 that defendant mailed a notice, which speaks for itself, but denies that the notice complied with applicable law. Plaintiff denies the allegation of delinquency and denies that defendant was authorized to take any of the acts alleged.

8. Plaintiff denies any allegation in paragraph 35 that defendant was authorized to take the actions alleged. As for the contents of the Charter, it speaks for itself. Plaintiff admits the allegation in paragraph 35 that plaintiff did not pay property taxes but denies that any were owed and denies that there was a delinquency. Plaintiff is without sufficient information to admit or deny the allegation concerning the action of the City Clerk.

9. With respect to the allegations in paragraph 36, plaintiff denies that defendant was authorized to take the acts alleged. Regarding the content of the Charter, it speaks for itself. Plaintiff denies that defendant complied with applicable law concerning notice and is without sufficient information to admit or deny the allegations concerning defendant's efforts at publication.

10. Plaintiff admits the allegation in paragraph 37 that it has not paid property taxes but denies that it owed or owes property taxes and denies that defendant had authority to take the acts alleged. Plaintiff denies any allegation in paragraph 37 that the City of Sherrill provided plaintiff with the requisite notice of a two-year redemption period. Plaintiff denies the allegation in paragraph 37 that defendant complied with its Charter, which speaks for itself.

11. Plaintiff is without sufficient information to admit or deny the allegation in paragraph 38 concerning publication. As for the allegation about the contents of the Charter, it speaks for itself. Plaintiff denies that defendant provided the requisite notice of the redemption period and denies that defendant had authority to take any of the acts alleged.

12. Plaintiff admits that defendant provided notice to the persons and at the places alleged in paragraph 39 but denies that the content or service of the notice complied with defendant's Charter or with state and federal law. Plaintiff denies that the properties were unoccupied and denies that defendant personally served the owner or occupant of the properties. As to allegations about the contents of the Charter, it speaks for itself. Plaintiff admits that William Hervey was Director or Intergovernmental Relations and that Kathy Perham was Executive Assistant to the General Manager of Oneida Textile Designs but denies that either was the owner or occupant of the property. Plaintiff denies that defendant had authority to take any of the acts alleged.

13. Plaintiff denies any allegation in paragraph 40 that property taxes were owed. Plaintiff admits that defendant's counsel sent a letter concerning a payment of taxes under protest. To the extent that defendant alleges in paragraph 40 that plaintiff did not respond with a proposal to maintain the status quo pending federal litigation of

defendant's taxation authority, that allegation is denied. The allegation that plaintiff did not pay taxes, under protest or otherwise, is admitted.

14. Plaintiff admits the allegation in paragraph 41 that the Oneida County Clerk recorded defendant as the owner of the properties in furtherance of defendant's illegal tax enforcement efforts. Plaintiff denies that any acts of defendant or of the Oneida County Clerk were valid or lawful or that they had authority to take any of these acts. Plaintiff denies that it is in wrongful possession of the properties and that defendant is entitled to ownership or possession of them. Plaintiff admits that defendant commenced the referenced eviction proceeding but denies that it did so on February 15, 2000. Plaintiff admits that it operates a retail outlet and a textile design facility on the properties in question, taken as a whole.

15. Plaintiff admits that it has not paid property taxes and denies any allegation in paragraph 42 that any such taxes have been or are due. Plaintiff admits that it, like all other property owners in Sherrill who are not obliged to pay property taxes, received municipal services such as garbage removal that are provided to everyone. Plaintiff denies that such services include zoning enforcement and planning.

16. Plaintiff denies the allegation in paragraph 43 that it has owed or owes property taxes and admits the allegation that it has not paid property taxes. Plaintiff denies that its possession of property in Sherrill will diminish property taxes available to Sherrill or funds available to Sherrill. Plaintiff denies that the allegation in paragraph 43 that "law abiding, tax-paying citizens will suffer" because of plaintiff's property purchases. The truth is that the Nation's possession of property has bolstered the economic base and revenues of local governments like defendant and that Sherrill residents "suffer" only because defendant has

declined to request or accept Silver Covenant Chain payments and payments for services, payments that exceed the property taxes in dispute and are rejected on the ground that they are not labeled as a tax payment.

17. Because paragraph 44 simply incorporates defendant's allegations in paragraphs 29 through 43, plaintiff, pursuant to Fed. R. Civ. P. 10(c), hereby incorporates its responses to paragraphs 29 through 43.

18. Plaintiff admits the allegation in paragraph 45 that the properties in question are within the boundaries of the City of Sherrill, the State of New York and the United States of America. To the extent that this allegation is meant to include an allegation that the properties are taxable and are not restricted reservation land and part of Indian Country, the allegation is denied. Plaintiff denies that it must abide by defendant's taxation laws and denies any implication that defendant may violate the law of the United States prohibiting taxation of the Nation's lands in Sherrill. Plaintiff denies that defendant has provided the tax and foreclosure notices required by state and federal law. As for allegations of the contents of the Sherrill Charter, it speaks for itself. Plaintiff denies that the Charter compels taxation of Nation lands. The Charter must be interpreted to recognize federal law prohibitions on state and local taxation of Indian lands.

19. Plaintiff denies the allegations in paragraph 46, except that as to the contents of the Sherrill Charter, the Charter speaks for itself.

20. Plaintiff denies that defendant is entitled to tax lands now possessed by plaintiff and denies that defendant is entitled to the declaration for which it prays in paragraph 47. Plaintiff is without sufficient information to admit or deny any allegation concerning lands that could possibly be

possessed in the future.

21. Plaintiff denies that defendant is entitled to the relief requested in paragraph 48.

22. Because paragraph 49 simply incorporates defendant's allegations in paragraph 29 through 43, plaintiff, pursuant to Fed. R. Civ. P. 10(c), hereby incorporates its responses to paragraphs 29 through 43.

23. Plaintiff denies the allegations in paragraph 50.

24. Plaintiff admits that it has not paid property taxes and denies all other allegations in paragraph 51.

40. Defendant's counterclaims fail to state any claim upon which relief can be granted.

D. Second Defense

41. The Nation is a federally recognized Indian tribe, and its sovereign immunity bars defendant's efforts to tax and to take the Nation's lands, bars this suit, and precludes the exercise of jurisdiction over the Nation and the award of any relief requested by defendant. 63 Fed. Reg. 71941 (Dec. 30, 1998).

E. Third Defense

42. Defendant's efforts to tax Nation land, to take Nation land and to evict the Nation from its lands, which are reservation lands and Indian Country subject to the Nation's governance, are in violation of federal constitutional, statutory and common law, including but not limited to the Indian Commerce Clause (Art. I, sec. 8) of the United States Constitution, the 1794 Treaty of Canandaigua, 25 U.S.C. § 177 and federal common law, as alleged in plaintiff's

complaint filed in this action, which complaint is incorporated herein pursuant to Fed. R. Civ. P. 10(c).

F. Fourth Defense

43. Federal law completely preempts the laws of the defendant and of the State of New York, such that those state and local laws are invalid and unenforceable to the extent that they purport to permit taxation of Nation lands. Further, complete preemption bars state and local efforts to restrict an Indian Nation's possession of land or to impose a fee on an Indian Nation because it possesses land.

G. Fifth Defense

44. By virtue of the Supremacy Clause of the United States Constitution, Art. VI, cl.2, the laws of the defendant and of the State of New York are invalid and unenforceable to the extent that they purport to permit taxation of plaintiff's land, the imposition of a fee on plaintiff or regulation of plaintiff's right to possess its lands.

H. Sixth Defense

45. Sherrill may not evict the Nation or take title to or possession of the Nation's lands because defendant violated the notice and due process requirements of state and federal law, as alleged in the complaint in this action and as incorporated here by reference pursuant to Fed. R. Civ. P. 10(c).

I. Seventh Defense

46. The federal constitutional principle of separation of powers bars a judicial order of eviction where Congress has not authorized the conveyance of plaintiff's lands pursuant to the requirements of 25 U.S.C. § 177. The same principle bars an order that plaintiff not "purchase" or

possess lands reserved to it by the 1794 Treaty of Canandaigua, as Congress has not authorized the conveyance of those lands, or dispossessed plaintiff of them, pursuant to 25 U.S.C. § 177. The same principle bars an order imposing a fee on plaintiff as a consequence of its possession of land, or restrictions on improvement of such land, because such matters are committed to Congress.

J. Eighth Defense

47. The Equal Protection Clause of the United States Constitution bars any order that the Nation must pay for services and may not purchase or possess additional property or improve existing property.

K. Ninth Defense

48. The Due Process Clause of the United States Constitution prohibits any order that the Nation not purchase, possess or improve land.

L. Tenth Defense

49. The Takings Clause of the United States Constitution prohibits any order that the Nation not purchase, possess or improve land.

M. Eleventh Defense

50. The Privileges and Immunities Clauses of the United States Constitution prohibits any order that the Nation not purchase, possess or improve land.

N. Twelfth Defense

51. The United States Constitution, including but not limited to the Indian Commerce Clause, the Fifth Amendment and the Fourteenth Amendment, prohibit the

relief requested by Sherrill.

O. Thirteenth Defense

52. Congress has not authorized the taxation or alienation of the lands in dispute in this action, has not authorized any change in their reservation status or their restricted status, and has not authorized any limitation on the Nation's possession or use of such lands.

P. Fourteenth Defense

53. Plaintiff is entitled to a set-off for funds paid to Oneida County pursuant to its Silver Covenant Chain program.

Q. Fifteenth Defense

54. There is no case or controversy, justiciable controversy or actual dispute concerning lands plaintiff does not now possess in Sherrill but may come to possess there in the future. It is speculative whether and how plaintiff will come to possess such lands and whether there will be a tax controversy concerning them. These speculative matters are not a proper basis for declaratory judgment or for an injunction.

R. Sixteenth Defense

55. Defendant has refused to request or accept Silver Covenant Chain payments and has refused to request or accept payments for services, both payments having been offered by plaintiff. These regular payments substantially exceed all property taxes plaintiff contends it is owed annually on all lands in Sherrill possessed by plaintiff. Defendant, accordingly, is estopped from seeking, and has waived any right to seek, damages and injunctive relief.

WHEREFORE, plaintiff prays for entry of judgment in its favor and against defendant, providing that defendant take nothing and providing plaintiff appropriate declaratory and injunctive relief with respect to defendant's illegal and invalid efforts to take and to take Nation lands and providing plaintiff with such other relief to which it may be entitled at law or in equity, including but not limited to attorneys' fees and costs and such orders as are appropriate to assure the Nation's ownership and possession of its lands and to halt Sherrill's efforts to tax and to take those lands.

Dated: March 14, 2000

Respectfully submitted,

MACKENZIE SMITH LEWIS MICHELL & HUGHES, LLP

_____

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Defendant City Of Sherrill's Statement Of Material Facts, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), July 14, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA INDIAN NATION, Route 5 Vernon, New York, 13476, Plaintiff, vs. CITY OF SHERRILL, 377 Sherrill Road Sherrill, New York 13461, Defendant	:	Civil Action No. 00-CV-223 (NJM) DEFENDANT CITY OF SHERRILL'S STATEMENT OF MATERIAL FACTS

1. Plaintiff Oneida Indian Nation ("OIN") is a federally recognized Indian tribe. Complaint, ¶ 5 (attached to Barker Affidavit, dated July 12, 2000 ("Barker Aff."), Ex. 4.)

2. Defendant City of Sherrill ("Sherrill") is a municipal corporation organized under the laws of the State of New York, Complaint, ¶ 6 (Barker Aff., Ex. 4).

3. In 1997 and 1998, OIN purchased two properties (the "Properties") fronting on Route 5, within the municipal boundaries of Sherrill. On one, OIN has a textile distribution facility. On the other, OIN has a gas station and convenience store. These Properties consist of ten tax sub-parcels. Complaint, ¶ 11 (Barker Aff., Ex. 4).

4. OIN purchased the Properties from non-Indians through voluntary, free-market transactions; these Proprieties were not purchased by the federal government. Complaint, ¶ 11 (Barker Aff., Ex. 4).

5. The Bureau of Indian Affairs recognizes thirty-two acres of land in Madison County, and no land in Oneida County, as land under its jurisdiction. Annual Report of Indian Lands, dated December 31, 1997 (Barker Aff. Ex. 8). The Properties, all of which are located in Oneida County, are not within that thirty-two acre tract. Complaint, ¶ 7 (Barker Aff. Ex. 4).

6. The Sherrill Properties have not been held in trust by the Federal Government for the benefit of individual members of OIN; rather, OIN acquired the Properties by purchasing them from private individuals in voluntary, free market transactions. Complaint, ¶ 11 (Barker Aff., Ex. 4).

7. Sherrill, pursuant to its city charter, has sought to collect property taxes on the Properties. OIN has refused to pay those taxes. Complaint, ¶ 13 (Barker Aff., Ex. 4).

8. The municipal services OIN receives are provided by Sherrill, not by the federal government. Barker Aff. at ¶ 4.

9. Title to three sub-parcels of the Properties, one which houses the OIN textile facility and two vacant sub-parcels which serve as parking lots to the textile facility, was conveyed to Sherrill by Tax Sale Deed on February 9, 2000. Oneida County Clerk's Recording Certificate of the Tax Sale Deed, dated February 9, 2000 (Barker Aff., Ex. 7).

Dated: New York, New York
July 14, 2000

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON
(A Partnership Including
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By:_____
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City Of Sherrill's Response To Plaintiff's First Request for Production of Documents, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), August 14, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA INDIAN NATION Route 5 Vernon, New York 13476	:	
Plaintiff,	:	Civil Action No. 00-CV-223 (NJM) (GLS)
v.	:	**CITY OF SHERRILL'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**
CITY OF SHERRILL 377 Sherrill Road Sherrill, New York 13461	:	
Defendant.	:	

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedures, defendant City of Sherrill ("Sherrill") submits the following objections and responses to the document requests set forth in Plaintiff's First Requests for Production of Documents (the "Request").

GENERAL OBJECTIONS

1. Sherrill objects to the Request to the extent that compliance with the Request would exceed its obligations pursuant to the Federal Rules of civil Procedure.

2. Sherrill objects to the Request to the extent that it is overly broad in scope, unduly burdensome, redundant, vague, ambiguously, harassing, oppressive, lacking in particularity, or seeks documents that are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence, as well as to the extent that it would impose an unjust burden on Sherrill to respond in the form of an excessive expenditure of time and money.

3. Sherrill objects to the Request insofar as it seeks documents or things that are unreasonably cumulative, duplicative, or that are obtainable from some other source that is more convenient, less burdensome, or less expensive.

4. Sherrill objects to the Request to the extent that it calls for the production of documents that are within the custody, control, or possession of the plaintiff.

5. Sherrill objects to the Request to the extent that it seeks the production of documents or things that are not within the possession, custody, or control of Sherrill.

6. Sherrill objects to the Request to the extent that it seeks documents or things protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Sherrill does not intent to produce such documents. Inadvertent production of any privileged document otherwise immune from discovery shall not be deemed a waiver of any applicable privilege or work product protection. Rather than delay production of responsive, non-privileged documents, Sherrill will produce responsive, non-privilege documents as indicated in its specific responses below and will, in due course, produce a list of privileged documents pursuant to Fed. R. Civ. P. 26.

7. Sherrill submits this response and will submit documents without waiving (i) the right to object on any grounds (including but not limited to competence, relevant, materiality, privilege, or admissibility) to the use of the responses or documents as evidence for any purpose, or to the use of the documents in any proceeding; (ii) the right to object on any ground to any other discovery concerning the subject matter of the Request; and (iii) the right (but not the obligation, except as provided by law or rule) to supplement this response and document production. By producing a document, Sherrill does not admit that such a document is indeed responsive to the Request.

8. Sherrill objects to these Requests to the extent they call for conclusions of law, given that the Court must ultimately formulate such conclusions after the parties present their evidence.

9. Sherrill objects to the Requests to the extent they are premature, given that expert discovery has not yet begun and fact discovery remains to be completed.

10. Any Response of Sherrill to any Request that it will produce documents is not intended as a representation that such documents exist.

11. These General Objections are incorporated into each of the specific responses set forth below.

SPECIFIC RESPONSES

Request No. 1:

Produce all documents that mention, reflect or refer to any decision or act by the Congress of the United States, by the House of Representatives, by the Senate or by the President of the United States, with respect to the Oneida parcels, to eliminate the status of that land as Oneida

reservation land or otherwise to change its reservation status in any respect.

Response to Request No. 1:

In addition to its General Objections, Sherrill objects to this Request as vague, ambiguous, overbroad, and unduly burdensome, especially in its request for publicly-available documents and documents relating to governmental bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to this Request to the extent it calls for a legal conclusion on Sherrill's part. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 2:

Produce all documents that mention, reflect or refer to any decision or act by the Congress of the United States, by any house thereof or by the President of the United States, with respect to the Oneida parcels, to subject such land, when in the actual possession of the Oneida Indian Nation of New York, to taxation by the State of New York or by its political subdivisions.

Response to Request No. 2:

In addition to its General Objections, Sherrill objects to this Request as vague, overbroad, and unduly burdensome, especially in its request for publicly-available documents and documents relating governmental bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to this Request to the extent it calls for a legal conclusion on Sherrill's part. Subject to these objections, Sherrill will product responsive documents form its files.

Request No. 3:

Produce all documents that mention, reflect or refer to any ratification of or approval by the Congress of the United States, by any house thereof or by the President of the United States of any sale, from 1789 to the present, of the Oneida parcels or of any larger parcel including any of that land.

Response to Request No. 3:

In addition to General Objections, Sherrill objects to this Request as overbroad and unduly burdensome, especially in its request for publicly-available documents and documents relating to governmental bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to this Request to the extent it calls for a legal conclusion on Sherrill's part. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 4:

Produce all documents that mention, reflect or refer to federal approval in accordance with the Non-Intercourse Act, 25 U.S.C. § 177, of any sale, from 1789 to the present, of the Oneida parcels or of any larger parcel including any of that land.

Response to Request No. 4:

In addition to its General Objections, Sherrill objects to this Request as vague, overbroad, and unduly burdensome, especially in its request for publicly-available documents and documents relating to governmental bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to the Request to the extent it calls for a legal conclusion on Sherrill's part. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 5:

Produce all documents that mention, reflect or demonstrate that the Oneida parcels are not today subject to restrictions against alienation imposed by the Non-Intercourse Act, 25 U.S.C. § 177, are not today Indian country within the meaning of 18 U.S.C. § 1151, or do not today have the status of Oneida reservation land.

Response to Request No. 5:

In addition to its General Objections, Sherrill objects to this Request as vague, ambiguous, overbroad, and unduly burdensome, especially in its request for publicly-available documents and documents relating to governmental bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to this Request to the extent it calls for a legal conclusion on Sherrill's part. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 6:

Produce all documents that reflect, mention or demonstrate any decision or act by the government of the United States, or any part of it, to permit taxation of the Oneida parcels, or any larger parcels of which they are a part, by the Stat of New York or by its political subdivisions.

Response to Request No. 6:

In addition to its General Objections, Sherrill objects to this Request as overbroad and unduly burdensome, especially in its request for publicly-available documents and documents relating to governmental bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to this Request to the extent it calls for a legal conclusion on Sherrill's part. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 7:

Produce all documents that reflect, mention or demonstrate any decision or act by the government of the United States, or any part of it, to change or diminish any right of the Oneida Indian Nation under the 1794 Treaty of Canandaigua with respect to the Oneida parcels or to alter the status of that land under the that treaty.

Response to Request No. 7:

In addition to its General Objections, Sherrill objects to this Request as overbroad and unduly burdensome, especially in its request for publicly-available documents and documents relating to governmental bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to this Request to the extent it calls for a legal conclusion on Sherrill's part, and objects to the term "right" on the grounds that it is vague, ambiguous, and undefined. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 8:

Produce all documents that you contend demonstrate the right of or permit the City of Sherrill, notwithstanding the 1794 Treat of Canandaigua, to tax the Oneida parcels when those lands are in the actual possession of the Oneida Indian Nation.

Response to Request No. 8:

In addition to its General Objections, Sherrill objects to this Request as duplicative of other requests, overbroad, and unduly burdensome. Sherrill further objects to this Request to the extent it calls for a legal conclusion on Sherrill's part. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 9:

Produce all documents that reflect or are a part of any effort by the City of Sherrill to give notice to the Oneida Indian Nation with respect to the collection of taxes on the Oneida parcels, with respect to delinquency in payment of such taxes, or with respect to foreclosure or eviction for non-payment of such taxes.

Response to Request No. 9:

In addition to its General Objections, Sherrill objects to this Request as vague and ambiguous. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 10:

Produce all documents that reflect or are a part of any effort by the City of Sherrill to give notice to the Oneida Indian Nation concerning a right to redeem the Oneida parcels.

Response to Request No. 10:

In addition to its General Objections, Sherrill objects to this Request as duplicative of other requests. Subject to these objections, Sherrill will produce responsive documents from its files.

Request No. 11:

Produce all documents identified or referred to in your answer and counterclaim.

Response to Request No. 11:

Subject to its General Objections, Sherrill will produce responsive documents from its files.

Request No. 12:

Produce the expert report described in Fed. R. Civ. P.26(a)(2)(B).

Response to Request No. 12:

In addition to its General Objections, Sherrill objects to this Request as premature.

Request No. 13:

To the extent not produced in response to the above requests, produce all documents that you contend support your denials of the allegations in paragraphs 8 and 17, 18, 29 and 20 of the Oneida Indian Nation's complaint.

Response to Request No. 13:

In addition to its General Objections, Sherrill objects to this Request as duplicative of other Requests, overbroad, and unduly burdensome, especially in its request for publicly-available documents and documents relating to governmental bodies and officials other than Sherrill and Sherrill officials. Subject to these objections, Sherrill will produce responsive documents from its files.

Sherrill also notes that there is no paragraph 29 in the Complaint. To the extent Request No. 13 contains a typographical error and should read "paragraph 19" instead of "paragraph 29," Sherrill reiterates its objections to Request No. 13 for paragraph 19 of the Complaint.

Request No. 14:

Produce all documents to which you refer in any answer to plaintiff's interrogatories or requests for admissions, served together with these document requests.

Response to Request No. 14:

Subject to its General Objections, Sherrill will produce responsive documents from its files.

Request No. 15:

Produce all documents, created since 1996, that mention the Oneida parcels or taxation of Oneida land in the City of Sherrill.

Response to Request No. 15:

In addition to its General Objections, Sherrill objects to this Request as duplicative of other requests, overbroad, and unduly burdensome. Subject to these objections, Sherrill will produce responsive documents from its files.

Dated: August 14, 2000
New York, New York

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
(A Partnership Including Professional Corporations)

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CERTIFICATE OF SERVICE

I certify under penalty of perjury pursuant to 28 U.S.C. §1746 that on August 14, 2000 I caused to be served upon the following by Federal Express a true copy of the City of Sherrill's Response to Plaintiff's First Request for Production of Documents:

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Attorneys for Plaintiff Oneida Indian Nation

Dated: New York, New York
August 14, 2000

Laura Sulem

City Of Sherrill's Response To Plaintiff's First Set of Interrogatories, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), August 14, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA INDIAN NATION, Route 5 Vernon, New York 13476, Plaintiff,	:	Civil Action No. 00-CV-223 (NJM)(GLS)
vs.	:	CITY OF SHERRILL'S RESPONSE
CITY OF SHERRILL, 377 Sherrill Road Sherrill, New York 13461, Defendant.	:	TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, defendant City of Sherrill ("Sherrill") hereby answers the interrogatories set forth in Plaintiff's First Set of Interrogatories (the "Interrogatories"). The answers set forth below are based on information currently possessed by Sherrill. Sherrill reserves (i) the right to object on any grounds (including but not limited to competence, relevance, materiality, privilege, confidentiality, authenticity, or admissibility) to the use of these answers in any proceeding or in the trial of this or any other matter, (ii) the right to object to any other discovery concerning the subject matter of the Interrogatories, and (iii) the right but not the obligation (except as required by law or rule) to correct, revise, clarify, supplement, or amend these answers and objections.

GENERAL OBJECTIONS

Sherrill asserts the following general objections to each Interrogatory, and each such general objection is hereby incorporated into Sherrill's response to each Interrogatory as if fully set forth therein:

1. Sherrill objects to each Interrogatory to the extent it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Sherrill further objects to the extent any Interrogatory seeks information regarding the acts, decisions, or policies of any government body other than Sherrill or about any government officials other than Sherrill officials.

2. Sherrill objects to the Interrogatories (including the definitions and instructions) to the extent they seek information in violation of the Local Civil Rules of the United States District Court for the Northern District of New York and the Federal Rules of Civil Procedure.

3. Sherrill objects to each Interrogatory to the extent it seeks information that is protected from discovery under the attorney-client privilege or the work-product doctrine, or which falls within any other privilege, immunity, protection, or restriction. The inclusion of any information in any response shall not constitute a waiver of such privilege or immunity.

4. Sherrill objects to each Interrogatory to the extent it seeks information in the possession of, known to, or otherwise equally available to plaintiff.

5. Sherrill objects to the Interrogatories to the extent they are premature, given that expert discovery has not yet begun and fact discovery remains to be completed.

6. Sherrill objects to each Interrogatory to the extent it is overly broad in scope, unduly burdensome, redundant, vague, ambiguous, harassing, oppressive, or seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence, as well as to the extent it would impose an unjust burden on Sherrill to respond in the form of an excessive expenditure of time and money.

7. Sherrill objects to each Interrogatory to the extent it calls for a conclusion of law, given that the Court must ultimately formulate such conclusions after the parties present their evidence.

8. No objection or limitation, or lack thereof, made in these responses and objections shall be deemed an admission by Sherrill as to the existence or non-existence of information.

SPECIFIC ANSWERS AND OBJECTIONS

Interrogatory No. 1:

Explain in reasonable detail the basis for your denials in paragraph 17 of your answer.

Response to Interrogatory No. 1:

In addition to its General Objections, Sherrill objects to Interrogatory No. 1 as overbroad, unduly burdensome, and premature. Sherrill further objects to Interrogatory No. 1 on the grounds that it calls for a conclusion of law and refers to the document referenced in paragraph 17 of the Complaint for its contents.

Interrogatory No. 2:

Explain in reasonable detail the basis for your denials in paragraph 18 of your answer.

Response to Interrogatory No. 2:

In addition to its General Objections, Sherrill objects to Interrogatory No. 2 on the grounds that it is premature and calls for a conclusion of law. Sherrill further objects to Interrogatory No. 2 on the ground that paragraph 18 of its Answer specifically states that no responsive pleading at all was required because paragraph 18 of the Complaint alleged no facts.

Interrogatory No. 3:

Explain in reasonable detail the basis for your denials in paragraph 19 of your answer.

Response to Interrogatory No. 3:

In addition to its General Objections, Sherrill objects to Interrogatory No. 3 on the grounds that it is premature and calls for a conclusion of law. Sherrill further objects to Interrogatory No. 3 on the ground that paragraph 19 of its Answer specifically states that no responsive pleading at all was required because paragraph 19 of the Complaint alleged no facts.

Interrogatory No. 4:

Explain in reasonable detail the basis for your denials in paragraph 20 of your answer.

Response to Interrogatory No. 4:

In addition to its General Objections, Sherrill objects to Interrogatory No. 4 on the grounds that it is premature and calls for conclusions of law. Sherrill further objects to Interrogatory No. 4 on the ground that paragraph 20 of its Answer specifically states that no responsive pleading at all was required because paragraph 20 of the Complaint alleged no facts.

Interrogatory No. 5:

Identify with particularity every Act of Congress or

law of the United States upon which you base any contention that the Oneida parcels, when in the actual possession of the Oneida Indian Nation, are not reservation land, are not Indian country, are not subject to federal restrictions against alienation, or are taxable by the State of New York or its political subdivisions.

Response to Interrogatory No. 5:

In addition to its General Objections, Sherrill objects to Interrogatory No. 5 on the grounds that it is overbroad and unduly burdensome. Sherrill further objects on the grounds that Interrogatory No. 5 is premature and calls for conclusions of law.

Interrogatory No. 6:

Identify every act or decision of the legislative branch, the judicial branch or the executive branch of the government of the United States upon which you base any contention that the Oneida parcels, when in the actual possession of the Oneida Indian Nation, are not reservation land, are not Indian country, are not subject to federal restrictions against alienation, or are taxable by the State of New York or its political subdivisions.

Response to Interrogatory No. 6:

In addition to its General Objections, Sherrill objects to Interrogatory No. 6 on the ground that it is duplicative of information already in the possession of plaintiff and refers plaintiff to Sherrill's Memorandum of Law in Support of its Motion for Summary Judgment, or in the Alternative for a Preliminary Injunction, which was served on plaintiff on July 14, 2000. Sherrill further objects on the grounds that Interrogatory No. 6 is overbroad and unduly burdensome, especially in its request for information about acts and decisions of government bodies and officials other than Sherrill and Sherrill officials.

Interrogatory No. 7:

Do you contend that, between 1789 and the present, any part of the federal government expressly ratified or approved any sale of the Oneida parcels, or of any larger parcel including any of these parcels; if so, explain in reasonable detail the factual basis for your contention, identifying with particularity each act of express ratification or approval and giving its date.

Response to Interrogatory No. 7:

In addition to its General Objections, Sherrill objects to Interrogatory No. 7 on the grounds that it is overbroad and unduly burdensome, especially in its request for information about acts and decisions of government bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to Interrogatory No. 7 on the ground that it is premature.

Interrogatory No. 8:

Do you deny that the 1794 Treaty of Canandaigua affirmed an Oneida reservation with designated boundaries; if so, explain in reasonable detail the basis for your position.

Response to Interrogatory No. 8:

In addition to its General Objections, Sherrill objects to Interrogatory No. 8 on the ground that it calls for a conclusion of law and refers to the treaty referred to in Interrogatory No. 8 for its contents.

Interrogatory No. 9:

Do you contend that the Oneida parcels, whether or not they have reservation status today, are geographically outside of the reservation boundaries affirmed in the 1794 Treaty of Canandaigua; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 9:

In addition to its General Objections, Sherrill objects to Interrogatory No. 9 on the ground that it is premature and refers to the treaty referred to in Interrogatory No. 9 for its contents.

Interrogatory No. 10:

Do you deny that the Oneida parcels, regardless of their status today, were in 1805, 1806 and 1807 subject to federal restrictions against alienation and were not taxable by the State of New York and its political subdivisions; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 10:

In addition to its General Objections, Sherrill objects to Interrogatory No. 10 on the grounds that it is premature and calls for conclusions of law.

Interrogatory No. 11:

Do you contend that the Congress of the United States, any house thereof or any branch of the government of the United States, at any time, expressly changed the reservation status, the tax status or the restricted status any of the Oneida parcels or of any larger parcels including these parcels; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 11:

In addition to its General Objections, Sherrill objects to Interrogatory No. 11 on the grounds that it is overbroad and unduly burdensome, especially in its request for information about acts and decisions of government bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to Interrogatory No. 11 on the ground that it is premature.

Interrogatory No. 12:

Do you contend that the Congress of the United

States, or any house thereof or any branch of the government of the United States, at any time, impliedly changed the reservation status, the tax status or the restricted status of any of the Oneida parcels or of any larger parcels including those parcels; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 12:

In addition to its General Objections, Sherrill objects to Interrogatory No. 12 on the grounds that it is overbroad and unduly burdensome, especially in its request for information about acts and decisions of government bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to Interrogatory No. 12 on the grounds that it is premature and calls for a conclusion of law, and objects to the term "impliedly" as vague, ambiguous, and undefined.

Interrogatory No. 13:

Do you contend that the Congress of the United States, or any house thereof, expressly approved or ratified a sale or transfer of the Oneida parcels, or of a larger tract of which they were a part, to Cornelius Dockstader in 1805 or to Peter Smith in 1807; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 13:

In addition to its General Objections, Sherrill objects to Interrogatory No. 13 as overbroad and unduly burdensome, especially in its request for information about acts and decisions of government bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to Interrogatory No. 13 as premature.

Interrogatory No. 14:

Do you deny that the transfers or sales of the Oneida parcels in 1805 to Cornelius Dockstader and in 1807 to Peter

Smith were void ab initio; if so, explain in reasonable detail the basis for your denial.

Response to Interrogatory No. 14:

In addition to its General Objections, Sherrill objects to Interrogatory No. 14 on the grounds that it is premature and calls for a conclusion of law.

Interrogatory No. 15:

Do you contend that the Congress of the United States, or any house thereof, at any time, impliedly approved or ratified any sale or transfer of the Oneida parcels or of a larger tract of which they were a part; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 15:

In addition to its General Objections, Sherrill objects to Interrogatory No. 15 on the grounds that it is overbroad and unduly burdensome, especially in its request for information about acts and decisions of government bodies and officials other than Sherrill and Sherrill officials. Sherrill further objects to Interrogatory No. 15 on the ground that it is premature, and objects to the term "impliedly" as vague, ambiguous, and undefined.

Interrogatory No. 16:

Do you contend that any sale or transfer of the Oneida parcels, or of a larger tract of which they were a part, ever has occurred in accordance with the requirements of the then-existing Non-Intercourse Act, 25 U.S.C. § 177; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 16:

In addition to its General Objections, Sherrill objects to Interrogatory No. 16 on the grounds that it is premature and calls for a conclusion of law.

Interrogatory No. 17:

Do you contend that the City of Sherrill is entitled to tax the Oneida parcels even if they constitute a part of the Oneida reservation, are in the actual possession of the Oneida Indian Nation, are restricted against alienation pursuant to 15 U.S.C. § 177 and are Indian country within the meaning of 18 U.S.C. § 1151; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 17:

In addition to its General Objections, Sherrill objects to Interrogatory No. 17 on the grounds that it is unduly burdensome, oppressive, and premature. Sherrill further objects to Interrogatory No. 17 on the ground that it requests information and evidence that will be presented in Sherrill's pre-trial brief.

Interrogatory No. 18:

If the City of Sherrill may tax the Oneida parcels, do you contend that the City of Sherrill may evict the Oneida Indian Nation notwithstanding its sovereign immunity; if so, explain in reasonable detail the basis for your contention.

Response to Interrogatory No. 18:

In addition to its General Objections, Sherrill objects to Interrogatory No. 18 on the grounds that it is unduly burdensome and oppressive. Sherrill further objects to Interrogatory No. 18 on the ground that it calls for a conclusion of law.

Interrogatory No. 19:

With respect to any request for admission served with these interrogatories that you do not unqualifiedly admit, state in reasonable detail the basis for not giving an unqualified admission.

Response to Interrogatory No. 19:

In addition to its General Objections, Sherrill objects to Interrogatory No. 19 on the grounds that it is unduly burdensome, oppressive, and premature.

Interrogatory No. 20:

Give the tax identification number, size, and name of owner of every tax parcel in the City of Sherrill that the City of Sherrill does not attempt to tax, whether because of a tax exemption or for any other reason.

Response to Interrogatory No. 20:

The following Sherrill properties are exempt from property taxation:

Tax Parcel No.	Parcel Size	Parcel Owner
322.014-1-4.2	35' x 30'	City of Sherrill
322.014-1-23*	100' x 200'	City of Sherrill
322.014-1-25*	55' x 211.6'	City of Sherrill
322.014-1-26*	.4 acres	City of Sherrill
322.014-1-30	34.07 acres	Oneida County Industrial Development Agency
322.015-1-1.75	Information not available	Oneida County Industrial Development Corporation and Sterling Power Partners
322.015-1-1.77	Information not available	City of Sherrill
322.015-1-1.78	2.5 acres	Oneida County Industrial Development Corporation and

Tax Parcel No.	Parcel Size	Parcel Owner
		Sterling Power Partners
322.015-1-18	4 acres	City of Sherrill
322.015-1-24	180 x 164.6'	City of Sherrill
322.015-1-56	1 acre	City of Sherrill
322.015-1-70	378.95' x 100'	Sherrill Post 230 American Legion
322.015-2-40.1	5.56 acres	City of Sherrill
322.016-1-9.7	2.51 acres	State of New York
322.016-1-78.1	140.85' x 50'	City of Sherrill
322.017-1-9	10.35 acres	City of Sherrill
322.017-1-32	1.66 acres	Sherrill Kenwood Water District
322.018-1-1.2	6.5 acres	Sherrill-Kenwood Community and Retirement Housing
322.018-1-1.4	.2 acres	City of Sherrill
322.018-1-1.61	1 acre	Sherrill-Kenwood Water District
322.018-1-5	5.97 acres	City of Sherrill
322.019-1-16	1.6 acres	City of Sherrill
322.019-1-17	1.74 acres	City of Sherrill
322.019-1-38	255' x 246'	City of Sherrill
322.019-1-55	150.17' x 146.43'	City of Sherrill
322.019-1-69	5.9 acres	Vernon Verona Sherrill School

Tax Parcel No.	Parcel Size	Parcel Owner
		District
322.019-1-70	1.7 acres	Church Plymouth
322.019-1-71	1.4 acres	City of Sherrill
322.019-1-72	7.1 acres	City of Sherrill
322.019-2-48	1.3 acres	St. Helena Church and Parsonage
322.019-2-49	7.6 acres	City of Sherrill
332.006-2-64	4.8 acres	City of Sherrill
332.007-1-48	279.8' x 162.9'	Church Christ Methodist
332.007-2-38	87' x 165'	Parsonage Christ Methodist
332.007-2-71	180' x 97'	Church Gethsemane Episcopal
332.007-3-6	2.3 acres	City of Sherrill
332.007-4-26	65' x 160'	Sherrill Grange 1567
332.007-5-31	1.1 acres	City of Sherrill
332.011-1-47	5.7 acres	Sherrill-Kenwood Water District

* After Sherrill transferred ownership of these parcels to itself by filing the tax sale deed on February 9, 2000, Sherrill removed them from the tax rolls and now classifies them as City of Sherrill property, and therefore property tax exempt.

Interrogatory No. 21:

Regarding your allegations in paragraph 59 of your

fourth counterclaim concerning irreparable harm and a decrease in the City of Sherrill's property tax revenues, identify the City of Sherrill's annual property tax revenues for each year from 1990 to the present.

Response to Interrogatory No. 21:

Year	Current and Delinquent Taxes to Be Collected	Total Revenue Collected	Uncollected Taxes
1990	$527,991	$524,102	$3,889
1991	529,991	528,380	1,611
1992	634,041	629,441	4,600
1993	574,144	569,788	4,356
1994	579,333	576,719	2,614
1995	585,849	583,014	2,835
1996	602,716	600,461	2,255
1997	611,195	606,728	4,467
1998	633,129	625,036	8,093
1999	665,971	656,831	9,140

Interrogatory No. 22:

Explain in reasonable detail the basis for your allegation in paragraph 30 of your counterclaim that the Oneida parcels "were neither reservation land nor Indian Country."

Response to Interrogatory No. 22:

In addition to its General Objections, Sherrill objects to Interrogatory No. 22 on the ground that it is duplicative of information already in the possession of plaintiff and refers plaintiff to Sherrill's Memorandum of Law in Support of its Motion for Summary Judgment, or in the Alternative for a Preliminary Injunction, which was served on plaintiff on July 14, 2000. Sherrill further objects to Interrogatory No. 22 on the ground that it is premature.

Interrogatory No. 23:

With respect to each of the Oneida parcels, parcel by parcel, identify with particularity each notice the City of Sherrill gave to the Oneida Indian Nation regarding taxes due on each such parcel, enforcement by the City of Sherrill of its tax laws as to each such parcel, tax sales of each such parcel, or foreclosure, eviction or the right to redeem each such parcel, giving the date, method of service and recipient of each such notice and a brief summary of the content of each such notice.

Response to Interrogatory No. 23:

Tax Parcel No.	Description of Notice
322.014-1-23 322.014-1-25 322.014-1-26	August 7, 1997 letter from Michael Holmes to Ray Halbritter notified OIN that it was delinquent in paying its 1997 taxes for these parcels and stated that payment in full was due by September 2, 1997 or Sherrill would proceed according to section 94 of

Sherrill's Charter, which sets forth Sherrill's property redemption procedures.

September 17 and 24, 1997, and October 1, 8, 15, 22, and 29, 1997 publication in Oneida Daily Dispatch of tax sale notice for these parcels. Tax sale was scheduled for November 5, 1997. Tax sale notice was also posted at Sherrill City Hall, Sherrill's Police Station, and the Sherrill Post Office.

On or about February 27, 1998 a tax bill was mailed to Ray Halbritter, billing him for 1998 taxes as well as unpaid taxes from 1997.

August 4, 1998 letter from Michael Holmes to Ray Halbritter notified OIN that it was delinquent in paying its 1998 taxes for these parcels and stated that payment in full was due by September 4, 1998 or Sherrill would proceed according to section 94 of Sherrill's Charter, which sets forth Sherrill's property redemption procedures.

September 17 and 24, 1998 and October 1, 8, 15, 22, and 29, 1998 publication of tax sale notice for these parcels. Tax sale was scheduled for November 5, 1998. Tax sale notice was also posted at Sherrill City Hall, Sherrill's Police Station, and the

Sherrill Post Office.

On or about February 26, 1999 a tax bill was mailed to Ray Halbritter, billing him for 1999 taxes as well as unpaid taxes from 1998 and 1997.

August 4, 1999 letter from Michael Holmes to Ray Halbritter notified OIN that it was delinquent in paying its 1999 taxes for these parcels and stated that payment in full was due by September 3, 1999 or Sherrill would proceed according to section 94 of the Sherrill Charter, which sets forth Sherrill's property redemption procedures.

November 8, 1999, December 8, 1999, and January 7, 2000 publication of Notice of Redemption in Oneida Daily Dispatch, stating February 8, 2000 as last day to redeem these parcels.

January 10, 2000 publication of Notice of Redemption in Oneida Daily Sentinel, stating February 8, 2000 as last day to redeem these parcels.

January 10, 2000 personal service of Notice of Redemption for parcel 322.014-1-23 on William Hervey, then Oneida Indian Nation's Director of Intergovernmental Relations, and Kathy Perham, then Oneida Textile Designs' Executive Assistant to the General Manager. Notice of

Redemption stated that the last day to redeem these parcels is February 8, 2000. Additionally, Notice of Redemption for parcels 322.014-1-25 and 322.014-1-26 were personally served on William Hervey and were also posted on those parcels.

322.014-1-24
322.015-2-1
322.015-2-64
322.015-2-65

On or about February 27, 1998 a tax bill was mailed to Ray Halbritter, billing him for 1998 taxes for these parcels.

August 4, 1998 letter from Michael Holmes to Ray Halbritter notified OIN that it was delinquent in paying its 1998 taxes for these parcels and stated that payment in full was due by September 4, 1998 or Sherrill would proceed according to section 94 of Sherrill's Charter, which sets forth Sherrill's property redemption procedures.

September 17 and 24, 1998 and October 1, 8, 15, 22, and 29, 1998 publication of tax sale notice for these parcels. Tax sale was scheduled for November 5, 1998. Tax sale notice was also posted at Sherrill City Hall, Sherrill's Police Station, and the Sherrill Post Office.

On or about February 26, 1999 a tax bill was mailed to Ray Halbritter, billing him for 1999 taxes as well as unpaid taxes from 1998 for these

	parcels. August 4, 1999 letter from Michael Holmes to Ray Halbritter notified OIN that it was delinquent in paying its 1999 taxes for these parcels and stated that payment in full was due by September 3, 1999 or Sherrill would proceed according to section 94 of Sherrill's Charter, which sets forth Sherrill's property redemption procedures. March 6, 2000 letter from Michael Holmes to Ray Halbritter enclosed the 2000 tax bill for these parcels and stated that Sherrill assumed the tax sale certificate for these parcels on November 5, 1998 and filed said certificate on November 16, 1998. Letter also quoted from section 94f of Sherrill's Charter, which sets forth Sherrill's property redemption procedures, and stated that the redemption period for these parcels expires on November 5, 2000.
322.015-2-40.3 322.015-2-45.1 322.015-2-47	On or about February 26, 1999 a tax bill was mailed to Ray Halbritter, billing him for 1999 taxes for these parcels. August 4, 1999 letter from Michael Holmes to Ray Halbritter notified OIN that it was delinquent in paying its 1999 taxes for these parcels and stated that payment

in full was due by September 3, 1999 or Sherrill would proceed according to section 94 of Sherrill's Charter, which sets forth Sherrill's property redemption procedures.

September 22 and 29, 1999; October 6, 13, 20, 27, 1999; and November 3, 1999 publication of tax sale notice for these parcels. Tax sale was scheduled for November 10, 1999. Tax sale notice was also posted at Sherrill City Hall, Sherrill's Police Station, and the Sherrill Post Office.

March 6, 2000 letter from Michael Holmes to Ray Halbritter enclosed the 2000 tax bill for these parcels and stated that Sherrill assumed the tax sale certificate for these parcels on November 10, 1999 and filed said certificate on November 24, 1999. Letter also quoted from section 94f of Sherrill's Charter, which sets forth Sherrill's property redemption procedures, and stated that the redemption period for these parcels expires on November 10, 2001.

Interrogatory No. 24:

Specify with particularity the damage award requested in paragraphs 57 and 65 (d) of your complaint and explain in detail how you calculate the amount for which you seek reimbursement.

Response to Interrogatory No. 24:

In addition to its General Objections, Sherrill objects to Interrogatory No. 24 as premature.

Interrogatory No. 25:

Identify each expert whose opinions you may present at trial; for each, state each opinion the expert will give and provide the basis for each opinion.

Response to Interrogatory No. 25:

In addition to its General Objections, Sherrill objects to Interrogatory No. 25 on the ground that it is premature.

Dated: August 14, 2000
New York, New York

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
(A Partnership Including Professional Corporations)

By: _____
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Attorneys for Defendant City of Sherrill

328383

Declaration of Paul Thomas, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), September 5, 2000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION
Route 5
Vernon, New York 13476,

Plaintiff,

-vs- Civil Action No. 00-CV-223 (NPM/GJD)

CITY OF SHERRILL
377 Sherrill Road
Sherrill, New York 13461,

Defendant.

DECLARATION OF PAUL A. THOMAS, JR.

I, PAUL A. THOMAS, JR., hereby state:

1. I am over 18 years old and am competent to make this Declaration. Unless otherwise indicated, I have personal knowledge of the statements made herein.

2. I am an employee of Monroe-Madison Title Agency, LLC ("Monroe-Madison"), a subsidiary of Monroe Title Insurance Corporation ("Monroe Title") which is headquartered in Rochester, New York. Monroe Title operates offices in Madison and Oneida Counties, located in Wampsville, New York, and Utica, New York, respectively.

3. I received a B.A. in political science from the State University of New York at Fredonia in 1973. Since my graduation from college, I have worked in the field of real estate title services and research. Since 1976, my work in real estate title matters has been primarily in the Oneida and Madison County area. I founded Madison Abstract and Title Company with offices in Wampsville, New York and Utica, New York in 1983. I was President of Madison Abstract until it became a part of Monroe Title Insurance Corporation in1997.

4. I am familiar with and experienced in title research, title opinions, title examination and preparation of title abstracts. I have examined and researched titles for more than 25 years and have provided title opinions on numerous occasions. I have testified as an expert on title issues on approximately four occasions and was accepted as an expert by the court in each instance.

5. I am familiar with the parcels of land located on New York State Route 5 in Sherrill, New York (Oneida County), owned and occupied by the Oneida Indian Nation. One group of parcels is occupied by Oneida Textile, a textile manufacturing facility and retail outlet, located between Route 5 and Prospect Road. An excerpt from the tax map of the City of Sherrill indicating the locations of these parcels is attached as Exhibit 1. The tax parcel numbers for the textile facility and outlet are: 322.014-1-23, 322.014-1-24, 322.014-1-25, 322.-14-1-26, 322.015-2-1, 322.015-2-64 and 322.015-2-65. I refer to these lots hereafter as the "Oneida Textile Lots."

6. A second group of Oneida Nation-owned parcels on Route 5 is used as a gasoline service station known as Oneida Sav-On and is located at the intersection of Sherrill Road and Route 5. An excerpt from the tax map of the City of Sherrill indicating the location of these parcels is attached

as Exhibit 2. The tax parcel numbers for the land occupied by gasoline service station owned by the Oneida Nation are: 322.015-2-40.3; 322.015-2-45.1 and 322.015-2-47.1. I refer to these lots hereafter as the "Oneida Sav-On Lots."

7. I have been asked by the law firm of Zuckerman, Spaeder, Goldstein, Taylor & Kolker, LLP, on behalf of the Oneida Indian Nation (the "Nation"), to review title issues relating to the Oneida Textile Lots and the Oneida Sav-On Lots.

8. Using records from the Oneida County Clerk's Office and the Oneida County Surrogate's Court, both located in Utica, New York, records from the New York State Archives in Albany and documents contained in the Report of Special Committee to Investigate the Indian Problem of the State of New York (Albany 1889), also known as the "Whipple Report," title to the Oneida Textile Lots and Oneida Sav-On Lots was traced, owner by owner, from the present back to 1805. This work was performed by both me and/or employees of Monroe-Madison under my direction and subject to my review.

9. I also reviewed the 1794 Treaty of Canandaigua and the 1788 Treaty of Fort Schuyler, which describes the boundaries of the Oneida Nation reservation reserved to the Oneidas by the Treaty of Canandaigua. I have reviewed the boundaries of the Oneida reservation described in the Treaty of Fort Schuyler.

10. I have concluded that the Oneida Save-On Lots and the Oneida Textile Lots are within the boundaries of the reservation described in the Treaty of Fort Schuyler and confirmed in the Treaty of Canandaigua.

11. I have also concluded that:

(a) the Oneida Textile Lots and the Oneida Sav-On Lots remained in the possession of the Oneida Nation, and within the Oneida reservation boundaries, until 1805;

(b) these lands were conveyed to a Cornelius Dockstader, identified as a member of the Oneida Nation, in 1805;

(c) Dockstader then conveyed the lands to a Peter Smith in 1807; and

(d) thereafter, Smith conveyed the lands to others by mesne conveyances until 1997 and 1998, when the lands were reacquired by the Oneida Nation.

I declare under penalty of perjury that the foregoing is true and correct.

September 05, 2000
Wampsville, New York

PAUL A. THOMAS, JR.

Plaintiff Oneida Indian Nation's Response To Defendant City Of Sherrill's Statement Of Materials Facts, *Oneida Indian Nation v. City of Sherrill, 00 CV 223* (NDNY), September 11, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION,

Plaintiff,

v. **Civil Action No. 00-CV-223 (NPM/GLD)**

CITY OF SHERRILL,

Defendant.

PLAINTIFF ONEIDA INDIAN NATION'S RESPONSE TO DEFENDANT CITY OF SHERRILL'S STATEMENT OF MATERIALS FACTS

Plaintiff Oneida Indian Nation, by counsel, hereby responds to the Statement of Material Facts submitted by the defendant City of Sherrill.

1. The Nation does not dispute paragraph 1.

2. The Nation does not dispute paragraph 2.

3. The Nation does not dispute paragraph 3, except to the extent that the statement that the Nation "purchased two properties" in Sherrill is intended to suggest that the Nation was not or is not entitled to possess the

properties pursuant to federal treaties, or to suggest that the proprieties were not part of the Oneida reservation. In fact, the Nation simply assumed possession of its property, which was before and at all time a reservation pursuant to, among other treaties, the 1794 Treaty of Canandaigua. Affidavit of Peter D. Carmen in Support of the Nation's Cross-Motion for Summary Judgment, and in Opposition to the Defendant city of Sherrill's Motion for Summary Judgment, or in the Alternative for a Preliminary Injunction ("Carmen Aff."), at ¶¶6-13, exhs. 3-6.

4. The Nation does not dispute paragraph 4, except that it objects to Sherrill's use of the term "purchased," for reasons described in paragraph 3. Carmen Aff. at ¶¶6-13, exhs. 3-6.

5. The Nation disputes paragraph 5. All of the Nation's lands in Madison and Oneida Counties that were part of the Oneida reservation guaranteed by the United States in the Treaty of Canandaigua remain under the jurisdiction of the United States, and subject to restraints against alienation, because Congress has not expressly stated a contrary intention. Carmen Aff. At ¶¶6-13, 18-22, exhs. 3-6, 13-16.

6. The Nation does not dispute the statement in paragraph 6 that the Nation's lands in Sherrill "have not been held in trust by the Federal Government for the benefit of individual members of [the Nation]" (emphasis added). Nor does the Nation dispute the statement that the Nation acquired its lands in Sherrill "by purchasing them from private individuals in voluntary, free market transactions," except with respect to the term "purchasing," as explained in paragraph 3, above. Further, to the extent that Sherrill means to imply that the Oneida lands in Sherrill, as a reservation, are not subject to a trust relationship between the United States and the Nation, under which relationship the lands

remain restricted against alienation and pursuant to which the Nation is entitled to the rights and immunities set forth in governing treaties and under federal law, including the right to be free from taxation of its reservation lands, the Nation denies such implications. Carmen Aff. at ¶¶6-13, 18-22, exhs. 3-6, 13-16.

7. The Nation does not dispute paragraph 7.

8. The Nation does not have sufficient information to admit or dispute paragraph 8. It is reasonable to expect that Sherrill received federal funding, directly or indirectly, for some of the services it provides.

9. The Nation disputes paragraph 9, to the extent that it is intended to suggest that title to the Nation's lands in Sherrill could be lawfully conveyed to Sherrill by tax deed on February 9, 2000. The Nation does not dispute that Sherrill purported to convey title to the properties described in paragraph 9. This conveyance, however, was unlawful, given the reservation and tax-free status of the properties Sherrill sought to convey to itself, and in light of the Nation's sovereign immunity. Carmen Aff. at ¶¶6-13, 18-22, exhs. 3-6, 13-16.

10. Pursuant to Fed.R.Civ.P. 10(c), the Nation incorporates by reference herein its Statement of Material Facts submitted in support of the Nation's cross-motion for summary judgment, filed this same date.

Dated: September 11, 2000 Respectfully submitted,

MACKENZIE SMITH LEWIS MICHELL & HUGHES, LLP

BY:_____
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-and-

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Oneida Indian Nation's Statement Of Materials Facts, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), September 11, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ONEIDA INDIAN NATION,

Plaintiff,	**Civil Action No. 00-CV-223**
v.	**(NPM/GLD)**

CITY OF SHERRILL,

Defendant.

PLAINTIFF ONEIDA INDIAN NATION'S STATEMENT OF MATERIAL FACTS

1. Plaintiff Oneida Indian Nation of New York ("the Nation") is a federally recognized Indian tribe. Affidavit of Peter D. Carmen in support of Oneida Indian Nation's Cross-Motion for Summary Judgment, and in Opposition to the City of Sherrill's Motion for Summary Judgment, or, in the alternative, for a Preliminary Junction ("Carman Aff."), Exh. 1.

2. The Nation is in possession of two properties, consisting of 10 tax parcels, in Sherrill. Carmen Aff. At ¶5, exh.2.

A. History of the Lands in Dispute

3. The Nation's lands in Sherrill were part of the lands possessed by the Nation for centuries before this country was formed, often referred to as "aboriginal" lands. Carmen Aff. at ¶6.

4. The Nation's lands in Sherrill were part of the Oneida reservation guaranteed and confirmed in the 1794 Treaty of Canandaigua. Carmen Aff. at ¶¶9-10, exh. 6; Declaration of Paul A. Thomas, Jr., at ¶10.

5. Congress has done nothing to alter the reservation status of the Nation's lands in Sherrill. Carman Aff. at ¶12.

6. Congress has not modified, eliminated, or terminated the Treaty of Canandaigua, which remains in full force and effect. Carmen Aff. at ¶11.

7. The rights conferred to the Nation by the Treaty of Canandaigua include the right to be free from taxation of the nation's reservation lands. Carmen Aff. at ¶9, exh. 6.

8. Congress has done nothing to alter the tax-free status of the Nation's reservation lands, including its lands in Sherrill. Carmen Aff. at ¶12.

9. The reservation lands that the Nation now possesses in Sherrill were out of the Nation's possession from 1805 to 1997-1998. Carmen Aff. at ¶¶14-15, exhs. 8-10

10. Neither Congress nor the President approved the transactions removing the Nation's lands in Sherrill from its possession. Carmen Aff. at ¶16.

B. Possession and Subsequent Treatment of the Nation's Lands in Sherrill

11. The Nation assumed possession of its lands in Sherrill as a result of voluntary, free-market transactions in 1997 and 1998. Carmen Aff. at ¶17. exh. 11.

12. In 1999, the Bureau of Indian Affairs determined that lands reacquired by the Nation in 1997 "cannot be alienated without the express approval of the United States, and are subject to Oneida tribal governmental power." Carmen Aff. at ¶19, exh. 13.

13. The Department of Interior has regularly given approvals for transactions related to repossessed Nation lands under federal laws requiring such approvals to be given where the lands at issue are Indian lands subject to restrictions against alienation. Carmen Aff. at ¶20, exh. 14.

14. The Attorney for the Town of Verona has concluded that Treaty lands returned to the Nation's possession are reservation lands, restricted from alienation and exempt from taxation. Carmen Aff. at ¶21, exh. 15.

15. Sherrill acknowledged the restricted status of the nation's lands in Sherrill when it sought, and obtained, federal approval of a utility easement through the Nation's land. Carmen Aff. at ¶22, exh. 15. This approval was pursuant to 25 C.F.R. 169.1(d), which requires federal approval for easements over "land held in trust by the United States for a tribe or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance."

C. Sherrill's Efforts to Tax the Nation's Lands

16. Starting in August 1997, the defendant City of Sherrill has undertaken efforts to impose property taxes on the Nation's lands in Sherrill. Carmen Aff. at ¶23.

17. On August 7, 1997, the Sherrill City Clerk sent notices of tax delinquency to the Nation with respect to three of the Nation's 10 Sherrill parcels. Carmen Aff. at ¶24, exh. 17.

18. The notices did not identify the parcels Sherrill was seeking to tax. Id.

19. In response to the Nation's refusal to pay property taxes to Sherrill, Sherrill advertised in a local newspaper the three Nation parcels for a November 5, 1997 tax sale. Carmen Aff. at ¶ 25, exh. 18.

20. Sherrill did not serve on the Nation by mail or personal delivery any notice of the scheduled November 5, 1997 tax sale. Carmen Aff. at ¶26.

21. On November 5, 1997, as advertised, the three Nation parcels were sold at tax sale. Because there were no outside bidders on the property, the City of Sherrill itself purchased the properties. Carmen Aff. at ¶27, exh. 20.

22. Even though the two-year deadline for redemption of the three Nation parcels sold at tax sale began to run on November 5, 1997, Sherrill did not give the Nation notice of the deadline for redemption until November 8, 1999, when it published an announcement in a local newspaper that the Nation had three months, until February 8, 2000, to redeem the three parcels. Carmen Aff. at ¶28, exh. 21.

23. Sherrill served the Nation notice by mail of the February 8, 2000, redemption deadline on January 10, 2000. Carmen Aff. at ¶29, exh. 22.

24. On February 9, 2000, Sherrill recorded a deed conveying the three Nation parcels to itself. Carmen Aff. at ¶30, exh. 23.

25. On February 17, 2000, Sherrill commenced a summary eviction proceeding in its City Court to evict the Nation from its lands. Carmen Aff. at ¶31, exh. 24.

26. Sherrill has also begun to impose, and enforce the nonpayment of, property taxes on the other seven parcels of Nation lands in Sherrill. Four additional Nation parcels were sold by Sherrill to itself at a tax sale on November 5, 1998, and the final three Nation parcels were sold at tax sale by Sherrill to Sherrill on November 10, 1999. Carmen Aff. at ¶32, exh. 25.

27. In each these instances, Sherrill failed to identify in its initial delinquency notices to the Nation the parcels on which taxes were allegedly due, and failed to provide the Nation with direct notice of the impending tax sale. Carmen Aff. at ¶33, exh. 26.

28. With respect to the Sherrill parcels sold at November 5, 1998 and November 10, 1999 tax sales, Sherrill served the Nation with notice by mail of the deadlines for redemption of these properties on March 6, 2000. Carmen Aff. at ¶¶34-35, exh. 27.

Dated: September 11, 2000

Respectfully submitted,

MACKENZIE SMITH LEWIS MICHELL & HUGHES, LLP

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Attorneys for Oneida Indian Nation

Plaintiff's Response To Defendant's First Request For Production Of Documents, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), October 30, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA INDIAN NATION,

Plaintiff,

vs. **Civil Action No. 00-CV-223 (DNH)(GSP)**

CITY OF SHERRILL,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff Oneida Indian Nation, by counsel, pursuant to Fed. R. Civ. P. 33(b), hereby responds to defendant City of Sherrill's first request for production of documents.

Objections herein are made by counsel.

The Nation objects to the inclusion of "attorneys" in instruction 7 and objects to any request seeking information that is subject to the attorney-client, work product, litigation preparation or deliberative privileges.

The Nation objects that Sherrill has served its document requests after objecting that discovery in this case is "premature."

Most fundamentally, the Nation objects to Sherrill's document requests as a whole on the ground that they seek information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. The United States recognized the Oneida reservation in the 1794 Treaty of Canandaigua, which the Supreme Court has held remains in full force and effect. County of Oneida v. Oneida Indian Nation, 47 U.S. 226 (1985). The taxability of the land at issue in this case, which is indisputably within the original boundaries of that reservation and is now in the Nation's actual possession, depends exclusively upon whether the Congress of the United States ever changed the reservation status or tax status of that land. Under federal law, Congress' power regarding reservation status and tax status is exclusive. Thus, the only issue in this case is whether Congress has asked to change the reservation or tax status of the Nation's land. Most of Sherrill's document requests do not address any acts or inaction of Congress, presumably because Sherrill already has admitted in its pleadings that Congress never has acted to change the reservation status or tax status of the Nation's land.

Request 1

All documents concerning the acquisition, sale, or transfer of the Oneida Properties, by any person, including but not limited to the terms of each acquisition, sale, or transfer.

Response: Objection. This request is overbroad and vague. It seeks documents that are not relevant or reasonably calculated to lead to the discovery of relevant documents or information. Without waiving these objections, plaintiff will produce its reacquisition agreements and deeds for the referenced properties. See also the materials accompanying the Nation's motion for summary judgment.

Request 2

All documents concerning OIN's acquisition of each of the Properties, including but not limited to: (a) the terms of the each acquisition; (b) the size and location of each of the Properties; (c) the source of the funds for each acquisition; (d) the consideration paid by OIN for each of the Properties; (e) all deeds, titles, or any other documents received by OIN in connection with such acquisition; (f) any restrictions against alienation on each of the Properties; and (g) the ownership interest of any persons or entities other than OIN in each of the Properties.

Response: Objection. This request is overbroad and vague and seeks documents not relevant or reasonably calculated to lead to the discovery of relevant documents or information. Without waiving these objections, plaintiff will produce its reacquisition agreements and deeds for the referenced properties and documents reflecting restrictions against alienation. There are no documents reflecting the ownership interest today of any persons or entities other than the Nation. See the Nation's answer and objections to Sherrill's interrogatories 2 and 7, and the materials accompanying the Nation's motion for summary judgment.

Request 3

All documents concerning who has had ownership of the Properties at any time.

Response: See the objections and response to Request 1, above. See also the Nation's answer and objections to Sherrill's interrogatory 3.

Request 4

All documents concerning the residential use of any of the Properties by any person.

Response: See the response and objections to Request 1, above. See also the Nation's answer and objections to Sherrill's interrogatory 4.

Request 5

All documents concerning the business operation that take place on the Properties, including but not limited to: (a) the name of any enterprise that is or has been operating on the Properties; (b) the identities of individuals who are employed in businesses or enterprises located on each of the Properties; (c) the nature of the businesses or enterprises conducted on each of the Properties; and (d) the revenue generated by the businesses or enterprises located on each of the Properties.

Response: Objection. This request is overbroad and seeks confidential and proprietary information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. It violates the Nation's sovereign immunity. Without waiving these objections, the Nation directs Sherrill to the Nation's answers and objections to Sherrill's interrogatories 6 and 8.

Request 6

All documents concerning the services provided to each of the Properties by the government.

Response: Objection. This request is vague and seeks documents that are not relevant or reasonably calculated to lead to the discovery of relevant evidence. Without waiving this objection, the Nation directs Sherrill to the Nation's answer and objections to Sherrill's interrogatory 9.

Request 7

All documents concerning the taxation of the Properties, including but not limited to: (a) OIN's alleged exemption or immunity from property taxation; and (b) OIN's alleged exemption or immunity from collecting sales tax on goods sold on the Properties.

Response: Objection. This request is vague and overbroad. Further, as to part (b), the request seeks documents neither relevant nor reasonably calculated to lead to the discovery of relevant evidence. Without waiving these objections, the Nation states that its property is not taxable because the United States acknowledged it in the Treaty of Canandaigua to be a part of the Oneida reservation and to be for the Nation's "free use and enjoyment." A copy of the Treaty of Canandaigua accompanied the Nation's motion for summary judgment.

Request 8

All documents received from, sent to, or copied to the government concerning the Properties.

Response: Objection. The request is vague and overbroad and seeks documents that are not relevant and are not reasonably calculated to lead to the discovery of relevant evidence. It has no restrictions as to time, covering hundreds of years, or as to the subject matter. The request also violates the confidential trust relationship between the United States and the Nation. Without waiving these objections, plaintiff will produce all documents since 1990 received from, sent to, or copied to the City of Sherrill, or its agents, concerning taxation of the referenced properties.

Request 9

All documents concerning the governmental recognition of OIN as an Indian tribe for any purpose.

Response: Objection. This request is overbroad and vague and compliance would be unduly burdensome. Further, it seeks documents that are not relevant and are not reasonably calculated to lead to the discovery of relevant evidence. Without waiving these objections, the Nation states that the United States recognizes the Nation as an Indian tribe, as reflected at 63 Fed. Reg. 13298 (March 13, 2000) (attached as Exhibit 1 to the affidavit of Peter D. Carmen in support of the Nation's summary judgment motion), and in the affidavit of Leslie Gay, which the Nation will produce.

Request 10

All documents concerning the governmental recognition of OIN as a representative of the Oneida Indians.

Response: Objection. This request is vague, overbroad and unintelligible. Further, it seeks documents neither relevant nor reasonably calculated to lead to the discovery of relevant evidence. Without waiving these objections, the Nation directs Sherrill to the Nation's answer and objections to Sherrill's interrogatory 21 and to document request 10, above.

Request 11

All documents concerning any group or groups of Oneida Indians other than OIN.

Response: Objection. This request is vague, overbroad and unintelligible and imposes an undue burden. It is unlimited in time, or as to subject matter. Further, it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of relevant evidence.

Request 12

All documents concerning any real property owned, possessed, or held by any group of Oneida Indians including but not limited to the governmental recognition of any real property, whether in New York or any other state, as Indian reservation land.

Response: Objection. This request is vague and overbroad, and compliance would be unduly burdensome. Further, this request seeks documents neither relevant nor likely to lead to the discovery of relevant evidence. It violates the Nation's sovereign immunity. It is unlimited as to time. Without waiving these objections, plaintiff will produce post – 1970 documents reflecting recognition by the United States of land possessed by the Nation as reservation land subject to the Nation's governance and subject to restrictions on alienation.

Request 13

All documents concerning the taxation of any group of Oneida Indians, including but not limited to (a) whether those groups pay taxes on any real property they own, possess, or hold; and (b) whether those groups collect sales tax on any goods sold on any real property they own, possess, or hold.

Response: Objection. This request seeks information neither relevant nor likely to lead to the discovery of relevant evidence. Further, it is vague and overbroad and would create an undue burden. If this request concerns the Oneida Tribe of Indians of Wisconsin, plaintiff has no responsive documents other than, perhaps, newspaper articles.

Request 14

All documents concerning the governmental recognition of any real property as Oneida Indian Nation reservation land.

Response: Objection. The request is vague and overbroad and poses an undue burden. It seeks documents neither relevant nor likely to lead to the discovery of relevant evidence. Without waiving this objection, plaintiff will produce post-1970 document reflecting recognition by the United States of land possessed by the Nation as reservation land subject to the Nation's governance and subject to restrictions on alienation.

Request 15

All documents concerning OIN's proposal to Sherrill of a standstill agreement with respect to taxation of the Oneida Properties.

Response: Objection. This request is vague and overbroad. It seeks documents subject to attorney-client, work product and litigation preparation privileges. It seeks documents that are not relevant or reasonably calculated to lead to the discovery of relevant documents or information. Without waiving these objections, plaintiff will produce all post-1990 correspondence between the Nation's attorneys and Sherrill or its attorneys concerning standstills proposed by the Nation.

Request 16

All documents concerning the formation of the Oneida Indian Nation.

Response: Objection. This request is vague and overbroad and poses an undue burden. It seeks information that is not relevant and is not reasonably calculated to lead to the discovery of relevant evidence. To the extent that the

request is for documents created at or near the time of the Nation's formation many centuries ago, there are not responsive documents.

Request 17

All documents concerning the leader(s) and governing body or bodies or OIN at all times since OIN's formation, including but not limited to: (a) the identities of each and every person currently elected to or otherwise serving as leader(s) or on those governing bodies and all persons formerly serving as leaders or on governing bodies for the last ten years; (b) the duties, responsibilities, and powers of OIN's nation representative since OIN's formation; and (c) the duties, responsibilities, and powers of OIN's men's council and clan mothers at all times since OIN's formation, including the identities of their current members as well as all former members for the last ten years.

Response: Objection. This request is harassing. It is vague and overbroad and poses an undue burden. It seeks irrelevant documents. It seeks documents not reasonably calculated to lead to the discovery of relevant evidence. It violates the sovereign immunity of the Nation. The identities of the current members of the Nation's government are stated in plaintiff's answers to Sherrill's interrogatory 1.

Request 18

All documents concerning the substance of OIN's tribal laws and tribal legal process since OIN's formation.

Response: Objection. This request is vague and overbroad and poses an undue burden. It seeks documents neither relevant nor reasonably calculated to lead to the discovery of relevant documents or information. Without

waiving these objections, plaintiff will produce the ordinance establishing its tribal court, as well as the applicable rules of procedure.

Request 19

All documents concerning events or gatherings related to OIN, including but not limited to tribal meetings, celebrations, and religious ceremonies, at any time.

Response: Objection. This request is vague and overbroad and poses an undue burden. It seeks documents neither relevant nor reasonably calculated to lead to the discovery of relevant documents or information. It violates the Nation's sovereign immunity and its first amendment rights. Without waiving these objections, the Nation also directs Sherrill to the Nation's answer and objections to Sherrill's interrogatory 22.

Request 20

All documents sufficient to show the number and identity of all members of OIN who live: (a) on any federally-recognized reservation; (b) on any of the Oneida Properties; and (c) on any other land in any state, including but not limited to the State of New York.

Response: Objection. This is overbroad and poses an undue burden. It violates the privacy of Nation members and the sovereign immunity of the Nation. It seeks documents neither relevant nor reasonably calculated to lead to the discovery of relevant documents or information.

Request 21

All documents concerning OIN's contention or belief that the Properties were illegally or wrongfully possessed, purchased, sold or transferred by the government or by any

other person, including but not limited to all such contentions and beliefs as set forth in paragraph 9 of the Complaint.

Response: Paragraph 9 of the complaint does not allege illegal or wrongful possession, purchase, sale or transfer. This request is overbroad and seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. The reservation and tax status of the land at issue in this case cannot be affected by the knowledge of the Nation or any act or omission on its part. The reservation and tax status of the land at issue in this litigation derives from federal treaties and, under federal law, is subject to the exclusion control of the United States Congress, which has never acted to change its reservation and tax status. Such reservation and tax status does not derive from or depend on the illegality of transfers of Oneida land.

Request 22

All documents concerning any effort by one or more Oneida Indians generally, or by OIN specifically, to claim title to, or legal possession of, any lands described by the 1794 Treaty of Canandaigua, as set forth in paragraph 8 of the Complaint.

Response: Objection. Paragraph 8 of the complaint does not allege efforts to claim title to or possession of lands. Further, this request is vague and overbroad and poses and undue burden and seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. Neither the reservation status nor the tax status of the lands at issue in this case can be affected by the two hundred years of effort to which this request is addressed. The reservation and tax statutes of the land at issue in this case derives from federal treaties, not from various illegal transfers of the land, and, under federal

law, is within the exclusive control of Congress. See the objections to request 21, above. Without waiving these objections, the Nation also directs Sherrill to the Nation's answer and objections to Sherrill's interrogatory 24.

Request 23

All documents concerning treaties and agreements between the Oneida Indians, including but not limited to OIN, and the government, including but not limited to the treaties and agreements themselves and documents concerning the negotiations of those treaties and agreements.

Response: Objection. This request is vague and overbroad and pose an undue burden. It seeks documents that are not relevant and are not reasonably calculated to lead to the discovery of relevant documents or information. Without waiving these objections, plaintiff will produce federal treaties acknowledging the Oneida reservation in central New York.

Request 24

All documents concerning the relocation of OIN, its members, or any other group or groups of Oneida Indians from New York State to other states or territories.

Response: Objection. This request is vague and overbroad and poses an undue burden. It is intended to harass. It sees document neither relevant nor reasonably calculated to lead to the discovery of relevant documents or information. The Oneida Indian Nation never relocated to another state or territory. Documents concerning the formation of the Oneida Indian Tribe of Wisconsin in Wisconsin or of the Oneida of the Thames Band in Canada have nothing to do with the tax and reservation status of the

Oneida Indian Nation's land in New York. See also the Nation's answer and objections to Sherrill's interrogatory 23.

Request 25

All documents identified or referred to in the Complaint.

Response: Objection. This request is vague. Defendant should identify the documents it seeks.

Request 26

All documents referred to in any answer to defendant's interrogatories, served together with this document request.

Response: Objection. This request is vague and overbroad. Defendant should identify the documents it seeks.

Request 27

To the extent they were not produced in response to the above requests, all documents concerning the Oneida Properties.

Response: Objection. This request is vague and overbroad and pose an undue burden. It seeks documents neither relevant nor reasonably calculated to lead to the discovery of relevant evidence. Further, it seeks confidential and proprietary information.

Dated: October 30, 2000 Respectfully submitted,

MACKENZIE SMITH LEWIS MICHELL & HUGHES, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2000, I caused a copy of the foregoing Request for Admissions to be delivered by first class mail, postage prepaid to:

Ira S. Sacks
Albert Shemmy Mishaan
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

One New York Plaza
New York, NY 10004

Attorneys for Defendant City of Sherrill

_____

Peter D. Carmen

Defendant City Of Sherrill's Response To Plaintiff Oneida Indian Nation's Statement Of Material Facts, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), November 13, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA INDIAN NATION, Route 5 Vernon, New York 13476, Plaintiff, vs. CITY OF SHERRILL, 377 Sherrill Road Sherrill, New York 13461, Defendant.	:	Civil Action No. 00-CV-223 (DNH) (GLS)

DEFENDANT CITY OF SHERRILL'S RESPONSE TO PLAINTIFF ONEIDA INDIAN NATION'S STATEMENT OF MATERIAL FACTS

Defendant City of Sherrill ("Sherrill"), by counsel, hereby responds to the Statement of Material Facts submitted by plaintiff Oneida Indian Nation ("OIN").

1. Sherrill disputes paragraph 1. The Oneida Indian Nation of New York is recognized as an Indian tribe by the Bureau of Indian Affairs ("BIA") solely for eligibility for funding and services from BIA. *See* Reply Memorandum of Law in Further Support of the City of Sherrill's Motion for

Summary Judgment, or in the Alternative for a Preliminary Injunction, and in Opposition to Plaintiff Oneida Indian Nation's Cross- Motion for Summary Judgment ("Sherrill Reply Mem.") at 28, n.17.

2. Sherrill does not dispute paragraph 2.

3. Sherrill does not have sufficient information to admit or dispute paragraph 3.

4. Sherrill does not have sufficient information to admit or dispute paragraph 4.

5. Sherrill disputes paragraph 5. For example, the 1838 Treaty of Buffalo Creek, 7 Stat. 550. *See Oneida Indian Nation of New York State v. County of Oneida, New York*, 2000 WL 1376451 (N.D.N.Y. Sept. 25, 2000) ("*Oneida III*"); Sherrill Reply Mem. at 7-9, 16.

6. Sherrill disputes paragraph 6. For example, the 1838 Treaty of Buffalo Creek, 7 Stat. 550. *See Oneida III*; Sherrill Reply Mem. at 7-9, 16.

7. Sherrill disputes paragraph 7. OIN's reservation land does not extend, if at all, beyond the thirty-two acre reservation in Madison County. OIN reservation land, if any, is not free from all taxation, such as the obligation to collect sales tax. *See* Memorandum of Law in Support of Defendant City of Sherrill's Motion for Summary Judgment, or in the Alternative for a Preliminary Injunction ("Sherrill Mem.") at 14-16.

8. Sherrill disputes paragraph 8. OIN's reservation land does not extend, if at all, beyond the thirty-two-acre reservation in Madison County. OIN reservation land, if any, is not free from all taxation, such as the obligation to collect sales tax. *See* Sherrill Mem. at 14-16.

9. Sherrill disputes paragraph 9. OIN has no reservation land in Sherrill. *See* Sherrill Mem. at 14-16. Sherrill does not have sufficient information to admit or dispute the remaining content of paragraph 9.

10. Sherrill does not have sufficient information to admit or dispute paragraph 10.

11. Sherrill disputes paragraph 11. OIN's Sherrill lands did not belong to OIN prior to OIN's purchase of the lands in 1997 and 1998. OIN acquired these lands by purchasing them on the open market. *See* Peter D. Carmen Affidavit (1) In Support of Oneida Indian Nation's Cross-Motion for Summary Judgment and (2) In Opposition to the City of Sherrill's Motion for Summary Judgment, or in the Alternative for a Preliminary Injunction dated September 11, 2000 ("Carmen Aff.") Ex. 12; Sherrill Reply Mem. at 11-13.

12. Sherrill disputes paragraph 12. In any event, the letter attached as Exhibit 13 of the Carmen Affidavit is in no way related or relevant to the Sherrill lands OIN purchased in 1997 and 1998. *See* Sherrill Reply Mem. At 14, n. 11.

13. Sherrill does not have sufficient information to admit or dispute paragraph 13 and notes that the document referred to in Exhibit 14 of the Carmen Affidavit is in no way related or relevant to the Sherrill lands OIN purchased in 1997 and 1998. *See* Sherrill Reply Mem. at 14, n. 11.

14. Sherrill does not have sufficient information to admit or dispute paragraph 14. In any event, the letter referred to in Exhibit 15 of the Carmen Affidavit is in no way related or relevant to the Sherrill lands OIN purchased in 1997 and 1998. *See* Sherrill Reply Mem. at 14, n.11.

15. Sherrill disputes paragraph 15. Although Sherrill sought and obtained federal approval of the warranty deed by which OIN conveyed to Sherrill a utility easement through OIN's Sherrill lands, in so doing Sherrill did not "acknowledge[ ] the restricted status of [OIN's] land." Indeed, the warranty deed contains no language to that effect. Carmen Aff. ¶ 16. Rather, in an attempt to protect a utility easement beneficial to its citizens, Sherrill sought approval from the BIA solely as the result of the uncertainty and confusion created by OIN's public position that its Sherrill lands are "reservation lands." *See* Affidavit of David O. Barker dated November 3, 2000 ("Second Barker Aff.") ¶ 14.

16. Sherrill does not dispute paragraph 16.

17. Sherrill does not dispute paragraph 17.

18. Sherrill does not dispute paragraph 18.

19. Sherrill does not dispute paragraph 19.

20. Sherrill disputes paragraph 20. OIN was notified by mail that three of its Sherrill tax parcels could be advertised and sold by Sherrill for non-payment of taxes. *See* Sherrill Reply Mem. at 20. The August 7, 1997 notices of tax delinquency explicitly state that "[t]he Commission may direct the City Clerk to proceed to advertise and sell properties for unpaid taxes due. If you do not wish to have your name and property advertised for tax sale, payment of the unpaid taxes must be received by September 2, 1997." Carmen Aff. Ex. 17.

21. Sherrill does not dispute paragraph 21.

22. Sherrill disputes paragraph 22. *See* Second Barker Aff. ¶ 15, Ex. 11.

23. Sherrill disputes paragraph 23. Sherrill did not service OIN notice by mail of the redemption deadline on January 10, 2000. Instead, on January 10, 2000 Sherrill personally served OIN by serving William Hervey with notices of the redemption deadline for tax parcel numbers 322.014-1-23, 322.014-1-25, and 322.014-1-26. Additionally, OIN was personally served with the notice of redemption for tax parcel number 322.014-1-23 by service on Kathy Perham and copies of the notices of redemption for tax parcel numbers 322.014-1-25 and 322.-14-1-26 were posted on each vacant parcel. Furthermore, the notices of redemption for all three parcels were published in the Daily Sentinel on January 10, 2000. *See* Second Barker Aff. ¶ 15, Ex. 11.

24. Sherrill does not dispute paragraph 24.

25. Sherrill disputes paragraph 25. The summary eviction proceeding in Sherrill City Court was commenced by Sherrill on February 15. 2000. *See* Affidavit of David O. Barker dated July 12, 2000 ("Barker Aff.") Ex. 5.

26. Sherrill does not dispute paragraph 26.

27. Sherrill disputes paragraph 27. OIN was provided with direct notice of the impending tax sale. The August 4, 1998, August 10, 1998, and August 4, 1999 notices of tax delinquency explicitly stated that "[t]he Commission may direct the City Clerk to proceed to advertise and sell properties for unpaid taxes due. If you do not wish to have your name and property advertised for tax sale, payment of the unpaid taxes must be received by September 4, 1998." Carmen Aff. Ex. 26; Second Barker Aff. ¶ 15, Ex. 11.

28. Sherrill does not dispute paragraph 28.

Dated: New York, New York
November 13, 2000

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON
(A Partnership Including
Professional Corporations)

By:_____
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334997

Affidavit of Ira Sacks, *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY), November 13, 2000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA INDIAN NATION	**:**
Route 5	**:**
Vernon, New York 13476,	**:**
	:
Plaintiff,	**: AFFIDAVIT**
	: OF IRA S.
vs.	**: SACKS**
	:Civil Action
No.	**: 00-CV-223**
	:(DNH) (GLS)
CITY OF SHERRILL,	**:**
377 Sherrill Road	**:**
Sherrill, New York 13461,	**:**
	:
Defendant.	**:**

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

Ira S. Sacks, being duly sworn, hereby deposes and says:

1. I am an attorney admitted to practice in the North District of New York and a member of the Firm of Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendant City of Sherrill ("Sherrill"). I submit this affidavit pursuant to Rule 56(f) of the Federal Rules of Civil Procedure. This affidavit is based upon personal knowledge, except where otherwise stated.

2. Plaintiff Oneida Indian Nation ("OIN") commenced this proceeding in the Northern District of New York on February 4, 2000, alleging that ten parcels of real property owned by OIN in the City of Sherrill (the "Properties" or the "Sherrill Properties") are located within the Oneida Indian reservation acknowledged in the 1794 Treaty of Canandaigua, and are thus exempt from taxation by Sherrill. On February 15, 2000, Sherrill filed a petition in Sherrill city Court demanding possession of three of the Sherrill properties owned by OIN, upon which Sherrill had foreclosed and executed a Tax Sale Deed. On February 22, 2000, OIN removed the Sherrill City Court proceeding to the Northern District of New York. On June 14, 2000, the two actions were consolidated by Magistrate Judge Gary L. Sharpe, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.

3. On July 14, 2000, Sherrill served OIN with a Motion for Summary Judgment, or in the Alternative for a Preliminary Injunction. On September 11, 2000, OIN served Sherrill with opposition papers to Sherrill's motion and filed a Cross-Motion for Summary Judgment. Sherrill remains entitled to summary judgment on its motion. However, if Sherrill's motion for summary judgment is not granted, it is clear that OIN's cross-motion is both premature and raises numerous disputed questions of material fact as to which Sherrill needs and is entitled to discovery.

4. For example, OIN repeatedly states that because Congress allegedly has not modified, eliminated, or terminated the Treaty of Canandaigua, the treaty remains in full force and effect today. *See* Peter D. Carmen Affidavit (1) In Support of Oneida Indian Nation's Cross-Motion for Summary Judgment and (2) In Opposition to the City of Sherrill's Motion for Summary Judgment or in the Alternative for a Preliminary Injunction dated September 11, 2000 ("Carmen Aff.") ¶ 11; OIN's Memorandum of Law (1) In Support of Oneida Indian Nation's Cross-Motion for

Summary Judgment and (2) In Opposition to the City of Sherrill's Motion for Summary Judgment or in the Alternative for a Preliminary Injunction dated September 11, 2000 ("OIN Mem.") at 11. Therefore, OIN argues, Congress has never modified the "reservation status" of the land it acknowledged in the Treaty of Canandaigua as Oneida Indian reservation land. Carmen Aff. ¶12; OIN Mem. at 9. These statements raise a host of disputed questions of material fact, and to the extent OIN proffers them in support of its Cross-Motion for Summary Judgment, Sherrill requires extensive discovery, including:

a. All documents relating to whether the Sherrill Properties are located within the boundaries of the reservation acknowledged by Congress in the 1794 Treaty of Canandaigua;

b. Depositions of experts in treaty interpretation and land surveillance concerning whether the Sherrill Properties are located within the boundaries of the reservation acknowledged by Congress in the 1794 Treaty of Canandaigua;

c. All documents relating to whether Congress has ratified or otherwise modified, eliminated, or terminated the Treaty of Canandaigua, through the 1838 Treaty of Buffalo Creek or otherwise; and

d. Deposition of experts concerning whether Congress has ratified or otherwise modified, eliminated, or terminated the Treaty of Canandaigua.

5. Furthermore, OIN asserts that the Sherrill Properties were part of "an overall 100-acre tract of Nation reservation lands…conveyed by certain Oneidas in 1805 into the possession of Cornelius Dockstader." Carmen Aff. ¶14, Ex.8. Exhibit 8 of the Carmen Affidavit includes a copy of the document purportedly reflecting the transfer of land from the Oneidas to Dockstader. OIN then asserts that "[i]n 1807, the New York Legislature confirmed Dockstader's title to these lands, which Dockstader then conveyed to Peter Smith." Carmen Aff. ¶15, Ex. 9, 10. Likewise, Exhibits 9 and 10 of the Carmen Affidavit include copies of the documents purportedly reflecting the confirmation of Dockstader's title and his subsequent transfer of the land to Smith. To the extent OIN proffers these exhibits in support of its Cross-Motion for Summary Judgment, Sherrill submits they raise disputed questions of material fact requiring discovery, such as:

a. All documents relating to whether the Sherrill Properties were conveyed in the 1805 an d 1807 transfers referred to in the Carmen Affidavit;

b. Depositions of experts in treaty interpretation and land surveillance concerning whether the Sherrill Properties were conveyed in the 1805 and 1807 treaties.

6. Next, OIN asserts that the 1805 transfer of land from the Oneida Indians to Dockstader and the subsequent 1807 transfer of land from Dockstader to Smith were neither approved by Congress nor the President. Carmen Aff. ¶16. OIN thus concludes that these transfers are "void ab initio." OIN Mem. at 10. Though it is careful not to expressly refer to the Non-Intercourse Act (the "Act") in its memorandum of law, clearly OIN is arguing that the

transfers, because they were allegedly approved by neither Congress not the President, are void because they violated the Act. 25 U.S.C. § 177.

7. To establish a violation of the Act, OIN must show that: "(1) it is or represents an Indian tribe within the meaning of the Act; (2) the parcels of land at issue are covered by the Acts as tribal land; (3) the United States has never consented to the alienation of the tribal land; and (4) the trust relationship between the United States and the tribe has never been terminated." *The Cayuga Nation of New York v. Cuomo*, 730 F. Supp. 485, 486 (N.D.N.Y. 1990). Sherrill submits that this raises disputed questions of material fact requiring discovery, including:

a. All documents relating to whether OIN has maintained its tribal status and remains an Indian tribe for purposes of the Act;

b. Depositions of OIN members and United States government representatives concerning whether the tribe has maintained its tribal status for purposes of the Act;

c. All documents relating to whether and the extent to which OIN represents the Oneida Indians – that is, whether "Oneida Indian Nation of New York" is actually the correct title of OIN because OIN represents only those Oneida Indians currently living in the State of New York;

d. All documents relating to whether the Sherrill Properties are tribal land under the Act;

e. All documents relating to any treaty affecting the Sherrill properties or the OIN;

f. All documents relating to whether the United States has consented to the alienation of the tribal land;

g. All documents relating to whether the United States has ratified the alienation of the tribal land;

h. All documents relating to whether the alleged reservation has been extinguished or diminished;

i. All documents relating to OIN's delay in asserting rights to the alleged reservation;

j. All documents relating to reliance on OIN's delay in asserting rights to the alleged reservation;

k. All documents relating to injury as a result of OIN's delay in asserting rights to the alleged reservation;

l. Depositions of OIN members and United States government representatives concerning whether the United States has consented to the alienation of the tribal land.

m. All documents relating to whether the trust relationship between the United States and OIN has remained intact; and

n. Depositions of OIN members and United States government representatives concerning whether the trust relationship between the United States and OIN has remained intact.

8. To the extend OIN relies on the letters in Exhibits 13 through 15 of the Carmen Affidavit for its cross-motion, these letters also raise several disputed fact questions concerning whether the government recognizes the Sherrill Properties as subject to OIN's governmental power and to federal restrictions against alienation. Sherrill requires further discovery of:

a. All documents describing, relating to, explaining, or concerning the Canastota, New York land referred to in Exhibit 13, and the circumstances of its acquisition by OIN;

b. Depositions of Franklin Keel and other United States government representatives concerning the Canastota, New York land referred to in Exhibit 13 and the government's position with respect to OIN's governmental power over the land, if any, and whether the land is subject to restriction by the United States government against alienation;

c. All documents describing, relating to, explaining, or concerning the document which is marked Exhibit 14, since the document is unclear, vague, and ambiguous on its face;

d. Depositions of United States government representatives concerning the document which is marked Exhibit 14;

e. All documents relating to the Verona, New York land referred to in Exhibit 15, and the circumstances of its acquisition by OIN; and

f. Depositions of Timothy A. Smith and representatives from the United States government concerning the Verona, New York land referred to in Exhibit 15 and the respective governments' positions with respect to OIN's governmental power over the land, if any, and whether the land is subject to restriction by the United States government against alienation.

9. Additionally, OIN's cross-motion attempts to raise a disputed question of material fact concerning the extent to which OIN members and/or representatives had actual notice of the tax proceedings commenced against it by the City of Sherrill. Sherrill believes the record shows that it is undisputed that OIN had actual notice of the tax proceedings: for example, Sherrill received letters from OIN's outside counsel regarding the tax proceedings, thus showing that OIN had actual knowledge. If this Court believes there is any issue on that score, Sherrill requires further discovery to determine exactly which members of OIN had actual knowledge of the proceedings and exactly when the members of OIN gained such knowledge. Necessary discovery includes depositions of OIN members and/or representatives.

10. Moreover, OIN's cross-motion raises disputed questions of material fact underlying whether OIN is entitled to sovereign immunity with respect to Sherrill's counterclaims in this action. In order to determine whether OIN is entitled to sovereign immunity, Sherrill is entitled to discovery of:

a. All documents relating to whether OIN has consistently and continually maintained its tribal status and remains an Indian tribe such that it may claim sovereign immunity; and

b. Depositions of OIN members and United States government representatives concerning whether OIN has consistently and continually maintained its tribal status and remains an Indian tribe such that it may claim sovereign immunity.

11. Finally, even if every claim in the Carmen Affidavit and the OIN Memorandum are true, Sherrill is entitled to the discovery described above and additional discovery so that it may mount a defense to OIN's claims in support of its Cross-Motion for Summary Judgment on the basis of the doctrines of laches, estoppel, waiver, statute of limitations, unclean hands, consent, extinguishment, diminishment and ratification. There are disputed issues of material fact underlying all of those defenses to OIN's claims of right to the land at issue as tribal land.

12. Sherrill served OIN with a document request and interrogatories on August 9, 2000, in an attempt to obtain facts relevant to the issues raised in OIN's cross-motion. Sherrill granted OIN's request for an extension to respond to these discovery requests until October 30, 2000. OIN produced no documents and failed to sufficiently

respond to Sherrill's interrogatories. Indeed, the objections and responses are tantamount to a refusal to answer. Given the early stage of this litigation, OIN's wholly inadequate responses to Sherrill's discovery requests, and the need for additional documentary discovery, depositions and expert discovery to determine certain of the factual issues outlined above, Sherrill is entitled to substantial discovery before fully opposing OIN's Cross-Motion for Summary Judgment.

Ira S. Sacks
(Bar code No. 510475)

Sworn to before me this
13th day of November, 2000

Notary Public
Marion Roppolo
Notary Public of New York
No. 01P04782244
Qualified in New York County
Commission Expires October 31, 2002

Certain Exhibits to Motions in *Oneida Indian Nation v. City of Sherrill*, 00 CV 223 (NDNY)

Approximate Transcription of Statement of Ransom H. Gillet at Oneida Castle, August 9, 1838

To the chiefs headmen & warriors of the Oneida Indians in New York

In order to prevent all [resistance?] and to counteract all misapprehensions concerning the purport of the treaty concluded between the United States and the New York Indians at Buffalo Creek on the 15th day of January 1838 & which was ratified by the Senate of the United States with amendments which have been this day assented to you by by [sic] the Oneidas at Oneida Castle I hereby most solemnly assure them that the treaty does not and is not intended to compel the Oneidas to remove from their reservation in the State of New York to the west of the State of Missouri or elsewhere unless they shall hereafter voluntarily sell their lands where they reside & agree to do so. They can if they choose to do so remain where they are forever. The treaty gives them lands if they go to them & settle there but they need not go unless they wish to. When they wish to remove they can sell their lands to the Governor of the State of New York & then emigrate. But they will not be compelled to sell or remove.

Dated at Oneida Castle
August 9, 1838

RH Gillet
Commissioner

I certify that the above was signed by the Commissioner of the United States
In my presence

Timothy Jenkins

Petition Of Six Nations Of New York Indians Relating To Kansas Lands, United States Senate, January 27, 1883

47th Congress **SENATE Mis. Doc. No. 38**
2nd Session

P E T I T I O N

of

SIX NATIONS OF NEW YORK INDIANS

RELATING TO KANSAS LANDS

JANUARY 27, 1883.—Referred to the Committee on Indian Affairs.

FEBRUARY 16, 1883 – Reported with accompanying documents. Ordered to be printed and recommitted.

To the honorable Congress of the United States of America, duly as-
sembled:

ARTICLE 1. We, the undersigned sachems, chiefs, headmen, and warriors of the Six Nations of New York Indians, duly assembled in the Onondaga councilhouse of the Onondaga Reservation, this 12th day of January, 1883, do most humbly and respectfully petition to your honorable body for a relief or our claims in the Kansas lands growing out of the various treaties made in favor of said Six Nations of New York Indians, namely, by the treaty of February 6, 1826; also treaty proclaimed February 23, 1829; also, treaty proclaimed July 9, 1832; and appendix proclaimed March 13, 1835; the above-mentioned known as Menominee treaties; finally by a treaty which was proclaimed April 4, 1840, according to schedule A therein found with the New York Indians as amended by the State and assented to by the

several tribes, concluded at Buffalo Creek, in the State of New York, January 15, 1838.

ART. 2. Your humble petitioner further shows and understand their claims to be thus: that is the Menominee treaty proclaimed February 6, 1826, in article 8, that the Menominee Indians of Green Bay did cede lands to the New York Indians by purchase; the above cession mentioned were finally settled and secured to New York Indians by the United States in the Menominee treaty proclaimed July 9, 1832; also in the preamble of the treaty of 1838 between New York Indians and the United States. In the 3d verse, that the said United States acknowledged that, the Green Bay lands was purchased by the New York Indians, so it was theirs by purchase; and in article 1 by the same treaty, the said Green Bay lands were theirs to cede, and did cede it to the United States. In consideration of the above cession on the part of the tribes of the New York Indians the United States agreed to set apart a tract of country situated west of the State of Missouri, in the Indian Territory, of 1,824,000 acres of land, being 320 acres for each soul of said Indians, which the said Indians have never received, or the equivalent of land ceded in Green Bay, Wis., to the United States.

ART 3. Your humble petitioner would respectfully recommend a relief of their above-mentioned claim, be appropriated as a fund to build a highschool in farm of each tribe of the said Six Nations of New York Indians, and to support the same for the special benefit of the youths of said Six Nations of New York Indians.

ART. 4. Your humble petitioner still further shows that the foregoing council of said Six Nations of New York Indians the following resolution was duly adopted:

Resolved, That one copy of above petition be sent to the Commissioner of Indian Affairs, one copy to Secretary of

Interior, one copy to the President of the United States of America.

ADOPTED.

ART. 5. Your humble petitioner shows that by vote of this council duly appoint Andrew John, jr. , as the chairman of the delegates to Washington, D.C., to the proper department of the United States Government for the purpose of presenting the above-mentioned claim, and support the same, to make an early settlement of the within petition; also, the following names appointed delegates with said Andrew John, jr., namely,: Moses Lay, Peter Shongo, in behalf of Seneca Nation; Alexander John, Heman Crow, Cayuga; Abram Hill, Oneida; Daniel Lafort, Tuscarora; Joseph Isaac, Onondagas.

To you we will ever pray.

In witness whereof we hereunto set our hands this 12th day of January, 1883.

SYLVESTER LAY,

President of the Seneca Nation

HIRAM DENNIS,

HARRISON HALFTOWN,

MARSH PIERCE,

WALTER KENNEDY,

MOSES LAY,

PETER SHONGO,

Councilors of the Seneca Nation of Indians,

ANDREW JOHN, JR.,

ALEXANDER JOHN,

his

HEMAN X CROW,

mark

Cayuga Chiefs.

ELIAS JOHNSON,

his

JAMES X PEMPLETON,

mark

Chiefs of the Tuscerora Nation.

JOSEPH ISAAC,

his

JACOB X BIGBEAR,

mark

Chiefs of the Onondogas.

his

ABRAM X HILL,

mark

his

ABRAM X ILAND,

mark

his

HENRY X POWELS,

mark

his

ELIJAH X LEWIS

Mark

Chiefs of the Oneidas.

DANIEL LAFORT,

President of the Council of the Six Nations of New York Indians.

LESTER BISHOP,

Clerk of the Six Nations from Cattarangus Reservation.

UNITED STATES INDIAN SERVICE.

New York Agency:

RANDOLPH, *January 19, 1883.*

I, Benjamin G. Casler, United States Indian agent for this agency, do hereby certify that the foregoing petition of the council of the Six Nations of New York Indians is duly executed, and the delegation duly appointed by the council of the Six Nations to present the same at Washington, D.C., to the President of the United States, the Congress of the United States, the Secretary of the Interior, and the Commissioner of Indian Affairs, consists of the following members: Andrew John, jr., chairman; Mosca Lay, Peter Shongo, Lester Bishop, Senecas; Alexander John, Herman Crow, Cayugas; Abram Hill, Oneida; Elias Johnson, Tuscaroras; Daniel Laporte, Joseph Isaac, Onondagas. All of whom are duly constituted and accredited delegates from the Six Nations of New York Indians to visit the city of Washington, D.C., and present said petition and the claims of said Six Nations for compensation for lands in Kansas as set forth in said petition.

BENJ. G. CASLER,

United States Indian Agent.

DEPARTMENT OF THE INTERIOR

Washington, February 12, 1883.

SIR: In reply to the communication received from your committee of the 29th ultimo, inclosing the petition of the Six Nations of New York Indians, in relation to their claim to lands in Kansas for any information or suggestions which this department may wish to communicate, I have the honor to invite your attention to the accompanying copy of report of the 9th instant from the Commissioner of Indian Affairs, to whom the subject was referred.

Very respectfully,

H. M. TELLER,

Secretary.

HON. HENRY L. DAWES

Chairman Senate Committee on Indian Affairs.

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

Washington, February 9, 1883.

SIR: I am in receipt, by department reference, of a communication from J. R. McCarty, clerk of the Senate Committee on Indian Affairs, dated January 29, 1883, in which he incloses the "petition of the Six Nations of New York Indians relating to Kansas lands," and stated that "the committee will be glad to receive from your department any information or suggestions which you may wish to communicate regarding the subject."

The petition sets forth that by certain treaties between the New York Indians and the Menomonees, the former purchased of the latter certain lands in Wisconsin, which lands were secured to the New York Indians by the treaty between the United States and the Menomonees concluded February 8, 1831 (7 Stat., 342); and that by the treaty of January 11, 1838 (7 Stat. 550), they ceded the lands in Wisconsin acquired from the Menomonees to the United States, in consideration for which the United States agreed to

set apart a tract of country situated west of the State of Missouri in the Indian Territory of 1,824,000 acres of land being 320 acres for each one of said Indians, which lands the said Indians have never received, or the equivalent of land in Wisconsin ceded to the United States. They ask as relief on account of the above claims that a fund be appropriated sufficient to build a high school for each tribe of said Six Nations and to support the same.

The petition is signed by delegates on behalf of the Senecas, Cayuga, Oneidas, Tuscaroras, and Onondagas.

The history of the negotiations between the New York Indians and the Menomonees and Winnebagoes, and the action of the government in connection therewith, may be found in Senate Ex. D.C. No. 189, 27th Congress, 2d session.

By the treaty of February 8, 1831, between the United States and the Menomonees (7 Stat., 342), the latter, although protesting that they were under no obligations to recognize any claim of the New York Indians to any portion of their country, and that they neither sold nor received any value for the land claimed by these tribes, yet agreed that such part of the lands described, as the President might direct, might be set apart as a home to the several tribes of New York Indians who might remove and settle upon the same within three years from the date of the agreement.

By a supplemental agreement concluded February 17, 1831 (7 Stat., 346), this limitation was changed so as to require the President to prescribe the time for removal and settlement.

The claim of the Menomonees that they had not received any value from the New York Indians for the lands in Wisconsin does not appear to be well founded. In the treaty between these Indians, August 18, 1821, approved by

the President, February 9, 1822, the receipt of $500 is acknowledged, and a receipt dated September 16, 1822, acknowledges the payment of $1,500 in goods.

The preamble to the treaty between the United States and the New York Indians concluded January 15, 1838 (7 Stat., 550), recites that, with the approbation of the President of the United Sates, purchases were made by the New York Indians from the Menomonee and Winnebago Indians of certain lands at Green Bay, in the Territory of Wisconsin, and after much difficulty and contention with those Indians concerning the extent of that purchase the whole subject was finally settled by a treaty between the United States and the Menomonee Indians, concluded in February, 1831, to which the New York Indians gave their assent on the 17th of October, 1832; that by the provisions of that treaty 500,000 acres of land were secured to the New York Indians of the Six Nations and the St. Regis tribe as a future home, on condition that they all remove to the same within three years or such reasonable time as the President should prescribe; and that the President is satisfied that various considerations have prevented those still residing in New York from removing to Green Bay, &e., in view of which facts the treaty was made.

By the first article of that treaty the several tribes of New York Indians ceded and relinquished to the United States all their right, title, and interest to the lands secured to them at Green Bay by the Menomonee treaty of 1831, except a certain tract reserved.

By the second article, the United States, in consideration of the above cession and relinquishment, agreed to set apart, as a permanent home for all New York Indians then residing in New York, Wisconsin, or elsewhere, a certain tract of country west of the State of Missouri containing 1,824,000 acres, being 320 acres of each soul of

said Indians as then computed: "To have and to hold the same in fee simple to the said tribes or nations of Indians, by patent from the President of the United States, issued in conformity with the provisions of the third section of the act" of May 28, 1830 (4 Stat., 411). (The section referred to provides that such lands shall revert to the United States if the Indians become extinct or abandon the same.)

By the third article it was agreed that such of the tribes of the New York Indians as did not accept and agree to remove within five years, "or such other time as the President may from time to time appoint, shall forfeit all interest in the lands so set apart to the United States."

By the fifteenth article the United States agreed to appropriate the sum of $400,000, "to be applied from time to time under the direction of the President, in such proportions as may be most for the interest of the said Indians, parties to this treaty, for the following purposes, to wit: To aid them in removing to their homes, and supporting themselves the first year after their removal; to encourage and assist them in education, and in being taught to cultivate their lands," &e.

This treaty was proclaimed April 4, 1840. Disputes being arisen under it, growing out of the claims of the Ogden Land Company, to the lands in New York, it was modified in some particulars by a treaty with the Seneca Nation, concluded May 20, 1842 (7 Stat., 586), but the modifications do not appear to affect the articles heretofore quoted from.

Contemporaneous history shows that this treaty of 1838 was made, not in the interests of the Indians, but for the benefit of the land company which owned the right of pre-emption in the New York lands, and which, therefore, was anxious to secure the removal of the Indians.

There appeared to be no desire on the part of any considerable number of the Indians to remove, and the idea of the removal of small parties was discouraged by the department.

On the 8th of May, 1845, this office reported to the Secretary of War that a letter had been received representing that a portion of the Senecas, and others of the Six Nations, then ready to remove, were exceedingly anxious on the subject, and wished to know whether the United States intended to aid them in their removal.

It was stated that there were some 4,000 Indians in New York, that about 250 of them desired to remove, and that it was not seen what advantage would arise from the removal of this small number. It was recommended that no action be taken, which was approved by the department.

The sum of $20,477.60 had been appropriated on the 3d of March, 1843, for the removal of New York Indians, this estimate being for 250 persons, and being part of the $400,000 agreed to be appropriated by the fifteenth article of the treaty.

On the 28th of May, 1845, Dr. Peter Wilson, accompanying a delegation of New York Indians, in a communication addressed to the Commissioner of Indian Affairs, asked the following question: "Will those who do not remove within the time (five years) forfeit their claims to the western country. This is an important question, and I desire you to answer it in writing."

I do not find that any answer was given. Other representations regarding the removal having been made, this office, on the 12th of September, 1845, offered to appoint Dr. Abraham Hogeboom an agent for the removal of the Indians.

Dr. Hogeboom accepted the appointment, and on the 7th of November, 1845, informed the office that 260 Indians had been enrolled, and that there appeared to be no doubt of the movement taking place. Ten thousand dollars was sent him on the 4th of that month to assist in the removal of the 260 persons.

On the 8th of December, 1845, he was informed that as the lakes and rivers had frozen over, the party must not start. It appears, however, that Dr. Hogeboom, notwithstanding the positive instructions of this office, started with a party of about two hundred some time in May, 1846, and on the 9th of July, 1846, Agent Harvey reported the arrival of 201 Indians in Kansas. These Indians suffered extremely from destitution and sickness; many of them died, and most of the survivors ultimately returned to New York. No further effort at removal appears to have been made, and only about $13,000 of the $20,477.60 was expended. No further appropriation for the removal of these Indians appears to have been made.

It will be observed that these 201 Indians removed after the expiration of the five years fixed in the treaty. No other time for removal appears to have been named by the President.

This appears to be the only organized attempt at emigration ever made, although various parties claiming to be New York Indians settled in Kansas at different times.

The number of those residing there in March, 1859, was reported to be 303, quite a number of them being Canada and Wisconsin Indians not entitled to lands under the treaty of 1838.

June 16, 1860, patents were issued to 32 New York Indians for 320 acres of land each, in Kansas, which is all the land that has been patented under the treaty of 1838.

On the 4th December, 1868, a treaty was concluded with the New York Indians, by the terms of which they surrendered to the United States all claims severally and in common to land west of Missouri, and all right and claim to be removed there, and for support after removal, and all other claims under the treaty of 1838, except their rights to the reservation then occupied by them. This treaty was not ratified by the Senate.

Senator Buckingham, in his report (see Report No. 145, Forty-first Congress, second session), took the ground "that no right to land in Wisconsin and west of Missouri was ever vested in the New York Indians, except the right of occupancy; that an equivalent for the amount paid by them to the Menomonees for lands in Wisconsin was received by those who removed to and settled upon those lands; that the Indians who never removed to the lands set apart for their permanent residence in Wisconsin, and who never removed to and became located on lands set apart for them west of Missouri, did not comply with the requirements of the treaties, and are not entitled to any interest in the lands nor to their proceeds."

A treaty was concluded with the Tonawanda band of Senecas, November 5, 1857 (11 Stat., 735), by which the Indians relinquished all claims under the treaties of 1838 and 1842, in consideration of which the United States agreed to pay and invest the sum of $256,000 for the said Tonawanda band. This amount is said to be their pro rata share of the $400,000 removal fund and of 320 acres of land each, at $1 per acre.

This treaty, Senator Buckingham says, should not be regarded as a precedent by which the government should be bound or guided, as it authorized the payment of moneys to the members of that band, to which they had no claim under former treaties.

It is true that no right to lands in Kansas, except that of occupancy, ever vested in the New York Indians (except the 32 who received patents), but they were entitled upon occupying the lands to receive a patent therefore in fee simple, subject to the proviso that "such lands shall revert to the United States if the Indians become extinct or abandon the same."

The title which they might acquire by occupancy was a base, qualified, or determinable fee, with only the possibility of reversion, and not the right of reversion in the United States, and therefore all the estate is in the Indians. (See decision of United States district court for the western district of Arkansas, May term, 1870, United States *vs.* Ben. Reese.)

Upon the question of the forfeiture of all rights under the treaty by the failure to remove, I am not so clear as Senator Buckingham appears to have been.

The removal was to take place within five years, or such other time as the President might from time to time appoint.

The phrase "or such other time" would seem to mean an extension of time rather than a limitation; that is, that the President might appoint a time for their removal after the expiration of the five years. Permission was given by this office for the removal of a number not less than 250, after the five years had expired. No time was ever named by the President in which the removal must be made or their rights to the land forfeited; nor was any part of the $100,000 appropriated, except the $20,177.50 before mentioned. It would seem, therefore, that the United States has not performed all the conditions precedent required by the treaty.

On the other hand it does not appear that the Indians, in any considerable numbers, ever manifested a desire of

willingness to remove to the western lands, but on the contrary, opposed such removal, and in view of the fate of the few who did remove, this unwillingness does not appear strange.

In view of all the facts in the case I am inclined to the opinion that the petition of these Indians is entitled to some consideration.

Should they now insist upon their right to remove and occupy the lands under the treaty, I do not think that the government could show such a refusal on the part of the Indians, and such a performance of conditions on its part as would release it from the obligations of the treaty.

It is presumed that all the lands ceded to these Indians by the treaty of 1838, except that patented to the thirty-two Indians hereinbefore referred to, have been disposed of under the general laws providing for the disposition of the public domain, and the proceeds thereof covered into the Treasury of the United States. The government, therefore, is not now in condition to fulfill the stipulations of the treaty regarding removal, if required to do so, and the Indians would seem to be entitled to some compensation in lieu thereof.

The relief prayed for does not appear to be excessive, and is not for the benefit of the Indians individually, but for their advantage and improvement as a race.

I think that a due consideration for them as wards of a powerful nation, and a liberal construction of their rights under treaty stipulations, require that the relief asked for should be granted.

I return the petition and inclose a copy of this report.

Very respectfully, your obedient servant,

H. PRICE,

Commissioner.

* * *

47th Congress, HOUSE OF REPRESENTATIVES
2nd Session **Report No. 2001**

INDIAN TREATY OF BUFFALO CREEK, NEW YORK.

March 2, 1863. – Referred to the House Calendar and ordered to be printed.

Mr. SPAULDING, from the Committee on Indian Affairs, submitted the following

R E P O R T :

[To accompany bill H. R. 7559]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 7559) to provide for a settlement with the Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, for the unexecuted stipulation of that treaty, respectfully report in favor of the passage of the bill for reasons appearing in the accompanying letter of the Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,

OFFICE OF INDIAN AFFAIRS,

Washington,

February 9, 1883.

SIR: I am in receipt, by department reference, of a communication from J. R. McCarty, clerk of the Senate Committee on Indian Affairs, dated January 29, 1883, in which he inclosed the "Petition of the Six Nations of New York Indians relating to Kansas lands," and state that the "committee will be glad to receive from your department any information or suggestions which you may wish to communicate regarding the subject."

The petition sets forth that by certain treaties between the New York Indians and the Menomonees, the former purchased of the latter certain lands in Wisconsin, which lands were secured to the New York Indians by the treaty between the United States and the Menomonees, concluded February 8, 1811 (7 Stat., 342); and that by the treaty of January 11, 1838 (7 Stat., 550), they ceded the lands in Wisconsin acquired from the Menomonees to the United States, I consideration for which the United States agreed to set apart a tract of country situated west of the State of Missouri, in the Indian Territory, of 1,824,000 acres of land, being 320 acres for each one of said Indians, which lands the said Indians have never received, or the equivalent of land in Wisconsin ceded to the United States.

They ask as relief on account of the above claims that a fund be appropriated sufficient to build a high school for each tribe of said Six Nations and to support the same.

The petition is signed by delegates on behalf of the Senecas, Cayugas, Oneidas, Tuscaroras, and Onondagas.

The history of the negotiations between the New York Indians and the Menomonees and Winnebagoes, and the action of the government in connection therewith, may be found in Senate Ex. Doc. No. 180, Twenty-seventh Congress, second session.

By the treaty of February 8, 1831, between the United States and the Menomonees (7 Stat. 312), the latter, although protesting that they were under no obligations to recognize any claim of the New York Indians to any portion of their country, and that they neither sold or received, any value for the land claimed by these tribes, yet agreed that such part of the lands described as the President might direct might be set apart as a home to the several tribes of New York Indians might remove and settle upon the same within three years from the date of the agreement.

By a supplemental agreement concluded February 17, 1831 (7 Stat., 346), this limitation was changed so as to require the President to prescribe the time for removal and settlement.

The claim of the Menomonees that they had not received any value from the New York Indians for the lands in Wisconsin does not appear to be well founded. In the treaty between these Indians, August 18, 1821, approved by the President February 9, 1822, the receipt of $300 in acknowledged, and a receipt, dated September 16, 1822, acknowledges the payment of $1,500 in goods.

The preamble to the treaty between the United States and the New York Indians concluded January 15, 1838 (7 Stat., 550) recites that, with the approbation of the President of the United States, purchases were made by the New York Indians from the Menomonee and Winnebago Indians of certain lands at Green Bay, in the Territory of Wisconsin, and after much difficulty and contention with those Indians concerning the extent of that purchase, the whole subject was finally settled by a treaty between the United States and the Menomonee Indians, concluded in February, 1831, to which the New York Indians gave their assent on the 17th of October 1832; that by the provisions of that treaty 500,000 acres of land were secured to the New York Indians of the

Six Nations and the St. Regis tribe as a future home, on condition that they all remove to the same within three years or such reasonable time as the President should prescribe; and that the President is satisfied that various considerations have prevented those still residing in New York from removing to Green Bay, Wisc. In view of which facts the treaty was made.

By the first article of that treaty that several tribes of New York Indians ceded and relinquished to the United States all their right, title, and interest to the lands secured by them at Green Bay by the Menomonee treaty of 1831, except a certain tract reserved.

By the second article the United States, in consideration of the above cession and relinquishment, agreed to set apart as a permanent bound for all New York Indians then residing in New York, Wisconsin, or elsewhere, a certain tract of country west of the State of Missouri, containing 1,624,000 acres, being 220 acres for each soul of said Indians as then computed; "To have and to hold the same in fee simple to the said tribes or nations of Indians, by patent from the President of the United States, deemed in conformity with the provisions of the third section of the act" of May 28, 1830 (4 Stat., 411). (The section referred to provides that such lands shall revert to the United States if the Indians become extinct or abandon the same.)

By the third article it was agreed that such of the tribes of the New York Indians as did not accept and agree to remove within five years, "or much other time as the President may from time to time appoint, shall forfeit all interest in the lands so set apart to the United States."

By the fifteenth article, the United States agreed to appropriate the sum of $400,000, to be applied from time to time under the direction of the President in such properties as

may be most for the interest of the said Indians, parties to this treaty, for the following purposes, to wit: To aid them in removing to their homes and supporting themselves the first year after their removal; to encourage and assist them in odnestion and in being taught the cultivate their lands," &e.

This treaty was proclaimed April 4, 1840. Disputes baying arisen under it, growing out of the claims of the Ogden Land Company to the lands in New York, it was modified in some particulars by a treaty with the Seneca Nation, concluded May 20, 1842 (7 Stat., 586), but the modifications do not appear to affect the articles heretofore quoted from.

Contemporaneous history shows that this treaty of 1838 was made, not in the interests of the Indians, but for the benefit of land company which owned the right of pre-emption in the New York lands, and which, therefore, was anxious to secure the removal of the Indians.

There appeared to be no desire on the part o any considerable number of the Indians to remove, and the idea of the removal of small parties was discouraged by the department.

On the fifth day of May, 1845, this office reported to the Secretary of War that a letter had been received representing that a portion of the Senecas, and others of the Six Nations then ready to remove, were exceedingly anxious on the subject, and wished to know whether the United States intended to aid them in their removal.

It was stated that there were some 4,000 Indians in New York, that about 250 of them desired to remove, and that it was not seen what advantage would arise from the removal this small number. It was recommended that no action be taken, which was approved by the department.

The sum of $40,477.60 had been appropriated on the 3d of March, 1843, for the removal of New York Indians, this estimate being for 250 persons, and being part of the $100,000 agreed to be appropriated by the fifteenth article of the treaty.

On the 20th day of May, 1845, Dr. Peter Wilson, accompanying a delegation of New York Indians, in a communication addressed to the Commissioner of Indian Affairs, asked the following questions: "Will those who do not remove within that time (five years) forfeit their claims to the western country? This is an important question, and I desire you to answer it in writing." I do not find that any answer was given.

Other representations regarding the removal having been made, this office, on the 12th of September, 1845, offered to appoint Dr. Abraham Hogeboom an agent for the removal of the Indians.

Dr. Hogeboom accepted the appointment, and on the 7th of November, 1845, informed the office that 260 Indians had been enrolled, and that there appeared to be no doubt of the movement taking place. Ten thousand dollars was sent him on the 4th of that month to assist in the removal of the 260 persons.

On the 8th of December 1845, he was informed that as the lakes and rivers had frozen over the party must not start. It appears, however, that Dr. Hogeboom, notwithstanding the positive instructions of this office, started with a party of almost 800 some time in May, 1846, and on the 9th of July, 1846, Agent Harvey reported the arrival of 201 Indians in Kansas. These Indians suffered extremely from destitution and sickness; many of them died, and most of the survivors ultimately returned to New York. No further effort at removal appears to have been made, and only about $13,000

of the $20,477.50 was expended. No further appropriation for the removal of these Indians appears to have been made.

It will be observed that these 201 Indians removed after the expiration of the five years fixed in the treaty. No other time for removal appears to have been named by the President.

This appears to be the only organized attempt at emigration ever made, although various parties claiming to be New York Indians settled in Kansas at different times.

The number of those residing there in March, 1859, was reported to be 303, quite a number of them being Canada and Wisconsin Indians not entitled to leads under the treaty of 1838.

June 15, 1800, patents were issued to 32 New York Indians for 320 acres of land each, I Kansas, which is all the land that has been patented under the treaty of 1838.

On the 4th of December, 1808, a treaty was concluded with the New York Indians, by the terms of which they surrendered to the United States all claims severally and in common to lands west of Missouri, and all right and claim to be removed there, and for support after removal, and all other claims under the treaty of 1838, except their rights to the reservation then occupied by them. This treaty was not ratified by the Senate.

Senator Buckingham, in his report (see Report No. 145, Forty-first Congress, second session), took the ground "that no right to land in Wisconsin and west of Missouri was ever vested in the New York Indians, except the right of occupancy; that an equivalent for the amount paid by them to the Monomonees for lands in Wisconsin was received by those who removed to and settled upon those lands; that the

Indians who never removed to the lands set apart for their permanent residence in Wisconsin, and who never removed to and become located on lands set apart for them west of Missouri, did not comply with the requirements of the treaties, and are not entitled to any interest in the lands nor to their proceeds."

A treaty was concluded with the Tonawanda band of Senecas, November 5, 1557 (11 Stat., 735), by which the Indians relinquished all claims under the treaties of 1838 and 1842, in consideration of which the United States agreed to pay and invest the sum of $66,000 for the said Tonawanda band. This amount is understood to be their pro rata share of the $400,000 removal fund, and of 320 acres of land each at $1 per acre.

This treaty, Senator Buckingham says, should not be regarded as a precedent by which the government should be bound or guided, as it authorized the payment of moneys to the members of that band, to which they had no claim under former treaties.

It is true that no rights to lands in Kansas, except that of occupancy, ever vested in the New York Indians (except the thirty-two who received patents), but they were entitled, upon occupying the lands, to receive a patent therefore in fee simple, subject to the proviso that "such lands shall revert to the United States if the Indians become extinct or abandon the same."

The title which they might acquire by occupancy was a base, qualified, or determinable fee, with only the *possibility* of reversion, and not the *right of reversion* in the United States, and therefore, all the estate is in the Indians (see decision of United States district court for the western district of Arkansas, May term, 1870, United States *vs.* Ben Reese).

Upon the question of the forfeiture of all rights under the treaty by the failure to remove, I am not so clear as Senator Buckingham appears to have been.

The removal was to take place within five years or such other time as the President might from time to time appoint.

The phrase "or such other time" would seem to mean an extension of time rather than a limitation; that is, that the President might appoint a time for their removal after the expiration of the five years. Permission was given by this office for the re [cut off in copy from microfilm]

82d Congress, SENATE **Report**

1st Session **No. 910**

IN THE SENATE OF THE UNITED STATES

July 12, 1892.—Ordered to be printed.

Mr. PLATT, from the Committee on Indian Affairs, submitted the following

R E P O R T :

[To accompany S. 3407.]

The Committee on Indian Affairs, to whom was referred the finding of the Court of Claims in the case of the New York Indians, etc. *vs.* The United States, make the following report:

The finding of the Court of Claims is as follows:

[Court of Claims. Congressional case No. 151. The New York Indians, being those Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York on the 15th day of January, 1838, *vs.* The United States.]

At a Court of Claims held in the city of Washington on the 11th day of January, A.D. 1892, the court filed the following findings of fact, to-wit:

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate of the United States, the 21st day of June, 1884.

James B. Jenkins, Henry E. Davis, Guion Miller, esqs. (with whom was George Barker, esq.), appeared for claimants, and the Attorney-General by F. P. Dewees, esq. his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The following is the letter transmitting the cause to this court:

UNITED STATES SENATE COMMITTEE ON CLAIMS,

June 21, 1884.

At a meeting of the Committee on Indian Affairs of the Senate of the United Sates the following order was made by that committee:

Ordered, That Senate bill (S. 467) to provide for a settlement with the Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, for the unexecuted stipulation of that treaty, together with the accompanying amendment intended to be proposed by Mr. Voorhees to the aforesaid bill, which bill and proposed amendment were referred to said committee at the first session of the Forty-eighth Congress, and which bill and proposed amendment are now pending before said committee, be transmitted (in accordance with the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Department in the investigation of claims and demands against the Government," approved March 3, 1883), to the Court of Claims of the United States, together with the vouchers, papers, proofs, and documents appertaining thereto, for the investigation and determination of the facts involved in said bill said proposed amendment thereto.

J R. MCCARTY,

Clerk to the United States Senate Committee on Indian Affairs.

All questions relative to the proposed amendment to the Senate bill mentioned in said letter were abandoned by counsel at the beginning of the argument, and it was stated that an agreement had been reached upon its subject-matter.

The case having been brought to a hearing on the 25th day of November, 1891, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, find the facts to be as follows:

I.

In 1784 the United States by treaty secured the Oneida and Tuscarora Nations in the possession of the lands upon which they were settled, and fixed the boundaries of the lands of the Six Nation, it being agreed by the United States that the Six Nations should be secured in the peaceful possession of the lands they then inhabited east and north of the boundaries fixed.

The stipulations of this treaty were renewed and confirmed in 1789 when the boundary was again described in the same terms as in the treaty of 1784 and the Indians relinquished and ceded to the United States the lands west of the defined boundary. The Mohawks were not parties to the treaty of 1789.

In 1794 another treaty was concluded with the Six Nations guaranteeing peace and friendship perpetual between

the parties, acknowledging the lands reserved to the Oneida, Onondago, and Cayuga Nations in their treaty with the State of New York to be their property, and engaging that the United States would never claim the same or disturb them or either of the Six Nations nor their Indian friends residing thereon and united with them in the free use and enjoyment thereof, but the said lands should remain theirs until they chose to sell the same to the United States, who "have the right to purchase." The land of the Seneca Nation is also described by metes and bounds in this treaty, acknowledged as their property, and confirmed as theirs until they choose to sell to the United States, who "have the right to purchase," and the United States having thus described and acknowledged the lands of the Oneidas, Onondagas, Cayugas, and Senecas, and engaged never to claim the same nor disturb the Six Nations in the free use and enjoyment thereof, the Six Nations upon their side engaged never to claim any other lands within the boundaries of the United States.

II.

The New York Indians in 1810 petitioned the President of the United States for leave to purchase reservations of their western brethren with the privilege of removing to and occupying the same. Thereupon, with the approbation of the President, lands situated at Green Bay, Wis., was purchased by the said New York Indians from the Monomonee and Winnebago tribes.

III.

In 1821 the Monomonee Indians ceded to the Stockbridge, Oneida, Tuscarora, St. Regis, and Munsee nations two large tracts of land in Wisconsin for a small money consideration. The title to one of those tracts was

confirmed in the New York Indians by the President March 13, 1823.

IV.

Thereafter certain New York Indians belonging to the Oneida, St. Regis, Munsee, and Brothertown tribes removed to and took possession of the lands in Wisconsin. Subsequently questions of tenure and boundaries of the lands granted to the New York Indians were raised by the Menomonees, negotiations were had, and steps were taken through which the purchase by the New York Indians from the Menomonees and Winnebagos was so reduced as to include only 500,000 acres of land on the south and west of the Fox River, together with three townships on the north and east of said river, comprising 80,120 acres, which was to be set apart for the Stockbridge, Munsee, and Brothertown tribes, to all of which the New York Indians duly assented, and thereafter the title to the said three townships and the said 500,000 acres was recognized by the Congress and the President of the United States to be in the New York Indians. In the treaty of February 8, 1831, with the Menomonee Indians it was agreed that certain land in Wisconsin might be set apart as a home to the several tribes "of New York Indians who may remove to and settle upon the same within three years from the date of this agreement."

This treaty was assented to by the New York Indians, October 17, 1832, and by amendment later introduced by agreement between the United States and the Menomonee Indians, the removal of those of the New York Indians who might not be settled on the lands at the end of three years was left discretionary with the President of the United States. A small portion of the New York Indians removed to the Wisconsin or Green Bay lands.

In the treaty with the Monomonees, *supra*, appears at the end of article 1 the following:

"It is distinctly understood that the lands hereby ceded to the United States for the New York Indians are to be held by those tribes under such tenure as the Menomonee Indians now hold their lands, subject to such regulations and alteration of tenure as Congress and the President of the United States shall from time to time think proper to adopt."

V.

The title of the New York Indians as set forth in the fourth finding has since been acknowledged by the United States; as in the treaty with the Menomonees of September 3, 1836, in the treaty with the Stockbridge and Munsees, of September 3, 1839; in the treaty with the New York Indians concluded at Buffalo Creek January 15, 1838,; and in the treaty with the Tonawanda band of Senecas of November 5, 1857.

VI.

From the preceding findings it appears as a fact that prior to February, 1831, the claimants, with the approbation of the President, had purchased from the Menomonee and Winnebago Indians certain lands near Green Bay in the then Territory of Wisconsin; that a question had arisen as to the extent of this purchase, which was finally settled by treaty between the Menomonees and the United States in February, 1831 (ratified in 1832, which treaty contained a provision securing to claimants, in consideration of $20,000, 500,000 acres of land at Green Bay (in addition to the townships set apart for the Stockbridge, Munsee, and Brothertown tribes), on condition that they should remove to the same within three years or such reasonable time as the President of the United States should prescribe.

VII.

In January, 1838, the claimants had not all removed to the lands in Wisconsin, but had been prevented from doing so by reasons accepted as sufficient by the President of the United States.

VIII.

Prior to the month of January, 1838, the claimants applied to the President of the United States to take their Green Bay lands and provide them a new home in the Indian Territory. Pursuing the Government policy in removing the Indians to the west of the Mississippi, the President acted upon the application of the Indians by making with them the treaty (known as the treaty of Buffalo Creek) of January 15, 1838.

IX.

The treaty of Buffalo Creek provided, in consideration of the premises recited in the foregoing three findings and of the covenants contained in the treaty itself to the performed by the United States, that the claimants cede and relinquish to the United States all their right, title, and interest in and to their Green Bay lands (excepting a small reservation), and in consideration of this cession and relinquishment the United States, in and by the treaty, agree and guarantee as follows:

First, to set apart as a permanent home for all of the claimants having no permanent homes a certain tract of country west of the Mississippi River, described by metes and bounds and to include 1,824,000 acres of land: to have and to hold the same in fee simple to the said tribes or nations of Indians by patent from the President of the United States, in conformity to the provisions of section 3 of the act of Congress of May 28, 1830, entitled "An act to provide for an

exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi;" the same to be divided among the different tribes, nations, or bands in severalty; it being understood that the said country was intended as a future home for the following tribes: The Senecas, Onondagas, Cayugas, Tuscarorsa, Oneidas, St. Regis, Stockbridge, Munsees, and Brothertowns, and was to be divided equally among them according to the number of individuals in each tribe, as set forth in a schedule annexed to the treaty and designated as Schedule A, on condition that such of the claimants as should not accept and agree to remove to the country set apart for them within five years, or such other time as the President might from time to time appoint, should forfeit to the United States all interest in the lands so set apart. The following is the Schedule A:

Census of the New York Indians as taken in 1837.

Number residing on the Seneca reservations:

Senecas 2,309

Onondagas 194

Cayugas 130

.....2,633

Onondagas, at Onondaga 300

Tuscaroras 273

St. Regis in New York 350

Oneidas at Green Bay 600

Oneidas in New York 620

Stockbridges 217

Munsees 132

Brothertowns 360

Second. The United States agreed to protect and defend the claimants in the peaceable possession and enjoyment of their new homes, and to secure their right to establish their own government, subject to the legislation of Congress respecting trade and intercourse with the Indians.

Third. The United States agreed that the lands secured to the claimants by the treaty should never be included in any State or Territory of the Union.

Fourth. The United States agreed to pay to the several tribes and nations of the claimants hereinafter mentioned, on their removal west the following sums, respectively, namely: To the St. Regis tribe, $5,000; to the Seneca Nation, the income, annually, of $100,000 (being part of the money due said nation for lands sold by them in New York, and which sum they authorized to be paid to the United States); to the Cayugas, $2,500 cash and the annual income of $2,500; to the Onondagas, $2,000 cash and the annual income of $2,500; to the Oneidas, $6,000 cash, and to the Tuscaroras, $3,000.

Fifth. The United States agreed to appropriate the sum of $400,000, to be applied from time to time by the President of the United States for the following purposes, namely: To aid the claimants in removing to their new homes and supporting themselves the first year after their removal; to encourage and assist them in being taught to cultivate their

lands; to aid them in erecting mills and other necessary houses; to aid them in purchasing domestic animals and farming utensils, and in acquiring a knowledge of the mechanic arts. It does not appear that application was made by the tribes or bands or any of them to the Government for removal to the Kansas lands, except as appears in Finding XV below. Article 3 of this treaty of Buffalo Creek provides that such of the tribes of the New York Indians as did not accept and agree to remove to the country set apart for their new home within five years, or such other time as the President might appoint, should forfeit to the United States all interest in the lands so set apart. By supplemental article the St. Regis Indians assented to the treaty with this stipulation, viz:

And it is further agreed that any of the St. Regis Indians who wish to do so shall be at liberty to remove to the "said country at any time hereafter within the time specified in this treaty, but the Government shall not compel them to remove."

The treaty of January 15, 1838, as amended by the Senate June 11, 1838, was assented to September 28, 1838, by the Seneca tribe of New York Indians; August 9, 1838, by the chiefs of the Oneida tribe; August 3, 1838, by the Tuscaroa Nation residing in New York; August 30, 1838, by Cayuga Indians residing in New York; October 9, 1838, by the St. Regis Indians residing in New York; August 31, 1838, by the Onondaga tribe of Indians on the Seneca reservations in the State of New York.

There is no evidence before the court that the Onondagas at Onondaga (300), Oneidas at Green Bay (600), Stockbridges (217), Munsees (132), Brothertowns (300), ever assented to the treaty as amended by the Senate June 11, 1838.

X.

In the year 1838, at the time of the making of the treaty of Buffalo Creek, the Six Nations of New York Indians, designated by that name in the treaty, consisted of six separate nations or tribes known and named as the Senecas, the Onondagas, the Oneidas, the Cayugas, the Tuscaroras, and the St. Regis; and each of said nations or tribes, except the Cayugas, owned and possessed a reservation of land in the State of New York on which the members of said tribes resided, and the right to occupancy to which was secured to them by treaty stipulations. The Cayuga Indians had no separate reservation of their own in the State of New York, but made their home with and resided upon the reservation and lands possessed by the Seneca Nation with the consent of the latter.

XI.

The lands occupied by the Seneca Nation in the State of New York, as set forth in the last preceding finding, consisted of four separate and distinct reservations, named:

The Buffalo Creek Reservation in Erie County, containing 49,920 acres; the Cattaraugus Creek Reservation, containing 21,680 acres; the Alleghany Reservation, containing 30,469 acres, and the Tonawanda Reservation, in Genesee County, containing 12,800 acres. The lands, occupied by the Tuscarora Indians were situated in Niagara County, N.Y., and comprised 6,249 acres. The lands occupied by the Onondaga tribe were situated in Onondaga County, N.Y., and comprised 7,300 acres. The lands occupied by the Oneida tribe were situated in Oneida and Madison counties, N.Y., and comprised 400 acres. The reservation and lands occupied by the St. Regis tribe were situated in Franklin County, N.Y., and comprised about 14,000 acres.

XII.

For many years prior to the making of the treaty of Buffalo Creek in 1838, the said several nations or tribes of Indians had improved and cultivated their lands, on which they resided and from the products of which they chiefly sustained themselves.

XIII.

At the time of the making of the treaty of Buffalo Creek in 1838, one Thomas L. Ogden and one Joseph Fellows, both residents of the State of New York, claimed to be the assignees of the State of Massachusetts and owners of the pre emptive right of purchase from the Seneca Nation of the several reservations of land occupied by them as above set forth, which preemptive right had been secured to the Commonwealth of Massachusetts by a convention of the States of New York and Massachusetts, held on the 6th day of December, 1786. The claims at the said Ogden and Fellows were recognized and provided for in the said treaty of Buffalo Creek and the treaty supplementary thereto, which was entered into between the United States and the said Six Nations on the 20th day of May, 1842. After the ratification of said treaty of 1843, which was proclaimed on the 26th day of August in that year, the Seneca Nation surrendered to said Ogden and Fellows the possession of the Buffalo Creek Reservation aforesaid, and the said nation has since continued to occupy the Cattaraugus and Alleghany reservations mentioned in said treaties of 1838 and 1842.

XIV.

The President of the United States never prescribed any time for the removal of the claimants or any of them to the lands or any of them set apart by the treaty of Buffalo Creek.

XV.

No provision of any kind was ever made for the actual removal of more than about 260 individuals of the claimant tribes as contemplated by the treaty of Buffalo Creek, and of this number only 32 ever received patents or certificates of allotment of any of the lands mentioned in the first article of the treaty, and the amount allotted to those 32 was at the rate of 320 acres each, or 10,240 acres in all.

In 1845 Abram Hogeboom represented to the Government of the United States that a number of the New York Indians, parties to the treaty of 1838, desired to remove to the Kansas lands, and upon such representation and in conformity with such desire said Hogeboom was appointed a special agent of the Government to remove the said Indians to Kansas.

The sum of $9,464.08 of amount appropriated by Congress was expended in the removal of a party of New York Indians under his direction in 1846.

From Hogeboom's muster roll in the Indian Office it appears that 271 were mustered for emigration. The roll shows that of this number 73 did not leave New York with the party; the number, thus reduced to 191, arrived in Kansas June 15, 1846, 17 other Indians arrived subsequently; 62 died, and 17 returned to New York.

It does not appear that any of the 32 Indians to whom allotments were made settled permanently in Kansas.

XVI.

The United States, after the conclusion of the treaty of Buffalo Creek, surveyed and made part of the public domain the lands at Green Bay ceded by the claimants, and sole or

otherwise disposed of and conveyed the same and received the consideration therefore.

XVII.

The lands west of the Mississippi secured to the claimants by the treaty of Buffalo Creek were afterwards surveyed and made part of the public domain, and were sold or otherwise disposed of by the united States, which received the entire consideration therefore; and the said lands thereafter were and now are included within the territorial limits of the State of Kansas. The price realized by the United States for such of the said lands as were sold was at the rate of $1.34 per acre, while the cost of surveying, etc., the same was at the rate of about 12 cents per acre, making the net price realized by the United States about $1.22 per acre.

XVIII.

By treaty with the Tonawanda band of the Senecas, numbering 650 individuals, the United States, November 5, 1857,in consideration of the release by the said band of its claims upon the United States to the lands west of the State of Missouri, all right and claim to be removed thither and for support and assistance after removal and all other claims against the united States under the treaties of 1838 and 1842 (reserving their rights to moneys paid or payable by Ogden & Fellows), agreed to pay and invest, and did pay and invest for said band the sum of $256,000. This amounted in substance to compensating the beneficiaries of the treaty of 1838 at the rate of $1 per acre for their claims to lands in Kansas, under said treaty, and also their proportionate share of the $400,000 provided to be appropriated in that treaty.

XIX.

After March 21, 1859, an order of the Secretary of the Interior was made which directed that the tract of land in Kansas Territory known as the New York Indian Reserve should be surveyed with a view of allotting a half section each to such of the New York Indians as had removed there under treaty provisions, after which the residue was to become public domain. After this and before the proclamation of the President and said lands as part of the public domain (December 3 and 17, 1860) the New York Indians employed counsel to protect and prosecute their claims in the premises, asserting the in the powers of attorney that the United States had seized upon the said lands contrary to the obligations of said treaty, and would not permit the said Indians to occupy the same or make any disposition thereof; the said Indians have steadily since asserted their said claims.

XX.

Of the sum of $400,000 agreed by the treaty of Buffalo Creek to be appropriated by the United States for the purposes mentioned in the ninth finding above, only the sum of $20,477.50 was so appropriated (except as hereinafter stated). Of this sum only $9,464.08 was actually expended; this sum was expended for the removal, more than five years after the ratification of the treaty, of some of the 260 individuals mentioned in the fifteenth finding above,; but in addition to said sum of $9,464.08 there was paid for the Tonoawanda band of Seneca $256,000, as mentioned in the eighteenth finding above.

XXI.

The records of the Indian Office do not show that the President ever prescribed any time for the removal of the New York Indians to Wisconsin under the treaties of February 8, 1831, and October 27, 1832, or that the President

prescribed any time for the removal of the New York Indians from Wisconsin and New York to the Kansas lands under the treaty of Buffalo Creek (January 15, 1838), or that the Government took any steps to defend those Indians who did remove to Kansas "in the peaceable possession of their new homes."

XXII.

The account under the treaty of Buffalo Creek may thus be stated (omitting all questions of law and as to interest and without deciding that the United States are or are not responsible for any portion thereof):

Credit the tribes with---

1,824,000 acres of land in Kansas, at

$1 per acre $1,824,000.00

Amount named in articles 9 to 14, both inclusive, of the treaty of Buffalo Creek (except the $100,000 for the Seneca Nation, which had been taken into the account in other dealings between the United States and that nation respecting the claims of Ogden and Fellows) 23,000.00

Amount named in article 15 of the treaty 400,000.00

..... 2,247,000.00

Debit the tribes with---

Amount expended in removing the portion of the 206 individuals mentioned in finding 15 ..... 9,464.08

10,240 acres allotted to the 32 mentioned in finding 15, at $1 per acre 10,240.00

Amount invested for Tonawanda band 256,000.00

..... 275,704.08

Balance 1,971,295.92

BY THE COURT.

Filed January 11, 1892.

A true copy.

Test, this 16th day of January, A.D. 1892

[SEAL.] JOHN RANDOLPH,

Assistant Clerk, Court of Claims.

It will be observed that this finding was made under the so-called "Bowman act," and deals only with facts. Upon the facts as found questions of law arise as to whether the United States is liable for a money payment to the claimants; and, if so, the amount thereof. These questions, in the opinion of the committee, should be determined by a court where they can all be carefully considered and decided. The committee therefore recommends the passage of the accompanying bill conferring jurisdiction on the Court of Claims to hear and determine the case.

The claimants demand interest on the value of their lands in Kansas, which were set apart for them with a view of their removal thereto, from 1843, or certainly from the year 1860, when the United States proclaimed the Kansas lands open to settlement. But in the judgment of the committee

this case is not one in which interest should be allowed against the Government.

The bill is therefore so drawn as to exclude the payment of interest upon any sum that may be found due by the Court of Claims.

52d Congress, **SENATE**

1st Session **Mis. Doc. No. 46**

IN THE SENATE OF THE UNITED STATES.

January 18, 1892.—Referred to the Committee on Appropriations and ordered to be printed.

FINDINGS FILED BY THE COURT OF CLAIMS IN THE CASE OF THE NEW YORK INDIANS vs. THE UNITED STATES.

[The New York Indians, being those Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, January 16, 1892, vs. The United States. Congressional case, No. 151.]

COURT OF CLAIMS, CLERK'S OFFICE.

Washington, January 16, 1892.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings filed by the court in the aforesaid cause, which case was referred to this court by the Committee on Indian Affairs, United States Senate, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,

Assistant Clerk, Court of Claims.

Hon. LEVI P. MORTON.

President of the Senate of the United States.

[Court of Claims Congressional case No. 151. The New York Indians, being those Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 16th day of January, 1892, vs. The United States.]

At a Court of Claims held in the city of Washington on the 11th day of January, A.D., 1892, the court filed the following findings of fact, to wit:

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate of the United States, the 21st day of June, 1884.

James B. Jenkins, Henry E. Davis, Guion Miller, esqs. (with whom was George Barker, esq.),. appeared for claimants, and the Attorney-General, by F.P. Dewees, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The following is the letter transmitting the cause to this court:

UNITED STATES SENATE COMMITTEE ON CLAIMS.

June 21, 1884.

At a meeting of the Committee on Indian Affairs of the Senate of the United States the following order was made by that committee:

Ordered, That Senate bill (S. 467) to provide for a settlement with the Indians who were parties as to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, for the unexecuted stipulation of that treaty, together with the accompanying amendment intended to be proposed by Mrs. Voorhees to the aforesaid bill, which bill and proposed amendment were referred to said committee at the first session of the Forty-eighth Congress, and which bill and proposed amendment are now pending before said committee, be transmitted (in accordance with the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March 3, 1883), to the Court of Claims of the United States, together with the vouchers, papers, proofs, and documents, appertaining thereto, for the investigation and determination of the facts involved in said bill and said proposed amended thereto.

J. R. McCarty,

Clerk to the United States Senate Committee on Indian Affairs.

All questions relative to the proposed amendment to the Senate bill mentioned in said letter were abandoned by counsel at the beginning of the argument, and it was stated that an agreement had been reached upon its subject-matter.

The case having been brought to a hearing on the 25th day of November, 1891, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, and the facts to be as follows:

I.

In 1784 the United States by treaty secured the Oneida and Tuscarora Nations in the possession of the lands upon which they were settled, and fixed the boundaries of the lands of the Six Nations, it being agreed by the United States that the Six Nations should be secured in the peaceful possession of the lands they have inhabited east and north of the boundaries fixed.

The stipulations of this treaty were renewed and confirmed in 1789 when the boundary was again described in the same terms as in the treaty of 1784 and the Indians relinquished and ceded to the United States the land west of the defined boundary. The Mohawks were not parties to the treaty of 1789.

In 1794, another treaty was concluded with the Six Nations guaranteeing peace and friendship perpetual between the parties, acknowledging the lands reserved to the Oneida, Onondaga, and Cayuga Nations in their treaty with the State of New York to be their property, and engaging that the United States would never claim the same or disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them in the free use and enjoyment thereof, but the said lands should remain theirs until they chose to sell the same to the United States, who "have the

right to purchase." The land of the Seneca Nation is also described by metes and bounds in this treaty acknowledged as their property and confirmed as theirs until they chose to sell to the United States, who "have the right to purchase," and the United States having thus described and acknowledged the lands of the Oneidas, Onondagas, Cayugas, and Senecas, and engaged never to claim the same nor disturb the Six Nations in the free use and enjoyment thereof, the Six Nations upon their aide engaged never to claim any other lands within the boundaries of the United States.

II.

The New York Indians in 1810 petitioned the President of the United States for leave to purchase reservations of their western brethren with the privilege of removing to and occupying the same. Thereupon, with the approbation of the President, land situated at Green Bay, Wis., was purchased by the said New York Indians from the Menomonee and Winnebago tribes.

III.

In 1821 the Menomonee Indians ceded to the Stockbridge, Oneida, Tuscarora, St. Regis, and Munsee nations two large tracts of land in Wisconsin for a small money consideration. The title to one of those tracts was confirmed in the New York Indians by the President March 13, 1823.

IV.

Thereafter certain New York Indians belonging to the Oneida, St. Regis, Munsee, and Brothertown tribes removed to and took possession of the lands in Wisconsin. Subsequently questions of tenure and boundaries of the lands

granted to the New York Indians were raised by the Menomonees, negotiations were had, and steps were taken through which the purchase by the New York Indians from the Menomonees and Winnebagos was so reduced as to include only 500,000 acres of land on the south and west of the Fox River, together with three townships on the north and east of said river, comprising 30,120 acres, which was to be set apart for the Stockbridge, Munsee, and Brothertown tribes, to all of which the New York Indians duly assented, and thereafter the title to the said three townships and the said 500,000 acres was recognized by the Congress and the President of the United States to be in the New York Indians. In the treaty of February 8, 1831, with the Menomonee Indians it was agreed that certain land in Wisconsin might be set apart as a home to the several tribes "of New York Indians who may remove to and settle upon the same within three years from the date of this agreement."

This treaty was assented to by the New York Indians, October 17, 1832, and by amendment later introduced by agreement between the United States and the Menomonee Indians, the removal of those of the New York Indians who might not be settled on the lands at the end of three years was left discretionary with the President of the United States. A small portion of the New York Indians removed to the Wisconsin or Green Bay lands.

In the treaty with the Menomonees, *supra*, appears at the end of article 1 the following:

"It is distinctly understood that the lands hereby ceded to the United States for the New York Indians are to be held by those tribes under such tenure as the Menomonee Indians now hold their lands, subject to such regulations and alteration of tenure as Congress and the President of the United States shall from time to time think proper to adopt."

V.

The title of the New York Indians as set forth is the fourth finding has since been acknowledged by the United States; as in the treaty with the Menomonees of September 3, 1836, in the treaty with the Stockbridges and Munsees, of September 3, 1839; in the treaty with the New York Indians concluded at Buffalo Creek January 15, 1838,; and in the treaty with the Tonawanda band of Seneca of November 5, 1857.

VI.

From the preceding findings it appears as a fact that prior to February, 1831, the claimants, with the approbation of the President, had purchased from the Menomonee and Winnebago Indians certain lands near Green Bay, in the then Territory of Wisconsin; that a question had arisen as to the extent of this purchase, which was finally settled by treaty between the Monomonees and the United States in February, 1831 (ratified in 1832), which treaty contained a provision securing to claimants, in consideration of $20,000, 500,000 acres of land at Green Bay (in addition to the townships not apart for the Stockbridge, Munsees, and Brothertown tribes), on condition that they should remove to the same within three years or such reasonable time as the President of the united States should prescribe.

VII.

In January 1838, the claimants had not all removed to the lands in Wisconsin, but had been prevented from doing so by reasons adopted as sufficient by the President of the United States.

VIII.

Prior to the month of January, 1838, the claimants applied to the President of the United States to take their Green Bay lands and provide them a new home in the Indian Territory. Pursuing the Government policy in removing the Indians to the west of the Mississippi, the President acted upon the application of the Indians by making with them the treaty (known as the treaty of Buffalo Creek) of January 15, 1838.

IX.

The treaty of Buffalo Creek provided, in consideration of the premises recited in the foregoing three findings and of the covenants contained in the treaty itself to the performed by the United States, that the claimants cede and relinquish to the United States all their right, title, and interest in and to their Green Bay lands (excepting a small reservation), and in consideration of this cession and relinquishment the United States, in and by the treaty, agree and guarantee as follows:

First, to set apart as a permanent home for all of the claimants having no permanent homes a certain tract of country west of the Mississippi River, described by metes and bounds and to include 1,624,000 acres of land: to have and to hold the same in fee simple to the said tribes or nations of Indians by patent from the President of the United States, is conformity to the provisions of section 3 of the act of Congress of May 28, 1830, entitled "An act to provide for an exchange of lands with the Indians residing any of the States or Territories, and for their removal west of the Mississippi; the same to be divided among the different tribes, nations, or bands in severalty; it being understood that the said country was intended as a future home for the following tribes: The Senecas, Onondagas, Cayugas, Tuscaroras, Oneidas, St. Regis, Stockbridges, Munsees, and Brothertowns, and was to be divided equally among them according to the number of individuals in each tribe, as set forth in a schedule annexed to

the treaty and designated as Schedule A, on condition that such of the claimants as should not accept and agree to remove to the country set apart for them within five years, or such other time as the President might from time to time appoint, should forfeit to the United States all interest in the lands so set apart. The following is the Schedule A:

Census of the New York Indians as taken in 1837.

Number residing on the Seneca reservations:

Seneca	2,309
Onondagas	194
Cayugas	130
	2,633
Onondagas, at Onondaga	300
Tuscaroras	273
St. Regis in New York	350
Oneidas at Green Bay	600
Oneidas in New York	620
Stockbridges	217
Munsees	132
Brothertowns	360

Second. The United States agreed to protect and defend the claimants in the peaceable possession and enjoyment of their new homes, and to secure their right to establish their own government, subject to the legislation of Congress respecting trade and intercourse with the Indians.

Third. The United States agreed that the lands secured to the claimants by the treaty should never be included in any State or Territory of the Union.

Fourth. The United States agreed to pay to the several tribes and nations of the claimants hereinafter mentioned, on their removal west, the following sums, respectively, namely: To the St. Regis tribe, $5,000; to the Seneca Nation, the income, annually, of $100,000 (being part of the money due said nation for lands sold by them in New York, and which sum they authorized to be paid to the United States); to the Cayuga, $2,500 cash and the annual income of $2,500; to the Onondagas, $2,000 cash and the annual income of $2,500; to the Oneidas, $6,000 cash and to the Tuscarora, $3,000.

Fifth. The United States agreed to appropriate the sum of $400,000, to be applied from time to time by the President of the United States for the following purposes, namely: To aid the claimants in removing to their new homes and supporting themselves the first year after their removal; to encourage and assist them in being taught to cultivate their lands; to aid them in erecting mills and other necessary houses; to aid them in purchasing domestic animals and farming utensils, and in acquiring a knowledge of the mechanic arts. It does not appear that application was made by the tribes or lands or any of them to the Government for removal to the Kansas lands, except as appears in Finding XV below. Article 3 of this treaty of Buffalo Creek provides that such of the tribes of the New York Indians as did not accept and agree to remove to the country act apart for their new homes within five years, or such other time as the

President might appoint, should forfeit to the United States all interest in the lands so set apart. By supplemental article the St. Regis Indians assented to the treat with this stipulation, viz:

And it is further agreed that any of the St. Regis Indians who wish to do so shall be at liberty to remove to the "said country at any time hereafter within the time specified in this treaty, but the Government shall not compel them to remove."

The treaty of January 15, 1838, as amended by the Senate June 11, 1838, was assented to September 28, 1838, by the Seneca tribe of New York Indians; August 9, 1838, by chiefs of the Oneida tribe; August 14, 1838, by the Tuscarora Nation residing in New York; August 30, 1838, by Cayuga Indians residing in New York; October 9, 1838, by the St. Regis Indians residing in New York; August 31, 1838, by the Onondaga tribe of Indians on the Seneca reservations in the State of New York.

There is no evidence before the court that the Onondagas at Onondaga (300), Oneidas at Green Bay (600), Stockbridges (217), Munsees (132), Brothertowns (360), ever assented to the treaty as amended by the Senate June 11, 1838.

X.

In the year 1838, at the time of the making of the treaty of Buffalo Creek, the Six Nations of New York Indians, designated by that name in the treaty, consisted of six separate nations or tribes known and named as the Senecas, the Onondagas, the Oneidas, the Cayugas, the Tuscaroras, and the St. Regis; and each of said nations or tribes, except the Cayugas, owned and possessed a reservation of land in the State of New York on which the members of said tribes

resided and the right to occupancy to which was secured to them by treaty stipulations. The Cayuga Indians had no separate reservation of their own in the State of New York, but made their home with and resided upon the reservation and lands possessed by the Seneca Nation with the consent of the latter.

XI.

The lands occupied by the Seneca Nation in the State of New York, as set forth in the last preceding finding, consisted of four separate and distinct reservations, namely:

The Buffalo Creek Reservation in Erie County, containing 49,920 acres; the Cattarangua Creek Reservation, containing 21,660 acres; the Alleghany Reservation, containing 30,469 acres, and the Tonawanda Reservation, in Genesee county, containing 12,800 acres. The lands occupied by the Tuscaroar Indians were situated in Niagara County, N.Y. and comprised 6,249 acres. The lands occupied by the Onondaga tribe were situated in Onondaga County, N.Y., and comprised 7,300 acres. The lands so-occupied by the Oneida tribe were situated in Oneida and Madison counties, N.Y., and comprised 400 acres. The reservation and lands occupied by the St. Regis tribe, were situated in Franklin County, N.Y., and comprised about 14,000 acres.

XII.

For may years prior to the making of the treaty of Buffalo Creek, in 1838, the said several nations or tribes of Indians had improved and cultivated their lands, on which they resided and from the products of which they chiefly sustained themselves.

XIII.

At the time of the making of the treaty of Buffalo Creek in 1838, on Thomas L. Ogden and one Joseph Fellows, both residents of the State of New York, claimed to be the assignees of the State of Massachusetts and owners of the pre-emptive right of purchase from the Seneca Nation of the several reservations of land occupied by them as above set forth, which preemptive right had been secured to the Commonwealth of Massachusetts by a convention of the States of New York and Massachusetts, held on the 6th day of December, 1786. The claims of the said Ogden and Fellows were recognized and provided for in the said treaty of Buffalo Creek and the treaty supplementary thereto, which was entered into between the United States and the said Six Nations on the 20th day of May, 1842. After the ratification of said treaty of 1842, which was proclaimed on the 26th day of August in that year, the Seneca Nation surrendered to said Ogden and Fellows the possession of the Buffalo Creek Reservation aforesaid, and the said nation has since continued to occupy the Cattaraugus and Alleghany reservations mentioned in said treaties of 1838 and 1842.

XIV.

The President of the United States never prescribed any time for the removal of the claimants or any of them to the lands or any of them set apart by the treaty of Buffalo Creek.

XV.

No provision of any kind was ever made for the actual removal of more than about 260 individuals of the claimant tribes as contemplated by the treaty of Buffalo Creek, and of this number only 32 ever received patents or certificates of allotment of any of the lands mentioned in the first article of the treaty, and the account allotted to those 32 was at the rate of 320 acres each, or 10,240 acres in all.

In 1845 Abram Hogeboom represented to the Government of the United States that a number of the New York Indians, parties to the treaty of 1838, desired to remove to the Kansas lands, and upon such representation and in conformity with such desire said Hogeboom was appointed special agent of the Government to remove the said Indians to Kansas.

The sum of $9,464.06 of amount appropriated by Congress was expended in the removal of a party of New York Indians under his direction in 1846.

XVI.

The United States, after the conclusion of the treaty of Buffalo Creek, surveyed and made part of the public domain the lands at Green Bay ceded by the claimants, and sold or otherwise disposed of and conveyed the same and received the consideration therefore.

XVII.

The lands west of the Mississippi secured to the claimants by the treaty of Buffalo Creek were, afterwards, surveyed and made part of the public domain, and were sold or otherwise disposed of by the United States, which received the entire consideration therefore; and the said lands thereafter were and now are included within the territorial limits of the State of Kansas. The price realized by the United States for such of the said lands as were sold was at the rate of $1.34 per acre, while the cost of surveying, etc., by the same was at the rate of about 12 cents per acre, making the net price realized by the United States about $1.22 per acre.

XVIII.

By treaty with the Tonawanda band of the Senecas, numbering 650 individuals, the United States, November 5, 1857, in consideration of the release by the said band of its claims upon the United States to the lands west of the State of Missouri all right and claim to be removed thither and for support and assistance after removal and all other claims against the United States under the treaties of 1838 and 1842 (reserving their rights to moneys paid or payable by Ogden and Fellows), agreed to pay and invest, and did pay and invest, for said band the sum of $256,000. This amounted in substance to compensating the beneficiaries of the treaty of 1838 at the rate of $1 per acre for their claims to lands in Kansas, under said treaty, and also their proportionate share of the $400,000 provided to be appropriated in that treaty.

XIX.

After March 21, 1859, an order the Secretary of the Interior was made which directed that the tract of land in Kansas Territory known as the New York Indian Reserve should be surveyed with a view of allotting a half section each to such of the New York Indians as had removed there under treaty provisions, after which the residue was to become public domain. After this and before the proclamating of the President of said lands as part of the public domain (December 3 and 17, 1880) the New York Indians employed counsel to protect and presents their claims in the promises, asserting in the powers of attorney that the United States had seised upon the said lands contrary to the obligations of said treaty, and would not permit the said Indians to occupy the same or make any disposition thereof; the said Indians have steadily since asserted their said claims.

XX.

Of the sum of $400,000 agreed by the treaty of Buffalo Creek to be appropriated by the United States for the

purposes mentioned in the ninth finding above, only the sum of $20,477.50 was so appropriated (except as hereinafter stated). Of this sum only $9,464.06 was actually expended; this sum was expended for the removal, more than five years after the ratification of the treaty, of some of the 200 individuals mentioned in the fifteenth finding above; but in addition to said sum of $9,464.06 there was paid for the Tonawanda band of Seneca $256,000, as mentioned in the eighteenth finding above.

XXI.

The records of the Indian Office do now show that the President ever prescribed any time for the removal of the New York Indians to Wisconsin under the treaties of February 8, 1831, and October 27, 1832, or that the President prescribed any time for the removal of the New York Indians from Wisconsin and New York to the Kansas lands under the treaty of Buffalo Creek (January 15, 1838), or that the Government took any steps to defend those Indians who did remove to Kansas "in the peaceable possession of their new homes."

XII.

The account under the treaty of Buffalo Creek may thus be stated (omitting all questions of law and as to interest and without deciding that the United States are or are not responsible for any portion thereof):

Credit the tribe with ---

1,824,000 acres of land in Kansas, at

$1 per acre..... $1,824,000.00

Amount named in article 9 to 14, both inclusive, of the treaty of Buffalo Creek (except the $1,000,000 for the Seneca Nation, which has been taken into account is other dealing between the United States and that nation respecting the claims of Ogden and Fellows) 23,000.00

Amount named in article 15 of the treaty 400,000.00

..... 2,347,000.00

Balance 1,971,295.93

BY THE COURT.

Filed January 11, 1892.

A true copy.

Test, this 16th day of January, A.D. 1892.

[SEAL.] JOHN RANDOLPH,

Assistant Clerk, Court of Claims.

S. Rlls. 2--------62

Affidavit Of Leslie Gay, *Oneida Indian Nation v. Williams*, 74 CV 167 (NDNY), March 1976

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

The Oneida Indian Nation of New York,
Plaintiff,

v. **Civil Action No. 74-CV-167**

Abraham Williams, et al., **Affidavit of Leslie M. Gay**
Defendants.

Leslie M. Gay, being duly sworn according to law, deposes and states the following:

1. I am employed in the Bureau of Indian Affairs, United States Department of the Interior, at Chief of the Tribal Relations Branch of the Office of Indian Services.

2. In my position, I work with the recognition of Indian tribes, the organization of tribal governments and the revision or modification of tribal governing documents.

3. Oneida Indian Nation of New York and the Oneida Tribe of Wisconsin are federally recognized Indian tribes. The Oneida Indian Nation of New York is one of the Indian tribes which entered into and signed the Treaty of Fort Stanwix, dated October 22, 1784, 7 Stat. 15, the Treaty of Fort Stanwix, dated January 9, 1789, 7 Stat. 34, the Treaty with the Six stations, dated November 11, 1794, 7 Stat. 43.

The Oneida Tribe of Wisconsin is recognized by the Secretary of the Interior as a successor in interest to the signatories of those treaties.

4. The Bureau of Indian Affairs recognizes the Oneida Indian Nation of New York as the Indian tribe which remained on the New York Oneida Indian Reservation, as surveyed by Nathan Burchard, following the Treaty of May 23, 1842 between the State of New York and the First and Second Christian Parties of the Oneida Indians.

5. The Bureau of Indian Affairs recognizes the customs and usage of the Oneida Indian Nation of New York as to membership in the Nation and selection of tribal leaders.

6. At the time this action was filed, in April 1974, the Bureau of Indian Affairs recognized Jacob Thompson and the Executive Committee as the President and representatives of the Oneida Indian Nation of New York.

7. The Bureau of Indian Affairs recognizes the Oneida Tribes of Indians of Wisconsin as a distinct and separate entity from the Oneida Nation of New York. The Wisconsin Tribe operates under its new constitution adopted pursuant to the Indian Reorganization Act, Act of Jun 18, 1934. 48 Stat. 984, 25 U.S.C. 461. et seq.

_____

Affiant

City of Washington) ss:
District of Columbia)

Sworn to and subscribed before me this __ day of March, 1976.

Notary Public

City Attorney Letter, City of Verona, February 18, 1993

February 18, 1993

Assessors
Town of Verona
Germany Rd., RD #1, Box 249
Durhamville, New York 13054

Re: Town of Verona; Oneida Nation Land – Route 365 and Patrick Road

Gentlemen:

This letter is written relative to your request for an opinion as to the taxability/non-taxability of the Oneida Indian Nation land located on State Route 365 and Patrick Road – the same bearing, or so I have been advised, the following tax map numbers: 298.000-1-30.3, 298.000-1-38; 298.000-1-39.1, 298.000-1-27 and 298.000-1-15.2

As a result of my research, I am comfortable in offering the opinion that there is adequate support and justification for a determination that the premises are not taxable.

I base this opinion on the following:

1.The aforesaid premises constitute "reservation land" pursuant to the Treaty of 1794 (notwithstanding that the same have been occupied by non-Indians) and therefore are exempt pursuant to Section 454 of the Real Property Tax Law.

2.Federal Law (Non-Intercourse Act, 25 U.S.C. §177) bars any sale of Indian land as a result of taxes in that this Section prohibits all sales without federal approval. Accordingly, and assuming for the purpose of argument that the land was taxable, there would be no method to insure collection or compel payment.

In addition to the foregoing, there is also the practicable consideration of the very substantial cost and expense to the Town of Verona in attempting to obtain a favorable court ruling that the property is taxable inasmuch as I have been assured by an Attorney for the Nation that they would challenge efforts by any taxing authority to obtain such determination.

I trust that you will find the foregoing helpful, but if you should have any questions, please do not hesitate to contact me.

Very truly yours,

TIMOTHY A. SMITH, P.C.

By

Timothy A. Smith

TAS:odk

cc: Ron. Maurice Daeley, Supervisor
Mrs. Betty A. Holmes, Town Clerk

Sherrill City Commission Meeting, September 22, 1997

REGULAR MEETING

September 22, 1997

A regular meeting of the Sherrill City Commission was held at 7:00 p.m. on September 22, 1997. Present were Mayor D. Evans, Commissioners W. Glasgow, R. Quackenbush, B. Carroll, T. White, City Manager D. Barker, City Clerk M. Holmes and City Attorney D. McDermott.

MINUTES

Motion was made by W. Glasgow and seconded by T. White that the minutes of the previous regular meeting be approved as written.
AYES: Glasgow, Quackenbush, Carroll, White, Evans

BILLS

Motion was made by B. Carroll and seconded by T. White that the following bills be approved for payment:

City Claims on Warrant No. 18

dated 9/22/97 .....$52,758.50

Sewer Claims on Warrant No. 18

dated 9/22/97 .....8,194.64

P&L Claims on Warrant No. 23

dated 9/22/97 .....129,715.93

Trust & Agency Claims on Warrant

No. 18 dated 9/22/97 .....5,479.16

Capital Claims on Warrant No. 10

dated 9/22/97 .....8,406.04

AYES: Glasgow, Quackenbush, Carroll, White, Evens

SCOTT NILES -- LINEMAN

D. Barker reported that Scott Niles has been a lineman for 2+ years and has completed the required course work and experience to be considered as a lineman. Motion was made by W. Glasgow and seconded by R. Quackenbush that Scott Niles be moved to lineman's status step 1 effective immediately.

ONEIDA INDIAN NATION

D. McDermott was present and has 2 separate easements that would allow the Sherrill Power and Light to place a transformer on the Oneida Nation property at 245 West Seneca Street. Mr. McDermott reported that the easement is standard with the exception that it is renewable each year but if not renewed the City would remove the equipment at the Nation's expense. The other item that is not standard is that the Bureau of Indian Affairs (BIA) needs to ratify it. That is the reason for two easements. The first one contains all the necessary language including a clause that stated that if the BIA did not ratify the easement then the equipment would be removed by the City at the Nation's cost. The second easement is identical except it does not include that clause but it would contain the ratification stamp by the BIA. Motion was made by W. Glasgow and seconded by T. White to accept both easement so that one with the BIA clause would become void after the BIA ratifies the easement and that ratified easement would be the one filed with Oneida Country.

AYES: Glasgow, Carroll, White, Evans

ABSTAIN: Quackenbush

D. Barker reported that the Power and Light would begin working on the equipment installation as their schedule allowed and that the transformer was probably still a week or two away from arrival.

CITY AUCTION

M. Holmes presented the Commission with a list of surplus equipment and furniture that the City would like to get rid of. Motion was made by W. Glasgow and seconded by B. Carroll that an auction date be sent for October 25, 1997 at 10:00 a.m. at the Public Safety Building. Pre auction viewing would be from 9:00 a.m. – 10:00 a.m.

AYES: Glasgow, Quackenbush, Carroll, White, Evans

OPEN HOUSE

The City Commission set a date for an open house for residents to see the new City Hall and the rest of the building complex including the City Court and Public Safety Building. The Open House will be from 10:00 a.m. – 1:00 p.m. on Saturday, October 18, 1997.

EXECUTIVE SESSION

Motion was made by W. Glasgow and seconded by R. Quackenbush to go into executive session to discuss personal matters regarding the Police Chief.

AYES: Glasgow, Quackenbush, Carroll, White, Evans

Motion was made by W. Glasgow and seconded by T. White to reconvene the regular meeting.

AYES: Glasgow, Quackenbush, Carroll, White, Evans

Motion was made by W. Glasgow and seconded by T. White to adjourn.

AYES: Glasgow, Quackenbush, Carroll, White, Evans

Michael Holmes
City Clerk

Oneida Indian Nation Silver Covenant Chain Grants for Local Governments Fact Sheet, October 28, 1997

Oneida Indian Nation
Silver Covenant Chain Grants for Local Governments
Fact Sheet

1. Effective January 1, 1998, the Nation intends to expand its Silver Covenant Chain Grant Program to include Municipalities and Countries affected by its land repossession policy.

2. Under this Program expansion, the Nation will provide direct grant monies to Municipalities and Countries based on the cumulative reservation land which the Nation has repossessed since 1987. Payments will be made quarterly, commencing on January 1, April 1, July1 and October 1 of each year.

3. Each Municipality and County within the Nation's reservation boundaries, as defined by the 1794 Treaty of Canandaigua, will qualify for these quarterly grant payments once the following criteria are met.

   (A) The Municipality or County maintains a government to government relationship with the Oneida Nation that holds fast to and keeps bright the covenant chain of friendship, peace and goodwill;

   (B) The tax assessor(s)for the Municipality affected has: (1) eliminated the County's payment obligations for all Nation repossessed land by removing such land from the tax rolls of the Municipality, pending final resolution of the

Nation's land claims; and (2) communicated these actions to the Nation in writing.

4. Each quarterly grant payment will be based on the cumulative amount of reservation land which the Nation has repossessed since 1987, as of the first day of the applicable quarter. On the first day of each quarter, the assessed value for each property possessed by the Nation will be totaled using the values on the date of acquisition by the Nation. This amount will be multiplied by 1.25 percent and then divided by four to determine the quarterly grant amount to be paid to each qualifying Municipality or County. Payments will be made within 30 days after the beginning of each quarter.

5. Starting in calendar year 1999, the quarterly grant amount to each Municipality or County will be increased by the amount calculated to be the percentage increase in the Consumer Price Index for Central New York as published by the United States Department of Labor, Bureau of Labor Statistics, for the previous calendar year. The percentage increase will be applied to the quarterly grant amount for each Municipality or County based on the land which the Nation possesses as of December 31 of the previous year. The inflation adjustment will be added to each quarterly payment thereafter, beginning with the second quarter payment.

6. Silver Covenant Chain payments to School Districts within the Nation's reservation shall continue under the same term as presently exist.

October 28, 1997

ROME DAILY SENTINEL

DATE: 8-3-00

Page: 4

Oneida Nation sends more aid to school districts

VERONA – Vernon-Verona-Sherrill School District received over $112,000 in aid from the Oneida Indian Nation's Silver Covenant Education grant program Tuesday, the highest among seven districts.

The program, which is in its firth year, is designed to help local school districts where the Oneida Nation has acquired ancestral lands.

Since 1996, Vernon-Verona-Sherrill School District has received a total $1,236,564.08 in grant funds.

Grants for the third quarter totaled more than $205,000.

Mark Emery, Nation media relations manager, said the quarterly grants, "are based on the cumulative average of reservation land that the Oneida Indian Nation has reacquired in each school district as of the first day of the applicable quarter, and payments are made within 30 days after the beginning of each quarter."

Eligible districts with third quarter payments are Vernon-Verona-Sherrill, $112,939.91;Canastota Central School, $29,811.76; Cazenovia Central Schools, $403.03; Madison Central Schools, $2,608.15; Morrisville-Eaton, $651,42; Oneida City Schools, $26,938.58; and Stockbridge Valley Central Schools, $29,803.64.

An annualized flat rate of 3.15 percent is applied to the land value, then divided by four to determine the quarterly payment.

"This formula doubles, and in some cases nearly triplets, the property taxes that would have been due on lands under private ownership," Emery said. "Each school district uses the voluntary grant at its own discretion."

Grant money is used by most districts to help fund academic programs, provide instructional materials and supplies and also helps to pay teachers' salaries and lower taxes.

The Oneida Indian Nation has awarded more than $1.8 million to area school districts since the Silver Covenant program's creation in 1996.

Cumulative grants for the other school districts since 1996 are as follows:

Canastota: $221,513.52

Cazenovia: $3,689.24

Madison: $12,826.70 (added in 1999)

Morrisville-Eaton: $1,936.44 (added in 2000)

Oneida: $209,284.85

Stockbridge-Valley: $164,389.29.

City of Sherrill Tax Sake Deed, February 9, 2000

A. SANDRA CARUSO
ONEIDA COUNTY CLERK
RECORDING CERTIFICATE

TRANSACTION NUMBER 3382

Tax Sale Deed

TYPE OF INSTRUMENT

Michael D. Holmes, Clerk

FIRST PARTY

The City of Sherrill, New York

SECOND PARTY

RECEIVED FROM

27 4

RECORDING CHARGE RECORDING PAGES

EXAMINED AND CHARGED AS FOLLOWS

TRANSFER FAX 0.00 MTG./DEED AMOUNT

RS# 4268 MORTGAGE #

TOWN Vernon RECEIVED TAX ON ABOVE MORTGAGE

BASIC _____

SPECIAL ADDL _____

MORTGAGE TAX TOTAL __

TOTAL RECORDING FEES 57 _____

THIS PAGE IS PART OF THE INSTRUMENT

I HEREBY CERTIFY THAT THE WITHIN AND FOREGOING WAS RECORDED IN THE CLERK'S OFFICE OF ONEIDA COUNTY, NEW YORK.

TERMINATION ID 2 _____

INITIALS _____ 3

THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 116, OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS PAGE IS PART OF THE RECORDED INSTRUMENT.

RETURN TO: (NAME) Dennis E. McDermott, Esq.

(ADDRESS) 112 Ferrier Avenue

Oneida, NY 13421

TAX SALE DEED

Made this 9th day of February, 2000 by and between:

MICHAEL D. HOLMES, as City Clerk of the City of Sherrill, Oneida County, New York.

the "Grantor," and

THE CITY OF SHERRILL, NEW YORK, a municipal corporation having its

office and principal place of business at 377 Sherrill Road, Sherrill, New York.

The "Grantee."

WITNESSETH, that the Grantor, under the authority contained in Title VII of the Sherrill City Charter (Local Law No. 1 of the Year 1925, as amended) and in Section 1060 of the Real Property Tax Law of the State of New York, does hereby remise, release and quitclaim unto the Grantee, its successors and assigns, forever the following premises for unpaid taxes for the year 1997:

FIRST PARCEL:

Premises of Oneida Indian Nation of New York

West Seneca Street, Sherrill, New York

City of Sherrill/Town of Vernon/Oneida County/New York

SBL No. 322.014-1-23 100 ft. front x 200 ft. depth

1997 Tax $2,083.00

SECOND PARCEL:

Premises of Oneida Indian Nation of New York

Prospect Street, Sherrill, New York

City of Sherrill/Town of Vernon/Oneida County/New York

SBL No. 322.014-1-25 55 ft. front x 211.60 ft. depth

1997 Tax $21.00

THIRD PARCEL:

Premises of Oneida Indian Nation of New York

Prospect Street, Sherrill, New York

City of Sherrill/Town of Vernon/Oneida County/New York

SBL No. 322.014-1-26 60 ft. front x 211.60 ft. depth

1997 Tax $21.00

Subject only as to such claims thereon as by law are provided.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the date first above written.

[S E A L]

Michael D. Holmes
Sherrill City Clerk

STATE OF NEW YORK

COUNTY OF ONEIDA ss:

On this 9th day of February, 2000, before me, the subscriber, personally appeared MICHAEL D. HOLMES, to me known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(-ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person(s) on whose behalf such individual(s) acted, executed the instrument.

Notary Public

PAM E. VOELKER
Notary Public in the State of New York
Appointed in Oneida County
Reg. No. 01V04810324
My Commission Expires Oct. 31, 00

TAX SALE AFFIDAVIT
WEST SENECA STREET and PROSPECT STREET

SHERRILL, NEW YORK

STATE OF NEW YORK

COUNTY OF ONEIDA ss:

MICHAEL D. HOLMES, being duly sworn, deposes and says:

1. At all times herein mentioned, I was and still am the City Clerk of the City of Sherrill, New York.

2. On August 7, 1997, letters to all delinquent taxpayers, including the Oneida Indian Nation of New York, were mailed. Such notice to the Oneida Indian Nation of New York was enclosed in a postpaid envelope address as follows:

Oneida Indian Nation of New York
c/o Ray Halbritter
Box 1
Vernon, NY 13476

and was deposited in the United States Post Office at Sherrill, New York. Such notice demanded payment of such delinquent taxes by September 2, 1997.

3. At a regular meeting of the City Commission held on September 8, 1997, at which a quorum was present throughout, a resolution was duly adopted directing me to advertise and sell the subject premises.

4. A tax sale notice was duly published in the Oneida Daily Dispatch, the official newspaper of the city, once a week for six (6) consecutive weeks on September 17, September 24, October 1, October 8, October 15, October 22 and October 29, 1997. There was further posted a notice of said sale not less than 42 days prior to the date of sale in the following three (3) public places within the City of Sherrill.

1. Sherrill City Hall;

2. Sherrill Police Station; and

3. Sherrill Post Office.

5. A tax certificate sale was held at the Sherrill City Hall, 377 Sherrill Road in said city, on November 5, 1997 at 2:00 PM. The city was the sold bidder and bid the subject premises in for the respective sums as follows:

SBL No. 322.014-1-23 (West Seneca Street)	$2,291.31
SBL NO. 322-014-1-25 (Prospect Street)	23.13
SBL No. 322.014-1-26 (Prospect Street)	23.13
Total	$2,337.57

The tax sale certificate for the subject premises was recorded in the office of the Oneida County Clerk on December 10, 1997.

6. Notice of redemption was published in the Oneida Daily Dispatch on November 8, 1999, December 8, 1999 and January 7, 20000, stating that the last day to redeem the property was February 8, 2000. A true copy of such notice was personally served on William Hervey, the Director of Intergovernmental Relations for the Oneida Indian Nation of New York (the said Oneida Indian Nation of

New York being the record owner of said property) on January 10, 2000 at about 11:30 AM at the office of the Oneida Indian Nation, 579A Main Street, Oneida, New York. With respect to SBL No. 322.014-1-23 (West Seneca Street), an additional true copy of such notice was also personally served on Kathy Perham, the Executive Assistant to the General Manager of the Oneida Textile Designs (reputedly, an enterprise of the said Oneida Indian Nation of New York conducting its business from the said premises) at approximately 12:00 PM on January 10, 2000 on the said premises. An additional true copy of such notice was posted on each of the following parcels which were, at that time, vacant:

SBL No. 322.014-1-25 (Prospect Street)

SBL No. 322.014-1-26 (Prospect Street)

Such posting occurring at approximately 12:00 PM on January 10, 2000.

7. As of the date of this affidavit, none of the aforementioned parcels has been redeemed.

8. To the best of my knowledge, all requirements for the sale of the property for unpaid delinquent property taxes as set forth in Title VIII of the Sherrill City Charter have been complied with.

_____

Michael D. Holmes
Sherrill City Clerk

Sworn to before me this
9th day of February, 2000.

Notary Public
PAM E. VOELKER
Notary Public in the State of New York
Appointed in Oneida County
Reg. No. 01V04810324
My Commission Expires Oct. 31, 00

Letter from Michael Anderson, Acting Assistant Secretary, Indian Affairs, January 19, 2001

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

January 19, 2001

The Honorable Dwight L. Evans
Mayor, City of Sherrill
New Sherrill Town Building
377 Sherrill Road
Sherrill, New York 13461

Re: City of Sherrill vs. Oneida Indian Nation

Dear Mr. Evans:

I understand that in certain pleadings filed in the above-captioned case, lawyers for the City of Sherrill and others contend that the Department of the Interior does not recognize an Oneida reservation created by the Treaty of Canandaigua. Your counsel has referred to certain maps and census reports as evidence of either non-recognition or diminution of that reservation.

Any attempt to utilize Bureau of Indian Affairs records to support the notion that the Oneida reservation was disestablished would be erroneous. The Office of the Assistant Secretary Indian Affairs supports the view that the

Treaty of Canandaigua created a reservation with approximately 250,000 acres in Central New York, that the lands which are the subject of the pending claim are within that area and the claim area has never been disestablished or diminished. Please be advised that the Deputy Commissioner of Indian Affairs concurs in this conclusion.

Sincerely

Michael Anderson
Acting Assistant Secretary – Indian Affairs

cc: Sharon Blackwell, Deputy Commissioner of Indian Affairs
Raymond Halbritter, Oneida Nation Representation

Section 81 Compliance, December 26, 2001

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Eastern Regional Office
Suite 260
3701 North Fairfax Drive
Arlington, Virginia 22203

December 26, 2000

Mr. Ray Halbritter, Nation Representation
Oneida Indian Nation
c/o Turning Stone Casino Resort
P.O. Box 126, RD #2 Patrick Road
via Verona, New York 13478

Re: $70,644,384.00 Combined Credit Facility and Bond Offering with KeyBank National Association, for itself and certain other Lenders

Dear Mr. Halbritter:

In connection with your request for review of the documents shown on the attached Document List for compliance with 25 U.S.C. §81 (as amended in Public Law 106-179, March 14, 2000), we have review the documents and have determined that the only documents that "encumber Indian lands for a period of 7 or more years" (P.L. 106-179 §2103(b) are the (i) Consolidated Leasehold Indemnity Mortgage and Security Agreement and the (ii) Assignment of Rents and Leases. The other documents shown on the attached list do not require approval under Section 81. Based

upon our review, the Leasehold Mortgage and the Assignment are in compliance with the applicable section of the Code and are hereby approved. We have enclosed executed copies of individual Section 81 Approvals that can be attached to each approved document.

In connection with our Section 81 review, we have also reviewed Phase 1 Environmental Study and your Supplemental Environmental Assessment each dated December 2000. We have reviewed these items to ensure that our approval is in compliance with the National Environmental Policy Act ("NEPA"). The two uses for the private financing approved under Section 81 are (i) an expansion of the existing casino facility and (ii) construction of a clubhouse for the existing golf course. We have determined that the gaming expansion is within the scope of activities analyzed in the original Environmental Assessment. We have also determined that the golf course clubhouse, based upon the submitted Supplemental Environmental Assessment, will have no significant impact on the environment. We have enclosed a Notice of Finding of No Significant Impact. We have also determined that you are not required to post or publish the FONSI and the approval under Section 81 shall be effective as indicated therein.

Sincerely,

Franklin Keel
Eastern Region Director

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Eastern Regional Office
Suite 260
3701 North Fairfax Drive
Arlington, Virginia 22203

SECTION 81 APPROVAL

The Oneida Indian Nation, a sovereign Indian nation (the "Nation"), has submitted this Consolidated Leasehold Indemnity Mortgage and Security Agreement from the Oneida Land Corporation dated as of December 1, 2000 (the **"Leasehold Mortgage"**), from the Oneida Land Corporation to Keybank National Association, in its individual capacity and as Agent for certain Lenders described therein, to the Department of Interior, Bureau of Indian Affairs (the **"Department"**), for its review and has requested its approval pursuant to 25 U.S.C. Section 81 (as amended in Public Law 106-179, March 14, 2000). The Department has reviewed this Leasehold Mortgage and determined that it complies with the provisions of 25 U.S.C. Section 81 (as amended in Public Law 106-179, March 14, 2000).

This Leasehold Mortgage is hereby approved by the Secretary of the Interior or his designee pursuant to 25 U.S.C. Section 81 (as amended in Public Law 106-179, March 14, 2000).

This Approval relates back to the aforesaid date of the Leasehold Mortgage.

Approved Pursuant to 25 U.S.C. 81:

United States Department of Interior Bureau of Indian Affairs

Dated: DEC 26 2001

_____

Franklin Keel, Director of the Eastern Regional Office of the Bureau of Indian Affairs for the Secretary of the Interior acting under delegated authority.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Eastern Regional Office
Suite 260
3701 North Fairfax Drive
Arlington, Virginia 22203

SECTION 81 APPROVAL

The Oneida Indian Nation, a sovereign Indian nation (the "Nation") has submitted this Assignment of Rents and Leases from the Oneida Land Corporation dated as of December 1, 2000 (the **"Assignment"**), from the Oneida Land Corporation to Keybank National Association, in its individual capacity and as Agent for certain Lenders described therein, to the Department of Interior, Bureau of Indian Affairs (the **"Department"**), for its review and has requested its approval pursuant to 25 U.S.C. Section 81 (as amended in Public Law 106-179, March 14, 2000). The Department has reviewed this Assignment and determined that it complies with the provisions of 25 U.S.C. Section 81 (as amended in Public Law 106-179, March 14, 2000).

This Assignment is hereby approved by the Secretary of the Interior or his designee pursuant to 25 U.S.C. Section 81 (as amended in Public Law 106-179, March 14, 2000).

This Approval relates back to the aforesaid date of the Assignment.

Approved Pursuant to 25 U.S.C. 81:

United States Department of Interior
Bureau of Indian Affairs

Dated: DEC 26 2001

Franklin Keel, Director of the Eastern Regional Office of the Bureau of Indian Affairs for the Secretary of the Interior acting under delegated authority

Zogby Study, Oneida Indian Nation Economic Impact Study 2000

ONEIDA INDIAN NATION
ECONOMIC IMPACT STUDY 2000
Submitted to:
Diane Sterling

Submitted by:
Zogby International
John Zogby, President
John Bruce, Vice President Systems Administration
Rebecca Williams, Vice President Editorial

John Karin,
Stephen P. Neun, Ph.D.,
David H. Beatty, Ph.D.,
Analysts/Writers

November 13, 2000

Table of Contents

[2]

I. Executive Summary

- The Oneida Nation Enterprises directly employs 2,8547 workers. When the impact of capital outlays for the 2000 fiscal year are taken into consideration, 3,041 jobs are directly related to the economic endeavors of the Oneida Nation Enterprises. *(All references to the fiscal year refer to data collected from Nov. 1 to Oct. 30.)*

- Job growth at the Nation has tapered off in recent years, but overall employment has held steady at between 2,850 and 3,000 workers since 1997.

- When indirect job creation from current operations is taken into account, 4,049 jobs have been created in Oneida, Madison, and Onondaga counties, and 4,193 have been generated statewide.

- Capital outlays for plant expansion and equipment in 2000 equaled $25.6 million, and that is down considerably from $70.5 million in 1999. Despite this decrease, capital outlays generated 393 jobs through direct and indirect effects in the three-county region.

- Total wages at the Oneida Nation Enterprises equaled $63.3 million in 2000 and reflect a steady upward trend.

- Indirect job creation in the three-county region added 1,401 jobs, of which 1,192 were generated from current employment at the Nation. The remaining 209 jobs reflect the indirect impacts of capital outlays. As a result, the Oneida Nation Enterprises in the three-county region created a total of 4,442 jobs in 2000.

- Non-Native Indian employees at the Oneida Nation Enterprises continue to generate substantial tax revenues for all levels of government.

- Those employees paid an estimated $15.5 million to New York State and $17 million in federal payroll taxes in 2000, and that includes federal income taxes along with the employee and employer portions of the Social Security and Medicare taxes.

- Vendor spending by the Oneida Nation equaled nearly $123.3 million in 2000, which is up substantially from the previous year.

- Vendor spending impacts a multitude of sectors throughout the three-county area, as well as in New York State. More than 4,000 vendors provided goods and services to the Oneida Nation Enterprises in 2000.

- Vendor spending in the three-county area has created approximately 200 jobs.

- The Oneida Indian Nation, through its job creation and various enterprises both within the Nation and in the surrounding communities, continues to generate revenues for the many governmental agencies contiguous to the Nation. These revenues include personnel, sales and real property taxes generated by Nation employees, and Nation vendor spending.

[3]

- More than 90% of the Nation employees reside in the three-county area, which means that a high proportion of the payroll impacts is felt in the immediate geographic region.

- Approximately 3.5 million guests visited Turning Stone in 1999, down slightly from projected figures, but an increase over the 3.4 million the previous year. In 2000, there was a moderate reduction in attendance to 3.5 million. Based on tracking data, the casino is anticipating attendance figures to reach 3.8 million in 2001.

- Building permits in Oneida and Madison counties in 2000 continued the steady upward

trend which was demonstrated in 1998 and 1999. Contractors and realtors have cited the Oneida Nation and the capital building program on the Nation's property as a significant reason for construction growth.

- Home improvement contracting in the three-county area – additions and general home improvements – is as strong in 2000 as in 1998-1999.

[4]

II. Conclusions and Recommendations

The Oneida Indian Nation should keep two words in mind, stability and diversity, as it plans its development into the new century.

In the past decade, the Nation has demonstrated its commitment to the region in terms of hiring workers, expanding activities and attracting thousands of tourists annually.

Job growth has been stable over the years, and it appears to have reached a plateau at about 3,000 employees. Local municipalities should recognize that the Nation's workforce is not only stable, but in contrast to other corporations, it cannot relocate, transfer jobs elsewhere or close its local operations at any point.

Stable jobs produce steady salaries, which as illustrated in this study, have a major impact on the area's economy. While the nation's hiring levels might remain static, it is important that it continue to attract a quality workforce thanks to its competitive salaries.

There can be efforts to expand diversification without substantially affecting the overall number of employees. For example, in the hotel-casino group, fewer than half of the employees are directly employed in casino operations. It was 45% in 2000, down from 55% in 1999. An increasing number of employees work in the showroom, the convention center, banquet operations, at the golf courses, and at the marina.

Continued diversification is recommended, both to counter competition from other casinos that concentrate narrowly on gaming, and to attract a wider range of guests for other activities at the Nation.

Diversification in the Nation's retailing and manufacturing operations also helps make the Nation's economic base more recession-proof. While any single type of recreational/tourism activity may face fluctuating demand from good times to bad, this diversification serves to augment stability.

The Nation should expand its efforts to inform the public about the history and culture of the region, creating added links that prompt visitors to return to the resort and Central New York. Because of the public's interest in the phenomenon of the Oneida Indian Nation, more emphasis on the Native American culture can reinforce ties between the Nation's own people, visitors and the region's residents.

Continued research to identify customer preferences in all of the Nation's activities is advisable. It helps to know whether the public is satisfied with existing enterprises and what types of diversification it would welcome in the future.

[5]

III. Narrative Analysis

PART I
JOB CREATION

Direct Job Creation

In 2000, the Oneida Nation Enterprises directly employed 2,857 individuals. Of that total, 92% were full-time positions, and 86% were held by non-Native Americans.

Table 1-1. Job Creation at the Oneida Nation Enterprises, 1990-2000*

Year	Total Employment	Change From Previous Year
1990	6	--
1991	30	24
1992	74	44
1993	1,704	1,630
1994	2,006	302
1995	2,221	215
1996	2,417	196
1997	2,850	433
1998	2,991	141
1999	2,982	-9
2000	2,857	-125

*Source: Unless otherwise indicated, the Oneida Indian Nation is the source of the data shown in all tables.

While the number of jobs is down slightly from 2,982 in 1999, a look at Table 1 indicates that job growth at the Oneida Nation Enterprises has been nothing short of phenomenal throughout the 1990s.

From a modest beginning of only six employees, the Oneida Nation Enterprises has expanded to 2,857. Most of that growth took place in 1993 when the casino first opened its doors.

Over the past four years, employment growth has stabilized, and usually hovers between 2,850 and 3,000 jobs.

[6]

Table 1-2. Distribution of Employment in 2000

Major Activity	Employment	%
Casino & Hotel Group	2,176	76
Administrative & Human	362	13

Services		
Retail Group	267	9
Textile Manufacturing	52	2
TOTAL	2,857	100

Table 1-2 sheds some light on the overall distribution of jobs at the Oneida Nation Enterprises. At the present time, 76% of the workers employed by the Oneida Nation are directly connected with the Casino and Hotel Group. The other 24% are divided among the retail group, administrative and human services, and textile manufacturing.

Of the 2,176 employees working for the casino/hotel group, 46% operate games (down 10% from 1999); 20% are employed in food and beverages, and 8% are employed in hotel operations. The remaining one-quarter of the employees is involved in such operations as security, marketing/credit, and the golf course.

Indirect Job Creation

Significance of the Multiplier

As stated in the previous report, new business activity not only benefits the new jobholders, but has an impact on the local economy as well. Clearly, any additional jobs beget more jobs, as payroll from the initial jobs is spent and circulated throughout the local economy. And as business activity expands, the increase in purchases from suppliers generates even more employment.

The process just described is referred to as the multiplier effect and it measures the ability of one job to produce more jobs as income is circulated throughout the economy. Thus, an increase in employment in a given locality will cause a chain reaction that cumulates into a

multiplicative change in overall employment. It stands to reason that the multiplier effect is most strongly felt locally. The statewide effect is more magnified and includes the local effect, while the nationwide effect is even larger.

(For this report, Zogby International purchased a set of multiplier that covers the economic activities of the Oneida Nation Enterprises within Oneida, Madison and Onondaga counties, plus the state. The estimates were supplied by IMPLAN of Stillwater, Minnesota, a firm that specializes in input/out analysis and is among the most highly recognized sources.)

The multiplier effect can be observed every day. For example, take the case of an individual who recently found employment at a local manufacturing plant that is

[7]

expanding production. Upon receiving his first paycheck, he takes his car to the local auto repair shop to install a new muffler.

The owner of the auto repair shop, along with the shop employees, all benefit from these expenditures in terms of enhanced income. These individuals in turn, are likely to spend a portion of this additional income at the local supermarket or barbershop. Therefore, the total impact on the local economy in terms of jobs and income generated is far greater than the initial job created at the local manufacturing plant.

Economists generally estimate the multiplier based upon input/output analysis pioneered by Wassily Leontief. Input/out analysis is an important estimating tool employed by economists to tract the intricate web of production linkages among various sectors of the economy. From this

analysis, economists can derive a multiplier and, as one would expect, it varies widely across industries.

The multiplier effects are made up of two components: the payroll effect and the vendor spending effect. In the case of the multipliers applied to the Oneida Nation Enterprises, approximately 82% of indirect job creation emanates from payroll rollover, while the remaining 18% comes from the Nation's vendor spending.

Table 1-3. Job Creation Through the Multiplier Impacts

Activity	Direct Job Creation	Three County		Statewide	
		Multiplier	Total Job Impact	Multiplier	Total Job Impact
Casino/ Hotel Group	2,176	1.41	3,077	1.46	3,173
Administrative/ Human Services	362	1.38	501	1.45	525
Retail Group	267	1.41	375	1.45	387
Manufacturing	52	1.84	96	2.07	108
TOTAL	2,857	1.41*	4,049	1.46*	4,193

**The composite multipliers are based on a weighted average of the multipliers for the four major activities. Source: IMPLAN*

[8]

The actual multipliers for the three-county region and the state are supplied in Table 1-3. The composite multiplier for the three-county area (Oneida, Onondaga and Madison

counties) equals 1.41. This means that for every one job directly created by the Oneida Nation Enterprises, .41 jobs are created indirectly in the three-county area because of the increased need for inputs and the payroll effects that result from increased household income.

Overall, that translates into an additional 1,192 indirect jobs in the three-county area, with most of those jobs existing because of the casino and hotel group (901 jobs added).

On a statewide basis, the composite multiplier equals 1.46, and a total of 1,336 indirect jobs exist because of the Oneida Nation Enterprises. The casino and hotel group created 997 indirect jobs.

Table 1-4. Job Creation Impacts of Capital Expenditures in 2000

Capital Expenditures in New York State (in millions of dollars)		Direct Job Creation	Three-County Area		Statewide	
			Multiplier	Total Impact	Multiplier	Total Impact
Construction	$16.8	147	2.2	323	2.4	350
Equipment	3.8	37	1.9	70	2.0	74

Source: IMPLAN

Outlays for land, new construction, and equipment also generate jobs that must be taken into consideration. For the 2000 fiscal year, the Oneida Nation Enterprises expended $25.6 million for land, new construction and equipment.

Assuming 80% of that outlay occurred within the three-county area, it was estimated that capital outlays directly generated 184 jobs for the three-county area during 2000. Of this total, 147 resulted from new construction and 37 from equipment outlays. Thus, total employment from capital outlays, including direct and indirect employment, each 393 jobs for the three-county area in 2000.

The statewide employment impacts are very similar. The Oneida Nation Enterprises generated a total of 424 jobs statewide because of capital expenditures during the 2000 fiscal year. Of that total, 240 were created indirectly.

[9]

Table 1-5. Comparison of Annual Employment Growth, 1991-2000

Year	Oneida Nation	Three-County	Statewide
1991	400	-3	-3
1992	147	-1	-2
1993	2,203	1	0.8
1994	18	-0.3	0.5
1995	11	-1	-0.5
1996	9	-0.1	1
1997	18	1	3
1998	5	0.1	1
1999	-0.3	-0.2	0.5
2000	-4	2	2
1990-2000 avg.	279	0.4	0.3
1993-2000 avg.	8	0.3	1

The information contained in Table 1-5 compares job growth at the Oneida Nation Enterprises with employment trends at the regional and state levels. These figures clearly indicate that the annual rate of job growth at the Oneida Nation far outpaced that of the surrounding region and the state.

From 1993, when the Oneida Nation had its largest increase in employment, to the present, employment increased at the brisk pace of 8% per year. Over the same period, employment at the three-county and state levels increased only 0.3% and 1% per year, respectively.

To put these figures in perspective, the rate of job growth at the Oneida Nation Enterprises from 1993 through 2000 was over 25 times the rate of job growth for the three-county area, and over eight times the rate for employment growth for the entire state over the same period of time.

[10]

PART II
Vendor Spending

Table 2-1. Vendor Spending, 1998-2000

Year	Spending (in millions)
1998	$102.6
1999	89.5
2000	123.3

Vendor payments by the Oneida Nation have played an important role in the economic vitality of the region. In

2000, vendor spending topped $123 million, and more than 47% of vendors were located in New York State.

Table 2-2. Vendor Count For Payments For Inputs and Capital Spending

	Location of Vendors		
Year	All Regions	Statewide*	Three-County
1999	4,157	836	1,076
2000	4,003	829	1,055

(*excluding three-county region)

Here is an abbreviated list of goods and services purchased by Oneida Indian vendors: petroleum, cigarettes, t-shirts, bingo paper, retail gifts, vehicles, computers, daycare supplies, dice/cards, medical supplies, recreational supplies, salon supplies, food/beverages, dishes/glasses, consulting services, travel services, janitorial services, repairs/maintenance, landscape services and construction supplies.

Indirect Job Impacts

Job creation through vendor spending is one of the primary ways economic activity at the Oneida Nation Enterprises enhances the regional and state economy. In total, slightly less than 18% of the jobs generated from the multiplier impact result from vendor payments in the three-county region. The remaining 82% results from the rollover impact of payroll expenses.

A total of 203 jobs have been indirectly created via vendor payments in the three-county region. Table 2-3 provides a detailed breakdown of the top 39 sectors of the economy most likely impacted along with an estimate of the number of jobs created. For example, 32 jobs were created in

the personnel supply services sector in the three-county region in 2000.

[11]

Table 2-3. Indirect Jobs Created (Estimated) Through Vendor Spending in the Three-County Region

Economic Activity	Jobs
Personnel Supply Services	32
Maintenance/Repairs- Other Facilities	13
Real Estate	12
Other Business Services	11
Wholesale Trade	10
Services to Buildings	9
Accounting, Auditing, Bookkeeping	8
Theatrical Producers, Bands, etc.	6
Research, Development/ Testing Services	5
Motor Freight Transport/Warehousing	5
Job Training and Related Services	5
Detective/Protective Services	4
Computer/Data Processing Services	4
Laundry/Cleaning/Shoe Repair	4
Newspapers	4
Management/Consulting Services	4
Legal Services	4
Advertising	4
Radio/TV Broadcasting	4
Hotels/Lodging	4
Landscape/Horticultural Services	3
Banking	3
U.S. Postal Service	3
Eating/Drinking	3
Retail Trade	3
Commercial Printing	3

Photofinishing/Commercial Photography	3
Communications, Except Radio/TV	2
Automobile Repair Services	2
Commercial Sports, Except Racing	2
Equipment Rental/Leasing	2
Miscellaneous Repair Shops	2
Electric Services	2
Engineering/Architectural Services	1
Miscellaneous Printing	1
Automotive/Apparel Trimmings	1
Credit Agencies	1
Maintenance/Repair-Residential	1
Motion Pictures	1
Air Transportation	1

[12]

PART III
Tax Revenue and Tax Rates

As a federally recognized sovereign nation, the Oneida Nation claims exemption from the collection of state and county sales taxes, hotel occupancy taxes, and from property taxes on the land it owns.

Various court decisions, including United States District Court (1977), United States Circuit Court of Appeals (1983), and The Supreme Court (1985) have determined and affirmed that certain counties are responsible for settling the land claim issues with the Oneida Nation. Negotiations with New York State, and Oneida County and Madison County officials are ongoing.

Despite these exemptions, the Oneida Nation Enterprises generate significant revenues for all levels of

government. Most of these revenues result from taxes levied on non-Native American employees.

In 2000, Madison, Oneida, and Onondaga counties received approximately $264,849, $1.9 million and $324,813 respectively, in tax revenues due to employment at the Oneida Nation Enterprises. In addition, the three counties will share $1.7 million in revenues resulting from indirect job creation through the multiplier and capital outlays.

Local tax revenues in 2000 for cities, towns, villages, school districts, and fire districts in the three counties will total more than $5.6 million. Additional local tax revenues of $3,536,384 will be generated across the three-county area because of indirect job creation.

Federal and State Taxes

The income tax is the main source of the revenue for the federal government, generating in excess of 48% of all revenues in 1998.

Table 3-1. Federal and State Income Taxes Withheld (in millions)

Year	Federal Taxes	State Taxes	Annual Total
1997	$5.9	$1.6	$7.5
1998	6.5	1.8	8.3
1999	6.8	1.9	8.6
2000	7.4	2.1	9.5

(Based on payroll statistics)

According to Table 3-1, federal income tax withholdings for non-Native American employees at the Nation increased from almost $5.9 million in 1997 to an estimated $7.4 million in 2000. Increased employment and

earnings account for this upward trend, with enhanced earnings playing a much greater role in the last two years.

[13]

Total withholdings may overestimate the amount federal income taxes paid because some employees may receive a refund from the federal government at the year of the year when they file their federal taxes. On the other hand, total withholdings may underestimate taxes paid because other workers may not have enough taxes withheld and, as a result, may have to make additional payments at the end of the year. In addition, total withholdings does not take into consideration the taxes paid by employees on any tips or gratuities they received.

Assuming these contrary forces negate one another, it is plausible to assume that overall withholds are a close approximation of the actual amount of federal taxes paid by non-Native Americans employed at the Nation.

In addition, Social Security and Medicare payments need to be taken into consideration. Social Security is funded through a payroll tax of 15.3% shared equally between the employer and employee up to a maximum level of $76,200 per worker. That translates into payments to the Social Security Administration of $9.7 million in 2000.

Slightly more than $17 million was paid in federal payroll taxes, which averages out to approximately $6,948 per non-Native American employee.

Assuming the additional jobs created via the multiplier effect, along with those resulting from capital outlays are similar in nature to those created by the Oneida Nation, an additional $12.2 million in federal payroll taxes

was generated in 2000. That brings the total payments in federal payroll taxes to $29.3 million.

It should be kept in mind that this figure is likely to underestimate the level of federal taxes paid because it does not consider the taxes that are paid by jobs outside New York State that are created by the multiplier effect.

State Taxes

It is estimated that workers at the Oneida Nation Enterprises paid $2,089,731 in state income taxes in 2000, or $848 per non-Native American worker. Adding in the revenues generated through capital outlays and indirect employment, the total is $3.5 million in 2000.

In addition, we need to take into account a variety of other taxes at the state level such as the sales tax, motor vehicle fees, and hospital patient fees. In 1999, New York State revenues, exclusive of the state income tax, federal aid, and lottery income equaled $25.177 billion. If that figure is divided by 8,580,667, which is the average number of workers employed in the state for the first nine months of 2000, the average amount of funds generated by each job through various taxes and fees can be estimated.

[14]

That figure equals $2,934. Adjusting downward to reflect the fact that wages in the three-county area are approximately 12% below the state average, it is estimated that each job in the region supported $2,582 in the state revenues in 2000.

Multiplying the 2,464 jobs directly created by the Nation yields $6.4 million in state revenues. The number is further adjusted to $7.4 million to reflect the fact that 393 Native American employees are likely to pay other forms of

state taxes, despite having the option of exemption from state income tax.

When the 1,760 jobs created indirectly or through capital outlays are taken into consideration, an additional $4.5 million will be generated in state revenues. Combining direct jobs with indirect jobs, $11.9 million in state revenues from various taxes and fees were generated in 2000.

In summary, $15.5 million in revenues will be generated for the State of New York from the economic activities at the Oneida Nation Enterprises in 2000. Twenty-three percent of that total results from state incomes taxes, while 77% will come from various fees and other forms of state taxation.

County Taxes

Table 3-2. Tax Revenues for the Three Counties in 1997 (in millions)

County	Total Tax Revenues	Property Taxes %	Sales Taxes %	Other %
Onondaga	$284.3	64.8	20.4	14.8
Oneida	91.4	51.4	47.7	0.9
Madison	25.1	75.1	24.0	0.9

Source: *Comptroller's Special Report on Municipal Affairs*

In order to estimate the tax revenues generated at the county level, information was obtained from the *Comptroller's Special Report on Municipal Affairs*, which can be found on the official New York State website, *http://www.osc.state.ny.us.* According to Table 3-2, in 1997, Madison County generated approximately $25.1 million in tax revenues, while Oneida and Onondaga counties generated $91.4 million and $284.3 million, respectively. (Note: 1997 was the latest year available.)

Dividing each one of these figures by the average number of jobs in 1997 shows the taxes supported by each employee. In Madison County, each job supported $744 in 1997. The same figure for Oneida and Onondaga counties equaled $861 and $1,256 respectively.

A portion of county taxes is paid in sales taxes and another portion is paid indirectly, as when one patronizes a local business, which in turn pays property or business taxes.

[15]

The 340 Nation employees residing in Madison County supported approximately $264,849 in county taxes in 2000. For Oneida County, 2,064 residents paid $1.8 million in county taxes. In Onondaga County, 247 Nation employees contributed $324,813 in county revenues.

A total of 1,585 workers gained employment either indirectly or because of capital outlays in the three-county region in 2000. Because it is impossible to determine the county of residence for all of these individuals, the average county tax burden per worker across the three counties is calculated, weighted by the proportion of workers residing in each county.

In 1977, that figure equaled $1,094 per worker. As a result, an additional sum of $1.8 million was generated in county taxes to be shared among the three counties. (These figures are adjusted for inflation.)

Added State Impacts

Two economic impacts directly accrue from the Oneida Nation's economic success. They come from payments made to New York State for the regulation of gaming. In 1999, the Nation paid $3.1 million, and in 2000, the Nation made payments of $1.3 million to the New York

State Racing and Wagering Board. In addition, fiscal year 2000 payments to the New York State Police totaled $738,444, according to a Nation report.

Collection of thruway tolls at Exit 33, in the vicinity of the Turning Stone Casino, produced approximately $3.4 million in 1997 and $3.7 million in 1998 for New York State. Based on a consistent increase in casino patronage and other Nation enterprises, the anticipated toll revenue was expected to reach $4 million for 1999, and $4.3 million in 2000.

Local Taxes

Local taxes are difficult to calculate given the multitude of taxes in place at the city, village, and school district levels. Data gathered by the New York State Comptroller's Office for 1997, the latest year available, shows the following:

Table 3-3. Tax Revenue for the Cities, Towns, Villages, School Districts, Fire Districts in Three Counties, 1997 (in millions)

County	Total % Revenues	Property Taxes	Sales Taxes %	Other %
Onondaga	$480.83	85.8	13.1	1.1
Oneida	218.46	82.3	15.4	2.3
Madison	60.67	94.1	6.1	0.8

Source: *Comptroller's Special Report on Municipal Affairs*

A glance at table 3-3 demonstrates that local authorities rely heavily on property taxes as a method for generating revenue.

[16]

The table below shows local tax revenues paid per employee and total employee impact, using the same

methodology employed to estimate county taxes generated by Nation employees.

Table 3-4. Local Tax Revenues for the Three Counties

County	Local Tax Revenues (Per Employee) 1999	Local Tax Revenues (Total Employees) 2000
Onondaga	$2,215	$572,819
Oneida	2,059	4.5 million
Madison	1,795	638,984

The weighted average of local taxes is multiplied by the number of indirect jobs, and those resulting from capital outlays, to get an estimate of the local taxes generated via indirect employment. In 1997, that total equaled $3.4 million or $2,131 times 1,585 workers. Adjusting for inflation yielded $3.5 million in 2000.

Property Tax Trend

Table 3-5. Municipal Property Tax Trend

Municipality	Total Tax Rate Per $1,000				
Oneida County	1997	1998	1999	2000	2001
Augusta	6.55	7.52	8.48	8.11	7.04
Kirkland*	4.41	4.40	4.40	4.39	4.39
Vernon	7.79	7.54	7.79	7.64	NA
Verona**	7.70	7.00	7.88	7.81	NA
Vienna	8.49	8.63	8.87	8.88	NA
Rome (city)	6.67	7.49	7.79	7.53	NA
Sherrill (city)	5.00	5.25	5.25	5.25	5.25
Madison County					
Cazenovia	8.03	7.87	7.90	6.77	NA
Oneida (city)	7.40	7.36	7.40	7.52	NA

Lenox	7.17	6.97	7.19	7.38	NA
Stockbridge	9.37	9.58	9.57	9.55	NA

*Town general tax rate only.
**Oneida County tax only. Town does not raise any town general tax.

[17]

Each county has a number of tax and special district rates that apply separately to villages, towns, schools and the county. The rates for each service are developed independently for the municipality or special district receiving the services. As such, the taxes raised by the various municipalities vary widely, and sometimes wildly.

The bottom line, however, is that the major tax rates, for general municipal services have remained relatively stable over the past five years. This stability reflects the constancy of local budgets and tax revenue, based on reasonably steady assessed values of the properties within the governing agency.

[18]

PART IV
Payroll Impacts

In 2000, the Oneida Nation Enterprises employed 2,857 individuals. Of that total, 2,618, or 91.6%, were full-time positions. In addition, 86% were non-Native Americans.

While total employment is down slightly from a high of 2,991 workers in 1998, overall employment has remained remarkably steady over the last four years, at between 2,850 and 3,000 workers. Clearly, these employment figures

indicate that the Oneida Nation Enterprises has become one of the most stable employers in the region.

This is a trait that should not be overlooked given the economic shocks the area economy has sustained over the last few decades with the closing of Griffiss Air Force Base and the departure of Lockheed-Martin and Chicago Pneumatic.

Table 4-1. Total Payroll, 1995-2000

Year	Total Payroll (in millions)
1995	$41.5
1996	47.1
1997	47.9
1998	56.7
1999	60.0
2000	63.3

Total payroll at the Oneida Nation equaled $63,255.429 in 2000, which is up by 5.4% from the previous year. What makes this increase in payroll interesting is that it took place at time when overall employment at the Nation diminished by 125 workers. This trend can only take place if average wages are increasing.

The average pay for all employees equaled $22,140 in 2000. Average pay, including all payroll-related expenses such as fringe benefits, equals $26,634 per year. The bulk of the difference is accounted for by the cost of medical care insurance.

The average pay of full-time employees equals $23,539 per year. This figure is based on the assumption that all part-time employees work an average of 20 hours a week.

[19]

Three-County Impact

Figure 1 provides a look at where the Nation's employees reside. More than 92% of the workers reside in Oneida, Madison and Onondaga counties, with the vast majority living in Oneida County. Of the workers that do not live in the three-county area, 51 lives in Herkimer County; 36 reside in Oswego County, and the remaining 119 live in other counties.

* * *

FIGURE 1

These figures clearly indicate that the majority of the economic impact of the Oneida Nation Enterprises is felt in the immediate geographic region. In fiscal year 2000, workers who resided in the three-county region earned a total of $58.7 million, out of a payroll of $63.3 million.

If you add the wages earned by those jobs created indirectly or through capital outlays, the figure becomes substantially larger. Assuming the average wage for those workers equals $22,140, the total payroll impact through direct and indirect effects is $93.8 million. Almost $59 million of this total results from the wages of those individuals who work directly for the Nation. The remaining $35 million results from indirect job creation.

While a substantial sum, it underestimates the total payroll impact because it does not take into consideration fringe benefits, nor does it take into consideration possible tips or gratuities earned by some workers.

[20]

Quality of Jobs

When talking about the quality of employment, the two most important aspects are job stability and wages. Job stability has already been confirmed.

Table 4-2. A Comparison of Average Salaries

Oneida Nation Enterprises	$22,140
Elsewhere in NYS:	
Restaurant Cooks	22,120
Hotel Desk Clerks	20,755
Hosts and Hostesses	18,143
Amusement Games & Recreation Attendants	16,608
Cashiers	15,894

*The report from the Bureau of Labor Statistics provides the mean annual salary for 1998.

The figures were adjusted for inflation.

(*Source: Bureau of Labor Statistics http://www.bls.gov/oes/state)*

A look at Table 4-2 indicates that average wages at the Oneida Nation Enterprises appear to be above industry standards for New York State, although the exact salaries paid to Nation employees was not available. The listed occupations were chosen because they are similar in nature to many of the jobs at the Nation.

What makes these figures even more interesting is that average wage of the five state jobs listed above is $18,704. In addition, in the Mohawk Valley, salaries tend to fall below the state average.

[21]

PART V
The Silver Covenant Chain Grants

The Oneida Nation is mindful of its impact on school districts where it owns land. Since January 1996, the Nation has offered Silver Covenant Chain Grants to six school districts. Since 1998, it has included Oneida County in the grants award program.

These grants have increased annually for each recipient, and that trend is expected to continue.

Table 5-1. Level of Awards

District	1996	1997	1998	1999	2000	Totals
Canastota	$3,149	$21,148	$34,741	$77,815	$111,395	$248,248
Cazenovia	34	70	808	1,562	1,601	4,075
Oneida	7,811	18,855	35,171	73,8831	94,538	230,258
Stockbridge	1,586	4,693	14,387	63,026	108,916	192,608
VVS	60,984	165,428	238,600	382,135	445,092	,292,239
Madison	0	0	0	5,074	10,361	15,435
Morrisville	0	0	0	0	2,588	2,588
Oneida County	0	0	78,762	163,040	45,411	287,213
Total	$73,564	$210,194	$402,469	$766,535	$819,902	$2,272,644

[22]

The total number of visitors to the casino/resort was 20,151,020 through 2000.

The Nation's 285-room hotel marked its third anniversary in September 2000, and with the addition of The Inn at Turning Stone, a 63-room motel, these two quality facilities have had large positive impacts on visitor spending in the area.

When the impact of the Nation's two hotels is combined with other three-county visitor spending figures, the annual spending by visitors to Oneida, Madison and parts of Onondaga County exceeds $172 million.

The Turning Stone hosts a wide variety of events that are particularly well received by the public, including prize fights between big name contenders, charitable telethon fund raisers, and celebrity performance drawing sell-out crowds.

The Nation's acquisition of two nine-hole golf courses, Pleasant Knolls and Sandstone Hollow, added diversity to the golfing opportunities at the resort. The newest one, Shenandoah Golf Course, is drawing a tremendous amount of enthusiasm among serious golfers.

The facility's reputation was enhanced in the summer of 2000 when Turning Stone hosted a pro golfer's "skins game," and a pro-am tournament. In addition, Shenandoah Golf Course received Audubon International's highest ranking—Certified Signature Sanctuary Status—for its commitment to environmental sensitivity. It is the first golf course operated by an Indian Nation, and the 17th golf course in the U.S., to receive this designation.

The resort drew 105,524 visitors to the Showroom through September 2000. Since its opening in March 1999, 23,604 people have visited the Convention Center, 7,719 players have played Pleasant Knolls since its opening in April 1999, and 3,970 golfers have played Sandstone Hollow since July 1999. In 20 months, these four operations have boosted attendance at the casino/resort by almost 133,000 people.

Table 6-1. Annual Number of Visitors

Year	Guests (in millions)	Percent change
1995	2.1	--
1996	2.4	17
1997	2.5	5
1998	3.4	35
1999	3.6	5
2000	3.5	-1

[23]

In 1999, an average of 9,719 daily visitors came to turning Stone Casino. It increased to 9,824 in 2000. In 1999, the Oneida Nation Enterprises, excluding Turning Stone, drew 10,437 customers a day, and it creased to 11,026 daily in 2000.

In 2000, The Turning Stone Resort hotel, a 285-room facility, totaled 82,223 room nights filled. This is an average of 225 rooms per day over the year, representing an 80% occupancy rate. The Inn at Turning Stone during the same period had an occupancy average rate of 34 rooms per day, or 54% occupancy. The projected numbers for FY 2001 are a total room occupancy of 82,735, or 277 rooms per day. The Inn at Turning Stone also is anticipated an increase to 13,908 rooms, or 38 rooms per night.

The Nation's recreational vehicle park had 16,933 sites occupied in 2000, and is anticipating a 5% increase to 17,848 in FY 2001.

The Turning Stone Resort provided a partial attendance count of 36,776 patrons in 1999. The total attendance figures for 2000 are 68,798 patrons, with a projection of 83,500 people in FY 2001.

Conventions brought 10,883 people to the resort in 2000. It is projected to reach 15,047 in FY 2001. The convention banquet center entertained 78,353 guests in 2000, and expects to greet 96,858 guests in FY 2001.

Table 6-2. Visitor Spending Trends (Oneida County)

Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total (in millions)
1995	$23.1	$17.3	$26.2	$38.2	$104.8
1996	24.4	19.1	27.1	37.1	107.7
1997	21.4	18.8	27.8	42.4	110.3
1998	21.9	20.1	30.8	48.3	121.2
1999	23.8	20.2	30.2	44.6	118.9
2000	25.1	19.9	30.9	44.4	120.3

The numbers have been updated to actual dollars for all the years shown, as determined by various county tourist agencies.

In Madison County, visitor spending amounted to $20.4 million in 1995, and has remaining fairly steady over the years. There was a slight decrease to $19.8 million in 2000.

[24]

Table 6-3. Visitor Spending at Oneida County Hotels, 1998-2000 (in millions)

	1998	1999	2000	Percent change
Impact without Turning Stone Resorts and Inn	$121.2	$118.9	$120.3	-0.0
Impact from Turning Stone Resorts and Inn	41.2	48.4	54.8	0.3
Total Impact	$162.4	$169.2	$175.1	0.07

The above table shows the impact on Oneida County from visitor spending.

Hotel Occupancy Tax Trends

Trends in receipts for hotel taxes in Oneida County vary from quarter to quarter. Visitor spending trends are extrapolated from these data, and do not include the impact of the Nation's hotel properties.

Table 6-4. Hotel Receipts in Oneida County, 1995-2000

Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
1995	$65,244	$49,000	$74,000	$108,000	$296,244
1996	69,000	54,000	76,500	105,000	304,500
1997	60,500	53,000	78,614	119,800	311,914
1998	62,000	57,000	87,000	136,500	342,500
1999	67,500	57,000	85,425	126,100	336,025
2000	71,100	56,265	87,425	125,375	340,165

During the review of hotel room tax revenue, it was noted that conventions and large group gatherings throughout the individual counties are not always shared with local tourism agencies. If for no other reason than the planning of

upcoming large group conventions, this information needs to be coordinated. Long-term room availability requires cooperative planning from all groups, both Native American and non-Indian.

Impact of Tourism on Area Attractions

Based on interviews with area directors and managers of local venues, there is a sense generally, that the Turning Stone Casino and Resort has a positive effect on the tourism industry in Madison, Oneida and Onondaga counties.

The Boxing Hall of Fame in Canastota, the Adirondack Scenic Railroad, the Baseball Hall of Fame, the annual Utica Boilermaker Race, Fort Stanwix in Rome and Munson-

[25]

Williams-Proctor Institute are, in their own right, major draws to the area. While Turning Stone Casino and Resort is by far the largest draw, each separate facility and attraction complements the other.

In 1999, Turning Stone Casino attracted 3.54 million registered players, and in 2000, the number decreased slightly to 3,50 million. The number of customers, excluding Turning Stone Casino and Resort, totaled 3.8 million in 1999, and increased to 4 million in 2000.

Table 6-5. Origin of Visitors To Turning Stone Casino

Area	Number of Visitors	Percent of Total
Utica/Rome	711,369	32.2
Syracuse	710,182	32.2
Miscellaneous NY areas	265,366	12.0
Albany/Schenectady	187,666	8.5

Rochester	172,229	7.8
All other U.S. states	83,356	3.8
States Bordering NY (PA, CT, VT, NJ, NH)	35,329	1.6
Metro NYC	27,434	1.2
Canada	15,551	0.7

Close to two-third (64%) of the visitors to the Turning Stone Casino are drawn from a 50-mile radius. All other areas of New York State, including metropolitan New York City, account for 652,695 visitors, or less than half of the number from Central New York.

[26]

PART VII
Housing and Real Estate Activity

There continues to be an active market for low-to-medium priced residential properties in Oneida County and Madison County, while high-priced homes are in very scarce supply. There has been an increase in the price level for these lower- to middle- range residences. (Note: Zogby International and the realtors agreed on these definitions: low-priced, below $70,000; medium, $70,000-$130,000; high, $130,000+.)

Commercial properties of all types are in short supply, both storefronts and new commercial developments.

The lagging price recovery of the mid-1990s, which slowed in 1998, has now regained strength, and prices are increasing by an estimated 3% of assessed value.

Land sales throughout the region are very active, and the price per undeveloped acre has remained firm, with moderate increases.

In general, the real estate brokers surveyed in the greater Oneida-Madison-Onondaga county areas are positive about the future of Central New York, in large part due to the Oneida Nation's business success and the peripheral impact on other business and residential interests.

Deed Transfers

[27]

In the latest survey, conducted in October 2000, many lower- to middle-priced houses are selling within reasonable time frames. High-priced and lease/rentals are hard to find, or if they are available, difficult to move.

Oneida County has maintained a steady, but not a dramatic increase in sales and value, while Madison County has experienced brisk activity, mostly in lower to moderately-priced homes.

In Madison County, high-end housing is especially scarce, as is commercial property and developed industrial space. In many towns throughout the county, there is a concern about a decrease in assessed value for town tax purposes. At the present time, tax rates remain remarkably stable.

Real estate agents and brokers are generally upbeat about the market in 2000. Their responses to questions regarding real property trends, and economic events affecting those trends, reflect optimism.

We asked, "In your area, how would you categorize the demand trend in real estate generally?"

In the Oneida/Madison County areas where I work, the demand is on the upswing, slightly above average and getting better. Canastota Realtor

The market in the Oneida area is better than it has been. Oneida City Realtor

I deal with real property in Oneida/Madison counties and some in Onondaga County. I think the market, while not rapidly improving, is getting better. Chittenango Realtor

We have a great demand for apartments, and just don't have enough. There are very few available. Vernon Area Realtor

The demand is going up. There is a high demand for apartments, and we don't have many available. Greater Oneida City Realtor

The demand for residential property in Madison County and the small bit of Onondaga County where we work is relatively high. The lower to moderate priced homes are most in demand. Madison County Broker

We find the demand trend getting better. I represent sellers and buyers in Madison, Oneida and Onondaga counties, and there is a moderately strong demand for homes in all areas. Oneida Broker

[28]

"How would you define the value trend in real property sales?"

The prices are on the rise as homes are harder to find. Oneida County Broker

The value level of the lower priced and moderate homes is getting stronger. The prices are coming up gradually. Vernon Area Realtor

The value across the board is improving. In the moderately-priced category, the prices are edging up to around 3% above assessed value. Oneida/Madison County Broker

"How would you define the trends in commercial property demands and values in your area?"

The demand and value trends are somewhat strong in western Oneida County and eastern/northeastern Madison County. There is a shortage of commercial properties, storefronts, and we could use some commercial development. Oneida city/Canastota Realtor

The demand for commercial fronts is above average, and the availability is scarce. Oneida County/Madison County Realtor

I handle a lot of commercial properties. I find the demand is high, but the value hasn't caught up. Onondaga County Realtor

We are always looking for commercial space, there just doesn't seem to be enough. Vernon/Verona Area Realtor

"What economic events have affected real property values in the past two years?"

The effect of the air base closing is still with us, but not as bad as earlier. The positive side is that the economy has improved and is remaining strong throughout the country, but to a lesser extent here in Central New York. Oneida County/Vernon Realtor

There is more job stability now, and the economy in the area has gotten stronger. Madison County Broker

Things have been going good since the Oneida Indians started the casino. The new golf course and resort have

helped. People are more apt to locate here now. Oneida (City)/Madison County Broker

The Thruway entrance is a big help, so people can commute to Utica or Syracuse easily. The Oneida Nation has flourished and that has helped bring other businesses. They find Central New York good for business. I am very positive about the future here. Oneida County/Madison County Realtor

[29]

PART VIII
Construction Industry

Residential Construction

Following a period of sluggish new residential construction starts through the mid-1990s, an upward move began in 1998 and continued into 2000. The increase, in both volume and dollar volume of new starts, is due to two factors. The economy nationwide has generated more interest in new residential investments, plus the local economy has rebounded from the loss of several major employers.

According to officials at the Mohawk Valley Builders Exchange, the local economy has provided work for any contractors "who are willing to work."

Although there is still a shortage of multiple family units in the Oneida-Madison Counties, there has been some effort to invest in new apartment starts in the past year. Industrial construction has seen a recent increase in new capital investment.

The Oneida Nation invested $12.9 million in new building starts in 1998. By 1999, its spending on capital improvement and construction jumped to $31.5 million.

Combined with the investments in lease/hold improvements and other building improvements, the Nation invested $36.5 million in 1999.

In 2000, the Nation's investments in buildings, lease/hold improvements, and building improvements totaled $15 million. Projects in 2000 included golf course improvements, estimated at $10 million, and an estimated $2.4 million worth of construction improvements at the Oneida Lake marina. [30]