UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONONDAGA NATION,

Plaintiff,

v. Civil Action No. 05-CV-314 (LEK/DRH)

THE STATE OF NEW YORK, *et al.*,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS

Because they style their motions as ones falling under Rule 12(b)(6), Defendants have not submitted a Statement of Material Facts, which would be required by Local Rule 7.1(a)3 if the motions are converted to motions for Summary Judgment pursuant to Rule 12(b), Fed. R. Civ. Proc. Because facts beyond the First Amended Complaint are in issue in this case, this Court may decide to convert Defendants' motions to motions for summary judgment. Plaintiff therefore submits this Response to Statement of Material Facts in opposition to summary judgment. Local Rule 7.1(a)3.

The purported facts that are assumed by Defendants and which they ask this Court to accept without proof are entirely incorrect. Thus, Plaintiff contests those of Defendants' purported facts which pertain to the issues of laches, acquiescence, impossibility, and disruptiveness, as well as the issues of the Onondaga Nation's presence in the area, the character

of the area, the alleged improvements to the area, the effect of a declaration of title and other issues listed below.

I. DEFENDANTS' STATEMENT OF UNCONTESTED MATERIAL FACTS

1. Plaintiff delayed unreasonably in filing this law suit.	Denied.
2. Plaintiff acquiesced in the taking of its lands by New York State.	Denied.
3. Defendants have been prejudiced by the alleged delay in filing suit	Denied.
4. More than 200 years have elapsed since 1790, when the first actionable wrong by New York State occurred.	Admitted.
5. The area has a "non-Indian character."	Denied.
6. The area in issue has been improved by Defendants.	Denied.
7. This law suit is disruptive.	Denied.
8. The Onondaga Nation does not have a presence in the area.	Denied.

II. PLAINTIFF'S RESPONSE TO STATEMENT OF MATERIAL FACTS

A. The Federal and State Courts Were Closed to the Onondaga Nation Until 1974

1. Plaintiff did not delay in filing this suit. From 1788 to 1974, Plaintiff had no legal opportunity to file this or any similar suit. Declaration of Dr. Lindsay Robertson (Robertson Declaration) *passim*.

2. The federal courts did not have jurisdiction to entertain such suits before 1974. Robertson Declaration ¶¶ 44-49.

3. The original jurisdiction of the United States Supreme Court was not available to Indian tribes because the Court ruled in 1831 that the Cherokee Nation did not constitute a "foreign state" for purposes of Article III original jurisdiction. Robertson Declaration ¶ 44.

4. The jurisdiction of the lower federal courts, which was established in 1789, was limited to suits between citizens of different states. Unless citizenship were acquired by other means, individual Indians did not become United States citizens until 1924. The members of the Onondaga Nation were not considered citizens before 1924. Indian tribes are not clearly entitled to claim citizenship for diversity purposes. Robertson Declaration ¶ 45.

5. Even if the Onondaga Nation were held to be a citizen of New York for diversity purposes, complete diversity would have been defeated for a land claim action because the defendants would have been citizens of New York State as well. Robertson Declaration ¶ 46.

6. Federal question jurisdiction, which was established in 1875, was not available as a legal basis for an Onondaga land claim in federal court because the first time the issue was raised the United States Supreme Court foreclosed this option. *Taylor v. Anderson*, 234 U.S. 74 (1914). The Second Circuit Court of Appeals in 1929 likewise ruled the federal courts did not have jurisdiction over Indian claims challenging the unlawful taking of tribal lands. *Deere v. New York*, 22 F.2d 851 (1927), *aff'd*, 32 F.2d 550 (2d Cir. 1929). Robertson Declaration ¶ 48.

7. *Deere* remained the applicable law in the Second Circuit until 1974, when the United States Supreme Court ruled that federal question jurisdiction over land claims based on

the Trade and Intercourse Act existed. *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974). Robertson Declaration ¶ 48.

8. Until relatively recently, New York State denied Indian nations legal capacity to maintain lawsuits in their own names; instead, the State legislature provided for the appointment of state-funded attorneys or agents to bring or defend such legal actions. Robertson Declaration ¶¶ 7-15.

9. New York State courts construed the appointment of attorneys for Indian nations as the exclusive means by which legal actions could be prosecuted to assert Indian interests and claims. *Jackson ex dem Van Dyke v. Reynolds*, 14 Johns. 335 (1817). The court found that denying Indian tribes the right to sue in their own names benefits them because "if left at liberty to resort to any attorney they please, they may be involved in ruinous litigation. . . ." Robertson Declaration ¶ 20.

10. Between 1790 and 1845, only one reported case asserting a land claim could be found that was brought by an Indian tribe, and that case failed. *St. Regis Indians v. Drum*, 19 Johns. 127 (N.Y. Sup.Ct. 1810). Robertson Declaration ¶ 22.

11. In 1806, the Onondaga Nation petitioned the State of New York for the appointment of an attorney to represent it. Robertson Declaration ¶ 15.

12. On April 7, 1806, the New York Legislature authorized the Council of Appointments to appoint and commission an attorney for the Onondagas, and Curtis Medad was appointed for that purpose. Robertson Declaration ¶ 15.

13. Because Mr. Medad proved ineffectual in asserting or protecting Onondaga land rights, the New York Legislature abolished the office of Onondaga attorney and appointed

Ephraim Webster as agent/attorney in Mr. Medad's stead, with identical responsibilities and duties. Robertson Declaration ¶ 15.

14. Ephraim Webster acted contrary to the needs and interests of his client. He facilitated the unlawful conveyance of Onondaga land to the State by acting as interpreter during the treaty negotiations in 1817 and 1822; the Onondagas complained to Governor DeWitt Clinton that Webster had deceived them, but the State refused to replace him. Robertson Declaration ¶ ¶ 17-18.

15. Neither Curtis Medad, Ephraim Webster, nor any other attorney or agent for the Onondaga Nation agreed to file suit against New York State concerning the State's acquisition of Onondaga land in violation of the Trade and Intercourse Act. Robertson Declaration ¶ 21.

16. In 1841, the New York Legislature abolished the office of Onondaga Agent, directing that the Onondaga Nation should look to the local district attorney to bring legal actions on the Nation's behalf; the district attorney was empowered to prosecute only trespass actions on their behalf arising from lands then possessed by the Nation. Robertson Declaration ¶ 23.

17. When the office of Onondaga Agent was restored in 1843, the Legislature refused to authorize the prosecution of legal actions as part of the agent's duties, and subjected the agent's duties to the specific direction of the Governor. Robertson Declaration ¶ 24.

18. The requirement to obey the Governor's instructions as a practical matter precluded any Indian agent for the Onondaga Nation from initiating legal action, even if such authority could be found, to challenge the validity of New York's acquisition of Onondaga lands. Robertson Declaration ¶ 24.

19. None of the New York State agents appointed by the State for the Onondaga Nation filed any legal action to recover Onondaga lands. Robertson Declaration ¶ 24.

20. One New York State case suggests individual tribal members could sue in state court to prevent injury to tribal lands, but this right was limited to suits for injunctive relief to protect possessory rights to land within the boundaries of state-recognized reservations, and did not extend to suits on behalf of the tribe to assert rights to land to which others claimed title or occupied. *Strong v. Waterman*, 11 Paige Ch. 607 (1845). Robertson Declaration ¶¶ 25-28.

22. New York law provided that Indian nations lacked capacity to sue generally in the absence of authorizing legislation by the New York State Legislature. Robertson Declaration ¶ 38.

23. The New York State Legislature never enacted a statute of general applicability enabling the Onondaga Nation to sue, and state courts confirmed that in the absence of such authorization, neither the Nation nor its members had capacity to sue in state court. *Onondaga Nation v. Thacher*, 7 Bedell 584, 169 N.Y. 584 (1901), *aff'd*, 189 U.S. 306 (1903). In 1940, the Legislature granted a limited exception to this rule and authorized the Nation to sue the Tully Pipeline Company with regard to damage to the Nation's cemetery caused by salt and salt-brine from the Company's pipeline. Robertson Declaration ¶¶ 37-39. This is the only enabling statute for the Onondaga Nation that has been found.

24. The New York State Legislature amended its Indian Law in 1953 to provide state court jurisdiction over civil actions between Indians and other persons, but it was not until 1987 that state courts suggested that the statute accorded state court jurisdiction over civil actions involving Indian tribes. *Oneida Indian Nation v. Burr*, 522 N.Y.S.2d 742 (1987). In 1995,

however, the New York Court of Appeals intimated that this suggestion may be wrong. *People v Anderson*, 137 A.D.2d 259, 529 N.Y.S. 2d 917 (1998). The question of tribal capacity to sue in New York courts remains unsettled today. Robertson Declaration ¶¶ 41-42.

25. In 1958, the New York Legislature amended its Indian Law to provide that the governing body of an Indian nation or tribe may maintain an action to recover lands unlawfully occupied by others. To the extent this statute purported to authorize tribes to bring land claims arising before September 13, 1952, however, it conflicted with 25 U.S.C. § 233, which precluded state court jurisdiction over such claims. Robertson Declaration ¶ 43.

B. Traumatic Events Between 1779 and 1850 Prevented the Onondaga Nation From Acting Collectively to Protect Its Land Rights

26. During this period, the government of the Onondaga Nation was disrupted, and its members temporarily dispersed, by the destructive forces of the Revolutionary War, unrelenting pressure from the State of New York to sell Nation lands, and threats of forced removal from New York. These forces made concerted action by the Onondaga Nation to protect its land and to seek redress for violations of their land rights virtually impossible. Declaration of Professor Anthony F. C. Wallace ¶ ¶ 24-26, 29 (Wallace Declaration). Persistent federal efforts to remove the New York Indians, including the Onondagas, to enclaves in the west deterred the Onondagas from seeking redress for land rights violations in the courts, even if such courts had been open to them. Wallace Declaration ¶ 70.

27. During the most intense period of dispersal, from 1788 to 1795, the State of New York took control of 99% of the land of the Onondaga Nation. In four state treaties – 1788, 1790, 1793 and 1795 – the Nation's territory was reduced to 7,100 acres, and two additional land

treaties reduced the Onondaga Reservation to its current size of 6,900 acres. Wallace Declaration ¶ 27.

C. The State of New York Acted in Bad Faith in Obtaining Onondaga Lands

28. The State of New York falsely and deliberately tricked the Onondaga participants in the 1788, 1793 and 1795 land transactions into believing that they were leasing rather than selling the Nation's lands. Declaration of Professor J. David Lehman ¶¶ 45-58 (Lehman Declaration); Wallace Declaration ¶ 33.

29. As a result, Onondaga leaders and citizens of the Nation have continuously believed and understood that the bulk of the Nation's lands, particularly the area that is now Syracuse, New York and the area adjacent to Onondaga Lake, was leased and is still owned by the Nation. Declaration of Sidney Hill ¶ 37 (Hill Declaration); Wallace Declaration ¶ 37.

30. New York State knowingly negotiated the illegal land transactions with individuals that did not have authority to act for the Onondaga Nation, despite the repeated protests of Onondaga Chiefs that the transactions were invalid for that and other reasons. Lehman Declaration ¶¶ 7, 10, 12 (treaty of 1788); ¶¶ 15, 19, 21, 28, 52 (Treaty of 1793); ¶¶ 58, 59 (Treaty of 1795); Wallace Declaration ¶¶ 31, 34 (Treaty of 1788); ¶¶ 41, 42 (Treaty of 1793); ¶ 43.

31. The State of New York exploited the apparent division between the Onondagas at Buffalo Creek and those at Old Onondaga, who comprised only 12% of the Nation's population, in order to coerce participation in state land cession treaties. Lehman Declaration ¶ ¶ 46, 52, 54; Wallace Declaration ¶¶ 31-44.

32. The Six Nations Confederacy or Haudenosaunee, of which the Onondaga Nation was and is a part, repeatedly and vigorously protested the validity of New York State's purported acquisition of Indian lands , including the Onondaga Nation's lands. Lehman Declaration ¶ ¶ 5, 7, 10, 14, 30, 60; Wallace Declaration ¶¶ 31, 42.

33. The United States, acting through its President and other officials, informed the State of New York that congressional approval was required under the Trade and Intercourse Act for the acquisition of Indian land, and that transactions lacking such approval were void, but the State nonetheless obtained Onondaga land in knowing violation of that requirement. Lehman Declaration ¶¶ 22, 39, 40; Wallace Declaration ¶ 54.

D. The Onondaga Nation Justifiably Relied on Promises by the United States that the Federal Government Would Resolve the Nation's Land Rights Complaints Against the State of New York

34. The Six Nations and the Onondaga Nation repeatedly called on Congress, federal officials and the President of the United States to investigate the fraudulent New York State land treaties, and sought federal assistance against the States's efforts to obtain Onondaga land. Lehman Declaration ¶¶ 24, 27, 28, 32; Wallace Declaration ¶ 55. For example, the Onondagas requested federal Indian agent Israel Chapin to accompany them to a meeting with New York State Governor George Clinton to present their protest against the state Treaty of 1793. Lehman Declaration ¶ 30.

35. The United States promised to protect the Six Nations and the Onondaga Nation against the efforts of New York State to improperly obtain Onondaga land in violation of federal law. Lehman Declaration ¶ ¶ 34, 37; Wallace Declaration ¶ 48. President George Washington in December, 1790, promised federal protection against the State, saying to the Six Nations that

the United States "will protect you in all your just rights." The United States failed to carry out these promises, even though federal officials told the Six Nations that land taken by the State in violation of federal law still belonged to them. Lehman Declaration ¶¶ 35, 37; Wallace Declaration ¶ 4, 63.

36. In 1802, a delegation of Six Nations chiefs, including Onondagas, lead by Handsome Lake, traveled to Washington, D.C., to meet with Secretary of War Henry Dearborn to discuss redress for New York State's violations of Six Nations' land rights and federal law. The meeting resulted in the issuance of an executive order by President Jefferson which confirmed Onondaga (and Seneca) title to "all lands claimed by and secured" to them by "Treaty, Convention or deed of conveyance or reservation." The 1802 executive order has not been revoked. Lehman Declaration ¶ 41; Wallace Declaration ¶ 57, 58

E. For Generations Diplomatic Negotiations Have Been the Customary Method of Resolving Six Nations Land Rights Complaints

37. It was the long-established custom and practice of the Onondaga Nation, the Haudenosaunee, and New York State to negotiate land and other disputes and differences in diplomatic government-to government meetings, and not to seek resolution of such disputes in courts. Wallace Declaration ¶ 9; Hill Declaration ¶ 27, 29. This practice is reflected in the Two Row Wampum, a belt of two parallel rows symbolizing the Haudenosaunee governments and European governments agreeing never to interfere with the other by adopting laws that would attempt to govern the other. Article VII of the 1794 Treaty of Canandaigua also reflects this method of resolving differences. Hill Declaration ¶¶ 29, 30, 31.

38. Six Nations' land claims were not minor matters to be settled in civil courts but were issues of major political importance to be settled by negotiation between the legitimate representatives of sovereign nations. Because of their significance to the welfare of the Six Nations, land matters were addressed at public meetings according to solemn protocols that reflected the formality and dignity of the event. Wampum belts and strings memorializing agreements and settlements of land disputes were often exchanged, which, to this day, the Onondaga Nation and the Six Nations rely on for memory of the content of the agreements. Wallace Declaration ¶ 47, 20-23.

39. New York State actively encouraged the Onondaga Nation to negotiate with the State about its objections and disputes regarding land. Wallace Declaration ¶ 10.

40. New York State refused to acknowledge that the Six Nations had a well-established system of land rights and procedures for transfer of land that had been followed for more than a hundred years in relations with Dutch and British colonial authorities. Wallace Declaration ¶ 45. Cultural norms among the Onondagas and the Six Nations required unanimous consent among the Nation's council of chiefs and concurrence from clan mothers and warriors, for the sale of national territory. Wallace Declaration ¶ 5, 19; Hill Declaration ¶ 9.

41. Federal and state governments actively discouraged legal action about land complaints during the period 1788 to 1845. Wallace Declaration ¶ 4.

F. The Onondaga Nation Persistently Sought to Protect and Preserve Its Lands and Sovereignty from Intrusion by the State of New York and the United States

42. To promote assimilation of Indians into mainstream non-Indian society, New York State adopted legislation in 1849 calling for "partition of tribal lands." The U.S. Congress

passed the Dawes Act in 1887. The federal statute allowed Indian reservations to be divided into parcels, "allotments," which were then transferred by the federal government to individual Indians with the expectation that individuals would become fee owners of the allotment after the "trust" period expired. The Onondagas rejected allotment because it threatened the Nation's land base; and without land, the Nation's sovereignty was at risk. Declaration of Professor Robert E. Bieder at ¶ 5 (Bieder Declaration).

43. The Onondaga Nation foresaw the effect of allotment: individually held land would eventually be subject to state taxes, to foreclosure, and to transfer to non-Indians. "Bit by bit the reservation would be sold off; the Onondaga people would become landless and . . . without their traditional government, community and identity." Bieder Declaration at ¶¶ 5, 6, 9, 10. The Tribal community would "collapse." *Id.* at ¶ 10.

44. Continuously throughout the period from approximately 1849 to 1918, the Onondaga Nation resisted state and federal efforts to allot the lands of the Nation. Bieder Declaration at ¶¶ 7-19. That period saw repeated legislative efforts to destroy the Onondaga land base through allotment. Evidence of this is found in the 1889 Whipple Report, the 1901 Lake Mohonk Conference of Friends of the Indian, and U.S. House Bill 18735 (1914)(federal proposal specifically aimed at alloting New York Indian lands). *Id.* at ¶¶ 16, 17, 18.

45. In 1920, a federal court ruled for the first time that transfers of Indian land to the State of New York without compliance with the Trade and Intercourse Act were of no legal effect. Bieder Declaration at ¶ 21, *citing, United States v. Boylan*, 265 F. 165 (2d Cir. 1920). The decision again gave the State of New York notice that its supposed "treaties" made without

compliance with federal law were void, although the ability of Indian nations themselves to bring suits challenging such treaties had not yet been established. *Id*. at ¶¶ 20-24.

G. The Everett Commission Concluded New York's Title to Indian lands is Void

46. In direct response to the *Boylan* decision, the State created the New York State Indian Commission for the purpose of "examin[ing] into the history, the affairs and transactions" between the State and Indian tribes." Bieder Declaration at ¶ 25 (The Commission was chaired by A.E. Everett, and the report of its findings is known as the "Everett Report"). The Commission met with Onondaga at the Nation's Reservation on August 16-17, 1920. The Onondaga Nation's statements at that meeting reflected the Nation's continuing belief that it was under the "legal protection" of the federal government, and that New York had no jurisdiction over the Onondaga Nation. Id. at ¶¶ 27-29, 31. Following this meeting, the Commission's report thus framed its task : "The fundamental of this question is to get back to whether the whole of the state of New York belongs to these Indians and if they should have compensation for what they have lost." Bieder Declaration at ¶ 34 (quoting George E. Vaux, Chairman of the Federal Indian Commission). The Everett Report concluded:

> I [Chairman Everett] maintain that you [the Iroquois] are the owners of all the territory that was ceded to you at the close of the Revolutionary War and unless you disposed of that property by an instrument as legal and binding and necessary as the conditions of that treaty was to place that property in your possess, you are still the owners of it.

Everett Report at 319-320. Bieder Declaration at ¶ 37.

47. New York State's own commission had concluded that the Six Nations had title to lands which the State had erroneously claimed was transferred to it. Bieder Declaration at ¶ 38.

48. The New York legislature did not act in response to the Report of the Everett Commission. Bieder Declaration at ¶ 40.

H. The Six Nations, Including the Onondaga Nation, Unsuccessfully Sought Relief in Federal Court

49. When the State legislature did not act in response to the State's own commission's findings, the Six Nations established a strategy for recovery of their lands. Bieder Declaration at 16. Though Everett stated that "approximately one-half of New York State is [Indian] property," the Six Nations and the Onondaga Nation were hesitant to file a lawsuit because of the extraordinary expense. Bieder Declaration at ¶¶ 41-47.

50. After debate, however, the Six Nations authorized the filing of suit. James Deere, a Mohawk chief, filed suit against occupants of lands to which the Mohawks claimed title. Bieder Declaration at ¶¶ 48, 49. The federal court dismissed the action finding that it had no jurisdiction to hear an Indian's land claim which was based upon the Trade and Intercourse Acts and treaties with the United States. *Id.* at ¶ 50; *Deere v. St. Lawrence River Power Co.*, 32 F.2d 550 (2d. Cir. 1929).

I. Following the Federal Court Defeat, the Six Nations and the Onondaga Nation Pursued Their Land Claims in Congress

51. The Six Nations' land claims were presented to the U.S. Congress in 1929. Bieder Declaration at ¶ 55 (Testimony of Oneida Tribal member, Laura "Minnie" Cornelius Kellogg). Ms. Kellogg pleaded with Congress urging the United States to take legal action to recover 18,000,000 acres of land wrongfully taken from the Six Nations by the States of New York and Pennsylvania. Bieder Declaration at ¶¶ 56-64. Congress did not act, and the United States did not take legal action to enforce the treaty guarantees made to the Six Nations. *Id.*

52. That same year, the City of Syracuse attempted to construct two dams on the Onondaga Reservation in order to protect the City from flooding. Bieder Declaration at ¶¶ 61-63. If built, the dams would have destroyed Onondaga homes. The Onondaga took their protests again to Congress, asserting that neither the State of New York nor the City of Syracuse could take Onondaga land. *Id.*

53. The Six Nations or Haudenosaunee submitted a petition to Congress asserting the land claims of the Onondaga Nation and other Iroquois nations to Congress, and the petition was printed in the hearing record in 1929 and again in 1930. Bieder Declaration ¶¶ 56-58, 63.

54. In 1948, the U.S. Senate held hearings on a bill to "Confer Jurisdiction on the Courts of the State of New York" with respect to criminal acts, a bill to "Provide for the Settlement of Certain Obligations of the United States to the Indians of New York," and a bill to confer state court jurisdiction over certain civil claims involving Indians. Bieder Declaration at ¶ 65. The Six Nations used these hearings as yet another opportunity to press their land claims. *Id.* at ¶ 66. The Six Nations also testified in opposition to the State courts taking jurisdiction over Indians, pointing out the failure of the State to redress the land takings identified in the Everett Report in 1921. Bieder Declaration at ¶ 66-68. The Onondaga Nation chiefs testified that the bills would interfere with the Nation's ability to pursue its land claims, stating that those claims were "established" by the Everett Commission determination. *Id.* A member of the New York State Joint Legislative Committee on Indian Affairs was present throughout the Indians' testimony to Congress. *Id.* at ¶ 71.

J. In Recent Years, the Federal Courts Gradually Opened Their Doors to Indian land claims

55. It was not until 1974 that the courts of the United States began to recognize that they had jurisdiction to hear Indian lawsuits which alleged violations of the federal Trade and Intercourse Act. *Oneida Indian Nation v. County of Oneida,* 414 U.S. 661 (1974). It was not until 1985 that the courts resolved some of the remaining substantial disputes establishing that Indians had a cause of action arising from a violation of the Act, and that there was no statute of limitations on such claims. *County of Oneida v. Oneida Indian Nation,* 470 U. S. 226 (1985). Additional questions remained, such as appropriate remedies, state immunity, and liability for land takings prior to the Trade and Intercourse Act. Thus, from the perspective of the Indian nations, though the federal courts appeared to be listening for the first time in nearly 200 years, a complete remedy for a State's unlawful takings was still not available in the courts. Declaration of Robert T. Coulter ¶¶ 6-10 (Coulter Declaration).

56. Nevertheless, as early as 1976, the Haudenosaunee formed a Lands Committee to consider these new developments. The Committee concluded that negotiations were preferable to litigation, and that the Six Nations would pursue the recovery of their lands as a confederacy to the greatest extent possible. Coulter Declaration ¶ 12. Accordingly, the Committee met with White House counsel to negotiate a resolution to the claims. *Id*. ¶ 13. The Nations' efforts to commence negotiations with the federal government were not successful.

57. In 1982, the Haudenosaunee Lands Committee succeeded in meeting twice with one White House Advisor, again requesting negotiations to resolve the land disputes. The Administration of then-President Reagan agreed to begin negotiations, as did the Interior

Department. For reasons unknown to the Nation, those negotiations did not occur. Coulter Declaration ¶ 17.

58. The Nation was constrained from seeking coercive relief in the courts or elsewhere by its knowledge that Congress asserted that it had "plenary power" over Indian nations including the power to "extinguish" land rights without due process and without recourse. *Tee-Hit-Ton Indians v. United States,* 348 U.S. 272 (1955). Coulter Declaration ¶ ¶ 18-21. The Nation believed with good reason that litigation to enforce the federal law could lead to unilateral extinguishment of its land rights. *Id.* at ¶¶ 20, 26-29. A bill to extinguish Indian land claims was presented in Congress in 1982, though it did not pass.

59. The Onondaga Nation during this period was aware of provisions of federal law which set limits on Indian claims for contract or tort damages. Coulter Declaration ¶¶ 84-86. But the Nation noted that the statute, though amended by Congress in 1982, exempted Indian suits for land title or possession from any time limits. The Nation thus believed that its cautionary approach to litigation was justified. *Id.*

60. The risk of extinguishment loomed large in the minds of the Nation's leaders. Accordingly, the Onondaga Nation and Haudenosaunee took the issue to the United Nations in 1976, seeking an international forum to protect their land rights. Coulter Declaration ¶¶ 23, 25. Relief was not quickly forthcoming. *Id*. at ¶ 24 (A Declaration of the Rights of Indigenous Peoples is pending before the United Nations at the 2006 session.)

K. The Onondaga Nation Acted Responsibly in Recent Decades to Defend and Protect Its Land Claims in Federal Court.

61. During the 1970s and 1980s, the Onondaga Nation was required to expend scarce resources to defend its land claims in various court actions. Coulter Declaration ¶¶ 30-49. A claim for damages against the United States was filed in the Indian Claims Commission by individuals who purported to represent the Six Nations, and the judgment in that claim posed the threat of extinguishing the Onondaga Nation's land claims. The Onondaga Nation was forced to sue, and it later refused to accept the monetary award. *Id.* at ¶¶ 33, 34.

L. Consistent With Its Historic Practice, the Onondaga Nation Requested the Assistance of the United States in Achieving Justice for the Loss of Its Lands

62. The Onondaga Nation wrote to the President of the United States in 1989, asserting again that the treaties with the State of New York were void and had been made in violation of federal law. The Nation asked again for a meeting to discuss its land rights. Coulter Declaration ¶ 56. The request for a meeting was denied. During the past 20 years, the Onondaga Nation repeatedly requested the United States to file suit in support of the Nation's land rights claim. The United States has not made a final determination on these requests. Hill Declaration ¶ 34.

63. Three years later, however, the Department of the Interior for the first time stated that it was considering taking legal action in support of the Onondaga Nation, to recover the Nation's lands. Coulter Declaration ¶ 57. No action was filed.

64. Having been spurned by the federal government, the Nation undertook efforts to find attorneys capable of representing the Nation despite its lack of financial resources. The Nation has historically resisted hiring attorneys on a contingency fee basis because such contracts

reinforced the tendency on the part of such attorneys to seek money damages, which has never been a priority of the Nation. Hill Declaration ¶¶ 36,39 65. The Onondaga Nation also sought financial assistance directly from the federal government to pursue the land claim. Virtually every year through the year 2001, the Nation formally requested that the United States either bring suit to protect its lands or provide funding so that the Nation could do so. The requests were made in writing and in meetings with federal agencies. Neither request was granted. Coulter Declaration ¶¶ 60-65.

M. The Onondaga Nation Attempted Without Success to Negotiate a Resolution to This Dispute Directly With the State of New York

66. In 1988, the Onondaga Nation renewed its efforts to negotiate directly with the State. Coulter Declaration ¶ 72. Though the Nation was impeded in its campaign to seek negotiations with the State by several years of lawlessness on its Territory, it continued to make requests. *Id.* at ¶¶ 72-78. The Nation secured a meeting with New York Governor Pataki in 1998 and subsequent meetings that year with the Governor's staff. *Id.* at ¶ 79.

67. The series of meetings ended when the Governor and his staff insisted that the Nation first file its lawsuit seeking recovery of Onondaga land before further settlement talks would be held. Coulter Declaration ¶¶ 80-82, 83; Hill Declaration ¶ 33.

N. The Onondaga Nation Has Sought A Resolution of Its Land Rights Dispute That Does Not Disrupt or Harm Its Neighbors

68. Consistent with its traditions, and its goal of reconciliation and healing regarding the land disputes, the Nation began in 1995 a public education campaign to insure that its neighbors understood the facts of the land rights dispute, and the Nation's intentions. Coulter Declaration ¶¶ 87-90; Hill Declaration ¶¶ 22, 23, 40.

69. When it had exhausted all other alternatives and the Nation filed this lawsuit, the Nation's harmonious relationships with its neighbors were such that the pendency of this claim brought positive responses and support; there was no interruption to civic relations, business interests, local government, or the real estate market. Declaration of Joseph J. Heath ¶¶ 8-34 (Heath Declaration) The public response to the Nation's lawsuit in general has been one of support for the legitimacy of the claim and the goals of rehabilitation of the Nation's land from its current state of degradation to one of health. *Id.* The filing of this lawsuit has not been disruptive.

70. The supportive response by the Onondaga neighbors is reflective of the nature of the community in which the Nation and non-Indian citizens live. There is ongoing awareness of the Onondaga history in Central New York; continuous cooperation on protecting Onondaga cultural sites and artifacts when there is proposed development of those lands by non-Indians; and a pervasive public spirit of unity between the Indian and non-Indian communities. Heath Declaration ¶¶ 35-46.

71. There is no factual basis for any speculation that these harmonious relations would be ruined by a declaration that New York State's title claims to Onondaga lands are void. Heath Declaration ¶¶ 47-50. For example, the Seneca Nation's title to lands of the City of Salamanca, New York, which is completely within the boundaries of the Seneca Reservation, has not interfered with orderly operations of the city government or the real estate market in the City. *Id.*

72. The Onondaga Nation filed this lawsuit in order to address historic wrongs and environmental damage caused by the loss of the Nation's lands. The suit was filed because the

Nation's land rights were being ignored and the natural world was being desecrated. The Nation is motivated by the principle of healing the natural world and healing the relationships with the Nation's neighbors, based on the traditional cultural value of stewardship of the lands and waters. Hill Declaration ¶¶ 19-22,27.

73. The Onondaga Nation did not sue any individuals nor seek to evict anyone in the claim area, because the Nation's wishes to resolve this land rights dispute in a non-disruptive manner. Hill Declaration ¶ 22.

74. The only disruptions arising from the existence of this land dispute appear to be those caused by the corporate defendants' 100-year occupation of Onondaga lands; the degradation of the land and water through the dumping of toxic wastes and mining operations are estimated to have caused damages on the order of billions of dollars. Heath Declaration ¶¶ 51-58.

O. The Onondaga Nation Maintains A Strong Demographic, Cultural, Legal and Political Presence in the Lands That Were Taken by the State of New York Between 1788 and 1822.

75. The Onondaga Nation is the central fire of the Haudenosaunee Confederacy, which is comprised of the Mohawk, Oneida, Cayuga Seneca and Tuscarora Nations located throughout upstate New York. The members of the Haudenosaunee live throughout its aboriginal lands in New York State. Hill Declaration ¶ 4.

76. Although a small number of Onondaga Nation members left the Nation's aboriginal area during the forced removal by the United States, the great majority of Nation members continue to live in the Nation's aboriginal territory. Hill Declaration ¶ 11.

77. The members of the Onondaga Nation continue to use its traditional homeland for purposes of hunting, fishing, and medicinal and cultural plant gathering. The area, and in particular the health and welfare of the natural world, continue to be important to the Onondaga Nation. Hill Declaration¶¶12, 15-21. Certain portions of the Onondaga Nation's aboriginal territory have special cultural and religious significance as evidenced by the fact that the Peacemaker, who formed the Haudenosaunee hundreds of years ago, visited and used these areas. *Id.* ¶¶ 13,14.

78. Onondaga Lake, located within the land that is the subject of this action, is especially important to the Onondaga Nation, because it is the location of the formation of the Haudenosaunee, and many Nation members lived there and relied on the natural resources for their survival. Hill Declaration ¶ 13

79. The ancestors of citizens of the Onondaga Nation are buried in unmarked graves throughout the Nation's aboriginal territory. Hill Declaration ¶ 42.

80. The federal, state and local governments have acknowledged the continuing ties of the Onondaga Nation to many areas within the land that is the subject of this action by consulting with the Nation with regard to the impacts caused by development projects on cultural resources significant to the Nation. Heath Declaration ¶¶ 37-39.

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Respectfully submitted,

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