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.

DECLARATION OF ROBERT T. COULTER, COUNSEL FOR THE ONONDAGA NATION, IN OPPOSITION TO MOTIONS TO DISMISS

ROBERT T. COULTER declares under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the States of New York and Montana and in the District of Columbia. I was admitted to practice in New York in 1970. I am admitted to practice in a number of federal courts, including this Court and the United States Supreme Court.

2. I am lead counsel for the Onondaga Nation in this action, and I make this Declaration in opposition to the Defendants' August 15, 2006, Motions to Dismiss, pursuant to FRCP 12 (b).

3. I am the founder and President of the Indian Law Resource Center, a private, charitable legal organization organized and directed by Indians. The Indian Law Resource Center, since its founding in 1978, has provided legal assistance without fee or charge for Indian and Alaska Native Nations throughout the United States and in Central and South America as well. The Center provides legal assistance to Indian and Alaska Native nations who are working

to protect their land, resources, human rights, environment, and cultural integrity. The Center's principal goal is the preservation and security of Indian and other Native Nations and tribes. The Center is a tax-exempt organization under §501(c)(3) of the Internal Revenue Code. The Center is funded entirely by grants and contributions from individuals, foundations, and Indian nations and accepts no federal or state government support.

4. I began to advise and represent the Onondaga Nation and the Haudenosaunee, or Six Nations Confederacy, in 1975, and I have continuously represented the Nation and the Haudenosaunee since that time, particularly on legal issues relating to lands and land rights. The six member nations of the Haudenosaunee are the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora Nations.

5. This Declaration is made of my personal knowledge about the events, statements, activities, and other matters referred to below, including the factors and considerations that caused or led the Onondaga Nation Chiefs and other leaders to take actions on the Nation's land rights and in some instances to await the results of research or to await clarification or development of the law applicable to Indian land rights.

CHANGES IN FEDERAL LAW OPEN THE COURTS, BUT QUESTIONS REMAIN

6. In 1974 the Supreme Court in *Oneida I, Oneida Indian Nation* v. *County of Oneida,* 414 U.S. 661 (1974), decided for the first time that the federal courts have federal question jurisdiction over Indian suits based upon the violation of the federal Trade and Intercourse Acts, but it remained unclear as a legal matter whether Indian nations had a valid cause of action based upon the Trade and Intercourse Acts, based upon the common law, or based on any other theory.

7. *Oneida I* also left undecided the question whether any statute of limitations or other time bars applied to such actions and the question of the effect of the Trade and Intercourse Acts on the Indian title to the lands in question, among other questions.

8. Most but not all of the above issues were decided in 1985 in *Oneida II, County of Oneida, New York, et al.*, v. *Oneida Indian Nation of New York State*, 470 U.S. 226 (1985).

9. Nevertheless, *Oneida II* left undecided or open to argument a number of remaining issues, particularly the issues of what remedies may be available for violation of the Trade and Intercourse Acts, whether states have immunity from such suits, and whether there is a viable cause of action for the illegal taking of Indian lands prior to the Trade and Intercourse Acts, among others.

10. Thus, in 1975 and later, the Onondaga Nation Chiefs, Clan Mothers, and other leaders did not know and could not know whether any lawsuit regarding their illegally taken lands could possibly be viable, because the law remained uncertain and undecided. The Onondaga Nation, like other Indian nations, had been excluded from the federal and state courts for two centuries, and no lawsuit by any Indian nation under the Trade and Intercourse Acts had ever been successfully concluded on the merits.

11. The Onondaga Nation and other Nations of the Haudenosaunee were very well aware of these issues and legal questions, and they followed very closely the progress of the Oneida lawsuits and other lawsuits. As set out below in further detail, the Onondaga Nation and the Haudenosaunee were parties to some of the lawsuits filed by other Indian nations, and in addition, I served as counsel to one of the Oneida parties in *Oneida II*.

ONONDAGA NATION LAND RIGHTS EFFORTS AFTER *ONEIDA I*

12. In about 1976, the Haudenosaunee, including the Onondaga Nation, created the Haudenosaunee Lands Committee, including representatives of each nation, for the purpose of studying and making recommendations about the land rights of the member nations of the Confederacy. Two of the first recommendations of the Haudenosaunee Lands Committee were that the land claims or land issues should be resolved through negotiations so far as possible and that the nations of the Haudenosaunee should address land issues as a Confederacy.

13. In June and July of 1976, the Haudenosaunee, including the Onondaga Nation, held two meetings with White House counsel, Roberta "Bobbie" Kilberg to discuss the need for a negotiated resolution of the land rights issues of the Haudenosaunee and the Onondaga Nation, particularly the unlawful takings by New York State. One particular issue discussed was the pendency of the Indian Claims Commission case known as Docket 84, an unauthorized claim that threatened to damage or destroy land rights and claims of the nations of the Haudenosaunee, including the Onondaga Nation. This case is discussed further in paragraphs 33 - 34 below.

14. However, despite persistent efforts by the Haudenosaunee Lands Committee and the Onondaga Nation, negotiations were not actually commenced. Nevertheless, the Lands Committee, between 1976 and 1982, continued to meet as often as every two weeks and continued to prepare for the requested negotiations with the United States.

15. Later in 1976, the United States did assist the Onondaga Nation in response to a complaint by the Nation pursuant to Article VII of the Treaty of Canandaigua of 1794. The United States provided legal assistance to the Nation to remove a number of non-Indian intruders on the Onondaga Nation territory south of Syracuse, New York. The issue of the intruders was a

very difficult land rights issue at that time.

16. The Haudenosaunee Lands Committee continued to seek United States involvement in resolving land rights issues, including those of the Onondaga Nation. At last, in 1982, a delegation of the Haudenosaunee, including a number of Onondaga Chiefs and Clan Mothers, met on two occasions with White House Advisor, William P. Barr and again requested negotiations with the United States to resolve the land claim issues involving New York State.

17. As a result of these meetings, the Reagan Administration White House staff eventually agreed to begin negotiations with the Haudenosaunee and so also did the Interior Department. Despite these assurances and despite continued efforts by the Haudenosaunee and the Onondaga Nation, negotiations were never actually begun for reasons unknown to us.

ONONDAGA NATION EFFORTS TO PROTECT RIGHTS TO INDIAN LANDS

18. Another serious legal problem stood in the way of any possible suit in the federal courts to secure Onondaga land rights, the asserted legal power of Congress to "extinguish" Indian land rights without due process of law and without any compensation. This supposed power of Congress had been upheld by the Supreme Court in *Tee-Hit-Ton Indians* v. *the United States*, 348 U.S. 272 (1955). The Onondaga Nation leaders and the Haudenosaunee Lands Committee knew of this asserted legal power by 1975 if not earlier.

19. The Onondaga and Haudenosaunee Chiefs and leaders also knew that the United States Congress claimed "plenary power" to legislate about Indian matters, including Indian lands, Indian land rights, and Indian rights of self-government, practically without any limitation by the United States Constitution and its Bill of Rights.

20. These well-established legal doctrines about the virtually unlimited powers of Congress to extinguish Indian land titles and land rights made it clear to the Onondaga Nation Chiefs, Clan Mothers and other leaders that any suit concerning the Nation's lands could and probably would result in congressional action to extinguish the Nation's asserted land rights and perhaps to take away other rights of the Nation as well. These serious threats discouraged legal action by the Onondaga Nation and the Haudenosaunee with regard to the land rights claims against the State of New York.

21. The Haudenosaunee Lands Committee and the Onondaga Nation concluded that any lawsuit concerning the Nation's lands taken by New York State would likely be futile and possibly counter-productive unless something could be done to change the law or to reduce the likelihood of federal action to extinguish the Nation's rights.

22. Leaders of the Onondaga Nation were present along with me and with Oneida Nation leaders at a meeting in Washington, D.C., with then Interior Department Solicitor Leo Krulitz in about 1978. At this meeting to discuss the Oneida land claims, Krulitz demanded that the Oneidas promptly present final settlement terms for resolving their land claims. He said explicitly that unless the Oneidas did so, the Interior Department would propose legislation to Congress to simply extinguish the claims unilaterally.

23. So great was the concern about the well-known extinguishment power of the federal government, that the Onondaga Nation and the Haudenosaunee took this issue to the United Nations as a human rights issue in1976 and 1977, along with specific proposals to outlaw the discriminatory extinguishment power over Indian lands.

24. Leon Shenandoah, then Tadadaho, the head of the Haudenosaunee and a member of

the Onondaga Nation Council of Chiefs, Chief Oren Lyons (still on the Council), Clan Mother Audrey Shenandoah, and many other Chiefs and leaders of the Haudenosaunee presented their land rights issues to the United Nations in Geneva, Switzerland in September of 1977. They demanded an end to the discriminatory treatment of Indian land rights in the United States and an end to the denial of other human rights. The Declaration of the Rights of Indigenous Peoples, which was first proposed at that conference by the Onondaga Nation and others, is now before the United Nations General Assembly for probable adoption at the current session.

25. Later, in 1980, a formal human rights complaint was lodged against the United States at the United Nations complaining of the discriminatory legal doctrines that permit the United States to take Indian lands at will and without the payment of any compensation. I prepared and filed the complaint on behalf of the Haudenosaunee, including the Onondaga Nation, and on behalf of certain other Indian nations.

26. The fears of extinguishment proved justified in 1982 when the Ancient Indian Land Claims Settlement Act bill was introduced in Congress. The purpose of this bill was to extinguish, unilaterally, the Indian land rights with respect to the lands illegally taken by New York State (and others) and provide a modicum of compensation — far less than fair market value for the land.

27. The Onondaga Nation, represented by Chief Oren Lyons, and the Haudenosaunee as a whole, represented by Chief Corbett Sundown and other Chiefs, testified against this bill and submitted a written statement which specifically referred to the Nation's land rights and claims against New York for the illegal takings their lands. *See*, Statement of Oren Lyons, Onondaga Nation, and Prepared Statement of the Haudenosaunee (Iroquois Confederacy), Submitted by

Oren Lyons, Onondaga Nation, in *Ancient Indian Land Claims*, Hearing before the Select Committee on Indian Affairs, United States Senate, Ninety-seventh Cong., 2d Sess., on S. 2084, pp. 56-65 (June 23, 1982).

28. I also testified against the bill and submitted a written statement, referring to the Haudenosaunee's land claims against the State of New York and the desire to resolve them fairly and reasonably. *Id.* at 65-74.

29. The Onondaga Nation Chiefs, along with me and other members of the Center's legal staff, worked diligently over a period many months to defeat the bill eventually.

THREATS TO ONONDAGA LAND RIGHTS: THE NEED FOR DEFENSIVE ACTION

30. The Onondaga Nation and the Haudenosaunee Lands Committee were faced with constant, serious threats to the land rights of the nations of the Confederacy in many different situations in the period 1974 to the present. These threats, principally in the form of legal actions and lawsuits relating to Haudenosaunee lands, compelled the Onondaga Nation and the Haudenosaunee to respond defensively to protect their land interests. It was clear that these lawsuits relating to Oneida lands, Seneca lands, Mohawk lands, and Cayuga lands (all member nations of the Confederacy) could result in (and some have resulted in) legal rulings and precedents as well as political actions with a profound adverse impact on the land rights of the Onondaga Nation and all the Indian nations in New York.

31. Accordingly, the Onondaga Nation and the Haudenosaunee were faced with the overwhelming necessity of taking defensive legal actions in many lawsuits. This necessity was enormously burdensome to the Onondaga Nation and the Haudenosaunee, as well as to their

counsel, the Indian Law Resource Center.

32. The Onondaga Nation and the Haudenosaunee during this period, particularly during the 1970's and 1980's, did not have the financial resources to hire the attorneys needed for the extensive and specialized litigation work of the Trade and Intercourse Act cases. For this reason, the Indian Law Resource Center provided legal assistance without charge so far as our funding permitted.

33. The first major matter that preoccupied the Onondaga Nation and called for defensive legal action was the case known as Docket 84 in the federal Indian Claims Commission, a claim supposedly in behalf of the "Six Nations". The case had been brought by a group of individuals without any authority to speak for any of the Six Nations, and the claim attorney had agreed to stipulations that could have extinguished the land rights of the Onondaga Nation and the other nations of the Six Nations in regard to the lands that had been illegally taken by New York State.

34. After administrative efforts failed, the Haudenosaunee filed suit in May, 1977 in the federal District Court in Washington, D.C., seeking an injunction against the Secretary of the Interior. *See, Six Nations* v. *Andrus*, 610 F.2d 996 (DC Cir. 1979), *cert. denied*, 447 U.S. 922 (1980). Although we did not win the relief we sought, the Haudenosaunee, including the Onondaga witnesses, created a strong evidentiary record that the claim was unauthorized and prosecuted without the knowledge or consent of the Onondaga Nation or the Haudenosaunee. The judgment award in the Indian Claims Commission case has been refused by the Haudenosaunee and has never been paid.

35. Between 1978 and 1982, the Haudenosaunee and the Onondaga Nation were compelled to take legal action to intervene as a party or to participate as *amicus curiae* in three of

the Oneida land claim suits in order to protect the specific interests of the traditional Oneida Nation government in New York as well as the general interest of all Indian nations in New York in the decisional law being developed in those cases. This litigation included many years of motion practice, numerous oral arguments, discovery, evidentiary hearings, and repeated appeals.

36. In 1983, the Oneida of the Thames Band, one of the parties in the Oneida litigation, decided to ally itself with the Haudenosaunee, including the Onondaga Nation. Because of the importance of establishing that there is a valid cause of action for violations of the Trade and Intercourse Act and the importance of winning the Oneida test case in the Court of Appeals and in the United States Supreme Court, the Onondaga Nation and the Haudenosaunee asked me and the attorneys of the Indian Law Resource Center to represent the Oneida of the Thames Band.

37. We represented the Haudenosaunee as *amicus* in the Court of Appeals and the Oneida of the Thames Band in the Supreme Court and helped to win the *Oneida II* decision. The burden on the Haudenosaunee and on the Indian Law Resource Center was enormous.

38. At the same time, between 1982 and 1989, we represented the Thames Band, the Onondaga Nation, and the Haudenosaunee in the Oneida case based on New York's taking of Oneida lands before the Trade and Intercourse Act was adopted in1790. *See, Oneida Indian Nation of New York* v. *State of New York*, 860 F.2d 1145 (2d Cir., 1988), *cert. denied* 493 U.S. 871 (1989). This litigation included an extensive evidentiary hearing on the state of the law during the Articles of Confederation period, two appeals to the Court of Appeals and a petition for review in the U.S. Supreme Court. This too was a test case of enormous importance to the Onondaga Nation to determine whether federal law would recognize a cause of action for such takings. Working for the best possible outcome in that litigation was a strategic priority for

preserving the rights of the Onondaga Nation and the Haudenosaunee. The demands of that litigation, which spanned over six years, made it extremely difficult, if not entirely impossible during that period, for the Onondaga Nation and the Haudenosaunee to bring suit for the taking of Onondaga Nation lands by the State.

39. It was not until the Supreme Court denied certiorari in that case in 1989 (493 U.S. 871) that the federal law on this matter was settled.

40. In 1982, one group of Mohawks from Canada filed a suit in the Northern District of New York seeking the return of Mohawk Nation lands illegally taken by New York in violation of the Trade and Intercourse Acts. The Onondaga Nation along with the Mohawk Nation and the Haudenosaunee responded to this suit in order to prevent the Nation's land interests from being litigated by individuals. The Indian Law Resource Center was called upon to research the Mohawk land claims, advise the Mohawk Chiefs and Clan Mothers, and help to train Mohawk leaders in negotiations and out-of-court dispute resolution skills.

41. That lawsuit by individuals was dismissed. *Canadian St. Regis Band of Mohawk Indians v. State of New York,* 573 F. Supp. 1530 (N.D.N.Y. 1983).

42. The Mohawk Nation claims later became the subject of negotiations with the State and with the federal government until talks broke down in 1988. At that point it was necessary for the Indian Law Resource Center to represent the Mohawk Nation in filing a federal lawsuit asserting the Trade and Intercourse Act claims. A negotiated settlement of the Mohawk claims was reached in 2005, but it has not been implemented, and the litigation continues.

43. In 1986, the land rights of the Tonawanda Senecas, a part of the Haudenosaunee, came into contention in a case against a railroad company. Again, Center attorneys were called

upon to deal with this crisis and help reach a settlement.

44. In 1993, the Seneca Nation of New York (not a member nation of the Haudenosaunee) filed a federal lawsuit claiming Grand Island and a few smaller islands in the Niagara River. The Tonawanda Band of Senecas (a member of the Haudenosaunee) and the Haudenosaunee, including the Onondaga Nation, concluded once again that it was critically important to join that lawsuit in order to protect the interests of the Tonawanda Senecas and to try to avoid any adverse rulings.

45. The Indian Law Resource Center was called upon to represent the Tonawanda Senecas in that action, and we did so until the case was finally concluded in 2006.

46. A further legal case involving Onondaga Nation land rights, which also required Nation time and legal efforts, occurred when a few Onondaga individuals in the Spring of 1997 filed a suit in this Court asserting the land rights of the Nation. *Onondaga Indian Nation, et al., v. State of New York, et al.*, 97-CV-445 NPM-GJD (NDNY 1997).

47. This unauthorized claim was opposed by the Nation as *amicus curiae*, and in due course it was dismissed. Nevertheless, the burden of such legal work slowed the Nation's efforts to find a resolution of its land rights issues concerning the lands illegally taken by New York State.

48. This unauthorized land claim suit nevertheless served the purpose of once again placing New York State on notice that the land rights of the Onondaga Nation in respect to the lands illegally taken by New York State remained unresolved and that the Onondaga Nation government was vigilantly guarding its right to bring such lawsuits in the future.

49. All of the above legal actions (paragraphs 33 through 38) were important measures

that the Onondaga Nation and the Haudenosaunee were compelled to take in order to defend their land rights in cases that they did not initiate. The Nation sought to achieve legal results that would protect Onondaga Nation land rights, sought to defend important legal principles, and sought to determine whether the federal courts and federal law would in fact permit the Nation to bring a successful suit.

ADEQUATE LEGAL RESOURCES WERE NOT AVAILABLE

50. The intense litigation in all of the cases mentioned above meant that the legal resources of the Indian Law Resource Center were exhausted and overtaxed throughout this period. The Center was, for all practical purposes, the only source of legal representation available to the Onondaga Nation and the Haudenosaunee on land rights matters. They could not afford to pay for this legal assistance. Contingent fee arrangements were not trusted and were not feasible in any event because the Onondaga Nation was not primarily interested in money damages.

51. The experience of many Indian claimants in the Indian Claims Commission had made it clear that contingent fee contracts often induced lawyers to seek money damages in preference to other forms of relief. Such arrangements led to improper claims and attorney conflicts of interest, such as occurred in Docket 84 described in paragraphs 33 - 34 above.

52. Before 1995, the Indian Law Resource Center had annual budgets ranging from $167,000 to less than $650,000 to cover all of the Center legal assistance for Indian nations across the United States, including Alaska, and to cover our human rights legal assistance for Indian peoples in Central and South America. Since 1996, the Center's annual budgets have

ranged between $1.1 million and $1.6 million, still a very small amount for a program that provides legal assistance to Indian nations throughout the United States and in many countries of Central and South America as well.

53. The Indian Law Resource Center devoted thousands of attorney hours annually to assisting the Onondaga Nation and the other nations of the Haudenosaunee in their land rights cases, all without charge. We were simply not able to provide the massive amount of attorney assistance that the Onondaga Nation and the Haudenosaunee could well have used since 1974.

54. Nevertheless, I and my colleagues at the Indian Law Resource Center carried out historical and legal research to precisely determine the Onondaga Nation's and the Haudenosaunee's land rights and to document in detail the taking of most of these lands by New York State. This research was undertaken in depth in 1986, soon after the decision in *Oneida II*, and continued for many years.

55. Crucial portions of the historical and legal research concerning the legal validity of the New York State transactions were not completed until 2003 when an expert legal historian was retained to assist in this very specialized and difficult work.

THE ONONDAGA NATION SEEKS ASSISTANCE FROM THE UNITED STATES

56. In May,1989, the Onondaga Council of Chiefs wrote to President George H. W. Bush saying once again that the so-called treaties with New York State were void and in violation of valid treaties with the United States and in violation of federal law. The Chiefs said that they expect to pursue legal remedies but wished to arrange a meeting to discuss these land rights issues.

57. Though no such discussions took place as a result of that request, the Interior Department began in 1992 to consider the possibility of federal legal action on behalf of the Onondaga Nation. Onondaga leaders met with officials of the Eastern Area Office of the Bureau of Indian Affairs and discussed the Bureau's recommendation to sue for title to one area of land taken by the State in violation of the Trade and Intercourse Act. No federal action resulted.

58. At the same time, in 1992, I informed the Onondaga Chiefs that the Indian Law Resource Center did not have the funds to take on any additional litigation, particularly litigation on behalf of the Nation.

59. As a result, the Nation and the Center began a years-long search for capable attorneys and for funding to pay for such legal work. A nation-wide search failed to identify attorneys who could take on the litigation without impossible fees.

60. In order to meet the ballooning needs of the Nation for legal assistance and to move more aggressively in asserting the Onondaga Nation land rights, the Nation and the Indian Law Resource Center began to request assistance from the federal government for the protection of the Nation's land rights.

61. The Onondaga Nation is widely known for its refusal to accept almost all forms of government assistance, but the protection of the Nation's land was a formal treaty obligation of the United States established in the Treaty of Fort Stanwix of 1784 and the Treaty of Canandaigua of 1794.

62. In September, 1995, the Onondaga Council of Chiefs wrote to President Clinton asking explicitly for federal assistance in resolving the Nation's land rights dispute with New York over the illegally taken lands. Funds for attorney fees, litigation assistance and technical

assistance were requested. A copy of that letter is attached as Exhibit A.

63. In December of that year, I requested the Interior Department to initiate litigation on behalf of the Nation against New York State for its violation of the Trade and Intercourse Acts. In early 1996, a formal litigation request was made by the Nation.

64. The Nation in 1996 submitted an application for funding from the Department of Interior for attorney fees and for other expert and technical assistance. No funds or other assistance were made available.

65. In early 1997, the Interior Department sent its litigation request to the Department of Justice, requesting litigation against the State of New York in support of the Onondaga Nation in respect to its lands.

66. From mid-1997 through 2000, the Onondaga Nation Chiefs and I, along with the Nation's General Counsel Joe Heath, made countless contacts with the responsible officials of the Department of Justice and attended countless meetings with these officials in Washington, DC. We requested federal litigation in support of the Nation's planned lawsuit and endlessly explained the need for federal litigation to overcome the State's sovereign immunity defense claims.

67. Over the years, we submitted countless memos to the Department of Justice and answered countless questions from Department lawyers. We were repeatedly assured that a decision would soon be made.

68. During these years, the Nation Chiefs and I, along with Joe Heath, also visited Congressional offices to inform the New York delegation and others in Congress of the Nation's plans to seek justice. We provided detailed information about the Nation's legal plans and about

the Nation's title to the lands taken by New York State.

69. With the repeated assurances of officials in the Justice Department that a decision would soon be made, the Nation waited for the Department of Justice to give its answer.

70. But there was never a decision on the Nation's request, only more meetings and more questions.

71. In January of 2001, all the remaining Justice Department officials we had dealt with departed, and a new administration came in. The Nation renewed its requests.

NEGOTIATIONS WITH NEW YORK STATE ARE FRUITLESS

72. Although New York State was on notice about the Onondaga Nation's claims long before, on December 27, 1988, the Onondaga Nation Council of Chiefs wrote to Governor Mario Cuomo advising him that the Nation regarded the so-called treaties made with the State as void and in violation of United States treaties with the Six Nations and in violation of other federal law. The letter informed that Governor that the Nation expected to take legal action, but wished to discuss these matters nevertheless. A copy of that letter is attached as Exhibit B.

73. It was in 1988 and continuing through 1998 that the Onondaga Nation, the Tuscarora Nation, the Mohawk Nation, and other nations were convulsed with lawlessness and violence on the part of illegal businesses and racketeers attempting to ignore or overthrow the nation governments. The Onondaga Nation was gripped in a serious threat to the rule of law caused by the illegal businesses. The Onondaga Nation had never in the past had need of police or armed law enforcement. During these years of difficulties and confrontation over the illegal businesses, much of the Nation leaders' efforts were devoted to the critical need to bring order to the

community and to bring the businesses under reasonable regulation.

74. More than anything else, this challenge to the rule of law, which the Onondaga Nation successfully resolved, impeded and delayed the Nation in pressing its demands for negotiations with the State.

75. Contacts with the State continued regularly during this period dealing with a variety of matters, especially taxation of sales on the Nation's territory. The Nation suggested talks about the land issues in1996, but without result.

76. Without the benefit of a formal police department, the Nation was able to maintain a peaceful closure of these illegal businesses on its currently recognized territory for a period of more that two years, from 1992 into1994. During this period of time, it became necessary for the Nation leaders and its Clans to work to develop and adopt the Nation's first written laws. This historic and prolonged process resulted in the adoption of the Onondaga Nation Business Rules and Regulations and the Nation's laws regulating outside traders who wished to do business on the Nation's territory.

77. Further, the Nation's leaders and lawyers engaged in an extended period of mediation with the illegal business owners and their attorneys. These mediations were supervised by the United States Department of Justice, Office of Community Relations, but they were not successful, because the illegal business owners eventually broke off the talks.

78. However, negotiations with the State were formally proposed again by the Nation to Governor George Pataki in1997. The Nation offered a preview of the Nation's land rights suit and suggested that it may be possible to resolve the land rights dispute without litigation.

79. A delegation of Onondaga Chiefs, Clan Mothers and other leaders met with

Governor Pataki and members of his staff in Albany on February 25, 1998. Prior to this meeting and also at the meeting, the Governor was given detailed written information about the Nation's legal title to the land illegally taken by the State and about the Nation's plans for litigation in the event that talks failed to resolve the issues. I attended the meeting along with other lawyers for the Nation.

80. On March 26, 1998, a second meeting was held in Albany with Judith Hard, an attorney on the staff of Governor Pataki. Attending the meeting were a number of Onondaga Chiefs and Clan Mothers, General Counsel Joe Heath, and myself, among others. At this meeting, the Nation's planned lawsuit was fully discussed, including the history of the unlawful state treaties, the legal basis of the lawsuit, the value of the land and its resources, and many other issues. The Nation expressed its continuing desire to resolve the land issues out of court if possible.

81. On April 3, 1998, a conference call between myself and Judith Hard discussed plans for further meetings about the Onondaga land issues.

82. On May 22, 1998, a third meeting was held at the Onondaga Longhouse with Judith Hard and other members of the Governor's staff. In addition to Onondaga Chiefs, the meeting was attended by two United States Justice Department attorneys and attorneys for the Nation. The Governor's representative distributed the State's proposed principles for any settlement of the lands issues.

83. Despite further efforts to continue settlement talks with the State, no further meetings were held specifically on land rights issues. The Governor and his staff insisted that the Nation first file its lawsuit before further settlement talks could be held. The Pataki administration told

the Nation that the State could not properly evaluate the strength or complexity of the Nation's land rights claim until formal litigation was actually commenced.

CONGRESS SAYS THERE IS NO TIME LIMIT ON INDIAN SUITS FOR LAND TITLE

84. In 1982, the Haudenosaunee Lands Committee, including the Onondaga Nation, took careful note of the statute of limitation for certain suits by the United States contained in 28 U.S.C. §2415. This limitation was about to expire, and it was widely discussed throughout Indian Country at that time because of its perceived importance to Indian nations. The Haudenosaunee Lands Committee and the Onondaga Nation took note that there were time limits on suits for damages based on contracts or torts, but that there was no time limit for suits for title to Indian lands.

85. The Lands Committee and the Onondaga Nation monitored Congress' consideration of bills to extend the statute of limitations in 28 U.S.C. §2415, as I did myself.

86. Later that year, 1982, the Lands Committee and the Onondaga Nation observed that Congress amended and extended the time limits in §2415 and that Congress left unchanged the provision in §2415(c) which exempted Indian nations' suits for land title or possession from any time limit. This was particularly important to the Onondaga Nation because of the Nation's long-held views about the importance of title as compared to money damages.

COMMUNICATIONS TO THE PUBLIC ABOUT THE NATION'S LAND RIGHTS

87. In 1995, the Onondaga Nation began a deliberate and planned effort to tell the public about the Nation and the Nation's concern about the taking of its lands by New York. The

Nation leaders, including a number of Chiefs, gave attention to communicating with the media and with community groups in the region about the Nation and about land issues.

88. The Nation leaders did as much as they could do to tell the public about the unlawful taking of their lands and about the pollution and environmental degradation that has taken place on much of that land.

89. Since this public education campaign was initiated, hundreds of articles have appeared in the newspapers. Most of these have been in the Syracuse area, but others have appeared in the Rochester and Albany papers and in the *New York Times*.

90. The Nation was particularly concerned that central New Yorkers were simply unaware of the history of how the Haudenosaunee lands were taken by New York State in defiance of the Trade and Intercourse Acts, the United States Constitution, the federal treaties of 1784 and 1794, and in violation of the State's own laws. In order to attempt to fill in this education void, the Nation and its attorneys worked with the *Syracuse Post Standard*, which published an award winning historical series on the Nation and the land takings in August of 2000. This series of six articles, entitled "An Empire Lost", originally appeared on separate days in the Syracuse paper and then was reprinted by the paper in a combined special printing.

91. I declare under penalty of perjury that the foregoing Declaration is true.

November 10, 2006

Date

Robert T. Coulter

ROBERT T. COULTER