

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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THE ONONDAGA NATION,

Plaintiff,

v.

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

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

Defendants.

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**DECLARATION OF JOSEPH J. HEATH, ESQ.,  
GENERAL COUNSEL FOR THE ONONDAGA NATION  
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS**

JOSEPH J. HEATH, hereby declares the following to be true and correct under penalty of perjury that:

1. I am the General Counsel for the Onondaga Nation and one of their attorneys in this action. I have been General Counsel for the Nation since 1983 and my responsibilities in this capacity have been to be primarily responsible for their legal matters, other than the land rights, and to work with other counsel on this land rights preparation.
2. I make this Declaration in opposition to the two motions to dismiss, one by New York State and the other by the non-state defendants, which were filed on August 15, 2006 in this matter.
3. The statements contained in this Declaration are based upon my personal knowledge, founded upon my work for the Nation and upon my having lived in Central New York for almost all of my 60 years.

4. I was born in Watertown, New York, in Jefferson County, in 1946. I lived the first 18 years of my life in northern Oswego County, before attending Syracuse University from 1964 to 1968. Following two years in the Navy, I returned to Central New York to teach school in Ithaca for a year, before attending law school in Buffalo, where I lived from 1971 to 1975. I then moved back to Syracuse and lived in the City of Syracuse until 2000, when I moved to my current home in northern Cortland County.

5. As general counsel for the Onondaga Nation, I have supervised the Nation's environmental and archeological efforts throughout its aboriginal territory. Further, since the early 1980s, I have assisted them in their communications and political outreach work and in their efforts to talk with and work with their neighbors by taking part in public speaking, meeting with reporters, editorial boards and concerned citizens groups from all corners of the Nation's aboriginal territory.

6. This Declaration addresses the following factual matters relevant to the pending motions to dismiss: (a) that the filing of the Nation's land rights action has, in fact, **not** been disruptive to the citizens, media or governments of Central New York; (b) that the Onondaga Nation's continued presence in their aboriginal territory is still recognized and welcomed by their non-Indian neighbors and the local governments; (c) an Indian Nation's retention of its recognized title to land is not necessarily disruptive as shown by the City of Salamanca, New York and (d) that the development of the area by non-Indians has not been positive, but in fact it has been distinctly and environmentally negative.

#### **The Filing of the Nation's Land Rights Action Has, in Fact, Not Been Disruptive**

7. The Defendants, without citing any facts in support thereof, have made the blanket assertions that this case is "inherently disruptive". However, the reality on the ground in Central New York is just the opposite: it has **not** been disruptive at all. The media coverage of the land

rights action and the Nation, since the filing of the original Complaint on March 11, 2005 has been overwhelmingly positive and supportive of the Nation and its efforts to achieve justice.

8. My office has reviewed our media files in which we have compiled copies of the media coverage of the Nation and its land rights actions since March 11, 2005. We have determined that at least 175 articles, or instances of electronic news coverage, have appeared in the media and that almost universally, they have been supportive of the Nation, its call for healing as contained in the first paragraph of the Complaint and the Amended Complaint. For instance, on March 20, 2005 the editorial in the *Syracuse Post Standard* was entitled: “ Elements of the Claim, Onondagas’ carefully targeted strategy avoids panic”. (See: Exhibit “A”.) The text of this editorial reads:

Like a gentle but persistent breeze, the Onondagas have carefully laid out their case for legal ownership of land in New York. . . .

The Onondagas’ announcement caused little stir in the area, a testament to the nation’s handling of the claim. The Onondagas have been true to their culture—which does not recognize that anyone has the right to truly “own” land that belongs to the Creator.

The water. The Onondagas say they are stewards of the land and water, and as such have included environmental cleanup of Onondaga Lake and other site as integral parts of their lawsuits. . . .

The air. The Onondagas are considered the most traditional of the members of the Iroquois Confederacy. As such, they would like Onondaga Lake and the surrounding areas returned to their original state—with fishable waters, huntable lands and pollution-free air. It is not clear whether this will happen in this generation, but it definitely will not every happen unless high goals are set. . . .

The people. It is not clear what will happen next in court or how long it will take to settle the claim. Thankfully, the Onondagas are opposed to gambling casinos, with is Gov. George Pataki’s solution for righting historic wrongs. What is encouraging and perhaps even humbling is how Sid Hill, tadodaho or spiritual leader of the Onondagas, views the Onondagas’ action:

“We’re trying to do a different land-rights action here. Our concern is for the environment and how we as two peoples can live in the area that was our ancestors’.”

This editorial also labels this land rights action as an: “arguably justifiable claim.”

9. In addition to this positive local media coverage, the statewide and national media have also contained numerous and positive articles, which have emphasized, *inter alia*, that the Nation’s land rights action is very different in nature from the land claims which have sought evictions and possession. For instance, on March 31, 2005 the *New York Times* contained a large article, with photographs, entitled: ”Challenging History and Pollution”, A copy of this article is attached hereto as Exhibit “B”. The article reads in part:

The Nation’s leaders have said that they do not intend to forcibly take away anyone’s land in the disputed territory, which is now home to hundreds of thousands of people. They also said that unlike other Indian tribes pursuing land claims against the state, they are not interested in compensation involving money and casinos.

What they want is influence in major policy discussions affecting the ecosystem in their ancestral lands. They also hope to use a favorable judgment to buy land to increase agricultural and housing opportunities, protect ancestors’ gravesites and safeguard the environment.

“We came to this point without avarice or any kind of greedy expectations,” Audrey Shenandoah, 78, one of the community’s clan mothers said in an interview in the Onondaga Nation Territory. . . .

The public response to the lawsuit has been surprisingly subdued. Onondaga Nation officials were bracing for negative reactions from homeowners throughout the claim area, but so far, none have emerged. Mr. Pirro [Onondaga County Executive] said his office had not received a single call from a constituent seeking information about the lawsuit. . . .

Onondaga representatives have started to make the rounds of public forums and newspaper editorial boards to respond to questions and solicit support for their cause. They speak of reconciliation and healing between them and the other residents of central New York, and steer the conversation towards discussions about the environment.

10. This positive media and editorial coverage has continued even after the Defendants filed their motions to dismiss on August 15, 2006. Defendants’ claims to the contrary, the letters to the editor continue to express strong support for the Nation, its presence throughout the aboriginal

territory, and the benefits to all of Central New York that can result from the filing and resolution of this land rights action. For instance, on Sunday, October 22, 2006, the “Readers Page” of the Post Standard featured a letter from Syracuse University Associate Professor of Religion, Philip P. Arnold, with a large display and color photo, captioned with the headline : “Onondaga—Our Lake, Learn to think of it in a new way.” A copy of this letter to the editor is attached hereto, as Exhibit “C”.

11. Prof. Arnold began this letter with: “It wasn’t until the Onondaga Nation files its ‘land rights action’ in U.S. Federal Court March 11, 2005, that I became fully aware of my living in a toxic soup.” The letter continues and recognizes the continued and sacred relationship that the Onondaga Nation maintains with Onondaga Lake:

Onondaga Lake is a sacred place for the “People of the Longhouse” (also known as the Haudenosaunee.) It is where the first Tadadaho, the Peacemaker and Hiawatha came together over 1,000 years ago to form the Great Law of Peace—the process by which the Onondaga Nation has governed itself continuously since that time. . . .

We people who are immigrants in Upstate New York, whether we have been here for generations or since last week, need to foster a better indigenous sense of the sacred—for practical reasons of our own survival.

12. In addition to the positive coverage in the news articles and editorials, perhaps the best measure of the lack of disruptiveness can be found in the dozens of letters to the editor that have appeared in the *Syracuse Post Standard*, since March 11, 2005. My office has counted twenty-seven such letters to the editor and only two of those have been negative in nature. The remaining twenty-five (including Prof. Arnold’s letter referred to above) have been very supportive of the Nation and this land rights action. For instance, on April 3, 2006, in a letter to the editor, entitled: “Onondaga’s Vision for Healing Worth Supporting”, Tully, New York resident Dan Gefell wrote: “Chief Sid Hill, tadodaho, has invited us all to join the Onondagas in healing our environment and relationships

between our peoples. The approach is visionary and a source of hope. As chief Hill pointed out, the first step in healing is to acknowledge the wounds—both environmental and between people. . . . Support the Onondagas’ vision for healing and accept Chief Hill’s invitation to apply it in your own life. ”. (See: Exhibit “D”).

13. Another measure of the positive relationship between the Onondaga Nation and its Central New York neighbors is shown by the speakers series that has been running since February of 2006, which is entitled “*Onondaga Land Rights & Our Common Future, A Collaborative Educational Series, Bringing Together the Central New York Community, Syracuse University and SUNY ESF*”. This series was announced in the *Syracuse Post Standard* in an article on February 24, 2006, ( attached, as Exhibit “E”) which *inter alia*, reads:

Local colleges and several local organization have teamed up with the Onondaga Nation to present a yearlong educational series on the nation and its land rights action. . . .

“We all know what condition this world is in, but we can set a precedent right here in our own community,” said Onondaga Chief Jake Edwards.

The series will focus on educating the Central New York community on the history of the Onondaga Nation and the importance of the land rights action the nation filed last spring. . . .

“The land rights action brings about healing from centuries of injustices that has occurred here.” [Jack] Manno [executive director of the Great Lakes Research Consortium at SUNY ESF] said. “We need to begin to learn about our own history, so that we can find ways to heal our relationship with the land and the waters.” . . .

Edwards said the series will offer a way to learn how to care for the environment.

“We all need the same things, clean air and clean water,” Edwards said. “We have a lot of work to do, but if we can combine our strengths, we can fight for what’s right.”

14. This educational speaking series has been held in the theater at Syracuse Stage and each of its monthly speeches have been attended by hundreds of non-Indians. I have attended each session. Each session has concluded with a prolonged period of questions from the audience and not one of these questions has been negative in nature or antagonistic to the Nation or to the speakers. Copies of the Programs for most of these events are contained in Exhibit "F".)

15. Many of these audience comments and questions have included statements in support of the Nation and of this case, particularly the spirit of healing that is contained in the first paragraph of both the original Complaint and the Amended Complaint. Many of the audience comments have been to express their gratitude to the Nation leaders, either on the stage or in the audience, for the positive leadership shown by the filing of this case, with its positive and healing message.

16. Every one of these speaking events has been very positive in nature, well attended, very well received by the audiences, and very well received by the media. For instance, on April 12, 2006, an article appeared in the *Syracuse Post Standard* under the headline: "Chief Traces History of Hurt; Irving Powless' talk on Onondagas and European Settlers Has Wit and Sting". A copy of this article is attached hereto as Exhibit "G".

17. Additionally, on October 17, 2006, a full day teach-in was conducted at the State University of New York's College of Environmental Science and Forestry, which was entitled: "*Environmental Stewardship: Finding Common Ground*". I attended this event. Hundreds of native and non-Indian participants attending this series of workshops and speeches in a very positive atmosphere of sharing and cooperation. A copy of the program for this day long event is attached as Exhibit "G".

18. During the lunch speeches on October 17, 2006, the President of the College announced the establishment of the "Center for Native Peoples and the Environment", that will focus

on developing connections between traditional ecological knowledge and western scientific knowledge. A copy of the college's press release announcing the establishment of this Center and the October 18, 2006 *Post Standard* article covering it are attached as Exhibit "H". SUNY ESF's press release talk positively about: "developing connections between traditional ecological knowledge (TEK) and western scientific approaches."

19. This establishment of the Center received a very positive editorial endorsement in the *Post Standard* on October 19, 2006, which praised the College for this decision and concluded by saying: "Considering this area's vast Native American history, it makes all the sense in the world." A copy of this editorial is attached as Exhibit "I".

20. Unlike many universities around the country that have strained relationships with their local Natives, due to offensive mascots and other issues, the relationship between the Onondaga Nation and Syracuse University remains very positive and has actually grown stronger since the filing of this land rights action.

21. Other cooperative efforts with Syracuse University include a new program of offering full scholarships which will cover tuition, room, board and fees, for any qualified Onondaga and Haudenosaunee high school graduate who qualifies for admission. This positive, new, cooperative program was established **after** the filing of this action in March of 2005.

22. This full scholarship program was announced by Syracuse University's Chancellor, Nancy Cantor on August 19, 2005, as reflected in an article in the *Syracuse Post Standard*, entitled "SU Offers Haudenosaunees Full Scholarships". During this historic announcement, Syracuse University officials stressed that they "have been working to establish closer ties with the Haudenosaunee and Native American people." A copy of this article is attached hereto, as Exhibit "J".



23. The success of this scholarship program was reported just a few weeks ago, when, on September 20, 2006 the *Post Standard* ran another article, entitled: "SU Sees A Jump in Indian Students". This article reported that the scholarship program has resulted in 27 new Haudenosaunee students attending the University. A copy of this article is attached hereto, as Exhibit "L". This article reaffirms Syracuse University Chancellor Nancy Cantor's announcement of the scholarship program as an "express[ion of] SU's respect for the Haudenosaunee and to instill a better relationship between the university and the Haudenosaunee. . . ."

24. Another measure of the non-disruptive nature of the atmosphere in Central New York between the Onondaga Nation and its non-Indian neighbors, since the filing of this land rights action, is the existence of the non-Indian support group: "Neighbors of the Onondaga Nation (NOON). NOON maintains a website at: [www.peacecouncil.net/noon](http://www.peacecouncil.net/noon), where it states that "NOON is a grassroots organization of Central New Yorkers which recognizes and supports the sovereignty of the traditional government of the Onondaga Nation . . . and advocates for the fair settlement of any claims that are filed."

25. NOON's web site lists the goals of NOON as: (a) "To promote understanding of and respect for the Onondaga people and culture within the broader Central New York community;" (b) "To educate ourselves and others about the history of the relations between the United States and the Onondaga Nation;" (c) "To challenge racism towards native peoples; and (d) "To work with the Onondaga Nation on matters of mutual concern."

26. NOON's open and public continued existence are further evidence that the filing of this action has not been disruptive within the "broader Central New York community."

27. Another indication of the lack of disruptiveness of this land rights action is found in its lack of impact on the real estate market. On the same day that the Nation filed its original

Complaint in this matter, March 11, 2005, the Post Standard published an article, with the title: “Will this hurt house, land sales?”, with the “this” referring to the Nation’s filing of this case. A copy of this article is attached hereto, as Exhibit “M”. The answer to this question was clearly: “No”, with the article’s opening sentence reading: “Native American land claims in Central New York have not hurt residential real estate sales, said two professionals in land transactions in other land claim areas.”

28. After quoting both a vice president of a title insurance company and a real estate attorney in Oneida, New York as both verifying that: “the land claims should not hurt sales.”, the article went on to quote the real estate attorney, Richard Vindigni, as saying: “People have gotten used to the Indian land claim.” The article also reported that title insurance has been routinely written in Central New York covering land rights actions for thirty five years and it concluded by reporting that: “A land claim does not lead to higher rates [for the title insurance].”

29. In addition to Ticor Title Insurance Company’s history of writing title policies in the other claims areas, as reflected in Exhibit “M”, at least one title insurance company has, since July of 2005, been writing title policies to cover the Onondaga Nation’s action. This is verified on the Washington Title Insurance Company’s web site: [www.washtitle.com](http://www.washtitle.com)

30. Another measure of the lack of disruption is shown by the cooperative interaction between the Nation and many of the local governments. The best example of this continued cooperation is with the City of Syracuse, which is a named defendant in this action. The Nation’s leaders have met with the Mayor of Syracuse twice since the March 15, 2006 filing and both meetings, which I attended as the Nation’s counsel, have been very positive and cordial. The Nation continues to maintain a constructive dialog and interaction with the City’s Common Council and with individual Councilors. Further, the Nation continues to work cooperatively with the City on

environmental issues of mutual concern, particularly the efforts to restore and clean up Onondaga Creek.

31. The Nation has also worked positively and cooperatively with other local governments. For instance, officials from the Town of Clay, in northern Onondaga County, have recently approached the Nation to begin a dialog about the Nation's and the Confederacy's historic interests in the Three Rivers area. The town's leaders have offered to work cooperatively with the Nation towards the creation of an accurate historic sign that would properly reflect the spiritual, historical and archeological interests of the Haudenosaunee and Onondagas in the Three Rivers area.

32. On August 29, 2006, the town leaders hosted a meeting of Nation leaders to discuss this cooperative effort and then undertook a tour of the area to show us their environmental restorative efforts in this important and historic area.

33. Another recent example of the continued recognition of the Onondaga Nation's historic presence and continued acceptance of the Nation's continued presence and contributions to Central New York is found in the August 2006 brochure, entitled: *"Welcome to The Valley"*, published by the City of Syracuse's Department of Community Development. A copy of the front and back of this brochure are attached as Exhibit "N". The text on the back of this Valley brochure reads:

The land had previously been settled by the Onondagas, Keepers of the Central Fire of the Haudenosaunee ("Iroquois Confederacy"), **still good neighbors of the Onondaga Nation today.**

We have learned much from them and enjoy many of their contributions to our culture. We join in their appreciation and care for this part of "Mother Earth" which we share. (Emphasis added.)

34. The Nation also has a close and mutually respectful working relationship with the Town of LaFayette, which actively seeks consultation with the Nation on environmental and

archeological matters. This spirit of consultation is based on this town's leaders recognition of the importance to the Nation of its numerous historic and archeological sites within the Town.

**The "Character of the Area" Has Not Become Distinctly Non-Indian:**

35. As reflected in some of the articles and cooperative efforts listed above, scholars, governmental officials and citizens in Central New York continue to be aware of and embrace the ties of the Onondaga Nation to this area. It remains widely accepted that this area was the center of the great Iroquois (Haudenosaunee) Confederacy and that the Onondagas, therefore have a continued right to be involved with decisions that are being made about the land and the waters.

36. As noted in ¶¶ 30 through 33 above, local governments recognize the continuing Onondaga presence. In addition, many state and federal agencies maintain a positive and cooperative interaction with the Nation, based upon these agencies' recognition of the Nation's continued presence in and interests in the land and the waters.

37. The Onondaga Nation's Historic Preservation Office responds to a wide variety of requests for consultation from federal, state and local governments throughout the Onondaga Nation's aboriginal territory. The majority of requests from federal agencies are pursuant to §106 of the National Historic Preservation Act; a small number are pursuant to the Native American Grave Protection and Repatriation Act (25 USC §§ 3001 *et seq.*). The following is a partial list of recent consultation projects within the claim area in connection with federal agencies:

- a. United States Department of Defense, Department of the Army: Fort Drum, New York (near Watertown, in northern Jefferson County): NAGPRA and §106 consultation concerning excavation of longhouse site; disposition of artifacts and remains;

b. United States Department of Agriculture, Natural Resource Conservation Service:

- i. Negotiation of Consultation Agreement underway;
- ii. Starmer Project, Pompey, New York: §106 Consultation;
- iii. Henderson Project, LaFayette, New York: §106 Consultation;
- iv. Mras Project, Lisle, New York: §106 Consultation; and
- v. Livingston Project, Lisle, New York: §106 Consultation;

c. United States Department of Agriculture, Office of Rural Development:

- i. Orleans and Alexandria, New York: §106 Consultation re: Sewer District Extension;
- ii. LaFayette, New York: §106 Consultation re: Smokey Hollow Water District;
- iii. Binghamton, New York: §106 Consultation re: Lillian Drive Water District Extension;
- iv. Owego, New York: §106 Consultation re: Owego Water System Improvement Project;
- v. Dryden, New York: §106 Consultation re: RPM Ecosystems Tree Nursery Project;
- vi. Homer, New York : §106 Consultation re: Homer Senior Apartments;

d. Federal Communications Commission:

- i. Consultation with the Nation for any FCC project in: Broome, Cayuga, Chenango, Cortland, Erie, Jefferson, Lewis, Madison, Onondaga, Oswego, Tioga, Tompkins, and St. Lawrence Counties, New York;

ii. §106 Consultation re: Wireless Communications Tower Siting: The Onondaga Nation receives bi-weekly notices containing between five and thirty towers, with the Nation responding to any that involve ground disturbance and requests notification in the event cultural resources are discovered during construction. For projects known to be in archeologically sensitive areas, the Nation requests cultural resource surveys be performed prior to construction.

iii. CRAM Communications, AM Tower, LaFayette, New York: §106 Consultation. FCC required project applicant to consult with Onondaga Nation and perform cultural resource survey of this project adjacent to currently recognized territory.

e. Federal Energy Regulatory Commission: Oswego River Project, Brascan Power: §106 Consultation.

38. The Nation also received consultation requests from various New York State agencies. In the past few years, we have developed a close and cooperative working relationship with the State Office of Historic Preservation. Additionally, the following is a partial list of recent consultation projects in connection with federal agencies:

a. New York State Department of Transportation: Consultation requested under §106 on a variety of projects within Onondaga, Oswego, Cayuga, and Cortland Counties:

- i. Plainville, New York: §106 Consultation regarding bridge reconstruction;
- ii. Cicero, New York: §106 Consultation re: Bartell Road Bridge;
- iii. Liverpool, New York: §106 Consultation re: bridge reconstruction;
- iv. Pompey, New York: §106 Consultation re: bridge over Limestone Creek.

b. State University of New York:

- i. Oswego, New York: NAGPRA and §106 consultation re: disposition of human remains:
- ii. Binghamton, New York: NAGPRA and §106 Consultation re: disposition of artifacts recovered during construction of Student Center.

39. The Nation also received consultation requests from various Central New York town governments. The following is a partial list of recent consultation projects in connection with various towns:

a. Onondaga County:

- i. Clay, New York: Three Rivers Point, SEQRA and §106 Consultation;
- ii. Elbridge, New York: Elbridge Water District, SEQRA and §106 Consultation;
- iii. LaFayette, New York: Jamesville Grove, SEQRA;
- iv. Lysander, New York: Highland Meadows, SEQRA and §106 Consultation; and
- v. Lysander, New York: River Road Golf and Development Project, SEQRA.

**A Recent Book about Central New York Reflect the Continued Recognition of the Presence of the Onondaga Nation**

40. This year, the Onondaga Historical Association published a new book: *Crossroads in Time, An Illustrated History of Syracuse*.<sup>1</sup> In its Preface, this book acknowledges both the

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<sup>1</sup> By Dennis J. Connors, Curator of History, Onondaga Historical Association, First Edition, Syracuse University Press, 2006. This book was just released, in August of 2006; it was published **after** the March 2005 filing of this action.

historic importance of the Onondaga Nation and the continuing presence and importance to the area and the county:

It is common to begin histories of American communities by relating the presence of Native Americans. To 17<sup>th</sup> and 18<sup>th</sup> century European powers and colonial authorities, our hills and valleys were a remote wilderness. But this land was the traditional meeting place of the Iroquois Confederacy. Members of the Onondaga Nation, central Keepers of the Council Fire, and their ancestors had resided here for centuries. As the Iroquois acted to maintain their own prerogatives and independence as a people, they exerted considerable influence on the affairs of European and colonial interests for more than two centuries. That made Onondaga a place of international notoriety. It was the locale for engaging lessons of cultural interaction as the two worlds maneuvered to both understand and influence each other.

And yet, when considering Native Americans in the eastern United States, it is too often only the adventures of colonial encounters that intrigue historians. **But the Onondaga People still live here.** The experiences, philosophies and struggles of that nation for the last two centuries to confront assimilation and endure as a distinct culture are also dramatic and notable topics for examination. The territory they occupy today, just south of Syracuse, has always been native land, well before Columbus stumbled into our hemisphere on his way to the Far East. The limitations of this publication, however, will not allow us to venture into their rich culture this time. (*Crossroads in Time*, p. 9, Emphasis added.)

41. The presence and importance of the Onondaga Nation to Central New York was likewise acknowledged in the 2002 book, by local historian, Donald H. Thompson, entitled: *The Golden Age of Onondaga Lake Resorts*.<sup>2</sup> This book devotes several pages to the history of the Nation around the lake and to the Nation's interaction with first the French, then the English and finally the State of New York. The book notes that, in 1933, Onondaga County built a replica of the first French fort: St. Marie Mission to the Iroquois to commemorate the first, sustained European interaction with the Onondagas. This first replica was subsequently replaced by the County in 1975. (*Id.* p. 14).

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<sup>2</sup> First Edition, Purple Mountain Press, 2002.



**The Haudenosaunee Flag Flies in Downtown Syracuse and at LaFayette, New York High School, in Recognition of the Onondagas' Continued Presence**

42. In November of 2003, the LaFayette, New York high school began flying the Haudenosaunee flag outside the school, along with the American flag. Attached hereto, as Exhibit "O", is a photograph that I took on October 24, 2006 of the flags outside the school.

43. The flag was raised at a ceremony, which I attended, outside the school on November 12, 2003, when an Onondaga young man, Steven Thomas, and a non-Native young woman, Sarah Walsh, joined together to raise the flag, as documented in the November 13, 2003 article from the *Post Standard*, which is attached as Exhibit "P". Mr. Thomas, who is Onondaga and was a junior, stated that: "the raising of this flag today will not further divide us but [will] unite us as a community." Ms. Walsh, also a junior, but not an Onondaga, said: "I think it's a great thing."

I attended this November 12, 2003 flag raising event at the LaFayette high school.

44. Attached as Exhibit "Q" is another news article which covered this flag raising ceremony at the high school; it is from the Associated Press. The headline to this AP piece reads: "Flag raising does what it was supposed to--unites community." and the article reads in part:

Intended to help unite a community, the flag of the Iroquois Confederacy was raised next to the American Flag at the local high school Wednesday, bringing together nearly 1,000 students, teachers and residents.

Although the flag-raising created a stir over the proper flag etiquette and drew mild protests from some in the community, the event at LaFayette Junior-Senior High School proved itself, said Superintendent Mark Mondanaro.

"We wanted to bring people together. Looking around, that's exactly what we accomplished," Mondanaro said.

"This action recognizes and celebrates two communities that come together as one in our schools," school board President James Wolf told the crowd during the 30-minute ceremony. "... it will lead to improvement on how we treat each other and how we live together."

45. The Haudenosaunee flag also flies in Clinton Square in downtown Syracuse, as shown in the photograph that I took on October 24, 2006, which is attached hereto as Exhibit “R”. This photograph shows the James M. Hanley federal court and office building in the background and the Soldiers and Sailors monument next to the flag, which flies along side the American and New York State flags.

46. The Haudenosaunee flag was first raised in Clinton Square, on August 3, 2002, during a ceremony which involved Syracuse Mayor Matthew Driscoll and Tadodaho Sidney Hill, as shown in the *Post Standard* article of August 4, 2002, which is attached as Exhibit “S”, and which concludes: “And in a ceremony attended by local politicians and Tadadsho Sid Hill, the spiritual leader of the six Iroquois nations that make up the Haudenosaunee, the Haudenosaunee flag was raised in Clinton Square—for the first time in history.”

I attended this August 3, 2002 flag raising event in Clinton Square

**An Indian Nation’s Retention of its Recognized Title to Land is Not Necessarily Disruptive As Shown by the City of Salamanca, New York**

47. The Seneca Nation has retained title to the land in the city of Salamanca, New York and this situation is an excellent example that such retention of title by an Iroquois Nation is not necessarily disruptive. That nation’s recognized title retention has not disrupted either the local, non-Indian government nor the real estate market.

48. The City of Salamanca’s municipal web site clearly acknowledges that: “Salamanca is the only city in the United States that lies almost completely on an Indian Reservation.” (See: [www.salmun.com/about.htm](http://www.salmun.com/about.htm).) The retention of the recognized title by the Senecas has been clearly acknowledge at least twice by the 2<sup>nd</sup> Circuit in: *US v. Forness*, 125 F. 2d 928, 930 (1942); and *Fluent v. Salamanca Indian Lease Authority*, 928 F. 2d 542, 544 (1991).

49. Rather than cause disruption, the acknowledgment of the Seneca Nation's recognized title was an important step towards the passage of the Salamanca Settlement Act, as part of the "truth and reconciliation" process that has been beneficial to all parties around Salamanca. This is shown when we examine the purposes of the Act, as set forth in 25 USC § 1774 (b): "It is the purpose of this subchapter to effectuate and support the Agreement between the city [of Salamanca] and the Seneca Nation; . . . to assist in resolving the past inequities; . . . to provide stability and security to the city and the congressional villages, their residents, and businesses; to promote the economic growth of the city and the congressional villages; . . . [and] to promote cooperative economic and community development efforts on the part of the Seneca Nation and the city." (25 USC § 1774 (b) (1), (2), (4), (5), and (7).)

50. The non-native government of the City of Salamanca has not been disrupted and continues to operate in a routine manner, as can be seen by only a cursory check of the web editions of the two local newspapers, the Salamanca Press ([www.salamancapress.com](http://www.salamancapress.com)); and the Olean Times Herald ([www.oleantimesherald.com](http://www.oleantimesherald.com)). Additionally, the real estate market in the City of Salamanca appears to be unaffected by the Seneca's recognized title and mortgages are still being written. (See: [www.city-data-com/housing-Salamanca-New-York.html](http://www.city-data-com/housing-Salamanca-New-York.html)).

**The "Development" of the Land and Water by the Non- State Defendants Has Not Been Positive, But in Fact, Has Been Distinctly and Environmentally Negative**

51. One of my primary responsibilities as General Counsel for the Nation has been to oversee their environmental work, with a particular focus and concern of the Nation being the environmental problems in and around Onondaga Lake and in Onondaga Creek. In this capacity, I have supervised other attorneys and environmental consultants who have worked for the Nation. I have also personally attended dozens of meetings at the State Department of Environmental Conservation which have reviewed various aspects of the remediation plans for Onondaga Lake and

Onondaga Creek. I have also personally reviewed scores of engineering studies, Risk Assessments, Proposed Remediation Plans, Records of Decisions and other documents that have been prepared for this remediation work. I have also personally toured many, if not all, of the Superfund sites that surround the Lake.

52. Defendant Honeywell International, Inc. is the owner of industrial properties along the southwest shore of Onondaga Lake, where, from 1881 until 1986 Honeywell and its predecessor companies: General Chemical Company, National Aniline and Dye Company, Solvay Process Company, Semet Solvay Company, Allied Chemical and Dye Corporation, Allied Chemical Corporation, and Allied Signal, Inc., operated three chemical plants, the Main Plant, the Willis Avenue Plant and the Bridge Street Plant.

53. During these 105 years of industrial chemical manufacturing, Honeywell and its predecessors used the Lake itself and its southwest shore as their private chemical waste dump. They disposed of hundreds of thousands of tons of toxic chemical wastes either directly into the Lake or into unlined dumps along its shore. These wastes included: mercury, lead, asbestos, tri- and tetrachlorobenzenes, toluene, ethylbenzene, xylene, polychlorinated biphenyls (PCBs), cadmium, chromium, cobalt, pesticides, creosote, chlorinated benzene, polycyclic hydrocarbons (PAHs), and volatile organic compounds (VOCs), among other heavy metal, chemical, and toxic discharges.

54. Additionally, the former Honeywell manufacturing and upland waste disposal sites are still actively contributing toxic and hazardous leachate to the Lake. Further, Honeywell's 100+ years of dumping toxic chemical wastes directly into the Lake has resulted in an estimated 20 to 40 percent of the bottom sink of the Lake being filled in with "Solvay Process wastes."

55. Attached hereto as Exhibit "T", is a copy of the July 30, 2004 article for the *Post Standard*, entitled: "How to Clean the Lake: Plan Could Cost \$2.3 Billion]", and it begins:

“Onondaga Lake’s biggest industrial polluter may have to spend up to \$2.3 billion over 17 years to clean a century’s worth of waste it dumped into the lake, state officials say in a report to be released today.” The description of the destruction caused by Honeywell and its predecessors continues later in this article:

The state sued Allied in 1989, claiming the chemical company was responsible for dumping 165,000 pounds of mercury into Onondaga Lake from 1946 to 1970. . . .

The mercury contaminated the lake’s fish and led to a fishing ban. Mercury also contaminates 7 million cubic yards of sediment on the lake bottom. It is the reason Onondaga Lake is on the federal Superfund list of toxic waste sites.

56. Defendant Clark Concrete Company, Inc. and its subsidiary, Valley Realty Development Company, Inc., are the owners of the Tully gravel mine, which is located on the north face of the Tully valley moraine and which has negatively impacted some of the head waters of Onondaga Creek. This mining area, near Solvay Road and Tully Valley Road in Tully, New York, also contains areas of extremely archeological sensitivity for the Onondaga Nation.

57. In addition to the routine deforestation and digging up of vast areas that are associated with such a gravel mining operation, without any reclamation, in early April of 2002, Clark caused severe damage to one of the streams that form the head waters of Onondaga Creek, when, in the course of attempting to dredge the clay sediments from the bottom of one of its wash ponds at the mine, the clay lining at the bottom of the pond was punctured. This caused the water in the pond to leak out of the bottom of the pond, through a gravel vein and down the side of the north face of the moraine. This unchecked discharge of water was of such high volume that it, along with the mud and gravel it contained, caused:

- a. Serious bed and bank damage to the stream;
- b. Destruction of all trout fry present in the stream at the time;

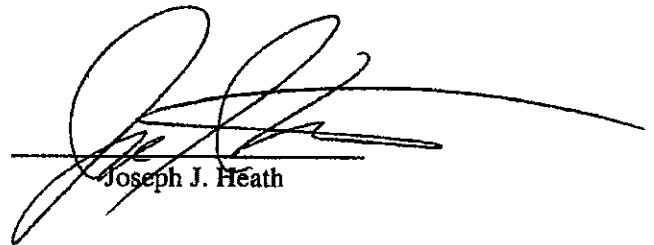
- c. A substantial amount of scouring of the stream bed, removing the small pebbles and gravel used for trout spawning; and
- d. Sediment deposits and turbidity downstream.

(See: April 10, 2002 New York State DEC Region 7 Memo, attached hereto, as Exhibit "U".)

58. Defendant Hansen Aggregates North America and its subsidiaries are the owners of what is commonly referred to as the "Jamesville quarry", which sprawls across portions of the towns of DeWitt and LaFayette and is the largest open pit mine in New York State. Despite the vast areas, of 1000s of acres, that have been devastated by this mining operation, there has been little or no reclamation of the land. Further, this mining operation has had a very negative impact on the ground water in the area.

I have read this statement and hereby declare that all of the statements contained above are the truth, to the best of my knowledge.

Dated: November 10, 2006



Joseph J. Heath