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Hearing on the "Status of Settling Recognized Tribes' Land Claims in the State of New York"
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Good morning, Chairman Pombo, Ranking Member Rahall, and distinguished members of the Committee on Resources. My name is Ray Halbritter, the Nation Representative of the Oneida Indian Nation of New York.

The Oneida Indian Nation is a federally-recognized Indian nation located in Oneida and Madison Counties, which is an area of central New York State where our people have lived on our homeland since time immemorial. The Oneida Indian Nation is the primary plaintiff in the largest and oldest land claim case in the country, one that has twice been upheld by the United States Supreme Court. Oneida Indian Nation v. County of Oneida, 441 U.S. 667 (1974); County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985).

We were quite surprised to learn last fall that the Governor of New York was attempting to terminate outstanding New York land claim cases, without the involvement or approval of the Oneida Nation, and, remarkably, without paying any compensation to the Oneida Nation.

And we were also astonished by the Governor's decision to invite Oklahoma and Wisconsin Indian tribes to establish governments and develop casinos in New York, something that is completely inconsistent with Haudenosaunee (Iroquois) traditions, federal law, and quite frankly, common sense.

What is most unfortunate about the Governor's attempt to bring out-of-state tribes into New York is that it will only delay a real settlement of the land claims with New York's Indian nations. This also means more uncertainty for the people who live in the land claim areas, where Indian and non-Indian conflict needs to be replaced by collaboration and workable solutions.

The Governor's invitations to out-of-state tribes seem to have to do more with New York politics and the interests of casino developers and their lobbyists than it does with actually resolving these historic disputes and letting upstate New York communities move forward together to bring opportunities and promise to this part of the State.

Two recent judicial developments seem to have halted the Governor's deals with the out-of-state tribes for the time being. On March 29, 2005, the Supreme Court decided City of Sherrill v. Oneida Indian Nation, 125 S.Ct. 1478 (2005), which rejected our claim of immunity to local property taxes within the Oneida reservation established by federal treaties and never disestablished. Not long after, the Governor withdrew the legislation implementing the out-of-state tribes' settlements. Most recently, on June 28, 2005, the Second Circuit Court of Appeals reversed a District Court's damages award of $250 million in favor of the Cayuga Nation in its land claim. The decision, which surprised most observers, held that the Cayuga Nation's land claim is subject to the defense of laches and must be barred on that basis. It is unclear at this time exactly what impact this decision—if it stands—will have on the New York Indian land claims. The State has already written to the district court in the case involving the Wisconsin Stockbridge-Munsee tribe's claim to indicate that the Cayuga decision will affect the likelihood of reaching a new agreement with that out-of-state tribe.

Let me provide you with the Oneida Nation's perspective on these important issues, starting with an historical overview.

The Oneida Alliance with the Colonists

The Oneida Nation had a unique role in the formation of the United States. At the time of the American Revolution, many members of the Haudenosaunee, or Iroquois Confederacy, were aligned with the British monarchy and were willing to help British troops defend against the mounting insurrection by the American colonists. In spite of these alliances, the Oneida Nation openly supported the American rebels, fighting alongside the Continental Army and providing other support and assistance. During the conflict, the Oneida people suffered greatly, losing many lives and having our communities and our way of life shattered by the British, who took revenge by killing our people and burning our homes and farms.

In recognition of our alliance with the United States, the Continental Congress passed a resolution in 1783, "to assure [the

Oneida Indian Nation] of the friendship of the United States and that they may rely on that the lands which they claim as their inheritance will be reserved for their sole use and benefit until they may think it for their own advantage to dispose of the same."

The Federal Treaties and the Non-Intercourse Act

In 1784, when the Nation occupied about six million acres of land in the central part of New York State, the United States signed a treaty that "secured the [the Oneida Indian Nation] in the possession of the lands on which they are settled."

In 1785 and 1788, New York State purportedly purchased more than five million acres of Oneida land, with the Oneida Nation retaining a reservation of about 300,000 acres, located within what is now Oneida and Madison Counties. As a result of the aggressiveness of New York and other states in obtaining Indian lands, Congress enacted the Indian Trade and Intercourse Act in 1790. One of the most important provisions of the Act prohibited the sale or encumbrance of Indian land without the formal approval of the United States. The primary purpose of the statute was to prevent the tribes from being cheated in any land transactions, which could lead to further conflicts and, perhaps, war. This statute remains the law of the land today.

In 1794, the United States reaffirmed federal protection of Iroquois lands in the Treaty of Canandaigua. Under the Constitution, this treaty, which was ratified by the United States Senate, continues to be the supreme law of the land. At the time of this federal treaty, the Iroquois Confederacy consisted of the Cayugas, Mohawks, Oneidas, Onondagas, Senecas, and Tuscaroras, all located in New York State. The Treaty of Canandaigua was signed by all the members of the Confederacy except the Mohawks, who entered into a separate treaty in 1796.

The New York Land Claim Cases

Although federal law required states to buy Indian land through a federal treaty, and President Washington's Secretary of War and Attorney General warned New York that buying land without a federal treaty was illegal, New York State went ahead with a long series of illegal purchases of Oneida land protected by federal treaties between 1795 and 1846. These transactions, and similar deals involving other tribes, deprived many of New York's Indian Nations of a substantial portion of their lands. With only a few exceptions, these land transactions occurred without the congressional approval of a federal treaty as required by federal law. And, the federal government did not take steps to enforce the law. All of the lands which were acquired from the Indians were within the land boundaries and reservations recognized by the 1794 Treaty of Canandaigua and the 1796 Mohawk Treaty.

The State not only violated federal law in acquiring tribal land; it also flouted basic principles of fair dealing. Taking advantage of its monopoly power as the holder of the "right of preemption" – the exclusive right to buy Indian land – the State legislature passed a law setting a maximum price for Oneida land, and a minimum price four times higher for the resale of the land. After the State's Council of Revision vetoed the legislation as unfair, the legislature overrode the veto, and State negotiators proceeded to acquire about 100,000 acres of Oneida land in a suspect deal struck with a small number of Oneidas in Albany after the rest of the Nation had refused to sell. That transaction alone removed a third of the federal reservation acknowledged only a year earlier in a treaty signed by President Washington. After that first transaction, it was only a matter of time before the Nation had to sell more land to survive.

Although the illegality of the 1795 transaction is unquestioned, there was nothing the Nation could do for over 150 years without the assistance of the federal government. The state courts said we had no jurisdiction over tribal land claims. Johnson v. LIRR, 162 N.Y. 462 (1900). We could not sue the State in federal court (unless the federal government joined us) because of the Eleventh Amendment. And, even if the Nation had wanted to sue the people who purchased the land from the State, there was no general federal question jurisdiction established until 1875, 470 U.S. at 255 (Stevens, J., dissenting), and even after that the Nation would have met objections to federal jurisdiction. See Oneida Indian Nation v. County of Oneida, 464 F.2d 916 (2d Cir. 1972) (Friendly, J.) (denying federal jurisdiction based on the "well-pleaded complaint" rule); Yoder v. Assiniboine & Sioux Tribes, 339 F.2d 360 (9th Cir. 1964) (denying federal jurisdiction based on the amount in controversy requirement).

In 1966, Congress opened the door to the Oneida land claim, and other similar claims when it passed 28 U.S.C. § 1362, which was intended to allow tribes themselves to bring whatever claims the federal government could have brought on their behalf. See H.R. Rep. 89-2040, reprinted in 1966 U.S.C.C.A.N. 3145, 3149. In a series of statutes enacted between 1966 and 1982, Congress also decided that the passage of time would not bar tribal land claims. 470 U.S. at 240-44.

The Oneida Nation land claim litigation is the biggest and the oldest. After years of asking the federal and state governments for redress, and only four years after Congress paved the way to federal court, in 1970 the Nation filed the first modern

land claim. Since that time, land claim cases have also been brought and are currently pending on behalf of the Cayugas, Mohawks, and Senecas.

The Oneida Nation land claim litigation began as a “test case” against the Counties of Oneida and Madison. The Nation believed that it would be easy to settle the case on terms that were fair and acceptable to everybody, once the legal principles were established. The plaintiffs in this test case were the Oneida Nation of New York, the Oneida Tribe of Indians of Wisconsin, Inc., and the Oneida of the Thames, a Canadian tribe. In 1974, after the Supreme Court upheld federal court jurisdiction, the Oneida plaintiffs filed a second case involving the entire 300,000 acre reservation. That case remained on hold while the Oneida Nation pursued the test case. The test case went to trial in the district court, which ruled in the Oneida Nation’s favor. The Second Circuit affirmed that decision in 1983.

In 1985, the Supreme Court affirmed a judgment awarding the Oneida plaintiffs rental damages in the test case, holding also that they have always had and still have a right to possess the land that was illegally transferred in the State transactions at issue in the case. The Court ruled that the Counties could not sue the State for reimbursement of any damages the Counties owed the Oneidas, because of the State’s 11th Amendment immunity. For many years, the State was not a party to this litigation as a result of this ruling, and had little incentive to settle. The State became a defendant again only when the United States intervened and sued the State.

Federal Intervention in the Land Claim Cases

Beginning in 1992, the U.S. Justice and Interior Departments decided that the pending Iroquois land claim cases needed to move forward, either to a judgment or to a settlement. As a result of this decision, the United States intervened in the pending land claim cases and brought claims against the State of New York on behalf of most of the Indian land claim plaintiffs in its role as trustee for Indian nations and tribes. The purpose of these interventions was to bring the State of New York formally back into the land claims litigation as a party and as the principal wrongdoer. The State does not have an 11th Amendment immunity defense against the United States.

The federal government joined in the Cayuga litigation in 1992. Federal intervention on behalf of the Oneida plaintiffs occurred in 1998. The United States has now intervened in all of the New York land claims cases, except for the claims brought by the Wisconsin Stockbridge-Munsee Tribe.

In 2002, the Cayuga Nation secured a District Court judgment that its claim was worth $250 million. A co-plaintiff in the Cayuga claim is the Seneca-Cayuga Tribe of Oklahoma. The Cayuga judgment was appealed to the Second Circuit, which reversed the District Court, ruling that the Cayuga’s claim was barred by the doctrine of laches, which ordinarily applies only when a party has unreasonably delayed filing suit, causing prejudice to the other side. The most surprising feature of the decision was the application of laches against the United States, which was suing on behalf of the Cayugas. Laches ordinarily does not apply to the federal government.

The Oneida Nation’s claim can be factually and legally distinguished from the Cayuga claim. So, even if the Cayuga decision stands, it may not decide the merits of the Oneida land claim litigation. Our land claim involves about 270,000 acres, about four times the size of the Cayuga land claim. In two of its out-of-state settlements, the State acknowledged a total value of not less than $1.2 billion when compared to the earlier judgment awarded the Cayugas. The Mohawk and Seneca claims are substantially smaller than the Cayuga or Oneida claims.

The Oneida Nation was also involved in a separate property tax dispute with the City of Sherrill, New York (Oneida County), a case which we recently lost in the U.S. Supreme Court. We had purchased land in our reservation, believing that the best way to restore our homeland was not to uproot the people who lived there, but to purchase what we could from willing sellers. Once we reacquired land, we offered to make voluntary Silver Covenant Chain payments, which exceeded existing property tax rates. Many local governments – but not the City of Sherrill—accepted them. The Supreme Court decided, however, that it was too disruptive to restore our governmental rights in this way, and required us to seek trust land status through the Department of the Interior, which we are in the process of doing. The Court did not call into question its 1985 decision which held that we could obtain damages. Consequently, notwithstanding the Cayuga decision, we believe the Oneida claim remains intact.

Oneida Settlement Negotiations with New York (1985—Present)

In other land claims settlements within the original 13 states, the federal government has provided as much as 50 percent of the compensation paid to Indian plaintiffs. In an attempt to settle the New York land claims cases, the federal government offered in 2000 to pay one-half of the compensation in the Oneida claim, and signaled its willingness to do the same in the other Iroquois cases. After the federal government and the State made a joint and formal offer to settle the Oneida claim for

$500 million, the Oneida plaintiffs agreed that the Wisconsin Oneidas would receive $250 million, the New York Oneidas would receive $225 million and a number of other non-cash benefits, and the Canadian Oneidas would receive $25 million. The settlement discussions also included a framework for the Oneida Nation to reacquire part of its reservation while living peacefully with its neighbors.

In February of 2002, the Oneida Nation, Governor George Pataki, and the leaders of Oneida and Madison Counties announced a framework to finally settle the Oneida land claim. Under this framework, the State and the federal government each would have provided $250 million to settle the monetary portion of the litigation. The proposed agreement also would provide a $50 million donation from the Oneida Nation to Oneida and Madison Counties to address the fiscal impact of the Nation's governmental and enterprise activities. The State agreed to match this donation with an equal amount, yielding a net benefit of $100 million for the two Counties. In addition, the Oneida Nation agreed to cap the reacquisition of its reservation lands to 35,000 acres and negotiate agreements to address sales tax and local issues. This framework for settlement reflected a considerable amount of compromise and hard work.

Later in the same year, the federal government withdrew its monetary offer of $250 million, and Governor Pataki failed to change this decision. In withdrawing this offer, federal officials cited budget constraints and concerns about providing compensation to settle litigation in which the United States is not a defendant and has no real risk of liability.

After this decision by the federal government, the State started to look at other approaches to settle the Iroquois land claims. At the suggestion of several of the Indian plaintiffs, including the Oneida Nation, discussions turned to offering the New York Indian tribes—the Mohawks, the Cayugas of New York, and the Oneida Nation of New York—each a casino in the Catskills, as a way to fund the monetary portion of the land claim settlements. According to financial projections by all the parties, the three casinos in the Catskills would generate enough money to provide for large cash payments to the out-of-state tribes, which are also parties to the land claims cases, as well as providing extra money for the State in revenue-sharing arrangements with the New York tribes.

We thought that this was a "win-win" solution because the Catskills would receive much needed economic development, the State would receive surplus revenue, and all of the upstate land claims cases could be settled with finality. Little did we know at the time, but the Governor had another plan in mind.

Dating back to the Cuomo Administration, it has been New York's policy not to support any type of governmental presence in New York by the Indian tribes from Oklahoma, Wisconsin and Canada, which are parties to these cases because of common ancestry with members of the New York tribes. The Oklahoma and Wisconsin tribes have separate treaties with the federal government (or federal statutes) establishing their reservations outside of New York and, through their emigration to Oklahoma and Wisconsin, have relinquished their rights to return to New York. These tribes also have successful gaming and other enterprises that are entirely separate from those of us who stayed in New York.

Except for contiguous reservations (e.g., the Navajo Nation), no tribe has ever exercised sovereignty over land in more than one state; and having Indian tribes with a governmental presence in more than one state was not something that the federal government ever contemplated occurring. For this reason, the U.S. Interior Department has never approved a land application for a tribe to exercise jurisdiction in multiple states, whether for a casino or for any other purpose.

In April of 2003, Governor Pataki and Attorney General Spitzer, through their attorneys, wrote a letter to the federal government stating that permitting out-of-state tribes to be provided with governmental jurisdiction in New York would open a "Pandora's box." They also noted that:

[T]here are a number of out-of-state tribes that assert land claims in New York. If each of those tribes was allowed to assert jurisdictional rights in New York, the potential for inter-tribal disputes and disruption in surrounding communities would increase exponentially. As a matter of policy, a conclusion that the [Seneca-Cayuga] Oklahoma Tribe may exercise jurisdiction in New York is clearly undesirable.

The Oneida settlement negotiations with the State have been active since 1998, the time of the U.S. intervention in the Oneida case. The federal judges overseeing the litigation have appointed two mediators in the case, and there have been bilateral negotiations between the Oneida Nation and the State.

Throughout the negotiations, it has been the goal of all of the parties to resolve other outstanding issues (e.g., taxes, civil regulator matters, etc.) among the State, the Oneida Nation, and Oneida and Madison Counties.

As of the summer of 2004, most of the local, State, and Nation issues had been resolved to the satisfaction of all parties. Only two major issues remained outstanding: (1) language in the settlement agreement that would prohibit out-of-state tribes

from establishing a governmental presence in New York; and (2) the amount and type of exclusivity benefits and competitive protections in a Catskill casino that the Oneida Nation would receive from the State in return for making payments from the revenues of its gaming devices from a Catskill casino. Federal policy requires substantial exclusivity before an Indian tribe can agree to make revenue-sharing payments to a state in a gaming compact.

Throughout our settlement negotiations with the State, the Governor expressed opposition to a New York presence of any out-of-state tribe; however, he eventually sought to create an exception for the Wisconsin Stockbridge-Munsee, the tribe with the weakest land claim—a claim that has no federal support. After the Stockbridge-Munsee hired Governor Pataki's former law firm as its lobbyist, the Governor's attorneys told Oneida representatives, during negotiations, that the State had to leave open the possibility of a Catskills casino for the Stockbridge-Munsee.

The Governor's Proposed Settlement Agreements

In November and December of 2004, in a stunning reversal of State policy, the Governor announced four land claims settlement agreements with three out-of-state tribes and one New York tribe, the Cayuga Indian Nation. The three out-of-state tribes with settlement agreements are the Wisconsin Stockbridge-Munsee, the Oklahoma Seneca-Cayuga, and the Wisconsin Oneida. In the proposed agreements, the out-of-state tribes have agreed to eliminate many of the New York tribes' sovereign and treaty rights over land in exchange for the State permitting each out-of-state tribe the right to own and operate a casino in Sullivan County.

Since these announcements, the Cayuga Nation, through its federally-recognized representative, Clint Halftown, has withdrawn from the agreement it signed with the State. Two of the three clans of the Cayuga Nation have expressed public opposition to permitting the Oklahoma Seneca-Cayugas to establish a governmental presence in New York. Two members of the Cayuga Nation Council from the third clan have announced publicly that they support the Cayuga settlement agreement, even though they were not signatories to the actual document.

On February 1, 2005, the Governor announced a land claim settlement with the New York Mohawks. There is no out-of-state tribe involved in this claim.

The settlement agreements contemplate a Catskill casino to be provided to each of these five Indian tribes in return for settling their respective land claim cases. The agreements provide for revenue-sharing with the State from each Catskill casino. The agreements also provide for tax agreements with the State to settle disputes over the sale of retail goods to non-Indian customers. The settlement agreements also provide monies to the counties affected by the land claims litigation.

The Oneida Nation of New York has been completely excluded from this State-initiated settlement process, despite the fact that the Governor's Program Bill notes that the goal of these agreements is to "facilitate cooperative relationships between state and tribal governments." As a result of the Nation's opposition to out-of-state tribes having a presence in New York, the Governor now seeks to enact legislation to end our claim without any compensation to our Nation whatsoever. Indeed, it has been openly acknowledged that the Governor's legislation, if approved by Congress, would likely give rise to a "takings claim" by the Oneida Nation based on an illegal taking of the Nation's land and property rights in violation of the Fifth Amendment. In other words, Mr. Pataki was hoping to make the federal government pay for his refusal to negotiate with the Oneida Nation.

In addition to not receiving any compensation from these agreements the Oneida Nation would be required to install slot machines at Turning Stone Casino and provide revenue-sharing payments to the State. This is a clear violation of the federal Indian Gaming Regulatory Act of 1988, which prohibits a state from imposing a tax on Indian casino profits or revenues.

The agreements would extinguish the Oneida Nation's rights in its reservation and abrogate the 1794 Treaty of Canandaigua. The permanent status of the Nation's reservation would be unclear, as the Nation would be forced into various agreements with Oneida and Madison Counties, threatening the 4,300 jobs at the Turning Stone Casino and the other enterprises and governmental activities of the Oneida Nation.

Except for the Mohawk settlement agreement, each of the agreements permits land claim litigation to continue after appropriate state and federal approvals, causing unnecessary uncertainty in the settlement of these claims.

The Oneida Nation land claim has always presented an opportunity to resolve all local issues between the Nation and our non-Indian neighbors. For years, the Oneida Nation has sought to use the land claims settlement negotiations for this purpose, even though the litigation primarily involves compensation for land that was taken from it many years ago. With the exclusion of the Oneida Nation, the settlement agreements do not resolve the many local issues between the Oneida Nation and our neighbors.

To make matters worse, the individual settlement agreements are ambiguous on numerous points, fail to settle the land claim cases with finality and certainty, and create more problems and issues than the controversies they were intended to resolve. Included at the end of this testimony is an attachment (Attachment A), which provides a brief analysis of each settlement agreement.

Last month, after it appeared unlikely that there was legislative support for the settlement agreements with out-of-state tribes, Governor Pataki dropped his efforts to pass legislation to implement the settlement agreements with the Oneida Tribe of Wisconsin and the Stockbridge-Munsee Tribe. Instead, he proposed a bill to approve only the Mohawk settlement.

Governor Pataki and the New York State Assembly supported the passage of the Mohawk settlement. Unfortunately, the State Senate opposed this approach. The State Senate Majority Leader, Senator Joseph Bruno, continued to support legislation to approve casinos for the Stockbridge-Munsee Tribe and the Oneida Tribe of Wisconsin, and he refused to support the Mohawk settlement without the other two.

This stalemate resulted in the New York legislature's adjournment without approving any of the Indian land claims. The settlement agreements signed by Governor Pataki, however, are in effect until September 2005.

A Pandora's Box

Allowing three new sovereign Indian tribes into New York, to acquire land, operate casinos, and exercise governmental jurisdiction, opens a "Pandora's box." These are not our words; rather, they are the words of the Governor and Attorney General of New York, as communicated by their legal representatives, to the National Indian Gaming Commission, in the letter of April 24, 2003, referred to earlier in our testimony.

In that letter, the State correctly noted that permitting the Oklahoma Seneca-Cayuga to open a bingo hall in Aurelius, New York would have ramifications well beyond the development of one gaming facility.

But the Pandora's Box metaphor used by the Governor and the Attorney General in this letter only scratches the surface of the potential problems that can be created by inviting new Indian tribes into the State.

In February 2005, the Cayuga Nation of New York, the Seneca Nation of Indians, the St. Regis Mohawk Tribe and the Oneida Indian Nation of New York joined the other members of the United South and Eastern Tribes in condemning the Governor's willingness to open the doors of New York to new Indian tribes. At a time when the State is looking to solve difficult problems, such as cigarette and automotive fuel tax issues, through negotiation and compromise with the Iroquois nations, now is not the time to pursue policies that will inevitably foment distrust and lead to more confrontation.

Not only does the Governor mistakenly believe that three new Indian tribes can be introduced in the State with no adverse consequences, he is incorrect to assume that tribal migration will end there. There are many tribes that assert land claims to land formerly occupied by ancestors of tribal members. Other tribes will undoubtedly be encouraged to assert such claims as a route to casino riches. Indeed, another Cayuga tribe in Oklahoma recently surfaced—the Western Band of Cayugas in Oklahoma—claiming to be the only lawful group of Cayuga Indians that can settle the New York land claim. There may be more tribes out there and the State may be opening the floodgates for these tribes to assert claims in the State in order to position themselves to obtain a casino somewhere in New York. At the very least, the Governor would set a precedent that would haunt many other state executives in the other states for years to come.

The Pandora's Box nature of this problem explains why no other state—and there are a dozen of them confronting an invasion of out-of-state tribes—has taken the Pataki Administration's approach of posting a "for sale" sign along the state border. Indeed, governors from other states are actively lobbying Congress to put an end to this threat.

These executives see what Governor Pataki once saw—that reservation shopping and tribal migration make for bad policy at the Federal, State, local and tribal level.

Chairman Pombo's Discussion Draft to
Amend the Indian Gaming Regulatory Act

I hope the Committee agrees that Governor Pataki's recent plan to resolve the land claims in New York by importing Indian governments from Wisconsin and Oklahoma to run casinos in the Catskills has created controversy, chaos, and confusion, which has prevented fair and timely settlements of the Indian land claims in New York.

The dynamics of the land claim settlements have been overtaken by greedy, non-Indian developers and lobbyists who are convinced they can make millions of dollars in the Catskills casino deals. These developers simply need an Indian government with a pretense of a claim to land in New York to initiate massive lobbying campaigns to realize their casino dreams.

Unfortunately, the efforts of the developers and out-of-state tribes disrupt the Indian nations located in the State and undermine the in-state Indian nations' efforts to defend their sovereignty. Why? Because the out-of-state tribes are willing to agree to anything in exchange for a casino. The concessions they are willing to make have no impact on the out-of-state tribes' reservations in Oklahoma and Wisconsin.

Consequently, with some technical changes, we support the provision in Chairman Pombo's Discussion Draft to amend the Indian Gaming Regulatory Act, which would prohibit an Indian tribe from conducting gaming on Indian lands outside of the State in which the Indian tribe has an existing reservation and is currently located.

This clarification to IGRA would go a long way toward preventing the kind of disruptive activity that is occurring in New York, Colorado, Illinois, Ohio, Pennsylvania, and at least six other states around the country, which are experiencing offers and threats by out-of-state tribes and non-Indian developers to exchange a land claim for a casino in a state where ancestors of the tribe may once have resided.

Conclusion

The Oneida Nation has always supported a fair and negotiated settlement to its land claim. We hope the Committee agrees that a settlement involving the importation of out-of-state tribes into New York to run casinos creates many more problems and controversies than what the settlement agreements attempt to resolve.

We appreciate the Chairman's leadership on a complex issue. And, I hope my testimony has helped to shed some light on what is a very difficult issue in New York. I would be happy to answer any questions you have.

Attachment A
- Brief Analysis of the Current Settlement Agreements -

The Wisconsin Stockbridge-Munsee Agreement

There is absolutely no reason to make any settlement with the Wisconsin Stockbridge-Munsee Tribe. The most important historical fact to understand about this Tribe's claim is that it is a claim to land with the Oneida Nation reservation that the Stockbridge temporarily occupied only after obtaining the prior consent of the Oneida Nation. The Oneida Nation always retained its rights in the land that comprises the Stockbridge claim. Thus, the Stockbridge-Munsee claim is not a claim protected by a federal treaty or by possession before European settlement, unlike the Iroquois land claims.

The Stockbridge-Munsees are a federally-recognized tribe located in Wisconsin. After the American Revolution, the Tribe's predecessors, the Stockbridge, sold off all of their tribal land in Massachusetts and traveled to New York, obtaining the Oneidas' permission to reside on 36 square miles of Oneida Nation land. The Stockbridge paid nothing in exchange for that permission. The Oneida Nation took them in according to our Iroquois tradition of giving shelter to refugee tribes, as our Nation had previously done with the Tuscaroras.

Federal, state, and Oneida Nation historical documents clearly establish that the Stockbridge were merely occupying the land in New York as guests of the Oneidas, obtaining no legal rights in the land. Once the Stockbridge left New York, the land reverted back to the possession and control of the Oneida Nation. As a result, the Nation has intervened in the Stockbridge claim as a defendant with the State, challenging the rights of the Stockbridge-Munsee Tribe.

The 1794 Treaty of Canandaigua unequivocally establishes the land claimed by the Stockbridge to be the Oneida Nation's "property" and "reservation," while the Stockbridge are only "Indian friends residing thereon."

The U.S. Supreme Court has explained that the refugee tribes in New York had no possessory rights in the land, and were mere tenants at will of the Oneida Nation. The Nation retained all of its land rights guaranteed through our treaties with the United States.

When the Stockbridge tried to sell the land in the early part of the 19th century, the New York State Assembly approved an 1809 committee report that concluded:

[T]he Oneida Indians gave the said tract of land to the Stockbridge Indians, on the following terms: the Stockbridge Indians were to occupy and enjoy the land and that if at any time the Stockbridge Indians should quit the said land, in that case it was to remain the property of the said Oneida Indians .

Even if the Stockbridge had an enforceable claim to the Oneida land they once occupied, they relinquished it in 1856, when the Stockbridge and the Munsees (two separate groups) signed a Treaty with the federal government to accept a reservation in Wisconsin. In Article I of the Treaty, the Stockbridge relinquished any rights and claims they may have had in New York. In fact, the federal government's commitment of funds to buy lands in Wisconsin for the Stockbridge was expressly premised on the surrender of all other claims and rights, including in New York.

It is also the position of the United States that the Oneida Nation never ceded the land claimed by the Stockbridge-Munsee. This position has been reaffirmed as recently as January of 2005, in letter by the U.S. Department of Justice to the judge in the Oneida land claim case.

As stated earlier, the federal government has refused to intervene in this land claim case, a result that permits the State to assert successfully its 11th Amendment immunity as a defense to the case moving forward on the merits. This procedural situation means that the State of New York has absolutely no liability in the Stockbridge claim because the U. S. Constitution will not permit the tribe to sue the State, absent the support of the federal government. Unless the United States intervenes in this case—which it has pointedly refused to do—the Stockbridge case will be dismissed.

The Stockbridge Tribe is so desperate for a casino and to avoid the immunity problem that it has limited its claim to possession of less than one acre of land, another reason why it is not credible for the Governor to assert that the State is exposed to any liability in this case whatsoever.

In October of 2004, New York Attorney General Eliot Spitzer filed a motion on behalf of the State to dismiss the Stockbridge-Munsee case on 11th Amendment grounds. As stated before, the State can expect and does expect a dismissal of the case.

On December 20, 2004, the State formally requested that the Court not rule on its motion to dismiss the case so that the settlement agreement reached with the Wisconsin Stockbridge-Munsee on December 7, 2004, could be implemented.

As further confirmation of the State's ability to avoid liability in the Stockbridge-Munsee claim, the State won a dismissal of a claim by another tribe making the same arguments as the Stockbridge on 11th Amendment grounds in a decision by the U. S. Court of Appeals for the 2nd Circuit on December 23, 2004. Rather than bring this new dispositive authority to the Court's attention, five days later, on December 28, 2004, the State renewed its request for a stay of its own motion in a telephone hearing with the Court. The State took this action despite the strength of its legal position in the case and the ruling by the 2nd Circuit.

It is extraordinary to us that the State of New York would settle a land claim case that was about to be dismissed—and involving only one acre of land—by granting the plaintiff tribe rights to a casino worth almost $1 billion.

As noted before, in the land claims negotiations between the Oneidas and the Governor's office, the State's representatives told the Oneidas on several occasions that the State would need to leave open the possibility of a Stockbridge-Munsee casino, while at the same time the Governor was opposing a New York presence for all other out-of-state tribes. At the time, we did not understand why the Governor's office would prolong our negotiations over a casino with an out-of-state tribe whose claim is totally without merit.

One of the results of the Governor's agreement with the Stockbridge-Munsee and the Wisconsin Oneidas is that our Nation will be entitled to compensation by the federal government for a "taking" under the 5th Amendment of the U.S. Constitution if Congressional legislation is enacted to abrogate our land claim. The Stockbridge-Munsee agreement with the State attempts to "cap" this liability at $84 million and provides for the Stockbridge Tribe to indemnify against a "taking" lawsuit brought by the Oneida Nation. The Stockbridge-Munsee has agreed to assume 70% of any such liability, up to a maximum of $59 million. It is our view that the United States cannot assign its taking liability to a third party, and it is fundamentally unfair for the Stockbridge-Munsee to receive a very valuable casino in the Catskills to settle the weakest land claim case, while the primary plaintiff in the Oneida land claim case, the Oneida Nation of New York, is forced to bring a "takings" lawsuit with a purported cap of $84 million in potential liability.

The Oklahoma Seneca-Cayuga Agreement

Like the Stockbridge-Munsee, the Oklahoma Seneca-Cayuga claim has no legal foundation, especially on the issue of having governmental rights both in Oklahoma and New York.

The Oklahoma Seneca-Cayuga Tribe is a conglomeration of people from various Iroquois and non-Iroquois tribes, many of whom had relocated to Ohio before the American Revolution started. Most of the ancestors of the Oklahoma Seneca-Cayugas were not even residing in New York when the 1794 Treaty of Canandaigua was signed.

The mixed groups later forming the Seneca-Cayuga Tribe were originally known as the Sandusky Senecas and the Lewistown Senecas. Both groups (including the Cayugas who left New York) were each granted a federal reservation in Oklahoma in place of their federal reservations in Ohio, through treaties with the United States in 1831 and 1832. These groups formally united as one tribe in 1867, through another treaty with the United States.

The Seneca-Cayuga were next formally recognized through a federal statute, the Oklahoma Indian Welfare Act of 1936. At the time of this federal enactment, the Tribe's own records indicated that only 15 of its 732 enrolled members had any type of Cayuga ancestry. The ancestry of the remaining 717 members included lineage from at least 17 tribes located outside New York.

Both the Oklahoma Indian Welfare Act and the written constitution of the Seneca-Cayuga Tribe limit the governmental jurisdiction of the Tribe to its Oklahoma lands and its members residing in Oklahoma.

Despite this history, the Seneca-Cayugas claim that they are a "successor-in-interest" to the Cayuga Indian Nation that signed the 1794 Treaty of Canandaigua. However, the Cayuga Nation was the original governmental signatory to the Treaty of Canandaigua, and the Cayugas have remained in New York since that time, recognized continuously as the political and tribal entity with which the United States treated with as the Cayuga Nation in the Treaty of Canandaigua.

The rest of the historical record demonstrates conclusively that the United States government never accorded the Seneca-Cayuga Tribe any rights under the Treaty of Canandaigua. Historical records also show that the Oklahoma Seneca-Cayugas have very little justification for a land claims case and absolutely no justification for sovereignty rights or a governmental presence in New York.

In 1976, when the U.S. Congress was considering an appropriation to satisfy Indian Land Claims Commission judgments, the U.S. Interior Department explained that it was not seeking any funds for the Seneca-Cayuga Tribe, finding:

no evidence to support the inclusion of the Seneca-Cayuga Tribe of Oklahoma or any element within the tribe [in a judgment in favor of the Six Nations]. This group of 'Senecas' was established in Ohio long prior to 1792 and we find that the Western Cayuga element left New York just prior to 1792 and did not participate in benefits provided by the 1792 and 1794 treaties.

In 1980, the Acting Solicitor of the U.S. Interior Department rejected the Seneca-Cayuga's request to be included in the proposed settlement of the Cayuga land claim:

Since your tribe is an historical amalgam of Senecas, Cayugas, and descendants of other tribes, both Iroquois and non-Iroquois, and because many of your ancestors permanently migrated from New York prior to 1790, the date of enactment of the first Non-Intercourse Act, there is insufficient evidence that your Tribe can make the same kind of Nonintercourse Act claim that the Cayuga Nation of New York can make.

In attempting to rebut this historical record, the Seneca-Cayuga refer to a 1984 affidavit by a lower level Interior Department official, which is supportive of the Tribe's successor-in-interest argument. However, the affidavit did not reflect the federal government's historical position regarding the Tribe and was not based on any analysis of the historical record justifying or even attempting to explain a change in position. Additionally, the affidavit was not directed to whether the Seneca-Cayuga Tribe had governmental rights in New York, something the federal government has never agreed to.

Taking advantage of the Tribe's predominately Seneca heritage, the Oklahoma Seneca-Cayugas also tried unsuccessfully a few years ago to intervene as a plaintiff in the land claims case brought by the Seneca Indian Nation of New York. One of the Tribe's expert witnesses submitted a report in support of intervention stating that:

[A] strong case can be made that the Seneca settlements at Sandusky and Lewistown were predominately Seneca with a

few people from other tribes, most probably other Six Nations people and local tribes such as the Delaware and Wyandot.

The intervention motion by the Seneca-Cayuga was opposed by the United States and rejected by the Seneca land claims court as made too late. However, the predominance of Seneca heritage in this Tribe, and the insubstantial amount of Cayuga ancestry among the members of the Tribe, make it very difficult to argue that this Tribe has a claim to exercise sovereignty and governmental jurisdiction over Cayuga land more than 1,000 miles away in New York.

In reviewing the Seneca-Cayuga settlement agreement with the State, it will come as quite a surprise to everyone that, remarkably, the settlement agreement does not end the land claim litigation.

In a section entitled “Management of Pending Litigation,” the State and the Tribe describe various contingencies and events regarding the continuation of the litigation. In the agreement, the Seneca-Cayuga agree to “indemnify” the State up to a maximum of $350 million against damages liability to the Cayuga Nation of New York. Expert testimony presented in the land claim trial supported a much larger award. Presumably, the State is liable for any amount above the sum of $350 million. The indemnification provision limits the Seneca-Cayuga obligation to its New York revenues and assets only, something that links this promise to the success or failure of a Catskill casino.

The Oklahoma Seneca-Cayugas and the Governor’s Office signed a “side” agreement to their land claims settlement agreement, on December 6, 2004. This side agreement has not been made public.

In justifying the complete reversal of its policy position on out-of-state tribes, the State argues that a recent federal District Court decision requires it to permit tribes from Oklahoma and Wisconsin to return to New York, as “successors in interest” to the Oneida and Cayuga Nations of New York, to open casinos and otherwise establish a governmental presence in the State. This argument makes no sense.

The Ruling in Seneca-Cayuga v. Town of Aurelius

In Seneca-Cayuga Tribe of Oklahoma v. Town of Aurelius, 2004 U.S. Dist. LEXIS 17481 (September 1, 2004), the Seneca-Cayugas are seeking a declaratory ruling that the Tribe may exercise governmental jurisdiction by opening up a Class II bingo hall within the Cayuga Nation reservation in New York. The Tribe argues that the land claim litigation has established that it has a possessory interest in the Cayuga reservation and that it is a successor in interest to the Cayuga Nation.

Since the Cayuga land claims case has already reached final judgment at the District Court level, the Court ruled on procedural grounds that res judicata bars the Cayuga Nation and the State of New York from litigating the issue of whether the Tribe is a successor in interest to the Cayuga Nation, even though that issue was not resolved in the earlier case. The Court faulted the other parties for not taking an interlocutory appeal of rulings allowing the Seneca-Cayugas to remain in the case. Consequently, the Court did not consider or discuss the overwhelming evidence that the Seneca-Cayuga Tribe is:

(1) a Seneca, not a Cayuga tribe, with a mixture of as many as 17 different non-Iroquois tribes from outside New York;

(2) consistently regarded by the federal government as having no rights under the federal Treaty of Canandaigua (1794); and

(3) limited in its jurisdiction to Oklahoma lands only.

A ruling by the District Court on the Tribe’s right to open a Class II bingo hall
has been held in abeyance by the judge pending the resolution of other remaining issues in the case.

It is an absurd notion that emigration out of New York before the Treaty of Canandaigua, and the acceptance of new federal reservations in Ohio and Oklahoma through at least four separate treaties with the United States, somehow results in creating rights for those Cayuga individuals who left, approximately two percent (2%) of the Seneca-Cayuga Tribe in 1936, to govern Cayuga Nation land in New York.

A conclusion to permit the Seneca-Cayuga Tribe to exercise governance in two states is also totally inconsistent with the history of its dealings of the United States over the past 200 years. As recently as January of 2003, the Bureau of Indian Affairs (BIA) of the U.S. Interior Department reaffirmed its historical position:

[T]he BIA presently does not recognize the Seneca-Cayuga of Oklahoma as having any political authority over lands in New York State.

Allowing the Seneca-Cayugas to come back as a government is also inconsistent with Iroquois and Cayuga traditions, which state that that a decision to sell land and abandon the Cayuga Nation government by individual Cayugas, means that such individuals may not return except as they left, as individual Cayugas, subject to the laws and traditions of the Cayuga Nation of New York.

Likewise, controlling U.S. Supreme Court precedent has established the principles of abandonment and relinquishment by Indians who emigrate outside of the jurisdiction of their original tribes and agree to join a new tribe and accept a federal reservation in another state. In 1941, the Court ruled that when a tribe abandons its homelands and agrees to relocate to a new reservation, it relinquishes any claims to lands which it may have had outside of that new reservation.

The confusion about “successor in interest” stems from Indian fishing disputes on the West Coast, involving tribes with common fishing rights. Unlike governmental rights over land, fishing rights can be apportioned among the descendants of ancestral tribes. No federal court has ever ruled in a final judgment that two tribes have concurrent jurisdiction to govern the same land, based on a “successor in interest” argument or any other legal theory. Indeed, no court has ever suggested that, where a tribe remains on its reservation, tribal members who leave the tribe and the reservation to move to a new state and a new reservation become, by virtue of their departure, a second tribal government in the reservation they left behind.

The recent ruling in the Aurelius case is not a final judgment, and the State of New York has insisted on preserving its appeal of the entire Cayuga land claim as a condition in its settlement agreements with the Seneca-Cayuga Tribe. A decision for the State in its appeal could erase the basis for the procedural ruling in the Aurelius case. After it has ignored most of the land claims rulings which have been issued over the past 30 years, including two U.S. Supreme Court decisions, it is difficult to accept the State’s argument that its “flip-flop” on out-of-state tribes is justified based on this interim District Court ruling.

The Wisconsin Oneida Agreement

The Wisconsin Oneidas have similar and difficult legal hurdles to overcome to argue that it is entitled to govern Indian land in two states. The Wisconsin Oneida legal position is almost identical to the other two out-of-state tribes, in that the Tribe broke off to form a separate tribal government in another state. The Wisconsin Oneidas gave up any rights they may have had to land in New York. As a co-plaintiff with the Oneida Nation, the Wisconsin Oneidas have never had to establish their own land claim rights because they were in the case with the Nation as the lead plaintiff. If the Wisconsin Oneidas tried the land claim case without the Oneida Nation of New York, they would lose. In our view, the State doesn’t even have to settle with this Tribe.

The Wisconsin Oneidas are recognized by the federal government as the Oneida Tribe of Wisconsin, Inc. They operate as a corporation and are located in Green Bay, Wisconsin. Many of the original members of the Wisconsin Oneida tribe were parties to the illegal transactions at issue in the land claims case before moving to Wisconsin and signing federal treaties to become a separately recognized Indian tribe. What is interesting historically is that the money received by these individuals from selling Oneida reservation land in New York was used to help acquire land for the reservation in Green Bay, Wisconsin. So, in effect, the Wisconsin Oneidas are attempting to profit twice from the same transactions in our land claim case.

The Wisconsin Oneidas claim that they are a “successor-in interest” to the “historic” Oneida Indian Nation, which was the signatory to the 1794 Treaty of Canandaigua. In fact, the Oneida Indian Nation of New York was the actual government signatory to the Treaty and has never left New York or disbanded in any way, retaining its existence and recognition by the federal government since 1794. The Wisconsin Oneidas, like the Oneida of the Thames, a Canadian tribe, merely represent some of the descendants of individual Oneida Indians who were parties to the illegal land transactions, left New York after these transactions, and banded together in other locations, where they were separately recognized as distinct and separate Indian tribes from the Oneida Nation of New York.

Further, the Wisconsin Oneidas signed a separate federal treaty in 1838, the Treaty of Washington, which established a 65,000 acre reservation in Wisconsin and was approved without any participation by the Oneida Nation of New York. At this time, the Oneida Nation of New York was left with approximately 750 acres of land.

Before the making of the Treaty of Washington, all of the parties agreed that the Oneida Nation of New York had rights in Wisconsin Oneida land, but the Treaty of Washington recognized the unique jurisdiction of the Wisconsin Oneidas in that land. Moreover, shortly after making that treaty, the United States, pursuant to the direction of the U.S. Senate, sought to confirm tribal agreement to the Treaty of Buffalo Creek. Although the Oneidas from Wisconsin had signed the treaty originally, which was just before the Treaty of Washington, circumstances changed after the Treaty of Washington. At this point, the United States began to treat the two Oneida groups as separate and distinct governments, with separate and distinct reservations.

In securing the consent of the Oneidas to the Treaty of Buffalo Creek, the federal treaty commissioner in charge of the negotiations only obtained the signatures of the Oneida Nation of New York because he was instructed by the Commissioner of Indian Affairs not to travel to meet with the Wisconsin Oneidas to obtain their approval. Later, in a letter to the federal government of October 25, 1838, the treaty commissioner explained why the Wisconsin Oneidas no longer had any interest in the treaty with the New York Indians:

Oneidas at Green Bay: This portion of the tribe signed the treaty at Buffalo Creek, and were parties to it. The letter of the Senate's resolution appeared to me to require that the treaty and amendments should be submitted to this tribe; but another treaty [the Treaty of Washington] having been made with them, and ratified by the Senate, I thought it proper to ask special instructions from your bureau, as to the propriety of the submission. My letter of the 16th of August last contains my views of this subject; and the letter from your office, of the 22nd of that month, contains the instructions by which I was governed. These letters are, of course, to be found in your office. In consequence of the instructions received, I did not make the submission to this tribe.

The federal commissioner did not go to Wisconsin to confirm agreement with the Wisconsin Oneidas because, at that time, they had been established as a separate tribe on their own Wisconsin reservation. These events confirmed the Wisconsin Oneidas as a tribe recognized by the United States to have jurisdiction over the land included in the Treaty of Washington, and not over any Oneida Nation lands in New York.

This interpretation of the history is also consistent with the written constitution of the Wisconsin Oneidas, developed under the authority of the federal Indian Reorganization Act, which also restricts their activities to their reservation lands in Wisconsin.

As noted earlier, the U.S. Supreme Court also confirmed in its Santa Fe decision that when a tribe abandons its homelands and agrees to relocate to a new reservation, it relinquishes any claims to lands which it may have had outside of that new reservation. The Wisconsin Oneidas, of course, left New York as individuals and did not become a recognized tribe and government until 1838. The Oneida Nation remained in New York. It makes no sense to think that individuals who left our Nation to establish a new tribe in Wisconsin 167 years ago could have the right to govern our Nation's land here in New York.

Likewise, Oneida and Iroquois traditions prohibit individuals who sell Mother Earth, our Nation and government, from coming back to our lands in any manner other than as individuals, subject to the laws and traditions of the Oneida Nation of New York. Our vocabulary may be different from the abandonment and relinquishment terms used in federal Indian law, but the meaning is not much different. Under Oneida law and under federal law, Oneidas who seceded from our Nation, and moved away to negotiate a separate treaty for a separate reservation in Wisconsin in which we have no rights, are not entitled to a "second bite of the apple," being permitted to form a second government to now govern our lands in New York.

Continuing their history of making a profit on Indian land wherever possible, members of the Wisconsin Oneidas sold almost all of their 65,000 acre reservation in Wisconsin after the Treaty of Washington to third parties and received the proceeds of the sales. In the Wisconsin Oneida settlement agreement with the Governor is a provision which states that all of the 65,000 acres within this historic reservation boundary can be reacquired by the Wisconsin Oneidas and converted into Indian land. We find it highly offensive that the Wisconsin Oneidas are permitted to regain their entire 65,000 acre reservation, while the Oneida Nation is restricted to regaining a tiny fraction of its reservation.

It is ironic that having benefited financially from the sales of land in both New York and Wisconsin that the Wisconsin Oneida would be permitted to trade away the rights of their New York brethren, providing them with a third chance in history to profit at the expense of the Oneida Nation of New York.

And we are extremely disappointed that Governor Pataki has turned his back on the Oneida Nation and its neighbors, especially after we worked with him over the past several years to try and stop the Wisconsin Oneidas from suing individual landowners in Central New York as a tactic in the land claim case. Concerned at that point about the possibility of out-of-state tribes like the Wisconsin Oneidas bringing lawsuits against individual landowners, Governor Pataki made the following public statement at a 2002 press conference, where he announced, with local leaders and the Oneida Nation of New York, a settlement framework for the Oneida land claim:

New Yorkers will not succumb to threats and scare tactics designed to impose the selfish interests of the Wisconsin Oneidas over the interests of our own citizens – Indian and non-Indian alike – who want to work and live together with peace and respect …Let there be no mistake – we will stand united with property owners against adversaries who do not care about the well being of Central New York – particularly the Oneida Tribe of Wisconsin.

The Governor has now changed his position, once again, from the 2002 framework which we developed with the State and the Oneida and Madison Counties.

The Governor's settlement agreement with the Wisconsin Oneidas proposes to disestablish the reservation boundaries of the Oneida Nation, as acknowledged by the 1794 Treaty of Canandaigua. All land is then subject to severe conditions and restrictions which threaten its current status. The agreement also does not provide any monetary compensation to the Oneida Nation, while at the same time granting a Catskill casino with a present value of as much as $1 billion to the Wisconsin tribe. The Wisconsin Oneidas are also granted 1,000 acres of land in upstate New York at an undisclosed location. This land would be subject to restrictions against alienation and would be tax-exempt. Interestingly, the exact location of this land has been concealed to avoid local controversy.

Under these settlement provisions, the Oneida Nation of New York is left with the remedy of suing the United States for a "taking" without just compensation under the 5th Amendment of the U.S. Constitution. This is a remarkable thing: the settlement agreements actually acknowledge, because they provide no compensation to the Nation, that they take the Oneida Nation's property without just compensation. We hope that the this time around, as opposed to the early 19th Century, the federal government will not stand idly by while others propose to extinguish our rights.

If the taking litigation is successful, the settlement agreement with the Wisconsin Oneidas provides that the Oneida Nation is only entitled to seven percent (7%) of the compensation because of its smaller size compared to the population base of the Wisconsin Oneidas (1,000 members vs. 15,000 members).

It is fundamentally unfair—and a repudiation of long-standing Iroquois concepts of tribal membership—to divide the value of the Oneida land claim based on the current population of each Oneida tribe or nation.

The Wisconsin Oneidas have a larger population than the Oneida Nation because their membership criteria do not follow the stricter standards of Iroquois nations (i.e., ¼ or higher Indian blood and a traditional clan system in which membership is only permitted with matrilineal descent).

Importing non-Iroquois Indian governments into New York also will result in substantial conflict with the Indian nations which remained in the State. For example, on at least two recent occasions, the Wisconsin Oneidas have been involved in efforts to overthrow the government of the Oneida Nation.

In 1988, a group of Indian warriors, which included Wisconsin and Canadian Oneidas, traveled to New York and burned down the bingo hall of the New York Oneidas. The Nation worked for several years with federal law enforcement authorities to prosecute and convict the individuals involved in these criminal acts.

In 1993, the Wisconsin Oneidas lobbied the U.S. Department of the Interior to withdraw its recognition of the Nation leadership, including me and the entire Nation Men's Council and Clan Mothers. The Assistant Secretary of Indian Affairs, Ada Deer, a member of the Wisconsin Menominee Tribe, agreed to do so, resulting in six months of uncertainty and conflict until the Oneida government was formally recognized again in February of 1994.

To add insult to injury, the land claims of the Wisconsin Oneidas are reinstated automatically if the New York Court of Appeals rules that slot machines are unconstitutional under state law.

So the entire process of obtaining federal and state approvals and building multiple facilities in the Catskills will unravel completely if state litigation against the Governor on this issue is successful.

The Wisconsin Oneidas agree in the settlement agreement to partially
" indemnify" the United States against any taking claim by the Oneida Nation. Their liability is limited to 30 percent of the maximum compensation which can be obtained by the Oneida Nation. Under the agreement, the Nation's "taking" compensation is proposed to be a maximum of 7 percent (7%) of $1.2 billion, or $84 million. The Wisconsin Oneidas would be liable for 30 percent (30%) of this amount, or $25.2 million.

Aside from the gross unfairness of these provisions, a statutory cap on a "taking" claim is unconstitutional and the United States is not permitted to assign its liability to a third party. Additionally, the Wisconsin Oneidas cannot arbitrarily limit a billion dollar claim to $84 million.

The Wisconsin Oneidas and the Governor's Office signed two "side" agreements to their land claims settlement agreement, on December 28 and 29, 2004. These side agreements have not been made public.

The historical record is clear that the United States treated the Oneida Nation and the Wisconsin Oneida Tribe as separate and distinct governmental entities since the 1838 Treaties of Washington and Buffalo Creek. Neither government has rights in

the reservation of the other, a fact that is also mandated by federal law and Oneida and Iroquois traditions.

If the Wisconsin Oneidas have any rights at all with respect to damages in the land claim litigation, at most it would be for rental damages prior to 1838, when the Wisconsin Oneidas signed the Treaty of Washington and accepted a reservation in Wisconsin. Even these rental damages should be subject to an offset or reduction for the money the Wisconsin Oneidas received for selling the reservation lands in New York of the Oneida Nation.

The New York Cayuga Agreement

The Cayuga Nation of New York has been a landless Indian nation since the illegal transactions took place which are the subject of their land claims litigation. In the litigation, the Cayugas have received a $250 million judgment for the loss of 64,000 acres of land in Cayuga and Seneca Counties. This judgment has been appealed by both the State and the Cayugas to the 2nd Circuit Court of Appeals.

Similar to the Seneca-Cayuga settlement agreement, the Cayuga land claims litigation also continues under this agreement. The agreement describes various contingencies and events which occur, depending on which party finally prevails in the litigation.

The federally-recognized leader of the Cayuga Nation of New York, Clint Halftown, has withdrawn from the State settlement agreement signed by him in November of 2004. In a press statement issued at the same time, Halftown stated that the reason for his withdrawal was the State's willingness to permit an out-of-state tribe, the Oklahoma Seneca-Cayugas, to have a governmental presence in New York and a Catskill casino.

The Cayuga Nation, also through its federally-recognized representative, Clint Halftown, ended its business relationship with its casino development partner in the Catskills, Empire Resorts, on January 1, 2004, permitting an existing agreement with Empire to expire. Two members of the Cayuga Nation Council from the Turtle Clan have challenged Halftown's authority to withdraw from the State settlement agreement and to let the Empire agreement expire, while the two other Cayuga clans, Heron and Bear, have expressed public opposition to the State and Empire resort agreements with the Cayuga Nation.

Before withdrawing from the land claim settlement agreement, the Cayuga Nation and the Governor's Office also signed a "side" agreement to their settlement agreement, on December 6, 2004. This side agreement has not been made public.