BEFORE THE INDIAN CLAIMS COMMISSION

EMIGRANT NEW YORK INDIANS, ex rel., JULIUS DANSPORTH, OSCAR ARCHIQUETTE, SHERMAN SKENANDORE, MAMIE SMITH, ARVID E. MILLER and FRED L. ROBINSON, THE ONEIDA TRIBE OF INDIANS OF WISCONSIN and THE STOCKBRIDGE-MUNSEE COMMUNITY, Petitioners,	)	Docket No. 75
vs.	)	
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: November 1, 1957

Appearances:

Ely M. Aaron,
Attorney for Plaintiffs

James J. Manogue,
with whom was
Mr. Assistant Attorney
General Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

PER CURIAM. At the trial of the above-titled case on February 27, 1956 defendant made an oral motion to dismiss the cause on the grounds of lack of jurisdiction in this Commission. One of the grounds upon which that motion was made was a lack of capacity on the part of original petitioners, The Emigrant New York Indians, to maintain the action. This Commission withheld its ruling upon the motion until such time as the evidence has been evaluated and suggested that the matter be treated in the briefs, which it was.

At the final argument on the case on May 10, 1957 petitioners orally moved the Commission for the entry of an order adding the Oneida Tribe of Indians of Wisconsin and the Stockbridge-Munsee Community as additional parties plaintiff. Petitioners were given leave to file a written motion, with leave to defendant to file its opposition. On May 20, 1957 petitioners filed their motion and on June 11, 1957 defendant filed its opposition and at the same time renewed its oral motion made at trial for dismissal on jurisdictional grounds, to which petitioners filed reply on July 15, 1957. Defendant denominated its motion a "cross motion for relief in the alternative" and has filed a memorandum in support thereof. Since the question under both motions is embodied in the defendant's "cross motion for relief in the alternative," this opinion will follow the order of that motion.

The request of defendant that its findings be marked "granted" or "refused" is denied. It does not appear that any useful purpose could be served by granting such request.

Defendant's first contention in its supporting memorandum concerns the limitation on the jurisdiction of the Oneida Tribe and the Stockbridge-Munsee Community under their respective constitutions. The Oneida constitution reads as follows:

Article I - Territory

> The jurisdiction of the Oneida Tribe of Wisconsin shall extend to the territory within the present confines of the

> Oneida Reservation and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law.

The Stockbridge-Munsee constitution reads as follows:

> Article II - Territory
>
> The jurisdiction of the Stockbridge-Munsee Community shall extend to all lands purchased, heretofore or hereafter, by the United States for the benefit of said Community. ".

Defendant contends that these limitations preclude the two tribal organizations from being added as parties plaintiff because the area over which they assert jurisdiction is not within the area in the present suit and that fact, along with other evidence in the record, shows that the two groups are not the successors in interest of the "Nine Tribes of New York Indians." Without going into detail in this opinion, suffice it to say that the identifiable group known as the Emigrant New York Indians are not the same as the "Nine Tribes of New York Indians" and the only succession of interest which is of importance to this case and this motion is that of the Emigrant New York Indians. The tribal roll prepared by the Special Commissioner appointed by the Court of Claims in one of the suits before that Court on the Kansas lands (40 C. Cls. 448, 485) contained the names of all of the New York Indians and not just the present group of Emigrant New York Indians. The ancestors of the Emigrant Indians must have been included in that roll, however, and it would seem to be an obvious way to prove the descendancy of the Emigrant Indians who are suing herein. Such descendancy

has not been proved in the record. Defendant is correct when it contends that this Commission cannot speculate upon the ancestry of claimants before it. Proof of ancestry, particularly when an unrecognized group is suing, should be shown to the satisfaction of this Commission. The motion of petitioners to admit the two organized and recognized tribal groups appears to be an attempt to cure this defect. It cannot be cured in this manner, but only by showing that petitioning parties to this litigation are in fact descendants and successors in interest of those Indians whom they now denominate Emigrant New York Indians.

There is no merit to the argument that the territorial limitation in the respective constitutions bars the bringing of an action.

As to admitting these two groups as additional parties plaintiff, it is the opinion of this Commission that to do so would not unduly prejudice the defendant. There is no element of surprise about the motion because the amendment to the petition filed August 10, 1951, clearly alleges the membership of the individual relators in these two tribal groups. There would be no change whatsoever in the facts upon which the claim is based and it would not in reality add a thing to the prosecution of the claim. The only detriment to the defendant would occur if the Commission accepted these two recognized groups in lieu of proof of capacity to maintain this suit in so far as relationship between the present claimants and the original Emigrant New York Indians is concerned. The Commission is not prepared to do this and, therefore, no detriment in this respect will result to defendant. The addition of these

tribal groups will not dispense with the necessity of showing a valid ancestral connection between the present unrecognized group called the Emigrant New York Indians and those people who were the original Emigrant New York Indians (see Peoria Tribe of Indians of Oklahoma, et al. v. United States, 4 Ind. Cls. Comm. 223). Regardless of the above, the situation regarding this motion does not differ greatly in principle from that in the case of Pueblo de Pecos v. United States, 4 Ind. Cls. Comm. 130, and we shall be guided by our decision in that case in admitting the additional parties.

Defendant's second point deals with the question of contracts and was covered by the parties in their briefs. Petitioners' counsel are employed under contracts with the two tribal entities, the Oneida Tribe of Indians of Wisconsin and the Stockbridge-Munsee Community, because the Emigrant New York Indians are not recognized by the Secretary of the Interior. Defendant contends that these contracts cannot be made the basis for a suit on behalf of an unrecognized group; that to do so is to circumvent the required approval of a contract by the Secretary of the Interior. The requirement that an approved contract be had is primarily for the protection of the Indians. It is not intended as a means of establishing jurisdiction. though it is a requisite to that jurisdiction. Where the primary purpose of the approval has been satisfied it is not the desire of this Commission to deny the right to the petitioners in this case to proceed under the present contracts. That primary purpose has been served in this case in that the tribal groups with whom the contracts were had are now parties plaintiff and they are also alleged

to be the same people who now designate themselves the Emigrant New York Indians. The individual relators are alleged to be members of the Emigrant New York group and are members of one of the two recognized tribal groups. Since the same people appear to be involved whether they are called Emigrant New York Indians or the Oneida Tribe of Indians of Wisconsin or the Stockbridge-Munsee Community, it would be a useless thing to require another contract for this case. It is not necessary to have a contract for each claim where the parties plaintiff are the same, as they are alleged to be in this case. The above allegations are subject to proof by petitioners, as stated hereafter.

Defendant's third point as to identity of individuals has been covered under point one.

The fourth point in defendant's memorandum concerning an amendment by petitioners is without foundation. Petitioners, while their statements and briefs have not always been clear on the point, did not sue on the 1821 treaty originally. Therefore, there has been no amendment as alleged by defendant. The description in the petition covers only the land involved in the 1822 treaty and petitioners are restricted thereto.

The statement of petitioners' counsel that they consider the 1821 treaty lands as a "rough offset" to the 500,000 acres acquired by the Emigrant New York Indians under the 1832 treaty has no bearing on the present hearing on liability and will not be considered at this time.

In accordance with the foregoing opinion the motion of defendant to dismiss the petition herein on the grounds of lack of jurisdiction

made at trial and renewed in its "cross motion for alternative relief" is hereby denied. The motion of petitioners to admit the Oneida Tribe of Indians of Wisconsin and the Stockbridge-Munsee Community as additional parties plaintiff is granted. Both the denial of defendant's motion and the granting of petitioners' motion are contingent upon the presentation of satisfactory evidence of the composition and ancestry of the present petitioners.

With regard to the facts involved, it is thought that the statement in this opinion is sufficient.

An order will be entered in accordance with the above opinion.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner