BEFORE THE INDIAN CLAIMS COMMISSION

THE ONEIDA NATION OF NEW YORK, THE ONEIDA TRIBE OF INDIANS OF WISCONSIN, THE ONEIDA NATION BY JULIUS DANFORTH, OSCAR ARCHIQUETTE, SHERMAN SKENANDORE, MAMIE SMITH, MILTON BABCOCK, BERYL SMITH AND AMANDA PIERCE, Plaintiffs,	)	Docket No. 301
v.	)	[Claims 1 and 2]
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: December 29, 1971

Appearances:

Marvin S. Chapman, Attorney for Plaintiffs. Louis L. Rochmes, and Aaron, Aaron, Schimberg & Hess were on the briefs.

Milton E. Bander, with whom was Mr. Assistant Attorney General, Clyde O. Martz, Attorneys for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

The Oneida Nation has brought this suit (Claims 1 and 2 of plaintiffs' petition) which consists of two claims involving land cessions by the Oneida Nation to the State of New York in 1785 and 1788. The two cessions were accomplished by treaties with the State of New York. The plaintiffs

claim that they were paid an unconscionably low consideration for the land ceded and that the United States is liable to the plaintiffs for the difference between the amount paid and the fair market value of the land.

On January 18, 1968, the defendant filed its motion for partial summary judgment dismissing Claims 1 and 2 of the petition on the ground that plaintiffs had failed to state claims on which relief could be granted in that there was no showing that defendant had an obligation to the plaintiffs with respect to lands ceded to the State of New York prior to 1790.

On February 26, 1969, the Commission denied the defendant's motion for partial summary judgment, holding that on the basis of the pleadings and supporting documents there did appear to be a substantial question of fact as to whether or not the United States had entered into a special relationship with plaintiffs prior to 1790 requiring the Government to protect the Oneidas in their land dealings. Oneida Nation v. United States, Docket 301, 20 Ind. Cl. Comm. 337. The Commission recognized that during the Revolutionary War the Oneidas had been allied with the Americans in their struggle for independence from Great Britain whereas the other members of the Six Nations had fought with the British, and that Article II of the Treaty of Fort Stanwix of 1784, 7 Stat. 15, appeared to single the Oneidas out for special consideration.

At a conference held on April 18, 1969, with counsel for the respective parties present, it was decided that the first two claims of the petition would be tried separately on the sole issue of whether or not the United States had a special responsibility or obligation to the Oneida Nation of such a nature that its breach would constitute a violation of the standards of fair and honorable dealings under Section 2, Clause 5 of the Indian Claims

Commission Act. Were this question answered in the affirmative, the parties agreed that the case would then proceed to a further trial on all issues of liability. At the trial on December 9, 1969, plaintiffs introduced in evidence eighty exhibits and defendant seven, in support of their respective positions relative to the claimed special relationship which, if it existed, would be a predicate for possible liability on the part of the United States had it failed to honor its obligation to protect the Oneidas in subsequent treaties with New York State in 1785 and 1788 when the bulk of Oneida lands were acquired by New York.

Section 2, Clause (5) of the Indian Claims Commission Act covers "extralegal or moral claims of Indians against the United States." Otoe and Missouria Tribe v. United States, 131 Ct. Cl. 593, 621, 131 F. Supp. 265, 283, cert. denied, 350 U.S. 848 (1955) (aff'g in part, remanding in part, Docket 11, 2 Ind. Cl. Comm. 335 (1953)). The United States may be held liable under the "fair and honorable dealings" clause in instances where "by its own acts, it had undertaken special duties which it has failed to fulfill." It is essential, therefore, "to determine if a special relationship was created; the nature and scope of any responsibilities assumed by the United States; and whether the Federal Government met these obligations." Lipan Apache Tribe v. United States, 180 Ct. Cl. 487, 502 (1967) (rev'g, Docket 22-C, 15 Ind. Cl. Comm. 532 (1965)). The Court of Claims stated in Oneida Tribe of Indians v. United States, 165 Ct. Cl. 487, 494, cert. denied, 379 U.S. 946 (1964) (aff'g, Docket 159, 12 Ind. Cl. Comm. 1 (1962)), that if a duty is found to exist

> [i]t is unimportant . . . to characterize that obligation precisely. Whether the responsibility be termed that of a guardian, a fiduciary, a trustee, a protector, or of a superior sovereign to a dependent people, the duty of care imposed upon the defendant would be the

> same. It would not reach the insurer's level nor fall to that of an outsider. The measure of accountability depends, whatever the label, upon the whole complex of factors and elements which should be taken into consideration. The real question is: Did the Federal Government do whatever it was required to do, in the circumstances . . .? That is the standard.

The Commission has found, after careful consideration of the historical events, including the relevant declarations made by representatives of the Federal Government, and Article II of the Treaty of Fort Stanwix, of October 22, 1784, between the United States and the Six Nations, 7 Stat. 15, that the United States did undertake the duty of protecting the plaintiffs' rights to their property.

In Snake or Paiute Indians v. United States, 125 Ct. Cl. 241 (1953) (rev'g, Docket 17, 1 Ind. Cl. Comm. 422 (1950)), the Court of Claims stated, at 255:

> [A] finding respecting fair and honorable dealings is . . . clearly in the nature of an inference to be drawn from all the relevant evidentiary or basic facts bearing on the entire course of dealings between the parties. . . . That something or someone is or is not fair or honorable is always a conclusion or an inference based upon many factual considerations. It is seldom that in a course of dealings over a long period of years, a single event will be determinative of whether, in the last analysis, a person has or has not acted fairly and honorably.

The issue before the Commission must be decided on the basis of the facts of record which consist of declarations and statements made by the representatives of the United States during the critical period of its struggle for independence. The facts and circumstances which form the basis of plaintiffs' claim are fully set forth in the findings of fact, and accordingly we shall refer only to the most significant facts.

In 1775 when the American patriots began their struggle for independence the odds were clearly in favor of Great Britain and against the colonists. It was of the utmost importance to the Americans that the Indian tribes

residing within close proximity of the colonists should at least remain neutral even if they could not be persuaded to take up arms against the British. The Continental Congress having in mind the events of the French and Indian Wars which had ended in 1763, exerted every effort to maintain the friendship and support of the Six Nations, who were a very powerful Indian confederacy having strong ties with the English, who had, in general, treated them with far more generosity and respect than had colonial New York.

Initially the Six Nations affirmed their neutrality in the war between Great Britain and the American colonies. However, it was not long before they were divided. All of the Six Nations, except the Oneidas and a portion of the Tuscaroras, allied themselves with the British and throughout the balance of the war engaged in actual hostilities against the American forces. The loyalty of the majority of the Oneidas was constant and unwavering.

The record, which is the basis of our findings of fact, establishes that the representatives of the United States repeatedly promised the Oneida Nation protection and favorable treatment in appreciation of its friendship and loyalty. The commissioners for Indian Affairs representing the Continental Congress declared that the Oneidas and Tuscaroras would "never have cause to complain of us; that you will find us warm and true friends." General Schuyler, one of the Commissioners, advised the Oneidas and Tuscaroras that they would never want for the protection of the United

States. General Washington himself recognized that the Oneidas had a "particular claim to attention and kindness for their perseverance and fidelity." On many occasions during the Revolutionary War the United States publicly and unequivocally promised to protect the lives and property of its faithful Oneida allies.

The central or Federal Government was aware of the interpretation New York State intended to place on that article of the Articles of Confederation which purported to vest control of Indian affairs in the hands of the Continental Congress rather than in the individual states. It was also aware of New York's desire to acquire all or at least part of the land of the Oneidas in central New York either for money or in exchange for western New York lands claimed and formerly inhabited by the Senecas, who as the result of the war, were enemies of the Oneidas. It appears from the legislative history of the Articles of Confederation and the ambiguity in language of the Indian control article itself, that the Congress was not convinced that it could legally interfere with land transactions between a state and the Indians residing in that state, and, as noted earlier, the Court of Claims and this Commission have already ruled that the Articles did not give the central government this power.[1/] However, the fact that the central government could not prevent New York or any other state from obtaining the land of its resident Indians did not mean that in a treaty with those Indians the Continental Congress could not assume a special relationship obligating it to protect the interests

1/ Six Nations v. United States, Docket 344, 12 Ind. Cl. Comm. 86 (1963), aff'd, 173 Ct. Cl. 899 (1965).

of the Indians in their lands by every legal and practical means in its power.

Upon the basis of the record in this case and the findings of fact reflecting that record, we conclude that the Federal Government, in agreeing to the terms of Article II of the Treaty of Fort Stanwix, undertook to protect the Oneidas in whatever legal way it could in connection with that tribe's retention or disposition of its lands in New York State.[2/] If a breach occurred, then the Oneidas have stated a cause of action under Clause (5) of Article 2 of the Indian Claims Commission Act and may recover whatever damages they are able to prove in subsequent proceedings relative to their loss of those lands to New York in the two cessions of land made to New York prior to 1790.[3/]

2/ Article I, giving peace to the hostile tribes and requiring the return of prisoners and the giving up of hostages to insure such return, and Article III, setting boundary lines between white and Indian occupancy and providing for the cession or relinquishing to the United States of all Six Nations' country west of that boundary, did not apply to the Oneidas who were not at war with the United States and whose land was east of the boundary drawn in Article III. Article II was specifically directed to the Oneida and Tuscarora and simply stated that those nations "shall be secured in the possession of the lands on which they are settled." Article IV provided for the usual giving of treaty goods or presents to all Indians present including, of course, the Oneida and Tuscarora.

3/ That the United States was familiar with the practice of the central government guaranteeing the integrity of Indian lands in the event of pressure tactics practiced on the Indians by local Governments of the colonies in which the lands were situated, is evidenced by the speech which the Continental Congress caused to be delivered to the Delaware Indians in April of 1776, quoted in part in finding 9.

The case will proceed for trial on the circumstances of the 1785 and 1788 acquisitions of Oneida land by the State of New York.

Margaret H. Pierce, Commissioner

We Concur:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Brantley Blue, Commissioner

Chairman Kuykendall dissenting:

In this decision the Commission has attempted to create a "special relationship," or responsibility, on the part of the United States to protect the Oneida Nation against two land transactions with the State of New York which occurred in 1785 and 1788.

While it is agreed that such a relationship did not exist and could not have existed during that time in our history, the majority has purported to fabricate this special relationship out of subsequent events.

Proof of breach of the special relationship, if any, has not been found after two hearings on the same record. Nevertheless, instead of dismissing the case because of failure of proof, the majority has ordered that there be a third hearing presumably on the same record. Plaintiffs have had their day in court and we should now act in the manner required by the facts and applicable law.

This effort flies full force into the teeth of recent decisions of the Court of Claims on this very point; Seneca Nation v. United States, 173 Ct. Cl. 919 (1965), aff'g in part, rev'g in part, Docket No. 342-A, 368-A, 12 Ind. Cl. Comm. 755, Six Nations v. United States, 173 Ct. Cl. 899 (1965), aff'g Docket No. 344, 12 Ind. Cl. Comm. 86.

It has been almost two years since the precise question now before us was first passed upon by the Commission. At that time I dissented from the Commission's action as I do now. By this reference I hereby incorporate my opinion which appears at 20 Ind. Cl. Comm. 337 into this one and make it a part hereof by this reference.

I again dissent.

Jerome K. Kuykendall, Chairman