

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

THE STOCKBRIDGE-MUNSEE COMMUNITY
also known as the STOCKBRIDGE-MUNSEE
BAND OF MOHICAN INDIANS,

Plaintiff,

v.

THE ONEIDA INDIAN NATION OF NEW YORK,

Defendant-Intervenor,

v.

Civil Action No.
3:86-CV-1140
LEK/GJD

THE STATE OF NEW YORK, GEORGE PATAKI,
individually and as Governor of the State of New York;
NEW YORK STATE DEPARTMENT OF
TRANSPORTATION, JOSEPH BOARDMAN,
individually and as Commissioner of Transportation;
THE COUNTY OF MADISON, NEW YORK;
THE COUNTY OF ONEIDA, NEW YORK;
THE TOWN OF AUGUSTA, NEW YORK;
THE TOWN OF LINCOLN, NEW YORK;
THE VILLAGE OF MUNNSVILLE, NEW YORK;
THE TOWN OF SMITHFIELD, NEW YORK;
THE TOWN OF STOCKBRIDGE, NEW YORK;
and THE TOWN OF VERNON, NEW YORK,

**FIRST
AMENDED
COMPLAINT**

Defendants.

I. Nature of the Action

1. This is an action to declare plaintiff's ownership and right to possess its reservation lands in the State of New York known as New Stockbridge, which lands are subject to restrictions against alienation under federal law. Plaintiff also seeks relief restoring it to

possession of its reservation and, as to the non-state parties only, trespass damages for the period of its dispossession. Against the State of New York, plaintiff seeks only prospective relief affecting some, but not all, of the lands claimed by the State.

2. Plaintiff's claims for relief arise under: **a)** the Commerce Clause of the United States Constitution, art. I, § 8; **b)** 25 U.S.C. §177; **c)** federal common law; **d)** the 1788 Treaty of Fort Schuyler; **e)** the February 25, 1789 New York statute implementing the 1788 Treaty of Fort Schuyler; and, **f)** the 1794 Treaty of Canandaigua, 7 Stat. 44.

II. Jurisdiction and Venue

3. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331; 1337; and 1362. The amount in controversy exceeds \$10,000 exclusive of interest and costs with respect to each defendant. As the subject lands are located in the New York counties of Madison and Oneida, venue in this Court is proper under 28 U.S.C. §§ 112(a) and 1391(b)(2).

III. Parties

4. Plaintiff Stockbridge-Munsee Community (hereafter "plaintiff" or "Tribe" or "Stockbridge Tribe") is an Indian Tribe recognized by the United States. Plaintiff's primary reservation and principal situs is located in the State of Wisconsin. Plaintiff also possesses a tract of 122 acres, more or less, within New Stockbridge, which tract is Indian Country and is held and governed by plaintiff as federal Indian reservation land. Plaintiff, currently organized under the provisions of the Indian Reorganization Act of 1934, is the same Stockbridge Tribe: a) that was a third-party beneficiary to the 1788

Treaty of Fort Schuyler; b) for which the New Stockbridge reservation was established by the 1789 Act of the New York Legislature; c) that was a party to the 1794 Treaty of Canandaigua; and, d) that was dispossessed of its land in New York through the illegal actions of defendants. At all relevant times, plaintiff has maintained tribal relations and has been recognized by the United States as a self-governing Indian tribe.

5. Defendant George Pataki is the Governor of the State of New York. As the chief administrative and executive officer of the State, he is empowered to hold title and other interests in real property on behalf of the State and is responsible for regulation of the use and occupancy thereof. In keeping plaintiff out of possession of the lands and natural resources that are the subject of this action, defendant Pataki acts outside the scope of his authority and therefore continues to act in violation of federal law.
6. Defendant State of New York purported to acquire from plaintiff its right, title, and interests in the subject lands pursuant to the transactions described and complained of hereinafter. Upon information and belief, New York State currently claims title to and occupies portions of the subject lands.
7. Defendant New York State Department of Transportation is a department of the State of New York and as such has jurisdiction over and is empowered to hold title and other interests in real property on behalf of the State and to regulate the use and occupancy thereof; Defendant Joseph Boardman is the Commissioner of the New York State Department of Transportation, and as such is the chief administrative and executive official of the Department empowered to hold title and other interests in real property on behalf of the State and is responsible for regulation of the use and occupancy thereof. In

keeping plaintiff out of possession of the lands and natural resources that are the subject of this action, defendant Boardman acts outside the scope of his authority and therefore continues to act in violation of federal law.

8. Defendants Madison and Oneida Counties are territorial divisions for local government within the State of New York and each claims title to and occupies portions of the subject lands.
9. Defendants Town of Augusta, Town of Lincoln, Village of Munnsville, Town of Smithfield, Town of Stockbridge, and Town of Vernon are municipal entities organized under the laws of the State of New York and each claims title to and occupies portions of the subject lands.
10. Defendant-Intervenor Oneida Indian Nation of New York is a federally-recognized Indian Tribe with its reservation and principal situs in the State of New York and claims title to the subject lands, portions of which it currently occupies. On September 25, 1987, Judge McAvoy ordered “that the Oneida Indian Nation of New York is granted leave to intervene as a defendant in this action as a matter of right, pursuant to Fed.R.Civ.P. 24(a)(2). The Nation shall be treated as a party defendant for all purposes.”
11. Defendants and Defendant-Intervenor assert an interest in the subject lands and natural resources and thereby keep plaintiff out of possession of the same.

IV. Description of the Subject Lands

12. From the time of the 1788 Treaty of Fort Schuyler, to the time of the acts complained of herein, the Stockbridge Tribe occupied, governed, and possessed treaty-recognized

Indian title to a tract of land six-miles square in New York State, as described and set aside for plaintiff's exclusive use and occupancy in the 1788 Treaty of Fort Schuyler and its 1789 state implementing act, and as approximately shown on the maps attached as Exhibits "A," "B," and "C." This is the land that is the subject of this action and is referred to herein as the "subject lands" or "New Stockbridge." The subject lands include all lands within this tract in which an ownership or possessory interest is now asserted by any defendant, with the exception of the 7.25 acres, more or less, claimed by the New York State Department of Transportation that comprise the right-of-way for NYS Route 46. Upon information and belief, the only land claimed by defendants Pataki, Boardman, and the State of New York that is the subject of this action is a parcel of .91 acres, more or less, identified in the Book of Deeds, Page 575 as "Town of Stockbridge, County of Madison, Map No. 21, MUNNSVILLE-PRATTS HOLLOW-PINE WOODS, S.H. NO.1360, Parcel No 1047," and classified as Abandoned Agricultural Land. A copy of the deed is attached as Exhibit "D."

13. By excluding those parcels within New Stockbridge in which an ownership or possessory interest is presently asserted by persons or entities other than the defendants in this action, plaintiff does not waive or relinquish any right, title, or interest it may have in the remaining lands of New Stockbridge that are not presently subject to this action, nor does it waive any claims it may have against any claimant to possessory or ownership rights in such lands.

V. Facts

A. Facts Establishing the Source of Plaintiff's Title to, and Sovereign Interest In, the Subject Lands.

14. During the period beginning prior to European contact and extending into the Dutch colonial period, the Stockbridge Tribe exclusively used and occupied a territory along the Hudson River from Lake Champlain to Long Island in what is now the State of New York. Although the British signed a covenant of peace and friendship with the Tribe in 1621, the British plan of settlement following the purchase of New York from the Dutch resulted in the confiscation and destruction of the Tribe's hunting grounds. The Tribe was thus forced to relocate and in the early 1700s settled on a reservation at Stockbridge in the Housatonic River valley of western Massachusetts, where it established a peaceful farming community which achieved notoriety as a "model Indian society."
15. During the Revolutionary War, the Tribe fought alongside the colonists under the leadership of Mohican Captains Daniel Ninham and Hendrick Aupamut. Captain Aupamut was decorated by General Washington for his bravery.
16. Around the time of the Revolutionary War, encroaching white settlement and high land taxes in Massachusetts resulted in the Tribe deciding to leave its reservation at Stockbridge, Massachusetts and, at the invitation of the Oneida Nation, re-settle on lands within Oneida aboriginal territory in central New York. Following the end of the War, the Tribe removed to a six-mile-square tract of land in New York, which tract had, on information and belief, been surveyed and transferred to the Tribe by the Oneida Nation.
17. Soon after the Tribe was securely settled on this tract, known as New Stockbridge, the State of New York and the Oneida Nation concluded the 1788 Treaty of Fort Schuyler, in

the first article of which the State, acting under the Articles of Confederation, lawfully exercised the sovereign power to purchase Indian lands, which power had formerly resided in the Crown under the Law of Nations, by purchasing all Oneida Indian land and thereby extinguishing all Oneida aboriginal title (with the exception of Oneida aboriginal title to those lands which the State immediately granted back to the Oneida for its own use and occupancy in the second article of the Treaty). Then, in the second article, as had been demanded by the Oneida Nation in the negotiations leading to the Treaty, the State reserved and set aside from the lands it had just acquired in the first article, a separate, permanent, Indian reservation for the Stockbridge Tribe. The Treaty's description of the lands that were to comprise the Oneida Nation expressly excluded the lands of New Stockbridge, and the Treaty separately reserved to "the Stockbridge Indians and their posterity forever . . . a tract of six miles square"

18. On February 25, 1789, the New York Legislature, still operating under the Articles of Confederation, lawfully ratified and implemented the 1788 Treaty of Fort Schuyler in a statute declaring that the New Stockbridge Reservation "shall be and remain to the said Stockbridge Indians and their posterity" AN ACT for the sale and disposition of lands belonging to the people of this State, Laws of the State of New York, Vol. III, Chap. 32, 69-72 (Albany, 1877).
19. Later in 1789, the Constitution of the United States became effective and the sovereign power to purchase Indian land and extinguish Indian title, which had theretofore resided in both the states and the central government under the Articles of Confederation, came to reside exclusively with the Federal Government. The United States, as the successor

sovereign to the State of New York respecting obligations and rights under the 1788 Treaty and its 1789 implementing act, thereby stepped into the shoes of the State.

20. In 1790, the First Congress enacted the Indian Trade and Intercourse Act which statutorily re-affirmed exclusive federal jurisdiction over transactions involving Indian land. That Act (referred to hereafter as the Nonintercourse Act) expressly forbade and declared void *ab initio* any sale of land, or any title or claim thereto, by any Indian nation or tribe without the consent of the United States. The Act has been continuously in force since 1790 and was re-enacted in the Act of March 1, 1793, 1 Stat. 329-330; the Act of May 19, 1796, 1 Stat. 469, 472; the Act of March 3, 1799, 1 Stat. 743, 746; the Act of March 30, 1802, 2 Stat. 139, 143; the Act of June 30, 1834, 4 Stat. 729; Rev. Stat. § 2116. Presently codified at 25 U.S.C. § 177, the Nonintercourse Act in pertinent part provides:

No purchase, grant, lease or other conveyance of land, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or conveyance entered into pursuant to the Constitution.

21. In the 1794 Treaty of Canandaigua between the United States and several New York Indian Tribes, including plaintiff, the United States recognized the reservations established in Confederal-era treaties between the State of New York and several Indian Tribes. The United States also pledged never to disturb the occupancy of the “Indian friends” of the Oneida. The United States thereby stepped into the shoes of the State respecting obligations and rights under the 1788 Treaty of Fort Schuyler and its 1789 implementing act.
22. Plaintiff was a party signatory to the 1794 Treaty of Canandaigua; was an “Indian friend”

of the Oneida Nation under article II of that Treaty; and received annuities directly from the United States, as did every other tribe that was party to the 1794 Treaty.

23. In a series of legislative enactments, including enactments in 1791, 1792, 1797, 1801, 1806, and 1813, the New York State Legislature repeatedly re-affirmed the 1788 Treaty of Fort Schuyler and its 1789 implementing Act. For example, the 1813 Act, in language similar to that contained in earlier Acts, declared that the tract “be and remain to the said Stockbridge Indians and their posterity forever, but without any power of alienation, or right of leasing or disposing of the same, or any part thereof.” Law of April 10, 1813, Ch. 93, §9 [1813] N.Y. Laws 153.
24. There has been no subsequent treaty or agreement with the United States that purports to either extinguish the Stockbridge Tribe’s recognized title to New Stockbridge or ratify any attempted extinguishment thereof by the State of New York. Thus, the only sovereign interest implicated in this suit belongs to the Stockbridge Tribe.

B. Facts Relating to the State’s Illegal Dispossession of the Tribe.

25. During the period from 1818 to 1842, the State entered into a series of land purchase agreements, which were called “treaties,” with the Stockbridge Tribe. Through these transactions, the State acquired possession of most of the land within the New Stockbridge Reservation. These transactions were not the result of voluntary, arms-length agreements between the parties. Rather, in each case, the Tribe was in a vastly inferior bargaining position and received unconscionably low consideration imposed by the State.

26. On July 14, 1818, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of three tracts of land in New Stockbridge containing a total of 5,529.6 acres. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
27. On March 25, 1820, the State of New York entered into an agreement with the Stockbridge Tribe for the transfer of 300 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
28. On February 23, 1822, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 3,125.29 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
29. On August 28, 1822, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 5,063.44 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
30. On September 16, 1823, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 1,768.81 acres in New Stockbridge. No officer of the United States was present at the execution of the

agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.

31. On June 21, 1825, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 1,768.93 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
32. On October 1, 1825, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 1,658.8 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
33. On June 29, 1826, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 150 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
34. On February 26, 1827, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 134.58 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.

35. On March 21, 1829, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 129.97 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
36. On April 25, 1829, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 150 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
37. On September 8, 1829, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 145.48 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
38. On April 30, 1830, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 91.43 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
39. On July 20, 1842, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 59.85 acres in New

Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.

40. On September 24, 1847, the State of New York entered into a purported “treaty” with the Stockbridge Tribe for the purchase and transfer of an additional 53.62 acres in New Stockbridge. No officer of the United States was present at the execution of the agreement, and the United States did not consent to or approve this purchase and transfer and has not subsequently ratified it.
41. The Oneida Indian Nation did not participate in any of the transactions complained of in paragraphs 26–40 herein, nor did the Oneida Nation, or any successor in interest to the Oneida Nation, object to said transactions at any time prior to Defendant-Intervenor’s motion to intervene in this case in 1987.
42. In addition to the land that was transferred in the transactions complained of in paragraphs 26–40 herein, certain portions of the New Stockbridge Reservation were never purportedly transferred by any agreement between the State and the Tribe. Despite this fact, the State wrongfully took these lands from the Stockbridge Tribe by purporting to transfer them to third parties through letters patent or similar instruments. These transfers were never agreed to by the Tribe, nor were they consented to, approved of, or subsequently ratified by the United States.
43. After each acquisition of Stockbridge Reservation land, the State of New York wrongfully took possession and then purported to sell those lands to third parties at a substantial profit to the State. Defendants, as well as all others who currently possess the

lands of New Stockbridge or claim ownership thereto, claim under mesne conveyances from the State, including Defendant-Intervenor which, on information and belief, has, in the period since this action was initiated in 1986, purchased and is now in possession of numerous parcels within New Stockbridge, totaling in aggregate over 2,000 acres, as well as certain rights to subsurface minerals in other parcels.

44. Defendants and defendant-intervenor have occupied, and continue to occupy, the subject lands. Upon information and belief, they have severed timber, minerals, and other valuable resources from the subject lands and they continue to do so. Upon information and belief, they have inflicted damage, pollution, and destruction upon the subject lands, and continue to do so.

First Claim for Relief: Federal Common Law

45. The Tribe repeats, realleges, and incorporates by reference herein the allegations contained in paragraphs 1 through 44.
46. None of the purported state “treaties” and transfers described herein were consented to, approved of, or ratified by, the United States, and, as a result, they were illegal and void *ab initio*.
47. The effect of these “treaties” and transfers has been and continues to be to keep plaintiff out of possession of its Reservation lands. Defendants and defendant-intervenor continue to assert and claim an interest in a portion of New Stockbridge and thereby keep plaintiff out of possession of its Reservation. Through the transactions described above, defendants and defendant-intervenor have claimed title to land that is not theirs, have

used and occupied that land, and taken the revenues therefrom for their own benefit, all in violation of the federal common law and plaintiff's federal common law right to exclusive use and possession of the lands of New Stockbridge. Under federal common law, plaintiff has a continuing right of possession to the lands of New Stockbridge and defendants and defendant-intervenor are engaged in an ongoing violation of federal common law.

Second Claim for Relief: 25 U.S.C. §177

48. The Tribe repeats, realleges, and incorporates by reference herein the allegations contained in paragraphs 1 through 44 and 45 through 47.
49. None of the purported state "treaties" and transfers described herein were consented to, approved of, or ratified by, the United States, and, as a result, they were illegal and void *ab initio* under the Nonintercourse Act, 25 U.S.C. §177. Defendant New York State deliberately, willfully, and in bad faith executed the "treaties" and the transfers complained of herein were in violation of the Nonintercourse Act and as a result plaintiff was unlawfully dispossessed of the subject lands. That dispossession continues to this day.
50. Under the Nonintercourse Act, plaintiff has a continuing right of possession to the subject lands and defendants' and defendant-intervenor's assertions of ownership or possessory rights in the subject lands has kept and continues to unlawfully keep plaintiff out of possession in violation of the Nonintercourse Act.

Third Claim for Relief:
Federal Treaty Protections Arising From
the 1788 Treaty of Fort Schuyler and the 1794 Treaty of Canandaigua

51. The Tribe repeats, realleges, and incorporates by reference herein the allegations contained in paragraphs 1 through 44, 45 through 47, and 48 through 50.
52. Plaintiff has a continuing right of possession to the subject lands and defendants' and defendant-intervenor's assertions of ownership or possessory rights in the subject lands has kept and continues to unlawfully keep plaintiff out of possession in violation of the guarantees contained in the 1788 Treaty of Fort Schuyler, its 1789 implementing Act, and the 1794 Treaty of Canandaigua.

WHEREFORE, plaintiff prays that this Court:

1. Declare that all right, title, and interest of the Oneida Indian Nation, and hence of defendant-intervenor Oneida Indian Nation of New York, in the subject lands was lawfully extinguished by the 1788 Treaty of Fort Schuyler and the 1789 Act of the New York Legislature that implemented the 1788 Treaty of Fort Schuyler.
2. Declare that the subject lands were acquired by the State of New York in violation of federal law, and that the "treaties" and transfers complained of herein were void *ab initio*;
3. Declare that plaintiff's Treaty-recognized Indian title to the lands of New Stockbridge has never been extinguished and that plaintiff therefore has a right of current possession to every portion of the subject lands which is claimed or held by any defendant or defendant-intervenor herein;
4. Order that plaintiff be restored to immediate possession of all of the subject lands

claimed by any defendant or defendant-intervenor herein;

5. With respect only to the subject lands and natural resources claimed or held by any of the non-State defendants, including defendant-intervenor, award damages, and accounting and disgorgement of all benefits unjustly received, including, where appropriate, damages for bad-faith trespass;
6. Award to plaintiff the costs of this action together with attorneys fees; and,
7. Award such other and further relief, including ejectment, as the Court may deem just and proper.

Respectfully submitted this 5th day of August, 2004.

s/ Don B. Miller

Don B. Miller (Bar Roll No. 502538)

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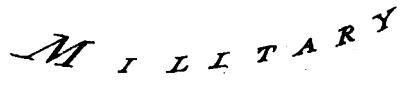
E-mail: pgitlen@woh.com

This map depicts the approximate location of the claim area. It is intended to provide notice of the claim area but is not intended to be a precise survey.

EXHIBIT A
AMENDED COMPLAINT



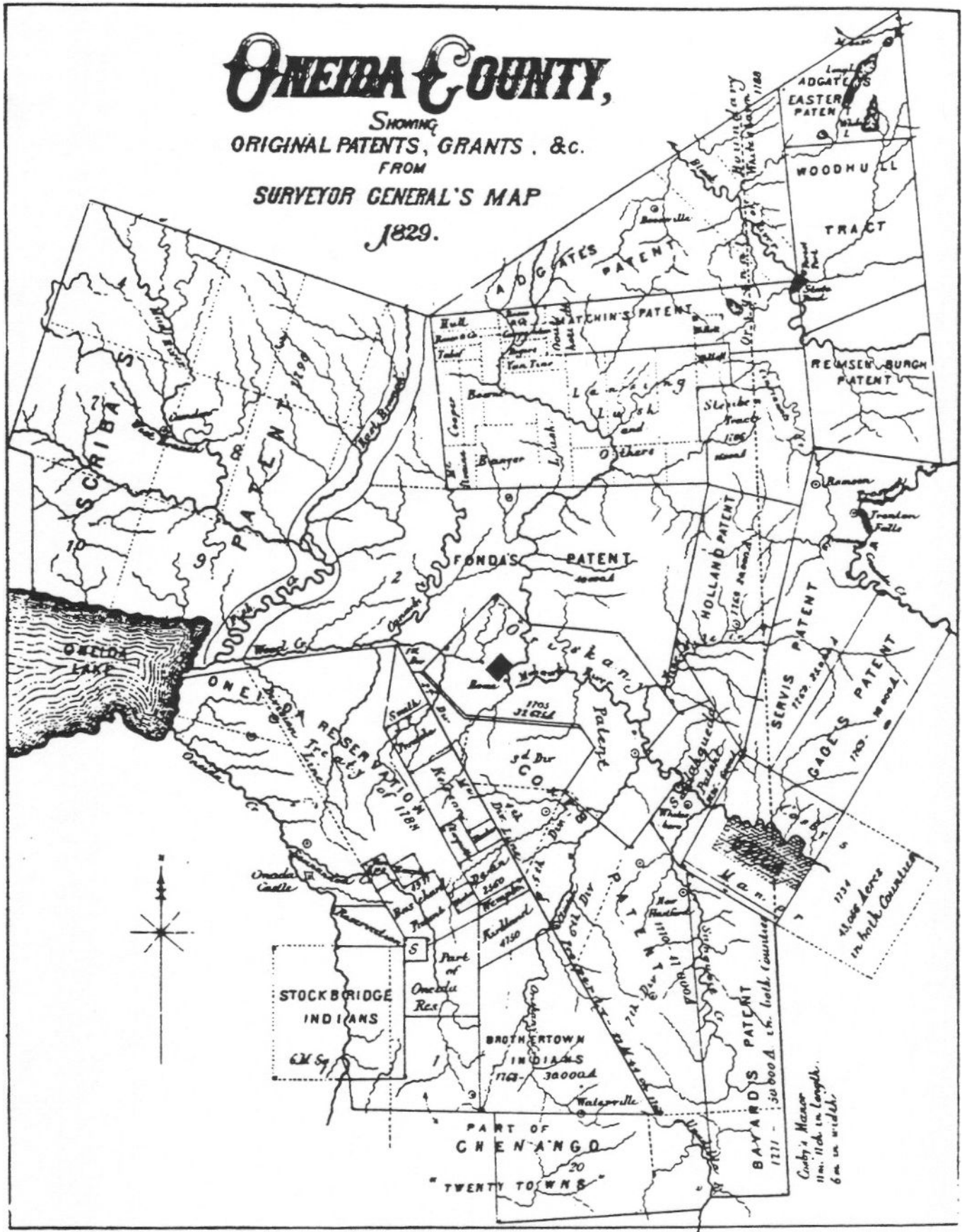
Fort Rensselaer



The Lots south of **AB** are the Lands leased to Peter Smith.

New-Stockbridge

Brother Town



History of Oneida County, New York, by Samuel W. Durant, 1878

EXHIBIT D
AMENDED COMPLAINT

Re: NEW YORK, ONTARIO and WESTERN
RAILROAD COMPANY
MADISON, ONEIDA and OSWEGO
COUNTIES
ACQUISITION OF FORMER RIGHTS
OF WAY

THIS INDENTURE

Made the ^{1st} day of ^{July} in the year Nineteen hundred
and fifty-nine, between HERMAN CARO, residing at 583 Cedar Hill
Road, Far Rockaway, New York, party of the first part, and THE
PEOPLE OF THE STATE OF NEW YORK, parties of the second part.

WITNESSETH:

That the party of the first part, in consideration of the
sum of ONE HUNDRED SIXTY SIX THOUSAND FOUR HUNDRED EIGHTY
(\$166,480.00) DOLLARS, lawful money of the United States, paid
by the parties of the second part, does hereby grant and release
unto the said parties of the second part, their successors and
assigns forever:

ALL those pieces or parcels of property, together with any
and all buildings, structures and appurtenances thereon and
thereto, situate, lying and being in the Counties, Cities, Towns
and Villages following, viz.:

County of Madison

City of Oneida

Town of Eaton
Town of Madison
Town of Stockbridge

County of Oneida

City of Utica
City of Rome

Town of Marshall
Town of Kirkland
Town of Westmoreland
Town of Verona
Town of Vienna
Town of New Hartford

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County of Oswego

Village of Cleveland
Village of Central Square

Town of Constantia
Town of West Monroe
Town of Hastings
Town of Schroepel
Town of Volney
Town of Lebanon

which pieces or parcels of property are described by parcel numbers on the maps referred to in Schedule "A" following, which maps are to be filed in the office of the appropriate county clerk simultaneously with the recording of this instrument. Schedule "A" above referred to, follows:

SCHEDULE "A"

Town of Eaton, County of Madison

Map No. 5
PECKSPORT-PINE WOODS S. H. NO. 1822
Parcels Nos. 7-7A, 8, 9, 10-10A, 11, 12

Town of Eaton, County of Madison

Map No. 39
WEST EATON-PECKSPORT S. H. NO. 8249
Parcels Nos. 13 and 15

Town of Eaton, County of Madison

Map No. 18
HAMILTON-BOUCKVILLE S. H. 5492
Parcels Nos. 32, 33 and 34

Town of Eaton, County of Madison

Map No. 38
WEST EATON-PECKSPORT S. H. NO. 8249
Parcels Nos. 1008 and 1012

Town of Eaton, County of Madison

Map No. 33
MORRISVILLE-BOUCKVILLE S. H. NO. 5330
Parcels Nos. 1023, 1024-1, 1024-2, 1025-1,
1025-2 and 1027

Town of Madison, County of Madison

Map No. 8
BOUCKVILLE-MADISON S. H. 5380
Parcels Nos. 45, 46 and 47

SCHEDULE "A" Cont'd

Town of Stockbridge, County of Madison

Map No. 21
MUNNSVILLE-PRATTS HOLLOW-PINE WOODS S. H. NO. 1360
Parcel No. 1047

City of Oneida, County of Madison

Map No. 7
WAMPSVILLE-ONEIDA CASTLE, S.H. NO. 5078
Parcel No. 1098

Town of Marshall, County of Oneida

Map No. 29
ORISKANY FALLS-DEANSBORO S. H. 5406
Parcels Nos. 107, 108, 109, 110, 111, 112,
113, 114, 115, 116, 117, 118,
119, 120, 121, 122, 123, 124,
125-127, 126, 128, 129 and 130

Town of Marshall and Town of Kirkland, County of Oneida

Map No. 20
DEANSBORO-NEW HARTFORD, S. H. NO. 761
Parcels Nos. 131, 132, 134, 135, 136, 137,
138, 139, 141, 142, 143, 144,
145, 146 and 148

Town of Kirkland, County of Oneida

Map No. 21
DEANSBORO-NEW HARTFORD S. H. NO. 761
Parcels Nos. 183, 184 and 185

Town of Kirkland, County of Oneida

Map No. 57
UTICA-ONEIDA CASTLE PT. 1, S. H. NO. 250
Westerly part of Parcel No. 188

Town of New Hartford, County of Oneida

Map No. 57
UTICA-ONEIDA CASTLE PT. 1, S. H. NO. 250
Easterly part of Parcel No. 188 and
Parcels Nos. 192, 194, 195, 196, 197. ~~and 198~~

Town of Kirkland, County of Oneida

Map No. 56
UTICA-ONEIDA CASTLE PT. 1 S. H. 250
Parcels Nos. 13 and 14

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SCHEDULE "A" Cont'd

Town of Westmoreland, County of Oneida

Map No. 110
KIRKLAND-ROME S. H. 8246
Parcels Nos. 37 and 38

City of Utica, County of Oneida

Map No. 85
CITY OF UTICA: NORTH-SOUTH ARTERIAL
(ORISKANY STREET TO RIVERSIDE DRIVE)
Parcels Nos. 88, 89, 90, 91

City of Rome, County of Oneida (Connecting Highway)

Map No. 72
CITY OF ROME: SOUTHERLY HIGHWAY CONNECTIONS
ONEIDA CO.
Parcel No. 105

Also Map 49, Parcel 81

City of Rome, County of Oneida (Arterial Highway)

Map No. 6
EAST WHITESBORO STREET ARTERIAL, CITY OF ROME
Parcel No. 8

City of Rome, County of Oneida (Arterial Highway)

Map No. 48
EAST WHITESBORO STREET ARTERIAL, CITY OF ROME
ONEIDA COUNTY
Parcel No. 51

City of Rome, County of Oneida

Map No. 57
EAST WHITESBORO STREET ARTERIAL, CITY OF ROME
ONEIDA COUNTY
Parcel No. 62

Town of Verona, County of Oneida

Map No. 97
DURHAMVILLE-ROME S. H. NO. 1157
Parcel No. 124

Town of Verona, County of Oneida

Map No. 34
ONEIDA VALLEY-STATE BRIDGE PT. 2 S. H. NO. 8367
Parcels Nos. 48, 49, 59 and 60

SCHEDULE "A" cont'd

Town of Vienna, County of Oneida

Map No. 125

SOUTH BAY-VIENNA PT. 1 and 2 S. H. NO. 8219
Parcels Nos. 1201 and 1204-2

Town of Vienna, County of Oneida

Map No. 1

NORTH BAY CONNECTION, ONEIDA COUNTY
Parcels Nos. 1204-1, 1204-2, 1209-1, 1209-2,
1210, 1214, 1215, 1216, 1218,
1219, 1223, 1225 and 1226

Town of Vienna, County of Oneida

Map No. 13

CLEVELAND-VIENNA PT. 4 S. H. 8103
Parcels Nos. 1226, 1227, 1228, 1230, 1231,
1232 and 1235

Town of Vienna, County of Oneida

Map No. 5

CLEVELAND-VIENNA PT. 3, S. H. 8102
Parcels Nos. 1236, 1237, 1238, 1239, 1241,
1242, 1243, 1244, 1245, 1246 and 1247

Town of Vienna, County of Oneida

Map No. 1

CLEVELAND-VIENNA PT. 2, S. H. 1620
Parcels Nos. 1248, 1249, 1250, 1251, 1252,
1255, 1257, 1258, 1260,
1261, 1262, 1263, 1264, 1265 and 1266

Town of Constantia, County of Oswego

Map No. 1

CLEVELAND-VIENNA STATE HIGHWAY NO. 1629
Parcels Nos. 1268, 1269, 1270, 1271, 1273,
1275, 1276, 1277, 1279, 1280,
1281, 1282A, 1282B, 1283, 1284,
1285 and 1286

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SCHEDULE "A" Cont'd

Town of Constantia, County of Oswego

Map No. 2

CONSTANTIA-CLEVELAND STATE HIGHWAY NO. 1554

Parcels Nos. 1287, 1288, 1289, 1290, 1291, 1292,
1293, 1294, 1295, 1296, 1297, 1298,
1299, 1300, 1303, 1304, 1305, 1306,
1307, 1308, 1309, 1311, 1314, 1316,
1317, 1318, 1319, 1320, 1321, 1322,
1323, 1324, 1325, 1326, 1327, ~~1328~~,
1329, 1330, 1331, 1332, 1334, 1337,
1338, 1339.

Town of Constantia, County of Oswego

Map No. 5

CENTRAL SQUARE-CONSTANTIA, PART II S. H. 1553

Parcels Nos. 1341, 1345, 1346, 1347, 1348, 1349

Town of West Monroe, County of Oswego

Map No. 4

CENTRAL SQUARE-CONSTANTIA STATE HIGHWAY NO. 1243

Parcels Nos. 1353, 1354, 1355, 1356, 1357, 1358,
1359, 1360, 1361, 1362, 1363, 1364,
1367, 1368, 1369, 1370, 1371

Town of Hastings, County of Oswego

Map No. 4

CENTRAL SQUARE-CONSTANTIA STATE HIGHWAY NO. 1343 PART I

Parcels Nos. 1372, 1373, 1374 and 1375

Town of Hastings, County of Oswego

Map No. 5

CENTRAL SQUARE-CONSTANTIA STATE HIGHWAY NO. 1243 PART I

Parcel No. 1375A

Town of Hastings, County of Oswego

Map No. 14

VOLNEY-ROOSEVELT CORNERS CENTRAL SQUARE S. H. 9053

Parcels Nos. 1376, 1377, 1378, 1379, 1380, 1381,
1382, 1383, 1384, 1385, 1386, 1387,
1388, 1389, 1390, 1391, 1392, 1393,
1394, 1395, 1396, 1397

SCHEDULE "A" Cont'd

Town of Schroepfel, County of Oswego

Map No. 14
VOLNEY-ROOSEVELT CORNERS, ^{Central Square} S.H. 9053
Parcels Nos. 1398, 1399, 1400, 1401, 1403, 1404,
1406, 1407, 1412, 1414, 1416, 1422,
1428

Town of Volney, County of Oswego

Map No. 14
VOLNEY-ROOSEVELT CORNERS, ^{Central Square} S.H. 9053
Parcels Nos. 1432, 1435

Town of Volney, County of Oswego

Map No. 4
VOLNEY-PALERMO S.H. 973
Parcels Nos. 1433, 1434, 1437

EXCEPTING however, from the property hereinabove described,
so much thereof described as follows:

- A. The northerly 30 feet of Map 57, Parcel 62
- B. A ten foot strip through Map 34, Parcel 49
- C. Part of Map 1, Parcel 1209-1
- D. Part of Map 1, Parcel 1204-1
- E. Part of Map 2, Parcel 1307
- F. Part of Map 2, Parcel 1308
- G. So much of the northerly portion of Map 29, Parcel 120 as lies westerly of a line 33 feet westerly of and concentric with the center line of said railroad
- H. So much of Map 49, Parcel 81 as may be situate within the confines of the Erie Canal as it now exists or formerly existed, as may be owned by parties of the second part

and as to the above, party of the first part grants and releases all his right, title and interest therein.

AND THE PARTY OF THE FIRST PART, in consideration of sums herein agreed to be paid, and in further consideration of the sum of ONE (\$1.00) DOLLAR, PAYMENT WAIVED, does hereby grant and release unto the People of the State of New York, its successors and assigns, all the estate, right, title, interest and property, in or to lands of the Chenango Canal, which the party of the first part or its predecessors in title, may have acquired as adjoining, adjacent

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bounding or contiguous owner, under Chapter 588 of the Laws of 1887 as amended.

Together with all the right, title and interest, if any, of the owner of, in and to strips and gores of land or lands under water adjacent to or adjoining said premises or lying between any of the above parcels and to the land lying in the bed of any street, road, avenue, lane or right of way as they now exist or formerly existed included in front of or adjoining the premises.

Together with the appurtenances and all the estate and rights of the owner in and to the premises and together with all the owner's right, title and interest in and to all riparian rights, appurtenances, fixtures, erections and structures, improvements and facilities located upon the aforesaid parcels and the rights of way described or referred to therein, or held for and in

connection with the maintenance and operation or use thereof, and in and to all franchises, rights, powers, privileges, consents, licenses and permits appurtenant to said parcels and the rights of way described or referred to therein, and necessary or convenient for the maintenance, operation or use thereof; and together with all sidings, sidetracks, yards, terminal facilities, and all leases and leasehold interests, siding agreements, easements and all agreements pertaining to the aforesaid parcels.

Together with all right, title and interest which the owner may have in and to any of the above lands, easements or rights in lands, which have been acquired by the former New York, Ontario and Western Railway Company or its predecessors in title by recorded or unrecorded instruments or otherwise, including any and all lands or rights in lands acquired by adverse claim or possession and long continued use.

And it is further covenanted and agreed that the terms and provisions of the contract made by the party of the first part and the parties of the second part relating to the transfer and release of the property herein described shall survive the recording of this instrument.

BEING THE SAME PREMISES conveyed to the party of the first part by James B. Kelsheimer III and Jacob Grumet, Receivers of the New York, Ontario and Western Railway Company, the Pecksport Connecting Railway Company, et al, by deeds, all dated November 26, 1957 and recorded as follows:

In Madison County on December 4, 1957 in Liber 545 of Deeds, page 560 and in Liber 545 of Deeds, page 569

In Oneida County on November 29, 1957 in Liber 1569 of Deeds, page 592 and in Liber 1569 of Deeds, page 586

In Oswego County on November 1957 in Liber 603 of Deeds, page 580 and in Liber 603 of Deeds, page 589.

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TO HAVE AND TO HOLD the herein granted premises unto the said parties of the second part their successors and assigns forever.

The party of the first part covenants:

FIRST: That he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

SECOND: That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law of the State of New York.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

In Presence of

Benjamin W. Dreblow

Herman Caro (L.S.)
Herman Caro

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:
CITY OF NEW YORK }

On this ^{29th} day of JUNE 1959, before me, the subscriber, personally came HERMAN CARO, to me known and known to me to be the same person described in and who executed the foregoing instrument, and he to me duly acknowledged that he executed the same.

Beverly B. Schwartz
Notary Public of the State of New York

BEVERLY B. SCHWARTZ
Notary Public, State of New York
No. 24-3549723
Qualified in Kings & N.Y. County
Commission Expires March 30, 1961

A duplicate original of this deed, recorded in Oswego County Clerk's office concurrently herewith, has affixed to it U.S. Documentary Stamps in the sum of \$183.15

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See Map. filed June 30, 1959.

Below

HERMAN CARO

to

THE PEOPLE OF THE STATE OF
NEW YORK

DEED

Dated: 19

State of New York
MADISON
County of Oswego

Recorded
on the

30 day of June A.D., 1909
at 4:10 o'clock P.M.
in Liber 562 of Deeds
at Page 573 and examined.

Arnold R. Fisher

Clerk

✓ Record & Return to

Dept. of Law
Real Property Bureau
103 Washington Ave
Albany, New York
after to books

APPROVED AS TO FORM
AND MANNER OF EXECUTION
LOUIS J. LEFKOWITZ
ATTORNEY GENERAL
By *Edward M. [illegible]*
ASSISTANT

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INDEXED

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

THE STOCKBRIDGE-MUNSEE COMMUNITY
also known as the STOCKBRIDGE-MUNSEE
BAND OF MOHICAN INDIANS,

Plaintiff,

v.

THE ONEIDA INDIAN NATION OF NEW YORK,

Defendant-Intervenor,

Civil Action No.
3:86-CV-1140
LEK/GJD

v.

THE STATE OF NEW YORK, GEORGE PATAKI,
individually and as Governor of the State of New York;
NEW YORK STATE DEPARTMENT OF
TRANSPORTATION, JOSEPH BOARDMAN,
individually and as Commissioner of Transportation;
THE COUNTY OF MADISON, NEW YORK;
THE COUNTY OF ONEIDA, NEW YORK;
THE TOWN OF AUGUSTA, NEW YORK;
THE TOWN OF LINCOLN, NEW YORK;
THE VILLAGE OF MUNNSVILLE, NEW YORK;
THE TOWN OF SMITHFIELD, NEW YORK;
THE TOWN OF STOCKBRIDGE, NEW YORK;
and THE TOWN OF VERNON, NEW YORK,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2004, I electronically filed the foregoing First Amended Complaint with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

1. David B. Roberts David.Roberts@oag.state.ny.us,
Federal.Papers@oag.state.ny.us

2. Michael R. Smith msmith@zuckerman.com
3. Rowan D. Wilson rwilson@cravath.com
4. G. Robert Witmer GRWitmer@nixonpeabody.com,
bbonisteel@nixonpeabody.com,
roc.managing.clerk@nixonpeabody.com

S/ Don B. Miller