

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

FREDRICK PERKINS and ALICE PERKINS,)	
)	
Plaintiffs,)	
v.)	No. 1:16-cv-00495-LJV-HBS
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

**MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF ON BEHALF OF THE
SENECA NATION OF INDIANS**

COMES NOW the Seneca Nation of Indians (the “Seneca Nation”) to respectfully request leave to submit the accompanying *Amicus Curiae* brief, on behalf of the plaintiffs, the Perkins, seeking to oppose the summary judgment motion filed by defendant, the United States, on May 18, 2018. The Seneca Nation’s interest in this matter is two-fold. First, the Seneca Nation has an interest in the correct interpretation and application of treaty rights guaranteed to the Nation and its members by the United States in the 1794 Canandaigua Treaty and the 1842 Buffalo Creek Treaty. Second, the Seneca Nation has an interest in protecting its sovereign authority to regulate and manage the natural resources of the Nation.

In this case, the United States has moved for summary judgment on the grounds that neither the Canandaigua Treaty nor the Buffalo Creek Treaty provide the Perkins an income tax exemption for the on-reservation extraction of Nation-owned natural resources, *i.e.*, gravel and sand. The United States’ narrow and restrictive interpretation of the two treaties raises concerns about the potential for precedent that is adverse to the interests of the Seneca Nation and its members. Additionally, this case has the potential to adversely affect the Seneca Nation’s right to use its

mineral resources, as the Perkins operated their gravel business under the authority of the Seneca Nation and in accordance with Seneca Nation law. The Seneca Nation seeks leave of this Court to file an *Amicus Curiae* brief that will inform this Court of the Seneca Nation's interpretation of the two treaties and the rights granted therein under the applicable standards of construction in Indian law cases.

Neither the United States nor the Perkins have consented to this motion.

The granting of this motion should not delay the adjudication of the pending cross-motions. The arguments addressed in the attached brief are already before the Court, and will need to be addressed regardless of whether this motion is granted. Thus, this brief does not expand upon the issues or arguments. Rather, it assists the Court's focus on the important issues to be decided by providing the unique perspective of a party to the treaties at issue.

The Seneca Nation also requests leave from the Court to participate in oral argument for the cross-motions filed by the Perkins and the United States. The Seneca Nation believes that its particular expertise and knowledge of the history and meaning of the Treaties can assist this Court in its consideration of how the Treaties apply to the current dispute.

THEREFORE, the Seneca Nation respectfully requests leave to submit the attached *Amicus Curiae* Brief, which sets forth in greater detail the grounds for finding that the treaties create a tax exemption for the type of income earned by the Perkins in this case. The Seneca Nation also requests leave to participate in oral argument for the cross-motions.

DATED this 29th day of June, 2018.

Respectfully submitted,

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