No. _____

In The
Supreme Court of the United States

STOCKBRIDGE-MUNSEE COMMUNITY,

Petitioner,

v.

STATE OF NEW YORK, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Petrella v. Metro-Goldwyn-Mayer*, *Inc.*, 134 S. Ct. 1962 (2014), this Court held that courts may not override Congress' judgment and apply laches to summarily dispose of *claims* at law filed within a statute of limitations established by Congress, thereby foreclosing the possibility of any form of relief. Equitable *remedies* may be foreclosed at the litigation's outset due to a delay in commencing suit only in "extraordinary circumstances," such as the need to prevent unjust hardship on innocent third parties. *Id*. at 1978. The question presented is:

Where Petitioner's claims were filed within the statutory-limitations period established by Congress, did the court of appeals contravene this Court's decision in *Petrella* by invoking delay-based equitable principles to summarily dismiss all of Petitioner's federal treaty, statutory and common-law claims, including one for money damages as upheld by this Court in *County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 246 (1985)?

PARTIES TO THE PROCEEDING

Petitioner Stockbridge-Munsee Community, a federally recognized Indian tribe, was plaintiff in the district court and appellant in the court of appeals. The State of New York, Mario Cuomo, as Governor of the State of New York, New York State Department of Transportation, Franklin White, as Commissioner of Transportation, Madison County, New York, Oneida County, 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, were defendants in the district court and appellees below. The Oneida Indian Nation of New York, a federally recognized Indian tribe, intervened as a defendant in the district court and was an appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Stockbridge-Munsee Community (Stockbridge) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, App.1, is reported at 756 F.3d 163. The district court's opinion, App.10, is reported at 2013 WL 3822093 and 2013 U.S. Dist. LEXIS 102569.

JURISDICTION

The judgment of the court of appeals was entered on June 20, 2014. App.1. The petition for rehearing was denied on August 11, 2014. App.22. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The following statutory provisions are reproduced in the appendix to this petition: 28 U.S.C. § 2415(a)–(c) and (g) and §§ 3–6 of Public Law No. 97-394 (the Indian Claims Limitation Act of 1982). App.24.

STATEMENT OF THE CASE

This Court ruled in *Petrella v. Metro-Goldwyn-Mayer*, *Inc.,* 134 S. Ct. 1962, 1974 (2014) (*Petrella*) that judges may not substitute their judgment for that of Congress and apply laches to bar a claim for damages brought within the time allowed by the Copyright Act's statute of limitations. *Petrella* reaffirmed the broad rule of federal equity jurisprudence that laches may not be invoked to bar legal relief in face of a statute of limitations enacted by Congress, noting that "[t]here is nothing at all different about copyright cases in this regard." *Id.* (citation and internal quotes omitted). But, "[a]s to equitable relief, in extraordinary circumstances, laches may bar at the very threshold particular relief requested by the plaintiff." *Id.* at 1967.

The court of appeals, making no distinction between the legal and equitable relief sought, summarily dismissed Stockbridge's claims against all defendants based on "fundamental principles of equity" illustrated by laches, acquiescence and impossibility, App.8, creating a direct conflict with *Petrella,* as well as with this Court's opinions in *County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226 (1985) (*Oneida II*) and *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005) (*Sherrill*). The lower court's dismissal of Stockbridge's claim against state officers also conflicts with *Petrella* because the possessory

remedy sought presents no extraordinary circumstances.[1]

A. Factual and Procedural Background

Stockbridge is composed of the Mohican tribe that greeted Henry Hudson near present-day Albany in 1609 and Munsee Indians from the Catskills region of New York. In 1785, it relocated to a six-mile-square tract granted to it by the Oneida Nation (New Stockbridge). This tract was later established as a permanent Stockbridge reservation in the 1788 Treaty of Fort Schuyler and its 1789 state implementing act[2] and acknowledged by the United States in the 1794 Treaty of Canandaigua.[3] In 15 transactions during

[1] The only land involved in the state-officers claim is 0.91 acres of abandoned farmland that is not used or maintained by the state. Stockbridge has waived all claims of sovereign governmental authority over the land and does not seek to quiet title. Therefore, the relief sought would not bind the state or infringe on any sovereign interest of the state, nor would it create hardship for, or be disruptive to the settled expectations of, innocent third parties.

[2] The 1788 Treaty of Fort Schuyler was a valid confederal-era treaty, *Oneida Indian Nation of N.Y. v. State of New York*, 860 F.2d 1145 (2d Cir. 1988), and provided, *inter alia*, that "the Stockbridge indians [sic] and their posterity forever are to enjoy their settlements on the [tract of six miles square] heretofore given to them by the Oneidas for that purpose." Treaty of Fort Schuyler, Sept. 22, 1788.

[3] In article II of the 1794 Treaty of Canandaigua, Nov. 11, 1794, 7 Stat. 44, the United States acknowledged the signatory tribes' confederal-period reservations and promised never to disturb any of them in the "free use and enjoyment" of their lands.

(Continued on following page)

the period from 1818 to 1842, the State of New York purchased this tract for unconscionably low prices without congressional approval in violation of federal law. As a consequence, Stockbridge now resides on a federal Indian reservation in Wisconsin.

Stockbridge filed this action in 1986 asserting that the state transactions were void and Stockbridge retained recognized Indian title to the six-mile-square tract. Stockbridge sought damages, possessory, and declaratory relief against all named defendants (all governmental entities possessing land within the six-mile-square tract). In 1987, the Oneida Indian Nation of New York (OIN) intervened as a defendant seeking dismissal on the grounds that it, rather than Stockbridge, retained ownership and the right to possession of the tract.

To accommodate post-1986 changes in Eleventh Amendment jurisprudence, Stockbridge amended its complaint in 2004 to state an *Ex parte Young* claim against state officers. The amended complaint also asserted claims under the 1788 Treaty and sought the

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Stockbridge was a signatory and received Treaty annuities from the United States. See *Six Nations v. United States*, 32 Ind. Cl. Comm. 440 (1973); H.R. Doc. No. 477 (1846). In 1971, the Indian Claims Commission found that "Stockbridge had a compensable property interest in New Stockbridge," that article II of the 1794 Treaty "related to the lands of the Stockbridges" and that "[a]rticle II pledged the United States never to disturb them in their free use and enjoyment of New Stockbridge." *Stockbridge Munsee Community v. United States*, 25 Ind. Cl. Comm. 281, 291–92 (1971).

same relief against defendant-intervenor OIN that was sought against the original defendants. The amended complaint alleged jurisdiction under 28 U.S.C. §§ 1331, 1337 and 1362 over claims arising under federal common law, the 1794 Treaty of Canandaigua, 7 Stat. 44, the 1788 Treaty of Fort Schuyler and the Indian Nonintercourse Act, 25 U.S.C. § 177. App.42. Against the non-state defendants, Stockbridge seeks declaratory, possessory and money-damages relief. App.46–47. Against the state officers, Stockbridge seeks only possessory relief. App.2.

In 2013, before disposition on any claims or defenses, the district court dismissed this action for lack of jurisdiction based on the bars imposed by Eleventh Amendment immunity, tribal sovereign immunity and the laches-like defense developed and applied in *Cayuga Indian Nation of N.Y. v. Pataki*, 413 F.3d 266 (2d Cir. 2005) (*Cayuga*) and its progeny. App.10–21.

The court of appeals affirmed dismissal of all claims as to all appellees based solely on the *Cayuga* doctrine. App.1–9. Stockbridge's petition for rehearing en banc based on this Court's *Petrella* decision was denied, App.22–23, and this Petition followed.

B. Legal Background

1. Congress' Statute of Limitations for Indian Land Claims: The Indian Claims Limitations Act of 1982 (amending 28 U.S.C. § 2415)

In the Indian Claims Limitations Act of 1982 (ICLA), Act of Dec. 30, 1982, Pub. L. No. 97-394, 96 Stat. 1976, note following 28 U.S.C. § 2415, App.27, Congress for the first time imposed a limitations period on certain tort and contract claims brought by Indian tribes on their own behalf. *Oneida II*, 470 U.S. at 242–43. The 1982 Act amended, for the fourth time, a 1966 statute limiting the period in which tort and contract claims could be brought by the United States. Pub. L. No. 89-505, 80 Stat. 304 (codified as amended 28 U.S.C. § 2415) (1966). Subsection (b) of the 1966 act set a six-year-90-day period for damages claims for trespass to Indian lands, while subsection (c) mandated that no time limit apply to actions to establish the title to, or right of possession of, real or personal property. App.26. Subsection (g) deemed any claim that had accrued before the 1966 Act's effective date to accrue on that date. *Id*. To give the Department of the Interior additional time to identify and evaluate claims possessed by the government in its capacity as trustee for Indian tribes, Congress extended the limitations period for such claims in 1972, 1977 and 1980. *See Oneida II*, 470 U.S. at 241–42.

In 1982, Congress enacted ICLA to establish a final and comprehensive system for the resolution of the Indian claims deemed accrued in 1966 and applied it

to actions brought by tribes themselves. It directed the Secretary of the Interior (the Secretary) to publish in the Federal Register two lists of all claims to which 28 U.S.C. § 2415 applied. This Court detailed ICLA's operative scheme in *Oneida II*, 470 U.S. at 243–44, and, as relevant here, explained that "[s]o long as a listed claim is neither acted upon nor formally rejected by the Secretary, it remains live." *Id*. at 243. *See* 28 U.S.C. § 2415(b), App.26. The "Stockbridge Munsee tribal nonintercourse act land claim" is listed on the first list published by the Secretary. 48 Fed. Reg. 13698, 13920 (March 31, 1983). App.40. Before it was filed in 1986, the claim was neither acted on nor formally rejected by the Secretary.

2. Indian Land-Claim Litigation

This action is one of a number of eastern Indian land claims brought by tribes on the heels of this Court's decisions in *Oneida Indian Nation of N.Y. v. County of Oneida*, 414 U.S. 661 (1974) (*Oneida I*) and *Oneida II* to vindicate treaty rights protected by federal statutory and common law. *See* 25 U.S.C. § 177 (the Nonintercourse Act). *Oneida I* held that the claims may be heard in federal court. *Oneida I*, 414 U.S. at 682. *Oneida II* held that "an Indian tribe may have a live cause of action for a violation of its possessory rights that occurred 175 years ago," 470 U.S. at 230, and recognized that federal common law and the Nonintercourse Act that it embodies remain in force today. *Id*. at 240. Recognizing that Congress had imposed a federal statute of limitations on tribal land

claims and established a system for their final resolution, this Court held that "it would be a violation of Congress' will were we to hold that a state statute of limitations period should be borrowed."[4] *Id.* at 244. *Oneida II* left two questions open: 1) whether equitable considerations should limit the relief available to the present-day Oneidas, *id.* at 253 n.27; and, 2) whether laches could bar an Indian land claim. *Id.* at 244–45 & n.16. It declined to rule on the laches issue because petitioners had not raised it in the court of appeals, but, in response to the dissent's urging that laches bar the claim outright, the Court noted that "application of the equitable defense of laches [to bar] an action at law would be novel indeed. . . . [and] would appear to be inconsistent with established federal policy." *Id.* at 245 n.16.

More than a decade after *Oneida II* recognized the Oneidas' aboriginal title to their reservation land, one of the Oneida land-claim plaintiff tribes, the OIN, relying on *Oneida II*, sought a declaration of its sovereign governmental authority over a 17,000-acre checkerboard of recently re-acquired reservation land and an injunction against collection of property taxes. In *Sherrill*, this Court, essentially treating OIN's self-help effort to re-establish its sovereign authority as an extension of the remedies phase of *Oneida II*, addressed the first of the questions left open in 1985.

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[4] The Oneidas had filed their test case "in 1970 when no statute of limitations applied to claims brought by the Indians themselves." 470 U.S. at 243 n.15.

It held that equitable considerations should limit available relief and declined to project redress for the rights recognized in *Oneida II* into the present and the future. *See* 544 U.S. 213–14; *id.* at 214 n.8 ("the question of equitable considerations limiting the relief available to OIN, which we reserved in *Oneida II*, is inextricably linked to, and is thus fairly included within, the questions presented."). This Court concluded that OIN's unilateral assertion of sovereign dominion over land that had been out of its possession for generations was too disruptive of settled expectations. Thus, OIN's "long delay in seeking equitable relief against New York or its local units, and developments in the city of Sherrill spanning several generations, evoke the doctrines of laches, acquiescence, and impossibility, and render inequitable the piecemeal shift in governance this suit seeks unilaterally to initiate." *Id.* at 221. However, because the question of damages for the Tribe's loss of its reservation lands was not at issue, this Court did not disturb its holding in *Oneida II*. *Id*.

Shortly thereafter, the court of appeals considered the Cayuga Indian Nation's land claim, filed in 1980 and joined in 1992 by the United States as a plaintiff on its own behalf and as the tribe's trustee. *See Cayuga Indian Nation of N.Y. v. Pataki*, 165 F.Supp.2d 266 (N.D.N.Y. 2001). The Cayugas sought ejectment and trespass damages against two counties and a class of defendant landowners arising out of New York's acquisition of a 64,000-acre treaty reservation in violation of the Nonintercourse Act and

federal common law. *Id.* at 271–72. The district court found the state liable for the tribe's wrongful dispossession and then held that dispossessing the land's current occupants would be an inappropriate remedy. *Id.* After a trial, the district court awarded damages, payable by the state alone, of almost $248 million. *Id.* at 272.

A divided court of appeals reversed, seizing upon *Sherrill*'s disruptiveness analysis to reject the Cayuga's argument that an award of money damages would not disrupt settled property interests: "disruptiveness is inherent in the claim itself . . . rather than an element of any particular remedy which would flow from [a] possessory land claim." *Cayuga*, 413 F.3d at 275. The *Cayuga* majority reasoned that the defenses invoked in *Sherrill* were not limited to claims seeking to revive tribal sovereignty, but applied to any disruptive Indian land claim, whether legal or equitable, *id.* at 276, without regard to whether the remedy sought was limited to money damages. *Id.* at 274.

> Thus, whatever the state of the law in this area before *Sherrill*, *see Oneida II*, 470 U.S. 253 n.27 (reserving "the question whether equitable considerations should limit the relief available" in these cases); *id*. at 244-45 (deciding not to reach the question of laches because defendants had waived it), we conclude . . . that, after *Sherrill*, equitable defenses apply to possessory land claims of this type.

Id. at 276.

Stating that the holding of *Sherrill* addressed "the question" reserved in *Oneida II*, the court of appeals found that the Cayugas' legal claim in ejectment was "subject to dismissal *ab initio*," i.e., "if the Cayugas filed this complaint today . . . a District Court would be required to find the claim subject to the defense of laches under *Sherrill* and could dismiss on that basis." *Id.* at 277. And, reasoning that because the trespass damages claim is predicated entirely on the ejectment claim and "because plaintiffs are barred by laches from obtaining an order conferring possession in ejectment, no basis remains for finding such constructive possession or immediate right of possession as could support the damages claimed." *Id.* at 278. Finally, the court of appeals concluded that *Sherrill*'s substantial "alter[ation of] the legal landscape in this area . . . [meant that] the federal law of laches can apply against the United States." *Id.* at 279.[5]

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[5] *Cayuga* marked an abrupt about-face in the Second Circuit's Indian land-claim jurisprudence. Before *Cayuga*, Second Circuit precedent held that the federal statute of limitations in 25 U.S.C. § 2415 mandated that the land-claim actions were timely filed and that delay-based defenses such as laches did not apply. *Oneida Indian Nation v. New York*, 691 F.2d 1070, 1084 (2d Cir. 1982); *Oneida Indian Nation of N.Y. v. County of Oneida,* 719 F.2d 525, 538 (2d Cir. 1983). See 719 F.2d at 539 (rejecting argument that "catastrophic ramifications" justifies dismissal of all claims: "'we know of no principle of law that would relate the availability of judicial relief inversely to the gravity of the wrong sought to be addressed.'") (quoting 691 F.2d at 1083). Indeed, in reasoning fully consistent with this Court's

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Judge Janet C. Hall dissented in part, arguing that *Sherrill* does not support the "conclusion that laches bars all . . . remedies, including those for money damages." 413 F.3d 280.

In *Oneida Indian of N.Y. v. County of Oneida*, 617 F.3d 114 (2d Cir. 2010) (*Oneida 2010*), another divided panel applied *Cayuga* to dismiss the Oneida land claim.[6] There, the court of appeals acknowledged that its *Cayuga* defense did not depend on the necessary elements of a laches defense

> but rather more generally on the length of time at issue between an historical injustice and the present day, on the disruptive nature of claims long delayed, and on the degree to which these claims upset the justifiable expectations of individuals and entities far removed from the events giving rise to the plaintiffs' injury.

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later decisions in *Oneida II*, *Sherrill* and *Petrella*, the court of appeals explained:

> Moreover, as the Supreme Court held in *Yankton Sioux Tribe v. United States*, 272 U.S. 351 (1926), if the ejectment of current occupants and the repossession by the Indians of a wrongfully taken land is deemed an "impossible" remedy, *id*. at 357, the court has authority to award monetary relief for the wrongful deprivation. *Id*. at 359. The claim for "fair rental value" is not so vague or indeterminable that an appropriate remedy could not be designed.

691 F.2d at 1083.

[6] The case dismissed in 2010 was a 250,000-acre claim filed after this Court's 1974 ruling in the *Oneida I* test case.

App.6 (quoting 617 F.3d at 127). And, as in *Cayuga*, the court of appeals also applied its equitable defense to dismiss the claims of the United States, which had intervened in 1998 as a plaintiff on its own behalf and as tribal trustee.[7] *Id.* at 136.

In 2012, the court of appeals applied its *Cayuga* doctrine to summarily dismiss the Onondaga Nation's land claim. *Onondaga Nation v. New York*, 500 F.App'x 87 (2d Cir. 2012) (*Onondaga*).[8]

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[7] Judge Gershon dissented in part, arguing:

> The Supreme Court has held that the Oneida Indian Nation has a federal common-law right to sue to enforce its aboriginal land rights. It has done so acknowledging that, while one would have thought that claims dating back for more than a century and a half would have been barred long ago . . . [it] found [no] applicable statute of limitations or other relevant legal basis for holding that the Oneidas claims are barred. . . . And yet, after thirty-five years of litigation, including two trips to the Supreme Court . . . the majority forecloses the Oneidas from obtaining *any* remedy in this action.

617 F.3d at 141 (citations and quotations omitted) (emphasis in original).

[8] This Court denied petitions for a writ of certiorari in *Cayuga* (*Indian Nation of N.Y. v. Pataki*, 547 U.S. 1128 (2006)); *Oneida 2010* (132 S. Ct. 452 (2011)) and *Onondaga* (134 S. Ct. 419 (2013)).

REASONS FOR GRANTING THE PETITION

The court of appeals' decision conflicts with this Court's recent *Petrella* decision and earlier decisions in *Sherrill* and *Oneida II*: delay-based equitable defenses may not bar claims at law filed within congressional limitations periods.

The direct conflict between the decision below and *Petrella* warrants this Court's review. In *Petrella*, this Court held that judges may not substitute their judgment for that of Congress and apply equitable defenses to summarily dispose of claims at law filed within a congressionally established limitations period. 134 S. Ct. at 1975. The *Cayuga* doctrine as developed and applied by the Second Circuit in Indian land-claim cases forecloses the possibility of any form of relief—it cannot be reconciled with *Petrella*'s holding that "we adhere to the position that, in the face of a statute of limitations enacted by Congress, laches cannot be invoked to bar legal relief." 134 S. Ct. at 1974. Critically, the court below overlooked the fact that *Petrella* was expressly adhering to this Court's earlier admonition in *Oneida II* (among other cases) that laches may not be invoked to bar legal relief. 470 U.S. at 244–45 n.16. *Petrella* stated unequivocally that the substantive and remedial principles that applied before the merger of law and equity in 1938 have not changed, 134 S. Ct. at 1974, and that this Court has "never applied laches to bar in their entirety claims for discrete wrongs occurring within a federally prescribed limitations period." *Id*. at 1975.

This directly contradicts the cornerstone premise of the ruling below, i.e., the *Cayuga* majority's understanding that *Sherrill* "dramatically altered the legal landscape" by "hold[ing] that equitable doctrines, such as laches, acquiescence, and impossibility, [require the dismissal of] Indian land claims, even when such a claim is legally viable and within the statute of limitations." 413 F.3d at 273. *See* App.5–7. *Petrella* establishes that *Sherrill* neither dramatically altered the legal landscape nor did it hold that Indian claims at law brought within the applicable federal statute of limitations can be completely barred by equitable doctrines.[9] 134 S. Ct. at 1985.

The *Petrella* analysis was not limited to copyright law as the court of appeals mistakenly found. 134 S. Ct. at 1968. App.7. Rather, *Petrella* reconfirmed the

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[9] Judge Hall's well-reasoned dissent in *Cayuga* is instructive here, standing as a prescient application of *Petrella*'s rationale to tribal possessory claims. Judge Hall agreed that *Sherrill* supported the majority's conclusion that *Sherrill* barred the Cayuga's possessory remedy but dissented from the "conclusion that laches bars all . . . remedies, including those for money damages." 413 F.3d at 280. Noting that the issue before the court of appeals in *Cayuga*, the application of a nonstatutory time limitation in an action for damages, had yet not been addressed by the Supreme Court, Judge Hall cautioned that its resolution must be "addressed by relying on relevant precedent and established principles. Congressional action and centuries of precedent with regard to both Indian land claims and foundational distinctions between rights and remedies, coercive relief and damages, and legal claims and equitable relief, should guide the attempt to resolve this historic dispute." *Id*. at 283 (Hall, dissenting).

general rule applicable whenever Congress has provided a statute of limitations. The cases relied on by the *Petrella* court to support its strict adherence to the rule that laches may not bar legal relief in the face of a federal statute of limitations involve a broad spectrum of federal statutes: the Federal Farm Loan Act (*Holmberg v. Armbrecht*, 327 U.S. 392 (1946)); the Securities & Exchange Act (*Merck & Co., Inc. v. Reynolds*, 559 U.S. 663 (2010)); the Prohibition Act (*United States v. Mack*, 295 U.S. 480 (1935)); the Civil Rights Act (*Nat'l R.R. Passenger Corp. v. Morgan,* 536 U.S. 101 (2002)); and, most significantly here, ICLA (*Oneida II*, 134 S. Ct. at 1973). Indeed, *Petrella* stated that "[t]here is nothing at all different . . . about copyright cases in this regard." *Id*. at 1974 (internal quotation omitted).

It is significant that the *Petrella* dissent relied in part on *Cayuga* to argue that modern litigation rules and practice often sanctioned the applicability of laches despite a fixed federal statute of limitations. *Id.* at 1984. The dissent asserted that this Court did not mean for "any of its statements in *Holmberg*, *Merck*, or *Oneida* to announce a general rule about the availability of laches in actions for legal relief, whenever Congress provides a statute of limitations." *Id.* at 1984 (Breyer, J., dissenting). The dissent cited *Cayuga* for the proposition that laches was available to dispose of a possessory land claim where the district court had awarded damages, regardless of whether it was an action at law or in equity. *Id.* But, rejecting the contemporary trend exemplified by

Cayuga, Justice Ginsburg, writing for the Court in *Petrella* as she did in *Sherrill*, replied that, "tellingly, the dissent has come up with no case in which this Court has approved the application of laches to bar a claim for damages brought within the time allowed by a federal statute of limitations." *Id.* at 1974.[10] It is also telling both that *Petrella* did not mention *Sherrill* and, although *Sherrill* turned on passage-of-time and delay considerations, it did not mention 28 U.S.C. § 2415(b).

The court of appeals' fundamental misunderstanding of the rule of decision in *Sherrill* lies at the heart of its application of the *Cayuga* doctrine to bar any form of relief. In *Sherrill*, this Court addressed only the first of the issues reserved in *Oneida II*—"whether 'equitable considerations' should limit the relief available to the present day Oneida Indians." 544 U.S. at 209 (quoting 470 U.S. at 253, n.27). Declining to project relief for interference with the reservation property rights recognized in *Oneida II* into the present and future, *id.* at 202, *Sherrill* ruled that the standards of federal Indian law and federal equity practice precluded OIN's unilateral assertion of sovereign governmental authority (and immunity from the obligation to pay local property taxes) over recently re-acquired reservation land. *Id.* at 214. The

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[10] Justices Ginsburg and Sotomayor dissented from the denial of the petitions for a writ of certiorari filed in *Oneida 2010. Oneida Indian Nation of N.Y. v. County of Oneida*, 132 S. Ct. 452 (2011) (Order List, Oct. 17, 2011 at 6 (No. 10-1420)).

equitable considerations at play evoked the defenses of laches, acquiescence and impossibility to bar OIN's claims for equitable relief. *Id.* at 221. *Sherrill* involved only equitable claims and remedies to which no federal statute of limitations applied.

Because the Court was, in effect, treating OIN's claims in *Sherrill* as a question of whether additional equitable remedies were available as a consequence of the 1985 "action at law" where only legal relief (money damages) had been sought, *see* 544 U.S. at 213, it was careful to emphasize that it was not disturbing its earlier holding in *Oneida II* that an Indian tribe may have a live cause of action for a violation of its possessory rights that occurred 175 years ago. *Id.* at 221. But the first question reserved in *Oneida II*—whether "equitable considerations [might] limit[ ] the *relief* available to OIN"—was fairly included within the questions presented in *Sherrill*. *Id.* at 214 n.8 (emphasis added). *Sherrill* emphasized that the distinction between a claim or substantive right (the 1985 damages *claim*) and a remedy (OIN's request for declaratory and injunctive *relief*) is fundamental:

> "the substantive questions whether the plaintiff has any right or the defendant has any duty, and if so what it is, are very different questions from the remedial questions whether this remedy or that is preferred, and what the measure of the remedy is."

544 U.S. at 213 (quoting Dan B. Dobbs, HANDBOOK ON THE LAW OF REMEDIES: DAMAGES – EQUITY – RESTITUTION § 1.2, p. 3 (1973)). As an example, *Sherrill* cited

to the district court's decision on remand after *Oneida II* to take the equitable remedy of evicting 20,000 private landowners off the table (while allowing the claim for damages to proceed), quoting the district court's observation that there is a "sharp distinction between the *existence* of a federal common law right to Indian homelands and how to *vindicate* that right." *Id.* at 210 (internal quotation omitted) (emphasis in original).

The *Cayuga* doctrine is based on the mistaken assertions that: a) *Sherrill* had answered the second question left open in *Oneida II*, 413 F.3d at 277; and, b) this Court's statement in *Sherrill* that it was not disturbing *Oneida II*'s holding, did not control whether laches applied to the Cayugas' claim. *Id.* at 274. The *Cayuga* doctrine is flawed, therefore, because, *inter alia*, it fails to distinguish between the questions left open in *Oneida II*. By expressly addressing only the first question whether equitable considerations should limit the relief available to the OIN, fully explaining the basic distinction between a claim or substantive right and a remedy, and stating expressly that it was not disturbing its holding in *Oneida II*, the *Sherrill* Court made clear that it was not addressing the second question left open in *Oneida II*—whether the equitable doctrine of laches could bar the Oneida land claim. Thus, contrary to the misunderstanding upon which the *Cayuga* doctrine rests, it is *Petrella* rather than *Sherrill* that answered the relevant question left open in *Oneida II* and altered

(to a lesser extent) the landscape against which Indian land claims must be considered.

This petition presents the fresh circumstance of *Petrella*'s recent adoption of *Oneida II*'s observations regarding the unavailability of laches to bar legal relief. *Petrella* unequivocally answered the second question left open in *Oneida II*—the equitable defense of laches may not be applied to bar an action at law filed within a time period prescribed by Congress. The lower court's persistent adherence to its *Cayuga* doctrine in the face of this Court's most recent conflicting decision warrants review and the exercise of this Court's supervisory power.[11]

[11] The ruling below effectively overrules this Court's holding in *Oneida II* that an Indian tribe may have a live cause of action for a violation of its possessory rights that occurred 175 years ago. 470 U.S. at 230. Thus, even had *Petrella* (and *Sherrill*) not reaffirmed *Oneida II*, *Oneida II* would still control: "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (internal quotations omitted) (quoting *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989).

A. The court of appeals' ruling that Congress has not established a limitations period for Indian land claims is wrong and conflicts with this Court's opinion in *Oneida II*.

The court of appeals tried to sidestep *Petrella* by ruling that Congress has not fixed a statute of limitations for Indian land claims, relying, without further analysis, on a portion of a sentence in *Oneida II* that stated that "neither petitioners nor we have found any applicable statute of limitations. . . ." App.7–8.[12] *Petrella* is not so easily dismissed, however, because, *inter alia*, the quoted *Oneida II* language was taken out of context, plucked from a more expansive statement that no limitations period barred the *Oneida* land claim—it does not state that Congress did not provide a statute of limitations for Indian land claims generally. 470 U.S. at 253. *Oneida II* explained that no statute of limitations applied to the damages claims of the Oneida tribal plaintiffs because in 1982 ICLA for the first time imposed a statute of limitations on damages claims brought by tribes, *id.* at 242–43, and "[t]he Oneidas commenced this suit in 1970, when no statute of limitations applied to claims brought by the Indians themselves." *Id*. at 243 n.15.

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[12] The court of appeals overlooked the fact that its own precedent at least twice recognized—including once in *Cayuga*—that 28 U.S.C. § 2415 provides a federal statute of limitations applicable to Indian land claims. See *Cayuga*, 413 F.3d at 279 ("[T]here is now a statute of limitations, *see* 28 U.S.C. §2415(a). . . ."); *Oneida Indian Nation of N.Y. v. New York*, 691 F.2d 1070, 1081–82 (2d Cir. 1982).

Contrary to the court of appeals' cursory analysis, *Oneida II* expressly recognized that Congress has established a statute of limitations for Indian claims and defined precisely the circumstances under which claims concerning Indian lands will be treated as time-barred. *Oneida II* observed that in 28 U.S.C. § 2415(g), App.26, Congress mandated that Indian claims accruing before July 18, 1966 shall be deemed to accrue on that date, 470 U.S. at 242, and,

> [w]ith the enactment of the 1982 amendments, Congress for the first time imposed a statute of limitations on certain tort and contract claims for damages brought by . . . Indian tribes. These amendments, enacted as [ICLA], . . . established a system for the final resolution of pre-1966 claims cognizable under §§ 2415(a) and (b).

Id. at 242–43 (citation omitted). Subsection (b) expressly included actions for money damages resulting from trespass to Indian lands.[13] App.25. *Oneida II*

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[13] Congress was fully aware that claims to significant areas of land dating back to the turn of the 18th century were at issue and intended to preserve them. See *Oneida II*, 470 U.S. at 253 (noting congressional acts settling Eastern Indian land claims). This is confirmed by the legislative histories of the 1972, 1977 and 1980 statute-of-limitations extensions. See, e.g., *Time Extension for Commencing Actions on Behalf of Indians: Hearing on S. 3377 and H.R. 13825 Before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 92d Cong., 2nd Sess. 23 (1972) (testimony of William A. Gershuny, Assoc. Solicitor for Indian Affairs, Dep't of Interior) ("we simply have to litigate questions of title going back 100 years, 150 years, 200 years

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went on to describe the detailed statutory-limitations scheme established by Congress, noting that ICLA directed the Secretary of the Interior to compile and publish two lists of all Indian claims to which the statute of limitations applied and established new limitations periods for claims that operate differently depending on the Secretary's listing decisions. *Id.* at 242–43.

In contrast to the Oneida land claim, Stockbridge filed this land-claim action in 1986, four years after Congress imposed a statute of limitations on tort and contract claims filed by Indian tribes themselves. The Stockbridge-Munsee land claim is among the Bureau of Indian Affairs' Eastern Area claims listed on the first list published by the Secretary in the Federal Register in 1983. 48 Fed. Reg. 13698, 13920 (March 31, 1983). App.40. It was not subsequently identified

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in some cases."); S. Rep. No. 92-1253, at 2, 4–5 (1972); H.R. Rep. No. 95-375, at 2–4, 6–7 (1977); S. Rep. No. 95-236, at 2 (1977) ("Many of these claims go back to the 18th and 19th centuries."); *Statute of Limitations Extension for Indian Claims: Hearing on S. 1377 Before the S. Select Comm. on Indian Affairs*, 95th Cong. 1st Sess. 24, 33 (1977) (referencing Oneida land claims). Private landowners' testimony in opposition to the extensions ensured that Congress was aware that some of the land at issue was no longer in Indian possession. See, e.g., H.R. Rep. No. 96-807, at 4 (1980); H.R. Rep. No. 96-807, at 9 (1980); S. Rep. No. 96-569, at 9 (1980) ("[t]his Committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdiction where they may be litigated") (testimony of Forrest Gerard, Assistant Sec'y of Indian Affairs); S. Rep. No. 96-569, at 3 (1980).

by the Secretary as unsuitable for litigation or a proposed legislative resolution, *see Oneida II*, 470 U.S. at 243, and is therefore among the claims preserved by Congress in 1982. It is a claim at law brought within the congressionally imposed limitations period.

The court of appeals misinterpreted *Oneida II* and erred in ruling that no congressional statute of limitations applied to this action.

B. The court of appeals' treatment of the damages claims as dependent on the possessory remedy conflicts with *Petrella* and the limitations scheme established by Congress in 28 U.S.C. § 2415.

Stockbridge's amended complaint asserts only claims at law (trespass and ejectment), but the remedies sought sound in both law and equity: they include declaratory relief, possession (referred to in the amended complaint as "ejectment"), damages and accounting and disgorgement of benefits unjustly received, including bad-faith trespass damages. App.46–47. By applying the *Cayuga* doctrine, the decision below improperly treats the damages claims as dependent upon the availability of a possessory remedy. The court of appeals' failure to distinguish between rights and remedies, legal claims and equitable relief and coercive relief and damages cannot be reconciled with either 28 U.S.C. § 2415 or *Petrella*.

The comprehensive limitations scheme embodied in 28 U.S.C. § 2415 treats Indian land-related claims for money damages differently from title and possessory claims to real property. App.26. Subsection 2415(b), App.25–26, provides that money-damages claims resulting from a trespass on Indian lands are subject to the statute's detailed limitations scheme, while 28 U.S.C. § 2415(c) provides that there should be no limit on the time for asserting title or possessory claims to real property. *See* discussion supra at n.13. In drawing this distinction, Congress recognized that the money-damages remedy arising from a land claim is not derivative of the claim to possession of the land itself. Section 2415 therefore "does not limit the time for bringing an action to establish the title or possessory right to real or personal property but any claims for monetary relief arising from these actions must be filed before the deadline." S. Rep. No. 95-236, at 1–2 (1977). *See* S. Rep. No. 96-569, at 1–2 (1980) ("It is important to note that the statute only imposes a limitation on claims seeking monetary damages. It does not bar actions involving titles to land, but any claims for monetary damages arising from these actions must be filed before the deadline.") (referring to § 2415(b)).

Petrella likewise recognized the separability of damages claims and possessory remedies, holding that "[i]n extraordinary circumstances . . . the consequences of a delay in commencing suit may be of sufficient magnitude to warrant, at the very outset of the litigation, curtailment of the relief equitably

awardable." 134 S. Ct. at 1977. Although the Copyright Act provided for a range of remedies (monetary damages, coercive-injunctive relief and recovery of profits), *id*. at 1968, in extraordinary circumstances the equitable *relief* provided for by Congress might be foreclosed at the outset, but the entire *claim* could not be foreclosed to deny the purely legal remedy of monetary damages.

Petrella's reasoning controls here. Although ejectment actions generally seek two remedies—restoration of possession and fair-rental-value damages—current possession is not an element of the legal claim in ejectment. The elements of an ejectment claim are "[p]laintiffs are out of possession; the defendants are in possession, allegedly wrongfully; and the plaintiffs claim damages because of the allegedly wrongful possession." *Oneida I*, 414 U.S. at 683 (Rehnquist, J., concurring).[14] Thus, while Stockbridge's equitable remedy of possession might, if sufficiently disruptive, properly be foreclosed at the outset under *Petrella*'s extraordinary-circumstances

[14] The elements of a cause of action in ejectment are well established: See *Taylor v. Anderson*, 234 U.S. 74, 74 (1914) (Nothing more required to state good cause of action than plaintiffs were owners in fee and entitled to possession; that defendants had forcibly taken possession and were wrongfully keeping the plaintiffs out of possession, and that the latter were damaged thereby in a sum named); *Joy v. City of St. Louis*, 201 U.S. 332, 340 (1906) (in pure action of ejectment, only facts necessary are that plaintiff is the owner and entitled to possession and that defendant wrongfully withholds such possession to plaintiff's damage in an amount stated).

exception, the unavailability of a possessory remedy may not bar the legal claim for money damages.[15]

Similarly, the unavailability of the equitable remedy of possession may not bar Stockbridge's separate (non-ejectment) trespass-damages claim because the claim for trespass damages is not derivative of the ejectment claim nor does it require proof of possession.[16] The distinction between claims and remedies is

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[15] Judge Hall's analysis of claims and remedies in ejectment and trespass actions is again instructive. Noting that both ejectment and trespass are actions at law, 413 F.3d at 283, she explains that while ejectment actions generally seek both an equitable remedy (possession) and a legal remedy (damages), "[e]ven where reinstatement of possession is disruptive, attendant damage claims are not similarly disruptive . . . and should be treated separately." *Id*. at 284. Citing *Oneida II* and *Taylor v. Anderson*, Judge Hall's dissent shows that the *Cayuga* majority's conclusion that a claim for money damages cannot be made out if the possessory remedy is barred is wrong because:

> [C]urrent possession is not an element of a legal claim for ejectment. . . . . [M]aking out this claim cannot depend on the plaintiffs' ability to obtain the right to *future* possession, whether legal or constructive, as such requirement would make the claim circular. Instead, the only necessary element in this regard is that the plaintiffs are wrongfully out of possession. . . . The inability to obtain the coercive remedy of possession, as a result of the court's exercise of discretion in the same case, should not bar an ejectment claim for money damages.

Id. at 285 (Hall, dissenting) (emphasis in original) (citations omitted).

[16] See discussion at 413 F.3d at 285–86 (Hall, dissenting) (Majority's contention that the claim for trespass damages must fail because the claim for coercive relief is foreclosed treats the

(Continued on following page)

central to the congressional scheme in 28 U.S.C. § 2415 and lies at the heart of the *Petrella* analysis, just as it did in *Sherrill* and *Oneida II*.

C. The court of appeals erroneously ruled that *Petrella* does not apply here because *Petrella*'s ruling was confined to the elements of traditional laches.

The court of appeals erroneously ruled that because *Petrella* was concerned only with the traditional laches defense, it does not apply to the equitable principle at stake here, which focuses instead on *Sherrill*'s combination of laches, acquiescence and impossibility to illustrate fundamental principles of equity that preclude the assertion of disruptive claims. App.8. But the longstanding "substantive and remedial principles" upon which *Petrella* is based are not confined to laches. 134 S. Ct. at 1974 (citing *Holmberg*, *Merck*, and *Oneida II*). Rather, they are properly understood to prevent courts of equity from "reject[ing] the balance that Congress has struck in a statute." *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 497 (2001). Where Congress has specifically preserved a claim, courts of equity are not free to reject Congress' judgment, "[t]heir choice (unless there is statutory language to the contrary) is simply whether a particular means of enforcing the

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laches defense as if it were a statute of repose. *Sherrill*, however, spoke only of the remedy of possession, never of the right of possession).

statute should be chosen over another permissible means; their choice is not whether enforcement is preferable to no enforcement at all." *Id.* *See Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332–33 (1999) ("Even when sitting as a court in equity, we have no authority to craft a 'nuclear weapon' of the law. . . . . The debate concerning this formidable power . . . should be conducted and resolved where such issues belong in our democracy: in the Congress.").

Moreover, the court of appeals was wrong to characterize *Petrella* as focusing only on the elements of traditional laches. The elements of the traditional laches defense played no part in *Petrella*'s reaffirmance of the general rule that Congress' timeliness determinations must control absent extraordinary circumstances relating to a particular remedy. The elements of the traditional laches defense are concerned only with the parties, i.e., "[l]aches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365 U.S. 265, 282 (1961). In contrast, *Petrella*'s extraordinary-circumstances exception, like the *Cayuga* doctrine, extends beyond the parties to prevent "unjust hardship[s] on innocent third parties." 134 S. Ct. at 1978.

Petrella relied on *Chirco v. Crosswinds Communities, Inc.*, 474 F.3d 227 (6th Cir. 2007) to illustrate the type and magnitude of extraordinary circumstances that might justify applying equitable defenses

in an action at law to bar at the outset certain relief sounding in equity. 134 S. Ct. at 1978. In *Chirco*, copyright holders challenged defendants' unauthorized use of copyrighted architectural designs to build a 252-unit condominium development within the limitations period, but waited 18 months after they learned of the infringement and after 168 of the units had been constructed, 141 of them sold and 109 already occupied by buyers. 474 F.3d at 230. The Sixth Circuit reversed the district court's dismissal of the entire suit based on laches, holding that plaintiffs' claims for legal relief (monetary damages) could not be dismissed because they had been brought within the period established by Congress. *Id.* at 236. However, plaintiffs' claims for equitable relief—an injunction mandating destruction of the housing project—had been properly dismissed at the litigation's outset because such relief would work an unjust hardship on defendants and innocent third parties. 134 S. Ct. at 1978.

Thus, while it is error to summarily dispose of a claim at law seeking legal relief in the form of money damages that is filed within the time period prescribed by Congress—thereby preventing a merits adjudication of any claims and foreclosing the possibility of any relief—courts may nonetheless, "[i]n extraordinary circumstances," take into account the interests of innocent third parties and, "at the very outset of the litigation, curtail[ ] . . . the relief equitably awardable." *Id.* at 1977.

Thus, for ejectment actions such as this (actions at law) that seek both purely legal relief (monetary damages) and relief sounding in equity (e.g., possession), *Petrella*'s extraordinary-circumstances exception encompasses the doctrines of laches, acquiescence and impossibility, fully addressing the equitable concerns of delay-caused disruption and settled expectations that lie at the heart of the Second Circuit's *Cayuga* doctrine.[17] It therefore accomplishes what *Cayuga* and its progeny attempted without restriking the balance achieved by Congress and avoids the unseemly prospect of individual judges overriding legislation by "set[ting] a time limit other than the one Congress prescribed." 134 S. Ct. at 1975.

D. The court of appeals' decision conflicts with *Petrella* by applying the *Cayuga* doctrine to bar Stockbridge's claims against the state officers.

In the wake of changes in Eleventh Amendment jurisprudence that occurred after its initial complaint was filed in 1986, Stockbridge amended its complaint to invoke the exception of *Ex parte Young*, 209 U.S.

[17] The *Petrella* extraordinary-circumstances exception, by permitting, at the litigation's outset, the curtailment of relief equitably awardable where the consequences of a delay in commencing suit are of sufficient magnitude, also addresses a central concern of the *Cayuga* majority, which was that the district court had not determined that a possessory remedy was inappropriate until 19 years after the suit had been filed. See 413 F.3d at 274–75.

123 (1908), and pursue an ejectment claim for future possession of land against state officers in their individual capacities (construed by the district court to be "official capacity." App.14.). The amended complaint does not challenge the state's title to the subject land and asserts no possessory claims against the state itself. *See* App.12. In addition, the amended complaint states no claim for money damages against the state nor does it seek any declaratory or injunctive relief with regard to the state's exercise of regulatory authority over the land that is the subject of this suit. App.47.

In light of *Sherrill*, Stockbridge has waived any claim to the exercise of sovereign governmental control over the land. Instead, Stockbridge seeks to recover only future possession of a 0.91-acre parcel which, at the time the amended complaint was filed, was vacant, unused, classified as abandoned agricultural land, and apparently maintained by the adjoining landowner rather than the state. *See* App.46.[18]

The court of appeals' dismissal of Stockbridge's claim against state officers without first inquiring into whether the possessory remedy presented sufficiently

[18] After the amended complaint was filed, Madison County officials informed Stockbridge that the state no longer owned the parcel and the district court dismissed against the state officials on that basis. App.16. On appeal, however, the state informed the court of appeals that it had been unable to confirm that it no longer owned the parcel.

extraordinary circumstances directly conflicts with *Petrella*. The extraordinary-circumstances exception permits, at the litigation's outset, the curtailment of relief equitably awardable *only* where the consequences of a delay in commencing suit are of sufficient magnitude. As with the *Petrella* plaintiff, Stockbridge's claims against the state officers "are not sufficiently extraordinary to justify threshold dismissal." 134 S. Ct. at 1978. Should Stockbridge ultimately prevail on the merits, however, at the remedies phase equitable factors might still curtail the relief available. *Id.*

CONCLUSION

After *Petrella*, there can be no justification for a doctrine that bars only Indian tribes' claims and does so without regard either for the type of relief sought or Congress' considered judgment that the claims be heard in federal court. The decision below is not equitable in any sense recognizable to the principles of federal-equity jurisprudence. The "equitable" doctrine invoked to dismiss Stockbridge's claims does not seek to "balanc[e] various ethical and hardship considerations," 1 Dan B. Dobbs, LAW OF REMEDIES 91 (2d ed. 1993), nor does it seek to arrive at adjustment and reconciliation between competing claims. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). For

these reasons, the *Cayuga* doctrine employed below is not an equitable defense at all.[19]

Indian treaty rights and claims to land carry with them their own powerful set of historical, legal and equitable underpinnings. Nearly 200 years of Indian-law jurisprudence has recognized that this Country's solemn guarantees, to which our national honor has been pledged, are not to be lightly cast aside. While the potential for widespread disruption to long-settled expectations might constitute "extraordinary circumstances" justifying threshold dismissal of particular equitable remedies, *Petrella* establishes that the court of appeals' application of the *Cayuga* doctrine to summarily dispose of Stockbridge's entire case, prevent the adjudication of any claims on the merits and foreclose the possibility of any relief was completely unjustified. Money damages are not disruptive, and where treaty rights can be vindicated without threatening broad societal expectations, the federal courts still have an unflagging obligation to do so.

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[19] See Kathryn Fort, *Disruption and Impossibility: The New Laches and the Unfortunate Resolution of the Modern Iroquois Land Claims*, 11 WYO. L. REV. 375, 402 (2011) ("[*Cayuga* doctrine] not properly an equitable defense. . . . . [It] does not provide any way for Indian tribes to combat it—their equities are never weighed in this equation.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2013

(Argued: June 18, 2014 Decided: June 20, 2014)

Docket No. 13-3069

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Stockbridge-Munsee Community,

Plaintiff-Counter-Defendant-Appellant,

- v. -

State of New York, Mario Cuomo, as Governor of the State of New York, New York State Department of Transportation, Franklin White, as Commissioner of Transportation, Madison County, The County of Madison New York, Oneida County, New York, Town of Augusta, New York, Town of Lincoln, New York, Village of Munnsville, New York, Town of Smithfield, New York, Town of Stockbridge, New York, Town of Vernon, New York,

Defendant-Counter-Claimant-Appellees,

Oneida Indian Nation of New York,

Defendant-Intervenor-Appellee.

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Before: JACOBS, STRAUB, and RAGGI, *Circuit Judges.*

The Stockbridge-Munsee Community ("Stockbridge"), a federally recognized Indian tribe, appeals from a judgment of the United States District Court for the Northern District of New York (Kahn, *J.*), dismissing its claims to title of a thirty-six square mile tract of land in upstate New York. It is well-settled that claims by an Indian tribe alleging that it was unlawfully dispossessed of land early in America's history are barred by the equitable principles of laches, acquiescence, and impossibility. We therefore affirm.

DON B. MILLER, Don B. Miller, P.C., Boulder, Colorado (Justin E. Driscoll, III, Brown & Weinraub, PLLC, New York, New York, on the brief), *for Appellant.*

JEFFREY W. LANG, Assistant Solicitor General (Barbara D. Underwood, Solicitor General, Denise A. Hartman, Assistant Solicitor General, on the brief), *for* Eric T. Schneiderman, Attorney General of the State of New York, Albany, New York, *for State Defendants.*

David H. Tennant (Erik A. Goergen, on the brief), Nixon Peabody LLP, Rochester, New York, *for County-Municipal Defendants.*

MICHAEL R. SMITH (David A. Reiser, Zuckerman Spaeder LLP, Washington, D.C.; Peter D. Carmen, Meghan M. Beakman, Oneida Nation Legal Department, Verona, New York, on the brief), Zuckerman Spaeder LLP, Washington, D.C.

Per Curiam:

The Stockbridge-Munsee Community ("Stockbridge"), a federally recognized Indian tribe residing on a federal Indian reservation in Wisconsin, appeals from a judgment of the United States District Court for the Northern District of New York (Kahn, *J.*), dismissing its claims asserting title of a tract of land in upstate New York. It is well-settled that claims by an Indian tribe alleging that it was unlawfully dispossessed of land early in America's history are barred by the equitable principles of laches, acquiescence, and impossibility. We therefore affirm.

I

In 1986, the Stockbridge filed suit against the State of New York, certain state officials and agencies (collectively, the "State defendants"), and certain counties, towns, and villages (collectively, the "county and municipal defendants"), seeking trespass damages and eviction from roughly thirty-six square miles of land located between Syracuse and Utica, New York. The Oneida Indian Nation ("Oneida") intervened as a defendant, asserting that the land claimed

by the Stockbridge is part of Oneida's historic reservation. The case has been stayed for various reasons.

The amended complaint, filed on August 5, 2004, asserts claims under federal common law, the Nonintercourse Act (25 U.S.C. § 177), and the 1794 Treaty of Canandaigua. These legal sources allegedly invalidate any sale of land by an Indian tribe without the consent of the federal government. According to the amended complaint, the State of New York's title to Stockbridge land, acquired in fifteen transactions (with the Stockbridge) between the years 1818 to 1842, are void because none of the transactions had the consent or ratification of the United States.

After the filing of the amended complaint, the case was stayed to allow the parties to pursue settlement. The stay was lifted in 2011, after settlement negotiations failed. All defendants then moved to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. In the alternative, the State defendants and Oneida also moved to dismiss for lack of subject matter jurisdiction. The district court dismissed all claims, granting the motions of (i) the State of New York and the New York State Department of Transportation on the ground that the Stockbridge had abandoned its claims against these defendants; (ii) the other State defendants on Eleventh Amendment grounds; (iii) the Oneida on tribal sovereign immunity grounds; and (iv) the county and municipal defendants on the ground that the claims were barred by the equitable defense enumerated in *City of*

Sherrill v. Oneida Indian Nation of New York, 544 U.S. 197 (2005) ("*Sherrill*"). This appeal followed.

II

The claims in this case are foreclosed by three decisions that resulted from decades-long litigation conducted by other Iroquois Nations: the Cayuga, Oneida, and Onondaga. *See Sherrill,* 544 U.S. at 197; *Cayuga Indian Nation of N.Y. v. Pataki,* 413 F.3d 266 (2d Cir. 2005) ("*Cayuga*"), *cert. denied,* 547 U.S. 1128 (2006); *Oneida Indian Nation of N.Y. v. County of Oneida,* 617 F.3d 114 (2d Cir. 2010) ("*Oneida*"), *cert. denied,* 132 S. Ct. 452 (2011); *see also Onondaga Nation v. New York,* 500 F. App'x 87 (2d Cir. 2012) (summary order), *cert. denied* 134 S. Ct. 419 (2013). We reach this conclusion upon *de novo* review of the district court's decision. *See Jaghory v. N.Y.S. Dep't of Educ.,* 131 F.3d 326, 329 (2d Cir. 1997).

First, in *Sherrill,* the Oneida sought an exemption from municipal property taxes on historic reservation land that they had privately acquired at market value. The Supreme Court held that such a "disruptive remedy" was barred by the "long lapse of time, during which the Oneidas did not seek to revive their sovereign control through equitable relief in court, and the attendant dramatic changes in the character of the properties." *Sherrill,* 544 U.S. at 216-217. *Sherrill* invoked doctrines of laches, acquiescence, and impossibility, but declined to apply any rigid test. *Id.* at 221.

Soon after, this Court decided *Cayuga,* in which the Cayuga claimed ownership of historic reservation land and sought (*inter alia*) money damages. 413 F.3d at 269. The district court had awarded the Cayuga nearly $250 million (in an opinion published before *Sherrill*); but this Court reversed on the ground that the *Sherrill* equitable bar precluded such relief. *Id.* at 273, 278. We rejected the Cayuga's argument that an award of money damages (rather than ejectment) would not disrupt settled property interests: "[D]isruptiveness is inherent in the claim itself – which asks this Court to overturn years of settled land ownership – rather than an element of any particular remedy which would flow from [a] possessory land claim." *Id.* at 275.

Oneida presented yet another native claim to upstate ancestral land. *Oneida,* 617 F.3d at 114. Attempting to distinguish its case, the Oneida argued that the defendants had "failed to establish the necessary elements of a laches defense." *Id.* at 117. But we concluded that "[t]his omission . . . [wa]s not ultimately important, as the equitable defense recognized in *Sherrill* and applied in *Cayuga* does not focus on the elements of traditional laches but rather more generally on the length of time at issue between an historical injustice and the present day, on the disruptive nature of claims long delayed, and on the degree to which these claims upset the justifiable expectations of individuals and entities far removed from the events giving rise to the plaintiffs' injury." *Id.* at 127.

In the wake of this trilogy – *Sherrill*, *Cayuga,* and *Oneida* – it is now well-established that Indian land claims asserted generations after an alleged dispossession are inherently disruptive of state and local governance and the settled expectations of current landowners, and are subject to dismissal on the basis of laches, acquiescence, and impossibility. The claims at issue here share all of these characteristics: the Stockbridge have not resided on the lands at issue since the nineteenth century and its primary reservation lands are located elsewhere (in Wisconsin); the Stockbridge assert a continuing right to possession based on an alleged flaw in the original termination of Indian title; and the allegedly void transfers occurred long ago, during which time the land has been owned and developed by other parties subject to State and local regulation. Such claims are barred by the *Sherrill* equitable defense.

The recent Supreme Court decision in *Petrella v. Metro-Goldwyn-Mayer, Inc.,* 134 S. Ct. 1962 (2014), does not alter the analysis. *Petrella* establishes that the equitable defense of laches cannot be used to defeat a claim filed within the Copyright Act's three-year statute of limitations. The Supreme Court commented on the applicability of laches to actions at law generally, but ultimately confined its ruling "to the position that, in face of a statute of limitations enacted by Congress, laches cannot be invoked to bar legal relief." *Id.* at 1974.

Congress has not fixed a statute of limitations for Indian land claims. *See, e.g., Oneida County, N.Y. v.*

Oneida Indian Nation of N.Y.S., 470 U.S. 226, 253 (1985) ("[N]either petitioners nor we have found any applicable statute of limitations. . . ."). And even if a statute of limitations applied, "the equitable defense recognized in *Sherrill* . . . does not focus on the elements of traditional laches." *Oneida,* 617 F.3d at 127. Rather, laches is but "one of several preexisting equitable defenses, along with acquiescence and impossibility, illustrating fundamental principles of equity that preclude[ ] . . . plaintiffs 'from rekindling embers of sovereignty that long ago grew cold.'" *Id.* at 128 (quoting *Sherrill,* 544 U.S. at 214).

III

Subject matter jurisdiction is generally a "threshold question that must be resolved . . . before proceeding to the merits." *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 88-89 (1998). Here, it is undisputed that the district court had subject matter jurisdiction over the claims against the county and municipal defendants. Because "'the substantive issue decided by the District Court'" – the applicability of the *Sherrill* bar – "'would have been decided by that court'" in any event to dismiss those claims, we may affirm on this ground with respect to all defendants, without reaching the Eleventh Amendment and tribal sovereign immunity issues. *Steel Co.,* 523 U.S. at 100 (quoting *Philbrook v. Glodgett,* 421 U.S. 707, 721 (1975)).

For the foregoing reasons, the judgment of the district court is affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STOCKBRIDGE-MUNSEE COMMUNITY,

Plaintiff,

-against-

STATE OF NEW YORK; *et al.*,

Defendants.

3:86-CV-1140 (LEK/DEP)

MEMORANDUM-DECISION and ORDER

(Filed Jul. 23, 2013)

I. INTRODUCTION

Plaintiff Stockbridge-Munsee Community ("Plaintiff"), a federally recognized Native American tribe, commenced this action on October 15, 1986. *See* Dkt. No. 1. In its Amended Complaint, filed on August 5, 2004, Plaintiff asserts claims under federal common law, 25 U.S.C. § 177 ("Nonintercourse Act"), and the 1794 Treaty of Canandaigua seeking possession of roughly thirty-six square miles of land in the State of New York and related damages. *See* Dkt. No. 228 ("Amended Complaint") ¶¶ 4, 12, 45-52. Now before the Court are three Motions to dismiss filed by, respectively: (1) Defendant-Intervenor the Oneida Indian Nation of New York ("Oneidas"); (2) Defendants the State of New York, the Governor of New York, the New York State Department of Transportation, and

the New York State Commissioner of Transportation ("State Defendants"); and (3) the remaining Defendants, comprising two counties, five towns, and one village in the State of New York ("County-Municipal Defendants"; collectively with the State Defendants, "Government Defendants"). Dkt. Nos. 231 ("Oneida Motion"); 232 ("State Motion"); 291 ("County-Municipal Motion"; collectively with the State Motion, "Government Motions"). For the following reasons, the Court grants the Motions and dismisses Plaintiff's claims.

II. BACKGROUND[1]

Plaintiff's primary reservation and principal situs are in the State of Wisconsin, but it claims that a 36-square-mile tract ("New Stockbridge") within the State of New York was conveyed to it in or before 1788 and then unlawfully conveyed out of its possession in a series of transactions and takings from 1818 to 1842. Am. Compl. ¶¶ 4, 12, 16-18, 21-23, 25-40, 42, 46, 49. Roughly 7.25 acres of that tract, composing a right-of-way for New York State Route 46, is excepted from Plaintiff's claims. *Id.* ¶ 12. The only land that was still claimed by the State Defendants when Plaintiff filed its Amended Complaint is a roughly .91-acre parcel. *Id.*; *see* Dkt. No. 295 ("Response to Government Motions") at 2 & n.5.

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[1] In resolving the Motions to dismiss, the Court takes the factual allegations in Plaintiff's Amended Complaint as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In its most recent filings, Plaintiff clarified that it "asserts no claims against the State itself" and, as to the .91-acre parcel, "seeks only to pursue an ejectment claim for future possession of land against State officers in their individual capacities." Resp. to Gov't Mots. at 2.[2] Additionally, as to the Oneidas, Plaintiff "abandons any claim based on the illegality of the original transfer, including its second claim for relief under the Nonintercourse Act, 25 U.S.C. § 177." Dkt. No. 288 ("Response to Oneidas' Motion") at 3.[3] Plaintiff otherwise seeks declarations that the Oneidas' interests in the subject lands were extinguished in 1788, that the transfers of the subject lands to the State of New York were void, and that Plaintiff's Indian title has never been extinguished and confers on Plaintiff a valid right of current possession, along with an order restoring possession and awarding damages and disgorgement of unjust benefits accrued by Defendants. Am. Compl. at 16-17.

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[2] Plaintiff's claims against the State of New York and the New York State Department of Transportation are therefore dismissed.

[3] Citations to Plaintiff's Response to the Oneida Motion use the document's internal page numbers and not the numbers electronically affixed to the top of the document.

III. SOVEREIGN IMMUNITY

A. State Defendants

1. Legal Standard

The Eleventh Amendment to the U.S. Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State," including Native American tribes. U.S. Const. amend. XI; *see Blatchford v. Native Vill. of Noatak,* 501 U.S. 775, 782 (1991). "The 'state' for purposes of the Eleventh Amendment generally includes state agencies and state officials sued in their official capacities, but not political subdivisions." *Riley v. Town of Bethlehem,* 44 F. Supp. 2d 451, 457 (N.D.N.Y. 1999) (citing *Monell v. Dep't of Soc. Servs.,* 436 U.S. 658 (1978)). In *Ex Parte Young,* 209 U.S. 123 (1908), the U.S. Supreme Court "carved out a 'narrow exception to the general rule of Eleventh Amendment immunity from suit.'" *Murray v. New York,* 585 F. Supp. 2d. 471, 472 (W.D.N.Y. 2008) (quoting *Frew ex rel. Frew v. Hawkins,* 540 U.S. 431, 438 (2004)). Under this exception, "'a plaintiff may sue a state official acting in his official capacity – notwithstanding the Eleventh Amendment – for prospective, injunctive relief from violations of federal law.'" *State Emps. Bargaining Agent Coalition v.*

Rowland, 494 F.3d 71, 95 (2d Cir. 2007) (quoting *In re Deposit Ins. Agency,* 482 F.3d 612, 617 (2d Cir. 2007)).[4]

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[4] The locution "individual capacity" can generate confusion because it is ambiguous as between "official capacity" in the context of an *Ex Parte Young* suit for prospective equitable relief and "personal capacity" in the context of a suit for damages. *Compare, e.g., Papasan v. Allain,* 478 U.S. 265, 278 n.11 (1986) ("When a state official is sued and held liable in his *individual* capacity, . . . even damages may be awarded."), *and Kentucky v. Graham,* 473 U.S. 159, 165 n.10 (1985) ("Personal-capacity actions are sometimes referred to as individual-capacity actions."), *and id.* at 171 ("[T]he Court's Eleventh Amendment decisions required this case [under 42 U.S.C. § 1988] to be litigated as a personal-capacity action. . . ."), *with Papasan,* 478 U.S. at 277 ("[An] official, although acting in his official capacity, may be sued in federal court [under *Ex Parte Young*]."), and *Murray,* 585 F. Supp. 2d at 472 ("[T]he requirement for suing state officials in their individual capacities [as opposed to the state itself] is an essential element of the *Ex Parte Young* doctrine." (quoting *Saltz v. Tenn. Dep't of Emp't Sec.,* 976 F.2d 966, 968 (5th Cir. 1992) (second alteration in original) (internal quotation marks omitted))), *and id.* ("A plaintiff may avoid the Eleventh Amendment bar to suit and proceed against individual state officers, as opposed to the state, in their official capacities, provided that his complaint (a) alleges an ongoing violation of federal law and (b) seeks relief properly characterized as prospective." (quoting *In re Deposit Ins. Agency,* 482 F.3d at 618) (internal quotation marks omitted)). Because Plaintiff "seeks only to pursue an ejectment claim for future possession of land against State officers in their individual capacities" on the theory of *Ex Parte Young,* the Court construes Plaintiff's references to "individual capacity" as references to "official capacity." Resp. to Gov't Mots. at 2. The distinction is important because "[i]n an official-capacity action in federal court, death or replacement of the named official will result in automatic substitution of the official's successor in office." *Graham,* 473 U.S. at

(Continued on following page)

"In determining whether the doctrine of *Ex Parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.,* 535 U.S. 635, 645 (2002) (alteration and internal quotation marks omitted). "[A]n *allegation* of an ongoing violation of federal law is sufficient for purposes of the *Young* exception." *In re Deposit Ins. Agency,* 482 F.3d at 621 (citing *Verizon Md.,* 535 U.S. at 646). "[The] inquiry concerning such allegations is limited to whether the alleged violation is a substantial, and not frivolous, one; [a court] need not reach the legal merits of the claim." *Id.* (citing *In re Dairy Mart Convenience Stores, Inc.,* 411 F.3d 367, 374 (2d Cir. 2005)). A party may sue under *Ex Parte Young* to stop a present and continuing violation of federal law that is premised on past state actions, but cannot obtain relief that would be tantamount to an award of damages for those past actions. *See Papasan v. Allain,* 478 U.S. 265, 278, 281 (1986); *State Emps. Bargaining, Agent Coalition,* 494 F.3d at 97-98.

2. Discussion

Here, Plaintiff alleged in its Amended Complaint, as clarified in its subsequent filings, that Defendants

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166 n.11 (citing FED. R. CIV. P. 25(d)(1); FED. R. APP. P. 43(c)(1); SUP. CT. R. 40.3).

the Governor of New York and the New York State Commissioner of Transportation possessed a .91-acre parcel of land to the exclusion of Plaintiff in violation of federal common law, treaty, and statute. Am. Compl. ¶¶ 45-52; Resp. to Gov't Mots. at 2 & n.5. Plaintiff also indicated, however, that it was informed in 2010 that New York no longer held the parcel in question. Resp. to Gov't Mots. at 2 n.5. Given New York's apparent release of the disputed land in 2010, *Ex Parte Young* cannot support Plaintiff's claim because the alleged violation of federal law by the relevant state officials necessarily has ceased. There is therefore no basis for a prospective ejectment action against those officials. Independent action of the parties has already wrought what Plaintiff sought to achieve through court order. Accordingly, Plaintiff's claims against the Governor of New York and the New York State Commissioner of Transportation are barred by the Eleventh Amendment and therefore dismissed.[5]

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[5] Plaintiff refers to the general principle that jurisdiction is determined at the time the suit is filed, but the Court is aware of no authority applying that principle in the context of an *Ex Parte Young* action. The cases Plaintiff cites involve, instead, statutory waivers of sovereign immunity. *See* Resp. to Gov't Mots. at 2 n.5. Nor is the general principle absolute even when it applies. *See*, *e.g., Kabakjian v. United States,* 267 F.3d 208, 212 (3d Cir. 2001) (observing that diversity jurisdiction can be destroyed subsequent to filing and that "[s]ubsection (e) of the Quiet Title Act can be read to provide that the government can, after suit is filed, sell the property in issue and thereby divest the district court of jurisdiction."). For the reasons stated *supra,*

(Continued on following page)

B. Oneidas

1. Legal Standard

"As a matter of federal common law, an Indian tribe enjoys immunity from suit except where 'Congress has authorized the suit or the tribe has waived its immunity.'" *Garcia v. Akwesasne Hous. Auth.*, 268 F.3d 76, 84 (2d Cir. 2001) (quoting *Kiowa Tribe v. Mfg. Techs., Inc.,* 523 U.S. 751, 754 (1998)). "A waiver of tribal sovereign immunity must be 'clear.'" *Cayuga Indian Nation of N.Y. v. Seneca Cnty.,* 890 F. Supp. 2d 240, 248 (W.D.N.Y. 2012) (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.,* 498 U.S. 505, 509 (1991)); *accord Garcia*, 268 F.3d at 86 (citing *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.,* 532 U.S. 411, 418 (2001)). Waivers of sovereign immunity are construed narrowly in favor of a sovereign, *see Lane v. Pena,* 518 U.S. 187, 192 (1996); *Rupp v. Omaha Indian Tribe,* 45 F.3d 1241, 1245 (8th Cir. 1995); *Seneca-Cayuga Tribe of Okla. v. Oklahoma ex rel. Thompson,* 874 F.2d 709, 715 (10th Cir. 1989), and the terms of a waiver

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the Court concludes that the circumstances of this case compel a finding that sovereign immunity bars Plaintiff's claim against the state officials. Moreover, it is unclear whether any claim for ejectment, which is a *legal* remedy, *see, e.g., Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n,* 430 U.S. 442, 451 (1977), may be asserted under *Ex Parte Young,* which allows *equitable* relief. *See, e.g., Ford v. Reynolds,* 316 F.3d 351, 355 (2d Cir. 2003) ("There being no valid claim for prospective injunctive relief in the complaint, *Ex Parte Young* has no application to this case.").

"define that court's jurisdiction to entertain the suit." *United States v. Testan,* 424 U.S. 392, 399 (1976).

2. Discussion

Plaintiff's original Complaint in this action, filed on October 15, 1986, asserted claims only against the Government Defendants. Dkt. No. 1. On or about June 19, 1987, the Oneidas moved to intervene as a defendant "for all purposes." Resp. to Oneidas' Mot. Ex. D. The Court granted the Oneidas' request to intervene on September 25, 1987. Dkt. No. 28; Resp. to Oneidas' Mot. Ex. Z. Plaintiff contends that this clear waiver of the Oneidas' sovereign immunity in 1987 as to the claims then being made in the original Complaint also encompasses Plaintiff's present claims against the Oneidas, which Plaintiff added in its Amended Complaint in 2004. *See* Resp. to Oneidas' Mot. at 22-29. Construing the Oneidas' waiver narrowly in their favor, however, leads the Court to the opposite conclusion. A waiver of sovereign immunity even "for all purposes" includes only claims then at issue in that action, and not other claims that might be added years in the future. Accordingly, Plaintiff's claims against the Oneidas are dismissed on the ground of tribal sovereign immunity.

IV. *SHERRILL* LACHES

A. Legal Standard

Laches is an affirmative defense, *see, e.g., Fendi Adele, S.R.L. v. Ashley Reed Trading, Inc.,* 507

F. App'x 26, 29 (2d Cir. 2013), with a peculiar application – referred to herein as "*Sherrill* laches" or "the *Sherrill* defense" – in the context of ancestral land claims such as this. *See generally, e.g., City of Sherrill v. Oneida Indian Nation of N.Y.,* 544 U.S. 197 (2005); *Cayuga Indian Nation of N.Y. v. Pataki,* 413 F.3d 266 (2d Cir. 2005) (holding laches applicable to ancestral land claims at law even though laches is a defense in equity); *Oneida Indian Nation of N.Y. v. County of Oneida,* 617 F.3d 114, 127-28 (2d Cir. 2010) (holding that the ancestral-land-claim version of laches does not require the elements of traditional laches). "Three specific factors determine when ancestral land claims are foreclosed on equitable grounds: (1) 'the length of time at issue between an historical injustice and the present day'; (2) 'the disruptive nature of claims long delayed"; and (3) 'the degree to which these claims upset the justifiable expectations of individuals and entities far removed from the events giving rise to the plaintiffs' injury.'" *Onondaga Nation v. New York,* 500 F. App'x 87, 89 (2d Cir. 2012) (quoting *Oneida,* 617 F.3d at 127).

B. Discussion

Plaintiff "recognizes that if this Court is going to follow the Second Circuit rulings in *Cayuga,* 413 F.3d 266, and *Oneida,* 617 F.3d 114, then it will have to dismiss the Tribe's claim against the non-intervenor defendants," and urges the Court to discredit those cases. Resp. to Gov't Mots. at 14 (citations truncated). The Court is bound to follow the precedents of a

higher tribunal. Plaintiff's claims against the County-Municipal Defendants therefore are dismissed.[6]

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Government Defendants' Motions (Dkt. Nos. 232, 291) to dismiss are **GRANTED**; and it is further

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[6] As Plaintiff concedes, this conclusion would compel dismissal of Plaintiff's claims against all non-intervenor Defendants; however, Plaintiff retracted its claims against the State of New York and the New York State Department of Transportation as erroneously pleaded, *see supra* note 2 and accompanying text, and the Court has determined that it does not have jurisdiction over Plaintiff's claims against the Governor of New York and the New York State Commissioner of Transportation. *See supra* Part III.A. Nor would Plaintiff's claims against the Oneidas fare any better even if the Court had jurisdiction under a waiver of the Oneidas' sovereign immunity. *See supra* Part III.B. Plaintiff argues that its claims against the Oneidas did not accrue until the Oneidas purchased land in the contested area in the late 1990s and early 2000s, but the dispute has ancient roots and cannot send up new shoots through the salted earth of the *Sherrill* defense whenever a future purchaser of land in the contested area happens to be the Oneidas. *See* Resp. to Oneidas' Mot. at 5; *cf. Oneida,* 617 F.3d at 126 ("[P]ossessory land claims – any claims premised on the assertion of a current, continuing right to possession as a result of a flaw in the original termination of Indian title – are by their nature disruptive and . . . , accordingly, the equitable defenses recognized in *Sherrill* apply to such claims." (internal quotation marks omitted)).

ORDERED, that Defendant-Intervenor the Oneida Indian Nation of New York's Motion (Dkt. No. 231) to dismiss is **GRANTED**; and it is further

ORDERED, that Plaintiff's Amended Complaint (Dkt. No. 228) is **DISMISSED**; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Memorandum-Decision and Order on all parties.

IT IS SO ORDERED.

Dated: July 23, 2013
Albany, NY

/s/ Lawrence Kahn
Lawrence E. Kahn
U.S. District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of August, two thousand fourteen.

Stockbridge-Munsee Community,

Plaintiff-Counter Defendant-Appellant,

v.

State of New York, Mario Cuomo, as Governor of the State of New York, New York State Department of Transportation, Franklin White, as Commissioner of Transportation, Madison County, The County of Madison New York, Oneida County, New York, Town of Augusta, New York, Town of Lincoln, New York, Village of Munnsville, New York, Town of Smithfield, New York, Town of Stockbridge, New York, Town of Vernon, New York,

Defendant-Counter Claimant-Appellees,

Oneida Indian Nation of New York,

Defendant-Intervenor-Appellee.

ORDER

(Filed Aug. 11, 2014)

Docket No: 13-3069

Appellant Stockbridge-Munsee Community filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

[SEAL]

/s/ Catherine O'Hagan Wolfe

APPENDIX D

28 U.S.C. § 2415(a)-(c) and (g), as amended by the Indian Claims Limitations Act of 1982.

§ 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided,* That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further,* That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further,* That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed sixty days after the date of

publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982 [note to this section]: *Provided,* That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided,* That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and

ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitations Act of 1982: *Provided,* That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

* * * *

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

* * * *

AMENDMENTS

* * * *

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97-394, as amended by Pub. L. 98-250, § 4(b), Apr. 3, 1984, 98 Stat. 119, provided that: "Sections 2 through 6 of this Act [amending this section and enacting provisions set out below] may be cited as the 'Indian Claims Limitation Act of 1982'."

PUBLICATION OF LIST OF INDIAN CLAIMS; ADDITIONAL CLAIMS; TIME TO COMMENCE ACTION; REJECTION OF CLAIMS; CLAIMS RESOLVED BY LEGISLATION

Sections 3 to 6 of Pub. L. 97-394 provided that:

"SEC. 3. (a) Within ninety days after the enactment of this Act [Dec. 30, 1982], the Secretary of the Interior (hereinafter referred to as the 'Secretary') shall publish in the Federal Register a list of all claims accruing to any tribe, band or group of Indians or individual Indian on or before July 18, 1966, which have at any time been identified by or submitted to the Secretary under the 'Statute of Limitation Project' undertaken by the Department of the Interior and which, but for the provisions of this Act [see Short Title of 1982 Amendment note above], would be barred by the provisions of section 2415 of title 28, United States Code: Provided, That the Secretary shall have the discretion to exclude from such list any

matter which was erroneously identified as a claim and which has no legal merit whatsoever.

"(b) Such list shall group the claims on a reservation-by-reservation, tribe-by-tribe, or State-by-State basis, as appropriate, and shall state the nature and geographic location of each claim and only such other additional information as may be needed to identify specifically such claims.

"(c) Within thirty days after the publication of this list, the Secretary shall provide a copy of the Indian Claims Limitation Act of 1982 [see Short Title of 1982 Amendment note above] and a copy of the Federal Register containing this list, or such parts as may be pertinent, to each Indian tribe, band or group whose rights or the rights of whose members could be affected by the provisions of section 2415 of title 28, United States Code.

"SEC. 4. (a) Any tribe, band or group of Indians or any individual Indian shall have one hundred and eighty days after the date of the publication in the Federal Register of the list provided for in section 3 of this Act to submit to the Secretary any additional specific claim or claims which such tribe, band or group of Indians or individual Indian believes may be affected by section 2415 of title 28, United States Code, and desires to have considered for litigation or legislation by the United States.

"(b) Any such claim submitted to the Secretary shall be accompanied by a statement identifying the nature of the claim, the date when the right of action

allegedly accrued, the names of the potential plaintiffs and defendants, if known, and such other information needed to identify and evaluate such claim.

"(c) Not more than thirty days after the expiration of the one hundred and eighty day period provided for in subsection (a) of this section, the Secretary shall publish in the Federal Register a list containing the additional claims submitted during such period: Provided, That the Secretary shall have the discretion to exclude from such list any matter which has not been sufficiently identified as a claim.

"SEC. 5. (a) Any right of action shall be barred sixty days after the date of the publication of the list required by section 4(c) of this Act for those pre-1966 claims which, but for the provisions of this Act [see Short Title of 1982 Amendment note above], would have been barred by section 2415 of title 28, United States Code, unless such claims are included on either of the lists required by section 3 or 4(c) of this Act.

"(b) If the Secretary decides to reject for litigation any of the claims or groups or categories of claims contained on either of the lists required by section 3 or 4(c) of this Act, he shall send a report to the appropriate tribe, band, or group of Indians, whose rights or the rights of whose members could be affected by such rejection, advising them of his decision. The report shall identify the nature and geographic location of each rejected claim and the name of the potential plaintiffs and defendants if they are known

or can be reasonably ascertained and shall, briefly, state the reasons why such claim or claims were rejected for litigation. Where the Secretary knows or can reasonably ascertain the identity of any of the potential individual Indian plaintiffs and their present addresses, he shall provide them with written notice of such rejection. Upon the request of any Indian claimant, the Secretary shall, without undue delay, provide to such claimant any nonprivileged research materials or evidence gathered by the United States in the documentation of such claim.

"(c) The Secretary, as soon as possible after providing the report required by subsection (b) of this section, shall publish a notice in the Federal Register identifying the claims covered in such report. With respect to any claim covered by such report, any right of action shall be barred unless the complaint is filed within one year after the date of publication in the Federal Register.

"SEC. 6. (a) If the Secretary determines that any claim or claims contained in either of the lists as provided in sections 3 or 4(c) of this Act is not appropriate for litigation, but determines that such claims may be appropriately resolved by legislation, he shall submit to the Congress legislation to resolve such claims or shall submit to Congress a report setting out options for legislative resolution of such claims.

"(b) Any right of action on claims covered by such legislation or report shall be barred unless the complaint is filed within 3 years after the date of

submission of such legislation or legislative report to Congress."

APPENDIX E

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Statute of Limitations Claims List

March 25, 1983.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of all Statute of Limitations Claims.

SUMMARY: This notice lists all potential pre-1966 Indian damage claims identified by or presented to the Department of the Interior's Statute of Limitations Program as required by Sec. 3(a) of the Indian Claims Limitation Act of 1982, Pub. L. 97-394. The claims are grouped by Indian Tribes. Excluded from this list are claims which were erroneously identified as claims and which have no legal merit whatsoever. The listing of a claim does not signify that the Department believes the claim has legal merit.

DATE: This notice establishes that tribes, groups, and individual Indians shall have until September 27, 1983, to submit additional claims not contained on this list to the Secretary of the Interior through the appropriate Area Office.

FOR FURTHER INFORMATION CONTACT:

Aberdeen Area Director, Bureau of Indian Affairs, 115 4th Avenue SE., Aberdeen, South Dakota 57401, Telephone: (605) 225-0250

Albuquerque Area Director, Bureau of Indian Affairs, 5301 Central Avenue NE., P.O. Box 8327, Albuquerque, New Mexico 87108, Telephone: (505) 766-3170

Juneau Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 3-8000, Juneau, Alaska 99802, Telephone: (907) 586-7177

Minneapolis Area Director, Bureau of Indian Affairs, Chamber of Commerce Bldg., 15 South 5th St., 6th Floor, Minneapolis, Minnesota 55402, Telephone: (612) 725-2906

Anadarko Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 368, Anadarko, Oklahoma 73005, Telephone: (405) 247-6673

Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 657-6315

Eastern Area Director, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245 Telephone: (703) 235-2571

Portland Area Director, Bureau of Indian Affairs, 1425 Irving Street NW., Portland, Oregon 97208, Telephone: (503) 231-6702

Muskogee Area Director, Bureau of Indian Affairs, Old Federal Building, Muskogee, Oklahoma 74401, Telephone: (918) 687-2295

Navajo Area Director, Bureau of Indian Affairs, Window Rock, Arizona 86515, Telephone: (602) 781-5151

Phoenix Area Director, Bureau of Indian Affairs, 3030 North Central, P.O. Box 7007, Phoenix, Arizona 85011, Telephone: (602) 261-2305

Sacramento Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, Telephone: (916) 484-8682.

SUPPLEMENTARY INFORMATION: The Indian Claims Limitation Act of 1982, Pub. L. 97-394, extends the federal statute of limitations governing pre-1966 Indian damage claims (28 U.S.C. § 2415) which was due to expire on December 31, 1982. A claim subject to the statute of limitations in Pub. L. 97-394 is an Indian claim for money damages which arose prior to July 18, 1966. Claims against the United States are not governed by this law, only money damage claims against persons, corporations, states, or any other entities except the federal government. Claims for title to land are also not governed by this statute of limitations. The vast majority of the listed claims involve trespasses to Indian land.

This notice lists all potential Indian damage claims which have at any time been identified by or submitted to the Bureau of Indian Affairs under the Department of the Interior's Statute of Limitations Program. Excluded from the list are claims which where erroneously identified as claims and which have no legal merit whatsoever. A copy of the Indian

Claims Limitation Act and the relevant portion of the published claims list are being provided all affected Indian tribes.

The public (Indian tribes, groups, and individual Indians) have until September 27, 1983, to submit to the appropriate Area Office additional pre-1966 Indian damage claims not listed in this document. (See the **FOR FURTHER INFORMATION CONTACT** section of this document for the names, addresses, and telephone numbers of the Area Offices). Any additional claims submitted to the Area Offices must be accompanied by: (1) a statement identifying the nature of the claim, (2) the date when the right of action accrued, (3) the names of potential plaintiffs and defendants, if known, and (4) any other information needed to identify and evaluate the claim.

Within 30 days after the expiration of the 180-day period, the Secretary will publish in the **Federal Register** a supplemental list comprised of those pre-1988 damage claims submitted to the Area Offices by tribes, groups, and individual Indians. A claim will not be included in this supplemental list if it is clearly frivolous, is not sufficiently identified, or is not submitted within the 180-day period.

For claims included on either published list of claims, any right of action shall be barred 60 days after the publication of the supplemental list. For all claims included on either of the published lists, the statute of limitations does not begin to run until the Secretary takes certain actions. If the Secretary

decides to reject any claim or category of claims included on the two lists, a report must be sent to the appropriate tribe whose rights or the rights of whose members could be affected by a rejection. The report will identify each separate claim being rejected, list the names of potential plaintiffs and defendants, if known or reasonable [sic] ascertainable, and breifly [sic] set forth the reason or reasons for rejection. A simple written notice of rejection will-be sent to individual Indian claimants if their identities and addresses are known or reasonably ascertainable from BIA records. As soon as possible after a report has been forwarded to a tribe, the Secretary shall publish a notice in the **Federal Register** identifying the claims covered in the report. Any right of action on claims rejected by the Secretary and covered in the report shall be barred unless a complaint is filed within one year after the notice of rejection is published in the **Federal Register**. After a report has been issued, any Indian claimant may request the Secretary to provide any non-privileged information relating to any claim covered by the report.

If the Secretary determines that a claim or a category of claims should be resolved legislatively, he may submit legislative proposals or reports to Congress. Any right of action on a claim covered by a legislative proposal or report shall be barred if the complaint is not filed within three years after the legislative proposal or report is submitted to Congress.

It is important to remember that for claims contained on either of the lists, the statute of limitations does not begin to run until such time as the Secretary formally rejects a claim or submits to Congress a legislative proposal or report.

Because of the numerous claims listed in the document, this notice may be subject to technical clarification or change.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs by 209 DM 8.

John W. Fritz.
Acting Assistant Secretary – Indian Affairs.

Instruction Sheet

Each claim has been assigned a nine or ten character identification number (a letter followed by eight or nine numbers). The first six characters identify a specific Bureau of Indian Affairs Area Office, Agency Office and tribe. The last three or four characters represent the specific number assigned to that claim. For example, A013400001 indicates:

A01 – Aberdeen Area Office/Cheyenne River Agency

340 – Cheyenne River Sioux Tribe

0001 – Claim number one

To locate a claim, begin with the Table of Contents which lists each tribe (grouped by Area Office and Agency) and the pages where the claims for that

tribe or its members can be found. Individual Indian claims are listed under the tribe of which the original Indian allottee was a member. The claims list has been reproduced by photographing two pages of the list to each **Federal Register** page. The page number referred to in the Table of Contents is located at the top center above the name of the Area Office and is not the five digit **Federal Register** page number located on the outer portion of each page.

If a tribe is not listed in the Table of Contents, no claim was identified for that tribe or its members.

Each page of claims contain five columns of information under the headings: Tribe, Case, allottee, Allotment, and Type Description.

Tribe: This column contains the six character code number (explained above) which identifies the Area Office/Agency and Tribe.

Case: The three or four digit number under this column represents the specific number assigned to that claim.

Allottee: This column lists the name of the original Indian allottee if the claim is an individual claim. For tribal claims, the word “tribal” has been inserted.

Allotment: This column lists the allotment number of the original allottee. If the land has no allotment number, the letters N/A (Not Applicable) have been inserted.

Type of Claim: This column briefly describes the nature of the claim. Because of space limitations a large number of claims have been described simply as *Forced Fee* or *Secretarial Transfer.* A *Forced Fee* claim involves the issuance of a fee simple patent by the Department of the Interior to an Indian allottee before the expiration of the trust period and allegedly without the consent of the allottee. A *Secretarial Transfer* claim involves the sale of an Indian allotment in heirship status by the Department of the Interior without the consent of all the beneficial heirs.

If after locating a claim on the list you desire further information, call or write the Area Office under which your tribe is listed. The names, addresses, and telephone numbers for all Area Offices are contained in the **FOR FURTHER INFORMATION CONTACT** section of this document. Be sure to include the complete identification number for your claim in any correspondence with the Bureau of Indian Affairs Area or Agency Office. If you cannot find a claim on the list or you need help in locating a claim, call the appropriate Area Office for your tribe. It is important to remember that additional claims not included on this list must be submitted in writing to the appropriate Area Ofice [sic] within 180 days of the publication date of this document.

BILLING CODE 4310-02-M

PORTLAND AREA STATUTE CLAIM

TRIBE	CASE	ALLOTTEE	ALLOTMENT	TYPE OF CLAIM
P12103	006H	LOUISE PEUSE	60	KALISPEL ROAD RIGHT OF WAY IN TRESPASS
	006I	ELIZABETH SMILT	84	KALISPEL ROAD RIGHT OF WAY IN TRESPASS
	006J	ABRAHAM NICK	103	KALISPEL ROAD RIGHT OF WAY IN TRESPASS
	006K	KALISPEL TRIBE	N/A	KALISPEL ROAD RIGHT OF WAY IN TRESPASS

EASTERN AREA STATUTE CLAIMS

TRIBE	CASE	ALLOTTEE	ALLOTMENT	TYPE OF CLAIM
S50002	001	CATAUBA	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50004	001	SENECA (ALLEGANY)	TRIBAL	BOUNDARY ENFORCEMENT
S50007	001	ST. REGIS	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50010	001	SENECAIOTL SPRINGS	TRIBAL	BOUNDARY ENFORCEMENT
S50011	001	ONEIDA	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
	002	ONEIDA	TRIBAL	ABORIGINAL LAND CLAIM
S50013	001	CAYUGA	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50030	001	GAY HEAD BAND OF WAMPANOAG*	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50031	001	WESTERN PEQUOT*	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50032	001	SCHAGHTICOKE*	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50033	001	MOHEGAN*	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50034	001	SHINECOCK*	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50035	001	SEMINOLE	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50036	001	CHITIMACHA	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50037	001	TINICA BILOXI	TRIBAL	NONINTERCOURSE ACT LAND CLAIM
S50038	001	STOCKBRIDGE MUNSEE	TRIBAL	NONINTERCOURSE ACT LAND CLAIM

*LISTING OF THIS CLAIM DOES NOT CONSTITUTE FORMAL FEDERAL ACKNOWLEDGMENT THAT THIS IS AN INDIAN TRIBE

APPENDIX F

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.

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.

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

FIRST AMENDED COMPLAINT

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 it's [sic] 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.

* * *

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)
Attorney for Plaintiff
Don B. Miller, PC