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6. TRIBAL LANDS: Oneida Tribes cannot retake N.Y. lands but may seek more money

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A federal judge this month ruled that three tribal groups representing descendants of the Oneida Tribes may press for economic redress for land sales made under duress as far back as 212 years ago. But, citing previous higher court rulings involving similar types of claims, U.S. District Court Judge Lawrence Kahn determined that the tribes cannot repossess about 250,000 acres in upper New York state.

The case -- brought by the tribes in New York, Wisconsin and Ontario against the state and Madison and Oneida county governments -- involves 26 land sale agreements made between 1795 and 1848 that may have violated terms of several treaties between the U.S. government and the tribes that reserved specific lands for tribal members.

The Oneida Indian Nation was one of six nations of the Iroquois Confederation, which at one time was "the most powerful Indian tribe in the Northeast," the court noted. While other tribes in the confederation sided with the British in the Revolutionary War, the Oneidas actively aided the colonists' rebellion.

Despite the federal treaties, the Oneidas in 1788 ceded most of their 6 million acre homeland to the state of New York, keeping only 300,000 acres. Historians generally agree these sales were made under duress, the court said, and the tribes argued that the transactions violated the Indian Trade and Intercourse Act and common law.

Essentially the land transfers were done at a much lower price than standard land values, even for the time. The state paid about \$113,200 for 200,000 acres in 1829, for example, and then sold the same land for over \$625,000. The tribes say that they were underpaid by \$500,000 at the time and were seeking as much as \$500 million in compensation.

The tribes were joined by the federal government in their suit against the state and counties [*Oneida Indian Nation of New York, et al., v. New York, et al.*; U.S. District Court for Northern District of New York; No. 5:74-CV-187 (LEK/DRH)].

In his May 21 **order**, Judge Kahn noted the "long and tortured procedural history" of the claims -- which were formally filed in 1970 as a test case and include issues that twice have reached the U.S. Supreme Court. "The courts have held themselves open to plaintiffs' land claims for centuries," he wrote; "however, recent legal developments raise the possibility that this court

might be compelled to close its doors now."

He was referring to the dismissal by the 2nd U.S. Circuit Court of Appeal of a land claim brought by Cayuga tribes, which in turn was based on a 2005 Supreme Court finding in a separate case that the Oneidas in New York could not claim sovereignty on lands they had repurchased. In another ruling in 2000, the tribes were precluded from pursuing claims directly against 20,000 current property owners.

Nonetheless, Kahn continued, "The court does not believe that the higher courts intended to or barred plaintiffs from receiving any relief; to do so would deny the Oneidas the right to seek redress for long-suffered wrongs."

Rejecting in part motions by the defendants to summarily dismiss the case, Kahn said the tribes may try to prove their economic claims, but that the law could not allow the tribes to retake the lands. "Equity bars the Oneidas' attempts to vindicate their rights to the lands promised to them by the United States and the state because of the disruption it would cause to defendants' expectations and those innocent third parties who now reside on related lands," Kahn held, citing the *Cayuga* ruling.

The judge did not determine what fair compensation would be but said that the tribes must show that the amounts they originally received were inadequate and came as the result of being misled or from an inferior negotiating position. In determining a fair market value, the court will examine the prices for which the land was sold, the quality of the land, prices paid by government for similar lands under treaties with other tribes, as well as prices paid for land in non-tribal transactions. If the tribes can establish their compensation claims, Kahn said, "they are entitled to damages in the amount of the difference between the fair market value of the land at the time and the consideration received" minus any offsets, such as sales costs incurred by the state.

Kahn also dismissed the counties from the case, because they did not buy or sell Oneida lands. He recognized that his order "does not dispose of the case entirely" and that it likely would result in an appeal.

Parties were given 10 days to file an appeal. "An immediate appeal would clarify the law and materially advance the termination of litigation," Kahn wrote.

New York intends to appeal the ruling, according to a spokeswoman for Gov. Elliot Spitzer (D).

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