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Day Pitney Represents Kent School in Significant Victory Over Schaghticoke Tribal Nation

Hartford, Conn, July 13, 2015 - Since 1975, Day Pitney has represented its long-time client, Kent School, a private, college preparatory school established in 1906 in Kent, Connecticut, in proceedings brought by the Schaghticoke Tribal Nation, a Connecticut Indian group with a 400 acre state-recognized reservation directly contiguous to Kent School's campus. The proceedings involved an administrative petition brought before the United States Department of the Interior, Bureau of Indian Affairs, ("BIA"), that requested the Schaghticoke Tribal Nation be recognized by the federal government as an Indian tribe. Additionally, in 1975 the tribe filed a lawsuit against Kent School claiming that the Schaghticoke was wrongfully dispossessed of tribal lands in Colonial times. The land in question is located on Kent School's core campus. In the lawsuit, the Schaghticoke sought to reclaim the land from Kent School and eject the school from its campus. In order for the land claims to proceed, it was first necessary for the tribe to obtain federal recognition from the BIA in order to have statutory standing to pursue the land claims.

After more than 15 years of administrative proceedings before the BIA, the Schaghticoke's petition for federal recognition was denied. The tribe appealed that decision up through the federal court system and ultimately to the U.S. Court of Appeals for the Second Circuit in New York City. The denial of the tribe's recognition petition was affirmed by that court, and the Schaghticoke's further attempt to obtain United States Supreme Court review of that decision failed.

Following final court action in the administrative proceedings, the Schaghticoke's land claim litigation remained pending in the Connecticut federal court. The tribe, having lost its recognition petition, did not have legal standing to maintain its land claims against Kent School. Day Pitney moved to dismiss those claims. The federal court agreed that the Schaghticoke was legally incapable of maintaining the land claims and dismissed them. After the tribe's appeal was rejected a second time by the Court of Appeals in December 2014, the land claim litigation was finally dismissed; seemingly ending almost 40 years of controversy over the tribe's claims to Kent School's campus.

However, in the midst of the land claim dismissal proceedings, the Department of Interior announced its intention to revise the federal tribal acknowledgement regulations in such a way that would have made it highly likely that the Schaghticoke would be able to re-petition for acknowledgement under relaxed standards and almost certainly be acknowledged, permitting them to resurrect their land claims against Kent School. Thus, the administrative and litigation victories won by Kent School would be completely undone under the guise of administrative rulemaking. Day Pitney vigorously opposed the proposed revisions to the acknowledgement regulations, with the assistance of Kent School's Washington counsel and advisors. On June 29, 2015, the Department of Interior released its final rule to revise the federal acknowledgement regulations and the firm was overwhelmingly successful in having removed the provisions from the new regulations that would have permitted repetitioning by the Schaghticoke and the revival of their land claims.

The firm achieved Kent School's top three objectives – eliminating the right to repetition for previously denied Indian groups such as the Schaghticoke; removing the presumption in favor of recognition for Indian groups with state recognized reservations, as exists with the Schaghticoke, and prohibiting "splinter groups" like the associated Schaghticoke Indian Tribe, from pursuing separate petitions. The final rule is a dramatic change from the first proposal announced in 2013 to change the acknowledgement rules, which would have virtually guaranteed recognition to the Schaghticoke, other denied Connecticut Indian tribes, and possibly to the Schaghticoke Indian Tribe. Under the final rule, it is now unlikely that any new tribes would be recognized in Connecticut and this result also ensures the success of our longstanding litigation victories in the Schaghticoke land claim litigation, as upheld by the Second Circuit.

Day Pitney partner David Elliott led the Day Pitney team, which also included Eric Sussman, Jaime Bachrach, John Cerreta and Bryan Orticelli.

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