

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

---

CITIZENS AGAINST CASINO GAMBLING IN ERIE COUNTY  
(JOEL ROSE AND MARY BARTLEY, as Co-Chairpersons),  
REV. G. STANFORD BRATTON, D. MIN., EXECUTIVE  
DIRECTOR OF THE NETWORK OF RELIGIOUS COMMUNITIES,  
NATIONAL COALITION AGAINST GAMBLING EXPANSION,  
PRESERVATION COALITION OF ERIE COUNTY, INC.,  
COALITION AGAINST CASINO GAMBLING IN NEW YORK –  
ACTION, INC., THE CAMPAIGN FOR BUFFALO – HISTORY  
ARCHITECTURE & CULTURE, ASSEMBLYMAN SAM HOYT,  
MARIA WHYTE, JOHN AND SHELLY McKENDRY,  
DOMINIC J. CARBONE, GEOFFREY D. BUTLER,  
ELIZABETH F. BARRETT, JULIE CLEARLY, ERIN C. DAVISON,  
ALICE E. PATTON, MAUREEN C. SCHAEFFER,

Plaintiffs,

v.

Civil Case No. \_\_\_\_\_

GALE A. NORTON, in her official capacity as the  
Secretary of the Interior,  
JAMES CASON, in his official capacity as the  
Acting Assistant Secretary of the Interior for Indian Affairs,  
the UNITED STATES DEPARTMENT OF THE INTERIOR,  
PHILIP N. HOGEN, in his capacity as Chairman of the  
National Indian Gaming Commission, and the  
NATIONAL INDIAN GAMING COMMISSION,

**COMPLAINT**

Defendants.

---

**INTRODUCTION**

1. This is an action for declaratory and injunctive relief brought under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701-706, the Declaratory Judgments Act (“DJA”), 28 U.S.C. §§ 2201 and 2202, Fed. R. Civ. P. Rule 57, the National Historic

Preservation Act (“NHPA”), 16 U.S.C. § 470 *et seq.*, as amended, the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, as amended, and the Indian Regulatory Gaming Act, 25 U.S.C. § 2701 *et. seq.* (“IGRA”), to challenge the decisions and actions of the defendants that permit the construction of a gambling casino on certain lands in the City of Buffalo in violation of the laws of the United States.

2. This action is brought for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears. This action seeks a declaration that the decisions and actions of the defendants that permit the construction of a gambling casino on lands in the City of Buffalo, County of Erie and State of New York are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. This action also seeks an injunction against the implementation by the defendants of such decisions and actions and enjoining them, and each of them, from proceeding with any decision or action permitting the construction of a gambling casino on lands in the City of Buffalo, County of Erie, until the defendants have complied with NEPA, NHPA and IGRA as hereinafter set forth. Plaintiffs also seek an order in the nature of mandamus directing the defendants to perform immediately their nondiscretionary duties under said statutes.

3. Plaintiffs seek declaratory and injunctive relief, and an award of costs including reasonable attorney’s fees and expert witness fees.

#### **PARTIES**

4. Plaintiffs Joel Rose and Mary Bartley bring this action in their capacity as co-chairpersons of the Citizens Against Casino Gambling In Erie County, an unincorporated association whose purpose is to avoid the negative environmental, health

and social consequences that will ensue if a gambling casino is constructed in the City of Buffalo or County of Erie.

5. Plaintiff Rev. G. Stanford Bratton, D. Min., is Executive Director of the Network of Religious Communities, a not-for-profit religious corporation organized under the laws of the State of New York, a network of eighteen denominations, fifteen religious organizations and over 200 individual congregations located throughout Western New York, including specifically throughout the City of Buffalo. Rev. Bratton is concerned about the negative social effects a casino will have on the poor and vulnerable of the community and its adverse impact on the economic health of the City, as well as the strain it will place on the community ministries of member organizations.

6. Plaintiff National Coalition Against Gambling Expansion is a not-for-profit corporation organized pursuant to the laws of the State of Massachusetts, with its primary office located in Washington, D.C. The corporation has members throughout the United States, including the City of Buffalo, who would be adversely affected by the construction of the proposed gambling casino in the City of Buffalo. They bring this action to avoid the negative environmental, health and social consequences that will ensue if a gambling casino is constructed in the City of Buffalo or County of Erie.

7. Plaintiff Coalition Against Casino Gambling In New York – Action, Inc. is a not-for-profit corporation organized under the laws of the State of New York, whose purpose is to avoid the negative environmental, health and social consequences that are caused by gambling in New York State and will be further exacerbated if a gambling casino is constructed in the City of Buffalo or County of Erie.

8. Plaintiff The Campaign for Buffalo – History, Architecture & Culture, is a not-for-profit corporation formed in 2002 pursuant to the laws of the State of New York,

which is dedicated to the preservation of significant historical, architectural and cultural assets in the vicinity of Buffalo, New York. Its principal offices are located in the City of Buffalo, New York. It has a membership of over 400 members, who are concerned that the construction of a gambling casino on the Buffalo Site would permit the destruction of the historically significant HO Oats buildings and grain elevators and would negatively impact the adjacent historic Cobblestone District, the nearby DL & W site, the Erie Canal Harbor and other important historic resources. Its members regularly tour these sites, and to the extent that they are destroyed or otherwise negatively impacted, they will lose the use and enjoyment that such historic resources provide. Timothy Tielman, the Executive Director of the Campaign for Buffalo, has published extensively on the subject of Buffalo's waterfront and early development.

9. Plaintiff Preservation Coalition of Erie County, Inc. is a not-for-profit corporation organized in 1984 and existing under the laws of the State of New York. The Preservation Coalition was organized to assure the preservation and continuing viability of the cultural and architectural past of the City of Buffalo and Erie County and to assure that those buildings and structures that are important to Buffalo and Erie County's history or are architecturally important will continue to be preserved for future generations. As such, the Coalition and its members, who regularly tour the site at issue, are concerned that the site and the surrounding area are not destroyed or otherwise negatively impacted by the construction and operation of a gambling casino.

10. Plaintiff Assemblyman Sam Hoyt brings this action individually and in his representative capacity as a member of the Assembly of the State of New York and on behalf of his constituents of the 144<sup>th</sup> District. He is concerned that the historically important HO Oats buildings be preserved for the citizens of the City of Buffalo and

State of New York, and is also concerned about the integrity of the laws of the United States and wishes to assure that those laws are fully carried out.

11. Plaintiff Maria Whyte brings this action individually and in her representative capacity as a member-elect of the Erie County Legislature, 6<sup>th</sup> Legislative District, which encompasses the west side of the City of Buffalo, including portions of its downtown area. She is concerned about the adverse effects a casino in Erie County will have on her constituents and the blight of the neighborhoods she has been elected to represent. She is also concerned about the integrity of the laws of the United States and wishes to assure those laws are carried out.

12. Plaintiffs John and Shelly McKendry own property at 79 Perry Street, in the City of Buffalo, County of Erie, which is two blocks from the site of the proposed gambling casino, and they operate their business, Hi-Top Fabricators, from that site. They and their 15 employees are concerned about the effects a gambling casino will have on their neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise.

13. Plaintiff Dominic J. Carbone is the owner of real property at 568 South Park Avenue, Buffalo, New York, approximately 1/2 mile from the site of the proposed gambling casino. He owns and operates a pizza restaurant at this building and is concerned about the effects a gambling casino will have on his neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise.

14. Plaintiff Geoffrey D. Butler resides at 250 Perry Street, Unit 20A, in the City of Buffalo, County of Erie, which is directly across the street from the proposed

gambling casino. As such, he is obviously concerned about the effects a gambling casino will have on his neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise, as well as the loss of the view he has of the architecturally and historically significant HO Oats Grain Elevator, which he looks at every day.

15. Plaintiff Elizabeth F. Barrett resides at 158 O'Connell Avenue, City of Buffalo, which is within the neighborhood that would be affected by the proposed gambling casino. She is concerned about the effects a gambling casino will have on her neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise.

16. Plaintiff Julie Clearly resides at 140 Hamburg Street, City of Buffalo, which is within the neighborhood that would be affected by the proposed gambling casino. She is concerned about the effects a gambling casino will have on her neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise.

17. Plaintiff Erin C. Davison resides at 150 Vincennes Street, City of Buffalo which is within the neighborhood that would be affected by the proposed gambling casino. She is concerned about the effects a gambling casino will have on her neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise.

18. Plaintiff Alice E. Patton resides at 78 Sidway Street, City of Buffalo, which is within the neighborhood that would be affected by the proposed gambling casino. She is concerned about the effects a gambling casino will have on her neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise.

19. Plaintiff Maureen C. Schaeffer resides at 169 Alabama Street, City of Buffalo, which is within the neighborhood that would be affected by the proposed gambling casino. She is concerned about the effects a gambling casino will have on her neighborhood, including the blight that such a facility may cause, the increased crime from such a facility, the lack of parking it will create, and the increase in traffic, air pollution and noise.

20. Defendant Gale A. Norton is the Secretary of the Interior. Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, *et seq.*, the Secretary has the authority to approve or disapprove Indian gaming compacts, or to allow such compacts to be considered to have been approved. Under the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774, *et seq.*, the Secretary has the authority to subject lands acquired by the Seneca Nation of Indians (“SNI”) to the provisions of Section 2116 of the Revised Statutes, 25 U.S.C. § 177, and “depending on the proximity of the land acquired” to expand the boundaries of existing SNI reservations at Allegany, Cattaraugus and Oil Spring in accordance with established procedures for that purpose.

21. Defendant James Cason is the Acting Assistant Secretary of the Interior for Indian Affairs. In that capacity he oversees the Bureau of Indian Affairs within the

U.S. Department of the Interior, and he may exercise the Secretary of the Interior's delegated authority for decisions affecting Indian Affairs.

22. Defendant United States Department of the Interior is a Cabinet-level agency of the United States government.

23. Defendant Philip N. Hogen is the Chairman of the National Indian Gaming Commission. The Chairman has the authority to approve tribal ordinances authorizing Class III gaming on "Indian lands" under Section 11 of the IGRA, 25 U.S.C. § 2710.

24. Defendant National Indian Gaming Commission is a federal agency established within the U.S. Department of the Interior by Section 5 of the IGRA, 25 U.S.C. § 2704.

#### **JURISDICTION AND VENUE**

25. Jurisdiction is based upon 28 U.S.C. § 1331, 28 U.S.C. § 1361, the APA, 5 U.S.C. § 702, the DJA, 28 U.S.C. § 2201, the NHPA, 16 U.S.C. §§ 470 *et seq.*, NEPA, 42 U.S.C. §§ 4321 *et seq.*, as amended, the Indian Gaming Regulatory Act, 25 U.S.C. §§2701 *et seq.*, seeking judicial review of various final agency actions taken by Defendants, officials of the U.S. Department of the Interior.

26. Venue of this action is proper in the Western District of New York, based on 28 U.S.C. § 1391(e). The Plaintiffs are substantially all residents of the Western District, and the casino gambling activities which have purportedly been permitted by the defendants' decisions and actions challenged herein, lie within the Western District.

## GENERAL ALLEGATIONS

### The Adoption of the Gaming Compact

27. On September 10, 2002, the U.S. Department of the Interior received a Class III Compact executed on August 18, 2002, by officials of the Seneca Nation of Indians and by the Governor of New York, designed to authorize casino gaming by the SNI in Western New York for 14 years. The SNI and the State of New York sought the Secretary of the Interior's approval of the Compact pursuant to Section 11(d)(8) of the IGRA, 25 U.S.C. 2710(d)(8).

28. Paragraph 11(a)(1) of the Compact purports to authorize the SNI to establish Gaming Facilities on land to be acquired by the SNI in the City of Niagara Falls, County of Niagara, State of New York, which site was further specified in Appendix 1 of the Compact. Under Paragraph 11(b)(3), the State agreed to support the SNI in its use of the procedures set forth in the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774f(c), to acquire restricted fee status for the Niagara Site.

29. Paragraph 11(a)(2) of the Compact purports to authorize the SNI to establish Gaming Facilities on land to be acquired by the SNI in the City of Buffalo or elsewhere in Erie County as determined by the SNI. Under Paragraph 11(b)(3), the State agreed to support the SNI in its use of the procedures set forth in the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774f(c), to acquire restricted fee status for any site chosen pursuant to Paragraph 11(b)(2).

30. On October 24, 2002, the Secretary of the Interior decided neither to approve nor disapprove the Compact, purportedly allowing the Compact to be considered to have been approved as of October 25, 2002, pursuant to Section 11(d)(8)(C) of the IGRA, 25 U.S.C. § 2710(d)(8)(C).

31. On November 12, 2002, the Secretary of the Interior Gale Norton sent letters to Governor George Pataki of New York and SNI President Cyrus Schindler. In those letters, she stated that she “could not affirmatively approve the Compact because of the effect it is likely to have on future compacts.” The particular “effect” of concern to the Secretary was the proliferation of off-reservation gaming. The Secretary stated that despite those concerns, she was allowing the Compact to go into effect because the SNI was acquiring the sites in question “through a Congressional settlement,” explaining at one point in the letter that “this decision rests squarely on a Congressionally-approved settlement of a land claim.”

32. On December 9, 2002, the Federal Register published a U.S. Department of the Interior notice stating that the Compact “is considered approved, but only to the extent the compact is consistent with the provisions of IGRA.” 67 Fed. Reg. 72968.

#### **Approval of SNI Class III Gaming Ordinance**

33. On November 25, 2002, the SNI submitted a Class III Gaming Ordinance to the National Indian Gaming Commission for approval. The gaming ordinance was accompanied by a copy of the Compact. By letter of November 26, 2002, to the SNI President, the Chairman of the National Indian Gaming Commission approved the SNI Class III Gaming Ordinance. The letter stated: “It is important to note that the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Nation has jurisdiction.”

#### **Acquisition and Approval of the Niagara Site**

34. On or about October 25, 2002, the SNI acquired approximately 12.8 acres of land in downtown Niagara Falls, New York, known as the Niagara Falls Convention and Civic Center Property, from the New York State Urban Development Corporation for

a purchase price of \$1.00. These lands [hereinafter “the Niagara Site”] were identified in Appendix I of the Compact as the site of Gaming Facilities. .

35. On the same day, the SNI leased the Niagara Site to the Seneca Niagara Falls Gaming Corporation. Also on the same day, the Seneca Niagara Falls Gaming Corporation subleased the Niagara Site to the New York State Urban Development Corporation d/b/a Empire State Development Corporation.

36. On October 29, 2002, the SNI requested the Secretary of the Interior to have the Niagara Site placed into restricted fee status pursuant to Section 8(c) of the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774f(c). That subsection states in pertinent part, “Unless the Secretary determines within [a certain time period] that such lands should not be subject to the provisions of Section 2116 of the Revised Statutes (25 U.S.C. § 177), such lands shall be subject to the provisions of that Act, and shall be held in restricted fee status by the Seneca Nation.”

37. An Environmental Assessment (EA) was prepared to evaluate the environmental effects of the acquisition of the Niagara Site. After officials of the Bureau of Indian Affairs (BIA) commented on the EA, a revised EA, dated November 27, 2002, was prepared. No Environmental Impact Statement pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, was prepared in connection with the acquisition of the Niagara Site by the SNI for gambling purposes. A Finding of No Significant Impact (FONSI) was prepared by BIA officials, and signed by the Assistant Secretary – Indian Affairs on November 29, 2002. The FONSI was never challenged in Federal Court.

38. On November 29, 2002, Neal A. McCaleb, then the Assistant Secretary – Indian Affairs, concurred in a recommended decision of the BIA that he decline to make a finding that the Niagara Site should not be subject to the provisions of 25 U.S.C. § 177.

### **History Of The Buffalo Site And Impacted Neighborhood**

39. Upon information and belief, the Buffalo casino project site is situated in the First Ward of Buffalo, the place where the City of Buffalo began. The site is located in a historic landscape which includes Buffalo's historic harbor and waterfront. (See attached map.)

40. The City of Buffalo was founded at the confluence of Lake Erie, the Niagara River, and the Buffalo River in the very neighborhood which the SNI seeks to make the home of its Buffalo gambling empire. Located in close proximity to the proposed Buffalo site is the historic terminus of the Erie Canal. The U.S. Department of Transportation has, within the past several years, committed over \$40,000,000.00 to the development of a historic district commemorating the Erie Canal at this site. Construction of the Erie Canal Harbor district is now underway.

41. The Erie Canal, completed in 1825 by the State of New York, was a revolutionary technological innovation which facilitated commercial development of Buffalo, the Great Lakes and the entire Great Plains area of the central United States. The Canal allowed easy water transit for people and goods from New York City to any point on the Great Lakes, and was the key engine in the development of Midwestern America in the mid-Nineteenth century.

42. Beginning in the 1860's, rail transportation began to supplement and eventually supplant waterborne transportation. The Buffalo Harbor reflected these changes, as Buffalo became a major railroad center as well as the most important inland

shipping port. The Delaware, Lackawanna and Western Railroad Terminal (“DL&W Terminal”) was constructed on the Buffalo River, adjacent to what is now the Erie Canal Harbor District, in order to accommodate the high volume of rail traffic flowing through Buffalo. The DL&W Terminal and the Erie Canal Harbor are precious American historical landmarks that are national destinations for tourists exploring the history of the United States. The insertion of a large gambling complex in the midst of this historic district will spoil the character and integrity of one of America's most important historic venues. The SNI has publicly stated its desire to incorporate the DL&W Terminal into its Buffalo gambling establishment.

43. The proposed site includes the historic HO OATS grain elevator and associated buildings. The grain mill opened in 1912 and the grain elevator was constructed in 1931. The grain elevators in the Buffalo harbor are considered to be the most distinctive type of architecture in the City. In 1992, the New York State Department of Parks, Recreation and Historic Preservation declared the HO OATS facility, and other Buffalo area grain elevators, to be eligible for the National Register of Historic Places. The SNI has announced its intention to demolish the HO OATS facility.

44. The proposed Buffalo site is adjacent to the historic Cobblestone District of Buffalo, New York. The Cobblestone District consists of streets and buildings dating from before the Civil War era, and has been designated a historic district by the City of Buffalo. The District is currently being renovated for residential housing in the style of classic nineteenth century architecture. Upon information and belief, the development of a commercial gambling casino that will be in operation every day until late at night will have an adverse impact upon the redevelopment of the Cobblestone District.

### **Acquisition and Approval of the Buffalo Site**

45. Upon information and belief, on or about October 3, 2005, the SNI acquired approximately 9 acres of land in downtown Buffalo, New York, bounded by Michigan Avenue, South Park Avenue, Perry Street and Marvin Street. (Map Attached). These lands [hereinafter “the Buffalo Site”] are within the geographic area designated in Paragraph 11, subparagraphs (a)(2) and (b)(1), of the Compact as the site of Gaming Facilities.

46. Upon information and belief, on or about October 3, 2005, the SNI requested the Secretary of the Interior to have the Buffalo Site placed into restricted fee status pursuant to Section 8(c) of the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774f(c). That subsection states in pertinent part, “Unless the Secretary determines within [a certain time period] that such lands should not be subject to the provisions of Section 2116 of the Revised Statutes (25 U.S.C. § 177), such lands shall be subject to the provisions of that Act, and shall be held in restricted fee status by the Seneca Nation.”

47. Upon information and belief, no Environmental Assessment (EA) was prepared to evaluate the environmental effects of the acquisition of the Buffalo Site for SNI gaming purposes, nor was an Environmental Impact Statement pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, prepared in connection with the acquisition of the Buffalo Site for SNI for gaming purposes.

48. Upon information and belief, on or about December 3, 2005, defendant James Cason, Acting Assistant Secretary – Indian Affairs, or another official of the defendant Department of the Interior acting in his stead, either declined or concurred in a recommendation that he decline to make a finding that the Buffalo Site should not be subject to the provisions of 25 U.S.C. § 177.

**FIRST CLAIM  
(VIOLATION OF SECTIONS 4 AND 11(D) OF  
THE INDIAN GAMING REGULATORY ACT)**

49. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1 through 48 above.

50. Section 11(d) of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d), authorizes Class III gaming only on “Indian lands” as defined in the Act.

51. “Indian lands” is defined in Section 4 of the IGRA, 25 U.S.C. § 2703, as

- (A) all lands within the limits of any Indian reservation;  
and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

52. No lands acquired or to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) of the Compact is within the limits of any Indian reservation for purposes of the IGRA.

53. No lands acquired or to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) is held in trust by the United States for the benefit of the Seneca Nation of Indians.

54. No lands acquired or to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) are subject to the governmental jurisdiction of the Seneca Nation of Indians.

55. Congress passed the Seneca Settlement Act of 1990, 25 U.S.C. §§ 1774 *et seq.* (“SNSA”), in order to facilitate the settlement of a long-standing lease dispute

between the SNI and lessees of SNI lands located in the City of Salamanca and the Congressional Villages, New York.

56. Pursuant to SNSA, the United States agreed to pay the SNI the sum of \$30,000,000. The SNSA did not restrict the use of those funds, which were to be spent “as determined by the Nation in accordance with the Constitution and laws of the Nation.”

57. Section 8 (c), 25 U.S.C. § 1774f (c), of the SNSA provides that in the event the SNI uses funds provided pursuant to the SNSA to acquire lands within its aboriginal area in the State or situated within or near proximity to former reservation land, the Secretary, in her discretion, may place such lands in restricted fee, but the SNSA does not authorize the Secretary to place such lands under the governmental jurisdiction of the SNI except where “based on the proximity of the land acquired to the Seneca Nation’s reservations,” such lands “become part of and expand the boundaries of the Allegany Reservation, the Cattaraugus Reservation, or the Oil Springs Reservation *in accordance with the procedures established by the Secretary for this purpose.*” (emphasis supplied).

58. In her Letters of November 12, 2005, the Secretary ignored the explicit distinction drawn in the SNSA between the acquisition of lands in restricted fee pursuant to Section 8(c) of the SNSA and the expansion of the SNI’s current reservation boundaries in accordance with federal regulations governing the creation of Indian country, choosing instead to *equate* the two processes: “we believe that the Settlement Act contemplates that lands placed in restricted status be held in the same legal manner as existing Nation’s lands are held and thus, subject to the Nation’s jurisdiction.”

59. The Secretary cited the SNSA as the sole basis for her decision not to disapprove the Compact. The SNSA does not authorize, let alone require, the Secretary to create “Indian lands” within the meaning of Section 4 of the IGRA, 25 U.S.C. § 2703, absent compliance with the requirements of Section 8 (c) of the SNSA and the regulations governing the creation of Indian country. The October 24, 2002, decision of the Secretary to neither approve nor disapprove the Compact, purportedly allowing the Compact to be considered to have been approved as of October 25, 2002, was therefore arbitrary, capricious, an abuse of discretion, and not in accordance with law, and violates Sections 4 and 11(d) of the IGRA, 25 U.S.C. §§ 2703, 2710(d).

60. Neither the National Indian Gaming Commission nor the Solicitor of the Department of the Interior made any “Indian land” determination with respect to lands to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) of the Compact. The Secretary of the Interior’s letters of November 12, 2002, ostensibly treating such lands as “Indian lands” within the meaning of the Indian Gaming Regulatory Act are not entitled to deference from this United States District Court.

61. The expiration of 45 days from the date of submission of the Compact to the Secretary of the Interior for approval does not authorize gaming on lands other than “Indian lands,” and therefore does not authorize gaming on any lands in the City of Buffalo or elsewhere in Erie County acquired pursuant to the SNSA.

62. To the extent that the November 26, 2002, decision of the Chairman of the National Indian Gaming Commission to approve the SNI Class III gaming ordinance purported to authorize the SNI to conduct casino gaming on any lands in the City of Buffalo or elsewhere in Erie County acquired pursuant to the SNSA, it is arbitrary,

capricious, an abuse of discretion, and not in accordance with law, and violates Sections 4 and 11(d) of the IGRA, 25 U.S.C. §§ 2703, 2710(d).

63. To the extent that any decision by the Acting Assistant Secretary – Indian Affairs, or by another official of the defendant Department of the Interior acting in his stead, declining to make a finding that the Buffalo Site should not be subject to the provisions of 25 U.S.C. § 177 purports to authorize gaming on the Buffalo Site, that decision was arbitrary, capricious, an abuse of discretion, and not in accordance with law, and violates Sections 4 and 11(d) of the IGRA, 25 U.S.C. §§ 2703, 2710(d).

**SECOND CLAIM  
(VIOLATION OF SECTION 20 OF THE INDIAN  
GAMING REGULATORY ACT)**

64. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1 through 63 above.

65. In her letters of November 12, 2002, to Governor Pataki and President Schindler, the Secretary of the Interior determined that lands acquired for gaming purposes pursuant to the SNSA are subject to the requirements of Section 20 of the IGRA, 25 U.S.C. § 2719, which governs gaming on lands acquired after October 17, 1988, the date of enactment of the IGRA.

66. Section 20(a) of the IGRA prohibits the conduct of gaming on lands acquired after October 17, 1988. Specific exceptions to that general prohibition are found in Section 20(b). In her letters of November 12, 2002, the Secretary stated that the exception in 25 U.S.C. § 2719(b)(1)(B)(i) applies to the lands acquired for SNI gaming pursuant to the SNSA. That exception states:

Subsection (a) of this section shall not apply when lands are taken into trust as part of a settlement of a land claim ....

67. No lands acquired or to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) of the Compact are in or are to be held in trust by the United States.

68. The lands acquired or to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) of the Compact were not acquired as part of the settlement of a land claim. The lease dispute between the SNI and its lessees was not a “land claim” within the meaning of Section 20(b) of the IGRA. Even if the lease dispute was a “land claim” within the meaning of Section 20(b) of the IGRA, no land was acquired as part of the settlement of that claim. The claim was settled upon the receipt of the funds provided pursuant to the SNSA.

69. Because the lands acquired or to be acquired for gaming purposes pursuant to Paragraph 11(a)(2) of the Compact were not taken into trust as part of a settlement of land claim, the only exception to the general prohibition of Section 20(a) of the IGRA applicable to lands to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) of the Compact, is Section 20(b)(1)(A), 25 U.S.C. § 2719(b)(1)(A), which states:

Subsection (a) of this section shall not apply when the Secretary, after consultation with the Indian tribe, and appropriate state and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly-acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary’s determination.

70. The Secretary did not determine that a gambling casino on lands to be newly acquired for SNI gaming purposes pursuant to Paragraph 11 (a)(2) of the Compact would not be detrimental to the surrounding community, as required by Section 20(b)(1)(A) of the IGRA, 25 U.S.C. § 2719(b)(1)(A), nor did the Secretary or anyone

acting under her authority prepare an Environmental Impact Statement or attempt in any way to comply with the provisions of that Section.

71. Even if lands to be acquired for SNI gaming purposes pursuant to Paragraph 11(a)(2) of the Compact are “Indian lands” within the meaning of Section 4 of the IGRA, 25 U.S.C. § 2703, the Secretary’s decision not to disapprove the Compact is arbitrary, capricious, an abuse of discretion, and not in accordance with law, and violates Section 20 of the IGRA, 25 U.S.C. § 2719(a).

72. To the extent that the November 26, 2002, decision of the Chairman of the National Indian Gaming Commission to approve the SNI Class III gaming ordinance purported to authorize the SNI to conduct casino gaming on any lands in the City of Buffalo or elsewhere in Erie County acquired pursuant to the SNSA, it is arbitrary, capricious, an abuse of discretion, and not in accordance with law and violates Section 20 of the IGRA, 25 U.S.C. § 2719(a).

73. To the extent that any decision by the Acting Assistant Secretary – Indian Affairs, or by another official of the defendant Department of the Interior acting in his stead, declining to make a finding that the Buffalo Site should not be subject to the provisions of 25 U.S.C. § 177 purports to authorize gaming on the Buffalo Site, that decision was arbitrary, capricious, an abuse of discretion, and not in accordance with law and violates Section 20 of the IGRA, 25 U.S.C. § 2719(a).

**THIRD CLAIM  
(VIOLATION OF THE NATIONAL  
ENVIRONMENTAL POLICY ACT)**

74. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-73, above.

75. The actions of the defendants which placed the Buffalo Site in restricted fee and permitted thereon the construction and operation of an Indian gambling casino was a major federal action significantly affecting the quality of the human environment, and therefore required the preparation of an Environmental Impact Statement under Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(c), and applicable regulations of the Council on Environmental Quality.

76. The National Environmental Policy Act requires that all agencies of the Federal government include in every recommendation or report on major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official, including a statement as to the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, and alternatives to the proposed action. 42 U.S.C. §4332(2)(C). In particular, NEPA requires that the Environmental Impact Statement discuss the impact of the alternatives on cultural or historic resources. 40 C.F.R. Part 1502.16.

77. On May 25, 2005, in a legal decision rendered by the Honorable Joseph Makowski of the New York State Supreme Court, the Court determined that the adoption and approval of such compact was an action that required the preparation of an Environmental Impact Statement pursuant to New York State Law. To date, no such Environmental Impact Statement has been drafted.

78. Upon information and belief, the development of a commercial gambling casino that will be in operation every day until late at night will have an adverse impact upon the redevelopment of the Cobblestone District and nearby historic sites, and will cause significantly increased traffic and concomitant air pollution, noise and adverse effects upon the Buffalo River and its watershed.

79. Upon information and belief, gambling casinos have created severe social problems within the communities where they have been located, further causing increased need for governmental and community services, and negatively impacting upon those communities. Indeed, credible studies have indicated that the number of compulsive gamblers in a community doubles within a ten mile radius of the casino.

80. Moreover, upon information and belief, the construction of a gambling casino at the Buffalo site will have further grave adverse effects upon the human environment in the area. A major gambling casino in the area will attract increased automobile traffic to a neighborhood that has recently been redeveloped for residential living. In addition, the casino will operate to the early hours of the morning, making the neighborhood unsuitable for family residential living. As previously indicated, gambling casinos have also been associated with a rise in prostitution, violent crime, and gambling addiction.

81. The Secretary of the Interior and other Defendants have failed to comply with the National Environmental Policy Act. As opposed to the Niagara site, not even the minimal environmental review has been carried out through the preparation of an environmental assessment. The Defendants issued no assessment of the potential environmental effects of the demolition of the HO Oats Grain Elevators, nor of the construction and operation of a major gambling casino on the Buffalo site. No draft environmental impact statement was prepared for the project, and the public and governmental agencies were not afforded the opportunity to comment on the project's environmental effects.

82. The Chairman of the National Indian Gaming Commission failed to comply with the National Environmental Policy Act, making no effort to consider the

environmental effects of casino gaming on the Buffalo site, nor were alternative sites considered as required by NEPA.

**AS AND FOR A FOURTH CLAIM UNDER THE  
NATIONAL HISTORIC PRESERVATION ACT**

83. Plaintiffs re-allege and incorporate herein the allegations in Paragraphs 1-82, above.

84. Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470(f), requires the head of any federal agency having direct or indirect jurisdiction or licensing authority over a proposed Federal or federally assisted undertaking, prior to the approval of the expenditure of any Federal funds thereon, or the issuance of any federal license therefore, to take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion on the National Register.

85. Defendants have failed and refused to comply with the requirements of the NHPA.

86. The Defendants violated the NHPA by failing to consult with the Advisory Council for Historic Preservation as required by Section 104 of the NHPA, 16 U.S.C. § 470f, prior to permitting the Buffalo site to be incorporated into the Territory of the SNI:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under part B of this subchapter a reasonable opportunity to comment with regard to such undertaking.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court to issue an Order:

1. Declaring that lands purportedly acquired by the SNI pursuant to the Seneca Nation Settlement Act of 1990 are not “Indian lands” within the meaning of the IGRA.
2. Declaring that the Compact violates Sections 11(d) and 20 of the IGRA.
3. Declaring that the Secretary’s decision not to disapprove the Compact is contrary to the IGRA and is arbitrary, capricious, an abuse of discretion, and not in accordance with law.
4. Declaring that the Secretary’s decision to allow the Compact to be considered approved is contrary to the IGRA, and is arbitrary, capricious, an abuse of discretion, and not in accordance with law.
5. Declaring that the decisions of the Secretary of the Interior allowing SNI casino gambling on lands acquired in the City of Buffalo or Erie County did not comply with Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C).
6. Declaring that any decisions of the Secretary of the Interior, the Acting Assistant Secretary – Indian Affairs, and the Chairman of the National Indian Gaming Commission, allowing SNI casino gambling on lands in the City of Buffalo or Erie County are major federal actions significantly affecting the quality of the human environment, and therefore require the preparation of an environmental impact statement.
7. Setting aside the decisions of (a) the Secretary of the Interior, purporting to allow the Compact to be considered approved; and (b) the Chairman of the National Indian Gaming Commission, approving the Seneca Nation Class III Gaming Ordinance.

8. Enjoining Defendants from taking any actions which would condone, allow, permit or otherwise further casino gambling on any lands purportedly acquired by the SNI pursuant to the Seneca Nation Settlement Act of 1990, unless the provisions and procedures in the last sentence of Section 8(c) of the Seneca Nation Settlement Act are followed.

9. Enjoining Defendants from taking any actions which would condone, allow, permit or otherwise further casino gambling on any lands purportedly acquired by the SNI pursuant to the Seneca Nation Settlement Act of 1990, until the provisions of Section 20 of the IGRA are complied with.

10. Awarding Plaintiffs attorney's fees and costs in this action pursuant to the Equal Access to Justice Act.

11. Awarding Plaintiffs reasonable attorneys' fees and costs pursuant to §305 of the NHPA, 16 U.S.C. §470w-4.

12. Granting such other and further relief that the Court deems proper.

Dated: Buffalo, New York  
January 3, 2006

Respectfully submitted,

STENGER & FINNERTY

s/ Joseph M. Finnerty

Joseph M. Finnerty

RICHARD LIPPES AND ASSOCIATES  
1109 Delaware Avenue  
Buffalo, New York 14209

STENGER & FINNERTY  
70 Niagara Street, The Third Floor  
Buffalo, New York 14203-3407

Richard J. Lippes, Esq.  
Telephone: (716) 884-4800  
Email: [rlippes@concentric.net](mailto:rlippes@concentric.net)  
Of Counsel:  
Kendra E. Winkelstein, Esq.  
[kwink@localnet.com](mailto:kwink@localnet.com)  
Richard C. Berger, Esq.  
[rgbergerlaw@yahoo.com](mailto:rgbergerlaw@yahoo.com)

Joseph M. Finnerty, Esq.  
Telephone: (716) 849-1700  
Email: [jfynnerty@stenfinn.com](mailto:jfynnerty@stenfinn.com)  
Of Counsel:  
Karim A. Abdulla, Esq.  
[kabdulla@stenfinn.com](mailto:kabdulla@stenfinn.com)  
Gregg S. Maxwell, Esq.  
[gmaxwell@stenfinn.com](mailto:gmaxwell@stenfinn.com)

KNOER, CRAWFORD & BENDER, LLC  
14 Lafayette Square – Suite 1700  
Buffalo, New York 14203

Richard J. Knoer, Esq.  
Telephone: (716) 855-1673  
Email: [rknoer@knoercrawford.com](mailto:rknoer@knoercrawford.com)

Of Counsel:  
Brendon R. Mahaffey, Esq.  
[brmeffy@knoercrawford.com](mailto:brmeffy@knoercrawford.com)

JACKSON & JACKSON  
600 Main Street – Suite 504  
Buffalo, New York 14202

Michael Lee Jackson, Esq.  
Telephone: (716) 228-8484  
Email: [mljbuf@aol.com](mailto:mljbuf@aol.com)

Rachel E. Jackson, Esq.  
Telephone: (716) 553-6630  
Email: [rachjack10@aol.com](mailto:rachjack10@aol.com)

**Attorneys for Plaintiffs**