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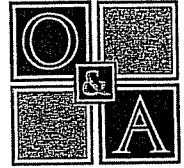
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December 12, 2006

VIA TELEFAX (473-8913) AND HAND DELIVERY

Andrew Bing
Assistant Solicitor General
Office of the Attorney General
New York State Department of Law
New York State Capitol
Albany NY 12223

Re: Peterman, et al. v. Pataki (Oneida County Index No. 99-533)

Dear Mr. Bing:

This is a sequel to my phone call to you yesterday requesting information as to what action your clients now intend to take in light of the U.S. Supreme Court's Order of Monday, December 4, 2006 denying the Petition for Certiorari that the Oneida Indian Nation (The "Nation") had filed with that Court in the above-captioned matter.

In that Petition the Nation had asked the Court to review the decision and summary judgment granted by State Supreme Court, Oneida County, which was subsequently affirmed by the Appellate Division, Fourth Department. Thereafter, both the Appellate Division and the New York State Court of Appeals denied the Nation's Motions for Leave to Appeal to the Court of Appeals. That in turn led the Nation to file the Petition for Certiorari with the Supreme Court that was rejected last week. Thus, the decision and summary judgment of Supreme Court, Oneida County, are now final. All appeals have been exhausted.

As you know, that decision granted our client summary judgment declaring invalid the 1993 Compact entered into by and between the Nation and Governor Cuomo on behalf of the State of New York, which purported to permit the Nation to operate a Class III gaming casino on Indian lands in New York State. The Nation argued unsuccessfully in all the aforementioned courts, including the U.S. Supreme Court, that New York State courts lacked jurisdiction to rule on the validity of the Compact because the Nation might be adversely affected by any decision and the Nation was an indispensable party over whom

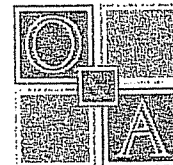
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the State courts had no jurisdiction because of the Nation's sovereign immunity. Again, all these arguments were consistently rejected.

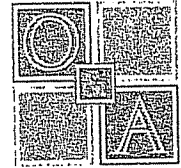
As your clients are also aware, in another decision last year, the U.S. Supreme Court ruled in *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), that property that was once part of the Nation's historic reservation in New York State, but which was thereafter sold off, and which was subsequently purchased by the Nation in the open market, did not revert to reservation status and thus did not return the land to the nation's sovereign control. The Turning Stone Casino, upon which the Nation operates a Class III gaming casino just off Exit 33 of the Thruway, is such land. Since it has not reacquired reservation status, it is sovereign soil of the State of New York and is, therefore, subject to New York State's constitutional and statutory law.

As your clients are also undoubtedly aware, under the Federal Indian Gaming Regulatory Act, Native American tribes are prohibited from operating Class III gaming unless, *inter alia*, they do so on Indian land pursuant to a compact between the Tribe and the State in which such land is located.

Your clients are, of course, also aware from the record in this case that not even the Federal Bureau of Indian Affairs approved Class III gaming by the Nation at Turning Stone. *See* letter dated June 4, 1993 from Thomas Thompson, Acting Assistant Secretary of Indian Affairs, to Neils Holch, Esq. (reproduced in the Record on Appeal to the Appellate Division at pp. 400-401). Note also that in a recent Draft Environmental Impact Statement, the Bureau of Indian Affairs noted that unless the land upon which Turning Stone is situated were taken into trust, the continued operation of the Turning Stone casino would be assumed to be illegal. This is further confirmed by a letter dated May 20, 2005 from the Bureau of Indian Affairs to Theodore Kulongoski, Governor of Oregon, advising that no Class III gaming compact between an Indian nation and a State on lands that are under consideration for trust status, but which have not yet achieved trust status, can be approved.

New York State's Constitution, Article I, § 9, prohibits commercialized gambling of the type being conducted by the Nation and affirmatively directs the Legislature to pass laws to prevent it. The Legislature has done so. *See generally*, Penal Law, Article 225. Moreover, the Legislature has specifically stated that it is the public policy of this state "... that the mandate of Section 9 of Article I of the State Constitution, as amended, should be carried out by rigid regulations to prevent commercialized gambling." General Municipal Law, § 185. In view of the fact that Turning Stone is not on Indian land, the Constitution and laws of the State of New York apply to activities on that land. Nevertheless, at this very moment, despite two U.S. Supreme Court rulings and the above provisions of the New York State Constitution and statutes, Class III gaming is being conducted by the Nation at the Turning Stone Casino on non-Indian land without a valid compact. Moreover, this gambling is being conducted with the full

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knowledge - not to mention acquiescence - of State officials, including the Governor and the Attorney General.

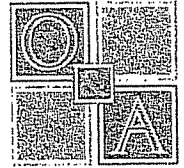
We further note that it is the Constitutional duty of the Governor to "take care that the laws are faithfully executed..." (New York Constitution, Article IV, § 3). Given all of the above, and the fact that the Attorney General and the Governor are fully aware of these provisions, we expect them to take action to cause the cessation of illegal expenditures of state funds to pay New York State Racing and Wagering Board personnel who are presently supervising gambling at said site. Note: Comptroller Alan Hevesi recently issued a Report (No. 2005-S-45) stating that the Racing and Wagering Board had deployed 13 on-site gaming inspectors at Turning Stone. *Id.* at 3. In view of the now well-established illegality of such operations, it is unconscionable to permit taxpayer funds to be further expended for such personnel who would be abetting the continued operation of an illegal enterprise. Also, given the Governor's duties to take care to ensure that the laws are faithfully executed, he should take the immediate appropriate steps to shut down this illegal operation occurring on New York soil. The "Alphonse and Gaston" charade of deferring to Federal officials should cease immediately. The Supreme Court has made it clear that Turning Stone is not on Indian land to begin with and the Bureau of Indian Affairs itself has so acknowledged in its Draft Environmental Impact Statement. Indeed, by letter dated May 13, 2005, addressed to Mr. Ray Halbritter, the Nation's Representative, Governor Pataki advised that by virtue of the U.S. Supreme Court's decision in *City of Sherrill, supra*, the Nation "does not possess governmental jurisdiction over the lands where Turning Stone is located."

We also call your attention to 18 U.S.C. § 1511, which makes it a federal felony for two or more persons to conspire to obstruct the enforcement of the criminal laws of the State with respect to gambling. If one of those persons is a state official, and if one of the persons has supervisory powers over the gambling operations, and if one of those persons takes any act to effect the object of such conspiracy, the statute is violated. Negotiations by State officials with the Nation to continue gaming under the present circumstances would clearly violate that law. For the highest ranking state officers to stand by now, knowing that the operation is illegal, and to allow it to continue, notwithstanding the fact that they have supervisory powers over the operation, raises serious concerns. The Court decisions and the mandate of the statutes makes it clear that the ball is clearly in the lap of your clients and not the Federal authorities. It is also the Governor's statutory duty to defend the State against any action that would seek to impair the sovereignty of the "State over any land under the jurisdiction of the State. *See State Law, § 10.*

I close with a reminder that the prohibitions against gambling are found in Article I, § 9 of the State Constitution, which is part of the Bill of Rights.

Given the season, I would not expect the operations to be closed until after the Holidays. However, I hereby request that you indicate to me by the close of business at 5:00 p.m. on

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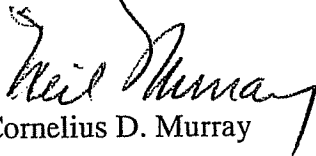
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Friday, December 15, 2006, whether or not your clients intend to cease the expenditure of illegal taxpayer funds at Turning Stone and to take action to ensure that the laws of the State of New York are faithfully executed. Be advised in advance that any indication that they are discussing this matter further with Federal authorities will not be considered an appropriate response. Also be advised that there is no need for further delay. This is no unexpected sudden development. Your clients have had ample time to prepare for this eventuality as the New York Court of Appeals ruled last May that it would not review the Appellate Division's Order of September 30, 2005, rendered over 14 months ago! One would reasonably expect that State officials would by now have decided upon a course of action in the event the Supreme Court were to rule as it did.

Very truly yours,

O'CONNELL AND ARONOWITZ

By:


Cornelius D. Murray

CDM:cm