



Public Hearing of the New York State Senate Committee on Racing, Gaming & Wagering

September 6, 2011 – 11:00 AM – 2:00 PM

**Ontario County Safety Training Facility, Rooms 2 & 3, 2914 County Road 48,
Canandaigua, NY 14424**

WITNESS LIST

1. Robert Porter, President, Seneca Nation of Indians
2. Michael D. Kane, President and CEO, Western Regional Off-Track Betting Corporation
3. Jeffrey Gural, Chairman, Newmark, Knight, Frank
4. Tracy Egan, Executive Director, Thoroughbred Breeding and Development Fund and Jeffrey Cannizzo, Executive Director, New York State Thoroughbred Breeders Association.
5. David Brown, President, and Dennis Petrisak, Vice-President, Finger Lakes Horsemen Benevolent & Protective Association
6. Nelson Acquilano, LMSW, Executive Director, Council on Alcoholism and Addictions of the Finger Lakes and David Young, Problem Gambling Prevention Coordinator, DePaul's National Council on Alcoholism and Drug Dependence



TESTIMONY OF ROBERT ODAWI PORTER
PRESIDENT OF THE SENECA NATION OF INDIANS
BEFORE THE NYS SENATE COMMITTEE ON RACING, GAMING AND WAGERING
SEPTEMBER 6, 2011

I. Introduction and Background.

Nya:weh Ske:no. Greetings to Chairman Bonacic and members of the Committee, and to the other Senators in attendance. I am thankful that you are well, and appreciate the opportunity to address you today.

I am here today on behalf of the Seneca Nation of Indians – and on behalf of those New Yorkers who are employed by the Nation’s enterprises, some of whom have joined us today -- to share with you our perspective on the question of whether the state constitution should be amended to permit commercialized gambling in New York State.

A constitutional amendment allowing commercial casino gambling in Western New York would undermine the Seneca Nation’s billion dollar investment in Western New York. It would also threaten the thousands of jobs we have created since 2002.

Please keep the following in mind as I testify: the Seneca people have lived up to our promises as expressed in the 2002 agreement – we invested hundreds of millions of dollars into getting up and running within a specific time frame. New York State, on the other hand, was not required to spend a single nickel as part of the agreement. Are we now faced with New York State breaking its side of that promise?

Before I address these specific issues, I would like to share with you some relevant historical information that will help you to fully understand the Seneca Nation’s key role in the modern Western New York economy.

In 1794, the Seneca Nation, along with the other nations of the Six Nations Haudenosaunee Confederacy, signed a treaty with the newly established United States of America that recognized the sovereignty of the Seneca Nation and established peace between our nations. This treaty also recognized the Seneca Nation's aboriginal title to what is now known as Western New York State and promised that we would be secure in the "free use and enjoyment" of those lands. This treaty is one of the earliest and most significant treaties in American history as it unified our peoples in a military alliance that proved critical to repelling the last British effort to threaten the United States during the War of 1812.

This treaty was signed right here in Canandaigua, and so it is especially significant that the Committee is conducting its first hearing on the subject of legalizing commercial gambling in the State. In the history of the Seneca and American people, this is a sacred place – a place where solemn commitments were made to respect and honor one another and to live together in peace.

While there have been many challenges in our relationship during the last 216 years, our treaty relationship with the United States has endured. Most recently, the United States fulfilled one of its obligations under the Canandaigua Treaty by sending our share of \$4,500 worth of cloth that is distributed annually to the Haudenosaunee people. This annuity payment, although small by today's standards, clearly demonstrates that our treaty relationship is alive and well.

Unfortunately, many of the promises made to us by the United States have either remained unfulfilled or have been broken. Most notably, the United States has inconsistently protected our Nation from the predatory behavior of New York State and its officials. From the time the Canandaigua Treaty was signed, the Seneca Nation has confronted repeated efforts by the State to take title and assert jurisdiction over our lands, to impose taxation in our lands, and even to take control over our children and our identity as a distinct indigenous people.

These threats have continued to the present day. Nearly sixty years ago, the State pressured us into signing an illegal right-of-way agreement for the New York State Thruway through our Cattaraugus Territory. Fifty years ago, the State actively supported the taking of 10,000 acres of our Allegany Territory by the United States for the Allegheny Reservoir and Kinzua Dam. Thirty-five years ago, the State induced us into allowing the Southern Tier Expressway to cross our Allegany Territory with promises that to this day have not been satisfied.

Despite this long history of predatory behavior, the Nation and the State came together in 2002 to enter into a Class III Gaming Compact that recognized the Nation's exclusive right to offer slot machines in Western New York. While recently a disagreement has emerged – which I will address later in my testimony – the fact remains that the Nation and the State have created thousands of jobs and billions in economic benefit for our two governments and the people of Western New York through Indian gaming.

The question I have for the Committee is this: Will New York State head down the same old path of telling lies to Indians and breaking our agreements by allowing commercial gambling in Western New York in violation of our 2002 Class III Gaming Compact?

II. The Seneca Nation and its Economy.

The Seneca Nation of Indians is the largest of the six indigenous nations that comprise the Six Nations Haudenosaunee (Iroquois) Confederacy. We have a rich history that extends back hundreds of years with origins in this very location. According to oral history, our birthplace as a people is at Ganondagan, near present day Victor, New York, which ironically is now controlled by New York State as a designated historic site. Our ancestors formed a powerful union with the other indigenous nations in what is now upstate New York and southern Ontario. We became known as the “Keepers of the Western Door” and extended our influence far into what is now Western Pennsylvania and Ohio.

Following the American Revolutionary War, we lost most of our aboriginal lands in a land-for-peace deal that secured the title to the lands we now occupy. Most of our 8,000 citizens live on or near our Allegany and Cattaraugus Territories in Western New York. Combined with our Oil Spring, Buffalo Creek, and Niagara Falls Territories, we own and retain full jurisdiction over 50,000 acres.

A. The Seneca Nation Economy.

The loss of most of our lands 200 years ago changed life significantly for the Seneca people. Foremost, the loss of our lands constituted a loss of our national wealth and we began a period of chronic poverty and underdevelopment that only recently has begun to subside.

The Seneca Nation's economic revitalization began in the 1970s based upon economic support from the United States in the form of health care and job training assistance. Later in the decade, a tobacco trade emerged as a few Seneca entrepreneurs and the Nation government began selling tax-free cigarettes to non-Indians in our territory. It is important to note that, based upon the Canandaigua Treaty and the Treaty of Buffalo Creek in 1842, the Seneca Nation and the Seneca people have always been immune from State taxes. It was only when New York State began to heavily tax cigarette sales that the business opportunity was created. Over the years, the tobacco trade has allowed for the Nation government and many Seneca people to start businesses and generate needed revenue for the services we provide our people. It would not have happened if the State had not raised its cigarette taxes to what is now the highest rate in the United States.

While the tobacco trade has been lucrative, the most recent economic success for the Nation has been through gaming. In the early 1980s, the Nation commenced high-stakes bingo operations, which later expanded to include electronic gaming. On January 1, 2003, the Nation opened our Class III casino in Niagara Falls and we have been growing ever since.

Today, the Seneca economy generates a little over \$1 billion annually, employing approximately 6,000 people, including thousands of non-Indians in New York, Pennsylvania and Canada who work at our gaming businesses, our tobacco businesses, and in our government. Our economy has both public and entrepreneurial sectors making the Seneca Nation the fifth largest employer in Western New York.

The Seneca Gaming Corporation has some 3,600 employees – most of whom are non-Indians -- and the Nation government has 1,300 employees. The Seneca Gaming Corporation generated \$95.4 million million in payroll over the last year, plus \$30 million in taxes, insurance and benefits. The Seneca Gaming Corporation spent a total of \$166 million with nearly 1,400 1,380 during the August 2010 to July 2011 time period. Our construction projects over the last nine years – which includes casino construction and public works projects – total approximately \$900 million.

As Seneca Nation leaders, we will do everything that we can to fight the erosion of our treaty rights and to protect the Seneca economy and its positive impact on the regional and state economy. But the numbers make clear that our fight for economic sovereignty is also a fight that protects the livelihoods of thousands of non-Indians, their families, their businesses and their communities throughout our region. I can say with confidence that no other organization or government during the last ten years has made an economic contribution to Western New York like the Seneca Nation.

III. The Seneca Nation's Gaming Interests.

A. The Seneca Gaming Corporation.

Because of its relevance to the question before the Committee, I would like to share with you some specific information regarding our Class III gaming operations.

Pursuant to the 2002 Compact with the New York State, the Seneca Nation owns and operates three Class III casinos:

- ! in Niagara County, known as Seneca Niagara Casino and Hotel on our Niagara Falls Territory,
- ! in Cattaraugus County, known as the Seneca Allegany Casino and Hotel on our Allegany Territory in Salamanca; and
- ! in Erie County, known as the Seneca Buffalo Creek Casino on our Buffalo Creek Territory.

B. Seneca Gaming Exclusivity.

The 2002 agreement provides that in exchange for the exclusive right to offer slot machines in our region – which is the area west of State Route 14 near Seneca Lake – we will pay the State 25% of the “net drop” on those machines. *[A copy of the 2002 NYS-Seneca Nation agreement is attached to my written testimony.]*

Again, let me be clear on this next point, because it is a critical one: the 2002 agreement required the Seneca Nation to invest hundreds of millions of dollars to get up and running within a specific time frame. The Seneca Nation – the Seneca people – took all the risk, while the State of New York took none. New York State had everything to gain, and nothing to lose.

Pursuant to State law, 25% of the monies received by the State are then paid to the “host communities” to mitigate impacts associated with casino operations. To date, the Nation has paid New York State and local municipalities \$475.2 million in exchange for this “exclusivity,” while an additional \$310 million is currently being held in escrow.

C. The NYS/SNI Exclusivity Dispute.

It is important to keep in mind that the 2002 Compact reflects a union of two historic adversaries and that disagreements and disputes over minor issues are inevitable. So, too, are agreements and the Compact has been amended repeatedly to reflect the addition of new games over the years. Two

significant disputes, however, have arisen and serve as the basis for the Nation withholding significant amounts of monies otherwise due to the State.

The first relates to reimbursements of monies invoiced for State Police and State Racing and Wagering Board expenses at the Niagara Falls facility. As a general matter, the Nation reimburses the State for its regulatory expenses, including the salaries of State personnel assigned to casino-related work. Since gaming commenced at Niagara Falls, the State Police have ostensibly provided law enforcement services at that facility and the Nation has been billed for these expenses. Almost from the beginning, however, the Nation – through our regulatory arm, the Seneca Gaming Authority – confirmed unsupported and exorbitant charges by the State Police that were invoiced to the Nation. Because these charges were not defensible – and because the State Police has refused to provide any explanation – the Nation has denied paying these charges for years. To a much lesser extent, we have also disputed charges assessed by the State Racing and Wagering Division. The current unpaid balance of State Police assessed charges is approximately \$48 million.

At the end of the Paterson Administration, some progress was made in resolving this outstanding dispute. Currently, we have been in discussion with representatives of Governor Cuomo and believe that we are on a productive path that may lead to the resolution of this issue in the near future.

The second major dispute involves the Nation's assertion that the State has grossly violated the exclusivity requirement of the 2002 Compact. In 2008, two events occurred that precipitated the current dispute over the Nation's exclusive rights to offer slot machines in Western New York. First, the Nation discovered that an illegal slot-machine game called Moxie Mania was being offered in various taverns in our exclusivity zone. And second, the three racinos in our exclusivity zone – Hamburg, Batavia, and Finger Lakes – were renamed as “casinos” that offered “slot machines.”

The Compact is very clear that a breach of exclusivity by the State completely relieves the Nation of its exclusivity payment to the State from the time of the breach into the future. In this way, the Compact creates a strict liability scheme. The Nation does not have to prove intent or damages – only that the State violated the Compact or allowed the Compact to be violated by others.

Once the breach was discovered, the Nation held back the semi-annual exclusivity payment due at the end of June 2009. The State did not respond. The Nation then held back the next semi-annual payment due in December 2009. Again the State did not respond. In January 2010, the Nation sent a letter to Governor Paterson informing the State of its breach, expressing our legal reasoning why the Nation's exclusivity payment obligation was breached, and asking for a meeting to discuss the issue. Again, the State did not respond. The Nation again held back the semi-annual payment due in June 2010 and in August 2010, the Nation Council formally suspended all payments.

Only then did the State respond. We received an audacious response from Governor Paterson's Counsel accusing the Nation of violating the Compact in retaliation for the State's efforts to impose taxation on cigarettes and demanding immediate payment. While there was a very limited effort at the end of the Paterson Administration to address our concerns about exclusivity, there was no meaningful dialogue to resolve this issue.

We recently met with representatives of Governor Cuomo – Lt. Governor Duffy, Director of State Operations Howard Glaser and Chief Counsel Mylan Denerstein. While there are many issues outstanding between the Nation and the State, it is our hope that we will be able to resolve this dispute and others in the near future.

D. The Seneca Nation Opposes Commercial Casinos Expansion in Western New York.

It should come as no surprise that the Seneca Nation is opposed to the expansion of commercial gambling in New York where our interests are affected. In our view, authorizing commercial casinos in Western New York would represent yet another injustice by the State to violate its written agreements with our Nation.

In 2002, we were promised slot machine exclusivity and we used that exclusivity to invest \$1 billion in Western New York. We made those investments – borrowing and spending hundreds of millions of dollars, employing thousands of construction workers, and hiring thousands of new employees. The future remains just as bright as the past. Most recently, the Seneca Gaming Corporation announced plans to construct a \$53 million addition to the hotel at the Seneca Allegany Casino & Hotel. Plans are also in the works right now for designing our Buffalo Creek Casino and commencing construction next year.

Will the 2002 Class III Gaming Compact become just another of the State's broken promises to the Seneca Nation?

Amending the State constitution to allow commercial casino gaming in Western New York will not improve the Western New York economy. In fact, it will undermine the Seneca Nation's important economic contribution to the region and jeopardize the investment plans currently underway. "

E. The Seneca Nation in the Catskills?

We believe that Indian gaming can and should play an important role in gaming expansion in the State, if that is what is desired. Recently, the United States Department of the Interior lifted restrictions on the ability of Indian nations and tribes to have lands taken into trust for gaming purposes.

We believe that the great things that the Nation and the State have done in Western New York can be replicated in the Catskills region. We have re-established our Catskills development committee and begun the search for a development partner. We have also met with local officials and re-affirmed that our previously negotiated local mitigation agreement remains in effect. I believe with the proper focus, that Indian gaming can come to the Catskills much sooner than passage of a State-wide referendum authorizing commercial gambling.

IV. Conclusion

On behalf of the nearly 14,000 citizens and employees of the Seneca Nation of Indians and the Seneca Gaming Corporation, thank you for conducting this important hearing and for inviting the Nation to testify on our economic development and job partnership and accomplishments in Western New York.

Our record is clear. When Seneca treaties, agreements and sovereignty are respected, all will benefit. We hope to continue our economic and job development efforts in Western New York and beyond, and we look forward to continuing our dialogue with you on this important issue.



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NATION-STATE GAMING COMPACT
BETWEEN THE
SENECA NATION OF INDIANS
AND THE
STATE OF NEW YORK

April 12, 2002

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3 **NATION-STATE GAMING COMPACT**
4 **BETWEEN THE**
5 **SENECA NATION OF INDIANS**
6 **AND THE**
7 **STATE OF NEW YORK**
8
9

10 This Compact is made and entered into between the Seneca Nation of Indians, a
11 sovereign Indian nation ("Nation") and the State of New York ("State") pursuant to the
12 provisions of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* ("IGRA").
13

14 WHEREAS, the Nation is a sovereign Indian nation recognized by the United States of
15 America, possessing all sovereign rights and powers pertaining thereto; and
16

17 WHEREAS, the State is a state of the United States of America, possessing all sovereign
18 rights and powers pertaining thereto.
19

20 NOW, THEREFORE, the NATION and the STATE, consistent with the Memorandum of
21 Understanding between the State Governor and the President of the Seneca Nation of Indians
22 executed on June 20th 2001, and in consideration of the undertakings and agreements hereinafter
23 set forth, hereby enter into this Class III Gaming Compact.
24

1 **1. DEFINITIONS.**

2
3 For purposes of this Compact, including the Appendices:

- 4
5 (a) “Appendix” means an appendix to this Compact, all of which are incorporated by
6 reference herein. “Appendices” means more than one Appendix.
7
8 (b) “Certified Mail” means certified or registered mail, Federal Express, United Parcel
9 Service, Express Mail or any similar mail delivery service generating a return receipt or a
10 signature of the recipient, confirming delivery of that mail. Certified Mail does not
11 include electronic mail.
12
13 (c) “Class III Gaming” has the meaning ascribed to such term in 25 U.S.C. §2703(8).
14
15 (d) “Class III Gaming Employee” means an individual employee of the Nation Gaming
16 Operation who renders Class III Gaming-related employee services in a Nation Gaming
17 Facility.
18
19 (e) “Class III Gaming Employee License” means a license issued by the SGA to a Class III
20 Gaming Employee pursuant to the procedures set forth in Appendix C.
21
22 (f) “Class III Gaming Key Employee” means a natural person employed by the Nation
23 Gaming Operation in a supervisory capacity empowered to make discretionary decisions
24 that affect gaming operations as determined by the SGA.
25
26 (g) “Class III Gaming Service Enterprise” means an entity or individual, other than a Class
27 III Gaming Employee, that provides Class III Gaming services, Class III Gaming supplies
28 or Class III Gaming equipment to a Nation Gaming Facility.
29
30 (h) “Class III Gaming Service Enterprise License” means a license issued by the SGA to a
31 Class III Gaming Service Enterprise pursuant to the procedures set forth in Appendix D.
32
33 (i) “Class III Non-Gaming Employee” means an individual employee of the Nation Gaming
34 Operation working in a Gaming Facility who is not a Class III Gaming Employee.
35
36 (j) “Class III Non-Gaming Employee License” means a license issued by the SGA to a Class
37 III Gaming Employee pursuant to the procedures set forth in Appendix C.
38
39 (k) “Compact” means this Nation-State Gaming Compact between the Nation and the State
40 and all Appendices attached hereto.
41
42 (l) “Effective Date” has the meaning set forth in Paragraph 4(a).
43
44 (m) “Gaming Device” means two categories of gaming devices: (i) ‘slot machines’ as that
45 term is defined in Section 9(a) of Appendix A; and, (ii) ‘video lottery games’ as that term
46 in defined in Section 9(a) of Appendix A.

- 1
2 (n) "Gaming Facility" means those portions of a structure in which the Nation conducts
3 Class III Gaming pursuant to this Compact. For purposes of this definition, a Gaming
4 Facility shall be deemed to include only those areas of a structure that the Nation uses for
5 Class III Gaming operations. Notwithstanding the foregoing, no areas of a structure
6 exclusively used for Class I or Class II gaming or for non-gaming activities shall be
7 considered part of a Gaming Facility.
8
- 9 (o) "Immediate Family Member" means the spouse, parent, or child of a person, or a parent
10 or child of the spouse of that person.
11
- 12 (p) "Licensing Review Commission" means the entity established to implement the appeal
13 procedures set forth in Appendices C-E.
14
- 15 (q) "Material Breach" means a material, uncured breach of this Compact.
16
- 17 (r) "MOU" means the Memorandum of Understanding between the State Governor and the
18 President of the Seneca Nation of Indians executed on June 20, 2001, incorporated by
19 reference herein.
20
- 21 (s) "Nation" means the Seneca Nation of Indians, its authorized officials, agents or
22 representatives acting in their official capacities.
23
- 24 (t) "Nation Gaming Operation" means the enterprise, business or entity operated or
25 authorized by the Nation to operate or conduct any form of Class III Gaming on Nation
26 lands pursuant to this Compact; provided, however, that this Compact shall apply to
27 operations of such enterprise, business or activity only to the extent that such operations
28 are directly related to Class III Gaming undertaken by the Nation pursuant to this
29 Compact.
30
- 31 (u) "Nation Law Enforcement Agency" means the agency of the Nation established and
32 maintained by the Nation pursuant to the Nation's sovereign powers to carry out law
33 enforcement within the lands of the Nation.
34
- 35 (v) "Non-Class III Gaming Registration" means a registration issued by the SGA to an
36 enterprise or other person pursuant to the procedures set forth in Appendix E.
37
- 38 (w) "Paragraph" means a numbered paragraph of this Compact.
39
- 40 (x) "Party" means either the Nation or the State.
41
- 42 (y) "Parties" means the Nation and the State.
43
- 44 (z) "Seneca Gaming Authority" or "SGA" means the entity established by the Nation
45 responsible for regulating Class III Gaming undertaken by the Nation pursuant to this
46 Compact.

1
2 (aa) "State" means the State of New York, acting through the Governor as chief executive
3 officer and such other officials, agents or representatives that he or she has duly
4 authorized, acting in their official capacities.
5

6 (bb) "State Gaming Officials" or "SGO" means the officials designated by the State to fulfill
7 the State's responsibility to ensure Nation Gaming Operation and SGA compliance with
8 the terms of this Compact.
9

10 (cc) "State Contribution" has the meaning set forth in Paragraph 12(b)(i).
11

12 **2. NO NON-GAMING RELATED ISSUES.**
13

14 Nothing in this Compact affects any matter not specifically addressed herein.
15

16 **3. AUTHORIZED CLASS III GAMING.**
17

18 The Nation shall conduct only those Class III Gaming games specifically listed in
19 Appendix A, in accordance with the specifications set forth in Appendices A and B.
20

21 **4. TERM OF COMPACT.**
22

23 (a) Effective Date. This Compact shall be effective after publication of notice of approval by
24 the Secretary of the Interior of the United States in the Federal Register in accordance
25 with 25 U.S.C. §2710(d)(3)(B), provided that the Compact has been executed and
26 certified by the Governor of the State and by the Nation pursuant to a referendum vote
27 authorizing such execution ("Effective Date").
28

29 (b) Termination Date. This Compact shall terminate on the fourteenth (14th) anniversary of
30 the Effective Date, unless renewed pursuant to Paragraph 4(c) or terminated pursuant to
31 Paragraph 4(d).
32

33 (c) Renewals.
34

35 (1) Unless either Party objects in writing delivered to the other Party no later than one
36 hundred twenty (120) days prior to the expiration of the fourteen (14)-year term
37 established pursuant to Paragraph 4(b), the term of this Compact shall be renewed
38 automatically for an additional period of seven (7) years.
39

40 (2) In the event either Party does timely object to the automatic renewal of the term
41 of this Compact, the Parties shall meet promptly following the receipt of such
42 written objection and use their best efforts to address the objecting Party's
43 concerns through frequent and regular good faith negotiations. In the event the
44 objecting Party's concerns cannot be resolved within a period of one hundred
45 twenty (120) days following the commencement of such negotiations, the Party
46 may submit only the issue of the other Party's good faith in the renewal

1 negotiations to the Party Dispute Resolution provisions set forth in Paragraph 14;
2 provided, however, that during the pendency of dispute resolution, the terms of
3 this Compact shall remain in effect.
4

5 (d) Early Termination.
6

7 (1) Either Party may terminate this Compact at any time if any of the following
8 occurs:
9

10 a. The IGRA is repealed;

11 b. The Nation adopts a referendum revoking the Nation's authority to
12 conduct Class III Gaming; or,
13

14 c. The other Party commits a Material Breach.
15

16
17 (2) To effectuate an elective termination pursuant to this subparagraph, the
18 terminating Party shall serve notice of such termination upon the other Party in
19 accordance with Paragraph 17(c), which notice shall be effective no earlier than
20 six (6) months following the date on which the other Party receives such notice.
21

22 **5. NATION REGULATORY AUTHORITY.**
23

24 (a) General Responsibility. The SGA shall have responsibility for the on-site regulation of
25 Class III Gaming undertaken by the Nation pursuant to this Compact. The SGA's
26 authority and responsibility shall be as set forth in this Compact and its Appendices.
27

28 (b) Specific Elements of SGA's Regulatory Responsibilities. The Nation shall ensure that
29 the SGA regulates the Class III Gaming undertaken by the Nation pursuant to this
30 Compact in a manner that ensures compliance with the provisions set forth in Appendix
31 J.
32

33 (c) Inspectors. SGA shall employ inspectors who shall be present in all Gaming Facilities
34 during all hours of operation and who shall be under the authority of the SGA and not the
35 Nation Gaming Operation.
36

37 (d) Access. Such inspectors shall be afforded access to all areas of the Gaming Facilities
38 during all hours of operation without notice.
39

40 (e) Investigations. SGA inspectors shall have authority to investigate any matter relating to
41 the regulation of the Nation's Class III Gaming operations pursuant to this Compact.
42

43 (f) Provision of Reports; Process and Resolution of Disputes. The SGA shall cooperate with
44 the SGO and shall make immediately available to the SGO all patron complaints, incident
45 reports, gaming violations, surveillance logs, and security reports. If a report indicates
46 that a complaint, violation or incident has not been resolved, the report shall state what

1 remedial steps have been or will be taken to resolve the matter. A follow-up report shall
2 indicate the final disposition of the matter. If the SGO believes that the action or inaction
3 taken by the SGA violates the provisions of this Compact or its Appendices, the Parties
4 shall meet to settle the matter. If the Parties cannot agree, the Nation or the State may
5 initiate the Party Dispute Resolution procedure set forth in Paragraph 14.
6

7 (g) Fines. The SGA shall be empowered by Nation regulation to impose fines and other
8 appropriate sanctions on the Nation Gaming Operation and its employees, licensees and
9 vendors within the jurisdiction of the Nation for violations of this Compact and its
10 Appendices. The SGA shall immediately notify the State, in writing of any fine or
11 sanction imposed pursuant to this subparagraph.
12

13 (h) Restriction on SGA. All SGA employees and officials, and Immediate Family Members
14 of such employees and officials, shall have no financial interest in Class III Gaming
15 undertaken by the Nation pursuant to this Compact, other than an interest that accrues
16 solely by virtue of Nation citizenship. No SGA employee or official shall be employed
17 by a person or entity required to be licensed pursuant to this Compact. This provision
18 shall be in addition to, not in derogation of, any applicable Nation law regarding conflicts
19 of interest.
20

21 (i) Identification Badges. The SGA shall issue color-coded identification badges to all SGO
22 and other State personnel working at a Gaming Facility, which badges shall be worn by
23 the SGO and other State personnel at all times when on the premises of the Gaming
24 Facility. Such badges shall remain the property of SGA and must be returned at the
25 conclusion of the official's work at the Gaming Facility.
26

27 **6. STATE RESPONSIBILITY.**

28
29 (a) Generally. The SGO shall have responsibility to ensure Nation compliance with the
30 terms of this Compact.
31

32 (b) Officials. Those officials designated by the State to fulfill the role set forth in Paragraph
33 6(a) above shall collectively be known as the "SGO".
34

35 (c) Access. For purposes of fulfilling its responsibilities as set forth in Paragraph 6(a), SGO
36 shall be afforded immediate, unfettered access to all areas of the Gaming Facilities during
37 all hours of operation without notice. SGO shall be afforded full access to areas of the
38 Gaming Facilities in which money is counted or kept only when accompanied by SGA
39 personnel, or when SGA otherwise provides permission. The State shall not cause to be
40 present at the Gaming Facilities more employees than are reasonably necessary to carry
41 out its responsibilities under Paragraph 6(a).
42

43 (d) Notice of violations. The State shall promptly notify the Nation and the SGA of any
44 alleged violations of this Compact with sufficient detail to allow the SGA to investigate
45 and if necessary rectify the alleged violation.
46

- 1 (e) Conduct of State personnel. SGO shall take all reasonable measures to avoid interfering
2 with the conduct of Class III Gaming and related activities and operations of the Nation
3 Gaming Operation.
4
- 5 (f) Records Access. In fulfilling the State role under this Compact, SGO may request, and
6 the SGA shall promptly provide during hours of operation, access to business and
7 accounting records of its Class III Gaming activities; provided, however, that all records
8 to which SGA provides access to SGO pursuant to this Paragraph 6(f) shall be subject to
9 the provisions of Paragraph 15 (Confidentiality).
10
- 11 (g) Investigations. The SGO shall have the authority to investigate any alleged violations of
12 this Compact. The SGA and the Nation Gaming Operation shall cooperate with the SGO
13 in such investigations.
14
- 15 (h) Quarterly meetings. Representatives of SGA, the Nation Gaming Operation and SGO
16 shall meet on a quarterly basis, unless otherwise agreed, to review past practices and
17 examine methods to improve the regulatory and enforcement programs established
18 pursuant to this Compact.
19
- 20 (i) Restriction on SGO. SGO, and Immediate Family Members of such SGO, shall have no
21 financial interest in Class III Gaming undertaken by the Nation pursuant to this Compact,
22 other than an interest that accrues under State law solely by virtue of being a citizen of
23 the State, or such interest that accrues under Nation law solely by virtue of Nation
24 citizenship. SGO, and any Immediate Family Members of such SGO, shall not be
25 employed by a person or entity required to be licensed pursuant to this Compact. This
26 provision shall be in addition to, and not in derogation of, any applicable State law
27 regarding conflicts of interest.
28
- 29 (j) Cultural Exchange. The State agrees and understands that the Nation possesses its own
30 unique social customs, traditions, laws, and history. In order to make SGO and State
31 personnel working at, or in conjunction with, a Gaming Facility more aware of the
32 Nation's culture, traditions, laws and history and for purposes of fostering an
33 environment that is consistent therewith, the Nation may conduct periodic cultural
34 seminars in a manner of its choosing for all such personnel. It shall be the policy of the
35 Nation and the State that such employees attend such seminars.
36
- 37 (k) Office space, parking. The SGA shall provide reasonable on-site office space at each
38 Gaming Facility for use by SGO and for State personnel working at a Gaming Facility
39 pursuant to this Compact. SGO and State personnel on official business may park at the
40 nearest available parking space at the Nation's Gaming Facilities. The Nation Gaming
41 Operation shall reserve at each Gaming Facility two parking spaces immediately adjacent
42 to an entrance (other than the front entrance) to the Gaming Facility for use by State
43 personnel in undertaking their duties under this Compact.
44
45
46

1 **7. LAW ENFORCEMENT MATTERS.**

- 2
- 3 (a) Jurisdiction. Nothing in this Compact shall affect the law enforcement jurisdiction of the
4 Nation or the State over the Nation’s lands as provided by applicable law.
- 5
- 6 (b) Nation Gaming Operation security personnel. The Nation Gaming Operation shall
7 provide security personnel to protect each Gaming Facility, its employees, patrons and
8 their property.
- 9

10 **8. ACCOUNTING STANDARDS AND AUDITING REQUIREMENTS.**

- 11
- 12 (a) Books and records. The Nation Gaming Operation shall make and keep books and
13 records that accurately and fairly reflect each day’s transactions, including but not limited
14 to receipt of funds, expenses, prize claims, prize disbursements or prizes liable to be paid,
15 and other financial transactions of or related to the Nation’s Gaming Facilities, so as to
16 permit preparation of monthly and annual financial statements in conformity with
17 Generally Accepted Accounting Principles as applied to the gaming industry and to
18 maintain daily accountability. The Nation Gaming Operation’s books and records shall
19 be susceptible of an annual audit in accordance with this Compact, in accordance with
20 Generally Accepted Accounting Principles. A chart of accounts, consistent with
21 Appendix F shall be adopted.
- 22
- 23 (b) Additional reports and records related to financial transactions. Upon SGA’s request, the
24 Nation Gaming Operation shall contemporaneously submit to SGO copies of all reports,
25 letters, and other documents relating to its Class III Gaming activities filed with the
26 National Indian Gaming Commission pursuant to 25 C.F.R. § 571.13. SGO shall
27 maintain as strictly confidential all such reports, letters and documents in accordance
28 with Paragraph 16.
- 29
- 30 (c) Class III Gaming accounting and auditing procedures.
- 31
- 32 (1) The Nation Gaming Operation shall, at its own expense, cause the annual
33 financial statements of the Gaming Facilities to be audited in accordance with
34 Generally Accepted Auditing Standards as applied to audits for the gaming
35 industry by a certified public accountant. Such audit may be conducted in
36 conjunction with any other independent audit of the Nation, provided that the
37 requirements of this Paragraph are met, and provided further that, the information
38 in the audit not related to Class III Gaming shall not be requested by the SGO or
39 provided by the SGA.
- 40
- 41 (2) A copy of the current audited financial statement as it relates to the Nation’s Class
42 III Gaming activities, together with the report thereon of the Nation’s independent
43 auditor, shall be submitted on an annual basis to SGA not later than one hundred
44 twenty (120) days following the end of the accounting period under review. Upon
45 request by SGO, SGA shall promptly provide a copy of such current report to
46 SGO.

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- (3) Subject to the limitations set forth in Paragraph 8(c)(1) above, the Nation Gaming Operation shall require its independent auditor to render:
 - a. A report on the material weaknesses, if any, in accounting and internal controls.
 - b. A report expressing the opinion of the independent auditor based on his or her examination of the financial statements, on the extent to which the Nation's Class III Gaming activities have followed in all material respects during the period covered by the examination, the system of accounting and internal controls adopted by the Nation. The independent auditor shall also make recommendations in writing regarding improvements in the system of accounting and internal controls as required by the National Indian Gaming Commission.
 - (4) The Nation's independent auditor shall retain a copy of each audit report, together with copies of all engagement letters, management letters, supporting and subsidiary documents, and other work papers in connection therewith, for a period of not less than three (3) years.
 - (5) The Nation Gaming Operation shall submit a copy of the reports required by Paragraph 8(c)(3) to SGA not later than one hundred twenty (120) days following the end of the accounting period under review or within thirty (30) days of receipt, whichever is earlier. Upon request by SGO, SGA shall promptly provide a copy of such current report to SGO.
 - (6) Nothing herein shall be construed to affect the right of the SGO to request audits from SGA for the purpose of confirming compliance by the Nation Gaming Operation with the provisions of this Compact. All documents, materials, books and records reviewed and/or copied for purpose of such audits shall be confidential in accordance with Paragraph 15 of this Compact. SGO shall bear the cost of such "additional audits" and such costs shall not be deemed "reimbursable expenses" for purposes of Paragraph 13.

36 9. **PERSONAL INJURY REMEDIES FOR PATRONS; INSURANCE**
37 **REQUIREMENTS.**
38

- 39 (a) **Insurance requirements.** During the term of this Compact, the Nation shall require the
40 Nation Gaming Operation to obtain and maintain public liability insurance insuring the
41 Nation Gaming Operation, its agents and employees against claims, demands or liability
42 for bodily injury and property damages by or to a visitor at the Gaming Facilities arising
43 out of or relating to the operation of the Gaming Facilities. Such liability insurance shall
44 provide coverage of no less than five million dollars (\$5,000,000.00) per person and five
45 million dollars (\$5,000,000.00) per occurrence, and shall cover both negligent and
46 intentional torts.

1
2 (b) Claims procedures. The Nation agrees that it will establish procedures applicable to the
3 Gaming Facilities to govern the resolution of claims against the Nation Gaming
4 Operation, its employees and agents that are covered by the insurance required pursuant
5 to Paragraph 9(a). The procedures that the Nation will establish are set forth in Appendix
6 H. It is understood that the Nation's agreement to this provision is not intended to and
7 does not constitute a waiver of its sovereign immunity from suit with respect to any such
8 claim.
9

10 **10. INTEGRITY OF GAMING DEVICES.**
11

12 (a) Designation of independent gaming test laboratory. The Nation Gaming Operation shall
13 propose to the State, with supporting documentation, an independent gaming test
14 laboratory that is competent and qualified to conduct scientific tests and evaluations of
15 Gaming Devices and to otherwise perform the functions set out in the Paragraph 10. The
16 selection of the independent gaming test laboratory is subject to this consent of the State,
17 but the State shall not unreasonably withhold its consent if the independent gaming test
18 laboratory holds a license in good standing in New Jersey, Nevada or Mississippi. If, at
19 any time, any of the independent gaming test laboratory's licenses are suspended,
20 terminated or subject to disciplinary action, the independent test laboratory shall
21 discontinue its responsibility under this Paragraph 10 and the Nation Gaming Operation
22 shall propose a new independent gaming test laboratory as provided herein.
23

24 (b) Testing and approval of Gaming Devices. The Nation Gaming Operation may not
25 acquire or expose for play any Gaming Device unless:
26

- 27 (1) The manufacturer or distributor that sells, leases or distributes such Gaming
28 Devices has obtained a Class III Gaming Service Enterprise License from the
29 SGA; and
30
- 31 (2) The Gaming Devices, or a prototype thereof, have been tested, approved and
32 certified by the independent gaming test laboratory as meeting the requirements
33 specified by this Compact, in accordance with the following process.
34
- 35 (3) The Nation Gaming Operation shall provide, or require that the manufacturer
36 provide, to the independent gaming test laboratory two (2) copies of each Gaming
37 Device's illustrations, schematics, block diagrams, technical and operation
38 manuals, program object and source codes, hexadecimal dumps (the compiled
39 computer program represented in base 16 format), if any, and any other
40 information requested by the independent gaming test laboratory. Upon consent
41 of the manufacturer, the SGA shall also make all such materials available to the
42 SGO, upon request, subject to Paragraph 15.
43
- 44 (4) If requested by the independent gaming test laboratory, the Nation Gaming
45 Operation shall require the manufacturer to transport not more than two (2)
46 working models of a Gaming Device to a location designated by the laboratory

1 for testing, examination or analysis. The independent gaming test laboratory shall
2 provide to the Nation Gaming Operation and to the SGO a report that contains
3 findings, conclusions and a certification that the Gaming Devices conform or fail
4 to conform to the requirements specified by this Compact. If the independent
5 gaming test laboratory determines that such Gaming Device fails to conform to
6 such requirements, and if modifications can be made that would bring the Gaming
7 Device into compliance, the report may contain recommendations for such
8 modifications.
9

- 10 (5) The manufacturer or distributor shall assemble and install all Gaming Devices in a
11 manner approved by the independent gaming test laboratory.
12

13 (c) Modifications of Gaming Devices.
14

- 15 (1) No modification to the assembly or operations of any Gaming Device may be
16 made after testing and certification unless the independent gaming test laboratory
17 certifies to the SGA that the Gaming Device as modified conforms to the
18 requirements specified by this Compact. All such proposed modifications shall be
19 described in a written request made to SGA and the independent gaming test
20 laboratory and promptly disclosed to the SGO. The request shall contain
21 information describing the modification and the reason(s) therefor, and shall
22 provide all documentation required by the independent gaming test laboratory. In
23 emergency situations in which modifications are necessary to preserve the
24 integrity of a Gaming Device, the independent gaming test laboratory is
25 authorized to grant temporary certification of the modifications of up to thirty (30)
26 days pending compliance with this Paragraph 10.
27

- 28 (2) With respect to any modifications proposed to a Gaming Device, the Nation
29 Gaming Operation shall advise the SGO in writing of any such modification no
30 less than ten (10) days prior to implementing the modification, and the SGO shall
31 have the right to request that the SGA seek prompt testing and certification of the
32 modification. However, the Nation Gaming Operation shall not be precluded
33 from implementing such modification prior to any such request. The modification
34 shall be withdrawn if the independent gaming test laboratory concludes that the
35 modified Gaming Device fails to conform to the requirements specified by this
36 Compact.
37

- 38 (d) Conformity to technical standards. Before exposing a Gaming Device for play, the
39 Nation Gaming Operation must first obtain and submit to the SGA a written certification
40 from the manufacturer or distributor that upon installation each such Gaming Device
41 placed at the Nation's Gaming Facilities: conforms precisely to the exact specification of
42 the Gaming Device tested and approved by the independent gaming test laboratory; and
43 operates and plays in accordance with the requirements specified in this Compact. SGA
44 shall promptly provide a copy of such certification to SGO.
45

1 (e) Ex parte communication. Neither Party shall communicate with the independent gaming
2 test laboratory, whether in writing, or by telephone or otherwise, concerning the approval
3 of the Gaming Devices without providing the other Party with a reasonable opportunity
4 to participate in or respond to such communication, provided that disclosures of
5 information under Paragraph 10(b)(3) above may not be made to SGO without the prior
6 consent of the manufacturer. The Nation Gaming Operation, SGA and the SGO, except
7 as provided by Paragraph 10(b)(3) above, shall ensure that copies of all written
8 communications sent to or received from the independent gaming test laboratory are
9 provided immediately to the other Party.

10
11 (f) Payment of independent gaming test laboratory fees. The Nation Gaming Operation shall
12 be responsible for the payment of all original independent gaming test laboratory fees and
13 costs, and fees for modifications made at SGA's request, in connection with the duties
14 described in this Paragraph. SGO shall bear the cost of any duplicate or "random" testing
15 initiated at the request of SGO. SGA shall provide to the SGO copies of all independent
16 gaming test laboratory invoices and payments by the Nation Gaming Operation, which
17 shall have the right to audit such fees.

18
19 (g) Independent gaming test laboratory duty of loyalty. The Nation Gaming Operation shall
20 inform the independent gaming test laboratory in writing that, irrespective of the source
21 of its fees, the independent gaming test laboratory's duty of loyalty and reporting
22 requirements run equally to the Nation Gaming Operation, SGA and to the SGO.

23
24 **11. SITES FOR GAMING FACILITIES.**

25
26 (a) Subject to the provisions of this Paragraph 11, the Nation may establish Gaming
27 Facilities:

- 28
29 (1) in Niagara County, at the location in the City of Niagara Falls indicated on the
30 map of downtown Niagara Falls attached as Appendix I, or at such other site as
31 may be determined by the Nation in the event the foregoing site is unavailable to
32 the Nation for any reason; and
33
34 (2) in Erie County, at a location in the City of Buffalo to be determined by the
35 Nation, or at such other site as may be determined by the Nation in the event a site
36 in the City of Buffalo is rejected by the Nation for any reason; and
37
38 (3) on current Nation reservation territory, at such time and at such location as may
39 be determined by the Nation.

40
41 (b) With respect to the sites referenced in subparagraphs 11(a)(1) and 11(a)(2):

- 42
43 (1) The sites shall be utilized for gaming and commercial activities traditionally
44 associated with the operation or conduct of a casino facility;
45

1 (2) The State agrees to assist the Nation in acquiring the site set forth in Appendix I
2 within the limits of the Seneca Settlement Act funds that the Nation has
3 committed to the acquisition of such site;
4

5 a. No later than thirty (30) days after the execution of this Compact by both
6 Parties, the State, through the Empire State Development Corporation
7 (“ESDC”) or otherwise, shall transfer fee title to the Niagara Falls
8 Convention Center and such other property as the State may own within
9 the boundaries of the parcel identified in Appendix I in fee simple to the
10 Nation in consideration of a payment from the Nation of one dollar
11 (\$1.00) in funds appropriated by the Seneca Settlement Act;
12

13 b. The Nation shall lease back to the State the Niagara Falls Convention
14 Center building for a period of twenty-one (21) years for an annual lease
15 payment of one dollar (\$1.00);
16

17 c. The State, in turn, shall lease to the Nation the Niagara Falls Convention
18 Center building for a period of twenty one (21) years for an annual lease
19 payment of one dollar (\$1.00) until such time as the Nation constructs and
20 begins operation of a permanent Gaming Facility in the Niagara Falls, at
21 which time the Nation shall pay to the State the balance, as of July 1,
22 2002, of the general obligation bonds pledged in connection with the
23 Niagara Falls Convention Center; and,
24

25 d. The State shall assist the Nation in whatever manner appropriate,
26 including the exercise of the power of eminent domain, to obtain the
27 remaining lands described in Appendix I on the best economic terms
28 possible. In the event the State does obtain all or part of the lands
29 described in Appendix I through exercise of the power of eminent domain,
30 it shall promptly convey such lands to the Nation at a price equal to the
31 cost of acquisition.
32

33 (3) The State shall support the Nation in its use of the procedure set forth in the
34 Seneca Settlement Act, 25 U.S.C. §1774f(c), to acquire restricted fee status for
35 the site described in Appendix I and any other site chosen by the Nation pursuant
36 to Paragraphs 11(a)(1) and 11(a)(2), to which the State has agreed, such
37 agreement not to be unreasonably withheld. For purposes of such support from
38 the State, the State shall assist the Nation directly with the Department of the
39 Interior, either in writing or in person, as the Parties deem appropriate and
40 necessary to obtain expeditious action on the Nation’s notifications under section
41 1774f(c) of the Seneca Settlement Act and on any other application made by the
42 Nation to obtain requisite approvals.
43

44 (4) The Nation agrees that it will use all but five million dollars (\$5,000,000.00) of
45 the funds remaining from amounts appropriated by the Seneca Settlement Act to
46 acquire the parcels in the City of Niagara Falls and the City of Buffalo.

- 1
2 (c) The Nation agrees that it will dedicate Seneca Settlement Act funds remaining after the
3 acquisition of the sites referenced in Paragraph 11(a)(1) and 11(a)(2) to the acquisition of
4 parcels to meet the housing needs of the Nation's members. Unless otherwise agreed by
5 the Parties, such housing parcels shall be physically and immediately contiguous and
6 adjacent to either: (i) an existing reservation of the Nation, or (ii) the sites referenced in
7 Paragraph 11(a)(1) and 11(a)(2) if actually acquired. The State shall support the Nation
8 in development of such housing projects and shall support any notification made by the
9 Nation under section 1774f of the Seneca Settlement Act for a housing development for
10 Nation members.
11
- 12 (d) The Parties agree that host municipalities should be compensated to be able to adjust to
13 the economic development expected to result from the Gaming Facilities authorized
14 under this Compact. Consistent with this goal, the State shall reach financial agreements
15 with the host municipal governments, and any payments made pursuant to such
16 agreements shall be made by the State.
17

18 **12. EXCLUSIVITY AND STATE CONTRIBUTION.**
19

20 (a) Exclusivity.
21

- 22 (1) Subject to subparagraphs 12(a)(2) and 12(a)(3), the Nation shall have total
23 exclusivity with respect to the installation and operation of, and no person or
24 entity other than the Nation shall be permitted to install or operate, Gaming
25 Devices, including slot machines, within the geographic area defined by: (i) to the
26 east, State Route 14 from Sodus Point to the Pennsylvania border with New York;
27 (ii) to the north, the border between New York and Canada; (iii) to the south, the
28 Pennsylvania border with New York; and (iv) to the west, the border between
29 New York and Canada and the border between Pennsylvania and New York.
30
- 31 (2) In the event the Tuscarora Indian Nation or the Tonawanda Band of Seneca
32 Indians initiate negotiations with the State to establish a Class III Gaming
33 compact, the State may agree to include Gaming Devices in any such compact
34 that permits gaming facilities within the geographical area of exclusivity set forth
35 in Paragraph 12(a)(1) without causing a breach of this Paragraph 12; (i) provided,
36 however, that in no event shall the State permit another Indian nation to establish
37 a Class III Gaming facility within a twenty five (25) mile radius of any Gaming
38 Facility site authorized under this Compact unless such facility is to be established
39 on federally recognized Indian lands existing as of the Effective Date of this
40 Compact.
41
- 42 (3) The exclusivity granted under Paragraph 12(a)(1) shall cease to apply with respect
43 to any one of the sites authorized under this Compact: (i) if the Nation fails to
44 commence construction on such site with thirty six (36) months of the Effective
45 Date; or (ii) if the Nation fails to commence Class III Gaming operations on such
46 site within sixty (60) months of the Effective Date.

1
2 (4) With the exception of a violation of the proviso set forth in Paragraph 12(a)(2)(i),
3 the Nation's obligation to pay and the State's right to receive the State
4 Contribution from the operation and conduct of a particular category of Gaming
5 Device as defined in Paragraph 1(m) shall cease immediately in the event of a
6 breach by the State of the exclusivity provisions set forth in this Paragraph 12(a)
7 only as to that particular category of Gaming Device for which exclusivity no
8 longer exists.
9

10 (5) With respect to a violation of the proviso set forth in Paragraph 12(a)(2)(i), the
11 Nation's obligation to pay and the State's right to receive the State Contribution
12 shall cease immediately as to all categories of Gaming Devices.
13

14 (b) State Contribution.
15

16 (1) In consideration of the exclusivity granted by the State pursuant to Paragraph
17 12(a), the Nation agrees to contribute to the State a portion of the proceeds from
18 the operation and conduct of each category of Gaming Device for which
19 exclusivity exists, based on the net drop of such machines (money dropped into
20 machines, after payout but before expense) and totaled on a cumulative quarterly
21 basis to be adjusted annually at the end of the relevant fiscal year, in accordance
22 with the sliding scale set forth below ("State Contribution"):
23

24 Years 1-4

25
26 18%, with "Year 1" commencing on the date on which the first Gaming
27 Facility established pursuant to this Compact begins operation, and with
28 Payments during this initial period are to be made on an annual basis.
29

30 Years 5-7

31
32 22%, with payments during this period to be made on a semi-annual basis.
33

34 Years 8-14

35
36 25%, with payments during this period to be made on a quarterly basis.
37

38 (2) In the event the States reaches a compact with another Indian tribe regarding
39 Gaming Devices of a like kind that has State contribution provisions that are more
40 favorable to the Indian tribe than those set forth herein, the terms of such other
41 compact shall be automatically applicable to this Compact at the Nation's option.
42

43 (3) Any dispute regarding a payment by the Nation of the State Contribution must be
44 raised within one (1) year of the receipt by the State of the audited financial
45 statements required pursuant to Paragraph 8(c)(2).
46

1
2 **13. REIMBURSEMENT FOR STATE COSTS OF OVERSIGHT.**
3

4 Pursuant to Section 2710(d)(3)(c)(iii) of the IGRA, the Nation shall reimburse the State
5 for certain costs associated with the oversight of this Compact, as set forth in Appendix
6 G.
7

8 **14. PARTY DISPUTE RESOLUTION.**
9

- 10 (a) Purpose. The Nation and the State intend to resolve disputes in a manner that will foster
11 a spirit of cooperation and efficiency in the administration of and compliance by each
12 Party with the provisions of this Compact.
13
- 14 (b) Negotiation. In the event of any dispute, claim, question, or disagreement arising from or
15 relating to this Compact or the breach hereof, the Parties shall use their best efforts to
16 settle the dispute, claim, question or disagreement. To this effect, either Party may
17 provide written notice of a claim to the other. Upon receipt of such written notice, the
18 Parties shall then meet within fourteen (14) days, shall negotiate in good faith and shall
19 attempt to reach a just and equitable solution satisfactory to both Parties.
20
- 21 (c) Method of dispute resolution. If the Parties do not reach such solution within a period of
22 thirty (30) days after such meeting, or if the Parties fail to meet and thirty (30) days pass
23 after the written notice of a claim is received, then, upon notice by either Party to the
24 other, either Party may submit the dispute, claim, question, or disagreement to binding
25 arbitration.
26
- 27 (d) Arbitration notice. The notice for arbitration shall specify with particularity the nature of
28 the dispute, the particular provision of the Compact at issue and the proposed relief
29 sought by the Party demanding arbitration; provided, however, that neither Party may
30 seek monetary damages for any alleged dispute, claim, question or disagreement.
31
- 32 (e) Selection of arbitrators. Each Party shall select one arbitrator and the two arbitrators
33 shall select the third.
34
- 35 (f) Procedures for arbitration. Arbitration under this Paragraph shall be conducted in
36 accordance with the rules of the American Arbitration Association or such other rules as
37 the Parties may mutually agree.
38
- 39 (g) Arbitration costs. The cost of the arbitration shall be shared equally by the Parties, but
40 the Parties shall bear their own costs and attorneys' fees associated with their
41 participation in the arbitration.
42
- 43 (h) Remedies. The arbitrators shall exempt the Nation from the payment of the State
44 Contribution for any breach of the State's commitments to exclusivity as set forth in
45 Paragraph 12(a). For Material Breaches, the arbitrators may impose as a remedy only
46 specific performance or termination of the Compact. For all other breaches other than

1 Material Breaches, the arbitrators may impose as a remedy only specific performance. In
2 no event shall monetary damages, other than specific performance, be available as a
3 remedy to either Party for any alleged breaches of this Compact, including Material
4 Breaches. An arbitration award against the Nation for specific performance that entails
5 the payment of money to the State shall be satisfied solely and exclusively from the
6 revenues of the Nation's Class III Gaming Facilities operated pursuant to this compact.
7 Either Party may apply to the arbitrators seeking injunctive relief for an alleged violation
8 of this Compact, and with respect to the relevant site, until the arbitration award is
9 rendered or the controversy is otherwise resolved.

- 10
11 (i) Arbitration decision. The decision of the arbitrators shall be final, binding and non-
12 appealable. Failure to comply with the arbitration award within the time specified therein
13 for compliance, or should a time not be specified, then forty-five (45) days from the date
14 on which the arbitration award is rendered, shall be deemed a breach of the Compact.
15 The prevailing party in an arbitration proceeding may bring an action solely and
16 exclusively in the U.S. District Court for the Western District of New York to enforce the
17 arbitration award and the Parties agree to waive their sovereign immunity solely and
18 exclusively for the strictly limited purpose of such an enforcement action in such court
19 and for no other purpose.

20
21 **15. CONFIDENTIALITY.**

- 22
23 (a) Purpose. The confidentiality provisions of this Paragraph 15 are necessary to ensure
24 ongoing and candid disclosure of information by the Parties to each other as required by
25 this Compact.
26
27 (b) Nation disclosure. The Nation agrees that the Nation Gaming Operation will provide
28 promptly records and information relating to its Class III Gaming operations to the SGO
29 solely for oversight of the State Contribution on the condition that the State agrees that
30 the access to and use of such documents and information is strictly limited to this
31 purpose. The State shall maintain all such documents and information strictly
32 confidential. The State shall promptly provide to the SGA any records or information
33 relevant to SGA's responsibilities under this Compact.
34
35 (c) Nation records. All records of the Nation Gaming Operation that are provided to the
36 State under this Compact, and all information contained in such records, are confidential
37 and proprietary information of the Nation. All such records, and copies of such records,
38 shall remain the property of the Nation, irrespective of their location. All Nation records
39 used by the State shall be returned to the Nation after the State's use of said records has
40 ended.
41
42 (d) State records. All records of the State that are provided to the Nation under this Compact,
43 and all information contained in such records, are confidential and proprietary
44 information of the State. All such records, and copies of such records, shall remain the
45 property of the State, irrespective of their location. All State records used by the Nation
46 shall be returned to the State after the Nation's use of said records has ended.

1
2 (e) Non-disclosure. The Nation and the State agree that all records of the Nation received by
3 the State are exempt from disclosure under the New York Freedom of Information Law
4 (Public Officers Law, sec. 84 *et seq.*). This Compact, as provided for under IGRA,
5 establishes the federal legal standards for matters pertaining to Class III Gaming by the
6 Nation and therefore preempts any State records law, including the New York Freedom
7 of Information Law, with respect to records and information provided in accordance with
8 this Compact. The State shall legally defend against disclosure under any applicable law
9 of information provided by the Nation pursuant to this Compact.

10
11 (f) Limited exceptions to policy of non-disclosure. The State may not disclose any records
12 or documents provided by the Nation's Gaming Operation or SGA under this Compact;
13 provided, however, that disclosure to a Nation, federal or state criminal agency pursuant
14 to a duly authorized warrant of the U.S. District Court in the context of an ongoing
15 criminal investigation may be made without the prior written consent of the Nation.
16

17 (g) Notice to Nation. Notwithstanding Paragraph 15(e) above, the State shall provide prompt
18 notice to the Nation's Gaming Operation of any other request or proposed form of order
19 relating to the disclosure of records provided by the Nation under this Compact. Except
20 where ordered by a duly authorized U.S. District Court warrant, the State shall not
21 disclose any such records, to a court or otherwise, without first providing the Nation with
22 an opportunity to challenge the request for the records and to seek judicial relief to
23 prevent disclosure.
24

25 **16. AMENDMENT AND MODIFICATION.**
26

27 (a) Amendment and modification. The provisions of this Paragraph 16 shall govern the
28 amendment and modification of this Compact. The Compact and its Appendices may be
29 amended or modified by written agreement of the Nation and the State.
30

31 (b) Compact revisions. A request to amend or modify the Compact by either Party shall be
32 in writing, specifying the manner in which the Party requests the Compact to be amended
33 or modified, the reason(s) therefor, and the proposed language. Representatives of the
34 Parties shall meet within thirty (30) days of the request and shall expeditiously and in
35 good faith negotiate whether and on what terms and conditions the Compact will be
36 amended or modified. A request by the Nation to amend or modify any provision of the
37 Compact shall be deemed a request to enter into negotiations for the purpose of entering
38 into a Nation-State Compact subject to the provisions of 25 U.S.C. §2710(d); provided,
39 however, that neither such request nor such negotiations shall be deemed to amend or
40 modify the terms or effectiveness of this Compact unless, and then only to the extent that,
41 modifications or amendments are agreed in writing by the Parties; provided, further, that
42 any impasse in such negotiations shall not operate to terminate or invalidate this
43 Compact.
44
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1 (c) Appendices provisions.

2
3 (1) Automatic amendments. If the State (i) makes lawful a Class III Gaming game
4 not authorized to be conducted for any purpose by any person, organization or
5 entity on the Effective Date of this Compact and the SGO adopts specifications
6 for such game, or (ii) enters into a compact with any Indian tribe or nation
7 governing the conduct of Class III Gaming game not authorized to be conducted
8 by the Nation Gaming Operations under this Compact, and setting forth
9 specifications for such game, then the State shall give the Nation Gaming
10 Operation written notice of such action within thirty (30) days, identifying the
11 game and its specifications. If the Nation Gaming Operation accepts such game
12 and its specifications, it shall notify the State in writing and a corresponding
13 amendment shall be made to the appropriate appendices hereunder to authorize
14 the Nation Gaming Operation to conduct such games. If the Nation Gaming
15 Operation submits its own specifications for such game, the State shall within
16 thirty (30) days notify the Nation Gaming Operation that it has accepted or
17 rejected the Nation Gaming Operation's proposed specifications. Failure to act
18 within thirty (30) days shall be deemed a rejection of the proposed amendment. If
19 the State accepts the Nation Gaming Operation's proposed specifications,
20 amendments and modifications shall be made to the appropriate Appendices. If
21 the State rejects the Nation Gaming Operation's proposed specifications, the
22 Nation may commence arbitration as specified in this Compact solely on the issue
23 of the State's good faith in its consideration of the Nation Gaming Operation's
24 proposed specifications.
25

26 (2) Other amendments. The Nation Gaming Operation may make a request to amend
27 or modify specifications for a currently approved game by submitting proposed
28 amended or modified specifications in writing to the State. The State shall within
29 thirty (30) days notify the Nation Gaming Operation that it has accepted or
30 rejected the Nation Gaming Operation's proposed specifications. Failure to act
31 within thirty (30) days shall be deemed a rejection of the proposed amendment. If
32 the State accepts the Nation Gaming Operation's proposed specifications, the
33 appropriate amendments and modifications shall be made to Appendices. If the
34 State rejects the Nation Gaming Operation's proposed specifications, the Nation
35 may commence arbitration as specified in this Compact on the issue of the
36 State's good faith in its consideration of the Nation Gaming Operation's proposed
37 specifications.
38

39 (3) Except as provided in Paragraphs 16(c)(1) and 16(c)(2) above, if a Party seeks to
40 amend or modify a provision of any of the Appendices to this Compact, it shall
41 notify the other Party in writing. The Party receiving such notice shall within
42 thirty (30) days notify the Party requesting the amendment or modification that it
43 accepts or rejects the proposed amendment or modification. If the proposed
44 amendment or modification is accepted, it shall be effective upon the written
45 acceptance of the other Party. If the proposed amendment or modification is
46 rejected, the Party proposing it may commence arbitration as specified in this

1 Compact on the issue of the State's good faith in considering the Nation's
2 proposed amendment or modification.
3

4 **17. MISCELLANEOUS.**
5

6 (a) **Calculation of time.** In computing any period of time prescribed by this Compact or any
7 laws, rules or regulations of the Nation, the day of the event from which the designated
8 period of time begins to run shall not be included. A calendar day includes the time from
9 midnight to eleven fifty-nine and fifty-nine seconds past meridian. Periods of less than
10 ten (10) days shall be construed as business days. Periods of eleven (11) days or more
11 shall be construed as calendar days.
12

13 (b) **Severability.**
14

15 (1) Except for Paragraph 3, if any Paragraph or provision of this Compact is held
16 invalid by a federal court, or its application to a particular activity is held invalid,
17 it is the intent of the Parties that the remaining Paragraphs and provisions, and the
18 remaining applications of such Paragraphs and provisions, shall remain in full
19 force and effect.
20

21 (2) Application of the provisions of Paragraph 12(a)(4), terminating the State
22 Contribution in the event of the State's breach of its exclusivity obligation under
23 Paragraph 12(a), shall not affect the validity of any other provision of this
24 Compact.
25

26 (c) **Official notices and communications.**
27

28 All notices and communications required or authorized to be served in accordance with
29 this Compact shall be served by Certified Mail at each of the following addresses:
30

31 **Seneca Nation of Indians**
32

33 Nation President
34 Seneca Nation of Indians
35 P.O. Box 231
36 Salamanca, New York 14779
37

38 Nation President
39 Seneca Nation of Indians
40 Route 438
41 Irving, New York 14081
42

43 **Seneca Gaming Agency**
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State of New York

Governor
State of New York
The Capitol
Albany, New York 12224

State Gaming Officials

New York State Wagering Board
1 Watervliet Avenue Extension, Suite 2
Albany, New York 12206

or to such other address or addresses as either the Nation or the State may from time to time designate in writing.

- (d) Further assurances. The Parties shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary to implement the intent and the terms and conditions of this Compact. Without limitation of the foregoing, consistent with the MOU, the Parties will jointly seek, in a timely manner, any further ratification of this Compact that may be required.

①

Treaty of Canandaigua: Established the reservation lands throughout New York for the Six Nations

The Canandaigua Treaty of 1794

Preamble of the Canandaigua Treaty

A Treaty Between the United States of America and the Tribes of Indians Called the Six Nations:

The President of the United States having determined to hold a conference with the Six Nations of Indians for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them; and Timothy Pickering being appointed sole agent for that purpose; and the agent having met and conferred with the sachems and warriors of the Six Nations in general council: Now, in order to accomplish the good design of this conference, the parties have agreed on the following articles, which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the Six Nations....

ARTICLE 1. Peace and friendship are hereby firmly established, and shall be perpetual, between the United States and the Six Nations.

ARTICLE 2. The United States acknowledge the lands reserved to the Oneida, Onondaga, and Cayuga Nations in their respective treaties with the State of New York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them, or either of the Six Nations, nor their Indian friends, residing thereon, and united with them in the free use and enjoyment thereof; but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

ARTICLE 3. The land of the Seneca Nation is bounded as follows: beginning on Lake Ontario, at the northwest corner of the land they sold to Oliver Phelps; the line runs westerly along the lake, as far as Oyongwongyeh Creek, at Johnson's Landing Place, about four miles eastward, from the fort of Niagara; then southerly, up that creek to its main fork, continuing the same straight course, to that river; (this line, from the mouth of Oyongwongyeh Creek, to the river Niagara, above Fort Schlosser, being the eastern boundry of a strip of land, extending from the same line to Niagara River, which the Seneca Nation ceded to the King of Great Britain, at the treaty held about thirty years ago, with Sir William Johnson;) then the line runs along the Niagara River to Lake Erie, to the northwest corner of a triangular piece of

land, which the United States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that State; then due east to the southwest corner of the land sold by the Seneca Nation to Oliver Phelps; and then north and northerly, along Phelps' line, to the place of beginning, on the Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca Nation; and the United States will never claim the same, nor disturb the Seneca Nation, nor any of the Six Nations, or of their Indian friends residing thereon, and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same, to the people of the United States, who have the right to purchase.

ARTICLE 4. The United States have thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas and Senecas, and engaged never to claim the same, not disturb them, or any of the Six Nations, or their Indian friends residing thereon, and united with them, in the free use and enjoyment thereof; now, the Six Nations, and each of them, hereby engage that they will never claim any other lands, within the boundaries of the United States, nor ever disturb the people of the United States in the free use and enjoyment thereof.

ARTICLE 5. The Seneca Nation, all others of the Six Nations concurring cede to the United States the right of making a wagon road from Fort Schlosser to Lake Erie, as far south as Buffalo Creek; and the people of the United States shall have the free and undisturbed use of this road for the purposes of traveling and transportation. And the Six Nations and each of them, will forever allow to the people of the United States, a free passage through their lands, and the free use of the harbors and rivers adjoining and within their respective tracts of land, for the passing and securing of vessels and boats, and liberty to land their cargoes, where necessary, for their safety.

ARTICLE 6. In consideration of the peace and friendship hereby established, and of the engagements entered into by the Six Nations; and because the United States desire, with humanity and kindness, to contribute to their comfortable support; and to render the peace and friendship hereby established strong and perpetual, the United States now deliver to the Six Nations, and the Indians of the other nations residing among them, a quantity of goods, of the value of ten thousand dollars. And for the same considerations, and with a view to promote the future welfare of the Six Nations, and of their Indian friends aforesaid, the United States will add the sum of three thousand dollars to the one thousand five hundred dollars heretofore allowed to them by an article ratified by the President, on the twenty-third day of April, 1792, making in the whole four thousand five hundred dollars; which shall be expended yearly, forever, in purchasing

clothing, domestic animals, implements of husbandry, and other utensils, suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated, to be made by the superintendent, appointed by the President, for the affairs of the Six Nations, and their Indian friends aforesaid.

ARTICLE 7. Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and the Six Nations agree, that for injuries done by individuals, on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other; by the Six Nations or any of them, to the President of the United States, or the superintendent by him appointed; and by the superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the Nation to which the offender belongs; and such prudent measures shall then be pursued, as shall be necessary to preserve or peace and friendship unbroken, until the Legislature (or Great Council) of the United States shall make other equitable provision for that purpose.

NOTE: It is clearly understood by the parties to this treaty, that the annuity, stipulated in the sixth article, is to be applied to the benefit of such of the Six Nations, and of their Indian friends united with them, as aforesaid, as do or shall reside within the boundaries of the United States; for the United States do not interfere with nations, tribes or families of Indians, elsewhere resident.

IN WITNESS WHEREOF, the said Timothy Pickering, and the sachems and war chiefs of the said Six Nations, have hereunto set their hands and seals.

Done at Canandaigua, in the State of New York, in the eleventh day of November, in the year one thousand seven hundred and ninety-four.

TIMOTHY PICKERING

Witnesses Interpreters

Israel Chapin Horatio Jones

Wm. Shepard Jun'r Joseph Smith

James Smedley Jasper Parrish

John Wickham Henry Abee

Augustus Porter

James H. Garnsey

Wm. Ewing

Israel Chapin, Jun'r

(Signed by fifty-nine Sachems and War Chiefs of the Six Nations.)

CANANDAIGUA, NEW YORK - NOVEMBER 11, 1797

Native American Name English Translation

O-NO-YE-AH-NEE O-NA-AH-HAH TUG-GEH-SHOT-TA KON-NE-AT-OR-
TEE-OOH HOT-OSH-A-HENH TEH-ONG-YOO-WUSH Handsome Lake
KAU-KON-DA-NAI-YA TEH-ONG-YA-GAU-NA TO-KENH-YOU-
HAU Capt. Key
NON-DI-YAU-KA KON-NE-YOO-WE-SOT O-NES-HAU-EE KOS-SISH-
TO-WAU TI-OOH-QUOT-TA-KAU-NA Woods On Fire
HENDRICK AUPAUMUT TO-HE-ONG-GO TA-OUN-DAU-DEESH DAVID
NEESOONHUK OO-JAU-GEHT-A Fish Carrier
HO-NA-YA-WUS KANATSOYH Farmer's Brother or Nicholas Kusick
OOT-A-GUAS-SO SOG-GOO-YA-WAUT-HAU SOH-HON-TE-O-QUENT
JOO-NON-DAU-WA-ONCH Red Jacket
OO-DUHT-SA-IT KAU-NEH-SHONG-GOO KON-YOO-TAI-YOO KO-
NOOH-QUNG KI-YAU-HA-ONH SAUH-TA-KA-ONG-YEEST Two Skies Of
A Length
TOS-SONG-GAU-LO-LUSS OO-TAU-JE-AU-GENH Broken Axe
OUN-NA-SHATTA-KAU JOHN SHEN-EN-DO-A TAU-HO-ON-DOS KA-
UNG-YA-NEH-QUEE O-NE-AT-OR-LEE-OOH Open The Way or Handsome
Lake
SOO-A-YOO-WAU TWAU-KE-WASH-A KUS-SAU-WA-TAU KAU-JE-A-
GA-ONH SE-QUID-ONG-QUEE Heap Of Dogs
E-YOO-TEN-YOO-TAU-OOK KO-DJEOTE SOO-NOOH-SHOO-WAU
KOH-NE-YE-AU-GONG Half Town or Jake Stroud
THA-OG-WAU-NI-AS KEN-JAU-AU-GUS SHA-QUI-EA-SA Stinking Fish
SOO-NONG-JOO-WAU TEER-OOS SOO-NOH-QUA-KAU KI-ANT-
WHAU-KA Capt. Prantup or Cornplanter
TWEN-NI-YA-NA HENRY YOUNG BRANT JISH-KAA-GA SOOS-YOO-
WAU-NA Green Grasshopper or Big Sky or Little Billy



Seneca Nation of Indians Gaming Exclusivity Zone

2002 New York State-Seneca Nation Compact



2

Capital, Suffolk and Western Regional Off-Track Betting Corporation's

Talking Points

New York State Senate Standing Committee on Racing, Gaming and Wagering Public Hearing to Develop Potential Legislation to Enhance the Racing Industry in New York State

Responses to Selected Questions Presented: (OTB Comments in Blue)

- Should the Legislature allow one or more OTBs to reopen in NYC?
 - Since their creation by the State legislature in the early 1970's, regional, OTBs have contributed much needed revenue to our county governments and have employed thousands of workers across New York. By re-opening parlors in NYC, drawing on the resources and expertise of the existing OTBs wagers formally placed at NYCOTB outlets or through unregulated advanced deposit wagering sites or via illegal bookmakers could be recovered resulting in much needed revenue being directed to the states racing industry and taxpayers. Accordingly, the Legislature should take the next step in providing necessary statutory payment relief to all OTBs, as to ensure that entity in charge or running a re-opened NYCOTB does not (in time) fall victim to same fate as its predecessor.

- Should the Legislature allow NYRA to open up OTB parlors in NYC?
 - No Comment

- Should the Legislature force the consolidation of all OTBs?
 - Unlike NYRA or harness tracks that in the past have received state loans and/or statutory payments while at the same time being run by private operators who have profited from VLTs, OTBs have never asked the legislature for any state dollars. Contrary to popular belief, any proposed consolidation would not ultimately save money because the handle (wagers) and patrons of the corporations are localized. Furthermore, any consolidation of the regional corporations will create the loss of much needed jobs, especially upstate. While consolidation of services can yield efficiencies, the physical situs of the bettors will not change; outlets must be available to serve them, and these outlets will vary in nature and scope depending upon the region and demands of the particular clientele they

serve.

▪ For Example:

- Capital OTB employs 250 full and part time individuals with an annual payroll just over \$8M (All employees are entitled to benefits). Capital OTB has 37 branches and 31 EZBet locations. Capital OTB leases 32 of the branch locations and partners with 31 local business owners to operate its EZBet locations. In 2010 Capital OTB paid over \$1,395,000 in rent (real property leases) to local property owners and has \$1,400,000 in future rent obligations to local property owners, over \$1,173,000 on other equipment lease expenses (not including tote expenses). \$177,000 on maintenance of these branches by local vendors (this does not include the maintenance work that OTB does with internal staffing), \$628,000 on repairs to these properties by local vendors (this does not include the maintenance work that OTB does with internal staffing). This is money that directly benefits the local economies of the counties served by Capital OTB.
- Suffolk OTB which operates in a region where there are no harness tracks or flat tracks, employs 227 individuals (75 FT, 152 PT) with an annual payroll of over \$8M (Full time employee salaries average \$64,000 and part time employee salaries average \$21,000). Suffolk OTB provides roughly \$4 million annually to its local county government from revenues derived from gross handle.
- In Western New York, an area that has felt the worst of the economic decline, Western OTB currently employs 550 individuals (211 FT / 339 PT) with an annual payroll of \$19M. Western OTB through its overall spending on goods and services contributes over \$15M annually to the local economies it serves (i.e. leases, facility maintenance, equipment and advertising). Western OTB owns 30 branches (including Batavia Downs), leases an additional 7 branches, and has contracted with 12 EZ Bet locations (4 more pending).

- OTBs continue to work towards and support consolidation of services among regional off-track betting corporations. Such items include but are not limited to:
 1. Upstate and downstate industry call centers as proposed by Capital and Suffolk OTBs, that would be based on shared tote systems within the industry;
 2. Single internet wagering platform; and
 3. Establishing working agreements between all industry participants (tracks, horsemen, OTBs). (ex. Statewide Marketing Effort/Plan).
- Where is horse racing a growing sport and why?

Racing is growing in areas that are attracting new and younger patrons through social media and additional incentives. OTBs are doing their part to attract new patrons to the sport while building off the base of bettors and clientele already apart of New York Racing. Examples include:

- Over the last few years Batavia Downs Raceway has advertised it's promotions through the Casino's Monthly newsletter and weekly print/email ads, all racing promotions are run through the Casino's Player's Club. Gaming promotions are advertised in the race program to entice horse bettors to visit the gaming floor. The purpose of the former is to increase the number of persons who see the promotions. It also introduces the racing promotions to a targeted market, namely persons who gamble at that casino. The mentality being that those who gamble at the casino would have the predisposition to possibly bet the horses as well. The purpose of the latter is to gather data from existing horse bettors in order to contact them via mail or email when promotions or special events or races are coming up. This increases visits to both the track and OTBs, and would hopefully entice them to bring along friends/family, further boosting exposure to any live racing or horse wagering events. In July of 2011, Batavia Downs Casino ran a Free Play coupon inside the Track's Live Racing Program having heard of positive results from other tracks. In the first night, 200 persons redeemed the offer between 9 and 11:30pm, successfully driving traffic from onsite horse bettors to the gaming floor. Live Racing sees their Program sales go up; gaming sees revenues/player counts go up.
- Over the last year Batavia Downs has begun to include mentions of horse racing events within gaming commercials. The commercials will mention an upcoming horse race (which can be wagered on at the casino) along with any

upcoming gaming promotions. As part of the commercial, the announcer also reminds listeners that they can watch wager and win on that horse race at their local OTB. OTB runs its own commercials as well, but including the mentions within the gaming commercials (which are of a higher frequency) moves to keep the upcoming race/event as “top of mind”. OTB/Live Racing benefits by getting its message out to more people more often. The casino benefits by attracting horse bettors (themselves predisposed as gamblers) into the casino environment, thinking that after betting the horses at the onsite ITW, they would then visit the slot machines.

- Also over the last year, Batavia Downs has increased the number of community events they visit with a promotional “Street Team”. These teams give out coupons and give out information about the Casino/Racetrack facility in order to drive traffic. Both Gaming Free Play and Food and Beverage coupons are given away which drives traffic to both the gaming floor AND the restaurant which is overlooking the track. Gaming pays for these appearances, but knows that advertising the horse track onsite may further encourage a visit. Live Racing gets more exposure than they normally would. Gaming is able to show that they’ve got more than just a gaming facility with restaurants; the live racing is almost treated like an amenity which further entices visits.
- Capital OTB has been aggressive in its efforts to grow the racing industry in New York through its multi-faceted approach to racing that includes:
 - Operation of its own TV station
 - Web site that receives millions of hits annually
 - Facebook and twitter pages that is used to promote racing and NY racing in particular
 - Working with other tracks on marketing packages that benefits the track and taxpayers
 - Live programming from Saratoga Racetrack each of the 40 days to promote the meet and educate and entertain racing fans in the Capital Region
 - Working to bring its TV station to a national audience, helping to promote NY racing
 - Building a brand new, state of the art Teletheater and studio for TV production

- Capital OTB has been aggressive in its efforts to work with tracks across New York – examples include:

- **Capital OTB/Vernon Downs:** Capital OTB partnered with Vernon Downs Harness Track. For the second year in a row, Capital and Vernon have partnered in a successful Marketing/promotional agreement that has Capital OTB focusing its TV station, web site, facebook and twitter accounts on Vernon Downs races. Further, Capital OTB and Vernon agree to fund contests and enhanced cash rewards for patrons that wager on Vernon Downs races on specific days. The partnership has been a terrific success as Vernon Downs handle has increased double digits in both of the last two years. At a time when handle trends are on the decline from 5 to 10 percent, an increase of that magnitude shows that if the tracks and OTBs work together good things can happen.

- Year 1: Vernon Downs handle increase of \$93,000 or 19%

- Year 2: Vernon Down handle increase of \$105,938 or 29%

Capital OTB offered similar types of promotional opportunities to other NYS harness tracks, only Vernon agreed to partner with Capital and as a result they benefited greatly by their participation and efforts to promote NY racing and their racing in particular.

- **Capital OTB/Finger Lakes:** Capital OTB partnered with Finger Lakes Racetrack this year in an effort to prevent Finger Lakes handle from declining with Capital OTB bettors as it has in the past. Capital OTB and Finger Lakes worked on a marketing and promotional package that provided Capital OTB patrons with handicapping information, contests, enhanced cash rewards on Finger Lakes races and we also sent a customer out to Finger Lakes for a weekend of fun and betting at Finger Lakes racetrack. The handle at Finger Lakes this year has increased at Capital OTB by nearly 1 percent. And while that doesn't sound all that impressive, if you compare it to the corporate decline in handle of approximately five (5) % and the decline in handle on NYRA tracks in 2011 which has seen a decline of 10% at Capital OTB, then the increase is a major accomplishment. Further,

Finger Lakes handle in 2010 declined nearly nine (9) percent when to 2009, when the marketing plan was not in place. So, again the increase of 1% shows that if tracks and OTB work together both entities can benefit.

- **Capital OTB – Saratoga Season:** Capital OTB produces live programming daily from the backstretch of Saratoga Racecourse. Capital OTB does this at its own expense and brings the flavor and excitement of Saratoga Racetrack to the Capital Region each day of the 40-day Saratoga meet. No other entity in the country produces live programming on a daily basis from the backstretch promoting a racetrack for 3-hours a day at their own expense. Capital OTB does this at its own expense and promotes going to the track, and experiencing the terrific atmosphere and racing from the track. The excellent programming and response Capital OTB got from its programming gave Capital OTB an idea. What not take the Capital OTB morning shows national, work with racetracks, promote their products and make money for the taxpayers.
- **Capital OTB – Taking its TV Station National:** Capital OTB is one of the only entities in the country to operate and own its own Television station. Further, with the construction of a new Teletheater, a brand new, state of the art studio will be build which will enable Capital OTB to produce better, more professional looking programming. Capital OTB is in negotiations with a distribution company to bring its morning shows national. Capital would provide programming that would be available nationally each morning from 9am to 12pm. The programming would highlight tracks around the country and bring the best racing from around the country to horseracing fans. Capital would have handicapping shows, guests from the tracks, handicappers from each track and provide bettors with real time information and news that they can't get anywhere else. This will bring Capital OTB national, enable Capital OTB to generate revenues from tracks that want us to highlight their product and help grow the racing industry and fans not only in New York but across the nation.
- **Capital OTB building a new, state of the art Teletheater and Television Studio:** Capital OTB is in the process of building a brand new, state of the art, 23,000 square foot facility in the City of Albany. This facility will bring excitement and energy to the Capital Region and will help to create new racing fans for years to come. This new facility is very similar to the Woodbridge facility in New Jersey, which is the most successful simulcast facility in the nation. The facility will have a full bar and restaurant and will have a more casual sports and entertainment feel to it which will help bring in more casual racing fans and new fans and turn them into regular racing patrons. In addition to building a brand new facility, Capital OTB is building a

brand new state of the art production studio that will make our programming and other racing related TV programs look more professional and more attractive to regular fans and casual fans.

- Is additional taxation of racing purses warranted?
 - No. Currently, OTBs and others in the industry are contributing funds so that the State Racing and Wagering Board can operate. Taxing purses at this time when they are scheduled to be increased through VLT revenues will only discourage and put an abrupt end to the expanding interest in NY racing. Increased purses build interest back into the state's racing industry; taxing these increased purses would only dampen those efforts.
- Should the State Racing and Wagering Board Members be paid on a per diem basis as opposed to an annual salary?
 - No Comment
- What will the Impact of expanded Casino Gaming be on horse breeding & racing industry?
- Should any Constitutional amendment include a component as to where the net funds generated should go?
- Anticipated VLT impact with opening of Aqueduct:
 - Harness tracks that are privately own continue to operate and profit from their VLT operations. Genting is set for an October VLT opening at Aqueduct, with its profits to be shared with the State, NYRA and others (Non OTBs) in the racing industry.

NYRA alone is projected to receive approximately \$50M annually from the VLT revenue at Aqueduct. Meanwhile, OTBs will continue to pay outdated statutory payments that have subsidized the privately owned racinos and to NYRA who now will benefit from VLT money as well as contractual agreements with out-of-state Advance Deposit Wagering Systems.

The Racino operators have recently formed an association ("New York Gaming Association), whose mission is to allow full casino gaming at their current VLT facilities. While OTBs are supportive of this effort, it only further signifies the need for change to the current statutory framework in which unduly burdens these corporations.

To that end, OTB's continue to push for the following:

- Elimination of unnecessary and duplicative payments to tracks,

specifically:

1. Dark Day (on days when harness tracks are closed for business);
 2. Maintenance of Effort (which currently requires OTBs to pay a certain level of payment based on 2002 base year handle despite any drop in current handle and profit to the OTBs); and
 3. Hold harmless (any drop off as a result of wagers taken on night-time out of state thoroughbred racing)
- As an alternative, regional OTBs could support a new comprehensive proposal for the remuneration of the tracks based on handle wagered at each outlet. A flat, percentage based formula which would eliminate decades of duplicative, confusing and outdated formulaic statutes. This would ensure that tracks are fairly compensated and OTBs are not held hostage by phantom handle.
 - To that end, it has been suggested that the monies New York's regional OTBs remit to the New York Racing Association (NYRA) on their live races is well below what NYRA collects both on track and from out of state wagering platforms. However, this suggestion ignores the fact of all the other statutory payments regional off track betting corporations are currently paying NYRA. In fact the cumulative effect of these various statutory fees result in greater overall expenditures by the OTBs when compared to their out of state competitors. Payments from OTBs not only benefit NYRA but also the horsemen, breeders, taxpayers and help to make up portions of purses and help support the operations at the tracks themselves.
 - Should NYS require out-of-state ADW's to pay the same statutory commissions as in-state-ADW's?
 - Regional, suburban OTBs continue to oppose the un-checked intrusion of unregulated out of state ADW sites, which poach wagers from New York bettors; return little to the track and nothing to the horsemen or the breeders. These entities are unregulated by New York's Racing and Wagering Board. Legislation or regulatory relief is needed to subject all out-of-state

account deposit wagering (ADW) entities that continue to operate with an unfair advantage in New York State to the same rules and regulations that NYS licensed entities abide by. By regulating and licensing such out-of-state ADW entities to the same extent that in-state wagering entities are regulated the State can ensure that these entities make statutory payments to the State, local municipalities, the breeders and the horsemen.

- Licensing these internet sites would level the playing field, while adding revenues to the State coffers. Out-of-State rebates, which are a draw for bettors, would suddenly be hobbled by requirements for ADW operators to contribute to the variety of entities and agencies that OTBs are required to support in New York State. It is imperative that out-of-state ADW operators be kept out of New York or be required to pay their fair share in support of the industry.

④

Tracy Egan

Senator, thank you for the opportunity to allow the Fund to testify at this important hearing. I will restrict my comments to those questions that pertain to the day to day operations of the Fund. As you probably know, I'm not a policy maker. In my role as Executive Director of the New York Thoroughbred Breeding and Development Fund, I execute the policies approved by my Board of Directors. I've been in the job for almost 16 months and have made some improvements there that allow me to serve our stake holders, and the Board in the best way possible.

Question one:

On behalf of the Fund and the thousands of people that it serves, I am happy to see the Legislature is looking into opening up betting sites in New York City. The closure of New York City OTB hurt the state's breeders significantly and continues to affect our programs because it had traditionally supplied more than a third (36%) of the Funds total revenue. It was our single largest source of income. And the Fund and its stake holders need that source of revenue replaced by betting kiosks, betting machines, or parlors in New York City. There is an gambling audience for our sport that haven't yet turned to phone or on-line wagering, and the State needs them to come back to a regulated wagering venue.

Let me review why the attempted bankruptcy and subsequent closing of NYC OTB meant millions in lost revenue to the Fund. In 2009, The Fund was owed 2.1-Million in pre-petition money which was never collected. In 2008, the year before the bet maker stopped making timely payments to the Fund, NYCOTB paid the fund \$3.8 million dollars. Remember, that was a third of our income. And, the state's breeders took it on the chin.

The Fund did not have enough money to pay breeders all that they were owed in 2009.

The Fund was forced to change the breeder awards programs:

- ◆ it stopped paying awards through fourth place, and still pays only 1st – 3rd
- ◆ it cut breeders awards to second and third place finishers, in half
- ◆ it instituted a 30% withholding, still in place, to make sure the Fund had sufficient revenue to pay all awards earners equally in case there was not enough money to pay full awards. (In 2010 the Fund did pay back 100% of withholdings, plus made a supplemental paying in early 2011.)

The Fund was forced to drop purse enrichment.

- ◆ It did not anticipate having sufficient revenue in 2011 to pay purse enrichment to the Finger Lakes and the NYRA

While NYRA's upsurge in business has benefited the Fund because it pays us as if its new phone and online customers are making their wagers on-track, it has only made up for about a third of what NYCOTB paid us.

Many farm owners and breeders couldn't hold out for a brighter day. As you can read in our annual report for 2010, viewable on line at our website nybreeds.com, we note a decline in breeding farms from more than 430 to 307.

The mares bred reports indicate many breeders were forced to cut back on production. In 2008, 1,857 mares were bred. By 2010, 519 fewer mares went to the breeding shed. That meant just 1,338 mares were bred to produce foals for 2001.

These declines are red flags to all those who care about agriculture and preservation of farmland in our state.

These declines are red flags to all those who care about the racing product in our state. We need NY-breds to take their place in the starting gates at the state's tracks for the benefit of handle, to create income for the state, and to help reverse the decline in interest in horse racing as a sport and gambling proposition.

In spite of the declines by the way, I'd like to point out that NY-breds are shining in the sales ring and on the track. Sheik Mohammed purchased a NY-bred at Saratoga for a cool half million. A New York-bred brought the second highest price at the most recent OBS yearling sale: 100-thousand dollars for a son of Political Force bred by Carol and Ray Swenson.

And the state's roster of Grade One winners keeps growing. I'd like to take this opportunity to congratulate the breeders of the NY-bred 2 year old Weemissfrankie who won the Grade I Del Mar Debutante on Saturday in California. She joins a growing list of New York-bred horses that demonstrate that quality is becoming a consistent hall mark of our product. She's a daughter of the late stallion Sunriver who stood at Empire Stud near Hudson NY.

And, I believe that if the Fund is given consistent revenue sources, that allow us to deliver on the the promises we advertise, we can produce more grade I New York breds such as Weemissfrankie, Haynesfield and A Shin Forward who notched his Grade One victory in Japan.

At the Board meeting in August, the members adopted a budget revision. Largely based on the fact that NYRA contributed so much more than anticipated to the Fund we were able to make 820-thousand dollars available for purse enrichment. Purse enrichment money was desperately needed by the horse men and women at the Finger Lakes. NYRA did not need the money because of the infusion of money from former NYCOTB customers and because of anticipated VLT money. Still, the Fund had to pay both entities because statutes dictate if we pay one track we must pay the other. That is something that you might want to address as consider making changes that could help the racing product and NY-breeders.

In this part of the state, farms are competing with boarding operations in Pennsylvania. In this part of the state, horsemen are always keeping an eye on the purses being offered by nearby Penn National and Presque Isle Downs. In all parts of the state, breeders are aware that the NY program is the envy of every other state and those states would love to attract our program participants to move over to those state backed programs.

The Fund is keenly aware that we serve owners, breeders and stallion owners in all parts of the state. We recognize that in every section of our state, people are struggling to stay in business and we want to help. We appreciate that you are holding this hearing because you have the same goal: to help the New York Thoroughbred Breeding and Racing industry thrive.

Question 6: Where is horse racing a growing sport and why?

This is the billion dollar question. It is thriving in Hong Kong where more than 80-billion dollars a year is wagered on horse racing. My knowledge of racing in Hong Kong is largely based on having heard Bill Nader, Executive Director of Racing for the Hong Kong Jockey Club, speak at a symposium at Belmont earlier this year. It was a symposium on race day medication. Also, I recently read a lengthy interview with Mr. Nader in the Paulick report.

So, Hong Kong racing thrives because the government loves it. It pays nearly \$2 billion US dollars annually in taxes. It's the largest single taxpayer in Hong Kong. So, their government has an interest in a healthy horse racing industry.

The fans love the race track experience. From food to the racing plants themselves at Sha Tin and Happy Valley, customers are more than satisfied.

Also, Nader stresses that consumers have absolute faith that the racing product is honest.

To encourage the popularity of racing, I believe we need more televised racing, such as NBS Sports provided this summer at Saratoga and will provide this fall from Keeneland. Also, I applauded tracks such as Finger Lakes who allow fans to view live racing through their website without making the fan become a wagering customer.

I believe the Jockey Club's backing of a project to set up a free-to-play site will help bring in gaming customers. After all, you don't go to a golf course without spending time taking lessons and practicing on the driving range, why should anyone bet on a horse without understanding how the wagers work, or without spending time learning about the horses, jockeys and trainers that are part of the puzzle solving

that goes into making a wager. Some people will decide not to risk a dollar. Others will decide they like the handicapping aspects of our sport.

And horse racing can thrive again in New York State. Our breeders need to know that our programs will be consistently funded. Our race horse owners need to know there will be a place in the starting gate for their NY-breds. Our Stallion owners need to know that if good stallions enter the breeding sheds here, good mares will follow.

Last year NYRA wrote more than 800 races for NY-breds. Under the franchise agreement they have to write at least 600. However, they may be able to card fewer races if they can demonstrate a decline in the size of the foal crop. So, we hope to see an increase in the size of the foal crops so that NYRA will decide it makes good financial sense to card more than the minimum.

Our breeders will find that they need a strong healthy racing program at the Finger Lakes Race Track. Not just because the pressure will be on from open horses that want to fill the starting stalls at NYRA venues, but because the entire racing industry needs multiple healthy racing venues.

Annually, there are more than 40-stakes races for NY-breds with more than 4-million dollars in stakes purse money. . In 2007, a total of more than \$41-million dollars in purse money was offered by NYRA and Finger Lakes. We expect to see an uptick in both those figures as the VLT revenue materializes and helps make the New York racing products even more popular.

We have seen over the past year that Vinery, Adena Springs and now Spendthrift farm are leading the way for other stallion owners to bring higher quality stallions to New York State. Outstanding breeder and stallion owner Becky Thomas is planning on re-opening Sequel Stallions near Hudson because she believes racing is on the re-bound in NY and she believes in the strength of our breeding programs. That is major good news because she already stands top stallions in Freud and Read the Footnotes.

The bottom line: a strong New York Thoroughbred Breeding and Development Fund is essential to the state's racing industry, the state's farms, and every single man and woman who works on a horse farm or at a race track in the Empire State.

Question 10. The anticipated economic impact on the sport of racing with the opening of the Aqueduct VLT project.

The Fund is excited with the prospects of a successful Resorts World. NYRA was anticipating 30-35 million in additional annual revenue. A couple of Sundays ago Michael Speller, casino president for Resorts World, said the figure would be closer

to 50-million dollars and that means both open and NY-bred horses will be running for higher purses.

In the first year of operation, if the machines take in 350-dollars a day (which is a conservative estimate) the Fund will receive \$5.7-million dollars. That should put the Fund back on solid footing. Going forward I believe the Board of Directors will be considering whether we can restore our programs to traditional levels because of this new revenue stream. As the hands on owner of a small farm, I know I am thankful to everyone who finally made the VLTs happen. As the Executive Director of the Fund, I anticipate that a steady and reliable revenue stream will enable the Fund to help lead the way for a come back for our farms, our breeders and our owners.

Question 11. Should New York State require out of State Advanced Deposit Wagering (ADW) systems to pay the same statutory commissions as in-state ADWs?

As you know the Fund benefits from those statutory commissions, so it's very easy for me to say "Yes" on behalf of the people we serve. The Fund, however, has not taken a position on this. Speaking for myself, it doesn't seem fair that the OTB's have to pay the Fund and the state while their direct competitors do not have to pay to help the men and women who in the horse racing industry here in New York State. Also, I would like to remind the Senators that the Breeding Fund does not get any portion of NYRA's out-of-state simulcast money even though NY-bred horses have been filing 3 races a day, on average, at the NYRA tracks over the past several years.

Thank you for the honor of asking me here. I'm happy to take your questions.



New York State Senate Racing & Gaming Hearing

September 6, 2011

By Jeff Cannizzo, Executive Director

New York Thoroughbred Breeders, Inc.

Overview & History

- **New York Thoroughbred Breeders, Inc. (NYTB)**, founded in 1974, is a membership organization and the official authorized representative of the Thoroughbred breeding industry in New York State. NYTB was formed in order to provide individuals in New York breeding and racing with an organization dedicated to their advancement.
- The breeding of thoroughbred racehorses is the 2nd largest agri-business in the state of New York. It creates tens of thousands of jobs in the state, saves and cultivates farmland in 50 New York counties, contributes over \$2 billion to our state's gross domestic product, and approximately \$124 million in state and local taxes.
- New York's breeders supply the "product" – the thoroughbreds – that fill races in New York.
- The New York State Thoroughbred Breeding and Development Fund ("the Fund"), established in 1973, has helped make the New York State thoroughbred industry the benchmark for regional thoroughbred programs around the world.
- The breeding incentive awards program administered by the Fund preserves, protects, and promotes the green-belt sector of New York State and fosters the growth and expansion of New York's thoroughbred breeding industry.
- The incentives provided by the Fund are financed from within the racing industry, using a small percentage of the total monies wagered through the pari-mutuel system in New York State on thoroughbred racing in New York State. The Fund also obtains revenues from a small percentage of Video Lottery Terminal (VLT) monies at Finger Lakes Race Track.

New York's Last 6 Year Trends

2005 to 2010

↓ Thoroughbred breeding farms *decreased 25%* (100 farms closed)

2004 to 2010

↓ mares participating in the program *decreased 37%*

2004 to 2010

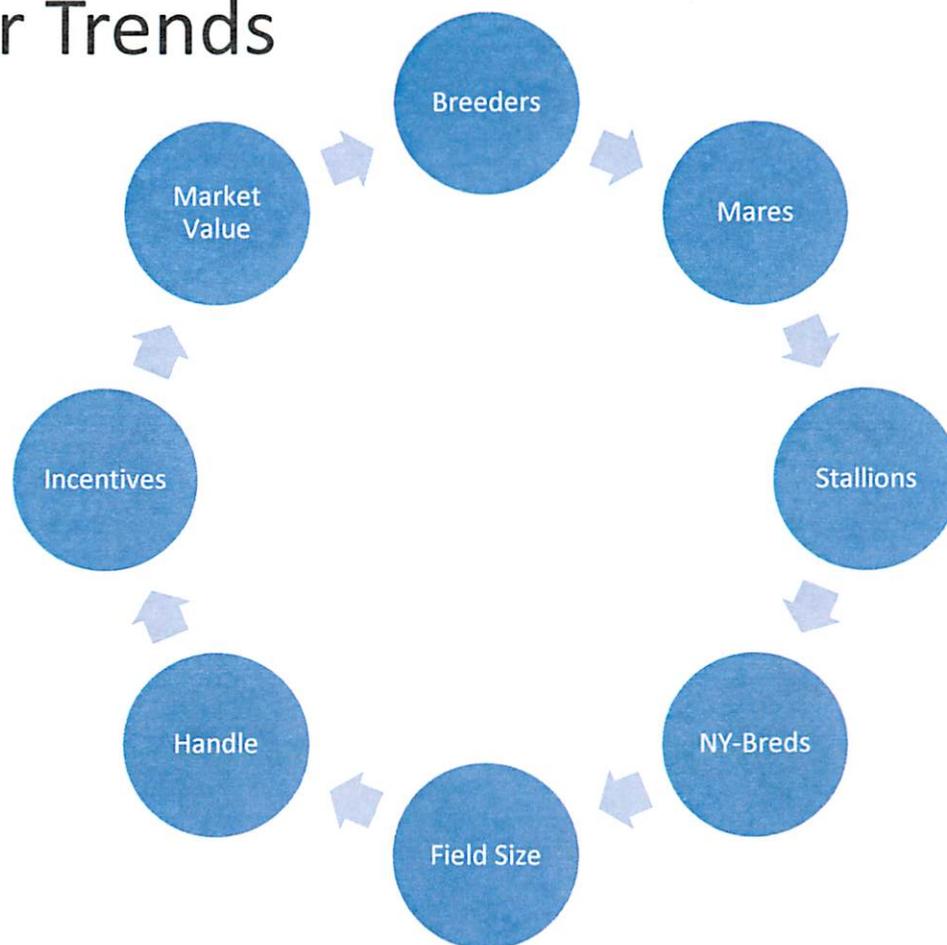
↓ over 4000 Thoroughbred breeding jobs have *left the State*

2004 to 2010

↓ the New York foal crop *decreased 27%*

2004 to 2010

↓ New York Stallions *decreased 57%*

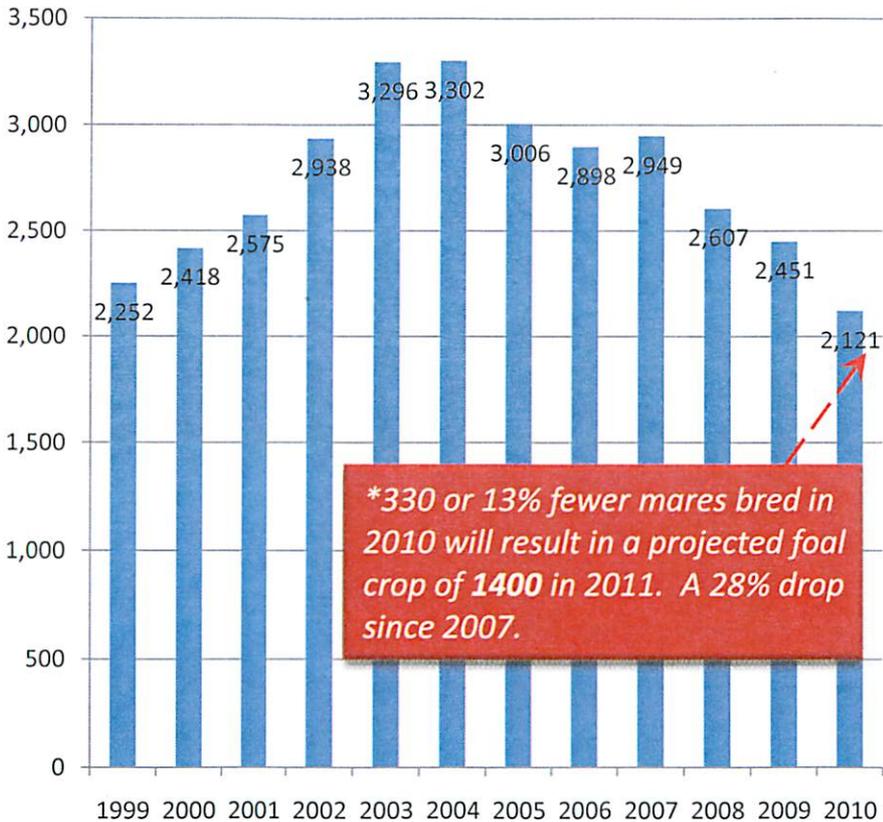


A cyclical relationship: breeding incentives, full fields, large purses, and quality racing. All help drive handle to fuel the industry.
(Up to \$150k in handle is generated from every additional horse entered in a race at NYRA.)

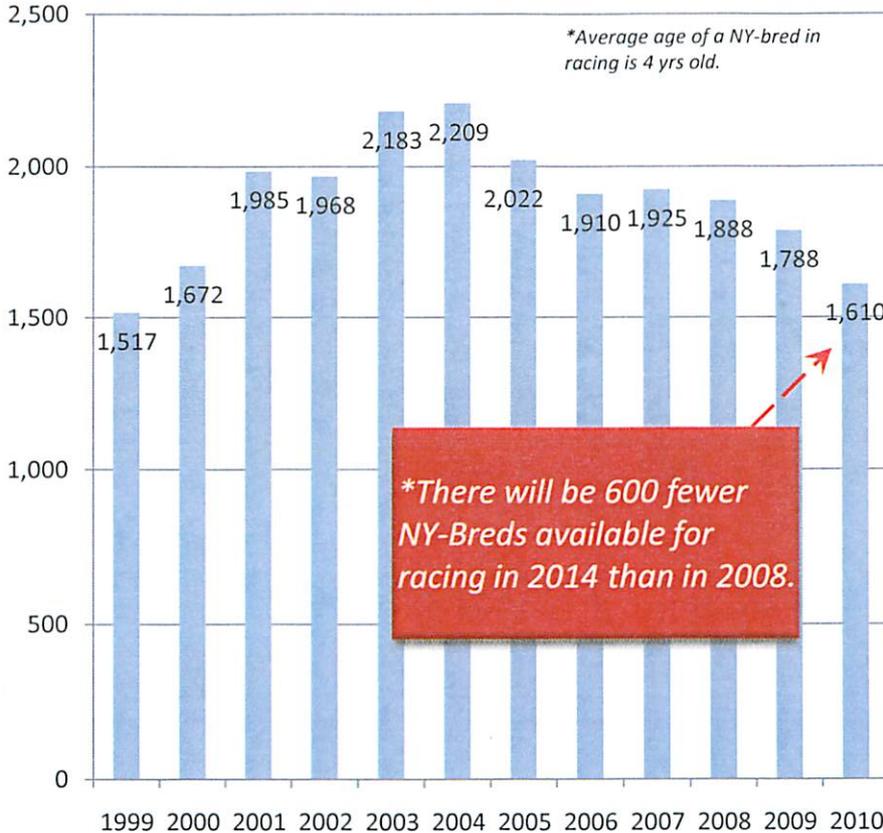
Breeding Trends

**Reported by the NYS Breeding & Development Fund*

NY Mares Bred



NY Foal Crop



Numbers for the 2011 New York mares bred and foal crop are the lowest in ten years, the result being a shortage to the supply at the track.

Breeding Fund Revenue By Handle

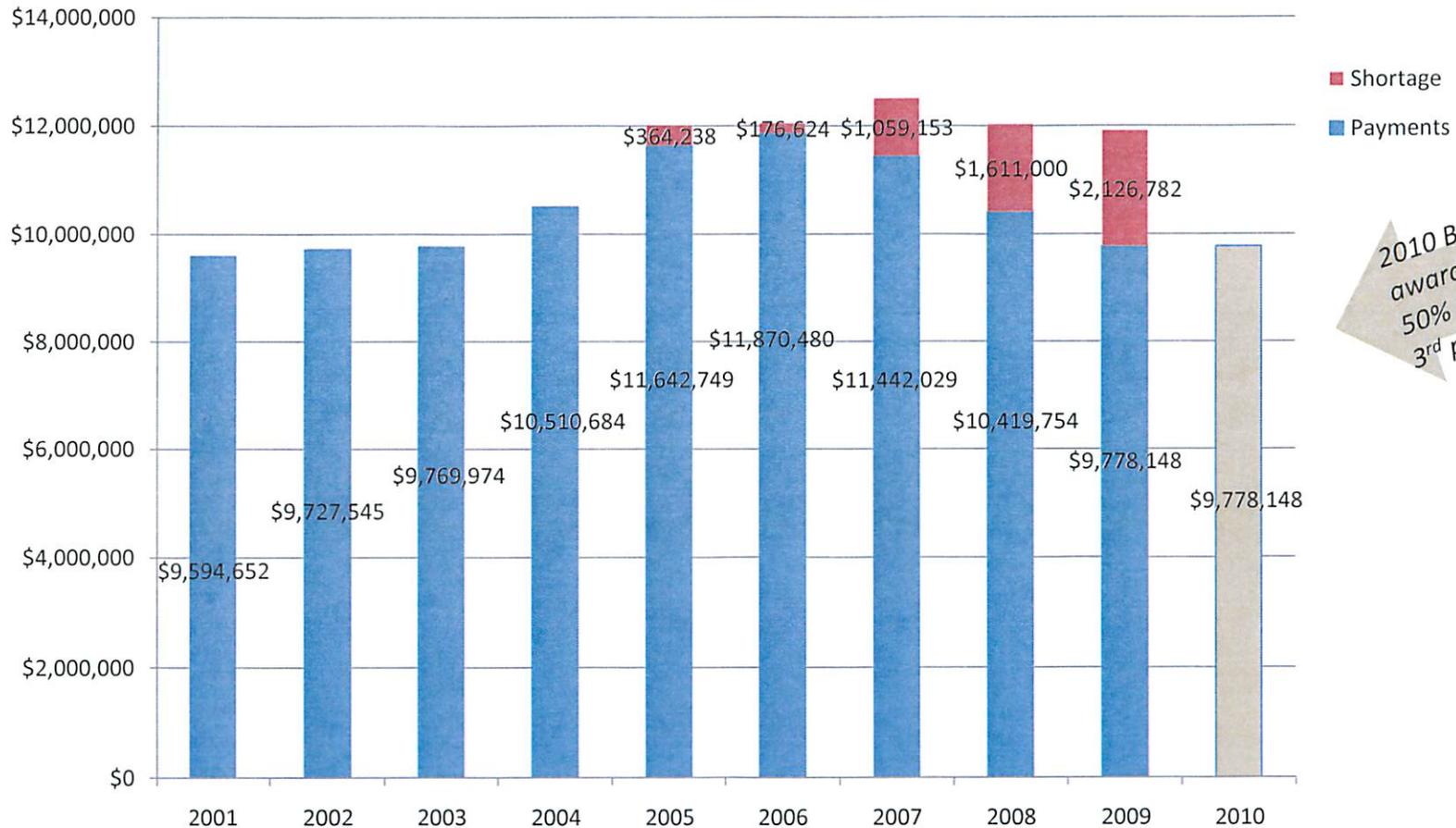
**Reported by the NYS Breeding & Development Fund*



Fund revenue has dramatically declined over the last four years due to handle trends, increased interest in advanced deposit wagering (ADW) from out-of-state, NYCOTB's failure to make statutory payments.

Breeding Fund Award Payments

*Reported by the NYS Breeding & Development Fund



2010 Breeder awards reduced 50% for 2nd and 3rd place.

Beginning in '05 Fund revenue could not cover awards being earned. Year over year this deficit has grown. In '09 the NYCOTB Bankruptcy left \$2.2M owed to breeders . The Fund reduced breeder awards by 50% after.

Hearing Questions

Should the legislature allow one or more OTBs to re-open and/or allow NYRA to open up parlors in NYC? Should the legislature force the consolidation of all OTBs?

- The closure of NYC OTB has left a vacuum with the NYC market, that if filled can only help the thoroughbred industry. While NYRA and others have filled some of this void in transporting bettors to NYRA locations and expanding their internet platforms, having OTBs open in NYC would have a positive impact on the industry and ensure maximum level of pari-mutuel wagering.
- The separation between racetrack and off-track wagering companies in NYS has created competition and redundancy of operations, confusion for the customer, and ultimately a weakened pari-mutuel wagering market. Current law permits NYRA to open off-track parlors in the NYC area. This should be the direction the State moves when reintroducing off-track betting facilities into the metro area. It's the most streamlined, cost-effective, and strategic approach to building new pari-mutuel wagering in NY. This would create one racing operation, wagering platform, marketing channel, television network and brand to the customer in NYC.

Hearing Questions

What will the impact of casino gaming be (if it is expanded in New York) on the horse breeding and racing industry? Should any Constitutional amendment (relating to casino gaming) include a component as to where the net funds generated should go?

- Increases in gaming at current VLT tracks (e.g. table games) could be beneficial to racing and the breeding industry, if it drives more people to the tracks to place wagers on live racing. However, full scale casino operations not affiliated with tracks or the industry could increase competition for the gambling dollar and, in turn, drive handle and interest in the sport down even further. Therefore, it is imperative that any legislation or constitutional amendments permitting full scale casinos include a small portion for the breeding and racing industry to share in. Various other State models in place around the country have this kind of legislation (e.g. Florida)

Is additional taxation of racing purses warranted?

- The Governor's motto for 2011 was "no new taxes". Thoroughbred owners and breeders are in fact New York tax payers, therefore that same principle should apply. However, any additional fees taxed on the industry should be spread out among all of the shareholders. It is not fair to target one sector of the racing industry to make up for the shortcomings of another. Taxing purses at this time would also send another message to out-of-state breeders and owners who want to bring their horses or farm into NYS that we are not "open for business."

Hearing Questions Cont.

What is the anticipated economic impact on the sport of racing with the opening of the Aqueduct VLT project?

- Resorts World Casino has estimated that its facility at Aqueduct will generate approximately \$10M for the Breeding industry annually.
- NYTB has already seen the impact of the anticipation of the opening of the Aqueduct VLTs. NY-Bred sales this past summer at Saratoga increased across the board. The total sales increased by 83%, with the average NY-Bred selling for 38% more than one year ago. A strong marketplace for breeders equals a stronger racing industry for NY, ultimately creating more jobs and revenue for all stakeholders including the State.
- The VLTs at Aqueduct are drawing savvy horseman and owners from other states to invest in New York thoroughbreds. More will follow. More people interested in New York breeding and racing will bring more horses, more investment dollars, and therefore more jobs.

Should NYS require out of State Advanced Deposit Wagering (ADW) systems to pay the same statutory Commissions as in-state ADWs? Where is horse racing a growing sport and why?

- Breeders do not currently receive any revenue from exported simulcast wagers (which includes ADWs). Revenue from these out-of-state wagers is currently split among NYRA, NY Horsemen (via purses), and the ADW/out-of-state track themselves. Given the ADW business is the only growing part of the Thoroughbred industry, we need to ensure that the breeding industry, the starting point of the sport, is included in the future of this business.

6

**STOP THE EXPANSION OF GAMBLING IN
NEW YORK STATE**

GAMBLING DESTROYS FAMILIES !

A POSITION PAPER

prepared by

Nelson C. Acquilano

MPA, LMSW, CASAC, CPP

Executive Director

Council on Alcoholism and Addictions of the Finger Lakes

presented to the

Senate Racing, Gaming and Wagering Committee Hearing

September 6, 2011

Good Morning.....

My name is Nelson Acquilano and I am the Executive Director of the Council on Alcoholism and Addictions of the Finger Lakes. We are a prevention and education and information and referral agency that covers the 5-county central Finger Lakes Region. I am also on a number of community coalitions, and serve on the Board of Directors for the Council on Addictions of New York State, and currently serve as chairperson for the NYS OASAS Advisory Council on Underage Drinking and Substance Abuse.

We have a terrible problem in New York. Our families, our communities are in great crisis. Society has slowly been deteriorating. But this is not an economic problem.

No, New York has a Quality of Life Problem... and it is a real crisis for families, for our neighborhoods, and for the whole community, and it will only further decline if we allow it.

In one recent year we had over 517,000 crimes committed in New York State... both violent crimes and property crimes.

New York State had the highest rate of AIDS in the country, and a high rate of other Sexually Transmitted Diseases.

- o We have 2 ½ million adults who have serious problems with alcohol, other drugs, and gambling....
- o Divorce is running at about 50 percent....
- o Our Mental Health Clinics.... our shelters and Social Service organizations are straining at the seams....

... and we have many other risk factors that we need to contend with... child abuse, academic underachievement, and a higher than acceptable rate for teenage pregnancies.

Our jails are full, our schools are faltering, and our families are failing.

Now given this background, the introduction of gambling in New York is contraindicated.

Given this background of community problems, to allow a known environmental carcinogen such as gambling into an otherwise delicately balanced community... to take a powerful -- a potent Risk Factor, a known risk factor -- and allow it to flourish within a local community or anywhere in New York - will only further jeopardize the family unit and healthy community lifestyle we are trying to build and maintain.

Gambling is one of the most destructive dynamics that can be introduced into a community, and when it is - it spreads like a cancer - like an epidemic, leaving broken lives, broken families, and broken communities in its path.

All states that have legalized gambling have found subsequent dramatic increases in the incidence of compulsive gamblers, and in crime, family dysfunction, divorce, bankruptcy, and mental illness. But by then it's too late. Once legalized, communities cannot reverse the trend and control the increase in the gambling addiction and negative consequences.

Compulsive gambling leads to many thousands of personal and family bankruptcies each year. Gambling leads to lost homes, broken families, lost savings accounts, lost college funds, and to a dramatic increase in crime including embezzlement at business and industry. It is strongly correlated with mental illness including anxiety disorders, depression, nervous disorders and suicide, and is associated with a rise in alcohol and drug abuse.

Furthermore, problem gambling also seriously affects the spouses, children, parents, and friends of the problem gambler. Some states have reported that divorce tripled after the introduction of casinos. Others reported an explosion in domestic violence.

The ultimate cost in broken families and disintegrated communities from gambling never even comes close to justifying it as a means to raise revenue. Casino gambling is often promoted based upon economic improvements - including more jobs - for the local community. There is now ample evidence pointing to exactly the opposite findings. Professor Robert Goodman in his study on legalized gambling, showed significant declines for selected area businesses - gambling can remove valuable resources from the community and can hurt small businesses and the overall economic development strategy critical for community sustainability and growth.

Other research shows that gambling is indirectly subsidized by the taxpayers. Field research throughout the nation indicates that for every dollar that gambling contributes in taxes, it usually costs the taxpayers at least 3 dollars (and higher numbers have been calculated) because of major increases in the welfare system, mental health system, and the criminal justice system.

Gambling is exploding across America but America is not ready for the consequences.

About 5 percent of gamblers are caught up in an addiction every bit as powerful as drug addiction. For many of these individuals their families are destroyed, their jobs are lost, their children are devastated, and they have lost all hope.

The National Council on Problem Gambling has found this to be true and has also found that pathological gamblers have a suicide rate twenty times higher than non-gamblers.

The United States has had previous experience with legalized gambling. With the proliferation of gambling, however, people saw the negative effects and started a trend to prohibit gambling activities, and by 1910 there was virtually no legal gambling in the United States. Gambling activities were not just prohibited via state statutes and local ordinances, but more importantly, these prohibitions were incorporated into most state constitutions to make it virtually impossible for future generations to legalize gambling activities.

In NYS we have a Constitutional Law not that prohibits us - BUT THAT PROTECTS US and our families from the consequences of gambling.... but that law has been circumvented by technicalities and now stands to be changed fully to accommodate the interests of the gambling industry. Our state Constitution also mandates the legislature to *pass appropriate laws to prevent offenses against any of the provisions of this section.*

I have pages of facts here showing how much the poor gamble.... that African Americans and Hispanics have higher rates of pathological gambling... that communities experience an increase in crime... and that in this next decade our youth will face more problems with gambling than with drugs.

I also have included my analysis of the research, in terms of an environmental impact study showing the pros and cons of gambling.... please review it - it is very enlightening.

The National Commission on Gambling recommended a moratorium on the expansion of the gambling industry.

As a social worker, as an addictions professional, as an advocate for the families that suffer, as a parent, and as a voter and taxpayer... I agree, and I strongly recommend that all community and governmental representatives actively reject both the growth and the public acceptance of gambling throughout New York State.

If we could stop an epidemic - something that would destroy 5 percent of our families - tens of thousands of families.... (and this would probably increase to 10 percent within 1 to 2 generations), wouldn't we have an imperative - a compelling moral and ethical responsibility to serve and protect our residents - especially those who are most vulnerable?

Our legislators - our leaders - should not gamble with our futures. Our families - our children - can't handle any more dysfunction!

Thank you.

**PROs and CONs REGARDING A CASINO IN YOUR COMMUNITY:
AN ENVIRONMENTAL IMPACT SUMMARY
OF THE RESEARCH ISSUES...
WHAT DOES THE RESEARCH FROM OTHER COMMUNITIES SHOW?
What do the Prevention and Treatment Experts really see? (*)**

| ISSUE: | Gambling Helps the Community | Gambling Hurts the Community |
|--|---|---|
| Increase in number of cases of Personal Bankruptcy | | X |
| Increase in cases of Depression | | X |
| Increase in cases of Suicides | | X |
| Increase in White Collar Crime, ex., embezzlement | | X |
| Increase in Stealing, loan sharking, property crime, assaults | | X |
| Loss of Family Savings | | X |
| Increase in Number of Youth Gambling | | X |
| Increase in Rate of Compulsive Gambling | | X |
| Increase in levels of Mental Illness (Anxiety Disorders, etc.) | | X |
| Increase in Family Dysfunction | | X |
| Increases in Divorce | | X |
| Reduces resources available for youth, including college savings programs | | X |
| Increases alcohol and drug abuse | | X |
| Increases rates of Relapse for the addicted back into alcohol and drug addiction | | X |
| Increases in rates of Domestic Violence | | X |
| Increases in rates of Prostitution | | X |
| Increases in rates of Homelessness | | X |
| Increases in taxes, i.e., costs for increase in local social services | | X |
| Increases in the poor gambling more than the affluent | | X |
| Increases in Drug Money Laundering | | X |
| Corresponding increase in illegal gambling | | X |
| Negative impact on restaurants and surrounding businesses | | X |
| Negative Impact on the Quality of Life for local residents | | X |
| Increase in tax revenues (albeit offset by additional costs) | X | |
| Increase in jobs (albeit minimally skilled jobs) | X | |
| Increase in tourism (albeit, restricted to the casinos) | X | |

(*) Research Supported.

GAMBLING PREVENTION FINDINGS

FINDINGS IN THE FINGER LAKES

In most cases the Compulsive Gambling is a “hidden disease”. The consequences are not as noticeable as with other addictions.

Here are just a few situations from Finger Lakes Residents..... please note that attendance at the Rochester Area Gambler’s Anonymous Meetings have tripled over the past year.

- A woman informed us that her daughter-in-law committed suicide after gambling away her home and an inheritance over a 10 month period.
- A Finger Lakes resident, male, committed suicide after embezzling monies from a civic organization.
- A professional woman attempted suicide because of her mounting gambling losses - it took three law enforcement agencies, emergency responders, mental health service and emergency room/hospital services to intervene - at a cost to taxpayers, her business and the health insurance company of \$25,000- 50,000.
- A highly successful and profitable multi-generation family owned business in the Finger Lakes was lost TWICE because of the owner playing poker. The first time the business was lost, a loan was given to cover the debt, and the debt was eventually repaid. The second time the business was lost, the business was lost entirely from the family.
- A woman from a medical group embezzled approximately \$110,000 from her employer to fund her gambling activities.
- A Finger Lakes county employee embezzled \$10-12,000 for gambling.
- A federal employee took and lost approximately \$44,000 from the federal government to fund gambling activities.
- An 18 year old admitted to stealing \$1,000 in lottery tickets, and was bailed out by parents; within one year he stole \$5,000 in lottery tickets from another convenience store and was bailed out by his grandmother.
- A professional woman in a local business lost substantial monies and found mounting bills and family dysfunction as a result of her gambling.
- A school teacher embezzled monies from a school and local safety department funds totaling \$50,000 directly related to his gambling debts.

GAMBLING FACTS:

- Last year gamblers LOST over \$100 Billion..... gambling does not create wealth - it transfers it (usually from the poor and those least able to expend it.)
- Gambling Addiction actually exceeds prevalence of alcoholism. After age 21, problem gambling is considerably more common than alcohol dependence," said John W. Welte, a psychologist at the Research Institute on Addiction at the University at Buffalo (2011).
- Video slot machines have taken the name of "Video Crack" when referenced for their strong addictive potential. (Psychologists acknowledge that the dynamic of "intermittent positive reinforcement", i.e., occasional pay-outs of a couple of coins by slot machines, is the most powerful shaper of human and animal behavior.)
- The American Journal of Economics and Sociology reported that those earning less than \$10,000 per year spend over twice as much money on gambling than people making 3 or 4 times that; meanwhile, the unemployed, retired and people on fixed incomes gamble 61-to-83 percent more than the employed!
- Experts say that one Compulsive Gambler affects at least 12 or more people - the spouse, children, relatives, co-workers or in the community as a whole.
- More money on gambling, less on retail items: Harvard Magazine, "Trafficking in Chance," by Craig Lambert, July-August 2002, p. 33-40.
- One out of every five pathological gamblers commits suicide: National Council on Problem Gambling, Inc., "The Need for a National Policy on Problem and Pathological Gambling in America," November 1, 1993, p. 7.
- Gambling increases divorce: Many sources, for instance, Mississippi State Department of Health, "Vital Statistics Mississippi" for the years 1991-1998.
- Gambling increases spousal abuse: Many sources, for instance, Maryland Attorney General J. Joseph Curran, Jr., "The House Never Loses and Maryland Cannot Win: Why Casino Gaming Is a Bad Idea," October 16, 1995, p. 5; NGISC Final Report, p. 7-27.
- Gambling causes embezzlement: The American Insurance Institute.
- Gambling is the fastest growing addiction among teens: "Survey Says Public School Students are Gambling," Associated Press, February 2003; National Gambling Impact Study Commission, page 4-12, citing the National Research Council, 1999.
- Gambling costs taxpayers \$3 for every \$1 raised: John W. Kindt, S.J.D. Professor of Commerce and Legal Policy at a University of Illinois, Statement Before Hearing of the U.S. House of Representatives Committee on Small Business, 21 September 1994.

●Gambling increases numbers of suicides: "Elevated Suicide Levels Associated with Legalized Gambling," David P. Phillips, et al, Suicide and Life-Threatening Behavior, Vol. 27, December 1996, p. 373.

●Poor gamble 3 times as much: U.S. Government Commission on the Review of the National Policy Toward Gambling, "Gambling in America," (1976), p. 65.

●62% of gamblers committed illegal acts as a result of their gambling: Native American Press/Ojibwe News, "Casinos, Crime, and Community Costs," by Clara NiiSka, January 25, 2002.

●47% of gamblers admitted to stealing to finance gambling: Prof. Earl Grinols, Professor of Economics at University of Illinois, Statement before Hearing of House Judiciary Committee, September 1996.

●52% of casino revenues come from problem and pathological gamblers: Prof. Earl Grinols, Professor of Economics at University of Illinois, Statement before Hearing of House Judiciary Committee, September 1996.

●Problem gamblers sell all they have and then beg, borrow and steal to support their addiction: Harvard Magazine, "Trafficking in Chance," by Craig Lambert, July-August 2002, p. 33-40.

●25 to 50% of gamblers spouses are victims of domestic violence: National Gambling Impact Study Commission (NGISC) Final Report, June 1999, p. 7-28.

●One in 11 spouses of problem gamblers will attempt suicide: Dr. Robert R. Perkinson, clinical director of Keystone Treatment Center in Canton, SD "Gambling Addiction," Alcoholism/Drug/Abuse/Teen/Gambling/Addiction Treatment Information online advice (9/4/2003)

●According to a study by the Research Institute on Addictions at the SUNY University at Buffalo: African Americans were less likely to gamble in the past year than whites, but those who did gambled more heavily than other racial groups, and along with Hispanic gamblers were more likely than average to be pathological gamblers.

●Alcohol/drug Treatment Agencies in the Buffalo Region have seen the highest Relapse rates back into active addiction – since the establishment of the casino(s). Gambling also fosters alcohol and drug use, abuse, and relapse!

●Each week the Las Vegas Hotline receives approximately 2000 calls – many suicidal, desperate.

●Furthermore, problem or pathological gambling also seriously currently affects more than one-quarter million New Yorkers who are the spouses, partners, children, parents, family members, friends and colleagues of the problem gambler.

●One study estimates the yearly social costs for each compulsive gambler to range between \$6500 and \$18,500 (insurance, welfare, health care costs, increase in taxes for crime control and jails, etc.)

●NGISC: Case studies of 10 casino communities conducted for the National Gambling Impact Study Commission revealed that the majority of those communities witnessed increases in domestic violence relative to the introduction of casinos.

●Reversals: Iowa, one of the first states to allow substantial casino gambling in the 1990's, has now imposed a moratorium; South Carolina, after having 34,000 machines installed in businesses throughout the state, has ordered their withdrawal; and Louisiana, after having recently legalized casino gambling, shows signs of making it illegal again (the new governor intends to outlaw casino gambling.)

●"In the next decade or so, we'll face more problems with youth gambling than we'll face with illicit drug use." — Howard Shaffer, Center for Addiction Studies

●Studies show that gambling is 'regressive,' in that the percentage of money spent on gambling decreases as income rises. Casinos and high-stakes lotteries offer a false hope of economic and social salvation for those caught in the throes of poverty.

●"Gambling always creates large socioeconomic problems, and (raises demand) for new taxes to address those problems." — Boston Globe reporters Mitchell Zuckoff and Doug Baily

●Gamblers Anonymous chapters doubled in number from 1989 to 1995. The national 1-800-GAMBLER hotline received more than 40,000 calls in 1994, up from 11,000 in 1991.

●Central City, CO Just two years after gambling was introduced, assaults and thefts had already increased 400 percent.

●Commercialized gambling attracts pathological gamblers, who "tend to engage in forgery, theft, embezzlement, drug dealing and property crimes to pay off gambling debts," said Robert Goodman, an urban planning professor from the University of Massachusetts-Amherst.

●Gambling: The Seductive Fantasy, John MacArthur Jr.: "America is on a gambling binge. It is the new invisible addiction assaulting millions of people in our country and around the world. America is fast becoming a land of gamblers and not only legal gambling, but illegal gambling makes the actual effect and impact of this thing almost incalculable."

●The New York State Catholic Conference opposes all casino gambling in New York State including casinos on Native American-owned land, as well as expanded opportunities for non-casino legalized gambling.

GAMBLING IMPACT STUDIES

The National Gambling Impact Study acknowledged many of the problems of gambling - the lives and families devastated by problem gambling, of walled-off oases of prosperity surrounded by blighted communities, of a massive transfer of money from the poor to the well-off, of a Puritan work ethic giving way to a pursuit of easy money.

The Commission recommended a moratorium on the expansion of gambling venues in the United States..... Gambling is becoming the fastest new addiction across the country, and the results have been devastating to hundreds-of-thousands of individuals and families.

GAMBLING PREVALENCE IN MARYLAND: A BASELINE ANALYSIS (May, 2011)

In Maryland, an impact study found that 3.4 percent of gamblers are problem and/or pathological gamblers, and another 9 percent are at high-risk for becoming a problem or pathological gambler.

The study noted that the impacts of gambling-related problems can be high, not only for individuals but also for families and communities. Pathological gamblers experience physical and psychological stress and exhibit substantial rates of depression, alcohol and drug dependence and suicidal ideation. The families of pathological gamblers experience physical and psychological abuse as well as extreme pressure from bill collectors and creditors. Other significant impacts include costs to employers, creditors, insurance companies, social service agencies and the civil and criminal justice systems. The impacts associated with gambling-related problems is not limited to those at the most severe end of the gambling problem continuum. Indeed, it is likely that problem and at-risk gamblers account for the largest proportion of the social costs of disordered gambling.

GAMBLING IN CONNECTICUT: Analyzing the Economic and Social Impacts (June 2009)

- Embezzlement increased 400 percent in Connecticut - with just the two Indian Casinos;
- DWIs have more than doubled
- Public School Administrators announced increases in (casino related) costs;
- Municipalities reported increases in (casino related) services ex., one reported a 76 percent increase in police service calls;
- There was an increase in automobile and pedestrian accidents - and deaths;
- There was an increase in substandard and illegal housing - one city had to add a new position "Blight Officer";
- They found an incidence of problem or pathological gambling at 3.9 percent.
- The number of bankruptcies in areas by the casinos were more than 10 percent higher than the national norms in 7 of the ten years after the casinos were built;
- The report acknowledged that family members found gambling to have devastated their lives. One clinician reported that "A vast amount of money gets eaten up by the compulsive gambler. Every so often you hear about someone hitting a tree or something, or a crime where someone steals a million dollars, but the real victims are the families. If you look at the number of people who are gambling around the state and you think about their families that are impacted; they are pushed beyond their limits. Imagine if you were poor and couldn't stop being poor. What would that be like?."
- Of the problem gamblers studied in this report:
 - 62 percent gambled until their last dollar was gone;
 - 29 percent gambled to pay off debts;
 - 13 percent sold possessions to finance gambling;
 - 26 percent borrowed to finance gambling !

NEW YORK STATE OASAS SURVEY

- In New York there are an estimated ONE MILLION New Yorkers with a gambling problem;
- 20 percent of adolescents currently have (or are) at risk of developing a gambling problem;
- 5 percent of adults over 18 have a gambling problem;

FAMOUS QUOTATIONS

"Gambling is the child of avarice,
the brother of iniquity,
and the father of mischief."
-- George Washington

"There is no question, in sites where gambling is introduced, there is an increase in crime."
-- Maryland Attorney General Joseph Curran

"We can affirm now with even stronger conviction that casino gambling is a pernicious cancer. Once a community contracts it, or makes a compact with it, it grows, and grows, and grows. And the pathology of addiction grows with it... Casinos are predatory. They prey on the poor, the elderly, the young, and on people of all ages who are vulnerable to addictive behavior. Many have called casinos a special tax on the poor. Their claims have merit when statistics consistently show that the poor spend a higher percentage of their income on gambling than any other economic group."
-- Most Rev. Henry J. Mansell, Bishop of Buffalo

"...for every dollar legalized gambling interests indicate is contributed in taxes,
it really costs the taxpayer \$3.00 to address the increased socio-economic costs to society."
- Professor John Kindt, University of Illinois

"In gambling the many must lose in order that the few may win" -- George Bernard Shaw

"The more people there are who gamble to acquire money, the poorer society is."
-- The Economics of Gambling: Summary Points, Professor Earl L. Grinols,
Department of Economics, University of Illinois

"The worst thing that can happen to a man who gambles is to win"
-- Charles H. Spurgeon

"When we put 50 slot machines in, I consider them 50 more mousetraps.
You have to have a mousetrap to catch a mouse."
-- Bob Stupak, former Las Vegas casino owner

"In the Casino the cardinal rule is to keep them playing and keep them coming back.
The longer they play the more money they lose. In the end we get it all."
-- Robert DeNiro, in Casino

"By gaming we lose both our time and treasure - two things most precious
to the life of man."
-- Owen Felltham

A CASINO IN ROCHESTER, NEW YORK ?

| According to Pro-Casino Lobbyists: | According to Casino Opponents: |
|---|--|
| A CASINO WILL: Create 500 new jobs | A CASINO WILL: Create 4,000 new personal/family and business bankruptcies! (*) |

(*) In 2003 there were 5,210 cases of bankruptcy filed in the Rochester division of the U.S. Bankruptcy Court's Western New York district.

Extrapolated from the Buffalo region, where there was a 17% **increase in new bankruptcies following the first year of casino gambling**, this would project to be over 4,000 new cases of bankruptcy in the Rochester region over the next five year period - minimum!

AN OPEN LETTER TO ALL OUR LEGISLATORS

Stop the Expansion of Gambling in New York State

The Council on Addictions of New York State (CANYS) is an organization of prevention, education, intervention and treatment agencies throughout New York State that meets to address concerns and issues that both affect the practice of prevention, intervention and treatment of alcoholism, drug abuse, and problem gambling as well as of organizational efficiency including administrative, managerial programmatic, fiscal and staff and Board concerns.

Our mission is to effectively address problems related to alcohol, tobacco, drug use and gambling problems in our local communities as well as regionally and statewide.

CANYS is also committed to advocating for education about problems related to alcohol, tobacco, other drugs and gambling and their associated problems.

Compulsive gambling leads to many thousands of personal and family bankruptcies each year. Gambling leads to lost homes, broken families, lost savings accounts, lost college funds, and to a dramatic increase in crime including embezzlement at business and industry. It is strongly correlated with mental illness including anxiety disorders, depression, nervous disorders and suicide, and is associated with a rise in alcohol and drug use and abuse. Anyone from youth through senior citizens can develop a compulsive gambling problem, and pathological gambling also seriously affects the spouses, children, parents, and friends of the problem gambler.

All states that have legalized gambling have found subsequent dramatic increases in the incidence of compulsive gamblers, and corresponding increases in crime, family dysfunction, divorce, bankruptcy, and mental illness.

We, in the prevention and treatment profession want to remind our legislators that the most effective means of prevention documented to reduce compulsive gambling and the related negative consequences, is to reduce the availability and accessibility to and of that behavior.

We, in the prevention and treatment profession are opposed to any further expansion of the gambling industry in New York State.

Sincerely,
LARRY CALKINS

Larry Calkins
President, CANYS

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Statement of David Young Problem Gambling Prevention Coordinator for
The National Council on Alcoholism and Drug Dependence Rochester Area

Hearing of the Senate Racing, Gaming and Wagering Committee.

September 6th, 2011 Hopewell New York

Hello, my name is David Young. I have been working for the past five years as the Problem Gambling Prevention Coordinator at the National Council on Alcoholism and Drug Dependence-Rochester Area. Thank you for the opportunity to speak today on the issues related to gaming and gambling in New York. What I have to share is different from most of the other speakers today, but it is equally important. It is an undeniable fact that some gamblers will eventually cross the line into compulsive or problem gambling. It is also true that any changes to gaming operations or oversight will have an impact upon the extent of problem gambling in our state. Despite the decisions made by policy makers and the legislature the effect of problem gambling will remain the same – a negative impact upon our communities and New York State.

We advocate for treatment services for problem or compulsive gambler and prevention and support services for their families. We advocate for the problem gambler and their families and when necessary call attention to areas of concern or recommend changes that serve to protect public health and public safety. Any increase or expansion of gambling and gaming must include dedicated funding to respond to both the prevention and treating of problem or compulsive gambling.

Scope of the problem

Pathological gambling is a significant mental health problem in New York and across the United States. This addiction is recognized by the American Psychiatric Association and is included in its DSM the key reference text in the mental health field .In New York there are an estimated ONE MILLION New Yorkers who currently have a gambling problem. "Twenty percent of adolescents currently have or are at risk of developing a gambling problem. Five percent of adults over 18 have a gambling problem." (OASAS Problem Gambling Survey Statistics.)

In 2010-2011 New York State sponsored gambling generated approximately \$3.1 billion in revenue for New York. The projection for the 2011-2012 year is a \$267 million increase in revenues.

We know that increasing gaming or gambling opportunities consequently increases costs to society. Social costs include increased rates of problem and pathological gambling problems for New York State residents. This encompasses: addiction, mental health problems, bankruptcy, fraud, foreclosures, suicide, domestic violence, divorce and embezzlement.

Every new slot machine or VLT (video lottery terminal) at a casino will destroy one job each year, by taking money out of the consumer economy, according to John Warren Kindt, business professor at the University of Illinois. Four thousand slots could mean forty thousand lost jobs over a decade. Each VLT or slot machine, conservatively, takes in \$100,000 a year. With the multiplier effect on consumer spending, that means that 4,000 planned slot machines will remove \$1.2 billion from the consumer economy each year, Kindt predicted. That's a loss of \$120 million in sales tax, just for starters, to set against the \$140 million in county/city profits. Not to mention a heavy blow to our struggling economy.

There are years of academic research showing that gambling destabilizes local economies. The state's proposed gambling expansion will only hurt our economy. Up to 90 percent of gambling profits come from VLTs or slot machines. Slot machines don't create jobs.

Costs to government go up as gambling addiction rises (doubling within casino feeder markets). Bankruptcies climb (18 to 42 percent higher in areas around casinos) and crime rates go up (about 10 percent a year). That means costs to government of \$3 for every \$1 in gambling revenue.

Twenty years ago in Illinois the increasing of the numbers of casinos was proposed as a solution to the state's budget problems. Now, Illinois and two other states with large gambling industries (California and Nevada) lead the nation in budget shortfalls.

I personally have heard countless stories of devastation from people living in the Rochester area that includes losing everything that they have worked for all their lives and now finding themselves in the position of working 3 jobs just to stay afloat when they should be enjoying their retirement. I receive phone calls on a daily bases from people seeking help for a gambling addiction or looking for GA meetings or from family members reaching out trying to find some kind of help for their loved ones and the financial devastation to their families.

I just worked with a gentleman who called looking for help for his wife who was in tears the whole time I talked with him .He had no idea how addictive gambling could be and no clue on how to help his wife or where to go for help or who to turn to. He had asked me why there are not more resources, information and services available as there are with someone impacted by an alcohol or drugs

addiction. Individuals, families and communities need to know what about problem and compulsive gambling and the harm it does them.

Some thoughts regarding funding for community prevention, education and treatment services for Problem Gamblers and their families – Funding for compulsive Gambling services can be, and usually is, generated by dedicating a portion of new revenues or through annual licensing fees. Responsible Gaming Programs across the country and throughout the industry virtually always include such funding and provisions, which may be viewed as a cost of doing business. New York State is the only state without dedicated funding from gambling revenues for problem gambling services – we proposed half of 1 percent of gambling revenue (\$15.5 million).

Thank you for the opportunity to share some of our thoughts and concerns as well as possible solutions for the State of New York. We look forward to working with you as we together create a responsible gaming industry that includes dedicating resources to the prevention and treatment of problem and compulsive gambling and gaming.