National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-07-02

To: Ivy Ong
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Notification of Violations

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that Respondents Ivy Ong (Ong) and Carlo World Wide Operations, L.L.C. (Carlo) managed and had a proprietary interest in the blackjack and gaming machine operations of the Seminole Nation of Oklahoma (Seminole Nation or Tribe) and are consequently in violation of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, NIGC regulations, 25 C.F.R. § 501 *et seq*, and the Tribe's gaming ordinance.

Authority

Under IGRA and NIGC regulations, the Chairman may issue a Notice of Violation (NOV) to any person for violation of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713; 25 C.F.R. § 573.3. A NOV must contain a "citation to the federal or tribal requirement that has been or is being violated." 25 C.F.R. § 573.3(b)(1).

Applicable Federal and Tribal Laws

A. IGRA requires that tribes obtain the approval of the NIGC Chairman to enter into a management contract for the operation and management of a gaming operation. 25 U.S.C. § 2711.

B. NIGC regulations reiterate this requirement, mandating that "[s]ubject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity." 25 C.F.R. § 533.1. Management contracts become effective upon approval by the Chairman. 25 C.F.R. § 533.1(a).

C. All management contracts not approved by the Secretary of the U.S. Department of the Interior must be submitted to the NIGC for review upon their execution. 25 C.F.R. § 533.2.

D. Management contracts and changes in persons with a financial interest in or management responsibility for a management contract that have not been approved by the Secretary of the Interior or the Chairman are void. 25 C.F.R. § 533.7.

E. NIGC regulations provide that it is a substantial violation of IGRA for a management contractor to operate a gaming operation without an approved contract. *See* 25 C.F.R. § 573.6(a)(7).

F. IGRA provides that, to lawfully operate Indian gaming, a Tribe must submit for approval to the NIGC Chairman a tribal gaming ordinance. 25 U.S.C. § 2710(b)(1)(B).

G. The IGRA requires that the tribal gaming ordinance must provide that the Tribe have the sole proprietary interest in and responsibility for the conduct of any gaming activity. 25 U.S.C. §2710(b)(2)(A); 25 C.F.R. §522.4(b)(1).

H. NIGC regulations require that a tribe's gaming ordinance provide that "the tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation…." 25 C.F.R. §§ 522.4, 522.7.

I. The Tribe's gaming ordinance, approved by the Chairman on May 31, 1999, provides that "[t]he Seminole Nation shall have the sole proprietary interest and responsibility for the conduct of gaming activities conducted in Indian Country subject to the jurisdiction of the Seminole Nation…." Seminole Nation Public Gaming Act, Title 15, Section 11.

J. One has a proprietary interest if he shares in or derives profit from a business as opposed to being a salaried employee merely performing clerical

and ministerial duties. *Dondlinger v. United States*, 1970 U.S. Dist. LEXIS 12693 (D. Neb. 1970)

K. The common, ordinary meaning of "proprietary interest" is "one who has in interest in, control of, or present use of certain property." *Evans v. United States,* 349 F.2d 653, 658 (5th Cir. 1965).

L. Failure to comply with any provision of an approved ordinance is grounds for issuance of an NOV. 25 C.F.R. § 573.5(a).

Purpose of Approval of Management Contracts and Sole Proprietary Interest Requirement

The operation, management, and control of the tribal gaming operations by Ong and Carlo without a management contract approved by the Chairman and in violation of the sole proprietary interest requirement threatens the NIGC's ability to achieve its congressionally mandated goals of shielding the Tribe from organized crime and other corrupting influences; ensuring that the Tribe is the primary beneficiary of the gaming operation; and ensuring that gaming is conducted fairly and honestly by both the operator and players. *See* 25 U.S.C. § 2702(2).

Circumstances of Violations

1. The Seminole Nation is a federally recognized Indian tribe with headquarters in Wewoka, Oklahoma. The Tribe owns four gaming operations, two of which are at issue here: the Rivermist Casino (Rivermist) located in Konawa, OK, and the Travel Plaza, located in Seminole, Oklahoma.[1] The Tribe has operated Rivermist since the spring of 2000 and Travel Plaza since approximately October, 1998.

2. The Seminole Nation Development Authority (SNDA) is a duly created agency of the Seminole Nation granted authority and responsibility by the General Council of the Nation to manage and operate the Nation's gaming activities under the provisions of the IGRA.

3. Carlo is a limited liability corporation registered in the State of Nevada. The corporation was originally registered on or about April 20, 2000, and its status was revoked on May 1, 2005. Carlo's registration was reinstated on or about June 20, 2006, and remains current. Carlo, in its corporate filings, currently and prior to revocation, lists its principal place of business as 220 N. Main Street, Seminole, Oklahoma.

4. Ivy Ong is listed in the Articles of Organization of Carlo as a manager. In Nevada State filings of the Annual List of Managers and Members of Carlo, Ong is listed as a manager for the periods April 2001-2002 and April 2002-2003.

[1] The Tribe's other operations, the Seminole Nation Bingo and Casino and the Wekoka Trading Post, may be mentioned in documents in the agency record, but are not at issue in this case.

5. The Chairman of the NIGC has never approved a management contract between the Tribe and Ong or Carlo.

6. On September 27, 2001, the Tribe requested that the NIGC review agreements between the Tribe and Carlo to determine if the agreements were management contracts requiring review and approval of the NIGC Chairman. On May 7, 2002, the NIGC upheld the determination of the Chairman that the games that were the subject of the agreements were Class III games and therefore illegal as no tribal-state compact existed between the Tribe and the State of Oklahoma allowing the Tribe to operate Class III games pursuant to 25 U.C.C. §2710 (d)(1)(C). On May 6, 2003, the NIGC advised the Tribe that it would not review the agreements because they were void for illegality.

Wizard Gaming Machine Agreement

7. On January 21, 2000, prior to its relationship with Carlo, the Tribe entered into an Operating Lease Agreement with Wizard Gaming (Tribe/Wizard Agreement), an Oklahoma gaming machine company. The Tribe/Wizard Agreement provided that Wizard Gaming would install gaming machines in exchange for forty percent (40%) of the net win from the equipment (machines). Net win is defined as cash from the bill acceptor minus payouts from the machines. The Tribe/Wizard Agreement does not specify at which location the gaming machines would be installed. However, in 2000, the machines provided by Wizard were installed at both the Travel Plaza and Rivermist.

8. When Wizard games were first placed at Travel Plaza and Rivermist, MultiMedia Games, Inc. was the only other vendor providing leased games at Seminole.

Carlo Gaming Machine Agreements

9. On August 16, 2000, the SNDA and Carlo entered into an Operating Lease Agreement for gaming devices at the Rivermist gaming operation, and on September 11, 2000, the SNDA and Carlo entered into an Operating Lease Agreement for gaming devices at the Travel Plaza gaming operation. (collectively, the Tribe/Carlo Agreements). The Tribe/Carlo Agreements provided that Carlo would install gaming machines in exchange for forty percent (40%) of the net win from the equipment (machines). Net win is defined as cash from the bill acceptor minus payouts from the machines. The Tribe/Carlo Agreements are similar to the Tribe/Wizard Agreement in other respects, but contain several key additional terms. Those additional terms are that:

   A. Carlo would pay for the cost of construction of new gaming facilities at both Rivermist and Travel Plaza, with no requirement that the Tribe repay Carlo the costs of construction;

B. Carlo would provide, at each facility, two full-time managers and two full-time technicians to assist in training of employees and management of the facility, and that these employees would be paid by Carlo; and
C. the length of the Tribe/Carlo Agreements would be one year, with the option of Carlo to extend for seven additional years.

10. Rolen Miller of Wizard Gaming reported to NIGC Field Investigator (FI) Marcelin R. Pate Ober that, approximately 6 months after Wizard and the Tribe entered into the Tribe/Wizard Agreement, he was told by Qazi Alam, Executive Director of the SNDA, to "cut a deal with Carlo."

11. Consequently, on July 15, 2001, Carlo and Wizard gaming entered into an Operating Lease Agreement (Carlo/Wizard Agreement) for the installation of 150 gaming machines at the Tribe's Travel Plaza gaming operation. This agreement was in form and substance similar to the Tribe/Wizard Agreement but for three key provisions. These provisions are:

    A. The term of the Carlo/Wizard agreement was one hundred and eighty days, renewable for one year and for successive one year periods thereafter;
    B. Carlo would pay Wizard twenty percent (20%) of net win; and
    C. An employee of Carlo would obtain meter readings on the games provided by Wizard, and Carlo would forward those readings to Wizard, along with payment for the percentage split of the profits. The Carlo/Wizard Agreement is silent as to any responsibilities of the Tribe for operation, maintenance, or accounting of the machines.

12. On November 15, 2001, Carlo and Wizard entered into an Operating Lease Agreement for the Rivermist Casino. This agreement was identical to the one the same parties entered into on July 15, 2001, for the Travel Plaza operation.

Casino Expansion and Design

13. Carlo was instrumental in financing, renovating, and expanding the Tribe's gaming operations. As provided in the August 16, 2000, Operating Lease Agreement for gaming devices at the Rivermist gaming operation, and the September 11, 2000, Operating Lease Agreement for gaming devices at the Travel Plaza gaming operation, Carlo paid for the cost of constructing new facilities at both locations. Carlo claims it incurred costs of over $2 million for construction of and equipment for the Travel Plaza facility, and over $1.3 million for construction of and equipment for the Rivermist facility. Carlo also paid related costs of advertising, consulting, and attorney's fees.

14. The expansion resulted in room for additional gaming machines and blackjack operations.

15. Jon Rooks, a manager for Carlo (Carlo Employee Rooks), was involved in the layout design for the new facilities.

Operation and Management of Gaming Machines

16. Roy Yargee, an SNDA employee (SNDA Employee Yargee), was the Gaming Manager for Travel Plaza from approximately November of 2000 until March of 2001.

17. Nettie Haney, a SNDA employee (SNDA Employee Haney), was the Interim Facility Manager for Travel Plaza beginning approximately late August or early September, 2001.

18. Carlo owned the machines and decided what machines were installed and placed at Rivermist and Travel Plaza. SNDA Employee Yargee had no involvement with machine placement.

19. Carlo's machines were placed in prime locations that other vendors also wanted. Carlo had 70-80% of the floor space at Rivermist. At Travel Plaza, Carlo had about 60% of the floor space. Most of the remaining floor space was devoted to gaming companies that were paid through Carlo.

20. Carlo Employee Rooks managed the gaming machine operations at both Rivermist and Travel Plaza. He oversaw the machine technicians and gaming machine orders at both locations.

21. According to Larry Brown, Security Officer at both Travel Plaza and Rivermist, the security department reported any issues with the machines directly to Carlo Employee Rooks.

22. Miller stated that any changes to the machines or movement of the machines within the casino were directed by Carlo. He further stated that any operational issues went through Carlo and that Wizard received all of its direction from Carlo. Miller stated that Carlo Employee Rooks was usually the person with whom he dealt. If there were any technical problems with Wizard machines, either Carlo Employee Rooks or a Carlo machine technician would call Wizard. Miller dealt only with Carlo on all business decisions or discussions about equipment in the casinos. Miller believed Carlo had a management agreement with the Tribe.

23. Carlo supplied its own full-time on-site technicians to set up the machines, configure the software, and train casino employees in running the reconciliation software. No other gaming machine vendors provided full-time on-site game technicians or had a manager on-site at the casino.

Maintenance of Gaming Machine Records

24. Independent auditor Dennis & Company CPA's, LLC, (Dennis & Company), in a November 25, 2002, letter to Qazi Alam, identified as a "major issue" the reporting of gaming machine revenue. The auditor concluded that the reporting of machine revenue was not in compliance with NIGC Minimum Internal Control Standards (MICS) and that hard meter readings were kept by Carlo and that Carlo billed the SNDA for those readings. The auditor further noted that the SNDA did not monitor the hard meters. The auditor recommended to the SNDA that it monitor the readings not only to comply with the MICS but to verify Carlo's billing.

25. Carlo Employee Rooks created a computer program to check hard meters and theoretical hold on the gaming machines. For a period of time, he also inputted the numbers into the program.

26. Carlo and Wizard split the vendor's 40% fee, with each receiving half, or 20%. At first, Wizard invoiced the Tribe for their share of the fee and the Tribe sent payment to Wizard. Later, Wizard invoiced Carlo directly and received payment directly from Carlo.

Blackjack Operations

Financial Arrangement

27. A February 7, 2001, "Agreement of Understanding, Blackjack Commission Distribution" between Carlo and the SNDA provides that the commission, less salary and wages of pit bosses, dealers and valets, shall be divided 60% to SNDA and 40% to Carlo, less 20% of the costs of soft drinks, coffee and chips. This agreement was followed by the parties until Carlo left the Seminole gaming facilities in August of 2002, and casino records reflect this arrangement.

Establishment of Blackjack

28. During his tenure, SNDA Employee Yargee had no responsibility over the blackjack employees. He did not set their schedules, nor did he have authority over training, discipline, pay raises or promotions. He did have this authority over tribal gaming employees.

29. In approximately August 2001, SNDA Employee Haney was promoted from casino clerk to Interim Facilities Manager at the Travel Plaza. At that time, she advised Qazi Alam that she did not feel she had the requisite experience to manage blackjack. Alam told her she did not need to supervise blackjack because it was a separate operation. From August 2001 until Ong's departure in August

2002, SNDA Employee Haney did not manage the blackjack games or employees.

30. Ong planned the new blackjack operation at the Travel Plaza. No one at the Tribe had blackjack experience.

31. Ong had access to all areas of the casino and its offices.

32. Carlo/Ong supplied blackjack equipment.

33. Ong decided the number of tables, how many and which machines to remove to make room for the tables, placement of the tables, and the rules for the blackjack games.

34. The first blackjack tables were established at Travel Plaza in December of 2000. NIGC FI Pate Ober observed two tables in January 2001. On March 20, 2001, FI Pate Ober observed eight blackjack tables were in operation.

35. Carlo Employee Rooks managed blackjack at Travel Plaza. He also set up the blackjack paperwork at Travel Plaza. He created forms for the cage and for the transfer of chips. He also created cash disbursement and cash receipt vouchers.

36. Garrett Sliger was a blackjack pit boss at Travel Plaza. When Sliger left, Kirk Brumbaugh took his place. Both Sliger and Brumbaugh took direction from Ong. Both Sliger and Brumbaugh were on the Tribe's payroll, but were brought in by Ong. Garret Sliger is Ong's brother-in-law.

37. During a January 8, 2002, site visit, Sliger told NIGC FI Pate Ober that "Carlo runs the card games."

38. Carlo provided money to establish the blackjack bank and guaranteed the blackjack bankroll. If the player's pool went in the negative, Ong would replenish it.

39. The first blackjack tables were established at Rivermist in January 2001.

40. Alam informed SNDA Employee Yargee that he was to "get done whatever Ivy Ong wanted done".

41. Al Brannon, a Carlo employee (Carlo Employee Brannon) was in charge of blackjack at Rivermist.

42. At Rivermist, the blackjack drops and counts were done by people brought in by Carlo through Carlo Employee Brannon.

43. Bob Dias, a Carlo employee, wrote policies and procedures for blackjack accounting.

44. During Carlo's management of the blackjack operation, there were no internal control standards in place for blackjack.

45. The SNDA took over blackjack operations from Carlo on August 28, 2002, and at that time began to establish internal control standards.

Blackjack Record Keeping

46. Carlo maintained supporting documentation for blackjack and was responsible for reporting of blackjack revenue to the SNDA. Independent audit firms hired by the SNDA to audit its gaming operations were unable to verify blackjack information due to a lack of documentation.

47. In a September 5, 2002, letter to Alam, the audit firm Dennis & Company recommended to the SNDA that that the blackjack reporting could be strengthened by having SNDA do it instead of Carlo, and by keeping all supporting documentation with the daily reports. Dennis & Company noted that Carlo had not provided any support for the numbers.

48. In a February 27, 2003 Independent Auditor's Report, the independent auditor stated that because of a lack of supporting documentation for blackjack revenue, the auditor was unable to form an opinion regarding the revenue shown in the SNDA income statement.

49. In the Independent Auditor's Report on the Internal Control Policies and Procedures for Gaming Revenue Based on the Audit of the Financial Statements for fiscal year ended September 30, 2002, the independent auditor noted that:

    A. chip inventory forms were not available for blackjack for game dates prior to August 28, 2002;
    B. blackjack was not audited by SNDA personnel prior to August 28, 2002; and
    C. opening/closing table inventory forms were not available for game dates prior to August 28, 2002.

50. In a Fraud Risk Internal Control Memo attached to the Independent Auditor's Report for fiscal year ended September 30, 2002, it is noted that Carlo was responsible for blackjack operations until August 28, 2002 and that no documentation exists to support the payment received by SNDA for blackjack during the audit period.

Ong and Carlo Controlled the Blackjack Cage and Blackjack Count Room and Conducted the Blackjack Count

51. During both SNDA Employee Yargee and SNDA Employee Haney's tenure at Travel Plaza the blackjack counts were done by Ong or Carlo employees. On one or two occasions, when there was one count room for blackjack and machines, Alam cleared the count room of people so Ong could conduct the count.

52. During February and March of 2001, Ong and his employees began taking the blackjack chips from the drops to a room in the Travel Plaza that had previously been the trucker's lounge, also known as the "red room." There were two blackjack tables there at the time. Ong counted the money on one of these tables. Later, the red room was converted to the blackjack count room.

53. Blackjack drops and counts at Rivermist were done by people brought in by Carlo Employee Brannon.

54. On occasion, Ong took large bills from the blackjack table count and gave them to the blackjack cage cashier to increase the blackjack bank. During one of the blackjack tournaments, Carlo Employee Sliger brought the drop money into an office and Ong counted the money on the desk.

55. There was a separate cage for blackjack at Travel Plaza. Check cashing took place in this cage directly behind the blackjack pit.

Surveillance and Security

56. SNDA Employee Haney was not allowed in the surveillance room. Carlo Employee Rooks was in the surveillance room on a regular basis. The Chief of Surveillance, Buddy Harjo, was Carlo Employee Rooks' father-in-law.

57. On one occasion SNDA Employee Haney saw Carlo Employee Rooks leave the surveillance room with videopes.

58. SNDA Employee Haney was never allowed to watch surveillance tapes.

59. At Ong's request, Ron Hill of H & H Alarm Company drew up a proposal to install a matrix surveillance system at Travel Plaza, Rivermist, and Seminole Nation Bingo. Carlo paid for the equipment and installation of surveillance systems at these three locations.

60. Because blackjack was operated separately, the Tribe's surveillance force was not asked to monitor the blackjack area. Security did not observe fills, payoffs or the drop.

Ong/Carlo Made Hiring Decisions

61. Ong hired blackjack employees. Dena Brady, Human Resources Director of the SNDA Personnel Department (SNDA Employee Brady), recruited, screened, and hired SNDA employees, including non-blackjack SNDA employees of the tribal gaming operations. SNDA Employee Brady was not involved in the hiring of blackjack employees. On occasion, her office would learn of a new blackjack employee when the employee submitted his or her timesheet. Ong or Carlo Employee Rooks brought people over to the Personnel Department and advised SNDA Employee Brady that they were now working at Rivermist or Travel Plaza.

62. Alam told SNDA Employee Brady not to question Ong or Rook's decision to hire anyone. Sometimes personnel paperwork went directly to Alam, bypassing SNDA Employee Brady. Personnel policies were regularly violated.

63. While many of the blackjack employees appeared on the payroll of the SNDA, Carlo reimbursed the SNDA for a percentage of the payroll costs of those employees.

Oversight of Casino Employees

64. Ong gave instructions to the on-site pit bosses and supervisors at the Travel Plaza.

65. Ong gave directions to the casino maintenance crew at Travel Plaza.

66. The blackjack pit bosses, who reported to Ong, scheduled the working hours of blackjack employees.

67. Carlo Employee Brannon, brought in by Ong, was in charge of blackjack at Rivermist and disciplined employees for violation of card dealing procedures.

68. The SNDA issued identification badges for Carlo employees.

69. Johnny Hy was an individual brought in by Ong sometime in the fall of 2001. His role was liaison between the casino and the Asian community, and he acted as a host at the Travel Plaza. Ong reimbursed the Tribe for part of Hy's salary. Hy also played blackjack at the Travel Plaza.

Approval of Credit (Markers) and Check Cashing

70. Ong approved credit for the play of blackjack. Credit was given to players at the blackjack tables. Paperwork supporting the giving of credit was put in a box at the pit podium. Some players, including Johnny Hy, filled out their own credit paperwork that was then put in the box.

71. The SNDA internal auditor noted on a MICS audit checklist that the SNDA did not issue credit for gambling.

72. Ong guaranteed any checks that were cashed at Travel Plaza.

73. Ong accepted checks in exchange for blackjack chips. Some checks were taken at the tables, but the majority was taken at the cashier cage. There was a separate cash cage for blackjack. Some checks were written out to Seminole Casino and some directly to Carlo. Carlo Employee Sliger brought the checks to Carlo's office at 220 Main Street, Seminole, OK and they were then deposited into an account in Carlo's name.

Loans to and From Casino

74. On more than one occasion, Ong was observed at Travel Plaza taking money from his pocket and giving it to the blackjack cage clerk when the cage was running low on money. A disbursement voucher was written to say how much money the cage owed Ong.

75. Carlo requested and received several draws or loans from the SNDA to conduct blackjack tournaments and to increase the blackjack player's pool.

Tournaments and Promotions

76. Ong and Carlo Employee Rooks determined when blackjack tournaments would run. Ong was involved in decision-making regarding promotions, giveaways and grand prizes. He had direct involvement in how the tournament was run and the number of people who could qualify.

77. During at least one tournament, Ong counted the drop money on the desk of his office.

78. Carlo bankrolled a $100,000 prize for a tournament.

Casino Marketing, Advertising and Equipment Purchasing

79. Carlo placed radio advertisements and created newspaper advertisements for Rivermist and Travel Plaza, ordered advertising supplies for these operations, and handed out complementary items at the both locations.

80. Carlo paid 40% of the cost of casino advertising for Rivermist and Travel Plaza

81. Carlo purchased game equipment for Rivermist and Travel Plaza.

Proprietary Interest in Tribe's Gaming Operations

82. The same evidence that supports a violation for managing without an approved management contract also supports a violation of the sole proprietary interest provision of the IGRA. Therefore, in support of the sole proprietary interest violation, the Chairman reasserts paragraphs 1 through 81, above.

83. The agency record contains documentation which sets forth the Tribe's reported gaming revenue for fiscal years 2001 and 2002 (October 1-September 30).

84. An article in the February 23, 2003, edition of the Daily Oklahoman quotes Ong as saying he "made $18 million in the past three years off the Seminole's casinos."

85. To correct these violations:

There is no cure for these violations because the Tribe has already severed its relationship with Carlo/Ong.

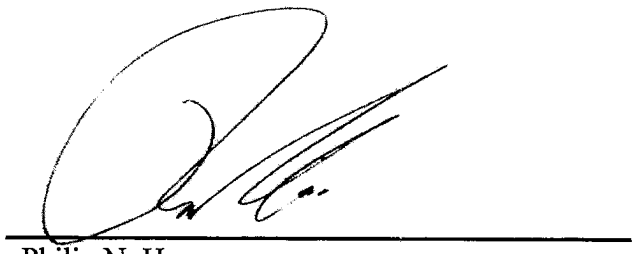
86. Appeal. Within thirty (30) days after service of this NOV, Respondents may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. Respondents have the right to assistance of counsel in such an appeal. A notice of appeal must reference this NOV. Within ten (10) days after filing a notice of appeal, Respondents must file with the Commission supplemental statements that state with particularity the relief desired and the grounds therefore and that include, when available, supporting evidence in the form of affidavits. If Respondents wish to present oral testimony or witnesses at the hearing, Respondents must include a request to do so with each supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, whether a closed hearing is requested and why. Respondents may waive their right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

87. Fine--Submission of Information.

The violation cited above may result in the assessment of a civil fine against Respondents in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondents may submit written information about the violation to the Chairman within fifteen (15) days after service of this NOV (or such longer period as the Chairman may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding

the violation and the amount of the civil fine, if any.

Dated this 16th day of May, 2007



Philip N. Hogen
Chairman
National Indian Gaming Commission