UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL T. WARREN

PLAINTIFF,

V.

UNITED STATES OF AMERICA, ET AL.,

DEFENDANT.

AMICUS SENECA NATION OF INDIANS' RESPONSE TO PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

06-CV-0026-WMS
Hon. William M. Skretny

PRELIMINARY STATEMENT

The Seneca Nation of Indians (the "Nation") respectfully requests leave to submit the following response to Plaintiff Daniel Warren's ("Plaintiff") Motion to Amend the Complaint.[1] Plaintiff's motion is, for all intents and purposes, a reiteration of his Motion to Add Parties, which Plaintiff filed on October 2, 2006 (Docket Nos. 28-31). As previously stated in the Nation's Response to Plaintiff's Motion to Add Parties, dated November 9, 2006 (Docket No. 38), this motion is predicated on circumstances that no longer exist, and burdens this Court with issues no longer before it. Furthermore, the Motion is substantively infirm, for it requests leave to add additional defendants, all of whom enjoy sovereign immunity, rendering a further amendment to the Complaint to add these defendants futile. The deficiencies in Plaintiff's original Motion to Add Parties are incurable, and for the reasons set forth below, the Nation respectfully requests this Court deny Plaintiff's current Motion to Amend the Complaint.

[1] This submission should not in any way be construed as a waiver of the Nation's sovereign immunity, which, as the arguments herein make clear, the Nation asserts unequivocally.

PROCEDURAL BACKGROUND

On April 6, 2006, Plaintiff filed this suit against the United States of America, the United States Department of the Interior, individual federal defendants, George E. Pataki as Governor of New York, and Cheryl Ritchko-Buley as Chair of the New York State Racing and Wagering Board (collectively, "Defendants"). Complaint (Docket No. 1) at ¶¶ 10-17. Plaintiff's original Complaint directly challenged the validity of the Gaming Compact between the Nation and the State of New York under IGRA, 25 U.S.C. 2701 *et seq*. *Id*. at ¶¶67, 78. It also challenged the restricted fee status of the Nation's Niagara and Buffalo Creek Territories, *id*. at ¶ 64, and the validity of the Nation's Gaming Ordinance, *id*. at ¶ 70.

On August 14, 2006, based on the scope and character of these claims, the Nation filed a Motion for Leave to File Amicus Brief and accompanying Brief Amicus Curiae (Docket No. 16), requesting dismissal of this action under Fed. R. Civ. P. 19. The Nation argued that both it and the State of New York, as the only two parties to the gaming compact, had significant governmental and economic interests in the Compact's validity. In addition, the Nation argued that it had a significant governmental interest in its authority over the Niagara Falls and Buffalo Creek Territories, and in the status of its title to land parcels within those Territories. As a result, the Nation urged that both it and the State were necessary and indispensible parties to the action rendering dismissal appropriate under Fed. R. Civ. P. 19.

On August 16, 2006, Plaintiff filed an Amended Complaint (Docket No. 17). Plaintiff withdrew his claims that the Niagara and Buffalo Territories are not "Indian lands" within the meaning of IGRA (former Third Cause of Action) and that the Territories do not fall into any of IGRA's Section 20 exceptions (former Fourth Cause of Action). It was on the basis of these alleged infirmities that Plaintiff had, in his original Complaint, argued that the Compact, the