

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

SAULT STE. MARIE TRIBE OF CHIPPEWA)
INDIANS; GRAND TRAVERSE BAND OF)
OTTAWA AND CHIPPEWA INDIANS;)
KEWEENAW BAY INDIAN COMMUNITY;)
HANNAHVILLE INDIAN COMMUNITY;)
BAY MILLS INDIAN COMMUNITY; AND)
LAC VIEUX DESERT BAND OF LAKE)
SUPERIOR CHIPPEWA INDIANS,)

Plaintiffs,)

v.)

JOHN M. ENGLER, Governor)
of the State of Michigan,)

Defendant.)

Civil No. 1:90 CV 611

Hon. Benjamin F. Gibson

STIPULATION FOR ENTRY OF CONSENT JUDGMENT

Plaintiffs Sault Ste. Marie Tribe of Chippewa Indians, Grand Traverse Band of Ottawa and Chippewa Indians, Keweenaw Bay Indian Community, Hannahville Indian Community, Bay Mills Indian Community and Lac Vieux Desert Band of Lake Superior Chippewa Indians (hereinafter "the tribes"), by and through their undersigned counsel, intervenor Saginaw Chippewa Tribe of Michigan (hereinafter "the Saginaw Tribe"), by and through its undersigned counsel, and defendant John M. Engler, Governor of the State of Michigan (hereinafter "the Governor"), by and through his undersigned counsel, hereby stipulate and agree as set forth below.

1. The tribes initiated this litigation pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721, (hereinafter "IGRA"). In their original complaint, filed July 10, 1990, the tribes named the State of Michigan as the sole defendant. Jurisdiction in this Court is based upon 25 U.S.C. § 2710(d)(7)(A)(i), and 28 U.S.C. § 1362.

2. On March 26, 1992, the Court granted the state's motion to dismiss the tribes' complaint on the grounds that the Eleventh Amendment to the U.S. Constitution barred the litigation in federal court,¹ but allowed the tribes to amend the complaint by naming state governmental officials as defendants. Subsequent to the Court's dismissal order, on May 5, 1992, the Court granted the tribes' motion for leave to file its first amended complaint naming the Governor as the sole defendant.

3. On February 9, 1993, the Court granted the tribes' motion confirming jurisdiction in the Court over all matters raised by the first amended complaint, save for the issues subsumed within the appeal to the Sixth Circuit. Subsequent to that Order, the parties filed dispositive cross motions for dismissal and/or summary judgment, together with supporting affidavits and/or memorandum briefs. Oral argument on the cross motions was scheduled for July 23, 1993; however, the parties, with the Court's concurrence, took the motions off calendar because they anticipated filing this Stipulation for Entry of

¹The tribes appealed the Court's decision to the U.S. Court of Appeals for the Sixth Circuit, No. 91-2698. The matter has been fully briefed and oral argument was heard on June 18, 1993.

Consent Judgment, which obviated the need for the Court to rule on the pending motions.

4. The tribes and the Governor have agreed to resolve their differences and thereafter to dismiss this litigation with prejudice. However, this Stipulation and the Court's subsequent entry of Consent Judgment shall become effective and shall bind and obligate all parties hereto only on the express condition that each tribal party and the Governor execute a class III gaming compact, which is concurred in by resolution of the Michigan Legislature, and that those compacts are thereafter approved by the United States Secretary of the Interior and notice of said approvals published in the Federal Register, pursuant to 25 U.S.C. § 2710(d)(8). In the event that any condition described herein does not occur with respect to one or all of the tribes, the dispositive cross motions for dismissal and/or summary judgment referred to in paragraph 3 shall be immediately placed on the Court's calendar for disposition, and thereafter the case shall proceed to judgment.

5. The Saginaw Chippewa Indian Tribe of Michigan (hereinafter "Saginaw Tribe") is a federally recognized Indian tribe with lands in the State of Michigan held in trust by the United States for its benefit. Its legal and political status is substantially identical to the original six plaintiff tribes, which are party to this litigation. The Saginaw Tribe seeks to intervene herein as a party plaintiff and agrees to be bound by the terms of this Stipulation for Entry of Consent Judgment in the same manner and to the same extent as the six originally

named plaintiff Indian tribes. The Saginaw Tribe independently could bring the identical cause of action against the Governor brought by the tribes in the instant proceedings, pursuant to 25 U.S.C. § 2710(d)(7)(A)(i). However, the Governor and the Saginaw Tribe seek to avoid relitigation of substantially identical issues, as well as avoid the risk of any inconsistent judgments. Therefore, through this Stipulation for Entry of Consent Judgment, the Governor and the tribes hereby consent to the intervention of the Saginaw Tribe for the express and limited purpose of entry and enforcement of this Stipulation for Entry of Consent Judgment and the accompanying Consent Judgment.

6. The parties hereto agree that from and after the date or dates the condition in paragraph 4 has been accomplished, each tribal party to this stipulation shall make semi-annual payments to the Michigan Strategic Fund of the State of Michigan in an amount equal to eight percent (8%) of the net win at each casino derived from all class III electronic games of chance, as those games are defined in each class III compact. As used herein, "net win" is defined as the total amount wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at said machines. For purposes of these payments, all calculations of amounts due shall be based upon a fiscal year beginning October 1 and ending September 30 of the following calendar year, unless the parties agree on a different fiscal year, and all payments due the state pursuant to the terms of this stipulation shall be paid no later than sixty (60) days after October 1 and March 31 of each year. Any payments due and

owing from the tribes in the year the compacts are approved, or the final year the compacts are in force, shall reflect the actual net win but only for the portion of the year the compacts are in effect.

7. The tribes' obligation to make the payments provided for in paragraph 6 above shall apply and continue only so long as there is a binding class III compact in effect between each tribe and the State of Michigan which provides for the play of electronic games of chance, and then only so long as the tribes collectively enjoy the exclusive right to operate electronic games of chance in the State of Michigan, as they are defined in said compacts. The operation of electronic games of chance by persons or entities other than the tribal parties to this stipulation shall not violate the tribes' exclusive right to operate said machines so long as said machines: a) reward a player only with the right to replay the device at no additional cost; b) do not permit the accumulation of more than fifteen (15) free replays at any one time; c) allow the accumulated free replays to be discharged only by activating the device for one additional play for each accumulated free replay; and d) make no permanent record, directly or indirectly, of the free replays awarded.

8. The parties hereto agree that from and after the date or dates the condition in paragraph 4 has been accomplished, each tribal party to this stipulation shall make semi-annual payments to any local units of state government in the immediate vicinity of each tribal casino in the aggregate amount equal to two

percent (2%) of the net win at each casino derived from all class III electronic games of chance, as those games are defined in each class III compact. As used herein, "net win" is defined as the total amount wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at said machines. Each tribe shall determine which local unit or units of government shall receive payments and the amounts thereof; provided however, the guidelines governing the tribes in making said determinations shall be based upon compensating said local units of government for governmental services provided to the tribes and for impacts associated with the existence and location of the tribal casino in its vicinity; and provided further, however, that out of said aggregate payment, each local unit of government shall receive no less than an amount equivalent to its share of ad valorem property taxes that would otherwise be attributed to the class III gaming facility if that site were subject to such taxation. For purposes of these payments, all calculations of amounts due shall be based upon a fiscal year beginning October 1 and ending September 30 of the following calendar year, unless a tribe determines to use a different fiscal year, and all payments due any local unit or units of government pursuant to the terms of this stipulation shall be paid no later than sixty (60) days after October 1 and March 31 of each year. Any payments due and owing from the tribes in the year the compacts are approved, or the final year the compacts are in force, shall reflect the actual net win but only for the portion of the year the compacts are in effect.

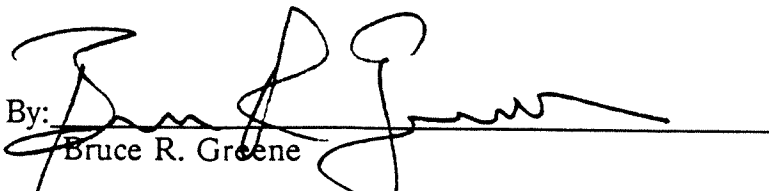
9. The parties hereby consent to the entry of the accompanying Consent Judgment, consistent with the terms and conditions of this stipulation.

Respectfully submitted, Bruce R. Greene
GREENE, MEYER & McELROY, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
(303) 442-2021

Daniel T. Green
Sault Ste. Marie Tribe of Chippewa Indians
206 Greenough Street
Sault Ste. Marie, Michigan 49783
(906) 635-6050

Attorneys for Sault Ste. Marie Tribe of Chippewa Indians

Dated: August 16, 1993

By: 
Bruce R. Greene

John F. Petoskey
Grand Traverse Band of Ottawa and Chippewa
Indians
Route 1, Box 157-A
Suttons Bay, Michigan 49682
(616) 271-6477

William Rastetter
6724 County Road 645
Cedar, Michigan 49621
(616) 228-6300

*Attorneys for Grand Traverse Band of Ottawa &
Chippewa Indians*

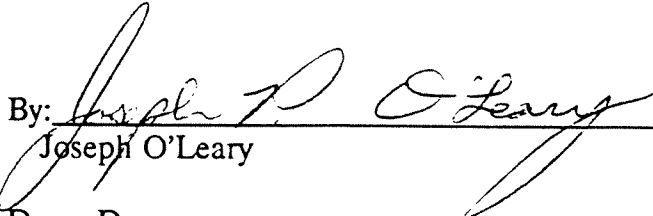
Dated: August 18, 1993

By: 
William Rastetter

Keweenaw Bay Indian Community
Tribal Center
Old U.S. 41
Baraga, Michigan 49908
(906) 353-6623

Attorney for Keweenaw Bay Indian Community

Dated: 8/18/93

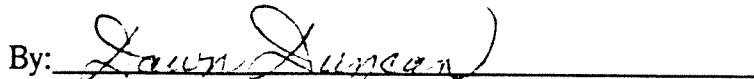
By: 
Joseph O'Leary

Dawn Duncan
Hannahville Indian Community
Route 1
Wilson, Michigan 49896
(906) 466-2342

John M. Peebles
Monteau, Guenther, Decker, Peebles & Evans
12100 West Center Road, Ste. 519
Omaha, Nebraska 68144
(402) 333-4053

Attorneys for the Hannahville Indian Community

Dated: 8/18/93

By: 
Dawn Duncan

Kathryn Tierney
Bay Mills Indian Community
Route 1
Brimley, Michigan 49715
(906) 248-3241

Anthony E. Andary
ANDARY & ANDARY
519 Court Street
P.O. Box 915
Sault Ste. Marie, Michigan 49783
(906) 632-1755

Attorneys for Bay Mills Indian Community

Dated: _____

By: *Kathryn Tierney*
Kathryn Tierney

Matthew J. Boitos
Lac Vieux Desert Band of Lake Superior Chippewa
Indians
P.O. Box 446
Watersmeet, Michigan 49969

John M. Peebles
Monteau, Guenther, Decker, Peebles & Evans
12100 West Center Road, Ste. 519
Omaha, Nebraska 68144
(402) 333-4053

*Attorneys for Lac Vieux Desert Band of Lake Superior
Chippewa Indians*

Dated: *Aug 18, 93*

By: *Matthew J. Boitos*
Matthew J. Boitos

Patricia A. Marks
Pirtle, Morisset, Scholsser & Ayer
The Federal Bar Building
1815 H. Street, N.W., Suite 750
Washington, D.C. 20006-3604
(202) 331-8690

Frank R. Jozwiak
Pirtle, Morisset, Scholsser & Ayer
1115 Norton Building
801 Second Avenue
Seattle, Washington 98104
(206) 386-5200

*Attorneys for the Saginaw Chippewa Indian Tribe of
Michigan*

Dated: August 18, 1993

By: _____

Frank R. Jozwiak

Washington State Bar No. 9482

Dated: August 20, 1993

Keith D. Roberts

Assistant Attorney General
Office of the Attorney General
401 S. Washington, Suite 3
Lansing, Michigan 48913

Attorney for Governor John M. Engler

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

SAULT STE. MARIE TRIBE OF CHIPPEWA)
INDIANS; GRAND TRAVERSE BAND OF)
OTTAWA AND CHIPPEWA INDIANS;)
KEWEENAW BAY INDIAN COMMUNITY;)
HANNAHVILLE INDIAN COMMUNITY;)
BAY MILLS INDIAN COMMUNITY; AND)
LAC VIEUX DESERT BAND OF LAKE)
SUPERIOR CHIPPEWA INDIANS,)

Plaintiffs,)

v.)

JOHN M. ENGLER, Governor)
of the State of Michigan,)

Defendant.)

Civil No. 1:90 CV 611

Hon. Benjamin F. Gibson

CONSENT JUDGMENT

The parties to the above captioned litigation have entered into a Stipulation for the Entry of Consent Judgment, signed by counsel of record on August 16 through 19, 1993, and filed with the Court on August 19, 1993 (hereinafter "the Stipulation"). Pursuant to the Stipulation and for good cause shown, it is hereby ORDERED, ADJUDGED and DECREED, that:

1. The terms, provisions and conditions of the Stipulation are hereby incorporated by reference into this CONSENT JUDGMENT as if fully set out herein and thereby made an ORDER of the Court.

2. The Saginaw Chippewa Indian Tribe of Michigan is hereby made a party to these proceedings for the express and limited

purpose of entry and enforcement of the Stipulation and is hereby bound by the terms of the Stipulation and this CONSENT JUDGMENT in the same manner and on the same terms and conditions as the original parties to these proceedings.

3. This CONSENT JUDGMENT shall become effective and shall bind and obligate all parties hereto only on the express condition that each tribal party and the Governor shall execute a class III gaming compact, which shall be concurred in by resolution of the Michigan Legislature, and that those compacts are thereafter approved by the United States Secretary of the Interior and notice of said approvals published in the Federal Register, pursuant to 25 U.S.C. § 2710(d)(8). In the event that any condition described herein does not occur with respect to one or all of the tribes, the dispositive cross motions for dismissal and/or summary judgment filed by the tribes and the Governor in these proceedings shall be placed immediately on the Court's calendar for disposition, and thereafter the case shall proceed to judgment.

4. From and after the date or dates the condition in paragraph 3 of this CONSENT JUDGMENT has been accomplished, each tribal party to the Stipulation shall make semi-annual payments to the Michigan Strategic Fund of the State of Michigan in an amount equal to eight percent (8%) of the net win at each casino derived from all class III electronic games of chance, as those games are defined in each class III compact. Details relating to the time and manner of payment, together with the definition of

the term "net win," are set forth in the Stipulation and shall hereby govern the parties.

5. The tribes' obligation to make the payments provided for in paragraph 4 of this CONSENT JUDGMENT shall apply and continue only so long as there is a binding class III compact in effect between each tribe and the State of Michigan, which provides for the play of electronic games of chance, and then only so long as the tribes collectively enjoy the exclusive right to operate electronic games of chance in the State of Michigan, as they are defined in said compacts. The operation of electronic games of chance by persons or entities other than the tribal parties to this Stipulation shall not violate the tribes' exclusive right to operate said machines so long as said machines: a) reward a player only with the right to replay the device at no additional cost; b) do not permit the accumulation of more than fifteen (15) free replays at any one time; c) allow the accumulated free replays to be discharged only by activating the device for one additional play for each accumulated free replay; and d) make no permanent record, directly or indirectly, of the free replays awarded.

6. From and after the date or dates the condition in paragraph 3 of this CONSENT JUDGMENT has been accomplished, each tribal party to the Stipulation shall make semi-annual payments to any local units of state government in the immediate vicinity of each tribal casino in the aggregate amount equal to two percent (2%) of the net win at each casino derived from all class III electronic games of chance, as those games are defined in

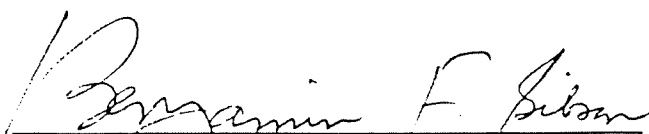
each class III compact. Details relating to the time and manner of payment, the definition of the term "net win," the minimum payments required and the guidelines governing the tribes' determination regarding said payments are set forth in the accompanying Stipulation, and shall hereby govern the parties.

7. Upon satisfactory evidence presented to the Court that the condition set forth in paragraph 3 of this CONSENT JUDGMENT has been met, all claims by all parties to these proceedings shall be dismissed with prejudice, pursuant to the terms of the Stipulation. The Court shall enter an appropriate order of dismissal upon receiving said satisfactory evidence from the parties.

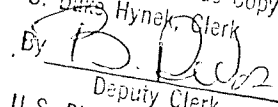
8. The Stipulation and this CONSENT JUDGMENT can be modified and rescinded only in the above captioned case, and only by the mutual written consent of all parties and with the Court's concurrence.

9. Notwithstanding said subsequent dismissal, the Court shall retain continuing jurisdiction for the purposes of enforcing the Stipulation and this CONSENT JUDGMENT according to their terms and provisions.

Dated: August 20, 1993



Benjamin F. Gibson
United States District Judge

Certified As A True Copy
C. Duke Hynek, Clerk
By 
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date AUG 20 1993