



FORM 8-K

Seneca Gaming Corp – N/A

Filed: August 29, 2005 (period: August 24, 2005)

Report of unscheduled material events or corporate changes.

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): August 29, 2005 (August 24, 2005)

SENECA GAMING CORPORATION

(Exact Name of Registrant as Specified in Charter)

Not Applicable

(State or Other Jurisdiction of
Incorporation)

333-117633

(Commission File Number)

54-2122988

(IRS Employer Identification
No.)

310 Fourth Street

Niagara Falls, NY (Seneca Nation Territory)

(Address of Principal
Executive Offices)

14303

(Zip Code)

Registrant's telephone number, including area code: **(716) 299-1100**

Not Applicable

(Former name or address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 Other Events.

On August 24, 2005, Seneca Niagara Falls Gaming Corporation (“SNFGC”), a wholly owned subsidiary of Seneca Gaming Corporation, filed a complaint against Klewin Building Company, Inc. (“Klewin”) and TD BankNorth, N.A. (“BankNorth”), as joint defendants, in the Superior Court for the Judicial District of New London, Connecticut. The suit was filed to obtain immediate injunctive relief in conjunction with a pending demand for arbitration by SNFGC related to Klewin’s failure to make required payments to the architect and subcontractors for the design and construction of Seneca Niagara Casino’s new luxury hotel. SNFGC filed the complaint in order to enjoin the defendants from utilizing \$14,551,977.49 paid by SNFGC into an account with BankNorth in the name of Klewin, which was set up by SNFGC for the purpose of paying Klewin’s subcontractors and architect on the construction project. SNFGC was subsequently informed by Klewin that the \$14,551,977.49 paid by SNFGC into the account was “swept” by BankNorth and, as a result, several subcontractors on the construction project have not been paid. Among other things, the complaint seeks temporary and permanent injunctive relief requiring that the defendants return to the account the \$14,551,977.49 that has been removed from that account and temporary and permanent injunctive relief enjoining defendants from utilizing the \$14,551,977.49 that has been removed from the account, other than for payment of Klewin’s subcontractors and architect on the construction project.

On August 25, 2005, the parties appeared before the court and agreed to a stipulated immediate order freezing the remaining balance of approximately \$5.5 million in the account pending a hearing on SNFGC’s application for temporary and permanent injunctive relief, subject to limited draw rights of not more than \$350,000 per week permitted to Klewin for its operating expenses pursuant to a budget to be submitted by Klewin weekly. The Company intends to seek recovery of all amounts already withdrawn from the account, except to the extent disbursed for appropriate purposes. The hearing is scheduled for September 9, 2005. We do not currently anticipate that the legal proceedings will materially adversely affect our ability to complete construction of Seneca Niagara Casino’s new luxury hotel on schedule.

The foregoing is only a summary description of the verified complaint and stipulated immediate order and by its nature is incomplete. It is qualified in its entirety by the text of the complaint and stipulated order, which are attached to this Current Report as Exhibits 99.1 and 99.2, respectively. All readers of this Current Report are encouraged to read the entire text of the complaint and order attached hereto.

The information contained in this Current Report shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except to the extent that it is expressly stated to be incorporated by specific reference in such filing.

Item 9.01 Financial Statements and Exhibits.

The following exhibits are filed as a part of this Current Report on Form 8–K:

(c) Exhibit

99.1 Copy of the Complaint against Klewin Building Company, Inc. and TD BankNorth, N.A.

99.2 Copy of the Stipulated Order

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

SENECA GAMING CORPORATION
(Registrant)

Date: August 29, 2005

/s/ Barry W. Brandon
Name: Barry W. Brandon
Title: Senior Vice President and General
Counsel

EXHIBIT INDEX

Exhibit No.	Description
99.1*	Copy of the Complaint against Klewin Building Company, Inc. and TD BankNorth, N.A.
99.2*	Copy of the Stipulated Order

*Filed herewith

RETURN DATE: SEPTEMBER 13, 2005

SENECA NIAGARA FALLS	:	SUPERIOR COURT
GAMING CORPORATION	:	
	:	JUDICIAL DISTRICT OF
	:	NEW LONDON AT
V.	:	NEW LONDON
	:	
KLEWIN BUILDING COMPANY, INC.	:	
and TD BANKNORTH, N.A.	:	AUGUST 24, 2005

VERIFIED COMPLAINT

COMES NOW Plaintiff Seneca Niagara Falls Gaming Corporation (“Seneca”) by and through its attorneys, and for its complaint states the following:

1. Plaintiff Seneca Niagara Falls Gaming Corporation (“Seneca”) is a tribally chartered corporation established by the Seneca Nation of Indians, a federally recognized Indian tribe.
2. Defendant, Klewin Building Company, Inc. (“Klewin”) is, upon information and belief, a Delaware corporation with an office in Norwich, Connecticut.
3. Defendant TD BankNorth, N.A. (“BankNorth”) is, upon information and belief, a Delaware corporation with an office in Glastonbury, Connecticut.
4. On October 15, 2003, Seneca, as owner, and Klewin, as design/builder, entered into an Owner–Design/Builder Agreement, whereby Klewin agreed to design and build a spa, hotel and casino for Seneca (the “Project”) for a Guaranteed Maximum Contract Sum of \$153,048,497.00 (the “Contract”). The Contract also required Klewin to promptly pay the architect, other design professionals, and its subcontractors the amount to which they were

entitled in accordance with the terms of their respective contracts, upon receipt of payment from Seneca.

5. During the Project, questions arose about the prompt payment to Klewin subcontractors and its architect. In order to ensure that Klewin’s subcontractors and architect were promptly paid, the parties established a “positive pay” account with BankNorth. It was represented to Seneca by both Klewin and BankNorth that Seneca could pay monies into the “positive pay” account and that only subcontractors listed on the payee register could receive funds from that account. Klewin’s fee for the Project would be deposited into a second, separate account unrestricted by the “positive pay” agreement.
6. On August 10, 2005, Seneca provided Klewin with a notice of default because of Klewin’s failure to promptly pay the architect and Klewin’s acknowledgement that it would not deliver the Project within the Guaranteed Maximum Contract Sum required by the Contract. The notice gave Klewin seven days to cure these defaults.
7. On August 12, 2005, Seneca paid \$14,551,977.49 into the BankNorth positive pay account based upon the representation that those monies would be used to pay Klewin’s subcontractors and architect as listed on the payee register. At the same time, Seneca deposited an additional \$325,771.67 into the unrestricted Klewin account for Klewin’s fee.
8. Subsequently, Seneca was informed by Klewin’s counsel that BankNorth “swept” the \$14,551,977.49 out of the positive pay account, and that the subcontractors listed on the payee register had not been paid.
9. As a result of not being paid, several of the subcontractors have threatened to walk off the Project.

FIRST COUNT (Injunction in Aid of Arbitration as to Klewin)

1-9 The allegations of paragraphs 1 through 9 are hereby incorporated by reference and restated as paragraphs 1 through 9 of this First Count.

10. By its conduct described above, Klewin has breached the Contract.

11. As a result of this dispute, Seneca has demanded arbitration pursuant to the Contract, seeking a determination that Klewin has breached the Contract and an order requiring Klewin to account for the funds paid to it by Seneca and requiring Klewin to pay the subcontractors the amounts to which they are entitled.

12. Pursuant to Conn. Gen. Stat. § 52-422, Seneca is entitled to an injunction to aid in the prosecution of that arbitration. An injunction is necessary to prevent Klewin from further breaching the Contract and to ensure that funds are available for payment of the subcontractors.

13. Klewin's actions have caused and, unless restrained, will continue to cause Seneca severe, immediate, and irreparable injury for which Seneca has no adequate remedy at law. Specifically, if the subcontractors remain unpaid, Seneca will be compelled to pay them directly (over and above the sums already paid to Klewin for their benefit) to ensure their continued performance and the Project's target completion date of December 31, 2005 will be compromised. Additionally, on August 23, counsel for Klewin indicated to Seneca that Klewin does not have money available to pay the subcontractors, and that it may be unable to complete the Project. Also on August 23, two of Klewin's most senior on-site representatives failed to appear at the Project.

SECOND COUNT (Constructive Trust as to BankNorth)

1-9. The allegations of paragraphs 1 through 9 are hereby incorporated by reference and restated as paragraphs 1 through 9 of this First Count.

14. On August 12, 2005, Seneca conveyed \$14,551,977.49 to BankNorth based on the representation that these funds would be used only for the payment of the subcontractors and architect as listed on the pay register of the positive pay account, and not in any other manner.

15. A confidential relationship existed between BankNorth and Seneca.

16. In light of the confidential relationship between BankNorth and Seneca, BankNorth should not retain or use monies held in the positive pay account.

17. Upon information and belief, BankNorth abused a confidence to Seneca by retaining or using monies held in the positive pay account for its own purposes.

18. Banknorth's actions have caused and, unless restrained, will continue to cause Seneca severe, immediate, and irreparable injury for which Seneca has no adequate remedy at law, as specified above.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be granted by this Court in the following particulars:

1. Temporary and permanent injunctive relief requiring that Defendants return to the positive pay account the \$14,551,977.49 that has been removed from that account.
2. Temporary and permanent injunctive relief enjoining Defendants from utilizing the \$14,551,977.49 that has been removed from the positive pay account, other than for payment of Klewin's subcontractors and architect on the Project.
3. An order requiring Klewin to disclose any and all property, real or personal, in which the defendant has an interest and any and all debts owing to the defendant.
4. An order creating a constructive trust of the \$14,551,977.49.
5. Such other and further relief as this court deems just.

PLAINTIFF – SENECA NIAGRA
FALLS GAMING CORPORATION

BY /s/ Derek T. Werner

Michael J. Donnelly

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Its Attorneys

RETURN DATE: SEPTEMBER 13, 2005 : SUPERIOR COURT

SENECA NIAGARA FALLS GAMING CORPORATION : JUDICIAL DISTRICT OF NEW LONDON

v. : AT NEW LONDON

KLEWIN BUILDING COMPANY, INC. and TD BANKNORTH, N.A. : AUGUST 25, 2005

STIPULATED ORDER

WHEREAS, the parties have appeared on this 25th day of August, 2005 on Plaintiff’s Application for Immediate Temporary Injunction;

WHEREAS, the parties have agreed to the following stipulated immediate order.

NOW, THEREFORE, it is hereby ordered as follows:

1. Defendant TD Banknorth, N.A. (“Banknorth”) shall freeze the \$5,500,000 (approximately) in the account with Banknorth in the name of Klewin Gaming and Hospitality, Inc. that is the subject of this action (the “Account”) pending a hearing on plaintiff’s application for temporary injunction, provided that the hearing occur on or before the date set by the court for conducting the same;
 2. Defendant Klewin shall be permitted to access nor more than \$350,000 per week from the Account for its normal operating expenses, subject to a budget therefore to be submitted to the parties by Monday of each week, pending a hearing on plaintiff’s application for temporary injunction, provided that the hearing occur on or before the date set by the court for conducting the same.
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3. Defendant Banknorth shall be permitted to exercise its right of setoff in and to the frozen funds in order to enforce its rights in and to said funds as against competing claims of any and all creditors who make claims against the frozen funds in the Account, pending a hearing on plaintiff’s application for temporary injunction, such right of offset shall not apply to Klewin’s access as described in paragraph 2.
 4. The court shall conduct a hearing on plaintiff’s application for temporary injunction, commencing on September 9, 2005 at 10:00 a.m.
 5. Prior to the hearing on Plaintiff’s application for temporary injunction, the parties shall conduct expedited discovery, including deposition of witnesses and exchange of documents.
 6. It is expressly understood hereby that the order freezing the \$5,500,000.00 in said account shall not constitute a judicial lien in favor of the plaintiff, but is merely maintaining the status quo; Banknorth expressly reserving and retaining any and all rights, titles and interest in and to the frozen funds

during the pendency of these proceedings and thereafter.