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The MICHIGAN GAMING Newsletter



BAY MILLS, STATE OF MICHIGAN FILE RESPONSES TO MOTION FOR PRELIMINARY INJUNCTION AGAINST VANDERBILT CASINO

On January 19, 2011, the Bay Mills Indian Community (“Bay Mills”) filed its brief in opposition to a motion for preliminary injunction that would force its Vanderbilt casino to close. The brief was submitted in connection with a motion for preliminary injunction that was filed by the Little Traverse Bay Band of Odawa Indians (“Little Traverse Bay Band”) on December 23, 2010.

The brief filed by Bay Mills claims that the Vanderbilt casino is built on “Indian Lands” as defined by federal law and its Class III Compact with the state of Michigan. The brief asserts that the Little Traverse Bay Band has failed to show a likelihood of success on the merits because the Little Traverse Bay Band lacks standing to bring the lawsuit. Additionally, Bay Mills argues that the Little Traverse Bay Band will not be irreparably harmed by allowing the casino to stay open, that Bay Mills would be harmed because of a disruption in revenues, and that the public would be harmed because of the temporary loss of jobs created by the casino in the Vanderbilt area.

Bay Mills also claims that the casino is operated on “Indian Lands” because the land meets all of the federal requirements to be defined as “Indian Lands” under the Indian Gaming Regulatory Act (“IGRA”). In general, Bay Mills claims that, because the land was bought with proceeds from settlement of a land claim with the state regarding tribal lands, the tribe exercises governmental authority over that land, and the land is restricted fee land, the tribe has the right to open a gaming facility on the Vanderbilt parcel.

(Continued on page 2)

Also on January 19, 2011, the state of Michigan filed its response in support of the preliminary injunction. The response, echoing arguments made by the Little Traverse Bay Band in the same case, asserts that the Vanderbilt casino is not operated on “Indian Lands” as defined under federal law and, therefore, is operated illegally. The state argues that, under IGRA, land purchased from proceeds from settlements such as the one between the state and Bay Mills does not convert the land to “Indian Lands.”

The state’s response relies heavily on decisions and opinions issued by the National Indian Gaming Commission (“NIGC”) and the Department of the Interior. These two agencies both concluded that the Vanderbilt casino is not operated on “Indian Lands.” The response states that the “NIGC reached its decision after a thorough consideration of the legal analysis provided by [Bay Mills]...and, after consulting with the Interior – the federal agency generally charged with administering Indian matters – which reached the same conclusion.” Though these decisions and opinions are not binding on the court, the state hopes that the judge will give each strong consideration and deference when analyzing the current lawsuit.

In its response, the state also argues that the Vanderbilt casino violates public policy by unlawfully allowing illegal gambling to occur on the premises. As part of the state’s argument, the Attorney General argued that the casino is “enticing the public to violate the law and is effectively creating a public nuisance.”

Under Michigan’s Penal Code, all participants (including the patrons wagering) in an illegal gambling operation are potentially subject to prosecution. Importantly, any losses that occur at such facilities can be recouped by the wagerer.

On January 20 and 21, 2011, the Vanderbilt casino temporarily closed in order to make the final changes necessary to open a 1,400-square-foot addition to the facility. The casino, which will total 2,600 square-feet after the addition, will reopen Saturday, January 22, 2011, with a total of 84 slot machines.

MICHIGAN HOUSE AND SENATE COMMITTEE APPOINTMENTS ANNOUNCED

The Michigan House of Representatives and Senate recently announced appointments to their respective Regulatory Reform Committees. The Regulatory Reform Committees are responsible for handling gaming-related legislative proposals in Michigan.

Michigan House Regulatory Reform Committee members include: Committee Chair, Hugh D. Crawford (R-Novi); Majority Vice Chair, Ken Yonker (R-Caledonia); Paul Opsommer (R-Dewitt); Kevin Daley (R-Lum); Tom McMillin (R-Rochester Hills); Jim Stamas (R-Midland); Michael Shirkey (R-Clark Lake); Ray Franz (R-Onekama); Ed McBroom (R-Vulcan); Bruce Rendon (R-Lake City); Tim Melton (D-Pontiac); Harold Haugh (D-Roseville); Barb Byrum (D-Onondaga); Dian Slavens (D-Canton); and James Womack (D-Detroit).

Michigan Senate Regulatory Reform Committee members include: Committee Chair, Tory Rocca (R-Sterling Heights); Vice Chair, Joe Hune (R-Hamburg Twp.); Arlan Meekhof (R-West Olive); Phil Pavlov (R-St. Clair Twp.); Majority Vice Chair, John Gleason (D-Flushing); and Morris Hood (D-Dearborn).

For more information on either committee, please visit: <http://www.senate.michigan.gov/committee/committeeinfo.htm> and http://house.michigan.gov/standing_committees.pdf.

OHIO GAMING EXPANSION UPDATE

On Monday, January 17, 2011, the Mahoning Valley Development Group (MVDG) announced its plans to build Ohio’s eighth horse racetrack, Mahoning Valley Downs and Resort. According to the company’s statement, the new facility will be a thoroughbred racetrack “along with a casino with an eye towards the expansion of VLTs (slots) to racetracks.”

(Continued on page 3)

“This is an exciting project that will be an incredible magnet for the Mahoning Valley to attract new jobs, new industry, and will have a ripple effect throughout the Valley. Importantly, we believe that we will create over 1000 jobs in the construction of the property and 1500-2000 permanent jobs in its operations,” said Rick Lertzman, Chairman of the MVDG.

According to the press release issued by the MVDG, the company has not yet applied for the required horse racetrack license from the state of Ohio, but fully believes that it falls into the required parameters to acquire proper licensure.

The new racetrack resort will be a \$300 million project constructed on more than 100 acres located near Youngstown, Ohio.

The announcement of the new racetrack venue comes as a wave of gaming sweeps through the state of Ohio. Ohio voters approved Issue 3 by a 53 percent vote in November of 2009, which allows for four casinos to be built, one each in Cleveland, Cincinnati, Franklin County, and Toledo. In addition, the state is looking at legalizing VLTs at the state’s horse racing tracks.

Ohio Governor Comments on Casinos

Notably, last week, the *Toledo Blade* reported that newly elected Ohio Governor John Kasich feels that the state was ‘not dealt a fair hand’ by Penn National Gaming and Cleveland Cavaliers owner Dan Gilbert, as they were granted the exclusive rights to build four casinos in the state by voter referendum in 2009. Gov. Kasich’s comments come as a looming state budget shortfall of nearly \$8 billion is being considered.

According to the report, Gov. Kasich commented, “[i]t rankles me that they spent approximately \$200 million for \$1 billion asset, and it happened because they spent enough money to get it on the ballot to pass this thing, which means we didn’t control our own destiny.”

The tax rate for the casinos is set at 33%, and the minimum capital investment per casino location is \$250 million each, and each casino is required to pay a \$50 million licensing fee.

Any further expansion of casino gaming in the state of Ohio would require a voter referendum.

AGA MEMBERS RE-ELECT BOARD DIRECTORS

Last Wednesday, January 11, 2011, the American Gaming Association (AGA) announced that the AGA membership re-elected five current members of the board of directors at its annual December meeting. Those re-elected will serve three-year terms on the Board.

Re-elected directors include Brian R. Gamache, chairman and CEO of WMS Gaming Inc.; Gordon R. Kanofsky, CEO and vice chairman of Ameristar Casinos, Inc.; Michael Leven, president and COO of Las Vegas Sands Corp.; Virginia McDowell, president and COO of Isle of Capri Casinos, Inc.; and Anthony Sanfilippo, president and CEO of Pinnacle Entertainment, Inc.

In addition, at the board of directors meeting, the AGA board elected Robert Heller, managing director and head of gaming and leisure for the Americas at UBSA Investment Bank, to his first term as an at-large member of the board. Also re-elected as an at-large member was Lary Ruvo, senior managing director of Southern Wine and Spirits of Nevada. Both gentlemen will receive one-year terms.

“Rob’s experience in the banking industry will bring a different and important perspective to any issue the board discusses,” said Frank Fahrenkopf, president and CEO of the AGA. “He joins an accomplished group of leaders who have guided the organization with a steady hand during a time of unprecedented economic challenges for our industry. This board’s experience will provide crucial guidance as the industry’s economic fortunes improve.”

The leadership of the AGA board remains the same: Keith Smith, president and CEO of Boyd Gaming Corporation, will serve as AGA chairman; Richard Haddrill, president, CEO and director of Bally Technologies, Inc., will serve as

(Continued on page 4)

Vice Chairman. Their current terms expire at the end of 2011.

Daily AGA SmartBriefs

Last year the American Gaming Association introduced the *AGA SmartBriefs*, a free daily e-newsletter which keeps the gaming industry up to date on the latest gaming news.

Sign up and stay ahead of the curve with updates on products, technologies, amenities, industry happenings and more. You can register to receive the free *AGA SmartBriefs* by visiting www.smartbrief.com/aga.

GLOBAL GAMING EXPO 2011 ANNOUNCES DRAMATIC CHANGES

The American Gaming Association (“AGA”) and Reed Exhibitions recently announced that they will be making extensive changes for this year’s Global Gaming Expo 2011 (G2E). The G2E is the gaming industry’s leading trade show and conference event, attended by nearly 26,000 industry professionals from around the world.

Changes to this year’s G2E include moving the schedule ahead by more than one month as well as moving venues. G2E 2011 will be held from October 4-6 and shift from the Las Vegas Convention Center to the Sands Expo and Convention Center. In addition, the AGA announced that the dates of G2E Asia, held annually in Macau, will also shift in order to create a ‘more evenly spaced global calendar of events.’ It will be held from June 8-9 of this year.

According to the AGA, show organizers revised the schedule to allow exhibitors more ‘breathing room’ between major international gaming events, as well as to assist purchasing decision-makers at gaming companies to plan for the entire year ahead with greater ease.

“G2E is the only international event developed ‘by the industry, for the industry,’” said Frank J. Fahrenkopft Jr., president and CEO of the AGA. “These changes, which were made with the needs of both exhibitors and attendees in mind, are concrete proof of our commitment to that creed.

We expect the revised schedule to result in increased attendance and sales at all of our events.”

For more information on G2E 2011, or to register for group or early bird discounts, visit the website at: www.globalgamingexpo.com.

G2E 2010 Session Recordings

To persons who may be interested or who may have missed out on last year’s conference, the G2E 2010 conference and panel session recordings have been updated and are available online. The G2E recordings archives features over 250 session recordings from G2E 2010, G2E Asia 2010, G2E 2009, and G2E Webinars.

For more information about registering for the G2E online library or for complimentary access to the G2E 2009 recordings, please visit: <http://www.prolibraries.com/g2e/>.