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The MICHIGAN GAMING Newsletter



MICHIGAN GAMING CONTROL BOARD RELEASES DETROIT CASINO REVENUES FOR OCTOBER, 2013

The Michigan Gaming Control Board (“MGCB” or “Board”) has released the October, 2013 total adjusted revenue figures for the three Detroit casinos – MGM Grand Detroit Casino, MotorCity Casino and Greektown Casino.

Month in 2013	Total Adjusted Revenue 2013		
	MGM Grand Detroit	MotorCity Casino	Greektown Casino
	Total Adjusted Revenue	Total Adjusted Revenue	Total Adjusted Revenue
January	\$45,053,237.92	\$35,104,651.68	\$26,014,038.75
February	\$46,465,030.58	\$38,280,263.88	\$26,554,877.16
March	\$54,317,934.38	\$45,753,508.81	\$34,689,130.33
April	\$48,995,129.99	\$39,735,195.61	\$31,309,701.67
May	\$48,326,080.76	\$39,604,092.95	\$28,589,982.46
June	\$41,794,972.38	\$35,431,762.38	\$26,630,622.16
July	\$51,507,665.66	\$34,639,218.50	\$26,177,226.98
August	\$47,374,526.35	\$38,690,225.53	\$26,833,700.14
September	\$45,258,504.74	\$35,689,062.25	\$25,392,633.55
October	\$46,324,032.96	\$35,088,106.84	\$24,912,775.32
Total	\$475,417,115.72	\$378,016,088.43	\$277,104,688.52

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Month in 2013	Total Adjusted Revenue and Taxes 2013		
	All Detroit Casinos		
	Total Adjusted Gross Receipts	Total State Wagering Tax	Total Detroit Wagering Tax
January	\$106,171,928.35	\$8,599,926.20	\$11,572,740.19
February	\$111,300,171.62	\$9,015,313.90	\$12,131,718.71
March	\$134,760,573.52	\$10,915,606.46	\$14,688,902.51
April	\$120,040,027.27	\$9,723,242.21	\$13,084,362.97
May	\$116,520,156.17	\$9,438,132.65	\$12,700,697.02
June	\$103,857,356.92	\$8,412,445.91	\$11,320,451.90
July	\$112,324,111.14	\$9,098,253.00	\$12,243,328.11
August	\$112,898,452.02	\$9,144,774.61	\$12,305,931.27
September	\$106,340,200.54	\$8,613,556.24	\$11,591,081.86
October	\$106,324,915.12	\$8,612,318.12	\$11,589,415.75
Total	\$1,130,537,892.67	\$91,573,569.31	\$123,228,630.30

Overall, for the month of October, revenue for the Detroit Market was down 4.2% from the same reporting period last year. Specifically, revenue for MGM Grand Detroit Casino, MotorCity Casino, and Greektown Casino were down 2.2%, 2.6%, and 9.6%, respectively, in October, 2013 in comparison to the same month last year.

Notably, recent reports have indicated a softening of casino revenues within the Midwest casino market including declines in overall gaming revenue from Ohio and Indiana when compared to the same reporting period last year.

The market shares for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for October, 2013 were 44%, 33%, and 23%, respectively.

All three casinos are subject to a wagering tax of 19%, with 10.9% of this levy to go to the City of Detroit, and 8.1% to be paid to the State of Michigan.

The figures released by the Michigan Gaming Control Board are the gross receipts less winnings paid to wagerers. The figures do not include: 1) any fees or other relevant city, state or federal taxes; 2) wages and benefits paid to casino employees; 3) payments to suppliers, service providers or vendors; and 4) other normal business expenses.

ADDITIONAL BRIEFS FILED IN VANDERBILT CASINO CASE IN ADVANCE OF U.S. SUPREME COURT ORAL ARGUMENT

Over the past two weeks, a number of briefs have been filed with the U.S. Supreme Court arguing in favor of the Bay Mills Indian Community's ("Bay Mills Tribe") right to open a tribal casino in Vanderbilt, Michigan. The Bay Mills Tribe had opened a casino in Vanderbilt in November, 2010 on land that was approximately 125 miles south of its reservation land located in Michigan's Upper Peninsula. The casino was closed following the entry of a preliminary injunction by the U.S. District Court for the Western District of Michigan in March, 2011. The Bay Mills Tribe then appealed this decision to the Sixth Circuit Court of Appeals, which reversed the decision of the District Court last August. The State of Michigan has now appealed the Sixth Circuit's decision to the U.S. Supreme Court and filed its Petitioner's Brief arguing against the legality of the Vanderbilt casino on August 30, 2013. Seventeen states have also filed amicus briefs agreeing with the position of the State of Michigan.

The case has attracted national attention due to the significant precedent it could set in the area of Indian gaming in this country. The case will review two issues: (1) whether a federal court has jurisdiction to enjoin activity that violates the Indian Gaming Regulatory Act ("IGRA") but takes place outside of Indian lands; and (2) whether tribal sovereign immunity bars a state from suing in federal court to enjoin a tribe from violating IGRA outside of Indian lands.

On October 24, 2013, the Bay Mills Tribe filed its Petitioner's Brief in the case, arguing, among other things, that tribal sovereign immunity bars the current action by the state of Michigan:

"This is one of the rare cases before this Court that is squarely controlled by settled precedent. Michigan sued the Bay Mills Indian Community by name, seeking severe financial penalties and an injunction against the tribe. This Court has repeatedly held that "an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity...Because Bay

Mills did not waive its immunity, and Congress did not abrogate it, the case cannot go forward against the tribe—regardless of the answers to academic questions about whether IGRA or some other statute would otherwise have provided the district court with subject matter jurisdiction. A straightforward application of the doctrine of tribal sovereign immunity thus resolves this case." *Petitioner's Brief*, p. 1-2.

The Bay Mills Tribe also argues in its Brief that any dispute between the parties should be settled by the process of arbitration set forth in the applicable Tribal-State Gaming Compact, and also that the parcel upon which the Vanderbilt casino is located should be considered "Indian lands" because this land was purchased with funds received from the 1997 Michigan Land Claims Settlement Act, an act of Congress which provided that "[a]ny land acquired with funds from the Land Trust shall be held as Indian lands are held." *Id.*, at p. 11.

On October 31, 2013, additional amicus briefs in support of the Bay Mills Tribe were filed on behalf of more than fifty federally recognized Indian tribes and other tribal organizations, including the National Congress of American Indians, the National Indian Gaming Association and the Scholars of American Indian Law. Notably, an amicus brief was also filed on behalf of the United States in support of the Bay Mills Tribe, which noted that "the United States has a substantial interest in the continued recognition of tribal sovereign immunity from suit, which furthers Congress's policy of encouraging tribal self-determination and economic development." The arguments of the Federal Government, however, focused on issues of jurisdiction and sovereign immunity. U.S. Solicitor General Donald Verilli has also filed a motion asking the Court for permission to participate in this matter's oral argument.

This case will be heard by the U.S. Supreme Court on Monday, December 2, 2013. It is anticipated that a decision in this matter will be issued near the end of the Court's 2013-2014 term.

The docket report for this case can be viewed at the following link: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-515.htm>

MICHIGAN HORSE TRACKS AWARDED LIVE RACING DATES

On October 31, 2013, Michigan Gaming Control Board (“MGCB”) Executive Director Richard Kalm issued the live racing dates and simulcast permits for Michigan horse tracks. The award follows the October 22, 2013, MGCB public meeting for the purposes of receiving information and commentary related to the pending 2014 Race Meet License applications for each horse racing track.

Executive Director Kalm has awarded a total of 124 live racing dates, as well as approved simulcast wagering permits for each of the tracks discussed below. Below is a summary of the live racing date allocations for each Michigan track licensee:

Hazel Park Harness Raceway – The track has been awarded 44 live race days that were sought in the track’s original license application, despite seeking to reduce the number of live race days to 10 in an amended application. Race days will be on Fridays and Saturdays from Friday, May 2, 2014 to Saturday, September 27, 2014. Each race day must contain at least 9 live horse races.

In its original application, the track sought authorization to conduct only standardbred races, however, it expressed an interest in running thoroughbred and mixed breed races in an amended filing. As a condition on the license award, the track must provide additional details on the breeds that it intends to run and how the track will accommodate these changes by December 1, 2013.

Mount Pleasant Meadows – The track has been awarded 43 mixed breed live race dates. Races will be conducted on Saturdays and Sundays from Saturday, May 3, 2014 to Sunday, September 28, 2014, with the exception of July 26, July 27, and September 1, when no racing will occur. Each race date must contain at least 9 live horse races.

Sports Creek Raceway – The track has been awarded a total of 11 standardbred, thoroughbred, and mixed breed race dates. Races will be conducted on Friday and Saturdays from Friday, November 28, 2014 to Wednesday, December 31, 2014. Each race date must contain at least 9 live

horse races.

Northville Downs – The track has been awarded 26 live race dates that were sought in the track’s original license application, despite filing an amendment seeking to reduce the number of live race dates to 10. Races will be conducted on Fridays and Saturdays between Friday, January 31, 2014 and Saturday, April 26, 2014.

In its original application, the track sought authorization to conduct only standardbred races, however, it expressed an interest in running thoroughbred and mixed breed races in an amended filing. As a condition on the license award, the track must provide additional details on the breeds that it intends to run and how the track will accommodate these changes by December 1, 2013.

Effective January 17, 2010, the MGCB assumed the duties of the former Office of Racing Commissioner through Executive Order 2009-45 which, among other things, transferred the regulation of live horse racing from the Office of Racing Commissioner to the Executive Director of the MGCB. In accordance with the order, Executive Director Richard Kalm now performs the functions of Racing Commissioner.

Each Executive Order granting live race dates and simulcast permits to Michigan horse tracks are available on the MGCB’s website, located [here](#).

VOLUME 19, ISSUE 30 CORRECTION

In the initial version of the November 1, 2013 *Michigan Gaming Newsletter*, there was an error in the story entitled, “MGCB Suspends Charitable Gaming Activity at Burton Poker Room,” as it related to the Michigan Gaming Control Board and the Michigan Attorney General’s recent suspension of gaming activities at the Palace Poker Room. The story has been corrected. The correct version of the story reads as follows:

On Wednesday, October 30, 2013, the Michigan Gaming Control Board (“MGCB”) announced that it had suspended all charitable gaming activity at Gloria’s Poker Palace, operating as Palace Poker Room, located in Burton, Michigan.

The suspension has been issued after a joint investigation was conducted by the MGCB and the Michigan Attorney General.

According to the announcement, the investigation began in August of this year when the MGCB received tips of illegal gambling activity occurring onsite. The MGCB has alleged that the investigation uncovered a scheme by which charities were required to pay the location a specific amount of funds from the event beyond what is required under the law or be denied the ability to use the location to hold charitable gaming events. In addition, the MGCB alleges several other violations of charitable gaming laws and regulations, claiming that the location operated charitable gaming events without the charity's supervision, falsifying financial reports, and provided charitable gaming funds to unlicensed charities or organizations.

The suspension represents the 16th charitable location that has been the subject of closure from the MGCB since 2010. In response to these investigations and in an effort to clarify legal charitable gaming practices, MGCB Executive Director Richard Kalm has submitted revised regulations governing millionaire party events, which include poker room activities. The draft regulations were submitted to the Department of Licensing and regulatory Affairs on September 18, 2013, and discussed at a hearing with the Michigan Legislature's Joint Committee on Administrative Rules on October 31, 2013. In order to become effective, the draft regulations must be subject to a public comment period and comply with the Michigan Administrative Procedures Act.