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The MICHIGAN GAMING Newsletter



MGCB RELEASES REGULAR PUBLIC MEETING AGENDA

On Wednesday, December 11, 2013, the Michigan Gaming Control Board ("MGCB") will hold its Regular Public Meeting. Please note that the date of this meeting has changed from its originally proposed date of Tuesday, December 10, 2013. The agenda includes the following items:

- A. Consider the Licensing & Regulation Division's Recommendation Regarding Level 1 and Level 2 Occupational License Applications
- B. Consider the Executive Director's Report and Licensing & Regulation Division's Recommendation Regarding the Pending Supplier License Application Request of
 1. Just For Fun, Inc. d/b/a JFF Uniforms, Board File No. SL004577-13-002
- C. Consider the Executive Director's Reports and Licensing & Regulation Division's Recommendations Regarding the Pending Supplier License Renewal Requests of
 1. Cummins-Allison Corp., Board File No. SL000263-13-002
 2. HoneyBaked Ham Company, Board File No. SL003691-13-001
 3. J.C. Beal Construction, Inc., Board File No. SL005664-13-001
- D. Consider the Executive Director's Report and Licensing & Regulation Division's Recommendation Regarding the Suitability of New Key Person of Greektown Casino, LLC
 1. Mark Lawrence Dunkeson, Board File No. GTC-2013-015

(Continued on page 2)

E. Consider the Executive Director's Report and Licensing & Regulation Division's Recommendation Regarding the Suitability of New Key Person of MGM Grand Detroit, LLC

1. Gregory Mark Spierkel, Board File No. MGM-2013-002

F. Consider the Executive Director's Reports and the Licensing & Regulation Division's Recommendations Regarding the Pending Transfers of Interest of

1. Cummins-Allison Corp., Board File No. SL000263-13-004 & SL000263-13-003
2. TCS John Huxley America Inc., Board File No. SL001026-13-002

G. Consider the Executive Director's Reports and the Licensing & Regulation Division's Recommendations Regarding Greektown Casino LLC's requests to

1. Make a Distribution to Purchase Shares from Minority Shareholders;
2. Amend the Certificate of Incorporation of Greektown Superholdings, Inc.;
3. Transfer Interest to New Key Persons Greektown Mothership LLC and Greektown Mothership Corporation;
4. Amend Certain Debt Transaction Documents; and
5. Approve the Suitability of New Key Persons Greektown Mothership LLC and Greektown Mothership Corporation, Board File No. GTC-2013-017

H. Consider Greektown Casino, LLC's Request to Suspend the Fixed Charge Coverage Ratio for 4th Quarter

The MGCB meeting will take place at the Detroit Office Hearing Room, located at Cadillac Place, 3062 W. Grand Blvd., Suite L-700, Detroit, Michigan at 9:30 a.m. on Wednesday, December 11.

SUPREME COURT HEARS ORAL ARGUMENTS IN BAY MILLS CASINO CASE

On Monday, December 2, 2013, the United States Supreme Court heard oral argument in the case of *Michigan v Bay Mills Indian Community, et al*, the matter reviewing the Bay Mills Indian Community's ("Bay Mills Tribe") right to open a tribal casino in Vanderbilt, Michigan on lands approximately 125 miles south of its reservation in Michigan's Upper Peninsula. During the one-hour oral argument period, the Court heard from Michigan Solicitor General John Bursch, on behalf of the State of Michigan; Neal Katyal of the law firm of Hogan Lovells, on behalf of the Bay Mills Tribe; and U.S. Deputy Solicitor General Edward Kneedler, on behalf of the Federal Government, which filed an amicus brief in the case.

This matter arrived at the U.S. Supreme Court after the Vanderbilt 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 then appealed the Sixth Circuit's decision to the Supreme Court. In addition to briefs filed by the State of Michigan, the Bay Mills Tribe and the Federal Government, seventeen states also filed amicus briefs agreeing with the position of the State of Michigan, while 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.

Monday's oral argument focused on the second question presented in the case - - whether tribal sovereign immunity bars a state from suing in federal court to enjoin a tribe from violating the Indian Gaming Regulatory Act ("IGRA") outside of Indian lands. Solicitor General Bursch argued that the Bay Mills Tribe does not enjoy immunity in such instance for two reasons, "[f]irst, it makes no sense that Congress intended States to have a

Federal injunctive remedy for illegal gaming on reservation, but no injunctive remedy if that gaming takes place on land that is subject to the State's exclusive jurisdiction. Second, a tribe should not have greater immunity than foreign nations. There's no dispute that if France opened up an illegal business in Michigan, casino or otherwise, it would have no blanket immunity." Supreme Court Hearing Transcript, p. 3.

Mr. Katyal thereafter opened his argument with a lively exchange with Justice Antonin Scalia:

MR. KATYAL: I would like to begin where my friend did not, with the text of the statute. Congress enacted subsection (A)(ii), like the rest of IGRA, to address gaming solely on Indian lands. In fact, Congress used that phrase "on Indian lands" a whopping 24 times in IGRA. By contrast, IGRA says not a word about off-Indian-lands activity.

JUSTICE SCALIA: So you think Congress really wanted the States to have power to stop illegal gambling on Indian lands, but not to have the power to stop illegal gaming on State lands? Is that --is that the law you think Congress wrote? ... Why would anybody want such a disposition?

MR. KATYAL: Two reasons, Your Honor, why I think Congress made the choice they did... Congress in IGRA was reacting to this Court's decision in *Cabazon* the year earlier, which had ousted State regulatory jurisdiction entirely from on-Indian-lands activity. So it changed the game entirely [and]...[a]ll IGRA did in (A)(ii) is empower compacts. It didn't abrogate immunity by itself directly; it requires the tribe to affirmatively buy into the idea of State law applying on the reservation." *Id.* at p. 29-31, 34.

During Mr. Kneeder's argument, the Justices discussed the unique nature of tribal sovereign immunity, while noting that this decision could indeed have wide-ranging implications in this area, even beyond tribal gaming.

JUSTICE BREYER: You understand Indian policy. This case has tremendous implications if we follow your approach. It seems to me well beyond anything to do with gaming. My belief is Indian tribes all over the country, operate businesses off the reservation, and businesses all

over the country are regulated. And does the State, I guess, in your view does not have the power to enforce the regulation against the Indian tribe. *Id.* at p. 55-56.

It is anticipated that the Court will issue a ruling in this matter, which could have a large impact on issues of tribal sovereign immunity an tribal gaming expansion near the end of its 2013-2014 term.

MICHIGAN LOTTERY SELECTS iLOTTERY SERVICE PROVIDERS

On November 25, 2013, the Michigan Lottery announced that it has selected Pollard Banknote and NeoGames to provide iLottery services, including instant and draw games, which allow players to purchase games over the internet and on mobile devices. The iLottery services are slated to go live in the fourth quarter of 2014.

"The Michigan Lottery is continually changing and evolving to meet the demands of its players and stay competitive in the entertainment marketplace. In today's society, more and more consumers want to do business online and that includes Lottery players. Adding iLottery services as an option for players keeps the Michigan Lottery offerings up to date and supports its efforts to increase its revenues and provide additional funding to the state's schools," said Tom Weber, the Lottery's chief deputy commissioner.

According to the Michigan Lottery, offering its existing games online will result in anticipated growth in sales. Based upon figures from other states, the growth is estimated to increase contributions to the state School Aid Fund by nearly \$480 million over the next eight years.

Notably, earlier this year the Michigan Lottery put its iLottery plans on hold as it experienced opposition from both the House and Senate. Though Governor Rick Snyder supported the iLottery plans and proposed \$3.4 Million be allocated for this purpose in his 2014 budget proposal, the Senate Appropriations Committee eventually de-funded this proposal, and separate iLottery funding did not make it into the final

omnibus budget bill sent to the Governor. The allocated funding was meant to aid in the development of the iLottery plans and also to pay for ten additional employees to handle the iLottery program.

Legislation was introduced in the House and Senate to ban online lottery ticket sales, but neither bill has made it out of committee. (See [House Bill 4531](#) and [Senate Bill 0294](#)).

STATE-TRIBAL COMPACTS UPDATE

On November 30, 2013, Tribal-State Gaming Compacts for several Native American tribes across the state came to the end of their initial 20-year terms under the provision of each compact. While the language within each compact is unclear as to whether the terms automatically extend past the initial expiration date, statements made during Monday's oral argument in the Bay Mills Supreme Court case suggested that the terms continue as the tribes and the state negotiate new or amended agreements.

The Tribal-State Gaming Compacts for each of the following Michigan Native American Tribes include expiration dates of November 30, 2013:

- Bay Mills Indian Community
- Grand Traverse Band of Ottawa and Chippewa Indians
- Hannahville Indian Community
- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Saginaw Chippewa Indian Community
- Sault Ste. Marie Band of Chippewa Indians

The November 30, 2013 expiration date is also included in the Gaming Compact for the Keweenaw Bay Indian Community, however, the State is barred from exercising its rights to unilaterally terminate or force renegotiation of the agreement until November 30, 2022 under a Consent Judgment entered in 2000 by the US District Court for the Western District of Michigan.

According to statements made during oral arguments in the *Michigan v. Bay Mills Indian Community* case before the US Supreme Court on December 2, 2013, Michigan's Solicitor General

stated that the compacts contain "an evergreen clause that allows [the compact] to continue while the parties try to negotiate a new compact."

According to various news reports, the state is currently in negotiations with the various affected tribes regarding executing new or extended gaming compacts.

JOINT COMMITTEE ON ADMINISTRATIVE RULES HEARS COMMENTS ON MGCB PROPOSED CHARITY GAMING RULES; MGCB ANNOUNCES SUSPENSION OF CHARITABLE GAMING AT FLINT POKER ROOM

On Friday, November 22, 2013, the Michigan Joint Committee on Administrative Rules, a legislative committee with oversight over state administrative rules, held a hearing on draft regulations submitted by the Michigan Gaming Control Board ("MGCB") that proposed changes to several provisions to existing charity gaming regulations. In addition, on November 27, 2013, the MGCB issued a press release noting that it had suspended all charitable gaming activity at Lucky's Poker Room in Flint due to investigations into allegations of illegal gaming activity.

Administrative Rules Amendments and Hearing

The hearing was well attended with several representatives from charitable organizations noting that their ability to use charitable gaming for fundraising purposes would be negatively affected by the proposed rules. Those in support of the proposed changes noted the rapid expansion of charitable gaming activity and the increase in improper handling of charitable gaming events.

The revised charitable gaming rules were submitted by the Executive Director of the MGCB, who has official oversight over Millionaire Party gaming events, on September 18, 2013 and updated on October 28, 2013. The proposed rules would require additional disclosure requirements from charitable organizations

seeking licensure for Millionaire Party events, including whether the charity or its principal officers have ever been convicted of certain crimes and are involved in any pending litigation, as well as evidence that the charity has raised at least \$2,000.00 in non-gaming related fundraising in the past year. The rules also require review and approval of gaming areas prior to the award of a license.

In addition to these requirements, the proposed rules provide additional requirements for locations where charity gaming is operated. Rental agreements for locations, for example, must be at fair market value and may not exceed \$250.00 per day for the location rental, including food and drink sales.

Suspension of Charitable Gaming License at Flint Poker Room

On Wednesday, November 27, 2013, the MGCB issued a press release noting it had suspended charitable gaming activity at Lucky's Poker Room, Lucky's Bingo Hall, Shamrock's Tavern, and Shamrock Internet Café, all located at the same address in Flint. The suspension was issued amidst an ongoing investigation into allegations of alleged illegal gaming activity at these locations, including the alleged use of computer slot machines.

According to the press release, the suspension represents the 18th location that has had its charitable gaming license suspended or banned since 2010. The Emergency Order of Summary Suspension Pending Further Investigation alleges that these locations have violated state penal code provisions, state gaming laws, state consumer protection laws, as well as liquor laws regarding unlawful gambling conducted on premises.

THOROUGHBRED RACING POSSIBLY RETURNING TO DETROIT-AREA

On Monday, December 2, 2013, the Michigan Horsemen's Benevolent and Protective Association ("MIHBPA") announced that it has entered into an agreement for live thoroughbred/mixed breed racing at Hazel Park and Northville Downs. The applications and plans have been submitted to the Michigan Gaming Control Board

("MGCB") for review and approval.

As noted in [Volume 19, Issue 31 of The Michigan Gaming Newsletter](#), MGCB Executive Director Kalm originally awarded a total of 124 live racing dates, as well as approved simulcast wagering permits for each of Michigan's tracks. In their original applications, Hazel Park Raceway and Northville Downs 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 was required to provide additional details on the breeds that it intends to run and how the track will accommodate these changes by December 1, 2013.

Although exact dates and schedules have not been announced, the plans include formatting an abbreviated race meet at Mount Pleasant Meadows in Spring of 2014, followed by a Summer meet at Hazel Park and a proposed Fall meet at Northville Downs. According to reports, track conversions will need to take place at both facilities to accommodate the thoroughbred and mixed breed racing.

"This is a significant event for the racetracks and the thoroughbred/mixed breed owners, trainers, breeders and fans," stated George Kutlenios, MIHBPA President. "This entirely new format for horse racing in Michigan is an important first step in finding the right combination of cooperative and willing participants to move our industry forward."

FEDERAL COMMITTEE TO DISCUSS ONLINE GAMING

On Tuesday, December 3, 2013, The United States House of Representatives Subcommittee on Commerce, Manufacturing, and Trade announced that it will hold a hearing on Tuesday, December 20, 2013 to examine the current regulatory landscape for online gaming. The Subcommittee will also review [HR 2666](#), the Internet Poker Freedom Act of 2013, which was introduced by Congressman Joe Barton (R-Texas) in July.

Notably, on Wednesday, July 17, 2013, The United States Senate Subcommittee on Consumer Protection, Product Safety and Insurance held a hearing entitled, “The Expansion of Internet Gambling: Assessing Consumer Protection Concerns.” In light of the recent enactment of intrastate online wagering schemes in Nevada, New Jersey and Delaware, the stated goal of the hearing was to “explore the consumer protection implications of the legalization of intrastate online gaming.”

Prepared statements from the hearing made by various United States Senators can be read by [clicking here](#).

Two online gaming expansion bills were introduced in the House of Representatives earlier this year. House Resolution 2282, introduced by Rep. Peter King (R-NY), would legalize and regulate all forms of internet wagering, except sports betting, while HR 2666, introduced by Rep. Joe Barton (R-TX), seeks to legalize and regulate only online poker. HR 2666 and HR 2282 were referred to Committee in July and June, respectively.

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