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# The \_\_\_\_\_ MICHIGAN GAMING \_\_\_\_\_ Newsletter



## **BAY MILLS VANDERBILT CASINO CHALLENGED BY MICHIGAN ATTORNEY GENERAL, OTHER TRIBES**

On December 21, 2010, the Little Traverse Bay Band of Odawa Indians and the Michigan Attorney General filed separate complaints in the U.S. District Court for the Western District of Michigan alleging that the Bay Mills Indian Community's ("Bay Mills Tribe") Vanderbilt casino is not located on "Indian lands" as defined by federal law and state compacts. Both of the complaints allege that, because the facility is allegedly not located on "Indian lands," the Bay Mills Tribe cannot conduct gaming activities at the Vanderbilt location. The complaints seek to enjoin the Bay Mills Tribe from conducting any Class III gaming activities at the Vanderbilt site.

Prior to the December 21, 2010 filing in the U.S. District Court of Western Michigan, at the end of November, the Little River Band of Odawa Indians, along with five other Michigan tribes, stated their belief that the Vanderbilt casino violated established state and federal policy regarding tribal gaming. After the opening, the Little Traverse Band of Odawa Indians announced that it was withholding its 6% slot revenue payment to the state's strategic fund because the new casino violates competitive market provisions in their compact.

On December 16, 2010, the Michigan Attorney General's office issued a letter to the Bay Mills Tribe that demands that it cease gaming operations at the Vanderbilt facility. The letter outlined the state's stance on the newly built tribal gaming facility, concluding that "the operation of this casino is not authorized by IGRA and therefore violates state and federal laws prohibiting gambling." Despite the letter, the Bay Mills Tribe has maintained that it has met all state and federal requirements for establishing a new gaming facility.

*(Continued on page 2)*

According to the State Attorney General, the letter was issued after several meetings and discussions between state and tribal leaders regarding the legality of gaming operations at the Vanderbilt casino. The Vanderbilt casino, which opened on November 3, 2010, contains 36 slot machines and is located in the former Project Nature Welcome Center off of Interstate 75. On December 1, 2010, the Bay Mills Tribe broke ground on an expansion project that would more than double the size of the existing facility in order to add more gaming machines and expand the restroom area.

## **YEAR IN REVIEW AND 2011 ANTICIPATED DEVELOPMENTS**

This year, the Detroit commercial casino market is projected to see a slight increase in revenues over 2009 and has fared relatively well in comparison to the other gaming markets across the U.S. Greektown Casino Hotel successfully emerged from Chapter 11 bankruptcy on June 30, 2010, and the casino's Chapter 11 plan of reorganization was also confirmed. MGM Grand Detroit and MotorCity Casino continue to operate their permanent casino complexes.

In 2011, Michigan will also see a continued push for new tribal casinos across the state. At the end of 2009, the new FireKeepers Casino opened between Battle Creek and Marshall, Michigan. The \$340 million casino includes a 230,000 square foot casino, and a parking structure with over 2000 spaces. Expansion plans for FireKeepers Casino have also begun. The casino complex rests on 78 acres, with the current facility utilizing only half of this property.

Also in November, 2010, ground work started on Four Winds North, a satellite gaming facility of the Pokagon Band of Potawatomi Indians (Tribe), owners of the Four Winds Casino located in New Buffalo, Michigan. The new casino will be located near Interstate 94, just west of the city of Hartford in Van Buren County and will include an initial 500 slot machines, nine table games, and a 100-seat casual restaurant. Once operational, the Tribe has the option of adding up to 500 additional slot machines. It has a tentative opening in late-2011 or early 2012.

The Gun Lake Band continues construction on its Gun Lake Casino. Phase I plans call for a 83,000 square foot facility that will feature 1,200 slot machines, 36 table games, an entertainment lounge, and a casino bar. It will be operated by the Gun Lake Band's management partner, MPM Enterprises, LLC, owned by an affiliate of Station Casinos, Inc., as well as private investors from Michigan. The Tribe's tentative opening date for the Gun Lake Casino is set for early 2011, and during the first week of December, 2010, the first games were shipped to the casino.

## **HISTORIC AGREEMENT REACHED BETWEEN LITTLE RIVER CASINO AND UNITED STEELWORKERS**

Yesterday, December 21, 2010, the Little River Band of Ottawa Indians ("Tribe") announced that a collective bargaining agreement has been reached between the Little River Casino Resort and the United Steelworkers. The agreement is the first of its kind to be reached after a union election campaign and collective bargaining process governed solely by tribal law.

The Board of Directors of the Resort approved the agreement on Monday, December 20, 2010 and it immediately took effect.

"This is [a] proud moment for our Tribe," said Stephen Parsons, Tribal Council Speaker for the Band. "We have worked hard to design a fair law to govern labor relations within our jurisdiction. This agreement shows that tribal sovereignty works."

According to the Tribe's press release, in 2008, United Steelworkers representatives approached the Tribe's leaders and expressed that they had significant support from Resort employees for a union election. In response, the Tribal Council adopted an election procedure to be overseen by an appointed Neutral Election Official. In October, 2008, Resort security officers elected the union to represent their bargaining unit. Negotiations proceeded under the Band's Labor Relations and Collective Bargaining Law.

*(Continued on page 3)*

“This is a mutually beneficial agreement that reflects the importance of tribal sovereignty while providing a mechanism for employees to have a choice of union representation or not,” said Tribal Ogema Larry Romanelli. This is truly a historic moment. I appreciate the union’s cooperation over the process and the efforts of all who were involved in the negotiation.”

## CONGRESS PASSES UPDATE TO RED FLAGS RULE

On Tuesday, November 30, the United States Senate unanimously passed the Red Flags Program Clarification Act of 2010 (“Red Flags Act”). The legislation serves to further clarify the definition of “creditor” under the Fair Credit Reporting Act (“FCRA”).

The FCRA was passed in 1970 and regulates the collection of consumer credit information. In accordance with the FCRA, the Federal Trade Commission is charged with putting forth rules and regulations to enforce the FCRA and other applicable federal statutes. The “Red Flags” provisions are a part of these rules and are designed to, among other things, require financial institutions to address the risk of identity theft.

The Red Flags Act clarifies the definition of “creditor” under the FCRA to include entities that regularly accesses consumer credit reports, provides information to consumer crediting agencies, or advance funds on behalf of an individual in return for an obligation to repay the funds or a security interest in property. Entities that collect personal information and that “maintain[] accounts that are subject to a reasonably foreseeable risk of identity theft” are also included under the definition of “creditor.”

Language in the Red Flags Act also explicitly excludes entities that advance funds on behalf of a client for expenses incidental to services provided to the client by the entity. These exclusions make clear that entities that provide professional services – such as lawyers, doctors, and accountants – are not considered a “creditor” under the FCRA and are not subject to the “Red Flags” provisions.

The “Red Flags” rule and its regulations were originally intended to become effective on November 1, 2009. However, due in part to confusion over the entities subject to the rules, the Federal Trade Commission has repeatedly delayed enforcement of the rules. Currently, the Federal Trade Commission is set to begin enforcement of the rules on December 31, 2010.

## OHIO CASINO UPDATE

Ohio voters approved Issue 3 by a 53 percent vote on Tuesday, November 3, 2009, allowing four casinos to be built, one each in Cleveland, Cincinnati, Franklin County, and Toledo, Ohio.

Consistent with the state constitutional amendment, state lawmakers have passed legislation to regulate the state’s casino industry. Ohio House Bill 519 became effective on September 10, 2010 and creates the Ohio Casino Control Commission, sets forth laws regarding casino gaming and operations, and creates the Joint Committee on Gaming and Wagering.

Dan Gilbert, owner of the Cleveland Cavaliers and Quicken Loans, heads Rock Gaming, LLC, which will be majority owner of the Cincinnati and Cleveland casinos. In August, Rock Gaming announced that it will partner with Caesars Entertainment (“Caesars”), formerly Harrah’s Corporation, and that Caesars will operate the two casinos. It is expected that Caesars will have a minority ownership interest in the two properties. Penn National Gaming will operate the Toledo and Columbus-area casinos. On September 8, 2010, Penn National announced that Bally Technologies was awarded a contract to provide slot management and marketing technology to the two properties. Both Penn National and Rock Gaming hope to open permanent gaming facilities in all four cities by the end of 2012.

### Columbus Casino Update

On Monday, December 13, 2010, the Columbus City Council voted to remove the site where Penn National is to construct its new casino from the city’s sewer contract with Franklin County. The move will require Penn National to annex the site to the city of Columbus in order to receive city

*(Continued on page 4)*

sewer services.

The council vote is the latest in ongoing negotiations over taxation and services that affect the Franklin County land where the casino is to be located. Penn National had originally agreed to annex the land to the city in September, but first insisted that it receive tax breaks and other incentives in consideration for the annexation. Penn National also has applied to drill wells on-site for water service; however, sewer service would remain restricted by Monday's city council vote until the company surrenders the land to the city.

Reports have projected that, if annexed, the city would receive around \$24 million in annual fees and taxes from the casino site. If the land is not annexed, then the city is projected to receive around \$16 million annually from fees and taxes.

#### Gaming Commission Update

Also in dispute is the composition of Ohio Casino Control Commission ("Commission"). On October 8, 2010, Ohio governor Ted Strickland announced his appointments to the newly formed Commission. However, Strickland, a Democrat, was defeated in the November gubernatorial election by Republican opponent John Kasich. On Tuesday, December 21, 2010, the Republican-controlled senate rejected all of Strickland's appointments to the Commission in order to allow Kasich the opportunity to appoint members of his choosing. By law, the Commission must include at least one accountant, one lawyer, one person with law enforcement experience, and at least one member from each of the four counties where the casinos will be located. Each member will be paid \$60,000 per year for their services.