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# The MICHIGAN GAMING Newsletter



## BAY MILLS INDIAN COMMUNITY LAWSUIT UPDATE

On January 13, 2011, the Bay Mills Indian Community (“Bay Mills Tribe”) filed an Answer to the Little Traverse Bay Bands of Odawa Indians’ (“Little Traverse Bay Band”) complaint filed in response to the opening of a Class III gaming facility in Vanderbilt, Michigan.

The Bay Mills Tribe’s Answer states, in part, that the court lacks proper jurisdiction to hear the claim filed by the Little Traverse Bay Band and other Tribes under 28 U.S.C. § 1362, “as BMIC [Bay Mills Indian Community] has not waived its sovereign immunity as a matter of fact and §1362 does not act as an express waiver of BMIC’s sovereign immunity as a matter of law.” In addition, the Answer states that the Little Traverse Bay Band lacks standing to bring the suit.

On Wednesday, November 3, 2010, the Bay Mills Tribe opened the Vanderbilt, Michigan gaming facility, which currently holds 36 slot machines. The Tribe has maintained that it has met all state and federal requirements for establishing a new Class III gaming facility.

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. Subsequently, 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 Tribe 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.

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On December 23, 2010, the court ‘consolidated’ the two lawsuits into a single suit. Notably, on January 7, 2011, the U.S. District Court for the Western District of Michigan granted an order to extend the deadline for the Bay Mills Tribe to respond to the state’s motion for a preliminary injunction. The Bay Mills Tribe now has until January 19<sup>th</sup> to file its response to the state’s motion. To date, the Vanderbilt gaming facility remains open.

For a copy of the Answer or Complaint filed by the Bay Mills Tribe responding to the Little Traverse Bay Band, please email *Newsletter* reporter Blaine DeGracia at [degracia@rmclegal.com](mailto:degracia@rmclegal.com).

### *Flint Township*

Last week, the *Flint Journal* reported that Executive Council Chairman for the Bay Mills Tribe, Jeffrey Parker, would be ‘more than happy’ to talk about the potential for opening a casino on newly acquired lands in Flint, Michigan.

On December 17, 2010, the Bay Mills Tribe filed a deed to 28 acres of land in Flint Township. According to the report, Mr. Parker said that the Bay Mills Tribe hasn’t decided what exactly to do with the 28 undeveloped acres, but alluded that the development of the land would be dictated by what happens to their casino in Vanderbilt, Michigan.

Mr. Parker told the *Flint Journal*, “[u]ltimately (what happens in Flint Township) depends on what happens here,” he said of the Vanderbilt casino. “If something could happen, and there was support for it, we’d be more than happy to have those discussions.”

## **MICHIGAN LEGISLATURE BEGINS 2011 SESSION**

On Wednesday, January 12, 2011, members of the Michigan legislature were sworn-in to their positions at the state capitol. This marked the first meeting of the 2011-2012 legislative session.

In accordance with Michigan law, any piece of

legislation that had not passed both chambers of the legislature by the end the 2009-2010 session expired. Therefore, the 2011-2012 session begins anew and any proposal to be considered by the legislature must be introduced.

Both chambers have finalized their committee assignments. Persons interested in obtaining a current membership list can visit: [www.legislature.mi.gov](http://www.legislature.mi.gov).

The Michigan House and Michigan Senate have independent Regulatory Reform Committees that will separately consider gaming-related legislative proposals.

For more information on either committee, please visit: <http://www.senate.michigan.gov/committee/committeeinfo.htm> and [http://house.michigan.gov/standing\\_committees.pdf](http://house.michigan.gov/standing_committees.pdf).

Included in the collection of bills introduced in the first week of the legislature is House Bill No. 4051 which, if passed, would bar Michigan Bridge Card holders from using the card to withdraw cash from Automatic Teller Machines or from using the card for lottery tickets, alcohol, or tobacco products.

## **OHIO GAMING 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.

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, puts forth laws regarding casino gaming and operations, and creates the Joint Committee on Gaming and Wagering.

*State Lottery Commission and Casino Control Commission*

On Tuesday, January 11, 2011, the Ohio state

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senate rejected all of former governor Ted Strickland's late-term appointments to the state's lottery commission. This follows the state legislature's rejection of all of Strickland's appointments to the Ohio Casino Control Commission in December of 2010. Newly sworn-in governor John Kasich has yet to appoint members of either the Ohio Lottery Commission or the Ohio Casino Control Commission.

#### *River Downs Racetrack*

On Thursday, January 13, 2011, Pinnacle Entertainment announced that it had received approval from the Ohio State Racing and Gaming Commission to acquire River Downs Racetrack near Cincinnati. The company has stated that it is acquiring the race track in anticipation of state legislation that would legalize slot machines at racing facilities.