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# The MICHIGAN GAMING Newsletter



## MICHIGAN GAMING CONTROL BOARD RELEASES DETROIT CASINO REVENUES FOR APRIL, 2014

The Michigan Gaming Control Board (“MGCB” or “Board”) released the April, 2014 total adjusted revenue figures for the three Detroit casinos—MGM Grand Detroit Casino, MotorCity Casino and Greektown Casino. Overall, the revenue for the Detroit market was down 6.5% compared to the same reporting period last year. Specifically, revenue for MGM Grand Detroit Casino, MotorCity Casino and Greektown Casino was down by 4.1%, 3.8% and 13.6%, respectively, during April 2014 compared to the same month last year.

Month in 2014	Total Adjusted Revenue 2014		
	MGM Grand Detroit	MotorCity Casino	Greektown Casino
	Total Adjusted Revenue	Total Adjusted Revenue	Total Adjusted Revenue
January	\$41,231,507.57	\$31,710,276.19	\$23,106,523.77
February	\$47,575,032.11	\$37,245,026.02	\$25,788,555.32
March	\$50,756,665.25	\$42,961,184.96	\$31,218,833.96
April	\$46,974,038.53	\$38,240,494.81	\$27,058,910.49
<b>Total</b>	<b>\$186,537,243.46</b>	<b>\$150,156,981.98</b>	<b>\$107,172,823.54</b>

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.

Month in 2014	Total Adjusted Revenue and Taxes 2014		
	All Detroit Casinos		
	Total Adjusted Gross Receipts	Total State Wagering Tax	Total Detroit Wagering Tax
January	\$96,048,307.53	\$7,779,912.91	\$10,469,265.52
February	\$110,608,613.45	\$8,959,297.69	\$12,056,338.87
March	\$124,936,684.17	\$10,119,871.42	\$13,618,098.57
April	\$112,273,443.83	\$9,094,148.95	\$12,237,805.38
<b>Total</b>	<b>\$443,867,048.98</b>	<b>\$35,953,230.97</b>	<b>\$48,381,508.34</b>

The market shares for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for April 2014 were 42%, 34%, and 24%, respectively.

The figures released by the 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, services providers or vendors; and 4) other normal business expenses.

## MICHIGAN AG REQUESTS U.S. SUPREME COURT REVIEW OF SIXTH CIRCUIT DECISION

On Wednesday, May 14, 2014, Michigan Attorney General Bill Schuette filed a Petition for a Writ of Certiorari (“Petition”) in the United States Supreme Court, asking the court to review a decision by the United States Court of Appeals for the Sixth Circuit allowing the Sault Ste. Marie Tribe of Chippewa Indians (“Tribe”) to continue its pursuit of constructing a casino in Lansing.

The Tribe is proposing to invest \$245 million in building and operating a 125,000 square foot casino with 3,000 slot machines and 48 gaming tables. The casino would be located at Michigan Avenue and Cedar Street, adjacent to the Lansing Center and is projected to create approximately 2,200 jobs.

At issue is the State’s ability to enforce Section 9 of Tribe’s Tribal-State Gaming Compact with the State of Michigan, which requires the Tribe to obtain written revenue sharing agreements with the other federally recognized Indian Tribes in Michigan prior to making application to the U.S. Secretary of Interior to have lands taken into trust. Having the land taken into trust is required before a Native American Tribe can open a casino pursuant to the federal Indian Gaming Regulatory Act (“IGRA”). It does not appear that the Tribe has entered into any revenue sharing agreements with other tribes in connection with the proposed Lansing casino, but has argued, among other things, that its plans are nonetheless allowable under the provisions of the 1997 Michigan Indian Lands Claims Settlement Act (“MILCSA”).

In its December 18, 2013 decision, the Sixth Circuit Court held that the preliminary injunction was improper “because the State is not suing to enjoin class III gaming activity, but instead a trust submission under MILCSA, §2710(d)(7)(A)(ii) of IGRA does not abrogate the Tribe’s sovereign immunity, and the district court lacked jurisdiction. The issue of whether class III gaming on the casino property will violate

IGRA if the Tribe's MILCSA trust submission is successful is not ripe for adjudication because it depends on contingent future events that may never occur."

The Petition states that "[t]he net result of the Sixth Circuit's approach is that States may not sue in federal, or any other court, to enjoin a tribe's imminent violation of significant provisions of its gaming compact. This ruling not only thwarts the State's bargained-for ability to limit off-reservation gaming, it has a negative impact on Michigan's other tribes, many of which signed compacts with identical language barring trust applications for off-reservation gaming."

The State argues first that the common-law doctrine of tribal immunity "has never extended so far as to grant tribes immunity for conduct such as operating an illegal casino off-reservation or violating their tribal-state compacts." Alternatively, if the Court finds that tribes do enjoy common law immunity, Congress surely intended by the creation of the IGRA, and its tribal-state compact requirement, to allow states (and tribes) to enforce the provisions of tribal-state compacts in court, thereby waiving tribal immunity statutorily.

The Petition focuses on the Sixth Circuit Court's insistence that merely petitioning to have land held in trust by the Secretary of the Interior is not "gaming activity" as contemplated by the IGRA when the only reason a tribe would petition therefor is to create a casino.

Further, the State argues that the Sixth Circuit's reliance on its assertion "that to satisfy § 2710(d)(7)(A)(ii) [of the IGRA] the gaming to be enjoined cannot be at 'sites unrelated to the alleged compact violation,'" in disallowing the State's attempt to enjoin *all* gaming conducted by the Tribe. The State contends that "[t]he only 'site' requirement in § 2710(d)(7)(A)(ii) is that the gaming occur on Indian lands, and there is no question that the Tribe's ongoing casino operations here are on Indian lands."

Also, the State relies on previous decisions from the Seventh and Tenth Circuits that are consistent with its position on common law and statutory tribal immunity and urges the Court resolve the split in authority consistent with those decisions.

It remains to be seen whether the Supreme Court will grant review. In the meantime, the February 24, 2014 order to stay proceedings in the matter remains in effect.

## **CHARITY GAMING RULES BECOME EFFECTIVE, TROY LOCATION SHUT DOWN**

On Wednesday, May 14, 2014, the revised charity gaming regulations for Millionaire Parties submitted by Michigan Gaming Control Board ("MGCB") Executive Director Richard Kalm became effective. The rules became effective once the final regulations were presented to the Secretary of State after the Michigan Joint Committee on Administrative Rules ("JCAR") did not object to the regulations during its review period. In addition, the MGCB suspended all gaming activity at Mr. B's in Troy due to alleged violations of charity gaming laws and regulations.

The revised Millionaire Party regulations were originally submitted to JCAR on November 22, 2013. An amended version of the rules, changed in accordance with input received from JCAR and the public, were submitted on March 25, 2014. The final version of the regulations include several changes to Millionaire Party operations and licensing processes, including limiting the rental fee for locations to \$250.00 per day, more flexibility for the Executive Director to review the backgrounds of organizations and locations participating in charitable gaming, and providing for basic background checks for dealers.

The House Committee on Regulatory Reform held a hearing on Wednesday, May 14, 2014, regarding proposed legislation that would revoke the amended rules. However, no vote was held on the proposed legislation during the committee hearing.

In addition, the MGCB suspended all charitable gaming at Mr. B's, a location in Troy, Michigan serviced by Arcadia Poker Supplier, LLC, a charity gaming supplier, on Tuesday, May 13, 2014. According to a press release issued by the MGCB, the investigation initially "revealed

repeated violations or refusals to comply with numerous provisions of Michigan's Bingo Act, which authorizes charitable events." These allegedly included instances of allowing more than \$15,000 in chip sales per event day, the falsification of records and making untrue statements to the MGCB, and location employees participating in gaming in violation of state law and regulations.

## **BEARD GROUP TO PRESENT CASINO RESTRUCTURING WEBINAR**

On Tuesday, May 20<sup>th</sup> at 1:00pm, the Beard Group, an industry leader in the production of legal and business publications, will be presenting a webinar entitled, "Casino Turnarounds, Restructurings, and Workout Situations." The webinar will feature a panel of four casino industry experts and a discussion of the following topics:

- Operations and Marketing techniques designed to resurrect struggling casino properties during times of financial distress
- Regulatory considerations that are unique to casino restructurings
- Key legal issues and considerations that are unique to casino bankruptcy and workout situations
- The state of the current capital markets as it relates to distressed casino transactions
- Other key issues to consider when dealing with a distressed casino operations
- Case Studies

The panelists for the webinar include: Randall Fine, managing director of The Fine Point Group; Connie Lahn, shareholder in the firm of Fafinski, Mark and Johnson, PA; David Waddell, president and managing partner of Regulatory Management Counselors, P.C.; and Alexander Fisch, managing director of Guggenheim Securities.

Additional information about this webinar presentation, as well as directions on how to register as an attendee, can be found at the following link:

<http://ezine.bankrupt.com/webinars/products/featured-webinars>

## **SIGN UP FOR RMC'S DAILY GAMING NEWS FEED**

Regulatory Management Counselors, P.C. (RMC Legal), authors of *The Michigan Gaming Newsletter*, would like to extend an invitation to sign up for the complimentary *RMC Daily Gaming News Feed*. The Daily News Feed delivers Michigan and gaming-industry specific news links directly to you each morning.

To sign up to receive the RMC Daily Gaming News Feed, simply visit: <http://rmclegal.com/media-publications> and complete the form.

Should you have any questions, feel free to contact Blaine DeGracia at 517-507-3857 or [degracia@rmclegal.com](mailto:degracia@rmclegal.com).

*The Michigan Gaming Newsletter would like to thank Jack Wyers for his contributions to this Newsletter.*