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



## TRIBAL SOVEREIGNTY UPHELD BY SIXTH CIRCUIT COURT OF APPEALS

This week, the Sixth Circuit Court of Appeals issued a decision in a case relating to the Greektown Casino bankruptcy, which was originally filed over a decade ago. ***Buchwald Capital Advisors, LLC v. Sault Ste Marie Tribe of Chippewa Indians; Kewadin Gaming Authority***, Nos. 18-1165/1166 (February 26, 2019). The split decision of the Court affirmed a lower court ruling holding that sovereign immunity applies to the Sault Ste. Marie Tribe of Chippewa Indians and the Kewadin Tribal Gaming Authority with respect to an attempt by a bankruptcy litigation trustee who was seeking avoidance and recovery related to conveyances made by the Tribe and Kewadin in 2005 totaling \$177 Million. Greektown Casino subsequently filed for bankruptcy in April of 2008.

The bankruptcy court initially denied the Tribe's motion to dismiss, finding that Congress had abrogated tribal sovereign immunity in the Bankruptcy Code. The Tribe appealed to the District Court which reversed, holding that Congress had not abrogated tribal sovereign immunity. The District Court remanded the case to the bankruptcy court to decide whether the tribe had waived its sovereign immunity. The bankruptcy court granted the Tribe's motion to dismiss finding that the Tribe's conduct had been insufficient to waive sovereign immunity, since the tribal law required an express board resolution, since there had been no implied waiver, and since filing of a bankruptcy petition is not a waiver. The Trustee appealed the decision to the District Court which affirmed it. The Sixth Circuit decision affirmed the District Court, thus finding that sovereign immunity applied.

A key issue in the case was the interpretation of Section 106 of the Bankruptcy Code, which states that "sovereign immunity is abrogated as to a governmental unit . . ." Section 101(27) of the Code defines "governmental unit" to include a long list of governmental entities "or other foreign or domestic government". The Trustee claimed that these provisions abrogated

sovereign immunity for a tribe. The Court analyzed the case and noted that “The real question is whether Congress --- when it employed the phrase ‘other foreign or domestic government’ ---unequivocally expressed an intent to abrogate tribal sovereign immunity”. The Court found that merely finding that Tribes are “domestic” and “governments” is not enough to say that Congress clearly, unequivocally, and unmistakably expressed its intent to include Indian tribes. “While it is true that Congress need not use ‘magic words’ to abrogate tribal sovereign immunity, it still must unequivocally express that purpose,” citing *FAA v. Cooper*, 566 U.S. 284, 290-91 (2012).

## **MGCB PUBLIC MEETING SCHEDULED FOR TUESDAY, MARCH 12**

The Michigan Gaming Control Board will hold a regular public meeting on Tuesday March 12, 2019. The meeting will begin at 9:30 a.m. with the staff briefing, followed immediately by the regular agenda items.

The meeting is open to the public and questions, comments and suggestions from the public regarding Board business and the licensing regulation and conduct of casino gaming in Detroit under the Act are welcomed and encouraged during the public comment portion of the meeting.

The meeting will be located at the MGCB Detroit office, Cadillac Place, 3062 West Grand Blvd., Suite L-700, Detroit. The Cadillac Place is in Detroit's New Center Area near the John Lodge Freeway (M-10), between Second Avenue and Cass Avenue. The Fisher Building and the Albert Kahn Building are nearby landmarks.

## **MARCH IS PROBLEM GAMBLING AWARENESS MONTH**

The Michigan Association on Problem Gambling (“MAPG”) and the National Council on Problem Gambling (“NCPG”) recognize March as “Problem Gambling Awareness Month”. MAPG President

Michael Burke stated the following in an interview with this publication:

It is our hope as an organization that we can work together with all of the stakeholders to provide meaningful services for that small percentage of gamblers who are adversely affected by gambling in this state.

The MAPG is focused on trying to assure that the generous money that is allocated to address problem gambling by various stakeholders gets spent in a meaningful way that assures that the small percentage of people needing help get appropriate treatment.

Yesterday, Senator Aric Nesbitt introduced Senate Resolution 0019, which was quickly adopted by the Senate. It provides as follows:

A resolution commemorating March 2019 as Problem Gambling Awareness Month. Whereas, Legalized gambling is available in a variety of forms across Michigan; and Whereas, For some individuals, gambling becomes an issue with significant societal and economic costs for them, their families, and their communities; and Whereas, Problem gambling is a public health issue affecting individuals of all ages and backgrounds; and Whereas, The National Council on Problem Gambling is coordinating the fifteenth annual National Problem Gambling Awareness Month during March, and seeks to increase public awareness of problem gambling as well as the availability of prevention, treatment, and recovery services; and Whereas, Problem gambling is treatable and such treatment is effective in minimizing harm to both individuals and society; and Whereas, It is important to raise public awareness of the warning signs of problem gambling and the availability and effectiveness of treatment; and

Whereas, Educating citizens about problem gambling is important not only to recognize it, but to prevent it as well; now, therefore, be it Resolved by the Senate, That members of this legislative body commemorate March 2019 as Problem Gambling Awareness Month; and be it further

Resolved, That we urge the state of Michigan to recognize the seriousness of problem gambling and encourage all of its citizens to play responsibly.

The NCPG has sponsored the Problem Gambling Awareness Month for 15 years now. More information on the topic can be found at its website at <https://www.ncpgambling.org/>.

## **DATES ANNOUNCED FOR 2019 FOUR WINDS INVITATIONAL**

The Pokagon Band of Potawatomi Indians and its Four Winds Casinos have announced that the 2019 Four Winds Invitational will be held from Friday, 7 June through Sunday, 9 June at Blackthorn Golf Club, located at 6100 Nimitz Parkway, South Bend. The eighth annual tournament will feature a field of professional women golfers from around the world competing on the Symetra Tour – Road to the LPGA. The 2019 tournament will include 144 golfers who will play for a \$150,000 purse.

“We are proud to bring back the Four Winds Invitational to South Bend for the eighth straight year,” said Matt Wesaw, Chairman of the Pokagon Band of Potawatomi Indians. “The Symetra Tour is an outstanding pathway that grooms some of the best golfers in the world. On a local level, we’ve watched it grow and become an important regional summer event that raises a lot of money for life changing equipment for Beacon Health System — over \$545,000 in seven years.”

In addition to the money donated to Beacon, over \$1 million in prize money has been awarded to athletes playing in the tournament. Entering the eighth year of tournament competition, a handful of current LPGA Tour stars have passed through

South Bend on their way to the biggest stage in women's professional golf.

The Four Winds Invitational is one of four Symetra Tour events that are part of the Potawatomi Cup. The Cup highlights the contributions of four member tribes from the Potawatomi Nation who host tournaments throughout the Midwest. As well as the normal purse payout for each event, a total of \$40,000 in bonus money is available to players based on performance, including \$6,000 to the winner of the Potawatomi Cup.

## **INDIANA SENATE PASSES GAMING LEGISLATION**

This week, on Tuesday, the Indiana Senate passed gaming legislation (Senate Bill 552) by a 38-11 vote.

Senate Bill 552 would make the following changes to the Indiana gambling landscape:

- Legalization of sports wagering. The legislation would allow mobile sports wagering after an individual signs up in person at a licensed casino, racino, or OTB facility. The operators offering such wagering will be allowed to use subcontractors who will also need to be licensed.
- Adding table games to horse racetrack casinos this year. Notably, authorization to allow table games starting in 2021 has already been approved. Thus, the legislation just speeds up this process.
- Allow two existing casinos (Majestic Star I and Majestic Star II) in Gary Indiana to move locations away from the waterfront, with one relocating to Terre Haute Indiana. The Terre Haute casino operator will be selected by a complicated competitive process to be conducted by the Indiana Gaming Commission.

The bill now moves to the Indiana House for consideration.

## **MGM RESORTS COMING TO NORTHFIELD PARK OHIO PROPERTY IN APRIL**

Per a [press release](#) dated February 27, 2019, MGM Resorts International executives shared the future name, logo and other details surrounding the acquisition of the Hard Rock Rocksino Northfield Park. Along with carrying the MGM name as an entertainment and hospitality leader, several other changes will take place to create a best-in-class gaming destination.

"MGM Resorts is proud to work alongside the 950 dedicated employees during this transition. MGM Northfield Park is situated in a great location within a vibrant community and offers wonderful amenities - from dining and entertainment venues to gaming, harness racing and retail options," said Chris Kelley, President, MGM Northfield Park. "Through the dedication and hard work of this team, the Rocksino and harness track have established themselves as market leaders and we are excited to begin this new journey together."

Other changes to the current property will include updates to food and beverage services including a new sports bar, an upgraded buffet, a bistro coffee and sandwich shop and a high energy casino bar. Entertainment venues and retail options will also see exciting changes.

MGM will be working along with the Hard Rock team during the transition. The completion of the transformation to MGM is expected to take place in April at the closing of the acquisition.

## **AGA ISSUES GAMING INDUSTRY RESPONSIBILITY REPORT**

This week, the American Gaming Association issued a comprehensive industry responsibility report reflecting that the industry has a rich history of creating careers, driving economic activity in communities across the country and ensuring that gaming patrons have the tools they need to engage in our offerings responsibly.

### **The report notes that:**

- Gaming industry employees contribute nearly five times more volunteer hours per person than the tech industry, for a grand total of more than 422,000 hours per year
- AGA members give generously to support community causes, reporting more than \$367 million in charitable giving last year alone; and
- The gaming industry outpaces most private sector industries in its commitment to instituting green building and water conservation programs, diverting more than 100,000 tons of waste away from landfills last year.