

# Litigation Update

September 16, 2013

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# Michigan v. Bay Mills Indian Community

- Significant threat to tribal sovereign immunity
- National Indian Gaming Commission should assert jurisdiction and help to prevent a very bad Supreme Court decision
- Ask Tracie Stevens to take action regarding Michigan v. Bay Mills

# Michigan v. Bay Mills - Background

- Bay Mills Reservation is in a remote and isolated area of the Upper Peninsula in Michigan
- Indian Gaming Regulatory Act's prohibition on gaming on lands acquired after 1988 does not apply when lands are taken into trust as part of a settlement of a land claim

# Michigan v. Bay Mills - Background

## Michigan Indian Land Claims Settlement Act

“The earnings generated by the Land Trust shall be used exclusively for improvements on tribal land or the consolidation and enhancement of tribal landholdings through purchase or exchange. Any land acquired with funds from the Land Trust shall be held as Indian lands are held.” MILCSA §107(a)(3).

# Vanderbilt: 100 miles from Bay Mills



# Michigan v. Bay Mills

- Michigan seeks federal court injunction
- Tribe asserts immunity
- Interior legal opinion – not Indian country
- NIGC legal opinion: *no NIGC jurisdiction*
- Sixth Circuit says they have no jurisdiction
- No remedy: sovereign immunity at stake
- Supreme Court grants certiorari

# Bay Mills: 6<sup>th</sup> Circuit Decision

IGRA § 2710(d)(7)(A) provides:

The United States district courts shall have jurisdiction over—

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact

# Bay Mills: NIGC Legal Opinion

In short, in the absence of Indian lands, IGRA grants neither the Commission nor the Chairwoman any jurisdiction to exercise regulatory authority over the Vanderbilt casino. Further, when the Commission obtains information that may indicate a violation of federal, state, or tribal statutes, it is obligated to turn that information over to the appropriate law enforcement officials. 25 U.S.C. § 2716(b).



# Michigan v. Bay Mills – State Briefs

- Michigan to Supreme Court: Overturn Santa Clara v. Martinez (1978)
- Even if Supreme Court doesn't go that far, it could be very bad.
- State injunctions for any IGRA violation? (Very bad for compact negotiations.)
- State injunctions for any federal question? (Everything in 25 USC.)
- Removal of sovereign immunity for off-reservation or “commercial” activities?

# Michigan v. Bay Mills

Dilemma: If a tribe opens an Indian casino outside of Indian country, it violates IGRA and some entity must have enforcement authority

- This case will hand that authority to States
- Authority should be with the NIGC:  
(Political status, expertise, relationship with Interior, and deference to agency decisions).

# Michigan v. Bay Mills – IGRA violations

- 1) Indian gaming explicitly limited to “Indian lands within such tribe’s jurisdiction” under 2710(b)(1).
- 2) Indian gaming must be authorized by tribal ordinance adopted by Indian tribe “having jurisdiction over such lands.” 25 USC 2710(d).
- 3) Bay Mills gaming ordinance is limited to Indian lands “over which the Tribe exercises governmental power.”
- 4) Bay Mills Gaming Compact § 4(H) “The Tribe shall not conduct any Class III gaming outside of Indian lands”).
- 5) Bay Mills Gaming Commission licensed Vanderbilt Site in violation of IGRA and the Bay Mills ordinance.

# Michigan v. Bay Mills - NIGC

NIGC has authority to enforce:

## 25 USC 2713(b) **Temporary closure; hearing** (1)

The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section [2710](#) or [2712](#) of this title.

# Michigan v. Bay Mills

- Supreme Court removes sovereign immunity, or NIGC enforces IGRA violations?
- NIGC must enforce and demonstrate a credible remedy for IGRA violations.
- With a closure order, Michigan request for injunction is moot.
- Summary remand or changed posture.
- NIGC is an independent agency.

# Legislative and Administrative Issues

- Budget and Sequestration
- Tax Issues – Nunes and Kind bills;  
Marketplace Fairness
- Carcieri Fix
- NAHASDA Reauthorization
- VAWA Implementation
- Land Buy Back Implementation  
Webinars on October 7 and 8

# NCAI Annual Meeting

- October 14-18 in Tulsa, Oklahoma
- Attorney General Eric Holder
- Assistant Secretary Washburn
- Tax Working Group
- VAWA & TLOA Implementation
- Land to Trust
- Trust Reform
- Coal
- Election year for NCAI

**THANK YOU!!!!**