



Seminole Hard Rock Hollywood



Seminole Hard Rock Tampa

# The State of Indian Gaming In Florida

BY MARC DUNBAR AND WILL HALL

Florida has proven fertile ground for tribal gaming. The Seminole Tribe of Florida's operation is thriving, and the Poarch Band of Creek Indians and Miccosukee Tribe have also developed successful gaming enterprises. This article will provide an overview of each tribe, their entry into the gaming space, and the current state of their operation.

## SEMINOLE TRIBE OF FLORIDA

The Seminoles dominate tribal gaming in Florida and have further established themselves as one of the gaming industry's leading forces. The tribe is headquartered in Hollywood, Florida, and nearly 3,300 tribal members live in the state.<sup>1</sup> The Seminole tribe is a pioneer in the area of tribal gaming, having opened the country's first tribal bingo hall in 1979.<sup>2</sup>

The tribe operates seven facilities throughout the state: Hard Rock Tampa, Hard Rock Hollywood, Seminole Coconut Creek Casino, Seminole Classic Casino, Seminole Immokalee Casino, Seminole Brighton Casino, and Seminole Casino Big Cypress. In fiscal year 2015/2016, Hard Rock Tampa alone collected \$967 million in gaming revenue.<sup>3</sup> Pursuant to the Seminoles' compact with the State of Florida, Hard Rock Tampa is the only facility in the state offering banked card games and slot machine gaming north of Broward County. Even Seminole Classic Casino, a much smaller facility located in south Florida near several non-tribal competitors, took in \$163 million for that period. In contrast, the Isle Casino in Pompano Park collected \$155 million in cardroom and slot revenue during that year, the

highest amongst the state's non-tribal slot machine facilities.<sup>4</sup>

A portion of the Seminole Tribe's compact with the state expired in 2015, causing a wave of litigation and political consternation. Although the 2010 agreement included a 20-year exclusivity agreement regarding slot machine gaming outside of Miami-Dade and Broward counties, it only provided a five-year period for the exclusive play of banked card games throughout the state.<sup>5</sup> When the latter period expired without a new agreement, the tribe filed suit in federal court alleging that the state was not negotiating a renewed provision in good faith.<sup>6</sup> The tribe also alleged that the state violated the exclusivity envisioned under the Compact by allowing non-tribal pari-mutuel facilities to offer "designated player games"<sup>7</sup> (such as three-card poker and pai gow poker) that operated as banked games.<sup>8</sup> In late 2016, a federal judge ruled that the state violated the Seminoles' banked card game exclusivity and that the tribe may continue to conduct its banked games through the totality of the compact's 20-year term.<sup>9</sup> Although the state filed an appeal of this decision, it eventually reached a settlement that will allow the tribe to offer banked card games exclusively in the state until 2030.<sup>10</sup>

The Seminole Tribe has also negotiated with the state in hopes of offering expanded gaming options (specifically craps and roulette) at its facilities. In 2015, the tribe agreed to an amended compact with Florida's Governor Rick Scott that would have allowed the tribe to add these table games in exchange for \$3 billion in contributions to the state.<sup>11</sup> This agreement would have permitted pari-mutuel facilities in Palm Beach County to

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**Artist rendering of Seminole Hard Rock Hollywood's \$1.5 billion expansion, which will include a guitar shaped hotel, a 10-acre pool, 7,000-seat theater, and several other amenities. This expansion is expected to be completed in 2019.**

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add slot machines and allowed non-tribal facilities in Miami-Dade and Broward Counties to offer limited banked card games. However, this agreement did not receive the requisite approval from the Florida Legislature, as issues such as daily fantasy sports and allowing slot machines in additional counties added only more controversy to an already hotly-debated issue.<sup>12</sup>

Despite this setback, the Seminole Tribe has made clear that it is seeking to expand its gaming business and reach going forward. In late 2017, after reaching the settlement on the banked card game issue, the tribe announced plans to construct a guitar-shaped hotel at its Hard Rock Hollywood facility.<sup>13</sup> This new hotel will be part of a \$1.5 billion expansion of that facility, which will include a 10-acre pool, 7,000-seat theater, and several other amenities. This expansion is expected to be completed in 2019.

## THE POARCH BAND OF CREEK INDIANS

The Poarch Band is based in Alabama but has land in trust in both Alabama and Florida. Although the Poarch Band does not have a gaming compact with either state, it operates gaming facilities in both. In Alabama, it operates three successful Class II gaming facilities under the Wind Creek trade name, which are located in Atmore, Wetumpka and Montgomery.<sup>14</sup> Within the State of Florida, the Poarch Band owns and operates two non-tribal facilities: Pensacola Greyhound Track and Poker Room and Creek Entertainment Gretna (a quarter horse facility in rural Gadsden County). Both of these facilities are part of Florida's pari-mutuel wagering industry and offer live racing, simulcasting, and non-banked card games. In fiscal year 2015/2016, Pensacola brought in \$4,252,135 in gross cardroom receipts and Gretna collected \$2,201,032.<sup>15</sup>

Recently, the Poarch Band spearheaded a legal battle to facilitate slot machine gaming at pari-mutuel facilities such as

Creek Entertainment Gretna. Attorneys for the Gretna facility argued that an amendment to Florida Statutes allowed counties outside of Miami-Dade and Broward counties to hold a referendum regarding the operation of slot machine gaming at pari-mutuel facilities.<sup>16</sup> As Gadsden County conducted and passed such a referendum, they argued that Creek Entertainment Gretna was entitled to a slot machine license. The State argued that applicable law barred slot machine gaming outside of those two south Florida counties, aside from that authorized in the Seminole Compact.

This effort to expand slot machine gaming in Florida ultimately failed. Although the Florida First District Court of Appeal initially agreed that Creek Entertainment Gretna should be granted a slot machine license<sup>17</sup>, the Court reversed that opinion a few months later following the retirement of one of the members of the three-judge panel during the rehearing period. In its amended opinion, the Court held that Gadsden County's referendum was void and that state law barred slot machine gaming at pari-mutuel facilities outside of Miami-Dade and Broward counties.<sup>18</sup> The Florida Supreme Court affirmed that decision, citing to the limited powers of non-charter counties, like Gadsden County, in Florida.<sup>19</sup>

Had the Poarch succeeded in this effort, it would have caused enormous waves in the state. Specifically, the Seminole tribe's compact would have been adversely impacted by a Poarch victory. As stated previously, the exclusivity granted to the Seminoles has played a significant role in shaping Florida's gaming industry. If pari-mutuel facilities outside of Broward and Miami-Dade Counties were allowed to offer slot machine gaming, it would have put the compact in serious jeopardy and could have led the Seminoles to cease making nearly \$300 million in annual revenue sharing payments to the state.

## THE MICCOSUKEE TRIBE OF FLORIDA

The Miccosukee Tribe is based in on its reservation west of Miami on the edge of the Everglades in south Florida.<sup>20</sup> It operates the Miccosukee Resort & Gaming facility in Miami. The Miccosukee do not have (and have not sought) a compact with the State of Florida. Therefore, the Miccosukee only offers Class II gaming. Specifically, the Miccosukee offer bingo, electronic bingo games, and non-banked card games. Although the Miccosukee do not release their annual gaming revenues, one observer has estimated that their gaming facility generates between \$72 million and \$106 million.<sup>21</sup>

The Miccosukee and its members are currently involved in a protracted battle with the Internal Revenue Service regarding the taxation of tribal gaming revenue distributions. In 2016, a U.S. District Judge ordered a tribal member to pay more than \$200,000 in back taxes related to unclaimed and undisclosed gaming distributions.<sup>22</sup> Although specifically involving one tribal member, this order would likely have a similar impact on all others. The judge





**Miccosukee Resort & Gaming**

noted in his order that the tribal chairman testified that he counseled members not to report this income in their tax returns and not to “disclose they were receiving distributions to persons outside the tribe.”<sup>23</sup> The individual defendant in that case, and the tribe have appealed this decision to the Eleventh Circuit. Oral argument was held on August 22, 2017 and the parties are awaiting an order.

In addition to the battle with the IRS, the Miccosukee Tribe has been involved in a long battle with its former lawyers. Two of the tribe’s former attorneys accused it of “engaging in a ‘criminal scheme’ to ruin their reputations through a series of bogus lawsuits going back to 2011.”<sup>24</sup> Specifically, the tribe had filed state and federal counts of malpractice, civil RICO, theft and other causes of action against the attorneys stemming from their prior representation of tribal mem-

bers.<sup>25</sup> All counts filed against the attorneys were dismissed (and several were deemed frivolous by various courts).<sup>26</sup> The attorneys brought suit against the tribe for criminal practices and malicious prosecution, but the Florida Third District Court of Appeals dismissed that suit based on tribal sovereign immunity.<sup>27</sup>

Looking ahead, Native American tribes with trust lands in Florida have proven to be successful operators and formidable players in shaping the future of gaming in the Sunshine State. Over the next few years, it is highly likely that their influence will increase and the Florida market continues to evolve into a mature gaming jurisdiction. ✨

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<sup>12</sup> <http://theseminolecasinos.com/seminole-tribe-of-florida>

<sup>3</sup> Matthew L. Fletcher, *The Seminole Tribe and the Origins of Indian Gaming*, 9 FIU L. Rev 255 (2014).

<sup>4</sup> “Seminole Hard Rock collects \$579 million – more than 8 racetrack casinos combined,” Miami Herald, August 8, 2017.

<sup>5</sup> Division of Pari-Mutuel Wagering, 85<sup>th</sup> Annual Report Fiscal Year 2015-2016, pgs. 19-20 of 39.

<sup>6</sup> “Lack of a Seminole Gaming Compact Proving Very Costly to Florida,” Florida Trend, January 10, 2017.

<sup>7</sup> “Seminoles file suit over gambling agreement,” South Florida Sun-Sentinel, October 26, 2015.

<sup>8</sup> “Designated Player Games” are card games in which the card room or card club participation is limited to providing a dealer for the game with the players being afforded the opportunity of “banking” the games or serving as the “house.” The “bank” can take two forms, either (i) a pooled sum accumulated from a jackpot rate and managed for the players by the card room or card club or (ii) the bankroll of an individual player seated at the table and involved in the dealt hand. These games are also referred to as “player banked” games and have been deemed Class III games under game opinions issued by the National Indian Gaming Commission. See NIGC Game Opinions re: Apache 21 issued Feb. 2, 1995; Classification of Banking Card Games in California issued June 6, 1995; Seven Suns Poker issued Aug. 11, 1999; and Player Pooled Blackjack at Northern Winz Casino issued Aug. 10, 2007.

<sup>9</sup> “Federal court favors Seminoles in gambling lawsuit,” South Florida Sun Sentinel, November 6, 2016.

<sup>10</sup> Seminole Tribe of Florida v. Florida, 219 F.Supp.3d 1177 (N.D. Fla. 2016).

<sup>11</sup> “Seminole Tribe and Florida Governor Settle Blackjack Exclusivity Dispute,” Casino News Daily, July 6, 2017.

<sup>12</sup> “Seminole Tribe Wins Big With New Compact, Expands Florida Gaming,” Broward Palm Beach New Times, December 9, 2015.

<sup>13</sup> “Failure of Seminole gambling deal has consequences,” South Florida Sun-Sentinel, March 9, 2016.

<sup>14</sup> “Seminole Hard Rock’s guitar-shaped hotel is finally happening. Here’s the first look,” Miami Herald, October 25, 2017.

<sup>15</sup> <http://pci-nsn.gov/westminster/index.html>

<sup>16</sup> Division of Pari-Mutuel Wagering, 85<sup>th</sup> Annual Report Fiscal Year 2015-2016, pg. 19 of 39.

<sup>17</sup> “More Slot Machines Could be Coming,” South Florida Sun Sentinel, June 1, 2015.

<sup>18</sup> Gretna Racing, LLC v. Dept. of Business and Professional Regulation, 2015 WL 3444350 (Fla. 1st DCA 2015).

<sup>19</sup> Gretna Racing, LLC v. Dept. of Business and Professional Regulation, 178 So.3d 15 (Fla. 1st DCA 2015).

<sup>20</sup> Gretna Racing, LLC v. Dept. of Business and Professional Regulation, 225 So.3d 759 (Fla. 2017).

<sup>21</sup> <http://miccosukee.com/tribe/>

<sup>22</sup> “Miccosukees lose \$1 billion bet with IRS,” Miami Herald, September 5, 2016.

<sup>23</sup> U.S. v. Jim, 2016 WL 6995455 (S.D. Fla. 2016).

<sup>24</sup> *Id.* at 2.

<sup>25</sup> “Miccosukee Tribe Wins Appeal Against Former Legal Team,” Gambling Insider, August 11, 2017.

<sup>26</sup> Miccosukee Tribe of Indians v. Lewis Tein, P.L., 227 So.3d 656 (Fla. 3d DCA 2017).

<sup>27</sup> *Id.* at 659-660.

<sup>28</sup> *Id.* at 657.