



# TFA

## Monthly Newsletter

May 2018

### IN THE NEWS

## Spring 2018 NIGA and NAFOA – Our Takeaways

by Jeffrey S. Heimann

Many of us had a busy few weeks of travel – some on the road for seven or eight consecutive days – to attend both NIGA in Las Vegas followed by NAFOA in New Orleans. The following is a summary of key themes heard at these conferences:

**Casino Expense Management:** TFA Capital Partners’ Kristi Jackson moderated a panel that focused on expense management given casino revenue growth has slowed in most jurisdictions. Improving cash flow therefore requires cost reduction. Areas of focus include:

- Managing free play, labor and healthcare costs
- Paying up for the right talent: a quality marketing executive can either use \$ more effectively or do more with less
- Look for economies of scale - and hold vendors accountable
- Customer acquisition is more expensive than customer retention

- While there is a stigma against consultants, having “subject-matter experts” can be impactful to your bottom line

**Sports Betting:** The Supreme Court will soon decide on the fate of the Professional and Amateur Sports Protection Act. It may in fact make a decision by the time you are reading this. As of May 1st, only four states are permitted any form of sports wagering, with Nevada the only that accepts action on single games. If overturned, each State will have jurisdiction to decide on what platforms, if any, sports betting may be conducted. Given that there is around \$150 billion\* in illegal sports betting each year (an estimated \$7.5 billion in revenue), the opportunity for Tribes to benefit certainly exists, but exactly how to best benefit remains unclear given the uncertainties over how each State will regulate it.

**High Profile, Off-Reservation Acquisitions:** While high profile acquisitions

**Mechoopda Tribe Looks Forward to Casino After Securing Victory in Court**

4/17/18 – [Indianz.com](http://Indianz.com)

**Rain Rock Casino Ribbon Cutting Ceremony Held Thursday**

4/20/18 – [SiskiyouDaily.com](http://SiskiyouDaily.com)

**Land in Trust: A Long, Painful Process**

4/22/18 – [CDCGamingReports.com](http://CDCGamingReports.com)

**Mississippi Momentum**

4/24/18 – [GGBMagazine.com](http://GGBMagazine.com)

**Pamunkey Tribe Partners with Billionaire Developer in Push for Casino**

4/25/18 – [Indianz.com](http://Indianz.com)

**Appeals Court: Tribal Casinos Can Be Subject to US Labor Laws**

4/26/18 – [WashingtonPost.com](http://WashingtonPost.com)

**Winnebago Tribe Takes Advantage of New “Opportunity Zone” Designation**

4/27/18 – [Indianz.com](http://Indianz.com)

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\*According to the American Gaming Association

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by Tribes is not new – the Mohegan Tribal Gaming Authority purchased Pocono Downs from Penn National Gaming for an initial price of \$280 million in 2004, followed by the Seminole Tribe of Florida acquiring Hard Rock International from Rank Group for \$965 million in 2006 – they seem to be on the rise now. Enter Poarch Band of Creek Indians with its recent announcement of acquiring Sands Casino Resort in Bethlehem for \$1.3 billion and the Seminoles announcing another large acquisition last year, with its purchase of Trump Taj Mahal in Atlantic City. In addition to these massive scale deals, we are seeing many other Tribes across the nation make smaller acquisition and diversification plays.

**NIGC Proposed Regulations:** NAFOA facilitated a luncheon with the NIGC to discuss its proposed new regulations. While February 28th, 2018 was the official “deadline” for comments on the discussion drafts, the NIGC Commissioners confirmed that they determined not to move forward with the January 2018 proposed draft regulations defining “management” and “sole proprietary interest.” While a wide range of topics was discussed, perhaps the most important take-away is that given both the experience the legal profession has with the manage-

ment indicia that was included in the Lake of the Torches documentation, together with the sheer volume of declination letters that the NIGC staff must deal with, now seems to be the time to create “safe harbor” language that could be used in lieu of declination letter requests for financing agreements. As discussed by Christine Swanick of Sheppard Mullin, safe harbor language may include provisions similar to the following:

- Agreement is a financing agreement.
- Lender is a federally or state regulated institution.
- No management-related provisions found in the 2009 Lake of the Torches indenture.

- Agreement includes provision where lenders agree not to engage in management activities.
- Interest rates based on market index rates plus commercially reasonable margins and no repayment terms are tied to percentage of gaming revenues.
- No receivership remedies, though creditors allowed to foreclose on collateral.
- Limitation to term of agreement, likely 5 to 10 years.

As always, we are all available to discuss these topics with you anytime.



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