



Class II Does not Mean Second Class

by J R Mathews

Class II games are an integral part of the tribal gaming industry and need to be defended. If the disappearance of Class II games happens, it will negatively impact the future of compacts that need to be signed with the states. Without Class II games, when the states want more revenue through new compacts, we will not have leverage to negotiate as we will not have an alternative to fall back on. Without a healthy supply of Class II games at our disposal, our ability to offer Class III games (without having to turn over most or all of the income from those games) could disappear.

More tribes are now searching out the best games of the Class II world and combining them with their Class III floor. The problem with some properties is that they relegate the Class II games to bingo floors or somewhere away from their Class III products.

Downstream Casino is a great example of how to blend Class II and Class III games. When we were in the process of borrowing the money to build this fabulous place, we were met with opposition from the lenders on Wall Street to our own Project Manager. They were all in agreement that Class II could not perform as well as the worst Class III. I fought with all of them to defend the Class II games and finally got them to agree to allow 10% of the floor, 200 units on the floor, to be Class II.

Mickey Brown is a legend in the gaming industry by any standards. He was the first gaming regulator in New Jersey and General Manager of Foxwoods. When he became Project Manager for Downstream, I learned a tremendous amount from him, but he wasn't on board with Class II until he saw them perform. He stated, "As an operator, before I developed a property in Oklahoma, I had not seen Class II machines perform. When we put Class II machines on the floor alongside Class III machines, their performance pleasantly surprised me, surpassing many Class III titles. I believe they are a vehicle for revenue enhancement while incurring little or no capital expense on any Native American gaming floor."

Some say that Class III is better than Class II. To me this is like saying that apples are better than oranges or that Bach is better than Beethoven. If tribes only serve apples and play Bach, they aren't giving the public a true choice and service cannot be the best it can be.

If Indian Country doesn't take active steps to protect Class II – a sovereign right – it will be lost. The premise is simple: If a game – no matter the class of game – makes more money on a dollar-for-dollar basis, but an operation will not make it a part of their gaming floor, they are following a practice that

could ultimately destroy a sovereign right of the tribes.

Class III games have had their biggest technological advancements based upon Class II research and development. It was the Class II industry that developed real time electronic interactive downloadable community gaming, TITO and so much more. Class III is still trying to catch up, 15 years later.

When someone from NASA was recently asked if they could land a man on the moon, they responded they could, but it would take about six years. They had lost the infrastructure to put a man back on the moon. There were no modules, no space capsules and no rockets to get him there. It would all have to be built from the ground up.

Well, so too it will be with the Class II option if we aren't supporting it. If we aren't careful, when we need those games, they won't be there. If the Class II option is lost, tribes will lose not only a precious sovereign right, but also the last economic bargaining tool in compact negotiations that is completely under tribal control.

I urge all tribes/tribal gaming commissions to adopt the following approach:

- a. Adopt the IGRA definition of Class II gaming verbatim [*IGRA §2703(7)(A)*] both in the definition section of their rules and in the sections dealing with game classification.
- b. Adopt the NIGC regulations dealing with electronic, computer or other technologic aid [*NIGC Regulations §502.7*] and electronic or electromechanical facsimile [*NIGC Regulations §502.8*] in the sections dealing with game classification.

Taking these steps also firmly puts the evaluative rules in the hands of the tribe and the federal laws and regulations that created Class II gaming as unique to tribal gaming. We must educate our tribal operators that Class II games are just as profitable as Class III games and should coexist with them on all gaming floors.

It is my suggestion that every tribal operation look at games that comprise the bottom 10 percent (coin-in or net win) of their floor and put the newest, best Class II games in their place. You may be surprised by the results. Not only will your operation make more money, but you will also be protecting tribal sovereignty. ♣

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