

Louisiana Gaming Developments Spring 2003

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Internet Gambling Litigation

In November, the United States Fifth Circuit Court of Appeals recognized that casino-style gambling on the Internet is legal under existing federal law, affirming the decision of the U.S. District Court in the Eastern District of Louisiana. In re MasterCard Int'l Inc. Internet Gambling Litigation, 313 F.3d 257 (5th Cir. 2002). In this suit, plaintiff debtors sued MasterCard International, Visa International and the banks that issued their credit cards, attempting to use the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, to avoid debts they incurred when they used their credit cards to purchase gambling credit or "chips" with which they gambled at on-line casinos, and to recover for injuries allegedly sustained as a result of the RICO violations.

The plaintiffs alleged that the banks and the Internet casinos facilitated illegal gambling on the Internet through the use of credit cards and sought a declaratory judgment that their gambling debts are unenforceable because they are illegal. The Fifth Circuit agreed with the district court's finding that the plaintiffs' allegations failed to show a pattern of racketeering activity or the collection of unlawful debt and found it unnecessary to examine whether they satisfied the other prerequisites to a RICO claim.

The court also found that a Kansas statute that criminalizes certain types of commercial gambling activity did not serve as the basis for a RICO predicate act, as the

defendants completed their transaction with the plaintiffs before any gambling occurred; thus, that transaction could not have involved taking custody of something bet or collecting the proceeds of a gambling device. Nor was a RICO predicate act found under a New Hampshire gambling statute, as no violation of this statute was alleged in the complaint nor was its applicability explained.

Three substantive federal crimes were also raised as predicates: the Wire Act, mail fraud and wire fraud (18 U.S.C. §§ 1084, 1341, 1343). The Wire Act was held not to apply because it concerns gambling on sporting events or contests and the plaintiffs failed to allege they had engaged in Internet sports gambling. In finding that the plaintiffs could not rely on mail or wire fraud as predicates, the Fifth Circuit reasoned that because the Wire Act does not prohibit non-sports Internet gambling, any debts incurred in connection with such gambling are not illegal; thus, no fraudulent representation was made. Further, the plaintiffs failed to show they relied on the defendants' representations in deciding to gamble.

As for the allegation of collection of unlawful debt, the Fifth Circuit found that plaintiffs did not make a sufficient allegation that the defendants engaged in the collection of unlawful debt because the defendants' conduct did not involve any violation of a state or federal gambling law. Reiterating the district court's statement, the Fifth Circuit agreed that the plaintiffs "are independent actors who made a knowing and voluntary choice to engage in a course of conduct" and held they cannot use RICO to avoid meeting obligations they undertook voluntarily.

Riverboats' Exposure under Longshore and Harbor Workers' Compensation Act

In December, the United States Fifth Circuit Court of Appeals held that a floating casino was a "recreational operation" within the meaning of an exception to the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901 et seq., such that the decedent, as an employee of such recreational operation, was not covered by the LHWCA even if some of his duties exposed him to the hazards associated with maritime commerce. Boomtown Belle Casino v. Bazor, 313 F.3d 300 (5th Cir. 2002).

The plaintiff brought a LHWCA claim for permanent total disability benefits and death benefits after her husband, who was employed as chief engineer of the land-based operations of the Boomtown Belle Casino ("Boomtown"), suffered a stroke while on the job and later died. The court reversed the Benefit Review Board's order affirming the award of compensation benefits under the LHWCA, finding that the decedent did not have the requisite employee "status" and he was not injured at a "situs" covered by the LHWCA.

The LHWCA covers longshoremen and harbor workers, but excludes some individuals for various reasons, including individuals employed by a "recreational operation." The court held that this particular exclusion turns, as an initial matter, on the nature of the employing entity, and not on the nature of the duties an employee performs, and found that a floating casino is a "recreational operation" for purposes of this exception. Thus, the decedent was not covered by the LHWCA. The argument that Boomtown was a conglomerate with multiple business endeavors, including longshoring, did not persuade the court to find that the decedent

satisfied the "status" requirement, because decedent's duties as chief engineer of the Boomtown facility exclusively furthered the operation of the casino. The court also concluded that the decedent did not meet the "situs" requirement of the LHWCA because at the time of decedent's stroke, the Boomtown land-based facility had yet to be used for a maritime purpose; no loading or unloading of cargo had occurred and no vessel was repaired, dismantled or built.

Riverboat casino operators who have LHWCA insurance coverage should perhaps consult with their insurance brokers regarding their coverage requirements in light of this decision.

Slots at New Orleans Fair Grounds

Legislation has been filed in the 2003 general legislative session that would allow the New Orleans Fair Grounds to operate slot machines as a means of increasing revenue. The bill would allow the operation of a maximum of 300 slots at the Fair Grounds track as early as July 1 of this year, increasing to 400 the next year, and 500 by July 1, 2005. The bill limits the maximum number of slots at the Fair Grounds to 700, unless the land-based Harrah's New Orleans Casino, which enjoys exclusive rights to land-based gaming, shuts down or the state's casino operating contract with the casino operator is terminated and the state does not become a party to another casino operating contract containing exclusivity provisions. This legislation is vital to the Fair Grounds race track's continued success, in light of the competition for quality races with tracks in the state where slots are already authorized, such as the Delta Downs race track in Vinton, Louisiana.

Lawsuit Landslide Settled

The Louisiana Gaming Control Board (the “Board”), in a special meeting on February 5, 2003, unanimously approved the transfer of Metro Riverboat Associates’ (“Metro Riverboat”) 50.1% interest in Belle of Orleans, L.L.C. to Bally’s of Louisiana, Inc. The buyout of Metro Riverboat’s 50.1% interest for \$15 million plus \$6 million to cover court costs and legal fees was part of a settlement agreement between the two former owners of Bally’s Belle of Orleans riverboat casino, Metro Riverboat and Park Place Entertainment (“Park Place”). The Board’s approval of the settlement agreement facilitated the end of a lawsuit landslide that began in 1998 when the Board approved the transfer of Hilton Hotels Corp.’s interest in the riverboat casino to Park Place, its casino spin-off, which transfer and approval Hilton’s partner in the riverboat, Metro Riverboat, believed violated its rights.

An accelerated, conditional approval of the settlement was requested by the two feuding owners at an earlier meeting of the Board in January, so that Park Place could account for the deal on its 2002 tax filing and so that Metro Riverboat could withdraw the 17 other lawsuits that remain over the matter. Having previously been dragged into court by these parties, the Board was unwilling to grant the approval at this meeting in advance of the State Police finishing their investigation concerning the buyout. However, the Board agreed to call a special meeting whenever the State Police made its report, and ultimately granted approval of the transfer at this special meeting in February. The transfer makes Park Place the sole operator of the riverboat.

Hollywood Casino Bonds in Default

Bondholders’ fears were realized recently when Penn National Gaming, Inc. (“Penn National”) went into default on \$150 million in bonds used to finance a project involving the Hollywood Casino Shreveport riverboat complex. The Hollywood Casino, a \$230 million riverboat casino and 403-room hotel on the Shreveport riverfront that employs about 1,800 workers, has struggled financially since it opened in December 2000 due to increasing competition among Shreveport casinos and weakening economic conditions in Dallas, where many of the casino’s patrons reside.

In February, the Louisiana Gaming Control Board (the “Board”) unanimously approved Penn National’s proposed buyout of the Hollywood Casino Shreveport despite protests by bondholders who feared the new owner would put the casino into Chapter 11 bankruptcy, likely reducing the value of their bonds. When property changes hands, bondholders have a right to call for the notes be paid, but, while Penn National assured the Board before it approved the buyout that it would strive to work out the problems at the ailing Hollywood Casino, it had not given bondholders any assurances that it would pay the debt. The Board shared the concerns of the bondholders, but approved the buyout reasoning that the property could go bankrupt and would need to restructure its debt no matter who owns the casino. A denial of approval for the buyout by the Board could have threatened Penn National’s all-or-nothing deal to purchase all three Hollywood casinos, including ones in Mississippi and Illinois.

Penn National reportedly has 60 days from the date of default to cure the default by either buying back the bonds at 101% of the principal or negotiating another solution.

Absent such agreement, the casino could go into Chapter 11 bankruptcy reorganization.

Horseshoe Casino Settles Regulatory Charges

In March, the Louisiana Gaming Control Board (the “Board”) approved a settlement requiring Horseshoe Entertainment, Inc. to pay \$7.4 million to settle allegations of inappropriate business practices involving minority partnerships in the Shreveport-Bossier City, Louisiana area. While the Louisiana legislature limits the Board to fines of no more than \$100,000 regardless of the severity of the violation, the Board has the power not to renew licenses without providing a reason, enticing casinos to settle for cash payments. The \$7.4 million sanction was negotiated as a condition for renewing the Horseshoe Casino’s riverboat license that expired in 1999. The Bossier City riverboat has been operating on an interim license since mid-1999 when the Board ordered background investigations of all riverboats whose licenses were coming up for renewal. The settlement enabled the casino to obtain a full five-year license renewal.