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# The **MICHIGAN GAMING** Newsletter



## **THIRD CIRCUIT AFFIRMS RULING ON NEW JERSEY SPORTS WAGERING**

On Tuesday, August 25, 2015, the United States Court of Appeals for the Third Circuit upheld a lower court ruling that found that a 2014 attempt to deregulate sports wagering in New Jersey violates federal law. The ruling follows multiple attempts by New Jersey officials to authorize sports wagering in order to provide additional gaming options in Atlantic City.

### **Background**

In 2011, New Jersey voters approved a constitutional amendment that permitted the legislature to pass legislation authorizing sports wagering in the state. Legislators thereafter passed the Sports Wagering Act in 2012, which permitted sports wagering in casinos and horsetracks and contained a regulatory structure for the licensing and oversight of such wagering. The law was challenged by the major United States sports leagues shortly after its enactment and, thereafter as a result of an appeal to the Third Circuit, was ruled to violate the Professional and Amateur Sports Protection Act ("PASPA"). PASPA is a 1992 federal law that prohibits states from authorizing sports wagering across the country except for those states with existing sports wagering programs (Nevada, and under limited circumstances in Oregon, Delaware, and Montana), which were grandfathered into the law. In its ruling, the Third Circuit held that PASPA was constitutional and that it preempted New Jersey's attempts to authorize sports wagering.

In response to the Third Circuit ruling, New Jersey enacted a new law in 2014 that deregulated sports wagering that occurred in casinos and horsetracks by persons over the age of 21. In addition, wagering could not occur on college sporting events occurring in New Jersey if involving a

New Jersey school. The state argued that PASPA only prohibits a state from authorizing or legalizing sports wagering, and that merely issuing a tailored repeal of certain prohibitions against sports wagering does not amount to “authorization.” As before, the law was quickly challenged by major U.S. sports leagues.

In November of 2014, the District Court for the District of New Jersey ruled that “PASPA preempts the type of *partial repeal* New Jersey is attempting to accomplish in the 2014 Law by allowing some, but not all, types of sports wagering in New Jersey.” *National Collegiate Athletic Association, et. al. v. Christie, et. al.*, Case No. 14-6450, Opinion, p. 24 (November 21, 2014) (emphasis in original). The state thereafter appealed to the Third Circuit.

### **Third Circuit Ruling**

This week’s 2-1 ruling affirms the District Court holding, citing precedent that “[s]tates may not use clever drafting or mandatory construction provisions to escape the supremacy of federal law.” *National Collegiate Athletic Association, et. al. v. Christie, et. al.*, Case No. 14-4568, Opinion, p.19 (August 25, 2015). The opinion finds that the 2014 law is merely an attempt to avoid the restrictions of PASPA despite the law’s clear intention to prohibit sports wagering.

The Third Circuit acknowledged New Jersey’s “salutary purpose in attempting to legalize sports gambling to revive its troubled casino and racetrack industries,” as well as the popular criticisms regarding PASPA’s restrictions. *Id.* at 14. However, it found that it was bound to PASPA’s plain language and that a change in policy would have to occur through a congressional amendment or repeal of the federal law.

The dissenting opinion, however, was not convinced that the 2014 law violated PASPA’s plain language, focusing on the lack of “authorization” or permission granted for the conduct of sports wagering. Hon. Julio M. Fuentes found that “There is no explicit grant of permission in the 2014 Law for *any* entity to engage in sports wagering....I don’t see how a partial repeal of prohibitions is tantamount to ‘authorizing by law’ a sports-wagering scheme in

violation of PASPA.” *Id.* at Dissent, p.5, 9 (emphasis in original).

### **Industry Reactions**

In response to the decision, American Gaming Association (“AGA”) President and CEO Geoff Freeman released a statement noting that “the AGA encourages deeper examination about the best path forward on this issue. Given that Americans are betting at least \$140 billion on sports illegally each year, it’s clear that the current law is not achieving its intended result. As the AGA leads an industry-wide task force to study sports betting, we will assess the implications of the court’s decision as the gaming industry continues to develop innovative ways to provide products and experiences that meet consumers’ demands.”

At this time, New Jersey officials have not indicated whether an appeal of the Third Circuit ruling would be sought with the United States Supreme Court. The state did seek Supreme Court review of the previous decision regarding its 2012 law, but certiorari was denied.

## **MGCB RELEASES NOTICE OF REGULAR PUBLIC MEETING**

The Michigan Gaming Control Board (“MGCB”) announced that it will hold its regular public meeting on Tuesday, September 8, 2015 at the MGCB Detroit office, Cadillac Place, 3062 West Grand Blvd., Suite L-700, in Detroit.

The meeting will begin at 9:30 a.m. with the staff briefing, followed immediately by the agenda items. The Cadillac Place is in Detroit’s New Center Area near the John Lodge Freeway (M-10), between Second Avenue and Cass Avenue. The Fisher Building and the Albert Kahn Building are nearby landmarks.

For more information regarding the MGCB, please visit their website

## SOARING EAGLE REQUESTS REVIEW OF SIXTH CIRCUIT DECISION

On Monday, August 24, 2015, the Soaring Eagle Casino and Resort (“Soaring Eagle”) filed a petition with the United States Court of Appeals for the Sixth Circuit for a rehearing with all judges regarding its ongoing litigation with the National Labor Relations Board (“NLRB”). The case was previously decided by a panel of three judges from the court, who expressed their disagreement with prior holdings but ultimately decided the case in accordance with this past precedent.

On July 1, 2015, a three-judge panel of the Sixth Circuit ruled in favor of the NLRB regarding a labor dispute involving an employee who was disciplined and later dismissed by Soaring Eagle for violating the Saginaw Chippewa Indian Tribe’s non-solicitation ordinances. The employee filed a grievance with the NLRB, which took action against Soaring Eagle for violations of the National Labor Relations Act (“Act”) which allows for employee organization. Soaring Eagle challenged the ruling, claiming that tribal sovereign immunity bars NLRB jurisdiction over tribal labor relations.

In its unique July decision, the Sixth Circuit panel stated that the Act should not apply to the tribe under traditional notions of tribal sovereignty. However, it ultimately held that it was bound to hold that the Act did apply due to the court’s recent ruling in *NLRB v. Little River Band of Ottawa Indians*, which adopted a stricter legal test regarding issues of tribal sovereign immunity and federal agency oversight. The *Little River* decision occurred only three weeks prior to the Soaring Eagle ruling.

Soaring Eagle argues in its petition that the full panel of judges should review the decision due to the disparity between the rulings and established law. “Because *Little River* won the race to judgment, the Saginaw Chippewa Tribe lost its appeal and is left with a decision that every member of the panel that heard its case agrees is contrary to controlling law. Such an unlikely result clouds the legitimacy of the appellate process. En banc consideration is necessary to secure uniformity across the Court’s decisions and to

realign its precedent with the Supreme Court.” Petition, p. 11-12.

The court has yet to rule on the petition. The case is *Soaring Eagle Casio Resort v. NLRB*, Case No. 14-2405.

## POKAGON BAND BREAKS GROUND ON TRIBAL VILLAGE IN HARTFORD

On August 26, 2015, the Pokagon Band of Potawatomi Indians announced that it broke ground on Pokégnek Édawat Hartford, its new Tribal Village, located approximately one mile east of Four Winds Hartford, in Hartford, Michigan.

The first phase is expected to be completed in spring of 2016 and will include eight homes consisting of townhomes and two duplexes. Two additional phases are planned at Pokégnek Édawat Hartford and will include more homes, a community center, and a park.

“Pokégnek Édawat Hartford is the latest milestone in our mission to assist Elders, youth, and families with housing, community and self-sufficiency for a better quality of life,” said John P. Warren, Chairman of the Pokagon Band of Potawatomi Indians. “We have 39 families on the waiting list for homes in Hartford, so the demand is high. We look forward to completing the additional phases to serve our families in need.”

The homes in Pokégnek Édawat Hartford are managed by the Pokagon Housing and Facilities Department. It offers Pokagon Citizens assistance with home ownership, loans, lease-to-own opportunities, and rental and homeless prevention programs.

The Pokagon Band also has 66 homes, a community center, and health center in Pokégnek Édawat Dowagiac. The Pokagon Band states that both Tribal Villages are examples of what a potential Pokagon development in South Bend, Indiana could look like.

## GLOBAL GAMING EXPO EARLY BIRD SPECIALS EXPIRE SEPTEMBER 14

Early Bird Discounts for the 2015 Global Gaming Expo (G2E), to be held at The Sands Expo and Convention Center in Las Vegas, Nevada, from September 28 to October 1, expire on **September 14**.

Early Bird Discounts include group discounts, Native American Casino Registration packages and special hotel and travel deals which registrants may take advantage of on the G2E website.

This year's show will also debut the "Integrated Resort Experience at G2E," which will present innovated non-gaming technology, products and services as casino guests would experience them in a gaming-resort setting. Show presenters state that the new program will deliver a complete end-to-end solution to help casinos attract more guests, encourage them to stay and play longer, and increase revenue per visitor.

Over 30,000 gaming professionals from around the world are scheduled to attend this year's G2E from all gaming industry trades and sectors. To register, or for more information about G2E, please visit [www.globalgamingexpo.com](http://www.globalgamingexpo.com).