

November 20, 2015

Volume 21, Issue 38

For more information on Michigan's gaming industry, please visit www.michigangaming.com

Editor in Chief

David D. Waddell, Esq.
Phone: 517.507.3859
waddell@rmclegal.com

Senior Gaming Analyst & Editor

Robert R. Russell, II
Phone: 517.507.3858
russell@rmclegal.com

Reporter and Associate Editor

Dustin M. Ford
Phone: 517.999.5414
dford@rmclegal.com

Reporter

Blaine R. DeGracia
Phone: 517.507.3857
degracia@rmclegal.com

Subscription information:
info@michigangaming.com

A publication of
RMC Ventures, LLC

Asher Court
321 W. Lake Lansing Rd.
East Lansing, MI 48823
Phone: 517.507.3860
Fax: 517.908.0235
www.rmclegal.com

The _____ MICHIGAN GAMING _____ Newsletter



SAGINAW CHIPPEWA TRIBE TO DISBURSE 2 PERCENT FUNDS

The *Midland Daily News* recently reported that today, Friday, November 20, 2015, the Saginaw Chippewa Indian Tribe (“Tribe”) will disburse its semi-annual two percent distribution derived from electronic gaming machines at its properties, Soaring Eagle Casino and Resort, and the Saginaw Eagles Landing Casino. Based upon the figures released by the Tribe, it generated approximately \$150M in electronic gaming revenue during the six-month period.

The Tribe will be distributing \$2,167,592.05 in Isabella County and another \$780,037.01 in Arenac County and Northern Bay County. There were a combined 401 requests for funds made by local governments and local schools.

“This process is an opportunity for us to share some of our good fortune while alleviating some of the needs within our community,” stated Tribal Council Chief Steve Pego. “I am proud of the funding that we have provided in the past and am very hopeful for the opportunities in the future.”

The tribe allocates two percent of its annual net win from electronic games of chance to local units of government to offset costs related to the operation of their casino properties. Eligible disbursements include those to local law enforcement, public safety organizations, schools, and other public and charitable groups.

FANTASY SPORTS UPDATE

On Thursday, November 19, 2015, Massachusetts Attorney General Maura Healey released a set of consumer protection regulations aimed at providing oversight into daily fantasy sports operations. In addition, a Massachusetts state court ruled that payment processing companies working with Draft Kings would be required to continue processing payments from New York, as, at the time, no formal legal action had been taken against the company in New York.

However, on November 17, 2015, the New York Attorney General filed complaints in the New York Supreme Court against FanDuel and Draft Kings with respect to their daily fantasy sports operations. Thus, daily fantasy operators are receiving mixed reactions from state officials on the legality of their operations.

The developments reflect state policy makers' increased attention to daily fantasy sports and their evaluations of whether the activity complies with state and federal laws. Daily fantasy sports are generally distinguished between season-long fantasy contests and daily fantasy contests.

Until recently, daily fantasy sports were offered in all but a few states under the theory, as stated by the daily fantasy operators, that the games are skill-based competitions that fall within an exemption to the Unlawful Internet Gaming Enforcement Act ("UIGEA"). However, state and federal policy makers have recently begun to take a closer look at the activity under state gambling laws, as well as other federal wagering laws, such as the Professional and Amateur Sports Protection Act. Below is a summary of the recent major developments in the area.

Nevada

On October 16, 2015, the Nevada Attorney General issued a memorandum concluding that daily fantasy sports constituted a "sports pool" under Nevada law, requiring operators to receive a gaming license prior to offering the activity in the state. The memorandum also concluded that daily fantasy sports (whether skill-based or not) constitute a "gambling game" under state law.

In its analysis, the Attorney General's office stated that "the determination of whether an activity constitutes a gambling game or a sports pool under Nevada law does not require analysis of the level of skill involved." The memorandum also refuted the daily fantasy operators' reliance on UIGEA's language, finding that "UIGEA is irrelevant to determining the legality of daily fantasy sports under Nevada law."

New York

On November 10, 2015, the New York Attorney General's office sent cease and desist letters to Draft Kings and FanDuel, alleging that the companies were offering illegal gambling games in violation of the New York Penal Laws and also in violation of the state's business laws related to deceptive practices. In advance of the lawsuit, both companies filed for a temporary restraining order in state court seeking to prevent the state from taking legal action against their operations. The request, however, was denied November 16, with the judge setting a hearing date for November 25. On November 17, the Attorney General filed complaints against both companies in the New York Supreme Court.

Neither Draft Kings nor FanDuel have filed an answer in the case at this time.

Massachusetts

On November 19, 2015, Massachusetts Attorney General Maura Healey announced proposed regulations under the state's consumer protection laws designed to regulate daily fantasy sports. In a press release on the matter, Healey stated that "[t]hese regulations are a first of their kind for the Daily Fantasy Sports industry, and they focus on protecting minors, ensuring truthful advertising, bringing more transparency to the industry, and leveling the playing field for all consumers."

The proposed regulations consist of 16 provisions, and include a statement that their purpose "is designed to protect Massachusetts consumers who play Daily Fantasy Sports contests for prizes from unfair and deceptive acts and practices that may arise in the gaming process." The regulations define the activity as a contest where a prize is

awarded based upon the performance of one or more athletes in a competition. The regulations would apply to those operators that offer ten or more contests per month for money, and excludes season-long fantasy sports that consist of at least 200 separate competitions where prizes are awarded out of a common fund of the participant's entry fees.

Proactive Fantasy Industry Steps

Despite all the activity on many fronts, the fantasy sports industry (which has existed and been accepted in many communities for a very long period of time) has been working to proactively address the issues raised. On Tuesday, October 27, the Fantasy Sports Trade Association announced that it will be forming the Fantasy Sports Control Agency ("FSCA"), an independent body to regulate the developing industry. The FSCA will be headed by former US Secretary of Labor and prominent legal scholar, Seth D. Harris. In addition to serving in the Obama Administration, Mr. Harris was the director of New York Law School's Labor and Employment Law programs, visiting professor at Seton Hall Law School, and focused his research on issues involving federal labor, disabilities, and employment discrimination policy.

Mr. Harris's accomplishments in both the legal and public sectors should provide the FSCA with strong guidance as it develops industry standards, internal controls, auditing, and enforcement mechanisms. In addition, his credibility and record of accomplishments provide the FSCA with the authority needed to bring together various stakeholders to address industry issues. His selection provides a strong first step in establishing effective, independent regulatory policy for fantasy sports industry members.

Additionally, the industry has embraced some of the efforts for practical governmental regulation. In response to the announcement by the Massachusetts Attorney General earlier this week of proposed regulations, both FanDuel and DraftKings offered qualified support for a regulatory approach, with FanDuel saying they made "a tremendous amount of sense," and DraftKings calling them a "thoughtful and comprehensive approach" to fantasy sports.

FINCEN REPORTS INCREASE IN CASINO FILINGS

The Financial Crimes Enforcement Network ("FinCEN"), a division of the US Department of Treasury, has reported a significant increase in filings made by casino and card room operators between March 1, 2012, and December 31, 2014.

Total suspicious activity report (SAR) filings from casinos and card rooms increased from 2,119 in 2012 to 46,575 in 2014. For Michigan, total SAR filings increased from 71 in 2012 to 2,420 in 2014. The state was the sixth highest in casino-related SAR report filings, representing approximately 4.6% of the total national filings made by casino and card rooms over the nearly three year period.

FinCEN reported that the top three suspicious activity types across the industry that triggered filings were: 1) minimal gaming with large transactions (15,907, 13.7%), 2) altering transactions to avoid a reporting requirement (13,475, 11.6%), and 3) miscellaneous casino-related transactions (13,305, 11.5%).

The increased number of reports filed reflects the gambling industry's continued focus on compliance with federal financial policy. In a statement delivered at the 2015 Bank Secrecy Act Conference in June, FinCEN Associate Director of Enforcement Stephannie Brooker stated that "[l]ast year, FinCEN Director, Jennifer Shasky Calvery, addressed the conference to highlight the critical role that casinos and card clubs play in keeping our financial system safe from potential money laundering and terrorist finance. There is a high level of attendance at today's conference, which tells me that the casino industry continues to show a strong interest in developing a deeper understanding about these issues."

FinCEN has taken enforcement action against casinos over the past two years, including imposing remedial compliance framework and audits, as well as assessing civil monetary penalties for compliance program deficiencies and extensive reporting failures. Enforcement action has also been taken against an individual

employee that assisted patrons in attempts to avoid reporting requirements.

ONTARIO'S RESPONSIBLE GAMBLING COUNCIL TO HOLD EVENT AT CAESARS WINDSOR

On Tuesday, November 17, 2015, the Ontario-based Responsible Gambling Council (“RGC”) held an anniversary event to thank Caesars Windsor and the Ontario Lottery and Gaming Corporation (“OLG”) for their ongoing support and commitment to problem gambling prevention.

Jon Kelly, CEO of the Responsible Gambling Council presented a plaque to Kevin Laforet, Regional President and CEO of Caesars Windsor. John MacFarlane, Senior Vice President Gaming, OLG also spoke.

In November of 2005, the RGC opened the first on-site responsible gaming resource centers in Ontario at Caesars Windsor and Fallsview Casino Resort in Niagara. Since then, the program has expanded to 54 gambling establishments across Ontario.

For more information on the Responsible Gambling Council or its Responsible Gaming Resource Centre, please visit: www.responsiblegambling.org.