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Robert W. Stocker II, Gaming Law
517.487.4715 • rstocker@dickinsonwright.com

Dennis J. Whittlesey, Gaming Law/Indian Law
202.659.6928 • dwhittlesey@dickinsonwright.com

Michael D. Lipton, Q.C., Gaming Law
416.866.2929 • mdlipptonqc@dickinsonwright.com

Peter H. Ellsworth, Gaming Law/Indian Law
517.487.4710 • pellsworth@dickinsonwright.com

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"INSTANT RACING" STILL A GAMBLE IN KENTUCKY

by W. Stuart Scott

Recently, Kentucky Downs began to allow wagering on historic races at electronic gaming machines. The Kentucky horse industry has long considered itself at a competitive disadvantage with neighboring racing states that allow other forms of wagering. The disadvantage may continue to grow as other states, such as Kentucky's northern neighbor, Ohio, have authorized expanded gambling (including authorizing slots at race tracks). With Kentucky lawmakers unable to agree on proposals which would authorize slot machines at race tracks, Kentucky Downs has sought to rely on existing laws to offer new wagering opportunities for patrons. So-called "instant racing" devices allow players to place wagers on games where the outcome, at least in part, relies on the results of historic horse races. The legal issue turns on whether the instant races are "gambling" or wagering on horse races under Kentucky law. Bill Flesher, Vice President for Development at Kentucky Downs, said that instant racing has generated nearly \$2 million for purses and breeders' awards. Kentucky Downs asserts that wagering on historical racing complies with the laws and regulations set out by the Kentucky Horse Racing Commission.

The state disagreed, and a trial occurred in December 2010 before Franklin Circuit Court Judge Thomas Wingate. At the trial's conclusion, Judge Wingate upheld a proposal allowing tracks to accept pari-mutuel bets on old races. A group entitled The Family Foundation intervened in the lawsuit, seeking to clarify the issue, and the ruling of Judge Wingate was appealed.

On Friday, June 15, the Kentucky Court of Appeals sent the case back to the trial judge. The 2-1 decision from the appellate court does not expressly prohibit instant racing at Kentucky Downs. Instead, the appellate court sent the case back to the trial judge to allow The Family Foundation of Kentucky and the state to explore issues surrounding the instant race game.

In December 2010, Judge Wingate refused to allow the state and The Family Foundation of Kentucky to exchange evidence and further develop issues surrounding the wagering. The appellate court ruled it was impossible to tell what the trial judge relied on to justify upholding

instant racing, Senior Judge Joseph E. Lambert wrote. Judge Lambert concluded as follows:

We agree that the parties had a right to develop proof and present evidence to establish that the wagers made by patrons at electronic gaming machines do or do not meet the definition of pari-mutuel wagering on a horse race.

Following the decision, Mr. Flesher confirmed that Kentucky Downs will not stop offering instant racing games. Kentucky Downs continues to take the position that such wagering activity complies with the laws and regulations in Kentucky.

The future of wagering by patrons at electronic gaming machines on historical racing remains up in the air. It is unclear whether its survival is, at this point, a safe bet.

Stuart Scott is a member in Dickinson Wright's Nashville office. He can be reached at 615.620.1710 or sscott@dickinsonwright.com.

PANAMANIAN GOVERNMENT APPROVES THE TYPE "C" SLOT MACHINES REGULATION

by Carlos A. Fonseca Sarmiento (Varela & Fonseca Abogados)

Through Resolution N° 51 published on June 26, 2012, in the Official Gazette, the Gaming Control Board of Panama approved the Regulation for the operation of type "C" slot machines. According to the Panamanian legislation, to qualify as type "C" slot machines, the maximum bet cannot exceed US\$3 and the maximum prize cannot exceed US\$200. Every person interested in obtaining a gaming license must have two years of experience in the gaming industry. An operator of type C slot machines will pay US\$150 a month for each machine that is installed. These machines can be installed in slot parlors with a maximum of 50 machines, unless the operator obtains a special authorization to operate up to 75 machines. But they can also be operated in bars, in which case the maximum number is 15 machines.

PROHIBITION AGAINST IMPORTING SLOT MACHINES IN VENEZUELA EXTENDED FOR THREE MORE YEARS

by Carlos A. Fonseca Sarmiento (Varela & Fonseca Abogados)

On June 6, 2012, the Official Gazette of Venezuela published Administrative Rule N° DE-2012-001 of the National Casino Commission of Venezuela prohibiting the importation of slot machines for three more years. Likewise, granting licenses to slot machines companies to import, distribute, assemble, and sell slot machines has also been prohibited for three more years.

The justification for this decision is that currently in the country there are a greater number of slot machines than are authorized for operation

in casinos or slot parlors. Therefore, the Commission has decided that it is unnecessary to authorize new importations to increase the number of slot machines in Venezuela. What the Commission has failed to recognize is that the technology in slot machines is rapidly changing in a manner that permits the government to more effectively regulate the casino industry. As a result, the casino industry is unable to import the latest, technologically superior slot machines currently available in the North American market.

Currently in South America, the importation of slot machines is illegal in Ecuador, Brazil, and Venezuela.