

Sports Litigation Alert

Reprinted from *Sports Litigation Alert*, Volume 10, Issue 14, August 9, 2013. Copyright © 2013 Hackney Publications.

NJ Racetrack Makes Bet of its Own Against Feds

By **Bob Darwell and Jeff Watkins**

William Hill, one of Britain's largest bookmakers, is hoping that they are in the money on a recent investment to become the exclusive operators of a sports book within Oceanport, N.J.'s Monmouth Park Racetrack. William Hill also became the title sponsor of the state's biggest racing event, the \$1 million William Hill Haskell Invitational, a midsummer target for top 3-year olds, to be run on July 28.

The investment is a bet that courts will deem the Professional and Amateur Sports Protection Act (PAPSA) unconstitutional. PAPSA, passed by Congress in 1992, made betting on sports illegal in all states except four, whose existing sports betting laws were grandfathered in at that time. This year, however, New Jersey passed legislation making gambling on sports legal within the state, and has since argued in federal court that PAPSA is unconstitutional.

Until a decision is made, William Hill will operate their Monmouth Park Racetrack sports book as a "free play" facility. In free play, no money would change hands, but players could win prizes, including concert tickets and meals. If an opinion in favor of New Jersey is handed down, the facility would switch to a Las Vegas-style gambling facility, giving the racetrack a head start on competitors within the state.

Competition would be strong within a New Jersey sports betting industry, so any early start will give the investor a leg up. Legalized sports betting could generate \$1 billion in bets and \$100 million in annual revenue for New Jersey in its first year, according to William J. Pascrell II, a lead lobbyist for the measure. New Jersey Sen. Lesniak has been reported as saying that multiple New Jersey casinos and racetracks are prepared to offer Las Vegas-style sports betting within 60 days of a favorable court ruling.

New Jersey may face long odds against obtaining a ruling that would allow sports betting within the state, though. In a February 28, 2013 opinion, New Jersey District Court Judge Michael Shipp held that PAPSA is constitutional. Judge Shipp disagreed with New Jersey, stating that PAPSA did not violate states' rights or equal protection principles, and that creating the law was within Congress' powers. Among his reasoning for the decision, Judge Shipp noted that PAPSA was passed by a 85-5 vote in the Senate, including a vote in favor by a New Jersey Senator, and New Jersey was given a 1-year window in which they could have made sports betting legal to gain access to the same grandfather exception that Las Vegas used to allow sports betting to be legal in that state.

New Jersey appealed the decision and argued their case in front of the 3rd Circuit on June 26. New Jersey argued that PAPSA discriminates against the 46 states that are not allowed to have sports betting and should be deemed unconstitutional in light of the recent U.S. Supreme Court opinion that the Voting Rights Act is unconstitutional. New Jersey also argued that a state condoning sports betting would not tarnish sports because the law would simply "shine a light" on a nationwide \$380 billion industry, of which only a fraction occurs legally within Nevada.

While Monmouth Park Racetrack and William Hill are watching the court proceedings carry out, they are working towards a fall opening for the free play sports betting facility, in time for football season. An opinion against New Jersey by the 3rd Circuit before the opening of the free play facility could affect the level of investment into the free play facility, but it likely would not shut it down immediately as Gov. Chris Christie has said that he would take the case to the U.S. Supreme Court, if necessary.

Robert Darwell heads the Sheppard Mullin's internationally acclaimed Transactional Entertainment, Technology and Advertising Practice Group, which was recently ranked by U.S. Legal 500 in its top tier. He is a partner in the firm's Century City and New York offices. Darwell was assisted on this article by Sheppard Mullin intern Jeff Watkins who is a law student at USC.



Sports Litigation Alert (SLA) is a narrowly focused newsletter that monitors case law and legal developments in the sports law industry. Every two weeks, SLA provides summaries of court opinions, analysis of legal issues, and relevant articles. The newsletter is published 24 times a year. To subscribe, please visit our website at <http://www.sportslitigationalert.com>