

Catania Gaming Consultants



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Toni Cowan Joins Catania Gaming Consultants

Catania Gaming Consultants is proud to announce that former National Indian Gaming Commission (NIGC) attorney Toni Cowan has joined its professional team.

Toni is licensed in New Jersey, Nevada, and Pennsylvania. Her expertise is in state gaming compliance, Internet gaming issues and federal Indian gaming compliance, which expertise stems from her many years of public

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service as a Senior Attorney at the New Jersey Casino Control Commission, the Nevada Attorney General's Office, Division of Gaming, and as Staff Attorney at the NIGC.

Ms. Cowan is a past member of the International Association of Gaming Regulators, and remains a member of the International Masters of Gaming Law. She has authored several published articles on gaming-related topics, trained Nevada lawyers in the specialty of gaming law, and provided training for tribal governments and regulators at regional Indian gaming law conferences.

You can read more about Toni's experience on our web site at www.cataniagaming.com.

UIGEA Itself Does Not Make Any Gambling Activity Illegal

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) itself does not make any gambling activity illegal, as most commentators have long believed. In *Interactive Media Entertainment & Gaming Association (iMEGA) v. Attorney General*, the United States Court of Appeals for the Third Circuit Court made clear that whether a transaction constitutes unlawful gambling turns on the law of the state from which the bettor initiates the bet, i.e., if it is illegal under that state's law, it constitutes "unlawful Internet gambling" under UIGEA.

However, any doubts regarding the underlying validity of UIGEA were also removed by the Court, which held that UIGEA is not impermissibly vague and "clearly provides a person of ordinary intelligence with adequate notice of the conduct that it prohibits." The Court also ruled that UIGEA does not violate an individual's privacy rights when gambling at home.

As to the privacy argument, the Court acknowledged the cases exempting private conduct in the home, including sexual behavior, from governmental intrusion. But the Court found that “gambling, even in the home, simply does not involve any individual interests of the same constitutional magnitude” and therefore “is not protected by any right to privacy under the Constitution.”

“We’re disappointed that the court didn’t overturn the law,” said Joe Brennan Jr., chairman of iMEGA, which sued the Justice Department, the Federal Reserve and the Federal Trade Commission. The ruling, however, has a silver lining, according to Brennan. “The court made it clear-gambling on the internet is unlawful where state law says so. But there are only a half-dozen states which have laws against Internet gambling, leaving 44 states where it is potentially lawful. It’s not perfect, but it’s a good start.”

"States have always held the power to regulate gambling in this country, not the federal government," said Brennan. "The court's ruling seems to say 'back to the future' when it comes to regulating Internet gambling, so we will turn our attention to the states to make the case that this industry can be properly regulated and produce badly needed tax revenue."

Brennan also said iMEGA’s legal team would review the ruling and make recommendations on a possible appeal.

EU Court Ruling Places Unrestricted Internet Gambling in Jeopardy

On September 8, 2009, the European Court of Justice upheld the recommendation of the Advocate General that a Portuguese monopoly on Internet gambling did not violate Article 49 of the European Community which mandates “the abolition of all restrictions on the freedom to provide services” from other EU member states. Bwin International Ltd., licensed in Gibraltar, which had a very strict regulatory system, argued that Santa Casa (the Portuguese monopoly) was in violation of EC law when it took action against Bwin.

It was undisputed that the Portuguese action was in violation of Article 49 and the only issue was whether the restriction could be justified “on grounds of public policy, public scrutiny or public health.” The Court upheld the Portuguese restriction because its main objective was “the fight against crime.” The Court also opined that “games of chance involve a high risk of crime or fraud, given the scale of the earnings and the potential winnings on offer to gamblers.” The court also concluded that the monopoly’s long existence “spanning more than five centuries, is evidence of that body’s reliability” and its operation under “strict (Government) control.”

Nowhere in the decision was there reference to the strict Gibraltar regulatory requirements, which far exceed those of Portugal. Thus, the decision might be referred to as the “Monopolistic Preservation Case.” Any gaming monopoly may now be justified on the rationale that it is a necessary measure to prevent crime.

Harrah’s Signs Gambling Deal with 888

A unit of Harrah’s Entertainment, Inc. has entered into a contract with 888 Holdings Plc. 888 will offer support services in gaming and payment software for Harrah’s World Series of Poker and Caesars Casino brands in the United Kingdom.

Harrah’s, the world’s biggest casino company, is lobbying Congress to allow licensed gambling operators to accept online wagers from people in the United States. 888 is investing in business-to-business services, to gain a quicker foothold in the United States if online betting is legalized there. Along with other online gaming companies, 888 pulled out of the United States market, which provided half the company’s revenue, upon the enactment of UIGEA in 2006.

Third Circuit Limits Delaware to Parlay Sports Betting

The same United States appeals Court that upheld UIGEA also dashed Delaware's plans for a new sports betting lottery which would have included single-game bets and wagering on a variety of professional and collegiate sports, limiting the state to parlay bets on professional football games.

The Professional and Amateur Sports Protection Act (PASPA) essentially banned sports betting in the United States. However, four states (including Delaware), which had some form of sports betting at the time PASPA was enacted in 1992, were "grandfathered in." The scope of the "grandfathering" clause had always been an open question.

The Court answered that question by ruling that PASPA precludes any type of sports betting beyond that which was offered by the "grandfathered" state at the time of PASPA's enactment. For Delaware, which had an unsuccessful NFL lottery in 1976, that meant the state's new lottery could allow only parlay bets, which means bettors must pick the winners of at least three separate NFL games in a single wager. And, as the Court held, "any effort by Delaware to allow wagering on athletic contests involving sports beyond the NFL would violate PASPA."

State officials could seek review by the full Court or the United States Supreme Court. In the meantime, operators of Delaware's three racinos said they are pleased with the number of players who placed parlay bets on NFL games.

Pennsylvania Casinos Will be Adding Table Games Soon

A budget compromise in Pennsylvania includes tax revenue the state expects to receive from legalizing table games. This move adds credence to the predictions of gaming regulators and casino executives that table games may be only six months away.

Lenders May Take Control of Resorts Atlantic City Casino

Resorts Casino Hotel in Atlantic City, is struggling to stay afloat while facing a sharp decline in revenue. The company, which has not paid its mortgage since October, has filed a petition that would allow lenders to take over operations. Eventual closure is also possibility.

Resorts has not made a payment on its \$360 million mortgage since October. It recently filed a petition with the New Jersey Casino Control Commission to transfer ownership to its lenders. If state regulators approve Resorts' request, it would be the first time in the city's history that a lender has taken control of a casino.

All of Atlantic City's casinos have seen steep declines in revenue. But the recession and regional slots competition have been particularly detrimental to small casinos like Resorts.

If the transfer is approved, the existing licensee would continue to manage and control the operations of the property. Title would be conveyed to a new entity wholly owned by Wells Fargo Bank N.A. as trustee of the securitization trust.

The new owner would immediately infuse \$8 million into the casino, so it would have enough cash to meet a \$15 million required reserve through 2010. The casino has been operating below that standard for months.

Revel Closer to Funding in Atlantic City

In the midst of the deepest downturn ever experienced by the Atlantic City casino industry, the only new

development under way, Revel, may be close to reaching an agreement that will ensure the project gets completed in mid-2011. Revel will include almost 2,000 rooms, a plethora of non-gaming amenities, restaurants, theaters, several pools and spas, and a 100,000 square foot casino. The property expects to employ at least 4,000 people.

With development dollars scarce, media sources have reported that Revel reached an agreement with a Chinese company to provide the balance of the money necessary to complete the Atlantic City project and open the first new casino on the Boardwalk since Trump Taj Mahal opened in 1991.

State Casino and Lottery Revenues Fall

Casinos and lotteries in most states are reporting a downturn in revenue for the first time, resulting in a drop in the money collected by state and local governments. Ironically, such declines frequently result in states seeking to expand existing gambling to make up for severe budget shortfalls. All of this demonstrates that gambling is not insulated from broader economic forces like recessions, as had been believed in the past.

The drop in revenue has led some gambling experts to wonder whether the gambling industry is reaching the market saturation point, whereby a limited number of gamblers with a fixed amount of money to bet are being split between a growing number of gambling options.

South Carolina Circuit Court Rules Poker Is a Game of Skill

Five poker players arrested for playing poker in a private residence in April 2006, and found guilty by a municipal court, had their convictions overturned by a South Carolina Circuit Court, which found poker to be a “game of skill” rather than a “game of chance” for purposes of a general anti-gambling law. That 1802 law, which bans “any game with cards or dice,” was found to be “unconstitutionally vague and overbroad.” As the court stated: “Enforced literally, South Carolina residents wouldn’t be able to play a game of monopoly.”

The court predicted that, if presented with the issue, the South Carolina Supreme Court would adopt the “dominant factor test,” which defines a game as one of chance or skill depending on which factor predominates. The court found that “[u]nder the dominant factor test, Texas hold’em is not gaming or gambling.”

This decision represents another in a growing series of rulings from around the United States and other countries recognizing the skill element as predominant in poker.

