

January 3, 2020

Volume 26, Issue 1

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

Associate Editor

J.J. Burchman, Esq.
Phone: 517.999.5414
burchman@rmclegal.com

Features Editor and Reporter

Gabrielle Davis
Phone: 517.999.5416
gdavis@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



DOJ FILES BRIEF IN FIRST CIRCUIT IN WIRE ACT CHALLENGE

On December 20, the Department of Justice (DOJ) filed its opening brief in the First Circuit, appealing the order by the United States District Court for the District of New Hampshire. The New Hampshire Lottery Commission (NHLC) and its service provider, NeoPollard Interactive LLC, filed suit against Attorney General William Barr in February 2019, seeking to overturn the DOJ's interpretive memo on the Wire Act released in January 2019. The memo had reversed prior DOJ precedent in re-interpreting the Wire Act to apply to all forms of gambling and not merely sports wagering. The District Court set aside the memorandum earlier this year in its order, leading to the DOJ's appeal to the First Circuit.

In its appeal brief, the DOJ argued that the District Court erred in setting aside the OLC's advice for three reasons:

1. The case presents no live case or controversy due to the forbearance of any prosecution by the DOJ (see previous story in [Volume 25, Issue 35 of The Michigan Gaming Newsletter](#)), and that the NHLC and NeoPollard failed to show a "credible threat of prosecution";
2. The District Court mistakenly concluded that all four offenses outlined in the Wire Act 18 (USCA § 1084(a)) apply only to sports gambling, while the sports gambling language truly applies *only* to the second prohibition; and
3. The District Court erred in ruling on the OLC opinion because it was not a final action appealable under the Administrative Procedures Act.

First, the DOJ argued that the OLC did not issue an opinion about whether the Wire Act would apply to lotteries owned and operated by the States in its 2018 memo. Regardless, the NHLC and NeoPollard brought suit to prevent enforcement of the statute against them. For these reasons, the DOJ argued that NHLC and NeoPollard lack standard and their suit is unripe.

Second, the DOJ argued that Section 1084(a) has long been interpreted as prohibiting the transmission and communication of “bets or wagers,” regardless of their subject matter. Likewise, the DOJ claims the phrase “on any sporting event or contest” modifies only the second prohibition. In 2011, the OLC issued an opinion that Section 1084(a) “prohibits only the transmission of communications related to bets or wagers on sporting events or contests.” The DOJ stated in its brief that, prior to the 2011 OLC opinion, it undertook “numerous prosecutions against persons who used interstate wire communications to engage in various gambling schemes, whether sports-related or not.”

Third, the DOJ argued that the District Court erred in setting aside the 2018 OLC opinion because OLC opinions are not “final agency action reviewable under the APA because they are predecisional legal advice.”

The DOJ’s brief contained many of the same arguments it raised in the District Court case, but the First Circuit brief focused more on the process of the legal challenge than the legal arguments in the DOJ’s interpretation of the Wire Act.

A few days after the DOJ’s December 20 brief was filed, Sheldon Adelson’s Coalition to Stop Internet Gambling (CSIG) and the National Association of Convenience Stores (NACS) filed an amicus brief. The amicus brief incorporates much of the same language verbatim that was used in its May 2019 amicus brief in the District Court case.

NHLC and NeoPollard are scheduled to submit their appeal briefs by January 21, with the DOJ then having an opportunity to file a response brief no later than February 10. With oral arguments likely, it appears that the First Circuit will not issue a decision until Summer 2020.

POKAGON TRIBAL CHAIRMAN WESAW HONORED AS ONE OF GLOBAL GAMING BUSINESS’S 25 PEOPLE TO WATCH IN 2020

Tribal Chairman Matthew Wesaw of the Pokagon Band of Potawatomi Indians was recently named by Global Gaming Business Magazine as one of its 25 people to watch in 2020. [Global Gaming Business Magazine](#) has annually named its 25 person “dream team” for nearly 20 years.

As Tribal Council Chairman and President of the Pokagon Gaming Authority, Mr. Wesaw has oversight responsibility for the Pokagon Band’s Four Winds Casino resorts with locations in South Bend, Indiana, and three locations in Michigan in Dowagiac, Hartford, and New Buffalo. Four Winds is currently in the midst of a significant expansion of its South Bend Casino resort that includes a 23-story hotel tower, convention areas, bars and restaurants, and a spa.

Mr. Wesaw noted: “The expansion project will turn us from a bigger small property to a larger mid-sized one. We are excited about this and we still have space to expand again, but it is also important that we don’t over-build. With the way gaming is going online, brick-and-mortar facilities could be in trouble down the road.”

FOUR WINDS CASINO AND POKAGON BAND DONATE HOLIDAY BASKETS

The Pokagon Band of Potawatomi and its Four Winds Casino recently announced the donation of 1,000 Christmas food baskets to families in need. The baskets were distributed on December 19 and were provided both on a first come, first served basis, as well as distributed to local churches and food pantries in Northwest Indiana and Southwest Michigan, including Decatur Human Services in Michigan and Feeding America in Benton Harbor. The Christmas donation follows the Pokagon Band’s donation of 1,200 Thanksgiving baskets.

“The Pokagon Band is pleased to continue our long-standing and heart-felt tradition of delivering food boxes to those in need throughout the holiday season, now in its fifth year,” said

Matthew Wesaw, Tribal Council Chairman of the Pokagon Band of Potawatomi. "This program would not be possible without the support of the Pokagon Tribal Council, Pokagon Citizens, Four Winds Casino employees and several community organizations. We hope all the recipients will truly have a Merry Christmas."

"We are very proud that so many Four Winds employees have volunteered to be part of this very special program for the past five years," said Frank Freedman, Chief Operating Officer of Four Winds Casinos. "We hope this donation can be a source of comfort and holiday cheer for all the recipients."

GUN LAKE CASINO DONATES MORE THAN \$53,000 TO WEST MICHIGAN CHARITIES

This holiday season, Gun Lake Casino partnered with eleven food organizations and Lakeshore Toys for Tots to donate over \$53,000 in five West Michigan counties.

"Gun Lake Casino recognizes the challenges local residents face during the holiday season," said Jose Flores, Vice President and General Manager of Gun Lake Casino. "It is no secret that many cannot afford toys for their children or food for the table. It is our mission to serve and support those who need it the most."

For the eighth year in a row, Gun Lake Casino collected gifts for children ages 0-16 for Lakeshore Toys for Tots. Between Gun Lake Casino team members and guests, over \$35,000 in toys were contributed for local children, tripling the amount donated during last year's collection.

Additionally, this was the seventh year that Gun Lake Casino focused on the issue of hunger. On December 17, Gun Lake Casino hosted the Game of Giving, a private charitable event that raised money for eleven local food organizations. Each charity was given the opportunity to raise awareness to its cause and connect with members of the Wayland Area Chamber of commerce. In total, \$18,450 was donated to

combat hunger in West Michigan, with each charity receiving at least \$1,000.

The eleven food organizations include: Allegan County Food Pantry, Manna's Market, The Green Apple Pantry, Community Action House, Good Hands Plainwell, Kalamazoo Loaves and Fishes, Martin Area Resource Center, Meals on Wheels of Western Michigan, God's Kitchen of Michigan, West Michigan Veteran's Assistance Program, and Feeding America West Michigan.