Supreme Court Opens the Door for Sports Betting for States and for Tribes

The State of SPORTS BETTING in Indian Country

CURRENT ACTIVITY IN: Arizona, California, Oklahoma, Oregon, Massachusetts, Michigan, New Mexico and Washington
Jamie Nettleton  
President  
Addisons Lawyers  
Sydney, Australia  
+61 2 8915 1030  
jamie.nettleton@addisonslawyers.com.au

D. Michael McBride III  
First Vice President  
Crowe & Dunlevy, P.C.  
Tulsa, Oklahoma  
+1 918 592 9824  
mike.mcbride@crowedunlevy.com

Marc H. Ellinger  
Second Vice President  
Ellinger and Associates, LLC  
Jefferson City, Missouri  
+1 573 750 4100  
mellinger@ellingerlaw.com

Quirino Mancini  
Secretary  
Tonucci & Partners  
Rome, Italy  
39 06 322 1485  
qmancini@tonucci.com

Justin Franssen  
Assistant Secretary  
Kalf Katz Franssen  
Amsterdam, Netherlands  
31 20 67 60 780  
franssen@kalfkatzfranssen.nl

Quirino Mancini  
Second Vice President, Affiliate Members  
Douglas Investigative Group  
Las Vegas, Nevada  
+1 702 683 6016  
battleborn@mindspring.com

Keith C. Miller  
Vice President, Educator Members  
Drake University Law School  
Des Moines, Iowa  
+1 515 271 2071  
keith.miller@drake.edu

Douglas Florence, Sr.  
Vice President, Affiliate Members  
Douglas Investigative Group  
Las Vegas, Nevada  
+1 702 683 6016  
battleborn@mindspring.com

Marc Dunbar  
Assistant Treasurer  
Jones Walker LLP  
Tallahassee, Florida  
+1 850 933 8500  
mdunbar@joneswalker.com

Morten Ronde  
Director of Education and Association Development  
International Masters of Gaming Law  
Denmark  
morten@imgl.org  
+45 208 87210

Sue McNabb  
Editor  
American Gaming Lawyer  
suemcnabb@bellsouth.net  
+1 225 241 6771

Michael E. Zatezalo  
Immediate Past President  
Kegler, Brown, Hill & Ritter Co., L.P.A.  
Columbus, Ohio  
+1 614 462 5400  
mzatezalo@keglerbrown.com

Stay connected for the latest updates and publications from IMGL.
Contents

4 Message from the President
Honoring the IMGL Regulators of the Year
By Jamie Nettleton

5 Letter from the Editor
The State of Sports Betting in Indian Country
By Dennis J. Whittlesey

6 Sports Betting Looms in Oregon’s Future
By Stephen Dow Beckham

7 Sports Betting: Uncertain Agenda in Washington
By Stephen Dow Beckham

8 The State of Indian Gaming in Northern California
By Stephen Dow Beckham

12 Sports Betting in Oklahoma
By Graydon Dean Luthey, Jr.

16 Sports Betting Update: Michigan
By John Roberts

17 Sports Betting Update: Massachusetts
By John Roberts

18 Sports Betting & Tribal Gaming in the West: Arizona, California and New Mexico
By Heidi McNeil Staudenmaier

22 International Masters of Gaming Law 2018 Regulators of the Year
By Sue McNabb
MESSAGE FROM THE PRESIDENT

Honoring the IMGL Regulators of the Year

BY JAMIE NETTLETON

IMGL is looking forward to our 2018 autumn conference which is taking place in Prague from 5-7 September 2018. Stephen Ketteley and Robert Skalina and the Prague conference committee have put together a fulsome agenda, details of which are available on our website at imgl.org.

The conference will involve a number of topical discussions involving industry leaders, covering issues such as artificial intelligence, keeping crime out of gaming, promoting social responsibility and diversity.

There will also be a number of social highlights, including a Gala Dinner at the Lobkowicz Palace (which is being sponsored by the SAZKA Group) and an opening reception at Zofin Garden (being sponsored by CMS).

Plans are also underway for our reception due to be in Las Vegas on 9 October taking place at The Country Club at Wynn Las Vegas. Invitations will be forwarded to all IMGL members soon.

On the following day (10 October), IMGL will be hosting an IMGL Masterclass, which is being convened by Marc Ellinger and Marc Dunbar, to take place at the Sands Expo at the Venetian. Details are available on our website.

The various IMGL Regulator of the Year regional Committees have been busy in their selection of the IMGL Regulators of the Year. A number of highly qualified nominees have been proposed, and I am pleased to announce that the following awards have been made:

- Regulator of the Year - Americas—Sara Gonso Tait, Executive Director, Indiana Gaming Commission
- Regulator of the Year - Europe—Juan Espinosa Garcia, Director General de Ordenacion del Juego, Spain
- Regulator of the Year - Australasia—Michael Sarquis, Executive Director, Office of Liquor and Gaming Regulation, Department of Justice and Attorney General, Queensland, Australia
- Regulator of the Year - Indian Country—Gordon Dickie, Executive Director, Seminole Tribal Gaming Commission, Florida
- Outstanding Achievement Award - Europe—Joseph Cuschieri, Malta
- Outstanding Achievement Award - United States—A.G. Burnett, Nevada

Please join me in congratulating each of the recipients. Each is extremely well deserved and IMGL is pleased to recognize the leadership which each of these regulators has given. These awards will be bestowed at various IMGL events, with the American recipients being awarded plaques to recognize their awards at our VIP reception in Las Vegas on 9 October 2018.

Finally, I would like to thank our Executive Director, Sue McNabb, for her tremendous efforts given to IMGL in her capacity as IMGL Executive Director. Sue is retiring as IMGL Executive Director, and we thank her for the energy, integrity and the huge endeavours which she has brought to the role. Sue will continue to be involved actively as an IMGL member, and I am sure that you will continue to see her at various IMGL events from time to time. Please join me in wishing Sue well and thank her for her support as IMGL Executive Director.

I would also like to welcome Brien Van Dyke as IMGL’s Assistant Executive Director. She will be dealing with the support and coordination of IMGL matters going forward. Brien can be contacted at brien@imgl.org.

We look forward to seeing you in Prague and other IMGL events, including an IMGL Masterclass near you.
LETTER FROM THE EDITOR

The State of Sports Betting in Indian Country

BY DENNIS J. WHITTLESEY

This issue of Indian Gaming Lawyer is dedicated to a recent Supreme Court decision that legalizes sports betting in states where such gambling is not illegal. This decision was rendered on May 14, 2018, and a number of Indian Tribes with casinos are anxious to offer sports betting to expand the gaming opportunity now available. To coin an old phrase, “The Gold Rush is on!”

The potential for a major treatise on the subject of sports betting in tribal casinos is likely to be written once (1) states take action to legalize sports betting where necessary and (2) the existing Tribal-State Gaming Compacts have been amended to allow sports betting. And, as the reader will see in the various articles in this publication, a substantial number of states already are dealing with the issue and it is easy to predict that there soon will be something close to universal sports betting in tribal casinos.

The decision opening the door for this emerging revolution is Murphy, et al. v. National Collegiate Athletic Association, et al. The process already has begun with gaming seeking negotiations for Compact modifications. The first step will be state legislatures enacting new laws to allow sports betting. Only then will the affected states be in a position to execute the new provisions.

We have asked leading experts in Indian laws and Indian Gaming to examine specific jurisdictions that were randomly selected by this Editor. Most of the authors are frequent contributors to IGL and well known to the readers. And we are fortunate to have them as contributors to this issue.

ARIZONA, NEW MEXICO AND CALIFORNIA

Heidi McNeil Staudenmaier reports on three states with which she is well familiar. She is a partner in the Phoenix law firm of Snell and Wilmer and has written for each issue of this magazine since it began publication in the Spring of 2016. The gaming tribes in these states are understandably interested in offering sports betting and the negotiations are already well underway.

WASHINGTON AND OREGON

These two states are addressed by another contributor to this magazine since it commenced publication: Dr. Stephen Dow Beckham, Professor of History at Lewis & Clark College, Portland, Oregon. Dr. Beckham is widely recognized as the leading Ethnohistorian in the United States and readers will once again be treated to his outstanding research and writing. And, in the interests of full disclosure, he and this writer have worked together continuously for decades.

OKLAHOMA

Dean Luthey is a Senior Partner in the Tulsa, Oklahoma law firm of Gable Gotwals. He is General Counsel for the Oklahoma Indian Gaming Association as well as a renowned litigation lawyer who has argued before the United States Supreme Court. He is a powerful speaker and the readers will soon discover that he is a compelling writer.

MICHIGAN AND MASSACHUSETTS

John Roberts has written two outstanding articles reporting on these states. John is a long-time active member of the International Masters of Gaming Law and his articles make clear that he is an outstanding writer.

CONCLUSION

We know you will find this issue of IGL to be a valuable guide map to the world of sports betting in Indian Country. There can be no doubt that this expansion of gaming opportunity will be a great boost for the Indian Gaming industry and the tribes that operate casinos that can operate sports betting. 
Repeal by the Supreme Court of the Professional and Amateur Sports Protection Act (PASPA) in May, 2018, raises the real prospect for sports betting in Oregon. The state is hungry for non-tax revenues. The State Lottery and a variety of video games generated $1.25 billion in 2017 and is seeking more “voluntary” funds to meet the state’s needs.

The Oregon State Gaming Commission is currently implementing “Progressives” over three years. It is working with the state’s eleven Indian casinos operated by nine tribes to open larger and larger jackpots to bettors.

Oregon was one of four states exempted in 1992 when Congress implemented PASPA. The state initiated Sports Action betting in 1989 and ran the program until 2007 when it became a bar to Oregon hosting the NCAA basketball tournament. Oregon has also legalized FanDuel. The past success of these gaming options contributes to the likelihood of the state’s embrace of Sports Betting.

The Indian casinos, widely distributed across the state, operate slot machines, blackjack, and other table games. They have the infrastructure to run sports books and several tribes have publically stated their interest in adding sports betting services. The Oregon Gaming Commission anticipates legalized Sports Betting by 2020. Implementation hinges on authorization, likely to be considered by the legislature when it convenes on January 22, 2019. Legislators face a September, 2018, deadline for draft bills.

“"We have been interested and have been talking for some time now about reintroducing some level of sports-based play into our portfolio.””
—Matt Shelby, Public Information Manager, Oregon Lottery

Oregon’s Penal Code declares illegal gambling a Class C Felony with a fine of up to $125,000 and up to five years in prison. The Code does not mention betting online. No Oregon residents have been prosecuted for using offshore betting sites.

Oregon State Capitol, Salem, Oregon.

Sports Betting Looms in Oregon’s Future

BY STEPHEN DOW BECKHAM

We have been interested and have been talking for some time now about reintroducing some level of sports-based play into our portfolio.”
—Matt Shelby, Public Information Manager, Oregon Lottery

Oregon’s Penal Code declares illegal gambling a Class C Felony with a fine of up to $125,000 and up to five years in prison. The Code does not mention betting online. No Oregon residents have been prosecuted for using offshore betting sites.

Oregon State Capitol, Salem, Oregon.
Indian Gaming Lawyer • Autumn 2018

Sports Betting: Uncertain Agenda in Washington

BY STEPHEN DOW BECKHAM

Major league sports loom large in Washington, home of the Seahawks, Mariners, and Sounders.

To change the state’s anti-gambling prohibitions would require a two-thirds supermajority (60%) of the legislature or a statewide referendum.

The 6-3 decision of the Supreme Court to overturn PASPA, however, has generated interest. The Washington State Gambling Commission is looking closely at Sports Betting. Gaming is widespread in Washington with 32 tribal casinos and bingo halls. The state also permits poker, horse racing, lotteries, charitable gaming, and social gambling (card rooms). It prohibits dog racing and online gambling.

Washington is one of seven states with no personal income tax. Residents, however, pay a 6.5% sales tax, the tenth highest in the nation. They also pay $.49 per gallon gasoline tax and a $.484% Business and Occupation Tax on manufacturing goods within the state. Some see income generated by Sports Betting as direct tax relief, a voluntary contribution to the state to fund social services, education, government, and other needs.

In spite of its strong stand in the past against Sports Betting, the Washington legislature in 1973 authorized regulated sports pools. A square sheet of paper or a board is divided into 100 equal squares, each of which constitutes a chance to win in the sports pool and each of which is offered directly to prospective contestants at one dollar or less. Players purchase a chance (or square) and sign his or her name in that area. These pre-digital pools are common in bars during football season.

Washington’s antiquated sports pools may be the key to expansion of Sports Betting in the state because they were “grandfathered,” namely authorized prior to PASPA (1992).

“Washington is still a pretty conservative state as far as gambling goes. And this is entirely, 100 percent in the hands of the Legislature. So nothing can happen, obviously, until next year at the earliest.”

—Chris Stearns, Commissioner, Washington State Gambling Commission, May, 2018

A view of the legislative building from Capitol lake in Olympia Washington.
As the nation’s largest state California became the site of “great expectations” for Indian gaming. The state’s many tribes and rancherias as well as eager external investors perceived the potentials of billions of dollars in annual cash flow. Success in gaming enterprises, however, was predicated on meeting the strict but complicated requirements of the Indian Gaming Regulatory Act (1988).

In 1851 the federal government dispatched three treaty commissioners to negotiate land cessions from tribes. Because the Gold Rush was then underway, the California Indian Commission was reluctant to tie up land and mineral resources in reservations. The treaties were explicit in describing the lands ceded but vague in identifying lands reserved for Indians. Ultimately none of the eighteen treaties was ratified. That remained the situation in 1871 when Congress suspended treaty-making. In an effort to keep as much of the state as possible in the “public domain” Congress in 1864 passed the California Reservations Act. The law prescribed that there would be no more than four reservations in the state.

The 1864 act has never been rescinded, but it was modified with passage of the Mission Indian Relief Act (1891) that created a series of small reservations in southern coastal California. These trust reservations were for Indians who had been forced into the mission system between 1769 and 1832 by Franciscan priests. The “Relief Act,” however, created no reservations farther north than the Chumash Reservation in the Santa Inez Valley near Santa Barbara.

The Indians of northern California, including the Central Valley, had few options to find a place to live. Some moved to the Hoopa Valley Reservation on the Trinity River, to Round Valley and Mendocino reservations, and to the short-lived Tule River and Fort Tejon reservations. Thousands remained landless, shoved pillar to post as they struggled to survive as agricultural workers, miners, and laborers. Between 1850 and 1863 an estimated 10,000 Indians were enslaved under the California Indian Indenture Act until it was abrogated by the 13th Amendment.

In the early twentieth century the Bureau of Indian Affairs hired Charles E. Kelsey, an attorney in San Jose, to prepare a census of the Indians in the northern part of the state. He enumerated 13,361 Indians. Of that number 2,302 families (7,928 people) were landless. Kelsey published this tragic situation in Indian Rights and Wrongs (1907). His advocacy led to federal purchases of small tracts of land, or rancherias, to become homes for the indigent Indians of California. On a case-by-case basis the Department of Interior bought lands and took them into federal fee status as “rancherias.” The lands program accelerated in the 1930s with purchase of more than fifty rancherias for homeless Indians in the northern part of the state.
The California Rancheria Termination Act (1958), P.L. 85-671, led to sale and fee patenting of all of the small federal fee lands occupied by Indians in northern California. Individuals and families made land selections. The B.I.A. was charged with guaranteeing adequate water systems and other amenities as it exited from trust responsibilities. Some rancherias voted to accept Termination; others rejected the law, but all were “terminated.”

In 1979 the case of Tillie Hardwick et al v. United States found the Department of Interior had failed to meet the requirements in the Termination Act. The court in 1983 restored eighteen rancherias to a federal relationship and permitted both rancheria governments and individuals to restore their lands to non-taxable trust. This “restoration” occurred five years prior to passage of IGRA and thus opened the prospect for these eighteen tribal groups to qualify lands for Indian gaming.

More than thirty rancherias did not participate in the Hardwick case and thus once IGRA was passed had to meet the “exceptions” provisions of IGRA if, and when, they secured “restoration” to federal relationships. Since “terminated tribes” were forbidden to use the Federal Acknowledgment Program, the restoration of the post-Hardwick rancherias was a complicated process.

NORTHERN CALIFORNIA INDIAN GAMING

Unlike many other states, Indian gaming came late to California. More than a decade passed before the State began entering into compacts. The process started wholesale in 1999 with fifty-eight agreements. In 2018 California has 74 state-tribal compacts. The compacts created a Special Distribution Fund to support problem gambling prevention programs; to reimburse local governments for off-reservation impacts by tribal government gaming operations; to compensate the state for regulatory costs incurred in connection with its regulatory responsibilities; and to cover shortfalls in the tribal revenue sharing trust fund.

In 1999 the administration of Governor Gray Davis did not appear to realize the lands “restored” to rancherias had been federal fee lands not in reservation status. This misunderstanding opened the door for wide proliferation of gaming in the northern part of the state. The Davis administration also did not mount close examination and documentation as to whether the “restored lands” it accepted for gaming were actually the aboriginal lands of a “restored tribe.” The extensive documentation of tribal identities in the California Indian enrollments of 1928-32 was ignored. Most of the rancherias were polyglot, multi-racial communities of California Indians as well as Euro-Americans, Mexicans, Chinese, Indians from other parts of the United States, Hawaiians, and “others.” Few could trace to the signers of the non-ratified treaty agreements of 1851 or document aboriginal use and occupancy of the lands identified for restoration. The restoration of lands to the newly restored rancherias became a complex legal muddle that plunged many potential gaming operations into years of dispute and costly litigation.

The route to gaming became exceedingly difficult for rancherias not participating in the original Tillie Hardwick case. As they found financial backers, purchased land, and attempted to get “restored land” into trust for a “restored tribe,” they were faced with challenges by city and county governments, by card rooms, and by anti-casino organizations such as Stand Up For California. Some rancherias secured strong financial backing. When the route to success became too costly and lengthy, they lost that support and had to turn to other investor groups.

In order to qualify land for gaming, the rancherias frequently hired consulting anthropologists and historians to document their aboriginal lands. When their lands had little potential to attract gaming patrons, their consultants sometimes came up with theories promoting pre-contact (before 1769) or early contact period migrations of people. This especially became the case when multiple rancherias and their backers focused on the potentially lucrative gaming revenues of the San Francisco Bay area. The Scotts Valley Band of Pomo from a small rancheria on the northwest side of Clear Lake, for example, reached south 103 miles. The tribe first attempted to establish that Point Mallote in Contra Costa County on the east side of San Francisco Bay was its aboriginal homeland. When thwarted in that effort, it next targeted Vallejo on the northeast side of San Pablo Bay. “Reservation shopping” for maximum market share became common in the years since 1999.

Continued on next page
Northern California is a setting for both modest as well as mega-casino operations. Because of population distribution, parts of the region dictate smaller-scale investments. In northwestern California are several modest tribal gaming businesses. All offer food services and some also have lodging, conference, and truck and travel amenities ranging from RV Parks to service stations and convenience stores. Opening in 2018 is the Rain Rock Casino of the Karuk Tribe on Interstate 5 in Yreka. The facility is the newest in the state with 36,000 square feet, 500 gaming machines, and 8 table games. On the northwestern coast of California are several small casinos: Lucky Seven (Tolowa Dee-ni in Smith River), Elk Valley Casino (Elk Valley Rancheria near Crescent City), Redwood Casino-Hotel (Yurok Tribe in Klamath), and the Cher-Ae Heights Casino (Trinidad Rancheria in Trinidad, California).

The Yocha Dehe Tribe (Wintun) operate the sprawling Cache Creek Casino Resort in Brooks, CA, on the west side of the Sacramento Valley. The facility is 90 miles from San Francisco and houses 2,300 slots, 120 table games, and poker tables. The resort also includes an 18-hole golf course, 200-room hotel, and spa.

The area north of San Francisco Bay was the setting of numerous rancherias. Because of the large population of that district and its popular Wine Country amenities, this area is the location for both large and small casinos. The Northern Quest Resort and Casino (Graton Rancheria in Rhonert Park) is a multi-purpose casino, hotel, spa, and conference center on the west side of Highway 101 in Marin County. The facility of 340,000 square feet cost $850 million. Revenues are in the vicinity of $400 million per year with seasonal fluctuations. The casino in 2014 paid $8 million to Rhoner Park and $5 million to Sonoma County for fire, police, and emergency services.

The Yocha Dehe Tribe (Wintun) operate the sprawling Cache Creek Casino Resort in Brooks on the west side of the Sacramento Valley. The facility is 90 miles from San Francisco but adjacent to the large population of the Central Valley and larger Bay area. Cache Creek opened as a bingo hall in 1985 and grew dramatically between 2002 and 2004 into a destination resort. It has 2,300 slots, 120 table games, and poker tables. The resort includes an 18-hole golf course, 200-room hotel, and spa.

Located on popular Interstate to Lake Tahoe, the Thunder Valley Casino Resort in Lincoln (on Lincoln Bypass off I-80) is owned by the United Auburn Community (Miwok and Maidu).

A number of tribes currently conduct gaming under compacts executed with former Governor Gray Davis in 1999 and 2000. In the opinion of many observers, it is past time to revisit those aging compacts.

— Dennis J. Whittlesey, “Five Major Indian Gaming Issues to Watch,” 2014
It opened in 2003 and for seven years operated in a business partnership with Stations Casinos, Las Vegas. The casino has 3,000 slots and video machines, 125 table games, and poker room for up to 160 players. The seventeen story hotel has 297 rooms with 40 suites and 14 restaurants and bars.

Several of northern California’s tribes and their investment partners have profited greatly because of the Indian Gaming Regulatory Act. The benefits have created jobs for Indians and non-Indians. They have generated a significant turn-over of money for construction, payrolls, and purchase of goods and services. Casino and related enterprise revenues have enabled tribes to diversify their businesses, meet debt service and build capital resources, fund education, and enhance tribal social services and cultural programs.

Stephen Dow Beckham earned his M.A. and Ph.D. at UCLA in history. He taught college students for forty-three years, and for many years was the Pamplin Professor of History at Lewis & Clark College, Portland, Oregon. He is the author of numerous books and articles, is a former “Oregon Professor of the Year,” and winner of the American Historical Association’s Distinguished Teaching Award. He has been retained as an expert witness in thirty-seven cases. Most of his legal work relates to Indian gaming, treaty rights, and land claims. His consulting has involved the Delaware Nation, Eastern Pequot, Duwamish, Coquille, Chinook, Cow Creek Band of Umpqua, Quapaw, Ottawa Nation, Karuk, Mechoopda, Chemehuevi, three bands of Pomo of California, Chinook, and other tribes and bands.
The recent U.S. Supreme Court decision in Murphy v. NCAA, No. 16-476 (Slip Op. May 14, 2018), striking down Congressional prohibition of sports betting outside Nevada has no immediate effect on Oklahoma. Current Oklahoma law makes sports betting unlawful. Accordingly, the legislature will have to adopt legislation at the least decriminalizing sports betting and the Governor must sign it for sports betting to lawfully occur in Oklahoma.

Because of the Tribal-State Model Gaming Compact, 3A O.S. § 281, decriminalizing sports betting does not necessarily mean that such gaming will lawfully occur. That compact contains an exclusivity provision conditioning the tribe’s payment fees to the state on the state’s prohibition of additional electronic gaming with Oklahoma. If the state allows electronic gaming in Oklahoma in violation of that exclusivity provision, the compacting tribes no longer have an obligation to pay the exclusivity fee. 3A O.S. § 281, Part 11 (A) provides:

1. The tribe covenants and agrees to pay to the state a fee derived from covered game revenues calculated as set forth in paragraph 2 of this subsection. Such fee shall be paid no later than the twentieth day of the month for revenues received by the tribe in the preceding month; and

The parties acknowledge and recognize that this Compact provides tribes with substantial exclusivity and, consistent with the goals of IGRA, special opportunities for tribal economic opportunity through gaming within the external boundaries of Oklahoma in respect to the covered games. In consideration thereof, so long as the state does not change its laws after the effective date of this Compact to permit the operation of any additional form of gaming by any such organization licensee, or change its laws to permit any additional electronic or machine gaming within Oklahoma, the tribe agrees to pay the following fees:

BY GRAYDON DEAN LUTHEY, JR.
2. The fee shall be:
   a. four percent (4%) of the first Ten Million Dollars ($10,000,000.00) of adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games,
   
   b. five percent (5%) of the next Ten Million Dollars ($10,000,000.00) of adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games,
   
   c. six percent (6%) of all subsequent adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games, and
   
   d. ten percent (10%) of the monthly net win of the common pool(s) or pot(s) from which prizes are paid for nonhouse-banked card games. The tribe is entitled to keep an amount equal to state payments from the common pool(s) or pot(s) as part of its cost of operating the games.

   Payments of such fees shall be made to the Treasurer of the State of Oklahoma. Nothing herein shall require the allocation of such fees to particular state purposes, including, but not limited to, the actual costs of performing the state’s regulatory responsibilities hereunder.

   Continued on next page
The compact also contains a liquidated damage provision. 3A O.S. § 281, Part 11 (E) provides:

In consideration for the covenants and agreements contained herein, the state agrees that it will not, during the term of this Compact, permit the nontribal operation of any machines or devices to play covered games or electronic or mechanical gaming devices otherwise presently prohibited by law within the state in excess of the number and outside of the designated locations authorized by the State-Tribal Gaming Act. The state recognizes the importance of this provision to the tribe and agrees, in the event of a breach of this provision by the state, to require any nontribal entity which operates any such devices or machines in excess of such number or outside of the designated location to remit to the state at least quarterly no less than fifty percent (50%) of any increase in the entities’ adjusted gross revenues following the addition of such excess machines. The state further agrees to remit at least quarterly to eligible tribes, as liquidated damages, a sum equal to fifty percent (50%) of any increase in the entities’ adjusted gross revenues following the addition of such excess machines. For purposes of this Part, “eligible tribes” means those tribes which have entered into this Compact and are operating gaming pursuant to this Compact within forty-five (45) miles of an entity which is operating covered game machines in excess of the number authorized by, or outside of the location designated by, the State-Tribal Gaming Act. Such liquidated damages shall be allocated pro rata to eligible tribes based on the number of covered game machines operated by each Eligible Tribe in the time period when such adjusted gross revenues were generated.

Those fees are substantial, with tribes paying to the state in excess of $1.25 Billion since compacted gaming was first offered in 2006, with in excess of $130 Million being paid in 2017. As a result of the compact’s exclusivity provision, only tribes will be able to offer sports betting.

For tribes to offer electronic sports betting, the Tribal-State Model Gaming Compact must be amended to include sports betting within the definition of a covered game. Because of the compact’s origin as an act of legislation by the people through referendum, and at least one major amendment by the legislature through statute, an amendment to the compact to include sports betting as a covered game must be adopted by the people through initiation or referendum.

If a compact amendment is adopted through legislation, any tribe that is a party to the compact desiring to offer sports betting must then adopt the amendment. For such adoption to become effective, the Secretary of the Interior, or his designee, must approve the amendment, or allow forty-five days after submission to pass without disapproval. See, 25 USC § 2710 (d)(3)(B); 25 CFR 293.10 (a), 293.12. If no increase to the existing exclusivity fees is made by the amendment, the chances for approval are enhanced. If an increase in the fee is included, approval becomes more problematic. Any approval by the Department, whether active or by inactive, then must be published in the Federal Register within 90 days of receipt of the Amendment by the Department of Interior’s Office of Indian Gaming. 25 CFR § 293.15 (b).

While awaiting Secretaryial approval, a tribe likely will review its gaming ordinance to determine if any amendment is required to offer sports betting and, if so, then adopt such an approval and submit to the Chair of the National Indian Gaming Commission for approval.

While the U.S. Supreme Court has created an opportunity for sports betting in Oklahoma, much must occur governmentally before that opportunity becomes reality. Finally, any reality depends on Congress not pre-empting the states by constitutionally compliant legislation.

For tribes to offer electronic sports betting, the Tribal-State Model Gaming Compact must be amended to include sports betting within the definition of a covered game. Because of the compact’s origin as an act of legislation by the people through referendum, and at least one major amendment by the legislature through statute, an amendment to the compact to include sports betting as a covered game must be adopted by the people through initiation or referendum. Such an amendment likely would also decriminalize sports betting. That legislation process, if it occurs, will not occur in a policy vacuum, but will be part of a legislative session addressing state revenue needs.

Graydon Dean Luthey, Jr. is a senior partner at GableGotwals in Tulsa, Oklahoma, and General Counsel of the Oklahoma Indian Gaming Association. He regularly handles litigation and administrative agency matters for Tribes and entities with which they do business. He has argued for Tribes before the U.S. Supreme Court. The views expressed in this article are his alone and do not necessarily reflect the views of his firm, the Oklahoma Indian Gaming Association, its members or its other clients.

1 21 O.S. §§ 941, 982.
SAZKA Group is a proud sponsor of the IMGL 2018 Autumn Conference

SAZKA Group is Europe’s largest lottery group addressing an adult population of 82 million in six countries.

Members of the group

www.sazkagroup.com
Sports Betting Update: Michigan

BY JOHN ROBERTS

A
fter the U.S. Supreme court overturned PASPA in May of this year, many states and gaming tribes started reviewing their options to enter the sports betting arena. In June the Michigan House voted 68-40 to pass H 4926, the “lawful Internet gaming act,” a bill that would legalize online gaming, poker and potentially sports betting in Michigan. The games “must include, but need not be limited to, poker.”

The bill looks to create a state regulatory body that would be tasked with establishing rules for the licensing and conducting real money online poker and casino games. The rules are to be promulgated within one year of the effective date of the Act.

The regulatory body will be the Michigan Internet Gaming Division which will be under the Michigan Gaming Control Board. This doesn’t include online lottery games which are already regulated by the state lottery.

The three Detroit commercial casinos and 23 tribal casinos would be eligible to apply for an online/poker license with fees of $200,000 for the initial licensing fee and a $100,000 renewal fee. The license will be valid for five years.

All of the online games would be taxed at a rate of 8% of Gross Gaming Revenues, wagers minus winnings paid out.

Tribes wishing to conduct online gaming would need a compact amendment to their Tribal State compact. The tribe must offer Class III gaming, under IGRA, (the Indian Gaming Regulatory Act). Internet gaming can commence no sooner than one year after the effective date of the act.

The House bill does not contain bad actor or suitability language and leaves the question of suitability of applicants to the discretion of the Division.

There is one point of contention that has caused tribes to not fully support the House Bill. Under Section 16 of the bill, it says in part that if federal law changes and prohibits tribes from participating in online gaming that occurs off Indian land, the commercial casinos in Michigan would still be allowed to continue offering online gaming. Under the act, an Internet wager received by a federally recognized Michigan tribe is considered gaming conducted within that tribe’s casino on Tribal land located in Michigan, regardless of the location of the bettor.

The legislation also allows for the state to enter into a multijurisdictional agreement with other states and allows a tribe authorized to conduct internet gaming under the act to become a party to such an agreement and also allow a tribe to enter into agreements with other Indian tribes to facilitate, administer, and regulate multijurisdictional internet gaming to the extent the agreement is consistent with applicable tribal, state and federal laws.

The state Senate is expected to vote on the legislation when lawmakers return from their summer break in September 2018.

John N. Roberts is the Executive Director for the Nottawaseppi Huron Band of the Potawatomi Gaming Commission in Michigan. He is the former Commissioner for the Mashpee Tribal Gaming Commission in Massachusetts. Prior to that he was Executive Director for the Pokagon Gaming Commission in Michigan, Deputy Commissioner for the San Manuel Gaming Commission in Southern California, Executive Director for the San Pasqual Gaming Commission, Executive Director at Robinson Rancheria Gaming Commission, General Counsel to Hawaiian Gardens Casino, Executive Director for Blue Lake Casino, Chairman Harrah’s Rincon Tribal Gaming Commission, Director of Administration Kansas Lottery and a former Assistant Attorney General for the State of Kansas.

Mr. Roberts, an attorney, is a member of the International Masters of Gaming Law, and has appeared on numerous panels nationwide and authored many nationally published articles. He is past recipient of IMGL Tribal Regulator of the Year and the IMGL Presidents award.
Massachusetts

Massachusetts is in no apparent hurry to draft legislation related to sports betting. Their legislative session ended July 30, so no action will be taken until the 2019 session, if then. Currently there are no tribal casinos in the state. The Mashpee Wampanoag tribe hoped to open a casino on land in Taunton but in 2016 a federal court decision determined the Department of Interior had incorrectly taken land into trust for the tribe and construction of their casino, which was in a very preliminary state, ground to a halt. On July 24, 2018, the Department of Interior took no position during a congressional hearing reviewing legislation related to the Mashpee tribe. A bill has been introduced by U.S. Representative William Keating, D-Mass in the House with an identical bill under consideration by the Senate, that would affirm the decision in 2015 by Interior to take 321 acres of land into trust for the tribe. If passed, the bill would end the ongoing legal challenge that has prevented the tribe from building a casino and threatens their status as a federally recognized tribe.

The Wampanoag Tribe of Gay Head (Aquinnah) plans a small gaming facility in Aquinnah, on Martha’s Vineyard.
SPORTS BETTING & TRIBAL GAMING IN THE WEST:

ARIZONA, CALIFORNIA AND NEW MEXICO

BY HEIDI MCNEIL STAUDENMAIER

ARIZONA

ow that sports betting is effectively legal under federal law as a result of the U.S. Supreme Court’s decision in May, many states are in the process of evaluating whether to legalize sports betting within their borders. Arizona is no exception. Under Arizona law, gambling—including sports betting—is still, for the most part, illegal. Regulated gambling, including gambling “conducted in accordance with a tribal-state gaming compact,” is not illegal, however, so long as the gambling is conducted in accordance with state law.

Since 2002, twenty-two tribes have entered into gaming compacts with Arizona. The compacts give Tribes the exclusive right to operate Class III gaming, which includes blackjack, poker, keno, and most other “Las Vegas Style” games. In exchange for this exclusive right, participating Arizona Tribes contribute a share of their Class III gaming revenue to the state. Notably, sports betting is not listed under the permissible Class III games in the compact, so as of now, neither the Tribes nor anyone else in Arizona can legally operate sports betting.

What needs to happen before sports betting can be conducted legally in Arizona? From the Tribes’ perspective, they need an amendment to their current compacts which will require state agreement and approval from the Secretary of the Interior. For the state to conduct sports betting, state law needs to be changed and the current exclusivity provisions of the tribal gaming compacts need to be considered.

Both the state and some of the Tribes have indicated that they would be open to negotiating this point. After the Court issued its decision in Murphy, Governor Doug Ducey tweeted that the Court’s ruling is “positive news” and that Arizona had been “working on a modernized gaming compact.” Gov. Ducey also stated that Murphy could “give[] Arizona options that could benefit [its] citizens and [its] general fund.”

Even before the Court issued Murphy, Arizona State Senator Dave Farnsworth predicted a high likelihood that a bill legalizing sports betting in Arizona would be passed by the legislature. Another Senator, Sonny Borelli, approved of legalizing sports betting in Arizona to distribute the funds to education and increase teacher pay. The Navajo Nation’s counsel has
stated that the Navajo Nation “is very interested in sports betting and in finding ways to expand their casino offerings.”

Arizona citizens also appear to lean toward supporting sports betting. One Arizona statewide survey found that, of those questioned, 51.5% supported legalizing sports betting, rising to around 67% when the pollers stated that sports betting “could bring millions of dollars to the state that could be directed towards education, road improvements and other important resources.” One report predicted that, if Arizona legalized sports betting, it could recover between $35 million and $178 million in taxes by 2023. But some are skeptical about legalizing sports betting for the purpose of generating “quick revenue.”

The tribal compacts begin expiring in 2022, so it is likely that sports betting will be included in discussions concerning new compacts.

CALIFORNIA

For sports betting to be legal in California, the California legislature and the citizens of California must amend the State Constitution that currently prohibits sports betting in the state.

Currently, the Tribes cannot conduct sports betting at their tribal casinos unless their existing compact is amended or renegotiated to include sports betting as a permissible form of Class III gambling.

If the State of California legalizes sports betting statewide, the existing compacts with the Tribes will likely have to be amended or renegotiated in light of the exclusivity provisions of gaming in tribal casinos.

California Law

The California Constitution states that the “[l]egislature has no power to authorize lotteries, and shall prohibit the sale of lottery tickets in the State.” Similarly, it also declares that the “[l]egislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.”

However, on July 20, 2017, in anticipation of the Supreme Court decision striking down PASPA, California Assemblyman Adam Grey introduced a proposal for an amendment to the California Constitution, which would add the following language: “[n]otwithstanding subdivisions (a) and (c), if the federal Professional and Amateur Sports Protection Act (28 U.S.C. Sec. 3701, et seq.) is amended or repealed to allow sports wagering in California, the Legislature may authorize sports wagering.”

In addition to the California Constitution, the State of California has several provisions of the Penal Code which deal with unlawful gaming in the state. For example, participating in “any bet, bets, wager, wagers, or betting pool or pools made between the person and any other person . . . upon the result . . . of skill, speed, or power of endurance of person or animal” is a punishable infraction under the California Penal Code.

Furthermore, every person who “records, or registers any bet or bets, wager or wagers, upon the result . . . of any trial . . . or contest . . . of skill, speed, or power of endurance of person or animal” shall be punished by fine or imprisonment.

Tribal Compacts

The California Constitution provides that “the Governor is authorized to negotiate and conclude compacts . . . for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian Tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to these compacts.”

Under the Amended and Restated Tribal-State Compact between the State of California and the Viejas Band of Kumeyaay Indi
ans (the “Compact”), the Tribe is given exclusive rights to engage in gaming in the State of California. This exclusivity provision is identical in all of the tribal gaming compacts in the State of California.

The Compact authorizes the Tribe to engage in gaming activities expressly listed in the Compact, but prohibits Class III gaming activities that are not expressly permitted. The Compact authorizes gaming devices, any banking or percentage card game, and the operation of any devices or games authorized under state law to the California State Lottery. However, the Compact limits the Class III gaming allowed in tribal casinos by prohibiting banking and percentage card game, and the operation of any devices or games authorized under state law to the California State Lottery. There is also a prohibition on Class III gaming that is not expressly authorized in the Compact, including sports wagering.

Additionally, the Compact contains a provision that specifies what the Tribe is allowed to do in the event the exclusive rights to gaming devices in tribal casinos is breached. In the event the exclusive right of Indian Tribes to operate gaming devices in California is abrogated by the enactment, amendment, or repeal of a state stature or constitutional provision . . . that gaming devices may lawfully be operated by another person, organization or entity (other than an Indian tribe pursuant to a compact) within California, the Tribe has the right to (i) terminate the Compact and stop operating the gaming devices, or (ii) continue under the terms of the Compact and negotiate reduced rates of revenue sharing with the state.

Public Response

There is already a constitutional amendment working its way through the California legislature and the initial petition paperwork has been filed to get the issue of legal sports betting on the ballot as soon as 2020. While some state legislators pushed to get the issue on the ballot for November of this year, that timeline is likely not feasible. Supporters of legalization cite increased state revenue from an activity which is already occurring rampantly in underground circles.

The Tribes’ responses have not been as positive. The Tribes

On July 20, 2017, in anticipation of the Supreme Court decision striking down PASPA, California Assemblyman Adam Grey introduced a proposal for an amendment to the California Constitution.
believe that the exclusivity provision of the compacts gives them the exclusive rights to conduct sports betting in their casinos on the tribal lands. If the state legalizes sports betting in card clubs and racetracks, the Tribes believe this would violate the exclusivity provisions of the compacts.

The Tribes will likely challenge the proposed Constitutional Amendment, or at least demand to be financially compensated for the alleged breach of the compacts. Although card club and racetrack owners would like to add sports betting to their establishments, they expect the tribal casinos will fight back. As a result, it is possible the State of California may have to either renegotiate the compacts with the Tribes concerning this issue of sports betting and the exclusivity provision, or provide them with financial compensation.

NEW MEXICO

In contrast to the Arizona and California tribal gaming compacts, the New Mexico compacts are exceedingly broad in terms of authorized Class III gaming—allowing Tribes to offer “any or all forms of Class III gaming.” This language has been interpreted as broadly as the plain text suggests—in 2015 the New Mexico Attorney General determined that the intent of the legislature had been to allow tribal casinos to conduct any form of Class III gaming, without exception. “Betting” and “gaming activity” are generally prohibited in New Mexico. These prohibitions cover sports betting, however, they explicitly exempt any betting or gambling “otherwise permitted by law.” New Mexico permits Class III betting made pursuant to Class III compact and some non-tribal licensed gaming, like pari-mutuel betting at racetracks. Thus, it appears that New Mexico Tribes operating casinos are currently legally authorized to offer sports betting pursuant to the Supreme Court decision. The New Mexico Tribes appear to have a quasi-monopoly on sports betting. Under the compact, the Tribes are required to pay a percentage of “net win” to the state (in 2018 these payments were over $17 million). However, the compact contains an “exclusivity clause”—that is, the Tribes are only legally required to continue making payments to the state as long as New Mexico does not legalize general Class III gaming, or expand pre-existing non-tribal Class III gaming. In 2015, the New Mexico Attorney General determined that an expansion of non-tribal Class III gaming rights would violate the compacts and result in loss of revenue payments.

To date, the New Mexico Tribes have been largely silent regarding sports betting. The CEO of the Navajo Nation Gaming Enterprise stated that the Navajo were “definitely interested” in setting up sports betting at their New Mexico casinos. With regards to non-tribal Class III gaming facilities, in May the spokesperson for Sunland Park Racetrack and Casino stated that the park was “excited by the possibilities” of sports betting. Interestingly, the general population seems to favor legalized sports betting. Both major New Mexico newspapers have published opinion articles highly critical of sports gambling, the chairman of the New Mexico Racing Commission has expressed reservation over the idea, and state representative Bill McCamley stated, “we need to have a conversation of how [sports betting] will be done before we move forward with anything.”

All that said, state representative Antonio Maestas announced plans to introduce a sports betting bill in 2019 and gambling research firm Eilers & Krejcik estimates that New Mexico could legalize sports betting within seven years.

Heidi McNeil Staudenmaier is the Partner Coordinator of Native American Law & Gaming Law Services for Snell & Wilmer LLP, where she is based in the firm’s Phoenix, Arizona office. Special thanks to Snell & Wilmer Summer Associates Ian Rafferty Joyce, Jessica D. Kemper and Erin P. Mitchell for their assistance in preparing this article. Heidi is a frequent writer and speaker on Federal Indian law and gaming issues. She can be contacted at hstaudenmaier@slwil.com or 602.382.6366. Heidi represents the Arizona Governor in the pending compact negotiations – the views and opinions set forth in this article are solely her own and do not reflect the opinions and views of the Governor or his staff.

22”Bet” is defined as a “bargain in which the parties agree that, dependent upon chance, one stands to win or lose anything of value specified in the agreement” but does not include business contracts, contests, the state run lottery, or betting otherwise permitted by law. N.M. Stat. Ann. §30-19-1.
23N.M. Stat. Ann. §30-19-1(B)(4); see N.M. Stat. Ann. §60-2E-4 (B) (‘Gaming activity is permitted in New Mexico only if it is conducted in compliance with and pursuant to… a state or federal law’) that expressly permits the activity or exempts it from the application of the state criminal law, or both.
26Compact, Section 11, D(1)(d). Permitted non-tribal Class III gaming includes the state-sponsored lottery, pari-mutuel betting on horse and bicycle racing, operation of gaming machines, and some fundraising by non-profits. Compact, Section 11, D(1)(d).
27Class III A.G. Report, note 29.
32Ochoa, note 28.

INDIAN GAMING LAWYER • AUTUMN 2018 21
Each autumn, International Masters of Gaming Law (IMGL) recognizes outstanding regulators based on stringent standards, including preeminence in the regulatory field and their noteworthy contributions to the overall body of regulatory work.

The regulators are selected from various jurisdictions internationally based on a rigorous nomination and review process with the possibility of a regulator being chosen from each jurisdiction. The categories are Europe, North America, South and Central America, Australasia, Indian country, and Evolving Jurisdictions. A regulator is not necessarily chosen from each category and each year they are selected only if they receive the required nomination and meet the demands of the review procedure.

The specific criteria for the selection process include that the overall body of work as a regulator be exceptional and that the regulator make contributions to the gaming industry as a whole while demonstrating noteworthy achievements in the regulation of industry. The nominee must also provide a stable regulatory environment in the jurisdiction, be identified as a person of high integrity, and demonstrate service to the community.

Through this annual selection process IMGL continues its mission of “advancing gaming law through education” by selecting regulators who reflect a similar mission in their management style while serving as role models in the regulatory environment. This year’s recipients of the award for IMGL Regulator of the Year certainly reflect these characteristics in their professional approach to the task of regulating a challenging and diverse gaming market.

IMGL is proud to announce the 2018 Regulators of the Year:

**Regulator of the Year - Australasia:**
Michael Sarquis, Executive Director, Office of Liquor and Gaming Regulation, Department of Justice and Attorney General, Queensland;

**Regulator of the Year - Americas:**
Sara Gonso Tait, Executive Director of the Indiana Gaming Commission;

**Regulator of the Year - Indian Country:**
Gordon Dickie, Executive Director, Seminole Tribal Gaming Commission;

**Regulator of the Year - Europe:**

There are several special awards for 2018.

**The Outstanding Achievement Award for the Americas** - A. G. Burnett, formerly with the Nevada gaming commission; and

**The Outstanding Achievement Award for Europe** - Joseph Cuschieri, formerly with the Malta regulatory agency.

IMGL has presented the Regulator of the Year awards since 2002. For a complete list of all past recipients, please visit our website at IMGL.org.
In October 2006, Mr. Michael Sarquis held the position of Executive Director of the Queensland Office of Gambling Regulation (QOGR), but was soon appointed Executive Director of the Office of Liquor and Gaming Regulation in July 2008. His responsibilities include managing the gaming and liquor regulatory license and compliance regimes and the Gambling Community Benefit Fund and implementing key elements of the responsible gambling strategy and harm minimization programs. Among the gambling operations regulated by his office are four casinos, an exclusive land-based and online lotteries operator, a sole land-based and online lotteries operator and gaming (or slots) machines which are installed in clubs and pubs throughout Queensland.

In addition to being a current member of the Gambling Community Benefit Fund Committee, he is a member of the Government’s Responsible Gambling Advisory Committee and is a former Vice President of the International Association of Gaming Regulators (IAGR).

Among other areas in gaming, Mr. Sarquis has been involved in the implementation of Australia’s first model for the regulation of online gaming, a regime that resulted in a number of license applications in the late 1990s. It was superseded by Australia’s Interactive Gambling Act that was introduced in 2001 and prevented the provision of many online gaming services to Australians.

Since 2006 his office has overseen considerable changes in gaming and liquor regulation including the merger of the state’s liquor and gaming regulatory regimes, a red tape reduction initiative, expedited online client services, Tackling Alcohol Fueled Violence Strategy, and partnering with other state agencies to procure the development of the $3.6 billion Queen’s Wharf Brisbane integrated resort including the issuance of a casino license.

IMGL President Jamie Nettleton states, “The Queensland regime is recognized globally by regulators as being of the highest standard, particularly in relation to its probity investigations. This is due principally to the efforts of Mike and his team.”

When asked about his favorite position in the gaming industry, Mr. Sarquis states his favorite role was as Executive Director of QOGR where he concentrated on the gambling industry working closely with industry on all regulatory aspects of casino operations, gaming machines, keno, wagering, online gambling, lotteries and charitable and other not-for-profit gaming. This role also led to his appointment to the Gambling Community Benefit Fund, a fund to provide grant funding for worthy projects to the not-for-profit sector, currently providing grants in excess of $54 million per year.

Regarding the roles that best prepared him for a career as a regulator Mr. Sarquis says, ”My project rolls in the licensing of two casinos and in particular the Director, Compliance position. Those roles provided comprehensive exposure to all aspects of a gaming regulators’ responsibilities.”

A meaningful achievement in the industry occurred in 1996 when Mr. Sarquis was part of a small team involved in a major review and restructuring of the gaming machine regulatory arrangements in Queensland. The amendments to the regulatory structure for gaming machines in Queensland included a progressive tax system, transferring ownership from state government to licensed gaming machine sites, increasing the number of machines for hotels and clubs, and increasing the return to player percentages, and changing administrative procedures to ease the regulatory burden.

Responding to a question regarding what Mr. Sarquis considers his greatest challenge as a regulator, he responded, ”In 2008 integrating the liquor and gaming agencies into a functioning cohesive unit and transitioning the agency to be a more client service focused organization and finding the right balance to meet the needs of the community government and industry.”

Mr. Sarquis further states that regulators need to be “agile and responsive to their environment... the need for that agility is even more apparent now with the rate of change accelerating as digital technology impacts gambling products, including a convergence of products and the array of different online and digital products being introduced to the market...”

The speed of change in technology creates a challenge for regulatory standards and taxation models. “For most regulators, their responsibilities extend beyond harm minimization, ensuring the integrity and fairness of games and the probity of those conducting gaming to include ensuring the community, government as well as industry benefit from legal gambling. Consequently it is important that policy and legislation is updated to cater for this quickly changing environment.”

Sharing general advice to attorneys, industry executives, educators and regulators, Mr. Sarquis states, “Organizations such as IMGL are well placed to influence this policy and legislative development.”
Early in her gaming career Sara Gonso Tait accepted a staff position with the Indiana Gaming Commission in 2011 and was promoted to Director of License Control, charged with combating illegal gambling operations. She was later promoted to the agency’s top legal position in 2014, serving as Chief Legal Counsel until her appointment as Executive Director. She is the chief regulator of Indiana’s 13 casinos, an industry that brings in more than 500 million in tax revenue each year to the state. Gaming is Indiana’s fourth largest source of revenue and employs over 12,000 people.

Sara Tait received a Bachelor of Arts degree in psychology from Miami University, Oxford, Ohio, and her law degree from Indiana University Robert H. McKinney School of Law. She is not only an outstanding regulator but also an accomplished athlete, attorney and mother of three children.

Mrs. Tait states, “The General Counsel position unexpectedly became vacant when I was eight months pregnant with twins and the Executive Director position became available less than a year later.” These opportunities came at what appears to be less than ideal times, but she states, “I believe more women should have a seat at the table. To not have pursued these opportunities would have required me to act against my own convictions.” Pursuing these opportunities as a mother of three children under four years of age reflects in her strong conviction.

As general counsel Sara Tait was tasked with implementing a “cut red tape” initiative and making substantial revisions to the rules. She states, “I became passionate about eliminating requirements that serve neither the IGC nor the gaming industry.” She considers one achievement to be maintaining a strong regulatory jurisdiction while aggressively initiating discussions with the industry about reform. Sara Tait states that she was challenged by new initiatives to contribute to the economic development of Indiana gaming; gaming in her state is a huge driver of revenue and employment, particularly in economically challenged areas where manufacturing has declined. “Providing stable and adaptive regulatory oversight contributes to the success of the industry and our state.”

One of her greatest challenges is being responsible for administering and creating a regulatory scheme and often creating something for which there is no model. Of her management style, Sara Tait states, “I am approachable manager with an open-door policy. I try to foster teamwork through a collegial and collaborative environment.”

Discussing challenges to regulators in general, Sara Tait says, “Open communication with stakeholders is key to resolving issues whether from casino operators to legislators to agency employees.” Sharing advice to regulators and those they regulate, she believes building relationships in other jurisdictions is very important to the continued success and evolution of the regulatory environment. “We will be much more efficient and effective if we learn from each other’s mistakes and successes.”

When sharing an amusing anecdote from her career as a regulator she says that her predecessors were all male “baby boomers” so it was a major change for a young female millennial to become the head gaming regulator.

Responding to a question about advice she would share with readers of IMGL publications, Sara Tait says that working together has to include both transparency and the ability to put yourselves in each other’s shoes. “While the state and the casinos act as partners on many mutually beneficial issues, the primary job of a regulator is to protect the integrity of the industry and promote the public’s confidence in it.” She further states that many people—especially women—act to their own detriment because they believe it’s a weakness to ask for help. She readily reveals that her help comes from a very supportive husband and family who assist with her three children—all under the age of four—and her top-notch long-term professional staff.

Sara Tait’s management style provides predictability and continuity, both admirable objectives. Tom Auriemma, a gaming consultant states, “Indiana should be proud of Sara’s accomplishments. She represents the first female casino regulator in North America that IMGL has recognized for this prestigious honor.”
Gordon Dickie’s career in gaming began in September 1980 when he joined the Nevada Gaming Control Board in Las Vegas. Prior to that, he was a San Diego police officer at the age of twenty-two. He states, “I loved the job and the officers I was lucky enough to work around.” After leaving the San Diego Police Department as a result of an injury, Mr. Dickie was asked if he would consider working with the Nevada Gaming Control Board to which he stated, “I’m not into fish and game.”

While at the Nevada Gaming Control Board, Mr. Dickie worked in an undercover unit and in the special investigations and intelligence unit. He was later recruited by Hilton Hotels Corporation to help start up their corporate security division where he learned about casino operations, surveillance, F & B, marketing, purchasing and entertainment. After eight years with Hilton, he worked various positions in the industry before joining Harrah’s in 1996 as Director of Security and Surveillance.

He next moved to Oregon to work in management at a tribal casino and later to New Mexico to work as General Manager with another tribe and then returned to California as a regulator with the Cabazon Tribe. In 2002, he returned to Las Vegas as Vice President of Compliance and Government Affairs for Shuffle Master.

Later, in 2006 Mr. Dickie was approached to join Cadillac Jack and to assist with licensing in Pennsylvania. In researching this offer, Mr. Dickie discovered through rumor and tabloids that Russian ownership was allegedly associated with Adnan Khashoggi, the arms dealer and fixer, and Bin Laden. Mr. Dickie immediately contacted his friend and former Gaming Control Board agent with expertise and a law degree, John Maloney. Mr. Dickie states, “Together John and I held the compliance and licensing in place to keep Cadillac Jack alive until they sold the company to Amaya.”

Following this experience, in September 2014 he accepted a position and soon became Executive Director of the Seminole Tribal Gaming Commission in 2015.

Mr. Dickie has without a doubt a varied and successful gaming regulatory background. He says the position that best prepared him to be a regulator was his law enforcement training and experience as a police officer. “I have been involved in some very intriguing investigations, arrests, and interviews of very important gaming names but at the end of the day, I must say being able to mentor tribal and non-tribal members on how to be the best regulator is most meaningful.”

Mr. Dickie further says that his greatest challenge as a regulator is protecting the assets of the tribal nation that is dependent on the Tribal Gaming Commission to ensure that those assets are protected for generations to come.

Mr. Dickie’s advice to readers of IMGL publications is to “ensure the integrity of gaming through the use of accounting, administrative and internal controls to assist regulators and casinos in monitoring gaming operations and the licensing process to help identify and deter unsavory opportunists and organized crime.” Kevin Quigley of IMGL states of Mr. Gordon Dickie, “Gordon’s broad-based experience in Indian gaming regulation and compliance, and along with his vast experience with commercial gaming interests and the Nevada gaming industry over a three decade career dedicated to compliance and gaming regulation enforcement, has allowed him to develop a deep understanding of many different regulatory issues and practices. He has shared this deep body of expertise with many in actively promoting best practices for tribal regulators countrywide.”

Finally, when notified of the IMGL Regulator of the Year Award, Mr. Dickie eloquently responded, “I have spent the past 39 years in the casino industry, half of it as a regulator and or compliance executive both in state and tribal jurisdictions. I have been mentored by the best in the industry and counseled by some of the best gaming lawyers in your organization. My law enforcement career, my regulator career, my compliance career, my casino operations career, manufacturing career have finally culminated to this great honor. I absolutely and humbly accept this award.”

“I have been involved in some very intriguing investigations, arrest, and interviews of very important gaming names but at the end of the day, I must say being able to mentor tribal and non-tribal members on how to be the best regulator is most meaningful.”
Mr. Juan Espinosa Garcia was appointed in December 2016 by Royal Decree as Director-General for the Regulation of Gambling. Prior to his term as Director General, Mr. Espinosa served as Deputy Director General for Gambling Regulation. In addition, he also has extensive professional practice in the field of design and analysis of regulation for all sectors of economic activity. He holds a degree in law from the University of Grenada, a Master of Arts in Economics for Competition Law from the University of London – Kings College, and a Master of Social Sciences in European and International Politics from the University of Edinburgh.

Early in his career as Deputy Director of Regulatory Affairs, Mr. Juan Espinosa worked to ensure the viability of the second licensing process in Spain, introducing new license operators to the market. He further obtained approval of two regulations for online slots and betting exchange that have significantly increased the size of the Spanish market since 2015. Among other accomplishments, Mr. Espinosa also launched the licensing process for online operators and achieved a reduction in the gambling tax to not only enable operators to have better economic results in Spain but also to offer better odds and prices to players.

Under his leadership DGOJ’s website offers total transparency including criteria on controversial aspects and decisions on licensed operators. In addition, under his leadership Spain has approved agreements on shared liquidity with Portugal, France, and Italy for poker products. Mr. Espinosa is also working with regulators from Latin America where the Spanish regulatory model is a main reference. IMGL member Santiago Asensi, Managing Partner of Asensi Abogados states, “I can confirm that in Columbia, the first country in the region that has fully regulated gambling, as well as in Peru, the first draft of the Gaming Act - which is not public yet - is full of similarities with the Spanish regulation.”

Commenting on his achievements as a regulator Mr. Espinosa says, “For me, the biggest achievement has been to lead the development and consolidation of online gaming and gambling in Spain via regulation witnessing the market consolidate from €229 million in 2013 to around 700 million in GGR presumably in 2018, whilst at the same time keeping it a largely socially sustainable industry, with prevalence rates being maintained in the range of 0.3 to 0.5% according to different studies.”

Speaking of his greatest challenge as a regulator, he refers to running the whole organization with public interest at the forefront “but at the same time a business-like mind set in terms of priorities, efficiency and efficacy…”. He also refers to managing dichotomies in regulation, the public versus private dimension, the monopoly versus the competitive market, the land base versus remote, regulation versus innovation, market versus protection of players and society itself. He continues stating that bridging the gap between what best serves the purpose of public interest and how public stakeholders and society perceive gambling is not always easy and gambling regulators find themselves in that position every so often.

He refers to two main challenges that regulators deal with: first, how to strike a balance between allowing the activity and protecting society sufficiently, and second, technology and the risk of regulation arriving too late only to become obsolete soon thereafter... There is the challenge of making technology better to protect players and better serve the public interest. “A good example is how to improve standards in terms of responsible gambling or fraud via artificial intelligence and sophisticated data management.”

Discussing his advice to regulators he states: leave preconceptions and biases aside (be pragmatic); develop evidence-based approaches to decide regulatory outcomes; and do not try to reinvent the wheel but fearlessly look at what is being done elsewhere.

As a final comment to attorneys, industry executives, educators and regulators, all readers of IMGL publications, he states, “Please be sure that whatever the responsibilities, scope and duties – whether to shareholders or clients, – to remember that we are all part of a sensitive industry and how professional and caring we are does have a bearing on the whole phenomenon of gaming and gambling.”

“Please be sure that whatever the responsibilities, scope and duties – whether to shareholders or clients, – to remember that we are all part of a sensitive industry and how professional and caring we are does have a bearing on the whole phenomenon of gaming and gambling.”

REGULATOR OF THE YEAR - EUROPE
JUAN ESPINOSA GARCIA
Director General for Gambling Regulation, Ministry of Finance, Government of Spain

26 INDIAN GAMING LAWYER • AUTUMN 2018
G. Burnett’s career in gaming started in 1998 when he worked as an agent for the Nevada Gaming Control Board (GCB). His early career also included a position as Senior Deputy Attorney General and Deputy Chief of Corporate Securities of the Gaming Control Board. He also worked with various state agencies including the Nevada Gaming Commission and the Nevada Commission on Sports.

He was appointed as a member of the board in 2011 and shortly thereafter was appointed as Chairman of the Board in 2012. He served with the GCB until December 2017. During his service on the GCB, Mr. Burnett was the state representative before the Nevada legislature on gaming matters and was responsible for negotiating sovereign tribal compacts. Among the many issues before the board during his service were growth of the Esports industry, mobile wagering, skill-based gaming, legalization of medical and then recreational marijuana, and daily fantasy sports.

Regarding the tragic events of October 1, 2017, IMGL member Stephen Martino states, “He was consistently available and in constant communication with MGM resorts as well as federal, state and local law enforcement. I’m confident in saying that no gaming regulator has ever faced a tragic incident like this.” Many of A.G.’s decisions during this time were “focused on ensuring the thoroughness of the investigation and the ongoing stability of the property for its guests and employees.”

Discussing his greatest achievement as a regulator, Mr. Burnett states, “I am proud that as an agency we were able to constantly move and shift according to the demands of the gaming environment.” Under his leadership the board confronted new issues in technology and investigative issues directly: “We were able to promulgate regulatory changes that kept Nevada at the forefront of gaming regulation.”

Mr. Burnett says that the greatest challenge for a board chairman is managing time and people and keeping up with the constant barrage of information. He managed six divisions, 400 employees and 3000 gaming licenses. “Time management and information management are critical to stay in front of complex issues.” Mr. Burnett further states, “Staying ahead but keeping your cool is a great challenge. There will always be challenges and Mr. Burnett states that the agency is working with multi-billion dollar corporations and dealing with new forms of technology and new forms of financing. “It is important to be educated on all issues and to research as much as you can.” When pressed to give advice to other regulators and those they regulate, Mr. Burnett said, “Be fair. Be impartial. Study the issues and know the law. Stand your ground and do what is right.”

Sharing an anecdote from his time as director, he recalls a licensing hearing for an individual that did not go well for the individual. “He was very upset and he turned up in front of the office later with a sign in protest and yelled, ‘down with A.G. Burnett and all his minions.’ I remember laughing thinking, ‘I have minions’?”

Finally sharing advice to attorneys, industry executives, educators and regulators, Mr. Burnett’s response appears to be his personal motto; “Be honest. Be straight up and don’t hold back. Don’t play games. Any problem can be fixed. Just do it openly and honestly. Confront everything head on and don’t shirk your duties.”

Mr. Cuschieri’s mission was to transform the authority, set a new direction and modernize gaming regulations and laws. He states, “Continuous improvement in the effectiveness of the regulator’s supervisory processes is key to minimize the level of risk exposure and advance consumer protection. Reputational risk is key for any regulator, and it needs to be protected through the integrity and the quality of governance and oversight.” Among the areas of focus for Mr. Cuschieri were regulated skill games, particularly fantasy sports, blockchain technology and crypto currencies, risk management and governance. Use of those initiatives was developed to address anti-money laundering including guidelines for the future.

During Mr. Cuschieri’s tenure as Executive Chairman, the Malta Gaming Authority’s focus on reforming the gaming sector included legislation which led to the enactment of the new Gaming Act which came into force in August 2018.

Mr. Cuschieri states, “The greatest challenge to regulators is ensuring a high level of consumer protection and AML supervision without stifling innovation and sectoral investment in technology and user experience.” When asked about his advice to regulators and those they regulate, Mr. Cuschieri states that there should be a focus on “evidence-based regulation” to ensure better quality in decision making and policy outcomes. “The regulated, on the other hand, need to play their part by investing more in self-regulation and being more transparent with regulators to ensure a higher level of trust and integrity in the entire supply chain within the gaming ecosystem.”

James Scicluna, an IMGL member who practices in Malta states, “Joe is regarded by those who have had professional dealings as a person of upmost integrity, demanding but fair, driven yet measured in his approach, a person with a private sector drive, political astuteness and a keen awareness of his responsibilities as a regulator.”

OUTSTANDING ACHIEVEMENT AWARD

JOSEPH CUSCHIERI

Malta

In 2013, Joseph Cuschieri was appointed Executive Chairman of the Malta Gaming Authority. Prior to that appointment he served in many executive positions in the private and public sector. Mr. Cuschieri has recently been appointed and currently serves as Chief Executive Officer of the Malta Financial Services Authority.

Mr. Cuschieri is a certified public accountant by profession, holding a Master of Business Administration degree and an Advanced Diploma in Management Accounting. Mr. Cuschieri also served as a member of the block chain task force where he assisted in developing a new regulatory framework for virtual currencies and distributed ledger technology.

When Joseph Cuschieri joined the Malta Gaming Authority in 2013, gaming in Malta was a growing industry with a need for modern and updated laws and regulations to replace the regulations adopted over ten years previously. Many developments had occurred in gaming technology markets and consumer behavior during that time, particularly in online gaming. According to one gaming attorney who works in Malta, there was a “lack of noteworthy judicial precedent as well as the lack of a coherent set of written and publicly available policies.” Presently Malta has experienced considerable success in the international remote gambling market. During his tenure, Mr. Cuschieri encouraged healthy competition and laws which set best practice standards that would work into the future embracing technology.

Mr. Cuschieri’s mission was to transform the authority, set a new direction and modernize gaming regulations and laws. He states, “Continuous improvement in the effectiveness of the regulator’s supervisory processes is key to minimize the level of risk exposure and advance consumer protection. Reputational risk is key for any regulator, and it needs to be protected through the integrity and the quality of governance and oversight.” Among the areas of focus for Mr. Cuschieri were regulated skill games, particularly fantasy sports, blockchain technology and crypto currencies, risk management and governance. Use of those initiatives was developed to address anti-money laundering including guidelines for the future.

During Mr. Cuschieri’s tenure as Executive Chairman, the Malta Gaming Authority’s focus on reforming the gaming sector included legislation which led to the enactment of the new Gaming Act which came into force in August 2018.

Mr. Cuschieri states, “The greatest challenge to regulators is ensuring a high level of consumer protection and AML supervision without stifling innovation and sectoral investment in technology and user experience.” When asked about his advice to regulators and those they regulate, Mr. Cuschieri states that there should be a focus on “evidence-based regulation” to ensure better quality in decision making and policy outcomes. “The regulated, on the other hand, need to play their part by investing more in self-regulation and being more transparent with regulators to ensure a higher level of trust and integrity in the entire supply chain within the gaming ecosystem.”

James Scicluna, an IMGL member who practices in Malta states, “Joe is regarded by those who have had professional dealings as a person of upmost integrity, demanding but fair, driven yet measured in his approach, a person with a private sector drive, political astuteness and a keen awareness of his responsibilities as a regulator.”
LOOKING AHEAD

2018-2019 SCHEDULE

SEPTEMBER 12, 2018
IMGL Masterclass® at EASG Conference
Valetta, Malta

SEPTEMBER 17-20, 2018
IMGL Masterclass® at International Association of Gaming Regulators (IAGR)
Copenhagen, Denmark

SEPTEMBER 20, 2018
IMGL Masterclass® at KPMG e-Summit
Isle of Man

SEPTEMBER 25-26, 2018
IMGL Masterclass® at Central and Eastern European Gaming Conference
Budapest, Hungary

OCTOBER 10, 2018
IMGL Masterclass® at G2E
Las Vegas, Nevada

OCTOBER 16-17, 2018
IMGL Masterclass® at European Gaming Congress
Ljubljana

For additional information on any of these upcoming Masterclasses®, visit the IMGL website or contact Brien Van Dyke at brien@imgl.org.

IMGL 2019 Spring Conference
MARCH 27-29, 2019 • NEW ORLEANS, LOUISIANA
WINDSOR COURT HOTEL

IMGL 2019 Autumn Conference
SEPTEMBER 11-13, 2019 • MUNICH, GERMANY
ROCCO FORTE THE CHARLES HOTEL

Information on both of these events will be available soon. Visit the IMGL website for complete conference information. For information on sponsorships or speaker opportunities for IMGL conferences, contact Morten Ronde at morten@imgl.org.

For additional information on any upcoming events, contact Brien Van Dyke at brien@imgl.org.

VISIT IMGL ONLINE AT IMGL.ORG