



WEDNESDAY, DECEMBER 9, 2015

Serious Realities in Fantasy Sports

MODERATOR:

Hai Ng, Partner, Neomancer LLC

SPEAKERS:

John Ford: CEO, BAM Software & Services LLC

Raymond Lesniak: Senator, New Jersey (Via Skype)

Kate Lowenhar-Fisher: Gaming Attorney, Dickinson Wright's, Las Vegas

Jack McGrail: Executive Director, Oregon Racing Commission

Ms. Wendy Davis: Okay, before we start our panel we just want to get the results of the idea factory, which was the last presentation. We had a very close 175 to 165 for the first and second. The first place goes to John Moss's idea on drones.

[Applause]

Ms. Wendy Davis: Thanks to International Sound we will donate \$1,000.00 to their charity Heart. Second place, but not by much, was Dan Fick's presentation.

[Applause]

Ms. Wendy Davis: We thank everyone that participated in that.

Okay, so we're ready to go with serious realities in fantasy sports.

Before we do that, real quick, we just want to thank our sponsors, Prairie Meadows for our beverage break, and this session is sponsored by Ann West Entertainment.

I will turn it right over to our moderator Hai Ng.

Mr. Hai Ng: Hi there, hi everybody.

Thanks for joining us in this session.

First, I'd like to introduce, all the way from New Jersey, Senator Raymond Lesniak, and he's joining us on Skye today.

[Applause]

Senator Raymond Lesniak: Yay.

Mr. Hai Ng: In person here, we have Doug, he's operating the Skype. He's there. Then we have, on the rest of the panel, let's start from all the way on the other end we have Jack McGrail, executive director Oregon Racing Commission. Right next to him we have Kate Lowenhar-Fisher. I got that right, right?

Ms. Kate Lowenhar-Fisher: Yeah.

Mr. Hai Ng: She's a gaming attorney with Dixon Wright.

Next to me was one of our judges today, John Ford, CEO of Bam Software and Services.

Since we have the Senator with us, we'll start with you first.

I know your time is valuable.

Where is New Jersey with fantasy sports right now, especially daily fantasy?

Senator Raymond Lesniak: First of all, my time is no less — my time is no less valuable than anyone else's here, so let's just get this right, at least from my opinion.

We're in limbo on fantasy sports because of the fact that we're in the litigation on sports betting. Indeed, let me give you the scoop.

We just heard today that on February 17th, the Third Circuit Court of Appeals will hear our entire on block on the appeal of my legislation that basically removes all regulations on sports betting at our casinos and at our racetracks.

If you're not familiar with it, the three judge panel, judge Trump Berry — you know the name Trump, right?

She actually is a smart woman, by the way, although she did rule against us.

Judge Rendell and Judge Fuentes voted two to one denying our effort to comply with PAPSA by doing away with all regulations with regard to sports betting.

Surprising to some, the entire bench on block reversed and vacated that decision and is hearing it in its entirety on February 17th.

Now I'm not an appellate lawyer in the federal courts, so I don't know the statistics in terms of what's the probability once they vacate decisions of panels in terms of reversing that decision, but I am told by folks who do practice this law that the odds are in our favor that they will uphold my law and that we will be able to start sports betting in New Jersey.

Not in time for the Super Bowl, unfortunately, not in time for March Madness, but certainly by the end of June. That's going to obviously be the straw that breaks the camel's back in terms of sports betting.

Then it's going to be wild, Wild West, and we'll see what happens in Congress as that goes forward.

That's not your question.

Mr. Hai Ng: I live in New Jersey, so I'm looking forward to that.

Senator Raymond Lesniak: Okay.

Fantastic.

There's a reason why I said that and why we are in limbo in terms of regulating fantasy sports betting, which I believe we should.

I believe we will.

I believe there are too many consumer protection concerns to leave unregulated without having a license and regulations.

However, we're not touching that.

The reason why is because PAPSA, we believe, and we have two judges appellate judges on our side, allows us to have sports betting as long as we don't regulate it.

Now the leagues and the justice department in their briefs up to now and in the oral argument have said that fantasy sports betting is not sports betting.

They never dealt with the issue of daily fantasy sports betting, which could be a horse of a different color.

It's not worth us to take the chance of going forward with regulating it now only for the court to say well, this is an issue we haven't decided before.

We're gonna take it upon ourselves. *Sua sponte* as we say in our profession, we're gonna take it upon ourselves and to say that indeed, this is sports betting.

If you regulate it, you can't have it.

Right now New Jersey is punting on the issue, although I will tell you our opinion across the board is that for consumer protection, it should be licensed and regulated.

Mr. Hai Ng: That's actually a great ending for you — great answer, because it's a great opportunity for me to segue into this question that I was going to ask the panel.

I would assume what you had said before, you don't see season-long fantasy as equal to daily fantasy.

Is it a different game for you, do you think?

Or is it the same?

Or you're punting the question?

Senator Raymond Lesniak: Well, I mean it certainly is more intense, and certainly the operators of it think it's a different game, because it's fairly putting a lot of money behind advertising it.

It gets thrown in our faces on every single — and that's what brought it to everybody's attention.

You all know, fantasy sports betting has been going on for quite a while.

Once it started getting advertised on the air, people started taking notice, and then of course with the scandals that came along later on it got folks like me and regulators involved.

Whether it's legally the same or not the same, it certainly takes on a different importance in the views of policy makers, because of the advertising and the scandal that erupted.

It got our attention, whether it's the same or not the same.

Mr. Hai Ng: Great, what about a panelist?

What do you guys think?

One word answer, yes, no.

Daily fantasy equals fantasy?

Jack?

Mr. Jack McGrail: No.

Mr. Hai Ng: Kate?

Ms. Kate Lowenhar-Fisher: Depends.

[Laughter]

Mr. Hai Ng: That's underwear. John.

Mr. John Ford: From my perspective, and I think this was a difficult issue for the New York attorney general in the recent hearing and the seeking of preliminary injunction is that the same game with the same rules that goes for one day, versus goes for a season long, one could argue which requires more skill, and which involves a greater degree of chance.

I happen to think that there's more skill in daily than in season-long, because less factors are subject to chance.

I know when I'm putting in my daily entry contest entries on 1:00 p.m. on a Sunday, I know who's not injured and I know who's injured.

If I'm playing a season-long game and I'm picking my team at the pre-season, I have no idea who's gonna get injured before a game or not.

In some respects, daily takes away some of the considerations for chance that are in season-long.

I think this was a difficult question that the New York AG's office had in the hearing a couple weeks ago, is that everybody wants to say that season-long is fine because that's the politically correct thing to do.

No one wants to be — no politician, no regulator wants to stand up there and say we need to do away with season-long fantasy.

They'd have a riot on their hands.

Daily, they think that's a lower hanging fruit, so they think they can have an impact on daily.

Logically, it's just specious to try to make it different.

Mr. Hai Ng: Here's the next question.

Everybody's been asking this.

Gambling or not gambling?

John.

Mr. John Ford: I'll start.

Mr. Hai Ng: That's one word, just gambling or non-gambling.

Mr. John Ford: Well, of course it's not.

Of course it's not. Of course it's not.

Ms. Kate Lowenhar-Fisher: Of course it is.

Mr. Hai Ng: There you go, Jack.

Mr. John Ford: But this — I'm sorry —

Mr. Jack McGrail: Certainly under Oregon statute it's gambling.

Mr. John Ford: Okay, so —

Mr. Hai Ng: Senator, in New Jersey statute with daily fantasy or fantasy be considered gambling?

Senator Raymond Lesniak: New Jersey statute. I'd have to think about that.

Mr. John Ford: Well, the Division of Gaming Enforcement has already concluded that it's not gambling.

In New Jersey, right?

Senator Raymond Lesniak: Okay.

That's correct, but I haven't given it a lot of thought, as I said, because my focus is on our appeal, and we're really not doing anything until that.

Mr. Jack McGrail: One fight at a time.

Mr. John Ford: It is the Division of Gaming Enforcement.

It's the body that regulates casino wagering in New Jersey.

Senator Raymond Lesniak: Right.

Mr. John Ford: I think in answer to that question, you can't answer that question with a yes or no.

I agree with Kate that the question in Nevada is more likely to conclude that it's gambling, because Nevada defines gambling different from everybody else in the world.

In their analysis, they didn't look at whether it's skill or chance, because they don't care.

Because under their statute it doesn't matter.

They regulate prop bets.

The idea that most state laws are dependant upon the outcome of a sporting event in order to be gambling, in Nevada they regulate prop bets.

Who's gonna hit the next football?

In Nevada the issue of whether or not fantasy falls under a game to be regulated is an easier question.

They didn't find that it was illegal. What they concluded is it's a regulated activity.

Ms. Kate Lowenhar-Fisher: Right.

What our Gaming Control Board or the attorney general in advising the Gaming Control Board, what they concluded was it's sports betting under our existing laws.

Ipsa facto it's gambling.

We don't have to get to the skill versus chance analysis because it doesn't matter.

Much like people can argue until they're blue in the face whether a skill poker player over time is going to do better than an unskilled poker player.

It doesn't matter in Nevada because their statute defines poker as a gambling game.

Our attorney general went further that Nevada's actually a predominance test jurisdiction when it comes to determining whether a game is one of skill or chance, but that shows up only in our lottery statute.

Our attorney general concluded, under our law, the skill versus chance analysis only matters if you're evaluating something under our lottery statute.

In any event, daily fantasy sports — and that is all we've analyzed, daily fantasy sports is sports betting.

As such, as a product that may be offered by a licensed sports pool in Nevada.

It's a gambling game.

Mr. John Ford: Under that theory they should conclude that season-long is a gambling game, too, to be regulated in Nevada. Politically they haven't done that.

They've just done what the — they've just dealt with the DFS.

Mr. Hai Ng: Since we're talking about that difference, one of the biggest points that every DFS site that's out there right now, daily fantasy sports site that's out there right now is basically claiming they're 100 percent legal because of the carve out in UIGEA, the Unlawful Internet Enforcement Gaming Act — or Internet Gaming Enforcement Act.

Now, there's another carve out in there which is parimutuel racing.

Jack, do you see this as marriage made in heaven, fantasy sports and racing?

Mr. Jack McGrail: Well, I think there are a number of issues that arise right off the top, and one is whether it's legal, and in the state that I'm in, whether it's a legal enterprise at all.

If you can get past that significant hurdle, you have another hurdle with regards to the regulatory side, and that is does the existing statutory framework allow the racing commission it's very limiting in some cases.

The authority in Oregon, for instance, says that the commission shall license, regulate and supervise all race meets he to regulate that activity?

Within the framework of an enabling statute, it tells you what you can't do, and it's very limiting in some cases.

The authority in Oregon, for instance, says that the commission shall license, regulate and supervise all race meets held.

Now I would love to be able to also license, regulate and otherwise oversee fantasy sports betting, because I think it does fit in with the framework of what a racing commission does, specifically what the Oregon Racing Commission does.

I think we are uniquely positioned to regulate that activity.

You go through the list of ADWs that we have registered, those licensees submit to a significant amount of oversight, including regular audits, age and geolocation verification, limits on the number — the funding of the accounts they're required to follow in large measure, anyway.

Consumer guidelines that are outlined by the National Council on Problem Gaming, and I can go through a whole list, but there were probably 17 points that we, as a regulator, looked to on the ADW side.

There is a significant difference between the ADW authorizing or enabling statute and the racing statute.

Those are the impediments that I see.

I would love to have the authority to do it, but I'm not the AG.

Mr. Hai Ng: We're gonna talk about PASPA so just make sure everybody in the audience knows what PASPA is.

Yes?

Everybody knows?

Show of hands?

You know what PASPA is?

That's all?

That's pretty bad. Okay.

Mr. John Ford: It's not bad, it's a learning opportunity.

Ms. Kate Lowenhar-Fisher: It's a strange law.

Mr. Hai Ng: Senator?

Senator Raymond Lesniak: Can I just add in the issue about the racetracks and fantasy sports?

Mr. Hai Ng: Absolutely.

Absolutely, please.

Senator Raymond Lesniak: From the public policy perspective.

Because I actually wrote a blog maybe five years ago, because we all know that the horseracing industry is waning, and it's hurting badly.

It's significant in New Jersey.

We actually have more acres of horse farms than any other state in the nation.

We're losing revenues, we're losing jobs there, and the industry is dying out.

You go to Monmouth Racetrack and they're all old folks.

You don't see any young folks betting on horses anymore.

I likened it to what — I'm a skier.

When the skiing industry was dying, until snowboarding came along with generation X, now it's thriving.

My thought is if we could get younger generations who are really attracted to sports betting into the racetracks that that would help that industry survive as well.

Indeed, Monmouth Racetrack has been planning — I'm not quite sure, and they're working with William Hill.

I'm not quite sure why they haven't launched it yet.

They may be waiting on the Third Circuit's decision, but to have a sports betting at the racetracks where people can actually come there and have a drink and bring some life into the horseracing industry.

I do think that absent us getting sports betting, that fantasy sports certainly can be a boost from the public policy perspective to our racing industry.

Mr. Hai Ng: Exactly.

Actually, you probably answered a question I was going to ask you.

I was just checking that everybody knew what PASPA is.

PASPA is Professional Amateur Sports Protection Act, and it basically awards only Nevada and one more state, right?

Delaware?

Ms. Kate Lowenhar-Fisher: Four.

Mr. Hai Ng: No, just four states.

Ms. Kate Lowenhar-Fisher: Nevada's got the only—

Mr. Hai Ng: Yeah.

One of the things I was gonna bring up was about two years ago when New Jersey first started to get PASPA and to allow sports betting, the DGE actually issued I

guess it was an exemption to allow casinos to offer fantasy sports for that one year, and there was an automatic sundown.

Do you see something like this happening at some point, Senator, for fantasy sports specifically, again, being offered to tracks and casinos in Atlantic City?

Senator Raymond Lesniak: Again, I think someone gave this opinion.

I don't think they need authorization.

I think they can go ahead and — actually, there has been a battle with the racing commission on that.

I think they can start without any authorization.

Mr. Hai Ng: Great.

That would be my opinion.

Monmouth Racetrack is actually planning on that, as I said, as we speak.

Kate, from a legal perspective, how do you see in terms of crossroads of daily fantasy and the racing from a Nevada perspective?

Is that even possible for something like that to happen, to turn DFS unto a parimutuel contest?

Ms. Kate Lowenhar-Fisher: Well, I think it's possible in Nevada.

We allow for parimutuel sports betting.

We have those regulations. Parimutuel's not just racing.

The question is we have 2.8 million people in Nevada. How do we get to everybody else and create that kind of handle?

The only thing I wanted to back up on a little bit is the UIGEA exception.

I'm just always inclined to frankly clarify what I think, and I think a lot of people think, is a misconception or misunderstanding or certainly a misreporting of that exception, or what I tend to call so-called exception.

The Unlawful Internet Gambling Enforcement Act is a financial transfer act, is what it is.

What it basically does is it prohibits anyone engaged in the business of unlawful internet gambling as defined by other laws from transferring funds in furtherance of that business.

To put it another way, it's an added charge statute.

That's how I look at it.

What I mean by that is you must be engaged in unlawful internet gambling as defined by other laws before you could confront an added charge for transferring funds in furtherance of that business.

That exception, that if you are transferring funds in connection with fantasy sports that meet the criteria, then you're not facing that added charge under UIGEA.

UIGEA explicitly doesn't modify, amend, undo change any other existing state or federal law, and it doesn't transform an unlawful activity into a lawful activity.

Mr. John Ford: No, but —

Ms. Kate Lowenhar-Fisher: Okay.

Mr. John Ford: Okay, so the but is, is that under the law, the only thing that you can't transfer money to is an illegal online gambling enterprise, right?

Ms. Kate Lowenhar-Fisher: Mm-hmm.

Mr. John Ford: If that was completely correct, then there would be no need for an exception for parimutuel wagering because it's not a transfer of funds to an illegal gambling operation.

We're all legal and we're licensed and regulated.

To make it clear, and this was lobbied hard by the AHC, to make it clear under UIGEA that it was not affecting parimutuels at all.

There was an exemption built in for parimutuel.

We already have the Interstate Horseracing Act.

We're already regulated state by state on the horseracing side.

We didn't really need the exception.

To make it crystal clear that this was a legal activity for parimutuel wagering, there is an exemption built into the definition of a better wager, that a better wager is not a parimutuel wager made in accordance with state law.

I think the same argument could be made for fantasy, is that the exemption is more than just — we're not describing it as a — it shouldn't be construed as an illegal gambling operation, what it is, is it is defined as not a bet or wager if you

follow these requirements, price set in advance, a fixed number of people, outcome determined by the skill of the person.

Those requirements, I understand your argument, but there's a little bit more to UIGEA of giving a little safe harbor for those activities.

I know when that got passed with the parimutuel exemption parimutuel, this industry, our industry felt a very big sigh of relief that that exemption was in there, even though we could've argued oh, that whole thing doesn't apply to us because we're not an illegal online gambling operator.

There is a difference.

Ms. Kate Lowenhar-Fisher: Yeah, and when the Wire Act was interpreted in 2011 to apply only to sports, I think it also relieved some tension with the Interstate Horseracing Act, which people always argued, of course, came much later, et cetera, and the Wire —

I thoroughly understand and appreciate your argument.

Mr. Hai Ng: If we look at the current situation now, you almost see Nevada has already decided to license and regulate.

There's news today that New York is probably going to go towards the license and regulate.

In fact, a lot of states are looking at that as opposed to an outright ban and making it illegal.

If we look at a future where there is a potential for this activity to be totally legal, how can racing benefit, and can racing benefit from a fantasy product? John?

Senator Raymond Lesniak: I thought I already answer —

Mr. Hai Ng: Oh, senator?

Senator Raymond Lesniak: Yeah, I thought I already answered that.

I think that will give a boost, bring younger — I mean just the atmosphere at racetracks that I've seen.

By the way, I used to go to racetracks.

My dad was a big horseplayer.

He would take the train from my hometown in Elizabeth to Monmouth Racetrack with \$40.00.

He would bet \$20.00 to win on the horse in the first race and \$20.00 double, and if the horse in the first race lost, he'd go back to the train and wait for the rest of the races, because he didn't have any money to bet.

If the horse in the first race won he'd have a great day.

I also used to be able to go right across the street to our local grocery store to place a bet on anything.

[Laughter]

Mr. Hai Ng: We won't repeat that.

Senator Raymond Lesniak: That's not the long time past on that one.

I am from New Jersey, have a problem with that?

[Laughter]

Mr. John Ford: I lived, for a couple years, Senator, in New Jersey as well.

Ms. Kate Lowenhar-Fisher: I'm from Exit Four.

Mr. John Ford: There you go.

Senator Raymond Lesniak: It can bring younger folks into the — I'm not familiar with other racing in other states, but I know in New Jersey, we're trying to bring other attractions into racing.

Again, for younger folks, concerts, other type of family activities.

Anything that I think brings younger folks, families, younger folks interest in sports into the racetracks will help the industry overall.

In my opinion, I think the industry can do very well as a niche.

People still love the big races, just like they love the big fights.

We had the Haskell with our Triple Crown winner, American Pharoah.

You couldn't get a ticket.

I believe ultimately — I know this isn't part of the question, but ultimately the racing industry is going to be best served by having these elite meets with the big events.

It doesn't help the everyday horsing industry, or horse farms.

To supplement that, it's going to have to have an additional source of revenue.

I do believe that sports betting, certainly, and fantasy sports as well can be very helpful.

They should take advantage of it.

Mr. Jack McGrail: Yeah, if I could just intercept, with all due respect to the Senator, I obviously take a much more optimistic view of the horseracing industry, and believe in it, and a strong future.

I think one of the things that fantasy can help in, and I'm not quiet about believing this and speaking it, is that we had a discussion at the California Horse Racing Board a couple months ago.

I agreed with Commissioner Jesse Choper who talked about the fantasy fan is the same fan that is a handicapper at a racetrack.

He is doing the same thing.

He's looking at data.

He's making assessments at data.

He's managing his bankroll.

He's doing the same activity that a handicapper is doing at a racetrack, he just happens to be a bit younger, and he happens to be doing it on another sport.

It seems to me that that target of fantasy players is a target-rich audience for creating new handicapping players on racing.

It's one of the things that we believe strongly in at BAM Software and that we've created is to create not only fantasy sports, traditional fantasy sports contests on football, basketball and baseball, but to also create handicapping contests on racing to try to migrate those fantasy players from traditional fantasy sports, to handicapping contests to parimutuel wagering.

I think that fantasy creates a great opportunity for the horseracing industry of being able to be a source to create new handicapping customers.

Mr. Hai Ng: I think I totally agree with that.

There are actually good numbers out there that show that as well.

Earlier in the year I had another panel on fantasy, and we had Draft Kings on.

One of the numbers that Jason brought up from their research with their own players was that every time they introduce a new sport fantasy category, like when they added NHL or when they added NBA or when they actually did the Breeders' Cup, too, it actually spiked, the fan base to that sport.

There wasn't a decrease because there were no hockey fans.

They had other players who just went toward hockey.

It increased the viewership as well.

Looking at that and what John had said, how do you see, Jack, from a regulatory point of view, how do you see that working?

How do you see fantasy benefitting horsemen and the sport itself?

Mr. Jack McGrail: Well, I think I'll start with taking my regulatory hat off here.

I don't know that bringing folks to a racetrack to do something other than bet on the races is going to stimulate handle at all.

In fact, you can have concerts, you can have lots of things going on at a racetrack, they're underused facilities, but I don't know that that is a benefit to the racing industry.

I grew up in the racing industry.

Well, I shouldn't say I grew up in it, but I've been following it since I was 12 years old.

I think there has to be a connection, a mechanism to fund and help fund racing through the fantasy site or whatever contest or however you want to define it.

There has to be some mechanism to push some of that money into the racing itself.

I agree partially with what John said, but I don't think these are the same people.

When you have folks gambling on daily fantasy sites, they're not the same people that are at the racetrack, generally speaking.

Those 55 million people, and the statistic is 16 million of those are daily fantasy players.

I don't have a solution, but I don't think that simply allowing fantasy to take place at a racetrack is going to help racing.

I do think there has to be a nexus there.

Some other type of connectivity to get that racing piece, and get that part of the game healthier.

I think there are statistics that show — just like if you have bettors that are betting into a pick six, and this is anecdotal, I admit, but I've been around enough to know, if you've bet a large amount into a pick six, you're less likely to bet as much on race one, two, three, four, as long as you're alive, that is.

I think you're not increasing handle that way, you're simply moving the handle around.

I think the point is that I don't know that these — I think that if somebody's playing fantasy sports at the racetrack, they're probably not betting as much as they would if there weren't fantasy sports there.

I think there are ways around that.

I do think that we need to address the aging population that's at racetracks.

That is a good way to do it, and I'm all for it.

I do believe that fantasy is here to stay, frankly.

I think that every state's going to get involved at some level, at some point.

There's too much revenue out there, there's too much tax revenue out there for them to let it go, including the National Council of Governors or something had a meeting, and they all talked about how we're gonna tax this product.

I don't think there's any way that it's gonna leave the marketplace, but I do think there's a significant chance that the National Conference of State Legislators will figure out a way to tax it.

Mr. John Ford: Just to clarify.

When I said that I believe that fantasy players are the same players as parimutuel players, I didn't mean that they are the same players.

I meant that they are the same type of players.

Because instead of — they're not slot machine players, they're not blackjack players.

What they are, are players who think strategically in the games that they're playing, are looking at data to make their assessment of what selections they should make, and manage their bankroll as they make their selections.

The characteristics of a fantasy player are the same as the characteristics of a parimutuel player. It's just that our parimutuel players are older and dying off, and the fantasy players are younger by an average of about 15 years.

Mr. Hai Ng: Senator?

Senator Raymond Lesniak: Yeah, I have to jump in here, because someone's missing a big economic point here.

That is any business has fixed costs.

To the extent that additional revenues can be brought in for other types of activities, whether they be amusement, or fantasy sports, or sports betting, they help cover those fixed costs.

It doesn't have to be a nexus between the pari-mutuel — the handle and the sports betting.

There's additional revenue that can keep the industry alive.

I have a different viewpoint.

I think it will be very helpful to the racing industry.

Mr. Jack McGrail: Well, just to clarify, my point wasn't — as long as there is a distribution of that revenue, it would help horseracing.

If there's no distribution, then it doesn't help horseracing.

That's clearly bringing more money in and having more utilization of your racetrack facilities, food and beverage and everything that goes with it is a great idea.

Mr. Hai Ng: Senator, from the New Jersey perspective in terms — obviously one of the reasons why we're having this panel is we're talking about if something like daily fantasy, which is a really hot product now that's making a lot of money and getting a lot of investment, at the very least if it's not making a lot of money —

Mr. Jack McGrail: Make a lot revenue.

Mr. Hai Ng: Yeah, I saw that, making a lot of revenue.

Is how do we increase — lower the average age of handicappers and people going to parks, and keep the horseracing sport alive?

From the New Jersey perspective, I know you wrote a bill several years ago.

Any new plans you could share for us in what's in store for New Jersey and its tracks?

Senator Raymond Lesniak: You mean in addition to what we've been talking about?

Mr. Hai Ng: Yes.

Senator Raymond Lesniak: Sure. You familiar with the concept of historical wagering?

Mr. Hai Ng: Yes.

Senator Raymond Lesniak: I mean it's kind of like bringing a casino into the horseracing business without having to go through the casino licensing.

Again, it relies — I believe one of the problems in terms of the younger generation is they need more action than we do, and that we did.

You know, the time in between races and horses — the races and the betting — because, as you know, one of the big things about sports betting is you can bet on whether the next play is going to be a pass or a run and who's gonna get the ball.

Yeah, we're looking at historical wagering to give more action into our racetracks as well.

Mr. Hai Ng: From a legal perspective and a regulatory perspective, how do you see this going forward?

Is this something that can be regulated by a racing commission, or is this something that has to be regulated from a gaming commission?

ADW is taking DFS bets.

How do you see that?

Mr. Jack McGrail: DFS entry fees.

[Laughter]

Mr. Hai Ng: Well, if it's gambling it's a bet.

Mr. Jack McGrail: For the contest.

That question's addressed to me.

I think the regulatory —

Mr. Hai Ng: Senator, yes.

Senator Raymond Lesniak: I'm a policy maker, that question's above my pay grade.

Mr. Hai Ng: Oh, go for it.

Senator Raymond Lesniak: The other folks are more expert than I am on that.

Mr. Hai Ng: All right, we'll let them have a go at it.

Mr. Jack McGrail: Me first?

Mr. Hai Ng: Jack, yeah.

Mr. Jack McGrail: Well, I think this goes back to my initial points that you need enabling legislation to authorize a racing commission to engage in that kind of regulation. That's not that easy to come by all the time.

You have competing interest at the state level as to who's going to regulate what?

You have lotteries involved in gaming control commissions and others.

Those are not impediments that I think would make this incredibly difficult, but they do have to be overcome.

When you're talking about changing laws, you're talking about year-long proposition, sometimes two.

That's what it took several — more than that, it took four years to get our instant racing legislation passed.

I think, like I said, we would be ideally situated to handle that regulatory function, I just don't know that they —

Mr. John Ford: They're gonna let you do it.

Mr. Jack McGrail: — they're gonna let us do it.

Ms. Kate Lowenhar-Fisher: I mean I'm inclined to agree.

I mean obviously there are political challenges, and you did allude to the Indian gaming, which is 42 percent of the marketplace.

Certainly to the extent that is at all threatening to casino operations that reside with the tribes, I mean that we can —

Mr. Hai Ng: Which is a unique problem that New Jersey doesn't have.

Ms. Kate Lowenhar-Fisher: New Jersey doesn't have, Nevada doesn't have it, but we're certainly mindful that many states that we're talking about do have those kinds of issues implicated politically.

I mean I think that, in certain places — I think that Nevada's one of them, the law, the regulations and the regulators are sophisticated enough and nimble enough that, to the extent, we think that our laws permit an activity.

We are certainly well-situated to ensure the gold standard of compliance, which all comes down to, I think, everything that we — I think everybody's equally concerned with knowing your customer and consumer protections and preventing money laundering or illegal activities.

I think whether racing commission or gaming commission or something that is styled as both, I mean I think those kinds of regulatory agencies, with varying degrees of sophistication, are certainly situated to manage these kinds of issues. We just need to make sure that the — we have the political wherewithal, and we have the laws in which to be able to do it.

Mr. Hai Ng: John, from a commercial perspective, what do you think is the best kind of arrangement?

Mr. John Ford: Well, I think that the road is very clear as to what's going to happen from my standpoint, is that there's going to be three options that states have.

There's going to be those states, which I think will be in the minority that will license and regulate it as a gaming activity.

Nevada, they can't do anything without regulating it as a gaming activity.

There will be those states that will look at it, decide that their either horseracing body or gaming commission should license it and regulate it, and of course tax it.

There will be those states, and Massachusetts, I think, is a leader in this, that will look at it and say gee, there's money being involved, it's a legal game, but from a consumer protection standpoint, we want to make sure that the operators are treating our consumers appropriately.

We're going to put in minimum age requirements, we're gonna put in no insiders getting pool information that they can make more informed entries.

We're going to put in a lot of protections so that the game is fair.

Then I think there's going to be another category, and in my view it's going to be the biggest category, which people will decide we got other things to worry about,

like Governor Christie said during one of the debates, “Really, we’re talking about fantasy sports?”

There will be some states that will conclude this just isn’t worth our time to look after, and other states are doing it.

We’ll go worry about other things.

Mr. Hai Ng: Senator, so let’s say results next year come up positive and sports betting is legal in New Jersey, fantasy sports?

Senator Raymond Lesniak: Regardless of what Governor Christie says, we don’t pay attention to him because he’s never in the state anymore.

[Laughter]

Senator Raymond Lesniak: We will regulate and license fantasy sports.

We’re a big consumer protection state, so we will certainly do that.

As I said, we’re going to wait to see what the court says.

We don’t want to, in any way, shape or form, jeopardize that, because for us, that’s a big kahuna.

Mr. Hai Ng: What about —

Senator Raymond Lesniak: We ultimately will regulate and license fantasy sports, for sure.

Mr. Hai Ng: We’ve talked about crossroads with fantasy sports products being offered at tracks and all that, but one thing that we haven’t talked about is, is there and can there be a successful horseracing-based fantasy game?

Mr. John Ford: That’s a no-brainer.

Of course there can be.

Of course there can be.

Not to toot our own Bet America horn, but we just launched a handicapping contest, and with the goal of trying to generate and create new parimutuel customers.

People can come in, it’s a simpler game, the rules are easier, they know what they’re going to win, as opposed to in a parimutuel pool they don’t know what they’re going to win.

It's like that Sam guy from the innovator circle session earlier today.

Where Sam can come in and he can play a handicapping contest, and the rules are very clear and easy to understand.

From my standpoint, handicapping contests, fantasy horseracing, if you wanna call it, are just a great entre into parimutuel wagering for a new customer.

I think they're also a great thing for further engagement for existing parimutuel handicappers, but I think it's a great tool of pulling people in from the fantasy world and exposing them to horseracing in a simpler, easier to understand formula.

Mr. Hai Ng: Jack?

Mr. Jack McGrail: I don't disagree.

I think there are some issues with handicapping contests, generally.

We have a statute that authorizes the operator to hold handicapping contests, but again, you're still getting the same people who would be there anyway to wager in the pari-mutuel side.

I don't know that it necessarily is going to be helpful.

It also does, depending on how the distribution runs the handicapping contest may or may not go through the tote system, depending on where you are.

I don't know what — that would be one of the things that, if we were regulating this, I think it should go through a tote system with all the additional protections that a tote system provides, including inability to past post and things like that, that are — just the accounting processes that take place.

We get the reports and we would review those reports.

The tote system, I think, would be a significant added element to consumer protection in this area.

I think we have — a few models have been presented to the commission, or to me, I guess, not to the commissioners.

Some of them include race cards that aren't really horse races, but there's a card of races using fantasy.

In some of these proposals there are elements or components where the distribution does include a piece that goes to the track operators and to the horsemen and things like that.

I think that's a fairly interesting model and a reason for some optimism there.

There's no regulation that requires that, but that's been proposed through a couple of meetings I've had.

Mr. Hai Ng: Kate?

Ms. Kate Lowenhar-Fisher: Well, in Nevada, actually we've managed not to quite regulate everything yet.

[Laughter]

Ms. Kate Lowenhar-Fisher: Hey, we don't have state or income tax, or corporate income tax, so we need gross gaming revenue tax to build our schools.

All of this matters a lot to us.

I am aware that, informally, handicapping contest —certainly intra-state, local handicapping contests have existed for a very long time in Nevada without particular regulatory oversight yet.

Because they've been done by companies are just licensed. I'm just informally aware of that.

I suspect that if it was a product that became popular, that it would be something that we would jump in and say that a licensed race pool would have to offer it, and probably through the tote system.

It's funny, because they still do informally go on in Nevada, and a lot of us wonder if that's the next thing that's going to be grabbed and regulated.

It just occurs to me, as we're talking, about making predictions about how people are going to behave.

We've avoided talking about what, if anything, the federal government might do, because —

Mr. Jack McGrail: If they can do anything.

Ms. Kate Lowenhar-Fisher: If they can do anything, well that begs the question, right?

I mean we have — I struggle calling it the restoration of the Wire Act, but there's raw law out there, and there are existing federal laws that potentially could be implicated by activities people are currently engaged in.

There's all of that.

I don't know if — I mean I don't have any bug at the office of the Department of Justice, but who knows.

I mean that's something that we're all not speculating on as we're talking about what the states may or may not do.

There was a period of time many years ago where everybody was doing something else on the internet before the federal government said something about it.

Mr. Hai Ng: Well, let's open it up to questions. Anybody questions?

Yes, please.

Could you go to a mic so that the senator can hear you?

Thank you for walking all the way there.

Mr. Tom DiPasquale: I'm the Executive Director of the Minnesota Racing Commission. I'm a racing regulator so I've been thinking about this for a while, of how this could benefit racing and racing regulators.

The thought that came to mind to me, from a policy point of view, is that this fantasy sports industry has the advantage of a ten percent take-out and no brick and mortar.

I go back to the Senator's point that there need not necessarily be a nexus between the activity and where the money goes.

I'm thinking of a construct that's like source market fees for ADWs where we license the fantasy sports company, we regulate it, we tax it and the revenue stream goes in part to the horse people for purses, the tracks and to help finance the commission.

The racing commissions would have some role, although perhaps not the entire role in overseeing and regulating the activity.

That's my thought.

Mr. Hai Ng: Excellent, thank you.

Thoughts? Senator, any thoughts on that?

Senator Raymond Lesniak: I agree with him 100 percent.

That's the direction we would certainly go in.

Mr. Hai Ng: Panel?

Sounds good?

Mr. John Ford: I'm with Tom on that one.

Ms. Kate Lowenhar-Fisher: Yeah.

Mr. Hai Ng: All right. Any other questions?

No?

Come on, really?

Mr. Jack McGrail: Pretty dead crowd.

[Laughter]

Senator Raymond Lesniak: Hey, I have a Christmas party I have to go to right now.

Mr. Hai Ng: All right.

[Laughter]

Senator Raymond Lesniak: Happy Holidays and a great New Year to everybody.

Ms. Kate Lowenhar-Fisher: Thank you.

Mr. Hai Ng: Thank you so much.

[Applause]

Mr. Hai Ng: Thank you senator, on behalf of the program.

Thank you so much.

Mr. Jack McGrail: We'll head off to our Christmas party.

Mr. Hai Ng: Exactly.

Closing thoughts?

Mr. Jack McGrail: Well, just in closing I think there is some reason for optimism.

I think that this market is huge, there's lottery-type prizes, there's so much money out there, and getting these people to the track or somehow getting some of the revenue directed to the tracks is not an impossibility.

I think it's a fairly difficult problem, but I think it could be overcome.

I would like to ask one question of John.

When Mara Healy's deciding to regulate this, and she's saying that college sports will not be part of the offerings, does that impact dramatically, or in any way, the offerings from an operator of DFS?

Mr. John Ford: Yeah, we personally don't do college sports, so we don't go there.

Every time you take away a sport, it has an impact on the business.

It's like every time there's one less track to bet on, there's less handle there.

It doesn't fully migrate.

I think there's some great things in the Massachusetts proposal ranks.

I think there's some things that have gone a little bit too far, and a little bit too much Big Brother.

There's a hearing late January I think, or coming up, where people can provide comments on that, and they'll consider that.

I think that that's all good stuff.

It's all good stuff. What you don't want is to over protect so that people can't enjoy the game, and what's really provided the growth of the game.

Ms. Kate Lowenhar-Fisher: Well, I just generally like to be optimistic about the expansion of gambling, in general.

Mr. Jack McGrail: Contests.

Contests.

Mr. John Ford: Contests.

Ms. Kate Lowenhar-Fisher: Entry fees for real contests whereby you may win prizes that have been fixed and announced in advance.

I'm a fan of those kinds of things too.

[Laughter]

Ms. Kate Lowenhar-Fisher: The general view, speaking on behalf of my city, but the general view is what's good for gambling in many ways is good for Las Vegas.

Whether there are casinos that are situated both in Nevada and in places like New Jersey, which is true, or just the idea that the more those products are out there, the more that every generation has an appetite.

We like to think that Las Vegas will remain sui generis unique in terms of a destination.

It's always going to draw people. We're not threatened by the expansion of those activities, we're incredibly fond of it.

To the extent that racing can flourish and that we have new customers coming to the gambling market in general, I mean I think probably outside of being at the tracks in person, being at a major race in sports book during a big race in Las Vegas is absolutely awesome in terms of the energy and in terms of the money spent.

If we can all work to keep it all flourishing, I think it's good for everybody.

Mr. Jack McGrail: I'll just reiterate that I just think it's an opportunity.

I think fantasy is an opportunity.

These are strategic players who are thinking about the game that they're playing, and that it's our opportunity to try to convert some of those players in to parimutuel wagers.

Because ours is a thinking person's game.

It requires data analysis to have any chance of being successful, and that's what folks are doing in fantasy.

We ought to try to do whatever we can to try to pull that pool of players and become future racing fans.

Mr. Hai Ng: Great.

Thank you very much.

If there are no more questions we will actually end early this time.

Ms. Kate Lowenhar-Fisher: Wow.

Mr. Hai Ng: Thank you so much.

[Applause]