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# **FAUX VIDEO POKER**

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## Faux Video Poker

We already know that the video lottery terminals in New York State operate like ersatz slot machines. They look like, sound like, and quack like slot machines to the players, but they are technically electronic versions of instant lottery scratch off games.<sup>1</sup> The lottery tickets have previously been randomly generated, and are dispensed to the players in “the exact sequence received from the central system.”<sup>2</sup> Since the tickets have already been generated, the players are competing amongst themselves for the winning tickets and not playing against the operator and owners of the machines.

The New York system may be more than acceptable with the players on slot machines where there is clearly no player skill or strategy involved in the operation of these games. It is not necessarily fine with video poker players. Video poker is a game that is not well understood by many people. It looks like draw poker, but it is not poker. There is no bluffing, you don’t compete against other players, and you can’t raise your bet during the game. You basically compete against the house. The rules are far different for the many versions of video poker than the rules for traditional draw poker.<sup>3</sup> Nor is video poker a traditional slot machine. Most importantly, “the video poker player has an opportunity to select which cards to hold and then draw in an attempt to improve the hand. The player needs a certain degree of skill because the key to achieving the game’s rated payback is making the most accurate selection.”<sup>4</sup> Thus, you have a game that is diametrically opposite that of the New York video lottery terminal. Video poker offers players choices, and it has a significant element of skill – all of which are antithetical to the New York video lottery system where “the next situated video lottery gaming ticket is electronically dispensed from the site controller computer to the video lottery terminal which then displays the outcome associated with that video lottery gaming ticket.”<sup>5</sup> As the appellate court stated in the recent New York case of Dalton v. Pataki,<sup>6</sup> “VLTs thus may be understood as presenting electronic versions of the instant-ticket lottery games conducted by the Division. As with ‘scratch-off’ tickets, an electronic instant lottery ticket is a winning or nonwinning ticket at the time of its creation and no skill on the part of the player is involved in the game. The distribution of electronic tickets, like scratch-off tickets, is random.”<sup>7</sup>

All this discussion would be academic except for the fact that the Lottery Division in New York State has introduced a video poker game to Monticello, Saratoga Harness and Finger Lakes Racetracks.<sup>8</sup> While the video poker machines are the same type of

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<sup>1</sup> See generally 21 NYCRR Subpart 2836-20.

<sup>2</sup> 21 NYCRR § 2836-20.3(b).

<sup>3</sup> One article notes that there are at least 100 versions of video poker. Bill Burton, “Video Poker 101,” <http://casinogambling.about.com/od/lasvegas/a/videopoker.htm>

<sup>4</sup> Dan Paymar, Video Poker – Optimum Play, 1 (1998); See generally Stanford Wong, Professional Video Poker, (1991); John Grochowski, The Video Poker Answer Book: How to Attack Variations on a Casino Favorite, 2000.

<sup>5</sup> 21 NYCRR §2836.20.3(d).

<sup>6</sup> 780 N.Y.S.2d 47(3<sup>rd</sup> Dept., App. Div., 2004).

<sup>7</sup> Id. at 53 –54.

<sup>8</sup> See Jim Kinney, “Poker Draws Players to New Machines,” The Saratogian, August 14, 2004.

instant lottery dispensing machine required by rule,<sup>9</sup> and also arguably under the New York State constitution,<sup>10</sup> almost nobody is making a serious effort to tell players that they are not playing real video poker machines.

Instead, the newspaper articles on video poker often focus on the idea that the players now have some control over these games. One player commented, “It’s interactive. ..You can choose which cards to hold and which to get rid of. There is some skill to it.”<sup>11</sup> Jim Maney, the executive director of the New York Council on Problem Gambling commented that “video poker appeals to the skill gambler.”<sup>12</sup> One article noted that the “poker machines allow players to change a dealt hand.”<sup>13</sup> The press release issued by Saratoga Gaming and Raceway notes, “The games are wonderful and players of all experience levels will enjoy playing these games.”<sup>14</sup>

Bu this is not true at all. There is no choice in New York video poker. It’s the same electronic instant scratch-off game as the other video lottery terminals in New York. We now have ersatz slot machines offering faux video poker.

Lottery and racetrack have not lied openly about the games. They simply have not directly answered the question of whether there is choice and skill involved in the video poker games. Instead, they have said that the “machines are controlled by the same electronic brain in Schenectady that runs all the other video gaming machines,”<sup>15</sup> that the “mechanics of the new machines are the same as the others,”<sup>16</sup> and that the poker machines were modified in order to have them “operate through the central computer network that controls lottery machines statewide.”<sup>17</sup> The spokespersons are simply saying that New York video poker is a lottery game that is run through the Lottery’s central computer system. That is assuredly accurate, but there is nothing in their statements that would alert the average player that they are about to scratch off an electronic instant lottery ticket rather than play traditional video poker.

There is simply is no reason for this disingenuousness. The Lottery Division and the racetracks should not be acting like stereotypical used car salesmen and hiding the truth about the New York video poker game. Government has no reason for being less than candid about its new video poker game. It does not need headlines about the Lottery offering “Video Hoaxer.” The Lottery and the racetracks need to tell their patrons/taxpayers that video poker offers no choices and is simply an electronic instant

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<sup>9</sup> See Note 2, supra.

<sup>10</sup> See Note 6, supra Note 13 at 63.

<sup>11</sup> See Note 8, supra.

<sup>12</sup> Id.

<sup>13</sup> Jerome Burdi, “Players Like Challenge Poker Provides,” The Saratogian, August 18, 2004. See also Bob Mathews, “Video Poker a Boost for Finger Lakes,” Rochester Democrat and Chronicle, August 19, 2004.

<sup>14</sup> Comments of Director of Video Gaming Joseph DeFrancesco, “Video Poker Has Arrived at Saratoga Gaming and Raceway,” August 17, 2004. Saratoga Gaming and Raceway is the new corporate name for the former Saratoga Harness.

<sup>15</sup> Statement of Caroline Hapeman, Division of the Lottery, supra at Note 8.

<sup>16</sup> Statement of Rita Cox, Saratoga Gaming and Raceway, supra at Note 13.

<sup>17</sup> Statement of Elizabeth Wendel, Saratoga Gaming and Raceway, “Video Poker Games Installed at Raceway,” Capital District Business Review, August 13, 2004.

scratch-off ticket in poker clothing. If you're going to offer faux video poker, at least tell the players that it's a faux game.