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AND THE MIDEAST: RACING AND  
GAMBLING SUMMIT 2004**

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# **GAMBLING LEGISLATION IN NEW YORK AND THE MIDEAST: RACING AND GAMING SUMMIT 2004**

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GAMBLING LEGISLATION IN NEW YORK AND THE MIDEAST

Racing and Gaming Summit 2004

December 7, 2004

AN EXPERT IS SOMEONE BEST KNOWN FOR FREQUENTLY GIVING HIS OPINIONS AND NOT FOR HOW FREQUENTLY HE IS RIGHT ABOUT HIS OPINIONS. THAT'S CERTAINLY NOT TRUE FOR PROFESSOR ROSE, WHO HAS DONE MORE THAN ANYONE TO ESTABLISH THE STUDY OF GAMBLING LAW AS A SERIOUS ACADEMIC PURSUIT, BUT IT DOES EXPLAIN MY PRESENCE ON THE PANEL. BUT NO MATTER HOW I GOT HERE, I'M HONORED TO BE PART OF THIS FINE PROGRAM IN ARIZONA.

I'M SUPPOSED TO PROVIDE SOME NOTION OF WHAT'S HAPPENED IN GAMBLING IN THE MIDEAST WITH A SPECIAL EMPHASIS ON NEW YORK STATE. I FIND, HOWEVER, THAT I CAN'T COME UP WITH THE WORDS TO CONSTRUCT A PROPER ANALOGY FOR NEW YORK STATE 'S RELATIONSHIP WITH GAMBLING.

BUT THERE ARE TWO GENERAL CANONS THAT APPLY TO THE STATE LEGISLATURE IN NEW YORK 1.), THE STATUS QUO IS ALWAYS 4-5, AND 2) SOMEWHAT LIKE THE OLD GE SLOGAN, RUMOR IS OUR MOST IMPORTANT PRODUCT – IN FACT, IT'S OFTEN OUR ONLY PRODUCT.

APPLYING THOSE CANONS TO NEW YORK, GAMBLING LEGISLATION IS LIKE TRENCH WARFARE IN WORLD WAR I. THERE, THE TROOPS SAT IN THE TRENCHES FOR MONTHS. THERE WOULD BE A FEW DAYS OF ATTACKS WITH TREMENDOUS CASUALTIES, AND YOU'D GO BACK TO THE TRENCHES. IN NEW YORK, YOU PASS A BILL IN TWO DAYS IN 2001, AND NOTHING HAPPENS FOR THREE YEARS. EVERYBODY FIDDLES AND DIDDLES. IT'S A SEINFELD EPISODE. WE PASSED AND NEGOTIATED A GAMBLING BILL IN OCTOBER OF 2001 IN TWO DAYS., WE ARE STILL WAITING IN THE TRENCHES TO SEE WHAT HAPPENS NEXT.

HERE'S WHERE WE ARE IN NEW YORK NEW YORK AUTHORIZED: 6 INDIAN CASINOS : 3 IN THE CATSKILLS AND 3 IN WESTERN NEW YORK FOR THE SENECA INDIANS AND RACINOS AT ALL THE STATE'S HARNESS TRACKS AND AT 2 THOROUGHBRED TRACKS: AQUEDUCT AND FINGER LAKES.

ORIGINALLY, THE RACING INDUSTRY WAS TO GET A MAXIMUM OF 25% OF THE NET PROCEEDS BASICALLY EVENLY SPLIT WITH THE HORSEMEN AND THE TRACKS. IN 2002, THE PERCENTAGE GIVEN TO THE TRACK WENT TO 17.5%. IN 2003, THE LEGISLATURE OVER GOVERNOR

PATAKI'S VETO RAISED THE AMOUNT TO THE RACING INDUSTRY TOT 29%, WITH THE TRACK GIVEN THE RIGHT TO GET THE HORSEMEN TO CONTRACT WITH THE HORSEMEN TO LOWER THEIR SHARE. THE LEGISLATION BASICALLY GUARANTEES THE TRACKS AT LEAST 20% OF REVENUES FOR THE FIRST FEW YEARS. NOTHING HAS CHANGED, THUS FAR, IN 2004.

WHY DID THE RACING INDUSTRY FARE SO BADLY? WELL, ONE BASIC REASON, THEY DIDN'T WRITE THE BILL. THE COUNSELS TO THE LEGISLATIVE LEADERS WROTE IT AND THEY HAD THREE CONCERNS. THEY WANTED THE MONEY FOR THE STATE'S NEEDS. THEY WERE CONCERNED THAT A HIGH RATE OF PAYMENT TO THE TRACKS FOR A COMMISSION WOULD VIOLATE THE CONSTITUTIONAL REQUIREMENT THAT THE NET PROCEEDS FROM A LOTTERY WOULD GO TO EDUCATION. IN FACT, THE ORIGINAL DRAFT OF THE VLT BILL – PREPARED BY THE GOVERNOR'S OFFICE –ALLOCATED A TOTAL OF 12% TO THE RACING INDUSTRY. AND THEY DIDN'T TRUST THE HARNESS TRACKS. THE STATE LEADERS DID NOT WANT TO REWARD AN INDUSTRY FOR FAILING. IF YOU'D HAVE TALKED TO TOP LEGISLATIVE STAFF IN 2001, THE MOST CHARITABLE THING YOU MIGHT HEAR THEM SAY ABOUT HARNESS TRACKS WAS "WHINING BABIES." THIS WAS NOT THE INDUSTRY'S VLT BILL.

NOW, THREE YEARS LATER WE HAVE TWO OPEN INDIAN CASINOS BY THE SENECA IN WESTERN NEW YORK, BUT NONE IN THE CATSKILLS. WE HAVE FOUR OPEN VLT PARLORS WITH MIXED RESULTS. FOUR AUTHORIZED OUTLETS HAVE YET TO OPEN. LAST YEAR IN THIS PROGRAM'S NEW YORK PANEL, YOU MIGHT REMEMBER RON SULTEMEIER'S TALK ON VLT'S FROM DELAWARE NORTH'S PERSPECTIVE. HE WAS REMARKABLY PRESCIENT. AT TWO OF THE FACILITIES THEY MANAGE, IT'S BEEN OKAY. AT FINGER LAKES, AND AT SARATOGA GAMING, THE REVENUE PER MACHINE IS OVER \$180 PER DAY. UNFORTUNATELY, AT THEIR THIRD, BUFFALO, THE REVENUE IS LESS THAN \$100 PER MACHINE PER DAY, AND AT MONTICELLO THE NUMBER IS ALSO ABOUT \$100 PER DAY. BUFFALO WAS EXPECTED. IT'S AN OLD FACILITY IN AN AREA WITH LOTS OF GAMBLING OPPORTUNITIES. THE MONTICELLO NUMBER IS A BAD ONE. IT'S THE CLOSEST OPEN SLOTS FACILITY TO NEW YORK CITY, AND IT'S NOT ATTRACTING ANYTHING OTHER THAN A LOCAL MARKET.

OTHER THAN MONTICELLO, HOWEVER, THE STATE HAS GOTTEN WHAT IT BARGAINED FOR. IT'S RECEIVED DECENT REVENUE. IT'S HELPED THE QUALITY OF RACING, AND IT CERTAINLY HASN'T OVERLY ENRICHED THE TRACKS.

THE FOUR THAT HAVEN'T OPENED ARE: NYRA AT AQUEDUCT. NYRA'S WILLING, BUT NOT ABLE TO OFFER VLT'S. IT'S FRANCHISE EXPIRES IN 2007, AND ITS PARTNER MGM NEEDS SOME GUARANTEE THAT VLT'S WILL CONTINUE BEYOND THAT DATE. YONKERS WHICH IS THE 800 POUND GORILLA IN THIS GROUP WITH A DESIRE TO HAVE UP TO 7,500 MACHINES WOULD LIKE A BETTER SPLIT AND IS UNWILLING TO GO FORWARD UNTIL THERE'S SOME CLEAR PRONOUNCEMENT ON THE LAW'S CONSTITUTIONALITY. BATAVIA DOWNS OWNED BY WESTERN OTB HAS BEEN HAVING FINANCIAL PROBLEMS AND IS PROJECTING A MARCH 2005 STARTUP. VERNON DOWNS IS A STORY IN ITSELF. EVERYTHING YOU MAY HAVE HEARD LAST YEAR ABOUT ITS IMMINENT OPENING HAS TURNED OUT TO BE UNTRUE. THE PLACE IS LIKE CHINATOWN FROM THE JACK NICHOLSON MOVIE. DUE DILIGENCE AT THAT TRACK IS MUCH LIKE PEELING AN ONION. YOU'VE GOT LAYERS AND LAYERS OF SCANDALS.

BUT AS MUCH AS I'D LIKE TO BET ON THE STATUS QUO THAT NOTHING WILL CHANGE, IT HAS TO CHANGE. TOO MANY PROBLEMS ARE DEVELOPING IN THE TRENCHES. NEW YORK'S HIGHEST COURT WILL SHORTLY DECIDE WHETHER VLT'S AND INDIAN CASINOS ARE

CONSTITUTIONAL. THE STATE'S INTERMEDIATE APPEALS COURT – IN A DECISION NOTABLE ONLY FOR ITS NEED TO DISPLAY THE UNANIMITY OF THE COURT - FOUND THAT INDIAN CASINOS WERE CONSTITUTIONAL BUT VLT LEGISLATION WAS UNCONSTITUTIONAL BECAUSE REVENUES FROM THE VLT'S WERE IMPROPERLY SHARED BY THE TRACK WITH HORSEMEN AND BREEDERS WHO WERE NOT VENDORS. IF THE COURT OF APPEALS TAKES ANY ACTION AGAINST THE LEGISLATION, THERE WILL BE A NEED FOR AMENDMENTS.

TWO, NYRA IS GOING TO NEED SOME REVENUE STREAM TO GET ANYWHERE NEAR TO PROFITABILITY. IT DESPERATELY NEEDS VLT'S.

THREE, GOVERNOR PATAKI HAS PROPOSED A BILL TO REVAMP RACING AND GAMING REGULATION IN NEW YORK AND ALLOW VLT'S AT AQUEDUCT. THE REPUBLICAN CONTROLLED SENATE HAS ALREADY PASSED IT, AND THE DEMOCRATIC CONTROLLED STATE ASSEMBLY HAS AUTHORED SIMILAR, ALTHOUGH NOT IDENTICAL, LEGISLATION. EVERYONE APPEARS TO WANT TO CHANGE THE REGULATORY STATUS QUO.

FOUR, NEW YORK CITY OTB - THE LARGEST OF THE STATE'S OTB'S IS NOW IN DIRE FINANCIAL SHAPE, AND WILL NEED A REVENUE BOOST OR ANOTHER REVENUE SOURCE.

FIVE, THE GOVERNOR IS IN THE PROCESS OF DEVISING DEALS WITH TRIBES IN THE STATE WHICH TRADE SETTLEMENT OF LAND CLAIMS IN RETURN FOR ADDITIONAL CASINOS IN THE CATSKILLS. HE HAS ALREADY ANNOUNCED DEALS WITH THE IN-STATE CAYUGA TRIBE AND THE OKLAHOMA BASED SENECA-CAYUGAS. YESTERDAY, HE ANNOUNCED A PLAN TO ADD TWO ADDITIONAL CASINOS TO THE CATSKILLS. THESE ARRANGEMENTS WILL NEED LEGISLATIVE RATIFICATION.

SIX, RECENT DEVELOPMENTS IN PENNSYLVANIA WILL REQUIRE THE STATE TO TRY TO BECOME MORE COMPETITIVE. WE'RE GOING TO SEE AT LEAST TWO LARGE SLOT HALLS IN PHILADELPHIA, ONE AT PHILADELPHIA PARK, WHICH IS JUST NORTH OF PHILADELPHIA, AND PROBABLY ONE-OR-TWO IN PENNSYLVANIA'S LEHIGH VALLEY. ALL OF THESE LOCATIONS ARE ABOUT AS CLOSE TO METROPOLITAN NEW YORK AS THE CATSKILLS. ONE OF THE EXISTING SENECA CASINOS IS ON THE PENNSYLVANIA BORDER. REAL ESTATE DEVELOPER JEFF GURAL HAS

PROPOSED A HARNESS TRACK IN NEW YORK'S TIOGA COUNTY WHICH IS ALSO RIGHT ON THE PENNSYLVANIA BORDER.

FINALLY, AND MOST IMPORTANTLY, THE STATE IS UNDER A COURT MANDATE TO PROPERLY FUND PUBLIC EDUCATION IN NEW YORK CITY. THE REFEREES APPOINTED BY THE COURT HAVE SAID THAT PROPER FUNDING MEANS AN ADDITIONAL \$5.6 BILLION PER YEAR PLUS \$9.2 BILLION IN CAPITAL EXPENSES TO BE PHASED IN OVER 5 YEARS. THE STATE AND THE CITY OF NEW YORK ARE SUPPOSED TO COME UP WITH OVER \$7 BILLION PER YEAR TO FUND EDUCATION. IN A WORLD WHERE TAX INCREASES THAT CANNOT BE PALMED OFF AS FEE INCREASES ARE ANATHEMA, THIS HAS TO MEAN A MASSIVE INCREASE IN GAMBLING TO FUND THIS COURT MANDATE. GOVERNOR PATAKI IN HIS LAST BUDGET PROPOSED 8 FREE STANDING VLT OPERATIONS. IT'S HARD TO BELIEVE THAT HE COULD PROPOSE LESS THIS YEAR.

HERE ARE THE RUMORS FROM THE RUMORS R' US CORPORATE HEADQUARTERS IN ALBANY: 1. QUICK PASSAGE OF GAMBLING REFORM LEGISLATION WHICH AT THE LEAST WOULD LET NYRA MOVE AHEAD TO HAVE VLT'S.

2. INTRODUCTION OF A CONSTITUTIONAL AMENDMENT ALLOWING COMMERCIAL CASINO GAMBLING IN NEW YORK,
3. QUICK RATIFICATION OF THE ADDITIONAL PROPOSED CASINOS IN THE CATSKILLS
4. AUCTIONING OFF OF FREESTANDING VLT PARLORS TO THE HIGHEST BIDDERS,
5. GIVING VLT'S TO OTB'S WHICH ENDS THE OTB FINANCIAL CRISIS ISSUE.
6. PROVIDING ADDITIONAL REVENUE TO THE RACETRACKS IN THE VLT FORMULA.

THE PROBLEM FOR THE RACETRACKS IS THAT EVEN IF THE STATE INCREASES THE VENDOR FEE, THOSE FEES ARE NEVER GOING TO REACH THE LEVELS OF SUPPORT AS IN PENNSYLVANIA OR WEST VIRGINIA. THE PROBLEM IS PRICE COMPETITION. THE OTB'S AND PERHAPS EVEN THE TAVERNS AND BARS ARE WILLING TO TAKE FAR LESS THAN THE TRACKS IN RETURN FOR THE RIGHT TO HAVE VLT'S. HORSE RACING MIGHT NOT WANT A 29% SHARE. THE OTB'S WOULD BE HAPPY TO DO THIS FOR LESS. EVEN IF THE RACETRACKS GET A HIGHER RATE FROM THE STATE,

THEY ARE LIKELY TO FACE A TON OF COMPETITION FROM FREESTANDING VLT SITES.

BUT AS BAD AS THE SITUATION MAY BE FOR THE RACETRACKS IN NEW YORK, THAT'S ABOUT AS GOOD AS IT GETS FOR THE PENNSYLVANIA TRACKS. THE PENNSYLVANIA LEGISLATION IS ABOUT AS REMARKABLE AS IT GETS IN TERMS OF ITS DISTRIBUTION OF SLOT MACHINE REVENUE. PEOPLE OFTEN TALK OF CHRISTMAS TREE BILLS WHERE THERE ARE PRESENTS FOR EVERYONE INVOLVED IN THE LEGISLATIVE PROCESS. THIS IS THE MOTHER OF ALL CHRISTMAS TREE BILLS. ON THIS EVE OF CHANUKAH, IT'S THE ULTIMATE CHANUKAH BUSH BILL, AND IT WILL TAKE MORE THAN 8 CRAZY NIGHTS TO DISTRIBUTE ALL THE PRESENTS FROM THIS BILL.

FIRST OF ALL, IT AUTHORIZES UP TO 61,000 SLOTS AT 14 SITES. 7 GO TO TRACKS, THE 4 EXISTING ONES – PLUS MOUNTAINEER 'S PROPOSED THOROUGHBRED TRACK IN ERIE AND THE COMBINATION OF HARRAHS AND CHESTER DOWNS WITH A HARNESS TRACK NEAR THE DELAWARE BORDER. THAT'S LEFT ONE OPEN SLOT WITH A BATTLE FOR A HARNESS LICENSE IN WESTERN PENNSYLVANIA.

THEN, THERE ARE 2 FREE-STANDING PARLORS IN PHILADELPHIA, 1, IN PITTSBURGH, AND 2 IN THE REST OF THE STATE PLUS 2 SLOTS FOR RESORTS.

EVERYBODY DOES WELL. THE LICENSEES GET TO KEEP 44.7% COMPARED TO ABOUT 20% IN NEW YORK. 12% GOES TO HORSEMEN, BREEDERS, AND THE HORSEMEN'S ORGANIZATIONS THEMSELVES. 4% GOES TO LOCAL GOVERNMENT, 5% TO GAMING AND ECONOMIC DEVELOPMENT FOR AN ABSURD NUMBER OF POSSIBLE USES INCLUDING A CONVENTION CENTER IN PHILADELPHIA AND A STADIUM, CONVENTION CENTER, AND AIRPORT DEVELOPMENT IN PITTSBURGH THE STATE TAX IS 34% WITH MOST OF THE MONEY GOING TO PROPERTY TAX RELIEF, BUT WITH ADDITIONAL FUNDS TO VOLUNTEER FIRE COMPANIES, COMPULSIVE GAMBLING TREATMENT, LOCAL LAW ENFORCEMENT, EVEN FOREST RESERVES. NO SPECIAL INTEREST WAS LEFT BEHIND BY THE BILL. LEGISLATORS WERE ALLOWED TO HOLD 1% OF A LICENSEE LICENSED SUPPLIERS WERE REQUIRED TO HAVE THEIR PRINCIPLE PLACE OF BUSINESS IN PENNSYLVANIA. PUBLIC RESENTMENT AGAINST ALLOWING PUBLIC OFFICIALS TO OWN PART OF A GAMING LICENSEE WAS INTENSE. THE LEGISLATURE RECENTLY PASSED AN AMENDMENT REPEALING THIS PROVISION AND MAKING

ADDITIONAL CHANGES. THE AMENDMENT WAS VETOED BY GOVERNOR RENDELL, BUT THE LEGAL EFFECT OF HIS VETO IS UNCERTAIN SINCE HE REFERENCED AN INCORRECT PRINT NUMBER OF THE BILL IN HIS VETO MESSAGE. IT'S A MESS – BUT NOT FOR THE LICENSEES.

TO NEW YORKERS, THE PENNSYLVANIA LEGISLATION LOOKS LIKE THE BIZARRO WORLD OF SUPERMAN COMICS. EVERYTHING IS OPPOSITE. THE NEW YORK RACINO BILL WAS A FEW PAGES. PENNSYLVANIA'S BILL IS 146 PAGES. EVEN THE AMENDMENTS WERE 61 PAGES. NEW YORK'S BILL GIVES A LOT TO THE STATE BUT ONLY FOR EDUCATION. PENNSYLVANIA LEAVES A LOT FOR THE OPERATORS BUT APPLIES THE GOVERNMENT FUNDS TO EVERY POSSIBLE INTEREST. NEW YORK DEVELOPED ITS RACINO BILL LARGELY IN PRIVATE. THE PENNSYLVANIA PROCESS WAS LARGELY OPEN TO THE WORLD. PENN NATIONAL IS SELLING THE HARNESS TRACK POCONO DOWNS TO MOHEGAN SUN FOR \$280 MILLION. IN NEW YORK, NOBODY OTHER THAN REAL ESTATE DEVELOPER JEFF GURAL – WHO IS TRYING TO OPEN TIOGA PARK – HAS SHOWN ANY INTEREST IN THE STATE'S LAST AVAILABLE HARNESS RACING LICENSE. NEW YORK'S LEGISLATURE WAS RECENTLY RANKED AS THE WORST IN THE NATION BY THE BRENNAN CENTER AT NYU. OFF THIS PAST

PERFORMANCE, PENNSYLVANIA MUST HAVE RUN IN THE MONEY.

BUT THE PENNSYLVANIA LEGISLATION IS ALREADY SHAKING UP THE MIDEAST. DELAWARE IS TALKING ABOUT EXPANDING HOURS AND EXPANDING THE NUMBER OF SLOTS. NEW GOVERNOR CODEY IN NEW JERSEY HAS PROPOSED SLOT MACHINES IN THE MEADOWLANDS APPARENTLY TO BE RUN BY THE ATLANTIC CITY CASINOS. THERE'S A PROPOSAL MOVING IN THE ASSEMBLY TO AUTHORIZE SPORTS GAMBLING. THE GOVERNOR OF WEST VIRGINIA IS PROPOSING A SPECIAL SESSION TO ALLOW TABLE GAMES AT THE STATE'S RACINOS. THERE IS CLEARLY GOING TO BE ADDED PRESSURE IN OHIO AND MARYLAND TO ALLOW SLOTS. WE ARE ALREADY SEEING A DOMINO EFFECT FROM PENNSYLVANIA. THE DOMINO EFFECT DIDN'T SEEM TO HOLD TRUE IN VIETNAM – BUT SINCE SOMINOES ARE AN OLD GAMBLING GAME – IT SEEM TO HOLD TRUE IN THE WORLD OF RACINOS AND CASINOS.