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VIA U.S. MAIL and EMAIL

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RE: Pennsylvania Skill™ Amusement Device – Gaming Law Amendments

Dear Mr. Pace:

This will supplement our letter of October 8, 2017, in which we opined that POM of Pennsylvania's ("POM") skill game machine, the *Pennsylvania Skill™* Amusement Device ("Device"), is not a gambling device under Pennsylvania law, in light of the recently enacted amendments to Pennsylvania's gaming law. It is our opinion, based on the language of the recent legislation, that the Device remains a legal device in Pennsylvania.

There is potential ambiguity in the new language, but that language must be read in the context of the overall regulatory scheme controlled by the statute, which as a whole is concerned with the regulation of legalized gambling, at locations in which it is authorized by the gaming law (casinos, truck stops, airports, horse racing tracks, and online). The statute does not purport to regulate, and the Gaming Control Board has no jurisdiction over, locations and activities that are not expressly within the scope of the statute, such as taverns, bars and restaurants.¹

The law's statement of intent (Sec. 1102), is focused on regulated gaming, including: (1) "regulation and policing of gaming and all activities that continue to be unlawful;" (2) "authorization of limited gaming by the installation and placement of slot machines as authorized in this part"; (8) "strictly monitored and enforced control over all limited gaming authorized by this part;" (11) the integrity of the regulatory control and legislative oversight over the operation

¹ The powers of the Board include "sole regulatory authority over the conduct of gaming or related activities as described in this part, and ensur[ing] the integrity of the acquisition and operation of slot machines...sole regulatory authority over every aspect of the authorization, operation and play of slot machines . . ." (Sec. 1202).

and play of slot machines and table games in this Commonwealth;” (12) “the intent of the General Assembly to authorize the operation of slot machines and table games under a single slot machine license issued to a slot machine licensee;” and (12.2) to ensure the sustainability of commercial gaming industry . . .by authorizing . . .skill and hybrid slot machines.”

One issue is whether the Device is a “slot machine,” and specifically a “skill slot machine” as defined by the statute (Sec. 1103). The definition of “slot machine” has not changed:

Any mechanical, electrical or computerized contrivance, terminal, machine or other device **approved by the Pennsylvania Gaming Control Board** which, upon insertion of a coin, bill, ticket, token or similar object therein or upon payment of any consideration whatsoever, . . . the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine or other device to receive cash, billets, tickets, tokens or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually.

A “slot machine” (1) may utilize spinning reels or video displays or both; (2) may or may not dispense coins, tickets or tokens to winning patrons; and (3) may use an electronic credit system for receiving wagers and making payouts. The amendments add two types of devices for which the Board may issue licenses: “hybrid slot machine . . . A slot machine in which a combination of the skill of the player and elements of chance affects the outcome of the game;” and “skill slot machine,” a slot machine in which the skill of the player, rather than the elements of chance, is the predominant factor in affecting the outcome of the game.”

The statute licenses manufacturer, suppliers and end-users of slot machines (casinos). Section 1317.1 provides that:

(D) (1) No person may manufacture slot machines, . . . for use within this Commonwealth unless the person has been issued the appropriate manufacturer license under this section.

(2) . . . no person may use slot machines, . . . unless the slot machines, . . . were manufactured by a person that has been issued the appropriate manufacturer license under this section.

Finally, Section 1518 (a) (4), relating to “Prohibited Acts,” provides that it is “unlawful for any licensed entity or other person to manufacture, supply or place slot machines on the premises of a licensed facility without the authority of the board.”

Taken as a whole, the amended statute appears intended to continue to control the Gaming Board's oversight of the regulated gaming industry. The statute does not modify the criminal statute under which it is determined whether or not a machine is an illegal gambling device. The definition of "slot machine" in the statute has not changed; if the Device was not a "slot machine" under this law before the amendments, it should not be "slot machine" now. Moreover, the specification in the definition of "slot machine" that the machine be approved by the Gaming Control Board leads us to conclude that the statute is intended to apply to, and the Board to have authority over, the regulated gaming industry in Pennsylvania. Finally, if the law were interpreted to cover any device that dispensed something of value after the insertion of currency, every arcade game that dispensed tickets exchangeable for prizes would be an illegal slot machine. It is unlikely that this is what the Legislature intended.

The new law also authorizes "video gaming terminals" to be placed in licensed truck stops. Video gaming terminals are devices "approved by the Board" that operate "one or more gambling games, the play of which utilizes a random number generator." A "gambling game" is "a game that plays or simulates the play of video poker, reel games, blackjack or other similar game authorized by the Board." The term does not include "a slot machine operated at a licensed facility . . . or a coin-operated amusement game." Because the Device is not a "reel game" and operation of the POM Device is predominated by player skill and not simply random number generation as set forth in our prior letter, we conclude that it does not meet the definition of a "video gaming terminal."

Please note that this letter reflects only our opinion and is likely to have no effect on the enforcement activities of the LCB, Pennsylvania State Police or other authority.

The analysis and conclusions in this letter are rendered on the date hereof and we have no continuing obligation hereunder to inform you of changes of law or fact subsequent to the date hereof or facts of which we have become aware after the date hereof. This letter is furnished to you only in connection with your current inquiry concerning the *Pennsylvania Skill*TM Amusement Device on behalf of POM. As before, all assumptions, understandings and statements of reliance herein have been made with your permission and without any independent investigation, inquiry or verification on our part, and we express no opinion with respect to the subject matter or accuracy of such understandings or assumptions or items relied upon. This letter may not be used, quoted from or relied upon by any person or entity other than POM without our prior written consent.

Sincerely,

Kleinbard LLC
Matthew H. Haverstick, Esq., Partner