

IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2006-IA-01877-SCT

AMERISTAR CASINO VICKSBURG, INC.

APPELLANT

V.

NO. 2006-IA-01877-SCT

JIMMY L. DUCKWORTH

APPELLEE

INTERLOCUTORY APPEAL FROM THE
CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI

BRIEF OF APPELLANT AMERISTAR CASINO VICKSBURG, INC.

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

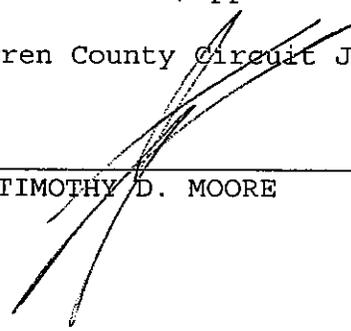
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Honorable Isadore W. Patrick, Warren County Circuit Judge



TIMOTHY D. MOORE

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STATEMENT REGARDING ORAL ARGUMENT

The issues in this matter have been fully briefed. Accordingly, Appellant asserts that an oral argument on the merits of this case will not aid or assist this Honorable Court in making its determination.

I. STATEMENT OF THE ISSUES

Whether a patron dispute over alleged winnings from a casino promotion can be removed from the exclusive jurisdiction of the Mississippi Gaming Commission by calling the promotion a "raffle" or otherwise attempting to couch the dispute as arising out of common law?

II. STATEMENT OF THE CASE

In June of 2005, Ameristar Casino Vicksburg, Inc. (hereinafter "Ameristar"), a licensed casino, began a promotion titled "\$190,000 Dream Car Giveaway" (hereinafter "the Giveaway").¹ The Giveaway was open only to Ameristar Star Awards cardholders.² These cardholders obtained entries to the giveaway based on their play at the casino³ and were required to be present in the casino to win.⁴ Entries were placed in a drum, from which ten finalists were drawn at random.⁵ Each finalist was given \$100 and received a key, one of which opened a miniature car.⁶ The finalist with the winning key was allowed to spin a prize wheel to determine whether he or she would win a car or certain sums of cash.⁷

Prior to the Giveaway, Ameristar was required to *and did in fact* submit the Giveaway rules to Mississippi Gaming Commission (hereinafter "the MGC"), and the MGC approved those rules.⁸ Paragraphs 28 and 29 of the rules stated that: (1) any disputes and complaints

¹R pp. 16, 29, 34-40.

²R p. 36, ¶ 2 (stating "[e]ach participant must be at least 21 and an Ameristar Star Awards card member").

³R p. 36, ¶ 2 and 9 through 13 of Rules.

⁴R p. 36, ¶ 17.

⁵R p. 36, ¶ 16.

⁶R p. 37, ¶ 18.

⁷R pp. 37, ¶ 18; 36-38. T p. 3.

⁸R pp. 34-35, ¶ 3.

arising from the Giveaway would be resolved in accordance with the Mississippi Gaming Control Act and Mississippi Gaming Commission Regulations; and (2) that Ameristar reserved the right to cancel, change or modify the Giveaway with prior approval from the Mississippi Gaming Commission.¹⁰ These paragraphs in the rules were included because the MGC **requires** that those specific paragraphs be contained within the rules for **every** promotion.¹¹ The MGC mandated that the language be included so that all those who participated in the promotion would be on notice that the promotion was subject to the jurisdiction of the MGC.¹² In compliance with the regulations, Ameristar's rules were posted in the Casino during the Giveaway.¹³

On June 19, 2005, Ameristar held one of the drawings in the Giveaway.¹⁴ Because the winning drawing ticket contained Jimmy L. Duckworth's (hereinafter "Duckworth") handwritten name, Ameristar declared him the winner and gave him \$5,461.00 in cash and a check for \$35,000.00, representing the total award of \$40,461.00.¹⁵ Ameristar

¹⁰*Id.*

¹¹R p. 35. Specifically, the MGC Memorandum of August 31, 1999 states that those paragraphs "must appear in the rules and regulations of tournaments, promotions and drawings submitted to the Mississippi Gaming Commission and shall appear in the rules and regulations displayed in the casino" See R pp. 46 and 47.

¹²R pp. 41, 42 and 47.

¹³R p. 35, ¶ 5.

¹⁴R pp. 4 and 16.

¹⁵R pp. 4, 5, 8 (copy of Ameristar check in the amount of \$35,000.00 made payable to Duckworth) and 16.

later determined that Duckworth did not obtain the ticket by earning it through casino play, but instead obtained the winning ticket in an unauthorized manner in violation of the express, posted rules of the game.¹⁶ For this reason, Duckworth was not a valid entrant in the game, and Ameristar stopped payment on the \$35,000.00 check and demanded repayment of the cash award previously provided him in good faith, without knowledge of his violation of the rules.¹⁷ By participating in the promotion, Duckworth voluntarily subjected himself to and agreed that any disputes regarding the promotion would be decided within MGC's exclusive jurisdiction.¹⁸

After Ameristar stopped payment on the check, Duckworth reported the incident to the MGC, and the MGC issued a notice of violation to Ameristar for failing to immediately report the dispute.¹⁸ For whatever reason, Duckworth failed to pursue the matter with the MGC and instead, on June 7, 2006, filed a Complaint in the Circuit Court of Warren County, Mississippi, seeking payment of the \$35,000.00 check on which Ameristar stopped payment.¹⁹ On June 27, 2006, Ameristar filed

¹⁶R p. 16. Specifically, Duckworth did not earn the ticker nor was it otherwise awarded to him by Ameristar. Rather, it was transferred to him by his brother, when the rules of the promotion clearly state that tickets are non-transferrable.

¹⁷*Id.*

¹⁸R p. 37 ¶ 27 (stating that "[p]articipation in this Promotion is an agreement to abide by the rules of the Promotion").

¹⁸R p. 31, ¶ 5. The MGC issued a notice of violation to Ameristar based on Duckworth's complaint.

¹⁹R pp. 4-15.

its Motion to Dismiss.²⁰ Specifically, Ameristar asked that the complaint be dismissed, because the MGC had exclusive jurisdiction over any dispute arising from the Giveaway.²¹ Thus, Duckworth was required to pursue any grievance with the MGC.²² The Trial Court characterized the Giveaway as a "raffle" and not a "game," and thus, that the alleged winnings were not a "gaming debt."²³ Because the Act only covers "gaming debts," the Trial Court concluded that the complaint was not subject to the exclusive jurisdiction of the Act.²⁴ Ameristar takes issue with and files this Appeal based on that ruling.

²⁰R pp. 16-21. Ameristar's Reply to Duckworth's Response to its Motion is located at R pp. 29-53.

²¹R pp. 16-21.

²²*Id.*

²³R pp. 54 and 55.

²⁴*Id.*

III. SUMMARY OF ARGUMENT

The trial court ruled that the MGC did not have exclusive jurisdiction over Duckworth's claim because the Giveaway was a "raffle," which is not a "game" as defined by the Act.²⁵ Therefore, according to the Court, "the winnings from said raffle are not a gaming debt."²⁶ The Court further cited language from the Mississippi Court of Appeals decision in *Burse v. Harrah's Vicksburg Corporation*²⁷ for the proposition that the MGC could only have jurisdiction over Duckworth's claim if he voluntarily filed that claim with the MGC. The trial court was incorrect.

The trial court's reliance on the *Burse* decision is misplaced, and Ameristar submits that if there is a distinction between "raffles" or "promotions" on the one hand and "games" on the other, it is not one that would remove the former from the exclusive jurisdiction of the MGC. The Giveaway falls within the scope of the Act such that any resulting dispute is subject to the MGC's *exclusive jurisdiction*, and patrons cannot avoid this jurisdiction by forum shopping and couching their claims as arising from common law. Even if this were not certain from the plain language of the Act and the prior decisions of this Court holding that *all gaming matters*²⁸ are subject to the exclusive

²⁵R pp. 54 and 55.

²⁶R p. 54 ¶ 4.

²⁷919 So. 2d 1014 (Miss. App. 2005).

²⁸*Grand Casino Tunica v. Shindler*, 772 So. 2d 1036, 1040 (Miss. 2000).

jurisdiction of the MGC, this is confirmed by the fact that the MGC: (1) required Ameristar submit the rules for the Giveaway for the MGC's approval;²⁹ (2) approved the rules;³⁰ (3) required those rules state that any dispute would be subject to the MGC's exclusive jurisdiction;³¹ and (4) issued a notice of violation to Ameristar as a result of Duckworth contacting the MGC after Ameristar stopped payment on his check.³² Duckworth's claim should be submitted to and decided by the MGC.

²⁹R p. 34, 35, 39 and 40.

³⁰*Id.*

³¹R p. 41, 42 and 47.

³²R p. 31. *See also* Petition for Interlocutory Appeal, Exhibit #5.

IV. ARGUMENT

- A. "All gaming matters" fall within the exclusive jurisdiction of the MGC.

This Court's decision in *Grand Casino Tunica v. Shindler* is dispositive of the issue in this case.³³ In *Shindler*, the question involved the MGC's jurisdiction over a claim that a patron should have been allowed to place larger bets.³⁴ Specifically, Shindler complained that he was due additional winnings for a series of mini-baccarat games in which he alleged he should have been allowed to bet \$20,000.00 (instead of the maximum of \$5,000.00) per hand. Much like the case at bar, while the Grand Casino maintained that the plaintiff's claims were subject to the exclusive jurisdiction of the MGC, the trial court held that the claims sounded in the common law of torts and contracts and thus, were not subject to the exclusive jurisdiction of the MGC.³⁵ In reversing the trial court, this Court noted that, "[t]he success of Shindler's argument rest[ed] upon the premise that he . . . [did] not seek 'gaming debts' or 'alleged winnings' as defined in the Act."³⁶ The *Shindler* Court's explanation of the lack of merit of these claims is worthy of citation at length:

For well over 150 years, the law of Mississippi has stated that claims based upon any for of gambling are void and unenforceable at common law. Furthermore, this rule . . .

³³772 So. 2d 1036 (Miss. 2000).

³⁴*Shindler*, 772 So. 2d at 1036.

³⁵*Id.* at 1038.

³⁶*Id.*

has never differentiated amongst types of actions nor the parties involved. Until this case, there had not been many serious challenges to Mississippi's rule. The Mississippi Gaming Control Act codified the idea by making **all gaming matters** the exclusive jurisdiction of the [MGC]. Before the . . . Act, casino patrons . . . would have had no forum in which to air their grievances. The legislature gave the public a right that they had not possessed before, but **with this right came the requirement that gaming matters be handled by the [MGC]**. As with workers' compensation claims, having a special body to examine issues is only logical; claims are often quite confusing and require a certain amount of specialized knowledge to properly analyze the various situations. In addition . . . , public policy dictates that a separate body handle gaming matters so the courts do not become overwhelmed with claims they have neither the time nor information to handle. However, Shindler still alleges that this case does not come within the statute . . . [asserting] his claim does not fit the definition of a "gaming debt" because he is not asking for money lost or won. He attempts to distinguish his claim on the basis that he is not claiming that he won money, rather that he **should** have won money.

* * *

Shindler and the circuit court's thinking does not add up: The [MGC] does not have jurisdiction over the claim because it does not concern a "gaming debt" nor "alleged winnings"; it concerns a contract for a gaming debt and a possible misrepresentation about alleged winnings. Shindler's . . . claims obviously fall within those that were barred at the common law . . . [and] falls squarely within the statutory definition of a "gaming debt" and "alleged winnings." The Legislature, through the enactment of the . . . Act, extended a right of recovery to gaming patrons. Without the enactment, Shindler and other dissatisfied gamblers would have no remedy or forum in which to air their grievances. In essence, the creation of the [MGC] gave citizens more rights than they previously possessed . . . [and] the Gaming Commission has exclusive jurisdiction over such claims. Therefore, the Gaming Commission was the only body having jurisdiction to hear this matter.³⁷

Thus, per the *Shindler* decision:

³⁷*Shindler*, 772 So. 2d at 1038 and 1040.

1. Duckworth's claim is based on a right he would not have but-
for the Act;
2. public policy and the legislature of the State of
Mississippi have dictated that with this right comes the
requirement that any claim be pursued with the MGC; and
3. the exclusive jurisdiction of the MGC cannot be circumvented
by the Trial Court's semantics in calling the Giveaway a
"raffle" or saying that a claim regarding a gaming matter is
somehow not based on a "gaming debt" or "alleged winnings."

As the *Shindler* Court so succinctly stated, "**all gaming matters**"³⁸ are subject to the exclusive jurisdiction of the MGC.

- B. Contrary to the Trial Court's ruling, the Giveaway was not a "raffle." Rather, it was a "game" as defined by the Act.**

The Trial Court's ruling that the Giveaway is not subject to the exclusive jurisdiction of the MGC is predicated on the idea that the Giveaway was a "raffle," and thus, was not a "gaming matter."³⁹ Ameristar submits that this is incorrect. Raffles are illegal unless sponsored by a non-profit, with all proceeds going to that group.⁴⁰ Even were the Giveaway called a "raffle," that would not remove it

³⁸*Id.* at 1040.

³⁹R pp. 54-55.

⁴⁰See Miss. Code Ann. §97-33-51, *et seq.* See also Op. Atty Gen No. 97-427, Humphrey, July 25, 1997.

from the scope of the Act,⁴¹ which broadly defines its scope as matters pertaining to debts and alleged winnings related to **any game approved by the commission**, or as this Court has stated, "all gaming matters."⁴² The Giveaway was a promotion that was a gaming matter within the scope of the Act, regulated by and subject to the exclusive jurisdiction of the MGC. It is clear that Duckworth's claim is for (by whatever words he might choose to describe it) alleged "winnings" or a "debt" arising from the Giveaway, which was subject to the approval of and which was in fact approved by the MGC.⁴³ Thus, per the plain language of the Act, Duckworth's claim is subject to the exclusive jurisdiction of the MGC.

Ameristar, like most Mississippi casinos, holds regular casino promotions as a way to drive business to the casino and reward loyal patrons. Common casino promotions include slot tournaments, blackjack tournaments, poker tournaments, scratch card giveaways, or drawing-based promotions like the "Dream Car Giveaway." The Mississippi Gaming Commission has a significant interest in overseeing **all** casino

⁴¹See e.g., *City of Mound Bayou v. Johnson*, 562 So. 2d 1212, 1215-16 (Miss. 1990) (holding the nature of a claim cannot be changed by gamesmanship in calling a claim something it is not).

⁴²Miss. Code Ann. § 75-76-5(k) (defining a "game" as "any banking or percentage game played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value . . . **or any other game or device approved by the commission**. However, "game" or "gambling game" shall not include bingo games or raffles which are held pursuant to the provisions of Section 97-33-51."); *Grand Casino Tunica v. Shindler*, 772 So. 2d 1036 (Miss. 2000).

⁴³R p. 34, 35, 39 and 40.

promotions and ensuring that they are conducted fairly and honestly, as any unfair activity in conducting these promotions would reflect negatively on the integrity of Mississippi casino gambling as a whole. For this reason, the MGC requires that casinos submit rules for all casino promotions to the MGC in advance for approval.⁴⁴ Although the "Dream Car Giveaway" involved a drawing of tickets like in a church raffle, it was not a church raffle. It was as much a casino promotion as a slot tournament, blackjack tournament, poker tournament, or scratch card giveaway.

Participation was restricted to members of Ameristar's Star Awards customer loyalty program.⁴⁵ The more a patron gambled in the casino, the more entries they received.⁴⁶ The drawing took place in the casino, where entrants were required to be present to win.⁴⁷ The promotion and its rules were pre-approved by the MGC, and, as required by the MGC, the rules stated that complaints would be resolved in accordance with the Mississippi Control Act and Mississippi Gaming Regulations.⁴⁸ Ameristar in fact received a Notice of Violation from

⁴⁴R p. 41-48. See also R p. 38 (document stamped "APPROVED BY THE MISSISSIPPI GAMING COMMISSION" and signed by a representative of the MGC); p. 39-40 (Letter from ACVI submitting rules for the Giveaway to the MGC for approval).

⁴⁵R p. 36 ¶ 2.

⁴⁶R pp. 3 and 9 through 13.

⁴⁷R p. 36 ¶ 17.

⁴⁸R p. 41-48. See also R p. 38 (document stamped "APPROVED BY THE MISSISSIPPI GAMING COMMISSION" and signed by a representative of the MGC); p. 34-35; 39-40 (Letter from ACVI submitting rules for the Giveaway to the MGC

the MGC for failing to immediately notify the MGC of the dispute with Duckworth.⁴⁹ The MGC and the Appellate Courts of this State have repeatedly decided disputes such as this over alleged winnings/debts in cases regarding games described as "promotions."⁵⁰

In fact, the MGC has considered and rejected the very argument advanced by Duckworth in *Jacobs v. Lady Luck*.⁵¹ In *Jacobs*, the patron made a claim against Lady Luck alleging that she was not awarded the proper amount of points for her play during a promotion. Lady Luck maintained that it deducted points from Jacobs' card, because she was using her card in machines being played by other patrons. In holding it had jurisdiction, the MGC stated as follows:

This is a matter within the jurisdiction of the [MGC]. The **promotion** was in connection with the operation of the casino and was a **system whereby value was given to a patron for playing a game at the casino**. This is a promotional device no different than **raffles** or free plays on a slot machine. That this also serves a marketing function is of no moment to the jurisdiction of the [MGC].⁵²

Thus, the MGC has held that promotions (and even "raffles," although Ameristar submits the Giveaway was not one) are subject to its

for approval).

⁴⁹R p. 31, ¶ 5; Interlocutory Appeal Petition, Exhibit 5.

⁵⁰R, Exhibit 2 to Hearing on Motion to Dismiss. In addition to MGC opinions, see Mississippi Appellate Court decisions deciding appeals of MGC decisions: *Mississippi Gaming Comm'n v. Treasured Arts, Inc.*, 699 So. 2d 936 (Miss. 1997) (dealing with phone card promotion); *Burse v. Harrah's Vicksburg Corporation*, 919 So. 2d 1014 (Miss. App. 2005) (dealing with claims pertaining to "mailouts" and "drawings" at Harrah's).

⁵¹R pp. 49-53.

⁵²R p. 51.

exclusive jurisdiction. As a matter of statutory construction, *Jacobs* is dispositive of the issue in this case and comports exactly with this Court's decision in *Shindler*.

- C. Contrary to the trial court's ruling, *Burse v. Harrah's Vicksburg Corporation*⁵³ does not stand for the proposition that Duckworth's claims are only subject to the exclusive jurisdiction of the MGC if Duckworth chose to initiate his claims there. In fact, it supports Ameristar's position that Duckworth's claims are subject to the exclusive jurisdiction of the MGC.

The Trial Court also cited the *Burse* ruling as a basis for denying Ameristar's Motion. Specifically, the trial court cited *Burse* for the proposition that:

[i]f the Plaintiff had agreed to allow the Gaming Commission to decide the dispute he could have subjected himself to the jurisdiction of the Gaming Commission by first filing his claim with that administrative body and therefore, would have become subject to the dictates of the Gaming Control Act.⁵⁴

Ameristar submits that the language in *Burse* upon which the trial court relied is *dicta* that could be (and was) misconstrued or misapplied. Moreover, the facts in *Burse* are very similar to those at issue with Duckworth and are in fact further evidence of the fact that ***the MGC is the body which decides disputes over promotions.***

In *Burse v. Harrah's Vicksburg Corporation*,⁵⁵ *Burse* received multiple mailouts from Harrah's inviting him to participate in a

⁵³919 So. 2d 1014 (Miss. App. 2005).

⁵⁴R p. 54.

⁵⁵919 So. 2d 1014 (Miss. App. 2005).

promotion to be held at the casino called "Knockout for Cash."⁵⁶ The promotion was limited and mailouts were sent by the casino to patrons who held "Total Rewards" gaming cards issued by the casino.⁵⁷ Burse personally attended two of the "drawings" at which there were no winners.⁵⁸ Burse subsequently filed a complaint with the MGC alleging that the drawings were a scam and fixed where there could be no winners.⁵⁹

The MGC investigated the complaint and sent Burse a letter stating that all documentation regarding "the drawings are in accordance with the Mississippi Gaming Commission rules and regulations."⁶⁰ Rather than file a petition for reconsideration with the MGC, Burse simply filed suit in the Circuit Court of Warren County, Mississippi.⁶¹ Because Miss. Code Ann. § 75-76-161(3) provides that when a claimant fails to file a petition for reconsideration, the decision becomes final and "is not subject to reconsideration by the executive director or review by the commission *or to review by any court*,"⁶² the Court of Appeals found that Burse failed to exhaust his

⁵⁶Burse, 919 So. 2d at 1015.

⁵⁷Id.

⁵⁸Id.

⁵⁹Id.

⁶⁰Id.

⁶¹Burse, 919 So. 2d at 1014, 1015-16.

⁶²Id. at 1016.

administrative remedies.⁶³ This is consistent with the Mississippi Supreme Court's decisions holding that failure to file a motion for reconsideration with the MGC results in a final decision that cannot be reheard or relitigated in *any Court*.⁶⁴

The language in *Burse* relied upon by the Trial Court was as follows:

1. "[Burse] failed to exhaust his administrative remedies under the Mississippi Gaming Act *before filing suit* in Warren County Circuit Court"; and
2. "*As Burse first sought recourse with the MGC, he became subject to the dictates of the Mississippi Gaming Act.*"⁶⁵

Ameristar respectfully submits that these statements were not necessary to the resolution of the *Burse* case and are appropriately characterized as *dicta*. Ameristar believes the Trial Court read them to imply that a claimant may choose in which forum he files his claim. Such a position would be inconsistent with *Shindler* and *Jacobs*, and would be contrary to principles of judicial economy and fair play by creating a paradigm where jurisdiction is controlled by the whim of the claimant and a race to the courthouse. For this reason, Ameristar submits that this Court should address these statements and clarify or overrule the *Burse* decision, as may be appropriate.

Regardless, even with this *dicta*, Ameristar believes *Burse* is supportive of its position. Both *Burse* and *Duckworth*:

⁶³*Id.*

⁶⁴*See Cook v. Mardi Gras Corp.*, 697 So. 2d 378 (Miss. 1997).

⁶⁵*Burse*, 919 So. 2d at 1016 (emphasis added).

1. made claims related to entries in a casino **drawing**;
2. were only able to participate in the **drawing** by virtue of their status as holders of casino reward cards;
3. were present at the **drawings** at issue; and
4. initiated complaints with the Mississippi Gaming Commission.

The only difference between the two cases is that Duckworth failed to follow through with his complaint to the MGC. Saying the Duckworth's claim is somehow different (than that of Burse) such that it is not subject to the exclusive jurisdiction of the MGC is inconsistent with the plain language of the Gaming Act and the prior decisions of this Court and the Court of Appeals.

When Ameristar stopped payment on the check issued to Duckworth, Duckworth complained to the MGC. In turn, the MGC issued a Notice of Violation to Ameristar for failing to first report the issue.⁶⁶ Duckworth appropriately initiated his claim with the MGC.⁶⁷ For whatever reason, he deliberately chose not to follow-through with that claim with the MGC. Per the public policy of the State of Mississippi as expressed by the legislature in the Act, it remains the sole forum for his complaint. No claimant, including Duckworth, is allowed forum-shop, and per *Burse*, Duckworth must exhaust his administrative remedies with the MGC.

⁶⁶*Id.*

⁶⁷R p. 31; *See also* Interlocutory Appeal Petition Exhibit # 5.

- D. If the trial court is correct that the Giveaway is a "raffle" which is not subject to the exclusive jurisdiction of the MGC, then Duckworth's claim is against public policy and thus, void and unenforceable.

The Giveaway was a promotion whereby patrons were given tickets to enter based on/in consideration of the amount of their gaming play.⁶⁸ Participants in the Giveaway gave consideration for participating in a promotion with an element of chance, which returned a thing of value. This is gaming. This is gambling.⁶⁹ *This is why MGC required approval of the rules for the Giveaway.* However, if the trial court is correct that the Giveaway was a "raffle" not subject to the exclusive jurisdiction of the MGC, then Duckworth's claims must be dismissed as void and unenforceable against a public policy.

That is:

1. Miss. Code Ann. §97-33-1 makes criminal any wagering, betting or gambling *not subject to the Mississippi Gaming Control Act, §75-76-1* or otherwise specifically made legal under the laws of the State of Mississippi;
2. Miss. Code Ann. §97-33-49 provides that raffles are illegal except those held pursuant to §97-33-51;
3. The Gaming Control Act specifically exempts from the

⁶⁸R p. 36-38.

⁶⁹See *Mississippi Gaming Comm'n v. Henson*, 800 So. 2d 110, 115 (Miss. 2001) (holding game an illegal gambling device because it required consideration, had an element of chance and returned a thing of value).

definition of a "game" any "raffle" held pursuant to Miss. Code Ann. § 97-33-51; and

4. Miss. Code Ann. §97-33-51 provides that raffles are illegal unless held by and for the benefit of nonprofit civil, educational, wildlife conservation or religious organization with the proceeds to go to that organization.

If Duckworth's claim truly is not subject to the exclusive jurisdiction of the MGC, then it is, by definition, void and unenforceable. Either that or Duckworth has stumbled on the one activity in the State of Mississippi, overlooked by the legislature and untouched by all laws, where a person gives consideration for participating in an activity where there is an element of chance involved and a thing of value is returned, but disputes regarding that activity are not subject to the exclusive jurisdiction of the MGC.

Ameristar submits that the true explanation is the simpler of the two, and that the Giveaway is not the one loophole in an otherwise all-encompassing net. Rather, if Duckworth's claim is not subject to the exclusive jurisdiction of the MGC, Duckworth's claim is void and unenforceable.⁷⁰ But for the Act and rights it gives to the public, rights which the public had not possessed before the Act, Duckworth has no claim.⁷¹ The exclusive forum for grievances related to these rights is the MGC, even though the Trial Court would have this Court

⁷⁰*Grand Casino v. Shindler*, 772 So. 2d 1036, 1038 (Miss. 2000) (citing *McAuley's Adm'n v. Mardis*, 1 Miss. 307, 308 (1828)).

⁷¹Miss. Code Ann. § 75-76-1.

hold to the contrary.⁷²

- E. Even if the law allowed patrons like Duckworth to choose whether to be subject to the jurisdiction of the MGC, by participating in the Giveaway, Duckworth agreed to be subject to the jurisdiction of the MGC.

Pursuant to the Rules of the Giveaway as approved by the MGC, by participating in the Giveaway, Duckworth agreed that any disputes would be subject to the MGC's exclusive jurisdiction. Specifically, the rules of the Giveaway provide as follows:

Participation in this Promotion is an agreement to abide by the rules of the Promotion.⁷³

As mandated by the MGC for all promotions, the Rules for promotion further state as follows:

- 28. The Mississippi Gaming Commission reserves the right to investigate any and all complaints and disputes regarding tournaments, promotions and drawings. Such disputes and complaints will be resolved in accordance with the Mississippi Gaming Control Act and Mississippi Gaming Commission Regulations.
- 29. Any dispute or situation not covered by the above rules will be resolved by ACVI management in a manner deemed by them to be the fairest to all concerned, and that decision shall be final and binding on all participants.

Duckworth cannot have it both ways. If, as he says, he was a valid entrant in the Giveaway, then by participating in the Giveaway, Duckworth agreed to follow its Rules (approved by the MGC and posted

⁷²Shindler, 772 So. 2d at 1038, 1040 (citing Miss. Code Ann. § 75-76-157). See Miss. Code Ann. § 75-76-157; 75-76-159.

⁷³R p. 37, ¶ 27.

in the Casino).⁷⁴ "It is hornbook law that the rules of a contest constitute a contract offer and that the participant's entering the contest 'constitute[s] and acceptance of that offer, including its terms and conditions.'"⁷⁵ This means Duckworth agreed to have this dispute decided by the Mississippi Gaming Control Act and Mississippi Gaming Commission Regulations. He should be estopped from arguing otherwise. If he was not a valid entrant in the Giveaway, then he has no claim. Either way, his Circuit Court action should be dismissed.

⁷⁴R pp. 34 and 35.

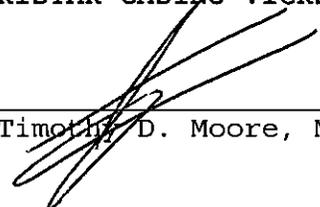
⁷⁵*Ermolaou v. Flipside, Inc.*, 2004 WL 503758 (S.D.N.Y. Mar. 15, 2004) (quoting *Fujishima v. Games Mgmt. Servs.*, 443 N.Y.S.2d 323, 327 (S.Ct. Queens County 1981)).

V. CONCLUSION

All gaming matters are subject to the exclusive jurisdiction of the MGC, and the MGC's jurisdiction cannot be whittled away or circumvented by semantics or the splitting of factual hairs. Sustaining Ameristar's Motion would not deprive Duckworth of recourse. Rather, his recourse would be what the legislature put in place when it legalized gambling, i.e., pursuing any claim with the MGC. Ameristar submits that if the law is not going to be applied as written by the legislature, then the only alternative is to dismiss Duckworth's claim as void and unenforceable, as any gaming outside that set forth in the Act is illegal. However, his claim is not outside the Act. There is a reason the MGC required Ameristar to submit the rules of the Giveaway for approval before holding the promotion: Promotions are subject to the exclusive jurisdiction of the MGC. Duckworth must pursue his claims there.

Respectfully submitted,

AMERISTAR CASINO VICKSBURG, INC.

BY: 
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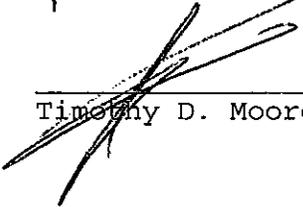
CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day served a true and correct copy of the foregoing via Hand Delivery, to the following counsel:

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The Honorable Isadore W. Patrick
P.O. Box 351
Vicksburg, MS 39181-0351

THIS the 24th day of September, 2007.



Timothy D. Moore