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LEAGUE OF THEIR OWN

HOW US SPORTS ARE STAKING A CLAIM TO THE FUTURE OF US WAGERING

If you read the news, it appears the entire US gaming industry is obsessed with sports betting. Hungry for new product offerings and approaches, operators see the potential that sports betting offers to produce new revenue streams. Sports betting and igaming are popular with players and profitable for operators across the world. In the UK, the remote sector accounts for some 35% of total gross gambling yield — and 41% of these revenues are generated by betting on sports, per UK Gambling Commission statistics. “Legalized sports betting in the US is expected to increase the revenue potential of igaming and therefore generate more revenue where it is permitted online,” says Paul Girvan, an igaming industry expert. “This equals greater potential tax revenue and therefore more incentive for states to permit online gaming with sports betting as a component.”

But what about those states that allow gaming on Native American lands? According to the National Indian Gaming Commission’s annual reporting, in 2017 there were 494 tribal gaming facilities in 29 states across the US, with Native American properties generating more than half of all gaming revenues in the country. Therefore, no discussion of sports betting or igaming in the US is complete without considering tribal facilities. For tribes and those doing business with tribes, the process for bringing about sports betting will be neither quick nor easy, but the result could be increases in visitation and revenues at brick-and-mortar facilities, as well as increased engagement and revenues for online operations.

What’s legal?

With the overturning of PASPA, states were given the freedom to permit and regulate sports betting within their borders in much the way they do with traditional casino and online gaming. Heidi McNeil Staudenmaier,

SPORTS BETTING AND TRIBES A LONG AND WINDING ROAD

As the US moves towards a legalized sports betting landscape, most in the industry are still toasting their good fortune. But the path to legalization won’t necessarily be an easy one for the country’s tribes, which are faced with having to renegotiate a host of tribal-state gaming compacts.

Suzanne Leckert plots their likely journey

a recognized expert in Indian and Gaming Law, is quick to point out that the Supreme Court decision alone “doesn’t mean [sports betting is] legal.” First, each state must pass its own legislation to permit sports betting within its borders. Some of the first states to authorize the practice — Delaware, New Jersey and Pennsylvania — have also permitted igaming. Still others have embraced the sports betting opportunity while not yet addressing igaming: Mississippi, West Virginia, Rhode Island (launching this November) and Oregon (legal prior to the PASPA decision). Under pressure from their constituents and those in the casino industry, many other states are working on legislation to enable

sports betting at existing casinos but not necessarily online.

Tribal gaming enterprises, however, operate through gaming compacts with their respective state governments. State legislation (or in the case of California, possibly a statewide constitutional amendment voted on by the people) must precede tribes’ introducing sports betting. Although US Senators Orrin Hatch (R-UT) and Chuck Schumer (D-NY) have recently announced support for federal oversight of sports betting, D. Michael McBride III, an Indian and Gaming Law attorney practising in Tulsa, Oklahoma, foresees no change to the state-by-state model of regulating sports betting for both commercial and tribal gaming.



McBride warns that federal oversight and its impacts on tribal-state gaming compacts “would be very complex” and “not a quick legislative hit.” Furthermore, “States and tribal governments have proven that they know how to regulate gaming,” according to Valerie Spicer, the former executive director of the Arizona Indian Gaming Association. Spicer believes that “we’ll start to see a natural consensus of good policy” across the country with regard to sports betting.

Much the same process will be required if online gaming is to be widely adopted by Native American tribes. And while compacts with states will likely need amending, the approval of sports betting and adding it to the menu of online gaming options forms

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an ever-stronger case for tribes and states to take another look at online gaming.

Path forward

The current and most likely way forward for tribes to offer sports betting is through state legislation followed by amendments to tribal-state gaming compacts. While sports betting is considered a Class III gaming activity, the vast majority of these compacts were negotiated prior to the Supreme Court decision, and sports betting was generally not included. Before moving forward, says

Staudenmaier, “State governments need to review their exclusivity clauses and be sure that those aren’t being violated.” In potentially lucrative markets such as California, this could be problematic. Don Casper, vice president of marketing for the Cabazon Band of Mission Indians’ Fantasy Springs Resort Casino in Indio Springs, CA, is quick to point out that tribes “have the exclusive right to provide casino games in California” and that “sports betting and igaming fall into that category.” Of course, the card rooms and horse tracks in California have sought

to offer igaming for many years and see this issue differently; therefore, a turf war is expected to ensue. Casper does not expect any movement on sports betting or igaming in California in the near future due to the political environment (it will be electing a new governor this November), and the fact that the charge will be led by the state's largest tribes, which have the political clout to handle the complex negotiations. This conflict between the tribes, card rooms and horse tracks over what types of games each may offer is a long-standing one, but perhaps the push toward legalized sports betting will be what California needs to resolve these issues and bring igaming to the state.

In California and other states, the amendment of a tribe's gaming compact could be a multi-year process. Even with state legalization and a gaming compact that permits it, other legal issues may still be present. Staudenmaier cautions that "both vendors and tribes need to be careful that any agreement they enter into isn't viewed as a management agreement by the National Indian Gaming Commission (NIGC), and therefore they need to be very careful in their negotiations and in working with the NIGC." Critical to consider, according to McBride, is that "any wagering would have to take place on the tribal property." This on-site requirement could limit the potential for sports betting as well as igaming wagers through tribal gaming enterprises.

Business decision

Many tribes are assessing not just whether igaming or brick-and-mortar sports betting fits into their master plans but also the financial feasibility of operations. The low margins for sports betting (15% on average in the UK) and the necessity of a large volume of wagers could prove problematic for small tribal sportsbooks. One possible solution is the formation of partnerships or shared liquidity for sports wagers. Given the low margins, it would seem that the igaming platform offers an attractive avenue to take

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advantage of this revenue stream. That, however, requires compacts to address both sports betting and igaming.

No stranger to the tribal-state compact process, Valerie Spicer is aware that the introduction of sports betting is a business decision. She advises that tribes look at "what it takes to operate sports betting, and how you're going to approach it... are you going to do it on your own or outsource it to an operator? What is the competition in your given state?"

First and next movers

The Pearl River Resort Casino in Choctaw, Mississippi, is so far the only Native American property to offer sports betting. The tribe has converted its sports bar into a sportsbook and announced plans to launch mobile-device betting in the near future. They are a first-mover, Staudenmaier points out, because of the permissibility of Mississippi's gaming laws, whereby Native American properties have the right to operate any kind of gaming that commercial operators can. Mississippi was among the first states to permit sports betting but it has not enabled igaming yet. New Mexico could be a next state to introduce sports betting at tribal facilities, as its compacts are "very wide open... and tribes probably have an easier road because they don't have to amend" their compacts. There is a lot of interest among Native American tribes across the US and a "lot of careful planning and research" underway, according to Spicer. Tribes in

Arizona could be well positioned to introduce sports betting too, with many currently engaged in gaming compact discussions.

The experts that we talked to agreed that sports betting will not come to tribal lands overnight. According to McBride, now is the time for the sports betting and igaming sectors to network and develop relationships with tribes. At the same time, tribes would be well positioned by forming partnerships with other tribes for shared liquidity.

With the push to increase competitiveness and bolster casinos' positions in the marketplace, on-site sports betting is garnering lots of interest across the US from both tribes and commercial gaming operators. Added to a suite of igaming offerings, however, sports betting has even greater potential. But Spicer says those hoping to capitalize on this emerging market should "be mindful that this is a process. Companies need to know and understand the tribal-state compacts within a given state and also the state statutes with regard to gaming and igaming. They need to be patient and respectful of the tribe and the process."

For sports betting to truly take off in the US and to develop along the lines of the UK market, not only must tribes secure the right to operate igaming but also sports betting within their states. The uptake on igaming may have slowed, but the increased revenue potential (read taxes) associated with sports betting could lead more states to take another look at these related issues. That will open the door for the tribes to do the same — and in those states where tribal gaming predominates it is the tribes that will be leading the way.



Suzanne Leckert is a founding partner of Convergence Strategy Group, which provides strategic planning and analytical services to gaming, leisure, commercial, tribal and public partners. Find out more at convergencestrat.com