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2007-2008 Survey of Florida Gambling Law

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2007-2008 SURVEY OF FLORIDA GAMBLING LAW

ROBERT M. JARVIS*

I.	INTRODUCTION	231
II.	ADULT ARCADES	231
III.	BINGO	232
IV.	CASINOS	233
V.	INTERNET GAMBLING	235
VI.	PARI-MUTUELS	235
VII.	SHIPBOARD GAMBLING	238
VIII.	STATE LOTTERY	242
IX.	TRIBAL GAMING	243
X.	CONCLUSION	244

I. INTRODUCTION

This survey discusses developments in Florida gambling law that took place during the period July 1, 2007 to June 30, 2008. It was a busy year, beginning with the publication of the first book on Florida's gambling history¹ and ending with the Florida Supreme Court poised to rule on the validity of the state's gambling compact with the Seminoles.²

II. ADULT ARCADES

Although Florida prohibits both slot machines and gambling parlors,³ in 1996 it passed the "Chuck E. Cheese Law,"⁴ which permits "games of skill" in adult arcades.⁵ But because the statute contains no standards, law en-

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I wish to thank the *Nova Law Review* Staff for allowing me to publish this article without having it go through the normal editing process. As a result, any mistakes—substantive or procedural—are my responsibility.

1. See DONALD D. SPENCER, *HISTORY OF GAMBLING IN FLORIDA* (2007), reviewed in Robert M. Jarvis, *Book Review*, 86 FLA. HIST. Q. 434 (2008).

2. See *infra* Part IX.

3. See FLA. STAT. §§ 849.01 and 849.15 (2008).

4. *Id.* § 849.161. The law is so named because legislators had in mind the type of games found in family restaurants like Chuck E. Cheese. See Fred Grimm, *Cheesy Loophole Lets 2-Bit Slot Joints Cash In*, MIAMI HERALD, May 24, 2005, at 1B.

5. See FLA. STAT. §§ 849.161(1)(a)(1.) and 849.161(2) (2008).

forcement officials often claim that such machines are being operated as illegal “games of chance.”⁶

In *Rowe v. County of Duval*,⁷ the First District Court of Appeal reversed and remanded a trial court’s ruling that the Chuck E. Cheese Law was inapplicable because the appellants’ machines accepted both coins and paper bills, instead of just the former (as contemplated by the statute).⁸ The majority considered this conclusion premature, however, because of the failure to determine whether the machines were games of skill.⁹ If they were, the appellants then would have the opportunity to renew their argument that the Chuck E. Cheese Law should be extended in light of technological advances that have made it possible for machines to accept both coins and bills.¹⁰ In a dissent, Judge Van Nortwick insisted that the statute’s wording was clear and that no remand was necessary.¹¹

III. BINGO

Bingo’s popularity in Florida has been declining for years, putting a serious crimp in the budgets of many charities.¹² Nevertheless, in *Bradenton Group, Inc. v. State*,¹³ the game managed to produce an opinion that will serve as a cautionary tale for years to come.

Philip Furtney was the owner of three businesses that collectively made money by renting out bingo halls.¹⁴ In 1995, prosecutors accused Furtney and his companies of violating the bingo statute and sought an order of forfeiture under Florida’s RICO statute.¹⁵ In response, Furtney successfully

6. See Fred Grimm, *Chuck E. Cheese Exception Begets a Split in Rules*, MIAMI HERALD, Aug. 20, 2006, at 1 (Broward). See also Amy Driscoll, *Senate Panel to Consider New Rules for Adult Arcades*, MIAMI HERALD, Feb. 19, 2008, at A1.

7. 975 So. 2d 526 (Fla. 1st Dist. Ct. App.), review denied, No. SC08-653, 2008 WL 4291666 (Fla. Sept. 19, 2008).

8. *Rowe*, 975 So. 2d at 527.

9. *Id.* at 529.

10. *Id.* at 528-29.

11. *Id.* at 529-30 (Van Nortwick, J., dissenting).

12. In an attempt to reverse the tide, the 2007 Florida Legislature passed the “Evelyn Wiesman-Price Act,” which authorizes non-profit organizations to offer “instant bingo” (i.e., pull-tab cards). See ch. 2007-228, 2007 Fla. Laws 2186, 2186-88 (amending FLA. STAT. § 849.0931 (2007)), and Jon Burstein, *Gambling on Future of Bingo*, S. FLA. SUN-SENT., July 29, 2007, at 1A.

13. 970 So. 2d 403 (Fla. 5th Dist. Ct. App. 2007), review denied, 987 So. 2d 1210 (Fla. 2008).

14. *Bradenton Group*, 970 So. 2d at 405 n.1.

15. *Id.* at 405.

moved for an order requiring the government to post a \$1.4 million bond.¹⁶ The dispute eventually reached the Florida Supreme Court, which in 1998 ruled that bingo offenses are not predicate RICO acts,¹⁷ seemingly bringing the matter to an end. In 1999, however, the government refiled the complaint, and, following numerous pre-trial motions, in 2005 a jury convicted the defendants of racketeering.¹⁸

On appeal, the Fifth District Court of Appeal reversed and remanded.¹⁹ Finding that the Supreme Court's 1998 decision had been ignored, the panel sharply rebuked the state's attorneys:

The defendants' bingo offenses could not form the basis for RICO liability and forfeiture. *Bradenton II* [the Supreme Court's 1998 decision] and collateral estoppel barred the action below. We are intrigued by the State's zealotry in this prosecution in light of the Florida Supreme Court's ruling in *Bradenton II* and *Pondella Hall for Hire, Inc. v. City of St. Cloud*, 837 So.2d 510, 510-11 (Fla. 5th DCA 2003). During oral argument, the State contended that minor changes in the amended complaint, additional parties and reliance on [the] federal [RICO] statute supported the revised prosecution. The argument is specious. The American Bar Association Standards for Criminal Justice, Prosecution Function Standard 3-1.1(b) and 3-1.1(c) (2nd ed. 1986 Supp.) states:

(b) The prosecutor is both an administrator of justice and an advocate. The prosecutor must exercise sound discretion in the performance of his or her functions.

(c) The duty of the prosecutor is to seek justice, not merely to convict.

We recommend this section to the prosecutors for their edification and enlightenment.²⁰

IV. CASINOS

While Florida has no land-based casinos of its own,²¹ two cases during the year found Floridians suing over other states' casinos. In *FLA Consult-*

16. *Id.*

17. *See Department of Legal Affairs v. Bradenton Group, Inc.*, 727 So. 2d 199 (Fla. 1998).

18. *Bradenton Group*, 970 So. 2d at 406-08.

19. *Id.* at 412.

20. *Id.* at 411-12.

ing, Inc. v. Rymax Corp.,²² a Florida company called FLA Consulting, Inc. agreed to assist two New Jersey companies that were seeking casino business in such places as Connecticut, Nevada, and New Jersey.²³ When the relationship soured, FLA Consulting filed suit in a Florida state court, which the defendants timely removed to federal court and then sought to have dismissed for lack of personal jurisdiction.²⁴

Finding that the defendants had fair notice that they might be sued in Florida, and had not only paid FLA Consulting in Florida but had shipped merchandise into the state and attended two trade shows here, the court had little difficulty denying the defendants' motion.²⁵ Although the defendants also argued that their contract with FLA Consulting required all disputes to be heard in New Jersey, the court held that the parties had operated under a later contract that lacked such a requirement.²⁶

The other casino case of the period was *Certegy Transaction Services, Inc. v. Travelers Express Co.*²⁷ In 2004, Certegy purchased all of the stock of Game Financial Corporation, a wholly-owned subsidiary of Travelers that provided cash advances to casino customers.²⁸ Although Certegy paid Travelers \$43 million, the parties agreed that this amount would be reduced if, within a specified time, Game lost certain customers.²⁹

One of the designated customers was the MGM Grand Hotel in Las Vegas, which Game did end up losing.³⁰ As a result, Certegy asked Travelers to adjust the purchase price by refunding \$4.8 million.³¹ When Travelers refused, claiming that MGM had remained a Game customer throughout the adjustment period (which ended on November 30, 2005), Certegy took it to

21. Proposals to authorize them, of course, have appeared on the ballot three times. In 1978, a plan to allow casinos in Miami Beach failed by a vote of 71%-29%. In 1986, a plan to allow each county to decide for itself whether to have casinos failed 68%-32%. And in 1994, a plan to allow casinos at selected sites, including pari-mutuel facilities and riverboats, failed 62%-38%. See PATRICK A. PIERCE & DONALD E. MILLER, GAMBLING POLITICS: STATE GOVERNMENT AND THE BUSINESS OF BETTING 110-24 (2004), and Florida Department of State—Division of Elections, *Initiatives/Amendments/Revisions*, <http://election.dos.state.fl.us/initiatives/initiativelist.asp> (last visited July 15, 2008).

22. No. 6:07-cv-1265-Orl-31KRS, 2007 WL 2714100 (M.D. Fla. Sept. 17, 2007).

23. *Id.* at *1.

24. *Id.*

25. *Id.* at *2-*3.

26. *Id.* at *4.

27. No. 8:06-cv-555-T-24 TBM, 2007 WL 3047142 (M.D. Fla. Oct. 18, 2007).

28. *Id.* at *1.

29. *Id.*

30. *Id.* at *2.

31. *Id.* at *2-*3.

court.³² While Certegy admitted that MGM's termination had occurred in December 2005, it pointed out that MGM had given notice of its intention to cancel on November 11, 2005.³³ Not surprisingly, the court, finding it impossible to resolve these factual disputes without a trial, denied the parties' cross-motions for summary judgment.³⁴

V. INTERNET GAMBLING

No internet gambling cases were reported during the survey period, although in November 2007 Attorney General Bill McCollum, responding to an inquiry from Cedar Grove Police Chief Guy J. Turcotte, reconfirmed that such betting is illegal in Florida.³⁵ Local newspaper accounts, however, left little doubt regarding the popularity of web-based wagering.³⁶

VI. PARI-MUTUELS

Despite anecdotal evidence that the growing number of slot machines in South Florida is leading to an increase in gambling addictions,³⁷ in January

32. *Certegy*, 2007 WL 3047142, at *3.

33. *Id.*

34. *Id.* at *6-*7.

35. *See* 2007 FLA. ATT'Y GEN. ANN. REP. 188. Turcotte decided to seek McCollum's advice after area businesses began selling telephone calling cards that came with free sweepstakes points which can be redeemed to play the sweepstakes games. The sweepstakes games are displayed on an interactive computer terminal, the object of which is to line up various symbols and characters in a winning combination. Each ticket contains a configuration of 3 to 25 symbols; winning combinations of which entitle the bearer to money prizes ranging in value from \$1.00 to \$1,000.00. Each terminal communicates with a server, which causes the terminal's screen to display whether the participant has won any "win credits" which can be redeemed for cash or prizes.

Id. at 188-89.

36. *See, e.g.,* Sandra Amrhein, *Gambling Raid Shuts Internet Site*, ST. PETERSBURG TIMES, June 6, 2008, at 3 (South Shore & Brandon Times) (Sun City computer center discovered to be serving as cover for a gambling house); Andrew Ba Tran, *12 Accused of Running Betting, Loan Sharking Ring*, S. FLA. SUN-SENT., May 24, 2008, at 1B (internet gambling operation headquartered in Coral Springs restaurant broken up); Todd Leskanic, *Professor Avoids Jail, Will Repay Club*, TAMPA TRIB., May 16, 2008, at 4 (Pasco) (former University of Tampa accounting professor ordered to repay \$120,000 she stole to support her internet gambling habit); *2 Accused of Extortion Over Gambling Debts*, MIAMI HERALD, Oct. 3, 2007, at B3 (Broward County men arrested for threatening gambler who lost \$1.2 million placing internet sports bets).

37. *See* Amy Driscoll, *Slot Machines Get Most Gambling Help Line Calls*, MIAMI HERALD, Aug. 1, 2007, at B6, and Jon Burstein, *Gambling Help Line Reveals Increase in Slot Addictions*, S. FLA. SUN-SENT., Aug. 5, 2007, at 5 (Community News). On the other hand, slot machines were found to have no measurable impact on the region's crime statistics. *See*

2008 voters in Miami-Dade agreed to let their county's pari-mutuels have them, thereby reversing their March 2005 "no" vote.³⁸ Yet even as proponents celebrated their victory, the performance of Broward's "racinos"³⁹ put a damper on the party. Due to the high (50%) taxes imposed on them by the Florida Legislature, the profits generated by Broward's pari-mutuels have been far below projections, so much so that Las Vegas's Boyd Corporation has, at least for the time being, shelved its plans to put slot machines in the Dania Jai-Alai fronton (despite paying \$152 million for the property).⁴⁰

Although their financial difficulties are their most immediate problem, the biggest threat facing the racinos actually lies elsewhere. In *Floridians for a Level Playing Field v. Floridians Against Expanded Gambling*,⁴¹ the Florida Supreme Court, finding that it lacked jurisdiction to hear the case, kept alive a challenge to Amendment 4, which paved the way for Broward and Miami-Dade to have racinos.⁴² The dispute is now back before a Leon County circuit court judge for a decision on whether the backers of Amendment 4

Amy Driscoll & Andres Amerikaner, *No Rise in Crime With Slots—So Far*, MIAMI HERALD, Jan. 24, 2008, at B1.

In an interesting twist, the government in *Waite v. Astrue*, No. 1:07-cv-00045-MP-AK, 2008 WL 2477657 (N.D. Fla. June 16, 2008) argued that *because* the plaintiff regularly gambled (often for long stretches of time), he was not disabled and therefore not did not qualify for enhanced Social Security benefits. The court agreed and wrote:

The ALJ gave weight to Dr. Mata's opinion that Plaintiff was capable of performing simple work, and found that Plaintiff's gambling activities showed a strong ability to socialize, to accomplish demanding tasks, and to be familiar with elaborate game rules and strategies. Because a [residual functional capacity (RFC)] assessment is based on all of the relevant evidence in the case record, not just the medical evidence, the Court agrees with the Magistrate that the ALJ properly formulated Plaintiff's RFC.

Id. at *1.

38. See Amy Driscoll, *Jackpot for Dade Slots*, MIAMI HERALD, Jan. 30, 2008, at B1, and Adrian Sainz, *Slot Supporters Win Big in Miami-Dade*, ORLANDO SENT., Jan. 30, 2008, at B2.

39. The term "racino," which combines the words "racetrack" and "casino," was coined by Richard L. Duchossois, a Chicago horseman, and first appeared in print in a 1995 *Sports Illustrated* article. See Word Spy, *Racino*, <http://www.wordspy.com/words/racino.asp> (last visited July 15, 2008).

40. See Amy Driscoll, *Analyst: Taxes Hurting Racinos*, MIAMI HERALD, Oct. 10, 2007, at B5; John Holland, *Miami-Dade Slots Vote Bring High-Roller Plans, But Broward Operators Say Profits Lacking*, S. FLA. SUN-SENT., Jan. 31, 2008, at 11B; Thomas Monnay, *Slot Take Disappoints Hallandale*, S. FLA. SUN-SENT., Dec. 9, 2007, at 1B; Toluse Olorunnipa & Roberto Santiago, *New Casino Put on Hold as Jai-Alai Hedges Bet*, MIAMI HERALD, Aug. 5, 2007, at B1. An effort to lower the tax rate failed to win approval during the 2008 legislative session. See Stacey Singer, *Track Owners Give Up on Slots*, PALM BEACH POST, May 4, 2008, at 1C.

41. 967 So. 2d 832 (Fla. 2007).

42. *Id.* at 833-35.

failed to collect enough valid signatures to put the initiative on the ballot.⁴³ Of course, such a finding would shut down the racinos.⁴⁴

Meanwhile, three lawsuits during the year shone a spotlight on the working conditions at pari-mutuels. In *Alvarez Perez v. Sanford-Orlando Kennel Club, Inc.*,⁴⁵ the Eleventh Circuit ruled that a dog track that deliberately withheld the overtime pay of a maintenance worker was liable for liquidated damages.⁴⁶ Similarly, in *Tafarella v. Hollywood Greyhound Track, Inc.*⁴⁷ and *Wajcman v. Hartman & Tyner, Inc.*,⁴⁸ poker dealers at the Mardi Gras Racetrack and Gaming Center were granted permission to file “collective actions” (the employment law equivalent of class actions) after claiming they had been forced to share their tips with non-tipped employees.⁴⁹

The period’s two remaining decisions both involved licensing disputes.⁵⁰ In *Florida Department of Business & Professional Regulation v. Gulfstream Park Racing Ass’n*,⁵¹ the Florida Supreme Court found that a statute⁵² barring Gulfstream Park in Hallandale from broadcasting its races to nearby Pompano Park was a special law because, as a practical matter, it applied only to Gulfstream.⁵³ And because it had been enacted using the more liberal procedures specified for general laws, the court found that it was invalid.⁵⁴ In a concurring opinion, Chief Justice Lewis, joined by Justice

43. See Jon Burstein, *Slot Machine Lawsuit Sent to Circuit Judge*, S. FLA. SUN-SENT., Sept. 28, 2007, at 6B, and Amy Driscoll, *Slot-Machine Case Sent to Lower Court*, MIAMI HERALD, Sept. 28, 2007, at B3.

44. The racinos, however, insist they are not worried. See, e.g., Amy Driscoll, *Supreme Court to Hear Anti-Slots Case*, MIAMI HERALD, Sept. 17, 2007, at B1 (quoting Bruce Rogow, the racinos’ lawyer, as saying, “In the long run, this is much ado about very little. . . . The parimutuels will prevail in one fashion or another. We can rest assured that parimutuels will continue to operate.”).

45. 515 F.3d 1150 (11th Cir.), *rehearing denied*, 518 F.3d 1302 (11th Cir. 2008).

46. *Alvarez Perez*, 515 F.3d at 1168.

47. No. 07-60017-CIV, 2007 WL 2254553 (S.D. Fla. Aug. 1, 2007).

48. No. 07-61472-CIV, 2008 WL 203579 (S.D. Fla. Jan. 23, 2008).

49. See *Tafarella*, 2007 WL 2254553, at *4, and *Wajcman*, 2008 WL 203579, at *2.

50. Of course, how a license is interpreted can have enormous consequences. Despite opposition from one of its leading competitors, see *Gulfstream Tries to Block Rival*, S. FLA. SUN-SENT., Apr. 10, 2008, at 3B, in June 2008 Mardi Gras was given permission to “stack” its license with that of the defunct Biscayne Kennel Club to get around regulations that currently limit pari-mutuels to 12 hours of poker per day per license. See Nick Sortal, *Poker Room to Go 24 Hours*, S. FLA. SUN-SENT., June 24, 2008, at 4B.

51. 967 So. 2d 802 (Fla. 2007).

52. See FLA. STAT. § 550.615(6) (2007).

53. *Gulfstream*, 967 So. 2d at 808-09.

54. *Id.* at 809-10.

Bell, chided the majority for failing to address the statute's non-severability clause.⁵⁵

Lastly, in *Florida Division of Pari-Mutuel Wagering v. Florida Standardbred Breeders & Owners Ass'n*,⁵⁶ the Division of Pari-Mutuel Wagering sought to have a lawsuit filed against it in Broward County transferred to Leon County, where it maintains its headquarters.⁵⁷ The case had arisen after the Division granted a slots license to The Isle Casino & Racing at Pompano Park, despite the track's failure to reach an agreement with its horsemen as to how to divide future slot monies.⁵⁸ Finding that the Division was entitled to assert its common law "home venue privilege," the Fourth District Court of Appeal ordered the case to be either dismissed or transferred.⁵⁹

VII. SHIPBOARD GAMBLING

The trial of the three men accused of killing SunCruz Casinos founder Konstantinos "Gus" Boulis in Fort Lauderdale in 2001 remained pending during the year, although in June 2008 Adam Kidan, who had purchased the company from Boulis shortly before the slaying, had his 70-month federal prison sentence cut in half after he helped officials investigate the circumstances surrounding Boulis's death.⁶⁰

Boulis's former company and its competitors suffered greatly during the year, buffeted by competition from land-based operators and the skyrocketing price of fuel.⁶¹ Adding to their woes, in June 2008 Governor Charlie Crist signed SB 1094, dubbed the "Gambling Vessels/Clean Ocean Act."⁶²

55. *Id.* at 810-11 (Lewis, C.J., concurring).

56. 983 So. 2d 61 (Fla. 4th Dist. Ct. App. 2008).

57. *Id.* at 62.

58. *Id.*

59. *Id.* at 62-63.

60. See Vanessa Blum, *Fraud Convict's Sentence Halved*, S. FLA. SUN-SENT., June 26, 2008, at 3B.

61. See Barry Flynn, *Businesses Take More of a Gamble: SunCruz Pulls Out, As Expanded Kennel Club Plans More Action*, DAYTONA NEWS-J., Jan. 27, 2008, at 1E; Tom Stieghorst, *Onshore Slots Have Day Cruises Playing Straits Poker*, S. FLA. SUN-SENT., Feb. 29, 2008, at 1D; Matt Miller, *Cruise Ship Layoffs Reflect Losing Battle Against Land Gambling*, ONLINE CASINO ADVISORY, June 29, 2008, <http://www.onlinecasinoadvisory.com/casino-news/land/cruise-ships-struggle-against-casinos-1800.htm>. Nevertheless, a group of local businessmen continued their efforts to bring another gambling ship (which they dubbed the M/V LIQUID VEGAS) to Port Canaveral. See Donna Balancia, *New Gambling Ship in Town*, FLA. TODAY, Jan. 26, 2008, at 1C, and Scott Blake, *3rd Gambling Ship Ready to Roll in July*, FLA. TODAY, June 24, 2008, at 1C.

62. See ch. 2008-231, §§ (1)-(10), 2008 Fla. Laws 2687 (codified at FLA. STAT. § 376.25 (2008)) [hereinafter cited as GV/COA].

Championed by Senator Mike Haridopolos (R-Melbourne), a longtime boats foe due to his connections with the pari-mutuel industry,⁶³ the law requires “day cruises”⁶⁴ to pay for wastewater pump-out facilities at their home ports (at present, such water normally is dumped at sea after being partially treated).⁶⁵ In addition, the ships will have to pick up the state’s oversight costs.⁶⁶ Although the legislation’s overall financial burden is likely to be

63. While running to fill the seat left vacant by the death of Senator Howard Futch, Haridopolos was criticized for accepting thousands of dollars from the pari-mutuel industry. See *Haridopolos Best in Primary*, ORLANDO SENT., Mar. 7, 2003, at A18. After being elected, Haridopolos immediately introduced SB 2800, which sought to ban casino boats from Florida’s waters. See *Haridopolos’ Gambling Ban a Reckless Move*, FLA. TODAY, Apr. 17, 2003, at 14. When this effort failed, he tried to lift the state ban on nighttime thoroughbred racing and sought permission for a new track in Ocala. See Steven Isbitts, *Bill Sheds Light on Night Racing*, TAMPA TRIB., Apr. 17, 2004, at 10 (Sports).

64. Day cruises, also known as “cruises to nowhere,” are gambling excursions that normally last five or six hours and sail just far enough (three miles on Florida’s east coast, nine miles on Florida’s west coast) to reach international waters, where they are able to open their casinos. For a further discussion, see *Florida Dep’t of Revenue v. New Sea Escape Cruises, Ltd.*, 894 So. 2d 954 (Fla. 2005).

65. See *GV/COA*, *supra* note 62, at § 4. Cruise ships that embark on multi-day voyages are expressly exempted, *id.* § 2(e), as are casino boats equipped with a marine waste system that “eliminates the need to pump out or dump wastewater.” *Id.* § 8(e).

66. *Id.* § 7.

small,⁶⁷ the perilous condition of the industry makes a court challenge on federal preemption grounds a strong possibility.⁶⁸

In the meantime, shipboard gambling produced the year's most dramatic opinion. In *Luyao v. State*,⁶⁹ Dr. Asuncion Mendoza Luyao, who had been given a 50-year jail sentence for overprescribing the painkiller OxyContin, thereby causing the deaths of six of her patients, was granted a new trial by the Fourth District Court of Appeal after it found that references to her fondness for gambling on the casino ship M/V PALM BEACH PRINCESS had prejudiced the jury.⁷⁰ According to the court, while Luyao might have be-

67. Neither of the bill's staff analyses included a cost estimate. See Professional Staff of the Florida Senate Environmental Preservation and Conservation Committee, *Bill Analysis and Fiscal Impact Statement of CS/SB's 1094 & 326*, at 8 (Mar. 25, 2008), <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=2008s1094.ep.doc&DocumentType=Analysis&BillNumber=1094&Session=2008>, and Professional Staff of the Florida Senate Regulated Industries Committee, *Bill Analysis and Fiscal Impact Statement of CS/CS/SB's 1094 & 326*, at 8 (Apr. 15, 2008), <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=2008s1094.ri.doc&DocumentType=Analysis&BillNumber=1094&Session=2008>.

Elsewhere, however, it has been claimed that the typical casino boat dumps 79,800 gallons of wastewater per week, see Surfrider Foundation, *Florida Gambling Boat Pollution*, <http://www.surfrider.org/sebastianinlet/news/gambling.htm> (last visited July 15, 2008), and that the cost to treat 1,000 gallons of waste water is \$5. See Lyndsey Lewis, *Senate Postpones Vote on Waste Dumping Bill*, BRADENTON HERALD, Mar. 23, 2007, at 10 (Local). As such, operators can expect to annually pay roughly \$20,000 per ship, in addition to the state's administrative expenses (which could add another \$10,000 a year if, as seems likely, two full-time staffers are hired). Alternatively, for a one-time cost of approximately \$100,000, a casino boat can be equipped with a marine waste system known as "Dragonfly" that makes pumping unnecessary. See Donna Balancia, *Dragonfly Creates Buzz in Cruise Ship Industry*, FLA. TODAY, Aug. 22, 2007, http://www.ajt.com/look/news/articles/0807_DragonflyCruiseBuzz.html.

68. The GV/COA has been crafted to try to avoid running afoul of *United States v. Locke*, 529 U.S. 89 (2000), which makes it clear that states cannot regulate vessel design. By instead focusing on the ports at which casino boats tie up, and making use of their facilities optional (annual registration with the state and payment to the port being the only actual requirements), the bill's supporters hope to come within the holding of *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973), which gives states a relatively free hand when overseeing shoreside activities. For a further discussion of what is and is not permissible, see Stephen Thomas, Jr., *State Regulation of Cruise Ship Pollution: Alaska's Commercial Passenger Vessel Compliance Program as a Model for Florida*, 13 J. TRANSNAT'L L. & POL'Y 533 (2004), and Laura K.S. Welles, Comment, *Due to Loopholes in the Clean Water Act, What Can a State Do to Combat Cruise Ship Dumping of Sewage and Gray Water?*, 9 OCEAN & COASTAL L.J. 99 (2003).

69. 982 So. 2d 1234 (Fla. 4th Dist. Ct. App. 2008) (per curiam).

70. *Id.* at 1235.

come more willing to issue prescriptions as her gambling losses mounted, the government had not done enough to prove its theory.⁷¹

The period's four other maritime cases all turned on highly technical points of procedure. In *PDS Gaming Corp. v. M/V Ocean Jewell [sic] of St. Petersburg*,⁷² the Eleventh Circuit reinstated the arrest of the M/V CASINO ROYALE after slot machines belonging to PDS Gaming, and originally placed aboard the M/V OCEAN JEWEL, were transferred without PDS's permission to the CASINO ROYALE.⁷³ According to the court, the trial judge had used the wrong standard in concluding that PDS had failed to show that it was entitled to have the arrest continued.⁷⁴

In *Azevedo v. Carnival Corp.*,⁷⁵ a slot technician aboard the M/V CELEBRATION whose appendectomy was misdiagnosed as menstrual pains was found not to be subject to an arbitration clause and therefore entitled to sue in state court.⁷⁶

In *In re: SunCruz Casinos, LLC*,⁷⁷ a seaman injured in an elevator mishap aboard the M/V SUNCRUZ VIII was permitted to file a late claim in the line's bankruptcy proceeding, the court finding that at the time of the original deadline the seaman had mistakenly believed he was fully recovered from the accident.⁷⁸

And in *Lee v. Oceans Casino Cruises, Inc.*,⁷⁹ which arose from a collision between two cars, one being driven by a casino boat employee and the other by a husband and wife (the latter of whom suffered fatal injuries), the Third District Court of Appeal held that the defendant vessel owner had

71. *Id.* at 1236-37. The information about Luyao's gambling habits had been excluded from her 2005 trial, which ended in a hung jury, but was allowed in by a different judge at her 2006 retrial. See Derek Simonsen, *Former PSL Doctor Luyao May Be Granted a New Trial*, FORT PIERCE TRIB., May 29, 2008, at A1.

72. No. 07-10088, 2007 WL 2988798 (11th Cir. Oct. 15, 2007) (per curiam). Throughout its opinion the court consistently misidentified the ship by misspelling the word "jewel." Built in 1982 as the Russian car ferry M/V MIKHAIL SUSLOV, the vessel assumed its present name in 2004 when it was brought to St. Petersburg. See Caryn Baird & Angie Holan, *Ocean Jewel History*, ST. PETERSBURG TIMES, Dec. 29, 2005, at 1D.

73. *PDS*, 2007 WL 2988798, at *1.

74. *Id.*

75. No. 08-20518-CIV, 2008 WL 2261195 (S.D. Fla. May 30, 2008).

76. *Id.* at *8.

77. 377 B.R. 741 (Bkrtcy. S.D. Fla. 2007).

78. *Id.* at 745-48.

79. 983 So. 2d 791 (Fla. 3d Dist. Ct. App. 2008).

failed to preserve for appeal the question of whether the plaintiffs' lawyer had improperly impeached one of its experts.⁸⁰

VIII. STATE LOTTERY

During the year officials in Tallahassee looked into the idea of privatizing the Florida Lottery, a step that could net the state between \$17 billion and \$31 billion.⁸¹ Any such move, however, will likely run into problems, inasmuch as the Florida Constitution prohibits private companies from conducting lotteries.⁸²

The only lottery case reported during the year was *Womack v. Commissioner of Internal Revenue*,⁸³ but the decision turned out to be a blockbuster. Roland Womack and Maria Spiridakos, supported by 59 other past Florida lottery winners, appealed to the Eleventh Circuit after the Tax Court held that when future lottery payouts are sold for an immediate lump sum, the money realized from the transaction is taxable as ordinary income.⁸⁴ The players had argued that the payouts constituted a long-term capital asset, and as such qualified for the more favorable tax treatment accorded such property.⁸⁵ In rejecting this contention, the Eleventh Circuit wrote:

In defining "capital asset," Congress used the term "property" to mean "not income"—that is, "property" serves to distinguish assets suitable for capital gains treatment from mere income. "Property" in the most general sense means anything owned, which would also include income and any rights or claims to it. Even if other statutes use "property" in this broad sense, to exclude substitutes for income in determining what constitutes a capital asset is

80. *Id.* at 794. According to the court, any other result would "encourag[e] an attorney to sit silently during trial, await the outcome, and complain only if [there was] an unfavorable result." *Id.* at 795.

81. See Gary Fineout, *Financial Firms Pushing for Private Florida Lottery*, MIAMI HERALD, Sept. 11, 2007, at B1; John Kennedy, *Crist Suggests Taking Lottery, Roads Private*, ORLANDO SENT., Sept. 5, 2007, at B1; Jerome R. Stockfisch, *Would Lottery Lease Be State's Winning Ticket?*, TAMPA TRIB., at 1 (Nation/World). A number of other states, including California, Illinois, and New York, are considering similar moves. See Nelson D. Schwartz & Ron Nixon, *Privatizing the Prize*, N.Y. TIMES, Oct. 14, 2007, at 3 (Bus.).

82. See FLA. CONST. art. X, § 7, which provides: "Lotteries . . . are hereby prohibited in this state." As a result, when it was decided in 1986 to have a state lottery, a constitutional amendment was needed to overcome the ban. Because the language used says, "Lotteries may be operated by the state," see FLA. CONST. art. X, § 15(a), it is unclear whether the state can lease its lottery to a private outfit.

83. 510 F.3d 1295 (11th Cir. 2007).

84. *Id.* at 1297-98.

85. *Id.* at 1302-07.

consistent with the word “property.” No other interpretation of “property” would harmonize with the statute’s purpose, as the very nature of the term “capital asset” excludes what is in essence ordinary income.⁸⁶

IX. TRIBAL GAMING

In November 2007, after 16 years of contentious negotiations, Florida and the Seminoles signed a gambling compact, thereby giving the tribe the exclusive right to offer baccarat and blackjack (and, outside Broward and Miami-Dade, the exclusive right to have Las Vegas-style slot machines).⁸⁷ Even before the ink had a chance to dry, however, Marco Rubio (R-West Miami), the Speaker of the Florida House of the Representatives, filed suit in the Florida Supreme Court, alleging that the governor had overstepped his bounds and, in the process, violated the Florida Constitution’s separation-of-powers clause.⁸⁸

Although oral argument took place in January 2008,⁸⁹ by June 2008 no decision had been issued.⁹⁰ As a result, the Seminoles decided to begin offering blackjack and baccarat, as well as various other table games, at their Hard Rock casino in Hollywood.⁹¹ Despite a steady rain, the grand opening, starring actress Carmen Electra, drew a huge crowd,⁹² and in the days that

86. *Id.* at 1304-05.

87. The compact’s details are reviewed at length in Robert M. Jarvis, *The 2007 Seminole-Florida Gambling Compact*, 12 GAMING L. REV. 13 (2008).

88. See Michael C. Bender, *Rubio Seeks Halt to Crist-Seminole Deal*, PALM BEACH POST, Nov. 20, 2007, at 4A; Mary Ellen Klas, *Rubio Asks Court to Block Seminole Deal*, MIAMI HERALD, Nov. 20, 2007, at A1; Alex Leary, *Rubio Fights Gaming Pact*, ST. PETERSBURG TIMES, Nov. 20, 2007, at 1A.

89. See Gary Fineout, *Justices Question Validity of Crist-Seminole Pact*, MIAMI HERALD, Jan. 31, 2008, at B2, and Linda Kleindienst, *State High Court Asked to Decide on Compact*, S. FLA. SUN-SENT., Jan. 31, 2008, at 3B.

90. The ruling finally came on July 3, 2008, and agreed with Rubio’s position. See *Florida House of Representatives v. Crist*, 990 So. 2d 1035 (Fla. 2008). Although this seemed to spell the end for the tribe’s games, five days later a federal judge said they could continue. See *PPI, Inc. v. Kempthorne*, No. 4:08cv248-SPM, 2008 WL 2705431 (N.D. Fla. July 8, 2008).

91. See Nick C. Sortal, *It’s A Big Deal: Blackjack Starts June 22*, S. FLA. SUN-SENT., June 7, 2008, at 1B, and *Seminole Casino Card Games Begin June 22*, ST. PETERSBURG TIMES, June 7, 2008, at 6B.

92. See Amy Driscoll, *Amid Glitz, Blackjack’s in the Cards*, MIAMI HERALD, June 23, 2008, at B1, and Charles Passy, *Casino’s Blackjack Debut a Big Deal*, PALM BEACH POST, June 23, 2008, at 1A. Despite her fame and good looks, Electra admitted she was an odd choice to host the grand opening: “I’m not a gambler at all. I’d rather be shopping.” See Madeleine Marr, *Carmen Electra: She’s A Big Deal*, MIAMI HERALD, June 24, 2008, at A8.

followed South Floridians eagerly lined up for a chance to lose their money.⁹³

X. CONCLUSION

While it is already being described as a gambling mecca by some,⁹⁴ Florida currently poses no threat to either Atlantic City or Las Vegas. But it is certainly gaining ground fast, and the future looks bright.

93. See Michael Mayo, *Seminoles Hold All the Cards*, S. FLA. SUN-SENT., June 24, 2008, at 1B.

94. See, e.g., Daniel Chang, *Feeling Lucky? With Improved Gaming and Lavish Casinos, South Florida's the New Sin City*, MIAMI HERALD, Sept. 21, 2007, at G6.