

EXPERT COMMENTARY ON PASPA AND SPORTS BETTING FROM JOE ASHER

Joe Asher has an extensive background in the gaming industry and sports betting business, which began in his years of working at Delaware racetracks as a teenager. In 2012, Asher became the chief executive officer of William Hill US, and has since helped build the race and sports betting company into one of the largest in the world.

I. BACKGROUND IN RACE AND SPORTS BETTING

Will you tell us about yourself and your background in the race and sports-betting industry?

I was born in Wilmington, Delaware, and my dad was a gambler. He owned a newsstand. I grew up going to the racetrack with my dad — mostly to Brandywine Raceway, but also to Delaware Park and other tracks in the area — like Liberty Bell and Garden State. I would read about the races. He also bet on sports and we used to go to baseball games. We would get general admission at the Phillies games. It was \$2.50 for adults and .50 cents for kids, and we would go up for a number of games. He was a big Dodgers fan, so when the Dodgers were in town we would go up early and figure out what hotel the Dodgers were staying at and get autographs. I was reading about it at the newsstand because I was reading all these newspapers. I read a lot of books about sports when I was a kid. I was a little statistics geek, so I would keep stats, clip out the box scores from the newspaper and keep all kinds of statistics.

When I was sixteen, I got a job working at Brandywine Raceway in the publicity department. I started announcing horse races not long after that, and I became the youngest track announcer in North America, calling races full-time in Harrington Raceway, part-time in Brandywine, and at Dover Downs. I still remember the first race I ever called. Then, I got a job as a full-time track announcer in Massachusetts at a track called Foxboro. I did a little bit of thoroughbred stuff at Fair Hill, and became the Wilmington News Journal's thoroughbred racing handicapper at Delaware Park where I used to do the picks in the paper. So, I was very heavily into it. Then, all the while I was putting myself through school and was encouraged by a couple of mentors to go to law

school, and I was interested in gaming law. Anyway, I went to Widener Law School, it's now called Delaware Law School at Widener University in Wilmington. I got out of law school, clerked for a year and then went to work at a law firm. I practiced law first in Delaware, and then in New York. Ultimately, I decided I wanted to get back into the gaming industry and wound up going to work for a client. I moved out to Vegas, and ultimately left that company and wound up starting a company in the sports betting space.

Fast forward to 2007-2008, I started a company called Brandywine Bookmaking, and it traded under the Lucky's brand name of Lucky's Race and Sports Books. In 2011, I signed an agreement to sell that company to William Hill. The transaction closed in 2012. William Hill bought three companies at that time — Brandywine being one of the three. Then, I ultimately stayed on to run the William Hill US business. It kind of came full circle.

How long did you practice law?

I graduated law school in 1993 and clerked for a year. In September of 1994, I started at Skadden Arps in Wilmington, Delaware. Ultimately, I left Skadden at the very end of 2002. I focused on corporate and commercial litigation. I was a litigator.

II. RACE AND SPORTS BETTING

Getting into William Hill, can you tell us about how you operate and how you position yourself in the greater gaming industry?

William Hill is a company that was founded a little more than eighty years ago by a guy named William Hill, who was originally an on-course bookmaker in the United Kingdom. He died in the 1970s, but the company went on from there. Currently, it's got about 16,000 employees and is headquartered in London. It's publicly traded on the London Stock Exchange. There's basically four main business units within William Hill: there's a U.K. retail business, there's a U.K. focused online business that's run out of Gibraltar, there's an online business in Australia, and there's the U.S. business. William Hill is one of the biggest sports betting companies in the world. The businesses are different in these various places. In the U.S., we operate sports books in casinos across the state of Nevada. Currently, it's 108 locations across the state — the number goes up or down a little bit from time to time. They range from fairly big, ten thousand square foot or more venues, to very small self-service betting kiosks in remote locations. That's a full outsource of that business — it's our brand, our bankroll, our betting product, our equipment. It's a full outsource of our business.

In addition to that, we're the exclusive risk manager for the Delaware Lottery. Under PASPA, Delaware is allowed to offer parlay betting on NFL

Winter 2017] *EXPERT COMMENTARY FROM JOE ASHER*

45

football. It must be at least three game parlays. That's operated under the auspices of the lottery in a partnership with Scientific Games. We set the odds and manage the risk for the state. Unlike Nevada, where it's our bankroll and our cash, in Delaware the state is the counterparty to the transaction and we're a service provider for the state. That's essentially the business. There's a one-off. We operate a race book in Council Bluffs, Iowa for Caesars at the Horseshoe Casino at Council Bluffs. We also manage the risk for a sports book in St. Kitt's.

What is your personal style as an operator? What's it like to be in a partnership with Joe Asher or to work for Joe Asher?

I think with our colleagues in the office, it's a fairly flat organization in some respects. I have eight direct reports, and I'm fairly involved in different areas of the business. I'm a big believer in corporate culture and giving people a good and fun environment in which to work. People work very hard. I work very hard and really focus on making sure the work gets done. I try to provide opportunities for people. There are certain positions that we would only hire internally from the company. When positions open up in trading or what we call bookmaking departments, there's always a lot of people who are interested in those jobs and we only consider internal applicants. We try to have a nice fun environment, yet a serious business culture. And at the end of the day, it's very much a people business.

We have very much a culture of compliance, as well, where every customer is important, and no customer is too important. We're a heavily regulated industry. We take those regulations very seriously and [so we are] very compliance-focused. We actually view that as a competitive advantage in the marketplace, as it expands.

From a business-partner perspective, we do what we say we're going to do. We're honest, ethical people and we live up to our obligations to our business partners and we always try to make sure we do right by them. I mean, it can be a scenario where we have just committed capital to build out a new sports book and we have spent all our money, but it's just not quite right. Rather than leave it in the not quite right frame of mind, we go and fix it and make it right. We're very accessible. Everybody's got my cell-phone number — it's on my business card [and] our employees and partners know it. When there's an issue, people call me or text me and it can run the gambit from a big serious issue to somebody asking, "Hey next time you come down here to Laughlin, can you bring me a new polo shirt because it got ruined in the wash."

For William Hill, are there any new projects you have underway that we should know about?

Well, good sports-betting businesses, certainly ours — these are

technology businesses these days. There's a heavy focus around technology. Not that long ago, we doubled the size of this office to expand for our technology department both the system side and the development side and it's this big expansion around technology. These are technology businesses. We do a little over a half of our betting handle on a mobile app — in Nevada, you can bet on a mobile app anywhere within the state. What that means is you've got app developers and we do it all internally. In terms of the app, we've got a new sign-up process that's in field trial with the Gaming Control Board — we call it Selfie Sign-Up. It's a patent-pending technology where you basically have to be physically present in a sports book in Nevada to open up a mobile account, but we allow you to do it all on your phone. You take a picture of your driver's license and the barcode on the back.

So, you are physically there in the book, but you don't have to interact with any person? A player can just sign himself up?

You can just sign yourself up. You can do all the pre-set-up before you go in, but then you have to physically go into the book to activate. So, that's in field trial now. We've got new kiosks that we are getting ready to roll out in the state, where we've taken some technology that we've got that was developed in the U.K. and modified for use here in the U.S. We're starting to get ready to deploy those.

The other thing we are doing — I just had a meeting earlier today about it — we're launching a product called "My Odds" where [for] certain sporting events, the start of the football season or certain games, customers can contact us on social media, on Twitter, and they ask us to put up a price on a certain type of prop bet, and we'll put the price up within minutes. We're really interacting with our customer base in a real way on social media so you can say, "What are the odds of Tom Brady throwing four touchdown passes, two interceptions, and the Patriots winning the game?" and then we'll put up a price for that. We do it all on social media. So those are some of the new things that are currently getting ready to start, and then there's a whole pipeline of stuff that we're working on beyond that — both on the technology side and deals with potential partners and that kind of stuff. There's a lot going on with business, and we're working on some sponsorship stuff, as well, that we're very close to getting over the line.

What is your approach to operating in various jurisdictions and how does it impact your business?

You start with the fundamental questions of: is it legal and who gets the licenses to operate in the jurisdiction? Then, are mobile and mobile apps permitted? Do you have to go to the casino to sign up for mobile? Can you sign up remotely? Those are among the policy decisions that will be made. Then of

course, what's the tax rate? A reasonable tax rate is critical because the illegal market will not go away. Whether you compete with the illegal market is a very real question.

III. PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT (PASPA)

Let's talk about PASPA and the Supreme Court accepting the case, Christie v. NCAA, which is looking to strike down PASPA. First of all, as a lawyer and sports-betting professional who knows the ins-and-outs of this business probably more than anybody from the outside could say they do, what do you think is going to happen? Do you think the Supreme Court is going to take this case to uphold the Third Circuit, or are they going to strike this down?

Well, I don't know what the Court's going to do. We do know that in appeals from federal appeals courts, the Supreme Court reverses over 70% of the time. I think that number was north of 80% this last term. Then, of course further making this unique, you had the Solicitor General recommendation against cert. and you don't have the circuit split, which is the traditional way of getting the Court to take the case. That math maybe gives you an indication of what the Court is thinking. Clearly, these four justices were interested in it. There's at least three ways the Court could rule. Number one, the Court could affirm PASPA and affirm the Third Circuit's decision on the effort to work around PASPA by going with unregulated sports betting in New Jersey, which was the *Christie II* decision. Another scenario is the Court rules that what New Jersey did in response to *Christie I* was appropriate and that it can deregulate sports betting in certain locations in the state, a sort of partial repeal. The Court could say the 2014 law is valid. PASPA stands, but you can deregulate. That's another scenario, and [is] more directly tied to the *Christie II* case, which is what they accepted on cert. The third scenario is they can strike the statute altogether and in effect reach the broader constitutional question, which is certainly the sexier issue. In effect, it's a states' rights issue, which has always been my view. Gambling is a matter that's historically left to the states to regulate, and if New Jersey wants to have sports betting and Utah does not, that's okay. It's up to the people of those states through their elected representatives or through a referendum process (or both in some states) to decide.

The Supreme Court case is interesting, as the legal process plays out. It's been fascinating. You've got this clash of the legal titans — Ted Olson on the one side and Paul Clement, the successor Solicitor General, on the other side. It's kind of ironic that by the time the Court decides the case, Governor Christie who has been the champion of this case, won't be Governor anymore, so the final Supreme Court case might be titled Somebody Else v. NCAA, which is somewhat unfortunate. Kudos to Governor Christie for having the persistence. I'm one who believes that persistence is an important trait in business, the

impact of which is often overlooked. You can't overstate the value of persistence and Governor Christie, Ted Olson, Matt McGill and their teams have pressed on for the case.

If PASPA is struck down and states are allowed to put forth legislation to allow sports betting, obviously that's a good thing for William Hill. How are you planning for that? Are you looking at certain jurisdictions pending the outcome of that case?

Absolutely. Obviously, we need to see how it shakes out initially in the courts and be prepared for what happens. You try to assess which states are likely to move quickly. Clearly, Delaware, which already has legislation in place and has the infrastructure in place, will move very quickly. We already have a contract there so we're obviously very focused on that. New Jersey will move quickly. It depends exactly on which result the Court reaches and whether it's unregulated. We already built out a sports book at Monmouth Park and are ready to open for business really quickly if PASPA is struck down and a state can legalize it. New Jersey actually doesn't have any legislation anymore because they repealed all that legislation, so they would have to reenact legislation, which would presumably happen pretty quickly. So, you would think New Jersey would go pretty quickly. We've obviously been through this type of analysis in other states and followed the news around on which other states may go quickly. We're in the first wave, if you will, and there will be waves to this — there will be fast adopters, there will be those who will come along a little bit after that, others later still, and then some probably not in my lifetime. We're focused on the early states and trying to position ourselves to be ready, and also make sure we are ready from a technology perspective, as well. So much will be dependent upon the legislation on the particular states.

If New Jersey had legal sports betting, do you think it would have saved the Atlantic City casinos that were forced to close in recent years?

Atlantic City is far from dead. The challenges it faced and continues to face are [based on] the size of the market and the expansion of gambling in the surrounding states. In the early days of Atlantic City, it was the only legal gambling east of Las Vegas. After the last race at Brandywine Raceway, a friend and I would drive to Atlantic City and gamble all night or until our money ran out. Then, we'd come back for work the next morning, and you wouldn't do that today. You would just go gamble at Delaware Park. My mom was a nurse's aide and on her days off she would take the bus from Wilmington to Atlantic City. You wouldn't do that today. You would go closer to home.

Will it help — of course, it'll help. Atlantic City would be a great place to go during football season and March Madness. So, will it help Atlantic City?

Absolutely, but that's a separate issue from the capacity issues. Effectively, Atlantic City was built up for a regional monopoly that no longer exists and so I think the closure of some properties and the downsizing of the market is what had to happen to address the fact that there's more capacity than there was a market. It will help Atlantic City and the racetracks — Monmouth Park and Meadowlands — racetracks have had very challenging times. So, it will help, but there's no magic bullet to these fundamental structural issues. I don't think the idea was ever that this was the silver bullet. Is this something that would help? Yes. Is this something that should be up to the citizens of New Jersey to decide? Absolutely. How do you say New Jersey can't have sports betting yet right across the Delaware River you can have parlays on the NFL. Folks bet with the state lottery on the parlays on the NFL and then bet with their bookie on everything else. The whole policy is kind of weird, and the NFL's stance on gambling continues to be a complete mystery to me. They come out against sports betting, except in Las Vegas because it's so well regulated. What does that mean? So, we'll see where we get to.

IV. DAILY FANTASY SPORTS (DFS)

What are your thoughts on Daily Fantasy Sports?

Daily Fantasy Sports betting is a form of a sports betting. It is gambling. It is by the way, a game of skill. There's definitely skill involved in daily fantasy sports betting just like there's skill involved in traditional sports betting. I don't see how it's consistent with PASPA. I just don't see how you reconcile Daily Fantasy with PASPA. I don't see how you reconcile those state laws that have been passed on Daily Fantasy with PASPA. I think clearly this moved the legalization of traditional sports betting forward because everybody sees what it is and the leagues embraced it. So, how could you be for Daily Fantasy and against traditional sports betting? That makes no sense. It's not an intellectually honest view. I can get if you are against both because you are against the spread of gambling or what have you. But I don't see how you can be for one and against the other.

Do you think that DFS has opened people's minds to sports betting? How can you be against sports betting when you have a DFS booth sitting in every NFL stadium?

That was one of the questions raised by one of the judges in the *en banc* argument in the Third Circuit. To their credit, the NBA hasn't tried to draw an artificial distinction. They've basically have said, "We think both should be legal." I think it's helped the conversation. I think the ultimate size of the Daily Fantasy market and how big it becomes is open for debate. I think it's a very niche market myself and I think it should be legal and regulated just like

traditional sports betting should be legal and regulated. This idea that it's something other than gambling or sports betting is just nonsense.

V. THE FUTURE OF ESPORTS

What do you think the future holds for eSports? What is eSports to an organization like William Hill?

I'm a believer in eSports as an independent business opportunity. It's something that people will do, and I totally get it. It's a little bit analogous maybe to golf in that you can play golf, but you can also go watch the professionals play and you can pick up some pointers. It's just amazing how good they are. When I was a teenager, Pac-Man was the big thing, and I was really, really good at Pac-Man. I had memorized all the patterns, and I'd play a lot. I would have calluses on my finger and would tape my fingers, and people used to give me quarters to play. And they would stand there and watch me play. Fundamentally, that's eSports thirty years ago. Now, they come to nice venues and the games are far more sophisticated, but fundamentally that's eSports. So, I totally get eSports as a spectator source of entertainment. I think the jury is very much out on whether or not that translates into eSports being a significant wagering product. I think it's very much an open question. We were the first company to offer betting on eSports events here in Nevada. Working with Seth Schorr at the Downtown Grand, we got wagering on an eSports event approved by the Gaming Control Board. We had wagering on two eSports events that were booked in 2016, and for each of those we got approval from the Gaming Control Board. We just got approval for our third eSports event, which is happening in a couple months. The betting has been small to date, very small, but we'll see. You put it in the 'Never Know Category' and you see whether it's maybe a different customer you are able to attract, but the jury is still very much out on whether people are going to bet on eSports in Nevada.

VI. CLOSING REMARKS

Overall, what do you think the future holds for sports betting? What is on your radar as a company?

Well, clearly at some point in the future, sports betting is going to be legal and widespread throughout the U.S. It's already widespread throughout the U.S. today, but it's mostly in the black market, which serves only to benefit the criminals who operate in it. But one day, it will be widely available in a legal environment. Whether that happens as the result of this Supreme Court case or if Congress revisits the issue as the sports leagues have changed their views on the topic — clearly, it's moving towards and there is a momentum behind legalization. When that happens is up for debate, but there's been a tremendous

shift in attitudes around this and I think that folks realize that PASPA has been a failure as a matter of policy and the leagues were the original proponents of it. Obviously, they changed their perspective in a fairly short amount of time in reality-when you look at the decision to sue New Jersey in 2012 to Commissioner Silver and his op-ed piece in the New York Times a couple of years ago and the decision to move the Raiders to Las Vegas. It was not that long ago when Las Vegas could not advertise during the Super Bowl — you know the ‘What happens in Vegas, Stays in Vegas’ commercial. So, we’re going from “We’re not even going to take your advertising dollars for the city, not even talking about gambling,” to “There’s going to be a franchise down the street from Mandalay Bay.” It’s such a dramatic shift, and we’ll see where the NFL evolves to on the gambling question before that time. Right now, the NFL is playing games in London and folks are in Wembley Stadium betting right on their phone. I mean I went to the NBA game in London and the guy literally sitting next to me was betting in-game on his phone during the game, which is legal. Commissioner Silver talks about that too, by the way. When it becomes legal, the format it becomes legal — I think those are open questions. Then, what does the market look like? Obviously, that remains to be seen, as well. What’s the regulation look like in the different states? I think those are all open questions.