

# Op-Ed/Editorials - Court Rules Internet Gambling Is Not Illegal

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A federal judge has ruled in a major decision that Internet gambling is not a crime — sometimes.

Judge Stanwood R. Duval, Jr., of the U.S. District Court in New Orleans issued the ruling in late

February, 2001. He dismissed two test cases brought against MasterCard and Visa, allowing Web betting sites to continue to take credit cards. Judge Duval gave many reasons for throwing out the suits, including a legal conclusion that Internet gambling's main nemesis, the federal Wire Act, applies only to sports betting.

The opinion illustrates how important it is for lawyers to research the law before they file their

lawsuits. With a few changes, the nation's two largest credit card companies might have been ordered to stop being involved with Internet gambling.

The cases arose from what should have been a fairly easy legal question: If a player uses his

credit card to make bets online, does he have to pay the bill when it comes in the mail?

In most states and under most sets of facts the answer is clearly, "No." Since 1710, when Queen Anne of England signed the Statute of Anne, gambling debts have been unenforceable under the common law of the English-speaking world. Anyone who lends anyone else money, knowing the money will be used for gambling, is making a contract that is normally unenforceable.

Nevada is the best example. If a Las Vegas casino accepts an oral bet and the player loses and

refuses to pay, the casino has no legal right to sue. The Nevada Legislature had to pass a special law to allow suits on written markers.

In 1991, the Massachusetts Appeals Court ruled that a gambler, Richard Kommit, did not have to pay his MasterCard bill for \$5,500 cash he got from an ATM on the floor of an Atlantic City casino. The Court held that under the laws of Massachusetts, where Kommit lived, New Jersey, where he gambled, and Connecticut, where the bank issuing the MasterCard was located, credit card loans for gambling are unenforceable. In 1998, Cynthia H. Haines was sued by MasterCard and Visa for more than \$70,000, money they claimed she lost gambling via the Internet. Haines's attorney, Ira Rothken of Corte Madera, California, filed a counterclaim. He carefully limited his legal claims to California state laws, which bar credit card loans for gambling. Although he asked for money damages, he was mainly seeking a court order that MasterCard and Visa had to stop doing business in California with online gambling operators.

The terms of the settlement are secret, but it is clear that Rothken won big.

So what did the lawyers do wrong in the most recent cases? Just about everything.

They initially filed 11 class actions in federal courts in Illinois, Alabama, New York and California. The cases, which grew to be 33 by the time of the decision, were all transferred to Judge Duval. Two were chosen to be tests of the law.

But the lawyers had chosen the wrong law. They had sued the credit card companies under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), asking for lots and lots of money.

RICO actions are always difficult to win. Plaintiffs' lawyers would have to prove that Visa and MasterCard were part of a criminal enterprise in cahoots with Internet gaming operators. Even if the operators themselves were included as defendants, which they were not, there simply was no "enterprise." You can use your Visa to buy pizza, but does that mean Visa is in an enterprise to sell pizza?

RICO also requires a pattern of racketeering activity, meaning specific federal crimes or state gambling felonies had been committed. Judge Duval got the

parties to agree to two test cases, involving players from New Hampshire and Kansas. But plaintiffs had no way of showing these credit card companies had committed gambling felonies. Because illegal gambling is almost always a misdemeanor, there simply were no laws on the books in New Hampshire and only one in Kansas that could conceivably apply.

Plaintiffs' attorneys tried to find federal crimes.

Naturally, they cited the Wire Act.

But, they had made the mistake of limiting their lawsuits to Internet casinos and lotteries. Judge Duval looked to the actual language of the statute as well as its history and ruled that the Wire Act is limited to sports betting.

When the U.S. Attorneys wanted to show they could go after Internet operators, they were careful to make sure that every operation took sports bets by phone. It is unclear whether the Wire Act covers Internet casinos, but it was enacted to allow the federal government to go after bookies who took sports bets by phone.

If the complaints had been framed differently, plaintiffs might have won. My advice for any lawyer fighting Internet gambling: Forget RICO, file in state court, make sure your clients were making sports bets by phone, and don't get greedy — getting a court order that closes down a business will bring about a nice, large settlement.