

STATE OF NEW JERSEY  
CASINO CONTROL COMMISSION AND  
DIVISION OF GAMING ENFORCEMENT  
PETITION REF. NO. 3591201

-----X  
:  
IN THE MATTER OF THE PETITION :  
OF RATIONAL GROUP US HOLDINGS :  
INC. FOR INTERIM CASINO :  
AUTHORIZATION TO OWN THE :  
CASINO CURRENTLY KNOWN AS :  
THE ATLANTIC CLUB AND OTHER :  
RULINGS IN CONNECTION :  
THEREWITH :  
:  
-----X

---

---

BRIEF OF AMERICAN GAMING ASSOCIATION IN OPPOSITION TO PETITION OF  
POKERSTARS FOR INTERIM CASINO AUTHORIZATION

---

---

WILENTZ, GOLDMAN & SPITZER P.A.  
90 Woodbridge Center Drive  
Post Office Box 10  
Woodbridge, New Jersey 07095  
(732) 636-8000  
Attorneys for American Gaming Association

BRIAN J. MOLLOY  
RICHARD J. BYRNES  
Of Counsel and On the Brief

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
PRELIMINARY STATEMENT .....	1
STATEMENT OF FACTS .....	2
1. The PokerStars Petition .....	2
2. PokerStars: Business Profits From Violating U.S. Law.....	5
3. The Criminal Prosecution of PokerStars Officials For Bank Fraud, Money Laundering and Violating UIGEA .....	8
LEGAL ARGUMENT.....	16
THE POKERSTARS PETITION SHOULD BE DENIED.....	16
CONCLUSION.....	24

## PRELIMINARY STATEMENT

The American Gaming Association (AGA),<sup>1</sup> the national trade group representing commercial casino companies and other gaming-related businesses, respectfully recommends that this Commission deny the Petition (the "PokerStars Petition") in this matter. That Petition requests Interim Casino Authorization (ICA) under N.J.S.A. 5:12-95.12 of the Casino Control Act ("Act") for the proposed purchaser of the Atlantic Club Casino. To issue that ICA, the Commission must find that three corporate entities and four individuals are "qualified" under the Act despite their lengthy and intimate ties to PokerStars, the multinational online poker giant whose principals and operating entities have been the focus of federal criminal prosecution for bank fraud, money laundering and gambling offenses, and a parallel forfeiture action. Because PokerStars was operated as a criminal enterprise for many years, those applicants should not be found qualified.

AGA, which was created in 1995, has never before sought to participate in a licensing proceeding. AGA today opposes the PokerStars Petition because the integrity of the gaming industry would be gravely compromised by any regulatory approvals of PokerStars, a business built on deceit, chicanery, and the systematic flouting of U.S. law. New Jersey has long been a bulwark in ensuring that legalized gambling is conducted only by those who meet high standards for integrity. New Jersey's laws and regulatory tradition mandate denial of this Petition; neither those laws nor that regulatory tradition, nor the Commission's duty to enforce both, is altered in any way by the civil forfeiture settlement with the federal government purchased by PokerStars for more than half a billion dollars. We also urge the Commission to resist suggestions that it should issue the ICA to allow a more detailed review of this situation, or

---

<sup>1</sup> The AGA's members and its activities are identified in the Certification of Judy L. Patterson In Support Of Petition For Participation, accompanying the AGA's Petition for Participation in this proceeding.

that its decision should be influenced by current economic challenges faced by the Atlantic Club casino hotel, and by Atlantic City more generally. The ICA is designed to expedite conditional licensing of qualified licensees, not to open a side door into New Jersey's gaming industry for applicants who cannot meet the law's standards for integrity and honesty. Any action allowing PokerStars to be licensed would send a damaging message to the world of gaming, and to the world beyond gaming, that companies that engage in chronic lawbreaking are welcome in the licensed gaming business. That message would dramatically undermine public confidence in gaming regulation and could cripple the industry's public image for many years.

### **STATEMENT OF FACTS**

#### **1. The PokerStars Petition**

The PokerStars Petition states that Rational Group US Holdings Inc. ("Rational US"), a Delaware corporation, is prepared to acquire the Atlantic Club property, and describes the ownership of Rational US as follows:

- Rational Resources Ltd., a Maltese holding company, owns 100% of Rational US.
- Rational Group Ltd., a private company on the Isle of Man, owns 99.99% of Rational Resources; the balance is owned by Oldford Group Ltd.
- Oldford Group Ltd., a British Virgin Islands corporation, owns 100% of Rational Group, and thus owns 100% of Rational Resources as well as 100% of Rational US.

In short, Oldford Group would own and control Atlantic Club in its entirety. Without disclosing who owns Oldford Group, the PokerStars Petition requests that all three holding companies – Rational Resources, Rational Group, and Oldford Group – be found qualified under the Casino Control Act.

Oldford Group was a named defendant in a civil forfeiture action filed by the United States Government in 2011. That action charged that multiple defendants designed and implemented a scheme of illegal gambling, bank fraud, and money laundering over nearly five years, from 2006 to 2011.<sup>2</sup> That Complaint named as defendants four other corporate entities related to Oldford Group, all of which jointly operated the PokerStars franchise worldwide.<sup>3</sup> Those PokerStars-related entities chose not to contest the allegations that they had conducted a criminal fraud and money laundering enterprise for almost five years. Instead, they entered into a settlement agreement under which they paid more than a half billion dollars – \$547 million – plus an additional \$184 million to acquire certain assets of a competitor/co-defendant, Full Tilt Poker. To try to end the criminal conduct that prevailed at PokerStars for so many years, the settlement agreement requires that Isai Scheinberg, co-founder of PokerStars and its CEO, withdraw from involvement in that business.<sup>4</sup>

In addition, Oldford Group and its related entities featured prominently in the federal indictment in 2011 of eleven individuals who structured illegal payment systems to support illegal online poker play in this country. Three of those individuals were senior officers of PokerStars, one of whom (Nelson Burtnick, formerly head of payments processing for PokerStars) has pleaded guilty. The other two PokerStars defendants in the criminal case – Isai

---

<sup>2</sup> Verified Second Amended Complaint, *United States v. PokerStars*, No. 11 Civ. 2564 (S.D.N.Y. Sept. 11, 2012) (Certification of Brian J. Molloy In Opposition To PokerStars Petition, dated February 28, 2013 (“Molloy Cert.”), Exh. A).

<sup>3</sup> The other four entities are Rational Entertainment Enterprises Ltd., Pyr Software Ltd., Stelekram Ltd., and Sphene International Ltd. Stipulation and Order of Settlement Regarding PokerStars, *United States v. PokerStars*, 11 Civ. 2564 (LBS) (S.D.N.Y. July 31, 2012).

<sup>4</sup> *Id.* ¶ 13.

Scheinberg and Paul Tate (Burtnick's successor as head of payments processing) – are fugitives from the American courts. Six other individual defendants have entered guilty pleas.<sup>5</sup>

The PokerStars Petition asks that four individuals be found qualified under the Act:

- Mark Scheinberg – Acting CEO and Director of the Oldford Group. Mark Scheinberg is reported to be the co-founder of PokerStars with his father Isai Scheinberg, who is currently under federal indictment and a fugitive from American justice. In a widely-reported 2010 memorandum concerning a senior management change at PokerStars, Mark Scheinberg stated that he and his father would continue to be “closely involved in the company’s strategic direction and building on the success we have all achieved together as a team over the last 10 years.”<sup>6</sup>
- Paul Andrew Telford – General Counsel of the Oldford Group. Telford has been identified in the media as general counsel for PokerStars since 2008. He reportedly joined the board of PokerStars in 2010.<sup>7</sup>
- Pinhas Schapira – Treasurer and Director of the Oldford Group. According to filings in the New York forfeiture case, Schapira is a director of Oldford Group and three related entities: Rational Entertainment Enterprises Ltd., Sphepe International Ltd., and Stelekram Ltd, all of which were defendants in the forfeiture case. Schapira signed the claim of interest for PokerStars assets in that proceeding. According to

---

<sup>5</sup> Superseding Indictment, *United States v. Isai Scheinberg*, No. S3 10 Cr. 336 (LAK) (S.D.N.Y. April 14, 2011) (Molloy Cert., Exh. A, at Exh. A).

<sup>6</sup> Stephen Carter, *Campos appointed new PokerStars CEO*, EGR Magazine, July 20, 2010; Nathan Vardi, *PokerStars: Online Gambling’s Quiet Giant*, Forbes, Feb. 10, 2010.

<sup>7</sup> Wendeen H. Eolis, *PokerStars: Walls of Secrecy Tumble*, Poker Player Newspaper, Feb. 14, 2012, <http://www.pokerplayernewspaper.com/content/pokerstars-walls-secrecy-tumble-11919>; *Hot 50 Winners – Law & Regulation*, Gaming Intelligence, Jan. 25, 2012, <http://www.gamingintelligence.com/business/14691-hot-50-winners-law-a-regulation>.

filings in the Isle of Man and Gibraltar, he has been a director of PokerStars-related companies since 2004, and a financial officer of PokerStars since 2001.<sup>8</sup>

- Michael Hazel – Finance Director of the Oldford Group. In reports about PokerStars’ settlement of the forfeiture case, Hazel has been identified as “company finance director.”<sup>9</sup>

## **2. PokerStars: Business Profits From Violating U.S. Law**

Because of the deep and longstanding connections between PokerStars and the seven entities and individuals proposed as qualifiers, the history of PokerStars is central to any evaluation of the PokerStars Petition.

With a license from the Isle of Man, PokerStars began offering online poker games twelve years ago. During PokerStars’ existence, the online poker market has mushroomed from less than \$1 billion of annual revenues to almost \$7 billion. PokerStars grew slowly in its early years. In 2002, the company’s share of the global online poker market was about 7.6 percent; by 2005, its share was still only 10.6 percent. In the following year, PokerStars decided to ignore a new federal statute that criminalized all financial transactions that support online gambling (the Unlawful Internet Gambling Enforcement Act). Having resolved to break U.S. law in every transaction with U.S. residents, PokerStars’ market share nearly

---

<sup>8</sup> Verified Claim of Oldford Group, Ltd., dated October 31, 2011, *United States v. PokerStars* (Molloy Cert., Exh. B). The corporate registration records reveal that Mr. Schapira served as treasurer of Rational Entertainment Enterprises, Ltd. (REEL) since at least 2001; he has been a director of REEL since at least 2005, and of Sphene International, Ltd. since at least 2006, and of Stelekram Ltd. since at least 2010. All of those entities are named defendants in the federal forfeiture action filed against PokerStars in April 2011.

<sup>9</sup> Steven Stadbrooke, *PokerStars DOJ Deal and Acquisition of Full Tilt: The Day After*, CalvinAyre.com, Aug. 1, 2012, <http://calvinayre.com/2012/08/01/business/pokerstars-doj-deal-and-acquisition-of-full-tilt-the-day-after/>.

doubled and continued to expand at a heady pace. By 2009, PokerStars held one-third of the Internet poker market; by 2012, its share was more than half.<sup>10</sup>

American law enforcement officials challenged the legality of online gambling from its earliest beginnings. At least eight states enacted specific statutes to make clear that all forms of Internet gambling are illegal within their borders – Illinois, Indiana, Louisiana, Massachusetts, Nevada, Oregon, South Dakota, and Washington. A New Jersey court held in 2005 that online gambling violated this state’s laws. The attorneys general of five more states have issued opinions that online gambling is illegal in those states. Moreover, every state prohibits the operation of unlicensed gambling businesses, yet PokerStars acquired no license to operate in any of the fifty states whose residents gambled on its sites. Thus, PokerStars violated the laws of every state, as well as two federal statutes that criminalize violations of state gambling laws, the federal Illegal Gambling Business Act, 18 U.S.C. § 1955 (IGBA), and the Travel Act, 18 U.S.C. § 1952.<sup>11</sup>

Because of the many legal barriers to Internet gambling, every business holding a U.S. gambling license has decided *not* to offer any form of unlicensed gambling over the Internet in this country. In contrast, American legal barriers did not deter some gambling businesses, like PokerStars, that were located in jurisdictions beyond the immediate reach of American law enforcement, or that held good-faith arguments until 2006– however mistaken they may have

---

<sup>10</sup> *Online Poker Revenue Statistics*, Get Poker News, Feb. 24, 2009, <http://www.getpokernews.com/poker-news/online-poker-revenue-statistics/>. The market share estimates are drawn from PokerScout.com for 2006 and after, and from PokerPulse.com for before 2006. PokerStars Statistics, <http://www.pokerhistory.eu/poker-statistics/pokerstars-statistics>.

<sup>11</sup> 720 Ill. Comp. Stat. 5/28-1; Ind. Code § 35-45-5-2(c); La. Rev. Stat. Ann. § 14:90.3; Mass. Ann. Laws ch. 271, § 17A; Nev. Rev. Stat. § 465.092; Or. Rev. Stat. § 167.109; S.D. Codified Laws § 22-24A-1 to -15; Utah Code Ann. § 76-10-1102; Peggy Wright, *Morris judge pulls plug on Web sites for Gambling*, Morris Cty. Daily Record, Oct. 5, 2005; Tex. Atty. Gen. Op. No. DM-344; Fla. Atty. Gen. Op. No. 95-70 (Oct. 18, 1995); Oklahoma Atty. Gen. Op. No. 02-025 (June 26, 2002); Minn. Attorney General’s Memorandum (Nov. 20, 1995); Kan. Atty. Gen. Op. No. 96-31 (March 25, 1996).



proved to be – that U.S. laws did not apply to their activities. By 2005, U.S. residents were betting more than \$4 billion online with offshore entities.<sup>12</sup>

The legal watershed was reached in 2006, when Congress concluded that payment processing was the Achilles' heel of offshore entities offering illegal online gambling. Even if offshore entities were beyond the reach of U.S. courts, the people processing their payments to and from U.S. residents were not. In late 2006, Congress enacted the Unlawful Internet Gambling Enforcement Act (UIGEA), which bars financial transactions in support of unlawful online gambling. UIGEA defines “unlawful internet gambling” as gambling that otherwise violates federal and state laws, expressly recognizing that state laws apply to Internet gambling. UIGEA also reinforced the legal conclusion that online bets occur *both* where the gambling business is located *and* at the location of the bettor. 15 U.S.C. § 5361, et seq. UIGEA eliminated any plausible contention that taking bets and wagers from U.S. residents did not violate both state laws and the federal statutes that criminalize violations of state gambling laws, IGBA and the Travel Act.

Many offshore poker businesses – particularly the publicly-traded ones – reacted decisively to UIGEA and the increased federal enforcement efforts. They stopped taking bets from U.S. residents.<sup>13</sup>

At that moment, PokerStars made a crucial decision. It resolved to ignore legal risk in order to cash in on a lucrative business opportunity. With its major competitors bailing out of the American market, the privately-held PokerStars decided to increase its profile with U.S. bettors. After UIGEA was enacted, PokerStars issued a public statement that purported to reflect “extensive expert advice from within and outside the U.S.”:

---

<sup>12</sup> Deutsche Bank AG/London, *Online Gaming Industry, Surreal or Real Returns?* (July 19, 2005).

<sup>13</sup> GamblingData, *US Online Poker Data Report* at 10 (Oct. 2001).

[O]ur business continues as before – open to players worldwide including the U.S. You may play on our site as you did prior to [UIGEA].<sup>14</sup>

That decision to flout American law quickly swept PokerStars to a dominant position in the American market and in the worldwide online poker business, a dominant position it retained for five years.<sup>15</sup>

Federal prosecutors noticed.

### **3. The Criminal Prosecution of PokerStars Officials For Bank Fraud, Money Laundering and Violating UIGEA**

In an indictment released in mid-April 2011, a federal grand jury in New York charged three senior officials of PokerStars with bank fraud, money laundering, and criminal violations of UIGEA and IGBA. Those named were:

- Isai Scheinberg, who founded PokerStars with his son Mark Scheinberg;
- Nelson Burtnick, who worked in PokerStars' payments processing department from October 2006 through November 2008 and ultimately headed that department;
- Paul Tate, also of the PokerStars payment processing department, who was its chief from early 2009 until March 2011.

In addition, the indictment charged the principals of two other offshore poker companies that had remained in the U.S. market after 2006, along with several individuals who assisted the offshore poker companies in developing fraudulent methods for routing payments to and from U.S.

---

<sup>14</sup> *PokerStars' Response to the Unlawful Internet Gambling Enforcement Act*, Casino City Times, Oct. 12, 2006.

<sup>15</sup> Tali Tsipori, *PokerStars' Stars Still Shine*, ISR. Bus. Arena, Oct. 19, 2006, <http://www.globes.co.il/serveen/globes/docview.asp?did=1000143701>. As one commentator observed, "Sites such as Poker Stars [sic] and Full Tilt Poker actually benefited from the UIGEA, seeing their player bases surge when PartyPoker left the market." Aaron Todd, *NETeller exit impacts U.S. Internet gambling market*, Casino City, Jan. 18, 2007.

residents. Although the indictment named no corporate entities, the Oldford Group and four other entities related to PokerStars were sued in the parallel forfeiture action which presented almost identical accusations. The Justice Department seized the domain names used by PokerStars and its co-defendants and shut down those sites for gambling purposes while freezing players' balances in seventy-six bank accounts in fourteen countries.<sup>16</sup>

Both the indictment and the forfeiture complaint explained that UIGEA closed off legal methods for processing payments between U.S. residents and PokerStars. Accordingly, banks and credit card companies would no longer handle those transactions. To service American customers, the allegations continued, PokerStars had to deceive the financial companies through which they conducted those transactions. The deceptive practices alleged in the indictment and complaint include:

- *Fraudulent credit card processing:* PokerStars and its payment processors created dozens of phony websites that pretended to sell innocuous consumer products such as pet food (www.petfoodstore.biz) or household cleaning aids (www.green2yourgreen.com). Many thousands of PokerStars transactions were misrepresented as involving purchases of such fictitious goods so banks would process charges related to the activity.<sup>17</sup>
- *Fraudulent e-check processing:* A similar approach was used to trick banks into processing transfers via electronic checks through the Automated Clearinghouse (“ACH”) system maintained by the Federal Reserve. Many thousands of PokerStars

---

<sup>16</sup> Hurtado, Patricia and Jinks, Beth, *Online Poker Player Accounts Frozen as U.S. Indict Operators*, Bloomberg, April 18, 2011.

<sup>17</sup> Superseding Indictment ¶ 19, *supra* note 5.

transactions were misrepresented as involving, for example, sales of clothing and jewelry (www.oneshipcenter.com) or golf clubs (www.mygolflocation.com), or payday loans.<sup>18</sup>

- *Corrupting Small Banks:* As federal enforcement efforts began to seal off the payment processing scams developed by PokerStars after 2006, another route for payments was developed through financially-strapped banks. Agents for PokerStars promised and then made investments in those banks – notably SunFirst Bank in St. George, Utah – in return for the banks’ willingness to process transactions between PokerStars and U.S. residents that violated UIGEA. A SunFirst bank official was paid a special “bonus” for processing those transactions – in plain language, he was bribed to do so.<sup>19</sup>

These convoluted arrangements raised practical difficulties, as a PokerStars internal memorandum described in May 2009. Many PokerStars customers grew confused when the records of their PokerStars transactions described fictitious purchases of goods and services; at the time, the PokerStars memorandum explained, customers were receiving reports that characterized their gambling activity as involving one or more of at least 30 false “descriptors” (phony billing accounts). The PokerStars memorandum continued (emphasis added):

The purpose of a descriptor is to help the customer identify the source of the transaction, be it credit card or electronic funds transfer. Unfortunately PokerStars does not have this luxury; [it must rely] on whatever descriptor the [third-party] processor can get approved by the bank. These descriptors are diverse, often vague and *rarely reflect the nature of*

---

<sup>18</sup> *Id.* ¶¶ 22-25; Allocation Tr., 16, March 26, 2012, *United States v. Elie*, No. S6 10 CR 336 (LAK) (defendant’s allocation while entering guilty plea) (Molloy Cert., Exh. F).

<sup>19</sup> Superseding Indictment ¶¶ 29-31, *supra* note 5; Superseding Information ¶ 2, *United States v. Chad Elie*, No. S6 10 CR 336 (LAK) (S.D.N.Y. March 26, 2012) (Elie pled guilty on March 26, 2012, to the allegations in this Superseding Information) (Molloy Cert., Exhs. E, F); Superseding Information, *United States v. John Campos*, No. S7 10 Cr. 336 (LAD) (S.D.N.Y. March 28, 2012) (Campos pled guilty on March 28, 2012, to the allegations in this Superseding Information) (*Id.*, Exhs. K, L).

*the transaction in any way. In fact most descriptors strongly imply the transaction has nothing to do with PokerStars (i.e., BICYCLEBIGSHOP.COM, GOLFSHOPCENTER.COM, VENTURESHOPPING.COM etc.). Whilst some players read confirmation emails and understand the process, many do not and it is all too easy for a player to say to their bank, "I've never made a purchase at BICYCLEBIGSHOP.COM". As a result chargebacks . . . are increasing.*<sup>20</sup>

The comprehensive nature of PokerStars' illegal payments schemes – which continued for almost five years from October 2006 to April 2011 – emerged in the guilty plea entered by Nelson Burtnick in September 2012. Burtnick worked on payments processing for PokerStars for the first two years of that period, rising to become head of the payment processing department. He pled guilty to conspiracy to commit bank fraud and money laundering, plus two counts of violating UIGEA, all in connection with “deceiv[ing] United States banks and financial institutions into processing hundreds of millions of dollars” for PokerStars and Full Tilt Poker (another online poker company operating illegally in the U.S. market).<sup>21</sup> Among the allegations to which Burtnick pled guilty was the following factual assertion, which involves a message he sent after going to work for Full Tilt (emphasis added):

BURTICK e-mailed a Full Tilt Poker colleague that *the various internet poker processing options all involved “some form or another of ‘misrepresentation,’” including methods used by rival PokerStars.*<sup>22</sup>

In other words, every transaction between PokerStars and its hundreds of thousands of U.S. customers during this period was both fraudulently designed and illegal. Burtnick specifically

---

<sup>20</sup> Superseding Indictment ¶ 25(e), *supra* note 5.

<sup>21</sup> Superseding Information ¶ 1, *United States v. Burtnick*, No. S9 10 Cr. 336 (LAK) (S.D.N.Y. Sept. 19, 2012) (Molloy Cert., Exh. C).

<sup>22</sup> *Id.* ¶ 5(b).

pled guilty to the charge that while he was at PokerStars, he authorized violations of UIGEA through the receipt of payments for unlawful Internet gambling via credit card payments and electronic funds transfers.<sup>23</sup>

When Burtnick entered his guilty plea in open court, he made statements under oath that establish not only his own culpability for PokerStars' illegal business model, but also the involvement of other senior PokerStars officials (emphasis added):

From December 2006 to September 2008 I worked with Poker Stars as a payment product manager and I was eventually promoted to director of payments. . . . *I and others I worked with knew and understood that most banks in the United States refused to process transactions involving funds related to online poker because they considered online poker illegal under U.S. laws. . . . Both Poker Stars and Full Tilt Poker accepted payments from players throughout the United States . . . .* I along with other employees and company executives worked with existing and new third party payment companies to provide U.S. payment solutions that misled or deceived their U.S. banking partners by disguising the nature of the transactions to appear to be something other than the proceeds from poker. This was known and required in order to continue servicing the poker company's U.S. customers. . . .

It was known by the company that we had to do this type of deception in order to enable U.S. customers to load their customer accounts. As a result funds originating from U.S. players were transferred from the United States to places offshore or outside the United States to promote the businesses of Poker Stars and Full Tilt. It was through these

---

<sup>23</sup> *Id.* ¶ 6.

transactions that Poker Stars and Full Tilt accepted and received payments from U.S. players. *My superiors, other employees and I knew and understood that if we did not use payment companies that deceived their banking partners the business would not function or operate.* In exchange for these payment solutions that disguised the nature of the transactions the payments companies were paid increased fees. *Most U.S. business for both poker companies was fashioned this way.* I knew what I did was wrong.<sup>24</sup>

Burtnick was far from the only witness to describe the systemic illegality of PokerStars' U.S. operations. Five others have pled guilty aiding PokerStars' illegal payments practices between 2006 and 2011.

- Chad Elie, a third-party payments processor who worked for PokerStars and other offshore poker companies, pled guilty to conspiracy to commit bank fraud and money laundering. He admitted that, on behalf of PokerStars and two other offshore poker companies, he “lied to United States banks about the nature of the poker transactions they were processing and covered up those lies through the creation of phony corporations and websites to disguise payments.” Under oath, Elie acknowledged that he set up a bank account ostensibly to process payday loans that “was in fact used to process transactions for PokerStars.”<sup>25</sup>

---

<sup>24</sup> Allocation Tr., 13-14, Sept. 19, 2012 *United States v. Nelson Burtnick*, No S9 10 Cr. 336 (LAK) (S.D.N.Y.) (defendant's allocation) (emphasis added) (Molloy Cert., Exh. D).

<sup>25</sup> Superseding Information ¶ 1 *United States v. Elie*, No. S6 10 Cr. 336 (LAK) (S.D.N.Y. March 26, 2012) (Molloy Cert., Exh. E); Allocation Tr., 16, 23-24, March 26, 2012, *supra* note 18.

- Bradley Franzen, another third-party payment processor, pled guilty to charges that he committed bank fraud, money laundering, and UIGEA violations by structuring deceptive payment systems for PokerStars.<sup>26</sup>
- Ryan Lang, a payments processor with expertise in payments via “electronic checks” or “e-checks,” was charged with concocting a scheme beginning in 2007 to route electronic check payments to PokerStars by “creating phony shell companies to disguise the poker transactions so that banks would not learn that the payments were connected to gambling.” Lang pled guilty to conspiracy to commit bank fraud, money laundering, and violating UIGEA. At the hearing on his plea, he stated under oath that he worked with executives at PokerStars to develop a system of deceiving banks about the transactions being processed: “Throughout this process, I had ongoing discussion with poker executives [from PokerStars] about the various transactions and representations that were being made to banks.”<sup>27</sup>
- Ira Rubin, yet another payments processor, pled guilty in January 2012 to three criminal charges. He admitted engaging in a conspiracy to commit money laundering, to commit wire and bank fraud, and to violate UIGEA, by creating “dozens of phony web stores” through which PokerStars transactions were routed. Under oath, Rubin explained the transaction systems he designed for PokerStars: “The money was disguised to appear as

---

<sup>26</sup> Superseding Information ¶¶ 2-3, *United States v. Franzen*, No. S4 10 Cr. 336 (LAK) (S.D.N.Y.) (May 23, 2011) (Molloy Cert., Exh. H).

<sup>27</sup> Superseding Information ¶ 3, *United States v. Lang*, No. S5 Cr. 336 (LAK) (S.D.N.Y. Feb. 28, 2012) (Molloy Cert., Exh. H); Allocation Tr., Feb. 28, 2012, *United States v. Lang*, No. S5 Cr. 336 (LAK) (S.D.N.Y.) (Supplemental Certification of Brian J. Molloy In Opposition To PokerStars Petition, Exh. A).



payments to merchants, as we knew that U.S. banks were generally unwilling to process payments resulting from illegal gambling activity.”<sup>28</sup>

- John Campos, president of SunFirst Bank, pled guilty to bank fraud by processing payment transactions for PokerStars even though he knew the transactions were illegal. Under oath, he acknowledged deceiving other banks to process more than \$200 million in payments to PokerStars and Full Tilt Poker in November of 2010.<sup>29</sup>

Other evidence of PokerStars’ deep involvement in criminal activity comes from sworn statements of the investigating federal agents. One FBI agent, Rosemary Karaka, traced revenue from PokerStars’ fraudulent payment processing arrangements in the United States. That revenue all was delivered to bank accounts of Sphene International Ltd., an entity which Pinhas Schapira serves as a director. Agent Karaka traced payments cleared by SunFirst Bank in Utah, the bank corrupted by bribing its president John Campos; some of those payments landed in the account of Oldford Group Ltd., in Credit Agricole (Suisse) SA. (\$31 million), and the account of Sphene International Ltd. in the same Swiss bank (\$6.6 million).<sup>30</sup>

Now, and throughout the period of PokerStars’ illegal payments scheme, Oldford Group has held 100 percent ownership and control of the entities currently seeking qualification by this Commission, including the proposed licensee, Rational U.S. All four of the proposed individual qualifiers are directors and senior officials in Oldford Group, including the Acting

---

<sup>28</sup> Superseding Indictment ¶ 26(e) *supra* note 5; Allocation Tr., Jan. 17, 2012, *United States v. Rubin*, No. 10 CR 336 (LAK) (S.D.N.Y.) (Molloy Cert., Exh. I). A last payments processor, Brent Beckley, also pled guilty to charges from the Superseding Indictment, but evidently had no connection with PokerStars. Allocation Tr., Dec. 20, 2011, *United States v. Beckley*, No. 10 Cr. 336 (LAK) (S.D.N.Y.) (Molloy Cert., Exh. J).

<sup>29</sup> Superseding Information ¶¶ 3-4, *United States v. Campos*, No. S7 10 Cr. 336 (LAK) (S.D.N.Y. March 28, 2012) (Molloy Cert., Exh. K); Allocation Tr., 15, March 28, 2012 *United States v. Campos*, No. S7 10 Cr. 336 (LAK) (S.D.N.Y.) (Molloy Cert., Exh. L).

<sup>30</sup> Declaration of Rosemary Karaka in Support of Post-Indictment Restraining Order ¶¶ 27-28, 31 and Sch. A, *United States v. Scheinberg*, No. S3 10 Cr. 336 (LAK) (S.D.N.Y. Dec. 1, 2011) (Molloy Cert., Exh. A, at Exh. B).

CEO (Mark Scheinberg), General Counsel (Paul Telford), Treasurer (Pinhas Schapira), and Finance Director (Michael Hazel). All four men held senior positions with Oldford Group and PokerStars between 2006 and 2011, while the illegal payments scheme was conducted for every minute of every day.

The picture that emerges from these public materials is both unmistakable and remarkable: from 2006 to 2011, PokerStars' U.S. operations required constant and uninterrupted violations of U.S. law. During that period, financial institutions attempted to comply with UIGEA and other state and federal laws by not processing payments to or from online gambling companies like PokerStars. With other poker businesses choosing to withdraw from the U.S. market rather than defy American law, PokerStars seized an opportunity for rich profits by tricking banks into clearing its transactions with its customers. In the process, PokerStars constructed an elaborate edifice of lies, corruption, and double-dealing.<sup>31</sup>

### **LEGAL ARGUMENT**

#### **THE POKERSTARS PETITION SHOULD BE DENIED**

Two licensing provisions of the Casino Control Act mandate denial of the PokerStars Petition. Under N.J.S.A. 5:12-86(e), a license applicant or applicant for qualifier status cannot succeed if that person has engaged in:

---

<sup>31</sup> PokerStars cannot justify or excuse its uninterrupted lawbreaking by pointing to the 2011 reversal by the U.S. Justice Department of its previous interpretation of the federal Wire Act. In a memorandum released in December 2011, the department's Office of Legal Counsel announced that its official position would henceforth be that the Wire Act applied only to sports betting. Memorandum Opinion for the Assistant Attorney General, Criminal Division, from Virginia A. Seitz, Assistant Attorney General, Office of Legal Counsel (Sept. 20, 2011) (not released publicly until December 23, 2011). That reversal in no way changes the application to PokerStars of state laws that bar Internet poker; nor does it stop the federal Illegal Gambling Business Act and Travel Act from making it a federal crime to operate a business that violates those state laws. Nor does the Justice Department's interpretation of the Wire Act have any relevance to the crimes charged in the indictment in *United States v. Scheinberg* or the forfeiture claims presented in the parallel action. Those bank fraud, money laundering and UIGEA violations had nothing to do with the Wire Act, as the *Scheinberg* defendants and their lawyers plainly concluded. Five of those defendants – Burtnick, Lang, Elie, Campos and Rubin – entered guilty pleas *after* the Justice Department's statement of its changed position on the Wire Act in December 2011.

The pursuit . . . of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State, if such pursuit creates a reasonable belief that the participation of such person in casino operations would be inimical to the policies of this act or to legalized gaming in this State. For purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain.

*Id.* In addition, N.J.S.A. 5:12-86(g) requires denial of a petition if the applicant has committed: any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not been or may not be prosecuted under the criminal laws of this State or any other jurisdiction. . . .

The “offense[s] under subsection c” of the Act include gambling offenses under New Jersey law, N.J.S.A. 2C:37-1 et seq., as well as any other offense under New Jersey or federal law demonstrating that licensure “would be inimical to the policy of this act and to casino operations.” PokerStars’ operations since 2006 plainly have been inimical to the Act’s policy and to the responsible conduct of a gaming business.

The public record of PokerStars’ operations between 2006 and 2011 demonstrates that all seven proposed qualifiers routinely (i) pursued “economic gain . . . in an occupational manner or context which is in violation of the criminal or civil public policies of this State” (N.J.S.A. 5:12-86(e)), and did so in a “systematic manner”; (ii) committed acts that constituted violations of New Jersey gambling laws, even though those violations have not yet been the subject of prosecutions (N.J.S.A. 5:12-86(g)). The violations described in the federal criminal

prosecutions are certainly inimical to the policy of the Act, which insists on protecting the integrity of legalized gambling in New Jersey.<sup>32</sup>

PokerStars cannot argue that poker is not subject to New Jersey's gambling laws because it is not a "game of chance." By statute, New Jersey prohibits unlicensed gambling games, which are defined to include games in which "the element of chance is a factor that is material to the final result," without regard to whether some level of skill might also be applied to the game.<sup>33</sup> By this test, poker is a game of chance, since every poker hand is determined in part by the cards dealt to each player. Indeed, in New Jersey even backgammon is a game of chance. As a court ruled, although backgammon "can and does involve complex strategies and maneuvers incorporating sophisticated theories of mathematics and statistics which at least some highly intelligent players are able to utilize," each play begins with the rolling of dice, which introduces a "material" element of chance. By that reasoning, poker too is a game of chance under New Jersey law.<sup>34</sup> Indeed, this Commission regulates – as games of chance – the poker games offered by licensed casinos in New Jersey.<sup>35</sup>

---

<sup>32</sup> *In re Application of Boardwalk Regency Corporation for a Casino License*, 180 N.J. Super. 324, 334-337 (App. Div. 1981), *aff'd as modified* 90 N.J. 361 (N.J. 1982), *appeal dismissed as Perlman v. Attorney General of New Jersey*, 459 U.S. 1081 (1982).

<sup>33</sup> *Boardwalk Regency Corp. v. Attorney General of State of New Jersey*, 188 N.J. Super. 372, 378-379 (Law Div. 1982) (rejecting inquiry based on "level of skill" in game).

<sup>34</sup> *Id.*

<sup>35</sup> N.J.S.A. 19:47-14.1 et seq. New Jersey is hardly unusual in considering poker to be a game of chance. Every state court that has examined the question has found poker to be a form of gambling or controlled game prohibited under the applicable state's laws without a license. *See, e.g., Town of Mt. Pleasant v. Chimento*, No. 27197, 2012 WL 5870814 (S.C. Nov. 21, 2012) (overturning lower court's determination); *Commonwealth v. Dent*, 992 A.2d 190, 196 (Pa. Super. Ct. 2010) (overturning lower court's determination); *Joker Club, L.L.C. v. Hardin*, 643 S.E.2d 626, 629-31 (N.C. Ct. App. 2007); *Garrett v. Alabama*, 963 So.2d 700 (Ala. Crim. App. 2007) (Shaw, J. concurring specially); *People v. Turner*, 629 N.Y.S.2d 661, 662 (Crim. Ct. 1995); *Charnes v. Cent. City Opera House Ass'n*, 773 P.2d 546, 551 (Colo. 1989); *Garono v. State*, 524 N.E.2d 496, 500 (Ohio 1988); *People v. Mitchell*, 444 N.E.2d 1153, 1155 (Ill. App. Ct. 1983); *Indoor Recreation Enters., Inc. v. Douglas*, 235 N.W.2d 398 (Neb. 1975); *State ex rel. Schillberg v. Barnett*, 488 P.2d 255 (Wash. 1971). As a New York court explained in at 1995 decision, in poker "the outcome depends to a material degree upon the random distribution of cards. The skill of the player may increase the odds in the player's favor, but cannot determine the outcome regardless of the degree of skill employed." *Turner*, 629 N.Y.S.2d at 662 (internal citations omitted). *See also, e.g., Mills-Jennings, Inc. v. Dep't of*

Yet, as detailed in the 2011 federal indictment, PokerStars took bets from New Jersey residents for many years, including from underage bettors who are barred by state law from gambling in licensed casinos.<sup>36</sup> By 2010, an estimated 500,000 state residents were playing online poker with unlicensed offshore sites like PokerStars, all of them using the illegal payment mechanisms described in the 2011 federal indictment and forfeiture case. When the New Jersey legislature began to consider legalizing online poker, PokerStars officials stressed that one proposed law would not bar state residents from continuing to play at PokerStars sites. In addition, PokerStars' ordinary policy of taking bets from residents of all fifty states was highlighted in 2010 when a decision of the Washington Supreme Court caused PokerStars to stop accepting for-money play from residents of that state (four years after the state legislature enacted the controlling statute). Observers called PokerStars' action in Washington State "historic" because it was the first time an offshore poker site stopped accepting poker play from residents of a specific state.<sup>37</sup>

For ten years and more, PokerStars accepted poker bets from New Jersey residents on a daily – even hourly – basis, despite having no license to do so. PokerStars thereby

---

*Liquor Control*, 435 N.E.2d 407, 409 (Ohio 1982) (poker is a game of chance); *Lavick v. Nitzberg*, 188 P.2d 758 (Cal. App. 1948) (same). This conclusion is unchanged by the ruling last fall by a single trial court judge in Long Island that poker should not be deemed a game of chance under the Illegal Gambling Business Act. *United States v. Dicristina*, No. 11-CR-414, 2012 U.S. Dist. LEXIS 118037 (E.D.N.Y. Aug. 21, 2012). The decision in that case, which the federal government is challenging on appeal, stressed that it did not alter state law determinations that poker is a game of chance.

<sup>36</sup> Examples of players residing in New Jersey who have publicly acknowledged gambling on PokerStars' website include Colin Mellars of Morris Plains, [www.pocketfives.com/profiles/lespaulgman/](http://www.pocketfives.com/profiles/lespaulgman/), Aleksey Shestyan of Vorhees, [www.pocketfives.com/profiles/naluneabezshapki/](http://www.pocketfives.com/profiles/naluneabezshapki/), Leonard August of North Bergen, [www.pocketfives.com/profiles/smoothustler/](http://www.pocketfives.com/profiles/smoothustler/), and Joe Steur of Blackwood, [www.pocketfives.com/profiles/eaglesfn1127/](http://www.pocketfives.com/profiles/eaglesfn1127/). Also, throughout the relevant period, PokerStars permitted players under the age of 21 to participate. See *PokerStars Online Poker Software Terms of Service*, <http://web.archive.org/web/20090217152927/http://www.pokerstars.com/poker/room/tos/> (last visited Feb. 25, 2013).

<sup>37</sup> Noah Murray, *Some N.J. Lawmakers betting on the Internet for new casino game revenue*, Associated Press, June 3, 2010; John Brennan, *Benefits of online poker pushed*, *Record*, Nov. 7, 2010; Matthew Kredell, *The impact of New Jersey legislation on existing poker sites*, *PokerNews.com*, Feb. 2, 2010; *Washington residents denied online poker access*, *Online Casino Reports*, Oct. 16, 2010.

violated the state's law banning any unlicensed "contest of chance" where "the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants or some other persons may also be a factor therein." N.J.S.A. 2C:37-1 & 2C:37-4. From 2006 to 2011, PokerStars masterminded the payments involved in that unlicensed betting by systematically defrauding every bank and other financial institution that touched those transactions.

Under N.J.S.A. 5:12-86(e) and 5:12-86(g), each of those illegal actions was "inimical to the policy of [the Casino Control Act] or to legalized gaming" in New Jersey. The Act clearly announces the importance of excluding from the casino industry individuals and entities that have engaged in illegal conduct (N.J.S.A. 5:12(b)(9)) (emphasis added):

*[C]asino operations are especially sensitive and in need of public control and supervision, and since it is vital to the interests of the state to prevent entry, directly or indirectly . . . of persons who have pursued economic gains in an occupational manner or context which are in violation of the criminal or civil public policies of this state, the regulatory and investigatory powers and duties shall be exercised to the fullest extent consistent with law to avoid entry of such persons into the casino operations or the ancillary industries regulated by this act.*

In 2011 the legislature reinforced this policy when it substantially reformed certain aspects of the Act, but still insisted on the importance of "maintaining strict integrity in the licensing of casino operations." That language echoed the statement in the Hanson Report, which generated the 2011 reform legislation, that the state needed to bring its regulatory structure "into the 21<sup>st</sup> century . . . while maintaining strict integrity." As recently as last month, Governor Christie reaffirmed this commitment in his conditional veto of legislation authorizing Internet gambling

in New Jersey. "I authorize this step towards modernizing Atlantic City's entertainment attractions cautiously," he announced, "with carefully constructed limitations that will ensure the highest integrity and the most robust oversight."<sup>38</sup>

The PokerStars entities and individuals did not, of course, violate only New Jersey law. They also received bets from many states where statutes specifically barred online gambling. These include Illinois,<sup>39</sup> Indiana,<sup>40</sup> Louisiana,<sup>41</sup> Montana,<sup>42</sup> Nevada,<sup>43</sup> Oregon,<sup>44</sup>

---

<sup>38</sup> New Jersey Bill S12, § 1(b)(18) 214<sup>th</sup> Legislature (introduced Nov. 15, 2010); Report of the Governor's Advisory Commission on Gaming, Sports, and Entertainment 16 (July 21, 2010); Conditional Veto Message for Assembly Substitute for Assembly Bill No. 2578, Gov. Chris Christie, p. 1, (February 7, 2013).

<sup>39</sup> Examples of public acknowledgment of Illinois residents gambling on PokerStars sites include: (i) Matthew Cochrane of Algonquin, Illinois, reporting he played in PokerStars tournaments from September 2007 through March 2010, <http://pokerprolabs.com/mrkrinkle773/PokerStars>; (ii) an August 2010 complaint filed by Scott Crespo in federal court in Illinois asserting that Crespo won more than \$1 million while playing on PokerStars sites from Forest Park, IL, <http://www.pocketfives.com/profiles/bel0wab0ve/>; (iii) Crespo also sued two other Illinois residents concerning their play on PokerStars during the same time frame, Connor Drinan and Brandon Zaucha, both of Arlington Heights, IL, <http://www.cardplayer.com/poker-players/109520-connor-drinan>; <http://www.pocketfives.com/articles/connor-drinan-blanconegro-breaks-down-ub-com-200k-guaranteed-win-584466/>; <http://www.cardplayer.com/poker-players/109520-connor-drinan>; <http://www.PokerStarsblog.com/homepage/2011/sunday-warm-up-no-chop-this-time-brandan-079812.html>.

<sup>40</sup> Examples of public acknowledgment of Indiana residents gambling on PokerStars sites include: (i) Nathan Owens of Greensburg, IN, reporting playing in five PokerStars tournaments in 2008 and 2010, <http://www.pocketfives.com/PokerStars/pro+skinner/>; (ii) Brandon Blessing of Batesville, IN, who reported playing in many PokerStars tournaments between March 2010 and April 15, 2011, <http://forumserver.twoplustwo.com/184/staking-selling-shares-live/hollywood-poker-open-lawrenceburg-indiana-1258145/>; <http://www.pocketfives.com/profiles/kirbybubba/>; <http://nl.pokerprolabs.com/kirbybubba/PokerStars>; (iii) and a third player from Oakland City, IN, who reported playing in more than forty PokerStars tournaments online between June 2007 and March 2011, <http://www.pocketfives.com/PokerStars/nrocme/>.

<sup>41</sup> Examples of public acknowledgment of Louisiana residents gambling on PokerStars sites include (i) Alex Tassin of Houma, LA, who reported playing in more than 40 PokerStars online tournaments between July 2009 and March 2011, <http://www.pocketfives.com/profiles/louisianacajun/>; <http://www.pocketfives.com/PokerStars/houmalsu06/>; (ii) Brock Gary of Lafayette and New Iberia, LA, reported participating in more than 50 PokerStars tournaments between 2006 and March 2011, <http://www.pocketfives.com/PokerStars/camz2895/date-asc/>; and Caufman Talley III of New Orleans, LA played in more than one hundred online PokerStars tournaments between August 2009 and April 2011, <http://www.pocketfives.com/PokerStars/ponchos+nutz/>; <http://pokerdb.thehendonsmob.com/articles/caufman-talley-iii-wins-first-live-tournament-at-harrah-s-new-orleans-1893>.

<sup>42</sup> Examples of public acknowledgment of Montana residents gambling on PokerStars sites include (i) Tyson Marks of Missoula, MT, who won the PokerStars World Championships, <https://www.facebook.com/tyson.marks.5?fref=ts>; <http://www.PokerStarsblog.com/2010/my-poker-journey-and-how-i-bagged-the-wc-074121.html>; (ii) when a player named Alex complained that non-Montana residents were participating in a regional qualifying tournament for online players, Scott W of the PokerStars Support Team replied on July 13, 2007, that "the location of any players qualifying will be verified and if they have lied to get into any of the qualifying tournaments they will be disqualified," <http://archives1.twoplustwo.com/showflat.php?Cat=0&Number=11179754&page=0&fpart=1&vc=1>;

South Dakota,<sup>45</sup> and Washington for at least four years. By never acquiring a license to operate a gambling business in the United States, PokerStars violated the laws of every state in the Union. In so doing, PokerStars not only scorned state laws, but also violated the federal Travel Act and Illegal Gambling Business Act. PokerStars operated its illegal business in the United States until the moment the federal government seized its Internet domains and made it physically impossible to continue to break the law. Each independent violation of the criminal laws provides a valid basis for denying PokerStars' petition under N.J.S.A. §5:12-86(g); cumulated over nearly five years, PokerStars' uninterrupted lawbreaking overwhelmingly demonstrates that this petition should be denied.

---

(iii) Jean Weigand, who identified himself as located in Montana, reported participating in more than forty online tournaments with PokerStars between June 2009 and January 2011.

<sup>43</sup> Examples of public acknowledgment of Nevada residents gambling on PokerStars sites include (i) Paul Svelmoe of Las Vegas, who reported participating in more than twenty online tournaments with PokerStars from February 2007 to February 2011; (ii) Dennis S. Booze of Henderson, NV, reported participating in more than one thousand online PokerStars tournaments from December 2006 to April 2011, and winning more than \$600,000, <http://www.pocketfives.com/PokerStars/boozeorlose/date-asc/>; (iii) Crystal Quibell of Las Vegas played in more than forty online PokerStars tourneys from July 2007 to December 2010, <http://www.pocketfives.com/PokerStars/ladyluck84/>.

<sup>44</sup> Examples of public acknowledgment of Oregon residents gambling on PokerStars sites include: (i) Armando Valdez of Portland, who reports playing in more than one hundred PokerStars online poker tourneys between July 2006 and April 2011, <http://www.pocketfives.com/PokerStars/xrunerrunner/>; <http://forum.partimepoker.com/appeals-forum/688121-ooopz-d.html>; (ii) Dan Martin of Klamath Falls was banned for three months from PokerStars' sites when he was found to have multiple accounts on the site and to be playing in the same tournaments as his girlfriend, though he reported winning nearly \$1.5 million in PokerStars online poker tournaments between August 2006 and January 2011, <http://www.examiner.com/article/oregon-resident-banned-from-PokerStars-takes-off-for-the-wsop> ; <http://www.pocketfives.com/PokerStars/wretchy/date-asc/>; <http://pokerworks.com/poker-news/2009/04/23/poker-pundit-dan-wretchy-martin-intro-poker-and-beer-pong.html>; (iii) Tim Clark of Klamath Falls reported playing in more than one hundred online tournaments with PokerStars between December 2008 and April 2011, [http://www.pocketfives.com/PokerStars/rio\\*mata/](http://www.pocketfives.com/PokerStars/rio*mata/); <http://www.pocketfives.com/profiles/riomata/>.

<sup>45</sup> Examples of public acknowledgment of South Dakota residents gambling on PokerStars sites include: (i) Jason Residorfer of Sioux Falls, has been a regular player on PokerStars sites between 2001 and 2010, <http://pokerprolabs.com/sfcellman/PokerStars>; <http://www.PokerStarsblog.com/2006/PokerStars-class-of-2001-sfcellman-032355.html>; <http://www.pokerpages.com/player-profile/jason-reisdorfer.htm>; (ii) Jerad Kirch of Rapid City reported playing in more than ten online tournaments on PokerStars sites in 2009, <http://www.pocketfives.com/PokerStars/dakotasbest/>; <http://pokerprolabs.com/dakotasbest/PokerStars>; (iii) Trevor Chavez of Chamberlain reports playing in more than fifty online PokerStars tournaments between 2007 and 2009, <http://www.pocketfives.com/PokerStars/chavot420/>.



The seven PokerStars entities and individuals that seek qualification cannot evade responsibility for the lawless operation of PokerStars' business from 2006 to 2011. Most obviously, the illegal activities were central to the entire structure of PokerStars' U.S. operations. The four individual applicants include the co-founder of the business, two senior financial officers and the chief legal officer. Either they knew exactly how PokerStars structured its illegal payment arrangements in the United States, or they were unimaginably negligent. The Commission need not, however, speculate on this question. In entering his guilty plea, Nelson Burtnick, former head of payments processing for PokerStars, stated under oath that PokerStars' system of fraudulent payment arrangements was established by himself along with "other employees and company executives." He added that, "My superiors, other employees and I knew and understood that if we did not use payment companies that deceived their banking partners the business would not function or operate."<sup>46</sup>

Similarly, the three corporate entities have been responsible for PokerStars' illegal conduct. Throughout the relevant period, PokerStars' business was controlled by Oldford Group Ltd., a privately-held entity of which all four individuals are senior officials and directors, and which has 100 percent ownership and control over the two other holding companies that are proposed as qualifiers in this proceeding, as well as the proposed licensee, Rational US. There is no indication that the ownership of Oldford Group Ltd. has varied over the last eleven years. The only change in management and control over that time supposedly occurred last summer when the settlement with the federal government required that CEO Isai Scheinberg withdraw from management and control of the company.<sup>47</sup>

---

<sup>46</sup> See p. 13, *supra*.

<sup>47</sup> There may be, however, some uncertainty whether that withdrawal has actually happened as required. Between October 17 and 19, 2012, three months after the settlement order in the federal civil lawsuit, senior PokerStars leadership convened a conference on the Isle of Man with several leading online poker players. According to an

This conclusion is not weakened by any language in the forfeiture settlement that PokerStars purchased at the price of more than a half-billion dollars. That agreement states that nothing in it “is intended to or shall limit the PokerStars Companies . . . from offering real-money online poker” in the United States “if and when it becomes permissible to do so under relevant law.” That language states simply that the Justice Department has neither jurisdiction over nor a direct interest in PokerStars’ suitability for licensing by gaming regulators; it is consistent with the Justice Department’s customary practice not to address the consequences a settlement or even guilty plea may have in other forums.<sup>48</sup> The Casino Control Act establishes the consequences of PokerStars’ chronic lawbreaking. Nothing in the settlement agreement can change that conclusion.

### CONCLUSION

As this Commission held in *Div. of Gaming v. Industrial Equity*, 13 N.J.A.R. 519, 526 (Casino Control Comm’n 1989), “[i]t is the burden of the applicant to prove its suitability for ICA . . . . It is not the burden of the State to prove otherwise.” Casino license applicants

---

agenda posted on the Internet by one of the players who was in attendance, the three-day session included several topics on which “Isai” led the discussion, including “Introduction,” “Purpose of Meetings: Discussion,” “Discussion of FTP [Full Tilt Poker] Relaunch, and Q&A,” and “Players present top suggestions; Isai responds.” This report of the conference, filed by “OMGClayDol,” included the following passage:

At the end of Wednesday and Friday we had time to talk face to face to Isai about the most important issues we wanted change for and this was where I focused most of my attention.

<http://forumserver.twoplustwo.com/28/internet-poker/pokerstars-october-2012-player-meeting-report-1259831/>. The writer of that report concluded by noting that PokerStars officials had reviewed his summary of the meeting and did not ask that any part of it be changed. Because the summary refers only to “Isai” and not to “Isai Scheinberg,” and because it is unsigned, further inquiry would be required to determine whether Isai Scheinberg has complied with the commitment in the July 2012 settlement agreement that he withdraw from management and control of PokerStars. In view of the other materials discussed in this brief, this Commission should deny the PokerStars Petition without addressing Isai Scheinberg’s compliance with the federal court settlement; that is a matter for federal prosecutors to address.

<sup>48</sup> Even in areas – unlike gaming – where the federal government acts as regulator, the Justice Department does not presume to establish in settlement agreements the collateral consequences of guilty pleas, convictions or other dispositions; rather, separate statutes and regulations leave those determinations to other agencies, *not* to the Justice Department. *See, e.g.*, 19 U.S.C. § 1641(d)(1)(B) (dealing with customs broker licensing); 60 U.S.C. App. 2410(h)(1) (export licensing); 17 C.F.R. § 14.5 (license to appear or practice before the Commodity Futures Trading Commission); 10 U.S.C. § 2408(a) (defense contracting); 42 U.S.C. § 1320a-7 (federal health-care programs).

have failed because they were found to have personal relationships with individuals with criminal histories and/or criminal connections, or simply because their histories reflected insufficient respect for regulatory authorities. In *Boardwalk Regency*, the Appellate Division upheld a license condition that certain individuals be removed from a casino licensee *not* because the licensees had committed any crimes, but because of “their apparent continuing insensitivity to the potential impact of [their] associations in this sensitive industry.”<sup>49</sup>

This Commission routinely considers the good character of applicants for casino licenses and their key employees. As the Commission explained in a leading decision (emphasis added):

“Good Character” is a concept used repeatedly in legal as well as everyday affairs. It is demanded in sundry situations, including, among others, business, personal, and governmental relationships. A person’s “character” is usually thought to embrace “all his qualities and deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow men.” . . . [H]ere, the nature of the subject, that is, the suitability to participate in the sensitive casino gaming industry in New Jersey, itself supplies concreteness to the concept of “good character”. *The demand is for a party who will perform honestly and whose record does not suggest a lack of that essential integrity. Hence, we must look to an individual’s past conduct as a guide to how that individual is likely to operate a casino facility in the future.*<sup>50</sup>

---

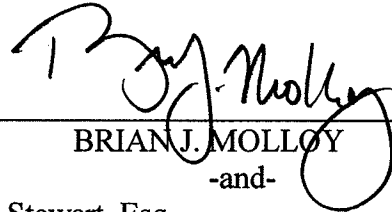
<sup>49</sup> 180 N.J. Super. at 348.

<sup>50</sup> *In re Bally’s Park Place, Inc.*, 10 N.J.A.R. 356, 367 (Casino Control Comm’n 1981) (citations omitted); *See In re Resorts International Hotel, Inc.*, 10 N.J.A.R. 244, 251 (Casino Control Comm’n 1979); *In re Playboy-Elsinore Associates*, 10 N.J.A.R. 465, 491 (Casino Control Comm’n 1988).

For many years, the PokerStars individuals and entities operated a business with a history of intentional, uninterrupted criminal violations. They cannot demonstrate the good character, integrity, and honesty required by New Jersey law. The PokerStars Petition should be denied.<sup>51</sup>

WILENTZ, GOLDMAN & SPITZER, P.A.  
Attorneys for Petitioner For Participation  
American Gaming Association

By: \_\_\_\_\_



BRIAN J. MOLLOY  
-and-

Dated: March 4, 2013

David Stewart, Esq.  
ROPES & GRAY, LLP  
One Metro Center  
700 12 St., NW, Suite 900  
Washington, D.C. 20005-3948

---

<sup>51</sup> *In re Application for a Casino License of Playboy-Elsinore Associates*, 10 N.J.A.R. 465 (Casino Control Comm'n 1982); *In re Application of Boardwalk Regency Corp.*, 10 N.J.A.R. 295 (Casino Control Comm'n 1980).