May 31, 2001

President Cyrus Schindler
Seneca Nation of Indians
Post Office Box 231
Salamanca, New York 14779

Re: Game Classification Opinion for a gaming device know as "Break the Bank"

Dear President Schindler:

We were asked to review the equipment and method of play for a game known as "Break the Bank," developed and marketed by Cadillac Jack, Incorporated, for the purpose of determining whether the Chairman of the National Indian Gaming Commission should regard the game as a class II or a class III game under the Indian Gaming Regulatory Act (IGRA). In addition to "Break the Bank," a name under which the game is marketed, Cadillac Jack also refers to the product as the Cadillac Jack PTC Multi-tab System.

In considering the question, we reviewed a detailed description for the game that was provided to an NIGC field representative during a visit to the Seneca Nation's gaming facilities on February 6-7, 2001. Cadillac Jack provided these materials to the Nation as part of its marketing effort. This complete description is included as an attachment and is incorporated by reference as part of this advisory game opinion. We also examined a videotape of game play that was made on November 27, 2000, by another NIGC field representative during a visit to the Lucky Star Casino, a tribal gaming facility operated by the Cheyenne and Arapaho Tribes of Oklahoma, where the game is also in play. Technical specifications for the game are not in question at this time.

Game Description Summary

The system intends to accomplish the sale of electronic pull-tabs through use of various system components. According to the Cadillac Jack materials, there are separate and stand-alone systems that enable the play of the game, including: (i) a computer cartridge (a "cartridge") which houses electronic pull-tabs (referred to as "tickets" by Cadillac Jack) in separate files located on the cartridge and acts as a non-volatile permanent storage medium for the tickets; (ii) a central computer controller to which up to 32 cartridges are attached and a network system which emanates from a central host location (the "Network"); (iii) an Electronic Printing-Dispensing Station (an "EPDS") which is connected to the Network and which by virtue of the Network is able to transmit to and receive from the central computer information about the tickets; (iv) an Electronic Viewing Station (an "EVS") which is connected to the Network and which by virtue of

the Network is able to transmit to and receive from the central computer information about the tickets and the game; and (v) a Point of Sale system ("POS") comprised of interconnected central and remote POS stations which function as cashiers for the system. The central computer, the Network, the EVS's and the EPDS's are collectively referred to as the "System." There is a separate Ticket Manufacturing Device ("TMD") that manufactures the electronic tickets and stores these electronic tickets on the cartridges. The TMD is not connected to any other system device.

The central computer acts as an aid for the transmission by the Network of images of the tickets to players, which are presented to the players in their original electronic form, in the case of players playing the tickets at an EVS, or as "paper facsimiles" in the case of players playing the tickets at an EPDS. All of the players are remotely located from the central location at which the cartridge, with the actual electronic tickets stored thereon, is located. The EPDS's and EVS's connected to the Network may be located in several locations in the same bingo hall or at separate bingo halls. The Game is played as many players simultaneously purchase, access, and play the electronic tickets on the cartridges through the aid of an EVS (if two or more are in use) or an EPDS by way of the Network and central computer.

Players access the game either at a player-operated EVS or at an EPDS that is operated by an attendant-employee of the gaming facility. During play at an EVS, a player inserts a smart card, obtained from a POS, into the device and depletes the credits that have been purchased and programmed on the smart card. For each credit expended, the player sees a visual image of a pull-tab, or "ticket" on the video screen. There are no paper pull-tabs available through the EVS. The electronic tickets have been stored on the computerized cartridge that has been placed into a central controller computer, or server, for the Network. Each cartridge will store electronically up to 150,000 tickets, each in a separate file or location on the cartridge. Players open each electronic ticket to reveal the pull-tab game by touching the monitor screen or through use of a hardware control button on the front of the EVS. A player wins by obtaining an electronic ticket containing a pattern of symbols that matches a pre-determined pattern previously designated a winning pattern. The player must affirmatively claim the prize by touching the monitor screen or by pushing another hardware control button. The value of the monetary prize from winning electronic tickets is transferred at player direction to the player's smart card as additional credits.

The Game also can be played without an EVS at the EPDS where acquiring an electronic ticket requires assistance by an attendant. Using the equipment that includes a printer, the attendant, at the request of the player, prints what is termed by Cadillac Jack as a "facsimile" of an electronic game ticket for the player. This is simply a printed piece of paper with descriptive words instead of symbols listed on it in a grid format similar to the electronic ticket. The printed sheet is covered by another piece of paper that the player pulls back to reveal the game. The player then determines whether she is a winner from

the paper facsimile and, in a successful instance, returns the paper facsimile to the attendant who credits the smart card appropriately.

According to the descriptive materials provided by Cadillac Jack, "the EVS and the EPDS do not act as dispensing units by which players may directly purchase a physical ticket. The tickets exist solely on the Cartridge in electronic format with the display and play of the game occurs through the aid of the EVS's and EPDS's connected to the Network."

Pertinent Statutes and Regulations

IGRA divides gaming into three distinct categories. Class I gaming involves social games and traditional Indian games not applicable to this discussion. Class II gaming includes "the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic *aids* are used in connection therewith) ... in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull tabs, ... instant bingo, and other games similar to bingo." The term "class II gaming" does not include "electronic or electromechanical *facsimiles* of any game of chance or slot machines of any kind." Class III gaming means "all forms of gaming that are not class I gaming or class II gaming." See 25 U.S.C. § 2703 (6) – (8).

Regulations of the NIGC provide corresponding definitions for these gaming classifications at 25 C.F.R. Part 502.

The purpose in drawing a distinction between class II and class III gaming is that, under IGRA, class III gaming may only be played in conformance with a tribal-state compact permitting such gaming. See 25 U.S.C. § 2710(d)(1)(C).[1]

Discussion

The game of pull-tabs is a game of chance played traditionally as a paper game. Players purchase outwardly identical cards from a stack of cards (the "deal"). The deal includes a pre-determined number of winning and losing cards. The player opens the tab and finds out if the card is a winner.[2] Under IGRA and NIGC regulations, the paper game of pull-tabs is class II. See 25 U.S.C. § 2703 (7)(A)(i)(III) and 25 C.F.R. § 502.3(b).

Proponents of the electronic version of pull-tabs suggest that the game is played with a similar underlying concept. A player obtains an electronic "card" or "ticket" that is displayed for the player on a video monitor from a "stack" of similar "cards" or "tickets"

[1] In the absence of a compact, a tribe may also play a class III game under procedures established by the Secretary of the Interior. See 25 C.F.R. Part 291.

[2] This description of the paper pull-tab game is that used by the Court in *Cabazon Band v. NIGC*, 827 F. Supp. 26, 28 (n. 2)(D.D.C. 1993), aff'd 14 F.3d. 633 (D.C. Cir. 1994).

stored electronically. Using the electronic equipment available to the player, the player "opens" the electronic pull-tab and examines the combinations on the video screen to determine if she has a winning combination. As with paper pull-tabs, the "deal" is finite which is to say that the numbers of winning and losing tickets are known when the "deal" is loaded, electronically, into the gaming equipment. In some versions, the deal is contained in a cartridge or series of cartridges that are loaded individually into a single player terminal. In others, the deal is loaded into a central computer that can be accessed through a number of individual player terminals. In either of these instances, the game does not exist in paper format but only in an "electronic" format. As such, the game becomes an "electronic facsimile" game of paper pull-tabs and, by the statutory definition, cannot be a class II game. See 25 U.S.C. § 2703(7)(B)(ii).

This analysis finds support in *Cabazon Band of Mission Indians v. National Indian Gaming Commission*, 14 F.3d 633, 636 (D.C. Cir. 1994) (*Cabazon II*) wherein the Court noted:

> There is now a computerized version of pull-tabs. The computer randomly selects a card for the gambler, pulls the tab at the gambler's discretion, and displays the result on the screen. The computer version, like the paper version has a fixed number of winning cards in each deal. The computer may be interconnected so that each gambler simultaneously plays against other gamblers in pods or banks of as many as forty machines.
>
> . . . .
>
> . . . [T]he tribes concede that the video version of pull-tabs is the same game as the paper version. . . . Because class II gaming does not include "electronic or electromechanical facsimiles of any game of chance" (25 U.S.C. § 2703(7)(B)(ii)), this concession alone demonstrates that the video game is not in the class II category. "By definition, a device that preserves the fundamental characteristics of a game is a facsimile of the game." Sycuan Band of Mission Indians v. Roach, (S.D. Cal. 1992). As commonly understood, facsimiles are exact copies or duplicates. Although there may be room for a broader interpretation of "facsimile," the video version of pull-tabs falls within the core meaning of electronic facsimile. It exactly replicates the paper version of the game, and if that is not sufficient to make it a facsimile, we doubt...that anything could qualify.
>
> . . . .
>
> . . . [T]he Act's exclusion of electronic facsimiles removes games from the class II category when those games are wholly incorporated into an electronic or electromechanical version.

Cabazon II, 14 F.3d, at 636. See also *Sycuan Band v. Roache*, 54 F.3d 535 (9th Cir. 1995) which considered an electronic pull-tab device known as the Autotab Model 101[3] and found the device to be class III.

In "Break the Bank," the primary method of play is through the use of an EVS terminal that allows the player to access the game. The EVS does not contain a storage file of electronic pull-tabs. The terminal merely transforms into visual characteristics the electronic file that it receives from the central computer through the network. The electronic game tickets are stored remotely in a central computer, or server, which is not accessible to the player. However, the game is one wholly contained—electronically—in the networked game system. That the cartridge is in a server that feeds through the player station computer to the viewing monitor rather than in the player station terminal computer itself is a distinction without a difference.

The fact that a player can receive a piece of paper with an individual game from the computerized deal copied to it, in those instances when the gambler plays the game through the EPDS feature, does not change the fact that, for play of the game at an EVS, the game is entirely electronic. The hybrid features of the EPDS appear to be a diversion, with apparently minimal player appeal, intended to create a sense that because certain of the pull-tabs eventually do exist in paper format, the play of the game is not primarily the play of an electronic facsimile of paper pull-tabs.

"Break the Bank" is played with networked equipment that is not substantially different from the device at issue in *Cabazon II*. The factual question is whether the electronic features present in "Break the Bank" wholly incorporate the game of paper pull-tabs. Said differently, does the game with its attendant equipment become an electronic facsimile—a device which preserves the fundamentals of the game or which is an exact copy or duplicate, as the Courts in *Sycuan Band* and *Cabazon II* applied that term? When the game is played with a central computer holding cartridges of electronic tickets, delivered to players through a network of electronic viewing stations, and even with the possibility of a player receiving a form of a paper pull tab that is delivered electronically to an attended station and printed for the player, we conclude that "Break the Bank" does wholly incorporate the paper game of pull-tabs, rendering it an electronic facsimile of the game and, therefore, a class III gaming device.[4] This conclusion is required under either

---

[3] "The 'Autotab Model 101 electronic pull-tab dispenser' is a self-contained unit containing a computer linked to a video monitor and a printer. The player electronically reveals concealed numbers to determine whether he or she is a winner.... The game retains the fundamental characteristics of the paper version of pull-tab: the video pull tab machine is supplied with a computer chip cartridge that insures a predetermined and known number of winning tickets from a finite pool of tickets with known prizes..." Sycuan, 54 F.3d. at 541.

[4] Courts have often interpreted the relevant provision of IGRA, 25 U.S.C. § 2703(7)(B)(ii), by relying on a commonly accepted definition of the term "facsimile" and not by applying the NIGC regulatory definition for "electronic facsimile" found at 25 C.F.R § 502.8. Under the Commission's definition, "Electronic or electronic facsimile means any gambling device as defined in 15 U.S.C. 1171(a)(2) or (3)." The statutory section, referred to as the "Johnson Act," defines a gambling device in pertinent part as:

a formal application of current NIGC regulations that incorporate the Johnson Act or an application of the plain language of the relevant statutory language of IGRA.

We recognize that not all games of chance that make use of electronics are electronic facsimiles. A particular game, otherwise class II under the IGRA definition, could be played with a technological aid, even an electronic technological aid, and remain class II. The statute recognizes as much for the play of bingo. See 25 U.S.C. § 2703(7)(A)(i).[5]

However, the equipment used to the play the "Break the Bank" game is not a mere "technological aid" as that term is defined in NIGC regulations. See 25 C.F.R. § 502.7 which provides that to qualify as a technological aid, the device "when used...(b) is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile..." When using the critical component pieces of the Network—the central computer, the EVS, and even the EPDS--the Break the Bank game is not readily distinguishable from the play of the game on an electronic facsimile. In

---

(2) any other machine or mechanical device (including but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

15 U.S.C. 1171(a).

[5] Some courts recognize that this possibility also extends to the play of paper pull-tabs. In *Diamond Game Enterprises v. Reno*, 230 F.3d 365 (D.C. Cir. 2000), United States Court of Appeals for the District of Columbia Circuit concluded that a gaming device known as the Lucky Tab II was a technological aid to the play of paper pull-tabs and a class II device under the IGRA. There is, however, a substantial difference in how the Lucky Tab II game described in *Diamond Game* is played compared to the game in *Cabazon II*. The Lucky Tab II device uses a paper roll of pull-tabs that are read by optical scanner and then displayed on a video monitor. The Court concluded that the game was not an electronic facsimile of the paper game and thus was not excluded from the class II definition.

> We think the Lucky tab II is quite different from the machine at issue in *Cabazon II*. To begin with, the Lucky Tab II is not a "computerized version" of pull-tabs. Although the Lucky Tab II has a video screen, the screen merely displays the contents of a paper pull-tab. Instead of using a computer to select patterns, the Lucky Tab II actually cuts tabs from paper rolls and dispenses them to players. In other words, the game is in the paper rolls, not as in the case of the *Cabazon* machine, in the computer.

Diamond Game v. Reno, 230 F. 3d at 367. However, the Court's evaluation of the game did not include a discussion of the Lucky Tab II game under the NIGC regulation (25 C.F.R. § 502.7) which removes from the definition of technological aid a device which, when used, cannot be readily distinguished from the play of a game as an electronic facsimile.

fact, the game is in the computer network and not in paper pull-tabs, the play of which might somehow be aided by a computer.

Conclusion

For this advisory opinion, we evaluate the entire Network system, including the central computer, the EVS terminals, and the EPDS. We do not evaluate separately the play of the game with only the central computer and the EPDS because that it not how the game is presented.

We conclude that "Break the Bank" game and its attendant network of gaming devices, also known as the Cadillac Jack PTC Multi-tab System, is a class III game under the Indian Gaming Regulatory Act.

Sincerely yours,

Kevin K. Washburn
General Counsel

William F. Grant
Senior Staff Attorney

Attachment

Copy to:
Cadillac Jack, Inc.
1804-I Montreal Ct.
Tucker, GA 30084