

## ADDITIONAL DEVELOPMENTS—BUSINESS LAW

### *UNITED STATES V. \$734,578.82*

*286 F.3d 641 (3d Cir. 2002)*

The Court of Appeals for the Third Circuit ruled on whether the government may forfeit online gambling proceeds from a U.S.-based financial intermediary under 18 U.S.C. §1955(d) when all the gambling activities took place lawfully in the United Kingdom.

Intercash Financial Services (IFS-NJ), a New Jersey corporation, received funds from bettors and deposited those funds into Fleet Bank accounts maintained for Intercash Financial Services, Ltd. (IFS-Canada)/Intercash Ltd. I.O.M (IOM), and American Sports Ltd. (ASL), a company operating in the United Kingdom under British government licenses. The bettors would then call ASL's international toll free number to place wagers. Therefore, the actual betting only took place in England. In December 1996, the U.S. government seized some of the Fleet Bank accounts maintained for IOM and ASL (collectively Claimants), and three years later, filed a civil *in rem* forfeiture action under § 1955(d) against those funds in the U.S. District Court for the District of New Jersey. The court granted summary judgment for the government.

Under § 1955(d), any property used in “illegal gambling” may be seized and forfeited to the United States. To satisfy the “illegal gambling” requirement, however, a gambling business needs to meet three conditions, pursuant to § 1955(b)(1): (1) it is conducted in violation of the law of the State (here New Jersey); (2) it involves five or more persons; and (3) it has been or remains in continuous operation for over 30 days or has a gross revenue of \$2000 in any single day.

Claimants appealed and the Third Circuit affirmed the district court judgment. The court found that the relevant New Jersey Statute N.J.S.A. 2C:37-2 broadly prohibits promotion of gambling, which includes any conduct that materially aids any form of gambling activity. Since IFS-NJ materially aided in the gambling enterprise in the United Kingdom, the court concluded that the government established probable cause that IFS-NJ was promoting gambling in violation of the New Jersey law. The court further found that IFS-NJ satisfied two other conditions of § 1955(b)(1), therefore it held that the government satisfied its burden of proof that IFS-NJ's activities constituted an illegal gambling business.

Furthermore, the court held that forfeiture can be ordered in the absence of any wrongdoing on Claimant's part. Therefore, although Claimants are doing legal business in the United Kingdom, it does not preclude the U.S. government from its forfeiture action aimed at business activity deemed illegal in the U.S. The court further rejected Claimants' several other arguments, including overreaching of the law, rule of lenity, and asserting jurisdiction in violation of bilateral treaty between the U.S. and the United Kingdom. The court held the position that its ruling here does not constitute an extraterritorial application of federal law to British citizens. In contrast, the court stated that the government is not required to tolerate activity that it defines as illegal merely because it affects someone who may live in a country where the activity is legal.

