Gambling recovery LLC must arbitrate Loss Recovery Act claim

Decision comes amid national wave of suits

Kris Olson // November 10, 2026 //

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In brief

- A Business Litigation Session judge ruled that a "gambling recovery" LLC suing under the Loss Recovery Act must arbitrate, because it stands in the shoes of the players who agreed to arbitration.
- The judge also held that the Federal Arbitration Act would preempt any reading of the statute letting a non-signer avoid arbitration, a ground defense counsel called "a little bit surprising."
- She rejected the plaintiff's reliance on an 1884 SJC decision and its argument that the claim is a qui tam action brought on the commonwealth's behalf.
- The ruling comes amid a national wave of similar suits by litigation-funded LLCs against online sweepstakes casinos and prediction markets.

A company suing under Massachusetts' centuries-old Loss Recovery Act to collect treble damages for other people's gambling losses must arbitrate its claim if the gamblers themselves would have had to, a Business Litigation Session judge has ruled.

The plaintiff, a limited liability company formed to pursue third-party claims under G.L.c. 137, §1, argued that it could not be bound by clickwrap arbitration clauses it never agreed to. It leaned on the Supreme Judicial Court's 1884 decision in *Cole v. Applebury*, which said such a plaintiff does "not derive his right to sue" from the loser, and cast its claim as a qui tam action brought on the commonwealth's behalf.

The defendants, operators of online "sweepstakes casino" platforms, countered that the claim derives from the rights of users who agreed to arbitrate, and that equitable estoppel bars the plaintiff from relying on those transactions while avoiding their terms.

Superior Court Judge Debra A. Squires-Lee agreed on three independent grounds.

First, she held that the plaintiff stands in the gamblers' shoes, much like a wrongful death claimant bound by a decedent's arbitration agreement under the SJC's decision in *GGNSC Administrative Services, LLC v. Schrader*. She found support in the Alabama Supreme Court's 2025 ruling in *Zynga, Inc. v. Mills*.

Second, she held that even if state law could be read to let a nonsignatory sidestep arbitration, the Federal Arbitration Act would preempt that reading.

"[T]he Legislature may not (intentionally or unintentionally) remove LRA claims from the scope of an FAA-governed arbitration clause merely by substituting a nonsignatory party for the losing gambler," she wrote.

Third, following two earlier Superior Court decisions, *Fair Gaming Advocates MA LLC v. VGW Holdings Ltd.* and *Curran v. Sideprize LLC*, she found the plaintiff equitably estopped because its claim cannot be adjudicated without reference to the platforms' terms.

"It would substantially undermine our Commonwealth's and Federal policy favoring arbitration … if binding agreements could be circumvented by dusting [off] 'ancient,' and 'arguably anachronistic' statutes rarely invoked until recent years," Squires-Lee wrote.

The 23-page decision is *Massachusetts Gambling Recovery LLC v. Blazesoft, Ltd., et al.*, Lawyers Weekly No. 09-119-26.

Part of national wave

Robert W. Ward of Washington, D.C., who represents defendant Zula Casino, called Squires-Lee's ruling "the most thorough decision on this issue that we've seen out of any court across the country."

The FAA preemption aspect of the holding was a little surprising, Ward said, because the defense had not argued it as a reason to compel arbitration. But he said it answers a theory that comes up often: that state law bars arbitration of these claims because the statute is penal or vindicates the state's right to recover.

"Seeing that point about, no, federal law requires this as well, is helpful to our clients and other companies that might be facing similar challenges, where a party is trying to essentially do an end run around the arbitration agreement," he said.

Ward said the derivative-claim theory, which the defense built on the wrongful death analogy, is a little more straightforward than equitable estoppel.

"When you're dealing with equitable doctrines, there's always some play," he said. "The courts have some room to decide whether it's fair."

Having both theories "in the arsenal," especially in states that have not yet applied them to such claims, "hopefully will dissuade some of these similar lawsuits going forward," he said.

As for the plaintiff's qui tam argument, Ward said Squires-Lee got it right.

"[The LRA] doesn't look anything like a qui tam statute," Ward said, noting that under the LRA, the government gets none of the money and has no procedural role. Instead, the recovery goes to an unrelated private party for its own use.

Ward said the defense still does not know exactly who is behind the plaintiff. Its members, he said, are individuals in Texas and Florida, along with a trust, and are associated with a Florida litigation funding firm, Veritas Management, though the plaintiff has represented that Veritas is not funding the suit, he said.

He predicted Squires-Lee's decision "will make it less attractive" for funders and others to bring such cases.

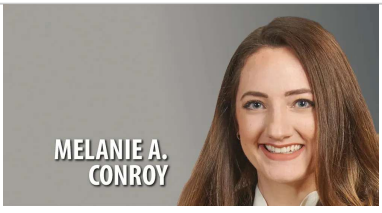
For now, the case is stayed, and the defendants' pending motions to dismiss will not be heard. Ward said the defense has not heard from the plaintiff about arbitration. His client's terms call for arbitration in Canada, which he said looks "very similar" to arbitration before the AAA or JAMS.

William M. Gantz of Boston, who represents the High 5 defendants, in an email called the court's three grounds "complementary and standard analyses," with estoppel and the derivative-claim finding the most important to the case.

Gantz said he doubts an arbitrator will even reach whether High 5's games are gambling because the plaintiff "does not identify any actual person who is alleged to have gambled and lost," which he said defeats its standing. In any event, "sweepstakes offered to promote a bona fide product or service are expressly authorized under Massachusetts law," he said.

You can tell that this is a little bit more of an emerging topic by how many centuries back the decision had to go to explore the rationale.

— Melanie A. Conroy, Boston



As for what comes next, Gantz predicted an appeal, as in other cases "brought by this group where their manufactured cases have been dismissed or sent to arbitration such as Ohio or Illinois."

Thomas R. Murphy, a Salem attorney who has long chaired the amicus committee of the Massachusetts Academy of Trial Attorneys, called the ruling "a sound decision."

“I don’t think it’s going anywhere,” he said. “It’s pretty bulletproof.”

The plaintiff’s case is more like a subrogation case than a qui tam action, Murphy noted, calling the wrongful death analogy “spot on.”

His advice to lawyers bringing a claim that derives from someone else’s transaction: “Look closely at what shoes you’re stepping into.”

Melanie A. Conroy, a Boston class action defense and business litigator, said arbitration fights have shifted. A decade ago, the flashpoints were unconscionability and notice; now that businesses have grown sophisticated about clickwrap agreements, the question is increasingly whom a clause can bind.

“You can tell that this is a little bit more of an emerging topic by how many centuries back the decision had to go to explore the rationale,” she said.

The LRA’s transfer of rights by operation of law is what kept the estoppel analysis from troubling her, Conroy said. Had the gamblers simply assigned their claims by contract, “I don’t know if you get the same result there,” she said. “To me, that would feel a lot more like a third party.”

If the ruling is vulnerable, she said, it may be on whether the LRA was meant to deter bad conduct through the public exposure of litigation. Sending the claims to private arbitration would then risk “clipping the wings of what this remedy was designed to provide” and present “a more meaty preemption question.”

Derek T. Ho of Washington, D.C., who represents the plaintiff, did not respond to requests for comment.

Pursuing others’ losses

The plaintiff, Massachusetts Gambling Recovery LLC, is a Delaware company with a business address in Tampa, Florida. Its stated purpose is to enforce Massachusetts gambling laws. According to defendant Zula Casino, it was formed just over two months before it filed suit.

It sued SCPS LLC, which does business as Zula Casino, and two Ontario-based affiliates, Blazesoft Ltd. and Blazegames, Inc. It also sued PTT, LLC, doing business as High 5 Games and High 5 Entertainment, LLC, New York-based companies that operate High 5 Casino.

The plaintiff alleged that the defendants run unlicensed online sweepstakes casinos in which users buy virtual coins to play slots, blackjack and other casino games, with the chance to win coins redeemable for cash. The defendants dispute that characterization; Zula says its platform never requires users to pay to play.

The plaintiff acknowledged that it "has no relationship to any gambler" who lost money on the platforms, and it identified no specific user or loss. It nonetheless sought three times the losses of all Massachusetts users.

The LRA, first enacted in 1785 and modeled on England's 1710 Statute of Queen Anne, gives a losing gambler three months to sue to recover what they lost in unsanctioned gaming. After that, "any other person" may sue for treble the amount. The Legislature has since exempted licensed casino gaming and sports wagering from the statute.

To use the platforms, players had to accept clickwrap terms requiring individual arbitration. Zula's terms flagged the provision in bold capital letters, let users opt out within 30 days of creating an account, and called for arbitration in Canada.

The plaintiff did not dispute, for purposes of the motions, that the users themselves would have to arbitrate, nor did it challenge how the terms were presented.

The parties agreed the FAA governs; the claims against the Zula entity are also subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, though Squires-Lee said that did not change her analysis.

The defendants moved to compel arbitration.

Distinguishing century-plus-old cases

Much of Squires-Lee's decision addresses the plaintiff's argument that a third-party LRA claim belongs to the public, not to the gambler.

In *Cole*, the third-party plaintiff sued over his brother's losses, and the defendants claimed the brothers had colluded to share a treble recovery. Squires-Lee read *Cole*'s statement that such a plaintiff does not "derive" his right from the loser as meaning only that a side deal with the gambler neither requires nor bars the suit. The SJC "had no reason" to consider how a gambler's contract with the winner binds later litigants, she wrote.

Massachusetts Gambling Recovery LLC v. Blazesoft, Ltd., et al.

THE ISSUE: Can a company that sues under the Loss Recovery Act, G.L.c. 137, §1, to recover treble damages for other people's online gambling losses be compelled to arbitrate under the clickwrap terms the gamblers accepted?

DECISION: Yes (Suffolk Superior Court/Business Litigation Session)

LAWYERS: Derek T. Ho, Mark P. Hirschboeck, Eliana Margo Pfeffer and Kyle B. Grigel, of Kellogg, Hansen, Todd, Figel & Frederick, Washington, D.C. (plaintiff)

A. Jeff Ifrah and Robert W. Ward, of Ifrah Law, Washington, D.C. (defendants Blazesoft, Ltd., Blazegames, Inc., and SCPS LLC d/b/a Zula Casino)

William M. Gantz and Poornarchita H. Dwarakanath (Boston), and Gregory Bailey (Miami), of Duane Morris (defendants PTT, LLC d/b/a High 5 Games; and High 5 Entertainment, LLC)

Nor was she moved by the SJC's description of such claims as "qui tam" actions in *Plummer v. Gray*, an 1857 decision she called a "two-paragraph" opinion.

Unlike the Massachusetts False Claims Act, she noted, the LRA does not require suit in the commonwealth's name, gives the government no share of the recovery, and gives it no control over the case.

The judge found persuasive federal decisions reaching the same conclusion about other states' versions of the statute, including the 6th U.S. Circuit Court of Appeals' 2025 ruling in *Burt v. Playtika, Ltd.*

She distinguished the out-of-state authority the plaintiff cited, including a May 2026 Kentucky trial court ruling refusing to compel arbitration that she said offered "little more than ipse dixit."

In a footnote, she declined to find that the defendants' alleged illegal gambling operations gave them unclean hands, saying the argument "assumes what [Massachusetts Gambling Recovery] sets out to prove."

Squires-Lee also listed a string of similarly named "gambling recovery" LLCs suing in Georgia, Illinois, Kentucky, Ohio, South Carolina and Massachusetts, several of them against prediction-market operator Kalshi.

"I do not find any party's hands appreciably cleaner than the other," she concluded.

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- Squires-Lee, Debra A.

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