

**STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS**

JACQUELINE DAVIS,

Plaintiff-Appellant,

v.

BetMGM, LLC,

Defendant-Appellee,

Supreme Court No. 166281

Court of Appeals No. 363116

Wayne County Circuit Court
No. 21-006981-CK

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**AMICUS CURIAE BRIEF OF DETROIT ENTERTAINMENT, L.L.C.,
GREEKTOWN CASINO, L.L.C. AND MGM GRAND DETROIT, LLC**

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STATEMENT OF QUESTION PRESENTED

- I. Whether plaintiff-appellant's common-law claims of fraud, conversion and breach of contract are preempted by the Lawful Internet Gaming Act (LIGA), which establishes the Michigan Gaming Control Board (MGCB) as the exclusive arbiter of patron disputes regarding alleged internet gaming winnings?¹

The trial court answered:	Yes
The Court of Appeals answered:	Yes
Plaintiff-Appellant Jacqueline Davis answers:	No
Defendant-Appellee BetMGM answers:	Yes
Amici Curiae answer:	Yes

¹ It is the view of Amici Curiae that the answer to the first question resolves the Court's second question, and it is therefore not separately addressed.

STATEMENT OF INTEREST

This amicus brief is submitted on behalf of the three commercial casinos located in the City of Detroit, Detroit Entertainment, L.L.C. (“MotorCity Casino”), Greektown Casino, L.L.C. (“Hollywood Casino at Greektown”) and MGM Grand Detroit, LLC (“MGM Grand Detroit”) (collectively, “Detroit Casinos”).² The Detroit Casinos are deeply concerned that this case could inadvertently upend the well-established patron dispute process that has been in place for more than two decades. It is imperative that the casino industry operate pursuant to one set of standards, which is established, regulated, and enforced by the Michigan Gaming Control Board (“MGCB”) and that those standards are consistently applied to the casinos, internet gaming operators, and platform providers in Michigan. If trial courts are now granted the authority to conduct “investigations” based on the same facts and conduct exclusively prescribed and enforced by the MGCB or if they are permitted to make determinations regarding the conduct and operation of games, associated equipment, and platforms that are contrary to the approvals and findings already made by the MGCB, the entire industry will be placed in an untenable position, will face significant uncertainty, and the authority and decisions of the MGCB will be eviscerated.

The Detroit Casinos have operated land-based (brick-and-mortar) casinos since 1999 (MGM Grand Detroit and MotorCity Casino) and 2000 (Hollywood Casino at Greektown). For over 25 years, therefore, the Detroit Casinos have been regulated by the MGCB, the state agency charged with regulating and ensuring the integrity of gaming in Michigan. There are MGCB offices located in each of the Detroit Casinos, MGCB regulation officers are present at each

² No party to this case or their counsel authored this brief in whole or in part and no party to this case funded the preparation or submission of this brief. While MGM Grand Detroit is a related party to BetMGM, they are separate legal entities, do not share counsel in this case, BetMGM did not contribute financially or otherwise to the preparation of this brief, and MGM Grand Detroit has no financial interest in the outcome of this case.

property every single day (including in offices open to the public), and each of the Detroit Casinos has daily interactions with various MGCB personnel. Indeed, casino gaming is one of the most heavily regulated industries in this state.

The Michigan Gaming Control and Revenue Act (“MGCRA”), MCL 432.201 *et seq.*, is a 1996-initiated law³ that authorized limited casino gaming in Michigan. Pursuant to MGCRA (and the promulgated administrative rules, Mich Admin Code, R 432.1101 *et seq.*), the Detroit Casinos are required to follow the rules and directives of the MGCB, which include having their games approved by both an independent testing lab and the MGCB’s lab, and all such games and associated equipment must meet Michigan’s stringent standards (among others) before they will be approved and authorized for use. In addition, every aspect of gaming conducted by the Detroit Casinos in their brick-and-mortar casinos is regulated by the MGCB—including the resolution of gaming-related disputes with patrons.

Nearly 25 years after passage of MGCRA, as a result of a changing gaming landscape, the Legislature enacted the Lawful Internet Gaming Act (“LIGA”), MCL 432.301 *et seq.* (2019 PA 152), which authorized limited internet gaming in Michigan and, like MGCRA, granted to the MGCB exclusive regulatory authority over the conduct of that gaming.⁴ Indeed, LIGA was drafted using MGCRA as a template. Internet gaming is also governed by promulgated administrative rules, Mich Admin Code, R 432.611 *et seq.*, which are similar in many respects to the administrative rules promulgated pursuant to MGCRA. Accordingly, the regulatory structure imposed on operators and platform providers (including BetMGM) under LIGA is closely aligned with the regulatory structure imposed on the Detroit Casinos under MGCRA. Under LIGA, the

³ See 1996 IL 1 (effective Dec. 5, 1996).

⁴ The Legislature also, at that time, enacted the Lawful Sports Betting Act (2019 PA 149), MCL 432.401 *et seq.*

Detroit Casinos, as licensed internet gaming operators, share with their licensed platform providers many responsibilities regarding internet gaming operations.

MGCB has been given exclusive jurisdiction over gaming-related disputes because it establishes the very rules licensees must follow in this regard, many of which are extremely technical and highly specialized. MGCB possesses the necessary training and expertise to determine the validity of these disputes. The dispute at issue in this matter concerns an authorized participant complaint (also referred to herein as a “patron dispute”) by Plaintiff-Appellant Jacqueline Davis (“Davis” or “Plaintiff”). This dispute involves *core* functions of the MGCB—a review of platform functions and malfunctions, gaming integrity, winnings, and losses. The validity of Plaintiff’s dispute requires a determination as to compliance with the MGCB’s regulations, which in turn requires MGCB’s technical expertise. The authority to make those determinations is properly given to the MGCB, which has the experience and technical expertise to undertake that review and analysis.

The MGCB’s loss of jurisdiction over determinations regarding platform malfunctions, gaming integrity, and winnings and losses would inevitably lead to inconsistency with respect not only to interpretation of the gaming rules and regulations but also to enforcement of those rules and regulations, resulting in a lack of finality for operators and platform providers—even when *they have abided by MGCB’s directives*. It would also deprive patrons of the ability to timely (and without cost) resolve their gaming disputes. The impact of that inconsistency would be devastating to the industry, patrons, and the public.

I. INTRODUCTION

The underlying facts in this case are simple and not in dispute. Plaintiff played a regulated online game on BetMGM's internet gaming platform. When BetMGM realized there was unusual betting, it suspended her account, investigated, and found a malfunction. Davis nonetheless claimed she was entitled to the full amount reflected in her suspended account. Unhappy with the detailed explanation provided by BetMGM, Davis filed suit in Wayne County Circuit Court and later filed a patron dispute with the MGCB, in effect appealing the decision by BetMGM that she had not won the amounts reflected in her account. The MGCB thereafter conducted its own independent investigation and concluded there was in fact a malfunction that caused more than \$3,000,000 to be improperly credited to Plaintiff's account.⁵ As a result, Davis was not entitled to the money she claimed. Despite this decision, Davis continued to pursue her claims through the courts. Both the trial court and the Court of Appeals determined that her claims were within the exclusive purview of the MGCB, the agency charged by law with reviewing and adjudicating patron disputes. Davis now seeks relief from this Court, premised primarily on two communications, one from the Attorney General's office and one from the MGCB.⁶

⁵ While not privy to the investigation conducted by MGCB, given their 25-year experience with the MGCB and, specifically, patron disputes, the Detroit Casinos feel comfortable concluding MGCB must have confirmed the malfunction and concluded that Plaintiff was not entitled to the "winnings" she claimed were due. As will be discussed, MGCB does not hesitate to require a licensee to pay a patron winnings if it concludes they were wrongfully withheld.

⁶ While the Detroit Casinos seriously doubt the MGCB intended to convey that it did not have exclusive jurisdiction over patron disputes or that it lacked authority to require a licensee to make a wronged patron whole, given that Plaintiff attempts to use these communications as support for this argument before the Court, the Detroit Casinos note that the MGCB clearly cannot limit its own jurisdiction contrary to the statute and its own rules. *Cowsert v Greektown Casino, LLC*, unpublished per curiam opinion of the Court of Appeals, issued July 12, 2005 (Docket No. 260496) (Exhibit 1), *for example*, demonstrates that because the MGCB has a patron dispute process, and is authorized to "do anything necessary or desirable" (MCL 432.309(1)) to ensure compliance with the statutes it implements, the MGCB *can* award gambling proceeds to a patron. *Cowsert*, unpub op at 2. See also *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259

Based on the Detroit Casinos’ decades of experience with patron disputes and the MGCB, the Detroit Casinos urge this Court to affirm the decision below. This case involves precisely the sort of situation in which MGCB has exclusive jurisdiction. Evaluating, investigating, and deciding disputes regarding game and platform functionality and winnings and losses, and ensuring the integrity of gaming are the very core of MGCB’s existence. By law, the MGCB is the agency granted broad jurisdiction over the gaming industry. It is the only agency with the training, skills, and expertise needed to examine, approve, review, and analyze highly technical electronic gaming machines and internet gaming platforms. It is the agency that establishes and enforces the complex and extensive requirements for gaming platforms and games. If it lacks exclusive jurisdiction over disputes regarding the functioning of those very gaming machines and platforms, it is effectively neutered from performing its core function. The Detroit Casinos urge this Court to consider the impact on the integrity of the entire gaming industry when reviewing the specifics of this particular and atypical case.

II. STATEMENT OF FACTS

A. Factual Overview

In February 2021, Davis registered as an authorized participant with BetMGM. As part of that registration process, Davis agreed to be bound by BetMGM’s terms of service (“Terms and Conditions”) (Davis Appx at 11a). The Terms and Conditions provide that, in the event there is an error or system failure that impacts a payout, BetMGM will “seek to place all parties directly

(2008) (an agency’s interpretation of a statute “cannot conflict with the Legislature’s intent as expressed in the language of the statute at issue.”); *TMW Ent Inc v Dep’t of Treasury*, 285 Mich App 167, 178; 775 NW2d 342 (2009) (courts “are not bound by an agency’s interpretation of a statute.”); *Campione v Adamar of New Jersey, Inc*, 302 NJ Super 99, 117; 694 A2d 1045 (App Div, 1997) (rejecting the Casino Control Commission’s “view of its role and authority [as] too limited” where the Commission informed a patron that the patron dispute process was “not designed to provide patrons with a forum for redress against casinos”).

affected by such Error in the position they were in before the error occurred.” Terms and Conditions, § 17.⁷ The Terms and Conditions also set forth the process a patron must follow in the event of a patron dispute, which requires a patron to first submit a complaint to BetMGM and then, if not satisfied with the result, to the MGCB.⁸

Between March 18 and March 23, 2021, Davis played a game on the BetMGM platform called “Luck O’ the Roulette.” Plaintiff’s Am Compl at ¶ 23 (Davis Appx at 86a). During that time, Plaintiff’s winnings (and losses) would show up correctly on the screen, but when any winnings were transferred to her account, they were multiplied exponentially because of a software malfunction. Plaintiff initially deposited \$50 into her BetMGM account to play internet games. After making that deposit, and between March 18 and March 23, 2021, she made thousands of bets, wagering between \$4.50 on her first play and up to \$5,000 per play thereafter. (*See generally*, Plaintiff’s Am Compl at ¶¶ 14-23.) (Davis Appx at 85a-86a). On March 21, 2021, Davis asked to

⁷ “You must inform Us as soon as you become aware of any errors with respect to Your Account or any calculations with respect to any bet or wager You have placed. In the event of such error or any system failure or game error (a divergence from the normal functioning of the game logic for whatever reason) that results in an error in any odds calculation, charges, fees, rake, bonuses or payout, or any currency conversion as applicable (“Error”) We will seek to place all parties directly affected by such Error in the position they were before the Error occurred. We reserve the right to declare null and void any bets or wagers that were the subject of such Error and to take any money from Your Account relating to the relevant bets or wagers, if there are insufficient funds in Your Account, We may demand that you pay Us the relevant outstanding amount relating to these bets or wagers. In all circumstances whereby We (in Our sole discretion) determine an Error has been used to gain an unfair advantage, We reserve the right to consider this activity to be subject to Section 19 (Forfeiture and Account Closure) of these Terms of Service.” Terms and Conditions, § 17 (Davis Appx at 22a).

⁸ “If You have any complaints, claims or disputes with regard to any alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event or the manner in which a game, tournament, contest, drawing, promotion or similar activity or event is conducted regarding the Services, You must submit Your complaint to Us in writing as soon as reasonably practicable following the date of the original transaction to which the claim or dispute refers.” Terms and Conditions, § 28 (Davis Appx at 27a).

withdraw \$100,000 from her account, which was thereafter approved and paid to Davis on March 23, 2021. Plaintiff's Am Compl at ¶¶ 25 & 27. (Davis Appx at 87a). Thereafter, her account was flagged and suspended by BetMGM due to "an error in the underlying game play" Plaintiff's Am Compl at ¶ 28, and exhibit F) (Davis Appx at 87a and 80a). At the time her account was suspended, it (erroneously) reflected a balance in excess of \$3,000,000 due to the malfunction that resulted in her account being credited substantial amounts of money that she did not actually win. See J. Kolman Letter to D. Steingold (Davis Appx at 81a-82a).

Plaintiff does not dispute that this malfunction occurred⁹ or that she significantly increased both her volume of play and amount wagered, ultimately betting up to \$5000 per play (the maximum betting amount). Regardless, BetMGM investigated, confirmed there was a malfunction, and accordingly notified Davis that she was not entitled to the amounts incorrectly deposited into her account.

Davis thereafter filed a complaint in the Wayne County Circuit Court alleging she was nonetheless entitled to the amounts improperly reflected in her account. Her complaint alleged breach of contract, fraud, and conversion theories for relief. About one month later, Davis submitted a patron dispute complaint to the MGCB ("Davis Patron Dispute").

B. Administrative (MGCB) Proceedings/Matters

On July 28, 2021, David Hicks, Internet Gaming Manager for the MGCB, acknowledged receipt of the patron dispute, advising Plaintiff that LIGA authorized the MGCB to "conduct any investigation it deems necessary as well as direct a gaming operator . . . to take corrective action that the Board considers appropriate." ("Hicks Letter") (Davis Appx at 117a). Mr. Hicks also

⁹ Plaintiff's Response to Motion to Dismiss at 9 (Davis Appx at 125a ("Plaintiff is not challenging the nature of the game malfunction or how it occurred."))

noted that the MGCB “has no authority to award any money or other relief directly to an authorized participant.”¹⁰ *Id.* The meaning of the Hicks Letter was apparently not clear to Plaintiff.¹¹

On January 24, 2022, Assistant Attorney General Mark Sands sent an email to the lawyers for BetMGM and Davis (“AG Letter”)(Davis Appx at 181a) stating as follows:

Upon the receipt of a patron complaint, an investigation, and the finding of a violation of the Act or Rules, the Board may direct a licensee to take any corrective action the board considers appropriate. But what the Board does not do is determine the validity of a dispute between the authorized participant and the licensee. That is, the determination that a licensee has or has not violated the Act or Rules is not an adjudication on the merits of the underlying authorized participant/licensee dispute because the Board does not have the authority to adjudicate such a dispute. [Emphasis added.] Appx at 181a.

On February 10, 2022, in response to the Davis Patron Dispute, the MGCB sent a letter to Davis (“February MGCB Letter”) (Davis Appx at 182a) stating as follows:

[T]he patron complaint process exists to inform the Board of potential violations of the Lawful Internet Gaming Act and Rules by its licensees. MGCB investigations are not intended to determine the merits of any outstanding dispute or litigation between an authorized participant and the internet gaming operator and its internet gaming platform provider. Rather, the MGCB’s powers include supervising internet gaming operations, investigating alleged violations of the Act and Rules, and upon the finding of a violation of the Act or Rules, the Board may direct a licensee to take any corrective action the board considers appropriate.

¹⁰ These particular assertions are correct. *First*, the MGCB is authorized to require a licensee to take “any corrective action” the MGCB deems appropriate, which in this case would include requiring BetMGM to unfreeze Plaintiff’s account and allow her to withdraw the funds, if it had determined she was entitled to those funds. See, e.g. Rule 432.641(7) (“the board ...may direct an internet gaming operator or an internet gaming platform provider to take any corrective action the board considers appropriate.”). *Second*, the MGCB does not itself give money to patrons who claim they are so entitled, nor should it do so. The MGCB does not owe a patron any money but, much like a court, if it determines money is due, it has the power to require the licensee to make the patron whole. *Id.*

¹¹ Plaintiff makes much of the Hicks Letter, which states that the MGCB will not award money directly to the patron. That is accurate, but wholly irrelevant to the issues before this Court. (Davis Br at 7, Appx at 123a.) The only relevant inquiry is whether the MGCB, as part of taking “corrective action,” could have required BetMGM to release the funds to Plaintiff. This is something the MGCB unquestionably could have done (and has done in other instances) within the scope of its jurisdiction.

Based on the information that you provided, and after a thorough investigation into the allegations in your complaint, MGCB will determine whether there was a violation by BetMGM of the Act and Rules. And if so, the appropriate remedy for such violation based on the Act and Michigan's Administrative Procedures Act, MCL 24.201 *et seq.* If BetMGM is found responsible for a violation, that information would be made public after it is fully adjudicated. February MGCB Letter (emphasis added) (Davis Appx at 182a).

On that same date, the MGCB sent a warning letter to BetMGM for failure to notify the MGCB immediately of a game malfunction (it was reported 3 days later), failure to advise Davis of her right to submit a complaint to the MGCB, and failure to provide sufficient cooperation to MGCB in connection with its investigation.¹² (Davis Appx at 183a).

The Detroit Casinos are not privy to why the January AG Letter or the February MGCB Letter were sent, or why they were written in that manner. Because warning letters are only issued after MGCB has completed an investigation, MGCB's investigation in this matter must have been complete by the date on which it issued both the warning letter to BetMGM and the February MGCB Letter. Implicit in its warning letter was the conclusion on the part of MGCB that a malfunction had occurred such that Davis was not entitled to the funds she claimed were due. Had the MGCB determined that Davis was entitled to the funds she claimed, MGCB would most certainly have ordered BetMGM to "take corrective action" and make the patron whole, as it has done on multiple occasions before with its licensees. Indeed, based on more than a quarter century of experience with the MGCB, the Detroit Casinos find it inconceivable that the MGCB would not have intervened and required BetMGM to pay Davis had it concluded she was entitled to the

¹² A warning letter is just that, a warning from the MGCB that it believes the licensee (here, BetMGM) has violated certain rules or internal controls. Because it was just a warning, BetMGM was not given the opportunity to dispute the findings or otherwise engage in the administrative process. Warning letters are typically reserved for one-time violations that the MGCB considers to be minor under the circumstances. Typically, if the same type of conduct is repeated, especially soon after issuance of the warning letter, a formal disciplinary action is initiated.

money she claimed. Even if MGCB did not believe she was entitled to her claimed “winnings,” had MGCB believed she had lost money as a result of the malfunction, it would have required BetMGM to make her whole. Because it did not do so, the Detroit Casinos are confident that MGCB concluded there was a malfunction pursuant to which Plaintiff’s account was incorrectly credited more than \$3 million, funds that she was not due. The fact that MGCB concluded Davis was not entitled to the funds she claimed were due certainly does not mean she would have had no remedy had MGCB concluded otherwise. Davis simply did not like MGCB’s refusal to require BetMGM to pay her funds she had not actually won. That dissatisfaction should not be allowed to upend the patron dispute process mandated by law, which process has been in place for decades for the benefit of both licensees and patrons.

III. ARGUMENT

A. Plaintiff’s Common Law Claims Are Preempted By LIGA

A state statute may preempt common-law claims by providing an exclusive statutory remedy. See e.g. *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006) (holding that “the UCC is comprehensive” and “intended to apply to nearly every situation involving negotiable instruments” such that the defendant’s common law accord and satisfaction defense was preempted). Where “comprehensive legislation prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific limitations and exceptions, the Legislature will be found to have intended that the statute supersede and replace the common law dealing with the subject matter.” *Id.*

When a statutory scheme grants regulatory authority to an administrative agency, courts undertake a two-step process to determine whether related common law claims are preempted. First, the court determines whether the statute in question grants to the administrative agency exclusive jurisdiction over the subject matter. *Papas v Mich Gaming Cntrl Bd*, 257 Mich App

647, 658-59; 669 NW2d 326 (2003) (holding that MGCRA vested the MGCB with exclusive jurisdiction “over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry”). Second, the court determines whether the common law claims at issue are inconsistent with the statutory scheme. *Id.*

1. MGCB Has Exclusive Jurisdiction Over The Conduct Of Gaming In Michigan

More than twenty years ago, in *Papas*, the Court of Appeals interpreted MGCRA as vesting MGCB with exclusive jurisdiction “over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry.” 257 Mich App at 658-59. In reaching this holding, that court focused on four aspects of MGCRA; specifically, that the statute: (i) granted the MGCB with all powers necessary and proper to fully and effectively execute the act; (ii) authorized the MGCB to investigate licensees; (iii) granted the MGCB the ability to grant, deny, revoke, restrict, or suspend licenses; and (iv) permitted the MGCB to “take any other action as may be reasonable or appropriate to enforce th[e] act and rules promulgated by the board.” *Id.* at 660.

Since *Papas*, the Court of Appeals has reaffirmed on numerous occasions MGCRA’s grant of *exclusive* jurisdiction to the MGCB. See *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 549; 683 NW2d 200 (2004) (“The MGCRA provides the MGCB with expansive and exclusive authority to regulate all aspects of casino gambling in Michigan.”); *Cowsert*, unpub op at 1 (“[T]his Court [has] held that the Legislature intended to vest exclusive jurisdiction in the MGCB over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry.”)(internal citation omitted); *McEntee v Incredible Technologies, Inc.*, unpublished per curiam opinion of the Court of Appeals, issued March 16, 2006 (Docket No. 263818) at 1 (Davis Appx at 221a)(“Under the MGCRA, the Legislature vested the [MGCB] with

exclusive jurisdiction over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry.”) (internal citation omitted).

In the two plus decades since *Papas*, *Kraft*, and *Cowsert* were decided, these consistent decisions set the framework under which the industry has functioned. LIGA was then enacted under that same framework. Indeed, like MGCRA, LIGA’s comprehensive set of rules and statutory authorities clearly evidence that the Legislature also vested the MGCB with exclusive jurisdiction over all matters relating to the licensing, regulating, monitoring, and control of internet gaming. Like MGCRA, LIGA endows the MGCB with all powers necessary and proper to fully and effectively execute the statute, as follows:

The [Michigan gaming control] board has the powers and duties specified in this act *and all other powers necessary to enable it to fully and effectively execute this act* to administer, regulate, and enforce the system of internet gaming established under this act. [MCL 432.305(1) (emphasis added).]

Under LIGA, the MGCB “has jurisdiction over and shall supervise all internet gaming operations” and “may do anything necessary or desirable to effectuate” the act including, but not limited to, developing qualifications, standards and procedures for approval and licensure of operators and suppliers; developing and enforcing testing and auditing requirements for internet gaming platforms, internet wagering, and internet wagering accounts; developing and enforcing requirements for responsible gaming and player protection, including privacy and confidentiality standards and duties; investigating violations of the act; and approving, denying, suspending, revoking, restricting, or refusing to renew internet gaming operating licenses. MCL 432.309(1) and (2). The MGCB is also specifically directed by LIGA to implement, administer, and enforce the statute by promulgating rules that address, among other things the “[t]echnical and financial standards for internet wagering, internet wagering accounts, and internet gaming platforms,

systems, and software or other electronic components integral to offering internet gaming[.]” MCL 432.310(d).¹³

In short—and as further illustrated below by the side-by-side comparison—there is no meaningful difference between the statutory duties and authority granted to the MGCB by MGCRA and LIGA:

MGCRA	LIGA
<p>(1) Casino gaming is authorized to the extent that it is conducted in accordance with this act.</p> <p>(3) <i>Any other law that is inconsistent with this act does not apply to casino gaming as provided for by this act.</i></p> <p>MCL 432.203(1), (3) (emphasis added)</p>	<p>(1) Internet gaming may be conducted only to the extent that it is conducted in accordance with this act.</p> <p>(3) <i>A law that is inconsistent with this act does not apply to internet gaming as provided for by this act.</i></p> <p>MCL 432.304(1), (3) (emphasis added)</p>
<p>(1) <i>The board has jurisdiction over and shall supervise all gambling operations governed by this act. The board has all powers necessary and proper to fully and effectively execute this act,</i></p>	<p>(1) <i>The board has the powers and duties specified in this act and all other powers necessary to enable it to fully and effectively execute this act to administer,</i></p>

¹³ Pursuant to this statutory authority, the MGCB promulgated extensive rules regulating internet gaming in Michigan, including, as is relevant here, platform malfunctions, and disputes arising from platform malfunctions. The MGCB’s duties include but are not limited to:

- Supervising internet wagering authorized by the act;
- Investigating alleged violations of the act or the rules and taking appropriate disciplinary action against a licensee or any other person, or instituting appropriate legal action for enforcement, or both;
- Conducting investigative and contested case hearings, issuing subpoenas, and administering oaths and affirmations to the witnesses to exercise and discharge the powers and duties of the MGCB;
- Revoking or suspending licenses and registrations, and imposing fines as the MGCB considers necessary;
- Imposing fines against individuals, internet gaming operators, and internet gaming suppliers for engaging in fraudulent practice, for each violation of the act, the rules, or any resolution or order of the board, or for any other action that the board determines is a detriment or impediment to internet gaming; and
- Taking any other action as may be reasonable or appropriate to enforce the act and the rules.

Rule 432.613(3).

<p>including, but not limited to, the authority to do all of the following: ...</p> <p>(a) Investigate applicants and determine the eligibility of applicants for licenses or registration and to <i>grant licenses to applicants in accordance with this act</i> and the rules promulgated under this act.</p> <p>...</p> <p>(d) <i>Investigate alleged violations of this act or rules promulgated by the board and to take appropriate disciplinary action</i> against a licensee or any other person, or institute appropriate legal action for enforcement, or both.</p> <p>...</p> <p>(i) <i>Conduct investigative and contested case hearings</i>, issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent documents and to administer oaths and affirmations to the witnesses to exercise and discharge the powers and duties of the board under this act....</p> <p>...</p> <p>(k) <i>Revoke or suspend licenses, impose fines and penalties as the board considers necessary</i> and in compliance with applicable laws of this state regarding administrative procedures, and review and decide applications for the renewal of licenses....</p> <p>...</p> <p>(w) <i>Take any other action as may be reasonable or appropriate to enforce this act and rules promulgated by the board.</i></p> <p>MCL 432.204a(1)(a), (d), (i), (k), (w) (emphasis added)</p>	<p>regulate, and enforce the system of internet gaming established under this act.</p> <p>MCL 432.305(1) (emphasis added)</p> <p>(1) <i>The board has jurisdiction over and shall supervise all internet gaming operations governed by this act. The board may do anything necessary or desirable to effectuate this act</i>, including, but not limited to, all of the following: ...</p> <p>(b) <i>Decide promptly and in reasonable order all license applications</i> and approve, deny, suspend, revoke, restrict, or refuse to renew internet gaming operator licenses and internet gaming supplier licenses.</p> <p>(c) <i>Conduct all hearings pertaining to violations of this act or rules promulgated under this act.</i></p> <p>...</p> <p>(i) <i>Develop and administer civil fines</i> for internet gaming operators and internet gaming suppliers that violate this act or the rules promulgated under this act.</p> <p>MCL 432.309(1)(b)-(c), (i)</p> <p>(2) <i>The board may investigate and may issue cease and desist orders</i> and obtain injunctive relief against a person that is not licensed by the board that offers internet gaming in this state.</p> <p>MCL 432.309(2) (emphasis added)</p>
<p>MGCRA Administrative Rules Dispute Resolution Process</p>	<p>LIGA Administrative Rules Dispute Resolution Process</p>
<p>Rule 432.11502.</p> <p>(1) <i>If a casino licensee receives written notice of a</i></p>	<p>Rule 432.641.</p>

<p><i>patron dispute within 10 days of the incident underlying the dispute, the casino licensee must investigate and attempt to resolve such dispute, provided that the notice of the patron dispute includes the information set forth in subsection (4)(a)-(d).</i></p> <p>(2) After receiving written notice of a patron dispute in compliance with subrule (1) of this rule:</p> <p>...</p> <p>(b) The casino licensee must, within 14 days of receiving written notice of the patron dispute, provide the patron with a written notification explaining the results of its investigation and <i>advising the patron of the patron's ability to file a patron dispute form with the board.</i></p> <p>...</p> <p>(3) The patron may file the completed patron-dispute form within 28 days of the incident by providing it to a board employee at the board office in the casino or sending it to the board office in Detroit, Michigan.</p> <p>...</p> <p>Rule 432.11502(1), (2)(b), (3) (emphasis added)</p>	<p>...</p> <p>(2) <i>An internet gaming operator or internet gaming platform provider must attempt to resolve all complaints with the authorized participant.</i></p> <p>(3) <i>An internet gaming operator or internet gaming platform provider must investigate each complaint and provide a response to the authorized participant within 10 calendar days after receipt of the complaint.</i></p> <p>(4) In its response, the internet gaming operator or internet gaming platform provider must advise the authorized participant of his or her right to submit the complaint to the board in the form and manner prescribed by the board.</p> <p>...</p> <p>(7) <i>On receipt of a complaint from an authorized participant or notification of an unresolved complaint from an internet gaming operator or internet gaming platform provider, the board may conduct any investigation the board considers necessary and may direct an internet gaming operator or internet gaming platform provider to take any corrective action the board considers appropriate.</i></p> <p>...</p> <p>Rule 432.641(2)-(4), (7) (emphasis added)</p>
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Accordingly, just as MGCRA vests the MGCB with exclusive jurisdiction “over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry” (257 Mich App at 658-59), LIGA vests the MGCB with exclusive jurisdiction over all matters relating in any way to the licensing, regulating, monitoring, and control of internet gaming.

2. MGCB Has Exclusive Jurisdiction Over The Conduct And Operation Of Internet Gaming Platforms, Including Malfunctions

In the Detroit Casinos' brick-and-mortar casinos, under MGCRA, the MGCB has exclusive jurisdiction over and regulates the conduct of gaming. There are literally thousands of different types of electronic gaming machines (both slot machines and electronic table games) within the casinos. As the industry has developed, so have these machines. These machines are complex and highly technical, operated pursuant to a myriad of software that controls the operation of the games, how winnings and losses are credited or debited from player accounts, the lights, the music, the presentation of the games, etc. The MGCB reviews and approves the machines, as well as their various components and functions. In addition, on each electronic game there is signage posted stating that malfunctions void all plays. In the event of an apparent malfunction, a slot technician employed by the casino and, often, a regulation officer from the MGCB, will run the reports necessary to confirm whether a malfunction has occurred. It is well established and understood by the casinos, regulators, and patrons that a malfunction will void all plays.

Pursuant to that framework, LIGA, and the rules promulgated thereunder, adopt that same framework for internet gaming.¹⁴ In fact, section 9 of LIGA specifically endows MGCB with the authority to develop and enforce testing and auditing requirements for internet gaming platforms and internet wagering accounts and to audit and inspect the related books and records. Rule

¹⁴ Separate from the legal requirements, it makes sense from a policy perspective that malfunctions void all plays. The MGCB is charged with ensuring the integrity of gaming, which at its core means that games operate as intended and that winnings and losses are accurately calculated, credited and debited. As such, malfunctions are voided to avoid an improper advantage or disadvantage to a patron or the house. This concept is thus well established in the gaming industry. In actuality, if a court were to reach a result that effectively negates that basic tenet and thereby requires release to patrons of amounts not actually won, the basic framework under which casino operators function and pay wagering taxes to the state and city would inevitably be adversely impacted.

432.632 requires internet gaming platforms to be approved by the MGCB. An “internet gaming platform” is defined as “an integrated system of hardware, software, applications, including mobile applications, and servers through which an internet gaming operator operates, conducts, or offers internet gaming.” MCL 432.303(u). An internet gaming platform is further defined by the administrative rules to include the “interactive gaming system” which means “the hardware, software, firmware, communications technology and other equipment that allows an authorized participant to remotely bet or wager through the internet or similarly distributed networking environment, and the corresponding equipment related to game outcome determination, the display of the game and game outcomes, and other similar information necessary to facilitate play of the game.” R 432.611(m). The internet gaming platform “provides the authorized participant with the means to play authorized games.” *Id.*

The internet gaming platform is thus a complex system of hardware, software, and technology that includes the gaming system, integration of games from third parties, and what is commonly referred to as the PAM (patron account management) or wallet, pursuant to which an authorized participant deposits and withdraws funds. Each platform must be tested and certified by an independent lab before it is even submitted to the MGCB lab for review. As just an example, to have a platform approved requires completion of an extensive Technical Security Questionnaire, which must be submitted to the MGCB with every request for platform approval.¹⁵ Only after verification of compliance with all the rules and technical guidelines issued by the MGCB, which also includes geofencing requirements and extensive internal controls, will MGCB approve a platform. Rules 432.632, 632a.

¹⁵ See Michigan Gaming Control Board, *Software and Hardware Submissions*, available at <<<https://www.michigan.gov/mgcb/internet-gaming-and-fantasy-contests/forms/software-and-hardware-submissions>>> (accessed March 4, 2025).

Notably, the MGCB has also promulgated rules that a gaming operator or platform provider must follow to prevent and redress internet gaming platform malfunctions. As relevant here, those rules require that the Terms and Conditions applicable to an internet gaming platform must first be approved by the Board as part of the Internal Controls¹⁶ and that such Terms and Conditions (between a platform provider and an authorized participant) *must* include a “*notice that a malfunction voids all plays.*” Rule 432.652(1)(l)(emphasis added). See also Rule 432.663(2)(a) (requiring internet gaming operators and platform providers to submit for MGCB approval a “written system of internal controls” addressing, among other things “[p]rocedures for responding to a failure of the internet gaming platform (i.e., game, system, communications, or *platform malfunction*)[.]”)(emphasis added)).

The platform provider is further required to “[r]ecord the authorized participant’s acceptance of the . . . internet wagering terms and conditions to participate in internet gaming . . .” Rule 432.655(f). “Internet gaming operators and *internet gaming platform providers must comply with all internal controls.*” Rule 432.664(1). If the internet gaming operator or internet gaming platform provider “fails to comply with any provision of its internal controls, the board may initiate disciplinary action.” Rule 432.664(2).¹⁷ Because operators and platform

¹⁶ Rule 432.663 requires that, “*before beginning internet gaming*, an internet gaming operator or internet gaming platform provider, or both, must submit its administrative and accounting procedures in detail in a written system of internal control for board review and written approval. A written system of internal controls must include a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of these rules.” (Emphasis added.) The promulgated rules are complex and lengthy, comprising 70 printed pages. Note that approval of Internal Controls is a *condition precedent* to receiving approval of the internet gaming platform and any proposed amendments also require MGCB approval. Rule 432.663a.

¹⁷ See also Rule 432.616(1)(c): “The board may initiate an investigation or a disciplinary action, or both, against a licensee if the board has reason to believe that at least 1 of the following applies: . . . (c) the licensee is not complying with all laws, rules, orders and resolutions.”

providers are *required* to include in their internal controls a notice that malfunctions void all plays,¹⁸ they are thus authorized to void a completed internet wager without MGCB approval when necessary to resolve an internet gaming malfunction. Rule 432.645.¹⁹

It is therefore clear that, just as the MGCB has exclusive jurisdiction under MGCRA over the conduct of gaming within brick-and-mortar casinos, including disputes concerning winnings and losses, it also has such exclusive jurisdiction under LIGA over the conduct of internet gaming, including disputes regarding winnings and losses.

3. The MGCB Has Exclusive Jurisdiction Over Patron Disputes

This case in large part turns on an understanding of what is and is not a patron dispute as defined by the law, regulation, and as that term is used in the industry. Indeed, much of the confusion in this case seems to center around whether MGCB has exclusive jurisdiction over every possible dispute between the parties, which is clearly not the case.

a. MGCB's Patron Dispute Process Is Set Forth By The Rules And Decades Of Practice

“Patron disputes” (under MGCRA) and “authorized participant complaints” (under LIGA) are functionally identical and terms of art in the gaming industry (and are referred to herein interchangeably). The rules promulgated pursuant to MGCRA provide that a “patron dispute” is a “dispute a patron has regarding winnings or losses and the conduct of gambling at a casino.” Rule 432.1106(b). If a casino licensee receives a written notice of a patron dispute within 10 days

¹⁸ See also LIGA’s definition of “Gross Receipts,” which expressly excludes from that definition “[a]mounts returned to an authorized participant due to a game, platform, or system malfunction or because the internet wager must be voided due to concerns regarding integrity of the wager or game.” MCL 432.303(l)(ii)

¹⁹ Absent a game error or malfunction, an operator or platform provider may not void a completed wager. See Rule 432.645 (“An internet gaming operator or internet gaming platform provider may not void a completed internet wager without board approval unless a void is necessary to resolve an internet gaming platform or internet game error or malfunction.”)

of the incident underlying the dispute, the casino licensee “must investigate and attempt to resolve such dispute . . .” Rule 11502(1). Within 14 days of receiving written notice of the patron dispute, “the casino licensee must provide the patron with a written notification explaining the results of its investigation and advising the patron of the patron’s ability to file a patron dispute with the board.” Rule 432.11502(2)(b). If the patron is not satisfied with the casino’s investigation and attempt to reach a resolution, the patron may file what is in effect an appeal to the MGCB. The MGCB provides online the following:

Submit a Detroit Casino Complaint

If you answer yes to each question below, you are ready to file a patron dispute.

1. Do you want to file a patron dispute for an incident that happened while gaming at one of the Detroit casinos (MGM Grand Detroit, Motor City Casino, or Greektown Casino)?
2. Did the incident happen 28 or fewer days ago?
3. Did the incident involve winnings or losses or the conduct of gaming?
4. Can you provide a summary of the dispute, including the date and time of the incident?²⁰

The patron dispute form provides in relevant part as follows: “The Michigan Gaming Control and Revenue Act *charges the Board with the responsibility of receiving complaints from the public.*” (Emphasis added.) The concept of a “patron dispute” is narrowly defined, as follows: “A dispute is defined as a complaint a patron has regarding winnings or losses or the conduct of gambling at a casino. A patron dispute does not include a claim for payment of a gaming debt evidenced by a credit agreement.” *Id.* at n 18. In the event a patron’s dispute concerns matters outside the scope

²⁰ Michigan Gaming Control Board, *Detroit Casino Complaint*, available at <<https://www.michigan.gov/mgcb/patron-disputes/detroit-casinos>> (accessed, March 4, 2025).

of a “patron dispute,” i.e. not related to winnings or losses or the conduct of gambling at a casino, the MGCB need not investigate. Rules 432.11502 and 11503.

Following enactment of LIGA, administrative rules were promulgated to incorporate a patron dispute process that was modeled after the process that is in place for the Detroit Casinos’ brick-and-mortar casinos. While the labels differ slightly (“authorized participant complaints” versus “patron disputes”), the process is essentially the same.²¹ Like the patron dispute process for the Detroit Casinos’ brick-and-mortar casinos, patrons (authorized participants) wagering online must first submit their complaints to the operator/platform provider to give them an opportunity to resolve the issue. Rule 432.641 (entitled, “Authorized participant complaints”). An internet gaming operator/platform provider must attempt to resolve all authorized participant complaints with an authorized participant and is required to investigate each complaint and provide a response within 10 days. Rule 432.641(2) and (3). Like the patron dispute process under MGCRA explained above, the internet gaming operator or platform provider must advise authorized participants of their right to submit a complaint to the MGCB. *Id.* at (4).²²

Like MGCRA, patron disputes under LIGA are limited to gaming-related disputes, such as an alleged violation of LIGA, the rules promulgated pursuant to LIGA, or the Terms and Conditions, that involve internet wagering accounts and game outcomes, all of which are within the exclusive purview of the MGCB. Examples of disputes that fall within these categories include anything related to the operation of the internet gaming platform, which would include issues

²¹ Michigan Gaming Control Board, *Submit an Internet Gaming and Sports Betting Complaint*, available at <<https://www.michigan.gov/mgcb/patron-disputes/internet-gaming-complaint-mgcb>> (accessed on March 4, 2025).

²² If the nature of the dispute involves “internet wagering accounts, game outcomes, or illegal activity related to internet wagering” the operator/platform provider *must* advise the MGCB regarding unresolved disputes even if the patron chooses not to seek review by the MGCB. *Id.* at (6).

related to play of the game, game presentation, game accounts, winnings or losses, and the digital wallet.

Because the law and the MGCB *require* operators/platform providers to investigate and try to resolve all patron disputes, the vast majority of such complaints are resolved at that level. The Detroit Casinos receive patron disputes virtually every single day and estimate that nearly all such disputes are resolved internally. Indeed, the MGCB has a history of pursuing compliance actions against licensees when it believes patron disputes were not properly investigated and resolved. It is therefore a very small number of actual patron disputes that make their way to the MGCB, and only after the operator and/or platform provider has had the opportunity to thoroughly vet and address them.

b. There Are Good Policy Reasons For This Grant Of Exclusive Jurisdiction To The MGCB Over Patron Disputes

Michigan's grant of authority to the MGCB to redress patron disputes is in keeping with the gambling industry nationwide. There are a multitude of reasons why it is standard for gaming regulators to be the exclusive arbiter of patron disputes, and three in particular stand out. *First*, gaming regulators have specialized knowledge and expertise regarding gaming laws, regulations, operations, and the myriad of technical controls and functions of the gaming systems, allowing them to handle gaming centric disputes much more effectively than a trial court. This is particularly true for the online gaming space where the entire operation is conducted on a platform created and supported by engineers and technical staff, tested by independent and state gaming labs, and operated entirely pursuant to sophisticated technology as mandated by the regulator.

Second, gaming regulators can resolve disputes much more quickly than the court system, providing timely resolutions for patrons and operators, without the costs associated with litigation. Patrons do not have to pay to have their disputes reviewed, investigated and resolved by the

regulators. Moreover, one of the primary missions of gaming regulators is to protect the public and ensure integrity in the industry. It is their job (and statutory obligation) to ensure that patrons receive the funds they are lawfully due. It is also their job to oversee the entire industry, so they have the knowledge and expertise to discern whether licensees are in compliance.

Third, having regulators resolve these disputes ensures consistency in application of the gaming regulations, which results in fairness and uniformity for both patrons and operators. Having gaming regulators resolve these disputes streamlines the process and is simply a more effective and accurate approach to ensuring patron disputes are properly addressed.

c. MGCBC Can (And Does) Provide Patrons With A Remedy If It Determines They Were Harmed By A Licensee

Plaintiff's case and the lower court's dissent are primarily premised on the notion that the MGCBC somehow lacked the authority to require BetMGM to release her "winnings" and, as such, she had no remedy.²³ This argument is based solely on the less than clear correspondence from the AG and MGCBC regarding MGCBC's role in patron disputes. But not only do both MGCRA and LIGA (and their corresponding rules) provide otherwise (as is discussed at length above), MGCBC's

²³ The dissent's suggestion that the MGCBC's authority is akin to that of a licensing board for physicians fails to recognize the gaming regulatory scheme. Unlike a licensing board for a physician, which functions solely to ensure a level of competence to practice medicine, the licensing division of the MGCBC is just one of multiple divisions of that agency charged with regulation of gaming in Michigan. Other MGCBC divisions include enforcement, audit, administration, internet gaming, sports betting, horse racing, etc. Licensing is but a small part of what MGCBC does to ensure the integrity of gaming in Michigan. No game can be offered in a casino or online absent evaluation and approval by the MGCBC. MGCBC regulation officers on a daily basis occupy offices in each casino and respond to a myriad of events that occur on the gaming floor. Additionally, a cursory review of the hundreds of pages of regulations governing every aspect of the conduct of gaming reveals the complexity of the all-encompassing regulatory scheme. The comparison to physician licensing is simply misguided. The MGCBC's authority over its licensees is all encompassing and covers every aspect of the conduct and operation of gaming—not just licensure.

actual practice regarding patron disputes is consistent with its own publicly announced mission statement, which provides that it “shall ensure the conduct of fair and honest gaming to protect the interests of the citizens of the State of Michigan.”²⁴ In conformity with that mission statement, the patron dispute process was established precisely so that the MGCB can investigate and resolve disputes of this nature and exercise its power to intervene if and when it concludes that a licensee owes a patron money. There would in fact be no point in having a patron dispute process if the MGCB could not intervene and require corrective action.

Indeed, in practice, the MGCB routinely intervenes and requires licensees to pay patrons when it determines money is due (or even just when the MGCB is merely concerned that the patron “may” have been harmed). By way of example, the MGCB has intervened and required payment in disputes between patrons and the Detroit Casinos in scenarios such as:

- A dealer pays winnings to the wrong player
- A dealer makes an error with a card shuffler or dice
- A dealer acts in a manner that advantages certain players and disadvantages others
- A slot machine appears to malfunction, but when MGCB personnel run game reports and/or otherwise investigate, they conclude a malfunction did not occur
- The casino fails to honor the rules governing a promotion
- An operator or platform provider withholds payment to a patron based on a claim of improper conduct that cannot be sufficiently established

As discussed above, the Detroit Casinos respond to patron disputes virtually every day and, with over 25 years of experience, the Detroit Casinos generally know what the MGCB will require them to do in situations such as those listed above, as well as in various other situations involving

²⁴ Michigan Gaming Control Board, *Our Mission*, available at <https://www.michigan.gov/mgcb#:~:text=Our%20Mission,of%20the%20state%20of%20Michigan> (accessed March 4, 2025).

patron disputes. Thus, virtually all patron disputes are resolved quickly. Based on that lengthy experience, the Detroit Casinos know that the MGCB will require them to make a patron whole if it believes the patron has been harmed, even if the harm was completely inadvertent or incidental. Plaintiff's contention, therefore, that she had no remedy by pursuing her dispute with the MGCB is simply and categorically untrue.

4. Plaintiff's Reliance On The Terms And Conditions As Somehow Demonstrating That MGCB Lacks Exclusive Jurisdiction Is Misplaced

Plaintiff claims that two sections of BetMGM's Terms and Conditions somehow evidence "proof" that MGCB does not have exclusive jurisdiction over patron disputes. First, Plaintiff asserts that the Terms and Conditions provide that if a patron or authorized participant is not satisfied with BetMGM's efforts to resolve its complaint, that person "may" file a complaint with the MGCB. Plaintiff claims that because such review is not mandatory, this somehow undermines MGCB's exclusive jurisdiction.²⁵ Given that MGCB functions as a neutral arbiter over an appeal from the decision made by the operator or platform provider, it makes sense that such review would be voluntary. Indeed, while authorized participants (if not satisfied) clearly have the right in every circumstance to do so, there is no logical reason why a patron would be *required* to seek review by the MGCB. The fact that this decision is voluntary, not mandatory, like it would be for any losing party in any other context, does not therefore support Plaintiff's position that MGCB lacks exclusive jurisdiction over patron disputes.

Second, Davis claims that, because the Terms and Conditions (to which she agreed) provide that the patron "agrees to the exclusive jurisdiction of the courts of Michigan for settlement of any dispute . . ." that that somehow yanks exclusive jurisdiction from the MGCB over certain

²⁵ See Plaintiff's Brf on Appeal n 15.

disputes. Obviously not every dispute that an authorized participant may have with BetMGM (or any other provider) is subject to the exclusive review of the MGCB. No one has ever made that claim, and to suggest otherwise is disingenuous at best. For starters, BetMGM does not have the ability in its Terms and Conditions or otherwise to determine whether and to what extent the MGCB has exclusive jurisdiction over authorized participant disputes. Regardless, this provision is not inconsistent with the reality that, as discussed below, not every dispute is an authorized participant complaint over which the MGCB has exclusive jurisdiction.

For example, while the MGCB does have jurisdiction over conduct within a casino complex, it does not weigh in on employment disputes, slips and falls, or patron complaints regarding the valet, the hotel, parking garage, restaurants, food court, or spa, or even personal injury claims relating to gaming equipment, such as claims of injury due to broken belly glass or slot machine doors.

On the online side, given that most everything happens on the platform, many of the disputes are in fact authorized participant complaints that fall within the exclusive jurisdiction of the MGCB. But there certainly are disputes that fall outside MGCB's exclusive purview. For example, the MGCB frequently receives disputes from patrons complaining that they have not been permitted to register for a platform or have been suspended from a platform. An operator or platform provider may block or ban a patron for a myriad of reasons, including failure to comply with KYC (know your customer) requirements in connection with anti-money-laundering laws, suspected fraud, collusion, or other patron misuse of the platform or suspicious patron conduct.

The MGCB generally will not review these types of disputes and considers them to be outside of its purview.²⁶

In addition, and just as further examples, authorized participants' claims that the platform provider failed to comply with ADA requirements concerning access to the platform or website, that they were harmed as a result of an alleged data breach or unlawful advertising, would be outside the authorized participant complaint process. For those matters, and others not within the exclusive purview of the MGCB, a patron is free to file suit and pursue a remedy in a court of law or through arbitration, as applicable (and as set forth in or required by the Terms and Conditions). But a dispute, such as the one submitted by Davis, which involves the operation of the internet gaming platform and whether a patron is entitled to claimed gaming winnings, is a dispute that is and must be, within the exclusive jurisdiction of the MGCB.

B. Plaintiff's Common Law Claims Are Inconsistent With, And Thus, Preempted By LIGA

Because the MGCB has exclusive jurisdiction over the internet gaming platform, the question becomes whether Davis's common law claims are inconsistent with, and thus preempted by, LIGA. Plaintiff's attempt to portray her claims as something other than a patron dispute is not compelling because no matter how it is described, what she seeks is her claimed "winnings." As such, her allegations of misconduct fall squarely within the MGCB's exclusive jurisdiction to regulate and remedy internet game malfunctions and to address a patron's claim for gaming winnings. Accordingly, Plaintiff's common law claims plainly conflict with LIGA, and are preempted. *Kraft* illustrates the point.

²⁶ Note that operators and platform providers are required to report suspected fraud to the MGCB and the MGCB may investigate in that regard. But a decision by an operator or platform provider regarding who it allows on its platform is outside the purview of the MGCB (except where that person is barred by the regulator).

In *Kraft*, the plaintiff sued casino defendants for fraud, misrepresentation, and unjust enrichment. 261 Mich App at 537. The plaintiff alleged that certain slot machines offered at defendants' casinos were "deceptive" because they were programmed to stop more frequently on lower monetary payoffs than was apparent from the game display, thereby allegedly misrepresenting the chances of winning a large payout. *Id.* at 538. The defendants moved for summary disposition, arguing, *inter alia*, that the plaintiff's common law claims were preempted by MGCRA, and the Court of Appeals agreed.

In so holding, the court first noted that MGCRA's preemption clause was "all-inclusive," providing that "[a]ny other law that is inconsistent with this act does not apply to casino gaming as provided for by this act." *Id.* at 546, quoting MCL 432.203(3). By using the phrase "any other law" in MGCRA's preemption provision, the court held that the Legislature intended to sweep broadly, preempting both legislative enactments *and* common law claims inconsistent with MGCRA. *Id.*

Having determined that MGCRA's preemption clause could reach common law causes of action, the court then considered whether the plaintiff's claims for fraud and unjust enrichment were "inconsistent" with the act. *Id.* at 547. The plaintiff argued that her common law causes of action coexisted with MGCRA because neither the act nor its administrative rules regulated the appearance of slot machines (the specific aspect of the games the plaintiff deemed deceptive), but the court disagreed.

Because MGCRA, among other things, vested the MGCB with the duty to protect the public, conduct investigations into the conduct of gaming operations, and regulate the rules of the slot machines in question, imposing a common law duty on top of the regulatory scheme was inconsistent with MGCRA. *Id.* at 550. Indeed, because the MGCB had "the power and duty to

prevent” casinos from using casino games that were “deceitful or misleading to casino patrons,” and the MGCBC monitored casino games to ensure their integrity (thus preventing fraud and deceit), the plaintiff’s common law claims were inconsistent with MGCRA. *Id.* at 551. As the court noted, any other holding would “give rise to conflicting standards for gaming” “because a casino licensee could use a gaming device that had been vigorously tested and approved by the MGCBC, only to have a different standard imposed through the medium of the common law.” *Id.*²⁷

As in *Kraft*, Plaintiff’s claims here are preempted. As explained above, LIGA’s preemption clause is nearly identical to MGCRA’s, providing that “[a] law that is inconsistent with this act does not apply to internet gaming as provided for by this act.” MCL 432.304(3).²⁸ Thus,

²⁷ The holding in *Kraft* is consistent with *Monroe Beverage Co, Inc v Stroh Brewery Co*, 454 Mich 41; 559 NW2d 297 (1997). In *Monroe*, the plaintiff alleged that the defendant violated the Liquor Control Act when it failed to transfer distribution rights to the plaintiff. *Id.* at 44. The defendant had no such obligation at common law, and the Act limited enforcement to “a wholesaler with which the supplier has an agreement.” *Id.* Thus, because the plaintiff did not have an agreement with the defendant, the plaintiff could not recover under the Act. *Id.* Further, because the Act created the duties and rights at issue in the case (i.e., those concerning the liquor distribution rights), the plaintiff could not pursue a negligence claim against the defendant either—the Act provided the exclusive remedy for the alleged wrongdoing. *Monroe Beverage Co, Inc v Stroh Brewery Co, (On Remand)*, 224 Mich App 336, 369; 568 NW2d 687 (1997). Similar to the liquor industry addressed in *Monroe*, there was no preexisting duty at common law, prior to the passage of MGCRA or LIGA, to provide restitution to persons claiming alleged gambling winnings. And because the alleged wrongful conduct in *Kraft* (and in the case *sub judice*) was not actionable at common law, it is governed and remediated exclusively by statute.

²⁸ “Where the language used [in a statute] has been subject to judicial interpretation, the legislature is presumed to have used particular words in the sense they have been interpreted.” *McCormick v Carrier*, 487 Mich 180, 192; 795 NW2d 517 (2010) (relying on past judicial interpretation of “objectively manifested” to interpret the statutory phrase “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.”). Here, because the preemption clauses in MGCRA and LIGA are substantively identical, and MGCRA’s preemption clause was judicially interpreted over two decades ago, the Court should presume that the Legislature intended for LIGA’s preemption clause, like MGCRA’s, to be “all-inclusive.” Further evidencing the “all-inclusive” nature of LIGA’s preemption clause is the fact that the Legislature could have, but did not, include language in the statute authorizing cumulative remedies. See e.g. *Dept of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 8; 779 NW2d 237 (2010) (plaintiff’s conversion claims were not preempted by the Agricultural

LIGA's preemption clause (like MGCRA's) is "all-inclusive" and encompasses common law claims. Further, as in *Kraft*, Plaintiff's common law claims are inconsistent with LIGA because they arise from allegations that directly implicate the MGCB's exclusive jurisdiction.

Plaintiff contends that BetMGM is liable for fraud, conversion, and breach of contract because BetMGM allegedly (i) violated rules promulgated by the MGCB when it allowed her to play Luck O' the Roulette between March 18 and 23, 2021 (Plaintiff's Am Compl at ¶¶ 4-5, 34), and (ii) should have paid Plaintiff the entire sum of her claimed winnings (Plaintiff's Am Compl at ¶¶ 7, 22, 40, 44, 47-50) (Davis Appx at 92a). But LIGA grants to the MGCB the exclusive power and duty to regulate the internet gaming platform, including internet game malfunctions (Rule 432.639(2)(1)(i)(E)), and to determine whether a licensee has violated its rules, which rules authorize the operator and platform provider to void transactions related to those malfunctions (R 432.645). Thus, the misconduct alleged by Plaintiff is expressly governed by MGCB-promulgated rules and corresponding directives, which plainly required BetMGM to notify its patrons that malfunctions void all plays, thereby authorizing BetMGM to void the transactions (and, therefore, not pay Plaintiff any money she had not in fact won).²⁹

Commodities Marketing Act, where the statute's enforcement provision made clear that the relief granted therein was "[i]n addition to any other remedy provided by law").

²⁹ For this reason, the present appeal is distinguishable from this Court's decision in *McMaster v DTE Energy Co*, 509 Mich 423, 433; 984 NW2d 91 (2022). In *McMaster*, the plaintiff sued DTE for negligently loading a truck full of scrap metal that ultimately injured the plaintiff. 509 Mich at 427. DTE argued that its common-law duty of care as a shipper of the cargo was abrogated by Michigan's passage of the Motor Carrier Safety Act (MCSA), which "imposes certain duties on the driver of the cargo to ensure that the cargo is properly secured through inspection and reexamination during the course of the trip." 509 Mich at 427, 434. But because the MCSA did not address *shippers'* duties in loading cargo—i.e., the role DTE played in the conduct at issue—the plaintiff's claim for negligence was not preempted by the MCSA. *Id.* at 438. Unlike *McMaster*, LIGA *does explicitly* govern the conduct at issue (internet gaming platform malfunctions and patron disputes involving claimed gambling winnings), and thus, Plaintiff's common law claims are plainly preempted.

In fact, Davis’s common law claims are entirely premised on whether BetMGM appropriately voided her plays because of the malfunction. If she is allowed to assert common law theories for relief that, despite confirmation by MGCB that the platform did in fact malfunction (a fact that Plaintiff concedes),³⁰ and that BetMGM appropriately voided those plays, such claims are completely inconsistent with the MGCB’s laws, rules, and requirements. There is no scenario in which they can be consistent, given they are premised on a single set of facts, which facts are completely governed by and under the exclusive jurisdiction of the MGCB.

Plaintiff’s breach of contract claim is similarly premised on her claim that the Terms and Conditions required BetMGM to allow her to withdraw her “winnings” from her account. Plaintiff’s Am Compl at ¶¶ 47-50 (Davis Appx at 99a). But given that the MGCB concluded there was a malfunction that voided all plays, there were no winnings (as defined in LIGA or the rules) in Plaintiff’s account that she was entitled to withdraw.

Likewise, her fraud claim is premised on the allegation that BetMGM “profited from Plaintiff’s losses because when a player loses a bet, the house keeps the money the player wagered.” Plaintiff’s Am Compl at ¶ 24 (Davis Appx at 96a). Plaintiff also claims that BetMGM “benefitted” from the malfunction because “Plaintiff continued to wager high amounts under the belief that the game was functioning properly and that her account balance was accurate.” *Id.* at ¶32. Finally, Plaintiff claims that, by having a game on the platform that was malfunctioning, BetMGM “represented ... that it would pay all bets that it lost.” *Id.* at ¶35. But Plaintiff was not entitled to those amounts because she was wagering not with her own funds but with funds that were improperly credited to her account (and because she was not entitled to the amounts

³⁰ See n 9.

improperly credited to her account as a result of the malfunction).³¹ Moreover, there could be no misrepresentation because Plaintiff never in fact won the amounts she claimed were due.

Finally, Plaintiff claims conversion based on BetMGM's failure to release her "winnings." Plaintiff's Am Compl at ¶ 44 (Davis Appx at 98a). But she had no winnings to be released.

Plaintiff's claims are all premised on one thing, which is that she is entitled to her claimed "winnings." See Plaintiff's Am Compl at ¶ 44 ("Defendant welched on the bets, is still in possession of Plaintiff's winnings, and has refused to pay her what she is owed.") (Davis Appx at 98a). Because a determination regarding whether a patron is entitled to gambling winnings goes to very essence of MGCB's purpose and jurisdiction, which is to ensure the integrity of gaming, her claims by definition directly conflict with the MGCB's authority under LIGA and are thus preempted as a matter of law.³²

³¹ In the experience of the Detroit Casinos, had the MGCB concluded that Davis was in any way harmed by the malfunction (for example if she had lost money by wagering her own money on a game that malfunctioned), it would have required BetMGM to make her whole. It appears, however, that Davis actually wagered very little of her own money on this game and was able to withdraw \$100,000 from her account before it was suspended, so she was more than compensated for those initial wagers.

³² The *McEntee* case is also instructive. In *McEntee*, the plaintiff brought suit against the manufacturer of the Golden Tee arcade game in an effort to recover money under MCL 750.315, which provides a civil remedy to those who lose money playing a device in the nature of betting. *McEntee*, unpub op at 1. After determining that Golden Tee is a "gambling game" under MGCRA (and, thus, subject to the statute), the court held that the plaintiff's claim was preempted. *Id.* at 2. Because MGCRA vested the MGCB "with exclusive jurisdiction over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry," including "*receiv[ing] complaints from the public*," the plaintiff's dispute was within the MGCB's gaming jurisdiction, and thus, his claim was preempted. *Id.* (emphasis added). The conduct alleged by Plaintiff here is similarly subject to LIGA and because LIGA vests the MGCB with exclusive jurisdiction over all matters relating in any way to internet gambling, including receiving complaints from the public, Plaintiff's claims are also preempted.

IV. CONCLUSION AND RELIEF REQUESTED

As discussed above, it has been well established for decades that the MGCB has exclusive jurisdiction over the conduct of gaming. Determination of the validity of a claimed malfunction or a claim that an operator failed to pay winnings when due are at the core of the MGCB's function—namely to ensure the integrity of gaming. LIGA, which was modeled after MGCR, also grants the MGCB exclusive jurisdiction over the conduct of internet gaming and, in particular, the operation of internet gaming platforms. Patron disputes that involve a claimed malfunction and its impact on winnings and losses, such as the present dispute before this Court, must remain within the exclusive purview of the MGCB, as has been the case for more than two decades. It is not difficult to imagine the chaos that would ensue for both patrons and operators if, going forward, trial courts are allowed to ignore the MGCB's conclusions as to whether a licensee violated the MGCB's rules, or reverse the MGCB's determinations with respect to the functionality of games or platforms, or require an operator to pay patrons for claimed losses that arise from the operator complying with the MGCB's requirements or that the MGCB has concluded are not in fact due. Such a result would undermine the public's confidence in the integrity of gaming and the ability of the MGCB to effectively and consistently perform its core function of regulating the gaming industry.

Because Plaintiff's common law claims directly conflict with MGCB's exclusive jurisdiction over the conduct of gaming, such claims are preempted by law. The Detroit Casinos urge this Court to affirm the decision of the Court of Appeals, thereby upholding the decades of precedent that protects both the casinos and their patrons, by ensuring both consistency of standards and enforcement and rapid resolution of patron disputes and authorized participant complaints.

Respectfully submitted,

HONIGMAN LLP

Dated: March 6, 2025

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation of MCR 7.212(B) because excluding the parts of this brief that are exempted, this brief contains 8,848 words.

/s/ Andrea L. Hansen
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Dated: March 6, 2025

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2025, I electronically filed the above document with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record in this matter registered with the ECF system.

/s/ Diane E. Pohl

Exhibit 1

STATE OF MICHIGAN
COURT OF APPEALS

MARK COWSERT,

Plaintiff-Appellant,

v

GREEKTOWN CASINO, L.L.C., d/b/a
GREEKTOWN CASINO,

Defendant-Appellee,

and

MICHIGAN GAMING CONTROL BOARD,

Intervening Defendant.

UNPUBLISHED

July 12, 2005

No. 260496

Wayne Circuit Court

LC No. 04-426026-CK

Before: Cooper, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Plaintiff Mark Cowsert brought this action in circuit court, alleging that he won a slot machine jackpot at defendant's casino, but that defendant refused to pay the winnings. Plaintiff asserted claims for breach of contract, negligence, and spoliation of evidence. Defendant Greektown Casino moved for summary disposition under MCR 2.116(C)(4), arguing that the circuit court lacked subject matter jurisdiction because plaintiff had not exhausted his administrative remedies before the Michigan Gaming Control Board ("MGCB"). The trial court agreed and dismissed plaintiff's action without prejudice. Plaintiff appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleges that he won a slot machine jackpot of \$13,757,317.37, but defendant refused to pay the winnings, claiming that the machine had malfunctioned. Defendant turned the slot machine over to the MGCB and plaintiff filed a claim with the board complaining of defendant's failure to pay the jackpot and possible tampering with the machine. While the matter was still pending before the MGCB, plaintiff filed this action in circuit court. The trial court agreed with defendant that the circuit court action should be dismissed because plaintiff had not exhausted his administrative remedies before the MGCB.

This Court reviews a trial court's decision on summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). It appears that the trial

court granted summary disposition under MCR 2.116(C)(4). Summary disposition for lack of jurisdiction under this subrule is proper when a plaintiff has failed to exhaust his administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. [*Service Employees Int'l Union, Local 466M v City of Saginaw*, 263 Mich App 656, 660; 689 NW2d 521 (2004).]

We agree with the trial court that plaintiff was required to first exhaust his administrative remedies before the MGCB. In *Papas v Gaming Control Bd*, 257 Mich App 647; 669 NW2d 326 (2003), this Court held that the Legislature intended to vest exclusive jurisdiction in the MGCB "over all matters relating in any way to the licensing, regulating, monitoring, and control of the non-Indian casino industry," even though the phrase "exclusive jurisdiction" does not appear in the legislation. *Id.* at 658-659. Where it is apparent that the Legislature intends "to endow the state agency with exclusive jurisdiction, courts must decline to exercise jurisdiction until all administrative proceedings are complete." *Id.* at 657. Once a plaintiff exhausts his administrative remedies before the MGCB, the circuit court can then exercise limited judicial review pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* *Pappas, supra* at 665-666. See also MCL 432.217.

Contrary to plaintiff's argument, an aggrieved casino patron has an available remedy before the MGCB. The MGCB has adopted administrative rules for the conduct of gaming operations, 1998 AACRS, R 432.1801 *et seq.*, including rules for resolving patron disputes. 1998 AACRS, R 432.11502. If the matter cannot be resolved by the casino, the patron has the right to file a complaint with the MGCB. The MGCB may investigate a complaint, if deemed necessary, and initiate disciplinary action. 1998 AACRS, R 432.11503.

Plaintiff also has a potential remedy for his claim that defendant destroyed evidence of his jackpot win by tampering with the machine. Plaintiff's claim related to the alleged destruction of evidence would qualify as a patron dispute under 1998 AACRS, R 432.11501 *et seq.* and, accordingly, should be resolved initially by the MGCB. Many of the administrative rules specifically address the integrity of the machines involved in gambling operations. The MGCB may decide to investigate the matter and has the right to impose disciplinary action against the casino, if appropriate. 1998 AACRS, R 432.11503. Further, 1998 AACRS, R 432.11108(2)(f) provides that in a disciplinary action against a casino licensee, the MGCB may, take "[a]ny other action deemed necessary by the board to ensure compliance with the act or these rules." Thus, if a patron has a legitimate claim to a jackpot that a casino wrongfully denied by tampering with the machine, that patron may be awarded the jackpot proceeds by the MGCB.

Defendant also argues that plaintiff's common-law claims are preempted by the Michigan Gaming Control and Revenue Act ("MGCR"), MCL 432.201 *et seq.* As a matter of law, we agree that plaintiff may not pursue common-law claims that are inconsistent with the

MGCRA. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 543-551; 683 NW2d 200 (2004).

Affirmed.

/s/ Jessica R. Cooper
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood