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State High Court Finds that Text Message Contest Does Not Violate Anti-Gambling Laws

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On April 21, 2008, the Georgia Supreme Court rejected an argument that a promotional contest sponsored by NBC in connection with its hit show, "Deal or No Deal" violated Georgia's anti-gambling laws. Because of the proliferation of text message-based promotional contests, this decision will likely have wide-reaching impact on the digital entertainment space. The game at issue – the "Lucky Case Game" – encouraged viewers of "Deal or No Deal" to guess which of six briefcases is the "lucky case" by submitting their guesses online for free or via text message for a fee of \$0.99. After the winning briefcase is revealed at the end of the show's broadcast, the entrants who correctly chose the "lucky case" are entered into a random drawing, the winner of which receives a prize. The plaintiffs, who are Georgia residents, submitted their guesses via text message but did not win. They sought to bring a class action against NBC Universal and the producers of "Deal or No Deal" claiming that the contest was an illegal gambling operation. Specifically, plaintiffs argued that the \$0.99 fee charged for the text message entry represented "consideration" for a gambling contract, which is void under Georgia's anti-gambling statutes. The Georgia Supreme Court, however, rejected this claim and determined that the text message fee was not, in fact, "gambling consideration", and therefore no "gambling contract" existed. In addition, the Georgia court rejected the plaintiffs' claim that the "Lucky Case Game" constitutes an illegal lottery (which is considered "commercial gambling" under Georgia law and provides a civil cause of action to recover the money paid out or lost in the operation of a lottery). The court agreed with the defendants' assertion that the game was used as a promotional tool and is not a lottery. Under Georgia law, in order for a plaintiff to successfully recover "gambling consideration" (which implies that a gambling contract exists), one party needs to be certain to win, and the other party certain to lose, based upon the happening of a specific event. In this case, the Georgia Supreme Court agreed with the district court that the \$0.99 text message fee did not constitute a bet or wager, that neither the defendants nor any participant were certain to lose, and the alleged consideration did not hang in the balance of the outcome. This decision by the Georgia Supreme Court may provide comfort to mobile carriers and any organization that is currently offering, or planning to offer, similar types of contests and/or promotions. Many states have similar anti-gambling statutes and regulations governing promotional contests and games. While future claims will be fact-specific, the court's reasoning that text message fees should not be considered a bet or wager likely strengthens

the hand of any contest or promotion sponsor facing a similar challenge as to the legality of text message-based entry fees.

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