

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

STACY STEVENS, as Personal  
Representative of the Estate  
of SCOTT STEVENS, deceased,

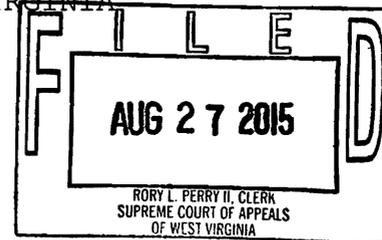
Plaintiff,

v.

Civil Action No. 5:14CV104  
(STAMP)

MTR GAMING GROUP, INC.  
d/b/a MOUNTAINEER CASINO,  
RACETRACK & RESORT and  
INTERNATIONAL GAME TECHNOLOGY,  
INC.,

Defendants.



**ORDER OF CERTIFICATION TO THE  
SUPREME COURT OF APPEALS OF WEST VIRGINIA**

Because this civil action involves several questions of West Virginia law that may determine the outcome of this action and because it appears to this Court that there is no controlling precedent on the decisions of the Supreme Court of Appeals of West Virginia, this Court respectfully requests that the questions of law set forth below be answered by the Supreme Court of Appeals pursuant to the Uniform Certification of Questions of Law Act, West Virginia Code § 51-1A-1, et seq.

I. Procedural History

A complaint in this civil action was filed in this Court by plaintiff, Stacy Stevens, as Personal Representative of the Estate of Scott Stevens, deceased, to recover damages from defendants, MTR Gaming Group, Inc. d/b/a Mountaineer Casino, Racetrack & Resort ("MTR") and International Game Technology, Inc. ("IGT").

MTR owns and operates Mountaineer Casino, Racetrack & Resort ("Mountaineer Casino"), a commercial gaming casino in Chester, West Virginia. IGT is engaged in the distribution and sales of computerized gambling equipment, software and network systems. IGT sold or leased to MTR certain gambling slot machines or video lottery terminals which were used or played by Scott Stevens when he visited the Mountaineer Casino as a gambling patron. West Virginia has legalized and regulates certain gambling video lotteries and facilities.

Plaintiff Stacy Stevens alleges that her husband Scott Stevens regularly patronized MTR to gamble using the above-mentioned slot machines and video lottery terminals. Scott Stevens committed suicide on August 13, 2012.

Stacy Stevens, as Personal Representative of the Estate of Scott Stevens, seeks to recover damages from both defendants for Scott Stevens' wrongful death. She alleges negligent and intentional breach of duty to care to Scott Stevens by MTR (Count I). Plaintiff also sues defendants MTR and IGT for defective product design (Count II) and product use defectiveness and failure to warn (Count III). Plaintiff sues defendants for premises liability (Count IV) and both defendants for intentional infliction of emotional distress (Count V) and wrongful death (Count VI). Plaintiff seeks to recover both compensatory and punitive damages from defendants.

Plaintiff alleges that the slot machines or video lottery terminals are "products" under West Virginia strict products liability law.

Plaintiff alleges that as a result of playing the above slot machines or video lottery terminals, Scott Stevens became addicted to playing these machines, lost money thereon and in desperation embezzled money from his employer. After he was fired by his employer, he allegedly continued to gamble using these slot machines and video lottery terminals and, to do so, took money from his family savings, 401(k) account and his children's college fund.

It is specifically alleged that the algorithms that govern today's slot machines and video lottery terminals intentionally conceal from patrons the win/loss functions of the machines and that the patrons who use these machines or terminals "do not know, and are not warned that the machines are designed to cause and foster the loss of willpower and rational decision-making capacities." Compl. ¶ 21. Plaintiff, in sum, alleges that "a modern slot machine incorporates a sophisticated computer, designed and engineered to create, cause, and encourage fast, continuous, and repeat betting." Compl. ¶ 14.

Video lottery terminals manufactured by IGT were sold and distributed to MTR and were at the Mountaineer Casino at all times involved in this action respecting Scott Stevens.

Plaintiff alleges that Scott Stevens suffered severe emotional distress because of the alleged conduct of MTR and IGT and that his

emotional distress was a substantial factor in bringing about his suicide on August 13, 2012. It is alleged that rather than cause the suicide, MTR and IGT had a duty to prevent the suicide from occurring. Compl. ¶ 44. Plaintiff further alleges that the family of Scott Stevens was not aware of his alleged addiction to slot machines or video lottery terminals and that the family of Scott Stevens was not aware of his suicidal ideation. Compl. ¶¶ 7, 8 and 10. The complaint does not allege that MTR or IGT were in any position of special relationship with Scott Stevens such as to be a caretaker of Scott Stevens during the times involved.

Following the filing of the complaint, both defendant MTR and IGT filed separate motions to dismiss. These motions were fully briefed and the Court held oral argument on these motions.

## II. Certified Questions

1. What duty of care exists as to each defendant given the allegation that the slot machines or video lottery terminals are designed through the use of mathematical programs and algorithms to create the illusion of chance while instead fostering a disassociated mental state, to protect casino patrons from becoming addicted to gambling by using these machines or terminals?

2. Are the gambling machines or terminals and specifically the software in them a "product" under West Virginia products liability law?

3. What legal duties, if any, arise under Moats v. Preston County Commission, 206 W. Va. 8, 521 S.E.2d 180 (1990), given that the suicide of Scott Stevens was a possible intervening cause?

Based upon the foregoing, the motion to dismiss of MTR and the motion to dismiss of IGT are each DENIED WITHOUT PREJUDICE pending an answer to the certified questions.

This civil action is STAYED pending an answer to the above certified questions of law.

This Court shall deliver to the Supreme Court of Appeals of West Virginia the record or any portion thereof upon notification from the Clerk of the Supreme Court of Appeals of West Virginia.

The Clerk of this Court shall also forward to the Clerk of the Supreme Court of Appeals of West Virginia the names and addresses of counsel of record and any unrepresented parties in this civil action as well as a copy of the current docket of this Court in this case.

This Court acknowledges that the Supreme Court of Appeals of West Virginia may reformulate any proposed certified question of law.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order of certification to the Clerk of the Supreme Court of Appeals of West Virginia and to counsel of record herein.

DATED: August 25, 2015

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE

LC2-FPS,STAYED

**U.S. District Court  
Northern District of West Virginia (Wheeling)  
CIVIL DOCKET FOR CASE #: 5:14-cv-00104-FPS**

Stevens v. MTR Gaming Group, Inc. et al  
Assigned to: Senior Judge Frederick P. Stamp, Jr  
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 08/07/2014  
Jury Demand: Plaintiff  
Nature of Suit: 365 Personal Inj. Prod.  
Liability  
Jurisdiction: Diversity

**Plaintiff**

**Stacy Stevens**  
*as Personal Representative of the Estate  
of Scott Stevens, Deceased*

represented by **James G. Bordas , Jr.**  
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**ATTORNEY TO BE NOTICED**

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**LEAD ATTORNEY**  
**PRO HAC VICE**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**MTR Gaming Group, Inc.**  
*doing business as*  
**Mountaineer Casino, Racetrack &  
 Resort**

represented by **Robert J. D'Anniballe, Jr.**  
 Pietragallo Gordon Alfano Bosick &  
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**ATTORNEY TO BE NOTICED**

**Defendant**

**International Game Technology, Inc.**

represented by **Brian J. Warner**  
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 Email: rrussell@shumanlaw.com  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
08/07/2014	<u>1</u>	COMPLAINT against All Defendants, filed by Stacy Stevens. (Attachments: # <u>1</u> Civil Cover Sheet) (copy to counsel of record via CM/ECF; copy to Judge Stamp) (nmm) Modified filed date on 8/8/2014. NEF regenerated (nmm). (Entered: 08/08/2014)
08/07/2014	<u>2</u>	Filing fee: \$ 400.00, receipt number WVNW000912 (nmm) (Entered: 08/08/2014)
08/19/2014	<u>4</u>	MOTION for Leave to Appear Pro Hac Vice of <i>Terry Noffsinger</i> by Stacy Stevens. (Attachments: # <u>1</u> Text of Proposed Order)(Bordas, James) (Entered: 08/19/2014)

		08/19/2014)
08/19/2014	<u>5</u>	MOTION for Leave to Appear Pro Hac Vice of <i>Sharon Y. Eubanks</i> by Stacy Stevens. (Attachments: # <u>1</u> Text of Proposed Order)(Bordas, James) (Entered: 08/19/2014)
08/19/2014	<u>6</u>	PHV Filing fee for Terry Noffsinger and Sharon Y Eubanks: \$ 400.00, receipt number WVNW000923 (nmm) (Entered: 08/19/2014)
09/04/2014	<u>7</u>	ORDER granting <u>4</u> Motion for Leave to Appear Pro Hac Vice of Terry Noffsinger. Signed by Senior Judge Frederick P. Stamp, Jr. on 9/4/2014. (copy to counsel of record via CM/ECF) (nmm) (Entered: 09/04/2014)
09/04/2014	<u>8</u>	ORDER granting <u>5</u> Motion for Leave to Appear Pro Hac Vice of Sharon Y. Eubanks. Signed by Senior Judge Frederick P. Stamp, Jr. on 9/4/2014. (copy to counsel of record via CM/ECF) (nmm) (Entered: 09/04/2014)
09/25/2014	<u>9</u>	SUMMONS Returned Executed as to MTR Gaming Group, Inc. served on 9/25/2014. (Bordas, James) (Entered: 09/25/2014)
10/10/2014	<u>10</u>	SUMMONS Returned Executed as to International Game Technology, Inc. served on 10/3/2014. (Bordas, James) (Entered: 10/10/2014)
10/16/2014	<u>11</u>	MOTION to Dismiss <i>Plaintiff's Complaint with Memorandum in Support of Motion to Dismiss and Order</i> by MTR Gaming Group, Inc.. (D'Anniballe, Robert) (Entered: 10/16/2014)
10/24/2014	<u>12</u>	MOTION to Dismiss by International Game Technology, Inc.. (Attachments: # <u>1</u> Memorandum In Support of Motion To Dismiss)(Warner, Brian) (Entered: 10/24/2014)
10/24/2014	<u>13</u>	MOTION for Leave to File Excess Pages by International Game Technology, Inc.. (Warner, Brian) (Entered: 10/24/2014)
10/29/2014	<u>14</u>	FIRST ORDER AND NOTICE REGARDING DISCOVERY AND SCHEDULING:  <b><i>***NOTICE TO ATTORNEYS*** : Pursuant to <u>Rule 7.1</u> of the Federal Rules of Civil Procedure, ALL Non-governmental CORPORATE parties must file a DISCLOSURE STATEMENT with the Court. Forms are available on the Court's Web Site at <a href="http://www.wvnd.uscourts.gov/forms.htm">http://www.wvnd.uscourts.gov/forms.htm</a></i></b>  Rule 26 Meeting to be held by 12/18/2014. Rule 26 Meeting Report due by 12/26/2014. Discovery due by 1/8/2015. Signed by Senior Judge Frederick P. Stamp, Jr. on 10/29/2014. (copy to counsel of record via CM/ECF) (nmm) (Entered: 10/29/2014)
10/30/2014	<u>15</u>	RESPONSE in Opposition re <u>11</u> MOTION to Dismiss <i>Plaintiff's Complaint with Memorandum in Support of Motion to Dismiss and Order</i> filed by Stacy Stevens. (Bordas, James) (Entered: 10/30/2014)
11/06/2014	<u>16</u>	RESPONSE in Support re <u>11</u> MOTION to Dismiss <i>Plaintiff's Complaint with Memorandum in Support of Motion to Dismiss and Order</i> filed by MTR Gaming Group, Inc.. (D'Anniballe, Robert) (Entered: 11/06/2014)

11/07/2014	<u>17</u>	RESPONSE in Opposition re <u>12</u> MOTION to Dismiss filed by Stacy Stevens. (Bordas, James) (Entered: 11/07/2014)
11/14/2014	<u>18</u>	REPLY to Response to Motion re <u>12</u> MOTION to Dismiss <i>Complaint for Failure to State a Claim Upon Which Relief Can Be Granted</i> filed by International Game Technology, Inc.. (Warner, Brian) (Entered: 11/14/2014)
12/18/2014	<u>19</u>	NOTICE of Appearance by J. Robert Russell on behalf of International Game Technology, Inc. (Russell, J.) (Entered: 12/18/2014)
12/22/2014	<u>20</u>	REPORT of Rule 26(f) Planning Meeting. (Bordas, James) (Entered: 12/22/2014)
12/23/2014	<u>21</u>	SCHEDULING ORDER: Amended Pleadings/Joinder of Parties due by 8/28/2015. Discovery due by 10/31/2015. Dispositive Motions due by 11/13/2015. Proposed Pretrial Order due by 1/20/2016. Final Settlement Conference/Pretrial Conference set for 1/25/2016 at 10:00 AM in Wheeling District Judge Courtroom, South before Senior Judge Frederick P. Stamp Jr. Jury Selection followed by Jury Trial set for 2/9/2016 at 8:30 AM in Wheeling District Judge Courtroom, South before Senior Judge Frederick P. Stamp Jr. Signed by Senior Judge Frederick P. Stamp, Jr on 12/23/2014. (kac) (Main Document 21 replaced on 1/21/2015 with signed order) (kac). (Entered: 12/23/2014)
01/08/2015	<u>22</u>	CERTIFICATE OF SERVICE by Stacy Stevens of <i>Plaintiffs' Rule 26(a)(1) Disclosures</i> . (Bordas, James) (Entered: 01/08/2015)
01/08/2015	<u>23</u>	Corporate Disclosure Statement by International Game Technology, Inc.. (Russell, J.) (Entered: 01/08/2015)
01/08/2015	<u>24</u>	CERTIFICATE OF SERVICE by International Game Technology, Inc. for <i>Rule 26(a)(1) Initial Disclosures</i> . (Russell, J.) (Entered: 01/08/2015)
01/08/2015	<u>25</u>	CERTIFICATE OF SERVICE by International Game Technology, Inc., MTR Gaming Group, Inc. . (D'Anniballe, Robert) (Entered: 01/08/2015)
04/20/2015	<u>26</u>	ORDER SCHEDULING ORAL ARGUMENT ON <u>11</u> and <u>12</u> MOTION TO DISMISS. Oral Argument Hearing set for 5/11/2015 02:00 PM in Wheeling District Judge Courtroom, South before Senior Judge Frederick P. Stamp Jr. Signed by Senior Judge Frederick P. Stamp, Jr on 4/20/15. (copy to counsel of record via CM/ECF)(lmm) (Entered: 04/20/2015)
05/11/2015	<u>27</u>	MINUTE ENTRY:  <b><u>***NOTICE*** THE ATTACHED DOCUMENT IS NOT ACCESSIBLE. IT IS FOR STATISTICAL PURPOSES ONLY.</u></b>  Proceedings held before Senior Judge Frederick P. Stamp, Jr: Motion Hearing held on 5/11/2015 re <u>12</u> MOTION to Dismiss filed by International Game Technology, Inc., and <u>11</u> MOTION to Dismiss <i>Plaintiff's Complaint with Memorandum in Support of Motion to Dismiss and Order</i> filed by MTR Gaming Group, Inc.. (Court Reporter Linda Mullen.) (soa) (Entered: 05/11/2015)

05/12/2015	<u>28</u>	ORDER CONFIRMING THE PRONOUNCEMENT OF THIS COURT GRANTING DEFENDANT INTERNATIONAL GAME TECHNOLOGY, INC.'S MOTION TO EXCEED PAGE LIMITS: Granting <u>13</u> Motion for Leave to File Excess Pages Signed by Senior Judge Frederick P. Stamp, Jr on 5/12/15. (soa) (Entered: 05/12/2015)
05/13/2015	<u>29</u>	ORDER CONFIRMING THE PRONOUNCEMENT OF THIS COURT DIRECTING THE PARTIES TO FILE A PROPOSED CERTIFIED QUESTION OR QUESTIONS AND STIPULATION OF FACTS AND STAYING THE CURRENT SCHEDULING ORDER: The parties are DIRECTED to submit to this Court a stipulated certified question or questions, and a stipulation of the facts relevant to the question or questions, and also indicate what portion of the record thereof should be included with any certification, regarding the issues identified above and during oral argument by 5:00 p.m. on June 26, 2015. Further, the current scheduling order is STAYED generally until further order by this Court. Signed by Senior Judge Frederick P. Stamp, Jr on 5/13/2015. (kac) (Copy to counsel) (Entered: 05/13/2015)
05/15/2015	<u>30</u>	TRANSCRIPT of Proceedings held on 5/11/2015, before Judge Stamp. Court Reporter/Transcriber Linda Mullen, Telephone number (304) 234-3987. Parties have five business days to file a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will become available via PACER to the public without redaction after 90 calendar days.. Redaction Request due 6/5/2015. Redacted Transcript Deadline set for 6/15/2015. Release of Transcript Restriction set for 8/13/2015. (lsm) (Entered: 05/15/2015)
05/15/2015	<u>31</u>	TRANSCRIPT PURCHASE ORDER for proceedings held on 5/11/2015 before Judge Stamp. (lsm) (Entered: 05/15/2015)
06/26/2015	<u>32</u>	Other Document <i>Defendant MTR Gaming Group, Inc. D/B/A Mountaineer Casino, Racetrack &amp; Resort's Proposed Stipulation of Facts, Proposed Certified Questions, and Proposed Designation of the Record</i> filed by MTR Gaming Group, Inc.. (D'Anniballe, Robert) (Entered: 06/26/2015)
06/26/2015	<u>33</u>	STIPULATION of <i>Proposed Questions for Certification</i> by International Game Technology, Inc.. (Warner, Brian) (Entered: 06/26/2015)
06/26/2015	<u>34</u>	RESPONSE by Stacy Stevens. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Bordas, James) (Entered: 06/26/2015)
08/25/2015	<u>35</u>	ORDER OF CERTIFICATION TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA denying without prejudice <u>11</u> MOTION to Dismiss Plaintiff's Complaint with Memorandum in Support of Motion to Dismiss and Order and <u>12</u> MOTION to Dismiss by International Game Technology, Inc. This civil action is STAYED pending an answer to the above certified questions of law. This Court shall deliver to the Supreme Court of Appeals of West Virginia the record or any portion thereof upon notification from the Clerk of the Supreme Court of Appeals of West Virginia. The Clerk of this Court shall also forward to the Clerk of the Supreme Court of Appeals of West Virginia the names and addresses of counsel of record and any unrepresented parties in this civil action as well as a copy of the current docket of this Court in this case. This Court

	<p>acknowledges that the Supreme Court of Appeals of West Virginia may reformulate any proposed certified question of law. Signed by Senior Judge Frederick P. Stamp, Jr. on 8/25/15. (copy to Clerk of the Supreme Court of Appeal of WV along with public docket; counsel via CM/ECF)(Imm) (Entered: 08/25/2015)</p>
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