

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
RICHMOND HILL SMALL CLAIMS COURT**

B E T W E E N:

MATTHEW BUCHALTER

Plaintiff

- and -

AMERICAN WAGERING INC.  
also known as CAESARS SPORTSBOOK

Defendant

**SCHEDULE "A" TO DEFENCE**

1. The defendant, American Wagering, Inc. ("**AWI**"), which is improperly named as American Wagering Inc., admits the allegations contained in paragraphs 1, 3, 5 to 6, and 8 of Schedule A of the Plaintiff's Claim.

2. AWI has no or insufficient knowledge of the allegations contained in paragraphs 19 and 20 of Schedule A of the Plaintiff's Claim.

3. AWI denies the remainder of the allegations contained in Schedule A of the Plaintiff's Claim and specifically denies that the Plaintiff is entitled to any of the relief sought on page 3 of the Plaintiff's Claim or in paragraphs 22 and 23 of Schedule A of the Plaintiff's Claim.

**American Wagering, Inc.**

4. AWI is a corporation incorporated pursuant to the laws of Nevada. AWI is a subsidiary of Caesars Entertainment, Inc., which is primarily a U.S.-based operator of

casinos and other gaming- and gambling-related ventures, most commonly known for the Caesars brand of casinos and sportsbooks. In Ontario, AWI operates an online sports betting and gaming website and mobile application known as Caesars Sportsbook. AWI is a licensed iGaming Operator in Ontario by the Alcohol and Gaming Commission of Ontario (“**AGCO**”) and offers and administers games of chance as an agent for iGaming Ontario (“**iGO**”), the subsidiary of AGCO responsible for online gaming.

## **The Facts**

5. The Plaintiff placed the 9 wagers set out in paragraph 5 of Schedule A to the Plaintiff’s Claim between June and August 2022. Depending on the date of his wager, one of three different versions of the General Betting Rules (“**House Rules**”) applied. Attached as Schedule 1 is the version of the House Rules in place from April 22, 2022 to June 26, 2022. Attached as Schedule 2 is the version of the House Rules in place from June 27, 2022 to August 16, 2022. Attached as Schedule 3 is the version of the House Rules in place from August 17, 2022 onwards.

6. On January 2, 2023, the National Football League (“**NFL**”) game between the Buffalo Bills and Cincinnati Bengals (the “**Game**”) was postponed due to an on-field medical emergency involving Buffalo Bills player Damar Hamlin.

7. On January 5, 2023, the NFL announced via press release that the Game is cancelled. Attached as Schedule 4 is the press release from the NFL announcing the cancellation of the game.

8. On January 9, 2023, in light of the Game's cancellation, AWI determined that it would settle all wagers where the result had already been established, and where the result was not yet established, the wager would be void and refunded to the user. In other words, wagers that had already won were settled as wins, wagers that had already lost were settled as losses, and wagers where the results could have been impacted by the result of the Game were voided and refunded to users. This was consistent with the House Rules. Wagers were subsequently settled that day.

9. As a result of AWI's determination, 8 of the Plaintiff's wagers were settled as losses, while one was settled as void and refunded to the Plaintiff. Notwithstanding the Game, the results of those 8 wagers had already been established. It was a certainty that those wagers were losses for the Plaintiff. The result of the Plaintiff's wager that the Cincinnati Bengals would finish with exactly 13 wins was not established notwithstanding the Game. It was impacted by the result of the Game, and so that wager was voided and the money was refunded to the Plaintiff.

10. On January 10, 2023, the Plaintiff contacted AWI through Caesars Sportsbook's customer service chat function, seeking a review of the settlement of his wagers. At that time, the Plaintiff took the position that because 17 games were not played by the Buffalo Bills and Cincinnati Bengals, all nine of his wagers were void pursuant to the House Rules.

11. Also on January 10, 2023, the Plaintiff contacted AWI through Twitter direct message to @CaesarsHelp. The Plaintiff took the same position through Twitter. Screenshots showing the Plaintiff's interactions with AWI on Twitter are collectively attached as Schedule 5.

12. On January 11, 2023, the Plaintiff was informed on Twitter of how AWI had determined it would settle wagers in light of the Game. At that time, the Plaintiff threatened AWI that he would make his dispute with AWI public.

13. Later that day, in light of the uncertainty created by the Game, one AWI staff member informed the Plaintiff through Caesars Sportsbook's customer service chat function that his "2 wagers on bills season total wins...will actually be voided and the funds will be returned back to [his] account". This was contrary to the determination made by AWI on January 9, 2023 and what the Plaintiff had been told earlier that day on Twitter, and was not correct.

14. Also on January 11, 2023, AWI communicated its settlement of NFL wagers in light of the Game to the AGCO.

15. On January 12, 2023, the Plaintiff again contacted AWI through Twitter. That day, AWI staff contacted the Plaintiff by telephone to inform him of the correct settlement of his wagers. The Plaintiff was informed that 8 of his wagers were settled as losses, while one was settled as void and refunded to him.

16. On January 27, 2023, AWI was contacted by iGO. iGO informed AWI that the Plaintiff had registered a complaint through iGO's dispute resolution procedure.

17. On January 30, 2023, AWI provided iGO with the information on how it made a determination regarding the settlement of wagers in light of the Game.

18. On February 3, 2023, iGO informed AWI that it agreed with AWI's interpretation of the House Rules, and that the Plaintiff's wagers at issue were settled appropriately.

19. On February 8, 2023, the Plaintiff commenced this action. That same day, the Plaintiff posted about this claim on his personal blog at the following link: <https://plusevanalytics.wordpress.com/2023/02/08/me-v-caesars/>. A copy of that webpage is attached as Schedule 6. The Plaintiff's bio from his blog is at the following link: <https://plusevanalytics.wordpress.com/about/>. A copy of that webpage is attached as Schedule 7.

20. On February 14, 2023, a publication called "Canadian Gaming Business" published an article about this claim at the following link: <https://www.canadiangamingbusiness.com/2023/02/14/ontario-nfl-caesars/>. In the article, the Plaintiff's "team" is cited as responding to questions from the publication. A copy of that webpage is attached as Schedule 8.

21. On or around February 23, 2023, the Plaintiff spoke on a podcast called "Gambling with an Edge", where he discussed this claim and then discussed the course the Plaintiff teaches and sells on sports betting. The podcast can be found at this link: <https://www.spreaker.com/user/7418966/plusevanalytics>.

22. On March 2, 2023, a publication called "Sports Handle" published an article about this claim at the following link: <https://sportshandle.com/ontario-bettor-damar-hamlin-lawsuit-caesars/>. In the article, the Plaintiff is cited as giving answers to an interview. A copy of that webpage is attached as Schedule 9.

### **The Plaintiff is Estopped From Claiming Against AWI**

23. The Plaintiff's dispute has already been settled by iGO. The Plaintiff is unhappy with the decision of iGO and seeks to re-argue those same issues before this Court. The Plaintiff's arguments were considered by iGO and rejected. Having raised the same issues before iGO, the Plaintiff is now estopped from re-arguing those issues before this Court.

### **This Action is an Abuse of Process**

24. In the alternative, if the Plaintiff is not estopped, this action is an abuse of process. The Plaintiff not only seeks to have this Court re-argue the same issues raised before iGO but seeks to have this Court reach an inconsistent conclusion to iGO. This Court is not being asked to judicially review the decision of iGO, nor could it, it is being asked to consider the Plaintiff's claims *de novo*. This is an affront to judicial economy, consistency, finality and the integrity of the administration of justice.

### **This Action Ought to Be Stayed in Favour of Arbitration**

25. In the further alternative, this action must be stayed in favour of arbitration.

26. The Plaintiff, as part of registering an account with Caesars Sportsbook, specifically agreed to the General Terms of Service (the "GTS") which are posted on AWI's Caesars Sportsbook website at <https://caesars.com/sportsbook-and-casino/on/support/terms-and-conditions-privacy/#general-terms-of-service>. A copy of the GTS is attached as Schedule 10.

27. The GTS set out that by clicking on “Submit” or “I Agree” or by using the “Services” (as that term is defined in the GTS), the user agrees to be entering into a legally binding agreement with AWI on the terms and conditions set out in the GTS. The Plaintiff’s creation of an account with Caesars Sportsbook and subsequent clicking of “Submit” or “I Agree” created a binding agreement between the Plaintiff and AWI. In the alternative, the Plaintiff’s use of the Caesars Sportsbook website and mobile application constituted a use of “Services” such that the Plaintiff created a binding agreement between the Plaintiff and AWI.

28. Section 30 of the GTS includes an arbitration agreement. The arbitration agreement requires that, other than certain excluded disputes, any claims or controversies arising from the “Agreements” be arbitrated. “Agreements” includes the GTS and any other additional rules published on the Caesars Sportsbook website or mobile application, including the House Rules. The disputes excluded from the scope of the arbitration agreement are those disputes related to the settlement of wagers or otherwise referred to iGO’s dispute resolution mechanism.

29. The Plaintiff’s Claim, as plead, is captured by the arbitration agreement. Having accepted the GTS, the Plaintiff is obligated to resolve any dispute arising from the “Agreements” by binding arbitration. Pursuant to section 7 of the *Arbitration Act, 1991*, SO 1991, c 17, this action ought to be stayed in favour of arbitration.

### **No Breach of Contract**

30. There was no breach of contract. At all times, AWI complied with the GTS and the House Rules and all of the Plaintiff’s wagers were settled appropriately.

### **No Unjust Enrichment**

31. There was no unjust enrichment. The GTS and the House Rules provide the juristic reason for the Plaintiff's losses. To the contrary, the Plaintiff seeks a windfall to recover amounts for wagers which he had lost with all certainty.

### **No Damages**

32. AWI denies that the Plaintiff has incurred any losses or damages as alleged, or at all. In the alternative, to the extent the Plaintiff incurred any losses or damages, which is denied, such losses or damages are not the responsibility of AWI in fact or law, and are excessive, unforeseeable, remote and not recoverable at law.

33. In the further alternative, the Plaintiff has not taken appropriate steps to mitigate his alleged damages as required by law.

### **No Basis for Penalty**

34. There is no basis for any claim for penalty amounts. At all times, AWI acted reasonably in its dealings with the Plaintiff and there are no facts plead by the Plaintiff which support such a claim.

### **Action Should be Dismissed**

35. This action is inflammatory, a waste of time, a nuisance and an abuse of process. It ought to be dismissed with costs to AWI on the highest possible scale.