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Attorneys *pro hac vice* for Defendant, William Lee Childs, Jr.

LYNNE MITCHNICK,

Plaintiff,

-against-

WILLIAM LEE CHILDS

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUDSON COUNTY

Docket No. HUD-L-4742-12

Civil Action

EXPERT'S AFFIDAVIT

ERIC HABER, being duly sworn, deposes and says:

1. I am an expert witness on behalf of Defendant William Lee Childs in the above-captioned action. I was retained on February 28, 2013. After reviewing the Complaint, the Answer and all subsequent discovery materials, I drafted an expert's report in connection with this matter. That report was completed on or about June 26, 2013 and sent to Plaintiff's counsel.
2. After reviewing the aforementioned materials in addition to all additional discovery in this matter, I submit the instant affidavit. All statements herein are based on my review of relevant materials, discussions with Defendant, and personal knowledge. I have no prior business or personal relationship with Defendant.

#### QUALIFICATIONS

3. I am 46 years old. In 1989, I earned my undergraduate degree in American Studies from Brandeis University. In 1993, I earned my Juris Doctor from Tulane University Law School.
4. After graduating from law school, I began a career in finance. I became a Chartered Financial Analyst (CFA Charter Holder) in 2003, an honor which is garnered through three years of study

on topics such as investment theory, accounting and statistics. I have been the portfolio manager of HaberCapital Management LLC since 2002.

5. Fueled by advances in internet gaming technology and increased media exposure, there was a so-called "poker boom" in 2003. The surge in popularity of the game made poker a viable full-time occupation for thousands of people, and poker tournaments that previously had been sparsely attended began to draw exponentially more players, both professional and recreational.
6. Being a poker enthusiast and sensing a business opportunity, I determined that money could be made by investing in poker players. I staked my first poker player sometime in or around 2004. Under my guidance, this foray into poker staking grew rapidly. I turned my initial investment into a large business and ended up at the helm of a massive poker staking operation. Many others entered into the staking business in an effort to emulate my success, and soon I was considered an industry leader—an elder statesman in a large community of poker stakers.
7. Through the years, I have refined and improved both my operation and the entire poker staking industry. To date, over 200 poker players have performed under my financial umbrella. I have invested millions of dollars into tournament poker. I have seen big downturns and massive wins, including the instance when a member of my "stable" won poker's largest yearly tournament (the World Series of Poker Main Event) for over \$8.5 million. I have developed poker staking accounting software and created various processes to track players.
8. I have seen almost everything when it comes to the player/staker relationship and have personally dealt with every manner of dispute. I have also acted as a mediator in disputes between stakers and players. Not only am I familiar with standard practices in the poker staking industry, I was instrumental in establishing those standard practices. I am uniquely qualified to comment on any issues arising out of a staking agreement, including the issues involved in the instant lawsuit.

## THE WORLD OF TOURNAMENT POKER STAKING

9. High stakes poker tournaments are held both in brick and mortar venues ("live tournaments") and in online poker rooms ("online tournaments"). Some professional poker players are "live pros," who travel the live tournament "circuit" from one casino to the next, participating in poker meets, or series of tournaments, in much the same way a pro golfer or pro tennis player travels a circuit. These poker meets typically last a week or longer, opening with series of "preliminary" tournaments and culminating with a "main event," which usually features the largest prize pool of the meet.
10. The two primary providers of live high stakes poker tournaments in the United States are: (i) the Caesars Entertainment Corporation ("Caesars"), which offers the World Series of Poker ("WSOP") and World Series of Poker Circuit ("WSOPC") events, and (ii) World Poker Tour Enterprises, which offers World Poker Tour ("WPT") events. There are also other unaffiliated poker tournaments throughout the year.
11. Caesars conducts its flagship poker meet, the WSOP, in Las Vegas every summer. The WSOP runs from Memorial Day weekend through mid-July and features the largest tournament fields and largest prize pools of the calendar year. Within the industry, the WSOP is regarded as the most important and most lucrative poker meet on the calendar.
12. WSOPC and WPT poker meets are live tournaments conducted in a variety of casinos. These recurring annual meets are smaller than the WSOP events but nevertheless feature prize pools worth hundreds of thousands, if not millions, of dollars.
13. Other professional tournament poker players are "online pros," who elect to play mostly online poker tournaments. The primary providers of online poker tournaments are Pokerstars.com ("Pokerstars") and FullTiltPoker.com ("Full Tilt"). Playing online rather than live tournaments

enables tournament players to play from home and enter multiple tournaments at a time. Online tournaments typically feature tournament fields significantly larger than live tournament fields.

14. On April 15, 2011, Pokerstars and Full Tilt ceased offering their services to United States residents. Currently, only non-US residents are permitted to play on those websites.

#### HOW TOURNAMENT POKER STAKING WORKS

15. Playing poker tournaments for a living involves a great deal of risk. This is directly attributable to the way in which poker tournament results are distributed. Each tournament has a single entry fee, paid by each player. A small portion of each entry fee is paid to the hosting venue and the rest is put towards the prize pool. The prize pool is thus comprised of the total amount of entry fees, less the money withheld by the hosting venue.

16. Most tournaments have payout structures that are top heavy. In a typical tournament, 80-90% of the players collect nothing, as the entire prize pool is distributed to the top 10-20% of the finishers. Finishing in the top 10-20% gives the player some return on his investment. However, consistently finishing in the top 10-20% of the field does not guarantee success. This is because even within the confines of the money finishers, the payout structure is top heavy—more than 75% of the prize pool is distributed to the top 3% of the field in most poker tournaments. Thus, each tournament provides a big windfall to only a handful of players, while the rest of the field departs disappointed. The best tournament poker players are the ones who are able to achieve that big windfall, i.e., finish in the top 3% of the field, most frequently.

17. Players who consistently play tournament poker, therefore, must accept what is known in the poker industry as “variance,” the reality that unless you defy the odds, and no matter how talented you are, you will enter many consecutive tournaments without making significant (or any) money. Of course, an expert poker player does have a large, demonstrable edge on the field. Such a player will most likely make money in the long run, as he will eventually earn his

share of top 3% finishes. However, the "long run" in this context is indeed a very long time. Droughts lasting multiple calendar years are not uncommon, and a player runs the risk of losing his entire bankroll before the ups and downs even out. This concept is called "gambler's ruin." In sum, even if a player has a long-term edge, a short-term lack of funding might render that player unable to see those long run results.

18. As a result of this dilemma, players seek investors who are willing to absorb short-term losses in order to share in the eventual profits. The investor is given access to the long-term expected returns in exchange for his promise to supply enough capital to withstand the short-term swings. When done properly, such an arrangement fits the definition of the ever-elusive "win-win" scenario. The investor becomes part of a long-term profitable activity—the expert player's edge in the tournaments—and the player gets to play tournaments without worrying about going broke.

19. In return for the investor's capital, the player gives the investor an agreed-upon percentage of the profits. So long as the player does in fact have a long-term edge, and so long as the investor continues to provide the necessary capital to withstand the short-term swings, the arrangement is mutually beneficial.

#### A REALLOCATION OF RISK

20. The player/staker arrangement is essentially a reallocation of risk. Despite freeing oneself of much financial risk through the relationship with a staker, a professional poker player must remain committed to the game. The staked player puts in hours, weeks and months of time and effort, foregoing other activities that could earn him money. The player is allowing the investor to benefit not only from his expertise but also from his steadfast commitment, as he puts in the prolonged hours necessary to conquer variance. The player is giving up a percentage of his profits *and* the opportunity cost of taking a different deal.

21. Through his arrangement with the player, the staker bears several risks. First, he faces the same type of risk that an investor in a security or a business faces—the risk that his investment will lose money. If the staker has made a mistake in assessing the player's ability, then the staker loses money. In order to profit, a staker must exercise the same degree of due diligence as the investor interested in purchasing stock in a biotech company, for example. If a stock or a poker player has faulty fundamentals, the investor in either entity may suffer.
22. Another enormous risk for the staker is the risk of insolvency. It is possible that the relationship will end after significant short-term losses, costing the staker the chance to realize the long term expected profits. At some point, the staker might become unwilling or unable to supply the player with funds. As mentioned above, while a player may be a sound long-term investment, the short term is certain to be bumpy. To realize his potential, the player often requires more funds than inexperienced stakers initially realize. The bumpy ride can be emotionally and/or fiscally difficult for both the player and the staker—not everyone has the funds to ride out a fifteen-month downswing.
23. Perhaps the greatest risk assumed by the staker is that the player will quit playing poker tournaments before winning anything significant. In order to minimize this risk for the staker, the player/staker agreement typically contains a clause providing that the player will not voluntarily leave the arrangement unless and until he has produced a net gain, or enters an agreed-upon number of tournaments, or logs an agreed-upon number of hours playing tournament poker, etc.

MAKEUP DEFINED – MAKEUP IS NOT A DEBT

24. The accounting of profits and losses in staking agreements is simple in theory, but can become convoluted due to the nature of cash flows in player/staker relationships. The typical staking arrangement features the staker fronting all of the tournament entry fees and both parties receiving 50% of the total net profits. For example, a player plays in 150 tournaments, all funded by the staker, and makes a *profit* of \$100,000. Both staker and player receive \$50,000.
25. The timing of these distributions is the issue. In most long-term staking arrangements, the parties do not wait until the very end of their association to distribute the profits. This would not be fair to either party: if the staker holds the profits during the entirety of the relationship, then the player will not have money to pay for expenses, etc. If the player holds the profits during the entirety of the relationship, then the staker sees no return on his investment and will inevitably struggle to continue funding tournament entry fees. Therefore, the parties settle up from time to time during the relationship. Profits can be split after an agreed-upon number of tournaments, after a certain positive figure is reached, whenever the arrangement is showing a net profit, etc. It is entirely up to the player and staker.
26. A typical scenario in a player/staker relationship looks like this: player makes a profit of \$20,000 during some period of time (after all tournament entry costs are returned to staker), and the parties split up the profits (\$10,000 each). The player then loses \$30,000. At this point, although the operation as a whole shows a net loss of \$10,000, the player has received \$10,000 in profits without any concomitant contribution. There is a major imbalance that must be reconciled if the parties are to realize their goal of a 50/50 split. Enter “makeup.”
27. Makeup is an accounting figure representing the amount the player must earn to bring the cash flows into balance. In the above example, the player has risked \$0 but collected \$10,000 despite having produced a net loss of \$10,000. Meanwhile, the staker, who split a \$20,000 gain with the

player at the outset and then subsequently absorbed a \$30,000 loss, has a personal net figure of -\$20,000. The player thus needs to earn \$30,000 in profit and give the entirety of that sum to the staker, to restore the balance, making player and staker once again realize their goal of a 50/50 split. The player is said to be "\$30,000 in makeup." If and when the player wins \$30,000 ("clears makeup"), net profits will once again sit at \$20,000 and the 50/50 split will be reflected by actual cash flows, as each party will again be holding \$10,000 in profit.

28. Sometimes, the player and staker agree to do profit splits whenever the accounting sheet indicates a positive figure. Some wait longer—it varies from agreement to agreement. Splitting profits whenever the accounting sheet is positive increases the risk that an imbalance of cash flows will exist for longer periods of time. When this imbalance becomes large, the staker's 50/50 share takes longer to realize. This method of delaying dividends is part of the risk the staker assumes in exchange for access to player's profitability and effort.

29. The frequency of these cash flow imbalances makes it even more crucial for the staker to protect himself against the possibility of a player quitting. Therefore many agreements contain clauses prohibiting a player from ending the affiliation unless and until the cash flow imbalance—the player's makeup figure—is corrected. In that circumstance, the player is beholden to the staker for an indeterminate period of time. Inexperienced people therefore mistakenly view makeup as a debt owed by the player to the staker. This is not accurate. In fact, makeup often accrues where the player/staker association reflects a large net profit. Makeup is not a debt; it is the reflection of an accounting imbalance.

30. To be properly understood, the player/staker relationship must be viewed with the above mentioned risk reallocation in mind. If the player stands ready to fulfill his end of the bargain by playing poker to the best of his ability, then the staker must also be prepared to honor his role, which is to provide enough funds to keep the player in action. Since tournament poker profits



come in periodic spikes amidst long periods of sustained losses, the reality is that players spend much of the player/staker relationship "in makeup." Properly viewed, makeup is an essential element of the risk undertaken by the staker.

#### DISSOLUTION OF THE STAKER/PLAYER RELATIONSHIP

31. When the staker wishes to end his affiliation with the player, he is not firing an employee. He is walking away from a theoretically profitable investment, depriving himself of long-term profits.
32. Using the same example from above, presume that the player wins \$20,000 using the staker's funds. They now settle up, collecting \$10,000 apiece. The player proceeds to lose \$30,000, and, at that point, the staker decides the relationship is over. Even though the player has risked \$0 and is holding \$10,000 pursuant to an arrangement that ultimately lost \$10,000, the \$30,000 in recent losses is unrecoverable. The use of this accounting method is a risk assumed entirely by the staker. The \$30,000 in makeup is a sunk cost to the staker; he has no right to demand its return.
33. This is a critical aspect of staking. All tournament entry fees and losses are a component of the risk undertaken by the staker. Since he voluntarily agreed to share profits, the player bears none of this financial risk whatsoever. This shifting of risk is the precise reason that staking arrangements are attractive to the player. The player is freed from the responsibility of paying for past losses out of pocket even when the staker releases him.
34. In practice, when a staker wishes to terminate the relationship while a makeup figure exists, he has two options: (1) release the player; or (2) "sell" the player to another staker. If the player is released, the staker forfeits all makeup. If the player is "sold" to another investor, the price paid by the new investor to the staker is typically some portion of the makeup. The market value of makeup is significantly less than dollar-for-dollar. I have been party to and witness to many

sales of players from one staker to another and have rarely seen makeup bought out dollar-for-dollar.

35. Now let's examine a situation in which the *player* elects to quit the arrangement. As previously mentioned, the parties can agree that if dissolution is effectuated by the player, the player will make a payment to the staker to compensate for residual makeup.
36. Assume once again that a player's and staker's accounting sheet shows a makeup figure of \$30,000. If the player quits the arrangement under those conditions, the staker may be entitled to some portion of that figure. This does *not* mean that responsibility for poker tournament losses has been shifted to the player nor does it transform makeup into debt. An exit payment from player to staker is a penalty—a protection afforded to the staker when the player does not uphold his end of the bargain, not repayment of debt.
37. When a player wishes to terminate the relationship while a makeup figure exists, per the standard player/staker agreements, the player is assessed a penalty: he/she is *supposed* to remedy the accounting imbalance. Often, the player cannot afford to make this payment. In practice, the parties will often then negotiate the terms of the player's release. The parties can settle for some portion of makeup at the time of dissolution, the player can promise to pay off a percentage of makeup in future installments, etc.

#### THE PARTIES' RELATIONSHIP AND WRITTEN BACKING AGREEMENT

38. Based on my review of the pleadings and discovery materials in this matter, including the transcripts of the depositions of the parties, I have made the following determinations:
39. Mr. Childs ("Player" or "Defendant") is a professional poker player of some renown. When Mr. Childs met Ms. Mitchick ("Staker," "Backer," or "Plaintiff"), he was both a "live pro" and an "online pro." He remained active in both live and online tournaments up until April 15, 2011,

when online poker play effectively ended for United States residents. He remains active in live poker tournaments.

40. Plaintiff and Defendant (collectively, the "Parties") entered into a written player/staker contract (hereinafter, "Backing Agreement"). The Backing Agreement specifies a 50/50 split of net profit, which is a standard term in tournament staking deals. While there is no explicit language to this effect, as stated by Ms. Mitchnick, the Parties further agreed to settle up whenever makeup was cleared, i.e., at junctures when their accounting sheet showed a net positive figure. See the Deposition of Plaintiff Lynne Mitchnick ("Mitchnick Dep.") at p. 13, lines 8-18. This is not an unusual term, but it is a concession by Ms. Mitchnick, as it ensures that the operation will have an accounting imbalance the majority of the time.

41. To avoid this problem, in my own staking relationships, I tend to do profit splits only when a player has produced a net profit above \$10,000. It appears that on at least one occasion, the Parties herein did the opposite: the evidentiary record contains a document indicating that a profit split took place on December 8<sup>th</sup>, 2008 although makeup was not cleared at that time.

42. There is a "Backer Responsibilities" section of the Backing Agreement pursuant to which Ms. Mitchnick was obligated to provide funds. The additional requirement in this section that funds be provided to the staker within a specified time period is a bit unusual. Typically, a player only requires that he has the entry fee in hand on the date of the tournament.

43. The contract also contains some provisions that are quite non-standard in the staking industry. For instance, there are clauses detailing how funds will be transferred between the parties, with considerable focus on the apparent creation of a joint bank account for that purpose. I do not engage in this practice and am unaware of other stakers who do.

44. The Backing Agreement also has a "Player Responsibilities" section. This section first asks that Mr. Childs "play to the best of his ability," which is usually just implied in these types of

agreements. This section also states that Mr. Childs will perform certain administrative tasks, including providing tournament schedules six months in advance and providing tax documents by January 31<sup>st</sup> each year.

45. First, to my knowledge, no tournament schedule is available six months beforehand. Second, while stakers and players must be in accord regarding schedules and production, I have never seen these sorts of clerical tasks emphasized in player/staker agreements and believe they are outside the general scope of such an agreement. Third, I have never personally had any issues with a player regarding tax documents.

46. The agreement further provides that should Mr. Childs terminate the relationship, he will suffer a penalty: he will have to compensate Ms. Mitchnick in the amount of the outstanding makeup. This penalty clause is a concession by Mr. Childs, but it is not particularly unusual. The clause is designed to ensure that Mr. Childs does not abruptly end the relationship to either play on his own or for another backer. As discussed above, a staker's recovery of full makeup when a player exits a staking deal is, in reality, extremely rare.

47. Finally, the agreement provides that if Mr. Childs has violated the contract "in any way," Ms. Mitchnick will have the right to terminate the contract and to penalize Mr. Childs by collecting outstanding makeup. It seems that the Plaintiff is relying on the overarching breadth of this clause to support her cause of action.

#### THE LAWSUIT

48. I am unaware of any other instances where a staker/player dispute has been litigated. Disputes similar to this one do arise with some frequency, but to my knowledge they are always resolved privately.

49. This is a typical example of a staker entering into a player/staker relationship without adequate research or preparation. Plaintiff was clearly not prepared for tournament variance. This lawsuit

is a transparent attempt by Plaintiff to shift the risk of loss from staker onto player. In pursuing this cause of action, Ms. Mitchnick either displays a lack of basic understanding of how poker staking works or entered into the Agreement with the intent to defraud Mr. Childs.

50. Many stakers do not appreciate the enormous amount of work, capital and patience it takes to support even a single player. When profits are not realized in the short term, stakers can become bitter and seek to exit the agreement. The situation in the instant case is quite typical; even when a player actually earns his profit split, a short-term downswing, leaving an imbalance in cash flows, can cause a staker to come unraveled.

51. It is not difficult to ascertain Ms. Mitchnick's net profits from the Backing Agreement. From reviewing the documents entitled "Attachment 10-1" and "Attachment 12-1" provided by Plaintiff in discovery, it is apparent that the Parties realized five (5) profit splits:

- a. On December 8, 2008, after Mr. Childs had a win at Harrah's Atlantic City, the parties took \$4,871 each in profit.
- b. On November 23, 2009, Mr. Childs cleared his online poker makeup figure and the parties took \$2,300 each in profit.
- c. On February 2, 2010, Mr. Childs had a win at Borgata, and the parties elected to take \$5,000 each in profit.
- d. On September 19, 2010, Mr. Childs had a win at Borgata. Ms. Mitchnick reports that a profit split ensued, but Mr. Childs informs me that this win did not clear makeup and that no profit was taken.
- e. On November 30, 2010, Mr. Childs had a very good result in an online tournament. Makeup was cleared and the parties took \$45,227 each in profit.

- f. On May 2, 2011, Mr. Childs was forwarded the balance of his closed Pokerstars account, which was \$5,777, and some unknown portion of that was kept by the parties as profit.

Per Defendant's admissions in his answers to Plaintiff's interrogatories, the parties' makeup figure on the date Plaintiff terminated the Backing Agreement was \$40,319. Not counting the profit split from May 2, 2011, the Plaintiff secured total profits of \$57,398. Subtracting the \$40,319 final makeup figure from the total profits reveals that Plaintiff's final net profit from the Backing Agreement was \$17,079 (plus any May 2, 2011 Pokerstars profit).

52. Ms. Mitchnick's theory is that she is entitled to compensation is based on supposed contractual transgressions by Mr. Childs. Unfortunately for Ms. Mitchnick, based on my thorough review of relevant material, Mr. Childs is not guilty of any actual malfeasance.

53. Plaintiff alleges that Mr. Childs failed to meet her demands with respect to the provision of schedules and the provision of tax forms. These issues are not material and are of extremely limited importance in the staking industry. Plaintiff further asserts that Mr. Childs was untimely with certain money transfers. The only time I have had issues with money transfers from players is when they were stealing from me, and Ms. Mitchnick has admitted that Mr. Childs is not a thief. Mitchnick Dep. at p. 120, line 1 through p. 121, line 9.

54. It appears that Ms. Mitchnick and Mr. Childs were in accord on these topics until sometime in 2011, lending further credence to my suspicion that Plaintiff is using these immaterial "violations" as an excuse to release Mr. Childs "for cause."

55. Although she refers to the agreement as a "venture capital" (Mitchnick Dep. at p. 22, lines 9-18), it seems that Ms. Mitchnick wishes to treat Mr. Childs as an employee. Regardless of what administrative tasks are discussed in the Parties' contract, the relationship was intended to be and remains a poker staking deal. Mr. Childs is a poker player in whose ability and effort Ms.

Mitchnick has invested. I view both the list of "Player Responsibilities" and "Termination by Backer" clauses in the Parties' contract as overreaching and violative of industry standards to the extent that they should not be enforced.

#### PLAINTIFF'S BAD FAITH CONDUCT

56. It is apparent that Plaintiff intends to treat Defendant's purported administrative "breaches" as an opportunity to "freeroll," or gain profits while taking no risk. From the start, it seems that Ms. Mitchnick intended to let Mr. Childs play with the goal of keeping the profits if he won and relying on immaterial contractual minutiae to allege misconduct if he lost.

57. First, as discussed above, the Parties' balance sheet shows Ms. Mitchnick achieved a net profit of over \$17,000. Ms. Mitchnick is now seeking a windfall.

58. Second, in light of Plaintiff's termination letter, when read in conjunction with the deposition transcripts, Ms. Mitchnick's treatment of Mr. Childs from February of 2012 until the date of termination violated of the basic concept of their business deal.

59. Again, the risk of loss in poker staking relationships is *always* borne by the staker and *never* by the player. The entire point of entering into the Backing Agreement from Mr. Childs' perspective was to reallocate the risk of loss onto Ms. Mitchnick. Once Ms. Mitchnick determined that she was going to terminate the relationship, she had a duty to inform Mr. Childs of this. From that point forward, Ms. Mitchnick believed she could not lose: Mr. Childs' wins were hers to profit from and his losses were recoverable by her as damages. The basis of the relationship was at that point destroyed, but Ms. Mitchnick selfishly concealed this fact from Mr. Childs.

60. Ms. Mitchnick's duplicity was both immoral and unfair. Mr. Childs continued performing under the Backing Agreement while unknowingly risking his own funds. The decision to continue the partnership did not unilaterally belong to Ms. Mitchnick. She was obligated to notify Mr.

Childs of the impending termination, which would have afforded him the opportunity to either strike out on his own or to locate a new backer.

61. The timing of Ms. Mitchnick's termination is not a coincidence: she withheld her intent while Mr. Childs played through the 2012 WSOP, the most lucrative meet of the year, then terminated the Backing Agreement shortly thereafter. The record indicates that Mr. Childs performed quite well in Las Vegas during the summer of 2012. Had he been playing with his own money or for a different backer, Mr. Childs would have pocketed a great deal of money instead of applying it to the Parties' makeup figure.

62. Plaintiff's statement that she elected to finance Mr. Childs' 2012 WSOP to "mitigate damages and not to put Mr. Childs in an untenable position" is ludicrous. Mitchnick Dep. at p. 78, line 25 through p. 79, line 3. This statement presumes that Defendant was going to win at the WSOP. Mr. Childs could easily have lost \$50,000 (or more) during the summer of 2012, thereby substantially increasing his obligation if Ms. Mitchnick's claims of material breach are believed. By continuing the relationship through the 2012 WSOP, Ms. Mitchnick was doing Mr. Childs no favors. She was taking a risk-free shot at a big score.

63. There are appropriate ways Ms. Mitchnick could have ended her relationship with Mr. Childs once she determined it was over. She could have simply walked away. Or, she could have "sold" Mr. Childs to another staker and recovered some portion of the final makeup figure from the new staker. Freerolling the 2012 WSOP, then dissolving the operation and demanding the entire accounting imbalance on the basis of some alleged clerical errors is wholly unreasonable. That Ms. Mitchnick disguised her intention to terminate for such a long period of time exacerbates the situation substantially.

64. It is my opinion that this lawsuit poses a real danger to the poker community. If Ms. Mitchnick were to prevail, the precedent set would render staked poker players employees-at-will who bear



responsibility for risks long understood to be borne by stakers. Plaintiff's attempt to recoup her staking losses after they accrued must be rejected.

  
ERIC HABER

Subscribed and sworn to  
before me this 1st  
day of November, 2013

  
NOTARY PUBLIC

ARLEEN CARR  
A Notary Public, State of New York  
No. 4675081  
Qualified in Nassau County  
My Commission Expires 6/30/2014