

## Wasn't the Gaming Law Business Supposed to Be Recession-Proof?

Lori Tripoli

AS WITH SEEMINGLY EVERY OTHER SECTOR last year, reports on the financial performance of the gambling business grew increasingly grim. Las Vegas' casino revenues were down.<sup>1</sup> Foxwoods Resort Casino in Connecticut announced the layoff of 700 workers.<sup>2</sup> Mohegan Sun stopped construction on a \$925 million expansion in eastern Connecticut.<sup>3</sup> The *Wall Street Journal* reported that Tropicana Entertainment LLC, Greektown Holdings LLC, and Legends Gaming filed for bankruptcy protection.<sup>4</sup> Bond prices for other casino companies dropped.<sup>5</sup> Bloomberg reported that Atlantic City casinos last September had experienced the biggest monthly decline in revenue since gambling began there in 1978, dropping 15 percent.<sup>6</sup>

Gamblers were staying home: "Players who have

incurred major losses from financial investments over the past 12 months may pass on the high-stakes tables for the next couple of years,"<sup>7</sup> predicted George Van Horn, senior analyst with IBISWorld, an industry and market research firm based in Los Angeles. "The current 'stay-at-home' mentality and low consumer confidence will hit casinos particularly hard, making some Las Vegas gambling establishments likely casualties," he said.<sup>8</sup>

One can't help but wonder what the fallout for legal counsel will be given the current state of the casino business. Should gaming lawyers be worried?

Yes and no, practitioners said. "We're still working," said Stephen Schrier, a partner at Blank Rome LLP who splits his time between the firm's Cherry Hill, N.J., and Philadelphia offices. Nevertheless,

---

Lori Tripoli is the managing editor of Gaming Law Review and Economics. She earned her J.D. from the Georgetown University Law Center. Based in Bedford, N.Y., she may be reached via e-mail at [ltripoli@liebertpub.com](mailto:ltripoli@liebertpub.com).

<sup>1</sup> Howard Stutz, *Timing and times are tough, but Wynn feeling confident*, LAS VEGAS REV.-J., Dec. 21, 2008, <<http://www.lvrj.com/business/36525149.html>>.

<sup>2</sup> Eric Gershon, *State's Casinos Aren't Recession-Proof After All*, HARTFORD COURANT, Oct. 5, 2008, <<http://www.courant.com/business/hc-casinos1005.artoct05.0,1907530.story>>.

<sup>3</sup> *Id.* See also, Adam Bowles, *Crisis on Wall Street Hits Home at Mohegan Sun Casino Project in CT*, AFL-CIO Building and Construction Trades Department, Sept. 24, 2008, <<http://www.buildingtrades.org/newsroom/?subSec=13&id=478>>.

<sup>4</sup> Several casino companies have defaulted on debt or have sought bankruptcy protection, tripped up by costly land acquisitions and ambitious new development. Kentucky-based Tropicana Entertainment LLC filed for Chapter 11 bankruptcy protection in May, defaulting on \$2.67 billion in bank and bond debt. Greektown Holdings LLC of Detroit and Illinois-based Legends Gaming, which has casinos in Louisiana and Mississippi, have also sought bankruptcy protection. Other companies are sweating under debt agreements that require them to maintain minimum levels of cash flow, even during an economic drought. The public-debt market, spooked by four casino bankruptcies this year, reflects the concerns. Bond prices for a half-

dozen casino companies, from Harrah's to small, Las Vegas-based Herbst Gaming, are trading at distressed levels, frequently below 60 cents on the dollar, on debt totaling about \$5.3 billion.

Tamara Audi & Jeffrey McCracken, *Debt-Laden Casinos Squeezed by Slowdown*, WALL ST. J., July 1, 2008, at A1, available at <[http://online.wsj.com/public/article\\_print/SB121487405694118001.html](http://online.wsj.com/public/article_print/SB121487405694118001.html)>.

<sup>5</sup> *Id.*

<sup>6</sup> Beth Jinks & Heather Burke, *Atlantic City Casino Revenue Posts Biggest Month Drop*, BLOOMBERG.COM, Oct. 10, 2008 (update 2), <[http://www.bloomberg.com/apps/news?pid=20601087&sid=a\\_ltlvc59N7E&refer=home](http://www.bloomberg.com/apps/news?pid=20601087&sid=a_ltlvc59N7E&refer=home)> (revenue for September was \$356 million). Revenue dropped in November, too, by a 7.8 percent decrease over the same month in 2007, to \$345.5 million. In December, revenue declined 18.7 percent to \$302 million, according to the New Jersey Casino Control Commission. Overall in 2008, casino revenue dropped 7.6 percent to \$4.55 billion, the New Jersey Casino Control Commission reported in early January. Press Release, N.J. Casino Control Commission, CCC Announces November Casino Revenue (Dec. 10, 2008), available at <[http://www.state.nj.us/casinos/home/news/pdf/2008/200811\\_revenue.pdf](http://www.state.nj.us/casinos/home/news/pdf/2008/200811_revenue.pdf)>.

<sup>7</sup> Press Release, IBISWorld, *The Chips Are Down: Hotel Casinos to Decline 2.9 Percent* (Jan. 12, 2009) (on file with author).

<sup>8</sup> *Id.*

Schrier, a former deputy attorney general for New Jersey's Gaming Enforcement Division, predicted more fallout to come for the casino business. "Gaming stocks are way down," he observed. Already, some \$10 billion of development projects are on hold in Atlantic City, and more are delayed in Las Vegas, said Nick Casiello Jr., the Atlantic City, N.J.-based chair of the gaming practice at Fox Rothschild LLP. With the gambling business performing this poorly, "there's going to be a lot of handwringing for the next three to four years," said Paul West, a member of McGlinchey Stafford PLLC in Baton Rouge, La. Law firms that aren't careful could see their accounts receivable languish. "A fundamental rule of business law is even if the demand from your clients stayed the same, if they don't have the ability to pay you, then you are in trouble," said Steven Geller, a member at Greenspoon Marder, P.A. in Ft. Lauderdale, Fla.. "That's what's happening here."

### A SATURATED MARKET?

To some, it's no wonder gamblers themselves aren't flocking to casinos: "People's 401Ks have taken a 40 percent hit," observed West. "Their cash flow is going down." At the same time, some say the gambling market has reached its saturation point. Unlike earlier downturns, gambling opportunities aren't just found in Las Vegas and Atlantic City anymore. Nowadays, "there's more competition between gaming properties and between jurisdictions," said Frank DiGiacomo, a partner in the Cherry Hill, N.J. office of WolfBlock.

Gaming venues in Atlantic City were competing with their neighbors in Pennsylvania, New York, and Connecticut. "Last year was a very challenging one for Atlantic City's casinos," N.J. Casino Control Commission Chair Linda Kassekert said.<sup>9</sup> "While the economic problems that face this nation took their toll on casinos in 2008, the industry was also hurt by growing competition in neighboring states and a partial ban on smoking in casinos."<sup>10</sup>

The current crisis is a bit worse than other setbacks. For all the devastation it wreaked, Hurricane Katrina yielded a boost to Louisiana's gaming industry. "The casinos were up 30 percent post-Katrina," West recalled. "There was nothing else to do down there, and temporary workers were being paid in cash," he noted. "Now there's no cash; nobody's much in the mood to go gamble."

The combination of fewer patrons and more gambling options is proving particularly troublesome during this economic crisis. "Although gambling in general has long been considered recession-proof, in many cases, we're approaching saturation," cautioned Geller. The existence of more local means of gambling make the business as a whole more susceptible to a slowdown, he said. The attendant tourism and hospitality industry is vulnerable as well.

"Gambling isn't what gambling used to be. Casinos would make money on gambling and give away other stuff—like the \$2.99 buffet," Geller said. That, of course, gave way to deluxe restaurants and top-notch entertainment options. "We all thought it was good when the industry was diversifying," Geller said. In a recession, though, people might still want to gamble but they'll be less inclined to dine at a five-star restaurant, he noted. And, given rising transportation costs, they may well choose a venue closer to home rather than a more remote destination. Indeed, some markets that rely on more local patrons actually performed well last year. For example, overall, Missouri's casinos saw a 4.9 percent increase in revenue for December 2008 over December 2007—although, individually, some casinos experienced a decrease for the month.<sup>11</sup> Revenue at casinos in Detroit was up last year—although only one casino there accounted for the increase; two others had lower revenues than in 2007.<sup>12</sup>

### LOOK TO REGULATORS

That said, even during a business slowdown, regulatory work for attorneys is unlikely to dry up, lawyers predicted. "Those lawyers that practice in this area practice largely in an administrative setting governed by regulations and policies set by gaming authorities," said Cory Aronovitz, founder

<sup>9</sup> Press Release, N.J. Casino Control Commission, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> MISSOURI GAMING COMMISSION, MARKET ANALYSIS, MONTH ENDED DECEMBER 31, 2008, <[http://www.mgc.dps.mo.gov/2009\\_fin/FY09\\_mkt\\_anal.htm](http://www.mgc.dps.mo.gov/2009_fin/FY09_mkt_anal.htm)> (last visited Jan. 19, 2009). See also, Jim Salter, *Mixed news for Missouri casinos*, ASSOCIATED PRESS STATE & LOCAL WIRE, Dec. 12, 2008.

<sup>12</sup> Nathan Hurst, *City casinos count on patrons to up the ante*, DETROIT NEWS, Jan. 19, 2009, <<http://detnews.com/apps/pbcs.dll/article?AID=/20090119/ENT08/901190325>>.

of Casino Law Group in Chicago and an adjunct professor of gaming law at the John Marshall Law School in Chicago. “Regardless of economic turmoil, you still have to comply.” The occasional underage gambling problem or regulatory violation will occur no matter how well the casino business is doing. “Licenses still need to be renewed; oftentimes, forms still need to be filed,” Aronovitz observed. Gaming lawyers can help with the bidding for new licenses and then counsel the winning applicant. “The typical regulatory work is still there,” Schrier said. So too are a steady stream of personal injury cases, he said.

If anything, rules might actually be revised during a time of economic turmoil. “If New Jersey starts to streamline its regulations, it may allow operators to compete more effectively with challenges they face in Pennsylvania and New York,” said DiGiacomo. “I hope the government views the current business climate and looks at regulations that are out of date and makes them more business friendly and efficient.” Companies, of course, will still rely on counsel to advise them about change.

While applications for any new gaming licenses might be fewer given the current credit market, regulators might find they can use the downtime to increase their oversight, lawyers said. “With fewer license applications to process, administrative agencies are more likely to focus on investigations,” Casiello explained. Cancellation, scaling back, or delay on new projects will also cause issues with regulators, West said. Boyd Gaming put its Echelon project on the shelf in Las Vegas, he observed. The company last summer announced that construction of the project at the former site of Stardust would be halted.<sup>13</sup> Others, no doubt, will follow suit. “The current economic climate is unprecedented in recent years,” said Keith Smith, president and chief executive officer of Boyd Gaming at the time the decision to postpone construction of Echelon was announced.<sup>14</sup> “This decision is not a reflection of the merits of the project, nor the accomplishments of our professional development team, but rather the challenges we, and many other businesses, face in today’s uncertain business climate,”<sup>15</sup> Smith said.

That tenuous business climate also means that clients have less ability to pay. “If you have 37 forms to fill out when times are good, you have the same 37 forms when times are bad. From that perspective, work should remain the same,” Geller observed. The problem is that clients that have to cut

back on everything are also going to have to reduce the legal fees they pay. “I do a lot of work for developers,” Geller said. “Their needs are greater now, but they just don’t have any way to pay lawyers.”

### MAKE THE MOST OF BAD TIMES

Of course, some aspects of a lawyer’s practice may be more lucrative others during a downturn. “They always say lawyers make money on the way up and on the way down,” West said. “Real estate lawyers won’t be doing much work, but finance groups [will],” he predicted of the recession. “There are other areas that are favorably impacted by the slowdown,” Casiello said. Labor and employment law practices are likely to experience a surge. If a casino company or gambling related vendor is going to lay off people, “it won’t do it without talking to labor lawyers first,” he explained. “For strict gaming lawyers, the pickup will be working on bankruptcies,” West said.

Gaming lawyers might also see an uptick in litigation as the economy worsens and vendors are compelled to pursue their own clients who can’t pay their invoices. Increased debt collection problems are likely on the horizon, Geller said. Lawyers will also have to help clients craft exit strategies as development slows to a standstill. Gaming law practitioners are likely to get some work seeking extensions for projects from gaming boards and in developing work-out arrangements with lenders, Schrier observed. “For the first time, underwriters are having to exercise their default remedies,” added DiGiacomo. As financing of large-scale projects falls through,<sup>16</sup> lawyers will no doubt be called on to help finesse new deals. “Some loans will have to

<sup>13</sup> *Money troubles: Boyd shelves Echelon in Las Vegas for at least one year; no delay at CityCenter*, GLOBAL GAMING BUSINESS, Sept. 2008, <[http://www.ggbmagazine.com/articles/Money\\_troubles](http://www.ggbmagazine.com/articles/Money_troubles)>.

<sup>14</sup> Press Release, Boyd Gaming Corp., Boyd Gaming Reports Second Quarter Results (Aug. 1, 2008), <<http://phx.corporate-ir.net/phoenix.zhtml?c=95703&p=irol-newsArticle&ID=1182479&highlight=Echelon>>.

<sup>15</sup> *Id.*

<sup>16</sup> See, e.g., John Delano, *Garage Topped Off At Rivers Casino On North Shore*, KDKA, Jan. 16, 2009, <<http://kdka.com/local/Rivers.Casino.top.2.910783.html>>; Liz Benston, *Las Vegas Sands: A big rise, a big fall*, LAS VEGAS SUN, Jan. 18, 2009, <<http://www.lasvegassun.com/news/2009/jan/18/las-vegas-sands-big-rise-big-fall/>>.

be refinanced,” West said. Contractors will have to be appeased as well.

The legislative initiatives of the new Obama administration may also bode well for gaming lawyers. “No doubt, Democrats will pass more worker-friendly legislation,” observed Joseph Kelly, co-editor-in-chief of *Gaming Law Review and Economics* and a professor at SUNY College Buffalo in New York. More worker protection, of course, typically translates into more lawsuits against employers.

### SEEK OPPORTUNITIES

While the outlook for some casino companies may be bleak, well-positioned ones might well find investment opportunities in this changed economic climate—and they’ll need legal help getting the deals done. “Private equity and pension funds still have to invest their money,” West observed. Clients with cash or lines of credit are going to find some buying opportunities, he said. MGM Mirage is selling Treasure Island<sup>17</sup> in Las Vegas, Casiello pointed out. He predicted more such sales by end of the year. Work for lawyers will be generated as existing companies see buying opportunities and others sell assets to strengthen their balance sheets.

Some jurisdictions might even opt to expand their gaming options. “Communities will be looking to generate more money for coffers,” Aronovitz said. “Other jurisdictions are expanding, such as Maryland,”<sup>18</sup> Casiello observed. “Delaware may expand into sports betting,” he added.<sup>19</sup> “The recession could benefit additional states such as Ohio, Alabama, and Arkansas,” Aronovitz said. “Other jurisdictions, especially those that have horseracing and have seen the success of racinos” will look into expansion, Aronovitz predicted. “The big equity players have a ton of cash,” he said. They just need to find the right opportunity.

International work remains a possibility for gaming lawyers. “Usually a casino company going into a new jurisdiction will rely on existing counsel and have local counsel,” Casiello said. Local counsel are necessary because of their knowledge of local gov-

ernment, but opportunities for U.S.-based lawyers remain. “We represent a lot of manufacturers, not just in the Northeast but on international due diligence issues,” DiGiacomo said. “Growth is continuing in eastern Europe and in Latin America,” he reported. U.S.-based law firms also have opportunities to represent jurisdictions themselves that are regulating gaming, Casiello added. Foreign governments generally are interested in hiring a U.S. law firm that has experience with gaming legislation, he noted.

### ACCOMMODATE CHANGING CLIENT NEEDS

Undoubtedly, some clients will be experiencing challenges during this downturn. Lawyers who represented those clients during a good economy might still be interested in retaining those clients now—in anticipation of better times ahead. Doing so may take a bit of flexibility—and sympathy. “Remind clients how indispensable they are,” Geller suggested. “Be amenable to restructuring fees,” he said—even if a firm’s senior partners resist the notion. “Lawyers need to be spending more time with their clients and not charging them,” Geller said.

Some practitioners have been in the business long enough to remember the 1987 stock market crash and the economic slowdown that followed. “I don’t think it was really that different,” Casiello recalled. “In ’87, we saw more restructurings occurring—just as we are now,” he observed. Most importantly, “we survived,” he said.

<sup>17</sup> Associated Press, *MGM Mirage to sell Treasure Island for \$500 million*, L.A. Times, Dec. 16, 2008, <<http://www.latimes.com/business/la-fi-mirage16-2008dec16,0,3807847.story>>.

<sup>18</sup> See, e.g., Behnam Dayanim, “Shocked” to Find Gambling on the Shores of Maryland: Anatomy of the Controversy and Response, 12 GAMING L. REV. & ECON. 452–57 (2008).

<sup>19</sup> See, e.g., Alan Brody, *Free State slots face attack from eastern flank: Delaware ponders sports betting to counter gambling in surrounding states*, GAZETTE.NET (Jan. 1, 2009), <[http://www.gazette.net/stories/01012009/poline133531\\_32477.shtml](http://www.gazette.net/stories/01012009/poline133531_32477.shtml)>.