Playing Craps in the Bankruptcy Sandbox:

Gaming Industry Restructuring Issues

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1. The Parties

Most Gaming company reorganizations involve some or all of the following parties:

- Equity – owners of the debtors
- Debtors
- Management of the casino
- Employees of the casino
- Secured lenders (First Mortgage on PP&E, boat, etc.)
- Secured lenders (Equipment)
- Unsecured lenders (bonds or mezzanine debt)
- Owners of trademark and license agreements
- Equipment lessors (typically slots)
- Mechanics liens (typically from construction of the property)
- Trade vendors (food, beverage, uniforms, etc.)
- Personal injury claimants
- State Gaming Regulators
- The Bankruptcy Court

2. **Forum:** On an immediate basis, the parties have choices with respect to the resolution process – specifically, whether to file an involuntary or voluntary Chapter 11, seek foreclosure, or negotiate out-of-court with an interim forbearance in place.

   - Chapter 11

     - Unless already agreed to as a pre-negotiated or pre-packaged bankruptcy, Chapter 11 automatically gives the debtors significant time to develop a plan of reorganization or sale of the Company.

     - In a Chapter 11, the U.S. Trustee will appoint an official committee of unsecured creditors (which would not likely include bondholders who typically have collateral in casino credits).

     - Adequate protection payments to bondholders may be controversial in Chapter 11.

   - Foreclosure

     - Most distressed companies would file for Chapter 11 before a foreclosure takes place.

     - There may be other practical limitations from a licensing perspective with respect to the success of a foreclosure strategy.

   - Interim Forbearance: Keep the Company out of Chapter 11 for some period.

     - Agree on interim management of the property.

     - Attempt an out-of-court settlement with full access to information by bondholders and their advisors.

   Regardless of the forum choice, local gaming regulators will want to be updated on the progress of restructuring negotiations.

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3. Management of the property

- To proceed under forbearance, bondholders need to understand and generally agree with the Company's business plan going forward.
- Management needs to be credible with the bondholders.
- Bondholders need a refined view of short and long-term prospects for EBITDA at the property including a detailed understanding of management-controlled issues and local market conditions.
- Management should have economic incentives relating to EBITDA improvement.
- Economic and business issues of management services agreement may require renegotiation.

4. Existing equity

- Role as equity owner and/or manager of the property;
- Role as a potential bidder to acquire a restructured property;
- Trademark and licensing issues; and
- Tax and other issues.

5. Licensing Issues

- Licensing requirements limit the most traditional restructuring solutions, i.e. bondholders taking all the equity in the Company;
- Changes of control and/or management will also have to filter through the gaming regulatory process; and
- Regulators want to be kept up-to-date on the status of restructurings, but rarely take positions in open court.

The Balance Sheet Challenge – Why Gaming Cases are Different

The traditional balance sheet restructuring mechanic of converting debt into equity to deleverage the balance sheet can conflict with the desires of large creditors to avoid licensing.

- Concentrated bond ownership implies concentrated ownership of post-reorganization equity.

  Example:
  In a full debt-for-equity conversion case, for a theoretical 25% bondholder would likely receive 25% of the newco equity.
  - Assumes trade recovery paid in cash
  - Assumes no recovery to old equity
  - Assumes no other claims, per analysis below

		Equity Ownership %	
Claim	$ Claim	Before	After
Trade	$10	0%	0%
Bonds	$200	0%	100%
Equity	-	100%	0%
Theoretical Bondholder	$50	0%	25%

- In many gaming cases bond ownership becomes very concentrated, especially in credits backed by a single gaming property.
  - 3-5 institutional holders often hold over 2/3 of the bonds by the time of confirmation.
  - Estimated holdings by the largest creditors often exceed 30% of the bond issue.
  - In some cases the largest single creditors owns over half the bond issue.
  - **High ownership in post-reorganization equity may trigger licensing requirements.**

- Licensing requirements generally apply after approximately 10% equity ownership
  - Specific levels vary by state and particularities of the situation.
  - Some states have license triggers as low as 5%.

6. **Sale process as a method to determine enterprise value:** The sale process typically provides a reference point for enterprise value, around which the debtor reorganizes. To the extent there is a process to sell the Company or find a new equity owner, there are several significant issues to address:

   - Role and compensation of the Company's sale advisors (especially to the extent the purchase price is less than the secured claim amount).
   - Protocol for reporting progress on the search process to bondholders and their advisors.
   - Timing on when to pursue a sale – sooner or later?
   - What is the best format to promote maximum competition among potential buyers/plan sponsors?
   - Role of existing equity as a potential stalking horse bidder.
   - Issues relating to reserve price/stand-alone plan.
   - Implementation via a plan of reorganization or a Section 363 sale.
   - Protocol for reporting to the regulators.

7. **Allocation of value amongst various creditor groups**

   - Once enterprise value has been determined, distributions under a plan are dependent on the portion of claims that are secured, unsecured or under-secured.
   - Many casino credits have separate collateral pools for property and FF&E.
   - Collateral values and intercreditor dynamics are a complex part of consensual resolution.
   - Many "new build" casino bankruptcies also have mechanics' lien claims.

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- Generally, distressed investors will seek to avoid licensing once they understand the disclosure and due diligence involved in the investigative process.
  - Licensing investigation requires significant personal history disclosure.
  - Some jurisdictions require review of several years of personal checks.
  - Legal history of family members may also be a topic for investigation.
  - Investigation may require disclosure from individuals beyond those individuals working as creditors on the casino bankruptcy.
  - The depth of the investigation (i.e. how many individuals are required to make personal disclosure) can be an issue for large institutions.
  - Investors in funds may also be required to provide disclosure, depending on the circumstances.

- The balance sheet challenge in gaming cases is deleveraging the capital structure without creating unwanted licensing requirements for large creditors whose support is needed to confirm a plan of reorganization.
  - In highly concentrated bond ownership situations, a licensable party must receive the reorganized equity, or, alternatively, newco ownership concentration must be below license thresholds.
  - The gaming company's balance sheet usually needs to be deleveraged to meet feasibility requirements for a plan of reorganization.
  - Troubled gaming properties often propose capital expenditure plans to improve EBITDA performance.
  - Equity is a standard for of recovery in many plans of reorganization.
  - Sale price of the gaming property may reflect poor performance or local market conditions.

- Tension created by this dynamic can be exacerbated by entrepreneurial insiders proposing new value plans.
  - Many gaming cases start with the idea of an insider new value plan
  - Existing equity may control vital assets such as trademarks.

- Bondholders have several alternatives to avoid licensing.
  - Bondholders may team up with strategic partners.
  - Many states have institutional investor exemptions, which can raise the licensing trigger points.
  - Bondholders can sell the equity down to a level below licensing thresholds.
  - Structure around the problems and the specific numbers in the case.
  - Pursue a sale of the entire company.

Restructuring Alternatives

1. Section 363 sale

Sale of the company's assets pursuant to Section 363 of the bankruptcy code

Example – Resort at Summerlin

Pros

- Can be quicker than plan process in delivering new management and business plan
- Reduces uncertainty and can prevent further erosion in enterprise value
- Definable risks to buyer
- Specific rules for process through court approved sale and overbid procedures

Cons

- Recoveries capped
- May be poor timing to mark business to market
- Does not resolve collateral valuation and other distribution arguments
- Stock deal (as opposed to asset sale) may be required in jurisdictions with limited licensing
- Limited opportunity for financial engineering
- May be subject to financing risk

Issues

- Insider bidders
- Credit bid valuations
- Licensing risk of buyer
- Less creditor input
- Tax attributes

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2. Workout Plan

Plan of reorganization with large creditors taking back securities as a meaningful part of their distribution

Examples – Aladdin, Hollywood Casino-Shreveport, Greate Bay I, Trump Hotels & Casino Resorts

Pros

- Opportunity to maximize value
- Usually not subject to financing risks
- Can accommodate most licensing regulatory issues
- Capital structure can be creatively designed
- Settles distribution, collateral value and other issues
- Specific rules are plan confirmation requirements in the bankruptcy code

Cons

- May result in excessive leverage
- May result in moral hazard risk
- Complex to get multi-party consensus
- Confirmation risks to "buyer"

Issues

- Insider bidders
- Value of securities
- Feasibility
- Licensing risk of plan sponsor
- Voting by creditors to confirm plan
- Tax attributes
- Process to identify new manager and implement usually negotiated between debtor and large creditor constituency

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3. Cash Consideration – Sale Plan

Plan of reorganization provides specific cash recoveries to all creditors, i.e. no securities or other consideration

Examples – Windsor Woodmont - Blackhawk

Pros

- Valuation of consideration not an issue
- Accommodates most licensing regulatory issues
- Feasibility not an issue
- Specific rules are plan confirmation requirements

Cons

- Limits creditor recoveries
- Complex to set multi-party consensus
- Does not readily resolve distribution issues

Issues

- Tax attributes
- Insider bidders
- Licensing risk of buyer
- Voting by creditors to confirm plan

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Consensual Workout Process Overview

Overview:	Casino Company and Bondholders agree on process to identify and document a transaction to resolve ownership, management and balance sheet of Casino Company. After documentation, Casino Company will implement the transaction, probably through a Chapter 11 filing in [jurisdiction] and subject to regulatory approval. The Chapter 11 plan will include an overbid mechanism.
Protocol:	Debtor will establish a Special Committee of independent directors to oversee and execute the search and negotiation process. Directors who are officers of Casino Company will not have access to the Confidential Transaction Information. Bondholders (who are not otherwise bidders) will have full access to Confidential Transaction Information.
Sponsor Identification:	Debtor and Noteholder financial advisers shall agree on pre-approved candidates.
Financing:	Subject to approval of business plan and management, bondholders may offer financing (i.e. take back new notes, etc.). Possible term sheet items to be offered may include: • Cash paid or retained for capital budget • New first mortgage debt amount and terms • Preferred or common stock amount and terms • Economics of management contract Bondholders shall also consider all cash offers.

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Playing Craps in the Bankruptcy Sandbox

Gaming Restructuring Valuation Issues

Trump Casinos: A Case Study

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Overview

- As is the case with virtually every restructuring transaction, business valuations play a key role in the restructuring of companies in the gaming industry.
- Valuation methodologies utilized in the valuation of gaming companies are generally consistent with standard valuation methodologies.
  - Market Multiple Methodology
  - Precedent Transaction Methodology
  - Discounted Cash Flow Methodology
- Gaming multiples have recently been at cyclical highs.

	EV / LTM EBITDA at																				
	2000				2001				2002				2003				2004				5-Year
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Average
Ameristar (ASCA)	5.7x	6.0x	5.9x	13.8x	9.8x	9.1x	6.8x	7.7x	8.0x	8.4x	7.3x	6.4x	5.7x	6.5x	6.5x	6.1x	7.0x	6.9x	6.2x	7.6x	7.4x
Aztar (AZR)	5.4x	6.5x	6.1x	5.5x	4.9x	5.2x	5.0x	5.7x	7.1x	6.6x	5.0x	5.3x	5.1x	5.6x	5.9x	7.2x	7.6x	8.8x	8.6x	10.1x	6.4x
Boyd (BYD)	5.0x	5.2x	5.0x	5.5x	5.7x	6.6x	6.1x	6.2x	8.2x	7.5x	8.2x	7.0x	6.6x	8.1x	7.8x	8.3x	10.0x	10.8x	13.1x	16.6x	7.9x
Isle of Capri (ISLE)	5.4x	6.9x	6.4x	5.5x	5.5x	5.2x	5.1x	6.0x	6.2x	6.3x	5.5x	5.2x	5.0x	5.7x	5.8x	6.0x	6.4x	5.8x	6.1x	7.3x	5.9x
Pinnacle (PNK)	5.6x	5.8x	6.0x	5.4x	5.9x	6.4x	7.0x	6.9x	7.9x	8.2x	6.6x	6.2x	5.5x	7.4x	7.7x	7.6x	9.5x	9.0x	9.1x	11.2x	7.3x
Riviera (RIV)	5.6x	5.1x	5.0x	5.1x	5.4x	5.2x	5.1x	5.3x	5.8x	6.4x	6.4x	6.4x	6.0x	6.6x	6.5x	7.6x	7.3x	6.9x	7.6x	9.7x	6.3x
Mean	**5.4x**	**5.9x**	**5.7x**	**6.8x**	**6.2x**	**6.3x**	**5.9x**	**6.3x**	**7.2x**	**7.2x**	**6.5x**	**6.1x**	**5.6x**	**6.6x**	**6.7x**	**7.1x**	**8.0x**	**8.0x**	**8.5x**	**10.4x**	
Median	**5.5x**	**5.9x**	**5.9x**	**5.5x**	**5.6x**	**5.8x**	**5.6x**	**6.1x**	**7.5x**	**7.1x**	**6.5x**	**6.3x**	**5.6x**	**6.5x**	**6.5x**	**7.4x**	**7.5x**	**7.8x**	**8.1x**	**9.9x**	

Overview

- A number of qualitative factors must be evaluated in connection with the valuation of a gaming company:
  - Importance/value of brand name license (success of the Borgata in Atlantic City calls importance into question)
    - *Borgata: "A slum or poor district in Italy"*
  - Location of casinos (i.e., located in a "drive-in" market such as Atlantic City, or a "fly-in" market such as Las Vegas)
  - Competitiveness of the individual casinos (often measured by fair share: gaming revenue share as a percentage of gaming position share)
  - Size (number of properties, number of rooms, number of gaming positions)
    - Number of properties, rooms and gaming positions

Overview

- Qualitative factors, continued:
  - Diversity (number of markets served)
  - Operational characteristics
    - Slot/table mix
    - Gaming positions per room
    - Promotional costs / Gross gaming revenue
    - Win per gaming position per day
    - Win per hotel room per day
- Particular characteristics of a company's corporate / capital structure can impact value of creditors' collateral once enterprise value has been determined.
  - Operating service agreements
  - Intellectual property licenses
  - Property leases

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Trump Hotels & Casino Resorts

- Houlihan Lokey served as the financial advisor to the informal committee of holders of $1.3 billion of Trump Atlantic City ("TAC") First Mortgage Notes as part of the Company's efforts to consummate a restructuring transaction. TAC was one of two operating subsidiaries of Trump Hotels & Casino Resorts ("THCR"), now known as Trump Entertainment Resorts).
- Four casinos comprised THCR:
  - Trump Taj Mahal (Atlantic City)
  - Trump Plaza (Atlantic City)
  - Trump Marina (Atlantic City)
  - Trump Indiana (Riverboat casino in Gary, Indiana)
- The Company had begun to experience financial distress, as a result of burdensome debt service requirements and declining operating performance.
  - The condition of the Company's properties was declining, as the Company did not have the capital required to maintain its properties at an ideal level after paying cash interest expenses.
  - 2003 was a particularly difficult year (poor weather, Iraq war, opening of the Borgata)

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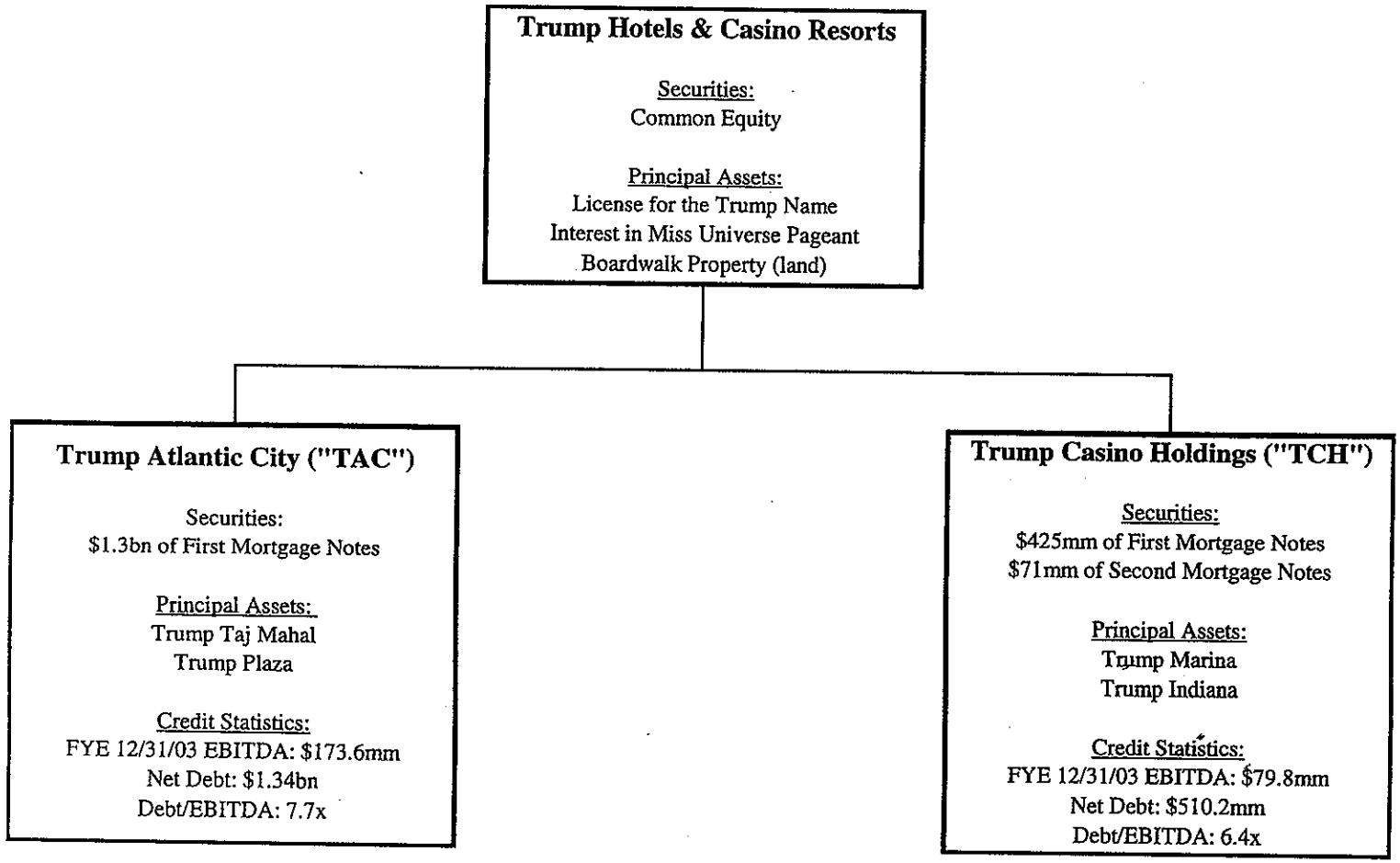
Trump Capital Structure (Simplified)



Involved Parties & Key Issues

- Negotiations over the restructuring of the over-leveraged Company were complex, involving many interested parties:
  - The Company
  - Public shareholders
  - Donald Trump (as CEO, chairman of the board, shareholder, bondholder, licensor and potential new money investor)
  - TAC Noteholders
  - TCH Noteholders
- A number of key issues drove the negotiations:
  - Allocation of value between TAC and TCH
    - Both entities were over-levered, but TCH was generally believed to be less over-levered, and potentially had equity value
  - Allocation of value between the equity and the notes (equity value at TCH would flow to the equity, not to TAC Noteholders)

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Valuation Issues

- As a result of the capital structure of the Company, with any equity value at either TAC or TCH flowing to the equity (since the TAC and TCH notes were not cross-collateralized), valuations of the individual subsidiaries were key to the negotiations.
  - As you would expect, different parties had significantly different views of the appropriate valuation.
    - Equity holders argued that there was value at TCH to flow to equity
    - TAC holders argued that there was no equity value at TCH, and that all of the equity of the reorganized entity should be distributed to TAC & TCH holders. TAC holders also supported a low valuation as a result of their status as investors by virtue of their conversion of debt into equity.
- Significant issues impacting the valuation included:
  - Determining appropriate projections to utilize (status quo vs. investment case)
    - TAC holders argued that it was appropriate to use the status quo valuations, as the investment case projections could only ever be realized if the proposed transaction was implemented.

Valuation Issues

- Valuation issues (continued):
  - Condition of the properties
    - Significant deferred capital expenditure requirements to make the properties competitive
  - A/P rationalization
    - Working capital imbalance resulting from stretching of payables
  - Threat of expansion or legalization of gaming in Maryland, Delaware and Pennsylvania
  - Tax liability in Indiana, which at the time could have resulted in a $15 to $20mm lump sum payment requirement
  - Potential cost of re-branding the properties
  - Impact of splitting TAC and TCH (viability and impact on valuation)

Trump: Restructuring Plan

- While experts reports were filed by Lazard (on behalf of the Company), Houlihan Lokey (on behalf of the TAC holders) and CIBC (on behalf of the public shareholders), a settlement was ultimately reached to avoid costly litigation.
- The negotiated transaction resulted in the following:
  - TAC Noteholders exchanged their $1.3 billion of notes for a combination of new notes, new equity and cash (93.2% nominal recovery, 99.1% based on current equity trading prices)
  - TCH 1st Mortgage Noteholders exchanged their $425 million of notes for a combination of new notes, cash and new equity (107% nominal recovery)
  - TCH 2nd Mortgage Noteholders exchanged their $71 million of notes for new notes and new equity (95.5% nominal recovery)
  - Equity Holders received $17.5 million in cash, 0.05% of the new equity, warrants for approximately 8% of the new equity (at Plan value) and a parcel of land, subsequently sold for $25 million.
  - Donald Trump received approximately 26% of the new equity in return for a $55 million new investment and the contribution of a new license, along with certain concessions relating to his ownership of TCH 2nd Mortgage Notes.

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Trump: Restructuring Plan

- Post-restructuring, the Company had a simplified capital structure, with one $1.25 billion issue of notes (at a lower interest rate) secured by a combined collateral pool.
- With the reduced leverage and new cash infusion, the Company was also able to secure a $500 million credit facility to allow it to make the necessary capital expenditures and pursue various expansion opportunities.

Trump Entertainment Resorts

Securities:
Common Equity
$1.25 billion of New Notes
$500 million exit financing facility

Principal Assets:
License for the Trump Name
Interest in Miss Universe Pageant
Trump Taj Mahal
Trump Plaza
Trump Marina
Trump Indiana

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APPENDIX

Hollywood Casino Shreveport
Plan Excerpt

Bankruptcy Trends in the Gaming Field

Excerpt from Hollywood Casino Shreveport Plan of Reorganization

The below excerpt from the HCS plan of reorganization provides for the withholding of equity distributions under the plan from claim holders found by Gaming Authorities to be unsuitable to be owners of the reorganized debtor.....

6.5 Issuance of Equity Interests and New Securities

. . . .

(ii) On the Effective Date, Noteholder Newco shall issue and distribute, in accordance with this Plan, the Noteholder Newco Interests; provided, however, that, if a holder of an Allowed Claim entitled to receive Noteholder Newco Interests under this Plan would, due to the fact that the holder ("Prospective NNI Holder") by reason of owning an indirect economic interest in Reorganized HCS of five percent or more, be required, under applicable gaming laws of the State of Louisiana, to undergo a suitability investigation and determination from the LGCB or its agent, and such Prospective NNI Holder either (a) refuses to undergo the necessary application process for such suitability approval or (b) after submitting to such process, is determined by the LGCB or its agent to be unsuitable to hold the Noteholder Newco Interests, then, in that event, Noteholder Newco would hold the Noteholder Newco Interest of that Allowed Claim and (x) such Prospective NNI Holder shall only receive distributions of Noteholder Newco Interests which the LGCB or its agent allows, (y) the balance of Noteholder Newco Interests to which Prospective NNI Holder would otherwise be entitled ("Excess Noteholder Newco Interests") shall be marketed for sale by Noteholder Newco, as trustee for Prospective NNI Holder, and (z) the proceeds of any such sale shall be distributed, in whole, to Prospective NNI Holder as soon as such sale can be facilitated. Noteholder Newco shall exercise reasonable efforts to obtain the best and highest price available for the Excess Noteholder Newco Interests. In addition, in the event that the LGCB or its agent objects to the possible suitability of

any Prospective NNI Holder, Noteholder Newco Interests will only be distributed to such Prospective NNI Holder upon a formal finding of suitability by the LGCB or its agent. If the LGCB or its agent issues a formal finding that a Prospective NNI Holder lacks suitability, then the process for the sale of that Prospective NNI Holder's Noteholder Newco Interests will be as set forth in (x), (y) and (z) above. Notwithstanding the foregoing, no Noteholder Newco Interests shall be distributed to any Prospective NNI Holder without the authorization of the LGCB or its agent Louisiana State Police, provided, however, that this sentence shall not prevent or delay the distribution of cash provided under Section 4.12(ii) from Noteholder Newco to Black Diamond.

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Business Reorganization Committee

Bankruptcy Trends in the Gaming Field

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Business Reorganization Committee Agenda

"Emerging Issues in Hospitality, Entertainment Venue and Gaming Bankruptcies."--Rudy J. Cerone, Douglas Draper and Linda F. Cantor II.

Gaming has exploded exponentially in the last decade. Forty-eight states now permit some form of legalized gambling. This has also resulted in an increased number of bankruptcy filings.

Such cases involve issues that differ from a "typical" chapter 11 case due to the highly regulated nature of the debtor and the possible implications of the state's police powers, the unique emphasis on cash, and the one-dimensional approach to valuation. The following review identifies some of the issues presented by bankruptcy filings of gaming operations. [FN1]

I. FIRST DAY ORDERS

It is typical in a large bankruptcy case for the debtor to obtain numerous "first day orders," including such common bankruptcy orders as authorization for payment of payroll and related employee expenses, emergency use of cash collateral, and appointment of debtor's bankruptcy counsel. The most unique "first day order" applicable to a casino bankruptcy is an order authorizing the payment of gaming chips and tokens in the ordinary course of business.

Casino gaming chips and tokens represent liabilities of the casino. (While these terms are used interchangeably, chips relate to table games and tokens to coin-operated machines.) Gamblers exchange money for chips, which represent an obligation of the casino to repay. Occasionally, a patron will "walk away" from the gaming table with such tokens (chips) in his pocket. The right to exchange his chips for money constitutes, at worst, a general unsecured claim and, at best, a priority consumer claim up to the amount of $1,800.00 per individual. [FN2] However, bankruptcy judges inevitably issue a "first day order" permitting the casino to pay such gaming chips upon demand. As a technical matter, the Code would require that the casino filing bankruptcy stop issuing and honoring "prepetition chips" as of the moment of the bankruptcy, issue only new "postpetition chips" from that moment on, and require players possessing "prepetition chips" to file their claims in the bankruptcy and await distribution through a plan of reorganization. As a practical matter, it is universally recognized that such a move would sound the death knell for the casino. Judge Cosetti, discussing "first day orders," noted that "[t]he purpose of first day orders is to benefit creditors, by maximizing reorganization values. Many times they are in conflict with other provisions of the Bankruptcy Code. Such orders carry a heavy burden." [FN3]

The statutory basis for the entry of such an order is found in the "catchall" provision of ß 105(a), which permits the bankruptcy court to issue any order necessary to carry out the provisions of the Bankruptcy Code. Furthermore, the Doctrine of Necessity, which is an outgrowth of the Necessity of Payment rule first recognized in

conjunction with railroad cases dating to at least 1882, also would support such a ruling although no published decisions exist in this context. It should be noted, however, that while the Doctrine of Necessity has become more widely recognized, it has not been universally accepted. [FN4] Even courts authorizing payments pursuant to the Doctrine of Necessity find that those particular payments are required for the debtor to continue operations and, generally, limit the payment to a particular creditor receiving payment rather than a specific type of debt. This is not the case in honoring casino tokens. Because the gaming chips are indistinguishable from each other, all debt evidenced by these tokens are afforded the same treatment, whether they be held by individual casino patrons or other casino properties which have accepted these chips in exchange for chips to be used at their facility. There may be no "necessity" for allowing competitors to redeem these chips for full face value; however, the distinction between the types of creditors benefitted apparently has not been drawn by the courts.

Similarly, the court usually will approve the honoring of sports book wagers and deposits and progressive games liabilities as necessary to casino operations. Other "first day orders" which are routinely granted include an order permitting the debtor to retain prepetition charge card accounts, and to honor tour and travel commitments and other prepetition room deposits. All of these "first day orders" typically are granted to permit the debtor to continue uninterrupted operations, and justified as being necessary in a casino bankruptcy.

II. OVERVIEW OF REGULATORY ISSUES

Gaming regulation has its genesis in various declarations of public policy which are concerned with, among other things: (1) the prevention of unsavory or unsuitable persons from having a direct or indirect involvement with gaming at any time or in any capacity; (2) the establishment and maintenance of responsible accounting practices and procedures; (3) the maintenance of effective controls over the financial practices of a licensee, including the establishment of minimum procedures for internal fiscal affairs and the safeguarding of assets and revenues, providing reliable record keeping and requiring the filing of periodic reports with Gaming Authorities; (4) the prevention of cheating and fraudulent practices; and (5) the creation of a source of state and local revenues through taxation and licensing fees. These statements of public policy are embodied in statutes, regulations and supervisory procedures implemented at the state and local level by a variety of overlapping regulatory bodies (the "Gaming Authorities"). Regulation and licensing affects gaming properties (hereinafter, "Casinos") [FN5] and their owners and operators on several levels, many of which have a profound impact in the course of a Casino bankruptcy. [FN6]

A. Licensing and Regulation of the Casino

Only corporations organized under the laws of the forum state may hold a gaming license. [FN7] Accordingly, gaming enterprises are operated by domestic corporations, that in turn are often wholly-owned by out-of-state (and often publicly-traded) corporations. Because parent corporations routinely guarantee the debts of subsidiaries, Casino bankruptcies frequently involve two or more corporate entities. [FN8] Regulation of a Casino affects both the operating corporation (the "licensed" company) and the holding corporation (the "registered" company) and occurs in at least three different forms: (1) licensing and registration, (2) financial reporting, and (3) gaming license fees and taxes.

1. Licensing and Registration

The mechanics of licensing vary by locality, but generally require detailed investigations of a licensee's business activities and financial status. Although a parent corporation of a licensed corporate subsidiary is not required to obtain a license, it is required to be "registered", which in turn requires a parent corporation to obtain a "finding of suitability" from local Gaming Authorities. The investigations and requirements necessary to obtain a finding of suitability are quite similar to those necessary for licensing.

While the licensing and registration processes are outside the purview of the bankruptcy court, they nonetheless will affect many aspects of a Casino reorganization. For instance, no person may become a stockholder of, or receive any percentage of profits from, a gaming licensee without first obtaining approvals from Gaming Authorities. A registered corporation may not make a public offering of its securities without the prior approval of

Gaming Authorities if the securities or the proceeds therefrom are intended to be used to construct, acquire or finance gaming facilities or to retire or extend obligations incurred for such purposes. [FN9]

2. Reporting Requirements

Regulation of both licensed and registered corporations involves stringent reporting requirements. A registered corporation generally is required to submit, upon application and on a periodic basis, detailed financial and operating reports to Gaming Authorities. It may also be required to furnish any other information requested by Gaming Authorities. A registered company is required to maintain a current stock ledger in the gaming state which may be examined by Gaming Authorities at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to Gaming Authorities. A failure to make such disclosure may be grounds for finding the record holder unsuitable. The registered company also is required to render maximum assistance in determining the identity of the beneficial owner. In Nevada, Gaming Authorities even have the power to require the registered company's stock certificates to bear a legend indicating that the securities are subject to the Nevada [Gaming] Act. [FN10]

In addition to these requirements, the licensed corporation must report and obtain approval from Gaming Authorities of substantially all loans, leases, sales of securities and similar financing transactions. [FN11] Failure to comply with reporting requirements by either the registered or licensed corporation could result in a corporation's license being limited, conditioned, suspended or revoked subject to compliance with certain statutory and regulatory procedures. Moreover, at the discretion of Gaming Authorities, the registered and licensed corporations, as well as the individuals involved, could be subject to substantial fines for each separate violation.

3. Gaming License Fees and Taxes

License fees and taxes, computed in various ways dependent upon the type of gaming activity involved, are payable to the state and to the counties and cities in which the licensee's respective operations are conducted. Depending upon the particular fee or tax involved, these fees and taxes are payable either daily, monthly, quarterly or annually and are based upon either: (1) a percentage of gross revenues received; (2) the number of gaming devices operated; or (3) the number of table games operated. [FN12] A casino entertainment tax is also paid by casino operators where entertainment is furnished in connection with the selling of food or refreshments. Licensees that hold a license as an operator of a slot route or a manufacturer's or distributor's license also pay certain fees and taxes to the state.

B. Licensing and Regulation of Key Personnel

Gaming Authorities may investigate any individual who has a material relationship to, or material involvement with, any registered company or its licensed subsidiary in order to determine whether such individual is suitable or should be licensed as a business associate of a gaming licensee. [FN13] Officers, directors and certain key employees of the licensed subsidiary must file applications with Gaming Authorities and may be required to be licensed or found suitable. Officers, directors and key employees of the registered company who are actively and directly involved in the gaming activities of the licensed subsidiary may be required to be licensed or found suitable by Gaming Authorities. Gaming Authorities may deny an application for licensing for any cause deemed reasonable. A finding of suitability is comparable to licensing, and both require the submission of detailed personal and financial information followed by a thorough investigation. An applicant for licensing or a finding of suitability must pay all of the costs of the investigation. Changes in licensed positions with the registered company or its licensed subsidiary must be reported to Gaming Authorities. In addition to its authority to deny an application for a finding of suitability or licensure, Gaming Authorities also have jurisdiction to disapprove a change in a corporate position.

If Gaming Authorities were to find an officer, director or key employee unsuitable for licensing or unsuitable to continue having a relationship with the registered company or its licensed subsidiary, the companies involved would be required to sever all relationships with such person. Additionally, Gaming Authorities may require the registered company or its licensed subsidiary to terminate the employment of any person who refuses to file appropriate applications. Determinations of suitability or questions pertaining to licensing are not subject to judicial review in Nevada.

C. Licensing and Regulation of Casino Ownership

1. Equity Securities

Regulation of registered companies may extend beyond key personnel. The beneficial holder of the registered company's voting securities, regardless of the number of shares owned, may be required to file an application, be investigated and have its suitability as a beneficial holder of the registered company's voting securities determined if Gaming Authorities have reason to believe that such ownership would otherwise be inconsistent with the declared policies of the State. [FN14] The applicant must pay all costs of the investigation incurred by Gaming Authorities in conducting such an investigation. Regulation may not be limited to State Gaming Authorities. In Nevada, the Clark County Liquor Gaming Licensing Board and the City of Las Vegas have both taken the position that they have the authority to approve all persons owning or controlling the stock of any corporation controlling a gaming licensee within their jurisdictions. [FN15]

2. Debt Securities

Gaming Authorities may, in their sole discretion, require the holder of any debt security of a registered corporation to file applications, be investigated and be found suitable to own the debt security of the registered corporation. If Gaming Authorities determine that a holder is unsuitable to own such security, the registered corporation can be sanctioned, including the loss of its approvals, if without the prior approval of Gaming Authorities, it: (1) pays to the unsuitable person any dividend, interest or any distribution whatsoever; (2) recognizes any voting right by such unsuitable person in connection with such securities; (3) pays the unsuitable person remuneration in any form; or (4) makes any payment to the unsuitable person by way of principal, redemption, conversion, exchange, liquidation or similar transaction. [FN16]

III. BANKRUPTCY OPERATING ISSUES COMMON TO GAMING CASES

Anumber of issues that occur in other types of bankruptcy cases are common to Casino cases (although the comprehensive regulations imposed by Gaming Authorities often add interesting additional elements and complications).

A. Hotel Issues

Many Casinos have hotels connected with their operation. Accordingly, issues raised in ordinary hotel cases frequently arise in Casino cases. For years, there were conflicting cases regarding security interests in hotel revenues. In 1994, however, 11 U.S.C. Section 552 was amended to clarify the split the of authority concerning the continuation of a lien in hotel rent:

> (2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

11 U.S.C. ß 552(b)(2).

While the amendments to Section 552 may resolve a number of issues in ordinary hotel cases, this section does not address the fact that in Casino cases, hotel revenues often are intermingled with Casino cash. To further complicate matters, Casinos may not be able to segregate hotel revenues because the hotel portion of the Casino (and often its restaurants and non-gaming attractions) may be operated intentionally at a loss to attract customers.

B. Cash Collateral Issues

Although the question of hotel rents has been resolved, no cases yet have addressed the manner in which a creditor may perfect a lien in Casino cash. By its very nature, a Casino generates substantial amounts of cash on a daily basis. The amount of cash constantly fluctuates, and unlike ordinary bank accounts, cash is located throughout the casino. Substantial cash may be held in the Casino "cage", but an even greater amount may reside within gaming devices and floor banks and on tables. Free hotel rooms, casino "comps", markers, chips, tokens and customer deposits also figure in the mix.

IV. BANKRUPTCY OPERATING ISSUES UNIQUE TO GAMING CASES

A. Agreements re Electronic Gaming Devices

In Nevada, gaming devices are common in locations other than casinos. For instance, video poker machines, and to a lesser extent slot machines, are frequently located in bars, restaurants, convenience stores, and grocery stores. [FN17] Gaming machines in locations other than casinos frequently are owned by third parties and placed under contract. These contracts fall into two types: space lease and participation. Under a space lease, a licensed slot operator actually leases space from the owner (or lessee) of a bar, for instance, for a flat sum per week or month. The slot operator retains 100% of the gaming revenue. Under a participation, the slot operator and the debtor share in the revenues. In a participation, the owner or lessee must be licensed, while in the space lease situation, only the slot operator is licensed.

Both space leases and participation agreements generally are treated as executory contracts, subject to assumption, rejection or assignment in accordance with Section 365 of the Code. Gaming law, however, may profoundly affect the timing of an assignment and limit the persons or entities to whom an assignment may be made. For instance, in a participation agreement, a debtor owner or lessee has the ability to change slot operators very quickly. Any slot route operator may provide machines. In a space lease, however, the slot route operator has the license and consequently to bring in a new slot operator would require a new license to be issued for the location. This can take several months unless Gaming Authorities are willing to handle an application on an expedited "emergency basis." Nevada law provides for an emergency approval if the debtor's business is to be managed by a receiver, trustee or assignee.

B. Security Interests in Casino Revenues and Gaming Devices

1. Casino Cash

While Section 552 may resolve certain issues regarding perfection of a security interest in hotel rents, there is no settled law respecting perfection of liens in other Casino cash.

Section 552, as amended, is consistent with earlier decisions holding that an assignment of rents is perfected upon recordation of a deed of trust without further action. *See e.g.* In re Scottsdale Medical Pavilion, 159 B.R. 295, 302, 24 Bankr. Ct. Dec. (CRR) 1218, Bankr. L. Rep. (CCH) ∂ 75504 (Bankr. 9th Cir. 1993), aff'd, 52 F.3d 244, Bankr. L. Rep. (CCH) ∂ 76466 (9th Cir. 1995). Excepting rents, however, courts have held that a security interest in cash may be perfected only by possession. *See, e.g.*, In re Ventura-Louise Properties, 490 F.2d 1141 (9th Cir. 1974); Matter of Charles D. Stapp of Nevada, Inc., 641 F.2d 737, 8 Bankr. Ct. Dec. (CRR) 397 (9th Cir. 1981). This is, of course, consistent with Section 9-304 of the Uniform Commercial Code, which provides a security interest in cash is perfected by possession. A security interest in proceeds, however, may be created by filing under Section 9-305.

Taking possession of cash pursuant to a writ of execution or garnishment is not affected by licensing, though it may have an effect if cash is depleted below minimum levels. If it is the intention to control the cash of the Casino with operations continuing, the appointment of a receiver is required. However, gaming law provides that an individual may not exercise control over a licensed company without first obtaining the prior approval of Gaming Authorities. A receiver must obtain a license and undergo the same screening process required of the Casino's key personnel.

No decision respecting perfection of a security interest in Casino cash has ever been published. [FN18] These matters are seldom, if ever, litigated. The reason is that there is level of comfort in uncertainty, and in almost all cases, the Casino and hotel is worth more in an operating mode than with the Casino closed. Creditors who arguably have security interests in Casino cash generally object to use of cash collateral. Rather than risking having the bankruptcy court make an all-or-nothing ruling which may result in the closing of the Casino and hotel, creditors and debtors-in-possession usually stipulate to use of cash collateral and adequate protection.

2. Gaming Equipment

Distribution, sales and use of gaming devices is closely regulated. In Nevada, one is required to have a distributors license in order to sell, use or distribute a gaming devices either for use or play both inside and outside Nevada. Violation of this provision is a gross misdemeanor. Simple possession of one of these devices, improperly distributed, can be a misdemeanor. Obviously, these restrictions would greatly complicate efforts to liquidate assets or enforce security agreements.

Nevada law, however, provides that in cases of bankruptcy or foreclosure of a lien by a bank or other person holding a security interest for which gaming devices are security in whole or in part for the lien, Gaming Authorities may authorize the disposition of the gaming devices without requiring a distributors license. Otherwise, the enforcement of a security interest in gaming equipment, or even a sale in the ordinary course, may result in a third party or creditor owning (and perhaps criminally possessing) a warehouse full of slots without any ability to sell them or move them out-of-state. [FN19]

3. Riverboats

Riverboat gaming operations also implicate federal law governing the perfection of a security interest in a vessel. Section 31321 of the Ship Mortgage Act [FN20] requires that a conveyance, mortgage or related instrument, including any part of a documented vessel or a vessel for which the application for documentation is filed, be filed with the Secretary of Transportation in order to be valid against any persons except the grantor or a person having actual notice of the security instrument. The statute further provides that each conveyance, mortgage or related instrument that is filed in substantial compliance with ß 31321 is valid against any person from the time it is filed with the Secretary. A preferred ship mortgage attaches to the vessel and all the equipment and appurtenances on board owned by the vessel's owner. [FN21]

In the event that the vessel is not a documented vessel as defined at 46 U.S.C. ß 12101, *et seq.*, it is necessary to look to the applicable state law where the vessel is titled to determine the perfection of the security interest in the vessel and the equipment and appurtenances on board. Under state law, perfection is governed by the Uniform Commercial Code. [FN22]

Several cases have found that Mississippi dockside Casinos do not constitute "vessels" for purposes of Federal admiralty and maritime matters. [FN23] In the case of Mississippi Casinos, ordinary barges are converted into floating dockside Casinos. The Casinos are not designed, intended, nor capable of being used as a means of water transportation. The Casinos are not equipped with standard marine equipment but, instead, are permanently moored and positioned in non-navigable waterways. Because the Casinos were not "vessels," the courts have found that the documentation filed by a lender, purportedly to perfect a ship mortgage under Federal law, was invalid and, therefore, the lender did not possess a valid first ranking security interest enforceable in the bankruptcy case. [FN24] Conversely, if the Casino is required to-sail in order to conduct gaming operations, [FN25] then it undoubtedly would be a "vessel" under Federal law, and security interests therein would be governed by the Ship Mortgage Act. [FN26]

V. FEDERALISM CONCERNS

A. Tensions During Pendency of the Case

The automatic stay provided by Section 362 expressly excludes the ability of a governmental unit to enforce its

"police or regulatory powers, other than obtaining or enforcing a money judgment." Conversely, Perez v. Campbell, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971) and 11 U.S.C. ß 525(a) prohibit discrimination against a debtor in possession. Section 525 provides, in pertinent part:

> (a) . . . a governmental unit may not deny, revoke, suspend, or refuse to renew *a license, permit, charter, franchise, or other similar grant to*, condition such a grant to, discriminate with respect to such a grant against . . . a person that is or has been a debtor under this title or a bankrupt or a debtor under the bankruptcy act . . . *solely because* such bankrupt or debtor has been a debtor under this title or a bankrupt or debtor under the bankruptcy act. . .

11 U.S.C. 525(a) [emphasis added].

The Judiciary Committee, in its report to the House of Representatives, stated that ß 525 prohibits actions by governmental organizations that can seriously affect the debtor's livelihood or fresh start, and that Section 525's enumeration of the various forms of discrimination is not an exhaustive list. *In re Rath Packing Co.*, 35 B.R. at 618, *quoting* H.R. Rep. No. 525, 95th Cong., 1st Sess. 367 (1977), U.S.C.C.A.N. pp. 5787, 6323. Certainly, gaming licensure will seriously affect a Casino debtor's livelihood and opportunity for a fresh start.

There appears to be only one reported case addressing the interplay between State gaming law and Section 525. In In re Elsinore Shore Associates, 66 B.R. 723, 15 Bankr. Ct. Dec. (CRR) 420, 15 Collier Bankr. Cas. 2d (MB) 1128, Bankr. L. Rep. (CCH) ô 71553 (Bankr. D.N.J. 1986), the bankruptcy court permanently enjoined the New Jersey Gaming Commission from attempting to enforce a statute that allowed for the renewal of a gaming license to be conditioned upon payment of all outstanding state fees and taxes. The bankruptcy court rejected the commission's argument that Section 525 was not designed to confer a benefit upon debtors and that by enforcing the statute (which would require payment of pre-petition taxes and fees), the commission was treating the debtor in the same manner as all other gaming licensees. The court emphasized that the New Jersey statute created a clear conflict between the state regulatory scheme and the priorities contained in the Bankruptcy Code. The court did note, however, that Section 525 would not prohibit a governmental unit from requiring a debtor to prove future financial responsibility. [FN27]

B. Tensions in the Plan Process

A plan of reorganization that contemplates cancellation of existing stock and reissuance of new stock may result in a change of control that will require the prior approval of Gaming Authorities. Sales of gaming equipment requires prior approval. Assumption and assignment of a agreement relating to gaming devices may require approval of Gaming Authorities. The granting of any registrations, amendment of orders of registration, findings of suitability, approvals or licenses to be sought in connection with a plan of reorganization are discretionary with Gaming Authorities. The burden of demonstrating the suitability or desirability of certain business transactions is at all times upon the applicant. Any licensing or approval process requires the submission of detailed financial, business and personal information, as well as the completion of a thorough investigation. The time and manner in which each application is investigated and considered is entirely within the discretion of Gaming Authorities. Additionally, Gaming Authorities have absolute authority to limit, restrict or condition any application or request for withdrawal filed in any manner deemed reasonable by Gaming Authorities. These matters all may affect the plan and confirmation process, taking certain critical decisions and the timing of the effective date of a confirmed plan out of the hands of a Casino debtor or bankruptcy court and placing them in the hands of Gaming Authorities.

Tensions may exist, as well, among the various branches of State government and the bankruptcy actors, especially in emerging jurisdictions. In Jordan v. La. Gaming Control Board, 712 So. 2d 959 (La. App. 1st Cir. 1988), aff'd in part, rev'd in part, 712 So. 2d 74 (La. 1998), the Louisiana courts were asked to referee a dispute between certain legislators, on the one hand, and the Gaming Control Board and the Governor (supported by the Casino debtor and its creditors), on the other hand, over who in the State government had the authority to approve and execute the amended New Orleans Casino operating contract which had been negotiated as part of the confirmed plan in In re: Harrah's Jazz Company, Case No. 95-14545 (Bankr. E.D. La. 1995).

C. Sovereign Immunity

1. Seminole Tribe

In the landmark case of Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252, 34 Collier Bankr. Cas. 2d (MB) 1199, 42 Env't. Rep. Cas. (BNA) 1289, 67 Empl. Prac. Dec. (CCH) ∂ 43952 (1996), the Supreme Court invalidated a Congressional waiver of sovereign immunity under the Indian Commerce Clause. Although *Seminole* did not address bankruptcy law, commentators immediately questioned the decision's affect on the Bankruptcy Code. Indeed, a number of courts, including three U.S. Circuit Courts of Appeal, already have relied upon *Seminole* in holding that Section 106 of the Code is unconstitutional. *See, e.g.*, In re Elias, 218 B.R. 80, 32 Bankr. Ct. Dec. (CRR) 2, 39 Collier Bankr. Cas. 2d (MB) 782 (Bankr. 9th Cir. 1998), decision aff'd, 216 F.3d 1082 (9th Cir. 2000); In re Sacred Heart Hosp. of Norristown, 133 F.3d 237, 245, 31 Bankr. Ct. Dec. (CRR) 1246, 32 Collier Bankr. Cas. 2d (MB) 238, Bankr. L. Rep. (CCH) ∂ 77604 (3d Cir. 1998), as amended, (Feb. 19, 1998); Matter of Estate of Fernandez, 123 F.3d 241, 31 Bankr. Ct. Dec. (CRR) 601, 38 Collier Bankr. Cas. 2d (MB) 1249, Bankr. L. Rep. (CCH) ∂ 77514 (5th Cir. 1997), amended on denial of reh'g, 130 F.3d 1138 (5th Cir. 1997); In re Creative Goldsmiths of Washington, D.C., Inc., 119 F.3d 1140, 1145, 31 Bankr. Ct. Dec. (CRR) 218, 38 Collier Bankr. Cas. 2d (MB) 574, Bankr. L. Rep. (CCH) ∂ 77457 (4th Cir. 1997).

Section 106 is a Congressional waiver of state sovereign immunity with respect to virtually every substantive provision of the Bankruptcy Code (60 sections in all). Section 106 grants bankruptcy courts the power to enter money judgments against states and to enforce *any* order, process or judgment against *any* governmental unit under applicable non-bankruptcy law. In light of *Seminole*, the power of Gaming Authorities and the jurisdiction of the bankruptcy courts appear to be on a collision course. There has already been a near miss.

In In re National Cattle Congress, Inc., 179 B.R. 588, 33 Collier Bankr. Cas. 2d (MB) 401, Bankr. L. Rep. (CCH) ∂ 76455 (Bankr. N.D. Iowa 1995), a debtor-in-possession who operated a pari-mutual dog racing facility moved the bankruptcy court to declare that the Iowa Racing & Gaming Commission's attempt to revoke their gaming license was a violation of the automatic stay. The commission argued that revocation of the gaming license was an exercise of their regulatory power, and thus exempt from the automatic stay under Section 362(b)(4). The bankruptcy court concluded that the commission's resolution to revoke the license was an exempt exercise of its regulatory powers, but that revocation of the license itself was an impermissible attempt to exercise control over property of the estate. *Id.* at 597-98. The District Court affirmed the decision. In In re National Cattle Congress, Inc., 91 F.3d 1113 (8th Cir. 1996), the Eighth Circuit Court of Appeals noted the recent *Seminole* decision:

> While this case was pending on appeal, the Supreme Court decided *[Seminole]. Seminole* holds that the Indian Commerce Clause, U.S. Const. art. I, ß 8. cl. 3, does not grant Congress the power to abrogate a State's immunity under the Eleventh Amendment. Seminole expressly overrules Pennsylvania v. Union Gas Co., 491 U.S. 1, 109 S. Ct. 2273, 105 L. Ed. 2d 1, 29 Env't. Rep. Cas. (BNA) 1657, 19 Envtl. L. Rep. 20974 (1989) (overruled by, Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252, 34 Collier Bankr. Cas. 2d (MB) 1199, 42 Env't. Rep. Cas. (BNA) 1289, 67 Empl. Prac. Dec. (CCH) ∂ 43952 (1996)), which held that the Interstate Commerce Clause, U.S. Const. art. I, ß 8, cl. 3, granted Congress the power to abrogate Eleventh Amendment immunity. The Commission suggests that an order enforcing the automatic stay against the Commission violates the State of Iowa's Eleventh Amendment immunity as construed in *Seminole*. . . . Accordingly, without reaching the merits of the bankruptcy and district court orders under review, and without expressing a view as to the Eleventh Amendment issue, we remand this case to the district court with instructions to remand to the bankruptcy court for further consideration in light of *Seminole*.

Id. at 1114.

Although the case was remanded, no other decisions in *In re National Cattle Congress, Inc.* on this issue were ever published. No further appeals followed. Inevitably, however, bankruptcy courts will be called on to resolve the conflicts between the automatic stay and the regulatory power of Gaming Authorities. Although not raised in *In re National Cattle Congress, Inc.*, gaming law and Section 525 of the Bankruptcy Code also present obvious federalism concerns.

The tension between state gaming law and bankruptcy law is sometimes apparent when a claimant argues that a state court judgment is entitled to res judicata effect in a subsequent bankruptcy. For instance, in In re Leroux, 216 B.R. 459 (Bankr. D. Mass. 1997), two casinos had obtained pre-petition default judgments in New Jersey based upon gambling debts. In his Chapter 11 case, the debtor had objected to the claims, arguing that the gambling debts were void as against the public policy of the State of Massachusetts. The court rejected the argument, noting that 28

U.S.C. 1738 provides that judicial proceedings in other states are entitled to "the same full faith and credit in every court within the United States and its Territories and Possessions. . ." After determining that New Jersey law applied to the gambling debts, and that the default judgments were appropriately obtained, the court overruled the objections, notwithstanding Massachusetts public policy. One can only speculate as to the result, however, where a gambling debt has not been reduced to judgment or where there are issues respecting the choice of law and a claims proceeding results. [FN28]

2. *Ex Parte Young* and Other Exceptions to *Seminole* [FN29]

An exception to State sovereign immunity against suits in Federal court is set forth in Ex parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), and its progency. *Young* permits Federal court suits against individual state officers, in their capacities as such, for prospective injunctive or declaratory relief. Thus, in certain instances, State Gaming Authorities may be sued in bankruptcy court to further the purposes of reorganization under the Bankruptcy Code.

Additionally, States may waive their sovereign immunity defense, either expressly or through conduct. An explicit waiver can occur if the State participates in a Federal program that conditions its receipt of Federal funds upon a waiver of sovereign immunity. [FN30] Indeed, Congress easily can overrule the effect of *Seminole* on bankruptcy cases simply by conditioning the States' receipt of sought-after Federal funds on their waiver of sovereign immunity in bankruptcy cases, [FN31] much as the Feds now coerce States to adopt certain laws to receive highway funds. Submission by the State of a proof of claim in a bankruptcy case also will effect a waiver of sovereign immunity, not only on the merits of the claim, but also for related dischargeability, automatic stay, plan confirmation and other issues. [FN32]

Finally, certain bankruptcy matters do not implicate a State's sovereign immunity because they are not "suits" against the State within the meaning of the Eleventh Amendment. A discharge order clears all dischargeable debts, including those owed to a State, because the order is based on the bankruptcy court's jurisdiction over the debtor and his estate, and not over the State. [FN33] Similarly, a bankruptcy court proceeding for determination of the scope of the automatic stay and whether the stay precluded a state administrative proceeding against the debtors and their officers, although it affected the State's rights, was not an Eleventh Amendment "suit" against the State. [FN34]

3. Indian Tribes Are Sovereigns, Too

The *National Cattle Congress* [FN35] case, once again, raised a sovereign immunity issue, only this time it dealt with the Sac and Fox Tribe of the Mississippi in Iowa, and not the State of Iowa. The debtor's chapter 11 plan proposed to extinguish a real estate mortgage lien held by the Tribe in exchange for a restrictive covenant prohibiting gambling on the property. The bankruptcy court upheld the Tribe's assertion of sovereign immunity. Thus, it appears that the same issues raised above vis-a-vis States are applicable to attempts to drag an Indian tribe into a bankruptcy case against its will.

VI. CLAIMS PROCEEDINGS AND AVOIDANCE ACTIONS

As discussed above, gaming law may have a profound impact upon the administration of Casino's bankruptcy estate. Bankruptcy courts are far more likely, however, to encounter gaming issues in the course of claims proceedings and avoidance actions. If there is one obvious trend involving gaming and bankruptcy law, it is that the continued prevalence of litigation to determine the dischargeability of debts and to recover transfers relating to gambling. [FN36] The cases generally fall into three categories: (1) Casino v. Gambler; (2) Cash advancing credit card company v. Gambler; and (3) Chapter 7 Trustee v. Casino.

A. Casino v. Gambler

No clear winner has emerged in the seemingly endless battles between Casinos and their patrons regarding the dischargeability of gambling debts. The results in these cases appear to depend more upon how the courts view the parties and gambling, rather than upon any particular legal principal. The quintessential casino-friendly non-dischargeability case is presented by In re Poskanzer, 143 B.R. 991 (Bankr. D.N.J. 1992). This case involved a

debtor who in the 1970's and 80's had "amassed a personal fortune" developing hundreds of properties throughout the northeastern part of the United States. The debtor was "experienced businessman", and in fact had been "celebrated as an icon in the real estate business in New Jersey". Moreover, the debtor had an "established history of satisfying his gambling debts". Less than one month prior to his Chapter 7 filing, the debtor had obtained hundreds of thousands of dollars in credit from casinos in Las Vegas and Atlantic City based upon a bank account with assets "grossly inadequate to meet his newly incurred casino debts." Given these facts, it was a foregone conclusion that the gambling debts would be deemed non-dischargeable.

A more interesting case is presented by In re Anderson, 181 B.R. 943, 33 Collier Bankr. Cas. 2d (MB) 967, Bankr. L. Rep. (CCH) ∂ 76539, 28 U.C.C. Rep. Serv. 2d 606 (Bankr. D. Minn. 1995). In that case, a casino had accepted dozens of bad checks (59 to be precise) totaling more than $11,000.00 over roughly a two-week period. In response to the debtor's argument that he had hoped to make good his losses, the court stated: "Rather than responding prudently, however, he continued to play, to pass checks, and to play again, on the increasingly-fantastical hope that his luck would turn and that he could beat the outstanding checks to his bank with a deposit of winnings." The court deemed the entire principal debt non-dischargeable, as well as interest, attorneys' fees and even civil penalties. Interestingly, in its twelve-page decision, the court devoted only one brief paragraph to its discussion of the casino's reliance upon the debtor's implied representations regarding the validity of his checks, stating: "The Plaintiff also has proved up the forth element, reliance, though it did so more by invoking the universal understanding of transactions by check in our consumer-based economy than it did by producing direct evidence." Conspicuously absent was any discussion regarding the reasonableness of the casino in accepting nearly 60 checks in two weeks from a patron less than two months past his eighteenth birthday.

Other cases emphasize that the these types of cases often turn on the court's perception of the debtor. In In re Vianese, 195 B.R. 572 (Bankr. N.D.N.Y. 1995), the bankruptcy court awarded attorneys' fees to a debtor couple after it dismissed a complaint by a casino to have a $16,500.00 gambling debt determined non-dischargeable. The court noted that the debtors were an assistant county superintendent of business and a sales manager for a local real estate company and stated that the check returned to the casino for non-sufficient funds "should be viewed as 'an excess similar to other excesses associated with living beyond one's means.'"

In In re Hall, 228 B.R. 483 (Bankr. M.D. Ga. 1998), the bankruptcy court rejected a casino's argument that the debtor's gambling debts were non-dischargeable because they were for "luxury goods and services" Although the court earlier noted that the debtor had essentially engaged in a marker-kiting scheme, using money obtained from one casino upon the execution of a marker to pay debts to other casinos, the court held that the gambling was not a "luxury". The debtor had lost hundreds of thousands of dollars over the past 15 years and his recent gambling activities reflected "a spirit of desperation, not pleasure." The court also rejected the casino' argument that the debt had been procured through actual fraud. Although the debtor had signed the subject marker less than ten days before filing bankruptcy and had as his sole source of income a business he described as a "sinking ship," the court found that the debtor "honestly, though unreasonably, believed that he would one day get lucky and be able to satisfy his debts." In stark contrast to *In re Anderson*, the court further concluded that the casino had taken insufficient steps to examine the debtor's credit worthiness (requesting a six-month average balance on the debtor's bank account) and thus failed to demonstrate that it reasonably relied upon the debtor's representations respecting his credit worthiness. [FN37]

B. Cash-Advancing Credit Card Company v. Gambler

Markers are the not the only means by which gamblers incur debt. Cash advances from credit card companies are far more common, and like casinos, credit card companies frequently seek to have such debts determined to be non-dischargeable. The lengthiest opinion on this subject in at least the past two years (49 pages) comes from the Middle District of Louisiana. In re Melancon, 223 B.R. 300 (Bankr. M.D. La. 1998) involved a couple who had obtained cash advances of nearly $8,000.00 and borrowed $5,000.00 purportedly to purchase an automobile (they instead gave the loan proceeds to their son and daughter-in-law to purchase a new car). When applying for the $5,000.00, the debtors not only misrepresented the purpose of the loan, but also failed to mention a second mortgage on their home and more than $25,000.00 in credit card debt, most of which was for cash advances to support one debtor's gambling habit. In deeming the debt non-dischargeable, the court confronted a common defense in such cases: the subjective hope a debtor's luck would turn. The court's comments are memorable:

Debtors in the credit card/gambling cases have, about unanimously, offered the following: "I believed I was going to pay the money back because I believed, albeit unreasonably (debtor's lawyer intelligent enough to throw the bait, hoping the judge involved will bite at the intelligent-sounding objective/subjective discussion--how does it go? "We find the debtor, however, unreasonably, believed she was going to win at gambling. Therefore, because of the subjective intention we are after, . . . the debtor intended to pay back.") . . . Of course, only the most self-destructive person would go a-gambling hoping or believing they were going to lose. Hello? Don't all people (except this distressed few) who gamble believe they are going to win, or, at least break even? Or, put another way, will any bankruptcy judge ever hear the following testimony: "I knew there was no way I was going to win, and I do not believe myself to be overly self-destructive; I simply enjoyed going to the casino (video poker establishment, racetrack, gambling boat, etc.) because they, during certain hours, give you free drinks and food, and I like the flashing bright lights--besides, I feel important when the valet parks my car." Answer. No. We will never see it. So where do the courts, who stop asking themselves what to do when the debtor testifies that he believed he was going to win, go wrong?

It appears to us that they go wrong by failing to consider the following line of inquiry. Q. Had you ever won before (over what you borrowed or came with)? A. Yes. Q. What did you do with your money? A. (1) put it back up to try to double it; (2) took it home and saved it until next time; (3) counted it, set it aside, and gambled only a small portion of it while applying the remainder of my winnings to the creditor from whom I borrowed the money. If the answer is (1), the follow-up inquiry is "Did you win more, keep what you had won, lose what you had won, or lose more than you had won?" A. (1) I won more (then we are back to the aforementioned questions); A. (2) I kept what I had won (again, back to the aforementioned questions); A. (3) I lost what I had won (which generates the aforementioned questions regarding the use to which he was to put the amount that constituted the break-even money); A. (4) I lost more than I had won (which generates the follow-up--where did you get the money that you had to bet with after your losses exceeded your winnings?). All of this is a long way of suggesting that before a court believes a debtor who claims to have had a plan to win and use the winnings to pay back the amount borrowed, shouldn't there be evidence--if the debtor ever had won (and what debtor hasn't)--that winnings had been used before? In other words, don't we know that we do not have to believe what witnesses say they believed and hoped just because they say so?

The outcome in *In re Melancon* is largely a result of the court's position that a credit card company has no duty to investigate the credit worthiness of a customer in order to reasonably rely upon an implied representation that the debtor will repay the debt. Other courts, however, have held in favor of the gambler for precisely this reason. In In re Reynolds, 221 B.R. 828 (Bankr. N.D. Ala. 1998), for example, the court held that the debtor's reckless disregard respecting their ability to repay cash advances used for gambling established the requisite intent for the debt to be determined non-dischargeable as having been procured by false pretenses. The credit card company's complete lack of investigation, however, rendered any reliance on its part unreasonable. Judgment was entered for the debtors.

Other courts continue to accept the "subjective intent to repay" test so criticized in *In re Melancon*. Their reasoning, however, may be no less compelling (and involve far less moralizing). In In re Scocozzo, 220 B.R. 850 (Bankr. M.D. Pa. 1998), the court held that the credit card company had failed to establish that a cash advance had been procured by false pretenses, false representation or actual fraud, simply by proving that the only source of repayment was gambling winnings. According to the court, "[The debtor's] gambling created a large and needless financial obligation. Rarely, however, are the bills of debtors limited to expenditures for necessities. The fact remains that gambling has been largely legitimized and currently represents no greater a lack of frugality than many other examples of contemporary lifestyle. If Congress wishes to shut the door on the discharge-ability of debts of this nature, they are quite able to articulate the language to accomplish that objective." [FN38]

C. Chapter 7 Trustee v. Casino

One would imagine that question of whether a debt to a casino is avoidable as a fraudulent transfer would have been resolved years ago. Nonetheless, Chapter 7 trustees continue to pursue actions against casinos seeking to recover gambling losses, arguing that the debtor did not receive reasonably equivalent value for the debt incurred. For instance, in In re Armstrong, 231 B.R. 739 (Bankr. E.D. Ark. 1999), judgment vacated, 259 B.R. 338 (E.D. Ark. 2001), a Chapter 7 trustee sued Harrah's casino in Shreveport, Louisiana, seeking to recover $377,000.00 in gambling losses over the one-year period prior to the debtor's bankruptcy. The trustee argued (and the bankruptcy court found) that the debtor knew that the debts he incurred to Harrah's would "hinder, delay or defraud" numerous

other creditors, including victims of a Ponzi scheme. The trustee did not prevail, however, on either his actual or constructive fraudulent conveyance claims. The actual fraudulent conveyance claim failed because the casino successfully demonstrated that it gave value for the transfer and had acted in good faith. The constructive fraudulent conveyance claim failed because the court concluded that by permitting a wager (regardless of the likelihood of a positive outcome), the casino had provided reasonably equivalent value. On appeal, however, the District Court found that the casino did not act in good faith when it extended credit to the debtor, and thus was not protected by the "good faith transferee for value" defense to the trustee's fraudulent transfer claim; the casino did not engage in a diligent inquiry regarding the debtor's assets, liabilities, and income before initially extending credit and subsequently increasing the debtor's credit limit, and the casino became aware of circumstances placing it on inquiry notice of the debtor's potential insolvency within the relatively short span of time after approving the debtor's credit application.

The Harrah's casino in Robinsonville, Mississippi, fared no better against the Armstrong trustee than did its cousin in the Bayou State, albeit losing on a different theory. In In re Armstrong, 231 B.R. 723 (Bankr. E. D. Ark. 1999), aff'd, 2001 WL 332920 (E. D. Ark., Mar. 30, 2001), the debtor signed 26 markers totalling $50,000, which his bank honored approximately thirty days later. The debtor was placed into involuntary bankruptcy within the 90-day preference period. The trustee sued Harrah's to recover the payments made on the markers as preferential. The bankruptcy court agreed, rejecting the Casino's new value and ordinary course of business defenses.

VII. CONCLUSION

Many unique issues are raised in Casino bankruptcy cases due to their highly regulated nature. Although Casino cases tend to be fact-specific, we hope that the above provides insight into some of the issues presented in Casino bankruptcies.

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FN1. Another article that explores many of the same issues is John M. Czametzky, *When the Dealer Goes Bust: Issues in Casino Bankruptcies*, 18 Miss. C.L. Rev. 459 (1998).

FN2. 11 U.S.C. ß 507(a)(6).

FN3. In re U.S. Metalsource Corp., 163 B.R. 260, 266, 25 Bankr. Ct. Dec. (CRR) 215, 28 Fed. R. Serv. 3d 854 (Bankr. W.D. Pa. 1993).

FN4. *See* In re Revco D.S., Inc., 91 B.R. 777 (Bankr. N.D. Ohio 1988).

FN5. There are, of course, other types of gaming properties besides the traditional Las Vegas style casino. Riverboat gaming has become popular throughout much of the Midwest and along the Gulf Coast and occasionally presents conflicts (or at least an interesting convergence) of state gaming and federal bankruptcy and admiralty law. Some of these issues are addressed below. Other types of gaming of include horse and greyhound racing, jai alai. and bingo. (As state-sponsored programs, lotteries are unlike other forms of gaming.) Each type of gaming will naturally present unique issues in bankruptcy. Many of the regulatory issues that are likely to be encountered in a bankruptcy involving a horse or dog racetrack, a jai alai facility or bingo hall, however, are likely to parallel those encountered in a traditional casino. Moreover, cases involving traditional casinos are more common than cases involving other forms of gaming. For these reasons, this article will focus primarily on the traditional casino.

FN6. Regulatory schemes obviously vary by locality. The State of Nevada, however, has the longest history of legalized gaming and has established the most comprehensive regulations respecting gaming activities. Because Nevada law frequently serves as a basis for gaming regulation in other states, general discussions of gaming law are based upon Nevada law. Emerging gaming jurisdictions often have a more ambiguous legislative policy towards

gaming issues. Louisiana law will be cited to illustrate a non-Nevada approach.

FN7. Though gaming licensed Casinos may be owned and operate by individuals, limited liability companies, partnerships and trusts, for ease of this overview, the discussion is limited to corporations.

FN8. This common structure, dictated at least in part by gaming concerns, may have a significant impact upon both case administration and claims litigation. For instance, in In re Elsinore Corp., 228 B.R. 731, 33 Bankr. Ct. Dec. (CRR) 850, 41 Collier Bankr. Cas. 2d (MB) 321 (Bankr. 9th Cir. 1998), the appellate panel upheld a determination by the bankruptcy court that workers at the Atlantis Hotel & Casino in New Jersey were not entitled to priority treatment under Section 507(a)(3) for wages earned within 90 days of the cessation of business at the Atlantis. The wage claimants were employed at the parent/holding company level, and the parent corporation had not ceased doing business as a holding company.

FN9. See La. R.S. ß 27:236(C).

FN10. See also La. R.S. ß 27:236(D).

FN11. See La. R.S. ß ß 27:236 and 277.

FN12. See La. R.S. ß 27:271.

FN13. See La. R.S. ß ß 27:233-236.

FN14. La. R.S. ß 27:236(E).

FN15. There are certain exceptions to the requirement that shareholders obtain findings of suitability. For instance, under Nevada law an "institutional investor," which acquires more than ten percent (10%), but not more than fifteen percent (15%) of the registered company's voting securities may apply to Gaming Authorities for a waiver of a finding of suitability if such institutional investor holds the voting securities for investment purposes only. See also La. Admin. Code ß 42:1X.2143. Activities which are not deemed to be inconsistent with holding voting securities for investment purposes only include: (1) voting on all matters voted on by stockholders; (2) making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in its management, policies or operations; and (3) such other activities as Gaming Authorities may determine to be consistent with such investment intent.

FN16. See also La. Admin. Code ß ß 42:1X.2145 and 2147.

FN17. Gaming devices, regardless of type (i.e. video poker, video blackjack, or traditional slot machines) are generally referred to as "slots". Businesses that provide gaming machines to numerous businesses are known as "slot route operators". See also La. R.S. ß 27:301 *et seq.* re: video draw poker devices.

FN18. However, In re S & J Holding Corp., 42 B.R. 249, 39 U.C.C. Rep. Serv. 668 (Bankr. S.D. Fla. 1984), held that money from video arcade machines was not proceeds, was not subject to a filing-perfected security interest in proceeds and, therefore, was not subject to a prepetition security interest in the machines and their proceeds.

FN19. See also La. R.S. ß 27:275 *et seq.*

FN20. 46 U.S.C. ß 31321

FN21. Estate of Rhyner v. Farm Credit Bank of Spokane, 780 P.2d 1001, 1005, 1990 A.M.C. 1185 (Alaska 1989); U. S. v. F/V Golden Dawn, 222 F. Supp. 186 (E.D.N.Y. 1963) *quoted in.* First National Bank Trust Company of Escanaba v. Oil Screw Olive L. Moore, Barge Wiltranco I, 521 F.2d 1401 (6th Cir. 1975).

FN22. See La. R.S. ß 10:9-101 *et seq.*

FN23. Pavone v. Mississippi Riverboat Amusement Corp., 52 F.3d 560, 1995 A.M.C. 2038, 32 Fed. R. Serv. 3d 271 (5th Cir. 1995); King v. Grand Casinos of Mississippi, Incorporated-Gulfport, 697 So. 2d 439 (Miss. 1997); *accord* Chase v. Louisiana Riverboat Gaming Partnership, 709 So. 2d 904 (La. Ct. App. 2d Cir. 1998), writ denied, 719 So. 2d 1057 (La. 1998).

FN24. In re Biloxi Casino Belle Inc., 176 B.R. 427, 435 (Bankr. S.D. Miss. 1995).

FN25. See La. R.S. ß 27:65(B).

FN26. See Kathy Benetrix v. Louisiana Riverboat Gaming Partnership, d/b/a Isle of Capri Casino, 1995 WL 867854 (W.D. La. 1995).

FN27. There is also authority which supports the conclusion that Section 525 of the Bankruptcy Code prohibits a state from revoking a debtor's self-insured certificate, under a state's applicable workers' compensation act. *See* In re Rath Packing Co., 35 B.R. 615, 11 Bankr. Ct. Dec. (CRR) 595, 9 Collier Bankr. Cas. 2d (MB) 1295 (Bankr. N.D. Iowa 1983) (Iowa State Insurance Commissioner's revocation of debtor's self-insured status violated 11 U.S.C. ß 525); *accord*, In re Hillcrest Foods, Inc., 10 B.R. 579, 7 Bankr. Ct. Dec. (CRR) 735, Bankr. L. Rep. (CCH) ∂ 67999 (Bankr. D. Me. 1981) (the suspension of debtor's status as self-insurer under Maine Workers' Compensation Act may be a violation of 11 U.S.C. ß 525); *see also* In re Blue Diamond Coal Co., 145 B.R. 895 (Bankr. E.D. Tenn. 1992) (Tennessee Workers' Compensation Board motion to dismiss adversary complaint by debtors alleging improper revocation of debtor's certificate of self-insurance denied, because such action by Board may constitute a violation of 11 U.S.C. ß 525).

FN28. For instance, in Carnival Leisure Industries, Ltd. v. Aubin, 53 F.3d 716 (5th Cir. 1995), the Court of Appeals held that an unpaid gambling debt arising in the Bahamas, previously held to be unenforceable as against Texas public policy, could not be used to support action for fraud against gambler who was extended credit by casino). Inevitably, similar facts will arise in the context of a claims proceeding.

FN29. For an excellent discussion of *Seminole Tribe, Young* and the other sovereign immunity issues, see 2 *Collier on Bankruptcy* ch. 106 (15th ed. rev. 2000).

FN30. In re Innes, 184 F.3d 1275, 1281, 34 Bankr. Ct. Dec. (CRR) 1143, 42 Collier Bankr. Cas. 2d (MB) 857, 137 Ed. Law Rep. 185, Bankr. L. Rep. (CCH) ∂ 77976 (10th Cir. 1999), cert. denied, 529 U.S. 1037, 120 S. Ct. 1530, 146 L. Ed. 2d 345 (2000).

FN31. The Supreme Court has said as much: College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 119 S. Ct. 2219, 2230- 31, 144 L. Ed. 2d 605, 135 Ed. Law Rep. 362, 51 U.S.P.Q.2d (BNA) 1065 (1999).

FN32. In re Rose, 187 F.3d 926, 930, 34 Bankr. Ct. Dec. (CRR) 1046, 42 Collier Bankr. Cas. 2d (MB) 899, 137 Ed. Law Rep. 885, Bankr. L. Rep. (CCH) ∂ 77977 (8th Cir. 1999) (and cases cited therein); *accord* In re MCA Financial Corp., 237 B.R. 338, 342, 42 Collier Bankr. Cas. 2d (MB) 1193 (Bankr. E.D. Mich. 1999) (motion for relief from stay).

FN33. In re Collins, 173 F.3d 924, 930, 34 Bankr. Ct. Dec. (CRR) 211, Bankr. L. Rep. (CCH) ∂ 77917 (4th Cir. 1999), cert. denied, 528 U.S. 1079, 120 S. Ct. 785, 145 L. Ed. 2d 663 (2000); *accord* In re Phelps, 237 B.R. 527, 533-34 (Bankr. D.R.I. 1999).

FN34. In re International Heritage, Inc., 239 B.R. 306, 310-11, 35 Bankr. Ct. Dec. (CRR) 59, 42 Collier Bankr. Cas. 2d (MB) 1986, Blue Sky L. Rep. (CCH) ∂ 74193 (Bankr. E.D.N.C. 1999).

FN35. In re National Cattle Congress, 247 B.R. 259, 35 Bankr. Ct. Dec. (CRR) 251, 43 Collier Bankr. Cas. 2d (MB) 1685 (Bankr. N.D. Iowa 2000).

FN36. Because most bankruptcy cases involve debtors with "no-asset" estates, the battleground revolves around non-dischargeability. Whether a gaming debt is an allowable claim is, of course, an issue of applicable state law.

FN37. There are, of course, numerous other examples of casinos succeeding in claims litigation against gambling customers. *See, e.g.*, Matter of Wegener, 186 B.R. 692, 27 U.C.C. Rep. Serv. 2d 923 (Bankr. D. Neb. 1995) (bankruptcy court rejected argument that keno operator's employee's debt for unpaid keno tickets was unenforceable based upon purported public policy prohibiting employee of gaming company to participate in employer's game). Gambling debts may also be relevant in a confirmation setting. *See* In re Famisaran, 224 B.R. 886 (Bankr. N.D. Ill. 1998) (denying confirmation of Chapter 13 plan based, in part, on debtor's expenditures at local casino).

FN38. *In re Melancon* is one of the very few cases in which a court has sided with a credit card company. The overwhelming majority of cases in the last few years have held in favor of the debtor. *See* In re Cron, 241 B.R. 1 (Bankr. S.D. Iowa 1999) (Chapter 7 debtors who had obtained cash advances for gambling 60 days prior to bankruptcy successfully rebutted presumption of non-dischargeability where she and her co-debtor husband were both employed and not hopelessly insolvent, had earmarked winnings for repayment of debt, and had repaid previous cash advances; debtors' bankruptcy had been necessitated by unforeseen change of circumstances resulting from loss of job); In re McLeroy, 237 B.R. 901 (Bankr. N.D. Miss. 1999) ($9,000.00 Cash advance was dischargeable where debtor testified that she intended to repay issuer, had history of making payments, paid $1,250.00 towards debt. and had not consulted with bankruptcy attorney until several months later.): In re Stearns, 241 B.R. 611, 35 Bankr. Ct. Dec. (CRR) 311 (Bankr. D. Minn. 1999) (Credit card company failed to demonstrate actual reliance upon implied representation of debtor regarding ability re repay debt and failed to show that debtor's belief that she could repay cash advance from gambling "big win" was not genuine); In re Kong, 239 B.R. 815, 35 Bankr. Ct. Dec. (CRR) I, Bankr. L. Rep. (CCH) ∂ 78017 (Bankr. 9th Cir. 1999) (Finding that debtor lacked fraudulent intent was not clearly erroneous, even though debtor made no attempt to repay cash advance for gambling and consulted with bankruptcy attorney 2 or 3 days after loss; debtor had prior history of success at gambling and had previously paid back cash advances.); and Rembert v. Citibank South Dakota, N.A., 219 B.R. 763 (E.D. Mich. 1996), aff'd, 141 F.3d 277, 32 Bankr. Ct. Dec. (CRR) 531, Bankr. L. Rep. (CCH) ∂ 77666, 1998 FED App. 106P (6th Cir. 1998) (Reversing judgment holding cash advance for gambling non-dischargeable where evidence was undisputed that the debtor subjectively believed that she would win sufficient funds to repay debt.).

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