

BANKRUPTCY, DEBT & GAMING LAW SYMPOSIUM

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INTRODUCTION

Five years ago, the words gaming and bankruptcy were rarely used in the same sentence. Casino operators restructured their debt obligations to take advantage of favorable lending rates and available capital, not due to unmanageable debt loads, the plummeting value of real estate portfolios, or significant revenue decreases. Nevada's gaming regulatory structure has long contemplated the possible bankruptcy of a casino operator, ensuring that creditors are protected, casinos remain open, and casino employees keep their jobs; but the unprecedented economic downturn that began in 2008 brought challenges to casino operators that required a swift reaction from Nevada gaming regulators.

On April 7, 2009, Dennis Neilander, then Chairman of the Nevada Gaming Control Board ("Board"), issued an industry letter entitled *Attention to Economic Consequences*. In the letter, Chairman Neilander acknowledged the prospect of bankruptcies among Nevada's gaming licensees and announced that the Board would be focusing resources on debt restructurings and the regulatory considerations necessary to complete them. Chairman Neilander addressed the need for quick review and approval of distressed gaming company applications because "the timing could very well be such that the State Gaming Control Board and Nevada Gaming Commission will be asked to grant several approvals for emergence from bankruptcy within a limited timeframe." To that end, the Board created a special purpose entity comprised of representatives from various Board divisions to oversee the processing of applications for gaming licensees in bankruptcy and to issue the required approvals for other types of debt restructurings.

Chairman Neilander accurately predicted in 2009 that the number of gaming applications the Board would handle in connection with bankruptcy filings and debt restructurings would increase. Nevada has been hit particularly hard in the past few years, leading the nation in unemployment and foreclosure rates. Planned projects on the Las Vegas Strip such as Echelon and Fontainebleau have stalled, and the iconic Sahara Hotel and Casino closed in 2011. The largest privately funded construction project in the United States, CityCenter Las Vegas, faced significant financial hurdles before opening in December 2009. Bankruptcies and debt restructurings in the gaming industry are unique because of the gaming regulators' stringent licensing requirements. Unlike other industries where a lender can foreclose on collateral or assume control of a business,

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lenders to gaming companies cannot own gaming devices or receive revenue from a gaming operation without prior regulatory approval. The Nevada gaming regulators have kept pace with the economic challenges confronting casino operators by maintaining the integrity of the application and investigatory processes while providing timely resolution for gaming companies.

Despite its struggles, the Nevada gaming industry is optimistic as it heads into 2012. In December 2011, the Board reported that winnings at Nevada casinos in October 2011 were up 8.1% when compared to casino winnings in October 2010, and remarkably, with winnings at Las Vegas Strip casinos increasing 13.3% compared year over year. Gaming has cultivated technological innovation and creative design by rewarding talent and encouraging entrepreneurs. In the aftermath of this economic downturn, the gaming industry is again at the forefront—challenging the pessimism of the recession with creativity, reinvention, and innovation. The following articles illustrate how the gaming industry has responded to the difficult economic times and remained strong through the combined efforts of Nevada's licensees and its regulators.