

A REVIEW OF NEVADA PATRON DISPUTE DECISIONS¹

Mark Lerner² and Emily Cunningham³

I. PATRON DISPUTES

Disputes that arise between casino operators and their guests over gambling and other casino activities are commonly referred to as “patron disputes.” Patron disputes are rare relative to the millions of gambling transactions that occur every day at casinos. Many — probably most — are resolved informally and quickly by patrons and casino personnel. Despite the relatively small number of disputes and the even smaller number that are not quickly resolved, patron disputes are of concern to gaming regulators because of their potential effects on public perceptions of the fairness and integrity of casino operations.

Many jurisdictions have specific mechanisms for adjudicating patron disputes that are not resolved informally. Because gambling debts are not enforceable at common law,⁴ any procedure specified legislatively is the exclusive remedy and must be strictly followed.⁵ In Nevada, the process entails a sequence of administrative and judicial proceedings.

Despite the prevalence of such processes in jurisdictions where gambling is

¹ The authors thank A.G. Burnett, chairman, Nevada Gaming Control Board, for graciously facilitating this study. The authors also thank former GCB hearing examiner Richard DeGuise for his review of a draft, and we have endeavored to incorporate his corrections and insights in the final version. The authors are solely responsible for any errors.

² Mark Lerner is a member of the adjunct faculty at the William S. Boyd School of Law.

³ Emily Cunningham is a 2017 graduate of the William S. Boyd School of Law.

⁴ See *LaFontaine v. Wilson to Use of Ugast et al.*, 185 Md. 673, 679 (1946); *Applicability of Statute of Anne Provisions Regarding Gambling*, Tenn. Op. Atty. Gen. No. 04–046 (Tenn. A.G.), 2004 WL 789813 (quoting 9 Statute of Anne, ch. 14, § 1 (1710) (Eng.)); Ronald J. Rychlak, *The Introduction of Casino Gambling: Pub. Policy and the Law*, 64 MISS. L.J. 291, 296–97, 362 n.35 (1995) (explaining that Queen Anne enacted the Statute of Anne to stabilize British society by refusing to enforce large gambling debts); see also NEV. REV. STAT. § 1.030 (2016) (“The common law of England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State.”).

⁵ See *Erickson v. Desert Palace, Inc.*, 942 F.2d 694, 696 (9th Cir. 1991).

legal, we are unaware of any compilation or analysis of decisions in such cases. This paper represents a first attempt at such a compilation and analysis. It focuses on the jurisdiction with the longest experience in patron disputes and plentiful available decisions: Nevada.

II. NEVADA'S PATRON DISPUTE PROCEDURE

The Nevada legislature created a two-part process: (1) an administrative decision that is (2) subject to judicial review.⁶ Through rulemaking, the Nevada Gaming Commission added detail to the process.⁷

In Nevada, either the patron or the casino initiates the patron dispute process by notifying the Nevada Gaming Control Board (GCB).⁸ If the dispute involves \$500 or more, the casino must notify the GCB.⁹ If the dispute involves less than \$500, the casino is not required to notify the GCB, but must inform the patron of the right to do so.¹⁰ Once notified, the GCB assigns an agent to investigate,¹¹ usually by traveling to the premises where the dispute arose, interviewing the patron and casino employees, reviewing game or house rules, and examining any illuminating surveillance video. After completing the investigation, the agent prepares a written decision¹² and sends it to the parties.¹³ A party aggrieved by the agent's decision may ask the GCB to reconsider the decision.¹⁴ If a party requests reconsideration, the matter is referred to the GCB or a hearing examiner.¹⁵ The hearing examiner oversees discovery by the parties, resolves pre-hearing procedural squabbles, and schedules and presides over an administrative hearing. Hearings are subject to procedural rules but are usually conducted informally,¹⁶ in large part because most patrons are not represented by counsel. The hearings are open to the public,¹⁷ but are usually attended only

⁶ See NEV. REV. STAT. §§ 463.361–.3668 (2016).

⁷ See NEV. GAMING COMM'N REG. 7A.010–.190 (2017) (Patron Disputes).

⁸ See NEV. REV. STAT. § 463.362(2) (2016).

⁹ *Id.* § 463.362(2)(a).

¹⁰ *Id.* § 463.362(2)(b).

¹¹ *Id.* § 463.362(3).

¹² The agents' decisions state conclusions only — who wins and (if applicable) how much. The agents also prepare more detailed, investigative reports, which are not sent to the parties but which can be obtained through discovery.

¹³ See NEV. REV. STAT. § 463.362(3) (2016).

¹⁴ *Id.* § 463.363(1).

¹⁵ See *id.* § 463.364(2).

¹⁶ See, e.g., NEV. GAMING COMM'N REG. 7A.070(1) (2017):

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted and is sufficient in itself to support a finding if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

¹⁷ In appropriate cases, such as where proprietary information or intellectual property

by the parties' representatives, witnesses, and counsel. After the hearing, the hearing examiner prepares a written recommendation, which the GCB considers at one of its regular, monthly public meetings. The GCB acts on the record; no evidence is taken. The GCB may adopt the hearing examiner's recommendation as its order, modify and adopt the recommendation as modified, reject the recommendation, or refer the case back to the hearing examiner for further proceedings.¹⁸ Following entry of the GCB's order, the losing party may petition the state district court for judicial review, and the matter then follows state appellate procedure.¹⁹ Judicial review is based on the record created at the administrative hearing; no new evidence is taken, but the reviewing court may remand the case and order the GCB or hearing examiner to take additional evidence, after which the GCB or hearing examiner may revise its decision.²⁰ The GCB decision has a presumption of validity; the reviewing court may modify or reverse only in certain limited circumstances — for example, where the decision is arbitrary or capricious or in violation of law.²¹

The GCB's order consists of the hearing examiner's written recommendation signed by at least two of the three GCB members.²² These orders are public and available on request from the GCB for a copying charge,²³ but are not routinely published on the GCB's website or otherwise. The investigating agents' decisions presumably are also public (they are sent to the parties to the disputes),²⁴ but are also not published or apparently available on request. Although the agents' investigative reports are available to the parties through discovery, they are apparently not made available to the public.

Judicial review seldom proceeds past the state district courts, whose

is presented, the GCB or hearing examiner may close the hearing. *Id.* at 7A.050(1)(c) (“The hearing . . . must be conducted . . . [i]n public, unless the board or hearing officer orders otherwise.”).

¹⁸ See NEV. REV. STAT. § 463.364(2) (2016).

¹⁹ *Id.* § 463.3662(1); see also *id.* § 463.3668(1) (describing the appellate procedure of patron disputes).

²⁰ *Id.* § 463.3666(1).

²¹ See *id.*

²² In cases that predate this study, where a GCB member did not participate because of recusal or other absence and the vote of the remaining two GCB members was split, the GCB and the Nevada Gaming Commission viewed the decision of the investigating agent — not the hearing examiner's recommendation — as the final, appealable decision. There does not appear to be any specific statutory or regulatory authority for this procedure. Cf. NEV. REV. STAT. § 463.220(4) (2016) (“[A] tie vote of the Board upon an application [for a license or finding of suitability] does not constitute a recommendation of denial of the application.”); NEV. GAMING COMM’N REG. 4.160(2) (2017) (same). However, the statutes suggest that the agent's decision does constitute a GCB decision, which would therefore be subject to judicial review. NEV. REV. STAT. § 463.362(3) (2016) (“[T]he Board, *through an agent*, shall conduct whatever investigation *it* deems necessary and shall determine whether payment should be made.”) (emphasis added).

²³ See NEV. REV. STAT. § 239.055 (2016).

²⁴ See *id.* § 463.362(3).

decisions are public, but not published. There are therefore few published judicial player dispute decisions in Nevada, and the GCB orders comprise almost the entirety of the record.

III. METHODOLOGY

We obtained electronic copies of GCB orders issued in 2010 through 2016, seven years' worth, 173 decisions in total.²⁵

We read each of the orders and populated a spreadsheet with data from the decisions including:

- Case number.
- Patron's name.
- Operator name as listed in the decision caption, and the operator's location if different from the operator name listed in the caption.
- Which party — player or operator — was the petitioner.
- The amount in dispute.

For each decision, we entered the following dates:

- The date of the incident and, if different, the date the GCB was notified of the dispute.
- The date of the investigating agent's decision.
- The date of the administrative hearing.
- The date of the GCB order.

We could not include dates of the hearing examiners' recommendations because they are not included in the orders.

We included information about the nature of the dispute:

- The basic category of activity giving rise to the dispute: e.g., slot machine, table game, sports book, player rewards program, promotion, etc.
- Game specifics: e.g., for slot machines, the make, model, denomination, and other characteristics if and as described in the order; for table games, whether the game was blackjack, roulette, pai gow, etc.

We entered information about the outcome:

- Who prevailed: patron, casino, or mixed result.
- The award, if any, to the prevailing party.

Finally, we included the identities of the regulatory authorities involved:

- The name of the investigating agent.
- The name of the hearing examiner.
- The names of the GCB members who signed the decision.

²⁵ The total amount charged by the GCB for electronic copies of 569 pages was \$331.40. The GCB charges \$0.10 per page after the first fifty pages, plus a \$0.50 per page surcharge for the "extraordinary use" of GCB resources. *See id.* § 239.055(1).

We split up the cases, each author entered data separately, and then we combined our results in one document. To ensure consistency and accuracy, we later checked the work together. While we are confident about the accuracy of the data, there may be inconsistencies and some (hopefully minor) errors. Readers are invited to point these out to the authors for correction.

In entering the data into a spreadsheet, the authors had multiple goals. First, we wanted to provide an easy template for conducting analyses and drawing conclusions, and for making future additions about older and newer cases. Second, we entered the data with the thought that it might later be transferred to a searchable, online database that practitioners could access and use to research patron dispute decisions.²⁶

As part of our data entry process, and with the intention of creating different searchable outcomes, we created an index of key words associated with each decision. The key words were entered at the same time as the data, and the lists were compiled separately by both authors. As a result, the key words index was not consistent enough internally to be used as part of a searchable database. While it is possible to create a consistent key word index, we concluded that searchable case synopses would accomplish the same purpose and would be more useful for practitioners. However, we did not arrive at this conclusion until late in our work. We started to prepare synopses, but the process is time-intensive and we leave completing it for the future. For these reasons, the key words index and case synopses are not included in the spreadsheet.

We also created headnotes for each case. However, they have not been conformed for style and substance and so are not included here.

After completing data entry, we began analyzing the dataset.

IV. FINDINGS

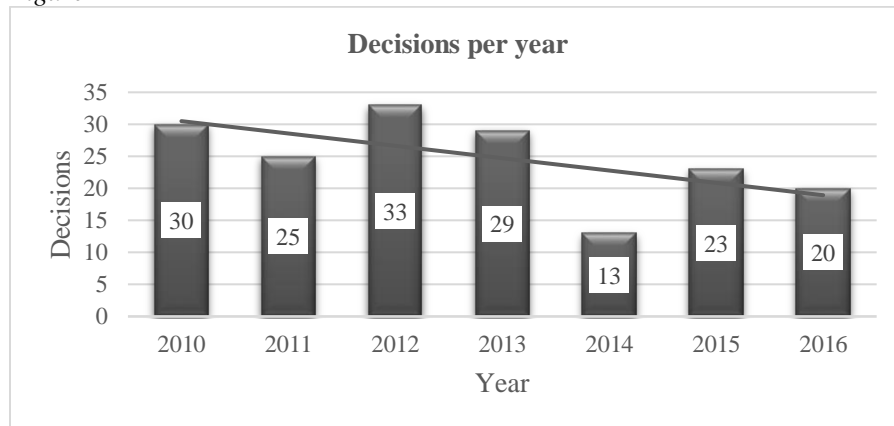
We have broken our findings down into the following categories: (A) the number of dispute decisions; (B) who prevailed in the disputes; (C) patrons as prevailing parties; (D) the amount of money at issue; (E) the types of games giving rise to disputes; (F) the nature of the disputes; (G) timing of decisions; (H) information about investigating agents; and (I) amounts awarded. Below, we will provide the raw statistics for these categories, and in section V we will analyze these findings and draw conclusions.

²⁶ The spreadsheet containing this study's data is accessible at <https://docs.google.com/spreadsheets/d/e/2PACX-1vTDL03vgrLl8eUoVZZKD3CLZrs4VOyClbE5dXcbfhjyroq5UrFNTI9o7a6Kxcq6EUjzzJ0IXIkvYSpp/pubhtml>.

A. *The Number of Dispute Decisions*

From 2010 through 2016, the GCB issued an average of twenty-five player dispute decisions per year.²⁷ The most decisions (thirty-three) were issued in 2012, the fewest (thirteen) in 2014.²⁸ Figure 1 shows the number of decisions issued each year. The trendline shows a general downward trend in the number of decisions being issued during the seven years studied.²⁹

Figure 1



Given the differences in the number of casinos and visitors and the size of the local populations, unsurprisingly Southern Nevada produced more than four times as many dispute decisions (141, or 81.5%) as Northern Nevada (thirty-two, or 18.5%).³⁰ The GCB hearing examiner based in the north in Carson City averaged fewer than five dispute decisions a year, while the examiner based in the south in Las Vegas averaged twenty a year.³¹

B. *Who Prevailed in the Disputes*

Investigating agents ruled in favor of casino operators and against the patrons in 164 of 173 cases, or 94.8%.³² Whereas, investigating agents ruled in

²⁷ See Appendix A, rows 2-174, col. A, accessible at <https://docs.google.com/spreadsheets/d/e/2PACX-1vTDL03vgrL18eUoVZZKD3CLZrs4VOyC1bE5dXcbfhjyroq5UrFNTI9o7a6Kxcq6EUjzzJ0IXIkvYSpp/pubhtml>.

²⁸ See *id.* at rows 2-174, col. A.

²⁹ See *id.*

³⁰ See *id.* at rows 2-174, col. C.

³¹ See *id.* at rows 2-174, col. P (hearing examiner Henry was based in Carson City, and hearing examiner DeGuise was based in Las Vegas).

³² See *id.* at rows 2-174, col. T.

favor of patrons nine times out of 173, or 5%.³³ Four of the nine cases involved casino promotions, three involved sports books, one involved a slot machine, and one arose from poker.³⁴

Operators benefited from their petitions for reconsideration a much higher percentage of the time than patrons benefited from theirs. Of the 164 petitions for reconsideration filed by patrons, seven (4%) resulted in outcomes more favorable to the patron than the investigating agent's decision.³⁵ Of the nine petitions for reconsideration filed by operators, six (67%) resulted in outcomes more favorable for the operators than the investigating agent's decision.³⁶

Thus, overall, operators ultimately prevailed in the vast majority of disputes—161 out of 173 times, or 93.2% of the time.³⁷ Patrons ultimately prevailed seven out of 173 times (4%). The remaining five decisions (2.9%) had mixed results where neither the operator nor the patron prevailed outright.³⁸

Four patrons (or at least patrons with the same name) were involved in more than one dispute.³⁹ One was involved in three disputes at three casinos over a three-year period, all involving blackjack.⁴⁰ The other three patrons were involved in two disputes each: one patron was involved in two poker disputes,⁴¹ and the other two were each involved in two race book disputes.⁴² The operator prevailed in each case.⁴³

³³ *See id.*

³⁴ *See id.*

³⁵ *Compare id.*, *supra* note 26, at rows 2-724, col. D, *and id.* at rows 2-174, col. T.

³⁶ *See id.*

³⁷ *See id.* at rows 2-174, col. T.

³⁸ *See id.*

³⁹ *See id.* at rows 6, 15, 49, 70, 78, 79, 94, 95 & 107, col. B.

⁴⁰ *See* Arghavan v. Silverton Casino Lodge, Case No. 2009-9081L (Nev. Gaming Control Bd., May 6, 2010); Arghavan v. Hard Rock Hotel & Casino, Case No. 2011-8778L (Nev. Gaming Control Bd., June 7, 2012); Arghavan v. Aria Resort & Casino, Case No. 2013-7318L (Nev. Gaming Control Bd., Aug. 8, 2013).

⁴¹ *See* Morrell v. Aria Resort & Casino, Case No. 2011-7407L (Nev. Gaming Control Bd., Aug. 10, 2011); Morrell v. Venetian Casino Resort, Case No. 2009-9148L (Nev. Gaming Control Bd., Apr. 8, 2010).

⁴² *See* Haberkorn v. Caesars Palace, Case No. 2012-8406L (Nev. Gaming Control Bd., Feb. 6, 2013); Haberkorn v. Wynn Las Vegas, Case No. 2012-8407L (Nev. Gaming Control Bd., Feb. 6, 2013); *see also* Payne v. Club Cal Neva, Case No. 2012-7880L (Nev. Gaming Control Bd., Oct. 4, 2012); Payne v. Club Cal Neva, Case No. 2012-7879L (Nev. Gaming Control Bd., Oct. 4, 2012). The *Payne* cases arose from similar bets placed at different locations of the same operator, were heard together, and could be considered a single case rather than two different cases brought by the same person.

⁴³ *See* Haberkorn, Case No. 2012-8406L, *supra* note 28; Haberkorn, Case No. 2012-8407L, *supra* note 28; Payne, Case No. 2012-7880L, *supra* note 28; Payne, Case No. 2012-7879L, *supra* note 28; Arghavan, Case No. 2009-9081L, *supra* note 26; Arghavan, Case No. 2011-8778L, *supra* note 26; Arghavan, Case No. 2013-7318L, *supra* note 26; Morrell, Case No. 2011-7407L, *supra* note 27; Morrell, Case No. 2009-9148L, *supra* note 27.

There were several repeat operators. The operator with the most disputes was involved in eight, 4.6% of the total.⁴⁴

C. Patron as the Prevailing Party

As mentioned above, the patron prevailed in seven of the 173 total disputes (4%).⁴⁵ An additional five disputes (2.9%) had mixed results.⁴⁶

Further, the patron prevailed in none of the seventy-four slot machine disputes.⁴⁷ The results in one of the cases could be considered “mixed.”⁴⁸ The patron was awarded the \$891.75 he had won prior to a machine malfunction, but was denied the additional \$589.38 in theoretical wins (wins that mathematically might have been expected to occur but for the malfunction) the investigating agent had ordered to be paid.⁴⁹

Out of the 30 table games disputes, the patron prevailed outright in none.⁵⁰ There were two table game disputes with mixed results.⁵¹ In one, involving pai gow, the operator was ordered to return the patron’s \$100 in wagers on a play the hearing examiner ruled to be a misdeal.⁵² It could not be determined what cards the patron held, but if the wagers had been allowed to stand, they would have paid at most \$150.⁵³

The other mixed-result table game dispute involved the proper interpretation of regulations and house rules dealing with aggregate caps on payouts.⁵⁴ The hearing examiner and the GCB awarded the patron \$1,750 more than the investigating agent had, but many thousands less than the patron claimed was the correct application of the aggregation rules.⁵⁵

Out of the twenty-six sports book disputes, the patron prevailed in one (3.8%).⁵⁶ In that case, after the patron filed a lost ticket claim, the sports book

⁴⁴ See Appendix A, *supra* note 26, at rows 2-174, col. C.

⁴⁵ See *id.* at rows 2-174, col. T.

⁴⁶ See *id.*

⁴⁷ Compare *id.* at rows 2-174, col. M, and *id.* at rows 2-174, col. T.

⁴⁸ See *Eskandari v. Orleans Hotel & Casino*, Case No. 2014-7066L (Nev. Gaming Control Bd., May 8, 2014).

⁴⁹ *Id.* Although the GCB ruled in the patron’s favor in *Eskandari*, the patron could have done better. According to the decision, the patron had turned down the operator’s settlement proposal, made before the investigating agent’s decision was issued, of \$2,500 in cash plus \$1,500 in free play.

⁵⁰ Compare Appendix A, *supra* note 26, at rows 2-174, col. M, and *id.* at rows 2-174, col. T.

⁵¹ See *id.*

⁵² *Taylor v. Rio Suite Hotel & Casino*, Case No. 2010-8068L (Nev. Gaming Control Bd., Sept. 2, 2010).

⁵³ *Id.*

⁵⁴ See *Handy v. Venetian Resort Hotel Casino*, Case No. 2013-8158L (Nev. Gaming Control Bd., Aug. 10, 2016).

⁵⁵ *Id.*

⁵⁶ Compare Appendix A, *supra* note 26, at rows 2-174, col. M, and *id.* at rows 2-

neglected to honor the claim and cashed the ticket when it was presented by another person.⁵⁷

The remaining five times that patrons prevailed all arose from promotions or player rewards programs.⁵⁸ In three of those cases, the patrons had been “trespassed” (barred) from the operator’s property. Two additional cases with mixed results also involved trespassed patrons.

In three cases, the GCB allowed patrons to redeem player reward program points earned before the patrons were barred, notwithstanding house rules expressly stating that a barred patron’s points were forfeited.⁵⁹

In two mixed-results cases, the GCB allowed the trespassed patrons to play off free play awards earned prior to the trespass but reversed the investigating agent’s decision awarding the cash value of those awards.⁶⁰

In another case in which the patron prevailed, the GCB ordered the operator to pay its employee who won \$1,000 in a drawing, despite a policy prohibiting employees from participating.⁶¹ There is irony in referring to this patron as “prevailing” because, although the patron was awarded \$1,000, his employer fired him for violating the policy, which the GCB said “was well within [the operator’s] rights.”⁶²

In another victory for the patron, the patron won a \$250 free-play wager at even money.⁶³ The operator paid the patron \$250, the amount a player would have profited if making a cash wager.⁶⁴ The patron claimed he should be paid \$500, the total amount the casino would pay to a winning cash player (a return of the amount wagered plus the amount of the winnings).⁶⁵ The GCB found the house rules to be ambiguous on this point, and ordered the operator to pay the patron \$500.⁶⁶

174, col. T.

⁵⁷ Brandywine Bookmaking, LLC v. Rasco, Case No. 2009-9138L (Nev. Gaming Control Bd., Apr. 8, 2010).

⁵⁸ Compare Appendix A, *supra* note 26, at rows 2-174, col. M, and *id.* at rows 2-174, col. T.

⁵⁹ See Hermansen v. Harrah’s Entertainment, Case No. 2009-1342R (Nev. Gaming Control Bd., June 3, 2010); Balagtas v. Atlantis Casino Resort Spa, Case No. 2011-1005R (Nev. Gaming Control Bd., May 5, 2011); Rose v. The Sands Regency, Case No. 2016-1101R (Nev. Gaming Control Bd., June 9, 2016).

⁶⁰ See Mesquite Gaming, LLC v. Elster, Case No. 2013-7219L (Nev. Gaming Control Bd., Oct. 10, 2013); Mesquite Gaming, LLC v. Bergida, Case No. 2013-7254L (Nev. Gaming Control Bd., Oct. 10, 2013).

⁶¹ Murphy’s Law v. Loreda, Case No. 2012-8785L (Nev. Gaming Control Bd., June 5, 2013).

⁶² *Id.*

⁶³ See Nersesian v. Palms Casino Resort, Case No. 2010-7217L (Nev. Gaming Control Bd., June 3, 2010).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

In the final case where the patron prevailed, the GCB awarded non-club members winnings from a promotion the operator intended for club members only because the operator's rules on the eligibility of non-club members were ambiguous or non-existent.⁶⁷

D. Amounts at Issue

Combining the amounts in controversy from the entire seven-year dataset, there was a total of \$5.4 million in dispute.⁶⁸ The largest amount in dispute in a single case was \$1.3 million, while the smallest amount was \$1.30.⁶⁹ The average was \$31,291.⁷⁰ When outliers of the largest and smallest amounts at issue are eliminated from the calculation, the average drops almost 25% to \$23,878.⁷¹ Across all disputes, the median amount at issue was \$2,000.⁷² Thus, the average was inflated by a few extraordinary cases, and most of the disputes were much smaller than the average.

E. The Types of Games Giving Rise to Disputes

Slot machines were the game category most frequently involved in disputes.⁷³ A total of seventy-four disputes arose from the use of slot machines, or 42.8% of all disputes.⁷⁴ From year to year the percentage of disputes involving slot machines fluctuated considerably, between 30% and 57% of the yearly totals.⁷⁵ Twenty-two (41%) of the seventy-four slot machine disputes involved a machine malfunction or perceived malfunction.⁷⁶

After slot machines, table games were the games next most commonly giving rise to patron disputes.⁷⁷ There were thirty disputes that arose from the play of table games, or 17.3% of all disputes in the dataset.⁷⁸ The number of disputes arising from the play of table games remained relatively constant over the seven-year period.

Statistics on disputes arising from the play of sports books were much the same as the statistics on disputes arising from table games.⁷⁹ The play of sports

⁶⁷ *Town Center Lounge II v. Jaramillo et al.*, No. 2010-7953L (Nev. Gaming Control Bd., Sept. 2, 2010).

⁶⁸ *See* Appendix A, *supra* note 26, at rows 2-174, col. H.

⁶⁹ *See id.* at row 141, col. H; *Id.* at row 23, col. H.

⁷⁰ *See id.* at rows 2-174, col. U.

⁷¹ *See id.*

⁷² *See id.*

⁷³ *See id.* at rows 2-174, col. M.

⁷⁴ *See id.*

⁷⁵ *Compare id.* at rows 2-174, col. A, *and id.* at rows 2-174, col. M.

⁷⁶ *Compare id.* at rows 2-174, col. M, *and id.* at rows 2-174, col. O.

⁷⁷ *See id.* at rows 2-174, col. M.

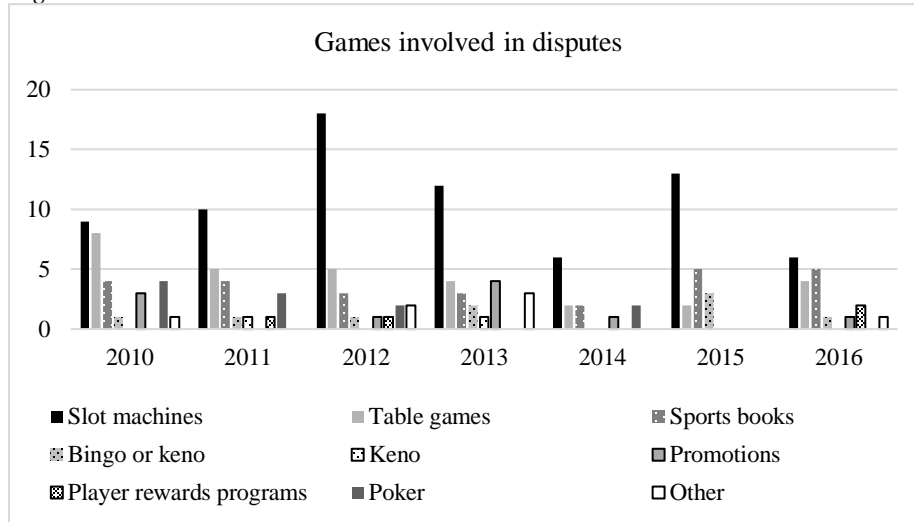
⁷⁸ *See id.*

⁷⁹ *See id.*

books gave rise to twenty-six disputes, 15% of the total of all disputes in the seven-year dataset.⁸⁰ The number of disputes arising from the play of sports books remained relatively consistent over the seven years covered by the study.

Figure 2, below, shows how the number of disputes arising from slot machines exceeds the number of disputes in any other category.

Figure 2



F. The Nature of Disputes

Disagreements over the correct interpretation of a house or game rule were responsible for a significant portion of the disputes. A total of seventy disputes, or 40.5% of all disputes over the seven-year dataset, involved an argument about rules.⁸¹ Rule interpretation issues spared no category of game. Patrons and operators argued over the meaning of slot machine pay tables, house rules for table games and sports books, and the rules set forth in promotional materials.⁸² Other kinds of disputes could also be included in the rule interpretation category — e.g., disputes involving discrepancies between the patron's claim and the game's payout table or other posted rules. Either way, it is clear that rule interpretations are central to many, if not most, patron disputes.

Slot machine malfunctions or perceived malfunctions were involved in twenty-two disputes (12.7% of all disputes).⁸³ The remaining eighty-one disputes were all over the map in terms of their nature.⁸⁴

⁸⁰ *See id.*

⁸¹ *See id.* at rows 2-174, col. O.

⁸² *Compare id.* at rows 2-174, col. M, and *id.* at rows 2-174, col. O.

⁸³ *See id.*

⁸⁴ *See id.* at rows 2-174, col. O.

G. *Timing of Decisions*

The overall time between the date incidents were first reported and the date the GCB issued its decisions averaged 143 days (median: 123 days).⁸⁵ The average was skewed by two extraordinarily lengthy disputes. The longest dispute lasted 1,066 days between the date of the incident giving rise to the dispute and the date of the final GCB decision, and the second longest was 950 days.⁸⁶ These delays resulted primarily from the patrons' delays in reporting the incidents or patrons requesting continuances. Disregarding those, disputes averaged about four months from start to finish.⁸⁷

The four months included the following components:

- Investigating agent took an average of thirty-three days to investigate and prepare a decision,⁸⁸ well within the forty-five day deadline established by statute.⁸⁹
- Once the report was in, the first hearing was held an average of seventy-seven days later (median: fifty-eight).⁹⁰
- The GCB issued its decision an average of thirty-four days after the hearing.⁹¹ (As mentioned above, the intermediate date of the hearing examiner's recommendation is not provided in the decisions.)

H. *Investigating Agents*

Sixty-five agents investigated the 173 disputes.⁹² The agent involved in the most conducted fourteen.

Agents' decisions were reversed nine times (5% of all decisions), and the reversal benefited the player five of those times.⁹³ Agents' decisions were modified four times (2%), and none of the modifications benefited the player.⁹⁴

I. *Amounts Awarded*

Players prevailed seven times (4.6%).⁹⁵ The average amount awarded to these prevailing patrons was \$4,969.⁹⁶ However, these results include the value

⁸⁵ Compare *id.* at rows 2-174, col. I, and *id.* at rows 2-174, col. Q.

⁸⁶ See *id.*

⁸⁷ See *id.*

⁸⁸ Compare *id.* at rows 2-174, col. G, and *id.* at rows 2-174, col. K.

⁸⁹ See NEV. REV. STAT. § 463.362(3) (2016).

⁹⁰ Compare Appendix A, *supra* note 26, at rows 2-174, col. F, and *id.* at rows 2-174, col. K.

⁹¹ Compare *id.* at rows 2-174, col. F, and *id.* at rows 2-174, col. Q.

⁹² See *id.* at rows 2-174, col. J.

⁹³ See *id.* at rows 2-174, col. S.

⁹⁴ See *id.*

⁹⁵ See *id.* at rows 2-174, col. T.

⁹⁶ See *id.* at rows 2-174, col. U.

of awards of player reward credits redeemable for merchandise, and the average is skewed by one such award worth \$24,000.⁹⁷ Without that award and the one other such award of player reward credits worth \$2,486,⁹⁸ the average cash award drops to \$1,448.⁹⁹ The median value of all awards to patrons was \$1,199.¹⁰⁰

V. CONCLUSIONS

From the findings we compiled, we have drawn a few conclusions of interest.

A. *The operator almost always wins*

It may be that many meritorious patron claims are resolved without a hearing. The casino may settle directly with its customer, both parties may accept the investigating agent's determination, or the case may settle after the petition for reconsideration is filed but before the hearing examiner issues a decision. Any of these possibilities would suggest that disputes that go to a hearing and result in a decision are more likely to be unmeritorious. One subject for future research would be to compare the number of disputes the GCB is called to investigate with the number of disputes that result in a hearing or decision. Another research subject would be to survey operators to find out how many disputes they encounter and resolve informally.

B. *When patrons do win, they do not usually win very much*

The *total* amount of *cash* won by all winning patrons over seven years was \$13,440 (the value of awards of player reward credits redeemable for merchandise totaled an additional \$26,486).¹⁰¹ Patrons prevailed in seven cases, but one was a joint decision for two cases, and another case called for an award to three different patrons. If those instances are included separately in the calculation of the number of patrons, the average amount won by each prevailing patron was about \$1,120.

C. *Patrons seldom win slot machine disputes*

Slot disputes comprise the largest category of disputes.¹⁰² Again, the patrons' lack of success before the GCB may be because an unknown number of meritorious cases are resolved without a hearing.

⁹⁷ *See id.* at row 11, col. U.

⁹⁸ *See id.* at row 40, col. U.

⁹⁹ *See id.* at rows 2-174, col. U.

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

¹⁰² *See id.* at rows 2-174, col. M.

D. Patrons win most often in cases involving player reward programs or promotions

Such cases often involve interpretation issues.

E. Investigating agent decisions are almost always upheld by hearing examiners

If the petitioner does not get a favorable decision from the agent, the petitioner is unlikely to prevail, especially if the petitioner is the patron. Investigating agents' decisions were reversed nine times (5.2%), and of those only four benefited the patron, meaning that, overall, reversals of the investigating agents' decisions only benefitted patrons in 2.3% of all disputes over seven years.¹⁰³

F. Hearing examiner recommendations are almost always adopted by the GCB.

To succeed in a patron dispute, it is vital to obtain a favorable recommendation from the hearing examiner. The combination of agent and hearing examiner decisions being upheld so frequently suggests it may not warrant challenging an agent's decision without an especially strong basis for the challenge and a significant amount of money in dispute.

G. Words Matter

The prevalence of disputes arising from issues of rule interpretation suggests it would be worthwhile for operators and manufacturers to devote special care to preparing and reviewing their rules. For slot machines, the biggest source of rule interpretation stems from misinterpretations of pay tables, so it would be beneficial for operators and slot machine manufacturers to devote care to preparing and reviewing them. For table games, issues of interpretation of house rules warrant thorough and careful preparation of house rules. Finally, the terms and conditions of promotional materials offered as part of player reward programs should be prepared and reviewed to help prevent unnecessary player disputes. It is true that much of the time the patron's interpretation of the rules is a stretch that is easily dismissed. Nevertheless, our review suggests that a significant number of disputes might be avoided altogether with more careful preparation and review of written materials.

H. Settling is likely to be the best strategy

Since patrons are unlikely to prevail in the dispute process, in most cases almost any offer from the operator is likely to be worth accepting. As for

¹⁰³ See *id.* at rows 2-174, col. S.

operators, more research would be needed to determine whether they could benefit from settling more cases like those in the study. The median amount in dispute is \$2,000, and the costs associated with defending a patron dispute — attorney’s fees, salaries of employee-witnesses, and the value of time and other resources casino personnel could be expending on other issues — could easily exceed \$2,000. It may be that any payment up to a certain amount is worthwhile for the operator, even if the patron’s case is patently unmeritorious and perhaps even if the value of the settlement approaches the value of the claim. The study did not show any apparent copycat cases, if that is a concern. Accordingly, surveying operators to develop an estimate of the costs associated with patron dispute cases could potentially help operators, patrons, and their lawyers develop realistic and effective settlement strategies. However, additional research is hardly needed to conclude that it would have been more cost effective to pay, rather than defend, the \$1.30 in dispute in one case.

I. The process moves reasonably quickly

The only bottlenecks that we saw were the result of the patron-petitioners waiting to notify the GCB of a dispute or requesting continuances. Other than that, the process appears to move about as fast as it reasonably could. Investigating agents respond immediately, and the month it takes on average for them to complete the investigations, write a decision, and undergo any internal reviews seems reasonable, even rapid — it is considerably less than the statutory forty-five day deadline.¹⁰⁴ The same goes for the hearing process, which on average occurs about two-and-a-half months after the investigation is complete, a period that includes the twenty day period aggrieved parties have to petition for reconsideration and the fifteen days respondents have to respond to petitions.¹⁰⁵ The average thirty-four days after the hearing that it takes the GCB to issue a decision includes the time it takes for the hearing officer to write a recommendation, as well as time needed to accommodate the GCB’s monthly meeting schedule and the advance notice requirements of the open meeting law. While it might be possible to shave a few days off some stages of the process, improvements would be marginal at best.

J. Decisions tend to turn on a small number of legal issues

The authors wrote headnotes for the cases. We determined that they were not substantively and stylistically consistent enough to include here at this time. However, some general principles that emerged are worth mentioning.

- *Petitioners bear the burden of proof.* Every decision included the following boilerplate: “In casino/patron dispute hearings, it is the

¹⁰⁴ See NEV. REV. STAT. § 463.362(3) (2016).

¹⁰⁵ See *id.* § 463.363(1), (5).

petitioner's burden to prove by a preponderance of evidence that the enforcement agent's initial finding should be reversed or modified."¹⁰⁶

- *Ambiguities are resolved in favor of the patron.* This is another reason to carefully prepare written house rules and procedures.
- *Principles of contract law apply in slot machine cases.* The play of a slot machine is considered the patron's acceptance of an offer made by the operator, and the terms of the offer as evidenced by the machine's display and pay tables determine the outcome. The caveat found on every machine, "Malfunction voids all pays and plays," is enforceable under contract principles.¹⁰⁷
- *Value earned by patrons cannot be taken away.* This arises most commonly in connection with player reward programs, where the patron has earned rewards points or credits that are redeemable for merchandise or free play and then is "86-ed" by the operator.¹⁰⁸ Barred patrons are allowed to redeem player reward program points earned before the patrons were barred, notwithstanding house rules that expressly stated that a patron's points are forfeited on being barred.¹⁰⁹ Conditions may be imposed: the patron may be required to redeem the rewards within a specified period of time, or must be escorted into the premises and out again by operator personnel or even GCB agents.¹¹⁰
- *No awards for theoretical wins.* The GCB will not award patrons on the basis of winnings they might have won if, for example, a malfunction or other intervening event had not happened.¹¹¹

Only the first of these principles is articulated in a statute or regulation.

VI. FUTURE RESEARCH

This material would benefit from being migrated from a spreadsheet to a relational database that would permit easier input and flexibility of analysis. A relational database would also facilitate linking entries to the underlying decisions and would permit many-to-one and one-to-many fields that are difficult to create in spreadsheets.

If there is a desire to make this a continuing project, the creation of a synopsis for each case should continue. The authors will continue to work on case synopses, but ultimately others would have to pick up the task.

¹⁰⁶ This tracks language from NEV. REV. STAT. § 463.364(1) (2016) and NEV. GAMING COMM'N REG. 7A.160 (2017).

¹⁰⁷ See Sengel v. IGT, 2 P.3d 258, 262 (2000).

¹⁰⁸ See Hermanson, Case No. 2009-1342R, *supra* note 37; Balagtas, Case No. 2011-1005R, *supra* note 37; Rose, Case No. 2016-1101R, *supra* note 37.

¹⁰⁹ See *id.*; Hermanson, Case No. 2009-1342R, *supra* note 37; Balagtas, Case No. 2011-1005R, *supra* note 37; Rose, Case No. 2016-1101R, *supra* note 37.

¹¹⁰ See Mesquite Gaming, LLC, Case No. 2013-7219L, *supra* note 38; Mesquite Gaming, LLC, Case No. 2013-7254L, *supra* note 38.

¹¹¹ See Eskandari, Case No. 2014-7066L, *supra* note 30.

The headnotes could be conformed for style and assembled in digest form. A relational database would facilitate this, where multiple headnotes could be assigned to each case.

Additionally, we believe that it would be useful to explore expanding the data to include Nevada case law. The authors know of only two published cases that squarely implicate the patron dispute process,¹¹² but unpublished, district court decisions would be useful as well. Whoever tackles the task of adding Nevada case law will have to obtain unpublished decisions for inclusion. This may be achieved by soliciting unpublished decisions from practitioners or creating a website where practitioners can upload unpublished decisions.

Another ambitious but worthwhile project would be to expand the dataset to include administrative and judicial decisions from other jurisdictions with patron dispute resolution processes. It would be interesting to know whether there are any jurisdictional differences in patron dispute rulings and principles.

As mentioned in the findings section, other research topics would include the frequency of disputes that do not go to a decision because the operator settles them informally or because of effective mediation by the investigating agent. As also mentioned above, another project would be to survey operators to determine the costs of disputes.

For a more complete database, the names of lawyers, if any, representing the parties might be added. The same goes for the names of witnesses that appear at hearings, though this might not be of as much use or interest.

VII. PROCESS SUGGESTIONS

The research also suggests some possible improvements to the patron dispute process. While the GCB's decisions are public, they are not published. One must put in a request, and GCB personnel must spend time compiling the decisions. It would be helpful to practitioners and researchers, and perhaps more efficient for the GCB, to publish decisions on the GCB website as they are issued. That would allow operators, patrons, and lawyers to view decisions and draw their own conclusions about whether and how to proceed in patron dispute cases. It would also facilitate continuation of this project, if that is deemed to be worthwhile. Additionally, posting decisions as they occur would simplify creation of a decision library that could be linked to a searchable database. The decisions produced for this study were compiled year by year; that is, the decisions for an entire year are included in a single document. While each such document could be divided into the individual cases for scanning and conversion

¹¹² See *Erickson v. Desert Palace, Inc.*, 942 F.2d 694 (9th Cir. 1991); *Sengel*, 2 P.3d 258 (Nev. 2000); see also *Zoggolis v. Wynn Las Vegas, LLC* 768 F.3d 919, 924–25 (9th Cir. 2014) (disputes involving credit instruments are not subject to the patron dispute process). There may be additional, unpublished Nevada Supreme Court decisions affirming district court decisions in patron dispute cases. Although such decisions may be available, they usually contain little exposition and have no mandatory precedential value. NEV. R. APP. PROC. 36(c)(2)–(3) (2016). We did not attempt to compile such decisions.

to searchable text, it would be less tedious if each decision was a separate document.

Pleadings and exhibits, including the investigating agents' decisions and investigative reports filed or discoverable in patron dispute cases, do not appear to be confidential except where covered by an order protecting proprietary information. If that is the case, they might be posted with the GCB decisions. The agents' investigative reports would be particularly illuminating since they would show what evidence is important to their decisions.

The GCB might consider asking the legislature to establish a statute of limitations for notifying the GCB of a dispute. Current law does not appear expressly to provide one. The GCB is notified of almost all disputes immediately, so any limitation would not be an issue in most cases. But the long delays in a few cases, and the problems of proof and fairness such delays create, could be avoided with a deadline.

Given the high affirmance rate for agent decisions and hearing examiner recommendations, it might be useful to consider establishing even stronger presumptions of validity or perhaps permitting the GCB to act on patron disputes administratively rather than at public meetings. The GCB could also take advantage, if it doesn't already, of a statute that allows the GCB to have claims of less than \$500 decided by the hearing examiner without need for a GCB hearing.¹¹³

The GCB and the Nevada Gaming Commission might consider codifying or otherwise publicizing some of the common legal conclusions announced by the hearing examiners and the GCB so that they are readily available to operators, practitioners, and patrons who are involved in or contemplating patron disputes.¹¹⁴

+ + +

We invite suggestions on ways to improve the current research and dataset and any other formal database created. We believe that the research we have conducted is relevant and useful but can be made better. We welcome your comments.

¹¹³ See NEV. REV. STAT. § 463.361(2)(b) (2016).

¹¹⁴ See, e.g., *supra* Part V ("Decisions tend to turn on a small number of legal issues."); see also *supra* note 22 (procedure for split votes).