

## Getting in on a Gaming Law Practice Is a Fail-Safe Bet

Tourist boards might want you to think that what happens in Vegas stays in Vegas. But what's happening in Vegas is pretty much happening everywhere these days.

From senior citizens carrying bags of quarters to Hollywood stars entering poker tournaments and soccer moms wagering over George Clooney's Oscar prospects, everyone indulges in a little recreational gambling now and then. Between traditional casinos, state lotteries, Indian casinos, shipboard gambling, and other venues, Americans are wagering \$1 trillion a year, estimates Robert Jarvis, a professor at Nova Southeastern University Law Center in Fort Lauderdale, FL, and co-author of a casebook on gaming law.

With business booming and new venues opening up domestically and overseas, and given the tightly regulated environment under which the industry operates, gaming companies need plenty of legal advice. Someone has to represent casinos, race tracks, slot machine manufacturers, and their ilk.

"With the exception of Utah and Hawaii, every state has some form of gaming," Jarvis explains. Indeed, "90 percent of the American population has a casino within three hours' driving distance," estimates Paul West, head of the gaming section at McGlinchey Stafford's Baton Rouge, LA, office.

The operators of gaming facilities tend to be pretty big players themselves. In Pennsylvania, for instance, which recently authorized slot machines in the state, "most licenses start with a \$50 million price tag," says Francine Griesing, partner at Eckert Seamans in Philadelphia and vice-chair of the firm's hospitality group. The deadline for applying for one of 14 licenses to be issued to operators was last December.

"Not too many gambling operators are poor," Jarvis notes.

### State Blessings

The number of jurisdictions adding gambling to their roster of legalized activities continues to

grow. Of course, gaming has been in Nevada since the 1930s and in Atlantic City since 1976, Jarvis advises. "New Jersey legalized gaming in Atlantic City in part because of fiscal crises," says Michael Bonner, managing partner of Kummer Kaempfer Bonner Renshaw & Ferrario, which has offices in Las Vegas and Reno. "Because that was a pretty successful experiment, other states saw licensed gaming as a big revenue source," he adds.

The more recent uptick in gaming is attributable to three events, Jarvis says. "First, the passage of the Indian Gaming Regulatory Act in 1988 led to the explosion of tribal casinos." The second event was "the reintroduction of riverboat gambling up and down the Mississippi." Then third, "the advent of the Internet led to gaming all over the place," Jarvis quips.

It hasn't stopped.

"Here in Fort Lauderdale, we've just approved slot machines," Jarvis says. "The reason Pennsylvania passed slot legislation was not because of a big interest in having gaming," observes Griesing. "The real interest was in economic development, tax relief for Pennsylvanians, encouraging tourism, and increasing economic development and opportunity."

At the same time, this new industry in the Keystone State will be highly regulated and for good reason. The Pennsylvania legislature provided "a lot of protection to guarantee the integrity of these operations and keep organized criminal elements out of them," says Robert Graci, special counsel in the Harrisburg, PA, office of Eckert Seamans.

### Shedding a Stigma

Exit the mobsters and molls. Enter the lawyers.

The strict regulatory schemes that states have imposed "maintain public trust in the industry," says Scott Scherer, a partner at Hale Lane in Carson City, NV, and a former member of the Nevada Gaming Control Board. "Nevada got serious about cleaning up the industry in the 1960s and '70s," he adds. "By the early '80s, Nevada had done a pretty good job.

“I think that it has worked,” Scherer continues. “People do feel that they’ll get a fair shake if they come to Las Vegas. They know the games are well regulated so they have a chance to win.” Gaming “is the most heavily regulated industry in the United States, even more so than the securities industry,” Jarvis adds.

“Poker is not just being played in smoky dark rooms by people you wouldn’t want to have at your house for dinner,” says Shaun Clark, a partner in the Century City, CA, office of Sheppard, Mullin, Richter & Hampton, who counts WPT Enterprises (the World Poker Tour) among his clients. Poker “is being played by engineers, lawyers, pretty much everyone.”

*The amount of money needed to obtain a gaming license in the first place, and surviving the scrutiny involved in receiving one, keeps any number of gaming lawyers busy.*

Gambling “has become a more acceptable form of entertainment,” Bonner says. It also “has become a lot more accessible” adds West. “It used to be that to gamble you had to go to Las Vegas. It was somewhat intimidating,” he says. The advent of user-friendly slot machines also helped things along. Putting a buck in a slot machine causes a lot less apprehension than figuring out how craps is played. “With slot machines, there’s no worry that you’ll make a mistake and look foolish,” West observes.

These days, of course, even Vegas is hot. Since the dark days after 9/11 when no one was traveling, “Las Vegas experienced sort of a new Renaissance,” says Donna More, a partner in the gaming and government group in the Chicago office of Greenberg Traurig and a former chief legal counsel to the Illinois Gaming Board. “There’s a new cachet related to Las Vegas; people think that it’s trendy. Movie stars are there.”

Gaming venues in economically hard hit areas aren’t entirely suffering either. Gambling on the Gulf Coast, devastated by those hurricanes last summer, is making a comeback, lawyers report. The law has changed in Mississippi to allow casinos, with restrictions, to be on land rather than floating, West says.

As this article was being written, West reported that two riverboats were open in New Orleans. “As the only two games in town, so to speak, they are running to capacity,” he says. “There’s not a lot of other entertainment in New Orleans right now.”

## Big Deals

The amount of money needed to obtain a gaming license in the first place, and surviving the scrutiny involved in receiving one, keeps any number of gaming lawyers busy. “Everything that a casino does has to be approved” by regulators, West says. “There’s an extremely in-depth background check.” “It’s very intrusive,” Bonner says. “It’s akin to a high-level security check.”

“Probably 80 percent of a gaming entity’s overall legal needs are no different from those of most large corporations,” according to Bonner. Employment issues, real estate matters, and Sarbanes-Oxley requirements are all among the legal problems that arise. As Bonner says, “the people who hold themselves out to be gaming attorneys focus on specific regulatory requirements,” but preparing license applications and guiding clients through the process are just two components of a gaming practice. “Making sure that the licensees are compliant is [also] an ongoing process,” Griesing adds.

“You get involved with corporate counseling because so many decisions have regulatory aspects,” More explains. “You are the middleman between the government regulators and your clients. The messenger is often the bad guy. It sometimes is challenging to try to explain to the regulator your client’s position when the regulator is in total disagreement, and vice versa. “Trying to broker a compromise is the challenge,” More observes.

Gaming lawyers also stay busy by staying on top of changing requirements. The challenge in places like Pennsylvania “is the newness of it,” Graci says. “With other regulated businesses, you know what regulators expect. There’s greater familiarity because the rules and regulations have been on the books longer.” But Pennsylvania’s new gaming regulations “fill a three-ring binder,” according to Graci.

Measures affecting the hospitality industry in general are also followed by gaming operators. Smoking bans, for instance, tend to be of interest to casinos. “A smoking ban was introduced in the state of Colorado,”

reports Troy Stremming, vice president of governmental affairs at Ameristar Casinos, Inc., in Kansas City, MO, which also has a casino in Colorado. “We are working with legislators to amend the proposal so that there’s a carve-out for the gaming floor.”

Licenses of a different sort take up Shaun Clark’s time. “My primary practice is representing media companies,” he says. “One is responsible for revolutionizing poker as a television event.” World Poker Tour (WPT), a series on the Travel channel, “follows the top poker events at the top casinos. It culminates in a championship event at the end of the year at the Bellagio.”

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“The World Poker Tour does not host the events itself,” Clark explains. “The WPT has relationships with casinos to identify their tournaments with the World Poker Tour.”

The World Poker Tour “is a brand,” and there are licenses “for everything from video games to scratch-off lottery tickets to hats, chips, cell-phone games, and underwear.” Clark also works on production agreements and manages patent and trademark rights and infringement issues for the client.

## Offshore Opportunity

Gaming law “is also an international practice,” Bonner observes. “The biggest new market is Macao.” Interestingly, Macao, a small island near Hong Kong, “will bypass gaming revenues in Nevada in the next year or two,” predicts P. Greg Giordano, who recently joined the Las Vegas office of Snell & Wilmer as a partner in charge of the firm’s gaming, administrative, and antitrust law practice group.

Other foreign clients are of the virtual sort. “WPT has an offshore online gaming site,” Clark reports. “However, it is not accessible within the United States.” That’s because, in the minds of some, the Wire Act forbids online gambling.

“DOJ keeps on threatening people with prosecution,” Giordano says. Is there any hope that US-based companies will be able to develop online casinos? According to Giordano, “the only way is if federal law and attitudes change. Right now, there’s too much uncertainty. No big gaming companies will take the risk of losing a land-based gaming license by participating in online gaming.”

With the *New York Times* reporting that online gaming is likely to be a \$12 billion business this year and that the likes of Merrill Lynch and Goldman Sachs are investing in online casinos traded on the London Stock Exchange (Matt Richtel, “Wall St. Bets On Gambling On the Web,” *NY Times*, Dec. 25, 2005, p.1.), there’s no doubt that, as Clark says, “online gaming is an important issue.” It is indeed “one of the hot buttons for the United States as a whole because there has been huge success for online gaming companies. I think that we’ll see a showdown between the states and the federal government over who controls whether online gaming in that jurisdiction is legal,” Clark predicts.

In the end, whether a client is virtual or land-locked, “there’s a great deal of opportunity out there” for legal work, Graci says.

There’s also an added bit of glamour. The joy of being in-house for Stremming is that he can step out of his office and have dinner in a five-star restaurant, see a show, hear some songs. That sure beats the hushed tones of a white-walled office with neutral carpeting. ■

—Lori Tripoli

*Lori Tripoli is a freelance writer in Bedford, NY. In addition, she recently became the managing editor of Gaming Law Review. Reach her at LoriTripoli@hotmail.com.*

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