



GAMING BANKRUPTCIES: GCB RESPONSE

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As the economy continued to decline in 2009, more and more companies with Nevada gaming licenses began considering bankruptcy protection. The forced pressure of trying to relieve crushing debt loads, and lenders who were either unwilling or unable to agree to reduce down that debt, did in fact cause some companies to file. Still other companies began aggressive negotiations with their lenders and the looming possibility of either foreclosure or bankruptcy became great.

Of course, the economy has not improved much during 2010, and companies are striving to attain positive cash flow and in some extreme cases, just stay open.

Since bankruptcy is a process whereby a business debtor can either reorganize or outright liquidate their business, some gaming licensees used the process as both a shield and a sword; in some cases the sword worked and aggressive negotiations with lenders were successful, but in others, companies were forced to kneel and raise the shield of Chapter 11 Bankruptcy in defense. As everyone knows, Chapter 11 corporate reorganization allows a business to essentially pay off its creditors at a reduced rate while the business continues to operate. The alternative, outright liquidation, which encompasses a sale of the assets of the business in order to satisfy creditors, was unattractive to lenders who might find themselves in a licensing position should they come into ownership of gaming operations or assets.

In either case, the Gaming Control Board recognized that once application was made to the bankruptcy court either by the bankrupt entity or any of its creditors, a process would begin whereby the Board would be in a strange position: As the court would schedule and oversee the process, we recognized that bankruptcy courts have a great deal of power that is exercised in order to balance the needs of a business that must reorganize while seeing that creditors are made as whole as possible. The questions that arose for the Board were many: What if the Board was a creditor? What type of regulatory control could the Board have while the bankrupt entity went through the process, and would bankruptcy courts, having preeminent jurisdiction over the bankrupt estate, recognize or even consider gaming laws and regulations? Further, what type of entity would emerge from the bankruptcy, and how would the tangled web of personal and corporate licensing

requirements affect that final corporate structure?

Bankruptcies are governed by the United States Bankruptcy Code, which currently uses Chapters 1, 3, 5, 7, 9, 11, 12 and 13 to handle reorganizations and liquidations. The Board is, in the case of business bankruptcies, primarily concerned with Chapters 7 and 11; in Chapter 7 (liquidation), a debtor turns its assets over to a bankruptcy trustee who handles the liquidation (or sale) of those assets, and in Chapter 11 (reorganization), a business reorganizes itself with the intention of paying off debt and creditors and emerging as (hopefully) a leaner, more efficient business. Chapter 11 debtors are typically referred to as “debtors-in-possession,” or “DIPs.”

We knew that it was likely that in most of the cases, we would see Chapter 11 cases. In a Chapter 11 bankruptcy, the debtor company remains “in possession” of its assets which are protected by an automatic stay. Business, for the most part, continues while the debtor proposes a plan of reorganization (as long as the business activities are in the ordinary course of business). The plan would show how the debtor intended to pay off the claims of its creditors and interest holders. Meanwhile, a sometimes lengthy process of hearings on various motions occurs until the plan is approved by the court and creditors are paid.

Recognizing that once the bankruptcy process kicked in, the Board might have to be flexible in order to keep properties open and hopefully alleviate any potential losses of gaming employees, it was decided early on that an internal team within the Board would be needed in order to facilitate quick investigation and yet ensure that strict licensure standards were maintained. While keeping care not to allow the gaming laws and regulations of this state to be violated, the Board's Bankruptcy Group began working with companies and individuals (ranging from large-scale public companies to small-scale restricted licensees) in shepherding them through the process. Thus, abbreviated investigations of such persons as trustees and receivers was contemplated, as the Board could perform a cursory investigation of such a person, approve them to operate the bankrupt entity, and then require either a full transfer to a fully-investigated, licensed operator or require a subsequent comprehensive investigation of the

individual after initial approval. Further, the possibility of bank-ownership of gaming licensees began to be real. The Board took steps to determine internally how such an investigation and licensure might occur. To date, these measures have allowed the Board to quickly and efficiently work with the bankruptcy process in meeting all of the goals stated above. It should also be noted that the bankruptcy courts have, throughout this process, been incredibly helpful and amenable to Board concerns; in fact, the working relationship between the Board and the U.S. Bankruptcy Trustee's Office has never been better.

All of this, of course, has affected each of the Board's Divisions, requiring much work during both the pre-petition and post-petition process. Pre-petition cases are being dealt with by the Board's Audit and Tax & License Divisions, depending upon what Group the company falls within. Audits and related activities such as pre-petition claims are taking place in a relatively timely fashion and are tailored based upon what “emergency” might exist. Also,

distressed properties are being closely monitored by those Divisions and careful monitoring of such properties' minimum casino bankroll requirements are made.

The Enforcement Division continues to actively monitor the internal workings of

properties where the stress and confusion of weakened fiscal strength can leave employees feeling the need to exercise less-than good judgment when handling money.

Post-petition companies that emerge from bankruptcy are likely going to look very different than they did prior to filing. One basic element of Chapter 11 bankruptcies is that debt-holders are allowed to convert that debt into equity (ownership). Therefore, part of the bankruptcy restructurings can likely encompass new holders of equity that are unaccustomed to gaming laws, like banks and other financial institutions. Dealing with new types of corporate structures is what the Corporate Securities Division does best, and careful analysis of such structures is made on nearly a daily basis. The Investigations Division continues to excel at investigations of individuals and has ushered several smaller companies through this process already, and has done so successfully under



crushing time constraints.

The Board and its Divisions continue to strive to develop new, more efficient ways of monitoring the financial health of its gaming licensees and ensuring that the bankruptcy process runs smoothly along with the gaming regulatory process.

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