

Op-Ed/Editorials - Casinos as debt collectors

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A large casino may be stuck with more than \$10 million every year in bum checks and bounced markers.

How to collect?

Debt collectors often make their money by, well, collecting debts. They are not paid by the hour, but depend for their livelihood upon their ability to extract money from reluctant customers. In the past, this sometimes led to problems. Debt collection is consistently one of the top consumer complaints.

In 1977 the United States Congress found, there is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. It reacted by passing the federal Fair Debt Collection Practices Act. The Act spells out what outside debt collectors can and cannot do. Some are obvious, such as not threatening violence. Others are more complicated and technical, such as normally not making phone calls after 9:00 pm or before 8:00 am and not revealing that the call is for collection of a debt if someone other than the debtor or his family answers the phone. A debt collector who makes a mistake is violating federal law. Does this Act apply to casinos? How about their lawyers? The question is of more than academic interest. The stakes are high.

First, of course, there is the money. Legal gaming operations directly lend billions of dollars each year to their patrons, and have to chase down hundreds of millions of dollars that are not paid back in time. The National Gambling Impact Study Commission, created by Congress, asked me to do a study in 1998 on credit and

the casino industry. I found that the 12 casinos in Atlantic City that year issued approximately \$2.13 billion in counter-checks, markers, to their patrons. This means that, in just this one city, players borrow more than \$2 billion each year from casinos. This does not include personal checks written directly to the casinos or to others, or, most importantly, patrons' use of credit cards, ATMs or other forms of credit used to get cash to gamble. Most patrons were able to pay off most of their loans by the end of their trips and the markers were canceled as paid in full. Players redeemed more than \$1.58 billion in markers prior to deposit. For some, however, luck was not as kind. So \$543,174,000 in markers remained unpaid after the players had left the casinos. Most of this money was recovered through the normal procedure of depositing the markers for collection through the banking system: The casinos collected \$424,400,000 from the players' banks in this way.

This means that \$118,774,000 bounced. Having to chase down more than \$100 million in bad debts every year turns casinos and their lawyers into major collection agencies.

Successful collection agencies, I might add. Casinos eventually collected more than \$91 million of these bum markers. So, of \$2 billion lent by Atlantic City casinos, only 1.3% was not repaid. Still, that means \$28 million had to be written off.

Obviously some of these bum markers are from people who cannot pay. But some of this money is owed by people who, for one reason or another, simply refuse. Casinos sometimes have to sue their (former) best patrons. Or they sell the debt to an outside collection agency, which then files a lawsuit. But gambling debts are not always collectable in a court of law. What's a debt collector to do?

Today's state licensed casinos do not break kneecaps. In fact, in states like Nevada there are detailed regulations covering how gaming debts may be collected.

But if the Fair Debt Collection Practices Act applies, casinos are opening themselves to civil damages and fines if they don't strictly comply with federal technical requirements as well.

Any debt collector subject to the Act may be liable for actual damages suffered by a person as a result of the abusive collection practices. It is obviously hard to put a dollar figure on being awakened at, say, three o'clock in the morning. So

Congress added an additional fine of up to \$1,000 per violation, plus having to pay court costs and the debtor's attorneys fees.

It might be worth paying \$1,000 to collect a single debt of \$300,000. But violators are also exposing themselves up to class actions. Lawyers have an incentive to sue, because the debt collector can be made to pay up to \$500,000 or 1% of its net worth, whichever is less, to the class plaintiffs, as well as attorney fees and costs.

So, are casinos subject to this federal law?

The answer is probably not. The federal law is limited to companies whose primary business is debt collection. The business that is owed the money is usually not subject to the debt, unless it does something stupid, like using a phony name.

In 2000, federal District Court Judge Philip M. Pro ruled that Caesars Palace could not be sued for alleged violations of the Act, because Caesars Palace was trying to collect debts owed to it by a patron. It was not acting as a debt collector for some other company.

The one potential problem was that, legally, Caesars Palace does not exist. The actual company name is Desert Palace, which is doing business as Caesars Palace.

The judge said this was O.K., because its in-house debt collectors and outside lawyers always used the name Caesars. The patron could not claim that it was using a name other than its own.

So, at least in Nevada, when casinos using their own name go after deadbeat patrons, they cannot be sued under the federal Fair Debt Collection Practices Act.

Still, casinos tell me that they try to keep to the letter of this law — just in case.

What do you think? You can address comments to Dr. I. Nelson Rose.

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