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I am Bob Faiss. I serve as the director of the gaming law practice at the firm of Lionel Sawyer & Collins, which is Nevada's largest law firm and where I have practiced for 26 years. During that period, I have represented the gaming industry in connection with virtually every material change to Nevada gaming statute and regulation, including those affecting gaming credit.

I was Assistant Executive Secretary to the first Nevada Gaming Commission, for which in 1963 I wrote the first state publication on the history, economics and control of what was then America's only casino industry, and I was Executive Assistant to Governor Grant Sawyer, who fashioned Nevada's present system of gaming control nearly 40 years ago.

In 1997, Nevada casinos reported gross gaming revenue¹ of approximately \$7.5 billion.² Credit play is estimated to account for approximately 5- 15% of the total amount wagered at all Nevada casinos.³

Credit play occurs when a patron borrows money from a casino to allow him to make wagers. Credit play must be distinguished from other types of credit. A patron who borrows money from independent third parties (such as credit card companies) and then uses the borrowed money to gamble is not engaging in "credit play." Credit play must also be

¹ In Nevada, "gross gaming revenue" is generally the amount won by the casino, less the amount paid out to patrons as losses. *See Nev. Rev. Stat. § 463.371 (1997).*

² The 235 nonrestricted gaming licensees with gross gaming revenue of \$1,000,000 or more reported total gross gaming revenue of \$7,493,752,537. State Gaming Control Board, *1997 Nevada Gaming Abstract*, at 1-3.

³ The percentage amount is the estimate of casino financial executives interviewed by Ellen F. Whittemore and Robert D. Faiss of Lionel Sawyer & Collins in October and November 1998.

distinguished from cashing a personal check, for which the patron presumably has sufficient funds.⁴

The majority of credit in Nevada is given to the most upscale clientele, or the "high roller." Many high rollers are residents of another country.⁵ These are the gamblers who may be given complimentary rooms and amenities and who may be reimbursed for their airfare and other expenses. These astute gamblers may arrange percentage discounts on the amount they will have to repay prior to the credit being extended. For instance, if they borrow \$100,000 and lose that wagering, they have an arrangement with the casino to only pay back \$90,000. They take every advantage to reduce the price that they pay to gamble. For them, credit play is a wise financial decision.

For many gamblers, "high rollers" or otherwise, credit often is a matter of convenience and personal safety.⁶ By playing on credit, they don't have to travel with large amounts of cash or wire transfer money to the casino.

Although my comments today are limited to Nevada, I should note that the issuance of credit by a casino is subject to regulatory control in each of the seven gaming states that authorize

⁴ While cashing a check is a form of credit, the amount of written-off checks is estimated to be less than .5% of the total checks cashed. Interviews of casino financial executives by Ellen F. Whittemore and Robert D. Faiss (Oct.-Nov. 1998).

⁵ See, e.g., MGM Grand, Inc., *1996 Annual Report*, at 34 ("The Company extends credit to certain casino patrons, a substantial portion of whom reside in countries other than the United States, following evaluation of credit worthiness"); Mirage Resorts, Incorporated, *1996 Annual Report*, at 44 ("... a substantial portion of the receivables was due from foreign customers.").

⁶ Harrah's Entertainment, Inc., *Casinos and Credit*, (1998) at 4.

a casino to grant credit.⁷ Each state requires the casino to determine that the patron is worthy of the amount of credit granted. Casino credit is only granted to a player at his or her specific request and only in the amount requested by the player, if such amount is warranted. Casinos do not publicly advertise the availability of credit to attract patrons.

A patron requests credit by completing an application form.⁸ In Nevada, the typical form contains a request for the patron's complete name, address, birth date, social security number, the name of the business where employed, the type and address of business, the patron's position at the business, the amount of credit requested, and bank references with account numbers. The patron is also requested to disclose the name of each casino where the patron has an established credit line. Nevada casinos do not request information regarding a patron's income or current assets and liabilities. After completing the application, the patron must execute it, certify the accuracy of the information provided and authorize the casino to conduct any credit history investigations necessary to consider the request for credit. The patron must also provide the casino with identification which is photocopied and kept by the casino.

Nevada casinos are subject to strict regulations regarding the information they collect before they grant credit to a casino patron. Nevada Gaming Commission Regulation 6.120⁹ requires a casino to document that it has received information from either a bona fide credit-

⁷ Illinois, Indiana, Louisiana, Michigan, Mississippi, Nevada and New Jersey authorize a casino to lend money to its patrons. Colorado, Iowa, Missouri, Montana and South Dakota prohibit credit play. Copies of the relevant statutes are attached as Exhibit A. Credit practices are also limited by the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

⁸ A typical Nevada application form is included at Exhibit B.

⁹ A copy of Nevada Gaming Commission Regulation 6.120 is attached as Exhibit C.

reporting agency, a legal business that has extended credit to the patron, or a financial institution at which the patron maintains an account. Alternatively, the casino may grant credit to a patron if its own records or records at another casino indicate that the patron has established credit and that the patron has paid substantially all of the previous outstanding debt and there is a reasonable basis for granting the credit to the patron. For foreign patrons, the casino may rely upon written information received from an agent or employee having personal knowledge of the patron's credit reputation or financial resources.

Most casinos require additional information in order to satisfy themselves of the patron's creditworthiness as part of the casinos' required internal control procedures.¹⁰ Internal controls are the measures adopted within a business to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency and encourage adherence to prescribed managerial policies.¹¹

While each Nevada casino is free to adopt its own internal control system, these systems must be approved by the Gaming Control Board as meeting minimum standards. The casino's submitted system is continually evaluated by the regulators and by the casino's independent accountants who must report any deficiencies to the Gaming Control Board. Once a casino adopts an internal control system and submits the system to the Gaming Control Board, the casino is bound by regulation to follow it. The failure to comply with its internal control submission subjects the casino to disciplinary proceedings.

¹⁰ See Nev. Gaming Comm'n Reg. 6.090, attached as Exhibit D. A copy of the minimum internal control standards applicable to the issuance of credit is attached as Exhibit E.

¹¹ *Id.*

Casinos use different sources to solicit information about a potential credit customer. If the patron has established credit at another casino, the casino at which the patron is seeking credit will contact Central Credit, an independent credit reporting agency that maintains information provided to it by the casinos. Most casinos subscribe to Central Credit's services. Central Credit will provide the inquiring casino with up-to-the minute information about the patron. If the patron does not have established credit, the inquiring casino will generally contact an independent credit reporting agency for credit information.

In deciding whether to grant credit to a particular customer, the casino must be provided with information that indicates the patron is creditworthy and has an ability to repay the credit extended. Once the casino obtains the information, casino executives review the information and make a business determination - based on their experience - as to whether the information obtained about the patron justifies the extension of credit requested. As the amount of requested credit increases, the executives who must approve the request change in both authority and number. These executives are in all cases individuals who have either been licensed by or reported as a key employee to the Gaming Control Board.

Once credit is established, the patron may draw against the credit line. The patron usually requests a draw while playing at a table game. Only a small portion of credit customers play slot machines. After completing the necessary procedures, the patron is requested to sign a countercheck, known as a "marker," which evidences the amount of the draw. If the patron wins, the outstanding markers are redeemed with the winnings. If the patron loses, the markers are retained in the casino cage until redeemed or deposited for payment. Markers that remain

unpaid at the end of the patron's visit are customarily redeemed by the patron within 30 days.¹² All casinos have policies related to when collection efforts begin.

If a patron does not timely pay his debt, the casino begins an in-house collection process. This collection attempt can be done by sending letters requesting payment, by personal contact, by telephone conversations with the patron, or by presenting the credit instrument to the patron's bank for collection. Only bonded, duly licensed collection agencies or a casino licensee's employees, representatives or attorneys may collect a gaming debt from a patron. A casino that uses improper methods to collect a gaming debt is subject to disciplinary action by the Gaming Control Board.

Very few Nevada casino debts are collected through judicial process. It has only been since 1983 that the Nevada legislature authorized casinos to enforce gaming debts in court.¹³ Prior to that time, judicial collection of Nevada gaming debts was not available.¹⁴ Today, Nevada casinos have the full range of legal remedies provided for any other legally enforceable debt. If suit is commenced, the action proceeds as does any other breach of contract lawsuit. Once a final judgment is obtained in Nevada, the judgment can be executed in any state because

¹² Approximately 60% of all markers are redeemed within 30 days. Interviews of casino financial executives by Ellen F. Whittemore and Robert D. Faiss (Oct. -Nov. 1998).

¹³ See Nev. Rev. Stat. § 463.368(1) ("A credit instrument accepted on or after June 1, 1983, and the debt that the credit instrument represents are valid and may be enforced by legal process.").

¹⁴ Nevada had incorporated the English common law as its own. Nev. Rev. Stat. § 1.030. This incorporation included the English statutes in force at the time the American Declaration of Independence was executed. *West Indies, Inc. v. First Nat'l Bank of Nevada*, 67 Nev. 13, 214 P.2d 144, (1950). One of those statutes was the Statute of Anne, which made most gaming debts unenforceable in a court of law. Statute of 9 Anne, c. 14 § 1.

of the full faith and credit principles governing out-of-state judgments guaranteed by the United States Constitution.

Most patrons repay their debts to the casino in a timely manner and the casino does not resort to judicial process. The bad debt expense of Nevada casinos is only 2.2% of gross gaming revenue.¹⁵

Well-run casinos are prudent in their lending practices, which are directed by some of the most educated and experienced executives in the gaming industry. Good long-range casino planning dictates that casinos not allow patrons to borrow more than they can afford to repay. There are several reasons for this. First, if the loan isn't repaid, the casino hasn't made anything on the patron's wagers. Second, a casino has no collateral for the loan.¹⁶ Third, casinos do not charge any interest on credit play -unless forced to proceed to judicial process- and do not make a profit on the extension of credit. Fourth, casinos want to retain a patron's business. If a patron is granted more credit than he can afford to repay, the casino may well lose that patron's business and not collect the debt. Finally, a casino that has issued credit unwisely may be taxed by the Gaming Control Board for the amount of the loan, even though the patron has not repaid it.

The Nevada gaming industry can justifiably claim that it follows responsible gaming credit practices. The industry believes that it exercises care in extending credit only to those whose personal history demonstrates a responsible attitude toward credit obligations and the financial ability to pay.

¹⁵ State Gaming Control Board, *1997 Nevada Gaming Abstract*, at 1-3.

¹⁶ Some patrons make front money deposits (money put on account with the casino) and then are issued markers against the front money. Since the casino has the patron's money the casino isn't really loaning money to the patron.

The Nevada industry - through its individual members and the Nevada Resort Association Task Force for Responsible Gambling - has worked closely with Nevada gaming authorities and the Nevada Council on Problem Gambling to support a Nevada gaming regulation that among other things, requires casinos to adopt a program allowing patrons to exclude themselves from receiving casino credit and check-cashing privileges.¹⁷

With certain exceptions, gaming credit is not subject to taxation in Nevada until the debt is collected. Nevada's basic tax on the gaming industry is a percentage of net cash won; in other words, the total of cash received as winnings less the total of cash paid out as losses. The tax base also includes revenue from gambling games in which the casino is not party to the wager, such as poker. The tax is collected monthly and is graduated from 3% of the first \$50,000 of net gaming revenue to 6 1/4% of net gaming revenue in excess of \$134,000.¹⁸ In fiscal year 1997, this tax raised approximately \$450 million.¹⁹ This represented about 32% of Nevada state tax collections.²⁰

Gaming debt payments are taxed in the month they are received by the casino. The exceptions that may cause the unpaid debt to be taxed as cash are instances in which an inference may be raised that the casino's conduct contributed to nonpayment of the debt. These would include, for example, failure to obtain the patron's signature on the debt instrument; failure to

¹⁷ Nev. Gaming Comm'n Reg. 5.170 is included as Exhibit F.

¹⁸ Nev. Rev. Stat. § 463.370

¹⁹ Total percentage fees paid in fiscal year 1997 were \$444,975,675. State Gaming Control Board, *1997 Information Sheet*.

²⁰ State Budget Office, *Fiscal Year 1997 General Fund Revenue Summary*.

obtain an address for the patron; failure to check the credit history of the patron; and failure to make a reasonable effort to collect the debt.

While Nevada casinos have always granted casino credit, Automated Teller Machines (ATMs) were only introduced in Nevada casinos during the late 1980s.²¹ The trend to use ATMs is not unique to Nevada casinos. In 1997, there were about 180,000 Automated Teller Machines (ATMs) in the United States, up from 139,000 in 1996.²² Various non-bank businesses specifically servicing the automated teller market are responsible for the majority of the growth.²³

ATMs are offered by casinos as a convenience to their customers. As the average transaction at a casino property is less than \$200, customers do not appear to be abusing that convenience.²⁴ There is no way to identify whether the money was used to gamble and - because gaming accounts for only about half of revenues in major Nevada resorts - it is doubtful that all such advances were used for gaming. The presence of ATMs apparently has not caused visitors to overextend themselves. According to a review of figures from the Las Vegas Convention and Visitors Authority and the State Gaming Control Board, the average Las Vegas visitor in 1997

²¹ Bellagio, *ATM Impact Study-- Automated Teller Machines in Las Vegas Casinos and their influence on gambling and spending among visitors*, Aug. 1998.

²² Anne Hayes Peterson, *ATMs & debit cards*, CREDIT UNION MAGAZINE, July 1, 1998.

²³ *Id.*

²⁴ Interviews of casino financial executives by Ellen F. Whittemore and Robert D. Faiss, (Oct. - Nov. 1998).

spent less money per day than before the machines were introduced in casinos.²⁵

In addition to ATMs, many Nevada casinos offer their patrons the convenience of credit card advance machines. These machines do not dispense cash. Instead, once the charge to the credit card is approved by the credit card issuer, the cash is issued at the casino cage.

Each credit card company that issues a credit card to its customer must make a determination that its customer has the ability to repay the amount of credit authorized by the company. The casino in which a credit card advance is drawn does not make that determination. If the credit card company authorizes a certain advance, it makes no difference whether the customer buys goods or chooses an entertainment experience such as gambling. If the credit card company is correct in authorizing that amount of credit, the customer won't be overextended, no matter how the money is spent.

Nevada's new regulation to address problem gambling also requires Nevada casinos to post signs on all ATMs and credit card advance machines identifying where patrons with gambling problems may turn for help.²⁶

There are those who argue that gambling credit is driving casino patrons into bankruptcy. This argument is not supported by empirical, validly scientific studies. The Nevada experience in fact rebuts the argument that gaming credit is a major factor in bankruptcy filings. Las Vegas compares favorably to other cities in its bankruptcy filings for 1997, ranking 65th among

²⁵ Bellagio, *ATM Impact Study-- Automated Teller Machines in Las Vegas Casinos and their influence on gambling and spending among visitors*, Aug. 1998.

²⁶ Nev. Gaming Comm'n Reg. 5.190.

metropolitan areas in bankruptcy filing per capita.²⁷

A 1996 USA Today survey of 522 bankruptcy filers found that only 2 percent cited gambling as a major factor. That is consistent with the experiences of Nevada casino financial executives who indicate that only a small portion of their credit patrons file bankruptcy. For instance, one casino reported that over a period of more than four years, only 346 credit patrons out of more than 200,000 had filed bankruptcy owing gaming debt to that casino. Another reported that out of approximately 9,000 active credit accounts in 1997, the casino was listed as a creditor in only 10 bankruptcy proceedings in that year. According to casino financial executives, only a small percentage of their credit patrons declared bankruptcy.²⁸

To determine if the experience of the casino financial executives interviewed was consistent with bankruptcy filings in Nevada, the bankruptcy section of our law firm sampled 508 of the 11,716 bankruptcy cases filed in Las Vegas in the first 9 months of 1998. They found that only 58 debtors among the sample of 508 listed gambling losses during the preceding year in response to a specific question regarding such losses. Of the 508 bankruptcy filers, only one listed an unpaid gaming debt to a casino.²⁹

While I do not presume to suggest that this sample is representative of all the bankruptcy

²⁷ American Bankruptcy Institute, *Bankruptcy Filings by Metropolitan Statistical Area, Year-Ending 1997Q3* (Visited Oct. 28, 1998)<<http://www.abiworld.org/stats/metrostats97q3.html>>.

²⁸ Interviews with casinos financial executives by Ellen F. Whittemore and Robert D. Faiss (Oct.-Nov. 1998).

²⁹ Laurel Davis, a bankruptcy partner of Lionel Sawyer & Collins reviewed 508 bankruptcy files of the United States Bankruptcy Court, Southern District of Nevada that were filed during August and September 1998.

filings in Nevada, nor that it should be accepted as scientifically valid, the result does suggest that the criticism of gaming credit as a major factor in bankruptcy is unwarranted.

Patron credit has been a part of the Nevada gaming industry since wagering was authorized by the Legislature in 1931.³⁰ As with many other aspects of casinos in this state, credit practices and the government regulation of those practices have evolved over decades. Both regulatory and business decisions have been based on experience. The result, we believe, is a time-tested component of the nation's oldest casino industry that functions efficiently and responsibly.

³⁰ Act of March 30, 1931, Section 3302-3302.16, Nevada Compiled Laws, 1931-1941.