

Global Gaming Expo Edition



Michael Pollock's
**GAMING INDUSTRY
OBSERVER**[®]
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Regulatory update ...

APPEAL TO NJ'S HIGHEST COURT LEADS TO FURTHER UNCERTAINTY FOR FUTURE OF TROPICANA

Editor's Note: The denial of Tropicana's license renewal 11 months ago has resulted in a regulatory and legal morass. Former New Jersey Casino Control Commission Assistant General Counsel Steven Ingis, now Legal Advisor for Spectrum Gaming Group, publisher of this newsletter, was intimately involved in the license denial and argued the commission's case before the Appellate Division. He provides the following analysis of the unusual Tropicana situation.

In a rather surprising development in the unpredictable saga of Tropicana Casino and Resort in Atlantic City, the New Jersey Supreme Court has agreed to hear the casino's appeal of the Casino Control Commission's December 2007 denial of Tropicana's license renewal application. Argument has been scheduled for November 17 in Trenton, at which time lawyers for the embattled casino owner will try to persuade the highest court in New Jersey that it was stripped of its casino license arbitrarily.

Last May, a three-judge panel of the Appellate see **TROPICANA** on page 7

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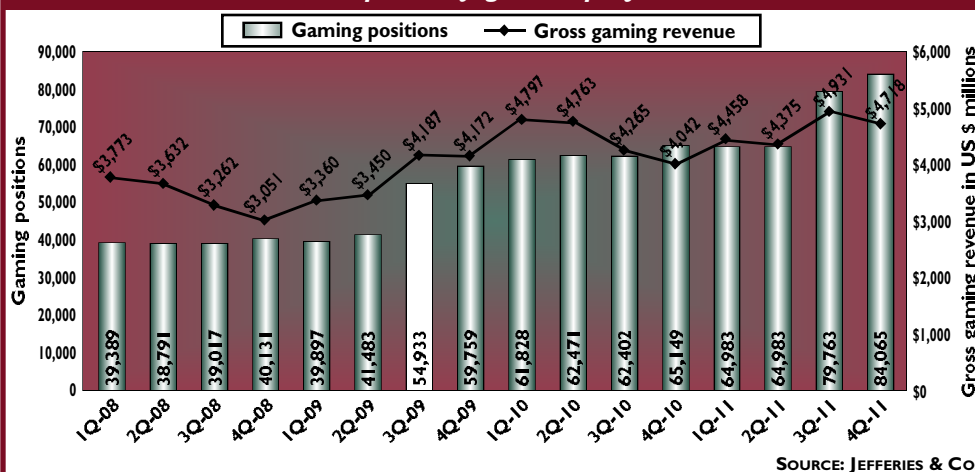


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Macau quarterly growth projections



SOURCE: JEFFERIES & CO.

Letter from Macau ...

VISA RESTRICTIONS LIKELY TIED TO JUNKET UNDERCURRENT AS CHINA CONTROLS 'WATER TAP'

Editor's note: The following analysis is by Norman MacKillop, Macau Country Manager for Spectrum Gaming Group, publisher of this newsletter.

In the bad old days of corruption in Hong Kong, locals would use the term mo soi, mo soi! "Soi" means water in Cantonese, but in a slightly different tone it means "money" or "tax." The pun referred to those unlucky enough to have to call the fire service. If no "soi" (money) was paid to the firemen, the "soi" (water) would not be turned on and the property would go up in flames.

Nowadays in Macau, when locals talk of China turning the soi on or off, they are referring to restrictions on Chinese citizens visiting Macau. They provide the soi for Macau's casino-driven economy, which has seen phenomenal growth in a few short years.

Before discussing the visa restrictions, it should be understood that Chinese citizens do not enjoy freedom of movement as citizens do in the Western world. There are even restrictions on where individuals can live and work — and a Chinese citizen can be an illegal immigrant in his own country. Exit visas

are required to leave the country, with different rules applying to various countries, the reason for the visit and what job you hold (e.g. government servants are more strictly controlled).

It should also be understood that tours organized by government-approved agencies are less strictly controlled, and the talk of visa restrictions in the context of Macau refers to the Individual Visit Scheme introduced by China in 2003 to boost the economies of Macau and Hong Kong, which were badly hit by the SARS crisis.

Initially, the visit scheme applied to citizens of certain cities with well developed economies in Guangdong Province bordering Macau and Hong Kong, and it has been gradually extended to cover 49 cities and counties as far north as Beijing. The scheme brought about an immediate increase in Mainland visitors to Macau.

Macau relies on Mainland China for 57 percent of visitors and about 40 percent of these arrive through the IVS.

Although the various cities in the scheme have their own restrictions, the biggest impact has been the restriction on neighboring Guangdong residents now being allowed to visit only once in three months compared to once every two weeks before June 1, 2008.

The loophole in visitors arriving from China via visas for Hong Kong has also been closed. see **MACAU** on page 6

Slot trends ...

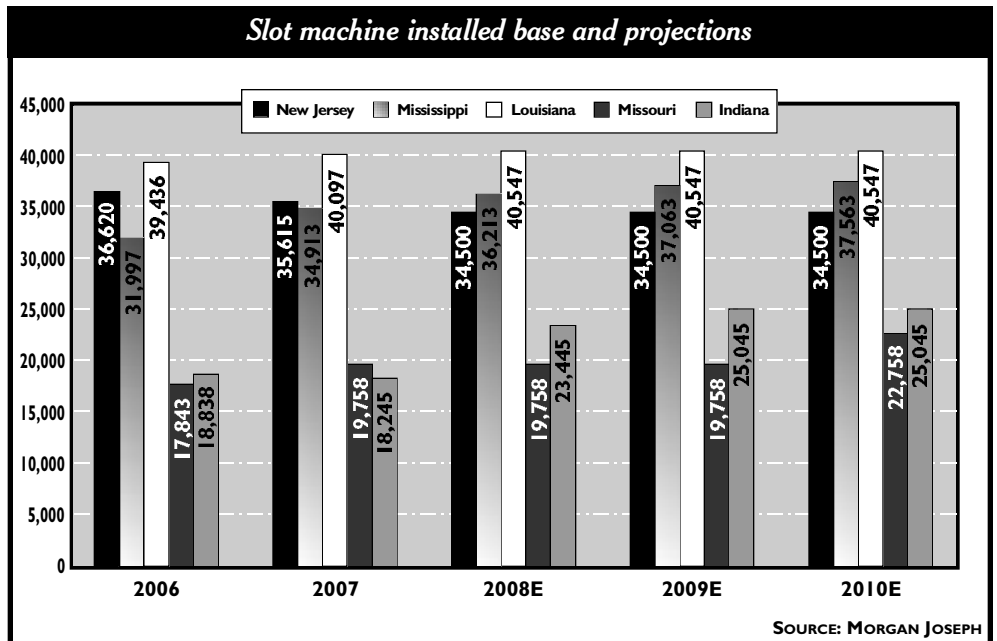
ECONOMIC STAGNATION
FUELS SPENDING STAGNATION
AMONG SLOT MANAGERS

Remember the lonely Maytag repairman, who was consigned to a life of boredom, based on the premise that Maytag products needed little service? Well, that lonely fellow may find some company among slot salespeople in the states of New Jersey, Mississippi, Louisiana, Missouri and Indiana.

As the chart shows, demand for slot products in these mature states is not expected to grow much in the near term. We concur with these assumptions, as developed by Morgan Joseph. Casinos are being buffeted by economic forces in several ways. As the accompanying article on this page indicates, slot players who are suffering from declining home prices and limited access to credit are not going to loosen their gaming purse strings any time soon. This limits the need to expand the number of gaming positions.

At the same time, casinos are going to respond to the tightening of gaming budgets en masse by tightening their own spending. This means cutbacks in capital spending, and decisions to freshen slot floors with new products will be forestalled.

Slot salespeople will argue that this is precisely



the wrong time to keep stale product on the floor, that a sense of newness will spur growing interest by players, and will fuel incremental revenue. Such arguments, however, will not easily gain traction amid the gathering economic storm.

That is not to say that such points are not valid. Indeed, the same-old slot floor will have virtually no chance of growing revenue absent some significant catalyst. New products could make some incre-

mental difference, but will be difficult to justify in such a climate. So, the result will be that slot players — already jarred by a series of economic jolts — will cut back their spending, and will be less motivated to spend money on products that are in need of refreshment.

That, in turn, will reduce capital spending even further. This is a downward spin cycle that no Maytag repairman on earth could remedy. ■

Macro economic trends ...

NEGATIVE SAVINGS +
NEGATIVE MARKET NEWS
= NEGATIVE CASINO OUTLOOK

In 2004, Americans saved \$174.3 billion, which was about 2 percent of disposable personal income that year. If 2 percent sounds like a lot, it isn't. Back in 1978 — when the first casino in the United States, outside the state of Nevada, opened for business in Atlantic City — that savings rate was nearly 10 percent.

Between 2004 and 2006, Americans went from a 2 percent savings rate to a negative savings rate of 1.1 percent. (As economists would note, a negative savings rate occurs when you use your credit card to buy a hammer, which you then wield to smash your piggy bank.)

It is no coincidence that, between those same benchmark years of 2004 and 2006, casino revenues in the United States grew by more than 25 percent. Adults had simply stopped saving and had commenced unprecedented spending. Consumer spending, in all its glory, emerged as the new national pastime.

After all, who needs to put money in a piggy

bank (or even a real bank) when home prices are rising and stock prices are cruising along on autopilot? Rising home values became the easy way to save, and spend. While casino revenues were growing at a double-digit clip, housing values were rising even faster, growing by 29 percent nationwide during that same two-year span.

This was a form of automatic savings. Then again, perhaps not.

Starting in Vol. 11, no. 4, and continuing for numerous issues since, *Gaming Industry Observer* cautioned that the negative savings rate could not be sustained, and that casinos were a prime beneficiary of that increased spending.

We can now estimate roughly how much of that negative savings rate made its way into count rooms from Biloxi to Bangor. The roughly \$60 billion in U.S. casino revenue in 2006 equaled about 0.6 percent of disposable personal income that year. That percentage has increased over time, as casino revenue grew faster than disposable income.

Consumers, naturally, did not care because they were spending money based on the theoretical value of their wealth, as measured by their stock portfolios and the assumed value of their home equity. Economists (and newsletters) like to refer to this as the "wealth effect," which assumes that consumers

spend an additional nickel for every \$1 increase in their net worth.

That effect, of course, works just as well in reverse. When we measure this variety of changes against our model, we note that every \$1 trillion decline in disposable income wipes out about \$316 million in casino revenue nationwide. And that assumes that disposable income stays the same as net worth evaporates, which of course is unrealistic.

If personal income reverted back to 2004 levels, that equates to \$400 million annual declines in casino revenue for every \$1 trillion decline in disposable income. Consider that, by some estimates, the combined decline in the value of housing and corporate securities could exceed \$5 trillion this year. You do the math because, at this point, our pencil just snapped.

"Given the amount of personal household debt alongside the tightening of credit and higher credit standards, we believe Americans will be forced, if not at their own volition, to reduce household debt," said Deutsche Bank's **Andrew Zarnett**, who has long been one of the most thoughtful gaming analysts. "On a relative basis, we believe reduced consumer spending will have a greater negative impact on destination gaming rather than regional or local gaming." ■

View from Russia ...

CASINOS OPERATE IN LIMBO AS GOVERNMENT PREPARES TO EFFECTIVELY SHUT INDUSTRY

The introduction of legislation to legalize casino gambling in any jurisdiction inevitably spawns debate about the extent of regulation the would-be operators will face. And while overregulation can undoubtedly stifle enterprise, the opposite situation can ultimately lead to the same result.

In Russia, a loosely regulated industry has led to such growth that the government solution is an over-reactionary, punitive law. The situation is a cautionary tale for any jurisdiction — from Native American to national — that effective regulation from the outset ensures long-term success for both the private and public sectors.

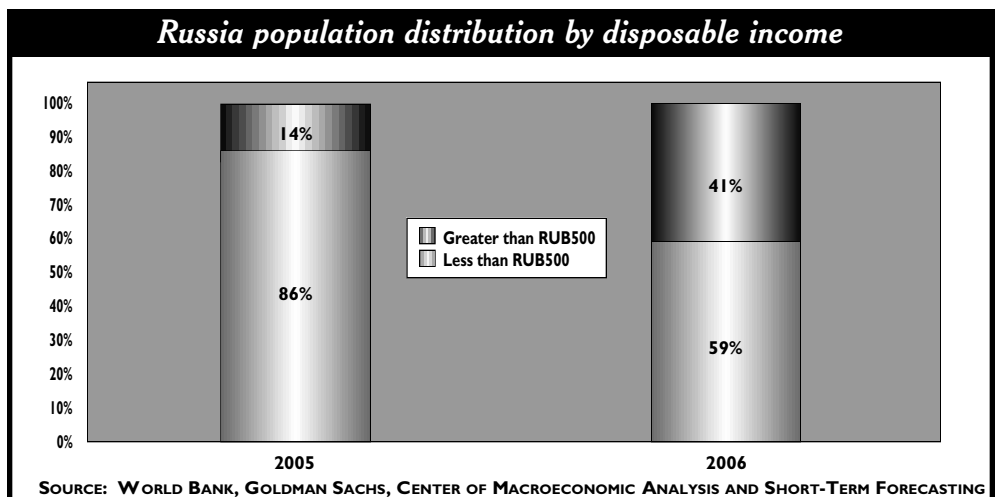
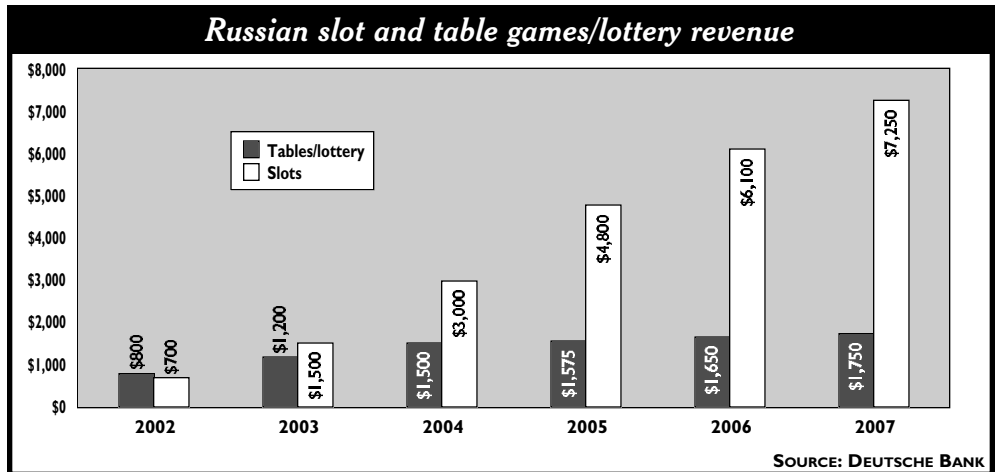
Russia's gambling industry had been healthy and robust, having generated an estimated \$7.8 billion in gross gambling revenues last year. Discretionary income among the citizenry in populous areas is growing; the World Bank projects that the average monthly disposable income per capita will rise from 7,800 rubles (about US\$300) to 25,000 rubles (almost US\$1,000). Wage growth has increased by double digits every year for the last five years and disposable income grew 10.7 percent last year and was up 11.8 percent for the first four months this year.

Against this backdrop of oil-fueled economic growth, the gaming industry is, incongruously, operating in a combination of limbo and shutdown mode. By federal law passed in December 2006, every casino and gaming hall is required to close by July 2009. At that point, gaming will be permitted in only four remote gaming zones, none of which is located in or sufficiently near a major metropolitan area.

The law was championed by then-President **Vladimir Putin**, who viewed the industry as having grown uncontrollably large and engaging in an activity harmful to citizens. The idea was to geographically confine gambling and create destination resorts that would attract only those who could afford the time and money to visit; the names "Las Vegas" and "Sun City" came up frequently in the governmental discussions.

The dreams of government today clash with the realities of investors, developers and gaming operators. "We're looking at concepts that require 10 years to develop, yet we're supposed to be done in 10 months," said **Clive Tilley**, President and CEO of Tilley Entertainment, which operates one casino in Moscow and one in Kazan.

Take, for example, Russia's designated Southern Gaming Zone, a 2,000-hectare (4,942 acres) tract of farmland on the Sea of Azov coastline. Located a



rough (not roughly, but rough) two-hour drive from the thriving city of Rostov-on-Don (pop. 1.1 million), the gaming zone is utterly devoid of infrastructure, adequate access, prospective employees and prospective gamblers. The closest village, Port Katon (pop. 1,300), is poor and appears to have only subsistence levels of water and electricity.

The Rostov Oblast government, which owns half of the Southern Gaming Zone (Krasnodar Krai owns the other), is caught in a chicken-and-egg situation: It has expressed a willingness to spend more than \$2 billion in infrastructure, but first needs to know if investors will follow suit. The administration commissioned a glitzy master plan concept for the property, envisioning that the world's major gaming companies would be willing to invest in the ultimate greenfield project.

Engaged by the Rostov administration through lead consultant BDO Unicon, Spectrum Gaming Group (publisher of this newsletter) found that the world's major gaming companies are fearful of investing in Russia. They cited the lack of stability in gaming laws, corruption, uncertain regulatory environment, better opportunities in other countries, lack of infrastructure, involvement of organized crime in gaming, and government's apparent distaste for legalized gambling.

As one senior executive of a Las Vegas-based gaming company said, "We're very interested in Russia. We want to be in Russia. ... But it would be very hard for me to go to my owners and say, 'I need \$8 billion to \$10 billion to invest in Russia.' I think they would shoot me."

And this was well before the current economic crisis.

The Rossiyskaya Gazeta noted in September that the exact location of the Primorsky gaming zone in the far east of Russia has changed twice and that "the creation of Primorie's Las Vegas has been delayed without date."

It appears that there will be no major development in the gaming zones in the foreseeable future. If anything, the zones may germinate with small motels or hotels or other tourist attractions, with gaming as an amenity.

In the meantime, Russia's gaming industry is being phased out. Moscow's casino operators are riding out the final months, hoping that government will see the wisdom of at least delaying the implementation of the gaming-zone law, if not outright overturning or amending it. Tilley said bonuses await those employees who stay with him until the end; meanwhile, he is preparing to export his gaming equipment when the clock strikes midnight. The floor space itself

see **RUSSIA** on page 7

Cluster analysis

The cluster analysis used in this newsletter breaks down as follows: The Route 40/Exit 2 Cluster is the Atlantic City Hilton and Tropicana; the Midtown Cluster is Trump Plaza, Caesars, Bally's and the Sands (which closed in November, and thus is still reflected in this data); the Inlet Cluster is Trump Taj Mahal, Resorts and Showboat, while the Marina cluster is Borgata, Harrah's Atlantic City and Trump Marina.

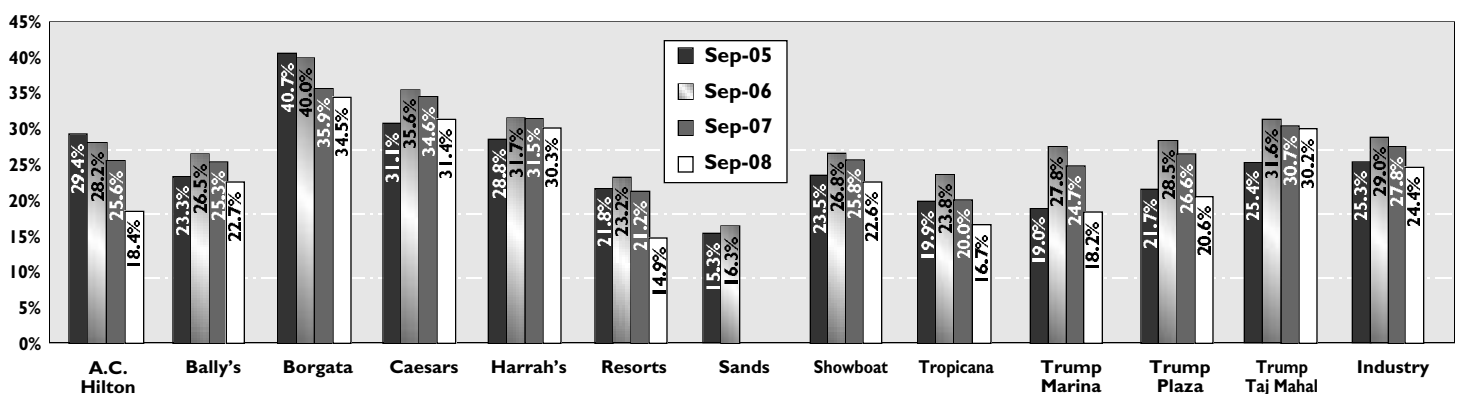
ATLANTIC CITY CLUSTER ANALYSIS

	NO. OF BUS PASSENGERS, YEAR ENDING AUG-08	CHANGE FROM YEAR ENDING AUG-07	ESTIMATED NO. OF CARS PARKED, YEAR ENDING AUG-08	CHANGE FROM YEAR ENDING AUG-07	ESTIMATED NO. OF VISITORS, YEAR ENDING AUG-08	CHANGE FROM YEAR ENDING AUG-07	CHANGE FROM YEAR ENDING AUG-06	ESTIMATED WIN PER VISITOR, YEAR ENDING AUG-08	CHANGE FROM YEAR ENDING AUG-07	CHANGE FROM YEAR ENDING AUG-06
Route 40/Exit 2 cluster	1,336,482	0.5%	1,531,423	-13.4%	4,858,755	-10.0%	-15.4%	\$134	-3.3%	-0.2%
Midtown cluster	2,053,398	-11.9%	3,179,519	-10.1%	9,366,292	-10.5%	-16.4%	\$155	2.4%	3.3%
Inlet cluster	1,711,551	-9.0%	2,634,335	-6.3%	7,770,522	-6.9%	-5.1%	\$145	-1.0%	-3.9%
Marina cluster	113,892	-8.1%	4,318,711	2.5%	10,046,927	2.4%	16.4%	\$152	-2.7%	-11.3%
Total	5,215,323	-8.0%	11,663,988	-5.4%	32,042,496	-5.8%	-5.1%	\$148	-0.8%	-3.0%

ATLANTIC CITY TRANSPORTATION DATA, YEAR ENDING AUG-08

	NO. OF BUS PASSENGERS, AUG-08	YEAR-TO-YEAR CHANGE	MONTH-TO-MONTH CHANGE	NO. OF BUS PASSENGERS, YEAR ENDING AUG-08	CHANGE FROM YEAR ENDING AUG-07	ESTIMATED NO. OF CARS PARKED, AUG-08	YEAR-TO-YEAR CHANGE	MONTH-TO-MONTH CHANGE	ESTIMATED NO. OF CARS PARKED, YEAR ENDING AUG-08	CHANGE FROM YEAR ENDING AUG-07
A.C. Hilton	56,516	-13.0%	4.1%	616,605	-6.8%	53,214	-9.8%	6.7%	544,905	-11.7%
Bally's	92,742	-9.2%	4.9%	931,982	-12.1%	119,909	1.7%	7.2%	1,160,169	-10.6%
Borgata	522	-83.8%	-12.9%	10,227	3.1%	220,377	8.4%	12.2%	2,071,258	2.2%
Caesars	76,009	-2.2%	4.2%	729,151	-0.6%	171,156	22.6%	4.2%	1,475,761	-4.2%
Harrah's	4,272	-16.1%	63.7%	54,372	1.8%	173,161	13.4%	13.3%	1,591,912	3.7%
Resorts	37,264	-27.7%	0.1%	556,663	-4.1%	38,607	-9.9%	5.9%	410,778	-8.0%
Showboat	78,435	3.6%	3.9%	742,260	-8.8%	122,257	-14.1%	16.3%	1,326,692	-12.1%
Tropicana	71,132	24.6%	35.0%	719,877	7.8%	101,469	-7.1%	6.2%	986,518	-14.3%
Trump Marina	4,851	-25.8%	18.6%	49,293	-18.7%	63,218	-6.7%	7.8%	655,540	0.7%
Trump Plaza	39,053	1.6%	6.7%	392,265	-15.3%	61,193	6.2%	6.8%	543,589	-10.8%
Trump Taj Mahal	39,058	-16.4%	8.0%	412,628	-15.3%	96,831	10.7%	8.2%	896,866	4.8%
Total	499,854	-5.5%	8.4%	5,215,323	-8.0%	1,221,391	3.5%	-3.9%	11,663,988	-5.4%

Benchmarking snapshot: Est. pct. of time Atlantic City gaming positions are occupied



Las Vegas outlook ...

INDUSTRY RETRENCHMENT
REFLECTS SHORT-TERM,
LONG-TERM PROBLEMS

Last year at this time, Las Vegas-based casino operators were riding high: Stock prices were in or near record territory, Las Vegas Strip operations were riding waves of escalating room rates and gaming revenues and Las Vegas Strip-area land was selling for epic prices.

Las Vegas Sands was preparing to open Palazzo, Wynn Resorts was about to top off Encore, MGM Mirage was building its giant CityCenter project and planning other major projects, and Boyd Gaming was just getting underway on its what was to be its flagship, Echelon. The world's biggest operator, Harrah's Entertainment, was adding a tower to its top property, Caesars Palace, and trying to decide when and how to redevelop its impressive land holdings on the east side of the Strip.

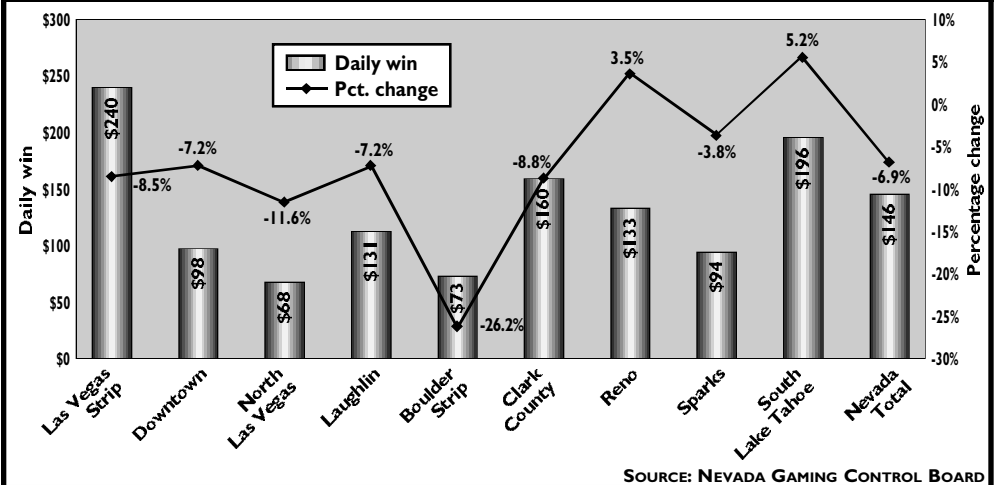
And gaming's most robust outpost, the Chinese enclave of Macau, was reporting bountiful numbers, with gaming win continuing to climb at a steep rate. Las Vegas Sands had recently opened the world's biggest casino, Venetian Macau, and was continuing its mammoth Cotai Strip building project designed to give the company the biggest straw drawing on the seemingly limitless pool of gaming win in Macau. Wynn Resorts and its Wynn Macau owned a generous chunk of the prized VIP market and maintained an outsized share of market gaming revenues. And MGM Mirage was preparing to open its own long-awaited entrant in the enclave, MGM Grand Macau, in partnership with Pansy Ho.

But, as Mickey Dolenz still reminds us, that was then, this is now.

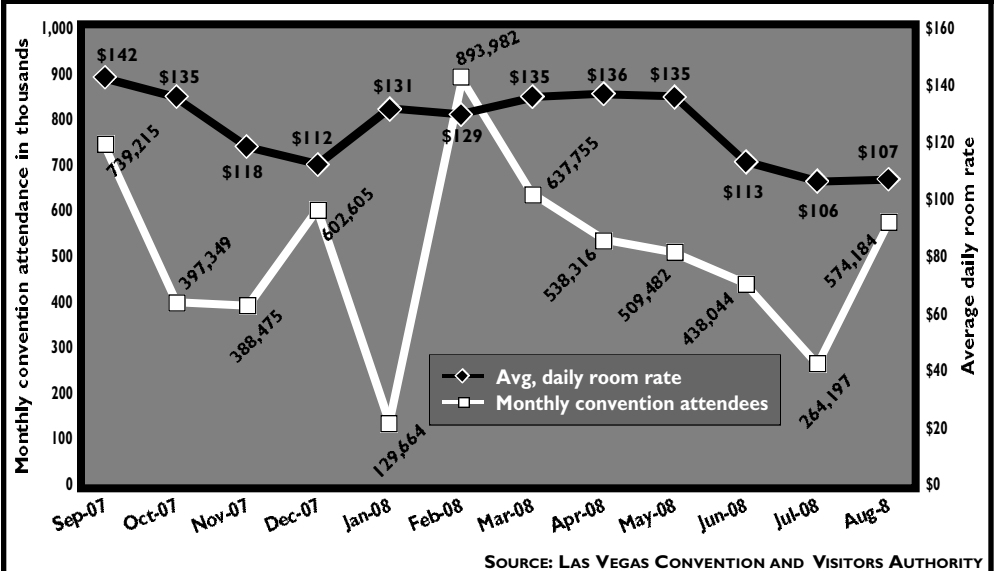
The biggest Las Vegas-based operators are in a much different place – a bad place. Publicly traded companies have seen their share values plummet by as much as 95 percent. Projects have been shelved or halted, a phenomenon that has affected other markets as well, including Atlantic City and Connecticut. Companies have had their debt ratings downgraded and are finding it nearly impossible to raise capital or refinance debt. Las Vegas and other casino markets have seen declining gaming and nongaming revenue streams as a nationwide recession, high fuel prices, a crippled airline industry, plummeting real estate values, rising joblessness and bleak consumer confidence have had pronounced effects.

Even in Macau, Chinese government-imposed visa restrictions are starting to reduce mass-market gaming win, a trend nearly unfathomable during the heady years after the U.S. operators first broke Stanley

Nevada markets, daily win per position for August 2008



Las Vegas ADR vs. convention attendance, last 12 months



Ho's monopoly. (See the related story on p. 1.)

As times have changed for the biggest operators, their options have shrunk yet their futures are much more uncertain. Survival strategies have come into play for some operators and the others are retrenching and doing their best to limit their exposure to the poor market conditions.

The short-term problem facing major Las Vegas operator has been an effective drying up of a significant chunk of what had been a reliable gaming customer: Adults who were willing to spend \$5,000 to \$10,000 per gaming visit.

This group of customers – an industry staple – is buffeted by several factors, starting with the decline in their net worth. This has been compounded by difficulties securing affordable flights. A \$5,000 spend that is eaten up by \$1,000 transportation costs becomes less palatable, particularly if they are not assured of a full comp on their room, food and beverage.

The higher-end customers are still visible in Las Vegas, albeit some of their numbers have dipped.

This group – which is more immune to the downturn for a variety of reasons – is, ironically, finding the welcome mat less visible in other domestic markets. A customer with a theoretical worth of \$8 million is now finding it difficult to secure a spot in markets such as Atlantic City. The problem: Such customers sometimes win. Few operators, in the current environment, are willing to take the risk of turning an already bad month into a train wreck.

The long-term problem is more intractable. When, if ever, will airlines be willing to revert to a business model in which they effectively subsidize Las Vegas by offering a panoply of cheap, affordable flights throughout the year? If those good old days never return, it will require the development of a new business model.

An inability to address the air-travel issue will make markets such as Florida, which still enjoys cheap, shorter flights from the northeast and Midwest, even more attractive. (See Vol. 13, no. 16, p. 3.)

Periodic restrictions over the past two years have proved to have little effect, other than brief falls in gaming stocks, which soon rallied after restrictions were lifted. (Current drastic drops in gaming stocks are mainly due to the world financial crisis.)

However, the latest negative turn of the water tap has resulted in a 24.6 percent year-on-year decrease in visitors arriving via the IVS in September 2008. To put this in perspective, 2.3 million visitors arrived in September, a 2.1 percent increase over 2007. Not bad for a tiny territory with a resident population of 552,000.

On the revenue front, data from the Macau Gaming Inspection and Coordination Bureau showed that while 2008 third-quarter revenue rose by 27.9 percent, the pace of growth has slowed compared with the 54.6 percent increase between January and June.

Official government forecasts are that Macau's GDP growth this year will drop from 15 percent to 10 percent. Put in the context of the current global financial crisis, these predictions are hardly reason for cries of anguish. Jefferies & Co. analysts speculate that having achieved its objective in slowing down Macau's growth, China will open the tap again some time in mid 2009, leading to a full year growth in 2009 of 11 percent.

There is a common misconception that somehow a large chunk of Macau's revenue finds its way into mainland government coffers. Not true.

Macau's constitution (the Basic Law) allows Macau to keep all of its revenue. Why therefore would China want to slow down Macau's economy? China never officially states reasons for visa restrictions and theories abound ranging from restricting the flow of proceeds of corruption to Macau's casinos, collaborating with the Macau government to cool down the economy, lack of faith in Macau government due to a recent scandalous corruption trial involving a senior government official, anger with the American companies for siphoning profits over to the USA, or simply trying to control the massive illegal outflow of money to Macau.

The US companies in Macau have invested huge amounts of capital in the economy. It would be unfair to punish them for that. Against the backdrop of China's anti-corruption drive and efforts to control economic growth, turning the tap on the illegal outflow of Chinese money may be a more compelling reason for the restrictions — in particular, when the majority of the money pours into the coffers of Macau's junket operators.

As gaming operators invest billions into Macau's economy and infrastructure, they are struggling to overcome the growing power of junket operators. The junket operators, sub junkets and their so-called collaborators are a hybrid of travel agent, money lenders and debt collectors, the most powerful of whom concentrate on bringing clients from Mainland China.

Junket-based patrons to Macau casinos currently account for 70 percent of the gaming revenue. Consequently, they have the power to exert strong influence on concessionaires through their ability to demand higher commissions and move their clients from one competing casino to another — and even on the government by the tax revenue they generate through VIP play.

Their capital investment in infrastructure and the development of Macau is minimal, but their return in investment far outstrips that of concessionaires. In typical VIP rooms, the casino is earning about 3 percent (an actual range 2.55 percent to 3.10 percent) of turnover and paying up to 1.25 percent (according to a recent agreement, brokered by an alarmed government between operators when competition pushed commission rates to 1.35 percent) of the 3 percent directly back to the junket operator.

The junket operator, in turn, gives rolling turnover to their sub-junkets at rates ranging from 0.50 percent to 1.25 percent. This leaves a very small margin for the casino to pay its 40 percent government taxes, operating and other costs and leaves both junket and casino operators vulnerable to severe losses through a large win.

Individuals can only take a maximum of RMB20,000 (\$US250) without filing a customs declaration and residents can purchase foreign exchange at banks up to US\$20,000 in a one-year period by presenting their identification documents and stating the purpose of the transaction. Larger amounts require stricter scrutiny.

A-Max Entertainment, a leading junket aggregator in Macau, boasted that it generated US\$5.3 billion in rolling chip turnover in February and forecast that it would average US\$6.3 billion per month in 2008.

Remember this is in only one casino in Macau (Melco/PBL's Crown casino). A-Max operates by earning commission from the casino and luring sub-junkets to their fold by offering credit deals and daily settlement of accounts, who in turn give credit to their sub junkets and so on down the feed chain. Count your own beans, but when you consider that the majority of the end clients are from China, the

figures do not correlate with the aims of China's currency restrictions.

The company expects profit for September 2008 will be about HK\$220 million compared to a HK\$51 million loss a year ago. A-Max also warns of a possible year-end loss due to the volatility of the junket market.

Another implication is that the junket operator's gain is likely to come at the expense of the casino operator whose stock price has fallen rapidly. If China's aim is to slow down this business, restricting exit visas does not seem to be having the desired effect in terms of the junket business.

However, China has a fine balancing act to perform. If the real goal is to lure Taiwan to the fold, Macau, like Hong Kong is an important model of success as a Special Administrative Region and sovereign territory of China.

Regardless of whether or not the reasons for tinkering with visa controls are to protect their own economy or help Macau stabilize and diversify theirs, China will maintain this perception even at the expense of turning the water tap on to full flow. Heaven forbid, but perhaps the government should buy casino stocks in tandem with controlling the water tap. ■



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Division heard similar claims during an hourlong argument, and then, in a sharply worded, unanimous opinion issued on July 1, soundly rejected all of Tropicana's arguments. The Court agreed with the decision of the Commission to deny the license, stating that there was more than ample evidence to support the agency's findings and conclusions.

In its lengthy discourse, the appellate panel echoed the findings made by the Commission, that Tropicana's regulatory performance over the course of the year leading up to the license hearing had been "abysmal," and pointedly denounced the intransigence of key management officials in failing to comply with regulatory standards. More specifically, in assessing the record concerning the casino licensee's failure to demonstrate the statutory requisite of business ability and casino experience, the Court emphasized the inexplicable failure to constitute an independent audit committee for more than six months and regulatory violations directly relating to inadequate staffing.

The Court also duly noted that, based on long-established principles applicable to appeals from decisions rendered by administrative agencies, the scope of review for the Court was limited to determining whether the decision was arbitrary or unreasonable. Under this standard, reversals of agency rulings stemming from adjudicatory proceedings are rare. Even rarer is for the state Supreme Court to become involved after the Appellate Division has decided a case of a factual nature in favor of the agency.

After receiving the opinion of the Appellate Division, which was viewed as a complete vindication of its decision, the Commission reasonably believed that the appeal was over. The presumed end to the appellate process was particularly important in this matter, because of the pending sale of the Tropicana. Under the governing law of the Casino Control Act, no sale of the casino following a denial of the license can be consummated while an appeal of the denial is still pending.

The conservator overseeing the operations of the Tropicana since the Commission's ruling in December 2007, retired New Jersey Supreme Court Justice **Gary Stein**, has been trying to sell the casino. Stein has had little success due to myriad factors, including the perilous economic climate, which has made it exceedingly difficult to attract a purchaser willing to spend fair market value for the property; complications stemming from ongoing bankruptcy proceedings, with several creditor groups trying to stake their respective claims; and the demise of his financial advisor Bear Stearns, which necessitated an eleventh-hour replacement.

The appeals process was another obstacle, but after

the July ruling, which seemingly left no room for further challenge, no one, including the Tropicana lawyers could reasonably have expected the Supreme Court to grant the Tropicana's petition for certification, which procedurally allowed the Court to hear the appeal.

Indeed, the regulatory agencies initially elected not to file new briefs with the Court in opposition to the petition for certification; instead, the agencies followed the time-honored practice in cases where certification is considered unlikely of relying on the appellate legal briefs already filed, and reserving the right to file additional briefs should certification be granted.

Now that the appeal has been resurrected, the hoped-for sale of the Tropicana is once again subject to outside forces beyond the conservator's and Commission's control, with no timetable for the Court's ruling.

In its order granting certification, the Supreme Court gave no hint as to the reasons for deciding to hear the appeal, leaving the parties to speculate about the issues that may be of particular concern to the Court. Thus, in preparation for the argument before the Court, the respective lawyers will need to focus on the entire case, rather than on any precise issue.

It is conceivable that potential issues glossed over by the Appellate Division because of their perceived lack of merit will be addressed more expansively in the forthcoming proceeding. In this regard, Tropicana's lawyers steadfastly argued to the Appellate Division, without success, that the Commission had improperly allowed outside forces to cloud its collective judgment. The role played by the hotel-employees union, UNITE HERE, which was antagonistic toward Tropicana, may be revisited, along with the highly unusual circumstance of Senate President **Richard Codey** submitting a letter on the eve of the hearing, urging the Commission to allow the union to intervene in the license hearing.

Tropicana's lawyers have protested that these highly prejudicial elements in the case deprived their client of a decision by an independent and impartial tribunal. As noted, the Appellate Division was not sympathetic to such assertions, quickly dismissing them as having no merit whatsoever. Tropicana's attorneys are hopeful that, this time around, the Court will be more receptive to their pleas.

In addition, Tropicana's lawyers will once again assert that the Commission's failure to adopt appropriate regulations provides a basis for overturning the ruling to deny licensure. For its part, the Commission is reasonably confident that, upon review of the record, the Supreme Court will reach the same conclusions as its brethren did last spring and once again affirm the decision to deny licensure.

The Division of Gaming Enforcement will be supporting its sister agency, as it did before the Appel-

late Division. During the licensing proceedings, the attorney for the Division, then-Acting Director **Yvonne Maher**, was overly critical of Tropicana's case, and she delivered a caustic summation that led many in the audience to anticipate a recommendation to deny the license application. Maher stopped short, however, of recommending denial and instead suggested the granting of the license for a one-year period, subject to a laundry list of conditions.

Tropicana's lawyers argued on appeal that the Commission erred by rejecting the Division's recommendation for a one-year renewal, but the Appellate Division disagreed, stating that the agencies had different functions and that the Commission was vested with the authority to independently evaluate each license application. The fact that the Commission disagreed with the Division was of no moment.

The Supreme Court has agreed to hear this case on an accelerated basis, hence this month's date for argument. However, there is no predictable timetable for the decision. The one thing that is certain, however, is that a favorable ruling for Tropicana would send shockwaves through the casino industry. ■

will likely become retail or office space.

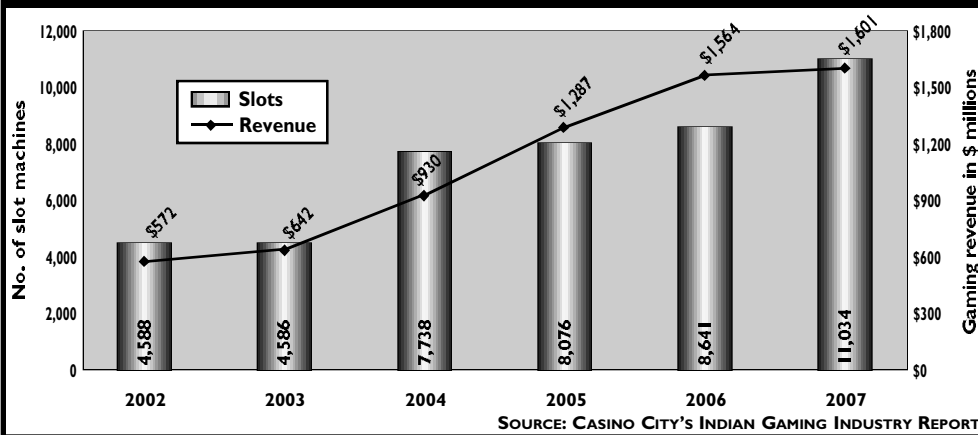
Michael Boettcher, President and CEO of Storm International, said the federal government should recognize that the law will be counterproductive by eliminating hundreds of thousands of jobs, increasing corruption in an already corrupt country, and driving casino gambling underground. The latter point is especially noteworthy: Turkey closed all its casinos 10 years ago, yet there are an estimated 100 underground casinos operating in Istanbul alone.

"I consider there to be a lot of stupid things in the gaming industry, but this is the stupidest," said Boettcher, whose company operates five Moscow casinos and a chain of 23 Super Slots gaming halls.

The core problem is that Russia never earnestly regulated casino gambling to begin with. Further, a relatively low tax scheme — 7,500 rubles (US\$280) per slot machine per month and 125,000 rubles (US\$4,650) per table per month, with no tax on gaming revenue — resulted in a low barrier to entry. **Alain Bourdin**, Chief Financial Officer of Korston Group, which operates a Moscow casino hotel, argues that the rate is too low for that reason.

Absent effective controls, the industry — in the view of the government — has spun out of control and warrants a virtual death sentence. Just as the government had no foresight in controlling the industry at the outset, it has demonstrated little foresight in considering the consequences of shuttering such a large industry. ■

Florida Indian gaming growth



Florida update ...

FEDERAL ENFORCEMENT ACTION UNLIKELY WHEN OTHER, SIMPLER SOLUTIONS EXIST

State Sen. **Stephen Geller**, D-Florida, the Senate minority leader who will be leaving office soon, is a recognized expert on Florida gaming. Some of his remarks at our recent Florida Gaming Summit were thoughtful and provocative. They also set off a few alarm bells.

Geller warned that the issues surrounding the legality of the compact negotiated between Governor **Charlie Crist** and the Seminole Tribe will soon reach a denouement of sorts. He warned that the National Indian Gaming Commission — which has enforcement powers in such matters — could issue an order in a few months that would force the Seminoles to shut down Class III tables and slots at their highly successful Seminole Hard Rock properties. (See Vol. 13, no. 15, p. 1 for an analysis of the issues surrounding this dispute.)

This issue has been in a form of limbo since July 3, when the Florida Supreme Court ruled that the compact violated Florida law by authorizing banked card games that would otherwise not be legal in the state. The Indian Gaming Regulatory Act authorizes tribes and states to negotiate compacts that would authorize a form of gaming that is otherwise allowed in the state.

We suggest that the outcome might not necessarily be so dire as to require federal marshals to pull the plug on Class III Indian gaming. The NIGC has wide discretion in determining when it will take the dire action of shutting down a casino (as also seen by its seemingly hands-off approach to the Seneca casino in downtown Buffalo, NY). In our experience, the federal agency will act carefully in this matter, and will err on the side of allowing the political process to move forward.

In short, the agency is not likely to throw thou-

sands of people out of work if such an outcome can be avoided. One trial balloon being quietly floated would be for Florida to authorize charity gaming nights that would allow non-profits to offer these otherwise illegal card games on a limited basis. It could be authorized one night a year with a 25-cent maximum bet. Such a move would be sufficiently kosher to allow the compact to be approved. (Charity gaming in Connecticut opened the door for Indian gaming in that state.)

The problem, however, is that too many Florida legislators are not exactly unhappy with the finding that the compact is illegal. They are not looking for solutions that would please the Supreme Court or NIGC.

Geller is right when he notes that the Florida compact was ill-conceived, and is not exactly a good model for states to follow.

The current political climate, however, calls for solutions that generate revenue for the state. Higher unemployment, among other impacts from an NIGC enforcement action, is in no one's best interest. We do not suggest that the NIGC is eager to do that.

For 30 years, we have been cautioning states that they need to legalize gaming the right way the first time. Casinos do not come with an "off" switch. The situation in Florida only underscores that cautionary note. The right answer is to find a simple solution toward ensuring that the compact is legal and binding. ■



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MICHAEL J. POLLOCK
 EXECUTIVE EDITOR AND PUBLISHER

JOSEPH S. WEINERT
 EDITOR

MICHAEL D. DIAMOND
 ASSOCIATE EDITOR

GAIL PAGANO
 SUBSCRIBER RELATIONS MANAGER

BARRY S. WIZOV
 LAYOUT AND GRAPHIC DESIGN

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1201 New Road, Suite 308

Linwood, NJ 08221 USA

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