

# GAMING RESTRUCTURING IN NEVADA

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When the calendar flipped to 2008, America appeared to be entering an important and memorable year. A historic presidential election was taking place. At the outset of the presidential campaign, it appeared that foreign policy issues would dominate the tenor of the campaign. As the campaign progressed, it became apparent that economic issues would predominate. What started as general economic malaise in the spring of 2008 turned into a commercial cataclysm a few months later with the federal government's takeover of Fannie Mae and Freddie Mac, the Lehman Brothers' bankruptcy, the downgraded credit ratings of American International Group, Inc. ("AIG"), and the resulting stock market plunge. Nevada was definitely not exempt from the country's financial troubles. After years of unrivaled growth and a record 39 million tourists visiting Las Vegas in 2007, the southern Nevada economy plummeted in 2008.<sup>1</sup> It became increasingly apparent throughout 2008 and 2009 that the Nevada gaming industry would not be spared from a prolonged and stubborn recession.

A quick tour of the north end of the Las Vegas Strip highlights the struggles of Nevada's casino operators and the effect of the recession on Nevada's most famous industry. After demolishing the Stardust, a property that had operated on the Strip since 1958, Boyd Gaming commenced construction on its Echelon development in 2007.<sup>2</sup> Echelon was a planned hotel, casino, and shopping complex on the former Stardust site.<sup>3</sup> In August 2008, Boyd Gaming announced that it would delay construction on its Echelon Place development for three or four quarters.<sup>4</sup> However, as of April 2012, construction had not recommenced.

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<sup>1</sup> See Ashley Powers & Jessica Gelt, *Sahara Hotel-Casino in Las Vegas to Close in May*, L.A. TIMES, Mar. 12, 2011, <http://articles.latimes.com/2011/mar/12/nation/la-na-vegas-sahara-20110312>.

<sup>2</sup> Steve Friess, *Aging Resort Demolished to Make Way for a Young One*, N.Y. TIMES, Mar. 14, 2007, [http://www.nytimes.com/2007/03/14/us/14stardust.html?\\_r=2](http://www.nytimes.com/2007/03/14/us/14stardust.html?_r=2).

<sup>3</sup> *Id.*

<sup>4</sup> Alexandra Berzon & Robin Urevich, *Echelon Delay Changes Prospects for Workers*, LAS VEGAS SUN, Aug. 2, 2008, <http://www.lasvegassun.com/news/2008/aug/02/echelon-delay-changes-prospects-workers/>.

A little further north on the Strip sits the vacant Fontainebleau project. When conceived, Fontainebleau Las Vegas was going to be a 4,000 room, sixty-eight story hotel, casino, and condominium development on the north Strip that would serve as a sister property to the famed Fontainebleau in Miami Beach.<sup>5</sup> Construction commenced on Fontainebleau Las Vegas in early 2007. When the hotel tower was topped off in November 2008, and the construction was approximately seventy percent completed, Fontainebleau's largest lender, Bank of America, refused to provide further financing on its line of credit.<sup>6</sup> As a result, construction ceased, and the Fontainebleau's owners filed for chapter 11 bankruptcy protection in June 2009.<sup>7</sup> During the bankruptcy proceedings, the Fontainebleau property was sold to Carl Icahn, and the property remains unfinished as of April 2012.<sup>8</sup>

The New Frontier Hotel & Casino once stood across Las Vegas Boulevard from Wynn Las Vegas and Encore. In May 2007, El Ad Properties, an Israeli-based real estate investment group that owns the Plaza Hotel in New York City, announced it would purchase the New Frontier and its thirty-six acres for more than \$1.2 billion from Phil Ruffin.<sup>9</sup> At the time of its acquisition, El Ad Properties contemplated building a replica of the Plaza Hotel. The New Frontier closed on July 16, 2007, and was imploded on November 13, 2007.<sup>10</sup> Development of a new hotel on the New Frontier site never commenced.

A few blocks north on the Strip stands the iconic Sahara Hotel & Casino, which opened in 1952 and was once frequented by the Rat Pack and Elvis Presley. The Sahara was purchased in 2007 by SBE Entertainment, a company owned by Los Angeles nightclub impresario Sam Nazarian.<sup>11</sup> After it scaled back operations in 2009 by closing two of its three hotel towers and buffet, the Sahara closed on May 16, 2011.<sup>12</sup> In a hopeful sign of an economic turnaround, the owners of the Sahara announced on May 1, 2012 that they had secured

<sup>5</sup> See Liz Benston, *Outlook for Fontainebleau Slides from Bad to Worse*, LAS VEGAS SUN, June 8, 2009, <http://www.lasvegassun.com/news/2009/jun/08/fontainebleaus-outlook-slides-bad-worse/>.

<sup>6</sup> See Joel Rosenblatt, *Bank of America Sued by Fontainebleau Over \$800 Million Funding*, BLOOMBERG, Apr. 24, 2009, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=asDh3rjy9ddU>.

<sup>7</sup> *Fontainebleau Las Vegas Files for Ch. 11 Bankruptcy*, REUTERS (June 10, 2009), <http://www.reuters.com/article/2009/06/10/fontainebleulasvegas-idUSBNG42415320090610>; Steve Green, *Fontainebleau Developer Files for Bankruptcy; More Jobs Cut*, LAS VEGAS SUN (June 9, 2009), <http://www.lasvegassun.com/news/2009/jun/09/fontainebleau-developer-files-bankruptcy/>.

<sup>8</sup> Press Release, The Bus. J., Icahn Enterprises Acquires Fontainebleau Property in Las Vegas (Feb. 18, 2010), available at [http://www.bizjournals.com/prnewswire/press\\_releases/2010/02/18/NY57492](http://www.bizjournals.com/prnewswire/press_releases/2010/02/18/NY57492).

<sup>9</sup> Howard Stutz, *New Frontier Sale Sets Record*, LAS VEGAS REV.-J., May 16, 2007, <http://www.lvrj.com/news/7530232.html>.

<sup>10</sup> Rob Ponte & Michael Lyle, *Implosions*, LAS VEGAS SUN, <http://www.lasvegassun.com/history/implosions/> (last visited April 20, 2012).

<sup>11</sup> See Powers & Gelt, *supra* note 1.

<sup>12</sup> Steve Green, *Sahara's Closure on May 16 Will Mark "the End of an Era,"* LAS VEGAS SUN, Mar. 11, 2011, <http://www.lasvegassun.com/news/2011/mar/11/sahara-hotel-casino-close-may-16/>.

\$300 million in funding to redevelop the iconic Sahara property, with plans to reopen the property in 2014 under the name SLS Las Vegas.<sup>13</sup>

These and other stories of shaky financing, distressed assets for sale, and foreclosure littered the Las Vegas papers throughout the past few years. Rather than sitting idle, the Nevada Gaming Control Board (“Board”) and Nevada Gaming Commission (“Commission”) issued an industry letter in April 2009. The Board and the Commission are tasked with overseeing all gaming operations in Nevada. In the letter, Board Chairman Dennis Neilander noted that Nevada’s gaming regulators had “taken steps to endure an ongoing downturn in the industry and [were] preparing for what may be a prolonged recovery.”<sup>14</sup> Chairman Neilander’s letter noted that the Board had created a special purpose entity to “dictate the course through which applications and ancillary processes for approval to bring gaming licensees out of bankruptcy will be most efficiently readied for Board and Commission disposition.”<sup>15</sup> The special purpose entity was necessary because:

[i]n the last several weeks, prospects for bankruptcy and major debt restructuring among licensees have risen. Already, there are a few large gaming companies in bankruptcy, along with a few smaller licensees. More are anticipated and, potentially, there could be several. The Board will be focusing resources on debt restructurings and regulatory considerations necessary to complete these debt restructurings. In fact, the timing could very well be such that the [Board and Commission] will be asked to grant several approvals for emergence from bankruptcy within a limited timeframe.<sup>16</sup>

The gaming industry is heavily regulated and strictly controlled in order to prevent unsavory or unsuitable persons from being directly or indirectly involved with gaming, to establish and maintain responsible accounting practices and procedures, to maintain effective controls over the financial practices of licensees, to prevent cheating and fraudulent practices, and to provide a source of state and local revenue through taxation and licensing fees. Any person or entity who holds or controls a significant stake in a Nevada gaming operation must be investigated by the Board and found suitable by the Commission. Unlike chapter 11 reorganization proceedings in non-gaming industries, a gaming company’s creditors must comply with state and local gaming laws and regulations. A gaming company debtor likely will be unable to quickly reorganize by converting its debt into equity because its creditors will need to be licensed as gaming equity owners. Unlike a residential mortgage foreclosure proceeding in which the creditor sells the residence to the highest bidder, a creditor to a gaming enterprise may neither assume control of a gaming enterprise without prior regulatory approval nor sell or transfer certain of the debtor’s assets, such as gaming devices, without prior regulatory approval.

In this Article, we will examine the various laws and regulations that affect a gaming enterprise debtor and its creditors. We will then examine vari-

<sup>13</sup> *Owners Get Funding to Reopen Sahara on Vegas Strip*, NEWSOK, May 1, 2012, <http://newsok.com/owners-get-funding-to-reopen-sahara-on-vegas-strip/article/feed/377287>.

<sup>14</sup> Industry Letter from Dennis K. Neilander, Nev. Gaming Comm’n Chairman, to All Licensees and Interested Persons, *Attention to Economic Consequences* (Apr. 7, 2009), available at [http://www.gaming.nv.gov/industry\\_ltrs/industry\\_ltr\\_207.pdf](http://www.gaming.nv.gov/industry_ltrs/industry_ltr_207.pdf).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

ous examples of overleveraged gaming companies operating in Nevada and the steps taken to modify these companies' financial obligations. Our analysis will focus on four gaming companies that filed for bankruptcy protection—Tropicana Entertainment, Station Casinos, Riviera Holdings, and Black Gaming—and three gaming companies that restructured their debt obligations, through differing procedures but without filing for bankruptcy protection—Cosmopolitan, M Resort, and Palms.

## I. REGULATORY OVERVIEW

Nevada's gaming laws and regulations authorize the Board and Commission to require any or all individuals holding equity securities in a privately-held gaming licensee, along with lenders, holders of evidence of indebtedness, underwriters, key executives, agents or employees, as applicable, to be licensed.<sup>17</sup> Pursuant to regulations implemented in 2011, individuals may hold up to five percent of a privately-held gaming licensee without being licensed.<sup>18</sup>

Nevada's gaming laws and regulations treat publicly traded corporations ("PTCs") differently. The Nevada gaming statutes that deal with PTCs focus on voting control rather than solely on equity ownership. In the typical situation in which a PTC has equity listed on an exchange that is freely traded and widely distributed, applicable Nevada regulations require a person acquiring more than five percent of the voting securities of the PTC to file notice with the Commission within ten days of filing notice with the United States Securities and Exchange Commission ("SEC").<sup>19</sup> An individual acquiring more than ten percent of the voting securities of a PTC registered with the Commission must submit an application to the Board for a finding of suitability within thirty days after the Board chairman mails written notice to the holder.<sup>20</sup> These filing requirements are mandatory.

Generally, the Board does not require a gaming licensee's lenders to apply for a finding of suitability, but the lender may be subject to a determination of suitability by Nevada's gaming regulatory authorities at any time. A gaming licensee must report certain loans or extensions of credit it receives within

<sup>17</sup> Nev. Gaming Comm'n Reg. 15.530-3, 15A.160, 15B.160 (2011).

<sup>18</sup> Nev. Gaming Comm'n Reg. 15.530-1, 15A.065 and 15B.065 (The regulations implemented on December 22, 2011 allow individuals that hold five percent or less of the equity securities of a privately held gaming licensee to submit to a less invasive and less costly registration process rather than the licensing process.).

<sup>19</sup> "Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of more than 5 percent of any class of voting securities of a [PTC] registered with the [Commission], and who is required to report, or voluntarily reports, the acquisition to the [SEC] pursuant to section 13(d)(1), 13(g) or 16(a) . . ." shall file a copy of that report, and any amendments thereto, with the Commission within 10 days after filing that report with the SEC. NEV. REV. STAT. § 463.643(3) (2009).

<sup>20</sup> *Id.* § 463.643(4).

Each person who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of more than 10 percent of any class of voting securities of a [PTC] registered with the Commission, or who is required to report, or voluntarily reports, such acquisition pursuant to section 13(d)(1), 13(g) or 16(a) . . . shall apply to the Commission for a finding of suitability within 30 days after the Chair of the Board mails the written notice.

*Id.*

thirty days after the end of the quarter in which the loan transaction was consummated.<sup>21</sup> The report to the Board must include:

[t]he names and addresses of all parties to the transaction, the amount and source of the funds, property or credit received or applied, the nature and amount of security provided by or on behalf of the licensee, the purpose of the transaction, and any additional information the [B]oard may require.<sup>22</sup>

These reporting requirements apprise Nevada's gaming regulators of the involvement of the gaming company's creditors. The Board and Commission will require the creditor to be licensed or found suitable if they believe the lender has the power to exercise significant authority over the gaming licensee or if licensing the lender would otherwise serve the public interest.<sup>23</sup>

Privately-held gaming licensees must obtain approvals from the Nevada gaming regulators in order to pledge their stock or membership units to secure financing or to grant an option to purchase such stock or membership units.<sup>24</sup> Additionally, issuance of debt securities by a gaming licensee must receive prior approval from the Commission.<sup>25</sup> Debt securities include bonds, debentures, and warrants. Anyone holding a debt security of a licensee may be subject to a finding of suitability. If the debt security is convertible, the holder may be placed in a mandatory licensing category upon conversion, as they would become subject to the rules related to the equity owners of a gaming licensee.

Because of these various requirements, issuers of interests in Nevada gaming licensees utilize convertible security to create an option to be exercised by the purchaser upon obtaining all necessary regulatory approvals. As noted above, Nevada gaming regulations require an individual acquiring five percent or more of the "voting securities" of a PTC licensee to report its holdings to the Board and Commission, and a holder of more than ten percent of such securities to file an application for finding of suitability.<sup>26</sup> There is no mandatory requirement that a holder of non-voting securities in a registered PTC file such an application.

The convertible security is used in order for a purchaser to acquire an interest in a PTC licensee before a finding of suitability has been concluded. Such a transaction may involve a preferred purchase agreement under which a purchaser agrees to purchase from the gaming licensee's equity holders a series of preferred units upon obtaining all necessary regulatory approvals. The parties would also execute an escrow agreement under which the purchaser deposits the preferred purchase price into an escrow account, to be released either (a) to the seller upon the closing of the purchase, which is subject to obtaining all necessary regulatory approvals, or (b) to the purchaser if the transaction does not close by a certain date. Once the purchase has closed, the purchaser holds the preferred units, which carry no voting or other approval rights or rights to share in distributions by the licensee. The preferred units of the licensee are convertible to units with full economic rights in the licensee only upon a posi-

<sup>21</sup> Nev. Gaming Comm'n Reg. 8.130.

<sup>22</sup> *Id.* 8.130(7).

<sup>23</sup> NEV. REV. STAT. § 463.165 (2009).

<sup>24</sup> *Id.* §§ 463.510(1), 463.540(1).

<sup>25</sup> *Id.* § 463.510; Nev. Gaming Comm'n Reg. 15.540.1-2 (2011).

<sup>26</sup> NEV. REV. STAT. 463.643(3)-(4).

tive finding of suitability by the Commission. This conversion feature makes the preferred units the equivalent of an option to purchase.

The focus on voting control under the Nevada gaming regulations has made it possible to formulate creative corporate structures in which private equity investors willing to forego voting control are spared the effort and expense of an application, investigation, and finding of suitability process in Nevada. Beginning in 1998 with the acquisition of Harvey's Casino Resorts by an investment group headed by Colony Capital, the use of the private equity structure dividing a gaming company's shares into voting control and non-voting economic interests was used to great effect in Nevada, spurring investment in the state's casinos.<sup>27</sup> With the economic downturn over the last five years, the private equity model has been used by casino lenders and debt holders to structure their holdings in ways that enable them to convert casino debt into equity.

## II. LAS VEGAS CASINO BANKRUPTCIES AND RESTRUCTURINGS

Beginning in late 2007, many large casino companies were over-leveraged and unable to meet their debt obligations. The lenders to these various licensees could not exercise their rights without having to account for the regulatory consequences of foreclosure. Restructuring alternatives for casino debtors generally include refinancing outstanding debt, selling assets, deleveraging capital, or bringing in new investors. The applicable gaming regulations impact the decisions to be made by a gaming company debtor and its creditors as to which alternative is best to pursue. Some licensees elect to file for bankruptcy protection whereas others restructure their debt obligations. Some lenders elect to foreclose while others choose to abandon defaulted casino debt, selling the debt at a loss in order to avoid the arduous gaming licensing process in Nevada. The following examples illustrate the regulatory issues involved when creditors to Nevada gaming licensees exercise their legal rights.

### A. *Station Casinos*

Before filing for bankruptcy protection, Station Casinos, Inc. ("Station"), through various subsidiary companies, owned and operated ten hotel casinos under the Station and Fiesta brand names and eight smaller casino properties in the Las Vegas Valley. Station also managed a casino for a Native American tribe in California. As a result of severe economic conditions, including the credit crisis and a decrease in consumer confidence levels, Station experienced a significant reduction in revenues.<sup>28</sup> In addition, the decline in real estate values in Nevada adversely affected the value of Station's assets.<sup>29</sup> The deterioration of Station's results of operations and asset values and their significant debt levels, coupled with the unavailability of credit generally, negatively impacted

<sup>27</sup> See Lisa Baker, *Q & A with Thomas J. Barrack, Jr., Founder, Chairman and CEO, COLONY CAP.*, [http://www.colonyinc.com/articles/news\\_cj.htm](http://www.colonyinc.com/articles/news_cj.htm) (last visited Mar. 21, 2012).

<sup>28</sup> Disclosure Statement to Accompany First Amended Joint Chapter 11 Plan of Reorganization for Station Casinos, Inc. and Its Affiliated Debtors at 35-36 *In re Station Casino, Inc.*, No. BK-09-52477 (Bankr. D. Nev. July 28, 2010).

<sup>29</sup> *Id.* at 36.

their ability to refinance their outstanding indebtedness or otherwise raise capital for a restructuring. On July 28, 2009, Station filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code.<sup>30</sup> The Station debtors continued to operate and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

Much of the Station bankruptcy proceedings centered on the company's "going private" transaction in 2007.<sup>31</sup> A group of holders of Station's senior notes and subordinated notes expressed the view that Station may have claims, including ones dealing with fraudulent conveyances, against third parties that could be asserted by Station in connection with the going private transaction in 2007.<sup>32</sup> In response, in March 2009, Station's Board of Directors authorized the formation of an independent Special Litigation Committee to investigate whether Station had claims "that could be brought against lenders, former stockholders or others, in connection with the 2007 [g]oing [p]rivate [t]ransaction."<sup>33</sup> The Special Litigation Committee issued its report on September 22, 2009, finding, among other things, that:

- [t]he financial projections for the 2007 [g]oing [p]rivate [t]ransaction were reasonable when made and were not unduly optimistic or overly aggressive.
- [Station] was not insolvent at the time [it went private] and did not become insolvent as a result of [going private] . . . .
- No person or entity intended to nor believed [that going private] would defraud, hinder, or delay a creditor of [Station].
- The participants . . . had a good faith belief that [going private] would succeed and that [Station] would enjoy continued growth.<sup>34</sup>

Ultimately, it was the former Chairman of the Board of Directors, Frank Fertitta III, and the former Vice-Chairman of the Board, his brother Lorenzo Fertitta, who led a group of investors that made the only qualified bid during the bankruptcy auction.<sup>35</sup>

The reorganization plan called for the creation of a new holding company, Station Holdco, LLC ("Station Holdco"), forty-five percent of which was to be owned by the Fertitta family, twenty-five percent of which was to be held by German American Capital Corporation ("Deutsche Bank"), fifteen percent of which was to be held by JP Morgan Chase Bank, N.A. ("JP Morgan Chase"), and the remaining fifteen percent to be held by Station's former bondholders.<sup>36</sup> Station Holdco would be a non-voting member of Station Casinos, LLC ("Station Casinos"), which was registered with the Commission as a PTC on May 26, 2011.<sup>37</sup> The approved bankruptcy plan also established a new holding com-

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 40.

<sup>32</sup> *Id.* at 37.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 41.

<sup>35</sup> Steven Church, *Station Casinos Wins Court Approval of Sale to Chairman Fertitta's Group*, BLOOMBERG (Aug. 6, 2010), <http://www.bloomberg.com/news/2010-08-06/station-casinos-wins-court-approval-of-sale-to-chairman-fertitta-s-group.html>.

<sup>36</sup> Station Casinos, LLC, Quarterly Report (Form 10 Q), at 49 (Aug. 15, 2011).

<sup>37</sup> Agenda for State Gaming Control Board and Nevada Gaming Commission Special Agenda, May 26, 2011, available at [http://www.gaming.nv.gov/documents/pdf/11may26\\_agenda\\_sp\\_disp.pdf](http://www.gaming.nv.gov/documents/pdf/11may26_agenda_sp_disp.pdf).

pany called Station Voteco, LLC (“Station Voteco”). Station Voteco would hold the voting interests in Station Casinos. Its members would be a JP Morgan Chase designee, Stephen Greathouse, a Deutsche Bank designee, Robert Cashell, and Fertitta Station Voteco Member LLC, whose members were Frank Fertitta III and Lorenzo Fertitta. The officers of Station Casinos were licensed by the Commission on May 26, 2011.<sup>38</sup> Station Voteco was registered with the Commission as a holding company on the same date, with Lorenzo and Frank Fertitta, Stephen Greathouse and Robert Cashell being found suitable by the Commission as voting members of Station Casinos.<sup>39</sup> As Station Holdco was a non-voting member of Station Casinos, it was not required to register as a holding company with the Commission, nor was its members required to be licensed or found suitable by the Commission. Station Casinos emerged from bankruptcy in June 2011 with ownership held by the Fertittas, Deutsche Bank, and JP Morgan Chase.<sup>40</sup>

### B. *Tropicana Entertainment*

In January 2010, Tropicana Entertainment Inc. (“TEI”) became the first major casino company to emerge from bankruptcy during the recession. Before filing for bankruptcy protection, Tropicana Entertainment, LLC (“Tropicana”), was a leading domestic casino operator with five casinos in Nevada, three casinos in Mississippi, and one casino in each of New Jersey, Indiana, and Louisiana. In December 2007, the New Jersey Casino Control Commission denied Tropicana’s license renewal in connection with its New Jersey property.<sup>41</sup> In response, a conservator was appointed immediately for the Tropicana New Jersey property.<sup>42</sup> Following this licensure denial, the Indiana Gaming Commission asserted that the failure to renew Tropicana’s New Jersey license also imperiled the company’s Indiana licensure.<sup>43</sup> Tropicana agreed to sell its Indiana casino.<sup>44</sup> The denial of TEI’s license by the New Jersey Casino Control Commission constituted an immediate default under Tropicana’s credit facility.<sup>45</sup> Tropicana failed to make interest payments under its forbearance agreement and filed for bankruptcy on May 5, 2008.<sup>46</sup>

Post-bankruptcy, the Tropicana properties were split between the two largest debt holders. Tropicana Las Vegas Hotel and Casino, Inc. (“Tropicana LV”), a Form 10 PTC, was approved to acquire 100 percent of the interests in

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Chris Sieroty, *Station Casinos Emerges from Bankruptcy*, LAS VEGAS REV.-J., June 17, 2011, <http://www.lvrj.com/business/station-casinos-emerges-from-bankruptcy-124086429.html>.

<sup>41</sup> Disclosure Statement for the Joint Plan of Reorganization of Tropicana Entertainment, LLC and Certain of Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code at 18, *In re Tropicana Entm’t, LLC et al.*, No. 08-10856 (Bankr. D. Del. Jan. 11, 2009), 2009 WL 111424.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 19.

Tropicana Las Vegas, Inc.<sup>47</sup> An intermediary company, Tropicana Las Vegas Intermediate Holdings Inc., intervened between Tropicana Las Vegas, Inc. and Tropicana LV.<sup>48</sup> As recited in the Order of Registration, this non-publicly traded intermediary company was registered as such and found suitable by the Commission.<sup>49</sup> Approximately sixty percent of the shares of Tropicana LV were held by various subsidiaries of Onex Armenco, which had purchased the property's secured debt at a discount during the bankruptcy.<sup>50</sup> Trilliant Gaming Nevada Inc. ("Trilliant") was the general partner of Onex Armenco. Trilliant was registered as a holding company and found suitable as the beneficial owner and controlling beneficial owner of Tropicana LV.<sup>51</sup>

The remaining Tropicana assets were beneficially owned and controlled by Icahn Enterprises L.P. On January 21, 2010, Icahn Enterprises Holdings L.P. ("IEH") was registered as an intermediary company and found suitable as a beneficial owner and controlling beneficial owner of TEI, a registered publicly traded corporation.<sup>52</sup> On the same date, Icahn Enterprises G.P. Inc. ("IEGP") was registered as a holding company and found suitable as the general partner of IEH and as a beneficial owner and controlling beneficial owner of TEI.<sup>53</sup> Beckton Corp. was also registered as a holding company and found suitable as the sole shareholder of IEGP and as a beneficial owner and controlling beneficial owner of TEI on the same date.<sup>54</sup> The Tropicana debt was purchased during the bankruptcy by four hedge funds beneficially owned by Carl Icahn and Icahn Enterprises L.P. This debt was converted into equity after TEI emerged from bankruptcy. The minority investors in the hedge funds were not required to be licensed or found suitable by the Nevada gaming regulators, as the investors did not have the ability to vote the TEI shares or control TEI's Nevada gaming activities.

### C. Riviera

In June 2007, Riviera Holdings Corporation's ("Riviera") common stock reached a price of over \$39 per share.<sup>55</sup> By March 2009, its stock price had dropped to \$1.91 per share<sup>56</sup> and the company had received a notice of default

<sup>47</sup> Tropicana Las Vegas Hotel & Casino, Inc., No. SD-202 (Nev. Gaming Comm'n & State Gaming Control Bd. Nov. 18, 2009) (order of registration), available at [http://www.gaming.nv.gov/corpsec\\_orders/Tropicana\\_Las\\_Vegas\\_Hotel\\_and\\_Casino\\_Inc/1\\_Order\\_of\\_Registration\\_11\\_18\\_10.pdf](http://www.gaming.nv.gov/corpsec_orders/Tropicana_Las_Vegas_Hotel_and_Casino_Inc/1_Order_of_Registration_11_18_10.pdf) [hereinafter Tropicana, Order of Registration].

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Beth Jinks & Cotton Timberlake, *Onex, Yemenidjian Take Over Tropicana Vegas Casino*, BLOOMBERG (July 2, 2009, 15:21 EDT), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=apIEF0GBO1EA>.

<sup>51</sup> Tropicana, Order of Registration, *supra* note 47.

<sup>52</sup> Icahn Enter. L.P., No. SD-108 (Nev. Gaming Comm'n & State Gaming Control Bd. Jan. 21, 2010) (order of registration), available at [http://www.gaming.nv.gov/corpsec\\_orders/Icahn\\_Enterprises\\_L\\_P/17\\_Tenth\\_Revised\\_Order\\_of\\_Registration\\_01\\_21\\_10.pdf](http://www.gaming.nv.gov/corpsec_orders/Icahn_Enterprises_L_P/17_Tenth_Revised_Order_of_Registration_01_21_10.pdf).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 22.

<sup>56</sup> Steve Green, *Riviera Gets Notice of Technical Default; Stock Tumbles*, Las Vegas Sun (Mar. 4, 2009), <http://www.lasvegassun.com/news/2009/mar/04/riviera-gets-notice-default-stock-tumbles>.

from the bank that administered its credit facility.<sup>57</sup> In June of that year, Riviera received a deficiency letter from the New York Stock Exchange providing notice to Riviera that it did not meet the exchange's listing standards.<sup>58</sup> Riviera had sustained losses and its financial condition had become so impaired that it did not seem likely that Riviera would be able to continue operations. In response to the New York Stock Exchange notice, Riviera withdrew its common stock from trading on June 25, 2009.<sup>59</sup> Riviera's common stock then became available on Pink OTC Markets, Inc., an over-the-counter electronic quotation system. For the one-year period ending January 6, 2010, the average closing price for Riviera's stock rose to a high of \$4.79 per share and sank to a low of \$0.30 per share. The day before Riviera filed its petition for bankruptcy its closing stock sale price was \$0.25.<sup>60</sup>

Riviera filed for bankruptcy in the United States Bankruptcy Court for the District of Nevada on July 12, 2010.<sup>61</sup> Investment firm Starwood Capital Group ("Starwood Capital") bought control of Riviera's first mortgage "for about 50 cents on the dollar" and "[led] creditors negotiating a prepackaged bankruptcy."<sup>62</sup> Pursuant to its reorganization plan, Riviera cancelled its outstanding common stock and issued 100 percent of its Class A voting shares to Riviera Voteco, LLC ("Riviera Voteco") and Class B non-voting shares to lenders having certain claims against Riviera, including affiliates of Starwood Capital.<sup>63</sup> At the time Riviera emerged from bankruptcy, Starwood Capital controlled seventy-nine percent of the voting stock, with Desert Rock Enterprises LLC ("Desert Rock"), Derek Stevens, and Greg Stevens collectively holding twenty-one percent of the voting stock.<sup>64</sup> Desert Rock acquired much of its stake in Riviera in 2009 when the shares were priced at \$3.15.<sup>65</sup> The Commission had previously licensed Derek and Greg Stevens, the owners of Desert Rock as well as the Las Vegas 51s minor-league baseball team, when they acquired fifty percent of the Golden Gate Casino, Las Vegas' oldest hotel-casino, in March 2008.<sup>66</sup>

Riviera Voteco was registered with the Commission as a holding company and found suitable as a beneficial owner and controlling beneficial owner of

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<sup>57</sup> *Id.*

<sup>58</sup> *Riviera Stock Delisted from N.Y. Stock Exchange*, Las Vegas Sun (June 25, 2009), <http://www.lasvegassun.com/news/2009/jun/25/riviera-completes-delisting-stock-exchange>.

<sup>59</sup> Disclosure Statement to Accompany Debtors' Joint Plan of Reorganization for Riviera Holdings Corp. at 23, *In re Riviera Holdings Corp.*, No. 10-22910-LBR (Bankr. D. Nev. Sept. 3, 2010), 2010 WL 6184559 [hereinafter *Riviera Disclosure Statement*].

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 1.

<sup>62</sup> Jonathon Keehner, *Sternlicht's Starwood Said to Raise \$2.8 Billion for Two Real Estate Funds*, BLOOMBERG (Mar. 31, 2010), <http://www.bloomberg.com/news/2010-04-01/ster-nlicht-s-starwood-said-to-raise-2-8-billion-for-two-real-estate-funds.html>.

<sup>63</sup> *Riviera Disclosure Statement*, *supra* note 59, at 7-8.

<sup>64</sup> Agenda of Nevada Gaming Comm'n Meeting at 12-13, Mar. 24, 2011.

<sup>65</sup> Arnold M. Knightly, *Las Vegas Investor Seeks Approval of Riviera Ownership Stake*, LAS VEGAS REV.-J., July 10, 2009, <http://www.lvrj.com/business/50459917.html>.

<sup>66</sup> Howard Stutz, *Commission Approves Sale of 50 percent Stake in Golden Gate*, LAS VEGAS REV.-J., Mar. 21 2008, <http://www.lvrj.com/business/16890696.html>.

Riviera.<sup>67</sup> BSS VoteCo, LLC (“BSS Voteco”) and Desert Rock were licensed by the Commission as members of Riviera Voteco.<sup>68</sup> BSS Voteco and Barry Sternlicht, the chairman and CEO of Starwood Capital, were also found suitable by the Commission as beneficial owners and controlling beneficial owners of Riviera.<sup>69</sup> Last, Derek Stevens was found suitable as a beneficial owner of Riviera.<sup>70</sup>

#### D. Black Gaming

Prior to its reorganization, Black Gaming, LLC (“Black Gaming”), through various subsidiary companies, owned and operated three gaming properties in Mesquite, Nevada: Virgin River Hotel Casino & Bingo; Oasis Hotel, Casino, Spa and Golf; and Casablanca Resort & Casino. The chief executive and majority shareholder of Black Gaming was Robert Black. In 2004, Black Gaming planned renovations and expansions at its properties and took out three pieces of debt to fund the development plans: a senior secured note of \$125 million, a senior subordinated note of \$66 million, and a \$15 million revolving loan.<sup>71</sup> Mesquite was one of the Nevada cities hit hardest by the recession, and Black Gaming ultimately did not have the cash flows necessary to service its debt.

When Black Gaming filed its prepackaged chapter 11 bankruptcy petition on March 1, 2010, it listed \$11.23 million in assets and \$253.37 million in liabilities.<sup>72</sup> Accounting for its real estate holdings, Black Gaming estimated its business value between \$85 and \$90 million.<sup>73</sup> Prior to filing the bankruptcy petition, Black Gaming had reached an agreement with approximately eighty percent of its lenders under which Black Gaming’s senior secured and subordinated debt would be reduced from approximately \$200 million to \$62.5 million.<sup>74</sup> The \$15 million revolving loan was paid off.<sup>75</sup> As a result of the restructured loans, Mesquite Gaming’s debt service declined from \$22 million to \$5.3 million annually.<sup>76</sup>

An investor group comprised of Black Gaming CEO Randy Black, Black Gaming COO Anthony Toti, South Point Casino owner Michael Gaughan, and Newport Global Advisors, a private investment firm, provided an approximate

<sup>67</sup> Riviera Holdings Corp., No. SD-094 (Nev. Gaming Comm’n & State Gaming Control Bd. Mar. 24, 2011) (seventh revised order of registration), available at [http://www.gaming.nv.gov/corpsec\\_orders/Riviera\\_Holdings\\_Corporation/10\\_Seventh\\_Revised\\_Order\\_of\\_Registration\\_03\\_24\\_11.pdf](http://www.gaming.nv.gov/corpsec_orders/Riviera_Holdings_Corporation/10_Seventh_Revised_Order_of_Registration_03_24_11.pdf).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Ben Fidler, *Black Gaming is Ready to Play Again*, DAILY DEAL, Aug. 5, 2010.

<sup>72</sup> Voluntary Petition, *In re* Black Gaming, LLC, No. 10-13301 (Bankr. D. Nev. Mar. 1, 2010).

<sup>73</sup> *Id.*

<sup>74</sup> Howard Stutz, *Black Gaming LLC Files Bankruptcy*, LAS VEGAS REV.-J., Mar. 2, 2010, <http://www.lvrj.com/business/black-gaming-llc-files-bankruptcy—cuts-debt-85904547.html>.

<sup>75</sup> Chris Sieroty, *New Company’s Plans for Mesquite Approved*, LAS VEGAS REV.-J., July 29, 2011, <http://www.lvrj.com/business/new-company-s-plans-for-mesquite-approved-126386623.html> [hereinafter Sieroty, *Mesquite Gaming*].

<sup>76</sup> *Id.*

\$18 million cash investment to reduce the company's debt load.<sup>77</sup> United States Bankruptcy Court Judge Bruce Markell approved Black Gaming's reorganization plan on June 28, 2010.<sup>78</sup> The restructured company, Mesquite Gaming, LLC, is owned forty percent by Newport Global Advisors, twenty-five percent by Anthony Toti, twenty-five percent by Michael Gaughan, and ten percent by Randy Black.<sup>79</sup> Mesquite Gaming received all of the requisite approvals in connection with the restructuring and new ownership structure from the Commission in July 2011.<sup>80</sup>

#### E. *Cosmopolitan*

The Cosmopolitan of Las Vegas is a resort casino located on the Las Vegas Strip between the Bellagio and CityCenter. The property opened in December 2010 after having been under construction for more than five years. When conceived by New York real estate developer Ian Bruce Eichner, the Cosmopolitan was planned as a condominium development. But in February 2008, Deutsche Bank, the main lender for the Cosmopolitan, filed a notice of default against 3700 Associates, LLC ("3700 Associates"), Mr. Eichner's company, after 3700 Associates defaulted on a \$760 million construction loan.<sup>81</sup> Deutsche Bank implemented foreclosure proceedings against 3700 Associates, and soon thereafter, Nevada Property 1, an affiliate of Deutsche Bank, purchased the property out of foreclosure for approximately \$1 billion on September 3, 2008.<sup>82</sup> Deutsche Bank was unable to find another buyer for the property because of the lack of affordable financing available in September 2008.<sup>83</sup>

Unlike other lenders that found themselves owning half-built resort casino properties, Deutsche Bank chose to finish construction on the project, and the Cosmopolitan opened in December 2010.<sup>84</sup> Deutsche Bank financed the Cosmopolitan's completion with a low-interest loan, which potentially makes the company liable for approximately \$4 billion.<sup>85</sup> Unusually, Deutsche Bank did not hire a casino management company to operate the casino.

On October 21, 2010, Nevada VoteCo, LLC was approved by the Commission to become the sole voting shareholder of Nevada Property 1, LLC

<sup>77</sup> *Id.*

<sup>78</sup> Arnold M. Knightly, *Judge Approves Black Gaming Reorganization Plan*, LAS VEGAS REV.-J., June 28, 2010, <http://www.lvrj.com/business/judge-approves-black-gaming-reorganization-plan-97335709.html>.

<sup>79</sup> Sieroty, *Mesquite Gaming*, *supra* note 75.

<sup>80</sup> *Id.*

<sup>81</sup> Liz Benston, *Why Cosmopolitan's Credit Collapse Accentuates Positive in Strip Outlook*, LAS VEGAS SUN, July 17, 2008, <http://www.lasvegassun.com/news/2008/jul/17/why-cosmopolitans-credit-collapse-accentuates-posit/>.

<sup>82</sup> *Buyout Keeps Cosmopolitan in Play*, LAS VEGAS SUN, Sept. 4, 2008, <http://www.lasvegassun.com/news/2008/sep/04/buyout-keeps-cosmopolitan-play/>.

<sup>83</sup> *Id.*

<sup>84</sup> Suzanne Craig, *Deutsche Bank's \$4 Billion Las Vegas Bet*, N.Y. TIMES, Apr. 18, 2011, <http://dealbook.nytimes.com/2011/04/18/deutsche-banks-4-billion-las-vegas-bet-3/>. For example, Morgan Stanley walked away from the Revel development in Atlantic City in April 2010 and elected to take a \$1 billion write-off rather than complete construction. *Id.* Additionally, Carl Icahn, who purchased the Fontainebleau resort in Las Vegas in a bankruptcy proceeding in 2009 for \$156 million, has not resumed construction on the property. *Id.*

<sup>85</sup> *Id.*

(“NP1”).<sup>86</sup> NP1 was registered as a Form 10 PTC and also as the nonrestricted gaming licensee. NP1 issued two classes of stock, voting and non-voting. Nevada VoteCo, LLC (“Nevada VoteCo”) held all of the voting rights and none of the economic interests in NP1. Nevada VoteCo was registered as a holding company and a member of NP1. The members of Nevada VoteCo were also found suitable as beneficial owners and controlling beneficial owners of NP1. Nevada Mezz 1, LLC (“Nevada Mezz 1”) held all the economic interests in NP1, but no voting rights. Nevada Mezz 1 is owned 100 percent by Nevada Parent 1, LLC (“Nevada Parent 1”), which in turn, is held solely by Deutsche Bank. Because Nevada Mezz 1, Nevada Parent 1, and Deutsche Bank held, either directly or indirectly, only nonvoting stock, no applications were filed on behalf of these entities. As noted above, many lenders are justifiably hesitant to go through this process because of the financial and personal disclosures that are required.

Since opening in December 2010, the Cosmopolitan has attracted large crowds interested in the resort’s hotel amenities, dining options, and nightlife venues, but not particularly interested in gambling.<sup>87</sup> As a result, the Cosmopolitan reported net losses of \$169,618,000 in the first three quarters of 2011.<sup>88</sup> After years of new resorts opening on an annual basis on the Las Vegas Strip, the Cosmopolitan is the last new resort casino development to open on the Las Vegas Strip since 2010.

#### F. M Resort

The M Resort opened in March 2009 on the far south end of Las Vegas Boulevard in Henderson, Nevada.<sup>89</sup> The resort was financed with approximately \$700 million in loans from Bank of Scotland, \$160 million in a subordinated convertible note issued to MGM Mirage, and equity contributions by Anthony Marnell III, and individuals and companies affiliated with Mr. Marnell.<sup>90</sup> Anthony Marnell served as M Resort’s chairman and chief executive officer when the property opened. Mr. Marnell’s father, Tony Marnell, opened the Rio All Suite Hotel & Casino, just west of the Las Vegas Strip in 1990, and oversaw the building of numerous casinos on the Las Vegas Strip, including the Mirage, Bellagio, and Wynn Las Vegas, through his construction and design firm Marnell Corrao Associates.<sup>91</sup>

When it opened on March 1, 2009, the M Resort experienced large crowds and increased its employees from 1,800 at opening to 2,050 in its first month of

<sup>86</sup> Agenda for Nevada Gaming Commission Meeting, Oct. 21, 2010, available at [http://www.gaming.nv.gov/documents/pdf/10oct21\\_agenda\\_disp.pdf](http://www.gaming.nv.gov/documents/pdf/10oct21_agenda_disp.pdf).

<sup>87</sup> See Craig, *supra* note 84.

<sup>88</sup> Nevada Property 1 LLC, Quarterly Report (Form 10-Q) (Nov. 14, 2011), available at <http://www.sec.gov/Archives/edgar/data/1485589/000119312511310594/d245768d10q.htm>.

<sup>89</sup> Amanda Finnegan, *Valley’s Newest Resort Casino Open for Business*, LAS VEGAS SUN, Mar. 1, 2009, <http://www.lasvegassun.com/news/2009/mar/01/m-resort-nearly-open-business/>.

<sup>90</sup> Howard Stutz, *M Resort Facing Sale*, LAS VEGAS REV.-J., Aug. 17, 2010, <http://www.lvrj.com/business/lloydsbanking-group-soliciting-bids-for-m-resort-100804429.html> [hereinafter Stutz, *M Resort Facing Sale*].

<sup>91</sup> Finnegan, *supra* note 89.

operations.<sup>92</sup> But by May 2009, the M Resort was forced to lay off about five percent of its workforce as the massive crowds dwindled at the property.<sup>93</sup> The M Resort struggled to make its debt payments to Bank of Scotland and ultimately defaulted on its loan.

In July 2010, Bank of Scotland placed its \$700 million debt load up for sale and had the Blackstone Group, a global investment firm, solicit bids for ownership of the M Resort.<sup>94</sup> In October 2010, Penn National Gaming, Inc. ("Penn National"), a Pennsylvania-based casino operator, announced it had purchased the M Resort debt held by both Bank of Scotland and MGM Mirage for \$390.5 million.<sup>95</sup> In January 2011, Penn National began marketing the M Resort property to Penn's existing customers while it was negotiating with the M Resort's owners on a purchase agreement for the property.<sup>96</sup> The Board and Commission approved Penn National's ownership of the M Resort in May 2011. Penn National was licensed as the sole member and manager of LV Gaming Ventures, LLC d/b/a The M Resort Spa and Casino.<sup>97</sup> Following the acquisition of the M Resort by Penn National, Anthony Marnell remained President of the M Resort.<sup>98</sup> The Nevada gaming regulators expressed satisfaction that Penn National had established a presence in Nevada with its acquisition of the M Resort and stabilized the financial condition of the property.<sup>99</sup>

Interestingly, Penn National had already registered with the Commission as a PTC a year before it acquired the M Resort.<sup>100</sup> Penn National had executed an option to purchase shares in Morris Goldstein & Associates, Ltd., d/b/a Nevada Slots & Supplies, a Nevada slot route operator. Penn National had purchased one percent of the slot route operator in order to go through investigation and licensing process before making a large investment in a Nevada gaming property.<sup>101</sup> Peter M. Carlino, chief executive officer and chairman of Penn, was quoted as saying that the slot route investment gave Penn National the ability "to move quickly if [it saw] the right opportunity."<sup>102</sup> At that time,

<sup>92</sup> Steve Green, *M Resort Hiring Another 250*, LAS VEGAS SUN, Mar. 5, 2009, <http://www.lasvegassun.com/news/2009/mar/05/m-resort-hiring-another-250/>.

<sup>93</sup> Howard Stutz, *M Resort Slashes Staff by 5 Percent*, LAS VEGAS REV.-J., May 16, 2009, <http://www.lvrj.com/business/45210352.html>.

<sup>94</sup> Stutz, *M Resort Facing Sale*, *supra* note 90.

<sup>95</sup> Thomas Zadvydus, *Penn National Buys MGM Debt*, DAILY DEAL, Oct. 11, 2010.

<sup>96</sup> Howard Stutz, *Penn National Keeps Plans Moving Onward, Upward*, LAS VEGAS BUS. PRESS (Feb. 16, 2011), [http://www.lvbusinesspress.com/articles/2011/02/16/opinion/columnists/stutz/iq\\_42000701.txt](http://www.lvbusinesspress.com/articles/2011/02/16/opinion/columnists/stutz/iq_42000701.txt).

<sup>97</sup> Penn National Gaming, Inc., No. SD-200 (Nev. Gaming Comm'n & State Gaming Control Bd. May 19, 2011) (Revised Order of Registration), *available at* [http://gaming.nv.gov/corpsec\\_orders/Penn\\_National\\_Gaming/3\\_Revised\\_Order\\_of\\_Registration\\_05\\_19\\_11.pdf](http://gaming.nv.gov/corpsec_orders/Penn_National_Gaming/3_Revised_Order_of_Registration_05_19_11.pdf).

<sup>98</sup> Howard Stutz, *Penn National Gets Nod to Take Over M Resort*, LAS VEGAS REV.-J., May 4, 2011, <http://www.lvrj.com/business/penn-national-s-purchase-of-m-resort-recommended-121267729.html>.

<sup>99</sup> *Id.*

<sup>100</sup> Penn National Gaming, Inc., No. SD-200 (Nev. Gaming Comm'n & State Gaming Control Bd. June 17, 2011) (order of registration), *available at* [http://gaming.nv.gov/corpsec\\_orders/Penn\\_National\\_Gaming/1\\_Order\\_of\\_Registration\\_06\\_17\\_10.pdf](http://gaming.nv.gov/corpsec_orders/Penn_National_Gaming/1_Order_of_Registration_06_17_10.pdf).

<sup>101</sup> *Id.*

<sup>102</sup> Howard Stutz, *Penn National Gets Final Approval in Nevada*, LAS VEGAS REV.-J., June 17, 2010, <http://www.lasvegassun.com/news/2010/jun/17/penn-national-gaming-gets-final-approval-nevada>.

the Nevada gaming regulations did not allow for an application for licensure or finding of suitability on a speculative basis. An individual or entity had to already hold an interest in a licensee in order to file a gaming application. The applicable Nevada gaming regulations, however, changed in late 2011 in response to the passage of Assembly Bill 213 during the 2011 Nevada legislative session, which authorized the Commission to issue “preliminary findings of suitability.”<sup>103</sup> This amendment to Nevada law allows the Board to conduct a suitability investigation into an individual’s background without the applicant’s current involvement in the gaming industry. This determination of suitability is expected to shorten the investigation time required for an individual’s subsequent application to be licensed for involvement in a particular gaming activity.

### G. Palms

The Palms Resort Casino opened in November 2001,<sup>104</sup> and quickly positioned itself as a casino resort that catered to the under forty demographic. To that end, the resort was the home base for the cast members from MTV’s *The Real World: Las Vegas* in 2002.<sup>105</sup> The Palms expanded in 2005 with the addition of another hotel tower dubbed the “Fantasy Tower” and expanded again in 2008 with the construction of the Palms Place residential tower.<sup>106</sup> The Palms took on a substantial amount of debt to fund these expansions.

The Maloof family, which is part of the group that owns the Sacramento Kings NBA franchise, owned a majority interest in the Palms from its opening in 2001 until 2011.<sup>107</sup> In June 2011, George Maloof, the property’s President, announced a partnership with TPG Opportunity Partners to reduce the Palms’ debt obligations.<sup>108</sup> TPG Opportunity Partners is a partnership between Leonard Green & Partners (“Leonard Green”), a private equity firm based in Los Angeles, and TPG Capital (“TPG”), a private equity firm based in Fort Worth, Texas and San Francisco, California.<sup>109</sup> Leonard Green and TPG had previ-

<sup>103</sup> David G. Schwartz, *Students Help Push State Toward Net Gaming Future*, LAS VEGAS BUS. PRESS (Nov. 28, 2011), [http://www.lvbusinesspress.com/articles/2011/11/28/opinion/columnists/schwartz/iq\\_49034235.txt](http://www.lvbusinesspress.com/articles/2011/11/28/opinion/columnists/schwartz/iq_49034235.txt).

<sup>104</sup> David Strow, *Palms Ready to Open, Will Cater to Everyone*, LAS VEGAS SUN (Nov. 9, 2001), <http://www.lasvegassun.com/news/2001/nov/09/palms-ready-to-open-will-cater-to-everyone/?history>.

<sup>105</sup> Erica Walsh, *Vegas: The Suite Life*, TRAVEL CHANNEL, <http://www.travelchannel.com/interests/vegas-planning-and-activities/articles/vegas-the-suite-life> (last visited Feb. 23, 2012).

<sup>106</sup> Rebecca Clifford-Cruz, *The Palms, Popular Among Playboys and Performers, Celebrates 10 Years*, LAS VEGAS SUN, Nov. 14, 2011, <http://www.lasvegassun.com/news/2011/nov/14/one-sin-citys-finest-celebrates-10-years>.

<sup>107</sup> Oskar Garcia, *Shuffle Leaves Maloofs 2 Percent of Palms Casino*, BLOOMBERG BUS. WEEK (June 21, 2011), <http://www.businessweek.com/ap/financialnews/D9O0FVF81.htm>.

<sup>108</sup> Amanda Finnegan, *Palms, TPG Announce Partnership to ‘Significantly Reduce’ Debt*, VEGAS INC (June 14, 2011), <http://m.vegasinc.com/news/2011/jun/14/palms-tpg-announce-partnership-significantly-reduc/> [hereinafter Finnegan, *Palms*].

<sup>109</sup> See *id.* Hamlet Holdings, a joint venture of Apollo Global Management and TPG Capital, are the majority owners of Caesars Entertainment Corporation, the largest casino operator in the world.

ously purchased the property's \$459 million outstanding loan.<sup>110</sup> Under the plan with TPG Opportunity Partners, the Palms converted debt into equity.<sup>111</sup> FP Holdings L.P., a company jointly owned by Leonard Green and TPG, now holds ninety eight percent of the Palms.<sup>112</sup> George Maloof owns two percent of the Palms and has an option to acquire an additional seven and one-half percent.<sup>113</sup> Under the approved plan, Maloof remains the Chairman of the Board of the new company.<sup>114</sup>

Because the Palms transaction involved the conversion of debt into equity, FP Holdings, the new operator of the Palms, and its various parent companies, needed to obtain Commission approval in connection with the equity conversion. In November 2011, the Commission approved the sale of a majority stake in the Palms to affiliates of TPG Capital and Leonard Green.<sup>115</sup>

### III. CONCLUSION

Although a gaming creditor may hold an interest in a gaming company, the creditor cannot transfer its interests, sell the gaming operation, or reorganize without first complying with state gaming laws and regulations. As the Station Casinos, TEI, Riviera, Black Gaming, Cosmopolitan, M Resort and Palms reorganizations addressed above illustrate, the ultimate plan for a distressed gaming company will vary considerably based on the creditors' tolerance for licensure or a finding of suitability. Many lenders ultimately forego voting control or sell assets at a considerable loss rather than subject themselves to the rigors of a background investigation by the gaming regulators. Those stakeholders that ultimately retain some equity in a licensee are subject to ongoing compliance and reporting requirements. In all of the examples listed above, conditions were imposed requiring prior approval of transfers of both voting and non-voting securities and periodic reporting regarding the holders of the same, as well as reporting of any changes in limited partners in the investment entities. Additionally, controls were imposed on the distribution of profits. In particular, distributions to entities and individuals that have not been found suitable were prohibited without the Commission's prior approval.

It has taken the combined efforts of those involved in the Nevada gaming industry, licensees and regulators, to maintain an environment in which entrepreneurs are able to infuse capital into the Nevada gaming industry despite the economic challenges since 2008. The corporate model established in Nevada to encourage private equity investment is now used to ensure that distressed gaming companies can restructure quickly and efficiently, allowing for negotiation and modification of obligations that ultimately provide formerly over-leveraged companies with the capital necessary to thrive.

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<sup>110</sup> Chris Sieroty, *Control Board Urges Sale of Palms Stake*, LAS VEGAS BUS. PRESS, NOV. 14, 2011, Vol. 28, at 12 [hereinafter Sieroty, *Sale of Palms*].

<sup>111</sup> Finnegan, *Palms*, supra note 108.

<sup>112</sup> Sieroty, *Sale of Palms*, supra note 110.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*