

Casinos

– risks to insurers

Aspen Opinion

June 2006

Contents at a glance

Introduction	1	Advantage players	6
Insurance protection	2	Esoteric risks	7
The United Kingdom	2	Passive smoking	7
Global growth	3	Surveillance and evidence	8
Katrina	3	Employee crime and conspiracy	8
Mississippi claim	4	Hygiene	9
Terrorism	4	Robbery and muggings	9
Fire safety	5	Coinless slots	9
Earthquake	5	Internet gaming	10
Special risks	5	Bent software	10

Introduction

Casino gaming is booming, both on land and on the web. Gambling in the USA is no longer the preserve of Las Vegas and Atlantic City. Nearly all US States now have casinos. In 2004, Californian casino income at US\$8.25 billion was just behind Nevada but already is now matching it. Many American casinos are afloat or sited on Indian Reservations (to escape State laws) of which there are around 350 with plenty more still planned. Internationally, gaming has now reached over 160 nations. Governments of countries that have long resisted gambling have had to review their policies to avoid being left behind.

Insuring large casino groups can be attractive business but understanding some of the interesting risks that may arise is fundamental. Organised Crime remains a problem in certain less regulated jurisdictions but the Mob was cleared out of Nevada gaming twenty years ago. The Strip is now mainly in the hands of two publicly quoted corporations that have bought or developed a series of mega-casinos.

Global opportunities for provision of insurance cover arise. However, besides the routine property risks (exemplified by the devastation to thirteen casinos from Katrina) and slips and falls, unique problems of legal liability need to be understood. For example, though almost all gamblers lose money, professional gamblers do win and the hostile attitude of casinos towards them has created considerable litigation. The slogan used by many casinos – “We love Winners” needs to be diluted with the words – “Not too much and certainly not consistently”.

In respected publicly quoted corporations, legal liability problems with the public mainly arise from conduct occurring below Board level. In the past few years, casinos have been sued many times for incidents that cannot have been condoned by top management. Insurers should give careful thought to policy wordings to ensure that unreasonable risks are not being foisted upon them.

Insurance protection

The protection purchased by gaming companies depends on internal management decisions but options available will include:

- Property Risks
- Contents
- General Liability
- Moneys and Securities
- Employee Dishonesty
- Workers Compensation/Employers Liability
- Event & Entertainment Protection
- Business Interruption

The United Kingdom

There are about 143 casinos in the UK but many of these are small. Ownership is dominated by groups such as Stanley Leisure, Rank and Gala. This is all about to change. The Gambling Act 2005, after a stormy time in Parliament, has opened up the UK's casino industry to the 2007 arrival of Las Vegas style gaming incorporated into a 24/7 entertainment centre. Reforms of archaic restrictive gaming laws have already commenced with the abolition from October 2005 of the rule requiring 24 hours notice to enter a casino as a member.

In 2005, the UK's gambling industry turned over £54 billion but only a small proportion came from casinos, something the new law will dramatically change. Though currently only one (mega) regional casino of at least 5,000 sq metres will be permitted, few believe this limit will remain. Inside, there will be armies of one-arm bandits offering mega-jackpots (though unlikely to come close to the frequent US\$30 million jackpots in Las Vegas), restaurants, night clubs, cinemas and ten-pin bowling etc.

The Government had intended to create eight regional casinos but ran into too much opposition and so diluted the plans at the eleventh hour. Besides this one regional casino, the new Act still permits eight other large and eight new smaller less spectacular ones. However, it is apparent that the Government was and remains anxious to introduce far more casinos. A report released in March 2006 by the Office of the Deputy Prime Minister talks of up to one thousand casinos emerging over a ten year period.

The United Kingdom (continued)

In anticipation of the fullest reforms, the major American casino companies had invested about US\$100 million in the UK as the Bill went through Parliament. They will still want to participate (perhaps some take-overs will emerge) but the UK's GMB Union prefers plans involving companies with a proven track-record and a policy of paying well, something they do not appear to attribute to the US giants. Some plans had linked casinos to Premier League and top Scottish football clubs. It remains highly probable that the Government will somehow enable several regional casinos to be approved. Being forced to slash back from eight was a disaster for Government from a fiscal standpoint. Local authorities too had been anxious to seize what they perceived as a welcome opportunity to rejuvenate deprived areas. Currently, over forty local authorities are lobbying for further regional casinos and the chance to house them. The GMB itself has been lobbying for four regional casinos because of the regeneration potential.

No decisions have yet been taken on which of many sites might be favoured for the seventeen or for the one mega regional casino. There is a short-list of eight locations for the mega-casino including Docklands, Wembley, Blackpool, Glasgow, Manchester and Newcastle. Investigations are ongoing and a decision is likely around December 2006.

Global growth

Australia liberalised its gaming a few years ago and provides Las Vegas-style 24 hour gaming palaces in major cities. South Africa also offers Las Vegas-style gaming. The current hot-spot development areas for casinos (other than the UK and USA) are in Macau (where the Nevada giants are competing fiercely), Singapore, the former Eastern Bloc and Latin America. The American giants are also going to develop in Slovenia and Spain.

Katrina

While casinos in most countries including Britain are less likely to suffer the extreme weather conditions of Hurricane Katrina, some of the claims issues that arose there are also relevant far beyond. The high risk along the Gulf Coast was plain to see: nature was being defied with casinos built on floating platforms to escape the rigours of State law. From a casino operator's viewpoint, the substantial risk must have been obvious in a zone so often visited by hurricanes.

Harrah's, the world's largest casino group, reported after Katrina that it benefits from business interruption cover until the premises have been rebuilt plus an extra six months. Normally, there is a strict time limit on the rebuilding and duration of payments or a capped sum is fixed for business interruption but one company is known to be laughing up its sleeve at the terms of its cover and is in no hurry to reopen due to the terms of its business interruption policy.

Mississippi claim

One casino group in Mississippi is reportedly suing two of its ten insurers for refusal to pay their part of a US\$175 million claim from the hurricane. Apparently at issue is whether the claim is an uninsured flood loss. In the proceedings, a claim for punitive damages is included alleging that one insurer circulated other excess insurers about their denial, something the casino owners regard as interference with their own claims negotiations.

Terrorism

In December 2005, the Terrorism Risk Insurance Act was extended till December 2007 by the Terrorism Risk Insurance Extension Act (TRIEA). Casinos, especially in Las Vegas, are a prominent risk to terrorist attack – because of their global profile and the hostility of fundamentalist extremists to gaming. Referring to Las Vegas, Vincent Cannistraro a former director of Counter-Terrorism at the CIA and a former Director of the National Security Council said: “If anything is a soft target, it’s that”. This view is widely shared by other security experts but publicly, the city is regarded by the Bush Administration (for no published reasons) as a lower risk than Cleveland or Cincinnati. There is more to the official stance than is apparent and the risk of an attack in Sin City is real indeed.

Material suggesting a plan to attack the MGM Grand Casino in Las Vegas, the world’s largest hotel with 5,000 rooms, was uncovered after 2001. The 9/11 hijackers had used Las Vegas as a secret rendezvous HQ but no connection with the MGM plot was ever proved or publicly admitted. In Nevada, there were determined efforts to downplay the threat for commercial reasons. Security has been increased - a mere fig leaf - but the reality is that even a moderately determined outfit could blow up any of the Strip properties, so difficult is it to inhibit freedom of movement (and thus lose big profits) in a city with 650,000 visitors per week. The reported thwarted attack on the 72 storey US Bank Tower in Los Angeles planned for 2002 involved non-Arabs from SE Asia – a race who throng Las Vegas every day.

TRIEA permits exclusion of terrorist events of over US\$100 billion and for attacks using nuclear, biological, chemical and radiological events. With the increased sophistication of terrorists and the porous border security in the USA, especially involving sea-container entry where only 5% are inspected, these exclusion rights may become especially important.

Fire safety

The old MGM (now Bally's), a 26 storey block built in 1973, was severely damaged by a fire in 1980 which spread explosively due to the lack of sprinklers. No fire alarms sounded and the ventilation system was faulty. Though fire chiefs had wanted sprinklers installed, the management, based on the ambiguity of the law, had resisted the outlay of US\$192,000 in a project costing over US\$100 million. The city authorities over-ruled the fire chiefs in favour of management. Eighty-four died and eight hundred were injured. Corruption in getting the premises approved was widely alleged but in the absence of convincing evidence was never proven. It took another fire involving eight fatalities at the Las Vegas Hilton in 1981 before tough and clear laws emerged to ensure safe premises. Standards of safety on paper are high but any system is vulnerable to human failings or errors that only emerge after a catastrophe.

Earthquake

The Federal Emergency Management Agency (FEMA) has characterized Las Vegas as an area of high seismic risk. The city – with a population of 1.7 million - is currently locally perceived as a hot bet for a major event. A University of Nevada study published in February 2006, however, puts the risk of a 6.0 or greater quake for the area only at 10 - 20% in the next 50 years. The most vulnerable buildings would be the older casinos and hotels, especially those in the original Downtown area. The study puts the cost at US\$17.7 billion. If the much smaller casino city of Reno, Nevada were hit, the estimate is US\$7.6 billion. The last one of that magnitude was in 1852 but the Strip was shaken in the 1990s by a quake centred in the Mojave Desert.

Special risks

Most risks of insuring casinos will prove less catastrophic than major fires, terrorist attack, hurricane or earthquake. However, understanding these unique risks is important for those who may be contemplating providing casino coverage in the booming climate of global expansion.

Advantage players

Although the excesses created by Mob rule till the 1980s have now gone, a cat and mouse war continues between casinos everywhere and what are called advantage players. Being categorised as an advantage player in less regulated jurisdictions can be a dangerous occupation. Such players are not cheating but are very highly skilled and so can win consistently and for large sums. Casinos are paranoid about and fear these professional gamblers who cost casinos about 3% of profits per annum, no mean sum.

Casino management everywhere has to combat these players and to do so, they use a variety of methods, some of which have led to lawsuits. Originally, the problems started with blackjack in the 1960s when computer technology applied by Professor Stanford Wong led to the creation of a card-counting technique that reversed the casino's inbuilt winning edge of about 2% into a player advantage of the same amount – potentially ruinous if everybody did it successfully.

Advantage players who card-count (without any mechanical aid) are not breaking any law. This was established back in 1980 when famous card-counter Ken Uston sued for his treatment in Resorts International's Atlantic City casino and won his case on appeal. Since then, solitary counters and those working in teams have won multi-millions but sometimes at the expense of serious intimidation and occasional violence.

Some players have used software to predict where the ball will land at roulette. Professor Wong has recently developed a technique that coaches a dice-thrower to throw favourable numbers at the craps table. This lawful but not infallible technique is a new worry for casinos. In Video Poker, Bob Dancer's success through development of an infallible technique has got him effectively banned from two major Strip casinos. For around a dozen years, this gambler has been making a hefty living every year from winning at Video Poker and in just six months, he won a million dollars. Countless other disciples of his commercially available software now find themselves warned off premises in Las Vegas, Detroit and elsewhere.

A legendary figure in gaming circles, Bob Dancer used his computer skills and his software programme to enable him to know and then learn the mathematically precise way to play each hand dealt. By this means, he turned these slots from a negative expectation game into one that is positive. If everyone played like this guru, casinos would have to abandon video poker or change the rules.

Sometimes, and without any justification, the winnings of advantage players will be seized or withheld by the casino. This too could expose insurers to hefty claims that are hard to defend. Punitive damages have been awarded against some casino owners.

Esoteric risks

Other risks can involve actions for defamation by players who allege they have wrongly been placed in the Griffin Book, the bible used by casino management globally. This black book lists cheats, villains and known advantage players, who object to being included.

Claims by losers that they have been encouraged to drink too much so that they went on to lose everything have been made but the courts have not been sympathetic. However, on the right facts, some judges and juries could well award damages. Another concern is the increasing need for casinos to be alert to problem gamblers – players who are gambling beyond their means in a compulsive way. A successful claim could well be founded if the casino neglects its duties – yet casinos love losers, so they have no real enthusiasm to stop players from losing. In the UK, the new regime for casinos will include a strict obligation to spot and protect problem gamblers.

Passive smoking

Casino companies are generally of the opinion that gambling, drinking and smoking go together and that preventing smoking would be detrimental to business. Although a scant few have divided their premises into smoking and non-smoking sections, this is unusual. A report just released by the University of Reno suggests that casinos present the worst possible working environment for secondhand smoke. Researchers warned that casino staff are four times more likely to be victims of health problems than persons who work in safe, smoke-free environments. Initial reaction has been that casino managers have done everything feasible by use of air-conditioning and venting to beat the problem. This stance seems most unlikely to survive legal scrutiny for many if not most casinos. The risk of class actions is real.

In March 2006, New Jersey, home of Atlantic City, ran into trouble. The proposed new anti-smoking law was amended at the last minute to exempt casinos from strict new provisions – a decision lobbied for by casino management. However, bars and restaurants are now seeking to challenge the imbalance in a new lawsuit. Currently, in Nevada, casinos are likely to be exempt from planned new laws controlling smoking. It may however be possible for a player who is a habitué of a particular casino to sue for illness caused by passive smoking. Proving blame may be difficult especially as players voluntarily choose to play in the smoky atmosphere though this per se would not be a defence.

The new British controls on smoking as approved by the House of Commons in February 2006, proved to be stronger than some had predicted and casinos will be included in the ban – likely to be operating from mid-2007. This will be good news for the health of employees and welcomed by many, if not all, patrons.

A UK claim for health problems allegedly caused by passive smoking failed in 2005 (Muir v Whitbread). The claimant, who was a pub manageress, failed to prove causation but previous claims have settled on payment of damages. Most relevant was the claim of a dealer at Napoleon's Casino in London. That case raised the issue that one method of attracting players was gifting cigarettes, this club apparently providing 40,000 a year. This was a widespread policy among casino operators but has now been pared back though high-rollers in Nevada still get free smokes and drinks ...and free everything!

Passive smoking (continued)

Some British casinos have sought to avoid lawsuits from employees (as opposed to players) by inviting players not to blow smoke towards staff or by creating no-smoking tables as a haven in a fog of smoke. This is rather ineffective. Too often, the air is not cleansed adequately or at all by venting and air-conditioning.

Currently, a test case is being run in Nottingham that would, if successful, open up a further fifty or so immediate claims about passive smoking. As expert testimony on causation becomes less controversial, the prospect for large claims against casinos remains a serious problem. However, the new British laws and the spread of similar controls will have a beneficial effect for those not already damaged by passive smoke.

Surveillance and evidence

It is important that casinos be required to keep and produce their surveillance tapes and sound recordings. There have been examples of this vital evidence going missing. Laurie Fraser, Executive Director of Global Markets at Willis, highlights the importance of surveillance from different viewpoints. With large staffing, gathering of evidence quickly is more feasible. A fire or a hazard on the casino floor is more likely to be spotted because of the saturation of cameras and staff. With the high volume of slots and other electric equipment, this is important. With slips and falls so prevalent, especially early in the day on recently cleaned floors, evidence too can be captured.

Employee crime and conspiracy

The greatest financial risk to casinos from cheating is collaboration between player and dealer, though such are the sophisticated surveillance techniques that they will inevitably be caught, though not necessarily before some or much damage has been done. Casinos may have financial protection for Employee Dishonesty under their policy for such criminal misconduct. Though a dealer in this situation would be ill-advised to sue for dismissal, other legal claims by staff are commonplace.

Dealers can help players in many ways – by deliberately revealing cards to an accomplice when dealing; by over-paying winners; by turning a blind-eye to players increasing stakes after winning but before pay-out or by past-posting. Fixing the shuffle is less common but is highly effective. The end result of any conspiracy can be huge losses. These could be claimed from insurers.

Hygiene

With the quantities of food being prepared, the risk of class actions from food-poisoning outbreaks is never far away. The Flamingo in Las Vegas suffered an outbreak of Noro Virus in 2004 and two hundred employees and guests became ill. Other mass illness issues like Legionnaires' disease are also a hazard. Stored food, besides presenting hygiene risks, can also be a fire hazard.

Robbery and muggings

Las Vegas casinos do get attacked by armed robbers, something that would have been foolhardy in the days of Leftie Rosenthal, Sam Giancana, Fat Herbie Blitzstein and Tony Spilotro. There have been some twenty-eight attacks since 2003 and at least nine in 2005. Even the five-star Bellagio was taken for US\$170,000. Laurie Fraser regards the casino cage (the central cash point) as a particular risk and guests can occasionally be shot during such incidents.

In 2005, an elderly couple were mugged and one of them shot and killed in daylight in the car park of the Suncoast Casino, Las Vegas. Muggings in multi-storeys and car-parks are quite common, a special risk to advantage players who carry huge cash winnings. It is important that cameras and good quality lighting are provided to inhibit attacks and to catch the evidence. The Suncoast murderer has not been caught.

Coinless slots

A rapidly developing scene is the end of clanking cash slot machines. Paper-In, Paper-Out is the new gold-standard. Besides saving management time on counting and easing obvious security and theft issues, it has removed the problem of employees suffering injuries from shifting trays of heavy coins.

Internet gaming

Virtual Casinos operating on-line are big business and they have provided many examples of outright dishonesty. Often they are based in tax-havens or remote Third World countries. It is likely to be difficult for disgruntled users to sue them for fraud and such shady operators would probably not bother with insurance anyway. However, the British Government (like Australia already) is going to permit licensed internet gaming companies under the new Act. America, which has treated internet gaming as illegal, may belatedly be moving towards accepting that the juggernaut is unstoppable and that controlling the rules is a better option. Controls everywhere will need to be strict.

Bent software

Besides fraud such as disappearing with the cash from the bank, the dangers from insuring online companies are that gaming software can be and is unfairly bent to ensure that the casino wins. Leading accountants certify the payback amounts from the software but that can obscure the way that games are fixed.

Software can ensure winning hands at blackjack are dealt to the dealer or determine that the roulette numbers chosen by the player rarely hit. Anybody wanting to set up a virtual casino can buy this bent software and register a new casino in some remote jurisdiction with lax laws.

Here is an example of an advertisement selling available software:

“Our proprietary random number generator is calculating profit before the winning/losing number is sent back to the game. You can set a minimum profit that’s always kept for you.”

This same company boasts:

“The software ...has the ability to change the winning % per game/table in real-time. Also you can withdraw the profit and limit player’s winnings. Games are completely random, if the winning is within the limit. If the bet is causing winning over the set limit, the generator is generating another number until the winning is within the limit (or player loses).”

Fair or what? Let punters and insurers beware!

Disclaimer

Whilst Aspen Insurance UK Limited has taken care in the production of this report, it is intended only as a general guide and it is not nor is it intended to be legal advice. No legal liability on any basis can be accepted by Aspen Insurance UK Limited, its affiliates, servants or agents for any matter contained in or arising from the contents of this report.

Copyright ©

This report must not be copied, reproduced wholly or in part nor abbreviated in any manner. Neither may its contents form the basis for any other report, lecture or seminar nor may it be used in any manner to the detriment or disadvantage of its creators without the written consent of any appropriate officer of Aspen Insurance UK Limited. Neither may it be circulated in any form without the full corporate identity of Aspen Insurance UK Limited being displayed as on the document published by them.

The moral rights of the authors are asserted.

Trademark

ASPEN is a registered trademark of Aspen (Actuaries & Pensions Consultants) plc of the UK and is used in the UK by Aspen Insurance UK Limited and its affiliates under licence. Aspen Insurance UK Limited and its affiliates are subsidiaries of the Bermuda-based Aspen Insurance Holdings Limited ("AIHL"). AIHL and its subsidiaries are not affiliated in any way with Aspen (Actuaries & Pensions Consultants) plc of the UK.