Gambling and the Law®:
How Not To Be Sued In Another State

I am the co-editor-in-chief of the *Gaming Law Review and Economics*, the law journal covering gaming law. We reported two cases in volume 12, Number 1, involving patrons who were injured in auto accidents suing casinos. The allegations are typical: the casinos supposedly got the drivers who caused the accident drunk. Nothing unusual about that. What is different is that the suits were filed in Kentucky and Arkansas, states without casinos.

Whether the casinos can be sued in those states is a question of personal jurisdiction.

Those two words strike fear into the hearts of most first year law students, and more than a few practicing lawyers. The problem with personal jurisdiction is two-fold: first, students are supposed to figure out the law themselves, through the case method, starting with the famous, or infamous, *Pennoyer v. Neff*, decided by the Supreme Court in 1877, and continuing with court decisions right up to the present. Which gives a good idea as to the second problem: If a doctrine is clear and easy to understand and apply, there would be no need for courts to have to keep clarifying it for 132 years.

Personal jurisdiction is of practical importance for casinos, because it answers the question of whether the casino can be sued in another state. But, I have never heard of casino executives asking their lawyers, before taking some important step, such as starting a marketing campaign or modifying a website, "Will this subject us to having to defend a suit in another state?"

This is both a lost opportunity for lawyers to help save the company money, and an indication that one of the main justifications for the doctrine has been lost.

Today, a discussion of personal jurisdiction begins when a casino has been sued, usually by a patron, in a federal or state court located in the plaintiff's home state. The casino's lawyers move to dismiss the case for lack of jurisdiction. If they win, it does not mean the case is over. But it does mean that the plaintiff will now have to start the case all over in a court in the casino's home state. This means the plaintiff will have to spend a lot of time and money traveling across the country to find a new lawyer and to attend hearings, only to have the trial heard in front of a judge and jury that doesn't see casinos as evil deep pockets.

Law students learn that the decision whether to dismiss involves a multi-step analysis. The overwhelming focus in on whether having the trial in the plaintiff's home state, called the forum state, would violate the defendant's due process rights. This is usually framed as, "Does the defendant have minium contacts with the forum state so that maintenance of the suit would not offend traditional notions of fair play and substantial justice."

Lots of factors get looked at, particularly whether the defendant "purposefully availed itself of the privilege of conducting activities within the forum state." Although tens of thousands of cases discuss this factor, the reason behind it has been lost: Due process is not only a test of fairness. It also tells the casino: you can make a conscious decision to avoid being sued in a state by limiting your activity there.

Of course, sometimes it is impossible to avoid being haled into an out-of-state court. If a casino has set up an office in another state it is almost always amenable to suit there, even for claims having nothing to do with that office. Courts have decided that having continuous and systematic contacts means it would not be too much of a burden to have to defend any lawsuit there.

Other times, the decision of whether to step up the casino's involvement with a state is so clear that the question of being open to suit is unimportant. Harrah's Entertainment, Inc. (HEI), was sued in a California state court by a couple who claimed they were injured in an elevator accident in the Rio in Las Vegas. In unreported decisions, the trial and appellate courts ruled that HEI could be sued in California on any claim arising anywhere,"based on HEI's own press release announcing HEI operates and manages an Indian gaming casino near San Diego..." HEI is not going to turn down a California casino just because someone might sue them there on an unrelated claim.

On the other hand, even a company as big as Harrah's, with casinos in dozens of jurisdictions, can protect itself. Here, HEI claimed that a separate company ran the Indian casino. Unfortunately, "They submitted no evidence to support their contention a company called HCAL, Inc., actually operates and manages the casino."

But Harrah's lawyers had been careful in setting up the parent company's relationship with two other subsidiaries, Harrah's Operating Company, Inc. and Rio Properties, Inc. The Court of Appeal dismissed both these companies from the suit, holding that the injured plaintiffs were not able to show they did any business in California.

Companies are considered separate legal entities, even if they are parent and subsidiary.

Harrah's again showed how this works in a strange case brought by a couple who claimed Harrah's Marina falsely reported to the IRS that they had won money, when they had never made a bet_ But the suit was dismissed, because the plaintiffs filed it in Louisiana and the Atlantic City casino company, technically Marina Associates, had almost no contact with that state. The parent company and Louisiana subsidiary had nothing to do with this claim. The plaintiffs tried to argue that they were injured in Louisiana by the allegedly false statements. But the court held that that was merely fortuitous: even if the allegation were true, the casino had not intentionally targeted Louisiana.

Although every case depends on its specific facts, there are some rules.

Having a website alone is safe. A court dismissed a suit filed in Missouri against Las Vegas's Imperial Palace for a slip and fall at the hotel, even though the site allowed reservations to be made and advertised an 800 number. The casino did not direct its advertisements specifically toward Missouri.

On the other hand, Nassau's Crystal Palace was forced to defend a suit filed in Florida, because the Bahamian company had so many contacts with that state. It even listed the Ft. Lauderdale address of its subsidiary, Crystal Palace U.S. Inc., on many of its advertisements and checks.

The biggest problem for lawyers and executives trying to avoid, in advance, being dragged into court in another state, is that the courts are split on how much advertising is too much, and whether they should count how many patrons live in the forum state. In the most recent auto accident cases, the Kentucky court noted that the defendant, Caesars Indiana, "earned at least $109 million from Kentucky residents in 2000;" while the Arkansas court noted, "Over 14,380 Arkansas patrons are registered" with Harrah's Shreveport.

On the other hand, a Pennsylvania court held Claridge Tower at Bally's could not be dragged to Philadelphia to defend an escalator accident claim, even though Bally's advertises extensively and "thirty-three percent of all people traveling on daily buses to Claridge Tower – 11,300 people – came from Philadelphia and surrounding Pennsylvania areas."

One court, in 1992, even held that Circus Circus and its subsidiary, the Edgewater Hotel, could be sued in California for a Laughlin boating accident, but another subsidiary, the Colorado Belle, could not be sued for the same accident, because it did not advertise enough.

Personal jurisdiction may sometimes be clear as mud. But casino executives would still be wise to ask their lawyers about it – before they are sued.

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