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Cory Aronovitz

Jon Topolewski

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CASENOTE: THE EMERALD CASINO FIASCO

CORY ARONOVITZ*

JON TOPOLEWSKI**

A recent decision in the United States Seventh Circuit Court of Appeals restricts the ability of a bankruptcy court to exercise post confirmation authority over a state administrative proceeding. In the consolidated appeals of *Village of Rosemont v. Aaron Jaffe* and *Emerald Casino, Inc. v. Illinois Gaming Board*,¹ the Seventh Circuit held that the bankruptcy court was unable to compel the Illinois Gaming Board (hereinafter the “IGB”) to carry through with a plan to transfer a casino license from Emerald Casino to the Isle of Capri Casino.² The following casenote will first attempt to unravel and clarify the factual underpinnings of this decision. This note will then analyze the manner in which the

* Mr. Aronovitz has fifteen years of gaming law experience as a regulator/former legal counsel to the Illinois Gaming Board and in private practice representing some of the largest manufacturers, suppliers and operators in legalized gaming jurisdictions. Mr. Aronovitz is the Founder of The Casino Law Group LLC, an adjunct professor of gaming law at the John Marshall Law School, and a founding member of the International Masters of Gaming Law.

In 1994, Cory was the award recipient of The John Rosecrance Gambling Research Paper Competition, by The Institute for the Study of Gambling and Commercial Gaming, University of Nevada. In August 2000, Cory was named one of the “Top 40 Lawyers Under 40” by the Chicago Law Bulletin. And, in May 2005, Cory was presented with a Distinguished Service Award from The John Marshall Law School for his achievements in gaming law.

Mr. Aronovitz has published extensively and is a frequent speaker related to various gaming issues.

** Mr. Topolewski is in his third year at the Loyola University Chicago School of Law. While at Loyola, he has been active in the school’s moot court program. For the past two years he has represented Loyola in the highly competitive Chicago Bar Association Moot Court Competition, acting as captain of the team this year. Mr. Topolewski recently contributed to an update of the United States Case Law section for the 10th edition of the Internet Gambling Report © 2007 Clarion Gaming. Prior to attending Loyola Law, Mr. Topolewski graduated from DePaul University with a B.S. in Economics.

1. 482 F.3d 926 (7th Cir. 2007) [hereinafter *Emerald III*].
2. *Id.* at 928-29, 931.

Seventh Circuit dealt with the claims of the appellants, the Village of Rosemont and Emerald Casino.

I. FACTS

An undergrowth of tangled and sordid facts led to the Seventh Circuit's decision. Appellant Emerald Casino, Inc. operated a riverboat gaming facility in East Dubuque, Illinois, until it closed the casino in 1997.³ That same year, Emerald applied for a license renewal but sought to relocate the casino to Rosemont, Illinois.⁴ In support of the relocation, appellant Village of Rosemont constructed a casino parking facility.⁵ To the surprise and disappointment of both parties, the IGB denied Emerald's request for renewal, and Emerald sought administrative review of the denial.⁶ The administrative law judge, after conducting a de novo hearing, issued a recommendation based on findings of fact and conclusions of law consistent with the IGB's Notice of Denial. The IGB then issued its Final Board Order denying Emerald renewal of its Owner's License.

Following the Final Board Order, the Illinois General Assembly entered the picture and amended the Illinois Riverboat Gambling Act (hereinafter the "IRGA").⁷ Basically, the amendment stated that if an applicant correctly completed the application and the municipality agreed to the receipt of the license, the IGB *shall* grant the renewal.⁸ In 1999, Emerald was permitted to reapply⁹ for a renewal and Rosemont consented to the relocation plan, but the IGB again denied the request.¹⁰ Additionally, the IGB brought a five-count disciplinary action against Emerald in which the IGB sought to revoke Emerald's existing license.¹¹ Emerald, meanwhile, sought a writ of mandamus directing the IGB to approve its application.¹² In *Emerald I*,¹³ the appellate court held that the language of the

3. *Id.* at 929.

4. *Id.*

5. *Id.*; see also Greg Hinz, *Time to Cash In; Legal War over Emerald Casino Needlessly Costing Taxpayers Millions*, CRAIN'S CHI. BUS., Nov. 28, 2005, at 2 (noting that Rosemont spent forty-five million dollars on the construction of the parking garage built in anticipation of the relocation of Emerald Casino).

6. *Emerald III*, 482 F.3d at 929.

7. *Id.*; 230 ILL. COMP. STAT. 10/11.2(a) (2004).

8. 230 ILL. COMP. STAT. 10/11.2(a).

9. *Emerald III*, 482 F.3d at 929. In light of the new amendment to the IRGA, the Board declared the administrative judge's prior order affirming the denial of Emerald's license moot and allowed Emerald to file a new application for renewal and relocation. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Emerald Casino, Inc. v. Ill. Gaming Bd.*, 803 N.E.2d 914 (Ill. App. Ct. 2003) [hereinafter *Emerald I*].

amendment was non-discretionary – if the application was complete and there was municipality approval, then the IGB must approve the renewal.¹⁴

Concurrent with the decision of the appellate court in *Emerald I*, the IGB continued its administrative disciplinary proceeding and sought to revoke Emerald's gaming license.¹⁵ The Village of Rosemont and four creditors, after discovering the detrimental nature of the proposed settlement between Emerald and the IGB, brought an involuntary bankruptcy action against Emerald. This bankruptcy action was later converted into a Chapter Eleven proceeding.¹⁶

Emerald then fought a two-front battle against two countervailing forces: the IGB's obvious distaste for Emerald's gaming practices and the Village of Rosemont's desire to have it follow through with its plan to relocate a casino to Rosemont. The only option that seemed to appease both sides was to transfer the license to a third party.¹⁷ In May 2003, such a plan was filed with the bankruptcy court.¹⁸ Subsequently, the Attorney General (hereinafter "AG") entered the picture.¹⁹ The AG stated that she would not approve a plan that resulted in any sort of net gain for Emerald's shareholders.²⁰ Under the belief that AG approval was required to settle the case, the IGB concluded that it had to recommence the disciplinary proceedings against Emerald.²¹

Emerald's troublesome two-front battle became an almost insurmountable four-front attack. Emerald fought against the Village of Rosemont and its creditors who sought a casino; against the IGB who sought a transfer of Emerald's license; against the AG who sought an uneconomical dissolution of Emerald; and against Emerald's own shareholders who sought some return on their investment.

On December 15, 2003, the IGB, Emerald Casino, and the AG signed what was referred to as the "First Side Letter."²² Essentially, this letter provided certain necessary criteria for the

14. *Id.* at 925-28.

15. *Emerald III*, 482 F.3d at 930.

16. *Id.*

17. *Id.*

18. *Id.*

19. See *Attorney General's Fight for Integrity of Illinois Gaming Upheld by Federal Appeals Court*, U.S. STATE NEWS, Apr. 4, 2007 (discussing Lisa Madigan's commitment to ensuring that Illinois casinos are run by ethical parties).

20. *Emerald III*, 482 F.3d at 930. The AG's refusal was based on the theory that Emerald's shareholders were not entitled to a return on their investment when Emerald had been accused of wrongdoing in the administrative proceedings. *Id.*

21. *Id.*

22. *Id.* at 930-31.

transfer of Emerald's license.²³ The letter also included two clauses that became paramount to the Seventh Circuit's decision. First, the letter stated that at any point either the IGB or the AG could revoke its commitment to the plan.²⁴ Second, the letter reaffirmed the State's sovereign immunity.²⁵

Soon thereafter, a winning bidder for the license was found in the Isle of Capri Casino.²⁶ The AG, however, disputed the transfer, arguing that the transfer violated multiple provisions of the side letter.²⁷

Even without the AG's approval, the IGB and Emerald presented the plan to the bankruptcy court.²⁸ One particular portion of the bankruptcy proceeding transcript, wherein the judge questioned the strength of the plan, became important to the Seventh Circuit's ultimate decision.²⁹ Specifically, the judge questioned the ability of the plan to withstand revocation.³⁰ The parties, either failing to recognize this potential or anticipating that they could enjoin the IGB or the AG from revoking the license in the bankruptcy court, agreed to proceed. The bankruptcy judge confirmed the plan on May 17, 2004.³¹

23. *Id.*

24. *Id.* at 931.

25. *Id.*

26. *Id.* Isle of Capri, a publicly-traded company that operated fifteen gaming facilities at the time of the bid, was willing to pay five hundred and eighteen million dollars for the license. *Id.*

27. *Id.* The AG disputed that the bidding process was unnecessarily skewed to the benefit of the VillageVillage of Rosemont. *Id.* The AG criticized the decision to favor the VillageVillage of Rosemont merely because of the parking garage the VillageVillage built, which the AG labeled as "unauthorized conduct." *Id.* The AG also questioned the disciplinary history of the transferee, the Isle of Capri Casino, and noted that it had been fined by both state and federal regulators. *Id.*

28. *Id.*

29. *Id.*; see *id.* at 936 ("The bankruptcy judge's warning could not have been any plainer: he alerted the parties to the fact that the membership of the Board might change, and that the license might be revoked, and they all said they were willing to go forward with this plan anyway.").

30. *Id.* The conversation before the bankruptcy judge went as follows:

The Court: Is there anything that would prevent the resumption of the revocation proceeding and the revocation of the license here, despite confirmation of the plan that's presently before the Court, other than a majority vote of the Illinois Gaming Board?

[Emerald's Counsel]: No.

The Court: So that if the membership of the gaming board changed, or if members of the gaming board changed their mind, there would still be a potential revocation?

[Emerald's Counsel]: Well, Your Honor, there's all sorts of things that could happen.

Id. at 931-32.

31. *Id.* at 932. The bankruptcy court made clear, however, that the plan was not binding on the AG who was not a party before the court. *Id.*

At that point, Emerald successfully managed to gain the allegiance of both the Village of Rosemont and the IGB. In doing so, however, the Village of Rosemont and the IGB gained an adversary in the AG. Following the confirmation of the plan, the AG attempted to prevent the IGB from performing a suitability review of the Isle of Capri Casino.³² The IGB reacted by passing what the court referred to as the "Second Side Letter," which revoked the portions of the "First Side Letter" that the AG previously alleged were breached by the transfer to Isle of Capri.³³

The bickering between the IGB and the AG soon took an unfortunate turn for Emerald when in March 2005, two new members were appointed to the IGB.³⁴ Following the new appointments, the IGB elected to continue with the disciplinary proceeding, as the IGB had not completely confirmed Isle of Capri as the transferee of Emerald's license.³⁵

Upon the administrative law judge's recommendation, and the IGB's consequent decision to revoke Emerald's license,³⁶ both Emerald and the Village of Rosemont filed complaints in the bankruptcy court seeking specific performance of the plan.³⁷ The bankruptcy court rejected the proposal and the district court affirmed that decision.³⁸ Both the Village of Rosemont and Emerald then appealed to the Seventh Circuit.³⁹

II. THE SEVENTH CIRCUIT'S TREATMENT OF THE VILLAGE OF ROSEMONT'S APPEAL

The Seventh Circuit interpreted the Bankruptcy Code narrowly and restrictively when it concluded that the bankruptcy court could not enjoin the IGB from revoking Emerald's license.⁴⁰

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* The administrative law judge's decision was based on the "findings of fact that Emerald and its principals had dissembled about the plans to move to Rosemont, that the renewal application Emerald had filed on September 28, 1999, was neither accurate nor complete, and that both Emerald and its principals had not been honest in other respects." *Id.* The IGB accepted the administrative law judge's recommendation to revoke Emerald's license and also to deny "any efforts by Emerald to engage in gambling in Illinois at any location." *Id.* (quoting administrative law judge, former U.S. Circuit Judge Abner Mikva, in his thirty-eight page opinion recommending revocation of Emerald's license). The IGB formally revoked Emerald's license on December 20, 2005. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *See id.* at 936 ("[T]here is no legal theory that would allow the bankruptcy court to force the IGB and the Attorney General of Illinois to discontinue the disciplinary proceeding against Emerald.").

The Village of Rosemont proffered three arguments. First, it claimed that the “First Side Letter” and the “Second Side Letter” were parts of the reorganization plan.⁴¹ Second, the Village of Rosemont argued that Sections 1142(b)⁴² and 105(a)⁴³ of the Bankruptcy Code gave the bankruptcy court the power to enjoin any activity that impeded the transfer of the license.⁴⁴ Third, the Village of Rosemont argued that the IGB had waived its sovereign immunity and, therefore, was susceptible to the jurisdiction of the bankruptcy court.⁴⁵

The Seventh Circuit held that the wording of the side letters doomed the Village of Rosemont’s first and third claims.⁴⁶ Specifically, the “First Side Letter” allowed for the continuation of the revocation proceedings if certain conditions were avoided.⁴⁷ Both sides stipulated that these conditions were not met.⁴⁸ Consequently, assuming that the “First Side Letter” was part of the plan, it permitted the continuation of the revocation proceedings.⁴⁹ Furthermore, the “Second Side Letter,” even if considered to be part of the bankruptcy plan, limited its reach only to the IGB – not to the AG.⁵⁰ Therefore, the confirmed plan did not ban the reinstatement of the disciplinary proceedings.⁵¹

As for the Village of Rosemont’s third claim, the Seventh Circuit held that the State always maintained its ability to claim sovereign immunity from suit and in no way waived this right.⁵² The Seventh Circuit was quick to point out that both side letters

41. *Id.* at 934-35.

42. 11 U.S.C. § 1142(b) (2006). Section 1142(b) states:

The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b).

43. 11 U.S.C. § 105(a) (2006). Section 105(a) states:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

44. *Emerald III*, 482 F.3d at 935.

45. *Id.* at 936.

46. *Id.* at 934-35.

47. *Id.*

48. *Id.* at 935.

49. *Id.*

50. *Id.* at 934-35.

51. *Id.* at 935.

52. *Id.* at 936-37.

specifically reserved the State's sovereign immunity.⁵³ Furthermore, the State was never a party to the bankruptcy proceedings and, therefore, could not effectively waive immunity in the bankruptcy court.⁵⁴ Consequently, the Village of Rosemont's claim that the State waived sovereign immunity was both baseless and untenable.

As for the Village of Rosemont's second argument, the Seventh Circuit applied an extremely limited and narrow interpretation of the bankruptcy court's power under Sections 1142(b) and 105(a) of the Bankruptcy Code. The rationale behind the Court's holding (that these sections did not permit the bankruptcy court to enjoin the IGB from revoking Emerald's license) was that neither section granted a bankruptcy court substantive rights.⁵⁵ While this holding has been widely accepted throughout other circuits,⁵⁶ it failed to address how a bankruptcy court's ability to enjoin the IGB from revoking Emerald's license might equate to granting the Village of Rosemont substantive rights.

Whether the bankruptcy court acted beyond its realm of authority and created substantive rights, or merely equitably protected the administration of the debtor's estate, is unclear. Section 105(a) gives the bankruptcy court the right to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the code."⁵⁷ Section 1142(b) states:

The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.⁵⁸

Broadly viewed, a bankruptcy court presiding over a debtor's estate has the power to issue any order if the subject of the order could conceivably have an effect on the administration of the

53. *Id.* at 936.

54. *Id.* at 936-37. "[W]hatever property right the license conferred has always been subject to, or conditioned on, the regulatory powers of the state. Nothing in the bankruptcy laws permits the court to enjoin the Board, a state regulatory agency, from exercising the police powers of the state to regulate the gambling industry." *Id.*

55. *Id.* at 935.

56. *See, e.g., In re Brass Corp.*, 301 F.3d 296, 306 (5th Cir. 2002) (finding that Section 1142 does not confer substantive rights onto the bankruptcy court); *In re Ludlow Hosp. Soc., Inc.*, 124 F.3d 22, 27 (1st Cir. 1997) (holding that Section 105(a) confers a limited power on the bankruptcy court, not full substantive rights).

57. 11 U.S.C. § 105(a).

58. 11 U.S.C. § 1142(b).

estate. In *In re A. H. Robins*,⁵⁹ the Fourth Circuit adopted a broad interpretation of the bankruptcy court's power under Section 105(a). The Fourth Circuit held that the bankruptcy court was within its authority to order an injunction prohibiting suits against third-party non-debtors.⁶⁰ In so holding, the Fourth Circuit noted that the entire reorganization plan hinged upon the injunctions. Therefore, the injunctions were an exercise of the courts equitable power.⁶¹

Likewise, the same principle has been applied in determining when the bankruptcy court may exercise power under Section 1142(b). In *In re LGI, Inc.*,⁶² the bankruptcy court held:

The proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom [of] action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.⁶³

In the present action, the Seventh Circuit narrowly construed the power of the bankruptcy court, holding, in this matter, that enjoining the IGB from revoking Emerald's license would create an independent source of rights.⁶⁴ The court cited a First Circuit decision wherein the court held, "section 105(a) affords bankruptcy courts considerably less discretion than first meets the eye, and in no sense constitutes a roving commission to do equity."⁶⁵ *In re Ludlow Hospital Society, Inc.*, dealt with an administrator's request to have the bankruptcy court extend a deadline for selling a Chapter Eleven hospital's assets in order to receive a depreciation reimbursement *after* the deadline had already passed.⁶⁶ The First Circuit's holding partially rested upon the court's determination that Section 105(a) did not grant the court the equitable power to alter a deadline imposed by a non-bankruptcy law.⁶⁷ Notably, however, the First Circuit based its holding on Section 108(b)⁶⁸ of the Code, as it dealt specifically with a bankruptcy court's inability to extend a non-bankruptcy deadline.⁶⁹

59. 880 F.2d 694 (4th Cir. 1989) [hereinafter *Robins*].

60. *Id.* at 701.

61. *Id.*

62. 322 B.R. 95 (Bankr. D.N.J. 2005).

63. *Id.* at 99 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

64. *Emerald III*, 482 F.3d at 935.

65. *In re Ludlow Hosp. Soc., Inc.*, 124 F.3d at 27.

66. *Id.* at 24.

67. *Id.* at 28.

68. 11 U.S.C. § 108(b) (2006).

69. *In re Ludlow Hosp. Soc., Inc.*, 124 F.3d at 29. 11 U.S.C. § 108(b) states, in relevant part:

As to the Seventh Circuit, the Village of Rosemont fell victim to the plan that the Village of Rosemont set forth in the bankruptcy court. The Seventh Circuit cited an excerpt of dialogue between the bankruptcy judge and Emerald's counsel as evidence that all parties were aware of, and consented to, the possibility that the IGB could change membership and revoke Emerald's license.⁷⁰ In acknowledging this possibility, the court suggested that the bankruptcy court would grant the Village of Rosemont substantive rights if it were to enjoin the IGB and the AG from continuing the disciplinary proceeding.⁷¹

The Seventh Circuit's short work of the argument, however, leaves the reader unsatisfied. As the court held in *Robins*, where the subject matter of a proposed order of the bankruptcy court protects an element upon which the reorganization plan hinges, it is within the province of the court to issue that order.⁷² In this case, the reorganization plan hinged upon both: (1) Emerald transferring its license to Isle of Capri, and (2) Isle of Capri building a casino in Rosemont.⁷³ Conceivably, per the reasoning of *Robins*, it would be within the equitable powers of the bankruptcy court to issue an order enjoining the IGB from revoking Emerald's license, as the entire reorganization plan hinged upon this occurrence.

Thus, while the power to remove the IGB's adjudicative ability does seem substantive in nature, the Seventh Circuit did very little to clarify the way in which enjoining the board from proceeding was different from an injunction preventing civil suits. The court confirmed the established principle that, post-confirmation, a bankruptcy court has equitable powers, but not substantive powers.⁷⁴ Other circuits, however, permit a bankruptcy court to intervene in third-party suits when there is a

Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of - -

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

11 U.S.C. § 108(b).

70. See *supra* notes 30-31 (citing the conversation between the bankruptcy judge and Emerald's counsel).

71. *Emerald III*, 482 F.3d at 936.

72. *Robins*, 880 F.2d at 701.

73. *Emerald III*, 482 F.3d at 931.

74. *Id.* at 935.

nexus between the suits and the administration of the estate.⁷⁵ One can interpret the Seventh Circuit's broad holding as requiring bankruptcy courts to refrain from intervening in state administrative proceedings. This is so even when the administrative proceeding has the grave potential to affect the interpretation, implementation, consummation, execution, or administration of a confirmed plan.

III. THE SEVENTH CIRCUIT'S TREATMENT OF EMERALD CASINO'S APPEAL

The Seventh Circuit ruled against Emerald on appeal and in doing so set the precedent that under Section 362(b) of the Bankruptcy Code,⁷⁶ a bankruptcy court cannot stay a state administrative proceeding.⁷⁷ In its appeal, Emerald argued that the district court erred in denying an automatic stay of the IGB's disciplinary decision.⁷⁸ In support of its position, the Seventh Circuit cited Section 362(b) of the Bankruptcy Code, which, according to the court, "forb[ade] the bankruptcy court from interfering with the government's police and regulatory powers."⁷⁹

The automatic stay provision of the Bankruptcy Code was enacted to protect a debtor's ability to assess its financial situation without interference from interested creditors.⁸⁰ An exception to

75. See *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) ("In bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan.") (internal citation omitted); see also *In re Davis*, 730 F.2d 176, 184 (5th Cir. 1984) (stating that bankruptcy courts have the "authority to enjoin litigants from pursuing actions pending in other courts that threaten the integrity of a bankrupt's estate") (internal citations omitted) (internal quotations omitted); see also *Diners Club, Inc. v. Bumb*, 421 F.2d 396, 398 (9th Cir. 1970).

In the exercise of its jurisdiction over the debtor's property, the [bankruptcy] court had power to issue injunctions and all other writs necessary to protect the estate from interference, and to ensure its orderly administration. . . . [The bankruptcy court's power] extends to the stay of proceedings in other courts, whenever such stays are necessary to conserve the assets of the estate, or to prevent interference with the orderly rehabilitation of the debtor corporation.

Id. (internal citations omitted).

76. 11 U.S.C. § 362(b) (2006).

77. *Emerald III*, 482 F.3d at 938.

78. *Id.* at 937.

79. *Id.* at 938.

80. See Rafael Ignacio Pardo, *Bankruptcy Court Jurisdiction and Agency Action: Resolving the Next Wave of Conflict*, 76 N.Y.U. L. REV. 945, 948 (2001) (interpreting House Bill 95-595 as it relates to automatic stays in bankruptcy proceedings). The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. H.R. REP. NO. 95-595, at 340 (1977). It gives the debtor a breathing spell from his creditors. *Id.* It stops all collection efforts, all harassment, and all foreclosure actions. *Id.* It permits the debtor

the automatic stay provision exists when a governmental authority attempts to exercise its regulatory authority.⁸¹ The Seventh Circuit read the Bankruptcy Code as conclusively prohibiting the bankruptcy court from affecting the State's regulatory power.⁸² The Seventh Circuit cited *Nelson v. La Crosse County District Attorney*⁸³ in support of this interpretation. In *Nelson*, a bankruptcy court was unable to stay a criminal proceeding against a debtor for her operation of a business that was the subject of the bankruptcy proceeding.⁸⁴ The basis of the court's finding in *Nelson* was that the criminal proceeding was not part of the bankruptcy court's *in rem* jurisdiction.⁸⁵ The Seventh Circuit analogized the position of the debtor in *Nelson* to Emerald's position.⁸⁶

Again, the Seventh Circuit interpreted the Bankruptcy Code narrowly and in a limited manner when it adjudicated this claim. The court plainly read Section 362(b) as a complete bar against a bankruptcy court staying a state regulatory proceeding.⁸⁷ The legislative history of the Bankruptcy Code and the decisions in multiple circuits, however, permit the exercise of discretion by the bankruptcy judge depending upon the purpose of the regulatory agency. For instance, in *In re Shippers Interstate Service, Inc.*,⁸⁸ the Seventh Circuit held that when a governmental regulatory proceeding has the grave potential to affect the assets of an estate, the court may use "discretion."⁸⁹ Likewise, the Eighth Circuit in *In re State of Missouri*⁹⁰ held, "the term 'police or regulatory power' refers to the enforcement of state laws affecting health, welfare, morals, and safety, but not regulatory laws that directly conflict with the control of the res or property by the bankruptcy court."⁹¹

to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy. *Id.*

81. 11 U.S.C. § 362(b). Section 362(b)(4) states:

(b) The filing of a petition under section 301, 302 or 303 of this title or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay –

...

(4) . . . of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment

11 U.S.C. § 362(b).

82. *Emerald III*, 482 F.3d at 938.

83. 301 F.3d 820 (7th Cir. 2002).

84. *Id.* at 823-25.

85. *Id.* at 838.

86. *Emerald III*, 482 F.3d at 938.

87. *Id.*

88. 618 F.2d 9 (7th Cir. 1980).

89. *Id.* at 11.

90. 647 F.2d 768 (8th Cir. 1981).

91. *Id.* at 776.

Additionally, in drafting Section 362, many politicians opposed the idea that the 362(b) exception from the automatic stay for regulatory agencies would act as an “automatic” exception.⁹²

Interestingly, the Seventh Circuit never discussed whether the IGB acted in an effort to protect the health, welfare, morals, or safety of the state, thereby exercising its regulatory powers; or whether the IGB acted more for a pecuniary interest. If the Seventh Circuit were to have undertaken this task it is quite possible that the Seventh Circuit would have viewed the IGB’s actions as pecuniary in nature. First, the Illinois General Assembly announced its intent for the licensing program to increase state revenues via the IRGA amendment of May 3, 2003.⁹³ Essentially, the state legislature announced that increased commercial activity was the focus of the IGB. Moreover, considering the financial interests that were at stake in this claim, the potential for the interference of a pecuniary interest was great.⁹⁴ Contrary to the Seventh Circuit’s holding, simply being a state regulatory agency should not alone suffice to grant blanket authority to interfere with a Chapter Eleven estate.

IV. CONCLUSION

The hand that the Seventh Circuit dealt in its holding is ominous at best. The Seventh Circuit’s narrow and plain interpretation of the implicated bankruptcy law provisions set a dangerous precedent for casino administrators and financiers operating within the Seventh Circuit’s jurisdiction. The lesson casino administrators and financiers should take from this holding is to be wary of the manner in which they construct bankruptcy plans. The gaming licenses casinos hold should no longer be considered playing chips on the table during plan construction. At a moment’s notice, the IGB has vested regulatory authority to remove these chips even when, as in Emerald’s case, the gaming license was the only chip on the table.

92. While the exception should be construed in such a way that the government body may pursue legitimate police power/regulatory goals, it should not apply so as to except agency action whose aim is to “protect a pecuniary interest in property of the debtor or property of the estate.” 124 CONG. REC. H32, 395 (1978) (statement of Rep. Edwards); *accord* 124 CONG. REC. S33, 995 (1978) (statement of Sen. DeConcini).

93. *Emerald III*, 482 F.3d at 930. Additionally, the amendment permitted the IGB to reissue a license that had been revoked or not renewed, and also provided that if a casino operator’s license was revoked or expired without renewal, the proceeds from re-issuance of the license would go directly to the state. *Id.*

94. *See* Hinz, *supra* note 5 (discussing the financial interests at stake in the Emerald Casino relocation).