

Curzi came across a Feb. 2, 2009, email with a spreadsheet attached—“Video Lottery Game Payout Percentage Report.” The document had come from Gaming Laboratories International, an independent auditor based in New Jersey that works with many state lotteries to test machines.

The spreadsheet listed all the types of Oregon video poker machines by manufacturer, the millions of games played in one quarter of 2008 and how much money players spent.

In one column, the document showed what various video poker machines, based on calculations of probabilities, were expected to pay out to players over time.

In another column, the document showed what the machines were actually paying out. Curzi thought the payouts should have been very close to what the game’s programmers predicted.

Some weren’t. Curzi discovered the game he had been playing at Quimby’s, the Jacks or Better “Bluebird” terminal produced by WMS Gaming, was off by quite a bit.

The spreadsheet showed Jacks or Better on average should be paying out 90 cents for every \$1 players put into the machine. It actually paid out about 87 cents.

That 3-cent difference may seem small, but when multiplied by the huge numbers of video poker games played, it translated to about \$1.3 million per year that Jacks or Better wasn’t returning to players.

“This,” Curzi recalls thinking to himself, “is totally corrupt.”

He kept digging and made a second big discovery: Lottery officials knew about the discrepancy, and the auto-hold function on some machines was to blame.

“Due to the vendors’ auto-hold strategies, a few other poker games have actual payout percentages that are below theoretical,” Carole Hardy, the lottery’s then-assistant director for marketing, wrote on April 1, 2009.

Curzi discovered a survey of video poker players the lottery commissioned from Mosak, a marketing research firm.

“Across all player types, the overwhelming majority of players said they prefer the auto-hold feature in video poker games as it makes it more convenient and easier to play,” a 2010 Mosak report said. “Players said this feature allows them to hold the correct cards, thus increasing their chances of winning.”

Curzi had only hoped to understand how auto-hold worked. He had instead discovered the lottery knew auto-hold sucked millions away from players—and players actually thought auto-hold helped them.

The lottery’s rules require “a close approximation of the odds of winning some prize for each game” and say those odds “must be displayed on a Video Lottery game terminal screen.”

Documents Curzi received show lottery officials debated whether or not they should tell players the actual odds if they relied on auto-hold.

In a memo labeled “confidential” and dated Sept. 15, 2009, lottery officials reported they had been studying their sys-

tem to find video poker games that might be making payouts that were too high. Instead, they found machines whose payouts were too low.

“This triggered additional investigation regarding the integrity of the games,” the memo said. “Further, there was a question whether additional information should be provided to players to ensure they have accurate information regarding how video lottery games pay.”

The Sept. 15 memo also contained this nugget about WMS Gaming, maker of the game Curzi played at Quimby’s: “WMS has confirmed that the auto-hold strategy for all WMS poker games is set to pay out lower than the other products as a result of the auto-hold strategies WMS has implemented.”

Lottery officials, according to a separate 2009 memo, decided to put accurate auto-hold payouts on the Web. But Curzi went looking online, even using the Internet Archive search engine, to see if the lottery had ever made public the lower odds. He found no evidence it had.



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agement consultant in the state’s Department of Administrative Services wrote back to say the lottery was still investigating Curzi’s claims.

On Dec. 31, Curzi took the Oregon Lottery to court.

Jack Roberts, the lottery director, took over the agency in December 2013, following years of controversy and accusations the agency wasn’t doing enough to address problem gambling. He had earlier served as state labor commissioner and ran in the Republican primary for governor in 2002.

Roberts says the lottery is fairly representing players’ chances. “Clearly the odds favor us,” he says. “That’s what gambling establishments are about, but we believe we’ve been honest in representing what they are.”

Roberts wasn’t around when the lottery introduced video poker and the auto-hold feature in 1992. “Our assumption has always been that on balance people who play auto-hold do better than people who

finding out if more players are concerned about auto-hold.

“It gets complicated in the middle of litigation,” he says. “Any actions that we take might be interpreted as an admission that we don’t mean to say.”

Experts on lotteries and the law say Curzi’s odds of winning in court seem low. Rob Carey, an Arizona class-action lawyer, took on several state lotteries over the deceptive practice of selling scratch-off tickets after the top prizes had already been awarded. Carey never succeeded in getting a class established for his lawsuits, but he did win payments for some plaintiffs and forced changes in state lottery practices.

He says Curzi’s case hinges on whether the Oregon Lottery’s public disclosures were adequate. “It really depends on what they’re telling the players,” Carey says.

The lottery could be safe even if the disclosures are vague. “You have to show the intent to defraud,” says I. Nelson Rose, a law professor at Whittier Law School in

“EVERYONE SHOULD UNDERSTAND THAT THE ODDS IN ALL OUR GAMES FAVOR THE LOTTERY.”
—JACK ROBERTS, OREGON LOTTERY DIRECTOR (LEFT)

Over the next month, Curzi built a spreadsheet to estimate how much money the video poker machines, based on the odds, should have paid out, compared to what they actually did.

What he found startled him. Payouts to video lottery players were as much as 5 percent lower when they used auto-hold than when they didn’t. That translated to \$134 million.

To Curzi, it was an outrageous discrepancy—especially given that players believed auto-hold helped them, and the lottery knew otherwise. Buried on the lottery’s website is one disclaimer: “Auto-hold strategies vary by game, based on the particular features of a game and do not necessarily result in theoretical payouts.”

Curzi says that’s not enough. The lottery is supposed to be based on chance. “You can’t manipulate the game,” he says.

In October 2014, he sent the Oregon Lottery a letter detailing his findings and notifying officials he intended to sue unless the lottery reimbursed players within 30 days. On Dec. 4, a claims man-

don’t,” he says. “We don’t tell people that.”

He rejects Curzi’s allegation the lottery is intentionally misleading players. “I don’t think we’ve ever represented that the auto-hold gives you the optimal result,” he says. “The idea was that it gives you a good result.”

But records Curzi turned up show the opposite. “The machine recommends the best possible cards to hold in order for the player to win and if the player changes the cards to be held, the possibility of winning will decrease,” the Sept. 15, 2009, memo marked “confidential” reads.

Today, the lottery is in the process of replacing all 12,000 video lottery terminals in the state; it’s a routine technology update. But one consequence of the upgrade is that Oregon is completely phasing out the WMS Gaming “Bluebird” terminal on which Curzi played Jacks or Better.

Roberts says Jacks or Better is being phased out because it’s unpopular with players.

Roberts says the lottery is interested in

Southern California. “I don’t think they’ll be able to do that.”

Rose says it’s the machines’ manufacturers that should be worried. “If the plaintiff were able to prove this was intentional,” he says, “that supplier could end up paying.”

Nevada-based Scientific Games, owner of WMS Gaming, the maker of the Jacks or Better game Curzi played, declined to answer *WW*’s questions. “It is company policy not to comment on ongoing litigation,” Scientific Games spokeswoman Mollie Cole said in an email.

Curzi is undaunted. He wants players to recoup their money. He wants the lottery’s auto-hold feature to give good advice, and he wants the agency to give players honest information.

“It goes all the way back to that first photo,” he says of the photo he took of the video poker machine’s bum recommendation at Quimby’s last year. “I look at it and say, ‘That’s not right.’” **WW**