

Telling the Truth About New York Video Poker

It's been more than two years since the New York State Lottery introduced "video poker" to its array of video lottery machines at racetracks. These games look and play like the "video poker" games at traditional casinos.

"Video poker" unlike traditional slot machines is not simply a game of chance. "This is because video poker gives a player a chance to use skill instead of just inserting coins and pulling the handle."¹ After being dealt your initial five cards, "you have the opportunity to hold some of the cards and draw to replace the others in an attempt to effect a winning poker hand (or to improve an existing winner) just as you would do in a live draw poker game."² Video poker after the initial draw "is a game of skill on the secondary level. Once a player sees the results of the luck of the deal, there's an element of skill and decision-making before the luck of the draw."³ In fact, Arkansas has recently authorized the placement of video poker at its pari-mutuel facilities as a game of skill.⁴

The determination of whether you win or lose is based on a pay table. The amount of credits or coins you receive determines a player's strategy and choice of machines. "The most important factor in a video poker machine is the pay schedule. How much you get for a full house, a flush, a four of a kind. In every category of games there are a number of pay schedules, some looser than others."⁵

So the objective for a video poker player is to look at the pay tables to seek out the best paying machines. The gold standard for video poker games where there are payoffs on hands with a pair of jacks or better is the 9-6 machines. These machines pay off 9 credits for a full house and 6 credits for a flush. Assuming proper strategy, 9-6 machines pay off bettors at a rate of 99.5%.⁶ If the player also has a frequent player card (which would get the player extra benefits for wagering with a particular casino), the payback on a 9-6 machine approaches 100%. In short, you can actually play a game at a casino where the odds are not against you. There are also 8-5 machines which pay off slightly lower on at 8 credits on full houses and 5 credits on flushes. 8-5 machines pay back at a rate of 97.3%.⁷

These returns to bettors from video poker are somewhat higher than the return to players of traditional slot machines. Traditional slot machines at casinos in the United

¹ Bill Burton, "Video Poker Pay Tables," at <http://casinogambling.about.com/library/weekly/aa011000.htm> last viewed September 29, 2006.

² Dan Paymar, Video Poker: Optimum Play, (2004) Pg. 3.

³ John Brokopp, "IGT Mimics Live Play with Opponent Poker," Chicago Sun-Times, July 21, 2006 Pg. NC 19. See also John Grochowski, "Time for Me to Cash Out after 11 Years at this Table," Chicago Sun-Times, December 24, 2004 Pg. 20. "Video poker is a game of chance, but there are strong elements of skill."

⁴ Acts 2005, No. 1151, 23-113-201.

⁵ Bob Dancer quoted in Susan Skorupa, "A High Pair of Video Poker Books," Reno Gazette-Journal, March 18, 2003 Pg. 1F

⁶ See note 1 supra. John Bordsen, "Casino Expert Weighs in with Advice about Where to Go _ and How to Improve your Chances of Winning," Charlotte Observer, February 26, 1999.

⁷ Id. Burton article.

States tend to pay back bettors at a rate of between 91% and 95% of the amount wagered. In New York State, the video lottery terminals pay back at 92%.

While video poker machines at New York racinos are a small percentage of the machines on the racino floor,⁸ they do seem to be particularly popular.⁹ A number of the games offered are 9-6 machines. The machines permitted in New York include a multi-game with a 9-6 Jacks or Better game manufactured by International Game Technology [IGT] and a 9-6 draw poker double double bonus manufactured by Bally's. The other video poker games permitted in New York appear to be 8-5 games.¹⁰

Do the video poker games in New York work in the same fashion as video poker in traditional casinos. There is no indication that they work differently than traditional video poker. Finger Lakes' website states, "There are currently 42 video poker machines available. 25-cent and \$1 denominations are available."¹¹ Saratoga Gaming and Raceway states "We offer six different titles of video poker games with a range of denominations on the gaming floor. All games are based on five card draw poker."¹² Monticello states, "If video poker is your game, we have many titles to choose from including..."¹³

The problem, however, is that the video poker machines in New York are not traditional video poker machines. They are no different than all the other video lottery machines at New York's racinos. They work on the same basis as an instant lottery scratch-off ticket. As the New York Court of Appeals stated, that the terminal "receives the next ticket from the site controller and displays the predetermined outcome--win or loss. If the player wins, the VLT will print an "electronically encoded instrument" which can be used to play additional video lottery games or can be redeemed for value."¹⁴ The Court of Appeals specifically distinguished the approved video lottery games that were electronic instant tickets from disapproved games of which "involved a single player pitting his or her skill against a machine."¹⁵

The video poker games in New York are simply electronic scratch off tickets in disguise. There is no skill involved in the game. The 9-6 machines don't return 99.5% of a player's bets. The 8-5 machines don't pay back 97.3% of a player's bets. Instead, they pay back the same 92% as all other video lottery terminals. A player who thinks that he

⁸ See the games listed at Saratoga Gaming and Raceway at

<http://www.saratogagamingandraceway.com/gamelist.cfm?id=101> last viewed October 3, 2006.

⁹ Batavia Downs lists Deuces Wild Poker, Double Bonus Poker, Jacks or Better Poker, and Bonus Poker among its top 19 games. See <http://www.batavia-downs.com/BataviaDownsGaming/GamingInformation/> last viewed October 3, 2006.

¹⁰ See for example Match Card Bonus Poker and Match Wheel Poker.

¹¹ http://www.fingerlakesracetrack.com/video_lottery.asp last viewed October 3, 2006. When video poker was started in August of 2004, Finger Lakes issued a press release which simply noted that video poker had arrived at Finger Lakes. See http://www.fingerlakesracetrack.com/news_detail.asp?id=170 last viewed October 3, 2006.

¹² http://www.saratogagamingandraceway.com/gaming_faqs.cfm?id=22#6 last viewed October 3, 2006.

¹³ <http://www.mightyngaming.net/gaming.cfm#videopoker> last viewed October 3, 2006.

¹⁴ Dalton v. Pataki, 5 N.Y.3d 243, 262 (N.Y. 2005)

¹⁵ *Id.* at note 9, at 265.

or she has found a great 9-6 video poker machine in New York has simply struck fool's gold. It's the same as any other machine in the racino.

Video poker in New York gives players the perception of choice or skill. However, if the player makes an incorrect choice on a video poker machine in New York (perhaps discarding a royal straight flush) the New York machine will restore the player's proper winnings. "The game has to make sure you get the result called for on your 'lottery card.'"¹⁶ This is insured by the use of a bonus feature that restores the player's proper winnings on the hand. "If you make a playing decision that costs you the payoff you should have gotten, the lantern or fairy or genie appears to improve your hand and correct your result."¹⁷

Nobody is saying that video poker, as played in New York, is an unauthorized game. However, what is happening here is that players believe they are playing a game of skill where they have some choice in the outcome of the game. The use of high paying 9-6 and 8-5 machines gives the players the mistaken belief that they have a relatively decent chance of winning or at least breaking even when they play New York video poker. The system is not geared to advise players of the actual workings of the machine. Many players are being misled. They think they're playing video poker. They're getting an instant lottery ticket. It is a flim-flam.

What is particularly appalling here is that it should be fairly easy to remedy the situation. Just put a warning or an advisory with the machines or by the bank of video poker machines. Simply state "Video poker games in New York operate in the same fashion as the other lottery games at the facility. There are no skill elements in this game, and your choice of which cards to retain or discard will not improve your chance of winning. The payoffs in this game are the same as the other games at this facility."

The failure to be forthright about the playing of video poker in New York helps nobody. There is no reason for state government to be disingenuous about the nature of video poker. The game as currently being operated simply makes the government look like a three card monte dealer. It's time to tell the truth.

¹⁶ John Grochowski, "Shuffling Through Gambling Mailbag," Gary Post Tribune, September 29, 2006.

¹⁷ Id.