

FILED

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1408-2010

Board Clerk PGCB

"CONFIDENTIAL"

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD

COMMONWEALTH OF
PENNSYLVANIA GAMING CONTROL
BOARD BUREAU OF
INVESTIGATIONS AND
ENFORCEMENT,

Complainant,

v.

PHILADELPHIA ENTERTAINMENT
AND DEVELOPMENT PARTNERS, L.P.
D/B/A FOXWOODS CASINO
PHILADELPHIA SLOT MACHINE
LICENSE 1367,

Respondent.

Filed By: Philadelphia Entertainment and
Development Partners, L.P.

Docket No. 1367

Office of Hearings and Appeals Docket
Number: 1408-2010

ADMINISTRATIVE HEARING

**RESPONDENT'S MOTION SEEKING A
FINAL ORDER TO PROTECT
CONFIDENTIAL INFORMATION**

Counsel of Record:

Stephen A. Cozen, Esquire
(PA ID #03492)

F. Warren Jacoby, Esquire
(PA ID #10012)

John V. Donnelly III, Esquire
(PA ID #93846)

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**ECKERT SEAMANS CHERIN &
MELLOTT, LLC**

213 Market Street, 8th Floor
Harrisburg, PA 17101
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**RESPONDENT'S MOTION SEEKING TO OBTAIN A FINAL ORDER TO PROTECT
CONFIDENTIAL INFORMATION**

Respondent, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP"), by and through its undersigned counsel, hereby moves the Pennsylvania Gaming Control Board (the "Board") to issue a Final Order to Protect Confidential Information. In support thereof, PEDP avers as follows:

1. On or about April 29, 2010, the Bureau of Investigations and Enforcement ("BIE") filed a Complaint against PEDP seeking revocation of its Category 2 slots machine license ("BIE Complaint").
2. In the BIE Complaint, BIE seeks the revocation of the Category 2 slot machine license issued to PEDP, which is the ultimate sanction that the Board can impose on a slot machine licensee ("Revocation Proceedings").
3. To date, the Gaming Board has never revoked any slot machine license issued under the Gaming Act or, indeed, held proceedings to consider the revocation of a slot machine license.
4. On or about June 1, 2010, PEDP filed its Answer, New Matter, Objections and Affirmative Defenses to BIE's Complaint.
5. On June 17, 2010, a Discovery conference was held before the Director of Hearings and Appeals ("Director") who issued an Order dated June 18, 2010 which, among other things, directed that all discovery in the Revocation Proceedings must be concluded on or before July 30, 2010. PEDP appealed such Order, and its appeal was denied by the Director, by an Order dated June 30, 2010. Thereafter, by Order dated July 29, 2010, the discovery period was extended through to and included August 13, 2010.

6. On or about June 30, 2010, PEDP received BIE's Request for Production of Documents and Interrogatories (collectively "BIE's Requests"), which demanded the production of numerous proprietary, confidential, and privileged documents.

7. On July 2, 2010, PEDP filed an Omnibus Motion to Protect Confidential Information ("Omnibus Motion"), requesting that an Order be entered designating as "CONFIDENTIAL" all discovery proceedings in this matter including, but not limited to, all written requests, responses, document productions, motions and responses thereto, and any depositions and other testimony taken in support of or in opposition to the Complaint filed by BIE. A true and correct copy of PEDP's Omnibus Motion, dated July 2, 2010 is attached hereto and made a part hereof as Exhibit "A".

8. BIE did not oppose the Omnibus Motion and, on July 9, 2010, the Director issued an "Interim Order" granting PEDP's Omnibus Motion (hereinafter referred to as "Interim Confidentiality Order"). A true and correct copy of the Interim Order is attached hereto and made a part hereof as Exhibit "B".

9. Thereafter, in response to BIE's Requests, and in accordance with the Interim Confidentiality Order, on July 12 and July 14, 2010, PEDP produced numerous proprietary, confidential, and privileged documents, designated as "CONFIDENTIAL," including, but not limited to, financial records, loan documents, check registers, tax returns, and partnership records, in addition to documents produced by BIE in response to PEDP's own discovery requests.

10. In addition to the exchange of documents, the parties have presented certain witnesses for depositions which were taken in accordance with the Interim Confidentiality Order.

11. To date, (a) BIE has taken the depositions of Gary Armentrout, President of Foxwoods Development Company LLC, Deborah Marchese, the former Chief Financial Officer of PEDP, Brian Ford, President of WPI and Michael Savarese, Director of PEDP's Auditors, Deloitte LP;¹ and (b) PEDP has taken the depositions of Joseph Morace and William Dobbins, investigators for BIE

12. In deposing these individuals, the parties have elicited proprietary, confidential, and privileged information, and utilized as exhibits documents designated as confidential in accordance with the Interim Confidentiality Order.

13. Much of the witnesses' testimony focused on the business activities and financial affairs of PEDP and the proposed development, financing and operation of the PEDP casino, including, but not limited to, the process and procedures implemented by PEDP to identify investors and/or lending institutions for the project.

14. The Interim Confidentiality Order expressly provides that "it will remain in effect until the Board has the opportunity to take up the Motion at a future Board meeting."

¹ BIE took the statement under oath of Nicholas Moles, former Vice President and General Counsel of PEDP, on June 2, 2010. This statement was taken prior to the issuance of the Interim Confidentiality Order. Nevertheless, it contains proprietary, confidential, and privileged information regarding PEDP's financial wherewithal – information which should be deemed confidential in accordance with 4 Pa.C.S.A. § 1206(f)(1)(iii) and (viii), which state that the following information "shall be confidential":

(iii) Information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies, which may include customer-identifying information or customer prospects for services subject to competition.

....
(viii) Any financial information deemed confidential by the board upon a showing of good cause by the applicant or licensee.

15. As a consequence, given that the discovery period has closed, and for the reasons set forth in paragraphs 9 through 12 above, PEDP respectfully requests that the Board issue a Final Order, superseding the Director's July 9, 2010 Interim Confidentiality Order, designating as "CONFIDENTIAL" all discovery proceedings in this matter including, but not limited to, all written requests, responses, document productions, motions and responses thereto, and any depositions, deposition exhibits, and other testimony taken in support of or in opposition to the Complaint filed by BIE.

16. This request will benefit PEDP, BIE and the Gaming Board in their efforts toward the prompt and fair resolution of the issues raised in the BIE Complaint, and PEDP's Answer during the Revocation Hearing.

17. Moreover, this request is in accordance with the confidentiality provisions of the Gaming Act and the Regulations promulgated thereunder.

18. Pursuant to 4 Pa C. S. A. § 1206 (f) of the Gaming Act, certain information may be treated as confidential, and protected from public disclosure, if the information falls within certain enumerated categories of confidential information.

19. The categories of information which may be protected from public disclosure pursuant to the Gaming Act include:

- (i) All information relating to character, honesty and integrity, including family, habits, reputation, history of criminal activity, business activities, financial affairs and business, professional and personal associations submitted under section 1310(a) or 1308 (a.1) or otherwise obtained by the board or the bureau.

- (ii) Nonpublic personal information, including home addresses, telephone numbers and other personal contact information, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed

compensation, financial account records, creditworthiness or financial condition relating to an applicant, licensee or permittee or the immediate family thereof.

(iii) Information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies, which may include customer-identifying information or customer prospects for services subject to competition.

(iv) Security information, including risk prevention plans, detection and countermeasures, location of count rooms, emergency management plans, security and surveillance plans, equipment and usage protocols and theft and fraud prevention plans and countermeasures.

(v) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy of any individual as determined by the board.

(vi) Records of an applicant or licensee not required to be filed with the Securities and Exchange Commission by issuers that either have securities registered under section 12 of the Securities Exchange Act of 1934 (48 Stat.881, 15 U.S.C. § 78a et seq.) or are required to file reports under section 15(d) of the Securities Exchange Act of 1934.

(vii) Records considered nonpublic matters or information by the Securities and Exchange Commission as provided by 17 CFR 200.80 (relating to commission records and information).

(viii) Any financial information deemed confidential by the board upon a showing of good cause by the applicant or licensee.

4 Pa. C. S. A. § 1206(f)(i) – (viii).

20. Further, the Gaming Board's regulations provide that confidential information may include information (and documents) submitted during discovery procedures. 58 Pa. Code § 407a.3(a).

21. Given that the discovery adduced to date includes the very same information described in paragraphs 19 through 21 above, and given the extent and scope of the discovery

materials exchanged during the pending Revocation Proceeding, including, but not limited to, all written requests, responses, document productions, motions and responses thereto, depositions, deposition exhibits, and other testimony taken in support of or in opposition to BIE's Complaint, it is clear that good cause exists for the issuance of a Final Order designating all of this information as within the confidentiality provisions of the Gaming Act, as amended, and the Regulations promulgated thereunder.


22. Consequently, PEDP respectfully requests that this Board issue a "Final Order" designating all discovery materials exchanged during this Revocation Proceeding, including, but not limited to, all written requests, responses, document productions, motions and responses thereto, and any depositions, deposition exhibits, and other testimony taken in support of or in opposition to the Complaint filed by BIE, be designated as "Confidential."

WHEREFORE, Respondent, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia, respectfully requests that the Board issue a Final Order granting PEDP's Omnibus Motion to Protect Confidential Information designating all discovery proceedings, and all documents, exhibits, testimony presented, and other evidence produced, prepared or exchanged during the discovery period in this matter be marked and maintained as Confidential Information, including during and for the purpose of any and all hearing(s) to be conducted with respect to Revocation Proceedings.

For the convenience of the Board, a proposed form of Order is attached hereto.

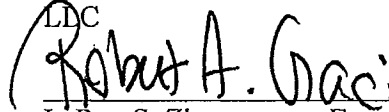
Respectfully submitted,

COZEN O'CONNOR



Stephen A. Cozen, Esquire (PA ID #03492)
F. Warren Jacoby, Esquire (PA ID #10012)
John V. Donnelly III, Esquire (PA ID #93846)
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ECKERT SEAMANS CHERIN & MELLOTT,
LLC



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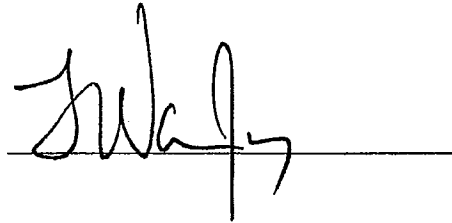
*Attorneys for Philadelphia Entertainment and
Development Partners, L.P.*

Dated: October 5, 2010

VERIFICATION

I hereby state that I am authorized to make this Verification, and state that the facts above set forth in the foregoing Respondent's Motion Seeking a Final Order to Protect Confidential Information are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C. S. § 4904 (relating to unsworn falsification to authorities).

Dated: October 5, 2010

A handwritten signature in black ink, appearing to read "J. Walz", is written over a horizontal line.

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

IN RE	:	
PHILADELPHIA ENTERTAINMENT AND	:	Docket No. 1367
DEVELOPMENT PARTNERS, L.P., d/b/a	:	
FOXWOODS CASINO PHILADELPHIA	:	Office of Hearings and Appeals Docket
	:	Number: 1408-2010

ORDER

AND NOW, on this ____ day of _____, 2010, upon consideration of Respondent, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia's Motion Seeking a Final Order to Protect Confidential Information and any response thereto, it is hereby ORDERED that said Motion is GRANTED. All discovery proceedings and matters including, but not limited to, all written requests, responses, document productions, motions and responses thereto, and any depositions, deposition exhibits and other testimony taken in support of or in opposition to the BIE Complaint, and PEDP's Answer, shall be marked and maintained as "Confidential" in accordance with the provisions of Section 1206(f)(1) of the Gaming Act, 4 Pa. C. S. A. § 1101 *et seq.*, as amended, and Gaming Board Regulations §§ 407a.3 and 493a.10a, including during and for the purpose of any and all hearing(s) to be conducted with respect to Revocation Proceedings.

Linda S. Lloyd, Director
Hearings and Appeals

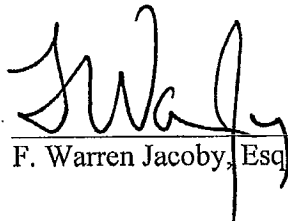
CERTIFICATE OF SERVICE

I certify that I am this day serving a complete copy of the foregoing Respondent's Motion to Seek a Final Order to Protect Confidential Information on October 5, 2010 by E-Mail upon the following:

Cyrus R. Pitre, Esquire
Chief Enforcement Counsel
Strawberry Square-Verizon Tower
303 Walnut Street, 5th Floor
Harrisburg, PA 17101-1825

Dale William Miller, Esquire
Deputy Chief Enforcement Counsel
Pennsylvania Gaming Control Board
1001 Hector Street, Suite 410
Conshohocken, PA 19428-5300

By:


F. Warren Jacoby, Esquire

Dated: October 5, 2010

EXHIBIT "A"

FILED

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1408-2010

Board Clerk PGCB

RECEIVED

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BEFORE THE PA GAMING CONTROL BOARD
PENNSYLVANIA GAMING CONTROL BOARD
OFFICE OF THE CLERK

COMMONWEALTH OF
PENNSYLVANIA GAMING CONTROL
BOARD BUREAU OF
INVESTIGATIONS AND
ENFORCEMENT,

Complainant,

v.

PHILADELPHIA ENTERTAINMENT
AND DEVELOPMENT PARTNERS, L.P.
D/B/A FOXWOODS CASINO
PHILADELPHIA SLOT MACHINE
LICENSE 1367,

Respondent.

Filed By: Philadelphia Entertainment and
Development Partners, L.P.

Docket No. 1367

Office of Hearings and Appeals Docket
Number: 1408-2010

ADMINISTRATIVE HEARING

OMNIBUS MOTION TO PROTECT
CONFIDENTIAL INFORMATION

Counsel of Record:

Stephen A. Cozen, Esquire
(PA ID #03492)

F. Warren Jacoby, Esquire
(PA ID #10012)

Jennifer M. McHugh, Esquire
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MELLOTT, LLC**

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PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P., D/B/A
FOXWOODS CASINO PHILADELPHIA'S OMNIBUS MOTION TO PROTECT
CONFIDENTIAL INFORMATION

Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP"), by and through its undersigned counsel, hereby files this Omnibus Motion to Protect Confidential Information and, in support thereof, avers as follows:

1. On or about April 29, 2010, the Bureau of Investigations and Enforcement ("BIE") filed a Complaint against PEDP seeking revocation of its Category 2 slots machine license ("BIE Complaint").
2. In the BIE Complaint, since BIE seeks the revocation of the Category 2 slot machine license issued to PEDP, the relief being sought is effectively the ultimate sanction that the Board can impose on a slot machine licensee ("Revocation Proceedings").
3. To date, the Gaming Board has never revoked any slot machine license issued under the Gaming Act or, indeed, held proceedings to consider the revocation of a slot machine license.
4. On or about June 1, 2010, PEDP filed its Answer, New Matter, Objections and Affirmative Defenses to BIE's Complaint, together with a Motion to Extend the Date to File Petition for Authorization to Conduct Table Games, and a Motion for a Discovery Conference.
5. On June 17, 2010, a Discovery conference was held before the Director of Hearings and Appeals ("Director") who issued an Order dated June 18, 2010 ("Discovery Order") which, among other things, directed that all discovery in the Revocation Proceedings must be concluded on or before July 30, 2010. PEDP appealed such Order, and its appeal was denied by the Director, by an order dated June 30, 2010.
6. On or about June 18, 2010, PEDP served BIE with its First Set of Interrogatories and its First Request for Production of Documents (collectively "PEDP's Requests").

7. On or about June 25, 2010, BIE served counsel for PEDP with copies of documents, upon which it allegedly relied and intends to rely in its initiation and prosecution of the Revocation Proceedings. This production was made by BIE, in addition to any production and other response to be made by BIE to PEDP's Requests.

8. On or about June 30, 2010, PEDP received BIE's Request for Production of Documents and Interrogatories (collectively "BIE's Requests"), which demand the production of numerous proprietary, confidential, and privileged documents, including, but not limited to financial records, correspondence, loan documents, check registers, tax returns, and partnership records.

9. PEDP's Requests and BIE's Requests seek documents and information which are not generally available to the public. Indeed, PEDP at all relevant times has maintained and protected the confidentiality of the documents and information sought by BIE.

10. In addition, it is likely that, during the Revocation Proceedings, various persons employed by the Board and/or PEDP will be deposed, examined and questioned about proprietary, confidential, and privileged information concerning PEDP's slot machine license, operations, and efforts to construct its facility.

11. Pursuant to Section 1206(f)(1)¹ of the Gaming Act, 4 Pa. C. S. A. § 1101, *et seq.*, as amended, and Gaming Board Regulations §§ 407a.3² and 493a.10a³, PEDP requests that the

¹ Section 1206(f)(1) of the Gaming Act provides that certain information submitted by an applicant in connection with a license application and information obtained by the Gaming Board or its staff through a background investigation shall be "confidential and withheld from public disclosure" including proprietary business information such as that requested in BIE's Requests.

² Section 407a.3 provides that confidential information includes proprietary business information such as that requested in BIE's Requests.

discovery proceedings in this matter, including all written discovery requests, and responses thereto, any document productions, and any depositions and other testimony taken in support of or in opposition to BIE's Complaint be considered "confidential".

12. In addition, it is anticipated that PEDP and BIE may file motions to resolve discovery disputes that arise between them and that, in support of their respective positions, PEDP and BIE will need to rely upon confidential and proprietary information, and PEDP therefore requests that those motions and responses thereto (including any and all exhibits thereto) should also be considered "confidential" in accordance with Section 1206(f)(1) of the Gaming Act, 4 Pa. C. S. A. 1101, *et seq.*, as amended, and Gaming Board Regulations §§ 407a.3 and 493a.10a.

13. This request for confidentiality as set forth in the above paragraphs is warranted given the unique nature of the Revocation Proceedings, the sensitive, confidential, privileged and proprietary nature of the information to be exchanged during the discovery proceedings, and the confidential, privileged, and proprietary nature of any testimony to be elicited during the discovery proceedings.

14. This request, upon information and belief, will benefit PEDP, BIE and the Gaming Board as it moves toward the prompt and fair resolution of the Revocation Proceedings.

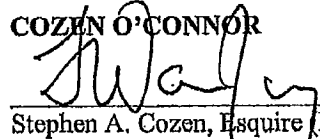
³ Board regulation 493a.10a provides that "[a] party or individual may designate information as confidential under § 407a.3 in any papers filed with the Clerk by filing a Motion to Protect Confidential Information." *See also* letter dated May 7, 2010 industry letter issued by Linda Lloyd, Director of Hearings and Appeals.

15. At this time, PEDP is not yet requesting that any of the foregoing information and documents be maintained as "confidential" for purposes of the eventual hearing in this action, and will make a separate submission regarding same prior to the commencement of the hearing.

WHEREFORE, Respondent, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia, respectfully requests that an Order be entered designating as "CONFIDENTIAL" all discovery proceedings in this matter including, but not limited to, all written requests, responses, document productions, motions and responses thereto, and any depositions and other testimony taken in support of or in opposition to the Complaint filed by the Bureau of Investigations and Enforcement, dated April 29, 2010. For the convenience of the Board, a proposed form of Order is attached hereto.

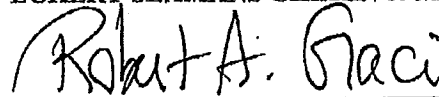
Respectfully submitted,

COZEN O'CONNOR



Stephen A. Cozen, Esquire (PA ID #03492)
F. Warren Jacoby, Esquire (PA ID #10012)
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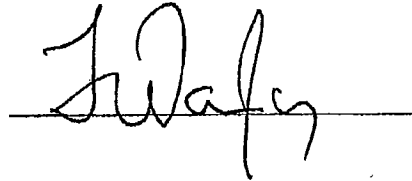
*Attorneys for Philadelphia Entertainment and
Development Partners, L.P.*

Dated: July 1, 2010

VERIFICATION

I hereby state that I am authorized to make this Verification, and state that the facts above set forth in the foregoing Omnibus Motion to Protect Confidential Information are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C. S. § 4904 (relating to unsworn falsification to authorities).

Date: July 1, 2010

A handwritten signature in dark ink, appearing to read "J. Wafar", is written over a horizontal line.

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

IN RE	:	
PHILADELPHIA ENTERTAINMENT AND	:	Docket No. 1367
DEVELOPMENT PARTNERS, L.P., d/b/a	:	
FOXWOODS CASINO PHILADELPHIA	:	Office of Hearings and Appeals Docket
	:	Number: 1408-2010

ORDER

AND NOW, on this ____ day of July, 2010, upon consideration of Respondent, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia's Omnibus Motion to Protect Confidential Information and any response thereto, it is hereby ORDERED that the Omnibus Motion to Protect Confidential Information is granted. All discovery proceedings in this matter including, but not limited to, all written requests, responses, document productions, motions, exhibits and responses thereto, and any depositions and other testimony taken in support of or in opposition to the Complaint filed by the Bureau of Investigations and Enforcement, dated April 29, 2010, are hereby designated "CONFIDENTIAL".

Linda S. Lloyd, Director
Hearings and Appeals


CERTIFICATE OF SERVICE

I certify that I am this day serving a complete copy of the foregoing Omnibus Motion to
Protect Confidential Information by E-Mail upon the following:

Cyrus R. Pitre, Esquire
Chief Enforcement Counsel
Strawberry Square --- Verizon Tower
303 Walnut Street, 5th Floor
Harrisburg, PA 17101-1825

Dale William Miller, Esquire
Deputy Chief Enforcement Counsel
Pennsylvania Gaming Control Board
1001 Hector Street, Suite 410
Conshohocken, PA 19428-5300

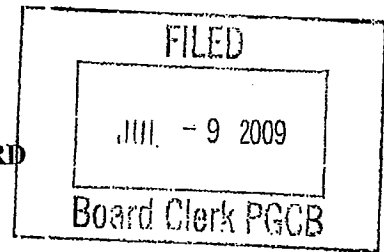
By: _____


F. Warren Jacoby, Esquire

Dated: July 1, 2010

EXHIBIT "B"

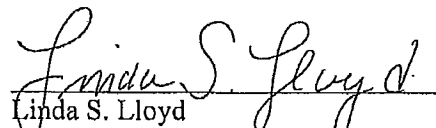
BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD



In Re: :
:
Complaint for Revocation of :
Philadelphia Entertainment and :
Development Partners, L.P. d/b/a : Docket # 1408-2010
Foxwoods Casino Philadelphia :
Slot Machine License 1367 :
:
Omnibus Motion to Protect :
Confidential Information :

INTERIM ORDER

AND NOW, this 9th day of July, 2010, after reviewing the above captioned Motion filed by Philadelphia Entertainment and Development Partners, L.P. on July 2, 2010, requesting that pursuant to the Gaming Act and other relevant law, the Board and its staff maintain the confidentiality of certain related to the Complaint for Revocation and the Board's Office of Enforcement Counsel's Response to the Motion filed on July 9, 2010, the Motion is **GRANTED**. This Order will remain in effect until the Board has the opportunity to take up the Motion at a future Board meeting. The documents referenced in the Motion will be maintained in confidence by the Board and its staff until further Order of the Board.


Linda S. Lloyd
Director of Hearings and Appeals