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BEFORE THE
THE PENNSYLVANIA GAMING CONTROL BOARD

PA GAMING CONTROL BOARD
OFFICE OF THE CLERK

FILED
JUN 25 2010
1464-2010
Board Clerk PGCB

PHILADELPHIA ENTERTAINMENT AND : PGCB DOCKET NO. 1464-2010
 DEVELOPMENT PARTNERS, L.P., D/B/A :
 FOXWOODS CASINO PHILADELPHIA :
 SLOTS LICENSE 1367 : ADMINISTRATIVE HEARING
 Movant :

COMMONWEALTH OF PENNSYLVANIA : ANSWER AND OBJECTION
 GAMING CONTROL BOARD :
 BUREAU OF INVESTIGATIONS :
 AND ENFORCEMENT, :
 Respondent

**ANSWER AND OBJECTION TO MOTION TO TOLL OR OTHERWISE
 EXTEND THE DATE BY WHICH TO FILE A PETITION FOR
 AUTHORIZATION TO CONDUCT TABLE GAMES AND PAY THE 4 PA. C.S.A.
 § 1361A TABLE GAMES AUTHORIZATION FEE**

By and through the Office of Enforcement Counsel, Respondent, Commonwealth of Pennsylvania, Gaming Control Board, Bureau of Investigations and Enforcement, in consultation with the Pennsylvania Gaming Control Board Bureaus of Licensing, Gaming Operations, Compulsive and Problem Gaming, Gaming Laboratory Operations, and Casino Compliance does hereby respond to the MOTION TO TOLL OR OTHERWISE EXTEND THE DATE BY WHICH TO FILE A PETITION FOR AUTHORIZATION TO CONDUCT TABLE GAMES AND PAY THE 4 PA C.S.A. § 1361 TABLE GAMES AUTHORIZATION FEE and avers as follows:

GENERAL RESPONSE

Movant, Philadelphia Entertainment and Development Partners, L.P. (hereinafter PEDP) holder of slot machine license 1367 may, subject to certain prohibitions and pursuant to Section 1312 A of the Gaming Act, seek approval to conduct table games. In

order to seek approval from the board, a Petitioner must file a Petition which includes, among other things, a waiver of its “right under section 1209(f) (relating to slot machine license fee) or under any contract executed by the applicant and the Department under section 1209(c) to receive the return of any portion of the slot machine license fee paid by the petitioner for its slot machine license; and (ii) the petitioner’s right, if any, to sue for the return of any portion of the slot machine license fee paid by the petitioner for its slot machine license”. See 4 Pa. C.S. 1312A (b) (11) (i) and (ii).

A slot machine licensee filing a petition for approval to conduct table games must pay a one-time authorization fee of \$16,500,000 if a petition is filed on or before June 1, 2010, and a one-time authorization fee of \$24,750,000 if a petition is filed after June 1, 2010.

Movant requests that the board to toll or extend the June 11, 2010 date by which a petition to conduct table games must be filed in order for a slot machine licensee to avail itself of the \$16,500,000 table games fee.

For the reasons set forth below, Respondent objects to Movant’s request.

ANSWER

1. Denied. These averments constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.
2. Denied. The averments in this paragraph are arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

3. Denied. The averments in this paragraph are arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. By way of further response, the Complaint for Revocation of Slot Machine License is a separate proceeding, and the facts contained in the Complaint and responsive pleadings in that case are not relevant to this Motion and request for relief. Strict proof is thereof demanded.

4. Denied. The averments in this paragraph are arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

5. Denied. This averment is a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

6. Admitted.

7. Admitted.

8. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

9. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. By way of further response, PEDP was not the only slot machine licensee to face opposition to its efforts to construct a gaming facility. Strict proof is thereof demanded.

10. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. By way of further response, PEDP was not the only slot machine licensee to face litigation in its efforts to construct a gaming facility. Strict proof is thereof demanded.

11. Admitted in part. It is admitted that PEDP did not begin construction within one year of the issuance of its slot machine license. The remaining averments are denied, as Respondent is without sufficient knowledge or information to form a belief as to the truth of those averments. Strict proof is thereof demanded.

12. Admitted.

13. Admitted.

14. Admitted. By way of further response, the Board Order of September 1, 2009 imposed nine (9) conditions on PEDP, the fulfillment of which are the subject of the Complaint for Revocation of Slot Machine License filed on April 29, 2010. Strict proof is thereof demanded.

15. Admitted. By way of further response, the Board Order of September 1, 2009 imposed nine (9) conditions on PEDP, the fulfillment of which are the subject of the Complaint for Revocation of Slot Machine License filed on April 29, 2010. Strict proof is thereof demanded.

16. Admitted in part. It is admitted that PEDP sought an extension of time to respond to certain conditions of the September 1, 2009 Board Order. The remaining averments are denied as the satisfaction of the conditions of certain Board Orders are the subject of Complaint for Revocation of Slot Machine License filed on April 29, 2010. Strict proof is thereof demanded.

17. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

18. Admitted.

19. Admitted in part. It is admitted Senate Bill 711 authorized tables, and that certain holders of slot machine licenses have applied for table games operating certificates. As to the remaining averments, Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

20. Admitted.

21. Admitted in part, and denied in part. The Board Order of March 3, 2010 is a matter of record, and speaks for itself. By way of further response, satisfaction of the conditions of the Board Order of March 3, 2010 is the subject of the Complaint for Revocation of Slot Machine License filed on April 29, 2010. To the extent that the averments of this paragraph attempt to interpret the Board Order of March 3, 2010, or in any way claim that the requirements of said Board Order have been satisfied, those averments are denied. Strict proof is thereof demanded.

22. Admitted in part, and denied in part. It is admitted that PEDP submitted certain documents to BIE. To the extent that it is averred that those documents satisfy or fulfill conditions of Board Orders which are the subject of the Complaint for Revocation of Slot Machine License filed on April 29, 2010, those averments are denied. Strict proof is thereof demanded.

23. Denied. The record of the Board meeting of April 7, 2010 speaks for itself, and to the extent that the averments of this paragraph attempt to characterize remarks by persons present at the meeting, those averments are denied. Strict proof is thereof demanded.

24. Admitted in part. It is admitted that Wynn terminated the agreement with PEDP. As to the remaining averments, Respondent is without sufficient knowledge or

information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

25. Admitted in part. It is admitted that PEDP and BIE entered into a Consent Agreement for submission to the Board. The consent agreement speaks for itself, and to the extent that the averments of this paragraph attempt to characterize or explain the contents of that agreement, those averments are denied. Strict proof is thereof demanded.

26. Admitted.

27. Admitted.

28. Admitted.

29. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

30. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

31. Admitted.

32. Admitted in part. It is admitted that Section 1312 A of the Gaming Act requires a slot machine licensee who seeks approval to conduct table games to file a petition with the Board and include a certain waiver as per Section 1312 A (b)(11). By way of further explanation Section 1312 A (b) (11) states that:

If the petitioner is a Category 1 or Category 2 slot machine licensee, a waiver, on a form prescribed by the board which is signed by the petitioner and acknowledged by each of the petitioner's principals, of the following rights arising as a result of an amendment or addition to this part that took effect at the same time as the effective date of this section:

(i) the petitioner's right under section 1209 (f) relating to slot machine license fee) or under any contract executed by the applicant and the department under section 1209(c) to receive the return of any portion of the slot machine license fee paid by the petitioner for its slot machine license; and

(ii) the petitioner's right, if any, to sue for the return of any portion of the slot machine license fee paid by the petitioner for its slot machine license.

33. Admitted in part and denied in part. It is admitted that PEDP must waive a claim for the return of its slot machine license fee as part of a Petition for authorization to conduct table games. By way of further response, PEDP must also waive its right to sue for the return of the license fee. The remaining averments are denied. It is denied that the ongoing proceedings pursuant to the Complaint for Revocation of Slot Machine License prevented PEDP from filing a Petition for authorization to conduct table games by June 1, 2010, or presently prevent PEDP from filing such a Petition. To the contrary, PEDP is free to file a Petition to conduct table games at any time. Strict proof is thereof demanded.

34. Denied. The averments in this paragraph are legal arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

35. Admitted.

36. Respondent hereby incorporates its response to paragraphs 1-34 as if fully set forth herein.

37. Denied. This averment is a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

38. Admitted.

39. Admitted.

40. Admitted in part. It is admitted that Section 1361 A of the Gaming Act provides in part that Petitioners for table games authorization must pay a one-time non-refundable fee. By way of further response, Section 1361 A of the Gaming Act, and the Gaming Act itself, speaks for itself and in any attempt to characterize or interpret all or portions of the Gaming Act, the language of the Gaming Act controls. Strict proof is thereof demanded.

41. Denied. The averments in this paragraph are legal arguments and conclusions of law to which no responsive pleading is required. Strict proof is thereof demanded.

42. Denied. The averments in this paragraph are arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

43. Denied. It is denied that the ongoing proceedings pursuant to the Complaint for Revocation of Slot Machine License prevented PEDP from filing a Petition for authorization to conduct table games by June 1, 2010, or presently prevent PEDP from filing such a Petition. To the contrary, PEDP is free to file a Petition to conduct table games at any time. By way of further response, the remaining averments are legal arguments, conclusions of law, and prayers for relief to which no responsive pleading is required. Strict proof is thereof demanded.

44. Admitted. By way of further explanation, Section 1312 A (b)(11) states that:

If the petitioner is a Category 1 or Category 2 slot machine licensee, a waiver, on a form prescribed by the board which is signed by the petitioner and acknowledged by each of the petitioner's principals, of the following rights arising as a result of an amendment or addition to this part that took effect at the same time as the effective date of this section:

(i) the petitioner's right under section 1209 (f) (relating to slot machine license fee) or under any contract executed by the applicant and the department under section 1209(c) to receive the return of any portion of the slot machine license fee paid by the petitioner for its slot machine license; and

(ii) the petitioner's right, if any, to sue for the return of any portion of the slot machine license fee paid by the petitioner for its slot machine license.

45. Denied. The averments in this paragraph are legal arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

46. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

47. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment. Strict proof is thereof demanded.

48. Denied. The averments in this paragraph are legal arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. By way of further response, the ongoing proceedings pursuant to the Complaint for Revocation of Slot Machine License did not prevent PEDP from filing

a Petition for authorization to conduct table games by June 1, 2010, and does not presently prevent PEDP from filing such a Petition. To the contrary, PEDP is free to file a Petition to conduct table games at any time. Strict proof is thereof demanded.

49. Denied. The averments in this paragraph are legal arguments, conclusions and interpretations of the law, and constitute a prayer for relief to which no responsive pleading is required. Strict proof is thereof demanded.

WHEREFORE, Respondent respectfully requests that the Board conduct a hearing in this matter.

OBJECTION

50. Respondent hereby incorporates its responses to paragraphs 1-49 as if set forth fully herein.

51. 4 Pa. C.S. §1361 A (the Gaming Act) authorizes the board to grant a petitioner for a table games authorization certificate or a certificate holder up to a six (6) month extension of time to pay the fee and any penalty imposed by the board.

52. Specifically, 4 Pa. C.S. §1361 A (c) states:

Failure to pay by deadline.—If a petitioner or certificate holder fails to pay the required authorization fee in full by June 1, 2010, the board shall impose a penalty and may grant the petitioner or certificate holder up to a six-month extension to pay the authorization fee or any remaining portion of the authorization fee and the penalty. The board shall require the petitioner or certificate holder to make weekly payments until the fee and penalty are paid in full.

53. PEDP, the Movant herein, has not filed a Petition for authorization to conduct table games pursuant to the Gaming Act, and is not the holder of a table games operations certificate.

54. Because PEDP is not a petitioner or a certificate holder for the purpose of 4 Pa. C.S. §1361 A, it is not entitled under the Gaming Act to an extension of time to file a petition by June 1, 2010 and pay the table game authorization fee of \$16,500,000.

55. The Gaming Act does not provide for an extension of time for a slot machine licensee to file a Petition for authorization to conduct table games and a table games authorization certificate on or before June 1, 2010.

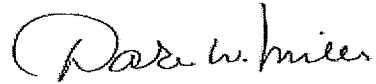
56. The Gaming Act does not provide for a tolling of the time for filing a Petition for authorization to conduct table games and a table games authorization certificate on or before June 1, 2010.

56. The Board has no authority under the Gaming Act to toll or otherwise grant an extension of time to PEDP to file a Petition for table games on or before June 1, 2010 and avail itself of the lower table games authorization fee of \$16,500,000.

57. PEDP has no right, in law or equity to the relief requested.

WHEREFORE, Respondent OBJECTS to Movant PEDP's request to toll or otherwise extend the date by which it must file a Petition for Authorization to conduct table games and pay the table games authorization fee of \$16,500,000.

Respectfully submitted,
Cyrus R. Pitre
Chief Enforcement Counsel

A handwritten signature in cursive script that reads "Dale W. Miller". The signature is written in black ink and is positioned above a horizontal line.

By: Dale W. Miller, Esquire
Deputy Chief Enforcement Counsel
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Office of Enforcement Counsel Eastern Region
1001 Hector Street, Suite 410
Conshohocken, PA 19428-5300
(610) 943-7426

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

COMMONWEALTH OF PENNSYLVANIA	:PGCB DOCKET NO. 1464-2010
GAMING CONTROL BOARD	:
BUREAU OF INVESTIGATIONS	:
AND ENFORCEMENT	:ADMINISTRATIVE HEARING
Respondent	:
	:
	:ANSWER AND OBJECTION
	:
	:
PHILADELPHIA ENTERTAINMENT AND	:
DEVELOPMENT PARTNERS, L.P., D/B/A	:
FOXWOODS CASINO PHILADELPHIA	:
Petitioner	:

ORDER

AND NOW, this, day of , 2010, it is hereby Ordered that the Petition of Philadelphia Entertainment and Development Partners, L.P., d/b/a/ Foxwoods Casino Philadelphia to toll or otherwise extend the time by which to file a Petition for authorization to conduct table games and pay the 4 Pa. C.S.A. § 1361A table games authorization fee is DENIED.

BY THE BOARD:

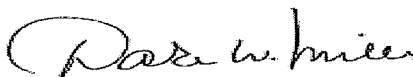
The Honorable Gregory C. Fajt
Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2010 a copy of the Answer and Objection was served upon attorneys for the Petitioner LeRoy S. Zimmerman, Esquire, Robert A. Graci, Esquire, who are authorized to accept such service by first class mail to:

LeRoy S. Zimmerman, Esquire
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

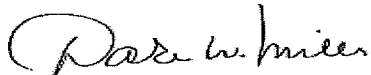
Robert A. Graci, Esquire
Eckert Seamans Cherin & Mellot, LLC
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Dale W. Miller, Esquire
Pennsylvania Supreme Court ID # 33520
Deputy Chief Enforcement Counsel
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VERIFICATION

I, Dale W. Miller, Esquire, hereby state that the facts above set forth 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: June 25, 2010

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