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PENNSYLVANIA GAMING CONTROL BOARD

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

Docket No. 1367

Office of Hearings and Appeals Docket  
Number: 1498-2010

v.

ADMINISTRATIVE HEARING

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

COMPLAINT, ORDER AND  
RULE TO SHOW CAUSE

Counsel of Record:  
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(PA ID #03492)

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

John V. Donnelly III, Esquire  
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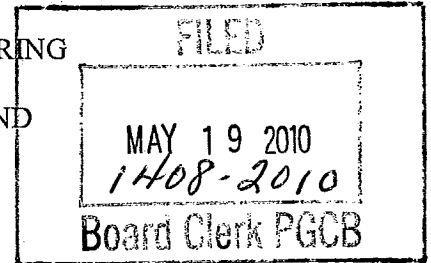
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Filed By: Philadelphia Entertainment and  
Development Partners, L.P.

**UNOPPOSED PETITION IN THE NATURE OF AN APPEAL OF THE ORDER DATED  
MAY 17, 2010 ISSUED BY THE DIRECTOR OF HEARINGS AND APPEALS  
DENYING THE UNOPPOSED MOTION BY PHILADELPHIA ENTERTAINMENT  
AND DEVELOPMENT PARTNERS, L.P. FOR AN EXTENSION OF TIME TO  
RESPOND TO COMPLAINT, ORDER AND RULE TO SHOW CAUSE PURSUANT TO  
58 Pa. Code § 497a.5**

PETITIONER, Philadelphia Entertainment and Development Partners, LP d/b/a Foxwoods Casino Philadelphia (“PEDP”), by and through its undersigned counsel, hereby files this Petition in the Nature of an Appeal of the Order dated May 17, 2010 issued by the Director of Hearings and Appeals (“Order”) denying the unopposed Motion by PEDP for an Extension of Time to respond to the Complaint, Order and Rule to Show Cause (“Complaint”) filed by the Office of Enforcement Counsel (“OEC”) on behalf of the Bureau of Investigations and Enforcement (“BIE”) for a period of 30 days pursuant to 58 Pa. Code § 497a.5, and, in support thereof, avers as follows:

1. On September 1, 2009, the Pennsylvania Gaming Control Board (“Board”), acting pursuant to its discretion under section 1210 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. § 1210, issued an Adjudication and Order granting the Petition of PEDP to Extend the Time to Make Slot Machines Available subject to certain Conditions.

2. After a hearing on March 3, 2010, at which the Board heard testimony from representatives of PEDP and Wynn Resorts, Limited (“Wynn”) concerning PEDP’s agreement with Wynn and its affiliates (“Wynn Transaction”) that had recently been memorialized in a Term Sheet that had been provided by PEDP to BIE, the Board directed PEDP to submit definitive financing documents to the Board and OEC no later than March 31, 2010, and to submit the documents required by Conditions 5 and 6 of the Board’s Order of September 1, 2009, by April 26, 2010.

3. On March 31, 2010, PEDP submitted to BIE its definitive financial documents in conjunction with the proposed Wynn Transaction, and subsequently submitted fully executed copies of such documents to BIE on April 5, 2010. Thereafter, on April 6, 2010, PEDP

submitted to BIE documents in response to Conditions 5 and 6 of the September 1, 2009 Order in conjunction with the Wynn Transaction.

4. At the April 7, 2010 meeting of the Board, BIE, through OEC, acknowledged that PEDP complied with the deadlines imposed by the Board in its March 3, 2010 Order for the submission of definitive financial documents and the documents required by Conditions 4, 5 and 6 of the Board's Order of September 1, 2009.

5. On April 8, 2010, without any warning or advance notice to PEDP, the Board, BIE, or any other state or local officials, Wynn unilaterally terminated the Wynn Transaction, and all related documents between Wynn and PEDP.

6. On April 28, 2010, PEDP and BIE, through OEC, entered into a Consent Agreement for submission to the Board pursuant to which, among other things, PEDP would have been accorded 180 days from the Board's approval of the Consent Agreement within which to deliver to the Board and BIE certain documents and information as required by Conditions 4, 5 and 6 and the Board's Order of March 3, 2010 in order to provide PEDP relief from the deadlines imposed by the Board's September 1, 2010 Order, as amended by its March 3, 2010 Order, as the result of the Wynn unilateral termination.

7. At its April 29, 2010 meeting, the Board issued its Order wherein it refused to approve such Consent Agreement, without prejudice.

8. Thereafter on that same day, April 29, 2010, shortly after the Board's rejection of the Consent Agreement, BIE, through OEC, filed the Complaint against PEDP seeking the revocation of its slot machine license.

9. Counsel for PEDP received the Complaint by electronic mail on April 29, 2010.

10. Although the proposed Order that accompanied the Complaint calls for the Board to set the number of days in which PEDP is to answer the Complaint, pursuant to the Board's Regulations, responses to such complaints must be filed within 30 days after service of a complaint. 58 Pa. Code § 493a.5(a).

11. Since the last day of the 30 day response period is a Saturday and the next day after the due date that is not a Sunday or legal holiday is June 1, 2010, PEDP's response to the Complaint is due on June 1, 2010. 58 Pa. Code § 493a.5(a).

12. PEDP is diligently working on preparing its response to the Complaint.

13. In addition, PEDP continues to work diligently to secure the necessary funding and/or financing for its casino project – following Wynn's unilateral and wholly unexpected termination of the Wynn Transaction – so as to be able to make new submissions to the Board in response to Conditions 4, 5, and 6 of the Board's Order of September 1, 2009, and the Board's Order of March 3, 2010.

14. Furthermore, while it continues with its efforts of seeking funding and financing in place of that which was to have been provided by Wynn, PEDP is also continuing in its efforts to submit to BIE and the Board a proposal for the re-setting of the timeframes to comply with Conditions 4, 5 and 6, which would be acceptable to the BIE and Board, and consistent with its efforts and the status of its negotiations with potential investors to replace Wynn.

15. During the same time period, PEDP has commenced an analysis of the events, litigation and documents relating to the period commencing in December 2006 to date (including with respect to the Wynn Transaction) as part of its preparation of its defense against the revocation Complaint filed by BIE, all of which will bear materially upon the factual and legal

issues to be presented to the Board in conjunction with its consideration and disposition of such Complaint.

16. Pursuant to § 497a.5 of the Board's regulations, 58 Pa. Code § 497a.5, the Board may, upon timely motion and for good cause shown, extend any period of time set forth in any Order of the Board.

17. PEDP respectfully submitted a request for such an extension by Motion dated May 13, 2010 ("Motion for Extension") outlining the above facts demonstrating that good cause existed to grant PEDP a thirty-day extension of time within which to respond the Complaint until July 1, 2010.

18. Prior to the filing of the Motion for Extension, the Chief Enforcement Counsel for BIE advised counsel for PEDP that BIE consented to PEDP's Motion for Extension.

19. Nonetheless, by Order dated May 17, 2010, the Director of Hearings and Appeals issued an Order denying PEDP's unopposed Motion for Extension.

20. Pursuant to 1 Pa. Code § 35.20, actions taken by a subordinate officer under authority delegated by the agency head may be appealed to the agency head by filing a petition within 10 days after service of notice of the action .

21. PEDP respectfully submits that given the gravity of the sanction sought by the BIE - the revocation of the Category 2 slot machine license issued to PEDP, the fact that such a sanction is a matter of first impression in this Commonwealth, and the fact that the Chief Enforcement Counsel for BIE consented to the request for an extension of time, the Order of the Director of Hearings and Appeals was issued in error, and has the operative and obvious effect of denying PEDP due process and of materially and adversely impacting the ability of PEDP to

negotiate with and enter to agreements with potential investors and/or funders for its proposed casino project, as well as PEDP's relationships with others.

22. To date, the 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.

23. PEDP has only limited guidance as to matters of procedure and substance as it prepares its defense to such Complaint. Thus, in addition to its review of such matters, it is also necessary to not only refer to Pennsylvania law, but to the law and rulings of other jurisdictions as to matters such as the proposed revocation.

24. PEDP has invested substantial sums to obtain the slot machine license, including the \$50 million licensing fee paid to the Commonwealth, as well as many millions of dollars more in its efforts to develop a licensed gaming facility.

25. PEDP has also expended substantial efforts to develop its licensed gaming facility as approved by the Board, including its substantial, though ultimately unsuccessful, efforts invested in the Wynn Transaction over an extended period of time from November, 2009 until April, 2010, which was terminated for reasons beyond PEDP's control and anticipation, as well as that of the Board and BIE.

26. Given the gravity of the ultimate sanction at issue, the substantial investment and efforts by PEDP in this project, and the resulting significant record at issue, PEDP needs adequate time to prepare its response to the Complaint and PEDP does not anticipate being able to do so by June 1, 2010.

27. Additionally, between the date of the filing of this Petition for Review and the date that PEDP's response is due, counsel for PEDP must prepare for and attend oral argument

before the Commonwealth Court to defend against an attack on PEDP's license and the Board's Order of September 1, 2009, which is scheduled to be held before a panel of the Court sitting in Philadelphia on May 18, 2010.

28. Good cause exists for said extension of time to respond, and no prejudice will arise if said request is granted. *See* 58 Pa. Code § 497a.5(a)(1).

29. This application is made prior to the expiration of the time period originally prescribed by the Board's Regulations. *See* 58 Pa. Code § 497a.5(a)(1).

30. Chief Enforcement Counsel for BIE advised the undersigned that BIE continues to consent to PEDP's request for a 30 day extension to respond to the Complaint.

31. It is respectfully submitted that the determination of the Director of Hearings and Appeals was without legal or factual basis or precedent, particularly given the unique nature of this matter of first impression, and the consent of the BIE – the very party that initiated the enforcement proceedings without the direction or consent of the Board – to PEDP's Unopposed Motion.

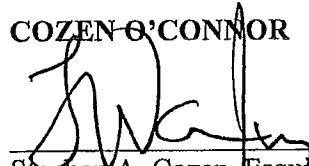
32. Accordingly, it is respectfully requested that the Board exercise its authority and overrule the decision of the Director of Hearings and Appeals and enter an Order granting PEDP's Petition for Review in the Nature of an Appeal from the Order dated May 17, 2010 and provide PEDP with a thirty (30) day extension of time to file its response to the Complaint.

**WHEREFORE**, for the foregoing reasons, Petitioner, Philadelphia Entertainment and Development Partners, LLP respectfully requests that the Pennsylvania Gaming Control Board enter an Order overruling the decision of the Director of Hearings and Appeals, dated May 17,

2010 and enter an Order providing PEDP with a thirty (30) day extension of time to file its response to the Complaint, Order and Rule to Show Cause until July 1, 2010.

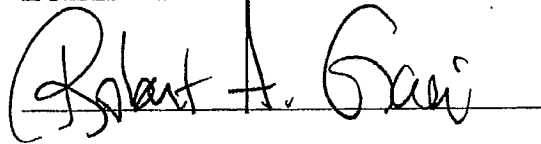
Respectfully submitted,

**COZEN O'CONNOR**



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



VERIFICATION

I hereby state that I am authorized to make this Verification on behalf of PEDP, and I state that the facts above set forth in the foregoing Unopposed Motion to An Extension of Time to Respond to Complaint, Order and Rule to Show Cause 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: May 8, 2010

Brian R. Ford

**CERTIFICATE OF SERVICE**

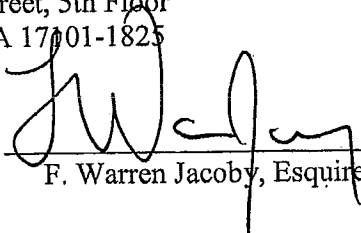
I certify that I am this day serving a complete copy of the foregoing Consent Motion to  
Extend Time by E-Mail upon the following:

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By:   
F. Warren Jacoby, Esquire

Dated: May 19, 2010

**BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD**

**IN RE** :  
**PHILADELPHIA ENTERTAINMENT AND** :  
**DEVELOPMENT PARTNERS, L.P., d/b/a** : **PGCB Docket No. 1367**  
**FOXWOODS CASINO PHILADELPHIA** :  
:

**ORDER**

**AND NOW**, this \_\_\_ day of May 2010, the Board hereby **GRANTS** the Petition in the Nature of an Appeal of the May 17, 2010 Order issued by the Director of Hearings and Appeals denying Philadelphia Entertainment and Development Partners, L.P.'s Unopposed Motion for an Extension of Time to Respond to the Complaint, Order and Rule to Show Cause Pursuant to 58 Pa. Code § 497a.5. The time for PEDP to respond to the Complaint, Order and Rule to Show Cause is hereby **EXTENDED** by 30 days until July 1, 2010.

By: \_\_\_\_\_  
Gregory C. Fajt, Chairman  
Pennsylvania Gaming Control Board