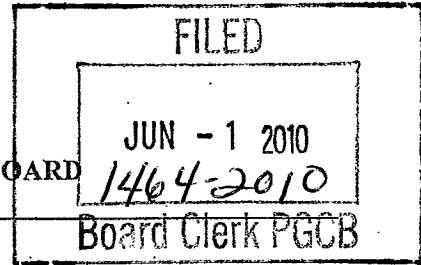


BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD



Docket Number: 1367

In re: Philadelphia Entertainment and  
Development Partners, L.P., d/b/a Foxwoods  
Casino Philadelphia

Counsel of Record:

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**PETITION BY PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT  
PARTNERS L.P. 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**

NOW COMES, Philadelphia Entertainment and Development Partners, L.P., d/b/a  
Foxwoods Casino Philadelphia ("PEDP"), by and through its counsel, Cozen O'Connor and  
Eckert Seamans Cherin & Mellott, LLC, and, pursuant to §§ 1202, 1312A, and 1361A of the  
Pennsylvania Race Horse Development and Gaming Act (the "Gaming Act"), 4 Pa. C.S.A. §§  
1202, 1312A, and 1361A, hereby moves the Pennsylvania Gaming Control Board (the "Board")

for an Order tolling or otherwise extending the date by which PEDP must file a Petition for authorization to conduct table games pursuant to 4 Pa. C.S.A. § 1312A and pay the 4 Pa. C.S.A. § 1361A table games authorization fee of \$16,500,000. In support thereof, PEDP avers as follows:

### INTRODUCTION

1. PEDP respectfully requests that the Board issue an Order that tolls or otherwise extends the date by which PEDP must file a Petition for authorization to conduct table games pursuant to 4 Pa. C.S.A. § 1312A and pay the 4 Pa. C.S.A. § 1361A table games authorization fee of \$16,500,000 until 180 days after such time as an Order and Adjudication issued by the Board disposing of the pending Complaint filed by the Bureau of Enforcement and Investigation (“BIE”) for Revocation of PEDP’s Slot Machine License (“Complaint”) becomes final and unappealable.

2. PEDP respectfully submits that there is good cause to grant the relief that it requests because the pending Complaint makes it impracticable for PEDP to file a Petition for authorization to conduct table games until the Complaint is finally resolved.

3. To the extent that PEDP prevails in the revocation proceedings or on appeal, it will have established, among other things, that the factors that have prevented PEDP from opening its licensed gaming facility, making slot machines available for play, and hence, petitioning by June 1, 2010 to conduct table games, were beyond its control and should not be a basis for penalizing PEDP, nor should PEDP be required to execute the waiver required by 4 Pa. C.S.A. § 1312A (b)(17) under the circumstances.

4. In that event, PEDP should likewise not be penalized for being unable to file its Petition for authorization to conduct table games pursuant to 4 Pa. C.S.A. §§ 1312A and 1361A by the June 1, 2010 filing date to qualify for the table games authorization fee of \$16,500,000, rather than being subject to the post-June 1, 2010 fee of \$24,750,000. as provided by 4 Pa. C.S.A. § 1361A.

5. The Board should therefore toll or otherwise extend the date by which PEDP must file a Petition for authorization to conduct table games pursuant to 4 Pa. C.S.A. § 1312A and pay the 4 Pa. C.S.A. § 1361A table games authorization fee of \$16,500,000 until 180 days after such time as an Order and Adjudication issued by the Board disposing of the pending Complaint for Revocation of PEDP's Slot Machine License becomes final and unappealable

#### **FACTUAL AND PROCEDURAL BACKGROUND**

6. On December 20, 2006, the Board announced the recipients of the two Category 2 Slot Machine Licenses to be awarded to operate gaming facilities in the City of Philadelphia, and it later memorialized such award in its Order and Adjudication dated February 1, 2007. PEDP was awarded one of the two Licenses ("License").

7. The License permitted PEDP to construct and operate a licensed gaming facility ("Casino") on Columbus Boulevard on the banks of the Delaware River in the Pennsport neighborhood of South Philadelphia ("Columbus Boulevard Site").

8. PEDP thereafter attempted to move forward and obtain the necessary permits and approvals from the City of Philadelphia to begin construction of the Casino at the Columbus Boulevard Site.

9. However, from the beginning, Philadelphia's City Council and certain local activist groups, among others, disagreed with the Board's decision to locate the Casino at the Columbus Boulevard Site and, thus, actively opposed PEDP's efforts to obtain the necessary permits and licenses to begin construction at the Columbus Boulevard Site. PEDP was therefore required, time and time again, to take action to counter each of these obstacles to its ability to begin construction of the Casino at the Columbus Boulevard Site, including four separate applications for relief filed with the Supreme Court of Pennsylvania.

10. PEDP was forced into ongoing and continuous litigation on multiple fronts with unsuccessful applicants for the License that was awarded to PEDP, including Riverwalk Casino, L.P. and Keystone Redevelopment Partners, LLC.

11. As a result of these factors, as well as the dramatic events in the financial market place which unexpectedly adversely affected the economy, including the gaming industry and the Foxwoods Tribe and planned sources of funding for the development of the Casino project, PEDP was not yet able to begin construction of its Casino within one year of the issuance of the License, and these conditions still exist in some form or other today due to circumstances beyond its control. PEDP has previously submitted motions, testimony and other presentations in support of the foregoing.

12. Accordingly, on May 22, 2009, PEDP filed with the Board a Petition to Extend the deadline by which the Casino was to be open with at least 1,500 slot machines operational and available for play. A disappointed bidder for a slot machine license, certain state legislators, and an anti-casino advocate all sought to intervene in this petition.

13. On August 28, 2009, the Board, at a public meeting, considered PEDP's Petition to Extend, as well as two Petitions to Intervene filed in the matter and a third Petition for leave to file a brief in the matter as amicus curiae. After a hearing at that meeting, the Board granted PEDP's Petition to Extend for good cause shown. After argument, it denied both Petitions to Intervene, but granted the Petition for leave to file a brief as amicus curiae on the basis of the Petition and the responses thereto.

14. On September 1, 2009, the Board issued four (4) Orders and Adjudications memorializing, and explaining the reasoning for, its decisions of that date, including the Extension Order granting the requested extension to PEDP.

15. The Extension Order granted PEDP's Petition to Extend Time, and extended by 24 months, until May 29, 2011, the time within which PEDP was required to have at least 1,500 slot machines operational and available for play at the Columbus Boulevard Site as provided by § 1210 of the Gaming Act. The Extension Order also imposed a number of reporting conditions on PEDP going forward.

16. PEDP timely satisfied many of the conditions, and sought an extension of time to submit the materials and information requested by the three of the conditions, which the Board ultimately denied.

17. PEDP meanwhile continued to diligently seek to identify new sources of funding and/or financing that would enable it to complete development and construction of the Casino and satisfy the remaining conditions in the Extension Order.

18. During this same time, the Pennsylvania Legislature was debating proposed new legislation to authorize licensed gaming facilities in the Commonwealth to also conduct table games.

19. On January 7, 2010, the Legislature enacted Senate Bill 711, which authorized table games in Pennsylvania's slot machine facilities. As a consequence, the current holders of slot machine licenses in Pennsylvania have applied for table game operating certificates, and acquiring such a certificate is an essential part of any business plan, and financial stability and success, of a slot machine licensee in Pennsylvania.

20. After many months of intensive negotiations, PEDP reached an agreement with Wynn Resorts, Limited (collectively, with its subsidiaries and affiliates, "Wynn"), pursuant to which a subsidiary of Wynn would acquire a controlling interest in and assume management control of PEDP. Subject to the Board's approval, this agreement would have provided funding and/or financing, as well as gaming and casino-development expertise, sufficient to enable PEDP to complete development and construction of its Casino.

21. At a March 3, 2010 hearing before the Board, in addition to the submissions made by PEDP to BIE the prior day, PEDP presented testimony from representatives of PEDP and Wynn concerning PEDP's agreement with Wynn ("Wynn Transaction") that had recently been memorialized in a Term Sheet that had been provided by PEDP to BIE. At the conclusion of the hearing, the Board directed PEDP to submit definitive financing documents to the Board and the Office of Enforcement Counsel ("OEC") no later than March 31, 2010, and to submit the documents required by Conditions 5 and 6 of the Extension Order by April 26, 2010.

22. 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.

23. At an April 7, 2010 meeting of the Board, BIE, through OEC, acknowledged that PEDP had 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.

24. 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 (through no fault of PEDP) the Wynn Transaction, and all related documents between Wynn and PEDP.

25. 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 termination.

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

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

28. On May 17, 2010, PEDP's Motion for an extension of time to respond to the Complaint, to which OEC had and has no objection, was denied, as the result of which PEDP's Answer to the Complaint is to be filed on June 1, 2010.

29. PEDP has been actively negotiating with potential investors and sources of financing to enable it to complete the development of its casino facility, and it is and would be impossible to enter into an agreement with any investor or source of financing without a table game operation certificate, which is now available under the recent amendment to the Gaming Act. As part of their planning and economic projections for any casino project, such parties have utilized a proposed table game authorization fee of \$16,500,000, based upon the delays that have been experienced by and imposed upon PEDP as the result of conditions beyond its control.

30. Thus, it is presently contemplated by PEDP as part of its plan for the development of its casino that it have the ability to conduct table games as part of its proposed operation of the casino.

31. Pursuant to § 1361A (a) of the Gaming Act, in order to be entitled to pay the table game authorization fee of \$16,500,000, rather than the higher fee of \$24,750,000, PEDP's Petition for authorization to conduct table games pursuant to 4 Pa. C.S.A. § 1312A must be submitted by June 1, 2010, together with payment of a table game authorization fee of \$16,500,000. Otherwise, PEDP will be required to pay a table game authorization fee of \$24,750,000 when it later petitions for authorization to conduct table games.



32. The provisions of the Gaming Act relating to table games further provide for the petitioner for a table game operation certificate to waive any claim for the return of all or any portion of its slot machine license fee as a condition of the submission of its petition. 4 Pa. C.S.A. § 1312A (b)(11).

33. Because of the ongoing revocation proceedings, and the possibility that by reason of such proceedings the Board may determine to revoke PEDP's license, PEDP is unable to file its Petition for authorization to conduct table games by June 1, 2010 during the pendency of such proceedings because, in order to do so, it would be necessary for PEDP to presently waive any claim for the return of all or any portion of its slot machine license fee, irrespective of the outcome of such proceedings.

34. PEDP believes that should it surrender its slot machine license, or should such license be revoked (notwithstanding the lack of basis for same), it is entitled to recover the \$50,000,000 slot machine license fee that it paid for its license, which would be precluded in the event that it filed its Petition for authorization to conduct table games during the pendency of the revocation proceedings.

35. PEDP therefore has filed the present Petition.

#### REQUEST FOR RELIEF

36. PEDP incorporates herein all paragraphs of this Petition, as well as all other pleadings, motions, applications, documents, testimony, and other papers and filings that it has presented to the Board and BIE/OEC in connection with its License, as though fully set forth herein.

37. PEDP respectfully requests that the Board issue an Order that tolls or otherwise extends the date by which PEDP must file a Petition for authorization to conduct table games pursuant to 4 Pa. C.S.A. § 1312A and pay the 4 Pa. C.S.A. § 1361A table game authorization fee of \$16,500,000 until 180 days after such time as an Order and Adjudication issued by the Board disposing of the pending Complaint for Revocation of PEDP's slot machine License becomes final and unappealable.

38. Pursuant to the Gaming Act, the Board has broad authority and power to oversee and regulate gaming in the Commonwealth, including specifically table gaming. Section 1202(a)(1) of the Gaming Act provides:

The board shall have general and sole regulatory authority over the conduct of gaming or related activities described in this part. . . and shall have sole regulatory authority over every aspect of the authorization, operation and play of slot machines and table games.

4 Pa. C.S.A. § 1202(a)(1).

39. Section 1312A of the Gaming Act provides that "a slot machine licensee may seek approval to conduct table games by filing a petition with the board." 4 Pa. C.S.A. § 1312A(a).

40. Section 1361A of the Gaming Act provides that a slot machine licensee that petitions a table game operating certificate pay a one-time nonrefundable authorization fee in connection with its petition. If the petition is submitted by June 1, 2010, the fee is \$16,500,000; whereas if the petition is submitted after June 1, 2010, the fee is \$24,750,000. 4 Pa. C.S.A. § 1361A.

41. Although § 1361A is silent as to whether the June 1, 2010 submission date may be tolled, PEDP submits that, under the circumstances, the Board has the authority to toll that date pursuant to its broad authority under § 1202 to regulate and oversee gaming in the Commonwealth.

42. PEDP further respectfully submits that, under the circumstances, there is good cause to grant the relief that it requests and enter an Order tolling the June 1, 2010 submission date until 180 days after such time as an Order and Adjudication issued by the Board disposing of the pending Complaint for Revocation of PEDP's Slot Machine License becomes final and unappealable.

43. For the reasons set forth herein, the pending Complaint makes it impracticable and inequitable for PEDP to file a Petition for authorization to conduct table games until the Complaint for Revocation is finally resolved.

44. Significantly, § 1312A (b)(11) requires a slot machine licensee to waive its right to the return of the slot machine license fee paid in connection with obtaining its initial slot machine license or any portion thereof, and it also requires a slot machine licensee to waive its right to sue for the return of that fee or any portion thereof.

45. Given the fact that the BIE/OEC is now seeking to revoke PEDP's License through the pending Complaint, PEDP believes that it is entitled to recover its slot machine license fee should its license be revoked, and it could thus potentially be forced to sue for the return of the \$50 million slot machine license fee that it paid in connection with its license, if the Board were to revoke PEDP's License. It would be unreasonable and inequitable, to compel

PEDP to agree to waive its right to the return of that substantial fee given the present circumstances.

46. Moreover, the contents of and disclosures in PEDP's Petition for authorization to conduct table games will depend significantly on the disposition of the pending Complaint, which makes it further impracticable for PEDP to file that Petition until the revocation proceedings have been resolved.

47. Importantly, to the extent that PEDP prevails in the revocation proceedings, it will have established, among other things, that the factors that have prevented PEDP from opening its licensed gaming facility, making slot machines available for play, and hence, petitioning to conduct table games, were beyond its control and should not be a basis for penalizing PEDP.

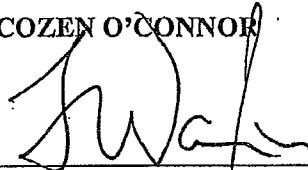
48. In that event, PEDP should likewise not be penalized for being unable to file its Petition for authorization to conduct table games by the June 1, 2010 filing date to qualify for the authorization fee of \$16,500,000, rather than the post-June 1, 2010 fee of \$24,750,000.

49. Nothing contained in this Motion is intended to nor shall it waive or release any claim by or on behalf of PEDP, or prejudice the right of PEDP, to recover the \$50 million slot machine license fee that it paid for its License.

WHEREFORE, pursuant to 4 Pa. C.S. §§ 1202, 1312A, and 1361A, PEDP respectfully requests that the Board issue an Order that tolls or otherwise extends the date by which PEDP must file a Petition for authorization to conduct table games and pay the 4 Pa. C.S.A. § 1361A.

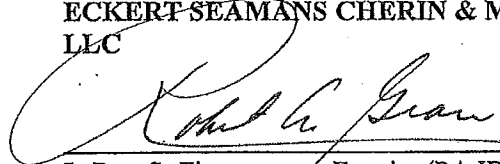
table games authorization fee of \$16,500,000 until 180 days after such time as an Order and Adjudication issued by the Board disposing of the pending Complaint for Revocation of PEDP's Slot Machine License becomes final and unappealable.

**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,  
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Harrisburg, PA 17101  
(717) 237-6000  
*Attorneys for Philadelphia Entertainment and  
Development Partners, L.P., d/b/a Foxwoods  
Casino Philadelphia*

Dated: June 1, 2010

VERIFICATION

I, Brian Ford, hereby state that I am authorized to make this Verification, and state that the facts above set forth in the foregoing Petition 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. § 13A61 Table Games Authorization Fee 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.A. § 4904 (relating to unsworn falsification to authorities).

Date: June 1, 2010

Brian R. Ford

**CERTIFICATE OF SERVICE**

I certify that I am this day serving a complete copy of the foregoing Petition 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 E-Mail upon the following:

Cyrus R. Pitre, Esquire  
Chief Enforcement Counsel  
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Harrisburg, PA 17101-1825

Dale William Miller, Esquire  
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Strawberry Square — Verizon Tower  
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Harrisburg, PA 17101-1825

By: 

Robert A. Graci, Esquire

Dated: June 1, 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 \_\_\_\_\_ 2010, the Board hereby **GRANTS** the Petition by Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP") 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 of \$16,500,000.

The time for PEDP to file a Petition for authorization to conduct table games pursuant to 4 Pa. C.S.A. §1312A and pay the 4 Pa. C.S.A. § 1361A table games authorization fee of \$16,500,000 is hereby **TOLLED** or otherwise **EXTENDED** until 180 days after such time as a final Order and Adjudication issued by the Board disposing of the pending Complaint filed by the Bureau of Investigation and Enforcement for Revocation of PEDP's Slot Machine License becomes final and unappealable.

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