



Meeting Minutes

Date: February 20, 2019

Time: 11:03 a.m.

Place: Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Present: Chair Cathy Judd-Stein
Commissioner Gayle Cameron
Commissioner Eileen O'Brien
Commissioner Bruce Stebbins
Commissioner Enrique Zumiga

Executive Session

11:03 a.m. Chair Judd-Stein asked for a motion to enter into executive session pursuant to M.G.L. c.30A §21(a) (3) for the purpose of discussing litigation strategy in the case of Stephen A. Wynn vs. Karen Wells, the Massachusetts Gaming Commission, and Wynn Resorts, when a discussion in an open session would have a detrimental effect on the litigation position for the Commission. Chair Judd-Stein stated that the Commission would reconvene in public session after the executive session. The motion was made by Commissioner Cameron and seconded by Commissioner Zuniga.

By roll call vote:

Commissioner O'Brien	Aye
Commissioner Stebbins	Aye
Commissioner Zuniga	Aye
Commissioner Cameron	Aye
Chair Judd-Stein	Aye

The Commission entered into executive session.

In addition to the Commissioners, Attorneys David Mackey and Paul Kominers from Anderson & Kreiger, Executive Director Ed Bedrosian, General Counsel Catherine Blue, Deputy General Counsel Todd Grossman, Chief Enforcement Counsel/IEB Deputy Director Loretta Lillios, Massachusetts State Police Detective Lieutenant Brian Connors, and Elaine Driscoll were present. Deputy Director Lillios appeared on behalf of the IEB in place of the IEB Director Wells who was recused for reasons stated below.

General Counsel Blue explained that the purpose of the executive session was to review the most current draft of a resolution agreement and the grid [REDACTED] which identifies (without providing any substance) the information covered by the preliminary injunction (PI) [REDACTED]

Executive Director Bedrosian explained to the Commission that the staff at the meeting has discussed what is in and out of the report based on the PI and the proposed resolution agreement. Ms. Lillios advised the Commission that she and IEB Director Wells reviewed the proposed resolution agreement and the grid and that there is still work to be done on the IEB report to ensure compliance with the PI and/or the resolution agreement if the Commission decides to resolve the Nevada litigation. The IEB report will require a new section describing the Nevada litigation and the impact of that litigation as well as edits to the report to comply with the PI or any resolution agreement. Ms. Lillios advised the Commission that regarding the materials impacted by the PI and/or the resolution agreement the IEB understands what is included and what is not under each.

Commissioner O'Brien stated that she would like to know that all material facts are included in the report if the Commission agrees to the resolution agreement and would like a statement from the IEB to that effect. Attorney Dave Mackey suggested that in order to answer Commissioner O'Brien's question, [REDACTED]

[REDACTED] He explained that the grid reflects the PI order issued by the Judge [REDACTED]

[REDACTED] The Commissioners were able to see that the grid named the documents involved but did not include the content of the documents. [REDACTED]

Mr. Mackey explained as to the information not relating to the 2014 EEOC matter, the grid [REDACTED]

[REDACTED] As to the 2014 EEOC matter, [REDACTED]

[REDACTED]

[REDACTED]

Ms. Lillios reminded the Commission that its direction to the IEB was to investigate who knew what and when.

[REDACTED]

Mr. Mackey continued the review of the grid relating to the 2014 EEOC matter. He stated that [REDACTED] He advised the Commission that [REDACTED]

[REDACTED]

Mr. Mackey described [REDACTED]

[REDACTED]

The resolution agreement also allows the IEB to include an email [REDACTED]

[REDACTED]

[REDACTED] Mr. Mackey

also stated [REDACTED] He believes that [REDACTED]

[REDACTED]

The Commission asked if Wynn Resorts should have been more careful in providing this information to the IEB. Executive Director Bedrosian explained that Wynn Resorts was trying to be responsive to the investigation. Mr. Bedrosian also explained to the Commission that Ms. Wells advised all of the interviewees to be mindful of privilege issues and that she reminded attorney witnesses that while Wynn Resorts waived its privileges, Mr. Wynn had not.

[REDACTED]

Mr. Mackey continued

[REDACTED]

The Chair asked for

[REDACTED]

Mr.

Mackey confirmed to the Chair

[REDACTED]

Mr. Mackey moved on to a discussion of the Gibson Dunn report. He described

[REDACTED]

[REDACTED]

[REDACTED] Ms.
Lillios explained [REDACTED]
Ms. Lillios explained [REDACTED]

Ms. Lillios also added that all the additional allegations found in the Gibson Dunn report but not in the IEB report were similar in nature to the allegations in the IEB report.

Mr. Mackey directed the Commission's attention to [REDACTED]

Commissioner O'Brien raised a question about public records to which Mr. Bedrosian responded that [REDACTED]

Mr. Bedrosian stated that Mr. Mackey talked to the Attorney General's office [REDACTED]

Mr. Mackey then proceeded to take the Commissioners through the sections of the proposed resolution agreement. [REDACTED]

The resolution agreement provides [REDACTED]

The Chair stated [REDACTED] Mr.
Mackey explained [REDACTED]

Mr. Mackey described the provisions in the proposed resolution agreement. The Chair asked for clarification on some of the provisions and proposed language changes. In particular, the Chair recommended that [REDACTED]

At this juncture, the Chair

explained.

Commissioner O'Brien agreed that

The Commissioners asked

The Chair will provide

Mr. Mackey continued through the proposed resolution agreement.

Mr. Mackey described the exhibits to the proposed resolution agreement. Exhibit A would be the order to dismiss the litigation with prejudice. Exhibit B is the PI order.

A Commissioner asked how we would

General Counsel Blue responded

Mr. Bedrosian explained to the Commission why Ms. Wells did not attend today's executive session. Ms. Wells individual counsel in the Nevada litigation will be sending a letter to Mr. Bedrosian stating that out of an abundance of caution and upon the advice of counsel to avoid the appearance of a conflict, she is not involved in the decision making process regarding the proposed resolution agreement. That letter when received will be made part of these minutes. If all parties ultimately agree on the proposed resolution agreement she will execute it. It is up to the sole discretion of the Commission as to whether or not the Commission decides to accept the proposed resolution agreement and agree to resolve the Nevada litigation. Mr. Bedrosian stated that Ms. Wells does not want the Commission to make its decision based upon the fact that she has been sued individually in the Nevada litigation.

Mr. Bedrosian shared with the Commission his call with the Attorney General's office

The Attorney General's team working on this issue participated on a call with Mr. Bedrosian, the Chair and Commissioner Cameron. The Chair asked the Attorney General's office to explain

The Attorney General's office stated that

There was a discussion

The Attorney General's team was clear that

The Chair asked if the Attorney General's team would

Attorney General's team responded [REDACTED]

Commissioner

Cameron asked the Attorney General's team [REDACTED]

The Chair

further wanted to understand [REDACTED]

The

Attorney General's team said that [REDACTED]

The Attorney

General's team advised [REDACTED]

The Chair stated that [REDACTED]

Mr. Mackey agrees that [REDACTED]

He believes [REDACTED]

Mr. Mackey also believes [REDACTED]

He believes that [REDACTED]

Mr. Mackey believes [REDACTED]

Commissioner Cameron asked [REDACTED]

Mr. Mackey stated [REDACTED]

Commissioner

Cameron asked [REDACTED]

Mr. Mackey says [REDACTED]

Ms. Lillios stated that immediately upon learning of the threat of the Nevada litigation, she and the IEB team identified a small number of items that they

believed were absolutely critical for the Commission to have. She stated that the resolution negotiations were quite successful in preserving the most critical pieces. The 2014 EEOC matter is a crucial piece of evidence from her perspective both in terms of the evidence itself and the timing. Without the 2014 EEOC matter the Commission may not have fair and accurate information to review Wynn Resort's suitability. In her view the resolution preserved the Commission's access to all of the crucial items obtained during the investigation.

Commissioner Cameron asked Ms. Lillios knowing what we don't have and what we can get under the resolution agreement would the Commission reach a different decision? Ms. Lillios stated that the missing information has little, if any, risk of having an impact on the Commission's determination on suitability. She could not say that the excerpted information lacked relevance or materiality, but felt confident that there was little, if any, risk that the excerpted information, if known by the Commission, would have an impact on their decision.

GEU head Detective Lieutenant Connors said that each individual Commissioner may view particular information differently and that he cannot be sure how any particular piece of information will resonate with an individual Commissioner. The 2014 EEOC matter is key, however. Detective Lieutenant Connors said that he feels that the IEB report is strong and that the Commission has the vast majority of the information it needs and in response to a question about whether the excerpted information would "move the needle" Detective Lieutenant Connors said in his opinion it would not. The investigation was done with integrity and confidence. Detective Lieutenant Connors is confident in the IEB report and at the end of the day the 2014 EEOC matter is critical. To lose that material is losing a significant piece of information. The way the IEB report is framed, the Commission can go forward. Detective Lieutenant Connors went through the Gibson Dunn report. A lot of what the Commission will see is independent of the Gibson Dunn report.

Ms. Lillios explained that the IEB report will contain significant and abundant information even with editing it for compliance with the resolution agreement and that many of the excerpted items were cumulative of other evidence available to the Commission. With respect to the Gibson Dunn report, Ms. Lillios saw the Gibson Dunn report primarily as merely corroborative of the IEB investigation, not as a substitute for the IEB's investigation because the IEB conducted its own independent investigation.

Commissioner Cameron asked if Wynn Resorts will contest the facts of the IEB report. Ms. Lillios stated that the company's public statements have indicated that it is not defending past actions but that we will see how Wynn Resorts responds and whether the company stipulates to the facts in the IEB report.

Commissioner O'Brien stated that

Ms. Lillios responded that

[REDACTED] Ms. Lillios responded that the Commission has other information; the attorneys' impressions, which would never be available to the Commission, were not probative and were initially included just helped to move the story along. Regarding other pieces of evidence that the Commission wouldn't have under the resolution, Ms. Lillios agreed that she never likes to give up evidence, but she doesn't think that having them would change the Commission's decision on suitability.

Mr. Mackey stated that [REDACTED] He doesn't think [REDACTED]

Commissioner Zuniga stated that he believed that the [REDACTED]

Ms. Lillios advised the Commission that going forward without the 2014 EEOC matter would not be good. Going forward with the litigation creates uncertainty since there is no way to know how the litigation would play out.

The Chair asked Director of Communications Elaine Driscoll if she were set if the Commission were to support a resolution agreement? Ms. Driscoll stated that if the Commission votes to resolve the litigation she would like some time to let folks know that we are going to vote so that they can watch the live stream. At that point, the Commissioners discussed their views on whether it would be appropriate to vote today or to put it off to a later date. Ms. Driscoll stated that if the Commission proceeds to a vote she doesn't know how detailed the public discussion would be but she would issue a statement along the lines of – the Commission voted on a resolution that guarantees Commission access to important information, reduces uncertainty due to the litigation process, and will allow the Commission to proceed with the hearing process. Ms. Driscoll discussed with the Commission various points that she would make depending on the questions she received.

Mr. Bedrosian told the Commission that he hopes that when the IEB report is publicly issued he believes it will show that the report contains significant compelling and copious amounts of information.

Ms. Lillios explained to the Commission that if the Commission votes to resolve the litigation, the IEB will need some time to get the IEB report in conformance with the resolution agreement. Then the IEB will work with attorney Mike Greco for his independent review on compliance with the resolution agreement. He will also be checking to see that facts in the IEB report are properly sourced. Mr. Mackey stated that that preliminary review is completed. Ms. Lillios stated that this process should take about 2 weeks.

The Commissioners reviewed the resolution agreement again and suggested [REDACTED] Mr. Mackey again described the position of the Attorney General's office on the resolution agreement, saying that the Attorney General's team has [REDACTED]

[REDACTED]

The Chair asked her fellow Commissioners if they would like to complete their discussion of litigation strategy without staff present. They indicated in the affirmative. Staff left the meeting and Commissioner Stebbins took the notes.

While staff was out of the executive session, the 5 Commissioners discussed the 2 options presented by staff – [REDACTED]

[REDACTED] The Commissioners wanted to be sure that each Commissioner was comfortable with whatever decision was made. The Commissioners discussed the merits around each option and proposed timeline. Commissioner Zuniga suggested that the Commission should focus on where it is now and remember that suitability will be ongoing during the entire 15 year license term. Commissioner Cameron expressed her view that [REDACTED]

[REDACTED] The Commission ultimately all agreed to pursue the resolution option. Commissioner O'Brien raised the issue of interaction with the Attorney General's Office and how they were involved in the process both from the start and on-going. Commissioners discussed the wording concerning the vote that they may take after the executive session and the permissible public messaging around the resolution agreement.

The Commissioners discussed a possible timeline, what the process would look like and the desire to advise staff that time was of the essence in moving through the resolution. At the end of the discussion, the Commission invited staff back into the executive session.

Staff returned to the executive session. The Chair asked staff to explain the timeline for going forward. She stated that there is a desire to move forward with the resolution in a timely fashion but all must make sure that the process is done in a way that makes sense. Staff explained a general timeline but also agreed to work on this and bring a timeline back to the Commissioners for their review at the next public meeting.

Deputy General Counsel Grossman drafted a resolution for the Commission's review. The Commissioners reviewed the motion and suggested changes. Mr. Grossman finalized the motion which will be voted on in public session.

4:28 p.m. Chair Judd-Stein asked for a motion to conclude the executive session and to reconvene in public session. The motion was made by Commissioner Cameron and seconded by Commissioner Zuniga.

By roll call vote:

Commissioner O'Brien	Aye
Commissioner Stebbins	Aye
Commissioner Zuniga	Aye

Commissioner Cameron Aye
Chair Judd-Stein Aye

4:31 p.m. , The meeting was reconvened in public session. ,

/s/ Catherine Blue
Catherine Blue
Assistant Secretary