



Executive Session Meeting Minutes

Date: January 14, 2021

Location: HD meeting. Given the unprecedented circumstances, Governor Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Massachusetts Gaming Commission (“Commission”) conducted this public meeting and executive sessions utilizing remote collaboration technology.

Having first convened a meeting of the Commission in an open session pursuant to G.L. c.30A, §20, the chair initiated discussion in regard to agenda item 10(d) relative to entering executive session pursuant to G.L. c.30A, §21(a)(3) for the purpose of discussing strategy with respect to *DeCosmo v. Blue Tarp reDevelopment, LLC, et al.*, and *Schuster v. Encore Boston Harbor, et al.*, and declared that discussion in an open meeting may have a detrimental effect on the litigating position of the Commission.

A motion to go into executive session for this purpose was made by Commissioner Zuniga and seconded by Commissioner O’Brien.

A roll call vote to move into executive session for this purpose was taken:

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| Commissioner Cameron: | Aye |
| Commissioner O’Brien: | Aye |
| Commissioner Zuniga: | Aye |
| Chair Judd-Stein: | Aye |

The vote in favor was unanimous. Chair Judd-Stein stated that the Commission would not reconvene in public session at the conclusion of the executive session.

The Commission then closed the public session and entered executive session.

Present:

Chair Judd-Stein, Commissioners Cameron, O’Brien, and Zuniga
Karen Wells, Executive Director
Todd Grossman, General Counsel
Carrie Torrisi, Associate General Counsel



Massachusetts Gaming Commission

Sarah Magazine-Yount, Director of Communications

This was the fourth item discussed in executive session. Attorney David Mackey left the video call for this item as the items he was invited to address had been concluded.

The Chair brought the session to order and turned the matter to Mr. Grossman to discuss the issue. Mr. Grossman reviewed the background of the two ongoing pieces of litigation: *DeCosmo v. Blue Tarp reDevelopment, LLC, et al.*, and *Schuster v. Encore Boston Harbor, et al.* and reminded the Commission that the DeCosmo matter was a Superior Court matter and had been dismissed, and the Schuster matter was a Federal Court matter that had not been dismissed. He indicated that he was contacted by counsel from the law firm Brown Rudnick who represented both of the defendants in the respective cases. Defense counsel indicated that the DeCosmo matter was on appeal before the Supreme Judicial Court. Because the Federal Court matter involved essentially the same legal issue, the judge agreed to certify the question to the SJC for review to help ensure that the matters are resolved on uniform legal grounds.

Given this background, Mr. Grossman explained, the defense counsel invited the Commission to consider filing an amicus brief in the matter. Such a brief would likely be due in the Spring. Defense counsel suggested in its call with Mr. Grossman and Ms. Torrisi that the Commission may have an interest in correcting any potential public perception that the blackjack rules were mistaken in the first place, as well as any suggestion that the rules process lacked integrity, and in general ensuring public confidence in the oversight of the games. Mr. Grossman indicated that since the Commission is not a party to the cases it is entirely discretionary on the Commission's part as to whether to elect to participate in the appellate process.

There was discussion relative to the Commission's legal exposure if it were to decide to file or not to file an amicus brief. Along those lines, the Commission reviewed the pros and cons of each approach. On the con side, there was concern raised that it may appear that the Commission was aligning itself with the licensees if it were to file a brief and appear to compromise its independence. To that end, it was noted that it would be preferable if the Commission were to be invited by the SJC to file such a brief. There was a discussion as to the expected deference the SJC may afford the Commission's position. There was also some discussion as to whether timing issues would allow for the Commission to wait for such an invitation. Mr. Grossman pointed out that if the Commission were interested in filing a brief that the idea would have to be brought to the Attorney General's Office for consideration as Anderson & Krieger does not have a SAAG designation for these purposes. That process could reasonably take some time so waiting may not be ideal. The Commission also discussed whether some of the aforementioned considerations relative to protecting the integrity of the rules and

enforcement process were compelling enough in this instance as a basis to insert itself into the appellate process and file a brief.

There was a question raised as to whether the Commission had already determined that the blackjack rules had been followed and that the licensees were in compliance. Mr. Grossman indicated that the decision in the Federal Court stated that the Commission itself had never opined on the matter though IEB Assistant Director Bruce Band had offered his analysis.

Given the open questions, the Commission elected to take some time to review its two previous public discussions relative to this litigation before making a decision. The first discussion involved Mr. Band's review of the blackjack rules, and the second when the Commission amended the rules in light of the litigation. It was determined that it would be helpful to clarify whether the Commission has publicly taken a position relative to these matters. By consensus the decision was made to review the materials and then reconvene an executive session for further discussion and a decision as to how to proceed.

Commissioner Cameron moved to adjourn this executive session. The motion was seconded by Commissioner O'Brien.

By roll call vote:

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| Commissioner Cameron: | Aye |
| Commissioner O'Brien: | Aye |
| Commissioner Zuniga: | Aye |
| Chair Judd-Stein: | Aye |

The vote to adjourn was unanimous.