



*State of New Jersey*

Chris Christie  
*Governor*

Office of the Attorney General  
Department of Law and Public Safety  
Division of Gaming Enforcement  
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*Acting Attorney General*

Kim Guadagno  
*Lt. Governor*

David Rebuck  
*Director*

July 28, 2014

Nicholas Casiello, Jr., Esq.  
Fox Rothschild, LLP  
1301 Atlantic Avenue  
Midtown Building, Suite 400  
Atlantic City, NJ 08401-7212

RE: Action in Lieu of Complaint

Dear Mr. Casiello:

The Division of Gaming Enforcement (Division) brings this Action in Lieu of Complaint against MGM Resorts International (MGM) and Tracinda Corporation (Tracinda) concerning the involvement and associations by MGM and Tracinda with Terry Christensen, after his criminal indictment in February 2006, through his conviction in August 2008, and most especially continuing even after his conviction through September 29, 2009.

On June 22, 2005, MGM, Mirage Resorts, Incorporated (MRI), MAC, CORP. (MAC) and Tracinda were qualified as holding and intermediary companies of Marina District Development Company, LLC (MDDC) when the casino license of MDDC was renewed. At that time, MGM held a 50% indirect ownership interest in MDDC, through MGM's joint venture with Boyd Gaming Corporation and Tracinda held over 55% of MGM's outstanding



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common stock.<sup>1</sup> MGM has remained under the jurisdiction of the Division by virtue of the provisions of the Stipulation. Furthermore, on April 24, 2012, MGM filed PRN 1141302 seeking a statement of compliance, and the Division has conducted a comprehensive investigation of MGM, MRI, MAC and Tracinda. The Division has conducted a thorough review of matters concerning MGM and Tracinda contacts and associations with Terry Christensen, including numerous interviews of MGM and Tracinda personnel familiar with such events.

Terry Christensen had been a member of the Board of Directors of MGM since 1987, at which time he was the President of Tracinda. He was the founding partner of the Christensen, Glaser, Weil, Fink, Jacobs & Shapiro law firm, and a close confidant and advisor to Kirk Kerkorian. After his appointment to the MGM Board, Christensen's law firm, now Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLP (Glaser Weil), provided extensive outside counsel services to MGM. On February 15, 2006, Christensen was indicted on charges of conspiracy to commit wiretapping and aiding and abetting related to illegal wiretapping, through private investigator Anthony Pellicano, in a child support action between Kirk Kerkorian and his former wife. After Christensen's indictment was announced, the Division on February 21, 2006 formally asked, by conference call with MGM, that Christensen resign from the MGM Board. On that call, MGM Assistant General Counsel Bryan Wright advised that Christensen was prepared to do whatever was necessary in the interests of the MGM casino licenses. The resignation was completed the same day, with a confirming letter from Wright sent to the Division and the gaming regulators for Nevada, Michigan, New York, Mississippi and Illinois.

After Christensen's indictment and Board resignation, Christensen remained as the billing partner for MGM legal services provided by Glaser Weil and MGM continued to

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<sup>1</sup> Following the MDDC license renewal hearing, the Division completed an investigation of MGM's joint venture with Pansy Ho to operate a casino resort in Macau. The Division issued its Special Report of the Division of Gaming Enforcement to the Casino Control Commission on Its Investigation of MGM MIRAGE's Joint Venture with Pansy Ho in Macau, Special Administrative Region, People's Republic of China (Special Report) on May 18, 2009, recommending, in part, that Pansy Ho and her father, Stanley Ho, be found unsuitable persons under the Casino Control Act (Act), N.J.S.A. 5:12-1, *et seq.* The issues raised by the Special Report were ultimately settled by a Stipulation of Settlement (Stipulation) entered by MGM and the Division on March 11, 2010. The Stipulation required a Divestiture Trust to be established to dispose of MGM's indirect ownership interest in MDDC and certain related real property and ground leases within a 30-month period. The Stipulation was thereafter amended to extend the disposition period and a second amendment was approved on February 13, 2013 to permit MGM to submit a petition for a statement of compliance.

consult Christensen on company matters. On August 29, 2008, Christensen was convicted of all charges. Upon follow-up investigation by the Division in September 2009, and through contact with outside counsel for MGM and with Tracinda, the Division ascertained that Christensen maintained office space at Tracinda's offices in California. This information was communicated to MGM outside counsel Fox Rothschild, LLP on September 28, 2009, and counsel confirmed such information and advised that Christensen vacated the office the next day. Christensen had been provided with an office at Tracinda in October 2008, and while various Tracinda representatives were uncomfortable with Christensen having the office, the issue was never raised with Kerkorian. MGM Board member and Tracinda executive Anthony Mandekic asked MGM's then General Counsel Gary Jacobs, a former partner at Glaser Weil, for his opinion regarding Christensen's Tracinda office and recalls that Jacobs advised it was "not a problem." Dan Taylor and Tracinda attorney Dick Sobelle recall Mandekic telling them such a conversation took place. Jacobs years later denied this conversation ever took place.

Further investigation revealed that Christensen had extensive involvement with MGM and Tracinda matters following both his indictment and conviction. Both the Division and the Nevada Gaming Control Board requested that MGM investigate the level of Christensen's involvement, the services provided, and Christensen's contacts at MGM and Tracinda. That internal investigation, and the Division's additional investigation of these matters, revealed the following circumstances and events, which the Division has determined are in violation of provisions of the Act and are subject to the agreed-upon civil monetary penalty discussed below.

#### Executive transition and executive compensation agreements

Almost immediately after the resignation of Chief Executive Officer (CEO) and Chairman of the Board J. Terrence Lanni on November 13, 2008, current MGM CEO and Chairman James Murren had a conversation with Terry Christensen concerning executive transition plans. MGM Chief Financial Officer Daniel D'Arrigo forwarded the draft press release announcing Lanni's resignation to Christensen for his comments, as a perceived representative of Tracinda. After Murren was elected CEO and Chairman on November 18, 2008, Murren, Jacobs and Board member Robert Baldwin engaged the law firm of Irell & Manella, LP to represent them in negotiating their compensation packages with MGM. After Christensen called Murren following Murren's conversations with Kirk Kerkorian about concerns regarding the delays in finalizing his compensation, Murren discussed those concerns with Christensen. Christensen further contacted MGM Board member, Tracinda executive and MGM compensation committee member Daniel Taylor to discuss Murren's compensation package and Taylor rejected his inquiry. Christensen also contacted Mandekic, who was a compensation committee member, to discuss not only Murren's

compensation package but also Jacobs' and Baldwin's, but Mandekic also rejected the inquiry.

#### Goldman Sachs

In late 2008, MGM considered engaging Goldman Sachs to assist with its financial difficulties. Through contacts from Jacobs, Christensen was aware of the discussions regarding the potential engagement, attended a meeting on December 5, 2008 between MGM and Goldman Sachs, which Kerkorian also attended, was copied on various drafts of the engagement letter and was provided with update e-mails concerning the possible engagement. Goldman Sachs was ultimately not retained by MGM.

#### Dubai World

Through contacts from Jacobs, Christensen was involved in several matters concerning MGM's joint venture with Dubai World for the CityCenter project, including the financing and then the litigation filed by Dubai World in 2009. Jacobs asserted that he specifically involved Christensen in Dubai World matters as he sought helpful advice to assist MGM with confronting its financial challenges. After Dubai World filed its complaint against MGM on March 22, 2009 alleging MGM was in breach of the joint venture agreement, Jacobs repeatedly sought the advice of Christensen regarding potential responses to the complaint by MGM and forwarded litigation updates to Christensen. Jacobs also kept Christensen informed about MGM Board meetings concerning Dubai World matters, forwarded drafts of documents related to the litigation to Christensen for his comments and forwarded other informational e-mails concerning negotiations with Dubai World and settlement proposals. Christensen also participated in numerous phone calls with Murren and Roland Hernandez, MGM Board member and audit committee chair, although Christensen may not have announced his participation on some of those calls.

#### Participation in meetings of the MGM Board of Directors

According to Hernandez and D'Arrigo, Christensen appeared in-person at approximately three to five MGM Board meetings after his 2006 indictment and prior to his 2008 conviction. Both Hernandez and D'Arrigo understood Christensen to be attending those meetings as an advisor and counsel to Tracinda and Kerkorian.

After Christensen's August 2008 conviction, he was scheduled to attend four telephonic MGM Board meetings, according to Kerkorian's calendar, on: February 24, 2009; February 25, 2009; May 11, 2009; and May 12, 2009. Taylor and Mandekic confirmed that Christensen did in fact attend one of those telephonic meetings, as Christensen entered Taylor's office mid-meeting on that occasion. There were e-mails from Christensen to Jacobs confirming the date and times of other telephonic meetings,

and Taylor and Mandekic believed Christensen did telephonically attend at least one other meeting. On no occasion was Christensen's attendance ever announced by phone or reflected in the Board minutes of any such telephonic meetings.

#### Genting Malaysia Berhad

In 2009, MGM considered forming a strategic relationship with Genting Malaysia Berhad (Genting), a Malaysia-based resort company. While discussions were ongoing in approximately June 2009, Christensen approached Jacobs regarding the potential transaction, including the possibility of Genting participating with Tracinda in a joint stock investment in MGM. Correspondence between Jacobs and Christensen continued regarding the potential transaction, with Jacobs soliciting Christensen's opinions and providing Christensen with status updates. On behalf of Tracinda, Christensen also attended a meeting with Jacobs, Murren, Taylor and Genting representatives. Ultimately, no transaction with Genting was finalized by either MGM or Tracinda.

#### Division's Special Report - Macau

Christensen was briefed regarding the Division's investigation of MGM's joint venture with Pansy Ho in Macau. After the Division requested to reopen the MDDC casino license in July 2009 to address the issues raised in its Special Report, Murren directed McManus to contact Christensen to advise of the reopening letter and provide Christensen with a copy of it. As he frequently used Christensen as a conduit to Kerkorian on complex issues, Murren wanted the information and reopening letter provided to Christensen so that Christensen would pass it along to Kerkorian. Murren again directed McManus to contact Christensen after a September 10, 2009 meeting with the Division regarding the Special Report, to provide Christensen with an update.

#### Appointment of Dr. Joseph Sugerman to the MGM Board

Dr. Joseph Sugerman is a physician who had a social relationship with Kerkorian and Christensen through playing tennis, and Kerkorian and Christensen were also the doctor's patients. Christensen approached Sugerman in the summer 2009 about a potential nomination to the MGM Board and advised Sugerman he had spoken with Kerkorian about the possible nomination and Kerkorian was supportive. Sugerman's Board nomination was viewed as one with ties to Tracinda. The matter was fast tracked.

In July 2009, Jacobs provided Christensen with the licensing requirements for an MGM Board member and advised of the status of Sugerman's nomination. While it was anticipated Sugerman would be nominated at the Board's August 4, 2009 meeting, the matter was not put to a vote when several Board members expressed concerns about not having enough information about Sugerman. Two luncheons were held thereafter for the

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Board to further interview Sugerman. Christensen attended the first luncheon held on August 11, 2009 in Beverly Hills, California, but not the second luncheon held on August 23, 2009 at the MGM Grand in Las Vegas. Dr. Sugerman was nominated to the Board on August 25, 2009. Members of the MGM Board were advised of Sugerman's prior relationship with Kerkorian, but the Board was not advised of either Sugerman's relationship with Christensen or that Christensen initially approached Sugerman regarding the Board nomination.

#### Delta Petroleum, Ford Motor Company and China Investment Corporation

Tracinda held a 33.9% ownership interest in Delta Petroleum Corporation (Delta), with Mandekic, Taylor and also Murren previously serving on the Delta Board of Directors. Following Christensen's 2008 conviction and at the suggestion of Mandekic, Christensen received \$200,000 in compensation from Tracinda for his services provided to Tracinda in connection with the Delta transaction. Christensen received communications and information regarding Delta matters from both Taylor and Glaser Weil.

Also in 2008, Tracinda held a significant investment in Ford Motor Company (Ford). Christensen wanted to engage in discussions with China Investment Corporation (CIC) regarding a potential CIC capital investment in Ford. Christensen asked Jacobs, through Jacobs' contacts in China developed through his position with MGM, to arrange an introduction to CIC. Jacobs communicated with Christensen in September and October 2008 regarding the scheduling and agenda for a meeting with CIC, and a meeting was arranged. Discussions between Christensen and CIC did not move forward further as Tracinda sold its shares in Ford.

#### Miscellaneous

After Christensen's indictment and continuing post-conviction, Kerkorian maintained a social relationship with Christensen.

In December 2008, at the direction of Murren, D'Arrigo sent a draft press release regarding the sale of Treasure Island to Christensen and Taylor for review.

Phone calls were made to Christensen by MGM executives Murren, Jacobs and McManus until September 2009.

In summary, Christensen was indicted on felony charges on February 15, 2006. Shortly after Christensen's indictment, the Division requested that Christensen resign from the MGM board of directors. On February 21, 2006, Christensen's resignation was accepted by the board. On August 29, 2008, Christensen was convicted. Christensen



continued to be involved with MGM and Tracinda and matters related to them from the time of his indictment, following his conviction and through the fall of 2009.

*N.J.S.A. 5:12-1b(7)* is an overall guiding principle and policy of the Act and requires:

Legalized casino gaming in New Jersey can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations, and the exclusion or removal from any positions of authority or responsibility within casino gaming operations and establishments of any persons known to be so deficient in business probity, either generally or with specific reference to gaming, as to create or enhance the dangers of unsound, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incident thereto.

*N.J.S.A. 5:12-80g* provides:

All licensees, all registrants, and all other persons required to be qualified under this act shall have a duty to inform the division of any action which they believe would constitute a violation of this act. No person who so informs the division shall be discriminated against by any applicant, licensee or registrant because of the supplying of such information.

Upon Christensen's indictment and then his conviction, MGM and Tracinda violated the policies of the Act under *N.J.S.A. 5:12-1b(7)* by allowing, facilitating and supporting Christensen's ongoing presence and involvement in the significant corporate matters of MGM and Tracinda on an ongoing basis. MGM failed to abide by its representations to the Division that Christensen was removed from his MGM position by permitting Christensen to be involved in board meetings and high level corporate matters following his indictment. After Christensen's conviction, MGM and Tracinda also continued to violate the representation to the Division regarding Christensen's removal and the spirit of such representation. That course of conduct constituted serious violations of the responsibilities of MGM and Tracinda under the Act. Further, the officers and directors and controlling persons of MGM and Tracinda, all qualifiers under the Act, failed to inform the Division of such actions and conduct in violation of *N.J.S.A. 5:12-80g*.

The Division accepts the offer of MGM and Tracinda to pay a civil monetary penalty pursuant to *N.J.S.A. 5:12-123, 129 and 130* in the amounts of \$150,000 on behalf of MGM

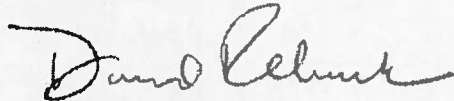
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and \$75,000 on behalf of Tracinda, payable under the Act in accordance with *N.J.S.A. 5:12-145a* and which MGM and Tracinda have agreed to pay in recognition of the seriousness of the failures to address Christensen's ongoing and continued involvement in their affairs following first his indictment and then his conviction.

Sincerely,

A handwritten signature in black ink, appearing to read "David Rebeck", written in a cursive style.

DAVID REBUCK  
DIRECTOR

c: Patrick Madamba, Jr., Esq.