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Re: Attorney General Strategy

As requested, below is our proposal to assist Caesars Entertainment to combat Sheldon Adelson's campaign to generate State Attorneys General ("AG") opposition to on-line gaming.

Why AGs Matter

AGs primarily serve as their State's lawyer. While they are lawyers first, AGs are also policy advocates, regulators, and enforcers. They are also influential on legislation. They interpret state laws by issuing opinions. Many have original criminal prosecutorial authority. All of them are seen as the state's top cop. Simply put, AGs hold a unique position in that they have almost unfettered ability to use their "bully pulpits" to advocate on behalf of the public interest.

The AG's front office is generally comprised of lawyers and others who are charged with developing and executing the AG's priorities. The front office generally includes a Chief Deputy, Chief of Staff, Policy Advisor, Public Information Officer and Legislative Liaison. These officials serve at the pleasure of the AG and generally assist in advancing the AG's interests. Front office interest or lack of interest in an issue can come from an assessment of media reports and potential media scrutiny; advocacy group requests; political benefit or detriment; legislative inquiries; and "pitches" made by law firms or other professionals in whom the front office has confidence.

AG Strategy and Proposal

Our collective experience working with and within the AG community is that when there are public campaigns (*e.g.*, advocacy driven) about the business practices of a national company or industry, AG offices have an awareness, and often a one-sided awareness, of the issues and the company and the industry. When that occurs, we believe the better course is for the industry to proactively engage the

AG community at several levels. We recommend that Caesars engage the AG community with an initial three-fold goal:

1. Define the Adelson campaign for what it is: a self-interested attempt to protect his interests by imposing ill-advised and unnecessary legal barriers to on-line gaming under the guise of consumer protection;
2. Educate AG offices on the need to protect the historic state prerogative to regulate gaming within state borders;¹ and
3. Promote the economic benefits of on-line gaming to any state that chooses to permit extensively regulated on-line gaming within its borders.

To achieve these goals, and as discussed in more detail below, we propose the following AG strategy for Caesars:

1. **Intelligence gathering:** Dickstein will actively gather intelligence from the AG community to assess the impact of Adelson's campaign and the possibility of AG action.
2. **Educate ourselves:** We will become fully versed in Caesars business model and its assessment of the Adelson campaign.
3. **Develop talking points for the AG community:** We will use our knowledge of the AG offices and, working with the Caesars strategy team, develop legal and policy talking points promoting our goals for use with the AG community.
4. **Educate the AG community:** Using our knowledge of and relationships with the AG community, we will identify the best means to educate AGs and their staff on defining Adelson and promoting the benefits and consumer protections associated with on-line gaming. As discussed below, there are several layers of education which will be honed as we continue to gather intelligence regarding Adelson's activities.
5. **Coordinate efforts:** We will work with Caesars internal and external teams to coordinate messages, share information and refine goals and strategies. We will identify members of the Caesars team and its other consultants who may provide additional leverage within the AG community, as needed.
6. **Become Caesars advocates at AG gatherings:** We are in constant communication with AGs and their staffs. We attend all AG meetings. We will use our knowledge of the Adelson campaign to promote the company's goals during those interactions. We will act as a resource for the AG community if they have questions or need information.
7. **Continue Monitoring and Refining Strategy and Goals:** From our experience, we know that events can change, often rapidly. We do not believe that a strategy should be static. It must be constantly assessed when there is new or different information available. We are adaptable, and our working relationships within the AG community has allowed us to maintain credibility for our clients even when new facts emerge that were previously not known.

¹ See *Thomas v. Bible*, 694 F.Supp. 750, 760 (D. Nev. 1988) (“Licensed gaming is a matter reserved to the states within the meaning of the Tenth Amendment of the United States Constitution.”), *aff'd*, 896 F.2d 555 (9th Cir. 1990).

Implementation

Caesars and others in the gaming industry are facing a sophisticated campaign to generate opposition to on-line gaming. We have been involved both inside AG offices and representing companies, with corporate and advocacy campaigns directed at AGs. It is important not to allow the adversary's campaign to define Internet gaming.

Engaging in initial intelligence gathering on the impact of the Adelson campaign is having will enable us to hone a more effective strategy with the AGs. We will talk in a confidential manner with trusted AGs, front office staff and consumer lawyers. **We will be attending the Conference of Western Attorneys General meeting on December 3 and will be in New Orleans during the remainder of the week meeting with AGs and senior staff while the closed-door NAAG meeting is taking place. Engaging AGs and senior deputies at this meeting is critical in light of the pendency of the NAAG letter. We fully expect that Adelson's team will be feverishly lobbying AGs to sign on to the letter during the meeting. In addition, the authors of the letter will certainly be urging their fellow AGs to sign on.**

We believe counteracting corporate campaigns in AG offices requires carefully honed talking points that address both legal and policy issues. These talking points are generally not intended for distribution, but are for use by our team to use within the AG community. We believe that it is important that the Caesars team participate in the development of the talking points and that the group sign off on the talking points before their use. This should be done as soon as possible.

Educating AGs is the critical element of our proposal. There are many factors that will dictate how best to disseminate messages and build positive relationships.

As we discussed yesterday, in the short run, it is our view that Caesars and the industry should stress to AGs the need for them to become better educated on the legal and policy issues associated with on-line gaming before staking out a position on possible federal legislation. Put simply, the industry should urge AGs to thoroughly vet the positions asserted by Adelson and his allies before adopting positions early on that may be difficult to retreat from after further consideration. There is, the industry should argue, no looming deadline that requires quick action and therefore there is no need for AGs to "rush to judgment" on such an important and far-reaching issue.

Longer term, Caesars and its allies should develop legally sound positions that can be communicated to AGs orally and possibly through White Papers regarding the need to protect state prerogatives against overreaching and unnecessary federal intrusion into the regulation of gaming. Federalism arguments have bi-partisan appeal among AGs.

The NAAG letter, for example, mischaracterizes "the inherently *interstate* nature of internet gambling transaction[s]." (emphasis in original) First, as you are aware, Congress expressly declared in the

Unlawful Internet Gambling Enforcement Act (“UIGEA”), 31 U.S.C. §5361, that “a bet or wager . . . initiated and received or otherwise made exclusively within a single State,” which is in accord with state law, including “age and location verification requirements,” will not constitute “unlawful Internet gambling.” *Id.* §5362(10)(B). Significantly, UIGEA states that the “intermediate routing of data packets does not determine the location in which bets or wagers are made.” *Id.* Thus, even if a gaming transaction is intermediately routed outside the state, the wager is still considered to be “made exclusively within a single State.” This is important because Congress, in the last gambling statute it enacted, declared that the Internet does not render every wagering transaction “inherently interstate,” and therefore the states remain free to exercise their historic role to regulate Internet gambling.

In addition, as our Firm discussed in great detail with the U.S. Justice Department in the course of our representation of the Illinois Lottery, there are well-designed technology and measures available to states to verify age to prevent underage wagering and verify location to ensure that wagering occurs within a state.² AGs should be educated on the law and the robust consumer protections available to ensure that minors do not wager and that wagering transactions are truly intrastate.

Finally, the NAAG letter (and much of the press coverage on this issue) inaccurately describes the state of the law at the time of the OLC opinion. Although it is true that the Bush Justice Department took the position in 2005 that the Wire Act outlawed Internet lottery ticket sales,³ as we discussed in the White Paper and in meetings with DOJ, the position taken by the Bush DOJ was at odds with well-established precedent interpreting the Wire Act. Enacted in 1961, the Wire Act was an element of a major anti-organized crime initiative by then-Attorney General Robert Kennedy that was directly aimed at bookies who used interstate wire communication to place bets on sporting events. Courts interpreting the Act held that the Act applied only to sports gambling. *See, e.g., Thompson v. MasterCard International, Inc.*, 313 F.3d 257, 262-63 & n.20 (5th Cir. 2002)(“[a] plain reading of the statutory language [of the Wire Act] clearly requires that the object of the gambling be a sporting event or contest.”). AGs therefore are being misinformed that the OLC opinion was an unprincipled “about face.” It is clear that the OLC opinion concerning the reach of the Wire Act was consistent with Wire Act precedent.

In sum, it is critical that Caesars and its allies engage substantively with AGs and senior staff quickly, assisted by counsel who have credibility with and knowledge of AGs and their offices.

Attendance at Select National AG Meetings/Presentations to AGs

Establishing relationships with AGs is a critical component of an effective education and outreach strategy. We recommend that individuals from Caesars legal and government affairs departments

² As we discussed, Dickstein successfully represented the Illinois Lottery before the DOJ, which led to the DOJ Office of Legal Counsel (“OLC”) Wire Act opinion. The OLC opinion borrows heavily from the White Paper we submitted on behalf of Illinois. No firm has more credibility on this issue with AGs than Dickstein.

³ Letter from Laura H. Parsky, Deputy Assistant Attorney General, Criminal Division, to Carolyn Adams, Illinois Lottery Superintendent (May 13, 2005).

attend national AG meetings and dinners, which present invaluable opportunities to establish personal relationships with AGs and key AG staff and educate them on the company and its issues. Through their interaction with AGs, these individuals will become the “face” of the company to AGs, who are less likely to demagogue companies they know and respect. Positive outreach efforts also will allow Caesars to counter and contain more effectively attempts by Adelson to encourage AGs to investigate the company.

We recommend that Caesars attend meetings of the National Association of Attorneys General (“NAAG”), the Democratic Attorneys General Association (“DAGA”), Republican Attorneys General Association (“RAGA”) and Conference of Western Attorneys General (“CWAG”) taking place this year. The four of us generally all attend every AG meeting. AG meetings in the next six months that will draw a significant number of AGs include:

- CWAG Winter Dinner – December 3 (New Orleans) (30+ AGs typically attend)
- DAGA Holiday Function – December 11 (Washington, DC) (typically 15 -20 AGs attend)
- DAGA Winter Policy Conference – January 23-25, 2014 (Orlando FL)(typically 15-20 AGs attend)
- DAGA Pre-NAAG Reception and Dinner – February 23 (Washington, DC)(typically 20 AGs attend)
- RAGA Winter National Meeting – February 23-25 (Washington, DC)(typically 20 AGs attend)
- NAAG Winter Meeting – February 24-26 (Washington, DC)(typically 40 AGs attend)
- DAGA Spring Policy Conference – May 7-8 (Seattle, WA)(typically 15-20 AGs attend)

Individual Meetings with AGs

Either at the national AG meetings or during in-state visits, we recommend that our team take executives from Caesars to meet, in particular, with AGs of key states where: (1) Caesars has a presence; (2) their states have implemented Internet gaming; and (3) the AG is a “thought leader” among his or her peers. As discussed above, Caesars should take the opportunity at such meetings to communicate the benefits and consumer safeguards relating to on-line gaming, the company’s commitment to consumers, and its robust technology, consumer protection and compliance programs. These meetings also will allow Caesars to more effectively gather intelligence and contain attempts by adversaries to cultivate support for efforts contrary to the company’s interests.

Our initial recommendation is to focus on the following AGs (subject to further discussions with you and your colleagues):

- NV AG Catherine Cortez Masto (D): As the AG of the center of legalized gaming in the U.S., AG Masto is or will be a thought leader regarding Internet gaming. Since she will be

servicing her last year in office, it will also be important to engage with Ross Miller and the other candidates vying to succeed her. Lori Kalani is a close personal friend of the AG, and others in the Firm also have good relationships with her.

- FL AG Pam Bondi (R): Elected in 2010, AG Bondi is a business-friendly, media-savvy AG who is well regarded by her peers. Unique among the states, the FL AG also serves in the Cabinet, which with the Governor has jurisdiction over a wide range of issues affecting the state. AG Bondi could be a thought leader on this issue.
- OK AG Scott Pruitt (R): AG Pruitt has quickly become one of the leading AGs on a host of issues, particularly those that impact the proper roles of the federal government and states. He should be sympathetic to the industry's federalism arguments.
- DE AG Beau Biden (D): As the AG of one of the few states that have implemented Internet gaming, AG Biden will also become a thought leader on this issue. In addition, he is well regarded by his peers.
- IL AG Lisa Madigan (D): As the AG of a state that has implemented Internet lottery sales, AG Madigan is a potential ally. She should be concerned that amending the Wire Act could jeopardize the legality of Illinois Lottery Internet sales.
- NY AG Eric Schneiderman (D): The New York Lottery joined with the Illinois Lottery to seek the reversal of the Bush DOJ Wire Act position. As with Illinois, any modification of the Wire Act threatens NY's plans to offer lottery tickets via the Internet. In addition, AG Schneiderman is an activist pro-consumer AG. It will therefore be critical to convince him that Internet gaming can be done safely.
- TN AG Robert Cooper (D): Appointed by the Tennessee Supreme Court, AG Cooper is widely admired for his thoughtfulness and legal ability.
- CT AG George Jepsen (D): AG Jepsen has quickly earned a reputation for carefully evaluating legal and policy arguments made by advocates before adopting a position.
- GA AG Sam Olens (R): A pro-business AG, AG Olens has become a thought leader on business issues, particularly among his Republican colleagues.

Collaborating with Third-Party Advocates

We will assess the value of engagement with AGs by third-parties aligned with Caesars. Third-parties would be able to discuss with AGs the benefits on Internet gaming without having to defend any particular company's business practices. However, as discussed above, Caesars must develop its own relationships with AGs to credibly refute Adelson and his allies. In addition, third-parties will not have the immediate access to decision makers as Dickstein would have.

Fees

For the education and outreach strategy that we have presented in this memo, we propose an initial six month representation of Caesars for a flat fee retainer of \$35,000 per month plus expenses.⁴ While we are hopeful that six months would be sufficient time to achieve the goal of educating a critical mass of AGs, we would make a recommendation for an ongoing strategy once we are over the initial hurdle in six months. There may be a point at which it is necessary to engage in research and draft policy papers, presentations, legal memoranda, or other documents. Except where expressly noted, such work would not be included as part of the engagement described above. Should Caesars elect to use our team for such projects, those services would be performed and billed on an hourly basis after approval from Caesars. In addition, in-state meetings with AGs on behalf of Caesars would be billed on an hourly basis.

As a full-service practice, our AG team regularly handles investigations and other government inquiries for large companies involving AGs and other government agencies.⁵ Any expansion of our representation to assist with AG and government inquiries would generally be billed by the hour.

Conclusion

We appreciate the opportunity to share our thoughts regarding the Adelson campaign and recommend a proactive AG strategy. We look forward to continuing our ongoing discussion at your earliest convenience.

⁴ When possible, we will prorate Caesars' share of expenses among multiple clients if we are attending or hosting AG meetings or events where other clients' issues also are discussed.

⁵ Our group is currently handling investigations for several major companies, including AT&T, DISH Network, a major beverage manufacturer, and several for-profit colleges.