

**ORDER 2012-129
IN RE SETTLEMENT AGREEMENT**

**WMS GAMING INC
12-WMS-01**

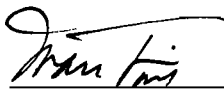
After having reviewed the attached Settlement Agreement, the Indiana Gaming Commission hereby:

Approves
APPROVES OR DISAPPROVES

the proposed terms of the Settlement Agreement.

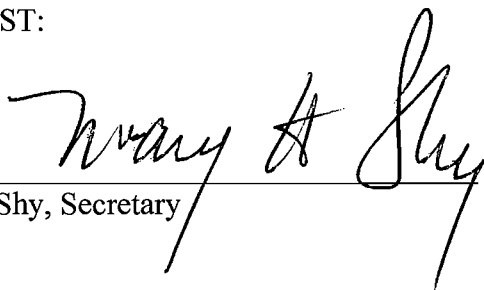
IT IS SO ORDERED THIS THE 2nd DAY OF AUGUST, 2012.

THE INDIANA GAMING COMMISSION:



Marc Fine, Vice-Chair

ATTEST:



Mary Shy, Secretary

**STATE OF INDIANA
INDIANA GAMING COMMISSION**

IN RE THE MATTER OF:)
)
WMS GAMING INC.) **SETTLEMENT**
) **12-WMS-01**
)

SETTLEMENT AGREEMENT

The Indiana Gaming Commission (“Commission”) by and through its Executive Director Ernest E. Yelton and WMS Gaming Inc. (“WMS”) (collectively, the “Parties”) desire to settle this matter prior to the initiation of a disciplinary proceeding. The Parties stipulate and agree to the following:

APPLICABLE LAW

1. IC 35-45-5-3.5(a) states “except [for antique slot machines], a person who possesses an electronic gaming device commits a Class A infraction.”
2. IC 35-45-5-4 states “(a) Except as provided in subsections (b) and (d), a person who:
 - (1) knowingly or intentionally owns, manufactures, possesses, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits an interest in a gambling device... commits promoting professional gambling, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this section.”
3. 68 IAC 17-1-1 states “(b) electronic gaming devices may only be moved in accordance with this rule. Riverboat licensees, riverboat license applicants, and supplier licensees must comply with this rule before electronic gaming devices are transported:
 - (1) from any point outside of Indiana into the state of Indiana;
 - (2) from any point within Indiana to any point outside of Indiana; or
 - (3) within Indiana.”
4. 68 IAC 17-1-1 states “(f) all EPROMs shall be transported separately from the shipment of electronic gaming devices.”
5. 68 IAC 17-1-2 states “(a) at least ten (10) days before transporting electronic gaming devices, the person causing the movement of the electronic gaming device shall notify the executive director, in writing, and provide the following information:
 - (1) The full name, business address, and business telephone number of the following:

- (A) The person selling the electronic gaming device.
 - (B) The ultimate owner of the electronic gaming device if ownership is being changed in connection with the transportation of the electronic gaming device.
- (2) The:
- (A) method of transportation; and
 - (B) the name, business address, and business telephone number of the carrier or carriers.
- (3) The full name, business address, and business telephone number of the person to whom the electronic gaming device is being transported.
- (4) The individual responsible for the shipment of the electronic gaming device for each person listed in subdivisions (1) through (3).
- (5) The destination of the electronic gaming device if the address is different from the business address listed in subdivision (1)(B).
- (6) The quantity of electronic gaming devices being transported.
- (7) A brief description of the electronic gaming device being transported.
- (8) The serial number of the electronic gaming device and a request for the issuance of a commission registration number in accordance with 68 IAC 2-6-5(a)(9).
- (9) The expected date and time of the following:
- (A) Delivery of the electronic gaming device to the riverboat.
 - (B) The exit of the electronic gaming device if the device is exiting Indiana.
- (11) If the electronic gaming device is being transported to a destination outside of the United States, the port of exit from the United States.
- (12) The reason for the transportation of the electronic gaming device.
- (13) Upon request by the executive director, the person selling the electronic gaming device must prove that the recipient is authorized, under state and federal law, to receive the electronic gaming device.”
6. 68 IAC 19-1-1 states “(a) this rule applies to supplier licensees.
 (b) If a supplier licensee has a warehouse located in Indiana, electronic gaming devices or live gaming devices, or both, may be shipped to the warehouse only in accordance with this rule.
 (c) Shipments of electronic gaming devices to and from the Indiana warehouse by a supplier licensee must comply with 68 IAC 17-1. Shipments of live gaming devices to and from the Indiana warehouse by a supplier licensee must comply with 68 IAC 17-2. The shipment notifications provided to the commission must indicate the reason the device is being shipped to the warehouse. The commission may require additional information to ensure compliance with the Act and this title.”
7. 68 IAC 19-1-2 states “(c) the supplier licensee must provide security measures and surveillance coverage that is deemed adequate by the executive director or the executive director's designee to ensure:
- (1) compliance with the Act and this title; and

(2) that the devices are not used for gambling or any entertainment purpose.”

FINDINGS OF FACT

8. There have been no criminal charges or finding of criminal liability in connection with the facts contained herein, and none are expected. Nonetheless, Commission staff has reason to believe that WMS actions could have exposed both WMS and other persons to a risk of violating the criminal statutes cited in paragraphs 1 and 2.
9. In December, 2011, several Commission staff members reviewed a proposal by WMS to temporarily store electronic gaming devices (“EGDs”) in a third party warehouse located in Indiana for a corporate customer with a subsidiary that is an Indiana riverboat licensee requesting storage for another of its subsidiaries that was a licensee in another jurisdiction. On December 20, 2011 WMS was informed that the proposal, which was initially approved for a single shipment, would not be approved due, in part, to the timeliness of the request, and the increase in the number of shipments and customers requested. In a telephone conversation on December 21, 2011 with the Commission’s EGD Compliance Manager, the Vice President of Regulatory Affairs for WMS inquired about future shipments to the warehouse for customers who were not Indiana licensees nor affiliated with an Indiana licensee. The EGD Compliance Manager replied that no shipments should be made to the warehouse.
10. As a part of the December, 2011 proposal provided by WMS were pictures of the storage facility, Associated Global Systems (“AGS”), which WMS represented to the Commission was secure and was intended to be used for the storage. In one of the pictures, EGDs were shown inside the warehouse. Recognizing this as evidence of a potential violation, on January 4, 2012 the Commission’s Director and a Supervisor of Gaming Control visited the warehouse. Ninety four (94) EGDs and numerous boxes containing miscellaneous EGD equipment were found. The manager of the warehouse was told to refrain from moving the EGDs until instructed by the Commission. The manager informed the Director of Gaming Control that the shipment was received by AGS from WMS on December 29, 2011, even though the Commission told WMS on December 21, 2011 not to ship any gaming equipment to the warehouse.
11. On January 5, 2012, several Commission staff members met with local counsel for WMS to discuss the investigation and the potential for a disciplinary action for the violation of statute and rules surrounding the unauthorized shipment and storage of the EGDs and other gaming equipment. A memorandum provided by WMS was provided to the Commission staff. The memorandum stated that a conversation took place on December 21, 2010 between the Commission’s EGD Compliance Manager and a WMS Senior Staff Compliance employee about the

possibility of temporarily storing EGDs for International customers in a warehouse in Indiana. WMS claims that the Commission's EGD Compliance Manager, after consulting with Commission staff attorneys, responded that this would be permissible as long as the EGDs were marked "export only". From December of 2010 through December of 2011, WMS proceeded to ship EGDs from a WMS facility in Illinois to the AGS facility for storage. WMS claims that, based upon this mistaken understanding of the December 21, 2010 telephone conversation, EGDs were, at various times, stored at the AGS facility over the period of approximately one (1) year without advising the Commission or following the long-established documentation and approval process for EGD shipments. The Commission never approved the use of the AGS facility by WMS to store EGDs.

12. Both the Commission's EGD Compliance Manager and General Counsel disagree with facts presented in the WMS memorandum relating to any approval for these shipments and deny providing approval for these shipments. Further, as an Indiana Supplier Licensee since 1996, WMS has exhibited knowledge of the approval process in that it has placed 11,257 shipments through the Commission's EGD system. The EGD system allows the Commission to monitor all of the orders, movements and shipments of EGDs in the state of Indiana. Also, internal controls provided by WMS that were in effect at the time of these shipments accurately state the requirements for shipping and storage in Indiana.
13. On January 6, 2012, the Director and Supervisor of Gaming Control returned to the AGS warehouse to verify that the EGDs were still stored there and to inquire about obtaining copies of the shipping records from WMS to the warehouse. The manager indicated that it would be easy to obtain the shipping records and that he would E-mail the information to the Director of Gaming Control by January 9, 2012. Having not received the promised communication from the warehouse's manager, the Director of Gaming Control called him on January 10, 2012. The Director was informed that WMS contacted the manager on the evening of January 6, 2012. The manager stated he had been told by WMS not to send the records, because WMS intended to do so. Assuming the statement to be true, this was done without the knowledge and consent of Commission staff. WMS, a nonparticipant to the referenced discussion, states that it did not make the described request; rather, that WMS requested to AGS to comply promptly with the Commission's request and that WMS would also be providing the records. In addition, WMS claims that in a follow-up conversation with AGS and a corporate counsel of AGS, WMS was advised that the records would not be provided by AGS until it was reviewed by its risk management committee. The Commission staff was not a party to either of those discussions, but has based its position upon credible information obtained during its investigation.

14. On January 12, 2012, the Commission's General Counsel sent a letter to the corporate office of AGS requesting the documents pertaining to the shipments from WMS to the AGS warehouse. These were the same documents previously requested by the Director of Gaming Control, but never received. The documents were received by the Commission on March 8, 2012 after a follow-up inquiry was sent by the Commission's General Counsel. WMS claims it was not aware of the events of this paragraph.
15. On January 18, 2012, WMS sent a formal response to the Commission regarding the Commission's investigation into gaming machines at the AGS warehouse. In the response, WMS cited communication errors within the company that led to the December 29, 2011 shipment of EGDs to the warehouse. WMS also stated its interpretation of 68 IAC 17-1-1 was that only shipments to and from licensed riverboats or racinos in Indiana had to comply with the shipping requirements. Further, WMS stated that there was a misunderstanding by WMS regarding 68 IAC 19-1-1, which discusses a supplier licensee with a warehouse in Indiana and storage of games in the warehouse. Finally, WMS stated there were other warehouses in Indiana to which WMS may have shipped EGDs. WMS reported the name of Tazmanian Freight Systems ("Tazmanian") in the response, but did not include the names of the other warehouses in the response, because WMS represented that it was attempting to determine and verify what warehouse facilities Tazmanian used. WMS advised the Commission staff that it would provide the names of the warehouses once they were determined and did so on January 30, 2012. The other warehouses were identified as Kid Glove Service Warehouse ("Kid Glove") in Indianapolis and Three Rivers Warehousing LLC ("TRW") in Fort Wayne.
16. On January 19, 2012, after numerous discussions between Commission staff and WMS regarding the movement of the EGDs in storage at AGS, the ninety four (94) EGDs and other equipment were shipped back to a WMS facility in Illinois. Five representatives from WMS and four from the Commission were present to ensure a complete and smooth transition. The Illinois Gaming Board was advised of the shipment and granted approval.
17. On February 3, 2012, the Director of Gaming Control visited Kid Glove and verified that a third party provider, Tazmanian, had previously delivered gaming equipment to the facility on behalf of WMS, as reported by WMS on January 18, 2012. The warehouse representative stated that Kid Glove immediately contacted Tazmanian and demanded the equipment be removed upon identifying the shipment as gaming equipment that Kid Glove was not authorized to possess. Since the shipment was received on a Friday, the EGDs were not picked up until the following week. The Kid Glove representative stated that Tazmanian contacted Kid Glove on three (3) occasions after the incident, requesting storage of EGDs but the company refused, citing the

appropriate legal concerns. Kid Glove has stopped doing business with Tazmanian due to its failure to disclose the contents of the shipment.

18. On February 9, 2012, a Supervisor of Gaming Control for the Commission E-mailed a report to the Director of Gaming Control regarding shipments of EGDs from WMS to TRW. The Supervisor had visited the warehouse and received shipping documents recording the EGDs received from Tazmanian on behalf of WMS. On February 2, 2012, a representative from TRW called the Director of Gaming Control to inform him that WMS was requesting a bill of lading from him for a shipment in September, 2011. The representative had been contacted by WMS regarding five (5) machines that did not make it to Colombia, South America, and WMS wanted to verify that the machines were shipped from TRW's warehouse in Ft. Wayne.
19. The Commission received shipping documents from all three companies which show that AGS stored 1,055 EGDs, Kid Glove 60 and TRW 233 for a total of 1,348. In a supplemental report dated January 27, 2012 from WMS to the Commission, WMS recorded 1,290 EGDs sent to AGS and 285 sent by Tazmanian for a total of 1,575.
20. WMS operated for approximately one year in a manner not in compliance with applicable statutes and Commission rules. Commission staff's investigation revealed a failure to have the proper checks and balances in place to detect problems in the shipping system, a failure to follow-up a perceived oral approval with any written waiver or statement documenting the same, and a failure to comply with the Commission's shipping rules. In addition, the failure of the WMS system to advise the proper departments within WMS that a shipment was sent to the AGS warehouse after WMS had been specifically advised not to utilize the warehouse exemplifies the failure of the WMS systems at that time. Furthermore, when WMS was notified on January 4, 2012 that EGDs were found at the AGS warehouse, WMS did not immediately disclose the extent to which the AGS facility had been utilized by WMS and WMS customers for a period of approximately one (1) year.

TERMS AND CONDITIONS

Commission staff alleges that the acts and omissions of WMS by and through its agents as described in this Settlement Agreement ("Agreement") constitute a breach of the Commission's statute located at Indiana Code 4-33 and/or its rules located at 68 Indiana Administrative Code. The Commission and WMS hereby agree to a monetary settlement of the alleged violations in lieu of the Commission pursuing formal disciplinary action against WMS. This agreement is being entered into to avoid the potential expense and inconvenience of disciplinary action.

WMS shall pay to the Commission a total of \$425,000 in settlement of the violations set forth in this Agreement. WMS will verify and file with the Commission a comprehensive corrective action plan outlining changes WMS has made or will make to prevent similar violations from happening again. In addition, WMS will also provide to the Commission verification of its internal controls for shipping and communication procedures. This Agreement extends only to violations and findings of fact specifically alleged in this Agreement. If the Commission subsequently discovers facts that give rise to additional or separate violations, which are not described in this Agreement, the Commission may pursue disciplinary action for such violations even if the subsequent violations are similar or related to an incident described in this Agreement.

Upon execution and approval of this Agreement, Commission staff shall submit this Agreement to the Commission for review and final action. Upon approval of the Agreement by the Commission, WMS agrees to promptly remit payment in the amount of \$425,000, submit the corrective action plan and internal controls as described within sixty (60) days, and waive all rights to further administrative or judicial review.

This Agreement constitutes the entire agreement between the parties. No prior or subsequent understandings, agreements, or representations, oral or written, not specified or referenced within this document will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all Parties.

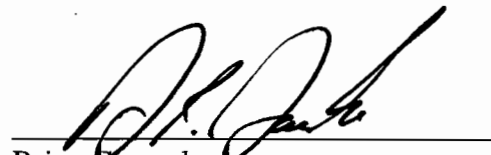
This Agreement shall be binding upon the Commission and WMS.

IN WITNESS WHEREOF, the parties have signed this Agreement on the below date and year.



Ernest E. Yelton, Executive Director
Indiana Gaming Commission

6.26.12
Date



Brian Gamache
WMS Gaming Inc.

6/28/12
Date