

LAW OFFICES OF
**NIELSEN, MERKSAMER,
PARRINELLO, MUELLER & NAYLOR, LLP**

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

SACRAMENTO

770 L STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752

FAX (916) 446-6106

591 REDWOOD HIGHWAY, #4000

MILL VALLEY, CALIFORNIA 94941-3039

TELEPHONE (415) 389-6800

FAX (415) 388-6874

SAN FRANCISCO

TWO EMBARCADERO CENTER, SUITE 200
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 389-6800

FAX (415) 388-6874

December 12, 2001

VIA FAX AND FEDERAL EXPRESS

Roy Q. Luckett, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 13 12:57 PM '01

Re: Response to Reason to Believe Finding in MUR 5020 On Behalf of
MGM MIRAGE, parent company of Mirage Resorts, Inc.

Dear Mr. Luckett:

In response to your letter to me dated October 18, 2001 and received in our office on October 24, 2001, we write to you on behalf of MGM MIRAGE ("MGM"), of which Mirage Resorts, Inc. ("Mirage") is now a wholly-owned subsidiary (having been acquired by MGM Grand, Inc., now known as MGM MIRAGE, on May 31, 2000). We have previously provided to you an executed Statement of Designation of Counsel.

As a result of MGM's acquisition of Mirage, many former Mirage employees who worked for Mirage at the time of the event at issue no longer work for MGM or its subsidiaries (including Mirage). MGM is in the process of attempting to reconstruct the facts relating to the Gormley event held at Le Cirque in Las Vegas. Thus far, MGM has been able to establish facts which contradict several of the Commission's key concerns and assumptions that appear to be based upon the reporting contained in the May 15, 2000 New York Times article, as set forth more fully below.

In an attempt to be as cooperative as possible, and given that Mirage is under new ownership without any connection to the event at issue, MGM hereby respectfully requests that the Commission and MGM enter into the Commission's Alternative Dispute Resolution procedures or, in the alternative, conduct pre-probable cause negotiations directed towards entering into a conciliation agreement pursuant to 11 C.F.R. section 111.18(d) with respect to the issues raised in the Commission's Factual and Legal Analysis. In addition, if it would be helpful to the Commission, MGM can prepare and submit statements under oath.

CONCERNS RAISED BY THE COMMISSION

The Commission's Factual and Legal Analysis attached to your October 18th letter asserts the following three potential areas of concern: (1) the possible use of Mirage corporate resources to collect contributions to the Gormley committee and forward such contributions to the Committee, based upon the assumption that no one from the Gormley committee attended the event held at Le Cirque; (2) a possible discount below fair market value provided by Mirage to the Gormley Committee with respect to the catering charges for the Gormley event held at Le Cirque; and (3) the possible use of a Mirage corporate list of vendors, clients and/or customers related to this event.

PRELIMINARY RESPONSE

1. Gormley Travel and Attendance Issue.

The Commission's Factual and Legal Analysis states that "the Gormley Committee's reports raise concerns about possible corporate facilitation because they do not show any apparent travel expenses incurred by Gormley in attending the event." (FEC at 6.) The Commission's Factual and Legal Analysis questions whether Senator Gormley or any campaign agent even attended the fund-raising event held on his behalf at Le Cirque.

Although it is apparently correct that the Gormley campaign reports do not reflect travel expenses incurred in connection with the Gormley event held at Le Cirque, MGM has confirmed that in fact Senator Gormley (and campaign agents) did travel to and attend the fund-raising event held at Le Cirque. The travel expenses of Mr. Gormley were not paid by Mirage or any related entity.

We believe the Gormley committee will be able to provide the Commission documentary evidence that Senator Gormley and several supporters did in fact attend the Gormley event at Le Cirque.

2. Catering and Room Rental Issue.

The Commission's Factual and Legal Analysis raises the following concern: "it appears possible that the cost of holding a fund-raising function at the [Le Cirque] restaurant may have exceeded the amount apparently paid by the Gormley committee, thereby potentially resulting in an in-kind contribution from Mirage to Gormley even after accounting for permissible food and beverages discounts." (FEC at 7.)

MGM has confirmed that in fact the Mirage did not make an impermissible in-kind contribution to the Gormley committee in connection with the catering and room rental costs relating to the Gormley fund-raising event held at Le Cirque. Rather, the Gormley committee

paid the full, fair market value of the food and beverage costs, room rental, service and gratuity, less the \$1,000 discount as permitted pursuant to 11 C.F.R. section 114.1(a)(2)(v).

Specifically, MGM has confirmed that it believes 29 individuals attended the Gormley fund-raising event held at Le Cirque. Importantly, the event was not a dinner event; rather it was a light lunch event that commenced at 11:30 in the morning. No wine or other alcoholic beverages were served.

The Gormley committee paid \$1,718.51 for the catering and room rental, which breaks down specifically as: \$1,000.00 for the room rental (the maximum rental rate charged for such rooms at Le Cirque; in fact it is our understanding that the room rental fee is often waived entirely for customers), plus \$718.51 for food and beverages. The \$718.51 for food and beverages represents the food charge for 29 persons, the actual beverage charges, plus a 20% service fee, a 20% tip, and tax, less the \$1,000 discount permitted pursuant to 11 C.F.R. section 114.1(a)(2)(v).

The charges to the Gormley committee further break down as follows:

<u>Qty</u>	<u>Description</u>	<u>Per Item</u>	<u>Total Charge</u>
29	Open Food	\$40.00	\$1,160.00
15	Panna Lir (Water)	\$ 7.50	\$ 112.50
5	Iced Tea	\$ 3.50	\$ 17.50
12	Diet Coke	\$ 3.00	\$ 36.00
2	Coke	\$ 3.00	\$ 6.00
1	Cranberry Juice	\$ 3.50	\$ 3.50
2	Dbl Espresso	\$ 4.50	\$ 9.00
2	Special Order Coffee	\$ 3.00	\$ 6.00
	Room Charge		\$1,000.00
	20% Service Charge		\$ 270.10
	20% Tip		\$ 270.10
	Tax		\$ 97.91
	Less: Permissible Discount		(\$1,000.00)
	Total		<u>\$ 1,718.51</u>

The amount charged the Gormley committee after discount was at least equal to the actual cost of the food and beverages. In fact, as an example, looking at the amounts charged on the beverages (\$3.00 for sodas and coffee, \$3.50 for juice and iced tea, and \$4.50 for double espresso), it is apparent that there is significant mark-up over cost in the gross prices.

In addition, the \$40 per person food cost charged to the Gormley committee (less discount) represents the fair market value for such food (that is, what would be charged of any customer for the same food in the same circumstances). Specifically, the Gormley campaign apparently requested a lunch menu to be prepared at a fair market value budget of \$40 per person, which was in fact prepared for the Gormley event. The menu was not part of the pre-set menu selection offered by the restaurant. The limited lunch served included the following: tuna carpaccio, salmon, dessert, and coffee.

3. Vendor Lists.

Lastly, the Commission's Factual and Legal Analysis raises the concern that "it is likely that [whoever organized the Gormley event] would have needed to utilize the corporate resources of Mirage . . . to devise a list of individuals to invite." (FEC at 11.)

Although a few individuals from outside of Mirage's restricted class apparently did attend the Gormley event held at Le Cirque, MGM does not believe that Mirage provided any vendor, customer, or client list to the Gormley campaign.

CONCLUSION

As stated above, in the spirit of cooperation, and especially since Mirage is under new ownership without any connection to the event at issue, MGM believes it would be productive for all parties either to enter into the Commission's alternative dispute resolution procedures or, alternatively, to conduct pre-probable cause negotiations directed towards entering into a conciliation agreement.

* * * * *

We look forward to the Commission's response to our request. Please feel free to call me at anytime at (415) 389-6800. Thank you for your assistance.

Sincerely,



Steven S. Lucas

cc: Gary Jacobs, Esq. (by fax)
MGM MIRAGE

SSL/slf
6311.01