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2 LOUISIANA GAMING LOUISIANA CONTROL BOARD

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5 BOARD OF DIRECTORS' MEETING

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10 Thursday, January 19, 2012

11

12 House Committee Room 1

13 Louisiana State Capitol

14 Baton Rouge, Louisiana

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18 TIME: 10:00 A.M.

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1 APPEARANCES

2

3 DANE K. MORGAN

4 Chairman

5

6 VELMA ROGERS

7 Vice-Chairman

8

9 ROBERT JONES

10 Board Member

11

12 AYRES BRADFORD

13 Board Member

14

15 MARK STIPE

16 Board Member

17

18 JAMES SINGLETON

19 Board Member

20

21 DENISE NOONAN

22 Board Member

23 MAJOR MARK NOEL

24 Ex-Officio Board Member

25

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1 APPEARANCES CONTINUED

2

3 LANA TRAMONTE

4 Executive Assistant to the Chairman

5

6 REPORTED BY:
7 SHELLEY G. PAROLA, CSR, RPR

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1 I. CALL TO ORDER

2 CHAIRMAN MORGAN: We'll come to
3 order. Good morning. Miss Tramonte
4 will call the roll, please.

5 THE CLERK: Chairman Morgan?

6 CHAIRMAN MORGAN: Here.

7 THE CLERK: Miss Rogers?

8 MS. ROGERS: Here.

9 THE CLERK: Mr. Bradford?

10 MR. BRADFORD: Here.

11 THE CLERK: Mr. Jones?

12 MR. JONES: Here.

13 THE CLERK: Mr. Stipe?

14 MR. STIPE: Here.

15 THE CLERK: Mr. Singleton?

16 MR. SINGLETON: Here.

17 THE CLERK: Miss Noonan?

18 MS. NOONAN: Here.

19 THE CLERK: Colonel Edmonson.

20 MAJOR NOEL: Major Noel for Colonel
21 Edmonson.

22 THE CLERK: Secretary Bridges? [No
23 response.]

24 II. PUBLIC COMMENTS

25 CHAIRMAN MORGAN: Okay. We have a
7

1 quorum. We'd like to offer an
2 opportunity for Public Comment. Is
3 there any public comment on any matter
4 before the Board today?

5 III. APPROVAL OF MINUTES

6 CHAIRMAN MORGAN: Hearing none,
7 Approval of the Minutes. Members, have
8 you had an opportunity to review the
9 minutes from December? Are there any
10 questions? Do we have a motion?

11 MR. BRADFORD: I move.

12 CHAIRMAN MORGAN: Mr. Bradford moves
13 to approve the minutes.

14 MS. NOONAN: Second.

15 MS. ROGERS: I second.

16 CHAIRMAN MORGAN: Seconded by
17 Miss Rogers. Is there any objection?

18 Hearing none, those are approved.

19 IV. REVENUE REPORTS

20 CHAIRMAN MORGAN: Item IV, Revenue
21 Reports.

22 MS. WARE: Good morning,
23 Mr. Chairman, Board Members. My name is
24 Trnessia Ware with the Louisiana State
25 Police Gaming Audit Section.

8

1 The riverboat revenue report for
2 December 2011 is shown on page one of
3 your handout. During December, the 13
4 operating riverboats generated Adjusted
5 Gross Receipts of \$138,567,136, up
6 \$14 million or 11 percent from last
7 month, but down \$2 million or 2 percent
8 from last December. Adjusted Gross
9 Receipts for fiscal year 2011-2012 to
10 date are over \$809 million, a decrease
11 of 1 percent or \$5.7 million from fiscal
12 year 2010-2011.

13 During December, the State collected
14 fees of almost \$30 million. As of
15 December 31st, 2011, the State has
16 collected \$174 million in fees for
17 fiscal year 2011-2012.

18 Next is the summary of the
19 December 2011 gaming activities for
20 Harrah's New Orleans found on page

21 three.

22 During December, Harrah's generated
23 \$32,118,047 in gross gaming revenue, up
24 \$11 million or 53 percent from last
25 month, but down slightly from last

9

1 December. Fiscal year-to-date gaming
2 revenues for 2011-2012 to date are
3 \$165 million, a decrease of 6 percent or
4 \$10.7 million for fiscal year 2010-2011.

5 During December, the State received
6 \$5,081,967 in minimum daily payments.

7 As of December 31st, 2011, the State has
8 collected \$30 million for fees in fiscal
9 year 2011-2012.

10 Slots at the Racetracks revenues are
11 shown on page four. During December,
12 the four racetrack facilities combined
13 generated Adjusted Gross Receipts of
14 \$31,235,011, an increase of \$1.5 million
15 or 5 percent from last month, and a
16 slight increase from last December.

17 Adjusted Gross Receipts for fiscal
18 year 2011-2012 to date are almost
19 \$193 million, an increase of 2 percent
20 or \$3.5 million from fiscal year
21 2010-2011.

22 During December, the State collected
23 fees of \$4.7 million. As of

24 December 31st, 2011, the State has
25 collected \$29 million in fees for fiscal

10

1 year 2011-2012.

2 Overall, riverboats, landbased and
3 Slots at the Racetracks generated
4 \$202 million, which is \$2.4 million or
5 1 percent less than last December.

6 Are there any questions before I
7 present Harrah's employee count and
8 payroll information? Harrah's New
9 Orleans is required to maintain at least
10 2,400 employees and a bi-weekly payroll
11 of \$1,750,835.

12 This report covers the two pay
13 periods in December 2011. For the first
14 pay period, the Audit Section verified
15 2,439 employees with a payroll of
16 \$2 million. For the second pay period,
17 the Audit Section verified 2,447
18 employees with a payroll 1,987,000.
19 Therefore, Harrah's met the employment
20 criteria during December.

21 Yes, sir.

22 MR. SINGLETON: Do you take a look
23 at -- because I keep hearing grumbling,
24 and it may be the part-time employees
25 versus full-time employees sometimes get

11

1 mixed up and that counts in this number?

2 Do you have any indication that these

3 are not all full-time employees?

4 MS. WARE: No. I don't have that
5 information with me, but I can look that
6 up and get back to you.

7 MR. SINGLETON: Okay.

8 CHAIRMAN MORGAN: Mr. Traylor.

9 MR. TRAYLOR: They're not all
10 full-time employees.

11 CHAIRMAN MORGAN: Introduce
12 yourself.

13 MR. TRAYLOR: I'm sorry. Jeff
14 Traylor, Gaming Division. It's not all
15 full-time. It's a mix of the part-time
16 and the full-time.

17 MR. SINGLETON: Is that what the
18 requirements are? And that's what I'm
19 trying to understand. People are
20 whispering to me that they're not
21 meeting the goals because some of them
22 are supposed to have full-time versus
23 part-time employees to make up the
24 2,400.

25 MR. TRAYLOR: That's the problem

12

1 that we have been dealing with since the

2 beginning. It doesn't specify in the

3 law whether it be full-time or

4 part-time, just the number. So that's
5 what we've been dealing with since this
6 started back in 2001, 2000.

7 CHAIRMAN MORGAN: It does address
8 the payroll amount, right?

9 MR. SINGLETON: That's the State --
10 that is the State then, the 2,400,
11 that's the requirement?

12 MR. TRAYLOR:: Yes, sir.

13 MR. SINGLETON: Maybe I ought to
14 just go back and ask the City, because
15 they had a contract that requires some
16 things in their contract, and maybe I
17 need to go back and add. If it's not in
18 your record, maybe it's in the City's
19 then. I'm not sure about that part, but
20 you're saying that some of these are
21 part-time employees that make up the
22 2,400?

23 MR. TRAYLOR: Yes, sir.

24 MR. SINGLETON: Can you tell me how
25 many?

13

1 MR. TRAYLOR:: I don't have it
2 today, but the next time we'll --

3 MR. SINGLETON: I'd just like to
4 know how many in the 2,400 are
5 part-time.

6 MR. TRAYLOR: Okay.

7 CHAIRMAN MORGAN: We need to get
8 clarification, because we worked through
9 this before with them right after I
10 became Chairman, and they were using
11 on-call individuals. So, I think,
12 didn't we set a minimum of number of
13 hours to be considered as a part-time
14 employee?

15 MR. TRAYLOR: We made sure that they
16 were working in the last -- I can't
17 remember if it's 60 days, I think --
18 that there is some history of them
19 working, not just that they left them on
20 there to show as an employee just to
21 count them. I mean, we make sure that
22 those people that they're claiming as
23 on-call are actually working. Some of
24 them are working every pay period, some
25 of them work full-time -- or maybe not a

14

1 full-time, 20 plus hours in one pay
2 period and none the next. But they
3 are -- there's a consistent pattern that
4 they're working. If they put somebody
5 as on-call and we see that they haven't
6 worked in two months, we don't count
7 those.

8 MR. SINGLETON: I guess if the
9 people -- I'm getting this information,

10 it's whispering information, probably
11 nothing much to it, and they are making
12 the suggestion. That's why I'm asking
13 that you check it very closely. I just
14 want to understand what the rules are
15 that we're operating under and whether
16 or not they actually are operating under
17 the same rule.

18 MR. TRAYLOR: And not to speak for
19 Harrah's. I know they've mentioned this
20 a few times, maybe in the board
21 meetings, that because of their numbers,
22 they do have to maintain some part-time
23 employees in order to keep the number to
24 where we require it to be because they
25 don't have the work for the number of

15

1 employees that they're required.
2 There's not enough work for 2,400
3 people.

4 MR. SINGLETON: Other people that
5 come in, if they can't meet their goal,
6 to come in and ask for some type of
7 compensation for that.

8 CHAIRMAN MORGAN: Yes, but I think
9 this is a contractual issue --

10 MR. SINGLETON: Okay.

11 CHAIRMAN MORGAN: -- between the
12 State, so we would need -- it gets more

13 complicated in this situation.

14 MR. SINGLETON: Okay. I'll just
15 wait until you get the information, and
16 we'll see where we are at that point.

17 CHAIRMAN MORGAN: Mr. Jones.

18 MR. SINGLETON: Thank you.

19 MR. JONES: Some companies use the
20 term "full-time equivalents," which
21 means if you've got a guy working half a
22 day and another one working half a day,
23 that's one full-time equivalent. If you
24 could report it in term of full-time
25 equivalents, FTEs, I think that's kind

16

1 of the intent of the law.

2 MR. TRAYLOR: We can report --
3 that's not an issue. We have all that
4 information to determine the number of
5 hours divided by -- I think they do 32
6 hours for a full-time employee -- and
7 provide that number. The problem,
8 again, that's what Leonce was just
9 mentioning, the law requires 90 percent
10 of the employment levels as of, I think
11 it was, March 8th, 2001. It doesn't
12 specify full-time, part-time.

13 MS. ZIPPERT: Hi, Christina Zippert.
14 I'm the compliance manager for Harrah's
15 New Orleans. Our DBE compliance

16 department is actually the ones that do
17 these numbers, so I'm not fully versed
18 on the law of their requirements, but I
19 do know FTEs -- it's not required to be
20 reported per FTEs. It is by employee,
21 but what we'd be happy to do to take
22 this off line, I'd be happy to get with
23 DBE compliance folks; and we can set up
24 a meeting with you, Chairman Morgan, if
25 that would be okay?

17

1 CHAIRMAN MORGAN: Well, we can, but
2 we've already addressed this. We just
3 don't have the information before us
4 today, but we have this delineated in
5 written form as to what's counted and
6 what's not.

7 MS. ZIPPERT: Correct.

8 CHAIRMAN MORGAN: We just need to
9 get that information to Mr. Singleton,
10 and then we'll readdress this next
11 month.

12 MS. ZIPPERT: Okay.

13 CHAIRMAN MORGAN: But I'd be more
14 than more happy to meet, but I think --

15 MS. ZIPPERT: Sure.

16 CHAIRMAN MORGAN: -- the parameters
17 are established. We just might need to
18 do a little different job of reporting

19 the various categories that we have
20 established.

21 MS. ZIPPERT: Thank you.

22 COURT REPORTER: Can you spell your
23 last name?

24 MS. ZIPPERT: Z-I-P-P-E-R-T.

25 MR. STIPE: I mean, it's driven by

18

1 contract, the agreement that was reached
2 by the parties in terms of how you
3 define employees and how it's
4 interpreted and all those kind of things
5 that I think we've worked through in, I
6 can't remember how many meetings ago,
7 but I remember one meeting we went
8 through that, so...

9 CHAIRMAN MORGAN: Okay. Any other
10 questions? Thank you. Video gaming.

11 MR. BOSSIER: Good morning, Chairman
12 Morgan and Board Members. My name is
13 Jim Bossier with the Louisiana State
14 Police Gaming Audit Section. I'm
15 reporting video gaming information for
16 December 2011, as shown on page one of
17 your handout.

18 During December 2011, eleven new
19 video gaming licenses were issued:
20 Seven bars and four restaurants.
21 Thirteen new applications were received

22 by the Gaming Enforcement Division
23 during December and are currently
24 pending the field: Four bars, eight
25 restaurants and one device owner.

19

1 The Gaming Enforcement Division
2 assessed \$5,782 and collected \$1,000 in
3 penalties in December, and there are
4 currently \$6,782 in outstanding fines.

5 Please refer to page two of your
6 handout.

7 There are currently 14,500 video
8 gaming devices activated at 2,159
9 locations.

10 Net device revenue for December 2011
11 was \$51,972,290, a \$4.6 million increase
12 or 9.8 percent when compared to net
13 device revenue for November 2011, and an
14 \$899,000 decrease or 1.7 percent when
15 compared to December 2010.

16 Net device revenue for fiscal year
17 2011-2012 to date is \$291,874,370, a
18 \$7.7 million decrease or 2.6 percent
19 when compared to net device revenue for
20 fiscal year 2010-2011. Page three of
21 your handout shows a comparison of net
22 device revenue.

23 Total franchise fees collected for
24 December 2011 were \$15,506,911, a

25 \$1.4 million increase when compared to
20

1 November 2011, and a \$236,000 decrease
2 when compared to December 2010.

3 Total franchise fees collected for
4 fiscal year 2011-2012 to date are
5 \$86,994,439, a \$2.2 million or
6 2.4 percent decrease when compared to
7 last year's franchise fees. Page four
8 of your handout shows a comparison of
9 franchise fees.

10 Does anybody have any questions?

11 V. PROPOSED SETTLEMENTS/APPEALS FROM HEARING

12 OFFICERS' DECISIONS

13 CHAIRMAN MORGAN: Any questions?

14 [No response.] Never moved to
15 settlements this quick, but Item V,
16 Proposed Settlements/Appeals. Attorney
17 General's Office, come up in the order
18 and introduce the matter.

19 1. In Re: Khorey M. Hart - No. PO40054666

20 (proposed settlement)

21 MS. BROWN: Good morning, Chairman
22 Morgan, Board Members, I'm Mesa Brown,
23 Assistant Attorney General, appearing on
24 behalf of the Division in the matter of
25 In Re: Khorey M. Hart, and this is

21

1 permit number PO40054666.

2 Here the permittee failed to remain
3 current in the payment and/or filing of
4 taxes owed. The permittee received the
5 tax clearance from the Internal Revenue
6 Service on October 5th of 2011. The
7 permittee and the Division have agreed to
8 settle this matter for a \$250 civil
9 penalty. The settlement has been
10 approved by the hearing officer, and it
11 is now being submitted for your
12 approval.

13 CHAIRMAN MORGAN: Thank you. Is
14 there any questions? I'll entertain a
15 motion to approve the settlement.

16 MR. JONES: So moved.

17 CHAIRMAN MORGAN: Mr. Jones makes a
18 motion.

19 MR. BRADFORD: Second.

20 CHAIRMAN MORGAN: Mr. Bradford
21 seconds. Is there any objection?
22 Hearing none, it's approved.

23 2. In Re: Facelift Painting, LLC, d/b/a Facelift
24 Painting - No. PO80902963 (proposed settlement)

25 MS. BROWN: Mesa Brown, Assistant

22

1 Attorney General. I will also be
2 appearing on behalf of Assistant
3 Attorney General, Olga Bogran, in the
4 next four matters. The first matter is,

5 In Re: Facelift Painting, LLC, d/b/a
6 Facelift Painting, case number
7 PO80902963.

8 Here the permittee failed to timely
9 submit its annual affidavit form and
10 fees. On October 18th, 2011, the
11 Division received the annual affidavit
12 form and fees. Both parties have agreed
13 to settle this matter for a civil
14 penalty of \$562.50. The settlement has
15 been approved by the hearing officer.
16 It is now being submitted for your
17 approval.

18 CHAIRMAN MORGAN: Okay. Any
19 questions?

20 MR. STIPE: I move approval of the
21 settlement.

22 CHAIRMAN MORGAN: Mr. Stipe moves
23 approval.

24 MS. NOONAN: Second.

25 CHAIRMAN MORGAN: Second by Miss

23

1 Noonan. Is there any objection? The
2 matter's approved. Item 3.

3 3. In Re: Matthew A. Harrison - No. PO40057720
4 (proposed settlement)

5 MS. BROWN: Thank you. The next
6 matter is, In Re: Matthew A. Harrison,
7 permit number PO40057720.

8 Here the permittee failed to remain
9 current in the payment and/or filing of
10 taxes owed. The permittee received a tax
11 clearance from the IRS on October 17th
12 of 2011. The permittee and the Division
13 have agreed to settle this matter for a
14 \$250 civil penalty. The settlement has
15 been approved by the hearing officer,
16 and it is now being submitted for your
17 approval.

18 CHAIRMAN MORGAN: Any questions?

19 MR. SINGLETON: Move approval.

20 CHAIRMAN MORGAN: Mr. Singleton
21 moves approval, seconded by Miss Noonan.
22 Is there any objection? Hearing none,
23 that's approved.

24 4. In Re: Pik Quik Food Store, Inc., d/b/a Ocean
25 Seafood & Restaurant - No. 3601216076

24

1 MS. BROWN: Thank you. The next
2 matter is Pik Quik Food Store, Inc.,
3 d/b/a Ocean Seafood & Restaurant,
4 license number 3601216076.

5 Here the licensee failed to timely
6 submit its annual forms and fees. It
7 submitted its forms and fees on
8 September 6th of 2011. Both parties
9 have agreed to settle this matter for a
10 civil penalty of \$750. The settlement

11 has been approved by the hearing
12 officer, and it is now being submitted
13 for your approval.

14 Are there any questions?

15 CHAIRMAN MORGAN: Questions?

16 MR. BRADFORD: Move approval.

17 CHAIRMAN MORGAN: Mr. Bradford moves
18 approval of the settlement, seconded
19 by --

20 MS. ROGERS: I'll second.

21 CHAIRMAN MORGAN: -- Miss Rogers.

22 Is there any objection? Hearing none,
23 that's approved.

24 5. In Re: Cary Rubsamen - No. PO40052161
25 (proposed settlement)

25

1 MS. BROWN: Okay. And the next
2 matter is, In Re: Cary Rubsamen, case
3 number PO40052161.

4 Here the permittee failed to remain
5 current in the payment and/or filing of
6 the taxes owed. The permittee received a
7 tax clearance from the IRS on
8 November 30th, of 2011. The permittee
9 and the Division have agreed to settle
10 this matter for a \$250 civil penalty.

11 The settlement has been approved by the
12 hearing officer. It is now being
13 submitted for your approval.

14 CHAIRMAN MORGAN: Any questions? I
15 move approval of the settlement.

16 Second?

17 MR. JONES: I'll second.

18 CHAIRMAN MORGAN: Second by
19 Mr. Jones. Any objection? Hearing
20 none, it's approved.

21 6. In Re: U.S. Foodservice, Inc. - No. PO86502300
22 (proposed settlement.)

23 CHAIRMAN MORGAN: Who has Item 6?

24 MS. COLLY: Good morning, Chairman
25 Morgan, Members of the Board. I am
26

1 Nicolette Colly, Good, representing the
2 Office of State Police in the matter of
3 U.S. Food Service, Inc.

4 U.S. Food Service, Inc., is a
5 non-gaming supplier permittee whose
6 anniversary date is September 27th,
7 2011. U.S. Food Service did not timely
8 submit its annual update form, annual
9 fee affidavit and \$250 renewal fee.

10 In lieu of suspension and penalty of
11 U.S. Food Service's permit, the parties
12 have stipulated that the permittee shall
13 pay a total penalty of \$562.50. The
14 order to approve the compromise and
15 settlement agreement was signed by
16 Hearing Officer Brown on December 21st,

17 2011, and is now being submitted for the
18 Board's approval.

19 CHAIRMAN MORGAN: Members, any
20 questions? I'll entertain a motion to
21 approve the settlement.

22 MR. STIPE: [Indicates approval.]

23 CHAIRMAN MORGAN: Mr. Stipe moves --

24 MR. BRADFORD: Second.

25 CHAIRMAN MORGAN: Seconded by Mr.

27

1 Bradford. Any objection? Hearing none,
2 that's approved.

3 7. In Re: R.T. & C.T., L.L.C., d/b/a Starfish
4 Restaurant - No. 2603210220 (appeal)

5 CHAIRMAN MORGAN: Item VII is R.T. &
6 C.T., LLC, doing business as Starfish
7 Restaurant number 2603210220. It's an
8 appeal. Both parties introduce
9 yourself.

10 MS. COLLY: Good morning, Chairman
11 Morgan, Members of the Board, I am
12 Nicolette Colly, Good, representing the
13 Office of State Police in this matter,
14 R.T. & C.T., Inc., d/b/a Starfish
15 Restaurant.

16 MR. ROBICHAUX: My name is Thomas
17 Robichaux. I'm an attorney representing
18 the defendant, R.T. & C.T., LLC, which
19 is the successor to R.T. & C.T., Inc.

20 CHAIRMAN MORGAN: So you took the
21 appeal, so go ahead and start.

22 MR. ROBICHAUX: Thank you. First,
23 I'd like to reassert and reiterate the
24 arguments that we made in our memorandum
25 in support of this appeal. I know

28

1 you've all read these briefs.

2 We dispute several of the findings
3 of facts of the hearing officer,
4 particularly paragraphs one and five,
5 that Mr. Mount lied to the trooper. He
6 told the truth as he believed it to be.
7 There's no evidence that he deliberately
8 lied, that Mr. Vadros was not supposed
9 to be signing checks as part of the
10 facts that were in dispute.

11 We dispute that the State Police
12 were never informed that Mr. Vadros was
13 elected secretary of the corporation,
14 when that was done at the direction of
15 the State and is public record held by
16 the Secretary of State.

17 We dispute that Mr. Vedros exercised
18 significant influence over the business.
19 This conclusion is based on an arbitrary
20 standard determined by Trooper Billiot
21 based on the hearsay statements of a
22 person the State admits is a criminal

23 with multiple convictions and is
24 contrary to the testimony of the only
25 live witness, the owner, Mr. Mount. And

29

1 we also dispute the conclusions of the
2 hearing officer and suggest that
3 revocation is far too harsh of a remedy.

4 This case hinges on two things:
5 Whether or not Mr. Vedros was
6 unsuitable, and, two, whether Mr. Vedros
7 had significant influence over the
8 business and, therefore, had to be found
9 suitable.

10 First, Mr. Vedros was never
11 determined by this board to be
12 unsuitable, so it cannot be said that a
13 person who was found unsuitable was
14 having control or influence over a video
15 poker licensee. Second, and most
16 importantly, is that this board cannot,
17 under the present law, take action
18 against persons alleged to have
19 significant influence over the business,
20 because that term is undefined, vague
21 and unconstitutional delegation of
22 legislative authority to the Executive
23 Branch in violation of Separation of the
24 Powers Doctrine, and its application is
25 arbitrary and capricious in violation of

1 the constitutional right to equal
2 protection and due process.

3 The significant influence comes up
4 in Louisiana Revised Statute 27:310(D),
5 where it says, every person who has the
6 ability in the opinion of the Division
7 to exercise a significant influence
8 shall meet suitability requirements.

9 Determination of significant
10 influence is left to the sole discretion
11 of the Division without any guidance for
12 either the Division nor the licensees as
13 to what that means. This is a fatal
14 flaw in the law and the prosecution of
15 this case and perhaps many others. The
16 lack of a definition or guidance in the
17 statute results in an unconstitutional
18 delegation of legislative authority to
19 the Executive Branch. Further, its
20 application is clearly arbitrary and
21 capricious because there are no set
22 standards for the Division to apply.

23 The reality is that each officer who
24 inspects or investigates makes their own
25 determination of what is significant

1 influence, and that automatically
2 becomes the opinion of the Division.

3 This is a violation of the licensee's
4 rights to due process and equal
5 protection of the laws. There is no
6 mechanism for the Division to actually
7 render an opinion. This is not the
8 opinion of a director or secretary of a
9 department based on a set of criteria,
10 and the Division personnel don't meet
11 and vote on a case-by-case basis. The
12 provision is vague, and the application
13 of this provision is, on its face,
14 arbitrary and capricious and, therefore,
15 unconstitutional.

16 Well, so we have to ask ourselves
17 what constitutes an unconstitutional
18 delegation of legislative authority.
19 The Louisiana Supreme Court has set
20 forth a three-prong test called a
21 Schwegmann Test. It goes like this:
22 One, it has to contain a clear
23 expression of legislative policy. Two,
24 it has to prescribe sufficient standards
25 to guide the agency in the execution of

32

1 that policy, and three, it must be
2 accompanied by adequate procedural
3 safeguards to protect against abuse or
4 discretion by the agency.

5 The Supreme Court further stated

6 that by insisting that the enabling
7 statute prescribed not only legislative
8 policies to be enforced by the agency,
9 but also sufficient standards to guide
10 or canalize the agency's execution of
11 the legislative will, the test ensures
12 the statute delegates only
13 administrative or ministerial authority
14 and guards against delegations of
15 unbridled legislative discretion and the
16 danger of delegation running riot.

17 That is the case herein, because
18 there are no standards for significant
19 influence. Each officer applies a
20 different and inconsistent standard.
21 For example, in this case, Officer
22 Billiot testified that she felt
23 accepting deliveries and placing orders
24 and picking up supplies at the store
25 rises to the level of significant

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1 influence. I completely disagree with
2 that. My opinion is very different, and
3 I believe if you ask -- surveyed this
4 panel, you'd each come up with a
5 different opinion of what constitutes
6 significant influence. This, I put to
7 you, is a legally absurd result.
8 Furthermore, since violation of these

9 gaming laws are a potential felony, the
10 legislature has impermissibly delegated
11 its authority to define felony to an
12 administrative body. The legislature
13 cannot delegate the right to define
14 felony offenses to administrative bodies
15 or department heads.

16 Also, the legislature cannot
17 delegate to the executive branch under
18 however stringent guidelines the
19 authority to fill in the details of what
20 constitutes a felony under the statute.

21 Now, a rule is unconstitutionally
22 vague if men of common intelligence must
23 necessarily guess at its meaning and
24 differ as to its application. A law is
25 fatally vague and offends due process

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1 when it denies persons of ordinary
2 intelligence a reasonable opportunity to
3 know what action is prohibited so that
4 he may act accordingly. Further, even
5 if a rule is understandable, it may fail
6 constitution analysis if it is
7 inconsistently or arbitrarily applied.

8 Such is the case herein. We do not have
9 a consistency in the application of this
10 law or in this rule. The substantial
11 control is arbitrarily and capriciously

12 applied across the board, and it is done
13 differently by every single officer in
14 the state. And we just -- and it's not
15 constitutional, and it cannot be
16 applied.

17 Now, this body does not have the
18 authority to declare the law
19 unconstitutional, but it does have the
20 ability and authority and, in fact, it
21 behooves this body to follow the
22 precedent set by the Louisiana Supreme
23 Court and refuse to act on a rule that
24 is clearly unconstitutional.

25 In conclusion, I'd like to reiterate

35

1 three things. Mr. Mount, the primary
2 defendant here, did not lie.
3 Mr. Vedros, who is now dead, was never
4 found unsuitable. He did not under the
5 rules have a significant influence
6 because significant influence is
7 undefined. Rules are -- these rules of
8 the gaming board are promulgated for the
9 health, welfare and safety of the
10 public, and to protect the video gaming
11 industry from infiltration from
12 organized crimes and other harmful and
13 unscrupulous elements thereby ensuring
14 the fair play of all video gaming

15 devices and the prosperity and longevity
16 of the industry.

17 I submit to you that Mr. Vedros is
18 dead. He's never been found unsuitable,
19 and there has never been an allegation
20 that there was any theft or other
21 impropriety committed by him or any
22 other person at R.T. & C.T., Inc., or
23 LLC, in any of the video poker
24 operations.

25 So the purpose of the law and the

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1 rules has been upheld. There is no --
2 there's no harm that has been done here
3 to the video poker industry. There's no
4 foul, no chance of him coming back from
5 the grave and screwing things up again,
6 excuse my French. Revocation in this
7 case is far beyond any reasonable
8 penalty. We pray to the Board to
9 reverse the decision of the hearing
10 officer completely and impose a fine in
11 lieu of revocation. Thank you.

12 MS. COLLY: Okay. I think what's
13 important here is to focus on the fact
14 that Mr. Vedros was never reported to
15 the Division from day one. I believe he
16 was initially named treasurer in 2005.
17 That wasn't discovered until the

18 investigation began in 2008. Upon that
19 investigation when it began, Mr. Vedros
20 was actually the person in communication
21 with the Division providing information,
22 answering questions and seemed to be the
23 person in control, which is why the full
24 investigation was initiated. When it
25 came to asking Mr. Mount questions, he

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1 was unable to provide information,
2 didn't know, had to get back to the
3 Division and things like that.

4 As far as the false information that
5 was provided, what's important is not
6 Mr. Mount's intent, but the fact that
7 the information did turn out to be
8 inaccurate and incorrect. In
9 Mr. Mount's testimony to the Division in
10 the -- at the hearing, Mr. Mount did
11 admit that Vedros helped him run the
12 business, gave him advice and did things
13 on his behalf. He also testified that
14 he gave Mr. Vedros authority to sign
15 checks, even write them out to cash and
16 take that money out for him,
17 Mr. Vedros's use. Mr. Mount also
18 testified that he was aware of
19 Mr. Vedros's criminal background and
20 that Mr. Vedros did, in fact, help him

21 run the business in 2007 when he was
22 sick.

23 At that time and throughout the
24 whole history of the license, Mr. Vedros
25 should have been reported to the

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1 Division, and he was not. As far as
2 R.T. & C.T.'s contention that Trooper
3 Billiot's testimony was hearsay, that
4 was not objected to at the hearing.
5 Hearsay is admissible, and R.T. & C.T.
6 did not object to the hearsay at the
7 hearing.

8 CHAIRMAN MORGAN: Mr. Stipe has a
9 question.

10 MR. STIPE: I'm sorry.
11 Mr. Robichaux. I mean, there was a
12 period where Mr. Mount was sick,
13 correct?

14 MR. ROBICHAUX: Yes, sir.

15 MR. STIPE: Okay. And during that
16 time frame, Mr. Vedros did operate the
17 business?

18 MR. ROBICHAUX: That is correct, and
19 that's not denied.

20 MR. STIPE: And it's not your
21 position that during that time frame
22 Mr. Vedros exerted substantial control.
23 He did during that time, didn't he?

24 MR. ROBICHAUX: I cannot deny that
25 for that time frame, but it was a few

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1 weeks in 2005. I think that really has
2 prescribed. I think there's a
3 three-year limit for prosecuting
4 something like that.

5 CHAIRMAN MORGAN: I don't think so.

6 MR. STIPE: I probably disagree with
7 that. I interrupted. I'm sorry.

8 MS. COLLY: It was clear during the
9 investigation that Mr. Mount either
10 didn't know what was going on in the
11 business and couldn't answer the
12 questions of the Division as far as
13 presenting his books and receipts and
14 whether Mr. Vedros was still a signer --
15 an approved signer on the company
16 checking account, which he shouldn't
17 have been at anytime because he was
18 never proven suitable.

19 Upon the recommendation that
20 Mr. Vedros be deemed suitable,
21 Mr. Vedros continued to participate in
22 the gaming activities of the business.
23 It was shown in the evidence to the
24 hearing officer that Mr. Vedros was
25 still executing checks, still

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1 participating in the business.

2 Upon the follow-up investigation,
3 Mr. Mount did reply that Mr. Vedros was
4 not signing checks, either because he
5 provided -- was lying or wasn't actually
6 aware. Either way, as the 100 percent
7 owner of the business, he should have
8 known what was going on with that
9 account. It wasn't until the follow-up
10 investigation that Mr. Mount actually
11 removed Mr. Vedros from the account.

12 I believe that the Division has
13 provided sufficient evidence and
14 testimony to prove that R.T. & C.T. did
15 not conduct itself in accordance with
16 Louisiana Gaming Law. The testimony and
17 documents presented to the hearing
18 officer prove those contentions, and we
19 pray that the decision and order of the
20 hearing officer revoking R.T. & C.T.'s
21 license be affirmed.

22 CHAIRMAN MORGAN: Do you have any
23 rebuttal?

24 MR. ROBICHAUX: Yes, sir.
25 Mr. Vedros was, in fact, installed as

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1 secretary of the corporation at the
2 request of the State, and my compatriot
3 here stated that he seemed to be in

4 control. Mr. Mount testified that, no,
5 in fact, Mr. Mount was in control. Now,
6 being the secretary of a corporation on
7 paper, as I think most of us know, does
8 not necessarily mean that you're
9 exercising significant influence over
10 the corporation. You may just be a
11 paper tiger. So and that goes back to
12 my entire point, which is that the
13 definition of significant influence does
14 not exist.

15 Mr. Mount is not a sophisticated
16 person. This is a mom and pop
17 operation, not a multi-national
18 corporation, not even a multi-parish
19 corporation. This is a little place on
20 Grand Isle that is run the way lots of
21 people run their businesses, like a mom
22 and pop.

23 I want to point out that there's a
24 significant difference in the result
25 here between the finding that Mr. Mount

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1 lied and that Mr. Mount was inaccurate
2 in his statements. The hearing officer
3 found that he lied, and that is just not
4 the case. And the penalty, I think,
5 should reflect that difference.

6 She claims that Mr. Vedros stated --

7 well, the trooper claimed that
8 Mr. Vedros stated that he helped run the
9 business, but what does that mean? My
10 bartender, my porter, my janitor, they
11 all help me run the business. These are
12 vague terms. This is why the
13 significant influence definition is
14 absolutely essential to any adjudication
15 of a case of this type, and as far as,
16 Mr. Stipe, your question about being
17 sick. We don't dispute that he helped,
18 okay, but, you know, viruses, bacterias,
19 other illnesses, they have no respect
20 for this Board or the rules put by the
21 Division or the laws of the legislature.
22 When people get sick in this world, our
23 friends step up and help us.

24 Now, how do I know that I'm going to
25 be sick tomorrow with a virus that's

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1 going to knock me on my back for a
2 month? I don't. I can't go
3 preemptively and get somebody to be
4 certified, and I don't know how long I'm
5 going to be down. I put to you that
6 having someone step in and run the
7 business while you're sick is not
8 something that the legislature intended
9 to really penalize by a revocation

10 action.

11 Now, I understand that there's a
12 technicality of a violation there, but
13 that's not something that we as a
14 society should condemn; and I ask you to
15 reverse the recommendation of the
16 hearing officer. Do not revoke this
17 license. Mr. Mount has never had a
18 problem other than this incident, and I
19 think that a revocation is far too
20 strong of an action for this board. I
21 thank you.

22 CHAIRMAN MORGAN: Sir, just a few
23 comments before I open it up to the
24 board members. To say it's a technical
25 violation is a stretch, in my opinion,

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1 because he -- everybody that's a
2 licensee is supposed to know all the
3 rules and regulations of this state, and
4 that's an obligation as a licensee. And
5 then going beyond that, it seems that he
6 was less than cooperative with the
7 Division during this investigation, and
8 that's my main concern in this issue.

9 Now, does that reach the level of
10 unsuitability? I'm not certain of that.
11 But it is an issue, and he is to
12 cooperate with the investigators. That

13 is paramount to this industry. And it
14 seems by the reading and the evidence
15 that was presented, that the State
16 Police had to basically pull teeth to
17 get information from him, and he wasn't
18 aware of the information and had to go
19 back and forth across the street to his
20 residence several times. It just was --
21 it looked like a circus by reading this
22 in the information that was provided.

23 I can't stress to you enough to
24 convey that to your client, that we
25 expect cooperation with the

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1 investigators when they're looking into
2 these matters, and I think communication
3 would have resolved this early on
4 instead of being obstinate.

5 MR. ROBICHAUX: Yes, sir. I can
6 tell you on behalf of my company, Lucky
7 Coin, who I'm the general counsel for,
8 if this board does not revoke, if he
9 stays in business, we will offer our
10 services to help him more fully -- more
11 fully comply in a more efficient manner
12 with all of the rules and regulations
13 and requests of the Division.

14 CHAIRMAN MORGAN: Okay. Any
15 questions?

16 MR. BRADFORD: I would hope that he
17 would fully comply.

18 MR. ROBICHAUX: Yes.

19 MR. BRADFORD: Completely comply.

20 MR. ROBICHAUX: Completely comply.

21 MR. BRADFORD: As do the other 2,000
22 people that we regulate in the --

23 MR. ROBICHAUX: Correct. I
24 apologize for the misstatement.

25 MR. BRADFORD: First of all, I want

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1 to go on the record disagreeing with you
2 that Mr. Vedros did not have substantial
3 control and authority over the business.
4 I believe that he did, and I do not
5 condemn Mr. Mount for that. I just wish
6 he had followed the rules and made the
7 proper submittal of paperwork to confirm
8 and that it's timely. I'll leave it
9 open for other board members to comment.

10 I have a motion or -- did you have a
11 motion? I have a motion whenever it's
12 appropriate.

13 MS. ROGERS: This is really just a
14 comment. We've spent so much time on
15 Mr. Vedros. I kind of feel like his
16 demise kind of renders this route.

17 MR. ROBICHAUX: I did not disagree
18 with you.

19 MS. ROGERS: And my other comment
20 is: In your opinion, does Mr. Mount
21 understand? You made a statement that
22 mom and mop or whatever -- and I don't
23 want to put words in your mouth -- but
24 do you think that he understands what he
25 has to do?

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1 MR. ROBICHAUX: I do believe that he
2 does, ma'am. I've met with him several
3 times over the course of this. I've
4 only been with the company for about
5 nine months now; and I took over this
6 action as his defense lawyer, but I've
7 had several conversation with him about
8 all the processes here and all of the
9 rules and regulations and where he
10 messed up. And I think he really has a
11 much firm -- more firm grasp -- a truly
12 firm grasp of where he messed up.

13 CHAIRMAN MORGAN: Well, in all
14 fairness, it's a mom on pop that makes
15 \$125,000 a year off these devices here,
16 too. So let's make sure we get it all
17 on the record.

18 MR. ROBICHAUX: Location, location,
19 location.

20 CHAIRMAN MORGAN: I wish I had a mom
21 and pop like that.

22 MR. ROBICHAUX: Me, too.

23 CHAIRMAN MORGAN: Any other
24 questions?

25 MR. BRADFORD: I have a comment -- a

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1 motion, but first of all, I want it to
2 be known that I do agree with the
3 hearing officer's finding of fact and
4 his application of the law; however, as
5 I voted several months ago, I do not
6 believe that this evidence supports
7 revocation, and my motion is that --
8 that we reverse the hearing's officer's
9 decision concerning revocation, and that
10 we impose a \$25,000 fine. In addition
11 to that, I move that we call for a
12 suspension of this license for ten days
13 in lieu of revocation.

14 CHAIRMAN MORGAN: Okay. Do the
15 members understand the motion? Okay.
16 We have a motion by Mr. Bradford,
17 seconded by Miss Rogers. Is there any
18 objection to the motion?

19 MR. JONES: I object.

20 CHAIRMAN MORGAN: Mr. Jones objects.
21 Do you have a substitute, or do you want
22 to --

23 MR. JONES: No.

24 CHAIRMAN MORGAN: May we have a roll

25 call vote?

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1 THE CLERK: Miss Rogers?

2 MS. ROGERS: Yes.

3 THE CLERK: Mr. Bradford?

4 MR. BRADFORD: Yes.

5 THE CLERK: Mr. Jones?

6 MR. JONES: No.

7 THE CLERK: Mr. Stipe?

8 MR. STIPE: Yes.

9 THE CLERK: Mr. Singleton?

10 MR. SINGLETON: Yes.

11 THE CLERK: Miss Noonan?

12 MS. NOONAN: Yes.

13 THE CLERK: Chairman Morgan?

14 CHAIRMAN MORGAN: Yes. The motion
15 carries. Thank you.

16 MR. ROBICHAUX: Thank you very much.

17 8. In Re: Charles J. Russell, III - No.

18 PO40032152 (rehearing request)

19 CHAIRMAN MORGAN: Item 8 is Charles

20 J. Russell, III, permit number

21 PO40032152. It's a rehearing request.

22 Is Mr. Russell here?

23 MR. HEBERT: No.

24 CHAIRMAN MORGAN: Go ahead.

25 MR. HEBERT: Good morning, Chairman

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1 Morgan, Members of the Board. I'm

2 Christopher Hebert, Good, representing
3 the matter of the State Police in the
4 matter of Charles J. Russell, III.

5 The Division would respectfully
6 submit that on November 10th, 2011, a
7 notice of recommendation of revocation
8 addressed to Mr. Russell was signed by
9 Chairman Morgan. This notice was based
10 on Mr. Russell's October 12th, 2011,
11 arrest for aggravated cruelty to
12 animals, a felony. Mr. Russell signed
13 for and received the Board's notice on
14 November 17th, 2011.

15 The notice indicated that Mr.
16 Russell had the right to request an
17 administrative hearing with the hearing
18 officer of the Louisiana Gaming Control
19 Board. The notice indicated that Mr.
20 Russell's written request for a hearing
21 must be filed with the administrative
22 docket clerk within ten calendar days of
23 his receipt of his notice pursuant to
24 the board hearing's Rule 108.

25 The notice indicated further that if

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1 Mr. Russell's request for a hearing was
2 not filed within ten calendar days of
3 his receipt of the notice, he would have
4 waived his right to any review, and his

5 permit would be revoked without further
6 proceedings. And finally, the notice
7 provided the title and address of the
8 administrative docket court in order for
9 Mr. Russell to request a hearing.

10 On December 2nd, 2011, the board
11 issued a notice of revocation for Mr.
12 Russell indicating Mr. Russell was
13 informed of his right to request an
14 administrative hearing, that his hearing
15 request should have been received by the
16 administrative docket clerk on
17 November 28th, 2011, and that no hearing
18 request was received.

19 Further, the notice indicated that
20 as a result of his nonaction,
21 Mr. Russell waived his right to any
22 review, and that his non-key gaming
23 employee permit was revoked. Mr.
24 Russell received the Board's notice of
25 revocation, as evidenced by a response

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1 to Chairman Morgan from his attorney,
2 Mr. Guerra, on December 8th, 2011. The
3 Division asserts that the notice is very
4 clear regarding the procedure to be
5 followed in order to request a hearing,
6 that Mr. Russell did not follow that
7 procedure, and that his failure to act

8 is the reason for the revocation of his
9 non-key gaming employee permit.

10 I'd be happy to answer any questions
11 that you have at this time.

12 CHAIRMAN MORGAN: Weren't the
13 charges refused?

14 MR. HEBERT: Yes, they were.

15 CHAIRMAN MORGAN: Any questions? We
16 have a request from the permittee for
17 this matter to be reheard at the hearing
18 office. They don't have to appear to
19 make a request. You have the evidence
20 before you with what they submitted.

21 What's the pleasure of the Board?

22 Mr. Stipe.

23 MR. STIPE: Yeah. You've seen this
24 exhibit. I mean, in light of this,
25 what's the -- what's your position on --

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1 MR. HEBERT: The Division's position
2 is that under the current law, once the
3 license is revoked, it's revoked for
4 five years, and that five years from the
5 date of the revocation Mr. Russell can
6 reapply.

7 MR. STIPE: And the revocation is
8 based on?

9 MR. HEBERT: The revocation was
10 initially based on his pending charge of

11 cruelty to animals.

12 MR. BRADFORD: I've got a question.

13 So if we grant him a rehearing at the
14 hearing office and it's reversed, does
15 the revocation go away?

16 MR. HEBERT: Right. The Division
17 would have to then consider the facts as
18 they are currently, and I think as part
19 of the notice -- part of the notice
20 indicated that Mr. Russell did fail to
21 timely notify the Division of the
22 arrest, and we would then seek a penalty
23 for that failure to notify but would no
24 longer seek revocation.

25 CHAIRMAN MORGAN: I'm getting

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1 Miss Smith to give some guidance.

2 MS. SMITH: Yes, sir.

3 CHAIRMAN MORGAN: Can you reiterate
4 about the law what you just told me?
5 There used to be a rule, and then it
6 changed.

7 MS. SMITH: Oh. In the past, the
8 five-year prohibition is by rule and not
9 by statute, and that's when we used to
10 talk about extenuating circumstances.
11 Now, it's in the statute. So it says,
12 shall not be granted a license for five
13 years after revocation or a finding of

14 unsuitability, I believe, or approval.

15 CHAIRMAN MORGAN: Right. So back
16 before about the rule of the Board and
17 actually taking actions to reverse some
18 of the revocations, but now it's by law.
19 We really don't have a choice. So I
20 move to deny the hearing request, unless
21 there's other discussions, just because
22 of the matters of law, right? Am I
23 understanding you correctly? No? Maybe
24 I got it wrong.

25 MS. SMITH: After any decision, the

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1 party can request a rehearing. They
2 have ten days, and the rehearing can be
3 granted under those circumstances of
4 49:959. So in this instance, if the
5 Board would consider that there's
6 additional evidence, then there could
7 be -- considered grounds for a
8 rehearing, and at that time, the hearing
9 officer could consider the additional
10 grounds and render a decision
11 accordingly.

12 So it is within the Board's purview,
13 even with that law, to grant a
14 rehearing, and what that does is allow a
15 new hearing with additional evidence.
16 And that would not be in violation of

17 the five-year prohibition.

18 CHAIRMAN MORGAN: Yeah, I definitely
19 missed that one.

20 MS. SMITH: I'm sorry.

21 CHAIRMAN MORGAN: I'm missing your
22 argument.

23 MR. HEBERT: My argument is based on
24 the provisions of 27:28 as they are now,
25 and I don't think that our arguments are

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1 different. It's just that the Division
2 took the position that his time had run.
3 With this additional information, it is
4 my understanding that you-all have the
5 power to consider the new facts, grant
6 the rehearing, at which time the hearing
7 officer can consider these new facts.

8 CHAIRMAN MORGAN: Okay. I defer to
9 smarter people on the board than me.

10 MR. BRADFORD: I'll give you a
11 motion. I move that the request for a
12 rehearing be granted and the matter be
13 forwarded back to the hearing officer.

14 CHAIRMAN MORGAN: Now, I guess we've
15 got that on record. The matter will be
16 granted for rehearing and forwarded back
17 to the hearing officer. Is there a
18 second? I'll tell you what, I'll second
19 that. Is there any objection? Hearing

20 none, that's approved.

21 Any other business?

22 VI. ADJOURNMENT

23 CHAIRMAN MORGAN: Okay. Motion to
24 adjourn.

25 MR. BRADFORD: I move.

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1 CHAIRMAN MORGAN: By Mr. Bradford,
2 seconded by Miss Noonan.

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1 REPORTER'S PAGE

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3 I, SHELLEY PAROLA, Certified Shorthand
4 Reporter, in and for the State of Louisiana, the
5 officer before whom this sworn testimony was
6 taken, do hereby state:

7 That due to the spontaneous discourse of this
8 proceeding, where necessary, dashes (--) have been
9 used to indicate pauses, changes in thought,
10 and/or talkovers; that same is the proper method
11 for a Court Reporter's transcription of a
12 proceeding, and that dashes (--) do not indicate
13 that words or phrases have been left out of this
14 transcript;

15 That any words and/or names which could not
16 be verified through reference materials have been
17 denoted with the word "(phonetic)."

18
19
20
21
22
23

24 SHELLEY PAROLA

Certified Court Reporter #96001

25 Registered Professional Reporter

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1 STATE OF LOUISIANA

2 PARISH OF EAST BATON ROUGE

3 I, Shelley G. Parola, Certified Court

4 Reporter and Registered Professional Reporter, do

5 hereby certify that the foregoing is a true and

6 correct transcript of the proceedings given under

7 oath in the preceding matter on January 19, 2012,

8 as taken by me in Stenographic machine shorthand,

9 complemented with magnetic tape recording, and

10 thereafter reduced to transcript, to the best of

11 my ability and understanding, using Computer-Aided

12 Transcription.

13 I further certify that I am not an

14 attorney or counsel for any of the parties, that I

15 am neither related to nor employed by any attorney

16 or counsel connected with this action, and that I

17 have no financial interest in the outcome of this

18 action.

19 Baton Rouge, Louisiana, this 1st day of

20 February, 2012.

21

22

23 _____
SHELLEY G. PAROLA, CCR, RPR

CERTIFICATE NO. 96001

24