

LGCB Board of Directors' Meeting , (Pages 1:1 to 97:24)

1: 1 LOUISIANA GAMING LOUISIANA CONTROL BOARD

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4 BOARD OF DIRECTORS' MEETING

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9 October 18, 2012

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11 Louisiana State Capitol

12 House Committee Room 1

13 Baton Rouge, Louisiana

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17 TIME: 10:00 A.M.

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1 APPEARANCES

2

3 VELMA ROGERS

4 Vice-Chairman

5

6 AYRES BRADFORD

7 Board Member

8

9 ROBERT JONES

10 Board Member

11

12 MARK STIPE

13 Board Member

14

15 JAMES SINGLETON

16 Board Member

17

18 DENISE NOONAN

19 Board Member

20

21 MAJOR CLAUDE MERCER

22 Board Member

23

24 CLAUDE JACKSON

25 Board Member

3

1 APPEARANCES CONTINUED

2

3 MAJOR MARK NOEL

4 Ex-Officio Board Member

5

6

7 LANA TRAMONTE

8 Executive Assistant to the Chairman

9

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11 REPORTED BY:

12 SHELLEY G. PAROLA, CSR, RPR

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1 I. CALL TO ORDER

2 VICE-CHAIRMAN ROGERS: I'd like to
3 call the meeting of the Louisiana Gaming
4 Control Board to order, please. First
5 of all, let me tell you that I'm sitting
6 here for the Chairman who called in ill
7 this morning, so you will have to bear
8 with me. Miss Tramonte, would you call
9 the roll, please.

10 THE CLERK: Chairman Hall?

11 VICE-CHAIRMAN ROGERS: Here?

12 THE CLERK: Miss Rogers?

13 VICE-CHAIRMAN ROGERS: Here.

14 THE CLERK: Mr. Bradford?

15 MR. BRADFORD: Here.

16 THE CLERK: Mr. Jones?

17 MR. JONES: Here.

18 THE CLERK: Mr. Stipe?
19 MR. STIPE: Here.
20 THE CLERK: Mr. Singleton?
21 MR. SINGLETON: Here.
22 THE CLERK: Miss Noonan?
23 MS. NOONAN: Here.
24 THE CLERK: Major Mercer?
25 MAJOR MERCER: Here.

8

1 THE CLERK: Mr. Jackson?
2 MR. JACKSON: Here.
3 THE CLERK: Colonel Edmonson?
4 MAJOR NOEL: Major Noel for Colonel
5 Edmonson.
6 THE CLERK: Secretary Barfield? [No
7 response.]
8 VICE-CHAIRMAN ROGERS: Not only do
9 we have a quorum, we have everybody
10 here.

11 II. PUBLIC COMMENTS

12 VICE-CHAIRMAN ROGERS: Do we have
13 any public comments at this time?
14 Public comments related to the agenda?
15 I'd like to call on Mr. Jones. I think
16 he has some comments he'd like to make.
17 MR. JONES: Yeah. There was a
18 terrific Associated Press article
19 Saturday morning, and I think we all
20 know that the vulnerable underbelly of

21 this industry was people that get
22 addicted to gambling and lose all their
23 family money and can cause serious
24 problems domestically.

25 There's a program in Shreveport that

9

1 all of us, I think, here are familiar
2 with where addicts can go and spend two
3 or three weeks, and it's really done a
4 lot of good.

5 There was an article -- this AP
6 article, which I made copies for all the
7 members. It talks about what a terrific
8 program it is. Reece Middleton that
9 runs it, of course, he appears before us
10 periodically to give us an update; but
11 it talked specifically about one lady,
12 and it said it changed her life and may
13 have saved her marriage. And she now
14 works part-time there.

15 And so it's really a good program.
16 It's received national acclaim, and I
17 just wanted to point that out to the
18 board members. Some of you may have
19 seen it, but those of you who didn't,
20 I'm just going to pass out copies of it.
21 That's it.

22 VICE-CHAIRMAN ROGERS: Thank you,
23 Mr. Jones.

24 III. APPROVAL OF MINUTES

25 VICE-CHAIRMAN ROGERS: I am going to
10

1 ask for a motion to waive the reading of
2 the minutes of the last meeting. Do we
3 have a motion?

4 MS. NOONAN: I'll move -- motion.

5 MR. JONES: Second.

6 VICE-CHAIRMAN ROGERS: Moved and
7 seconded. We will waive the reading of
8 the minutes.

9 IV. REVENUE REPORTS

10 VICE-CHAIRMAN ROGERS: All right.
11 We'll have the Revenue Reports now,
12 please.

13 MS. JACKSON: Good morning,
14 Miss Rogers, Board Members. My name is
15 Donna Jackson with the Louisiana State
16 Police Gaming Audit Section.

17 The riverboat revenue report for
18 September 2012 is shown on page one of
19 your handout. During September, the 13
20 operating riverboats generated Adjusted
21 Gross Receipts of \$141,799,760, up
22 7 percent of \$9 million from last month,
23 and up 6 percent or \$7.7 million from
24 last year. L'Auberge Baton Rouge opened
25 on September 1st entertaining

1 approximately 167,000 patrons and
2 generating almost \$13.3 million in AGR.

3 The Baton Rouge market as a whole
4 experienced a \$10 million increase over
5 September 2011.

6 Adjusted Gross Receipts for fiscal
7 year 2012-2013 to date are \$413 million,
8 a decrease of 2 percent or almost \$10
9 million from fiscal year 2011-2012.

10 During September, the State
11 collected \$30.5 million in fees. As of
12 September 30th, 2012, the State has
13 collected \$89 million in fees for fiscal
14 year 2012-2013.

15 Next is a summary of the
16 September 2012 gaming activity for
17 Harrah's New Orleans found on page
18 three. During September, Harrah's
19 generated \$25,248,720 in gross gaming
20 revenue, an increase of \$2.3 million or
21 10 percent from last month, but a
22 decrease of \$5.5 million or 18 percent
23 from September 2011. Fiscal
24 year-to-date gaming revenues for
25 2012-2013 to date are \$72 million, down

12

1 13 percent or \$10.8 million from fiscal
2 year 2011-2012.

3 During September the State received

4 \$4,931,507 in minimum daily payments.
5 As of September 30th, 2012, the State
6 has collected \$15 million in fees for
7 fiscal year 2012-2013.

8 Slots at the Racetracks Revenues are
9 shown on page four. During September,
10 the four racetrack facilities combined
11 generated Adjusted Gross Receipts of
12 \$32,743,677, a slight increase of
13 1 percent from last month, and an
14 increase of 3 percent or \$1 million from
15 September 2011. Adjusted Gross Receipts
16 for fiscal year 2012-2013 to date are
17 over \$100 million, a decrease of
18 1 percent from fiscal year 2011-2012.

19 During September, the State
20 collected fees totaling \$4,967,216. As
21 of September 30th, 2012, the State has
22 collected \$15 million in fees for fiscal
23 year in 2012-2013.

24 Overall in September, Riverboats,
25 Landbased and Slots at the Racetracks

13

1 generated \$200 million in Adjusted Gross
2 Receipts, which is \$3 million or
3 2 percent more than the previous
4 September.

5 Are there any questions before I
6 present the Harrah's employee

7 information?

8 VICE-CHAIRMAN ROGERS: Any
9 questions? Any comments? Thank you.

10 MS. JACKSON: Harrah's New Orleans
11 is required to maintain at least 2,400
12 employees and a bi-weekly payroll of
13 \$1,750,835. This report covers the
14 three pay periods in September 2012.

15 For the first pay period, the Audit
16 Section verified 2,414 employees with a
17 payroll of \$1,896,500. For the second
18 pay period, the Audit Section verified
19 2,417 employees with a payroll of
20 \$1,926,900. For the third pay period,
21 the Audit Section verified 2,403,
22 employees with a payroll of \$1,935,200.
23 Therefore, Harrah's met the employment
24 criteria during September.

25 Questions?

14

1 VICE-CHAIRMAN ROGERS: Any
2 questions? Any comments from the board
3 members? [No response.]

4 MR. BOSSIER: Good morning, Madam
5 Chairman and Board Members. My name is
6 Jim Bossier with the Louisiana State
7 Police Gaming Audit Section. I'm
8 reporting video gaming information for
9 September 2012 as shown on page one of

10 your handout.

11 During September 2012, twelve new
12 video gaming licenses were issued:
13 Seven bars and five restaurants.
14 Fifteen new applications were received
15 by the Gaming Enforcement Division
16 during September and are currently
17 pending the field: Ten bars, three
18 restaurants, one truckstop and one
19 device owners.

20 The Gaming Enforcement Division
21 assessed \$269 and collected \$2,500 in
22 penalties in September, and there are
23 currently \$769 in outstanding fines.
24 Please refer to page two of your
25 handout. There are presently 14,218

15

1 video gaming devices activated at 2,087
2 locations.

3 Net device revenue for
4 September 2012 was \$47,921,655, an
5 \$800,000 increase or 1.7 percent when
6 compared to net device revenue for
7 August 2012, and a \$400,000 increase or
8 eight-tenths of 1 percent when compared
9 to September 2011.

10 Net device revenue for fiscal year
11 2013 is \$143,179,022, a \$1.5 million
12 decrease or 1 percent when compared to

13 net device revenue for fiscal year 2012.

14 Page three of your handout shows a

15 comparison of net device revenue.

16 Total franchise fees collected for

17 September 2012 are \$14,296,064, a

18 \$177,000 increase when compared to

19 August 2012, and a \$132,000 increase

20 when carried to September 2011.

21 Total franchise fees collected for

22 fiscal year 2013 are \$42,788,662, a

23 \$131,000 or seven-tenths of 1 percent

24 decrease when compared to last year's

25 franchise fees. Page four of your

16

1 handout shows a comparison of franchise

2 fees.

3 Does anybody have any questions?

4 VICE-CHAIRMAN ROGERS: Any

5 questions? Any comments from any board

6 member? [No response.] Thank you, sir.

7 MR. BOSSIER: You're welcome.

8 V. VIDEO GAMING ISSUES

9 A. Consideration of the following truckstop

10 applications:

11 1. J & N Truck Stop, Inc., d/b/a J & N Truck

12 Stop - No. 5501505917 (stock transfer)

13 VICE-CHAIRMAN ROGERS: We're going

14 to move on to the video gaming issues.

15 The first item is J & N Truck Stop,

16 Inc., d/b/a J & N Truck Stop, Number
17 5501505917.

18 MS. SCOTT: Good morning, Madam
19 Chairman and Members of the Board,
20 Ashley Scott with the Attorney General's
21 Office here this morning to present
22 information regarding the transfer of
23 ownership of J & N Truck Stop d/b/a
24 J & N Truck Stop.

25 J & N Truck Stop is a Type 5

17

1 licensee operating one truckstop
2 facility in Terrebonne Parish. Before
3 the transfer of ownership before the
4 Board for consideration this morning,
5 the licensee was owned by Brad Boyer and
6 Nolan Boyer, and I'd like to note that
7 the information presented to the
8 Board -- the written information
9 contained a slight error, and I do
10 apologize for that. It indicates that
11 Mr. Nolan Boyer had a 20 percent
12 ownership interest before the transfer
13 before the Board; but in actuality, he
14 had a 10 percent ownership interest, and
15 Brad Boyer had a 90 percent ownership
16 interest.

17 In July of this year, Mr. Nolan
18 Boyer donated the entirety of his

19 ownership interest to his son, Brad
20 Boyer. As a result, Brad Boyer acquired
21 100 percent ownership interest of the
22 licensee.

23 Now, this matter was investigated by
24 Trooper Lenguyen of the State Police,
25 and Trooper Lenguyen is here with me

18

1 this morning to present his findings.

2 TROOPER LENGUYEN: Good morning,
3 Madam Chairman and Board Members. My
4 name is Trooper Vincent Lenguyen with
5 the Louisiana State Police.

6 Following the licensee's
7 notification to the Division in regards
8 to the transfer of ownership interest in
9 J & N Truck Stop, Incorporated, I began
10 the investigation of the transfer. I
11 found no information that would preclude
12 the donation of stock from Nolan Boyer
13 to Brad Boyer.

14 As a result of the donation of stock
15 from Nolan Boyer to Brad Boyer, the
16 organizational structure of the licensee
17 is now as follows: Brad Boyer will be
18 the President/Director and shareholder;
19 June Boyer, Secretary/Treasurer and
20 Director; Nolan Boyer would be the
21 manager.

22 Brad Boyer, June Boyer and Nolan
23 Boyer previously submitted to
24 suitability investigations with the
25 existing licensing of J & N Truck Stop,

19

1 Incorporated, doing business as J & N
2 Truck Stop. I found no information that
3 would preclude the licensee from
4 continuing to participate in the video
5 gaming industry.

6 MS. SCOTT: Madam Chairman and
7 Members of the Board, I have thoroughly
8 reviewed the file compiled by the State
9 Police and found no information that
10 would preclude the continued licensing
11 of J & N Truck Stop.

12 VICE-CHAIRMAN ROGERS: Are there any
13 questions? Any comments? Miss Noonan.

14 MS. NOONAN: I just wanted to know:
15 The 20 percent, was that the State -- a
16 typographical error on our part?

17 MS. SCOTT: Yes, ma'am, it was
18 typographical.

19 MS. NOONAN: So the paperwork is
20 correct?

21 MS. SCOTT: It is correct.

22 MS. NOONAN: Okay. Thank you.

23 MAJOR MERCER: I move we approve.

24 VICE-CHAIRMAN ROGERS: The motion

25 is we approve the transfer. All in

20

1 favor?

2 COURT REPORTER: Who do you want for

3 a second?

4 VICE-CHAIRMAN ROGERS: Mr. Singleton

5 seconded. All in favor? [Collective

6 "aye."] Opposed? [No response.] The

7 ayes have it. Thank you.

8 2. Bayou Magic Enterprises, LLC, d/b/a Royal Flush

9 Casino 2 - No. 5501511641 (stock transfer)

10 3. Galliano Truck Plaza & Casino, LLP, d/b/a

11 Galliano Truck Plaza & Casino - No. 2900513574

12 (stock transfer)

13 VICE-CHAIRMAN ROGERS: The next

14 issue is Bayou Magic Enterprises, LLC,

15 d/b/a Royal Flush Casino #2, Number

16 5501511641, another stock transfer.

17 MR. PITRE: Madam Chairman and Board

18 Members, before I begin, I was wondering

19 if I could present Bayou Magic along

20 with Galliano since they concern the

21 same issues, with the exception that

22 Bayou Magic has one additional transfer?

23 VICE-CHAIRMAN ROGERS: Do we have

24 any objections from anyone? [No

25 response.]

21

1 MR. PITRE: Bayou Magic Enterprises

2 is a Louisiana limited liability company
3 organized June 10th of 1999. It is
4 located in Houma in Terrebonne Parish.

5 Galliano Truck Plaza & Casino, LLP,
6 doing business as Galliano Truck Plaza &
7 Casino is a Louisiana partnership
8 organized June 3rd of 2002, and it's
9 located in Cut Off in Lafourche Parish?

10 On April 5th, 2012, a majority of
11 the membership interest in DBCJK, LLC,
12 amended the operating agreement to
13 provide for the expulsion of a member.

14 On April 10th of 2012, Aldridge Casino
15 Holdings, LLC, was expelled from the
16 membership of DBCJK, LLC.

17 On July 13th, 2012, Don McMath sold
18 5 percent of his membership interest in
19 DBCJK, LLC, to Gina Broussard;
20 therefore, Gina Broussard's status
21 changed from manager to owner/member.

22 Regarding Bayou Magic, on July 13th,
23 2012, DBCJK, LLC, sold 1 percent of its
24 membership interest in the licensee to
25 DBCJK2, LLC. Therefore, DBCJK, LLC,

22

1 will own 99 percent and DBCJK2, LLC,
2 will own 1 percent.

3 As a result of these membership
4 interest transfers, the licensee's

5 ownership records will be as follows.
6 For Bayou Magic, Enterprises, as I said
7 before, DBCJK, LLC, will own 99 percent;
8 DBCJ2, LLC, will own 1 percent. For
9 Galliano, it remains the same: DBCJK,
10 LLC, has 99 percent; DBCJK2, LLC, owns
11 1 percent.

12 For DBCJK2, LLC, DBCJK, LLC, remains
13 the sole member. For DBCJK, LLC, the
14 new membership is Christopher Beary with
15 39.1304 percent, Don McMath with
16 34.1304 percent, KACO Interest, LLC,
17 with 21.7392 percent, and Gina Broussard
18 with 5 percent.

19 The membership of KACO Interest
20 remains the same, with Charles Ashy with
21 50 percent and Sheila Ashy with
22 50 percent.

23 Master Trooper Kevin Smith to my
24 right conducted the investigation of the
25 membership interest transfers. The

23

1 Office of the Attorney General has
2 reviewed the file compiled by State
3 Police. Our review indicates that no
4 information has been found which would
5 preclude the continued licensing of
6 Bayou Magic Enterprises, LLC, doing
7 business as Royal Flush Casino #2 and

8 Galliano Truckstop -- Truck Plaza &
9 Casino, LLP, doing business as Galliano
10 Truck Plaza & Casino. Any questions?

11 VICE-CHAIRMAN ROGERS: Anybody have
12 any questions? I have a question. Have
13 all the legal ramifications of that
14 dismissed partner been satisfied?

15 MR. PITRE: There was a hearing that
16 was supposed to be scheduled for
17 June 12th that was canceled because the
18 defendants wanted to enter into a
19 settlement negotiation. Those were
20 supposed to start on September 21st, and
21 as I understand right now, they're still
22 in negotiations.

23 VICE-CHAIRMAN ROGERS: But what if
24 things don't turn out the way they're
25 wanting? Will this come back to haunt

24

1 the original members -- the other
2 members?

3 MR. PITRE: Mr. Aldridge, who is the
4 sole owner of Aldridge Casino Holdings,
5 in his petition did not request it be
6 reinstated as a member of DBCJK, LLC.

7 VICE-CHAIRMAN ROGERS: Okay.
8 Mr. Stipe.

9 MR. STIPE: That's kind of what I
10 was going to ask about. Of course, the

11 operating agreement can provide whatever
12 you want, I suppose. The basis for the
13 expelling the member does not have any
14 bearing on any suitability issues or any
15 law based on your suitability
16 investigation, does it?

17 TROOPER SMITH: No, sir, it doesn't.

18 MR. STIPE: Okay. And as I
19 appreciate, the issue that is the value
20 of that membership interest, there is
21 not a -- I think you said it, but there
22 is not an attempt to be reinstated as a
23 member or to somehow reverse the
24 expulsion, correct?

25 MR. PITRE: That's correct.

25

1 MR. STIPE: That's all I have.

2 Thank you.

3 VICE-CHAIRMAN ROGERS: Any other
4 questions? Any other comments? Do we
5 have a motion? Is there a motion to
6 approve the transfer?

7 MR. BRADFORD: I move we approve
8 both Bayou Magic Enterprises and
9 Galliano Truck Plaza together.

10 VICE-CHAIRMAN ROGERS: Do we have a
11 second?

12 MS. NOONAN: I'll second.

13 VICE-CHAIRMAN ROGERS: Miss Noonan

14 seconds. All in favor? [Collective
15 "aye."] Opposed? [No response.] The
16 transfer has been approved.

17 4. Fleur de Lis Gaming, LLC, d/b/a Hwy 31
18 Truckstop [sic] & Casino - No. 5004516662
19 (new application)

20 VICE-CHAIRMAN ROGERS: The next item
21 on the agenda is Fleur de Lis Gaming,
22 LLC, d/b/a Highway 31 Truck Stop &
23 Casino, Number 5004516662. This is a
24 new application, right?

25 TROOPER SMITH: That's correct,
26

1 ma'am.

2 MS. COLLY: Good morning, Madam
3 Chairperson and Members of the Board.
4 I'm Assistant Attorney General,
5 Nicolette Colly, appearing before you on
6 the matter of the original application
7 of Fleur de Lis Gaming, LLC, d/b/a
8 Highway 31 Truckstop & Casino. This is
9 a Type 5 video draw poker gaming license
10 application.

11 The applicant is a Louisiana limited
12 liability company organized on
13 February 3rd, 2012. The establishment
14 is located at 7030 Main Highway in St.
15 Martinville, Louisiana, in St. Martin
16 Parish. On May 1st, 2012, the applicant

17 purchased the licensed establishment
18 from the previous Type 5 licensee,
19 Riverbend Truck Stops & Palace Casinos,
20 Inc.

21 On the same day, the applicant
22 purchased 5.996 acres of land and
23 improvements comprising the entire
24 location from Redman Gaming of
25 Louisiana, LLC. The 100 percent owner

27

1 and managing member of Fleur de Lis is
2 Anthony J. Cashiola, Jr. John R.
3 Gottardi is the General Manager, and
4 Jerry S. Gottardi is the Manager of
5 Fleur de Lis.

6 Trooper Kevin Smith conducted the
7 suitability investigation of the
8 relevant persons associated with the
9 applicant and conducted an on-site
10 inspection of the facility. He is
11 present this morning to report his
12 findings to the Board.

13 TROOPER SMITH: Morning, Madam
14 Chairman, Members of the Board. I'm
15 Master Trooper Kevin Smith, Louisiana
16 State Police Gaming Enforcement
17 Division.

18 I conducted the suitability
19 investigation of Anthony J. Cashiola,

20 Jr., Kim O. Cashiola, John R. Gottardi
21 and Jerry S. Gottardi and found no
22 information that would preclude them
23 from participating in the video gaming
24 industry.

25 An on-site inspection was conducted,
28

1 and it was determined that the
2 establishment meets all criteria set
3 forth in video gaming laws as a
4 qualified truckstop facility.

5 Tax clearance certificates and
6 inquiries revealed that applicant and
7 relevant persons are current in the
8 filing and payment of all required taxes
9 and returns.

10 MS. COLLY: The Office of the
11 Attorney General has reviewed the file
12 compiled as a result of the
13 investigation conducted by the Office of
14 State Police. Our review indicates that
15 no information was found that would
16 preclude the licensing of Fleur de Lis
17 Gaming. Further, no information has
18 been found to preclude Anthony J.
19 Cashiola, Jr., Kim O. Cashiola, John R.
20 Gottardi and Jerry S. Gottardi from
21 participating in the gaming industry.

22 VICE-CHAIRMAN ROGERS: Do we have

23 any questions? Any comments? Do we
24 have a motion to approve this new
25 application?

29

1 MR. SINGLETON: I move.

2 VICE-CHAIRMAN ROGERS: Mr. Singleton
3 moves. Second?

4 MR. JONES: I will second.

5 VICE-CHAIRMAN ROGERS: Mr. Jones
6 seconds. All in favor? [Collective
7 "aye."] Opposed? [No response.]

8 Motion carries.

9 VI. CASINO GAMING ISSUES

10 A. Consideration of Certificate of Compliance for
11 the Alternate Riverboat Inspection of the
12 gaming vessel of Louisiana 1 Gaming L.P., d/b/a
13 Boomtown Belle Casino Harvey - R012600196

14 VICE-CHAIRMAN ROGERS: The next item
15 on agenda is Consideration of a
16 Certificate of Compliance for the
17 Alternate Riverboat Inspection of the
18 gaming vessel of Louisiana 1 Gaming,
19 L.P., d/b/a Boomtown Belle Casino
20 Harvey, number RO12600196.

21 MR. TYLER: Thank you, Madam
22 Chairwoman, Board Members. I'm
23 Assistant Attorney General, Michael
24 Tyler. I'm joined by Matt Long of the
25 American Bureau of Shipping Consultants,

1 also known as ABSC. Today we're here
2 with respect to the matter of the
3 Certificate of Compliance for Boomtown
4 Belle in Harvey.

5 On September 12th, 2012, Boomtown
6 Belle began the process of renewing its
7 Certificate of Compliance. During the
8 inspection, various issues were found
9 which necessitated a follow-up
10 inspection. This follow-up inspection
11 was held on October 9 of 2012. That
12 inspection found that most of the issues
13 that were previously found were
14 resolved; however, a couple of issues
15 remained outstanding.

16 For more on these particular
17 inspections, I now turn this matter over
18 to Matt Long.

19 MR. LONG: Good morning, Madam
20 Chairman, Members of the Board. Again,
21 my name's Matt Long with ABS Consulting,
22 and to further discuss the two remaining
23 deficiencies, I'd like to clarify. The
24 problems with the vessel, three water
25 tight doors, have been resolved. They

1 were resolved yesterday, so that
2 deficiency has been satisfied. We do

3 have an item remaining outstanding for
4 the fire screen doors. The delivery on
5 those items is as much as four to six
6 weeks and will also take quite a bit of
7 work to have installed.

8 So we are asking for a 60-day
9 temporary Certificate of Compliance of
10 Compliance to afford the vessel enough
11 time to make the necessary repairs.

12 MR. TYLER: As requested by Matt
13 Long, we feel that it is necessary for
14 the issuance of the temporary COC, given
15 the fact that this vessel's actual COC
16 expires at the end of this month,
17 October 31st to be exact; and since
18 these repairs are going to have to take
19 place after that particular date, the
20 temporary COC seems to be in order.

21 So we request that one be issued for
22 a period of 60 days and will expire at
23 the end of those 60 days, and the vessel
24 will be allowed to get a final COC once
25 they are able to prove that the

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1 outstanding issues are resolved without
2 any qualification whatsoever.

3 VICE-CHAIRMAN ROGERS: So you're
4 saying that your recommendation is that
5 we do approve the 60 days? Is that what

6 you're saying?

7 MR. TYLER: My recommendation is
8 that based upon ABSC's recommendation
9 for the temporary COC.

10 VICE-CHAIRMAN ROGERS: So let's see
11 what the recommendation of the Board is
12 now. Do we have any discussion from the
13 members? Mr. Singleton.

14 MR. SINGLETON: I'm going to make
15 the motion to approve, but the question
16 is: They renew these licenses?

17 MR. TYLER: These particular
18 licenses are renewed annually. It's an
19 annual requirement, so they are renewed
20 annually.

21 MR. SINGLETON: So what is so
22 difficult that they couldn't have gotten
23 this done within the time period that
24 was necessary since somebody must have
25 been made aware what the problems were.

33

1 MR. LONG: I believe I can speak to
2 that. Initially the vessel's inspection
3 was scheduled for August. We like to
4 try and get the inspections done with
5 enough time so that if any discrepancies
6 are found, they can be corrected prior
7 to the Board's meeting, but I believe
8 the inspection was initially delayed as

9 a result of Isaac -- Hurricane Isaac,
10 and so they had less time than they
11 typically do to make necessary repairs.

12 MR. SINGLETON: And they had no way
13 of knowing this until y'all did the
14 inspection?

15 MR. LONG: To my knowledge, no, sir.

16 MR. SINGLETON: Come on. I just
17 find it a little strange, the rationale
18 and reasoning behind that. Even with
19 that, I'm going to still make the motion
20 that we give them the 60 days, you know,
21 to correct it, but hopefully in the
22 future some of these people who are
23 sitting here and the others have to get
24 these things done.

25 I don't buy the fact that they have

34

1 to wait until you come to tell them
2 what's wrong. They ought to know what's
3 wrong, and that they be looking at that
4 from this point forward anyway.

5 So I'll move that we grant them 60
6 days.

7 VICE-CHAIRMAN ROGERS: A motion by
8 Mr. Singleton that we adopt the
9 resolution. Do we have a second?

10 MAJOR MERCER: I'll second.

11 VICE-CHAIRMAN ROGERS: Second by

12 Major Mercer. Let's get a
13 clarification, Mr. Long: Were the water
14 tight doors and the fire -- okay, that
15 was two different issues.

16 MR. LONG: Yes, ma'am.

17 VICE-CHAIRMAN ROGERS: Would you
18 explain again what was done and what was
19 not done?

20 MR. LONG: Okay. The water tight
21 doors have been repaired. That was
22 completed yesterday. We've received the
23 report from HydraForce electrical that
24 those repairs were completed and that
25 all of the three doors are operating

35

1 100 percent. Okay. The fire screen
2 doors are the items that remain
3 outstanding, and we have a proposal from
4 a company by the name of Correct Door to
5 have those doors installed.

6 VICE-CHAIRMAN ROGERS: All right.

7 Is that clear?

8 MS. SMITH: Yes.

9 VICE-CHAIRMAN ROGERS: We'll ask
10 Miss Tramonte for a roll call vote.
11 Let's read the resolution.

12 THE CLERK: On the 18th day of
13 October, 2012, the Louisiana Gaming
14 Control Board did, in a duly noticed

15 public meeting, consider the issue of
16 the Louisiana 1 Gaming, L.P.'s, request
17 for renewal of its riverboat gaming
18 vessel Certificate of Compliance and
19 report and testimony of ABS Consulting,
20 and upon motion duly made and second,
21 the Board adopted the following
22 resolution:

23 Be it resolved that after
24 considering the report and testimony of
25 ABSC, Louisiana 1 Gaming, L.P., be and

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1 is hereby issued a temporary riverboat
2 gaming vessel Certificate of Compliance.

3 Be it further resolved that upon the
4 satisfaction and repair of the fire
5 screen doors, Boomtown Belle Casino
6 Harvey with the recommendation from
7 ABSC, Louisiana 1 Gaming, L.P., be
8 issued a final riverboat gaming vessel
9 Certificate of Compliance for the
10 Alternate Inspection of the gaming
11 vessel.

12 Be it further resolved that the
13 temporary riverboat gaming vessel
14 Certificate of Compliance issued to
15 Louisiana 1 Gaming, L.P., shall expired
16 60 days from the date of its issuance or
17 the date of a final riverboat gaming

18 vessel Certificate of Compliance of
19 issue, whichever occurs first.

20 Be it further resolved that the
21 members of the Louisiana Gaming Board
22 hereby authorize the Chairman of the
23 Louisiana Gaming Control Board to issue
24 a final riverboat gaming vessel
25 Certificate of Compliance to Louisiana 1

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1 Gaming, L.P.

2 Thus done and signed in Baton Rouge,
3 Louisiana, this 18th day of October,
4 2012.

5 VICE-CHAIRMAN ROGERS: Now we need a
6 motion -- roll call, please.

7 THE CLERK: Mr. Bradford?

8 MR. BRADFORD: Yes.

9 THE CLERK: Mr. Jones?

10 MR. JONES: Yes.

11 THE CLERK: Mr. Stipe?

12 MR. STIPE: Yes.

13 THE CLERK: Mr. Singleton?

14 MR. SINGLETON: Yes.

15 THE CLERK: Miss Noonan?

16 MS. NOONAN: Yes.

17 THE CLERK: Major Mercer?

18 MAJOR MERCER: Yes.

19 THE CLERK: Mr. Jackson?

20 MR. JACKSON: Yes.

21 THE CLERK: Miss Rogers?

22 VICE-CHAIRMAN ROGERS: Yes.

23 MR. SINGLETON: Madam Chairman, just
24 out of curiosity, is anyone here from
25 Boomtown?

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1 MR. TYLER: Yes, he's here.

2 MR. SINGLETON: I just want to make
3 sure he's here and he heard the
4 comments. I don't want to have to go
5 over here again.

6 VICE-CHAIRMAN ROGERS: Did you want
7 a comment from them?

8 MR. SINGLETON: As long as he heard
9 it.

10 VICE-CHAIRMAN ROGERS: As long as
11 they verify, right.

12 MR. SINGLETON: Sixty days is where
13 we're at.

14 VICE-CHAIRMAN ROGERS: This motion
15 carries.

16 MR. TYLER: Thank you very much.

17 B. Consideration of Joint Petition for Approval of
18 Merger Agreement between Boyd Gaming
19 Corporation and Peninsula Gaming, LLC

20 VICE-CHAIRMAN ROGERS: The next item
21 on the agenda is Consideration of a
22 Joint Petition for Approval of the
23 Merger Agreement between Boyd Gaming

24 Corporation and Peninsula Gaming, LLC.

25 MR. GAUTREAU: Good morning,

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1 Vice-Chairman Rogers, Louisiana Gaming
2 Control Board Members. My name is
3 Leonce Gautreaux, Assistant Attorney
4 General. With me today is Evie Ficklin
5 from the Louisiana State Police.

6 Before you today is a joint petition
7 filed by Boyd Gaming and Peninsula
8 Gaming Partners for the transfer of the
9 100 percent ownership interest in
10 Peninsula Gaming. Peninsula Gaming
11 Partners is the 100 percent owner of
12 Peninsula Gaming, and by this petition,
13 Boyd seeks to acquire Peninsula Gaming
14 through a merger.

15 As the Board knows, both Peninsula
16 and Boyd are currently owners and
17 operators of licensees located in
18 Louisiana. Peninsula maintains the old
19 Evangeline Downs and the Amelia Belle
20 Riverboat Casino. In addition, they
21 also operate two casinos in Iowa and one
22 in Kansas.

23 Boyd currently owns and operates the
24 Treasure Chest in Kenner, Louisiana;
25 Sam's Town up in Shreveport; and Delta

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1 Downs Racetrack in Vinton, Louisiana.
2 They also operate in other
3 jurisdictions, including Mississippi,
4 Nevada, Illinois, Indiana and New
5 Jersey.

6 On May 16th, 2012, an agreement and
7 plan of merger was entered between Boyd
8 Gaming and Peninsula Gaming Partners and
9 Peninsula Gaming. In order to facilitate
10 this merger, Boyd formed a new, what I
11 call, string of holding and subsidiary
12 companies. Boyd Gaming formed Boyd
13 Acquisition, LLC, which it owns a
14 hundred percent. Boyd Acquisition owns
15 100 percent of Boyd Acquisition 1, LLC.
16 Boyd Acquisition 1 owns 100 percent of
17 Boyd Acquisition 2, LLC, which, in turn,
18 owns 100 percent of Boyd Acquisition
19 Sub, LLC. The sub is the vehicle
20 they're going to use to merge with
21 Peninsula.

22 So, in essence, they created a new
23 string of holding companies in order to
24 capture that new asset that they'll have
25 in Peninsula Gaming.

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1 As I said, Boyd Merger Sub will
2 merge into and with Peninsula Gaming.
3 Peninsula Gaming will be the surviving

4 entity. They will operate under the LLC
5 agreement of the Merger Sub, which is in
6 effect immediately prior to the date of
7 merger. The membership interest in the
8 Merger Sub will be converted to
9 membership interest in Peninsula Gaming,
10 and the managers of the Merger Sub will
11 be managers of Peninsula Gaming. And
12 they currently are William Boyd,
13 Marianne Boyd Johnson, Keith Smith and
14 Brian Larson. All are current directors
15 and/or officers of Boyd Gaming and have
16 previously been found suitable by this
17 Board.

18 The consideration for the merger is
19 approximately \$1.45 billion. It
20 consists of a combination of a cash
21 payment, a \$144 million promissory note,
22 the refinancing of Peninsula's current
23 debt and transaction and other costs
24 associated with the merger.

25 The membership interest in Peninsula

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1 currently held by Peninsula Gaming
2 Partners immediately prior to the merger
3 will be canceled and converted into a
4 right to receive this consideration.

5 The effective date of the merger is
6 the date that they will file the

7 Certificate of Merger with the Delaware
8 Secretary of State or another date that
9 is provided within that certificate.

10 The agreement does provide for a drop
11 dead date of December 31st, 2012, to
12 close this deal.

13 The closing is subject to all usual
14 conditions present for most closings,
15 like no breach of warranties or
16 obligations. The big one is that they
17 obtain all approvals and consents from
18 other gaming jurisdictions. Iowa
19 approved the transaction on
20 September 27th, 2012. The Louisiana
21 Racing Commission approved the
22 transaction, subject to this Board's
23 approval, on September 28th, 2012. I
24 was informed this morning that Kansas,
25 the other jurisdiction where they need

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1 approval, the Lottery has the matter set
2 for November 14th, and the Racing
3 Commission has the matter set for
4 November 16th.

5 Also, in addition to this, as a
6 merger, they had to give notice to the
7 FTC and wait a certain period of time
8 before they can consummate the merger.
9 The FTC terminated that waiting period

10 for them on June 4th, 2012, which freed
11 them up to consummate the merger.

12 The target closing date, I was
13 informed this morning, assuming all
14 approvals are given, is November 19th,
15 2012.

16 Just to recap: Post merger, Boyd
17 Gaming will indirectly hold 100 percent
18 of the ownership interest in Peninsula
19 Gaming. Boyd will own and control and
20 operate Old Evangeline Downs and Amelia
21 Belle. Peninsula Gaming Partners will
22 no longer hold a membership interest in
23 either Old Evangeline Downs or Amelia
24 Belle.

25 Now Miss Ficklin will provide the

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1 financing for the transaction.

2 MS. FICKLIN: Good morning, Miss
3 Rogers and Board Members. I'm Evie
4 Ficklin from Gaming Audit.

5 Boyd is using a combination of debt
6 and equity financing to acquire
7 Peninsula and to terminate existing
8 management agreements with certain
9 Peninsula -- senior Peninsula officers.

10 In May 2012, Boyd contributed
11 \$200 million in equity to one of its
12 newly formed subsidiaries, Boyd

13 Acquisition 1. Boyd Acquisition 1 is
14 currently holding the \$200 million
15 equity contribution until the merger
16 closes, and at that time it will be
17 applied toward the purchase.

18 Boyd Acquisition 1 and its sister
19 company, Boyd Acquisition 2, are
20 regarded as unrestricted subsidiaries by
21 Boyd lenders. Their place in Boyd's
22 corporate structure is shown in a post
23 merger organizational chart on page
24 four.

25 Boyd also intends to use the

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1 proceeds from the following debt
2 financing to acquire Peninsula:
3 \$350 million 8.375 percent senior notes
4 issued August 16, 2012, and \$825 million
5 Term B Loan under a new \$875 million
6 credit agreement -- that agreement has
7 not been executed, but it is in place --
8 and a \$144 million promissory note Boyd
9 Acquisition 2 will issue at closing to
10 the sellers, Peninsula Partners.

11 In advance of closing, Boyd's
12 subsidiaries are the borrowers under the
13 Senior Notes Indenture and the
14 \$875 million credit agreement. At
15 closing, the Boyd subsidiaries will

16 assign their rights and obligations,
17 under both the indenture and the credit
18 agreement, to Peninsula.

19 Post merger, Peninsula and its
20 subsidiaries will join Boyd Acquisition
21 1 and Boyd Acquisition 2 as unrestricted
22 Boyd subsidiaries. As unrestricted
23 subsidiaries, the debt financing used to
24 acquire Peninsula will be non-recourse
25 to Boyd.

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1 Boyd provided a description of a
2 management agreement it anticipates
3 having with Peninsula. As described,
4 Boyd will provide certain services,
5 including marketing, customer support,
6 human resources, technology and finance.
7 In exchange for those services,
8 Peninsula will pay Boyd a management fee
9 equal to 2 percent of Peninsula's
10 consolidated net revenue, plus 5 percent
11 of Peninsula's consolidated EBIDTA.
12 Boyd's projections are shown on page 56,
13 and Peninsula's projections will begin
14 on page 57. Boyd's projections indicate
15 Peninsula's cash flows will be
16 sufficient to service its debt.

17 Nothing came to Audit's attention to
18 preclude Boyd's acquisition of Peninsula

19 Gaming.

20 VICE-CHAIRMAN ROGERS: Do we have
21 any comments, any questions from the
22 Board? Mr. Stipe.

23 MR. STIPE: As I appreciate this,
24 the merger agreement kind of speaks to
25 the capital expenditures during 2012

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1 that are to be made --

2 MS. FICKLIN: Right.

3 MR. STIPE: -- which are in line
4 with what they had said to the Board
5 they would be making to these
6 facilities.

7 MS. FICKLIN: Yes, for the Louisiana
8 ones.

9 MR. STIPE: Going forward to 2013
10 and beyond, is there any capital
11 expenditure obligation in this purchase
12 agreement?

13 MS. FICKLIN: It's my understanding
14 that they will meet their maintenance
15 capex as planned, so -- and budgeted.

16 MR. STIPE: That is that they -- in
17 connection with these licenses, there
18 were some projections and capital
19 expenditures that were going to be made
20 by the selling entity -- the sellers.

21 Your understanding is that those capital

22 expenditures are going to be met or
23 exceeded by the buyers of these
24 facilities?

25 MS. FICKLIN: If we're talking about

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1 the Kansas Star Casino, I believe that
2 there's an agreement between both, and
3 there's an understanding of which
4 capital expenditures will be covered by
5 the sellers before they leave and
6 subsequent to; and then the Boyd
7 responsibility, on the other hand, for
8 those capital expenditures they'll be
9 responsible for.

10 MR. STIPE: Thank you. They kind of
11 dealt with the Kansas facility. I guess
12 my question is directed to the
13 facilities here in Louisiana. Those
14 projections of capital expenditures for
15 these facilities, as you understand the
16 agreement and the projections they've
17 made and the assertions they've made to
18 you in discussions with them, they're
19 going to continue those capital
20 expenditures at least at the levels that
21 were committed to this Board when the
22 licenses were renewed and that they
23 projected, correct?

24 MS. FICKLIN: That's my

25 understanding, so...

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1 VICE-CHAIRMAN ROGERS: Mr. Jones.

2 MR. JONES: Leonce, in our memo --

3 and you just said it, as well; you said

4 Peninsula is the surviving company upon

5 the consummation of the merger but Boyd

6 owns Peninsula. I mean, Boyd's a

7 surviving entity; isn't it?

8 MR. GAUTREAU: For the merger

9 itself with the two merging companies,

10 the reference -- the surviving entity

11 means the one that will survive the

12 merger. Boyd will be the ultimate

13 parent of that entity, yes.

14 MR. JONES: Another question: As

15 this deal goes through, Boyd will then

16 run five of the large gaming operations

17 in the state, if we count the riverboats

18 and the racetracks and Harrah's as

19 twenty, and they would own five of the

20 twenty --

21 MR. GAUTREAU: They would.

22 MR. JONES: -- which is a pretty

23 high level of concentration. Is there

24 anything in the statutes that would

25 prevent somebody from having that big of

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1 a chunk of the industry in this state?

2 MR. GAUTREAU: We have nothing in
3 our statutes. The only limitation that
4 we have is no more than six operating
5 riverboats on any designated waterway,
6 but nothing as far as a specific owner
7 operating that.

8 Now, I will say that's one of the
9 obligations that the FTC does when they
10 look at mergers is for anti-competition,
11 but they terminated the waiting period.
12 And, obviously, it had no concerns.

13 MR. JONES: But are we going to hear
14 from Boyd? Are they here?

15 MR. GAUTREAU: I meant to say that.
16 They do have representatives.

17 VICE-CHAIRMAN ROGERS: Leonce, I
18 have one question. You said November
19 the 19th. Is there any reason to
20 believe that -- I think you said Iowa
21 had not approved yet.

22 MR. GAUTREAU: Kansas.

23 VICE-CHAIRMAN ROGERS: Oh, Kansas.
24 Do you have any reason to believe they
25 would not approve?

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1 MR. GAUTREAU: We have no
2 indication; and I asked them this
3 morning if they received any indication
4 that Kansas has any issues, and they

5 told me they have not.

6 VICE-CHAIRMAN ROGERS: Yes. We're
7 going to invite -- is there anyone here
8 from Boyd and/or Peninsula that would
9 like to address the Board?

10 MR. WEST: Good morning,
11 Miss Rogers, Board Members. My name is
12 Paul West. I'm local counsel for Boyd
13 Gaming Corporation. With me today to my
14 right is Keith Smith, CEO of Boyd Gaming
15 Corporation; to his right, Josh
16 Hirsberg, CFO of Boyd Gaming
17 Corporation; to my left is Brian Larson,
18 Secretary and General Counsel of Boyd
19 Gaming Corporation.

20 We're here to answer any questions
21 that you may have. I think Keith wants
22 to make a few remarks just to open it
23 up.

24 MR. SMITH: Morning, Madam
25 Chairwoman and Members of the Board.

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1 Once again, I'm Keith Smith. I'm the
2 CEO and President of Boyd Gaming.

3 Boyd Gaming has had the pleasure of
4 doing business in the great State of
5 Louisiana since 1994 when we opened the
6 Treasure Chest Casino in Kenner,
7 Louisiana, and we expanded our presence

8 over the last 18 years by the purchase
9 of Delta Downs in '01 and Sam's Town
10 Shreveport in 2004.

11 You know, we have lots of
12 opportunities across the country of
13 places to invest our money, and we
14 typically look for opportunities in
15 states that have stable tax and
16 regulatory environments. And
17 Louisiana's track record speaks for
18 itself. It has had both stable tax and
19 regulatory environment, and we've been
20 pleased to be able to expand our
21 business here.

22 We're looking forward to being able
23 to complete the Peninsula acquisition,
24 and we would expand the number of
25 properties we have here in the State of

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1 Louisiana from three to five.

2 And we're here today with both our
3 CFO, Josh Hirsberg, and our General
4 Counsel, Brian Larson, to answer any
5 questions about the transaction or about
6 our company.

7 VICE-CHAIRMAN ROGERS: Do we have
8 any board member who would like to ask a
9 question? Mr. Stipe.

10 MR. STIPE: I just want to follow up

11 on the question I asked previously. In
12 terms of capital expenditures and the
13 outlays of capital expenditures, when
14 the licenses were renewed, I think there
15 were some projections that were made in
16 terms of improvements going forward. I
17 guess I would just like your assurance
18 that those capital expenditure
19 requirements will be met and/or exceeded
20 at these facilities going forward.

21 MR. SMITH: Sure. I think our track
22 record, both here in the state and
23 across the U.S., speaks for itself in
24 terms of the maintenance of our
25 properties and the amount we reinvest to

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1 keep them current and modern. We've
2 looked at the historical and the
3 maintenance capex for these properties.
4 We've obviously looked at the
5 projections and the level of maintenance
6 capex that is in the projections, and
7 we're very comfortable that we will
8 either maintain or exceed that number.

9 MR. STIPE: That's all I have.
10 Thank you.

11 VICE-CHAIRMAN ROGERS: Mr. Jones,
12 did you have a question?

13 MR. JONES: Yeah. In looking at

14 your financials, you've got, as I read
15 it, like three-and-a-half billion of
16 debt currently?

17 MR. SMITH: Yes.

18 MR. JONES: And you're going to add
19 about another million and a half because
20 this is an all cash deal, not stock
21 involved.

22 MR. HIRSBERG: No public stock.
23 Boyd's contributing equity into the
24 unrestricted sub from borrowings that
25 it's making.

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1 MR. JONES: Okay. When the smoke
2 clears, you'll have about \$5 billion in
3 debt?

4 MR. HIRSBERG: Round numbers will --
5 you know, across the different entities,
6 there's about 2.7 at Boyd; there's about
7 \$800 million at Borgata, and
8 \$1.2 billion at the operating entities
9 of Peninsula.

10 MR. JONES: My concern is kind of
11 similar to Mr. Stipe's. You're going to
12 be a very leveraged company. Your
13 market casts about \$570 million, or
14 something like that, and you're going to
15 owe about eight or nine times that much.
16 And normally that's not my concern; it's

17 the shareholders' concern. But I worry
18 if we have a double dip recession and
19 people trim back on their entertainment
20 budgets like what happened in the
21 financial meltdown a few years ago --
22 and still hasn't recovered totally from
23 that -- but I worry about, you know, if
24 the company has financial problems,
25 starting to skimp on capital

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1 expenditures and keeping things looking
2 good and whatnot.

3 It's just a concern because of the
4 fact that you're going to have one out
5 of every four of the larger gaming
6 establishments. You're not nervous
7 about being that leveraged?

8 MR. HIRSCHBERG: If you're talking
9 about the context of Peninsula itself,
10 if you look at Peninsula's standalone
11 credit, it has its own debt and own set
12 of operations. In reality in the last
13 several years, even through economic
14 recession, Peninsula's operating
15 performance has been very consistent and
16 actually improving over time.

17 In addition, the capital structure
18 that we put into place for Peninsula
19 gives it flexibility in terms of its

20 requirements to cut back on the
21 management fee if it needs to, to delay
22 the payment of the management fee, to do
23 things necessary to allow it to not only
24 reinvest in itself, but also to continue
25 to be leveraged.

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1 So we believe not only based on the
2 consistency of the performance
3 historically of the assets, but also the
4 incremental flexibility that we built
5 into the capital structure, that it
6 should have the flexibility to address
7 your concerns about reinvesting the
8 assets or consider some sort of a
9 difficult operating environment, should
10 that happen; albeit it has not happened
11 for Peninsula to date.

12 MR. SMITH: I would also add, once
13 again, during the most difficult times
14 back in '08 and '9 and '10, we continued
15 to reinvest at a very high level in our
16 properties and maintained them so that
17 they didn't deteriorate, and we're proud
18 of that fact.

19 So I think once again, our track
20 record will speak for itself, if you
21 look back in history.

22 MR. JONES: I know you've done so at

23 Delta Downs. That's all I have.

24 VICE-CHAIRMAN ROGERS: Thank you.

25 Any other comments? Any other

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1 discussions? Do we have a motion to

2 adopt the resolution?

3 MR. STIPE: I'll move.

4 MR. BRADFORD: Second.

5 VICE-CHAIRMAN ROGERS: Mr. Bradford

6 seconds. Read the resolution, please.

7 THE CLERK: On the 18th day of

8 October, 2012, the Louisiana Gaming

9 Control -- on the 18th day of October,

10 2012, the Louisiana Gaming Control Board

11 did, in a duly notice public meeting,

12 consider the issue of the Joint Petition

13 for Approval of the Merger Agreement

14 between Boyd Gaming Corporation and

15 Peninsula Gaming, LLC, and upon motion

16 duly made and seconded, the Board

17 adopted the following resolution.

18 Be it resolved that the following be

19 and is hereby approved: One, the

20 transfer of 100 percent of the ownership

21 interest in Peninsula Gaming, LLC, to

22 Boyd Acquisition 2, LLC, to be

23 effectuated through the merger of

24 Peninsula Gaming, LLC, with Boyd

25 Acquisition Sub, LLC. The issuance of a

1 license to conduct slot machine gaming
2 at an eligible facility to the Old
3 Evangeline Downs, LLC, doing business as
4 Evangeline Downs Racetrack & Casino upon
5 the effective date of the merger and
6 surrender of the current license. The
7 new license will be subject to the
8 Statement of Conditions attached hereto.

9 The debt transaction for financing
10 of the merger is as follows: \$350
11 million in senior notes; \$875 million
12 credit agreement consisting of a
13 \$825 million term loan and a \$50 million
14 revolver; \$65 million incremental loan;
15 and a \$144 million promissory note from
16 Boyd Acquisition 2, LLC, to Peninsula
17 Gaming Partners, LLC.

18 Thus done and signed in Baton Rouge,
19 Louisiana, this 18th day of October,
20 2012.

21 THE CLERK: Mr. Bradford?

22 MR. BRADFORD: Yes.

23 THE CLERK: Mr. Jones?

24 MR. JONES: Yes.

25 THE CLERK: Mr. Stipe?

1 MR. STIPE: Yes.

2 THE CLERK: Mr. Singleton?

3 MR. SINGLETON: Yes.
4 THE CLERK: Miss Noonan?
5 MS. NOONAN: Yes.
6 THE CLERK: Major Mercer?
7 MAJOR MERCER: Yes.
8 THE CLERK: Mr. Jackson?
9 MR. JACKSON: Yes.
10 THE CLERK: Vice-Chairman Rogers?
11 VICE-CHAIRMAN ROGERS: Yes. Motion
12 carries.
13 MR. SINGLETON: I have one before
14 you leave, just a question.
15 VICE-CHAIRMAN ROGERS: Sure. Go
16 ahead.
17 MR. SINGLETON: On your
18 participation goals, since you're
19 combining two entities that you have in
20 the past, separate entities, what am I
21 going to see when I go back to this new
22 single entity for your participation
23 goals and commitments, employment
24 services, things that you committed to
25 do early on in Louisiana?

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1 MR. SMITH: Sure. If you look at
2 the employment goals and the track
3 record for the Treasure Chest property
4 or Sam's Town Shreveport property or the
5 Delta Downs property, you'll see that

6 we've done a very good job of honoring
7 the goals that have been set, and we'll
8 continue to do that with both the
9 Evangeline Downs and Amelia Belle
10 properties. We don't see any issues
11 with owning up and carrying on with what
12 they've done.

13 MR. SINGLETON: What about
14 participation goals from Louisiana
15 companies?

16 MR. SMITH: I think the same thing
17 holds true when you look back at the
18 participation of those properties,
19 Treasure Chest and Sam's Town Shreveport
20 and the Delta Downs property, we do a
21 very good job of using Louisiana based
22 companies and owning up to our
23 obligations here in the State of
24 Louisiana, and we'll continue to do that
25 at Louisiana Downs -- or at Evangeline

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1 and Amelia Belle.

2 MR. SINGLETON: Okay.

3 VICE-CHAIRMAN ROGERS: Any other
4 comments any other Board Members?

5 MR. WEST: Thank you. We'd like to
6 thank the A.G.'s Office and State
7 Police. As you can see, the report was
8 not an uncomplicated transaction; and

9 they worked very hard on it, and we
10 appreciate it.

11 VII. RULEMAKING

12 A. Adoption of LAC 42:III.401, 402 & 403; and
13 amendments to LAC 42:III.111, LAC
14 42:XI.2403, LAC 42:XI.2405, LAC
15 42:XI.2407, LAC 42:XI.2409, LAC 42:XI.2417
16 and LAC 42:XI.2424 (Electronic
17 Submissions)

18 VICE-CHAIRMAN ROGERS: We're going
19 to go into the next item, which is the
20 final adoption of the rules which were
21 presented to the Board on June 21st,
22 2012, and February 16th, 2012, for the
23 institution of the rulemaking process.
24 Mr. Pitre.

25 MR. PITRE: Madam Chairwoman and

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1 Board Members, Earl Pitre, Jr.,
2 Assistant Attorney General, in the
3 matter of the rule adoption for Item
4 Number VII-A.

5 At its meeting on June 21st, 2012,
6 the Board voted to institute
7 promulgation procedures for the rules
8 listed in items VII-A on today's agenda.
9 Following this vote the Attorney
10 General's Office published in the
11 Louisiana Register a Notice of Intent

12 for the proposed rules directing all
13 individuals with questions or concerns
14 to contact my office directly. No
15 comments were received during this time.

16 As part of the promulgation
17 procedure, I also submitted reports to
18 the Board's House and Senate Oversight
19 Committees. The first report detailed
20 the substance of the proposed rules, and
21 the second informed the committees of
22 the questions or concerns voiced by the
23 public. Following the delivery of the
24 second report to the oversight
25 committees, they were given 30 days in

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1 which to call their own hearings to
2 satisfy any concerns they may have had.

3 As no hearings were called, the
4 default action of the committees,
5 following the lapse of the 30-day
6 period, is to approve the proposed
7 rules.

8 If the Board has no questions, a
9 motion to adopt the rules is needed.

10 VICE-CHAIRMAN ROGERS: Any comments?

11 Any questions from any board members?

12 Mr. Stipe.

13 MR. STIPE: Among the things in
14 this, I note that it's the obligation of

15 the video draw poker applicants to
16 notify the Commission -- the Division if
17 there's a change in address. Is that
18 correct?

19 MR. PITRE: That's correct.

20 MR. STIPE: Is that the case for all
21 the regulated entities?

22 MR. PITRE: If there's any changes,
23 they have to notify the Division. For
24 video poker, I believe it's ten days,
25 and for the casino enterprises, horse

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1 track -- slots at the track, the
2 riverboat and landbased, I think it's 15
3 days.

4 MR. STIPE: Is there any special
5 method or mechanism we use -- that
6 you-all use, the Division uses to bring
7 that to the attention of the regulated
8 entities and persons?

9 MR. PITRE: Other than the fact that
10 it's listed in the rules, and they're
11 required to know the rules.

12 MR. STIPE: All right. Just we've
13 had some problems. No, no. We've had
14 some problems with people saying they've
15 moved and some cases -- maybe not in the
16 too recent past, and I thought that was
17 the case. This is not new. This is not

18 a new obligation, correct?

19 MR. PITRE: That's correct.

20 MR. STIPE: This has been in place

21 for quite some time that it's the

22 obligation of these --

23 MR. PITRE: To notify, yeah.

24 MR. STIPE: -- entities and persons

25 to let us know that the address we have

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1 on file is not correct and if

2 something's changed?

3 MR. PITRE: They could always do an

4 advisory notice to the licensees to

5 remind them of the -- that particular

6 procedure.

7 MR. STIPE: All right. Thank you.

8 VICE-CHAIRMAN ROGERS: Any other

9 comments? Questions? If not, I'm

10 asking for a motion to adopt the rules.

11 MR. BRADFORD: I move approval.

12 VICE-CHAIRMAN ROGERS: Mr. Bradford

13 moves.

14 MR. SINGLETON: Second.

15 VICE-CHAIRMAN ROGERS: Mr. Singleton

16 seconds. All in favor? [Collective

17 "aye."] Opposed? Any opposition? [No

18 response.] The motion carries.

19 MR. PITRE: Thank you.

20 B. Adoption of LAC 42:III.109 (Record Preparation

21 Fees)

22 VICE-CHAIRMAN ROGERS: And now we go
23 to adoption of LAC 42:III.109, which is
24 a record preparation.

25 MR. PITRE: The repeal of record

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1 preparation fees. I'm going to go over
2 the procedure part again.

3 The Board voted on it February 16th.
4 The notice of intent was published. The
5 public had a chance to provide their
6 comments; none were received. Then the
7 reports went to the oversight
8 committees.

9 The committees had a 30-day period
10 within which to have their own hearings.
11 They didn't have any hearings, and then
12 so the default action again would be to
13 approve the repeal of LAC 42 Part III
14 Section 109.

15 If the Board has no questions, a
16 motion to repeal the rule is needed.

17 VICE-CHAIRMAN ROGERS: Any
18 questions? Any comments from board
19 members? So we are asking -- I'm asking
20 for a motion to adopt the repeal of the
21 rule.

22 MR. SINGLETON: I move.

23 VICE-CHAIRMAN ROGERS: Mr. Singleton

24 moves.

25 MAJOR MERCER: I'll second.

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1 VICE-CHAIRMAN ROGERS: Major Mercer

2 seconds. All in favor? [Collective

3 "aye."] Any opposition? [No response.]

4 Motion carries.

5 MR. PITRE: Thank you.

6 C. Institution of rule-making procedures for

7 amendments to LAC 42:XI.2415 (Truckstop travel

8 lanes)

9 VICE-CHAIRMAN ROGERS: Next is the

10 institution of rulemaking procedures for

11 amendments to LAC 42:XI.2415, which is

12 truckstop travel lanes.

13 MR. PITRE: To give a little bit of

14 a summary: These changes are intended

15 to provide the dimensions for the

16 traffic and interfacility access

17 connections which are required to be

18 maintained at Type 5 video draw poker

19 establishments in order to allow safe

20 ingress and egress from tractor --

21 tractor-trailer parking areas.

22 VICE-CHAIRMAN ROGERS: Any

23 discussion? Mr. Stipe.

24 MR. STIPE: How do we interface, or

25 do we, with the Department of

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1 Transportation on these design things?

2 MR. PITRE: In this case, they did
3 interface because the actual size of the
4 access connections were going to be to
5 industry standards.

6 MR. STIPE: When you say "industry
7 standards" --

8 MR. PITRE: Based on DOTD standards.

9 VICE-CHAIRMAN ROGERS: Are these
10 roads, or whatever you want to call
11 them, are they originally set, and then
12 you come back and resurface the
13 originals; or do you -- or do you cut
14 new ingresses and --

15 MR. PITRE: I think what that is
16 because --

17 VICE-CHAIRMAN ROGERS: Those are
18 originals, right?

19 MR. PITRE: They're original roads.
20 I think in this case there were some
21 lanes that were constructed prior to the
22 adoption of the current dimensions, and,
23 I guess, it was more like whether there
24 was a grandfather clause or not, this
25 was for those that were previously

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1 constructed fall into compliance.

2 VICE-CHAIRMAN ROGERS: I was just
3 curious. Thank you. Do we have any

4 more discussion?

5 MR. BRADFORD: Move for approval.

6 VICE-CHAIRMAN ROGERS: Mr. Bradford

7 moves for approval. Is there a second?

8 Okay. We need -- Mr. Bradford moves

9 that we institute the rulemaking

10 procedures. Any second?

11 MR. SINGLETON: I'll second.

12 VICE-CHAIRMAN ROGERS: Mr. Singleton

13 seconds. All in favor? [Collective

14 "aye."] Any opposition? [No response.]

15 Motion carries. Thank you, Mr. Pitre.

16 VIII. PROPOSED SETTLEMENTS/APPEALS

17 1. In Re: Frances Bakery Coffee House,

18 Inc., d/b/a Frances Bakery Coffee House -

19 No. 2600205254 (proposed settlement)

20 VICE-CHAIRMAN ROGERS: Now we will

21 go to the proposed settlements and

22 appeals. Our first order of business is

23 the Frances Bakery Coffee House, Inc.,

24 d/b/a Frances Bakery Coffee House,

25 Number 2600205254, proposed settlement.

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1 MS. COLLY: Madam Chairperson,

2 Members of the Board, I'm Assistant

3 Attorney General, Nicolette Colly,

4 representing the Office of State Police

5 in this matter.

6 This settlement arises from the

7 licensee's failure to timely submit the
8 required Louisiana Department of Revenue
9 and Internal Revenue Service tax
10 clearances. The licensee was advised of
11 the problem on or about August 26th,
12 2011, and was given 30 days by the
13 Division to obtain the tax clearances.
14 All associated persons and the
15 businesses were not cleared until
16 August 23rd, 2012.

17 The settlement agreement includes a
18 penalty of \$500 for the period of
19 noncompliance. I'd be happy to answer
20 any questions that you have at this
21 time.

22 VICE-CHAIRMAN ROGERS: Any questions
23 any board members? Any comments? We
24 need a motion to approve this
25 settlement.

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1 MR. JONES: Move approval.

2 VICE-CHAIRMAN ROGERS: Mr. Jones.

3 MS. NOONAN: I'll second.

4 VICE-CHAIRMAN ROGERS: Miss Noonan
5 seconds. All in favor? [Collective
6 "aye."] Any opposition? [No response.]
7 Motion carries.

8 MS. COLLY: Thank you.

9 2. In Re: James A. Jackson, Jr. - No. PO40002842

10 (appeal)

11 VICE-CHAIRMAN ROGERS: Our next item
12 of business is James Jackson, Jr. It's
13 an appeal by James Jackson from the
14 hearing officer's decision wherein he
15 revoked Mr. Jackson's non-key gaming
16 employee permit finding Mr. Jackson
17 unsuitable.

18 Is Mr. Jackson in the audience,
19 please? Mr. Jackson? Mr. Jackson for
20 the third time? Go ahead.

21 MS. BROWN: Thank you. Good
22 morning, Vice-Chairman Rogers, Board
23 Members. I'm Mesa Brown, Assistant
24 Attorney General, appearing on behalf of
25 the Division in the matter of, In Re:

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1 James Jackson, Jr., and this is case
2 number PO40002842.

3 Mr. Jackson is appealing the hearing
4 officer's decision rendered on the
5 July 2nd, 2012, administrative hearing
6 revoking his non-key gaming employee
7 permit.

8 The Division is asking this Board to
9 affirm the hearing officer's decision
10 revoking Mr. Jackson's permit as a
11 result of his failure to possess
12 suitability. Here, Mr. Jackson stole

13 from his employer; he admitted to
14 stealing from his employer. As a result
15 of Mr. Jackson's theft commission, State
16 Police has determined that Mr. Jackson
17 is unsuitable under general suitability
18 requirements which state that a person
19 must be one of good character, honesty
20 and integrity.

21 Mr. Jackson worked in a casino
22 around lots of money and financial
23 transaction. If he stole from his
24 previous employer, who is to say that
25 this won't happen again? It is

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1 important to remain consistent in
2 regulating the gaming industry. In the
3 past, individuals who have committed
4 crimes involving theft have been
5 declared unsuitable, as their
6 participation would be a threat to the
7 public interest of the state and to the
8 gaming regulation. Mr. Jackson should
9 be no exception to this rule.

10 Accordingly, the Division asks this
11 Board to affirm the hearing officer's
12 decision revoking Mr. Jackson's non-key
13 gaming employee permit as a result of
14 his failure to possess suitability.

15 VICE-CHAIRMAN ROGERS: Any

16 questions, comments from the Board? I
17 think we all received enough information
18 in the comments. I'm going to ask for a
19 motion.

20 MAJOR MERCER: I move we affirm the
21 hearing officer's decision.

22 VICE-CHAIRMAN ROGERS: Second?

23 MR. JACKSON: Second.

24 VICE-CHAIRMAN ROGERS: Second by Mr.
25 Jackson. All in favor? [Collective

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1 "aye."] Opposed? [No response.]

2 Miss Tramonte, would you -- I think we
3 may need to do a recall on this issue --
4 a roll call, excuse me, a roll call on
5 this issue.

6 THE CLERK: Mr. Bradford?

7 MR. BRADFORD: Yes.

8 THE CLERK: Mr. Jones?

9 MR. JONES: Yes.

10 THE CLERK: Mr. Stipe?

11 MR. STIPE: Yes.

12 THE CLERK: Mr. Singleton?

13 MR. SINGLETON: Yes.

14 THE CLERK: Miss Noonan?

15 MS. NOONAN: Yes.

16 THE CLERK: Major Mercer?

17 MAJOR MERCER: Yes.

18 THE CLERK: Mr. Jackson?

19 MR. JACKSON: Yes.

20 THE CLERK: Vice-Chairman Rogers?

21 VICE-CHAIRMAN ROGERS: Yes. Motion
22 carries.

23 MS. BROWN: Thank you.

24 3. In Re: Pilot Corporation Tennessee d/b/a Pilot
25 Travel Center #199 - No. 0804512585 (rehearing
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1 request)

2 VICE-CHAIRMAN ROGERS: The next item
3 on the agenda is the Pilot Corporation
4 Tennessee d/b/a Pilot Travel Center
5 #199, Number 0804512585. It's a
6 rehearing request. We're going to ask
7 each side to restrict your comments to
8 three minutes since we have heard this
9 before. We're going to ask that you
10 limit three minutes upon the rehearing
11 should the rehearing be granted.

12 MS. COLLY: Madam Chairperson,
13 Members of the Board, I'm Assistant
14 Attorney General, Nicolette Colly,
15 representing the Office of State Police
16 in this matter.

17 MR. CORTAZZO: Good morning, Madam
18 Chairperson Pro Tem, Ladies and
19 Gentlemen of the Board, Tom Cortazzo for
20 the license holder, Pilot Corporation.

21 MS. COLLY: This matter is before

22 you on the Division's motion for
23 rehearing based on our contention that
24 the decision by the hearing officer and
25 order by this board is clearly contrary

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1 to the law and evidence.

2 Truckstops are required to have a
3 range. Pilot did not have a range.
4 Contrary to the law and evidence, the
5 hearing officer ruled that Pilot did.

6 Truckstops are required to provide
7 full table service. Pilot did not offer
8 full table service. Contrary to the law
9 and evidence, the hearing officer ruled
10 that Pilot did.

11 Truckstops are required, when
12 applicable, to have a written sublease
13 of the facility's restaurant with
14 statutorily required language. Pilot
15 did not have that sublease, and contrary
16 to the law and evidence, the hearing
17 officer ruled that Pilot did.

18 I would like to be allowed to
19 examine each of those issues and point
20 out specifically where in the record
21 these issues were addressed and the
22 evidence provided to support those
23 violations.

24 VICE-CHAIRMAN ROGERS: Do you have

25 any comments?

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1 MR. CORTAZZO: To respond to --

2 VICE-CHAIRMAN ROGERS: Yes, to
3 respond.

4 MR. CORTAZZO: Well, we're here for
5 a motion for rehearing, as you've
6 stated. I think the question is, is
7 there anything new for the Board to
8 consider that it didn't consider or
9 wasn't presented with last month, a few
10 weeks ago?

11 I don't think there is anything new.
12 I didn't see anything in the motion that
13 warranted a rehearing. You're obviously
14 familiar with the issues. Rather than
15 repeat all the argument that you allowed
16 me to make a few weeks ago, I guess I
17 would just make myself available for
18 comments.

19 VICE-CHAIRMAN ROGERS: Is there a
20 motion to grant the rehearing from any
21 board members?

22 MS. NOONAN: I will motion to grant
23 the rehearing.

24 VICE-CHAIRMAN ROGERS: Miss Noonan
25 motions to grant the rehearing. Do we

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1 have a second?

2 MR. JONES: I'll second.
3 VICE-CHAIRMAN ROGERS: Mr. Jones.
4 Call the roll.
5 THE CLERK: Mr. Bradford?
6 MR. BRADFORD: No.
7 THE CLERK: Mr. Jones?
8 MR. JONES: Yes.
9 THE CLERK: Mr. Stipe?
10 MR. STIPE: No.
11 THE CLERK: Mr. Singleton?
12 MR. SINGLETON: No.
13 THE CLERK: Miss Noonan?
14 MS. NOONAN: Yes.
15 THE CLERK: Major Mercer?
16 MAJOR MERCER: Yes.
17 THE CLERK: Mr. Jackson?
18 MR. JACKSON: Yes.
19 THE CLERK: Vice-Chairman Rogers?
20 VICE-CHAIRMAN ROGERS: Yes.
21 THE CLERK: It passes five to three.
22 VICE-CHAIRMAN ROGERS: You'll have
23 five minutes to present your
24 presentation on the merits, please.
25 MS. COLLY: I'll first begin with

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1 the range issue. At the time of the
2 inspection, the restaurant did not have
3 a range in its kitchen. In its letter
4 to the Division, as you can see posted

5 above, Pilot not only acknowledges that
6 it did not have a range in its kitchen,
7 but takes it one step further and says
8 they take issue with the requirement
9 that they have a range. They have a
10 fully equipped kitchen, and they are not
11 in violation.

12 Contrary to Mr. Cortazzo's statement
13 that Pilot was willing to do whatever it
14 needed to do, Mr. Mack was saying -- in
15 this letter established that Pilot had
16 no intention of remedying the violation,
17 as they felt that we got it wrong and we
18 needed to rescind the violation.

19 Within a month, the recommendation
20 was made against Pilot, and the
21 investigating trooper was in
22 communication with Pilot. There was no
23 great lapse in communications with the
24 licensee. We informed them; Pilot said
25 you're wrong; the Division made its

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1 recommendation. Even if we were right,
2 Pilot's letter states that Arby's, the
3 sublessor, determined the equipment used
4 at the restaurant, and Pilot is not
5 allowed to purchase any equipment.

6 That is clearly contrary to
7 Louisiana Revised Statute

8 27:306(A)(5)(B), which states the
9 licensee shall maintain ultimate
10 supervision and control.

11 A range was not installed until
12 February 16th, 2012, approximately five
13 months after the initial inspection.
14 After a compliance conference notice was
15 issued and after Mr. Cortazzo joined the
16 matter, Pilot by no means cooperated
17 with the Division at the outset of this
18 matter.

19 I must also note that Pilot contends
20 that they are not required -- I'm sorry,
21 must also note, referring to the
22 transcript of the September 20th Board
23 Meeting, Pilot contents that they are
24 not required to have a range at its
25 restaurant. The statute does not

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1 require one, and that only because the
2 Division thought one was required, they
3 installed a range.

4 Contrary to the law and evidence,
5 the hearing officer found that the
6 equipment in Pilot's restaurant
7 constituted an oven/range applying
8 definitions from Merriam-Webster's
9 Dictionary and Thesaurus without
10 providing the actual definitions that

11 were used. As you will note from the
12 Merriam-Webster definitions previously
13 provided, and oven and range are not
14 synonymous. That finding is simply
15 incorrect. Although both appliances
16 prepare food by heating, an oven is a
17 chamber, and a range is a flat top with
18 burners.

19 A full analysis of those definitions
20 clearly provides otherwise. If they
21 were properly applied, a clear
22 difference would be found. This is also
23 bolstered by the recent change in the
24 statute. "And/or" was placed between
25 the two appliances in the newly written

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1 statute.

2 Moving on to full table service, the
3 Division put on the testimony of the
4 investigating trooper, the trooper who
5 was present at the facility on the date
6 of the inspection and conducted the
7 inspection. He received firsthand
8 information that the restaurant, in
9 fact, did not offer full table service.

10 The only witness testimony offered by
11 Pilot failed to confirm whether the
12 restaurant offered full table service,
13 who the manager was or whether he or the

14 employees were trained for full table
15 service.

16 As a result, Pilot failed to
17 contradict the testimony of the
18 Division's witness; yet the hearing
19 officer completely disregarded that
20 uncontradicted testimony and found Pilot
21 in compliance.

22 It is common and routine that the
23 investigating trooper's testimony is
24 accepted and taken as proof of the
25 matters testified to in these

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1 proceedings. The fact that full table
2 service was not offered at the
3 licensee's restaurant was confirmed by
4 the investigating trooper at the
5 truckstop facility restaurant on the
6 date of the inspection.

7 Finally, regarding the issue of
8 Pilot's restaurant sublease, Pilot, as
9 originally alleged in the Notice of
10 Recommendation of Administrative Action,
11 did not have a sublease in place for the
12 restaurant, and the existing sublease
13 did not contain the required language.
14 The sublease of the restaurant was not
15 added until an amendment of sublease was
16 executed in February 2012, along with

17 the required language.
18 Boilerplate language does not
19 suffice in these types of contracts.
20 The language must be specific in order
21 to put the lessee or sublessee on notice
22 that any violation by that lessee shall
23 be considered a violation by the
24 licensee. These facts were also ignored
25 and given no weight in the hearing

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1 officer's decision.
2 So what we have was a truckstop
3 facility that was not in compliance and
4 in clear violation of several gaming
5 laws: No range, no full table service,
6 no sublease, and what we now have is a
7 decision that is saying that all of that
8 is okay despite the evidence and
9 testimony to the contrary.

10 This type of precedent cannot be
11 set. It must be made clear to the
12 industry that LSP, Louisiana State
13 Police, strictly enforces all gaming
14 laws against all licensees. The
15 uncontradicted testimony of the Division
16 and documents prove that Pilot had
17 several violations. When a licensee
18 blatantly disregards the law and
19 expressly refuses to come into

20 compliance, that licensee should be
21 reigned into compliance.

22 VICE-CHAIRMAN ROGERS: Excuse me,
23 your time is up.

24 MR. CORTAZZO: Thank you. First,
25 with regard to the range issue, the

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1 letter that was our initial response to
2 the first communication that we received
3 from the state trooper was not an effort
4 to ignore the state trooper's opinion or
5 instruction. It was the first
6 communication to state our position to
7 see if there was any discussion or
8 possibility to reconsider the state
9 trooper's opinion. Immediately after
10 the state trooper explained that, no, he
11 would not accept our position, we went
12 into action and corrected the violation
13 that he had cited. It was not an effort
14 to be obstinate. It was not any
15 expression of a refusal to cooperate or
16 to come into compliance.

17 The trooper in the initial
18 communication asked for a response, a
19 position, and we stated in our position
20 the way we saw it. He told us we were
21 wrong, so we did what he told us to do.
22 It was not any indication that we would

23 not do what we were told to do.

24 As far as the an admission that we
25 had no range, the letter stated that we

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1 had no range, because at that time the
2 word "range" was being used by the
3 trooper as he explained or referred to a
4 stovetop. So we admitted that we had no
5 stovetop.

6 We didn't admit that we had no range
7 in the sense that it was later used at
8 the hearing. We had no stovetop there.
9 Our position, however, was that the word
10 "range" in the -- our position was that
11 the statute does not require a stovetop.
12 The term "stovetop" is not in the
13 statute; only the term "range" is, and
14 so really the dispute is over what does
15 "range" mean, as we discussed the last
16 time.

17 The hearing officer decided on what
18 range meant. He used a very acceptable
19 authority, Merriam-Webster. In fact,
20 Merriam-Webster is the authority that
21 the State -- the Division and the state
22 troopers used. They added copies of
23 excerpts from Merriam-Webster for the
24 Board to consider, including a copy of
25 the page from a thesaurus.

1 A thesaurus by definition is an
2 authority to show what a synonym is, and
3 the synonym, in that authority that the
4 State gave you, was that range could
5 mean oven. They confirmed our position,
6 but nevertheless because the state
7 trooper said we should also have a
8 stovetop, we added a stovetop. We got
9 into compliance. We wanted to do the
10 right thing. Whatever we're told to do,
11 we're going to do. We appreciate an
12 opportunity to state our position, but
13 when we're told that it's wrong, then we
14 come into compliance.

15 The same thing with regard to table
16 service, and I believe that the State is
17 focusing on their opinion that the
18 hearing officer said there is no
19 evidence that there was table service.
20 I believe what happened is that there
21 was evidence on both sides. The trooper
22 testified that he believed there was no
23 table service. There was a witness for
24 our side saying that he believed there
25 was table service. We had an executive

1 vice-president from Knoxville come down
2 and say that he is the man responsible

3 for ensuring compliance with
4 regulations. He was responsible from
5 the very beginning of the opening of
6 that facility -- he was responsible for
7 seeing that the employees were trained,
8 and he came down regularly to ensure
9 that they complied with the regulation;
10 they complied with the requirement.

11 The State cannot legitimately tell
12 you that there was no evidence on the
13 other side. There was that testimony.
14 We don't deny what the trooper
15 testified. We're only saying that we
16 provided testimony on the other side,
17 and so there is contradictory testimony;
18 and the hearing officer's position in
19 that situation is to choose what he
20 decides -- which side carries their
21 burden of proof.

22 And, actually, the State has the
23 burden of proof, and the hearing officer
24 simply decided that that burden of proof
25 was not carried.

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1 The hearing officer also noted on
2 that issue, expressly his decision --
3 and this is very significant -- that the
4 only thing the State required for us to
5 do to correct that violation was to add

6 signs -- signs that said table service
7 is available, and he noted that the
8 statute does not require signs.

9 So his thinking was that if this
10 Division did not require Pilot to do
11 anything differently after it received a
12 citation from what it was doing before,
13 and the State determined that after the
14 citation Pilot was in compliance, it had
15 to be in compliance before. The hearing
16 officer had no choice but to find that
17 there was no violation on this issue.
18 Everything that we did afterwards
19 complied, and it was the same thing that
20 we were doing before.

21 With regard to the sublease, the
22 State is not focusing on the contention
23 that the sublease did not include a --
24 the restaurant.

25 VICE-CHAIRMAN ROGERS: Time's up.

91

1 Excuse me.

2 MR. CORTAZZO: The sublease uses the
3 word restaurant, so it clearly covers
4 restaurant.

5 VICE-CHAIRMAN ROGERS: Do we have
6 any discussion by board members? Any
7 motion by any board member?

8 MR. STIPE: I just would move to

9 affirm the hearing's officer's decision.

10 MAJOR MERCER: I believe the State
11 Police has to enforce what the statutes
12 are at the time. As I was saying, I
13 believe that the State Police has to
14 enforce the statutes which were on the
15 books at that particular time. I
16 realize the statutes was changed later,
17 for whatever reason, I don't know.
18 Maybe it was to clear up if there was
19 any confusion about a range or an oven.

20 I also -- I think that basically
21 Pilot was in violation of that because I
22 think most people will tell you a range
23 is -- does have a stovetop on it.
24 However, I don't think that had
25 anything -- I think really the intention

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1 of the law was really for -- to have a
2 complete kitchen or something where you
3 cook food, and I don't think there was
4 any doubt probably Pilot's Arby's was
5 doing a good job of cooking food. But
6 still, it was a required to have a
7 range, and it could be confusing.

8 Also, on the waiting service, the
9 table service, that could also be a
10 little confusing, but the law was later
11 changed on that. But we still have the

12 statute that the State Police had to
13 enforce, and I think they do have to
14 enforce those. And while I think that
15 Pilots [sic] were in violation, they
16 also replied back. They had ten days to
17 reply back with a letter, and from the
18 testimony that I read in the hearing was
19 that they did call back and talk to
20 someone and state their reason. I think
21 that Pilots [sic] really think that they
22 didn't -- maybe they were in compliance.

23 And the bottom line is that my
24 motion would be that Pilot's were in
25 violation. I'm not going to affirm the

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1 hearing officer's decision that they
2 were not in violation. I think they
3 were in violation of the hearing
4 officer's -- violation of the statutes,
5 but I also think that Pilot's -- maybe
6 they didn't do it in the correct time,
7 but they did come back and correct
8 everything they were supposed to.

9 So I'm going to say that they were
10 in violation but no fines related.

11 VICE-CHAIRMAN ROGERS: Was that a
12 substitute motion to Mr. Stipe's
13 original motion?

14 MAJOR MERCER: Right.

15 THE CLERK: So your motion is to
16 find that Pilot was it violation --

17 MAJOR MERCER: That's correct.

18 THE CLERK: -- but no fine?

19 VICE-CHAIRMAN ROGERS: Do we have a
20 second?

21 MR. JONES: I'll second.

22 VICE-CHAIRMAN ROGERS: Mr. Jones
23 seconds. Roll call, please.

24 MR. CORTAZZO: May we speak to the
25 new violation -- to the new motion?

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1 VICE-CHAIRMAN ROGERS: No. The
2 lawyer says no.

3 THE CLERK: We're voting on a
4 substitute motion. Mr. Bradford?

5 MR. BRADFORD: No.

6 THE CLERK: Mr. Jones?

7 MR. JONES: Yes.

8 THE CLERK: Mr. Stipe?

9 MR. STIPE: No.

10 THE CLERK: Mr. Singleton?

11 MR. SINGLETON: No.

12 THE CLERK: Miss Noonan?

13 MS. NOONAN: Yes.

14 THE CLERK: Major Mercer?

15 MAJOR MERCER: Yes.

16 THE CLERK: Mr. Jackson?

17 MR. JACKSON: Yes.

18 THE CLERK: Vice-Chairman Rogers?

19 VICE-CHAIRMAN ROGERS: Yes.

20 THE CLERK: Okay. Five to three,
21 motion passes.

22 VICE-CHAIRMAN ROGERS: Thank you.

23 IX. ADJOURNMENT

24 VICE-CHAIRMAN ROGERS: We need a
25 motion to adjourn.

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1 MR. BRADFORD: So moved.

2 VICE-CHAIRMAN ROGERS: Mr. Bradford
3 moves that we adjourn.

4 MR. SINGLETON: Second.

5 VICE-CHAIRMAN ROGERS: Second by
6 Mr. Singleton. This Board is adjourned.

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

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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 October 18, 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 12th day of
20 November, 2012.

21

22

23 _____
SHELLEY G. PAROLA, CCR, RPR

CERTIFICATE NO. 96001

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