

1: 1 LOUISIANA GAMING LOUISIANA CONTROL BOARD

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4 BOARD OF DIRECTORS' MEETING

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9 September 20, 2012

10

11 Louisiana State Capitol

12 House Committee Room 6

13 Baton Rouge, Louisiana

14

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17 TIME: 10:00 A.M.

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1 APPEARANCES

2 DALE HALL

3 CHAIRMAN

4

5 VELMA ROGERS

6 Vice-Chairman

7

8 AYRES BRADFORD

9 Board Member

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11 ROBERT JONES

12 Board Member

13

14 MARK STIPE

15 Board Member

16

17 JAMES SINGLETON

18 Board Member

19

20 DENISE NOONAN

21 Board Member

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23 MAJOR CLAUDE MERCER

24 Board Member

25

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1 APPEARANCES CONTINUED

2

3 CLAUDE JACKSON

4 Board Member

5

6 MAJOR MARK NOEL
7 Ex-Officio Board Member
8
9
10 LANA TRAMONTE
11 Executive Assistant to the Chairman
12
13
14 REPORTED BY:
15 SHELLEY G. PAROLA, CSR, RPR
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17 d/b/a The Edge Sports Bar &
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1 I. CALL TO ORDER

2 CHAIRMAN HALL: All right. If
3 everyone would take a seat, I'd like to
4 begin, please. I'd like to call the
5 meeting to order. Miss Tramonte, would
6 you call the roll, please.

7 THE CLERK: Chairman Hall?

8 CHAIRMAN HALL: Here.

9 THE CLERK: Miss Rogers?

10 MS. ROGERS: Here.

11 THE CLERK: Mr. Bradford?

12 MR. BRADFORD: Here.

13 THE CLERK: Mr. Jones?

14 MR. JONES: Here.

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

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1 MAJOR NOEL: Major Noel for Colonel
2 Edmonson.

3 THE CLERK: Secretary Smith? [No
4 response.]

5 CHAIRMAN HALL: Okay. I believe we
6 have everyone here, so we certainly have
7 a quorum. Before we begin, too, I'd
8 like to welcome our newest member,
9 Mr. Claude Jackson, from Rodena, and I
10 understand [sic] --

11 MR. JACKSON: Rodessa.

12 CHAIRMAN HALL: -- Rodessa. I'm
13 sorry, Rodessa. Rodena is close.
14 Arkansas, Texas, Louisiana, he's in that
15 part up there where nobody can really
16 tell where he is, so -- but I'm glad to
17 have him onboard, and I'll try and find

18 out where Rodessa is. When I speak, I
19 will speak intelligently instead of
20 mispronouncing the name next time -- but
21 I thank you for being here, and we're
22 glad to have you.

23 I also understand that, Mr. Jones,
24 you have some comments you wanted to
25 make?

8

1 II. PUBLIC COMMENTS

2 MR. JONES: Yeah. I just wanted to
3 make --

4 CHAIRMAN HALL: Let me get your --

5 MR. JONES: You got me on?

6 CHAIRMAN HALL: Yes.

7 MR. JONES: When we granted the
8 license to what is now Ameristar, those
9 of us who were on the board back then
10 remember that there was a certain degree
11 of animosity there. I mean, L'Auberge
12 wasn't delighted in having a competitor
13 set up shop next-door, and we went
14 through some uncertain times. But I'm
15 happy to report that Ameristar and
16 Pinnacle/L'Auberge have really developed
17 a healthy working relationship.

18 And just to give you a couple of
19 examples: To get to the property where
20 they're building involves putting a road

21 in through some really yucky, marshy
22 kind of stuff where they had to truck in
23 a lot of material, which would have set
24 them back, but L'Auberge/Pinnacle
25 allowed them to cross their property to

9

1 move in heavy equipment, because the
2 casino is really right next-door to
3 where L'Auberge's casino is. It's right
4 there, but the road, you know, goes
5 halfway around the world to get there
6 and took some time to build it.

7 Well, anyway, L'Auberge said you can
8 cross our property, but you can only do
9 it between 4:00 and 7:00 in the morning
10 when there's low traffic, and it allowed
11 them to get heavy equipment in and
12 probably knocked two to three weeks off
13 the construction period.

14 In return for that, Ameristar told
15 L'Auberge that, well, when you have an
16 overflow crowd, you can use our property
17 to park on because there's a big
18 concrete area there, and when L'Auberge
19 has a big crowd, like the Thursday night
20 party by the pool, they've been able to
21 park on Ameristar property.

22 So they've really developed a
23 relationship, and it goes farther than

24 that. They're working together on how
25 to develop the property between the two

10

1 casinos and to mesh their beaches that
2 they have along the river there, and I
3 think it's going to -- unitive, to both
4 companies' benefit.

5 I mean, I think about how many
6 casinos in the country that the guy can
7 walk out of the front door and play golf
8 on this golf course or walk over there
9 and play golf on that golf course -- two
10 golf courses, assuming the two companies
11 cooperate. I mean, it really will
12 cement its position as the destination
13 spot, and in -- I mean, it really can be
14 two plus two equals five, in my opinion.
15 I think they'll benefit from working
16 together. The community feels good
17 about it, and I think the State will
18 benefit from it. And I just take my
19 hats off to both companies for working
20 together, because I think it will -- it
21 will add up for everybody involved.

22 I just wanted to say that. I think
23 it puts an exclamation point behind the
24 fact that we chose that site for the
25 casino. It was a good decision, I

11

1 believe.

2 CHAIRMAN HALL: Thank you,
3 Mr. Jones. I appreciate that.

4 I would also like to say, while
5 we're at this point, too, from my
6 observation, the L'Auberge property here
7 in Baton Rouge is up and running. I
8 believe we will probably not have much
9 in a report from their revenue because
10 they were really only -- because they
11 were delayed, they were really only in
12 operation one day, I believe, during the
13 period that they would have been
14 reported. So we're not going to have a
15 revenue report from them, but they are
16 up and operational.

17 I've been at the property. You
18 know, it is a beautiful property, and
19 they seem to be doing extremely well.
20 We'll see how that goes in the future.

21 Are there any other public comments
22 that are not related to what we're going
23 to be dealing with today? [No
24 response.] Thank you.

25 III. APPROVAL OF THE MINUTES

12

1 CHAIRMAN HALL: If I could, please,
2 could I have a motion to waive the
3 reading and approve the minutes from

4 last month's meeting?

5 MS. NOONAN: I'll motion.

6 CHAIRMAN HALL: Ms. Noonan

7 motions --

8 MS. ROGERS: Second.

9 CHAIRMAN HALL: -- second by

10 Miss Rogers. Any opposition? Hearing

11 none, the motion carries. So we'll

12 waive the reading of the minutes and

13 adopt the minutes.

14 IV. REVENUE REPORTS

15 CHAIRMAN HALL: I think the Revenue

16 Reports are up next. Good morning.

17 MS. JACKSON: Good morning, Chairman

18 Hall and Board Members. My name is

19 Donna Jackson with Louisiana State

20 Police Gaming Audit Section.

21 The riverboat revenue report for

22 August 2012 is shown on page one of your

23 handout. During August, the 12

24 operating riverboats generated Adjusted

25 Gross Receipts of \$132,689,584, down

13

1 \$6 million or 4 percent from last month.

2 Typically revenues are stronger in July

3 over August. Licensees in New Orleans,

4 Baton Rouge and Amelia had to close for

5 two to three days due to Hurricane

6 Isaac, no doubt having some impact on

7 the revenues; however, even with the
8 temporary closures, revenues statewide
9 were up 2 percent, or almost \$3 million
10 from August 2011.

11 Adjusted Gross Receipts for fiscal
12 year 2012-2013 to date are \$271,336,564,
13 a decrease of 6 percent or \$17.5 million
14 from fiscal year 2011-2012.

15 During August, the State collected
16 fees totaling \$28,528,261. As of
17 August 31st, 2012, the State has
18 collected over \$58 million in fees for
19 fiscal year 2012-2013.

20 Next is a summary of the August 2012
21 gaming activity for Harrah's New Orleans
22 found on page three. During August,
23 Harrah's generated \$22,930,304 in gross
24 gaming revenue, a decrease from last
25 month of \$1 million or 4 percent, and a

14

1 7 percent or \$1.7 million decrease from
2 last August. Gaming revenues for fiscal
3 year 2012-2013 to date are \$46,837,823,
4 down \$5 million or 10 percent from last
5 fiscal year.

6 During August, the State received
7 \$5,095,890 in minimum daily payments.
8 As of August 31st, 2012, the State has
9 collected over \$10 million in fees for

10 fiscal year 2012-2013.

11 Slots at the Racetracks revenues are
12 shown on page four. During August, the
13 four racetrack facilities combined
14 generated Adjusted Gross Receipts of
15 \$32,398,149, a decrease of 7.5 percent
16 or \$2.6 million from last month, but an
17 increase of \$1.3 million or 4 percent
18 from last August.

19 Adjusted Gross Receipts for fiscal
20 year 2012-2013 to date are \$67,416,122,
21 a decrease of \$1.7 million or 2 percent
22 from fiscal year 2011-2012.

23 During August, the State collected
24 almost \$5 million in fees. As of
25 August 31, 2012, the State has collected

15

1 over \$10 million in fees for fiscal year
2 2012-2013.

3 Overall in August, Riverboats
4 Landbased and Slots at the Racetracks
5 combined generated \$188 million in
6 Adjusted Gross Receipts, which is
7 \$2 million or 1 percent more than the
8 previous August.

9 Are there any questions before I
10 present the Harrah's employee
11 information?

12 CHAIRMAN HALL: I don't see any.

13 MS. JACKSON: Harrah's New Orleans
14 is required to maintain at least 2,400
15 employees and a bi-weekly payroll of
16 \$1,750,835. This report covers the two
17 pay periods in August 2012. For the
18 first pay period, the Audit Section
19 verified 2,429 employees with a payroll
20 of \$1,980,000. For the second pay
21 period, the Audit Section verified 2,436
22 employees with a payroll of \$1,981,000.
23 Therefore, Harrah's met the employment
24 criteria during August.

25 Any questions?

16

1 CHAIRMAN HALL: Thank you.

2 MS. JACKSON: I will also be
3 presenting the video gaming
4 information --

5 CHAIRMAN HALL: Very good.

6 MS. JACKSON: -- shown on page one
7 of the video handout.

8 During August 2012, 13 new video
9 gaming licenses were issued: Six bars,
10 and seven restaurants.

11 Twenty-one new applications were
12 received by the Gaming Enforcement
13 Division during August and are currently
14 pending in the field: Seven bars,
15 thirteen restaurants and one device

16 owner.

17 The Gaming Enforcement Division
18 assessed \$760 and collected \$260 in
19 penalties in August. There are
20 currently \$500 in outstanding fines.

21 As you can see on page two, there
22 are presently 14,336 video gaming
23 devices activated at 2,107 locations.

24 As shown on page three, net device
25 revenue for August 2012 was \$47,119,209,

17

1 a \$1 million or 2.1 percent decrease
2 when compared to net device revenue for
3 July 2012, and \$186,000 or .4 percent
4 decrease when compared to August 2011.
5 Net device revenue for fiscal year 2013
6 is \$95,257,368, a \$1.9 million or
7 2 percent decrease when compared to net
8 device revenue for fiscal year 2012.

9 Total franchise fees collected for
10 August 2012 are \$14,118,817, a \$255,000
11 decrease when compared to July 2012, and
12 a \$22,000 increase when compared to
13 August 2011, as shown on page four.

14 Total franchise fees collected for
15 fiscal year 2013 are \$28,492,597, a
16 \$445,000 or 1.5 percent decrease when
17 compared to last year's franchise fees.

18 Are there any questions?

19 CHAIRMAN HALL: Any questions? [No
20 response.]

21 MS. JACKSON: Thank you.

22 V. CASINO GAMING ISSUES

23 1. Consideration of Certificate of Compliance
24 for the Alternate Riverboat Inspection of
25 the gaming vessel of Louisiana Casino

18

1 Cruises, Inc., d/b/a Hollywood Baton Rouge -
2 No. R011700193

3 CHAIRMAN HALL: Okay. The next
4 agenda item that we need to look at is
5 going to be Mr. Matt Long from ABSC is
6 here to make a presentation for the
7 Alternative Compliance Report for
8 Hollywood Casino, so if you could join
9 us. Hi there. Join us, too. Thank
10 you.

11 MR. TYLER: Thank you. Chairman
12 Hall and Board Members, I'm Assistant
13 Attorney General, Michael Tyler, and
14 today I'm joined by Matt Long of ABSC.
15 We come before you seeking the
16 acceptance of the Alternate Inspection
17 Report of Hollywood Casino Baton Rouge,
18 as performed and prepared by ABSC and
19 the renewal of the Certificate of
20 Compliance for Hollywood Casino in Baton
21 Rouge.

22 On or about July 31, 2012, Hollywood
23 Casino Baton Rouge began the Alternate
24 Inspection Process for the renewal of
25 its Certificate of Compliance. For more

19

1 on this process and the findings of the
2 Alternate Inspection of Hollywood Casino
3 Baton Rouge, I now turn this
4 presentation over to Matt Long with
5 ABSC.

6 MR. LONG: Thank you. Good morning,
7 Mr. Chairman and Board Members. Again,
8 my name is Matt Long with ABS
9 Consulting, and I'm here to report on
10 Hollywood Casino's motor vessel Casino
11 Rouge, official number 1027353.

12 The survey was conducted in
13 accordance with Louisiana Gaming Control
14 Board's guidelines. Upon the initial
15 inspection, which took place on
16 July 31st, 2012, five deficiencies were
17 identified by Doug Chapman and Eddie
18 Elsenburg, the attending surveyors.
19 These deficiencies included: Access to
20 a fire station as a result of paint and
21 hinges, improper storage of cardboard
22 boxes beneath stairways and an
23 inoperable emergency exit door. The
24 number one ship service diesel generator

25 failed to properly shut down following
20

1 over speed and low lube oil alarms, and
2 finally, the main sprinkler pump failed
3 to operate.

4 On September 11th, 2012, the
5 aforementioned surveyors attended the
6 vessel again for a follow-up survey, and
7 all deficiencies were rectified to their
8 satisfaction.

9 Subsequently, ABS Consulting
10 recommends the certificate be issued for
11 one year.

12 MR. TYLER: We now present these
13 findings to this honorable board for
14 acceptance and request that upon
15 accepting the inspection report, the
16 Board will move for the renewal of the
17 Certificate of Compliance for Hollywood
18 Casino Baton Rouge.

19 CHAIRMAN HALL: Okay. So it is --
20 it is your testimony, then, that they
21 have met compliance with the standards,
22 and that you're recommending that they
23 be granted or approved an Alternative
24 Certificate of Compliance; is that
25 correct?

21

1 MR. LONG: Correct.

2 CHAIRMAN HALL: Can I ask a
3 question, just a moment for edification?
4 Their sprinkler pump, can you explain a
5 little bit more?

6 MR. LONG: In the engine room, the
7 vessel has a power driven pump used for
8 sea water to provide sprinkler water to
9 the vessel --

10 CHAIRMAN HALL: Okay.

11 MR. LONG: -- okay, and they did
12 have to replace that pump. Okay. Once
13 that pump was replaced, our surveyors
14 revisited the vessel and observed it
15 operating properly.

16 CHAIRMAN HALL: Okay. That's not
17 something that would have caused -- was
18 that something that would have caused
19 the imminent danger issue at the time
20 that it was not functional?

21 MR. LONG: It could have caused
22 danger, yes.

23 CHAIRMAN HALL: Okay. All right.
24 But it has been corrected, and it has
25 been replaced; and it is --

22

1 MR. LONG: Fully operational, yes.

2 CHAIRMAN HALL: -- fully
3 operational, okay.

4 Are there any other questions by the

5 Board? I don't see any. I do need a
6 motion, if you would. Mr. Bradford, you
7 want to make a motion?

8 MR. BRADFORD: Based on ABS
9 Consulting's recommendation, I move that
10 we approve the extensions.

11 CHAIRMAN HALL: Yeah. The issuance
12 of a Certificate of Compliance would be
13 the motion before us for approval. Do I
14 have a second?

15 MR. SINGLETON: I'll second.

16 CHAIRMAN HALL: Okay. Mr. Singleton
17 seconds. We have a couple of seconds.
18 Thank you, Mr. Singleton. And do we
19 have any opposition? Hearing none, the
20 motion carries and has been approved. I
21 thank you very much.

22 MR. TYLER: Thank you.

23 MR. LONG: Thank you.

24 VI. CONSIDERATION OF PROPOSED SETTLEMENTS/APPEALS

25 1. In Re: Express Food Deli, LLC, d/b/a The Edge

23

1 Sports Bar & Daiquiris - No. 2600114968

2 (proposed settlement)

3 CHAIRMAN HALL: Okay. Next up are
4 going to be settlements and appeals, and
5 I believe the first one that we have,
6 Item No. 1, is a motion to approve a
7 settlement. Good morning.

8 MS. WIMBERLY: Good morning.

9 CHAIRMAN HALL: And this is for
10 Express Food Deli doing business as Edge
11 Sports Bar & Daiquiri?

12 MS. WIMBERLY: Yes, it is, video
13 poker license number 2600114968. My
14 name is Ashley Wimberly appearing on
15 behalf of State Police.

16 The licensee violated LAC
17 42:XI.2405(B)(1)(B) and LAC
18 42:XI.2417(A)(1) when it failed to
19 timely file and pay its federal taxes.

20 The licensee is interested in settling
21 this matter, and in lieu of an
22 administrative hearing, the Division and
23 the licensee have entered into a
24 settlement agreement whereby the
25 licensee has agreed to pay a civil

24

1 penalty of \$500 for the aforementioned
2 violations.

3 Hearing Officer Reynolds approved
4 this settlement agreement on
5 September 10th, 2012, and I now submit
6 it for Board approval.

7 CHAIRMAN HALL: Okay. Do we have
8 any questions by the Board? None. Do
9 we have any comment -- public comments?
10 None. If so, do I have a motion?

11 MR. BRADFORD: I moved.

12 CHAIRMAN HALL: Mr. Bradford moves
13 that we accept the settlement --

14 MR. JONES: Second.

15 CHAIRMAN HALL: -- seconded by
16 Mr. Jones. Any opposition? Hearing
17 none, the Board approves the settlement.
18 Thank you very much.

19 MS. WIMBERLY: Thank you.

20 2. In Re: Pilot Corporation Tennessee d/b/a Pilot
21 Travel Center #199 - No. 0804512585 (appeal)

22 CHAIRMAN HALL: The next we have two
23 items for appeal. The first item for
24 appeal before the Board is going to be
25 Pilot Corporation Tennessee doing

25

1 business as Pilot Travel Center #199.

2 Good morning.

3 MS. COLLY: Good morning, Chairman
4 Hall, Members of the Board. I'm
5 Assistant Attorney General, Nicolette
6 Colly, representing the Division in this
7 matter.

8 MR. CORTAZZO: Good morning, Tom
9 Cortazzo here for the license holder,
10 Pilot Corporation. I have a client
11 representative here with me, Mr. James
12 Fultz.

13 COURT REPORTER: Spell his last name

14 for me.

15 MR. CORTAZZO: Spell it? F-U-L-T-Z.

16 CHAIRMAN HALL: Okay. Miss Colly.

17 MS. COLLY: Okay. The Division in
18 its appeal memorandum contends that the
19 decision and order rendered by Hearing
20 Officer Richard L. Reynolds in this
21 matter on May 21st, 2012, should be
22 overturned and Pilot Corporation ordered
23 to pay a \$1,500 penalty.

24 On September 27th, 2011, the date of
25 the Division's inspection of the

26

1 truckstop facility, it was found that
2 Pilot Corporation's on-site restaurant,
3 Arby's, did not have a range as required
4 by Louisiana Revised Statute
5 27:306(A)(4)(2)(E). Pilot, therefore,
6 at that moment was not a qualified
7 truckstop facility and was cited for the
8 violation. Further, and although Pilot
9 was not cited in writing on
10 September 27th, 2011, it was found that
11 Arby's was not providing full table
12 service to patrons.

13 As you have read in the Division's
14 memo, these two issues, along with a
15 lease and sublease issue, were resolved
16 before the Administrative Action Hearing

17 in this matter held on May 21st, 2012.
18 Contrary to Pilot's contention that it
19 was not properly noticed and standards
20 of due process was violated, Pilot
21 received a Notice of Recommendation of
22 Administrative Action on March 8th,
23 2012, in accordance with Louisiana
24 Revised Statute Title 49, Section 955.
25 This was, approximately, two months

27

1 before the May 21st hearing. That
2 notice detailed the Division's findings
3 and provided a date, time and place for
4 Pilot's opportunity to respond, present
5 evidence and argument and conduct
6 cross-examination.

7 Although Pilot was not initially
8 noticed in the inspection report, they
9 were given ample notice before the
10 hearing and actually resolved all issues
11 before the hearing.

12 At the hearing, the Division argued,
13 and still argues, that Pilot did not
14 have a range in its on-site restaurant
15 at the time of the inspection. At that
16 time, a range and oven were a
17 requirement, not an example, of what
18 constitutes a fully equipped kitchen.
19 The hearing officer reasoned that the

20 equipment that Pilot did have qualified
21 as an oven and range, and Pilot was in
22 compliance; however, the Division's
23 memorandum provides definitions to the
24 contrary.

25 As you will see, the Division's

28

1 Exhibit 3 provides Merriam-Webster's
2 dictionary entry for range: "A cooking
3 stove that has an oven and a flat top
4 with burners or heating elements."

5 Exhibit 2 provides the definition for
6 oven: "A chamber used for baking,
7 heating, or drying." You will also find
8 Exhibit 5, which is Merriam-Webster's,
9 the source entry for range: "An
10 appliance that prepares food for
11 consumption by heating it."

12 The thesaurus entry states that oven
13 is a related word but not a synonym. It
14 cannot be said that oven and range are
15 synonyms. Both are appliances used to
16 prepare food for consumption by heating
17 it; but a range is not a chamber, and an
18 oven is not a flat top with burners.

19 The Division's Exhibit 7 is a copy
20 of the equipment in the Arby's
21 Restaurant. This is clearly an oven, a
22 chamber. There's no flat top with

23 burners or heating elements. Turning to
24 Exhibit 8, although not a very clear
25 picture, you will see what Pilot later

29

1 installed to come into compliance. This
2 appliance has a flattop with burners.

3 In light of the recent legislation
4 effective August 1st, 2012, which
5 provides that a kitchen have a range or
6 oven, it is imperative that a correct
7 distinction be made between what
8 qualifies as a range and what qualifies
9 as an oven. If Merriam-Webster's is to
10 be used as the go-by for this issue, the
11 hearing officer's decision should
12 provide a complete and accurate analysis
13 of the two appliances.

14 Regarding table service, the
15 investigating trooper spoke with
16 employees who confirmed that the Arby's
17 did not provide table service; however,
18 the hearing officer found that the
19 Division provided no proof of the
20 allegation. Although the proof provided
21 may have been insufficient, testimony
22 was provided and should be reflected in
23 the decision.

24 The investigating trooper testified
25 under oath that the employees stated

1 that Arby's did not have table service,
2 and Mr. Acen (phonetic) Hazlewood,
3 Pilot's witness, stated that he trained
4 staff in or around 2003 for table
5 service, and he didn't know the current
6 manager of Arby's and could not confirm
7 whether table service was offered at or
8 before the time of the inspection.

9 Regarding the language of the Arby's
10 lease and sublease, as stated in the
11 Division's memorandum, the hearing
12 officer's decision does not reflect that
13 the specific language required by
14 Louisiana Revised Statute
15 27:306(A)(5)(B) was not added until an
16 amendment was drafted on or about
17 February 25th, 2012, made effective
18 March 1st, 2011, the date of the lease
19 and sublease. Even if this board finds
20 that that language is sufficient, the
21 Division should reflect the amendment.

22 Although the violations were
23 remedied, they were still in existence
24 at the time of the inspection, and Pilot
25 was not meeting the criteria for a

1 qualified truckstop facility.
2 Considering this, the Division

3 respectfully requests that the Board
4 overturn the hearing officer's decision
5 and order Pilot Corporation to pay a
6 \$1,500 penalty for its violations.

7 CHAIRMAN HALL: Thank you.
8 Mr. Cortazzo, as you know, you haven't
9 appeared before the Board during my
10 tenure. Generally, it's been held that
11 we don't accept new evidence now that
12 we're on appeal. We're looking at the
13 record that has been established. So I
14 just wanted to lay that guideline before
15 you continue.

16 Does anyone have any questions for
17 Miss Colly before Mr. Cortazzo speaks?

18 MR. STIPE: I'd like to hear from
19 him first.

20 CHAIRMAN HALL: If you would,
21 continue.

22 MR. CORTAZZO: Thank you, Chairman
23 Hall, I expected or understood that
24 would be your ground rules for the
25 appeal.

32

1 CHAIRMAN HALL: Okay. Thank you.

2 MR. CORTAZZO: Let me start by
3 giving a little bit of background and
4 setting some context to try to explain
5 Pilot's reason for opposing the

6 proceeding, if you will.

7 As you can imagine, these things
8 have great ramifications. It's like
9 throwing a stone in the pond. There's
10 widespread ripple effects. We do
11 business across the country with a
12 number of gaming centers at our
13 truckstops in a number of states, not
14 just in Louisiana, and just like you do,
15 all states watch, you know, the gaming
16 operations very carefully, very closely.
17 A finding of a violation here in this
18 instance could potentially have
19 implications across the country at our
20 business operations in other states. So
21 if there's a finding of a violation
22 that's potentially reportable, in these
23 other states, it may have impact on
24 suitability investigations and whatnot.

25 So while it may seem that, well, you

33

1 know, that this is trivial -- you put a
2 range in a kitchen and it's a done deal,
3 why are you so worried about it -- I
4 wanted to give you that context. It's
5 not simply putting a range in a kitchen,
6 which we did, and we were totally fine
7 with doing. It was the violation that
8 we were more concerned about.

9 In addition, as you know, we have
10 contracts for these facilities with
11 device owners, and a finding of a
12 violation is a potential breach of that
13 contract, so we need to protect against
14 those sorts of situations.

15 The State Police, I think, have sort
16 of a graduated system of punishment, so
17 if you have one violation on your
18 record -- so to speak your record -- the
19 next time something comes up, they take
20 it much more seriously. So we are very
21 aggressive and very active in preventing
22 even one finding of a violation from
23 getting on our record. So that's why we
24 take these things so seriously. Pilot
25 has always been a good corporate

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1 citizen. Basically, our position is:
2 Tell us what you want us to do, and
3 we'll do it.

4 So just for some further background:
5 When Pilot received the first citation,
6 it dealt only with the range issue, and
7 the trooper explained his position and
8 asked for our response in ten days. We
9 gave that response within that period of
10 time, and our response was simply to
11 state why we thought we were in

12 compliance. We explained how we read
13 the statute, and were open to criticism
14 or open to rejection, but we asked, in
15 other words -- this is our position.
16 Can you withdraw the violation? Or if
17 not, let us know, and we'll do what we
18 have to do.

19 We received no response to that
20 reply that we made for months. So we
21 thought everything was taken care of;
22 State Police must have accepted our
23 position. We were okay. It took months
24 before we heard back, and when we heard
25 back, all we got was the notice that our

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1 license was going to be revoked. So
2 that was, obviously, pretty precipitous.

3 At that time, we also received
4 notice that the State Police were taking
5 the position that the table service was
6 an issue. That was the first time that
7 was raised. It was not stated in the
8 citation. It was not pointed out in
9 connection with the investigation that
10 was done. At that time, the State
11 Police also requested a copy of our
12 lease documents, which we immediately
13 provided. So when we received that
14 notice, we responded quickly. Again, we

15 swung into action.

16 In fact, the man sitting at my right
17 is the person who was involved in
18 straightening out those issues. We did
19 install a range almost immediately. We
20 were, like, we don't think we have to,
21 but we'll do it. If you think that the
22 statute requires a stovetop, we'll put a
23 stovetop there. You asked for our lease
24 now; here's a copy of all our lease
25 documents. If you think something has

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1 to be resolved with regard to table
2 service, we'll do whatever you think it
3 takes to resolve that issue.

4 So we got all three of those items
5 resolved. State Police has concurred
6 that they're now taken care of. It's
7 just a question of what now must be done
8 with what the State Police say they
9 found back at that time.

10 So let me focus on those three
11 issues. The first is the range, and
12 it's our position -- it still is our
13 position; I think it's reasonable after
14 I looked at the statute -- that a range
15 in terms of a stovetop is not -- is
16 simply not required by the statute.

17 First of all, Pilot read that

18 statute to mean that those three items
19 listed in the statute, range, oven
20 refrigerator, were examples of what the
21 State requires to have a fully equipped
22 kitchen, and it's that language that's
23 in the statute, "fully equipped
24 kitchen." And we have never been told
25 before that our kitchen there, which had

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1 been there for a decade or more, was not
2 fully equipped. So we thought the
3 equipment there we had was adequate. We
4 have items in the kitchen, obviously,
5 that are not listed in the statute.

6 So that made us think that the
7 statute was not required to be read
8 literally; otherwise, all we would have
9 was a range, an oven and refrigerator.

10 What we had there was a kitchen
11 appliance to heat food; we had a
12 refrigerator; we had counters for
13 preparing food and everything else you'd
14 find in a kitchen, which we thought made
15 it fully equipped.

16 Secondly, we think that using
17 dictionary definitions for the word
18 range, we were in compliance. We had a
19 range. We're talking about
20 Merriam-Webster's. We had one that we

21 submitted to the hearing officer that
22 was not Merriam-Webster's, and,
23 obviously, there's a lot of dictionaries
24 that can be consulted. But the
25 definition that we found was, quote,

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1 "kitchen appliance used for cooking."
2 So that's what we had there. The
3 definition doesn't say "stovetop," which
4 is what the trooper was interpreting
5 range to mean.

6 And I can see that probably a lot of
7 people will interpret range to mean
8 stovetop, but this is a criminal
9 procedure -- or quasi criminal
10 proceeding, so the statutes have to be
11 read pretty narrowly in favor of the
12 accused. They can't be read vaguely and
13 broadly to find a violation. They have
14 to be read narrowly to find compliance
15 when possible. So while we have
16 dictionary definitions that we comply
17 with, we think that no violation can be
18 found.

19 I point out that the hearing officer
20 found in Merriam-Webster's dictionary
21 definition -- that he found us to be in
22 compliance with, and even the State
23 attached an item of new evidence that

24 we're in compliance with. The State
25 Exhibit -- brief Exhibit 5 gives a

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1 definition of range that is simply,
2 quote, "an appliance that prepares food
3 for consumption by heating it," and the
4 equipment we had there is exactly that.

5 It doesn't mention a stovetop. It
6 doesn't mention open flame that a lot of
7 people associate with being a stovetop.
8 It simply says, an appliance to prepare
9 food for consumption by heating it.

10 That's what we had there even before we
11 installed the stovetop to address the
12 accusation -- the violation. So we
13 think that's another reason why the
14 hearing officer found us in compliance
15 and why you can find us in compliance,
16 as well.

17 Also, I would point out the recent
18 legislation, and as you know, the gaming
19 statutes were revised a couple of months
20 ago. The word "or" has been replaced
21 between range and oven, instead of
22 "and," and I read that to mean that was
23 the legislative intent of that statute
24 all along. These are examples of what
25 you can have to make the kitchen fully

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1 equipped.
2 Finally, with regard to the
3 legislation, I think it highlights that
4 really the point is moot now. Whether
5 or not you interpret the statute as we
6 did or as the State Police did back in
7 August of 2011, it's a -- you know, at
8 best back then it was a technical
9 violation, but now really it is a moot
10 point. The legislature has spoken and
11 said either/or can make a kitchen fully
12 equipped, and I think that's where we
13 are now.

14 I think that this is a -- what I
15 would call a dominiums issue. It's not
16 worth what the State Police is
17 attempting to do to Pilot, because it's
18 such a minor point; it's now really
19 moot. And we're trying to avoid, like I
20 said, the bigger ripple effects. I
21 think it's not worth putting Pilot
22 through that.

23 I also point out that I really think
24 there's inconsistent enforcement on that
25 issue. That is an issue that I think

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1 the Board has to be concerned about.
2 There are a vast number of fast food
3 restaurants that clearly qualify and are

4 accepted by the State Police at these
5 truckstop gaming facilities like the one
6 we had in Arby's. There are Kentucky
7 Fried Chickens; there are Subways. None
8 of these places have stovetops; none of
9 them need stovetops to be restaurants,
10 and they are accepted generally by the
11 State Police across the state.

12 So to pick and choose, for whatever
13 reason, when to require a stovetop and
14 when to interpret range to mean stovetop
15 and when not to, you know, I think is a
16 problem with inconsistent enforcement.

17 So I don't think that the State
18 Police can pick and choose, and where
19 it's allowed at a large number of
20 facilities, it needs to be allowed by
21 all. So I think that we -- that's
22 another reason why I think that we're --
23 a violation should not be found on that
24 issue.

25 With regard to the table service

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1 issue, the second violation on this
2 case, Pilot has always had table
3 service. We construed the term "table
4 service" to mean an area of a restaurant
5 where it's clearly set aside for seating
6 with tables with condiments. The

7 statute does not require wait service.
8 Again, I think it's a matter of how
9 you're going to interpret it. Are you
10 going to interpret the statute broadly
11 to catch -- you know, to find everybody
12 in violation, everyone possible; or are
13 you going to recognize that it's a quasi
14 criminal statute, and you're required to
15 enforce it narrowly in favor of the
16 accused? So table service, I think,
17 should be interpreted more narrowly to
18 mean only what it says, table service.

19 If wait service was intended to be
20 what was required, the statute would
21 read "wait service." If you go in, you
22 know, any number of these truckstop
23 gaming facilities, you won't see waiters
24 patrolling the dining room to take
25 orders, to deliver food, to deliver

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1 bills. That's not the way these are set
2 up, and they are always accepted by the
3 State Police as adequate. So I think we
4 have always met the requirement of table
5 service.

6 However, I want to go on and
7 emphasize that even if you construe the
8 term "table service" to mean wait
9 service, to have wait staff, we have

10 always been overly cautious at this
11 facility and provided wait service.

12 I think that's borne out by the fact
13 that the State Police ultimately did not
14 require us to change anything with
15 regard to the way we operate. We didn't
16 change anything with regard to the way
17 wait service is provided. The only
18 thing that we were required to do was to
19 add signs that say "table service
20 available," which really has nothing to
21 do with the service itself which has
22 always been provided.

23 So I think that Pilot for both of
24 these reasons was in compliance then and
25 remains in compliance, and I don't think

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1 a violation is -- a violation and a fine
2 is appropriate.

3 There was testimony by a Pilot
4 executive that we met that requirement.
5 We had table service; we had wait
6 service, and the hearing officer simply
7 chose to base his opinion on the
8 testimony and the evidence that we
9 provided.

10 You heard Miss Colly say that there
11 was testimony the other way, and perhaps
12 the hearing officer just decided that

13 that was insufficient, and she asked
14 that the decision should be changed to
15 reflect that there was testimony. But
16 the hearing officer is free to accept
17 and reject either side, either set --
18 either side's evidence, and where
19 there's evidence on both sides, he's
20 free to choose either side. And as long
21 as there's evidence to support his
22 decision, I think the Board should
23 uphold it. So it's not a case where
24 there was no evidence to support the
25 decision.

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1 Again, this item also -- trying to
2 conclude on the table service issue -- I
3 would say, is dominiums; it's not worth
4 what the State is trying to impose on
5 Pilot, the broad ripple effect of what's
6 going on here that we're trying to
7 avoid.

8 There's also inconsistent
9 enforcement issues because all these
10 places with some exceptions are fast
11 food restaurants. There are some more
12 traditional restaurants, but the vast
13 majority of them at these gaming centers
14 are fast food restaurants where there
15 are no employees appointed only to wait

16 tables. So it would be very
17 inconsistent enforcement to require or
18 find Pilot in violation for not doing
19 that. There are employees behind the
20 counter who are tasked with providing
21 wait service when requested at this
22 facility, but there's no one on guard
23 waiting at the door to seat you at this
24 Arby's, you know, to take your order --
25 to take everyone's order. There's only

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1 people there ready to do so when
2 requested, and that's true of the vast
3 majority of facilities. So it would not
4 be appropriate to selectively enforce
5 some higher standard at this facility.

6 Again, we have the new statute that
7 was passed a few months ago that, I
8 think, renders this point moot. Table
9 services in the form of wait service --
10 table service at all is not even
11 required in these cases anymore other
12 than Orleans Parish, and this place is
13 not in Orleans Parish.

14 To move on's to the last issue now,
15 that's the lease language. Really, it's
16 a very fine point that I think is
17 meaningless. The statute, as you know,
18 requires that the lease impose upon the

19 lessee, the operator of the restaurant,
20 the obligation to comply with all gaming
21 laws, and the issue here is the question
22 of whether we had that language.

23 Well, Pilot and the lessee for the
24 restaurant thought that we had not only
25 that language, but we had more than that

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1 language. We thought that we were
2 exceeding the requirements of the
3 statute because the language we had said
4 to the effect of, lessee is required to
5 comply with all laws and regulations.

6 It didn't say, lessee is required to
7 comply only with gaming laws and
8 regulations, so we thought we had it
9 covered and then some; and the State
10 Police said, no, we're required to have
11 -- to specifically mention "gaming
12 laws," and we amended that lease, too,
13 and our position is that we met the
14 requirement to begin with. There should
15 not be any finding of a violation here.

16 I'm happy to answer questions if you
17 have any questions.

18 CHAIRMAN HALL: If we could have
19 Miss Colly to respond, and then we can
20 ask questions.

21 MS. COLLY: Regarding the notice of

22 the violations and our response, the
23 compliance conference was our response
24 to their letter. It wasn't the action
25 we were going to take. We were just

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1 notifying them that these are the
2 violations we found; here's what we
3 intend to do. It gives them an
4 opportunity to come in and talk to us
5 before we get to the hearing and resolve
6 those issues.

7 Even if they are resolved, however,
8 it doesn't necessarily mean that we have
9 to dismiss our action. We did not move
10 forward with the revocation and did an
11 administrative action.

12 Regarding oven and range, although
13 the law may have provided a fix now and
14 Pilot considers it to be moot and only a
15 technical violation, it still was a
16 violation at the time of the inspection.
17 The statute stated then and still states
18 that a fully equipped kitchen includes,
19 but is not limited to, and then it has a
20 list of amenities. They aren't simply
21 examples.

22 And finally regarding the lease and
23 sublease issue, even if the language is
24 deemed sufficient, I still believe that

25 the hearing officer's decision should

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1 reflect that it was amended to include

2 the video poker language.

3 CHAIRMAN HALL: All right.

4 Mr. Stipe.

5 MR. STIPE: I guess -- first of all,

6 I guess I don't see an overarching issue

7 associated with this particular case. I

8 mean, I just -- as to these particular

9 set of facts, I mean, they were given

10 notice that there was some things they

11 needed to correct, and the next time the

12 two parties gathered they were

13 corrected. The next time the two

14 parties gathered was at the hearing,

15 correct?

16 MS. COLLY: Correct.

17 MR. STIPE: And by the time they

18 were at the hearing, all the matters had

19 been corrected?

20 MS. COLLY: Yes.

21 MR. STIPE: And I don't see any

22 exhibits that were proffered that the

23 hearing officer didn't accept. I mean,

24 he took the evidence and the exhibits

25 that you-all introduced at the hearing,

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1 correct?

2 MS. COLLY: Right.

3 MR. STIPE: And the same is true for
4 the -- for the -- for Pilot, correct?

5 MR. CORTAZZO: Yes, sir. Both sides
6 stipulated to each other's exhibits.

7 MR. STIPE: And, I mean, I -- I'll
8 make a motion at the appropriate time,
9 but I don't really have any other
10 questions.

11 CHAIRMAN HALL: Mr. Bradford?

12 MR. BRADFORD: Miss Colly, my
13 frustration is not directed at you
14 personally, but I am very disappointed
15 that this has even come to this Board.
16 We have an excellent corporate citizen
17 here, and we're -- we make decisions on
18 hundred million and \$500 million,
19 billion dollar things every month, and
20 we are being asked to argue about the
21 definition of the range at a quality
22 corporate citizen with a quality
23 restaurant. These statutes were
24 designed to keep mom and pops from
25 throwing up a pup tent so that they

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1 could put video poker machines, and
2 somebody dropped the word "range" and
3 "table service" and "telephone" and
4 whatever -- showers and such and such to

5 qualify for truckstop. These folks
6 shouldn't be drug in here like this.

7 I'm very disappointed that we --
8 that we're here. Their kitchen is
9 probably better than most kitchens
10 statewide in these truckstops, fully
11 equipped with the ability to serve
12 quality food, hot food, and so rather
13 than me ramble on, I just -- I believe
14 the hearing officer got it right. I
15 believe it's our position today to
16 affirm the hearing officer and not to
17 reverse it, so I just wanted everybody
18 onboard to know kind of where I was
19 coming from on that.

20 CHAIRMAN HALL: Any other
21 discussion? All right. Do I have a
22 motion?

23 MR. STIPE: I would move just to
24 affirm the hearing officer.

25 MAJOR MERCER: I'll second it.

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1 CHAIRMAN HALL: Mr. Stipe moves to
2 affirm the hearing officer's decision.
3 Major Claude Mercer seconds it. If you
4 would, can I get on the record, please,
5 since it's an appeal. Miss Tramonte,
6 would you call the roll.

7 THE CLERK: Miss Rogers?

8 MS. ROGERS: Yes.
9 THE CLERK: Mr. Bradford?
10 MR. BRADFORD: Yes.
11 THE CLERK: Mr. Jones?
12 MR. JONES: Yes.
13 THE CLERK: Mr. Stipe?
14 MR. STIPE: Yes.
15 THE CLERK: Mr. Singleton?
16 MR. SINGLETON: Yes.
17 THE CLERK: Miss Noonan?
18 MS. NOONAN: Yes.
19 THE CLERK: Major Mercer?
20 MAJOR MERCER: Yes.
21 THE CLERK: Mr. Jackson?
22 MR. JACKSON: Yes.
23 THE CLERK: Chairman Hall?
24 CHAIRMAN HALL: Yes. Thank you.
25 Appreciate it. Thank you for your time.

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1 MR. BRADFORD: I'm sorry. Hope we
2 didn't waste your time.
3 MR. CORTAZZO: Thanks.
4 3. In Re: USA RACEWAY FLEET FUEL/LUBE EXPRESS,
5 INC., D/B/A GOLDEN PALACE CASINO
6 CHAIRMAN HALL: Next case is USA
7 Fleet Fuel/Lube Service doing business
8 as Golden Palace Casino. Good morning.
9 Good morning. How are you?
10 MS. ROVIRA: Fine, thank you.

11 CHAIRMAN HALL: Good.

12 MR. HEBERT: Morning.

13 MS. ROVIRA: Allison Rovira on
14 behalf of USA Raceway.

15 CHAIRMAN HALL: Hi there,
16 Ms. Rovira. Thank you.

17 MR. HEBERT: Christopher Hebert
18 representing the Division.

19 CHAIRMAN HALL: Mr. Hebert, how are
20 you, sir?

21 MR. HEBERT: Doing fine.

22 CHAIRMAN HALL: Good. If you'd like
23 to begin, Mr. Hebert.

24 MR. HEBERT: I believe it's Golden
25 Palace's appeal --

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1 CHAIRMAN HALL: Yes.

2 MR. HEBERT: -- so I would defer
3 to --

4 CHAIRMAN HALL: Oh, I'm sorry.
5 You're absolutely correct, Golden
6 Palace's appeal. Miss Rovira.

7 MS. ROVIRA: Let me first state that
8 I believe that I inadvertently confused
9 in my memorandum this matter with the
10 licensee's previous matter that had been
11 before the Board some time ago. I think
12 it was USA Speed Max.

13 So the issue of whether or not the

14 Board has jurisdiction, as far as I'm
15 concerned, is moot. I'm not here to
16 argue that. I'm only here to argue the
17 amount of the fine.

18 CHAIRMAN HALL: Okay.

19 MS. ROVIRA: I don't know if
20 Chris -- okay.

21 CHAIRMAN HALL: Okay. If you'd like
22 to.

23 MS. ROVIRA: I'm here just to appeal
24 the hearing officer's extreme fine that
25 was levied in this matter. The parties

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1 reached a settlement of \$2,500. The
2 hearing officer rejected the settlement,
3 and he imposed a fine of \$32,500.

4 The hearing officer referenced a
5 case that has nothing to do with this
6 matter at hand. It was a case about
7 suitability, and the person is -- the
8 case was Starfish Restaurant, and the
9 individual in that instance had a
10 criminal background, I believe, and had
11 hidden ownership in the establishment.

12 In this instance, the device owner
13 and the Type 5 licensee were the same
14 individual. There was a minor problem
15 with the device placement agreement, but
16 that device placement agreement had been

17 on file with State Police for some,
18 probably, 15 years.

19 When they did the inspection of the
20 facility, the Division noticed that
21 there was an issue with the device
22 placement agreement. They gave the
23 licensee the opportunity to revise it.
24 He submitted a new device placement
25 agreement, and that was corrected.

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1 So there never was any criminal
2 intent whatsoever. The Division agreed
3 to the \$2,500 fine, and I don't know
4 what the hearing officer used to make
5 the decision to increase the fine; but
6 in my memorandum, I cited many cases
7 that were more on point than the one
8 that the hearing officer cited, and I
9 just believe that the fine was way too
10 extreme for the situation at hand.

11 The licensee is -- well, was totally
12 in compliance at the compliance
13 conference and since then has
14 surrendered his license as of
15 August 8th, 2012. He has not been
16 operating since February of 2012. He
17 has made no money. He -- the gentleman
18 really has no money to even pay a fine.
19 The \$2,500 was going to be an extreme

20 hardship for him.

21 I just -- I believe that the \$32,500
22 is very extreme in this case considering
23 that he has not received any gaming
24 revenue and has not been operating for
25 six months.

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1 CHAIRMAN HALL: Okay. Thank you.
2 So it's -- if I could, just to clarify,
3 then, so that the point that the matter
4 is not properly before the Board and
5 that the matter is moot, those two
6 issues you're not arguing?

7 MS. ROVIRA: No, sir.

8 CHAIRMAN HALL: Okay. All right.
9 Very good. Thank you. Mr. Hebert?

10 MR. HEBERT: Good morning. As you
11 all are aware from my brief, I came here
12 prepared to argue on the issues of
13 whether the hearing officer's ruling
14 based on the stipulated facts was proper
15 and whether or not the Board has
16 jurisdiction, but I was taught a long
17 ago that where you're winning on an
18 issue, just shut up.

19 MS. ROVIRA: I did pull him out
20 earlier and tell him that.

21 MR. HEBERT: I would just like to
22 say, though, that the hearing officer

23 did not hear in issuing his decision
24 based on the facts which were stipulated
25 to by both parties. There was a

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1 voluntary stipulation of facts and an
2 acknowledgment by both parties that the
3 hearing officer would take the
4 stipulated facts into consideration and
5 account with making his final
6 determination and ruling.

7 Additionally, it is well settled
8 that the expiration of a license after
9 the commencement of an administrative
10 action does not render the action moot
11 based on the collateral consequences
12 doctrine.

13 With regard to the hearing officer's
14 decision to render a penalty in this
15 matter, it is well noted that we did
16 attempt to settle this matter, and the
17 Division did take into account, in
18 reaching the settlement, that the device
19 operating agreement, which was
20 incorrectly done, was between two
21 licensees that were both owned by the
22 same individual; and that although the
23 conditions of the establishment were, in
24 the words of the notice, deplorable,
25 those conditions weren't addressed and

1 improved and reinspected for compliance
2 and there was no revenue being received
3 by the licensee after February.

4 However, the Division does feel that
5 the hearing officer did the proper thing
6 in exercising his power as a trier of
7 fact and law in this matter, and we
8 don't feel that the hearing officer was
9 erroneous in substituting his own
10 penalty amount where he felt that the
11 nature and seriousness and the duration
12 of the violations warrant a greater
13 fine.

14 CHAIRMAN HALL: All right, sir. Do
15 we have any questions, discussion? I
16 think Mr. Bradford -- I'm sorry. You
17 were up first, Mr. Bradford.

18 MR. BRADFORD: Yeah. I'm not sure
19 how to ask any questions here. Allison,
20 let me ask you this: Your client is out
21 of business?

22 MS. ROVIRA: Yes, sir.

23 MR. BRADFORD: The truckstop is shut
24 down?

25 MS. ROVIRA: Shut down.

1 MR. BRADFORD: And, Trudy, let me
2 ask -- where is Trudy?

3 CHAIRMAN HALL: Oh, she's over here.

4 MR. BRADFORD: So he surrendered the
5 license?

6 MS. ROVIRA: Yes, sir. He placed
7 the license on hold in February, and he
8 surrendered it August 8th.

9 CHAIRMAN HALL: All right. Let me
10 say this, because I think it's
11 important. I'm not arguing that his
12 action is to surrender, but I don't
13 think that he can surrender until the
14 Board takes an action. The Board has
15 to -- has to accept his surrender. I
16 don't think he can just give it up.

17 Now, we can't compel him to operate
18 under the license, but I think it
19 requires a board action for there not to
20 be a license in effect; and I don't
21 think that has occurred yet. Now, I
22 believe that's what has been held
23 previously by rulings.

24 Now, I understand he's not in
25 business anymore. In essence, his --

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1 you know, whether the license exists or
2 not may not be worth arguing about, but
3 I think the Board has to take some
4 action for that license to disappear.

5 MS. ROVIRA: Okay. And I believe

6 that Mr. Hebert in his memorandum -- I
7 think he addressed that issue and stated
8 that there was no Board action needed,
9 and I'm -- is that correct -- for
10 surrender -- for acceptance of the
11 surrender?

12 CHAIRMAN HALL: Well, I think --

13 MR. HEBERT: No. The only argument
14 that I made is that there was an action
15 by the Division and not by the Board.

16 CHAIRMAN HALL: Right.

17 MS. ROVIRA: Okay.

18 MR. BRADFORD: It doesn't matter to
19 me one way or the other.

20 CHAIRMAN HALL: All right. Good. I
21 just wanted to make that point, but you
22 wanted to ask Trudy a question, so I was
23 getting it out of the way.

24 MR. BRADFORD: What impact -- if an
25 operator surrenders a license, what

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1 impact does that have on them being able
2 to be relicensed at a later date?

3 MS. SMITH: It doesn't have.

4 MR. BRADFORD: They can reapply and
5 --

6 MS. SMITH: Yes, as far as I'm
7 aware.

8 MS. ROVIRA: Can I make one more

9 suggestion? In the rules, I believe it
10 states that after 180 days, if they have
11 not resumed operations, that the license
12 is automatically surrendered.

13 CHAIRMAN HALL: I think the way
14 that's been looked at, Miss Rovira --
15 Allison, is that the Board doesn't have
16 to have any other reason to take an
17 administrative action to take the
18 license after 180 days if it has not
19 been utilized. In other words, they
20 don't have to have any other actionable
21 violation in order to be able to take
22 the license if it's not been utilized
23 for 180 days.

24 I don't know that it automatically
25 renders the license --

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1 MS. ROVIRA: Surrendered.

2 CHAIRMAN HALL: -- surrendered,
3 okay? I think that in my research,
4 that's what I -- that's the conclusion
5 I've come to, and I may prove to be
6 incorrect. But that's the way I
7 understand it.

8 So the Board can take action at some
9 point after this is settled very easily
10 to make the licensing valid or revoke
11 the license, or whatever the

12 terminology. I don't think a revocation
13 is the correct word, but to make the
14 license ineffective or acceptance --
15 accept its surrender.

16 MS. ROVIRA: Okay.

17 CHAIRMAN HALL: And then they don't
18 have to have any other reason to do that
19 other than it's been 180 days.

20 MS. ROVIRA: Okay.

21 CHAIRMAN HALL: Okay? I think.

22 MS. ROVIRA: Okay.

23 MR. BRADFORD: Well, this is to me a
24 perfect example. Here ten minutes ago
25 we had a good operator here that we drug

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1 through the coals for no reason, and
2 frankly your client has a mess on their
3 hands. Probably the most despicable
4 report I've read on spoiled food in the
5 refrigerator, molded bread, filthy
6 operation, and now they've closed it
7 so --

8 MS. ROVIRA: They did come into
9 compliance, and then they have since
10 closed it.

11 MR. BRADFORD: Yeah, they came into
12 compliance probably at the bare bones
13 minimum, but all nonetheless, that is
14 compliance, so...

15 But, anyway -- and if they're out of
16 business, and I don't know where I'm
17 going with this -- but I would not -- if
18 they're out of business and don't have
19 any money, you know, I'd probably let
20 them pay the \$2,500 and limp away. If
21 there's some reason they can come back
22 and get reopened, I would be hesitant to
23 allow that.

24 MS. ROVIRA: I could tell you that
25 the gentleman is looking to sell his

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1 property, but he's -- I'm helping him
2 work on that to try to sell it. He has
3 no desire to get back in the truckstop
4 business.

5 CHAIRMAN HALL: What about his Type
6 license, which is not before the
7 Board? There's no issue on his Type 6
8 license before the Board.

9 MS. ROVIRA: I believe that the only
10 locations that he had machines in were
11 in his two truckstop locations, which
12 have since been closed.

13 CHAIRMAN HALL: Mr. Stipe, you had a
14 question. Do you still have that
15 question?

16 MR. STIPE: I do. I guess in June,
17 if you were willing to -- you thought it

18 was a good idea to accept a \$2,500 civil
19 penalty, and we're sitting here now and
20 you've got not only the \$2,500 penalty
21 for the surrender of the license -- kind
22 of following up on the theme of where
23 you're winning, maybe you should just
24 kind of win -- I mean, if there's a
25 surrender of the license and the fine

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1 and the penalty that you had agreed or
2 thought was a good idea is levied and
3 collected, I mean, isn't that a good
4 result, from your standpoint?

5 MR. HEBERT: Well, the Division
6 thinks so. We stand by what we
7 originally agreed to in the settlement.

8 MR. BRADFORD: Miss Rogers beat me.

9 CHAIRMAN HALL: Miss Rogers?

10 MS. ROGERS: This is just a question
11 out of curiosity. Why would the
12 Division officer go up such an enormous
13 amount?

14 CHAIRMAN HALL: Hearing officer.

15 MS. ROGERS: It just doesn't
16 compute. Would you have any idea?

17 MR. HEBERT: Only what was reflected
18 in the hearing officer's decision. I
19 don't have any further insight as to,
20 you know, what he looked at. He stated

21 that the nature and seriousness and the
22 duration of the violations warranted a
23 larger --

24 MS. ROGERS: So they were operating
25 under these horrible conditions, as

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1 Mr. Bradford said, for a length of time?

2 MS. ROVIRA: I don't believe so.

3 They may have been operating until State
4 Police did the inspection, and at that
5 time, they made efforts to clean it up.
6 And they came into compliance in
7 November.

8 MS. ROGERS: Well, how long, though,
9 were they operating under these terrible
10 terms?

11 MS. ROVIRA: I'm not sure.

12 MS. ROGERS: That might be -- I'm
13 just trying to understand.

14 CHAIRMAN HALL: I don't think we
15 know.

16 MS. ROVIRA: I don't think we know
17 because that wasn't, I think, discovered
18 until the inspection was done.

19 MR. HEBERT: Right. And the
20 inspection was done in May of 2011.

21 MS. ROGERS: Because the enormity of
22 the difference just doesn't compute. It
23 doesn't make sense. Now, if it was from

24 \$2,500 to \$3,500, but not \$2,500 to
25 \$32,000. It just doesn't compute.

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1 CHAIRMAN HALL: Okay.

2 MS. ROGERS: I don't understand it
3 either.

4 CHAIRMAN HALL: Are we creating -- I
5 guess one question I want to have here
6 when we look at this is that, you know,
7 in here throughout here, both parties
8 reference previous decisions by the
9 Board where the Board has based its
10 penalties. Based on the violations, the
11 Board has penalized more in the past.
12 You know, we said, are we setting a
13 precedent whereby this case is going to
14 be reflected in the future as one where
15 these violations exist, and we're having
16 to argue the penalty by the decision at
17 this meeting where it's -- where a
18 larger penalty may be warranted would be
19 a question I would ask the Board more so
20 than anyone else.

21 MR. STIPE: I mean, I'll --

22 CHAIRMAN HALL: Mr. Stipe.

23 MR. STIPE: I mean, for me I don't
24 see an overarching. This case is about
25 a particular facility in St. Martin

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1 Parish that really wasn't maintained
2 well, and the particular operator, in
3 advance of the hearing, stopped
4 operating the facility and ultimately
5 surrendered the license; and the two
6 parties that were involved in the
7 administrative action came to the
8 conclusion of the fine. But I don't see
9 an overarching thing. I base it on the
10 particular facts and circumstances in
11 this particular instance.

12 CHAIRMAN HALL: Okay.

13 MR. STIPE: That's -- that's my
14 opinion, but --

15 MS. ROGERS: My problem with it
16 would be that any other operator could
17 just forgo along until they're examined.
18 It's just setting a bad precedent that
19 we -- but then, I guess, they weren't
20 examined for how long? How long was
21 that amount of time from one inspection
22 to the other?

23 MS. ROVIRA: May, I think, and then
24 November, I believe.

25 CHAIRMAN HALL: But they stopped

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1 operating in February.

2 MR. HEBERT: Right. The initial
3 inspection was done May 25th, 2011.

4 MS. ROGERS: And then they operated
5 until February?

6 MR. HEBERT: Well, this was when --
7 right. This was when -- exactly.

8 MS. ROVIRA: And then they came into
9 compliance, though, in November of 2011.

10 I mean, they were in compliance, and
11 maybe I don't know if -- he'll probably
12 kill me for asking this, but if Trooper
13 Lenguyen is still here, if he could come
14 up and maybe explain. He actually
15 conducted the inspections, I believe. I
16 don't know if that will give you some
17 insight.

18 CHAIRMAN HALL: All right. Major
19 Mercer, do you want to comment before we
20 get --

21 MAJOR MERCER: It's the same thing
22 that you were talking about, Mr.
23 Chairman, about setting a precedent. I
24 mean, there's numerous violations here,
25 and I wonder, you know, if the fine

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1 wasn't set because this was basically
2 all he could pay. What if it was a big
3 corporation and had numerous amounts of
4 money, would the fine be more, or would
5 it be the same thing?

6 MS. ROVIRA: If I may, I believe

7 that the Division considered the fact
8 that there was no criminal intent here.
9 I think that's -- if I had to surmise
10 what the hearing officer really looked
11 at was the fact that there was the
12 allegation of criminal intent to possess
13 the machines, and I'm not sure, because
14 we did not hold a hearing, if he
15 understood that there really was not any
16 criminal intent. And I believe that
17 that is what the Division -- in my
18 conversations with them, that is what
19 they looked at in agreeing to the \$2,500
20 fine, the fact that there was no
21 criminal intent to possess these
22 machines.

23 MR. HEBERT: Just speaking to the
24 point of ability of the licensee to pay,
25 I can certainly speak to the fact that

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1 that's not a consideration of the
2 Division, when looking at any of these
3 violations, is the ability of anyone.
4 We try to make sure that we're treating
5 everyone the same with regard to the
6 amount of a penalty and not taking into
7 consideration the solvency of the --

8 MAJOR MERCER: So the Division
9 didn't think these violations were that

10 serious to put that amount -- to
11 increase the amount of money or the
12 amount of fine?

13 CAPTAIN HALE: My name is Glen Hale.
14 I'm a Captain in the Gaming Operations
15 Section.

16 I don't know if it's appropriate or
17 not. I can tell you what we did. I
18 know we can't rehear or retry anything,
19 but if you would like, I can tell you --

20 CHAIRMAN HALL: Are you going to
21 give us what's on record?

22 CAPTAIN HALE: I believe so. That's
23 my belief.

24 CHAIRMAN HALL: Okay. Because I
25 really don't want new testimony.

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1 CAPTAIN HALE: I understand. And
2 whatever y'all would like to know, if
3 you want to ask questions, whatever. I
4 know we're in a gray area here. I just
5 didn't want to sit back there and --

6 CHAIRMAN HALL: And I appreciate
7 that, and not offer yourself for us,
8 right. My Chairman Whisperer, I
9 guess --

10 MS. ROGERS: Legal whisperer.

11 CHAIRMAN HALL: Since you didn't
12 testify at the hearing, it would be

13 improper for us to accept your
14 testimony.

15 CAPTAIN HALE: Okay.

16 CHAIRMAN HALL: Okay. I don't know
17 that we need to. But, Captain Hale, I
18 thank you --

19 CAPTAIN HALE: You're welcome.

20 CHAIRMAN HALL: -- for being willing
21 to come up and offer yourself to us.
22 Mr. Bradford?

23 MR. BRADFORD: I've got -- we looked
24 at a bunch of cases and the fines, and
25 there's some pretty hefty fines here for

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1 similar violations. However, for the
2 sake of brevity and for the sake of the
3 fact that your client is out of business
4 and personally I don't like to kick
5 somebody when they're down, I'm going to
6 make a motion that we amend the hearing
7 officer's judgment and change it back to
8 \$2,500. And I'll hold that motion until
9 everybody --

10 CHAIRMAN HALL: All right.
11 Mr. Singleton?

12 MR. SINGLETON: And, I guess, I'm
13 just trying to make some determination.
14 Here the place is open. It had bad food
15 in the refrigerator, all this other kind

16 of stuff was going on. Supposing I got
17 poisoned or ptomaine poisoning or
18 something, or maybe even died or
19 something by the fact of the way they
20 were improperly operating the place,
21 that bothers me a little bit in terms of
22 trying to evaluate what to do.

23 And, you know, if all these things
24 happened before, now we're coming back
25 and saying, okay, he's broke and he's

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1 out of business; therefore, we're going
2 to overlook the fact that -- initially,
3 if he was still in business, I assume
4 the \$32,000 would have been on the
5 table. Now that he's out of business,
6 it's not on the table. That's what I'm
7 understanding we're saying, and is that
8 what your motion is going to say?

9 MR. BRADFORD: Well, yeah.
10 Basically, it's -- I'm saying that if he
11 was still in business, I would be
12 looking to revoke his license, from what
13 I've read. I'd be looking to fine him
14 about \$50,000 and take his license and
15 shut him down.

16 MR. SINGLETON: Okay. But the other
17 question nobody had answered, I don't
18 believe, was the fact that he's out of

19 business. Can he go back in to
20 business? And I don't think that
21 question ever got completely answered --

22 CHAIRMAN HALL: And I think the
23 answer to that question is --

24 MR. SINGLETON: -- whether he can
25 come back into business.

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1 CHAIRMAN HALL: -- he can. He has
2 to reapply -- well, yes, he does still
3 have the license, but I'm making an
4 assumption that something's going to be
5 done about that. But --

6 MR. BRADFORD: The license has been
7 surrendered, but --

8 CHAIRMAN HALL: Well, technically
9 until the Board takes an action to take
10 the license or accept the surrender, he
11 still has the license, is the legal
12 point that I want to make.

13 MR. SINGLETON: Are we taking the
14 license --

15 [BOARD MEMBERS TALKING OVER ONE ANOTHER.]

16 CHAIRMAN HALL: No, sir. I think
17 this matter has to be cleared before we
18 can do that, and I think once that's
19 cleared --

20 MR. SINGLETON: And if he applies
21 again in the future, it would have to

22 come back to the Board?

23 CHAIRMAN HALL: Right -- no. If he
24 applies again, he'll have to go
25 through -- he'll go through the

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1 Division. He won't necessarily come --
2 yeah, we would come to the Board if he
3 did make an application in the future,
4 because it's a truckstop. So it would
5 come before the Board. So we would have
6 the final say. This board would have
7 the final say whether or not he were
8 able to operate in the future.

9 MR. SINGLETON: All right. That's
10 it.

11 CHAIRMAN HALL: All right.
12 Mr. Jones.

13 MR. JONES: I'm not a lawyer, and
14 I'm about to prove it here. Could we
15 not -- would it be legally possible to
16 uphold the hearing officer's \$32,500,
17 but suspend \$30,000 of it until such
18 time, if and when, he reapplies for a
19 license? Could we do something along
20 those lines?

21 Because I'm worried about the
22 precedent end of it for somebody that
23 stays in business, but he's not in
24 business. And would that be -- I mean,

25 would such a motion make any sense

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1 legally?

2 CHAIRMAN HALL: I think legally we
3 can do that. Mr. Hebert, would you --

4 MR. BRADFORD: Amend that --

5 MR. HEBERT: I've never heard of
6 that being done. I would think that it
7 couldn't because the fine is levied
8 against the licensee, correct?

9 MS. SMITH: Correct.

10 MR. HEBERT: That would be a new
11 licensee. He would be applying as a new
12 licensee. So how would they then be
13 able to levee a fine against a new
14 licensee, would be my question? Same
15 person but different license.

16 MS. ROVIRA: But you can take it
17 into consideration, all of this, if he
18 did ever reapply.

19 MR. HEBERT: Right. If he did ever
20 reapply, correct, any of the -- of these
21 past circumstances would be taken into
22 consideration in deciding whether or not
23 to approve his application.

24 CHAIRMAN HALL: Miss Noonan.

25 MS. NOONAN: My concern is the

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1 setting the precedent. I do think the

2 \$32,500 is a little high; however,
3 reading through all of the material, it
4 seemed like the owner was not willing to
5 cooperate. It took a long time. We
6 don't know exactly how long. It must
7 have been a long time. There had to be
8 a reason why this went up.

9 I agree that it shouldn't be \$32,000
10 -- it might not have to be \$32,500, but
11 I should think -- I do think it needs to
12 be more than \$2,500 based on the other
13 cases that we've seen with very similar
14 conditions.

15 So I'm in agreement that -- and just
16 because he is not in business, that was
17 his choice. That was his choice to go
18 out of business because he wasn't making
19 money. At the time that he was in
20 business and supposedly following law,
21 he was not following law. So he does
22 need to be fined, and I do think, in my
23 opinion -- again, I'm not an attorney,
24 but in my opinion, he needs to -- I
25 think that the fine needs to be more

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1 than \$2,500. And I think: How can the
2 Board agree on what he needs to pay?
3 And we can't make the condition, because
4 like you said, it would be a new

5 license. I mean, that's a good --
6 that's a good solution, but it's not --
7 it's a good suggestion.

8 MS. ROGERS: Too, a higher penalty
9 would maybe discourage him from -- we
10 don't want him going back into business
11 if he had that kind -- you know, had the
12 kind of record that we had before us.
13 So I'm agreeing with her. I think that
14 we need to make some kind of decision
15 where, maybe, to discourage him to go
16 back out there and do business.

17 MS. ROVIRA: Well, he is -- he is
18 trying to get rid of these two
19 properties; I can say that. So I do not
20 think he will be back in business.

21 MS. NOONAN: But that's always a
22 possibility.

23 MS. ROVIRA: But I don't know. I
24 can't guarantee that, but I can tell you
25 that he is trying to move these two

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1 properties.

2 CHAIRMAN HALL: Yes, sir. We need
3 to do something.

4 MR. BRADFORD: Just so we can get
5 something on the table and move on from
6 there, but I'm going to go ahead and
7 make my motion that we amend. Both

8 parties agreed to \$2,500, and so I'm
9 just going to go back there. I move
10 that we amend the hearing officer's
11 amount and impose a civil penalty of
12 \$2,500. That's my motion.

13 MR. STIPE: I'll second that motion.

14 CHAIRMAN HALL: All right. So we
15 have a motion and a second. All right.
16 Do we have any discussion on the motion?
17 No discussion on the motion.

18 MS. NOONAN: Can I make a substitute
19 motion?

20 MS. ROGERS: Not before. We have a
21 motion on the table. Can she amend it?

22 MS. NOONAN: Can I make a substitute
23 motion?

24 CHAIRMAN HALL: Right. If you do
25 have a substitute motion, Robert's Rules

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1 of Law here, if you make a substitute
2 motion, we would rule on the substitute
3 motion first and then the original
4 motion, correct?

5 MS. NOONAN: Okay. I substitute the
6 motion to amend the hearing officer's
7 decision but to increase the fine to
8 \$5,000.

9 MR. SINGLETON: I'll second it.

10 CHAIRMAN HALL: All right. So we

11 have a motion by Miss Noonan to amend
12 the hearing officer's decision from
13 \$32,000 to \$5,000, and we have a second
14 by Mr. Singleton. All right. And so we
15 need to now vote on your motion.

16 All right. So, Miss Tramonte, if
17 you would please call the roll.

18 THE CLERK: Miss Rogers?

19 MS. ROGERS: Yes.

20 THE CLERK: Mr. Bradford?

21 MR. BRADFORD: Yes.

22 THE CLERK: Mr. Jones?

23 MR. JONES: Yes.

24 THE CLERK: Mr. Stipe?

25 MR. STIPE: No.

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1 THE CLERK: Mr. Singleton?

2 MR. SINGLETON: Yes.

3 THE CLERK: Miss Noonan?

4 MS. NOONAN: Yes.

5 THE CLERK: Major Mercer?

6 MAJOR MERCER: Yes.

7 THE CLERK: Mr. Jackson?

8 MR. JACKSON: Yes.

9 THE CLERK: Chairman Hall?

10 CHAIRMAN HALL: It doesn't really
11 matter. Yes. All right. That's eight
12 to one, so -- and I thank y'all for all
13 of the comments that were made. They

14 were all very important, legitimate, and
15 for staying focused on this.

16 So what do I do with the other
17 motion now since that motion carried?

18 THE CLERK: It's done.

19 CHAIRMAN HALL: The other motion
20 doesn't exist. I'll throw my cheat
21 sheet away.

22 MS. ROVIRA: Thank you very much.

23 MR. HEBERT: Thank you.

24 CHAIRMAN HALL: Thank you,
25 Mr. Hebert.

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1 MR. BRADFORD: I would like to make
2 sure we find out about that license
3 being surrendered. I don't know how we
4 can do that.

5 CHAIRMAN HALL: I think what we're
6 going to do is, I understand, we'll be
7 in contact after this is -- I mean, this
8 is official, we'll be in contact with
9 Miss Rovira, as their representative,
10 about the surrender of their license.

11 MS. ROVIRA: Okay.

12 CHAIRMAN HALL: And I think I have
13 the authority to accept the license
14 without having to go through any other
15 action other than -- yeah, send you a
16 notice and ask you whether or not you

17 want to surrender it.

18 MS. ROVIRA: Okay. Sounds good.

19 CHAIRMAN HALL: Okay. All right.

20 MS. ROVIRA: Thank you.

21 CHAIRMAN HALL: Thank you. All

22 right.

23 VII. ADJOURNMENT

24 MR. BRADFORD: I move we adjourn.

25 CHAIRMAN HALL: All right. We have

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1 a motion and a second.

2 COURT REPORTER: Who seconded?

3 CHAIRMAN HALL: Okay. We're going

4 to give the second to Miss Noonan

5 because she is the most anxious to

6 adjourn.

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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)."

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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 September 20,

8 2012, as taken by me in Stenographic machine

9 shorthand, complemented with magnetic tape

10 recording, and thereafter reduced to transcript,

11 to the best of my ability and understanding, using

12 Computer-Aided 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 9th day of

20 November, 2012.

21

22

23 _____

 SHELLEY G. PAROLA, CCR, RPR

CERTIFICATE NO. 96001

