

ORIGINAL TRANSCRIPT

BEFORE THE INDIANA GAMING COMMISSION
REGULAR BUSINESS MEETING

TRANSCRIPT OF PROCEEDINGS

~~~~~  
DATE: April 7, 2003

PLACE: Indiana Gaming Commission  
115 West Washington Street  
Suite 950  
Indianapolis, Indiana

REPORTED BY:  
Deanne S. Hutson, Notary Public

(317) 231-9004

**Baynes & Shirey, Inc.**  
Court Reporting Video Services

FAX (317) 231-1950

[www.BaynesandShirey.com](http://www.BaynesandShirey.com)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES

MEMBERS OF THE COMMISSION:

Donald Vowels, Chairman

Ann Bochnowski

Thomas Milcarek

Dale Gettelfinger

Marya M. Rose

ALSO PRESENT:

Glenn R. Lawrence,

Executive Director

and Members of the Staff

INDIANA GAMING COMMISSION - BUSINESS MEETING

APRIL 7, 2003

CHAIRMAN VOWELS: Call the meeting to order. It's approximately 10:04 local time April 7, 2003. We'll show that Commissioners Milcarek, Gettelfinger, Rose and Bochnowski, along with myself, are present. We do have a quorum.

The first matter on the agenda then is the approval of the minutes from the business meeting of January 10, 2003. We all had an opportunity to review those minutes. Is there a motion in reference to these minutes?

COMMISSIONER MILCAREK: So move.

CHAIRMAN VOWELS: Is there a second?

COMMISSIONER ROSE: Second.

CHAIRMAN VOWELS: Any further discussion? All those in favor of approving the minutes say aye. Show they are approved.

The next matter on the agenda is the report of the executive director Mr. Lawrence.

MR. LAWRENCE: Since the last meeting

1 I have authorized a couple of waivers of  
2 rules and regulations, mainly the first one  
3 being Argosy. More and more locations are  
4 going to the ticket-in/ticket-out type of  
5 operation so they don't need the counters and  
6 the drops for that. So Argosy was given a  
7 waiver to remove the token acceptors from  
8 their electronic gaming devices.

9 Also, Harrah's has requested to be  
10 allowed to have Blackjack tables with only  
11 three to six positions in their high stakes  
12 game rooms because the people would rather  
13 just sit three or six. So I authorized  
14 that. Finally, Harrah's also asked a waiver  
15 for security escort of payouts of less than  
16 \$200. We did authorize that with some  
17 caveats and stipulations that security has to  
18 be on, has to be a camera and things like  
19 that. Granted a waiver of having a person  
20 there on payouts of less than \$200.

21 Finally, I wanted to advise you that  
22 Rhonda Dalton got her associate's degree.  
23 That's all we've done except take vacations.

24 CHAIRMAN VOWELS: Thank you. Any  
25 questions then for Mr. Lawrence? Under new

1 business is legislative update. Who is going  
2 to talk about that?

3 MS. ARNOLD: As you know, a bill that  
4 would allow casino gaming in Orange County  
5 passed the House and it passed the Senate  
6 committee to which it was assigned. This  
7 legislation could pass the full Senate as  
8 early as this week, and since the author has  
9 indicated that we'll likely concur with any  
10 changes made by the Senate, it would be  
11 eligible for the Governor's signature as  
12 early as next week. This bill allows the  
13 IGC to enter into a contract with an  
14 operating agent for the operation of a casino  
15 there. The casino must be located on water,  
16 which means that a body of water would need  
17 to be created there, and the bill specifies  
18 that the IGC and the historic preservation  
19 district created by the bill will jointly  
20 choose the location for the casino and will  
21 decide on the exterior facade of the  
22 facility. This legislation creates a unique  
23 situation in that this operating agent's  
24 contract can last up to twenty years, but  
25 the process previously employed by the

1 Commission of choosing applicants is going to  
2 be a little different this time because it  
3 will be our responsibility to generate the  
4 request for proposals. So we anticipate that  
5 the IGC will determine the selection criteria  
6 for the applicants and will then work very  
7 closely with the Historic Preservation  
8 Commission and other various entities to  
9 develop the facility.

10 In regard to the revenue generated by  
11 this casino, all projections have been based  
12 on \$50 million. The revenue will be  
13 distributed to the towns in Orange County,  
14 the Historic Preservation Commission, the  
15 Department of Commerce, the Property Tax  
16 Replacement Fund and a new entity called the  
17 which is Baden Springs Historic Hotel  
18 Preservation and Maintenance Fund. This  
19 preservation and maintenance fund will  
20 receive an up-front payment from our chosen  
21 applicant of \$1 million and then will receive  
22 \$20 million. Once they get to that \$20  
23 million, additional revenue will then go to  
24 the Property Tax Replacement Fund. I've  
25 given you this flow chart which may or may

1 not be helpful. I think it makes sense. I  
2 look at it and realize it doesn't. The  
3 numbers are correct, the percentages are  
4 correct.

5 To avoid making this sound like a  
6 done deal, I should mention there are several  
7 important rights of passage this legislation  
8 needs to go through before it becomes law.  
9 Even when it becomes law, the people of  
10 Orange County are going to have to hold a  
11 referendum and approve gaming. It still has  
12 a way to go, but this is as far as it's ever  
13 been, and I think the people from Orange  
14 County are really encouraged at this point  
15 about the casino.

16 There are also several other gaming  
17 related issues pending in the General  
18 Assembly. One is the measure that would  
19 allow an operator to own up to two licenses.  
20 Currently they can only have one. The other  
21 would change the due date of our annual  
22 report which is September 1st, which is  
23 really boring but it's important to us  
24 because now we can report on a fiscal year  
25 basis and not a calendar year. There's also

1 a provision pending that imposes a six  
2 percent tax on the transfer of any interest  
3 in ownership changes. Unfortunately, our  
4 administrative bill which included, among  
5 other things, a program for problem gamblers  
6 has died in the Senate. Since it passed one  
7 House it's eligible for conference committee.  
8 So we remain hopeful that our bill will  
9 eventually pass, but we also are prepared to  
10 look at alternative ways of addressing this  
11 issue in the event the legislation does not  
12 pass.

13 Finally, there was a bill that would  
14 have given the IGC its own law enforcement  
15 agency, and under the bill the boats would  
16 have continued to pay 100 percent of the  
17 cost of law enforcement on the boats, and  
18 that would have also been extended to the  
19 investigators housed here with us in  
20 Indianapolis. It would have required, I  
21 guess, training in areas specific to casino  
22 gaming for these enforcement officers and it  
23 would have also created additional audit  
24 positions which would have been paid for by  
25 the boats as well. This bill died in the

1 Senate, but since it passed the House, it's  
2 eligible for conference committee, and I  
3 wanted to give you a brief overview of that  
4 language in the event it does pass in the  
5 coming weeks.

6 So if you have any questions, I'd be  
7 glad to try to answer them.

8 CHAIRMAN VOWELS: Did the  
9 commissioners get a raise in the new  
10 legislation?

11 MS. ARNOLD: We were really trying  
12 for that, Don. That's an interesting  
13 question. The legislation so far has not  
14 included any increases in staff for the  
15 commission so we might not be able to get  
16 your pay increase, but we remain hopeful we  
17 don't have to do these new tasks with the  
18 staff we have.

19 COMMISSIONER BOCHNOWSKI: Always  
20 looking out for yourself.

21 MS. ARNOLD: That's right,  
22 absolutely. Thank you.

23 CHAIRMAN VOWELS: All right then.  
24 Thank you, Miss Arnold. Next on the agenda  
25 is delegation of authority, 2003-13. Miss

1 Dean.

2 MS. DEAN: Good morning. Before you  
3 is 2003-13, a resolution hopefully granting  
4 the executive director the authority to renew  
5 riverboat owner's licenses. Pursuant to  
6 Indiana Code 4-33-6-17 and 68 IAC 2-1-9 a  
7 riverboat owner's license may be renewed  
8 annually upon the payment of a five thousand  
9 dollar annual renewal fee and a determination  
10 that the license satisfies the conditions of  
11 the Riverboat Gambling Act.

12 68 AIC 2-1-13 provides that the  
13 Commission may waive, alter or restrict any  
14 licensing requirement or procedure if the  
15 commission determines the procedure or  
16 requirement is impractical, or burdensome, or  
17 such waiver alteration or restriction is in  
18 the best interest of the public and the  
19 gaming industry, and is not outside the  
20 technical requirements necessary to serve the  
21 purpose of the requirement or procedure.

22 Due to the length of time that may  
23 elapse between Commission meetings and the  
24 timing of the license renewals, it has come  
25 to the attention of the staff that it may be

1 best for the Commission to delegate the  
2 authority to the Executive Director for the  
3 one-year renewal solely to grant those  
4 waivers until the next Commission meeting is  
5 held and then to report back to the  
6 Commission for affirmation of the waiver or  
7 different action that the Commission may want  
8 to take.

9 We ask as a staff that the Commission  
10 consider this resolution and the ability of  
11 the Executive Director to grant the waiver  
12 for the one-year period of re-licensing.

13 COMMISSIONER BOCHNOWSKI: In theory I  
14 don't have a problem with that. Would we be  
15 able to receive materials prior to your doing  
16 that granting so if we had issues that maybe  
17 we'd see that you didn't see or whatever we  
18 would have time to call them to your  
19 attention?

20 MS. DEAN: Absolutely, any materials  
21 that were submitted we'll be happy to pass  
22 along to the Commission. Typically this is  
23 the one vote that is routinely done.

24 COMMISSIONER BOCHNOWSKI: I know, but  
25 it just would be make us have that comfort

1 level.

2 MS. DEAN: Absolutely.

3 CHAIRMAN VOWELS: Any other questions  
4 for Miss Dean? In front of us we have  
5 Resolution 2003-13 which is a resolution  
6 granting the Executive Director the authority  
7 to renew riverboat owner's licenses. As to  
8 the last paragraph, the last line says this  
9 authority pertains to the one-year license  
10 renewals only, and that's the sum and  
11 substance of that.

12 Is there a motion in reference to  
13 this resolution?

14 COMMISSIONER BOCHNOWSKI: I move to  
15 accept the resolution.

16 CHAIRMAN VOWELS: Is there a second?

17 COMMISSIONER GETTELFINGER: Second.

18 CHAIRMAN VOWELS: Any further  
19 discussion? All those in favor say aye.  
20 Show that it is approved. Congratulations,  
21 Mr. Lawrence. Miss Brodnan, new game  
22 approval.

23 MS. BRODNAN: You have before you for  
24 approval Resolution 2003-14 regarding Fortune  
25 Pai Gow Poker. This was granted a

1 conditional six-month approval back on July  
2 29, 2002, pursuant to Resolution 2002-18 and  
3 is now up for permanent renewal. Majestic  
4 Star sponsored the game and has indicated in  
5 writing that it wishes to continue offering  
6 the game. Commission staffs recommends that  
7 you grant permanent approval of Fortune Pai  
8 Gow Poker.

9 CHAIRMAN VOWELS: Any questions then?  
10 In front of us is Resolution 2003-14,  
11 approval of the game Fortune Pai Gow Poker.  
12 Is there a motion in reference to this  
13 resolution?

14 COMMISSIONER GETTELFINGER: So moved.

15 CHAIRMAN VOWELS: Is there a second?

16 COMMISSIONER BOCHNOWSKI: Second.

17 CHAIRMAN VOWELS: Any further  
18 discussion? All those in favor say aye.  
19 Show it is approved. You also have the  
20 occupational license matters, the first three  
21 there?

22 MS. BRODNAN: First is reference to  
23 Michael Scelsi. On or about March 25, 1997,  
24 Mr. Scelsi submitted an application for Level  
25 2 license to work at what is now known as

1 Harrah's Casino, then Showboat, as a dealer.  
2 He received a temporary license. He  
3 disclosed a 1986 arrest for misdemeanor  
4 gambling and indicated he was acquitted.  
5 However, it turned out he did plead guilty  
6 and served six months probation and was later  
7 dismissed from probation. As a result, in  
8 order to be eligible to receive a permanent  
9 occupational license, he needed to complete  
10 the misdemeanor gambling waiver process, and  
11 he submitted such a request in December of  
12 2002. On January 23rd of this year I  
13 conducted a hearing at Harrah's Casino to  
14 consider his request, and I have issued a  
15 written finding of fact and a recommendation  
16 to you that his request for a waiver of his  
17 misdemeanor gambling conviction be granted.

18 He disclosed the arrest on his  
19 application and disclosed the outcome to the  
20 best of his knowledge at the time. The  
21 incident occurred when he was 38 years old.  
22 At the time of the review hearing he was 54  
23 and has remained out of criminal trouble  
24 since the gambling incident. He has been  
25 employed at Harrah's since the property

1 opened as Showboat in 1997 without incident.  
2 He values the opportunity to work in the  
3 gambling industry and he enjoys his job. It  
4 is the opinion of this review officer that  
5 his continued employment in a licensed  
6 position would not pose a threat to the  
7 reputation or integrity of gaming in Indiana  
8 and, therefore, it is my recommendation that  
9 you grant his request for a waiver.

10 CHAIRMAN VOWELS: Any questions for  
11 Miss Brodnan? Thank you. We have in front  
12 of the Indiana Gaming Commission an order  
13 concerning misdemeanor gambling waiver  
14 request for Mr. Michael Scelsi. Is there a  
15 motion in reference to adopting or rejecting  
16 the recommendation of the review officer  
17 approving this waiver? Is there a motion to  
18 adopt?

19 COMMISSIONER GETTELFINGER: Move to  
20 adopt.

21 CHAIRMAN VOWELS: Is there a second?

22 COMMISSIONER MILCAREK: Second.

23 CHAIRMAN VOWELS: All those in a  
24 favor say aye. Show it is approved and  
25 adopted. Next you have Chonda Hicks.

1 MS. BRODNAN: Chonda Hicks applied  
2 for a Level 2 license to work as a cage  
3 cashier at Trump Casino and was issued a  
4 license in March of 2002. She failed to  
5 accurately disclose her criminal history on  
6 her application. As a result, commission  
7 staff sent her four letters requesting court  
8 documentation showing the outcome of several  
9 arrests as well as a written explanation of  
10 her failure to disclose. Three of these  
11 four letters were hand-delivered to her by a  
12 commission agent on the property. However,  
13 she did not submit the requested information.

14 Pursuant to Indiana code and gaming  
15 regulations, the Commission may revoke a  
16 temporary occupational license if the  
17 Commission determines that the individual did  
18 not disclose or stated falsely any  
19 information required by the application. On  
20 that basis, commission staff revoked her  
21 temporary occupational license and denied her  
22 application for permanent license. You will  
23 need to vote to either deny or approve her  
24 application. Commission staff recommends  
25 that you deny the application. If you do

1 deny it, she will have the opportunity to  
2 appeal.

3 COMMISSIONER BOCHNOWSKI: I move that  
4 we deny.

5 CHAIRMAN VOWELS: Is there a second?

6 COMMISSIONER ROSE: Second.

7 CHAIRMAN VOWELS: Any further  
8 discussion? All those in favor say aye.  
9 Show it is denied. Then Jimmy Garza.

10 MS. BRODNAN: Jimmy Garza applied for  
11 a Level 3 license to work as a steward at  
12 Belterra Casino and received a license in  
13 March of 2002. Mr. Garza also failed to  
14 accurately disclose his criminal history and  
15 the Commission staff sent him three letters  
16 requesting court documentation and an  
17 explanation of his failure to disclose. All  
18 three of the letters were hand-delivered to  
19 him by an agent at the property and he also  
20 did not submit the requested information. On  
21 that basis, Commission staff revoked his  
22 temporary license and denied his application  
23 for a permanent license.

24 You will again need to vote to either  
25 deny or approve the application. Commission

1 staff recommended that you deny, and if you  
2 deny the application, he will be able to  
3 appeal.

4 CHAIRMAN VOWELS: Questions? Any  
5 motion to deny or approve the application?

6 COMMISSIONER MILCAREK: Move to deny  
7 the application.

8 CHAIRMAN VOWELS: Is there a second?

9 COMMISSIONER BOCHNOWSKI: Second.

10 CHAIRMAN VOWELS: Any further  
11 discussion? All those in favor aye. Show  
12 it is denied. Miss Chelf on the next.

13 MS. CHELF: Mr. Michael Padon worked  
14 at Caesars Indiana between January of 2000  
15 and September of 2002, at which point he was  
16 terminated by Caesars because he had  
17 generated a false player rating card in order  
18 to provide compensation benefit to a patron  
19 who had not earned it. He then applied for  
20 an occupational license in October of 2002 to  
21 work for Belterra Casino. The Commission  
22 staff denied his application to work at  
23 Belterra because of the actions he committed  
24 at Caesars. The Commission affirmed that  
25 decision in November of 2002. Mr. Padon

1 then appealed that decision and the matter  
2 was assigned to Administrative Law Judge  
3 Bernard L. Pylitt.

4           Ultimately the Commission staff  
5 entered into a tentative settlement agreement  
6 with Mr. Padon, which I believe you have in  
7 your folders. The agreement provides that  
8 Mr. Padon will -- he's already been out of  
9 work since November so a further period of  
10 suspension would have been immaterial. He  
11 will serve a probationary period for one year  
12 beginning on the date he was issued a  
13 temporary occupational license. Obviously  
14 any future violations committed by him will  
15 subject his license to additional Commission  
16 action.

17           You have a copy of the proposed  
18 settlement agreement and the Commission needs  
19 to vote to either accept or reject the terms  
20 of the settlement agreement.

21           CHAIRMAN VOWELS: Any questions for  
22 Miss Chelf? Then in front of us we have the  
23 order of the Indiana Gaming Commission  
24 concerning the settlement agreement in re the  
25 denial of occupational license of Michael

1 Padon, and as Miss Chelf discussed, there's  
2 been an agreement with Mr. Padon by the  
3 staff he would have a temporary occupational  
4 license and probationary status period for a  
5 period of one year beginning on the date  
6 that he is issued the temporary occupational  
7 license. Is there a motion to approve or  
8 disapprove the terms of the settlement  
9 agreement?

10 COMMISSIONER BOCHNOWSKI: I don't  
11 think I have that, but why are we -- why did  
12 we decide to settle with this person?

13 MS. CHELF: When we were doing  
14 discovery in preparation for the  
15 administrative hearing we were persuaded by  
16 arguments that even though he created the  
17 player rating card, it wasn't -- the actual  
18 fraud wasn't carried through. His  
19 supervisors caught that error prior to it  
20 being carried through and we found that he  
21 had -- although he had been disciplined for  
22 other things by his employer, I believe it  
23 was being late or something like that,  
24 nothing else was of a gaming violation. He  
25 hadn't done this particular action -- there

1 was no evidence that he had done it  
2 previously. So based on those issues, we  
3 entered into the tentative settlement  
4 agreement.

5 MS. DEAN: It's also my understanding  
6 there was no evidence or inkling on any of  
7 the documentation that there was any type of  
8 personal gain. His argument was that he had  
9 created the card and she may not -- the  
10 woman may not have played it at that time  
11 but he knew of other times when she had  
12 played and had not received ratings for it.  
13 So he may have been attempting to correct a  
14 wrong that he saw in the past without any  
15 type of personal gain or further action.

16 CHAIRMAN VOWELS: Is there any  
17 relation between Mr. Padon and this woman  
18 other than customer?

19 MS. CHELF: I don't believe so.

20 COMMISSIONER ROSE: Is this the guy  
21 that we've looked at before who wrote us all  
22 the letters?

23 MS. DEAN: Yes, it is.

24 MS. CHELF: Yes.

25 CHAIRMAN VOWELS: Any other questions

1 or thoughts? Is there a motion to approve  
2 or disapprove the terms of the settlement  
3 agreement?

4 COMMISSIONER MILCAREK: I would move  
5 to approve the terms of the settlement  
6 agreement.

7 CHAIRMAN VOWELS: Is there a second?

8 COMMISSIONER BOCHNOWSKI: I'll second.

9 CHAIRMAN VOWELS: Any further  
10 discussion? All those in favor say aye.  
11 Show it is approved. Thank you, Miss Chelf.  
12 Then Miss Brodnan, back to you with Mary  
13 Beth Tyler.

14 MS. BRODNAN: Mary Beth Tyler was  
15 issued a Level 2 license in August of '97 to  
16 work as a dealer at Horseshoe, then known as  
17 Empress, and was issued a permanent license  
18 in April of '99. In May 2002 she was  
19 arrested at Horseshoe on an active arrest  
20 warrant for failing to appear. She had not  
21 disclosed this matter to the Commission, and  
22 as a result, Commission staff sent her  
23 numerous letters requesting court  
24 documentation regarding these charges. There  
25 actually turned out to be two different cases

1 that she had not notified of us. The first  
2 letter was sent on May 16th of 2002.  
3 Commission staff sent six additional letters  
4 between June and October of 2002 to Miss  
5 Tyler requesting this information. She sent  
6 part of the information in September and  
7 indicated several times that she would submit  
8 the remaining information, but the Commission  
9 never received it. As a result on January  
10 3, 2003, Commission staff initiated a  
11 disciplinary action against Miss Tyler. She  
12 submitted the remaining documentation on  
13 January 28th. The charges were misdemeanor  
14 charges and she has a final court date  
15 pending in April 2003.

16 At this time Commission staff and  
17 Miss Tyler agree to enter into a settlement  
18 agreement to resolve this matter. An  
19 agreement has been signed by both Commission  
20 staff and Miss Tyler. Staff recommends and  
21 she will agree to the following. Miss Tyler  
22 agrees that her occupational license will be  
23 suspended for a period of five days beginning  
24 May 1, 2003, with her license reinstated May  
25 6, 2003. She agrees to notify Commission

1 agents and staff in Indianapolis of the  
2 outcome of her upcoming court appearance and  
3 she agrees to do so within ten days of that  
4 appearance. If this matter is continued, she  
5 agrees to provide notification of the new  
6 date. She also agrees to promptly notify  
7 the Commission in the future of any criminal  
8 activity and further agrees to promptly  
9 respond to our requests for information. She  
10 further agrees that failing to comply with  
11 these notification requirements will result  
12 in further disciplinary action against her  
13 license.

14 Commission staff recommends that you  
15 approve these terms of the agreement to  
16 resolve this matter.

17 CHAIRMAN VOWELS: She was arrested at  
18 Horseshoe on May 8, 2002, on this warrant?

19 MS. CHELF: Yes.

20 CHAIRMAN VOWELS: It says she didn't  
21 notify commission agents there was a pending  
22 criminal charge. Did she know that there  
23 was a pending charge?

24 MS. CHELF: I believe so. She may  
25 have not known she had a duty to notify us.

1 There were actually two pending -- two that  
2 she had not notified us of.

3 CHAIRMAN VOWELS: She's in a  
4 pre-trial diversion program. If she  
5 successfully completes that, then the charges  
6 will be dismissed?

7 MS. CHELF: That's correct.

8 CHAIRMAN VOWELS: I know how that is  
9 in Vanderburgh County where a person who is  
10 eligible for a pre-trial diversion program  
11 means that they have no prior record. I  
12 assume that's probably the way it is  
13 throughout the state. I also know in  
14 Vanderburgh County that the prosecutor has  
15 become quite a collector for bad checks.  
16 Some of it rising to the level of criminal  
17 element, some of it not, but they do quite a  
18 good job with the muscle of the police  
19 department. Cutting us who do collection  
20 work out of things we could be doing. I  
21 find it hard to believe they're doing that  
22 throughout the state. If you think  
23 otherwise, then so be it. Any other  
24 questions or ramblings like me?

25 Then we have in front of us the

1 document to approve or disapprove the  
2 proposed terms of the settlement agreement.  
3 Is there any motion in reference to that?

4 COMMISSIONER BOCHNOWSKI: I move that  
5 we approve.

6 CHAIRMAN VOWELS: Is there a second?

7 COMMISSIONER ROSE: Second.

8 CHAIRMAN VOWELS: Any further  
9 discussion? All those in favor say aye.  
10 Show it is approved. My point of saying  
11 that was this may not be as heinous as it  
12 looks on a piece of paper because sometimes  
13 summons are sent to people's last known  
14 address where they do not live, and the next  
15 thing you know, this shows up. As a  
16 criminal defense attorney, I tend to give the  
17 benefit of the doubt to the non-police people  
18 on occasion.

19 The next matter -- Miss Brodnan, is  
20 that the end of you for now?

21 MS. BRODNAN: I think I have one more  
22 here. Transfer of ownership next or is it  
23 the renewals?

24 CHAIRMAN VOWELS: I have supplier  
25 license matters, renewals with Miss Marsden.

1 MS. MARSDEN: Before you is  
2 Resolution 2003-15. It's concerning the  
3 renewal of supplier's licensees Anchor Coin,  
4 Inc., A.C. Coin, Bally Gaming, Inc.,  
5 GameCash, Inc., Dallman Systems, Inc., And  
6 WMS Gaming, Inc. On March 15th of 2002 by  
7 Resolutions 2002-4 and 2022-5 the Commission  
8 renewed the above licensed suppliers.  
9 Conditions are placed on the supplier's  
10 license that they must be renewed annually or  
11 request for renewal of the supplier license  
12 at least 30 days prior to the expiration of  
13 the license in accordance with 68 AIC and  
14 pay an annual renewal fee. As of today's  
15 date, the commission staff has received the  
16 request for renewal of the licensures and the  
17 \$5,000 annual renewal fee from all the  
18 above-mentioned suppliers. All remain in  
19 compliance with the Indiana Gaming  
20 Commission. So before you is 2003-15,  
21 approval for the renewal of supplier  
22 licensees.

23 MS. DEAN: If I could add. Is there  
24 corporate counsel and director of compliance?  
25 They are here and if there is anything you

1 would like to say.

2 CHAIRMAN VOWELS: Usually on renewal  
3 of supplier license silence is your best  
4 friend. Any questions for Miss Marsden?  
5 Resolution 2003-15, this is a resolution  
6 concerning the renewal of supplier's  
7 licenses. Is there a motion in reference to  
8 this renewal?

9 COMMISSIONER GETTELFINGER: So moved.

10 CHAIRMAN VOWELS: Is there a second?

11 COMMISSIONER MILCAREK: Second.

12 CHAIRMAN VOWELS: Any further  
13 discussion? All those in favor say aye.  
14 Show the renewal is granted. Miss Brodnan,  
15 we're with you again?

16 MS. BRODNAN: You have before you for  
17 approval Resolution 2003-16 regarding  
18 supplier licensee Osborne Coinage Company.  
19 Osborne notified commission staff that the  
20 president Thomas Stegman transferred five  
21 shares of stock to Thomas Jeffrey and Todd  
22 Stegman, all who are current shareholders,  
23 officers and directors of Osborne. As a  
24 result of this transfer, no new shareholders,  
25 officers or directors were introduced into

1 the company and, as a result, Osborne has  
2 requested that the Commission waive the  
3 normal transfer of ownership procedures and  
4 background investigations.

5 CHAIRMAN VOWELS: Paragraph two,  
6 letter dated January 6, 2003. Do you have  
7 that? Notify Commission transferred five  
8 shares of stock to Jeffrey and five shares  
9 to Todd. Was Thomas supposed to be in  
10 there?

11 MS. BRODNAN: He's not. He is the  
12 president. Sorry. I said five to each. It  
13 was just five to those two.

14 COMMISSIONER BOCHNOWSKI: Five total  
15 to the two?

16 MS. BRODNAN: Five to one and five to  
17 the other. That's what the resolution says,  
18 right?

19 CHAIRMAN VOWELS: Any questions then  
20 for Miss Brodnan? This is the action on the  
21 request for waiver of normal transfer of  
22 ownership procedures and background  
23 investigations and action on request for  
24 approval of transfer of ownership interest.  
25 It's in two parts. A motion to grant or

1 deny. The Osborne request for the waiver,  
2 is there a motion in reference to granting  
3 or denying that request for a waiver?

4 COMMISSIONER BOCHNOWSKI: Since  
5 they've already undergone the background  
6 check, I would move to grant the waiver.

7 CHAIRMAN VOWELS: Is there a second  
8 in reference to granting the waiver?

9 COMMISSIONER ROSE: Second.

10 CHAIRMAN VOWELS: Any further  
11 discussion? All those in favor say aye.  
12 The next portion is to grant or deny the  
13 request for approval of the resulting  
14 transfer of ownership of the shares. Is  
15 there a motion in reference to granting or  
16 denying that request for the transfer?

17 COMMISSIONER ROSE: Move to grant the  
18 request for the transfer.

19 CHAIRMAN VOWELS: Is there a second?

20 COMMISSIONER BOCHNOWSKI: Second it.

21 CHAIRMAN VOWELS: Any further  
22 discussion? All those in favor say aye.  
23 Show it is granted in both parts. That's it  
24 for you, Miss Brodnan.

25 Miss Marsden, we're back with you on

1 the permanent suppliers?

2 MS. MARSDEN: Resolution 2003-18 is  
3 the granting of a supplier's license to  
4 Sierra Design Group. Sierra Design Group  
5 provides technical consulting, contract  
6 research and develops industry with several  
7 cutting edge gambling technologies. They  
8 have been in business since 1996. The  
9 Commission has completed a background check  
10 on Sierra Design Group and determines they  
11 are suitable to receive the supplier's  
12 license. Their license will be valid for a  
13 period of one year. Issuance of a  
14 supplier's license is conditioned upon  
15 payment of the license investigation and the  
16 payment of the \$5,000 annual license fee.  
17 If the payment is not received as directed  
18 by the commission staff, the license will be  
19 subject to revocation. Sierra Design Group  
20 will be providing a new slot machine called  
21 Raining Diamonds for Harrah's East Chicago.

22 CHAIRMAN VOWELS: Any questions for  
23 Miss Marsden? Thank you. Then what we have  
24 is the granting of a supplier's license to  
25 Sierra Design Group. That would be valid

1 for a period of one year from April 7, 2003;  
2 to April 6, 2004. Is there a motion in  
3 reference to Resolution 2003-18?

4 COMMISSIONER MILCAREK: Move to  
5 approve if all conditions are met.

6 CHAIRMAN VOWELS: Is there a second?

7 COMMISSIONER BOCHNOWSKI: Second.

8 CHAIRMAN VOWELS: Any further  
9 discussion? All those in favor say aye.  
10 Show it is approved. Thank you, Miss  
11 Marsden.

12 Then next are the riverboat owner's  
13 matters, financing, and Miss Dean again.

14 MS. DEAN: Yes, thank you. Pursuant  
15 to Resolution 2003-2, the Commission granted  
16 the executive director the ability to grant a  
17 waiver prior to presentation to the  
18 Commission concerning debt transactions upon  
19 discussion of the matter between the  
20 Executive Director, the Chair and the CPA  
21 member of the Commission. A waiver was  
22 granted to Boyd on February 25, 2003, under  
23 this procedure created. Boyd Gaming was  
24 represented by counsel Kay Fleming with Ice  
25 Miller and they asked for the waiver.

1 concerning affiliate California Hotel and  
2 Casino. California Hotel and Casino have  
3 entered -- or was asked to enter into a loan  
4 agreement for the amount of \$16 million for  
5 the purchase of a corporate airplane. The  
6 debt was at 5.7 percent for a fixed rate and  
7 the initial term is 4 for 20 months. It is  
8 an affiliate of Boyd. It does not provide  
9 any type of security to the Indiana property  
10 and the only security under the loan is for  
11 the corporate jet or airplane itself.

12 This waiver was granted by the  
13 Executive Director upon discussion with the  
14 Chair and with the CPA member. According to  
15 the resolution, the Commission may direct  
16 different procedures or follow-up should they  
17 so choose.

18 CHAIRMAN VOWELS: Any questions for  
19 Miss Dean? Is there any action that we need  
20 to take today or is this merely informative?

21 MS. DEAN: Unless the Commission  
22 would want to do something different, I  
23 believe it's informative.

24 CHAIRMAN VOWELS: Any questions?  
25 Thank you, Miss Dean. You have Harrah's

1 Resolution 2003-17.

2 MS. DEAN: Yes, and representing  
3 Harrah's today is Miss Kay Fleming. I'm  
4 sure this woman can inform the Commission  
5 much better than I can at this point. It's  
6 my understanding that Harrah's is coming  
7 before the Commission requesting a waiver of  
8 the two meeting rule and approval upon  
9 commission staff review of a refinancing of  
10 their current indebtedness.

11 MS. FLEMING: Yes, we actually are  
12 here on two components today. The first is  
13 the request for a waiver -- excuse me. This  
14 is Tom Evans with Harrah's and I'm Kay  
15 Fleming. The first component is \$1.8 billion  
16 of a credit facility which will replace a  
17 great deal of their existing debt, and if  
18 the conditions are favorable, they would take  
19 that up to \$2 billion.

20 The second component is a first  
21 meeting rule on \$500 million of unsecured  
22 notes. We would come back before the  
23 Commission prior to the execution of the  
24 exchange registration. That will be done as  
25 Rule 1-4-4(a) and then we would come back

1 before that goes public. The 1.8, however,  
2 they would like to close, I believe, in May.  
3 Actually in April. All of the documents, as  
4 well as an opinion letter from Ice Miller  
5 would be presented to the commission staff  
6 for their review, and obviously if the  
7 commission staff would deem it unacceptable  
8 we would make any changes at that point in  
9 time.

10 COMMISSIONER BOCHNOWSKI: It's my  
11 understanding that this amount of money  
12 represents money that you already have out?

13 MS. FLEMING: Right now they have the  
14 capacity for \$1.875 billion under the  
15 existing.

16 COMMISSIONER BOCHNOWSKI: You are  
17 merely trying to get better interest rates?

18 MS. FLEMING: Tom can probably  
19 address that better than I.

20 MR. EVANS: Our credit facility is  
21 nearing its end. We were four years into a  
22 five-year facility. We are restructuring it  
23 so that we will then extend it to five years  
24 going forward rather than allow it to get  
25 too close to maturity point.

1 COMMISSIONER BOCHNOWSKI: This is  
2 just your capacity; you wouldn't necessarily  
3 need to use all of it?

4 MR. EVANS: That's correct.

5 CHAIRMAN VOWELS: So we're into  
6 billions now. Like somebody said, if you  
7 owe the bank a little bit of money and you  
8 can't pay them, you have a problem. If you  
9 owe the bank a whole lot of money and you  
10 can't pay them, the bank's got a problem.  
11 All right. Commissioner Gettelfinger, as the  
12 money man here, do you have any particular  
13 thoughts or questions on this?

14 COMMISSIONER GETTELFINGER: No  
15 questions. Good luck.

16 CHAIRMAN VOWELS: Anything else?  
17 Anything else you want to add?

18 MS. FLEMING: No.

19 CHAIRMAN VOWELS: Resolution 2003-17  
20 is a resolution concerning financing by  
21 Harrah's Operating Company. Couple parts.  
22 First part is the request for waiver of the  
23 two-meeting rule. Is there a motion to  
24 approve or disapprove that request for the  
25 waiver?

1 COMMISSIONER GETTELFINGER: Approve.

2 CHAIRMAN VOWELS: Is there a second?

3 COMMISSIONER ROSE: Second.

4 CHAIRMAN VOWELS: Any further

5 discussion? All those in favor say aye.

6 Show it is approved.

7 Second portion is the request of the  
8 \$2 billion credit facility. Approve or  
9 disapprove which would be subject to review  
10 and approval of the final draft and  
11 associated documents by the commission staff.  
12 Is there a motion to approve or disapprove  
13 that request?

14 COMMISSIONER GETTELFINGER: Move to  
15 approve.

16 CHAIRMAN VOWELS: Is there a second?

17 COMMISSIONER BOCHNOWSKI: Second.

18 CHAIRMAN VOWELS: Any further

19 discussion? All those in favor say aye.

20 Show it is approved.

21 MS. FLEMING: Thank you.

22 COMMISSIONER BOCHNOWSKI: This other  
23 one you don't need us to do anything about?

24 MS. FLEMING: No, we will be back  
25 before the Commission before the public

1 portion of that.

2 CHAIRMAN VOWELS: Then that agreement  
3 on Trump.

4 MS. DEAN: We have a final financing  
5 presentation today by Trump Indiana. Their  
6 counsel Greg Hahn and corporate counsel Bob  
7 Pickus are here. I see Cathy walker also.  
8 This is on a \$5 million credit facility with  
9 a fixed rate of 4.25 percent.

10 MR. PICKUS: Good morning. I'm not  
11 used to this without Mr. Hahn introducing me.  
12 For the record, Bob Pickus, general counsel  
13 for Trump Hotels and Casinos. With me is  
14 Kathy Walker who, as I believe most of the  
15 Commissioners already know, left her position  
16 as general manager of Trump Indiana to come  
17 to Atlantic City to help us out.

18 MS. WALKER: If I may, Chairman.  
19 With us today is Chris Linengin [sic.], The  
20 new general manager of Trump Indiana.

21 MR. PICKUS: With that, it's going to  
22 be one of those small ones then. Before you  
23 today is a request for approval for a \$5  
24 million loan to allow Trump Indiana to  
25 acquire and purchase slot machines in order

1 to keep its product up-to-date and  
2 competitive. We looked at a number of  
3 alternatives for the acquisition and  
4 financing of slot machines, and in  
5 conversations with Mercantile Bank, which is  
6 of course a local Indiana bank which has  
7 been a good lender with us, we were able to  
8 negotiate a very good loan at a fixed rate  
9 of four and a quarter percent for the term  
10 of two years.

11 We would request first that the  
12 two-meeting rule be waived and, secondly,  
13 that the loan be approved. I'll be happy to  
14 answer any questions you have.

15 CHAIRMAN VOWELS: The \$5 million  
16 certainly seems insignificant to the other  
17 things we've been talking about.

18 COMMISSIONER BOCHNOWSKI: I don't  
19 think \$5 million is insignificant. I'm  
20 sorry.

21 CHAIRMAN VOWELS: The other numbers  
22 we're looking at much more than that. Maybe  
23 in reference to that you could borrow an  
24 increase of \$5 million at four and a quarter  
25 percent. Any questions then in reference to

1 this?

2 Resolution 2003-19 concerning  
3 financing by Trump Indiana Incorporated. It  
4 again is in two parts. There's a request  
5 for waiver of the two-meeting rule. Is  
6 there a motion to approve or disapprove that  
7 request?

8 COMMISSIONER ROSE: Move to approve.

9 CHAIRMAN VOWELS: Is there a second?

10 COMMISSIONER MILCAREK: Second.

11 CHAIRMAN VOWELS: Any further  
12 discussion? All those in favor say aye.  
13 Show that the waiver is approved.

14 The second portion is request for the  
15 approval of the acquisition of a loan with  
16 the conditions subject to the commission  
17 staff review. Is there a motion to approve  
18 or disapprove that request?

19 COMMISSIONER GETTELFINGER: I have a  
20 question first. What will be the security  
21 for this Mercantile Bank?

22 MR. PICKUS: Slot machines.

23 MS. DEAN: Just a slight warning, but  
24 I'm sure you know, Bob, that we will need to  
25 be careful with the wording on that security

1 in that the bank would not be able to take  
2 possession or control of those slot machines  
3 directly. So that is something we need to  
4 be very cautious of.

5 MR PICKUS: We have, if you recall, a  
6 prior loan with the same bank with the same  
7 security with documents that have previously  
8 been reviewed and approved by yourself and  
9 staff. So we will make sure that the same  
10 approval language is incorporated.

11 CHAIRMAN VOWELS: Security if they  
12 can't come get their slot machines?

13 MR. LAWRENCE: It's only five  
14 million.

15 CHAIRMAN VOWELS: Is there a motion  
16 in reference to the request for approval or  
17 disapproval?

18 COMMISSIONER ROSE: Move to approve.

19 CHAIRMAN VOWELS: Is there a second?

20 COMMISSIONER GETTELFINGER: Second.

21 CHAIRMAN VOWELS: Any further  
22 discussion? All those in favor say aye.  
23 Show it is approved in both parts. Thank  
24 you.

25 The next matter on the agenda -- Miss

1 Dean, that takes care of all the financing,  
2 right?

3 MS. DEAN: Yes, it does.

4 CHAIRMAN VOWELS: Miss Chelf, back to  
5 the license renewal.

6 MS. CHELF: Riverboat owner Showboat  
7 Marina Casino Partnership has requested a  
8 renewal of their license. You have before  
9 you an order to renew that license for one  
10 year from April 15, 2003, to April 14, 2004.

11 CHAIRMAN VOWELS: This is the  
12 one-year license renewal to renew the full  
13 blown investigation on the three year --  
14 every three years?

15 MS. CHELF: Yes.

16 CHAIRMAN VOWELS: I assume since we  
17 haven't heard anything bad that everything is  
18 going okay. Anyone needs to address this?

19 MS. FLEMING: I can address any  
20 questions.

21 CHAIRMAN VOWELS: Does anybody have  
22 any questions?

23 COMMISSIONER BOCHNOWSKI: You have no  
24 objection to this?

25 MR. LAWRENCE: No.

1 CHAIRMAN VOWELS: Well then, we have  
2 before us the order of the Indiana Gaming  
3 Commission renewing the riverboat owner's  
4 license of Showboat Marina Casino  
5 Partnership, and is there a motion to renew  
6 the riverboat owner's license for a period of  
7 one year from April 15, 2003, to April 14,  
8 2004?

9 COMMISSIONER BOCHNOWSKI: I would  
10 move to grant that.

11 CHAIRMAN VOWELS: Is there a second?

12 COMMISSIONER MILCAREK: Second.

13 CHAIRMAN VOWELS: Any further  
14 discussion? All those in favor say aye.  
15 Show it is approved.

16 The next matter on the agenda is Miss  
17 Brodnan. At this point Majestic Star Casino.

18 MS. BRODNAN: You have before you for  
19 approval a settlement agreement between the  
20 Indiana Gaming Commission and Majestic Star  
21 Casino. Pursuant to Indiana gaming  
22 regulations, riverboat licensees must inform  
23 Commission agents on property when an  
24 occupational licensee's employment is  
25 terminated, suspended, on leave of absence or

1 transferred to another position. This  
2 notification must be submitted within 15 days  
3 of the occurrence.

4 Commission staff was notified of two  
5 incidents where Majestic Star failed to  
6 provide these notifications. The first  
7 incident involved an employee whose license  
8 expired while the employee was on medical  
9 leave. Agents were not informed of the  
10 employee's return from leave and the employee  
11 worked one shift with an expired gaming  
12 license.

13 The second incident involved an  
14 employee who was on family medical leave and  
15 was terminated for exhausting her allowed  
16 leave time. The employee subsequently  
17 returned to work without notification to the  
18 Commission of the change and she worked  
19 approximately one month without a valid  
20 occupational license.

21 Majestic Star submitted correspondence  
22 to Commission staff outlining new procedures  
23 that would be implemented to prevent future  
24 violations. However, due to the two  
25 violations just mentioned, Commission staff

1 and Majestic Star agreed that a sanction be  
2 imposed. Majestic Star will agree to pay a  
3 fine in the amount of \$1,500. A settlement  
4 agreement has been executed and Commission  
5 staff recommends that you approve the terms  
6 of that agreement to resolve this matter. I  
7 believe David Wolf is here from Majestic Star  
8 if anyone has any other questions.

9 COMMISSIONER BOCHNOWSKI: What  
10 procedures have you put in place so that  
11 this won't happen again?

12 MR. WOLF: There's a detailed  
13 procedure in place as far as our HR  
14 department coordinating with other  
15 departments which wasn't in place before.  
16 There's a whole very detailed plan Susan has.

17 COMMISSIONER BOCHNOWSKI: You've all  
18 had a chance to review that?

19 MR. LAWRENCE: (Nodding)

20 CHAIRMAN VOWELS: Any other  
21 questions? In front of us then is  
22 commission action in re the settlement  
23 agreement with Majestic Star Casino. Is  
24 there a motion to approve or disapprove the  
25 proposed terms of the settlement agreement?

1 COMMISSIONER GETTELFINGER: Move to  
2 approve.

3 CHAIRMAN VOWELS: Is there a second?

4 COMMISSIONER BOCHNOWSKI: Second.

5 CHAIRMAN VOWELS: Any further  
6 discussion? All those in favor say aye.  
7 Show the settlement agreement is approved.

8 Then to the MBE/WBE. Miss Chelf.

9 MR. BRODNAN: That's me. If you  
10 remember, on December 6, 2001, the Commission  
11 approved MBE/WBE action plans that were both  
12 submitted by Trump and Majestic Star pursuant  
13 to previous incorrect reporting of numbers  
14 for the year 2000. Both properties were  
15 required to appear at all Commission meetings  
16 through January of this year and submit  
17 updates outlining their progress in this  
18 area. Majestic Star further agreed to make  
19 up an additional \$644,000 in the MBE area  
20 that it was short during 2002 from the  
21 incorrect reporting.

22 Both Trump and Majestic Star have  
23 supplied the Commission's directive. Reports  
24 for 2002 have been submitted and preliminary  
25 review shows that both properties continue to

1 meet statutory goals. Further preliminary  
2 review shows that Majestic Star did make up  
3 the additional money that was shortfall for  
4 the MBE number. Commission staff therefore  
5 recommends that Trump and Majestic Star be  
6 released from the obligation imposed by the  
7 Commission's December 2001 order, and there's  
8 been an order drafted for you for each  
9 property granting that release and there are  
10 representatives from both properties here if  
11 you have questions.

12 COMMISSIONER BOCHNOWSKI: I have a  
13 question. Under Trump I have that their WBE  
14 purchases were 4.41 percent. Aren't they  
15 supposed to be 5 percent?

16 MS. BRODNAN: That is probably their  
17 separate number. Trump and Majestic Star do  
18 have (inaudible) so there should be a number.

19 COMMISSIONER BOCHNOWSKI: So they're  
20 combined?

21 MS. BRODNAN: The combined number is  
22 what you look at.

23 CHAIRMAN VOWELS: Did we talk about  
24 this at a more recent meeting than December  
25 6, 2001?

1 MS. BRODNAN: They've been at all the  
2 meetings.

3 CHAIRMAN VOWELS: There was something  
4 we were talking about where having some of  
5 the documents at least similar in form so we  
6 can compare apples and apples.

7 MS. BRODNAN: Right.

8 CHAIRMAN VOWELS: I'm looking at a  
9 document of the Majestic Star and again it's  
10 from my March 14th pile. I don't know if  
11 anything's changed in what was submitted in  
12 my other pile. It appears that Majestic  
13 Star's MBE 17.50 percent versus Trump's at  
14 13.9 and then Majestic Star's WBE at 10.67  
15 versus Trump's at 6.43 and I think what we  
16 had talked about last time was possibly those  
17 two boats exchanging some information to be  
18 able to have some more parity in those  
19 numbers. Is there any indication that you  
20 have that that's been going on? Any  
21 communication going on there?

22 MS. BRODNAN: I'm not aware of any.

23 CHAIRMAN VOWELS: Was that at the  
24 last meeting in your last capacity?

25 MS. WALKER: Well, this will be the

1 last meeting at the last capacity. In  
2 December we had talked about two issues, one  
3 of which was the question on the separate  
4 reporting and coming up with a format that  
5 would make the two reportings similar. On  
6 that in the WBE area our first quart numbers  
7 have gone up on Trump only to 6.64 percent,  
8 and the other item that we had talked about  
9 was also sharing information on the MBE with  
10 Majestic Star, and Mr. Wolf was gracious  
11 enough to provide us with some of that. So  
12 our MBE number for the first quarter is  
13 going to be 14.7.

14 COMMISSIONER BOCHNOWSKI: MBE?

15 MS. WALKER: MBE will be 14.7. WBE  
16 will be 8 on a combined basis. The MBE on  
17 the Trump will be 6.64. Those reports are  
18 due to be filed this week -- in the next  
19 week or two as soon as we close our March  
20 numbers.

21 CHAIRMAN VOWELS: So that's basically  
22 been addressed and we'll see that at the  
23 next meeting?

24 MS. WALKER: Yes.

25 CHAIRMAN VOWELS: That's good.

1 COMMISSIONER BOCHNOWSKI: Thanks.

2 CHAIRMAN VOWELS: There appears to be  
3 some action that we're to take here; is that  
4 correct?

5 MS. BRODNAN: There should be an  
6 order for each property releasing them from  
7 the obligations that were imposed back in  
8 December of 2001.

9 CHAIRMAN VOWELS: That is the staff's  
10 recommendation that those should be granted.  
11 I guess we'll take them in two parts. The  
12 first in reference to Trump, we have in  
13 front of us that Commission action. Is  
14 there a motion in reference to this  
15 Commission action document we have in front  
16 of us? It's called commission action in re  
17 Trump Indiana Inc.'S minority and women owned  
18 business participation.

19 COMMISSIONER BOCHNOWSKI: Can I ask a  
20 question? If we release them from our  
21 conditions, what will we get from them then?

22 MS. BRODNAN: They still submit their  
23 quarterly and yearly reports. They just  
24 won't have to report at every meeting and  
25 submit those progress reports before every

1 meeting.

2 CHAIRMAN VOWELS: That releases them  
3 from the obligation to appear at all prior  
4 to each meeting?

5 MS. BRODNAN: Right.

6 CHAIRMAN VOWELS: Any other questions  
7 on that? Is there a motion in reference to  
8 this release?

9 COMMISSIONER BOCHNOWSKI: I move we  
10 release them.

11 CHAIRMAN VOWELS: Is there a second?

12 COMMISSIONER MILCAREK: Second.

13 CHAIRMAN VOWELS: Any further  
14 discussion? All those in favor say aye.  
15 Show it as granted. The same thing with  
16 Majestic Star. I assume it's in the packet.  
17 Like I say, I have the March 14th document  
18 here. There's nothing's that's changed in  
19 there?

20 MS. BRODNAN: No.

21 CHAIRMAN VOWELS: I have it  
22 somewhere. Is there a motion in reference  
23 to release Majestic Star from their  
24 obligation to appear at all Commission  
25 meetings, submit written progress reports

1 prior to each meeting?

2 COMMISSIONER ROSE: So moved.

3 CHAIRMAN VOWELS: Is there a second?

4 COMMISSIONER MILCAREK: Second.

5 CHAIRMAN VOWELS: Any further  
6 discussion? All those in favor say aye. So  
7 then, Miss Brodnan, you're moving on to  
8 Belterra?

9 MS. BRODNAN: Actually first is  
10 Argosy. The purpose of putting Argosy on  
11 for today is just to notify you that their  
12 report for the year 2002 was submitted in  
13 January and preliminary review of the report  
14 shows that Argosy failed to satisfy the  
15 statutory goal for WBE purchases. Instead of  
16 spending at least five percent of its  
17 purchase with certified WBE's, Argosy spent  
18 4.75 percent and, according to my somewhat  
19 pathetic math, the shortfall amount is  
20 approximately \$169,000. Argosy has indicated  
21 to Commission staff that the shortfall was  
22 due to an unusually low amount of WBE  
23 purchases in the first quarter of that year,  
24 and they have further indicated that they  
25 have since added new WBE's to fit into their

1 purchases and they don't foresee a problem  
2 with meeting the goals for 2003. There are  
3 representatives here from Argosy if they  
4 would like to say anything or if you have  
5 any questions.

6 CHAIRMAN VOWELS: So it was the first  
7 quarter of 2002 that brought them down; is  
8 that right?

9 MR. KINSER: Yes, sir. Larry Kinser.

10 CHAIRMAN VOWELS: Is there any  
11 logical explanation of why that happened that  
12 way?

13 MR. KINSER: I'd like to introduce  
14 Bill Harvey who is the director of our  
15 facility operations. He's in charge of the  
16 purchasing department. We had an unusual  
17 situation occur, I believe, the first quarter  
18 regarding a vendor that we had working for  
19 us. We had a vendor in 2001 that was  
20 disallowed as a WBE, so that put us back to  
21 a very low number starting in 2002. We  
22 recouped from the, I think it was, two  
23 percentage numbers, two points I think what  
24 it was. We recouped -- we added seven  
25 different WBE vendors in that year to get us

1 to that almost 4.6 number by the end of  
2 year. So we believe we've already added  
3 another three this year and one that is now  
4 pending that we believe that we should be  
5 okay in 2003.

6 COMMISSIONER BOCHNOWSKI: So when you  
7 were purchasing you were operating under the  
8 assumption that this company would be granted  
9 this status and then --

10 MR. KINSER: They disallowed. We  
11 were -- if memory serves, I think we were  
12 over 7 percent with that. We had to take  
13 out almost \$2 million worth of purchases.

14 CHAIRMAN VOWELS: Looking at this  
15 document that we have which is a recap of  
16 detail 2002 for Indiana Gaming Company LP,  
17 there's a section here total dollar amount  
18 spent WBE first quarter \$257 million, and  
19 then the second quarter you went up to  
20 \$560,000 million, third quarter \$438 million  
21 and fourth quarter \$566 million. Is that  
22 what we're talking about; I'm reading the  
23 right things here?

24 MR. KINSER: Yes.

25 CHAIRMAN VOWELS: You really came

1 back up from 257 to -- I'm sorry. Not  
2 millions. Thousands. So if we're talking  
3 in terms of \$257,000 in the first quarter  
4 and then you went up to \$560,000 and so  
5 you've plateaued out at a pretty good rate  
6 there?

7 MR. KINSER: Correct.

8 CHAIRMAN VOWELS: You did that  
9 without that vendor officially becoming  
10 certified at all?

11 MR. KINSER: That's correct.

12 CHAIRMAN VOWELS: That explains that  
13 4.57. What do you think it's going to be  
14 for this quarter?

15 MR. KINSER: We haven't closed our  
16 books yet, but if you look at the last three  
17 quarters of the year, we were in excess of  
18 five percent statutory requirement.

19 CHAIRMAN VOWELS: Anybody have any  
20 questions about that? Thank you. Miss  
21 Brodnan, anything else on that issue? That's  
22 self-explanatory it appears. We don't need  
23 to take any sort of action?

24 MS. BRODNAN: (Nodding)

25 CHAIRMAN VOWELS: You say that

1 Belterra is the next thing on your agenda.  
2 We'll do that.

3 MS. BRODNAN: Unless you have  
4 something else.

5 CHAIRMAN VOWELS: No.

6 MS. BRODNAN: Belterra has -- back in  
7 December of 2001 you also approved action  
8 plans submitted by Belterra regarding their  
9 MBE/WBE participation, and there's a section  
10 in the action plan that allows them -- it  
11 required them to set up a development fund  
12 where they would give money to the companies.  
13 There's a provision that allows them to then  
14 ask for approval to count that money from  
15 the fund towards their numbers for their  
16 statutory goals, and Belterra has submitted a  
17 request to do that with money that they have  
18 paid out to T.J.'s Foods pursuant to that  
19 section of the action plan, and Ron Gifford  
20 is here for Belterra if he has more to  
21 explain or if you have questions about that.

22 CHAIRMAN VOWELS: Is there anything  
23 you want to say about it?

24 MR. GIFFORD: Not unless there's  
25 particular questions, and Alaine Uboldi and

1 Gwen Smith are also here from Belterra. Of  
2 course, we have to appear before you every  
3 time you meet.

4 CHAIRMAN VOWELS: How is this not  
5 double dipping where you're -- are you not  
6 getting double credit here? Is this coming  
7 through that fund and then you're disbursing  
8 it out of the fund?

9 MR. GIFFORD: Maybe I can give you a  
10 30-second overview. This is separate and  
11 apart from the operating moneys that are  
12 spent with T.J.'s Foods. Their request of  
13 the fund was for \$150,000 to purchase a  
14 truck, tractor related expenses that would  
15 enable them to deliver not only to Belterra,  
16 but to some of the other riverboats. So  
17 that was approved by the advisory committee.  
18 They used that money for those purposes, and  
19 so that \$150,000 comes out of the development  
20 fund. It's really kind of a capital.  
21 That's not currently reflected in any of  
22 Belterra's numbers. We haven't counted that  
23 pursuant to the action plan. So the request  
24 before you is to treat that \$150,000 that  
25 was given to T.J.'s as an appropriate

1 expenditure under the development fund, and  
2 then pursuant to the terms of the action  
3 plan, if you approve that, then those numbers  
4 can count toward Belterra's goals under the  
5 statute.

6 COMMISSIONER BOCHNOWSKI: So --

7 MR. GIFFORD: No, it's not a double  
8 dip.

9 COMMISSIONER BOCHNOWSKI: It's really  
10 not a purchase that you made for your  
11 operation; it was part of developing a vendor  
12 so that you could -- going forward you'd be  
13 able to meet your requirements? Is that  
14 what the statute says that we have to allow  
15 them to do this?

16 MS. BRODNAN: No, their action plan  
17 says if they had been demonstrating  
18 substantial improvement from where they were  
19 before when they submitted the plan, then  
20 they can count that if we allow them to do  
21 that.

22 MR. GIFFORD: That was pursuant to  
23 the terms of the agreement worked out between  
24 the Commission and Belterra a year ago.

25 CHAIRMAN VOWELS: The staff's

1 position on this is what? That it's okay to  
2 go ahead and grant their request?

3 MS. DEAN: The plan that was drafted  
4 and approved by the Commission does allow for  
5 Belterra to come back before the Commission  
6 and ask for funds that were expended under  
7 the plan to be counted towards the MBE/WBE  
8 goals.

9 CHAIRMAN VOWELS: The staff's  
10 position is that that's all right in this  
11 instance?

12 MR. LAWRENCE: Yes, it is.

13 COMMISSIONER BOCHNOWSKI: Just because  
14 we approve this doesn't mean we're giving  
15 management approval?

16 MR. GIFFORD: We understand it to be  
17 an expenditure-by-expenditure request to the  
18 Commission.

19 COMMISSIONER ROSE: May I ask a  
20 question? \$150,000 what's the (inaudible)?  
21 If you don't count the \$150,000 towards your  
22 expenditure, are you under the budget?

23 MR. GIFFORD: No, 2002 Belterra has  
24 exceeded its MBE and WBE goals. So this is  
25 over and above.

1 COMMISSIONER BOCHNOWSKI: Just to  
2 make you look better?

3 MR. GIFFORD: We're just trying to  
4 follow the rules that have been laid out for  
5 us.

6 CHAIRMAN VOWELS: Is that your New  
7 Year's resolution?

8 COMMISSIONER BOCHNOWSKI: So the  
9 numbers that we have in front of us do not  
10 include that \$150,000?

11 MR. GIFFORD: That's correct.

12 CHAIRMAN VOWELS: Is there any action  
13 we need to actually take here other than --

14 MS. BRODNAN: We didn't have an order  
15 prepared. We can send one that says either  
16 approving or denying their request.

17 CHAIRMAN VOWELS: There will be  
18 something for us to sign later? Are there  
19 any questions? There will be some resolution  
20 or some Commission action addressing whether  
21 we approve this or not to count the money  
22 expended toward MBE/WBE statutory goals. Is  
23 there a motion in reference to that request  
24 to approve or deny that money going towards  
25 statutory goals?

1 COMMISSIONER BOCHNOWSKI: I would  
2 move to approve it since that's part of our  
3 plan.

4 CHAIRMAN VOWELS: Is there a second?

5 COMMISSIONER ROSE: I'll second it.

6 CHAIRMAN VOWELS: Any further  
7 discussion? All those in favor say aye.  
8 Show it is approved. Thank you, Miss  
9 Brodnan. Then Miss Chelf we're back with  
10 you on the Rising Sun presentation.

11 MS. CHELF: I believe that there are  
12 representatives of Rising Sun here to speak  
13 about those issues. If you have any  
14 questions, I have looked at the issue.

15 MR. LAWRENCE: If you'll recall, Mr.  
16 Chairman, it was requested by the Commission  
17 when the license was renewed that the parties  
18 enter into negotiations concerning the  
19 funding of local development fund. They have  
20 attempted over time to negotiate and have  
21 still not reached an agreement. Last time,  
22 I think it was two meetings ago, you  
23 suggested strongly to them that they enter  
24 into these negotiations and hopefully resolve  
25 it so that the Commission would not have to

1 take any action. They have not resolved it  
2 at this point in time. They are close.  
3 They requested that they be able to come  
4 before the Commission to give you an update  
5 of the status of those negotiations. So we  
6 do have both parties represented here if you  
7 care to ask them any questions. I have  
8 authorized that they have five minutes each.  
9 Whichever one you want to go first.

10 CHAIRMAN VOWELS: It doesn't make any  
11 difference. Miss Fleming representing Rising  
12 Sun.

13 MS. FLEMING: Yes.

14 CHAIRMAN VOWELS: Do the two of you  
15 want to come up and tell us or do you need  
16 to come up individually and bring people with  
17 you?

18 MS. FLEMING: Monte Denbo and also  
19 some people here on behalf of the foundation.  
20 We have more than just me.

21 CHAIRMAN VOWELS: Why don't you come  
22 up and give us the lowdown. We'll let Hyatt  
23 address this.

24 MS. FLEMING: Good morning again. In  
25 June of 1995 when Grand Victoria, its

1 predecessor, appeared before the Gaming  
2 Commission it was vying for a license to be  
3 located in Rising Sun. It was not a  
4 guaranteed license and there was some  
5 competition, and pursuant to the project  
6 agreement, Grand Victoria agreed to make  
7 certain incentive payments to the city of  
8 Rising Sun. The city, in its effort to  
9 enhance not only Rising Sun, Ohio County and  
10 communities in three surrounding counties,  
11 established the Rising Sun Regional  
12 Foundation as the recipient for all the  
13 funds. The foundation has over the life of  
14 the project awarded 458 grants to 170  
15 different not-for-profits units of government  
16 and school corporations. This resulted in a  
17 total of over \$13 million in grants which  
18 have been leveraged to generate over \$87  
19 million in projects in these areas. During  
20 that time the city intended and believed that  
21 the contributions would include the multiple  
22 excursion calculation and, in fact, Grand  
23 Victoria paid on that basis until August of  
24 2002.

25 Upon the commencement of dockside

1 gaming, Grand Victoria unilaterally reduced  
2 its commitment by paying on a turnstyle count  
3 and therefore excluding the multiple  
4 excursion. Contributions prior to dockside  
5 gaming had averaged over \$258,000 per month  
6 or approximately 2.12 percent of its AGR.  
7 Post dockside gaming the contributions have  
8 averaged \$119,000 per month or 1.08 percent  
9 of its AGR.

10 In the summer of 2001 the parties  
11 were negotiating the third amendment to the  
12 project agreement when Grand Victoria decided  
13 that it did not want to build a retail mall  
14 and the city agreed, and in lieu of the  
15 retail mall, certain developments came about.  
16 During those negotiations Grand Victoria  
17 advised the city it had erroneously been  
18 paying based on multiple excursion count and  
19 that it was perhaps going to unilaterally  
20 eliminate that part of the contribution. The  
21 city and the foundation obviously were very  
22 concerned and we entered into negotiations.

23 On December 6th the Gaming Commission  
24 held the public hearing regarding the license  
25 renewal. In light of the fact that the

1 parties could not reach a resolution  
2 regarding a replacement formula at that time,  
3 the remaining parts of the third amendment  
4 were executed and the parties agreed to  
5 continue to negotiate the matter. On  
6 December 6, 2001, the city and the foundation  
7 both appeared before the Gaming Commission  
8 and supported the renewal of Grand Victoria's  
9 license conditioned upon the fact that we  
10 would negotiate a replacement formula that  
11 would have the same economic impact that the  
12 admission based formula had had over the life  
13 of the project or approximately 2.12 percent  
14 of AGR.

15           The parties continued to negotiate  
16 and in the fall of 2002 we came fairly close  
17 to reaching an agreement. The parties met  
18 in September of 2002 and worked out a  
19 formula whereby Grand Victoria would  
20 contribute 1.85 percent of its AGR from  
21 August 1, 2002, to December 31, 2002; 1.75  
22 of AGR for 2003; 1.65 percent of AGR for  
23 2004; and 1.5 percent of AGR 2005 thereafter.  
24 Of course, this was subject to city council  
25 approval. City council advised the

1 representatives of the city that they would  
2 not agree to a formula or would not approve  
3 a formula containing the 1.5 percent after  
4 2005. They would, however, entertain and  
5 approve a formula if it paid a bottom line  
6 of 1.6 percent of AGR for 2005 thereon.

7           The city and the foundation are  
8 willing to accept a lesser percentage of AGR  
9 than it had historically received because of  
10 the potential new competition, the results of  
11 dockside and information about Grand  
12 Victoria's current performance. We exchanged  
13 numerous counterproposals, and at one point  
14 Grand Victoria accepted the 1.85 percent to  
15 1.6 percent AGR with the inclusion of a  
16 material adverse change concept. The city  
17 agreed to consider the material adverse  
18 change concept but requested the 1.85 percent  
19 at that time be implemented retroactively so  
20 that the foundation would not experience an  
21 interruption in its grant-making cycle.  
22 Grand Victoria declined absent resolution of  
23 the material adverse change concept.

24           We continue to exchange drafts with  
25 no agreement. The primary difference was

1 each party's view of material adverse changes  
2 and what new competition -- what role new  
3 competition should play in that. At one  
4 point in time the city suggested that we  
5 implement the 1.85 to 1.65 percent formula  
6 through 2004 so that at that time in 2004 we  
7 would see the results of dockside, what new  
8 competition, if any, there was and how Grand  
9 Victoria was performing. Grand Victoria  
10 declined and wanted to resolve everything  
11 before any type of agreement was entered.

12 In February of this year the parties  
13 met and after reviewing the Grand Victoria  
14 financials and realizing that for four out of  
15 five years they exceeded their projected  
16 EBITDA and AGR and realizing that that the  
17 1.85 percent to 1.6 percent formula captured  
18 material adverse changes because, number one,  
19 it was well below the 2.12 AGR formula the  
20 foundation had historically realized and the  
21 formula was tied to AGR. Therefore, as the  
22 AGR decreases, the distributions decrease.  
23 Additionally, we agree to drop even further  
24 from 1.85 to 1.6 which is a 25 percent drop  
25 over a few year period.

1           At that time I would like to note  
2 that we were coming -- the foundation was  
3 coming upon its March 2003 grant-making  
4 cycle. It could not award the grants at the  
5 levels it had historically awarded and we  
6 requested again that the 1.85 percent formula  
7 be implemented retroactively. Although Grand  
8 Victoria declined, they did advance the  
9 foundation \$300,000 and as a result, the  
10 foundation was able to award in excess of  
11 \$400,000 in grants in March of 2003.

12           We're here today seeking the  
13 direction of the Indiana Gaming Commission  
14 and ask what you believe their commitment was  
15 in December of 2001. The city and the  
16 foundation believe they committed to  
17 negotiate a formula that would result in the  
18 same economic impact that the admission based  
19 formula did prior to the commencement of  
20 dockside. Based on proposals submitted and  
21 the payments currently being made by Grand  
22 Victoria, the effect is 1.08 percent of AGR  
23 versus the 2.12 percent and the current  
24 contributions would result in the foundation  
25 only being able to award approximately

1 \$200,000 in grants per quarter when it has  
2 awarded between \$400,000 and \$500,000 worth  
3 of grants per quarter previously.

4 The parties are prepared to go to  
5 mediation on this. However, absent a  
6 clarification from the Gaming Commission, the  
7 city and the foundation fear that the  
8 mediation will not be successful and the  
9 parties will remain at an impasse.

10 Just to clarify and to close, I'd  
11 like to make a few notes. The city is not  
12 asking for an increase in the amount of  
13 contribution level and we are willing to  
14 accept and have demonstrated a willingness to  
15 accept a decrease. We're asking that you  
16 clarify the commitment made on December 6th,  
17 not interpret the project agreement and, to  
18 our knowledge, no other riverboat has asked  
19 for a decrease in the initial levels of its  
20 incentive payment. It is our understanding  
21 that Argosy has in fact sought some relief,  
22 but we believe that relief to be from the 14  
23 percent of AGR that it pays above \$300,000  
24 -- \$300 million in AGR.

25 It's vitally important that the

1 foundation continue to receive contributions  
2 at something equivalent to the historic  
3 level. In the last two years the  
4 not-for-profit agencies in that area, as well  
5 as every area, have experienced a decreased  
6 amount of funding, decreased amount of  
7 donation. It's vitally important the  
8 foundation be able to maintain its historic  
9 grant making level.

10 I would like to thank you all for  
11 your attention and consideration of this  
12 matter and at this time Monte Denbo would  
13 like to make a few statements on behalf of  
14 the foundation. Then we'd be happy to  
15 entertain any questions.

16 CHAIRMAN VOWELS: I think what we'll  
17 do, we'll have Mr. Denbo address this and  
18 we'll give Mr. Azark an opportunity to  
19 address this and we can ask questions.

20 MR. DENBO: It's good to see you  
21 folks. I wish it was under a little  
22 different kind of circumstances here. I was  
23 asked to get back into the foundation issue  
24 and help negotiate this last summer and  
25 really thought that we were making some

1 headway. As Kay said, we got pretty close.  
2 We come up with some pretty innovative  
3 creative kind of methods to try to solve  
4 this problem. All of a sudden, in my  
5 opinion -- and I've heard some folks talk  
6 about us getting close here. We're really  
7 back to square one. We're at the point  
8 where, as Kay has indicated, without some  
9 help and some guidance here. My personal  
10 opinion this thing's going to go nowhere and  
11 we're going to be another year into this  
12 process.

13 When you look at gaming in the State  
14 of Indiana and you look at all of the good  
15 things that have happened and some of the  
16 adverse things that have happened, there's  
17 nothing any better that's happened in the  
18 State of Indiana than this regional  
19 foundation. If you look at this on a  
20 state-wide basis and you look at the four  
21 counties, if it was just Ohio County it  
22 would be a little difficult to sit up here  
23 and really push this issue, but it's not  
24 just Ohio County. It's Ripley County, it's  
25 Dearborn County, it's Switzerland county.

1 All of these counties have benefited  
2 tremendously from this regional foundation.  
3 You're sitting in a situation where your  
4 school systems, your cities and towns. It  
5 has created four other local foundations that  
6 these local foundations are just by their  
7 charter will exist forever. Also, regardless  
8 of what happens in the future, you're going  
9 to have very very positive impact forever and  
10 ever. So Kay pretty well summed it up from  
11 the standpoint of what has to happen.

12 My opinion Hyatt, the city, the  
13 foundation, we all need a starting point. I  
14 thought that starting point was really  
15 arrived at back two years ago in the  
16 re-licensing process because I really felt in  
17 sitting here that everybody was in agreement  
18 that we would deal with historic levels.  
19 Somehow or other those historic levels in  
20 Hyatt's mind and the historic levels relative  
21 to the foundation are totally different.  
22 We're dealing with the difference is cut  
23 right in half of this process. So for the  
24 foundation to continue to be effective not  
25 just in Ohio County, but throughout the

1 region, we need some guidance, and literally  
2 the city in my opinion has given a lot by  
3 going down to the 1.85 to the 1.7 and so  
4 forth. We've taken in consideration adverse  
5 events, competition, et cetera. But to go  
6 any lower and to go down to that one point  
7 figure it's just not acceptable. It  
8 shouldn't be acceptable for anybody.

9 I think the bottom line to this is  
10 what we do need, as Kay summed up, we need  
11 some guidance. What was said, what was  
12 heard back two years ago when this  
13 re-licensing process took place. If we could  
14 just get that level of guidance from you,  
15 maybe this mediation process and maybe the  
16 negotiations can go forward. Thank you.

17 CHAIRMAN VOWELS: Thank you, Mr.  
18 Denbo. Mr. Azark, would you like to address  
19 us, please?

20 MR. AZARK: For the record, I'm Dan  
21 Azark with Hyatt Development Corporation. We  
22 welcome the opportunity to appear in front of  
23 you as well. First of all, we'd like to  
24 assure you that we're fully aware of and are  
25 abiding by the commitments that we made

1 during our initial licensing and also during  
2 the renewal hearing. Finding an equivalent  
3 to the formula that exists has been difficult  
4 for a number of reasons. In our discussions  
5 with the city, as Kay and Monte laid out, we  
6 had agreed in principle to pay more than  
7 what our current obligation is provided that  
8 we could get some downside protection. We  
9 had tentatively agreed to a formula where if  
10 our ability to pay diminished over time due  
11 to circumstances outside of our control,  
12 higher taxes, more competition, the  
13 percentage contribution would reduce. The  
14 principal disagreement we had with the city  
15 was not over this concept. It was how that  
16 reduction would be calculated. It's our  
17 strong preference that such a reduction be  
18 formulated, that it not be the subject of  
19 open-ended negotiation. The city's  
20 preference was to negotiate future  
21 reductions. We may look like based on our  
22 past conduct that we enjoy open-ended  
23 negotiations, but we don't. We don't think  
24 that it's a good use of anybody's time. So  
25 there are models in the state, Belterra has

1 a good one where the reduction is formulated  
2 in the event of material adverse  
3 circumstances, and that's what we were  
4 pushing towards. We weren't able to get to  
5 that.

6 The second point I'd like to make is  
7 that operators in this state pay the host  
8 community. The amount they pay the host  
9 community is a reflection of the relative  
10 strength of those locations. Argosy  
11 obviously pays a lot more money than we pay.  
12 Our commitment is one dollar per passenger  
13 without abatement for increased tax, without  
14 abatement for competition, and that dollar  
15 per passenger is already more than comparable  
16 locations pay in Indiana. Since we began  
17 our discussions, dockside has not changed the  
18 way that we operate. It's had a serious  
19 impact on our business. You all know that  
20 we were the only riverboat in Indiana that  
21 was not anxious to see dockside. We lobbied  
22 against dockside. You know now why. Our  
23 growth has severely diminished. It's  
24 actually negative growth recently and it's  
25 also resulted in millions of dollars of

1 additional taxes to our facility in Indiana.  
2 Dockside hasn't been good for us.

3           Finally, I believe it's more than as  
4 the city pointed out that to remember what  
5 your expectations of us were when you issued  
6 this license. We've reviewed the information  
7 that we provided you and that's really what's  
8 in these charts. Those are the projections  
9 of where we thought we would be when you  
10 issued this license, and you can see -- we  
11 know that as a percentage of AGR, as a  
12 percentage of EBITDA or a percentage of net  
13 income, the contribution to the city was  
14 always intended to diminish over time. It  
15 was initially thought to be initially  
16 projected to be two percent, but over the  
17 course of time it would reduce to about a  
18 point and a quarter after ten years. We're  
19 in the seventh year now and it reduced  
20 partially because of the time value of money  
21 and partially because of the expectation that  
22 the boat would continue to do better and  
23 better, which it hasn't.

24           The city -- we had also -- I should  
25 point out we had projected in our

1 presentations to you when you issued this  
2 license six or seven years ago, we projected  
3 that we would contribute about six percent of  
4 our net operating income to the foundation.  
5 In fact, over the last five years it's been  
6 about ten percent of the net operating income  
7 of the enterprise. The city and the  
8 foundation understandably want these payments  
9 to be as large as they possibly can. The  
10 needs of the city and the county are large  
11 and the foundation does an excellent job.  
12 The challenge is really to find a solution  
13 that doesn't advantage one party at the  
14 expense of another party.

15 We do look forward to mediation.  
16 We've been recommending mediation or  
17 arbitration for a long period of time. The  
18 city has agreed at this point to do it.  
19 We're optimistic that we can get a positive  
20 result and I think that if we track Michigan  
21 City experience or Switzerland County  
22 experience, both of which are vulnerable  
23 locations as well for different reasons, you  
24 will see that hopefully we can come back to  
25 you in the near future and report a positive

1 result with the city.

2 The notion of historic contributions  
3 being two percent or 2.14 percent reflects  
4 income levels and business performance  
5 levels. At the earliest part of our  
6 business cycle the revenue numbers that we're  
7 not likely to see again. There was limited  
8 or no competition and, as I said before, the  
9 projection always was, the deal always was  
10 one that was based on a dollar per  
11 something, a dollar per passenger, a dollar  
12 per admission. There is no ambiguity in  
13 that. We are prepared and have been all  
14 along prepared to pay more today provided we  
15 get some protection in the future. That's  
16 really where we stand. So we hope to be  
17 able to be back to you after mediation and  
18 resolve this.

19 COMMISSIONER BOCHNOWSKI: What would  
20 cause material change? I assume the dockside  
21 would be something that you would define as  
22 material change?

23 MR. AZARK: What we had suggested the  
24 material change be higher taxes, if taxes  
25 went up that that would be a material

1 change. We want things that would be  
2 outside of our control and that would affect  
3 our operating performance. Really there were  
4 two categories. One was higher taxes. The  
5 other was increased competition.

6 CHAIRMAN VOWELS: This document that  
7 you gave us that shows the comparison of the  
8 actual versus projected performance on a  
9 number of these pages, there's a dip from  
10 2000 down in 2001. Is that because of  
11 Switzerland and Belterra?

12 MR. AZARK: Yes, it is.

13 CHAIRMAN VOWELS: Then it stops 2002  
14 and it's rising. Is that attributable to  
15 dockside?

16 MR. AZARK: No, that really doesn't  
17 reflect dockside. I think what that -- are  
18 we looking at AGR or EBITDA or net  
19 operating?

20 CHAIRMAN VOWELS: I was going through  
21 and it looks like everything when it gets to  
22 2002 the line stops but it's heading up.

23 MR. AZARK: I think it is a matter of  
24 taking that first hit from Belterra and  
25 hoping to do better and indicating that we

1 can do bitter over time, all things being  
2 equal.

3 CHAIRMAN VOWELS: We have the  
4 transcript of the December 6, 2001, meeting  
5 and I see now that I read through this the  
6 sense that I had at the time is different  
7 than what appears on paper. There was some  
8 discussion initially from Mayor Roeder based  
9 on the verbal commitment by Grand Victoria  
10 the city supports it's re-licensure.  
11 However, we ask Grand Victoria to make the  
12 same pledge to the Gaming Commission and  
13 agree to make payments to the regional  
14 foundation the same way it always has until  
15 we both agree on the new formula, and then  
16 there are things in here -- page 312 I am  
17 looking at. Who is Mr. Schulze?

18 MR. AZARK: Richard Schulze is  
19 vice-chairman of Hyatt Development and he's  
20 president of Hyatt Gaming.

21 CHAIRMAN VOWELS: Our funding is  
22 fashioned in terms of the basis -- let me  
23 back up. The question was there has been  
24 talk about the regional foundation. My  
25 understanding is you've already committed to

1 fund that regional foundation as it is  
2 presently funded at such time there might be  
3 a change in the way riverboats are operated.  
4 Mr. Schulze responded "in terms of the basis  
5 our funding is fashioned, unless there is  
6 some terms changed, yes, sir." Then on page  
7 314 Mr. Schulze said -- and I think he's  
8 referring to you Mr. Azark. "As Dan  
9 suggested, we are committing to continuing  
10 funding the foundation on the current basis  
11 unless there is some material changes in  
12 circumstances." And then goes on to talk  
13 about we need to resolve in good faith as we  
14 go forward and how does one acceptable  
15 comparability. There have been differences  
16 in opinion on that. Certainly we pledge to  
17 you our willingness to negotiate that in good  
18 faith and resolve it in a manner that is  
19 fair and reasonable. Relevant portions  
20 there. You talked about material adverse  
21 circumstances which you would want some sort  
22 of check and balance and whatever  
23 negotiations you would have with Rising Sun.  
24 Have you spoken specifically -- we all write  
25 contracts. When I write a contract I want

1 to make it as ambiguous as possible so my  
2 client can take advantage the other side not  
3 reading it closely. But anybody else reading  
4 it, if somebody brought it to me, I would  
5 want things defined specifically so there  
6 can't be any ambiguity. You've talked about  
7 rising taxes and this and that. Has there  
8 been a definition of what material adverse  
9 circumstances are without it being  
10 open-ended?

11 MR. AZARK: I think where we left the  
12 discussion was that we were trying to nail  
13 that down specifically. These two parties  
14 can't agree on what a dollar per passenger  
15 means.

16 CHAIRMAN VOWELS: Where does it stand  
17 on the mediation? Do you agree to mediation  
18 but haven't agreed on a mediator?

19 MR. AZARK: Our proposal was that we  
20 mediate outside of Indiana, outside of  
21 Illinois outside of Indiana. We agreed to  
22 med -- our preference is that we find a  
23 retired judge to serve as the mediator and  
24 both parties have identified some  
25 individuals. We haven't selected one yet.

1           CHAIRMAN VOWELS: Miss Fleming, why  
2 don't you come up here.

3           MR. AZARK: With me, sir, is Phil  
4 Kayman who is our counsel who's been working  
5 with Miss Fleming on the mediation issue.

6           MR. KAYMAN: We've actually exchanged  
7 some drafts of amendment to the project  
8 agreement which have gone through a number of  
9 definitions of material adverse change,  
10 including defining what level of competition  
11 was necessary as well as the effective taxes  
12 on the bottom line. We've gone through a  
13 number of those formulas from both the very  
14 specific to the more general, and we're told  
15 that -- in fact, the February 3rd meeting  
16 that Miss Fleming referred to we were  
17 expecting that that would be the subject of  
18 discussions and some questions that had been  
19 raised earlier about how those things would  
20 work. We unfortunately at that meeting,  
21 however, were told that the concept of  
22 material adverse change was off the table.  
23 So it was at that point that we realized  
24 that perhaps a new approach was necessary and  
25 one in which a mediator might be quite

1 helpful. We went from acceptance and  
2 suggestion of a mediator to a point where I  
3 think we're quite excited a mediator would be  
4 quite helpful.

5 CHAIRMAN VOWELS: We're talking about  
6 non-binding mediation and it appears to me  
7 that -- and Miss Fleming, I'll ask you this  
8 question after I say this. You guys haven't  
9 even got to the point where you can agree on  
10 a mediator yet. So where does that stand  
11 from your point of view? Are you as excited  
12 about this mediator?

13 MS. FLEMING: We're excited about  
14 mediation. We're willing to proceed. We  
15 submitted the names of six potential.  
16 They've presented us with one potential  
17 mediator.

18 CHAIRMAN VOWELS: How would that be  
19 resolved? How would the mediator be chosen?

20 MR. KAYMAN: The mediators that have  
21 been suggested, what we were trying to do  
22 was first decide on some qualifications for a  
23 mediator, and we were quite and still are  
24 quite enamored with the idea that the  
25 mediator should be a retired judge, either

1 federal or state judge. The problem we have  
2 with selecting mediators, especially if  
3 they're local, is that it's very difficult  
4 for us to know who these people are or to  
5 find out their reputation.

6 CHAIRMAN VOWELS: When you say local,  
7 in that area or Indianapolis?

8 MR. KAYMAN: Indiana. We have agreed  
9 to the idea that the mediation should be in  
10 Indiana with an Indiana mediator. We  
11 originally thought it should be just totally  
12 outside the jurisdiction, but we've agreed  
13 that an Indiana mediator would be acceptable.  
14 We were looking at a former judge as a proxy  
15 for qualifications, quite frankly.

16 CHAIRMAN VOWELS: Do you do much  
17 trial work?

18 MR. KAYMAN: I don't. It was just  
19 very difficult. So the one mediator we have  
20 suggested is a retired Porter County judge.

21 CHAIRMAN VOWELS: As a friend of my  
22 mine said when the rules of evidence were  
23 codified, what's the point of knowing more  
24 about the rules of evidence than the judge  
25 knows? So you've agreed on an Indiana

1 mediator; is that right?

2 MS. FLEMING: Yes.

3 CHAIRMAN VOWELS: And the six names  
4 that you proposed, are they Indiana  
5 mediators?

6 MS. FLEMING: Yes, they are all  
7 Indiana. The closest -- there's one from  
8 New Albany, one from Shelbyville, a couple  
9 from Indianapolis and one from either Porter  
10 or LaPorte County. I don't remember. One  
11 from Evansville.

12 CHAIRMAN VOWELS: Who was it?

13 MS. FLEMING: Judge Brooks. He was  
14 the only former federal judge or magistrate  
15 to our knowledge that actively does  
16 mediation.

17 CHAIRMAN VOWELS: Who did you have?

18 MR. KAYMAN: Judge Robert Kennedy,  
19 state court judge.

20 MS. FLEMING: Mr. Kayman and I had a  
21 discussion last week about the mediator  
22 selection. We've asked for them to submit  
23 additional names. His thought was they  
24 choose one of ours and we flip a coin, and  
25 we don't feel comfortable with that.

1 CHAIRMAN VOWELS: This is an issue  
2 that doesn't bode well for non-binding  
3 mediation if you grant can't agree on a  
4 mediator. I don't know. All of this  
5 information is pretty overwhelming for us.  
6 We've been doing this for ten years now and  
7 trying to remember that December 6, 2001  
8 meeting. It was helpful having the  
9 transcript to see just what was committed to.  
10 If this issue would have been more apparent  
11 at the time on December 6, 2001, I think it  
12 would have been -- the sense that I had was  
13 that everything was going fine and everybody  
14 was going to resolve this thing pretty  
15 quickly. I'm not sure where we would have  
16 been that day if it would have been that  
17 clear to us how far apart everybody actually  
18 was.

19 Mr. Lawrence, any thought on -- as  
20 far as the Gaming Commission getting involved  
21 in micromanaging this stuff, but if it's  
22 stuck on a mediator, any thought in us  
23 getting involved in names and having each  
24 side name three people and have each side  
25 strike one and end up with somebody?

1 MR. LAWRENCE: I even had some names  
2 of folks that I have worked with over the  
3 course of my career also and at one time  
4 thought maybe we could just propose a panel  
5 and each strike one. I didn't know it had  
6 gotten to this point where we can't even --  
7 as I understand it, I had thought in the  
8 normal course you each give three names,  
9 strike and end up with one some way or  
10 other. I hadn't realized it had gotten as  
11 bogged down as it is.

12 COMMISSIONER BOCHNOWSKI: I kind of  
13 asked what our intent was. I think as a  
14 commission it's my understanding it was my  
15 understanding from the beginning we represent  
16 the people of the State of Indiana, not an  
17 industry. It's in the people's best  
18 interests that you're a healthy company. I  
19 think really if we have to side with  
20 anybody, we tend to side with people who are  
21 citizens of the State of Indiana and we want  
22 you to do right by these people because you  
23 got your license in a competitive environment  
24 by promising certain things. Now, I  
25 understand circumstances change and so on and

1 we don't want you to fail because you have  
2 an overburdened commitment to these people.  
3 I think you need to make a real effort to  
4 make this right.

5 MR. KAYMAN: I think we're extremely  
6 sensitive to that, I really do. I think  
7 that, as Dan said, we're agreeing to a  
8 formula that will provide more money than the  
9 current formula provides. What we have seen  
10 over the years is an erosion of both AGR and  
11 net operating income that is somewhat -- that  
12 we feel needs to be taken into account. The  
13 historic levels of contribution in certain  
14 respects reflect -- don't reflect what's  
15 happening today, and it's the fact that  
16 there's been an erosion with the same formula  
17 in place today that's been in place from the  
18 beginning shows that the conditions will  
19 never be necessarily the same and they're  
20 certainly not necessarily going to be the  
21 same as they were in the past. We would be  
22 perfectly happy to reinstate the levels of  
23 contribution in dollar terms from past years  
24 if circumstances were the same as they were  
25 in prior years. Those were happy times for

1 everybody, but -- so we're looking for a  
2 formula that will in fact result in more  
3 money than the current formula, and what we  
4 have proposed and what has been proposed by  
5 the city, we'll do that. The only thing  
6 we're really apart on is the protections in  
7 the future period.

8 COMMISSIONER BOCHNOWSKI: Do you  
9 agree with that?

10 MS. FLEMING: No.

11 CHAIRMAN VOWELS: Let me think  
12 outloud here. The first thing that we need  
13 to do is get the mediator situation. As far  
14 as the information that we hear today is  
15 pretty overwhelming. Needs to be analyzed by  
16 the staff and separate apples and apples and  
17 oranges from oranges. As Commissioner  
18 Bochnowski said, our concern is that you  
19 remain healthy because it's to the benefit of  
20 our goal to enhance the tax basis of the  
21 State of Indiana and employ citizens of  
22 Indiana and the surrounding areas with good  
23 jobs and good wages. That's where our main  
24 focus is. It's important that you guys are  
25 healthy. So our focus and our goals can be

1 bent in that regard. I'm not willing to  
2 show my hand and say that if you don't  
3 buckle in these negotiations that you're  
4 going to have a problem with us because that  
5 gives the town of Rising Sun a lot of muscle  
6 with you and why would they negotiate if  
7 they knew they could come back to us and we  
8 could whack. That's the bottom line, right?  
9 Don't assume that whatever we're talking off  
10 the cuff here today is the way we would end  
11 up. We're going to have a re-licensure  
12 period in December of this year and we may  
13 have to look at the situation on how good  
14 faith this went forward and how reasonable  
15 Rising Sun's expectations were of the  
16 situation. I think the first thing to do is  
17 help you guys with mediation. What I'm  
18 thinking -- and this is just off the cuff.  
19 Give you ten days to come up with a mediator  
20 and if you don't do it, we'll make three and  
21 give you a short time to time span to knock  
22 off three each and you end up with the one.  
23 Retired judges are good and I know Judge  
24 Brooks and he would be good. Miss Fleming  
25 did clerk for him. I wouldn't get too hung

1 up on judges. There are a lot of attorneys  
2 in Evansville that I know that would do a  
3 good job who are neutral and take their  
4 mediation very seriously where they will not  
5 let any indication of bias enter into what  
6 they do. I don't know. Do you have any  
7 thoughts on that at least getting this thing  
8 off dead center giving them ten days to come  
9 up with a mediator and if they can't do it,  
10 somehow just you and me or whatever come up  
11 with three names and then give them a short  
12 period of time to strike a name and get this  
13 thing rolling? It's not binding. That's  
14 why God made courtrooms.

15 MR. AZARK: But we are very hopeful  
16 it is productive.

17 CHAIRMAN VOWELS: What it will do for  
18 us, we will be able to see something in an  
19 organized manner how both of you came to the  
20 table, and then in December if it appears,  
21 number one, if this isn't resolved when it  
22 comes up for re-licensing, we're going to  
23 have to resolve it one way or another.  
24 Better that each of you compromise and give  
25 a little bit. Because you all know the ins

1 and outs of this a lot more thoroughly than  
2 we will ever know, but it's going to come  
3 down to the point in time where all those  
4 just one year re-licensure is going to have  
5 to be one of those we're going to look at,  
6 and if it looks like one side or the other  
7 is muscling the other and being unreasonable,  
8 we have to take that into consideration. I  
9 don't know what the situation with Rising Sun  
10 and whether they have reasonable expectations  
11 in their demands or if you guys are just  
12 muscling them because you're the big guy.  
13 Fortunately, they have enough money to hire a  
14 law firm that can't be bowled over and vice  
15 versa. So I think you guys are on equal  
16 footing there. Let's --

17 COMMISSIONER GETTELFINGER: Mr.  
18 Chairman, may I ask for a point of  
19 clarification from both parties?

20 CHAIRMAN VOWELS: Yes.

21 COMMISSIONER GETTELFINGER: In our  
22 packet is the 2002 annual report for the  
23 Rising Sun Regional Foundation and in the  
24 second sentence of the grants program there's  
25 this sentence and I would like each party to

1 react or respond to that sentence. Grand  
2 Victoria makes a one dollar contribution to  
3 the foundation for each embarking admission  
4 to its riverboat casino.

5 MR. AZARK: I have read that. Had  
6 you read that -- that is correct and had you  
7 read that same annual report a year earlier,  
8 it probably would have said a dollar per  
9 passenger embarking rather than a dollar per  
10 admission, but that is the development  
11 agreement that we have that suggests -- it  
12 doesn't suggest. It says that Grand Victoria  
13 will pay one dollar per passenger embarking  
14 on the riverboat.

15 CHAIRMAN VOWELS: Where are you  
16 seeing that?

17 COMMISSIONER GETTELFINGER: It's the  
18 first page, page one, second sentence of the  
19 first paragraph.

20 MS. FLEMING: I can't speak to what  
21 -- I honestly don't know what the 2001  
22 annual report for the foundation showed, but  
23 it's the city and the foundation's position  
24 that the intent was it would be one dollar  
25 based on an excursion basis and would include

1 the multiple excursion count and, in fact,  
2 that's the way it was administered for about  
3 the first six years of the operation.

4 COMMISSIONER GETTELFINGER: So the  
5 city disagrees with the foundation?

6 MS. FLEMING: It is one dollar per  
7 passenger, whether or not that count includes  
8 a multiple excursion count, and it is the  
9 city's position that it does.

10 COMMISSIONER GETTELFINGER: What would  
11 be your definition of embarking?

12 MS. FLEMING: Embarking under the  
13 admission tax and the way it was pre-dockside  
14 was one dollar per passenger per excursion,  
15 and that is the way we feel the intent of  
16 the agreement was, and it was administered  
17 that way by Grand Victoria for the first  
18 five and a half years.

19 COMMISSIONER GETTELFINGER: Just to  
20 help me. Is the difference of opinion the  
21 definition of embarking?

22 MS. FLEMING: Under the project  
23 agreement, if you're interpreting the project  
24 agreement, yes. If you're -- we feel that  
25 they made the commitment when they got

1 re-licensed to negotiate a formula that would  
2 have that same economic impact pre-dockside.

3 COMMISSIONER GETTELFINGER: Is that  
4 right? Is that the disagreement, what the  
5 word embarking means?

6 MR. AZARK: We have agreed to pay on  
7 this basis. That is the basis on which we  
8 pay, which we have always paid on that  
9 basis, we currently pay on that basis.

10 CHAIRMAN VOWELS: Again, my thought  
11 is go to mediation. You guys either pick  
12 him or we'll lay it out for you and work as  
13 best you can to avoid coming back to us  
14 because at some point in time, particularly  
15 in December when it's time to look at the  
16 license again, we're going to have to resolve  
17 it.

18 MS. DEAN: It's a minor point of  
19 clarification. I believe it's September.

20 CHAIRMAN VOWELS: That's even better.

21 COMMISSIONER BOCHNOWSKI: That's great  
22 because you should be able to resolve this.  
23 If you do get a mediator and you still can't  
24 agree, I think we'd want to see that  
25 mediation report and see where the problem

1 is.

2 MS. FLEMING: In Indiana it is my  
3 understanding -- and although I'm not  
4 extensively involved in mediations in  
5 Indiana, normally my understanding is  
6 mediations proceed without a mediations  
7 agreement. Hyatt has requested a mediation  
8 agreement that would keep the entire  
9 proceedings confidential.

10 MR. AZARK: For mediation to work,  
11 mediation, as I understand it, requires some  
12 degree of confidentiality between other --

13 COMMISSIONER BOCHNOWSKI: You can let  
14 us know. We keep things confidential. We  
15 have your entire financial statements. We  
16 never told anybody.

17 CHAIRMAN VOWELS: I don't know that I  
18 have a problem with that. If it comes down  
19 to it, we can mandate a document.

20 MR. AZARK: You have tremendous  
21 authority. What we would just ask is you  
22 not forget the basis on which this license  
23 was issued initially, that there was a set  
24 of expectations that we had and investing in  
25 Indiana and that you had of us in sharing

1 the benefits of that license and going back  
2 and looking at -- we're lucky to have those  
3 documents. They exist today. Those projects  
4 are there. Looking at what sharing means,  
5 what reasonable portion of sharing means is  
6 something that we think is important and  
7 should bear in these discussions.

8 CHAIRMAN VOWELS: Again, what I'm  
9 thinking is -- and I'm not showing my hand  
10 either way because I don't have enough  
11 information to know who is what. I told you  
12 and Commissioner Bochnowski stated earlier  
13 our goal is to the State of Indiana. So you  
14 guys pay a bunch of taxes. We're all  
15 getting in the state to employ people and we  
16 want you to make a lot of money so you can  
17 give the state of Indiana and employ a whole  
18 bunch of people and give them a whole lot of  
19 money. That's our focus. But I don't know  
20 who is muscling who and who's being  
21 unreasonable and all this. If we would have  
22 known it was this big of a problem on  
23 December 6, 2001, we probably would have held  
24 up granting the license until all the I's  
25 were dotted and the T's were crossed because

1 we've done that time and time again where we  
2 forced the parties to get reasonable and  
3 either reach it themselves or we'll do it  
4 for you, which is always not the best  
5 approach. Anyway, I'm not showing my hand  
6 either way because I don't know how to read  
7 it and I don't have enough info to know  
8 who's what. So you go into the mediation  
9 and it can be confidential. We will have  
10 access to that mediation report and it will  
11 remain a confidential document. I don't  
12 know. Is there going to be any problem  
13 there?

14 MS. DEAN: I believe it can be  
15 considered proprietary, but the parties can  
16 brief that for us.

17 CHAIRMAN VOWELS: I think it would be  
18 proprietary because you're going to have to  
19 give a lot of information. Then we can  
20 review that and hopefully with a mediator  
21 you'll reach an agreement. Since you can't  
22 agree on a mediator, I'm not going to kid  
23 myself on how this might turn out. I'm sort  
24 of going on the presumption that we're going  
25 to have to review a mediation report to help

1 us make a decision when the time comes of  
2 how this is going to play out. What I  
3 propose is -- today is April 7th. By April  
4 17th they tell you who the mediator is by  
5 agreement, or if they haven't done that, then  
6 I don't know what the other commissioners  
7 think. Just call up me with a suggestion on  
8 some names or some others. If you have any  
9 suggested names of people that you think are  
10 fair and are no way connected with any of  
11 this industry, talk to the Executive Director  
12 about it. Then within a ten-day period of  
13 April 17th we will submit to the parties  
14 three names and within ten days after that  
15 period they can --

16 COMMISSIONER GETTELFINGER: Mr.  
17 Chairman, why is it any of our business to  
18 get into the selection of mediators?

19 CHAIRMAN VOWELS: Because we need to  
20 get this resolved.

21 COMMISSIONER BOCHNOWSKI: And because  
22 their license is -- this agreement is part  
23 of their license so that's our business.

24 COMMISSIONER GETTELFINGER: That's  
25 their problem. It's not our problem to get

1 them timely with us.

2 CHAIRMAN VOWELS: We have a lot of  
3 power that we can use in good ways, and we  
4 did that in the beginning when we worked  
5 with these licensings. Mr. Thar always used  
6 to point out either there was going to be  
7 revenue sharing on this development and this  
8 and that or the state legislator was going  
9 to dictate it to them. Fortunately the  
10 State of Indiana and initially in this  
11 situation it couldn't have been rosier and it  
12 worked out to everybody's benefit. As time  
13 goes by and everybody gets richer, they  
14 become less friendly, and I think we have an  
15 obligation, as we have from the beginning of  
16 this, that if there's a problem and we have  
17 the authority that both sides will listen to  
18 us that they need a little nudging, if  
19 they're at a point where they can't agree on  
20 a mediator, it's easy for us to step in and  
21 name the three for them and then they can  
22 strike.

23 COMMISSIONER GETTELFINGER: If that's  
24 what we're going to do, wouldn't be it  
25 efficient then for us to name those mediators

1 ourselves now?

2 COMMISSIONER BOCHNOWSKI: Let's let  
3 them try.

4 CHAIRMAN VOWELS: I'd like to give  
5 them the opportunity.

6 COMMISSIONER BOCHNOWSKI: How is this  
7 mediator going to be paid in order to make  
8 this fair?

9 MS. FLEMING: Fifty percent by both  
10 parties.

11 COMMISSIONER ROSE: May I make a  
12 suggestion? It seems to me that if they  
13 can't agree on a mediator with the people  
14 that they have looked at, then we should  
15 suggest a mediator that is not a member of  
16 -- not anyone of those people that they put  
17 up so we could put up a panel of three.  
18 They each strike one. They've got one left.

19 CHAIRMAN VOWELS: Are you saying they  
20 should submit that to the Executive Director  
21 so we know what those names are?

22 COMMISSIONER ROSE: Right.

23 CHAIRMAN VOWELS: I think you're  
24 correct.

25 COMMISSIONER BOCHNOWSKI: This can

1 work. We had this very same situation in a  
2 city that I won't name, but it worked. We  
3 made them go out and they had ten minutes to  
4 solve their problem. So we could do that to  
5 you.

6 COMMISSION MILCAREK: We have never  
7 had to do this, but just a suggestion and a  
8 little pressure applied to the parties to get  
9 together. Usually they want to resolve it  
10 as quickly as possible. Sometimes just need  
11 a little nudge.

12 MR. AZARK: One thing that a wise  
13 person on the Ohio River once told me is  
14 that this money -- riverboat money is  
15 tainted. It taint never enough.

16 COMMISSIONER MILCAREK: The issue has  
17 to be resolved.

18 MR. AZARK: It's a serious issue to  
19 both parties. The amounts that we're talking  
20 about in present value are very serious  
21 amounts to both of our interests. We have  
22 every reason, including those that you've  
23 enumerated here, to want to end this, to  
24 resolve it in a way that neither party is  
25 disadvantaged.

1           COMMISSIONER BOCHNOWSKI: Sounds like  
2 we have to define some terms and some  
3 situations that you're looking at. The  
4 formulas have to be fully understood because  
5 I think we're talking percentages, you're  
6 talking a dollar a passenger. What is a  
7 passenger, et cetera, et cetera. Then this  
8 back end deal. Like future problems that  
9 arise.

10           MR. AZARK: We actually had come 90  
11 percent of the way. We had a formula. The  
12 only thing we disagreed on is how do you  
13 formulate the adjustment, and that's where we  
14 need to focus.

15           COMMISSIONER BOCHNOWSKI: It sounds  
16 like a mediator could come in and look at  
17 this objectively and there are some specific  
18 goals that that mediat --

19           MS. FLEMING: The city and foundation  
20 have always and believe and our last draft  
21 taken into account the tax consequences.  
22 It's just the city's position that the 1.85  
23 and 1.6 formula took into the account impacts  
24 of increased competition and, in fact, I  
25 believe in one of our drafts we even

1 suggested a percentage that would go down  
2 further, do away with material adverse  
3 consequence concept, so that we just had an  
4 increasing and decreasing AGR formula based  
5 on their AGR results.

6 COMMISSIONER BOCHNOWSKI: I could  
7 mediate this.

8 CHAIRMAN VOWELS: Commissioner Rose  
9 had a good point. Mr. Lawrence needs to  
10 know the names of those seven, your six and  
11 your one.

12 MR. LAWRENCE: Don't you have more  
13 than just one?

14 MR. KAYMAN: Once again, there were  
15 others outside the State of Indiana when we  
16 went to an agreement there would be an  
17 Indiana mediator. We never submitted others,  
18 but there were others that we had references  
19 on. When we went to an Indiana idea we  
20 started looking around for retired judges  
21 consistent with perhaps our misguided  
22 understandings.

23 CHAIRMAN VOWELS: Are the two of you  
24 in agreement that you'll within ten days come  
25 up with a mediator, and if you can't, you'll

1 let the Executive Director know the names  
2 discussed?

3 MR. AZARK: Sure.

4 CHAIRMAN VOWELS: Then within ten  
5 days after that you will be given three  
6 names and within the ten-day period after  
7 that each of you will strike. I don't know  
8 who goes first or how that works. I guess  
9 just simultaneously. Both strike the same  
10 one, then we've got a problem. I'm sure  
11 there's a lot of glitches in what I just  
12 came up. You'll call me, right?

13 MR. LAWRENCE: We'll fix it. We know  
14 what you meant.

15 CHAIRMAN VOWELS: Work it out with  
16 staff about the specifics of it. If any of  
17 the other Commissioners have suggestions of  
18 people, let Mr. Lawrence know. We'll figure  
19 it all out. But if we can get off that  
20 issue, then maybe we can get the ball  
21 rolling and at least gets things structured  
22 where we have to get involved in it at least  
23 there's some idea of where you all stood at  
24 least one time or another. It's always best  
25 to reach your own agreements rather than have

1 total strangers do it for you. Is there  
2 anything else on this we need to worry about  
3 today? All right, thanks.

4 Under other business then. Let the  
5 reporter know your name.

6 MR. WITTE: I will try to be more  
7 than brief at this point. My name is Dan  
8 Witte. I'm from the law firm of Sommer  
9 Barnard Ackerson. John Miller, the tribal  
10 chairman of the Pokagan band, was going to  
11 try to be with me today but he couldn't make  
12 it. The weather this morning was a little  
13 more icy in southwest Michigan where he is.  
14 Even though he gained an hour with the  
15 daylight savings time, he couldn't overcome  
16 the ice so he was unable to make it. I'm  
17 following up on an issue the Joe Champion  
18 spoke to you about in September in terms of  
19 the agreement between the Flynns and  
20 Fieldstreet Consulting and Boyd Gaming  
21 Casino. At that time we asked for an  
22 investigation and for that contract to be  
23 looked at and potentially overturned through  
24 the powers of this Commission. Since that  
25 time we've asked for some public records and

1 we've also been monitoring activities in both  
2 Illinois and Michigan and the storm clouds,  
3 quite frankly, that have been brewing around  
4 the Flynns. These packets of materials were  
5 sent out last week and I don't know if  
6 everybody got ahold of these. I've seen  
7 some nos. I've seen some yeses. As you can  
8 see from these materials, there's quite a bit  
9 of evidence that has been mounting regarding  
10 the Flynns and their activities in the gaming  
11 industry. None of it is good.

12 I'm going to briefly just go over a  
13 few things. The consulting agreement in  
14 question calls for payment of \$41,000 a month  
15 to Flynns and Fieldstreet Consulting and a \$5  
16 million contingent bonus on the Pokagans not  
17 be able to open a facility that's going to  
18 be able to compete with the Blue Chip  
19 Casino. That is the contract that we have  
20 here that's in question that needs to be  
21 investigated. 68 AIC 1-4-2 clearly states  
22 that this Commission does have the power to  
23 review contracts and overturn them. That is  
24 clearly spelled out in Part B. Part A says  
25 that it doesn't have to approve contracts,

1 but unfortunately in this case that is what  
2 happened. If you remember this contract a  
3 little bit. It was disclosed after the fact  
4 which lead to a \$1 million settlement fine  
5 and we think that is quite frankly par for  
6 the course in the terms of the way the  
7 Flynns deal with regulatory agencies in  
8 disclosing information in an appropriate  
9 manner.

10 I would direct your attention to Tab  
11 20 which is a rather lengthy complaint by  
12 the Illinois Board of Gaming Commission. It  
13 spells out all the investigations and  
14 findings they've undertaken in regards to the  
15 Flynns in Illinois and the problems they've  
16 had. Currently we're awaiting final action  
17 from the Illinois Gaming Board. However,  
18 they've already made two findings of  
19 unsuitability in regards to the Flynns and  
20 also the Flynns have put one of their gaming  
21 operations in the state of Illinois into  
22 bankruptcy.

23 In terms of the state of Michigan,  
24 there's also an accusation that the Flynns  
25 have violated Michigan lobbying law. Tab 1

1 is a detailed letter from John Miller of the  
2 Pokagan band to the Michigan Attorney General  
3 which kind of lays out how this has all come  
4 to be and how they sort of mysteriously seem  
5 to be this very well-organized and  
6 well-funded group that was against the  
7 opening of another casino in that area of  
8 southwestern Michigan. Then in Tab 14 what  
9 you'll see a group of affidavits. One of  
10 those is from Kevin Flynn and in Paragraph 8  
11 of that affidavit where he signs that  
12 affidavit and says that he has in no way,  
13 shape or form been participating in lobbying  
14 in the state of Michigan, and then you look  
15 at Tab 2 which is an article from the Grand  
16 Rapids Press and the second page of that  
17 article where it says a Lansing lobbying firm  
18 has been hired by Flynn to fight a state  
19 house resolution urging the governor to  
20 consider a casino.

21 CHAIRMAN VOWELS: Let's go back to  
22 that. You're talking Tab 14?

23 MR. WITTE: One of them is Mr. Kevin  
24 Flynn in particular. Fieldstreet has not  
25 directly or indirectly through any other

1 entity or person engaged in any lobbying  
2 activity of any nature whatsoever on behalf  
3 of Boyd in the state of Michigan. It is  
4 regulated and/or governed by the Michigan  
5 lobbying law.

6 CHAIRMAN VOWELS: What was this  
7 affidavit prepared for?

8 MR. WITTE: This was in actually the  
9 Illinois investigation.

10 CHAIRMAN VOWELS: Cross-reference that  
11 to something that you say --

12 MR. WITTE: If you look at Tab 2  
13 which is an article in the Grand Rapids  
14 paper, the second page of that article, the  
15 second full paragraph. They had a statement  
16 from these people where it says a Lansing  
17 lobbying firm has been hired by Flynn to  
18 fight a state house resolution urging the  
19 governor to negotiate casino pact with the  
20 Pokagan band, which is another band of the  
21 Pottawanamee Indians.

22 CHAIRMAN VOWELS: How does  
23 Fieldstreet relate to what your talking about  
24 here?

25 MR. WITTE: That's Flynn's company.

1 And Flynn himself, as you can see, signed  
2 that affidavit.

3 CHAIRMAN VOWELS: Is there anything  
4 other than this newspaper article that you  
5 base that on, Lansing lobbying firm has been  
6 hired by Flynn?

7 MR. WITTE: That is just one piece of  
8 the evidence. There's other pretty strong  
9 circumstantial evidence that this kind of  
10 unnamed group that seems to be well-funded  
11 and well-organized has been getting money  
12 from Flynn, his company Fieldstreet  
13 Consulting.

14 CHAIRMAN VOWELS: You're not just  
15 saying because it's in the newspaper it's got  
16 to be true, are you?

17 MR. WITTE: Of course not. That's  
18 not what I'm here to do. What we're asking  
19 to do -- that gets to the point exactly.  
20 What we're asking to do is the storm clouds  
21 have been gathering in Illinois and Michigan  
22 and, quite frankly, they're sitting herewith  
23 to action at the present time with a safe  
24 harbor agreement because this council  
25 approved that agreement in 2000, this

1 contract. What we're asking for is this  
2 Commission to use its power and conduct a  
3 full investigation into their activities and  
4 see if that contract should be allowed to  
5 stand because the evidence that's out there,  
6 if these people came before you today, it's  
7 pretty clear that they would not be granted  
8 this contract. So what we're asking is that  
9 you conduct a full investigation and that  
10 after that determine whether that contract  
11 should be allowed to stand.

12 CHAIRMAN VOWELS: My understanding is  
13 there is presently an on going investigation  
14 in two states, including ours? Is that --

15 MR. LAWRENCE: Three states then.

16 CHAIRMAN VOWELS: I think we're doing  
17 what you're asking. At some point in time  
18 Michigan and Illinois and Indiana have gone  
19 through all of this. We'll be able to  
20 address it if there's something to address.  
21 We've got an affidavit saying one thing and  
22 then a newspaper article saying another.  
23 Some substance there and has to be fleshed  
24 out.

25 MS. DEAN: A point of clarification

1 also. If you were talking about the fine  
2 levied in Indiana, it was not \$1 million.  
3 It was \$100,000 fine, \$900,000 contribution.

4 CHAIRMAN VOWELS: It's very important  
5 that you differentiate that. We never did  
6 that before and we'll never do that again.

7 COMMISSIONER BOCHNOWSKI: Seemed like  
8 a good idea at the time.

9 CHAIRMAN VOWELS: I think that we are  
10 doing what you requested. There's an ongoing  
11 investigation, and at some point in time when  
12 you have this many jurisdictions involved, it  
13 gets difficult and I'm not sure how it will  
14 resolve itself, but we will take appropriate  
15 time to address.

16 MR. WITTE: One last comment. The  
17 fact that this contract does not the  
18 Commission's (inaudible) I think it's  
19 important that the investigation not  
20 necessarily wait on what happens in Illinois,  
21 Michigan but because there's already approval  
22 given to this contract that I think maybe  
23 some affirmative action should take place to  
24 make sure the investigation goes forward not  
25 just based on what Illinois and Michigan

1 says.

2 CHAIRMAN VOWELS: Right, we do what  
3 we want.

4 COMMISSIONER BOCHNOWSKI: We've never  
5 relied on others.

6 CHAIRMAN VOWELS: I think that's it.  
7 Last meeting is the next thing on my agenda.

8 MR. LAWRENCE: Next regularly  
9 scheduled meeting is in May. That's such a  
10 short time between now and then and this  
11 will meet our statutory requirement of a  
12 quarterly meeting. So subject to the desires  
13 of the Commission, I would propose we do not  
14 have a May meeting and our next meeting  
15 would be the one scheduled for July.

16 CHAIRMAN VOWELS: July 11th is what  
17 my calendar shows. I don't know if anybody  
18 wants to be a problem child and insist we  
19 come in May?

20 COMMISSIONER BOCHNOWSKI: No.

21 CHAIRMAN VOWELS: So we'll just let  
22 you all know the next meeting is scheduled  
23 in Indianapolis for July 11, 2003. The time  
24 and place probably normal, but we will let  
25 you know. Motion to adjourn?

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

COMMISSIONER ROSE: So moved.

CHAIRMAN VOWELS: Is there a second?

COMMISSIONER BOCHNOWSKI: Second.

CHAIRMAN VOWELS: All in favor say  
aye. We are adjourned.

*Handwritten signature*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF INDIANA

SS:

COUNTY OF MARION

I, Deanne S. Hutson, Notary Public and Stenographic Reporter within and for the County of Marion, State of Indiana, do hereby certify that on the 7th day of April, 2003, I reported the Regular Business Meeting; and that the transcript is a full, true and correct transcript made from my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 15th day of April, 2003.

*Deanne S. Hutson*

-----

Deanne S. Hutson, Notary Public,  
Residing in Marion County, Indiana  
My Commission Expires:  
November 6, 2006