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BEFORE THE MISSOURI GAMING COMMISSION

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Meeting  
August 30, 2017  
10:00 a.m.  
3417 Knipp Drive  
Jefferson City, Missouri

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BEFORE: Herbert M. Kohn, Chairman  
Brian Jamison, Vice Chairman  
Daniel P. Finney, III, Commissioner  
Thomas Neer, Commissioner

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Reported by:  
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10 610.021(1), RSMo, Legal Actions, (3) & (13)  
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1 (Start time: 10:00 a.m.)

2 P R O C E E D I N G S

3 CHAIRMAN KOHN: Good morning everybody.

4 We'll call the meeting of the August 30, 2017

5 Missouri Gaming Commission to order.

6 Angie, please call the roll.

7 MS. FRANKS: Commissioner Lombardo.

8 (No response.)

9 MS. FRANKS: Commissioner Neer.

10 COMMISSIONER NEER: Present.

11 MS. FRANKS: Commissioner Finney.

12 COMMISSIONER FINNEY: Present.

13 MS. FRANKS: Commissioner Jamison.

14 COMMISSIONER JAMISON: Present.

15 MS. FRANKS: Chairman Kohn.

16 CHAIRMAN KOHN: Present.

17 We have a quorum. We're ready to proceed  
18 with the meeting.

19 And we have a special presentation by our  
20 Deputy Director Tim McGrail. And by introducing Tim  
21 McGrail, I'm also letting you know that our Executive  
22 Director Bill Seibert is not with us because he had a  
23 little bit of further surgery. He's doing well and he's  
24 home recovering and we hope to have him at the next  
25 meeting.

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1                   Go ahead, sir.

2                   MR. MCGRAIL: Thank you.

3                   On behalf of Executive Director Bill Seibert  
4 and the Commission as well, we present basically  
5 recognition of our employees here for milestones, years  
6 of service and then we also have an employee of the  
7 quarter.

8                   So to start with I'd ask for Amanda to come  
9 forward.

10                   So Amanda has been here with the Missouri  
11 Gaming Commission for ten years, so we're recognizing  
12 with a certificate of appreciation to Amanda Clutter for  
13 dedicated service with the Missouri Gaming Commission.

14                   Congratulations on reaching this significant  
15 milestone in your career. Your effort, dedication play  
16 a tremendous part in our success. We appreciate your  
17 commitment.

18                   Amanda started as soon as she graduated from  
19 high school. Is that correct?

20                   MS. CLUTTER: No.

21                   MR. MCGRAIL: Pretty close.

22                   But ten years is significant. Again, we  
23 appreciate for all of that.

24                   (Appause.)

25                   MS. CLUTTER: Thank you.

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1                   CHAIRMAN KOHN:  Amanda, on behalf of the  
2 Commission, we also want to add our congratulations and  
3 not only our congratulations but our sincere  
4 appreciation for all of the work you do for us and the  
5 people of the state of Missouri.

6                   So thank you and congratulations.

7                   MS. CLUTTER:  Thank you.

8                   CHAIRMAN KOHN:  We have a new commissioner.

9                   MR. MCGRAIL:  I have one more.

10                  CHAIRMAN KOHN:  I'm sorry.  I thought Amanda  
11 was unique.

12                  MR. MCGRAIL:  She is for the milestone for  
13 the year, but we do have an employee of the quarter.

14                  So this is one that we started when Executive  
15 Director Seibert took over as far as recognizing all of  
16 the good work that a lot of our -- that go above and  
17 beyond as far as their service to the Missouri Gaming  
18 Commission.

19                  So for the employee of the quarter I'll first  
20 kind of read over it a little bit and cover it.

21                  This is an employee -- this is a person that  
22 is seen when people come to the Missouri Gaming  
23 Commission.  She's always extremely pleasant, with a  
24 constant smile on her face and offers assistance to all  
25 employees in the public.  This employee takes on an

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1 extra responsibility that anyone asks her to do at a  
2 drop of a hat and never complains. She remembers  
3 everyone's birthday and anniversary. She's a leader in  
4 promoting good office morale with her genuine happy  
5 demeanor.

6 This employee demonstrates the Commission's  
7 core values of service, integrity and professionalism in  
8 all of her work and contact with others here at MGC.

9 So on behalf of again Executive Director  
10 Seibert and the Commission as well, I ask for Deb  
11 McDaniel to come forward and be the recipient of this  
12 employee of the quarter.

13 (Applause.)

14 MS. MCGRAIL: The big thing about this is she  
15 gets her own parking for the entire quarter, so I'm sure  
16 she's happy about that.

17 But congratulations.

18 MS. MCDANIEL: Thank you very much.

19 CHAIRMAN KOHN: And again, may we add our  
20 congratulations and appreciation for all of the hard  
21 work you do.

22 MS. MCDANIEL: Thanks, guys.

23 CHAIRMAN KOHN: Quite a writeup that he read.

24 I want to introduce a new commissioner we  
25 have with us. Larry Hale served for a long time and did

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1 an outstanding job, and we want to thank him for his  
2 service, and he has now been replaced by the Governor.  
3 The Governor named Dan Finney who is an attorney from  
4 the St. Louis area, and we welcome him and thank him for  
5 being with us, and I hope you enjoy your service here as  
6 much as the rest of us do. So welcome and  
7 congratulations.

8 COMMISSIONER FINNEY: Thank you, Chairman.

9 CHAIRMAN KOHN: A couple of changes to the  
10 agenda that I think will impact some of you.

11 First of all, you saw that we had a  
12 presentation called on the agenda geographic pay  
13 disparities, and that was going to be a presentation by  
14 a Drew Juden, and he had to cancel this morning, so we  
15 will not be having that presentation.

16 The other change is the item called  
17 Consideration of Hearing Officer Recommendations.  
18 That's Item Roman Numeral IV on your agenda. It will be  
19 moved to the last item on the agenda before the closed  
20 session. So let me tell you why we're doing that.

21 This is compared to the other items on the  
22 agenda a lengthier matter, and it may involve us going  
23 into closed session for consideration and coming out  
24 later for a vote.

25 So instead of having everybody wait here that

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1 is on the agenda earlier and having to wait while all  
2 that happens, we're going to take everything else first.  
3 Then if you want to leave after your matter has been  
4 disposed of, you can, and that will leave us just with  
5 the Pinnacle and River City matters which we will take  
6 up last.

7 So with that we're ready for consideration of  
8 the minutes of the meeting of June 27. Is there a  
9 motion to approve those minutes?

10 COMMISSIONER JAMISON: So moved.

11 COMMISSIONER NEER: Second.

12 CHAIRMAN KOHN: Angie.

13 MS. FRANKS: Commissioner Neer.

14 COMMISSIONER NEER: Approve.

15 MS. FRANKS: Commissioner Finney.

16 COMMISSIONER FINNEY: Approve.

17 MS. FRANKS: Commissioner Jamison.

18 COMMISSIONER JAMISON: Approve.

19 MS. FRANKS: Chairman Kohn.

20 CHAIRMAN KOHN: Approve.

21 MS. FRANKS: By your vote you've adopted the  
22 minutes of the June 27, 2017 meeting.

23 CHAIRMAN KOHN: Now, if you recall, the June  
24 meeting was in Kansas City and it was actually a two-day  
25 meeting, so we also have minutes of the meeting of

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1 June 28.

2 Is there a motion to approve those minutes?

3 COMMISSIONER NEER: Motion to approve.

4 COMMISSIONER JAMISON: Second.

5 CHAIRMAN KOHN: Angie.

6 MS. FRANKS: Commissioner Neer.

7 COMMISSIONER NEER: Approve.

8 MS. FRANKS: Commissioner Finney.

9 COMMISSIONER FINNEY: Approve.

10 MS. FRANKS: Commissioner Jamison.

11 COMMISSIONER JAMISON: Approve.

12 MS. FRANKS: Chairman Kohn.

13 CHAIRMAN KOHN: Approve.

14 MS. FRANKS: By your vote you've adopted the  
15 minutes of the June 28, 2017 meeting.

16 CHAIRMAN KOHN: Okay. Thank you very much.

17 We're now ready for Item Roman Numeral V,  
18 Consideration of Disciplinary Action.

19 Tim.

20 MR. MCGRAIL: Yes.

21 Mr. Chairman, that will be the first item on  
22 the agenda, Consideration of Disciplinary Action, and  
23 General Counsel Ed Grewach will be making the  
24 presentation.

25 MR. GREWACH: Thank you, Deputy Director

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1 McGrail, Mr. Chairman, Commissioners.

2 Under Tab E we have a Preliminary Order of  
3 Discipline directed to Gaming Partners International for  
4 shipping 4,297 defective decks of cards to Ameristar  
5 Casino in violation of our Rule 5.183.

6 That rule provides that no card shall contain  
7 any design that would allow a player to differentiate  
8 any card from any other, and this rule is essential to  
9 the integrity of gaming in that if a player was able to  
10 tell when a card was face down what card that was, it  
11 would be very similar to someone marking a card and  
12 would allow a player to cheat or gain illegal advantage  
13 in a game.

14 The defect was found on a card inspection in  
15 Ameristar Kansas City on January the 3rd, 2017. The  
16 defect was the ten of diamonds. The print on the back  
17 of the ten of diamonds was not centered.

18 The company also had three priors within the  
19 year preceding this violation which were outlined in the  
20 Preliminary Order of Discipline.

21 For the first violation that is set out in  
22 paragraph 10A of the Preliminary Order, the company  
23 received a nonpunitive letter, which we sometimes refer  
24 to as an NPL, which is basically a warning letter that  
25 no discipline is going to happen but a warning that it

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1 could happen in the future.

2 But the second violation that is set out in  
3 10B of the Preliminary Order, the original proposal of  
4 the staff was for a \$2,500 fine.

5 Whenever we propose a fine against a casino  
6 or supplier, we send out a letter to them proposing the  
7 fine and then we give them 14 days to respond, and so  
8 sometimes you'll hear that referred to as a 14-day  
9 letter.

10 Based on their response to that 14-day  
11 letter, the staff then reduced their recommendation of a  
12 \$2,500 fine through a nonpunitive letter in that case as  
13 well.

14 The third violation then also that you'll see  
15 set forth in paragraph 10C of the Preliminary Order also  
16 resulted in a nonpunitive letter to the supplier.

17 The staff then when they met and reviewed  
18 this case originally recommended a fine of \$5,000,  
19 again, sent the 14-day letter to the supplier.

20 The supplier's response indicated that they  
21 had taken remedial action to address this problem, that  
22 they expanded their plant in Blue Springs, Missouri,  
23 that they invested substantial sums in new equipment.  
24 They increased staff to include a site manager, a  
25 manufacturing engineer and an equipment specialist.

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1 They also indicated that they had a 99.7 accuracy rate  
2 for cards that were shipped in the state of Missouri.

3           Considering that then the staff agreed to  
4 reduce its recommendation to \$2,500, which is the  
5 recommendation we're presenting to the Commission today  
6 on this Preliminary Order of Discipline.

7           CHAIRMAN KOHN: Any questions of Ed?

8           COMMISSIONER JAMISON: No.

9           COMMISSIONER NEER: No, sir.

10           CHAIRMAN KOHN: Is there a motion to approve  
11 Disciplinary Action 17-110?

12           COMMISSIONER JAMISON: So moved.

13           COMMISSIONER NEER: Second.

14           CHAIRMAN KOHN: Any discussion on the motion?  
15 Angie.

16           MS. FRANKS: Commissioner Neer.

17           COMMISSIONER NEER: Approve.

18           MS. FRANKS: Commissioner Finney.

19           COMMISSIONER FINNEY: Approve.

20           MS. FRANKS: Commissioner Jamison.

21           COMMISSIONER JAMISON: Approve.

22           MS. FRANKS: Chairman Kohn.

23           CHAIRMAN KOHN: Approve.

24           MS. FRANKS: By your vote you've adopted

25 DC-17-110.

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1                   MR. GREWACH: Under Tab F we have a  
2 Preliminary Order of Discipline directed to Lumiere  
3 Place Casino for failing to properly collect cards and  
4 for falsifying information on card collection and  
5 destruction logs.

6                   The background card accountability is  
7 essential to maintaining the integrity of table games.  
8 An unaccounted for deck could result in the use of cards  
9 from that unaccounted deck to be used, introduced into a  
10 game to facilitating a player cheating in a particular  
11 game.

12                   To maintain that accountability the process  
13 that we've set up is that at the beginning of the gaming  
14 day there is a document that is an inventory document  
15 that shows the number of decks delivered to the pits for  
16 the gaming tables. Then at the close of the gaming day  
17 the rule requires that all of the decks that have been  
18 delivered be collected and returned back to the storage  
19 area.

20                   Once again, there's another log that is  
21 filled out, and the security officers are required to  
22 count those decks that are collected, log that in that  
23 log, and then at that point in time those decks that are  
24 collected go different routes.

25                   The decks that have been used are destroyed

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1 and the decks that haven't been used are returned to  
2 storage. So in the card collection destruction log, you  
3 have that breakdown of how many cards were destroyed and  
4 how many cards were returned to storage.

5 So when everything works right, all those  
6 numbers should add up, what was delivered, what was  
7 collected and then add the two numbers between what was  
8 returned to storage and what was destroyed.

9 Now, on March the 3rd, 2017, 18 decks of  
10 cards from the previous gaming day were discovered in a  
11 locked pit podium. Now, this in and of itself is a  
12 violation of the rule requiring that all cards be  
13 collected at the end of the gaming day.

14 As we investigated the matter we looked at  
15 all that paperwork I just discussed and saw that the  
16 number of decks that the paperwork indicated were  
17 delivered equaled the number of decks on a collection  
18 log that had the same number of decks collected as the  
19 number of decks delivered.

20 We knew that information, that log, was false  
21 because, in fact, there were 18 decks that were still  
22 locked in that pit podium. Further, when we looked at  
23 the destruction log, we saw that when we added up the  
24 numbers of cards returned to storage and the cards  
25 destroyed, those numbers again equaled the numbers

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1 delivered, the numbers collected, so we knew that number  
2 was wrong because there were still 18 cards in the pit  
3 podium, which obviously had been indicated in the  
4 destruction log had been destroyed.

5           During the six-month time period prior to  
6 this violation, as you can see in the Preliminary Order,  
7 the property had three separate disciplinary actions  
8 resulting from the card collection process.

9           In addition, on February the 1st, 2017 Deputy  
10 Director McGrail sent a letter to the casino emphasizing  
11 the importance of the collection and destruction process  
12 and documentation, suggesting further training of the  
13 staff and indicating that future incidents may result in  
14 discipline. This event happened one month after Deputy  
15 Director McGrail's letter.

16           The company had responded to us indicating  
17 that there had been significant personnel changes since  
18 these incidents occurred, including the termination of  
19 the security guard that was -- security officer that was  
20 involved in this collection process and the supervisors  
21 and directors of security and table games that were  
22 overseeing this process.

23           They indicated that they had also conducted  
24 additional training, and they also had just completed --  
25 we do compliance audits on a regular basis, on a

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1 rotating basis, and our most recent compliance audit of  
2 this particular property was completed on May 17, 2017.  
3 The property indicated that they were in response to the  
4 direction from that audit taking additional steps to try  
5 to address this particular problem.

6 The staff recommendation is a \$10,000 fine.

7 CHAIRMAN KOHN: Any questions of Ed?

8 COMMISSIONER JAMISON: Yes.

9 On that recommendation I'm assuming that part  
10 of that comes from the fact that it wasn't an overlook,  
11 is that they intentionally falsified logs -- or not --  
12 they just wrote down what they thought they were taking  
13 away and weren't really counting them to verify that  
14 that's what they were taking away and securing?

15 MR. GREWACH: It's more likely -- the  
16 information in the logs is false.

17 COMMISSIONER JAMISON: Right.

18 MR. GREWACH: More likely is they just didn't  
19 count them.

20 COMMISSIONER JAMISON: They just took all of  
21 the cards there and assumed that that was all of the  
22 cards on the sheet, so they wrote that number down?

23 MR. GREWACH: Right. They just carried the  
24 number down. They just plugged in the number saying,  
25 okay, here is what I started with. So then they just

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1 put that same number in collection and then they, you  
2 know, did the same numbers to add up. So in those two  
3 stages where they should have been counting the cards,  
4 the decks of cards --

5 COMMISSIONER JAMISON: They were skipping  
6 that stage?

7 MR. GREWACH: -- they did not.

8 COMMISSIONER JAMISON: They were either  
9 skipping that stage or they couldn't count correctly.  
10 Right?

11 MR. GREWACH: Giving them the benefit of the  
12 doubt I would assume they just skipped -- they just did  
13 not perform those counts.

14 COMMISSIONER JAMISON: Okay.

15 COMMISSIONER NEER: So simply stating they  
16 were falsifying the records?

17 MR. GREWACH: Correct. Now whether it was an  
18 intentional falsification or just not doing their job  
19 and counting the cards, that we don't know, but the logs  
20 were false.

21 CHAIRMAN KOHN: Ed, I have a question.

22 The security officer who was terminated, was  
23 that as a result of this incident or is it other?

24 MR. GREWACH: My information is it was a  
25 result of a different problem, but I don't know the

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1 definitive answer to that. He did receive as a result  
2 of this case a 30-day suspension.

3 CHAIRMAN KOHN: They did not take any other  
4 action with regard to this matter, as far as you know,  
5 other than the 30-day suspension, the same officer who  
6 was terminated for another reason?

7 MR. GREWACH: I really can't speak  
8 definitively to that, although that's the information  
9 that I had from our auditors.

10 CHAIRMAN KOHN: Any other questions?

11 COMMISSIONER FINNEY: One question.

12 Did you learn as to why those 18 decks were  
13 not included, why they were left behind?

14 MR. GREWACH: No, we did not.

15 As you see, when you look at some -- at one  
16 of the prior cases -- two of the prior cases, one  
17 involving cards, one involving dice, it was the same  
18 problem on those too, that decks were left and dice were  
19 left in a podium and not collected.

20 So that seemed to be a matter of just the  
21 personnel required to collect those not performing their  
22 duties properly.

23 CHAIRMAN KOHN: Any other questions?

24 If not, is there a motion regarding

25 DC-17-111?

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1 COMMISSIONER JAMISON: I'll move for  
2 adoption.

3 CHAIRMAN KOHN: Is there a second?

4 COMMISSIONER FINNEY: I'll second.

5 CHAIRMAN KOHN: Further discussion on the  
6 motion?

7 If not, Angie, please call the roll.

8 MS. FRANKS: Commissioner Neer.

9 COMMISSIONER NEER: Approve.

10 MS. FRANKS: Commissioner Finney.

11 COMMISSIONER FINNEY: Approve.

12 MS. FRANKS: Commissioner Jamison.

13 COMMISSIONER JAMISON: Approve.

14 MS. FRANKS: Chairman Kohn.

15 CHAIRMAN KOHN: Approve.

16 MS. FRANKS: By your vote you've adopted  
17 DC-17-111.

18 CHAIRMAN KOHN: Ed.

19 MR. GREWACH: Under Tab G we have a  
20 resolution to place Christopher Mandina on the  
21 involuntary exclusion list.

22 Our Rule 15.030 sets forth criteria for the  
23 placement of someone on the involuntary exclusion list,  
24 and from the list of causes that are applicable to place  
25 someone on that list, the two that apply in this

1 particular case are a violation of any provision of  
2 Chapter 313 and performing any act that adversely  
3 affects public trust in gaming.

4           On February 23rd, 2007 Mr. Mandina placed  
5 himself on the voluntary exclusion list, or we refer to  
6 it as the disassociated person or DAP list.

7           Now, that's different from the involuntary  
8 exclusion list. The DAP list is authorized by a  
9 statute, 313.813, designed to be a tool for someone who  
10 believes they have a gambling problem, and if you sign  
11 yourself on to that list, then pursuant to the statute  
12 you commit a misdemeanor by entering into a casino once  
13 you're on that list.

14           On August 22nd, 2014 Mandina was in Lumiere  
15 Place Casino and won a \$1,600 jackpot. For tax  
16 reporting purposes any jackpot of \$1,200 or over, the  
17 machine locks up because there's a W-2G form that has to  
18 be filled out and sent to the IRS for that taxable  
19 jackpot.

20           So when that happens, then the machine locks  
21 up and the slot attendant has to come and prepare some  
22 paperwork for the patron to sign.

23           So the slot supervisor approached Mandina  
24 with the paperwork. Now, Mandina at that point in time  
25 signed another person's name and gave another person's

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1 Social Security number when he filled out that report.

2 When the slot supervisor told him he would  
3 also need identification, then Mr. Mandina fled the  
4 casino.

5 On August the April 16th, 2015 Mr. Mandina  
6 was again at Lumiere Place Casino and this time won an  
7 \$1,800 jackpot and again forged another person's name  
8 and put another person's Social Security number on the  
9 jackpot form.

10 Again, he was asked for identification and  
11 once again he fled the casino. However, in this case  
12 our Highway Patrol agents followed him from the  
13 property. He resisted arrest by flee.

14 On October 27th --

15 CHAIRMAN KOHN: I'm sorry. He resisted  
16 arrest by what?

17 MR. GREWACH: By flee.

18 They were pursuing him in the parking garage,  
19 and as a matter of fact, he drove backwards out of the  
20 parking garage at 40 miles an hour, almost striking a  
21 security officer who was manning the gate at the  
22 property.

23 And the officers had, you know, told him to  
24 stop, told him to get out of the car and he resisted  
25 arrest by fleeing the officers.

1                   On October 27th, 2015 Mr. Mandina pled guilty  
2 in the St. Louis City Circuit Court for two counts of a  
3 Class C felony of forgery, two counts for trespass for  
4 being a disassociated person on the casino floor and one  
5 count of a Class D felony of resisting arrest.

6                   He received a suspended imposition of  
7 sentence with a condition that he not enter Lumiere  
8 Place Casino during the term of his probation.

9                   His actions and his plea constitute a  
10 violation of 313.813 and also constitute an act  
11 adversely affecting public trust and confidence in  
12 gaming and, therefore, make him eligible for the  
13 involuntary exclusion list.

14                   Once the Commission passes this resolution,  
15 then the resolution is served on Mr. Mandina.  
16 Mr. Mandina then has 30 days to request a hearing. If  
17 he requests a hearing, then at that point in time that  
18 hearing goes back -- would come back to you for your  
19 final decision on the matter then.

20                   CHAIRMAN KOHN: And for the purposes of our  
21 new commissioner, this applies to all casinos?

22                   MR. GREWACH: Yes, this applies to all  
23 casinos.

24                   COMMISSIONER JAMISON: In Missouri?

25                   MR. GREWACH: In Missouri, right.

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1 CHAIRMAN KOHN: Okay. Any questions of Ed?  
2 That's all this guy did?

3 MR. GREWACH: That was it.

4 COMMISSIONER JAMISON: A clarification  
5 between the DAP and the exclusion list. A person can  
6 put themselves on the DAP list and take themselves back  
7 off the DAP list because that's a voluntary list to be  
8 on. This exclusion list is not something he has any  
9 control over.

10 MR. GREWACH: That's correct.

11 Commissioner Jamison pointed out five years  
12 after you sign on to the list you can remove yourself  
13 from the list.

14 So that's the motivation for us pursuing this  
15 involuntary exclusion, so it is a permanent exclusion  
16 from all Missouri casinos.

17 CHAIRMAN KOHN: Any other questions of Ed?  
18 Is there a motion regarding 17-112?

19 COMMISSIONER NEER: Motion to approve.

20 COMMISSIONER JAMISON: 17-041.

21 CHAIRMAN KOHN: I'm sorry. 17-041.

22 COMMISSIONER JAMISON: I move for adoption.

23 COMMISSIONER NEER: Second.

24 CHAIRMAN KOHN: Discussion on the motion?  
25 Angie.

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1 MS. FRANKS: Commissioner Neer.

2 COMMISSIONER NEER: Approve.

3 MS. FRANKS: Commissioner Finney.

4 COMMISSIONER FINNEY: Approve.

5 MS. FRANKS: Commissioner Jamison.

6 COMMISSIONER JAMISON: Approve.

7 MS. FRANKS: Chairman Kohn.

8 CHAIRMAN KOHN: Approve.

9 MS. FRANKS: By your vote you've adopted  
10 Resolution No. 17-041.

11 CHAIRMAN KOHN: Okay. Ed, one more.

12 MR. GREWACH: Item H is a resolution to place  
13 Wayne C. Martin, III on the involuntary exclusion list.

14 In 2011 Mr. Martin and a friend formed a  
15 limited liability company to operate a construction  
16 company, each owning approximately one-half of the  
17 company. Shortly after the company started operating  
18 Mr. Martin began embezzling money from the LLC. He  
19 forged his co-owner's name on loans and took the  
20 proceeds. He falsified the ledger entries of the  
21 company indicating that the company held assets which,  
22 in fact, it did not, and he paid personal bills out of  
23 the LLC account.

24 On March 28th, 2017 Mr. Martin pled guilty in  
25 Federal Court to wire fraud in relation to these

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1 charges. He was placed on five years supervised  
2 probation, ordered to pay restitution of \$235,000 to his  
3 business partner.

4 The special conditions of the probation also  
5 required him to participate in a gambling addiction  
6 treatment program, prohibited him from engaging in any  
7 form of gambling and prohibited him from entering any  
8 casino during the term of his probation.

9 The plea and the actions he performed do  
10 constitute a conviction of a felony of a crime involving  
11 moral turpitude which qualifies him for the list under  
12 15.030.

13 Again, our reason for asking him to be placed  
14 on the list is that the conditions of the probation only  
15 are in effect for the term of this probation and this  
16 would make him a lifetime permanent exclusion from any  
17 casino in Missouri.

18 CHAIRMAN KOHN: Any questions?

19 Is there a motion with respect to Resolution  
20 No. 17-042?

21 COMMISSIONER NEER: Motion to approve  
22 Resolution 17-042.

23 CHAIRMAN KOHN: A second?

24 COMMISSIONER JAMISON: Second.

25 CHAIRMAN KOHN: Discussion on the motion?

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1 Angie.

2 MS. FRANKS: Commissioner Neer.

3 COMMISSIONER NEER: Approve.

4 MS. FRANKS: Commissioner Finney.

5 COMMISSIONER FINNEY: Approve.

6 MS. FRANKS: Commissioner Jamison.

7 COMMISSIONER JAMISON: Approve.

8 MS. FRANKS: Chairman Kohn.

9 CHAIRMAN KOHN: Approve.

10 MS. FRANKS: By your vote you've adopted  
11 Resolution No. 17-042.

12 CHAIRMAN KOHN: Mr. McGrail.

13 MR. MCGRAIL: The next item on the agenda is  
14 Consideration of Licensure of Certain Level I and key  
15 applicants. Sergeant Jim Bennett will make the  
16 presentation.

17 CHAIRMAN KOHN: Sergeant Bennett.

18 SERGEANT BENNETT: Good morning, Chairman,  
19 Commissioners.

20 CHAIRMAN/COMMISSIONERS: Good morning.

21 SERGEANT BENNETT: Missouri State Highway  
22 Patrol investigators, along with Missouri Gaming  
23 Commission financial investigators, conducted  
24 comprehensive background investigations on key and  
25 Level I applicants. The investigations included but

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1 were not limited to criminal, financial and general  
2 character inquiries which were made in the jurisdictions  
3 in which the applicants lived, worked and frequented.

4           The following individuals are being presented  
5 for your consideration: Kathleen Conlon, Non-Executive  
6 Director, Aristocrat Leisure Limited; Lydia Mason,  
7 Assistant General Manager, Hollywood Casino Maryland  
8 Heights; Colin Henson, Independent Non-Executive  
9 Director, Ainsworth Game Technology; Terrence Lanning,  
10 Safety Security Manager, St. Jo Frontier Casino; and  
11 Michael Yates, Independent Non-Executive Director with  
12 Ainsworth Game Technology.

13           The results of these investigations were  
14 provided to the Gaming Commission staff and the  
15 investigating officers are present at this meeting to  
16 answer any questions you might have.

17           CHAIRMAN KOHN: Are there any questions of  
18 Sergeant Bennett or any of the other officers here?

19           COMMISSIONER JAMISON: No, sir.

20           COMMISSIONER NEER: No, sir.

21           CHAIRMAN KOHN: Okay. Is there a motion to  
22 adopt Resolution 17-043?

23           COMMISSIONER JAMISON: So moved.

24           COMMISSIONER NEER: Second.

25           CHAIRMAN KOHN: Discussion on the motion?

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1 Angie.

2 MS. FRANKS: Commissioner Neer.

3 COMMISSIONER NEER: Approve.

4 MS. FRANKS: Commissioner Finney.

5 COMMISSIONER FINNEY: Approve.

6 MS. FRANKS: Commissioner Jamison.

7 COMMISSIONER JAMISON: Approve.

8 MS. FRANKS: Chairman Kohn.

9 CHAIRMAN KOHN: Approve.

10 MS. FRANKS: By your vote you've adopted

11 Resolution No. 17-043.

12 CHAIRMAN KOHN: Okay. Mr. McGrail.

13 MR. MCGRAIL: The next item on the agenda is

14 Consideration of Relicensure of Certain Suppliers.

15 Sergeant Julie Scerine will make the presentation.

16 SERGEANT SCERINE: Good morning, Chairman,

17 Commissioners.

18 CHAIRMAN KOHN: Good morning, Sergeant

19 Scerine. How are you?

20 SERGEANT SCERINE: Good. How are you?

21 Missouri State Highway Patrol investigators  
22 conducted the relicensing investigation of two supplier  
23 companies currently licensed in Missouri. These  
24 investigations consisted of jurisdictional inquiries,  
25 feedback from affected gaming company clients, a review

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1 of disciplinary actions, litigation and business credit  
2 profiles, as well as a review of the key persons  
3 associated with each company.

4 The results of these investigations were  
5 provided to the Missouri Gaming Commission staff for  
6 their review and you possess comprehensive summary  
7 reports before you which outline our investigative  
8 findings for each company.

9 The following supplier companies are being  
10 presented for your consideration: United States Playing  
11 Card Company and Gaming Partners International USA.

12 CHAIRMAN KOHN: Are there any questions of  
13 Sergeant Scerine?

14 COMMISSIONER JAMISON: Not necessarily of  
15 her, but on these, remind if I'm correct. Both of these  
16 are late and we've had this discussion before, that if  
17 we want to take action on the late application, we have  
18 to renew the license and then take action against that  
19 license? It's not in reverse. Correct?

20 MR. GREWACH: Correct. Because we as a staff  
21 don't view the late filings as making them unsuitable  
22 for relicensure but we do treat them as a disciplinary  
23 action.

24 Now, for both of these, just to give  
25 background on how the process works, when it's

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1 reported -- and it's a regulatory violation because the  
2 regulation requires them to file the renewal application  
3 within 120 days of the due date, and the reason behind  
4 that rule is that the investigation takes some time and  
5 their license expires on a certain day, so give us  
6 enough lead time to do that.

7           When they failed to do that as these two did,  
8 then we first instituted a gaming report, which is what  
9 starts an investigation going.

10           Now, that right now for these two companies  
11 is still in the investigative phase, so it hasn't got  
12 here to Jeff City to the staff yet. Once the staff gets  
13 it, then it will review it just like the discipline  
14 cases that I've presented earlier. Then we would come  
15 and make some recommendation to the Commission for  
16 whatever fine or whatever disciplinary action we thought  
17 was appropriate, and the Commission would make the final  
18 decision on that.

19           But it is a regulatory violation that again  
20 in staff's view does not make them unsuitable but we  
21 would proceed as a disciplinary action.

22           COMMISSIONER JAMISON: I guess I make the  
23 recommendation to staff that -- I mean, I guess they're  
24 claiming that they forgot or didn't remember the  
25 120 days. I'm sure we have a communication system with

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1 our licensees.

2 MR. GREWACH: We do.

3 COMMISSIONER JAMISON: Let's send out a  
4 reminder of this so at least we've done something on our  
5 part to remind, so when we take action against them for  
6 being late, we've at least sent out a reminder since the  
7 first time that they did the application.

8 MR. MCGRAIL: We can do that.

9 COMMISSIONER JAMISON: That would be  
10 appropriate.

11 CHAIRMAN KOHN: That's a good idea.

12 Any other questions or comments?

13 COMMISSIONER JAMISON: I move for adoption of  
14 17-044.

15 CHAIRMAN KOHN: Is there a second?

16 COMMISSIONER FINNEY: Second the motion.

17 CHAIRMAN KOHN: Thank you, Sergeant.

18 Any discussion on the motion?

19 Angie.

20 MS. FRANKS: Commissioner Neer.

21 COMMISSIONER NEER: Approve.

22 MS. FRANKS: Commissioner Finney.

23 COMMISSIONER FINNEY: Approve.

24 MS. FRANKS: Commissioner Jamison.

25 COMMISSIONER JAMISON: Approve.

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1 MS. FRANKS: Chairman Kohn.

2 CHAIRMAN KOHN: Approve.

3 MS. FRANKS: By your vote you've adopted  
4 Resolution No. 17-044.

5 CHAIRMAN KOHN: Now we need a motion on  
6 Resolution 17-045.

7 COMMISSIONER JAMISON: So moved.

8 COMMISSIONER NEER: Second.

9 CHAIRMAN KOHN: Discussion on the motion?  
10 Angie.

11 MS. FRANKS: Commissioner Neer.

12 COMMISSIONER NEER: Approve.

13 MS. FRANKS: Commissioner Finney.

14 COMMISSIONER FINNEY: Approve.

15 MS. FRANKS: Commissioner Jamison.

16 COMMISSIONER JAMISON: Approve.

17 MS. FRANKS: Chairman Kohn.

18 CHAIRMAN KOHN: Approve.

19 MS. FRANKS: By your vote you've adopted  
20 Resolution No. 17-045.

21 CHAIRMAN KOHN: Thank you.

22 Now we're going to go back up to the Item No.  
23 Roman Numeral IV on the agenda, which is Consideration  
24 of the Hearing Officer Recommendations with respect to  
25 Pinnacle Entertainment and PNK, or River City.

1                   And before we start let me remind the  
2 participants in this matter, as well as the Commission,  
3 of the process we're going to follow, and this was set  
4 forth in the letter to the attorneys for the two sides  
5 on August 16.

6                   First of all, the two matters will be  
7 consolidated because it's the same argument on both, so  
8 we don't need to hear the same thing twice.

9                   Secondly, we will hear from the hearing  
10 officer. Then we'll hear from the attorneys for the two  
11 sides. Mr. Bednar I think will be first and he will be  
12 given 15 minutes. Then Mr. Schube on behalf of the  
13 Missouri Gaming Commission representing the Attorney  
14 General's Office will be given 15 minutes. Mr. Bednar  
15 if he chooses can then have an additional five minutes  
16 for a rebuttal.

17                   At that time we will ask questions. The  
18 Commission may ask you questions during your  
19 presentations, and if they do, they do. That could  
20 happen. And unless there's a huge discussion that takes  
21 place as a result of one of those questions, that will  
22 still be within the 15 minutes.

23                   After the arguments and questions have been  
24 answered as asked by the Commission members, we may go  
25 into closed session to discuss the matter, and as I said

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1 at the beginning, we will then come out and report our  
2 decision.

3 So with that -- and Angie will keep time by  
4 the way. And if you are called at the end of fifteen  
5 minutes or five minutes in the event of rebuttal, feel  
6 free to finish your thought but that should be it.

7 So with that we're ready to hear from our  
8 hearing officer.

9 MR. STEIB: Good morning.

10 CHAIRMAN/COMMISSIONERS: Good morning.

11 MR. STEIB: May it please the Commission.

12 COMMISSIONER NEER: Two minutes are up.

13 (Laughter.)

14 MR. STEIB: We are here this morning to  
15 address the issue of Pinnacle Entertainment DC-317 and  
16 River City which is DC-319.

17 Pinnacle is a Nevada corporation and the  
18 possessor of a Class A license. River City is a  
19 Missouri corporation and a possessor of a Class B  
20 license. Pinnacle is the parent corporation of  
21 River City.

22 By agreement of counsel these matters were  
23 considered as one during the discovery process, and one  
24 hearing was held concerning both of these. And as the  
25 Chairman points out, because of the commonality of

1 issues they will be addressed singularly today.

2           This is not a complicated case despite this  
3 stack of paper involved that I've just demonstrated. It  
4 revolves around the simple proposition of whether these  
5 licensees provided prompt notice to the Commission staff  
6 of a problem with a promotional activity that they were  
7 conducting.

8           From April 1st, 2012 to December 30th, 2012  
9 these licensees conducted a promotional activity called  
10 MyChoice MyMillion, under which the patrons were to  
11 receive one entry for every 25 points.

12           On or about April 20th, 2012 these licensees  
13 ascertained that while slot players were, in fact,  
14 getting the 25 points, one entry, table players were  
15 required 50 points per one entry; hence, a discrepancy  
16 in the promotion that was going on.

17           As a result of that discovery, 125,000 total  
18 entries were affected, and the licensees were required  
19 to send out notices to 5,000 patrons telling them about  
20 this discrepancy.

21           11 CSR 45-10.030 provides licensees shall  
22 promptly report any facts to indicate -- promptly report  
23 to the Commission staff any violation of minimum  
24 internal control standards or Commission rule.

25           Further, 11 CSR 45-5.181(2)A provides that no

1 false or misleading statements shall be made by any  
2 licensee concerning a promotional activity.

3           The simple proposition is this: Did these  
4 licensees comply with that regulation and give prompt  
5 notice to the staff of the point issue discrepancy and  
6 problem? They did not is the answer to that question.  
7 The evidence adduced and the record reflects that they  
8 did not.

9           On April 20th, 2012 when Pinnacle and River  
10 City became aware of the problem it was not until  
11 November 30th, 2012, some seven months later, that they  
12 notified the Commission staff that there was a problem.  
13 Seven months can hardly be determined to be a prompt  
14 reporting of this issue.

15           I would be remiss if I did not address  
16 several issues which were raised by the licensees  
17 following the filing of the findings of fact,  
18 conclusions and final order.

19           The licensees contend that the Commission has  
20 no lawful basis on which to impose this discipline and,  
21 therefore, the Commission is prohibited from  
22 disciplining Pinnacle and River City.

23           The licensees base this on two theories, that  
24 of collateral estoppel and res judicata. The licensees  
25 attempted repeatedly to introduce into the record into

1 this hearing the case of In Re: Shannon Hoffman, which  
2 is DC-172.

3 Shannon Hoffman was a -- and is a business  
4 analyst with a Level II license for the casinos.

5 She was advised that she was going to be  
6 disciplined for her action in this MyChoice MyMillion  
7 point discrepancy. Shannon Hoffman requested a hearing.  
8 That hearing was conducted not by me but by a different  
9 hearing officer. His recommendation to the Commission  
10 was that Shannon Hoffman be suspended for three days,  
11 and, in fact, the Commission ratified that and Shannon  
12 Hoffman was, in fact, suspended for three days.

13 The party in that case was Shannon Hoffman in  
14 172. The license in 172 was that of Shannon Hoffman.  
15 She was the party and that was the license in question.

16 The licensees argue that because of the  
17 Shannon Hoffman determination that collaterally estops  
18 this Commission from issuing any discipline on these  
19 licensees under the theory of collateral estoppel  
20 because they claim that these prohibit the Commission  
21 from addressing that because of a collateral case.

22 Further, the licensees adopt the position  
23 that the Commission has no lawful basis to assess this  
24 discipline based on the theory of res judicata.

25 Res judicata as defined in Black's Law

1 Dictionary, which is the Bible for most practicing  
2 attorneys, defines res judicata as a motion adjudged, a  
3 thing already decided to be applicable -- counsel  
4 requires eyes -- to be applicable requires the identity  
5 of the things sued for, as well as the identity of the  
6 cause of action of the persons and parties to the  
7 action.

8           The sum and substance of the whole rule is  
9 that a matter once judicially decided is finally  
10 decided.

11           The Shannon Hoffman case and the cases that  
12 are before you today, 317 and 319, have different  
13 things, different res, different licensees, and the  
14 parties are quite different. So clearly res judicata  
15 should not apply in this case.

16           Of late the licensees have proposed the  
17 theory that the Commission is prohibited from issuing  
18 any discipline based on the fact that records were  
19 sealed.

20           At the hearing conducted in December a  
21 witness was called for the Commission, which that  
22 witness brought with her certain papers from which she  
23 testified. When she did that, the counsel for the  
24 licensees sought access to those papers. The counsel  
25 for the Commission objected saying that they contained

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1 proprietary information.

2 CHAIRMAN KOHN: Who is this person?

3 COMMISSIONER JAMISON: It was one of our  
4 staff. It was Cheryl.

5 MR. STEIB: The person was an employee of the  
6 Commission.

7 CHAIRMAN KOHN: Of the Commission. Okay.

8 MR. STEIB: She appeared at the hearing, had  
9 certain papers which she used and testified. Counsel  
10 for the licensee requested access to those papers.  
11 Counsel for the Commission objected saying that it  
12 contained proprietary information.

13 COMMISSIONER NEER: Why were those papers  
14 sealed, sir?

15 MR. STEIB: Let me get to that.

16 Based on that request and based on the  
17 objection for proprietary information, as counsel knows,  
18 when a witness comes to a hearing and brings certain  
19 papers and testifies from them, opposing counsel has a  
20 right to have access to those papers and a right to  
21 interrogate the witness regarding those papers. Not  
22 necessarily possession of them but has access to those  
23 papers that that witness has used in testifying.

24 Counsel for the licensees requested access to  
25 those papers, was given access to those papers,

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1 interrogated the witness regarding those papers, but  
2 based upon the contention of the counsel for the  
3 Commission that these papers contained proprietary  
4 information, counsel for the licensees was not given  
5 possession of those papers, although he did have the  
6 opportunity to examine them and interrogate the witness  
7 regarding those papers.

8           Hence, I believe that the Rule of Civil  
9 Procedure and the case law was followed in that case  
10 since counsel did have an opportunity to examine and  
11 interrogate that witness regarding those papers.

12           Based upon the record, based upon the  
13 evidence adduced, the testimony of witnesses, it is the  
14 recommendation of the hearing officer that Pinnacle  
15 Entertainment did not meet its burden of proof in  
16 showing clearly and convincingly that it should not be  
17 subject to disciplinary action for the violation  
18 therein, and the penalty of a fine in the amount of  
19 \$40,000 should be approved.

20           Further, based upon the evidence adduced  
21 and the testimony of witnesses and the record as a  
22 whole, it's the recommendation of the hearing officer  
23 that River City did not meet its burden of proof to show  
24 by clear and convincing evidence that it should not be  
25 subject to discipline and, therefore, it should be fined

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1 in the amount of \$10,000.

2 COMMISSIONER JAMISON: And back to Tom's  
3 question. The part that was sealed was internal  
4 information in those documents of the Gaming Commission  
5 that was sealed, that the attorney for the licensees  
6 could not disclose that information. Is that correct?

7 MR. STEIB: That's true.

8 COMMISSIONER JAMISON: He saw the information  
9 but the sealing was he couldn't disclose that  
10 information?

11 MR. STEIB: That's true. He saw the  
12 information. He was able to use that information in  
13 interrogating the witness and so did but did not get  
14 possession of it.

15 CHAIRMAN KOHN: Any other questions of  
16 Mr. Steib?

17 COMMISSIONER JAMISON: No, sir.

18 CHAIRMAN KOHN: Thank you for a very  
19 straightforward presentation. We appreciate it.

20 MR. STEIB: You're welcome.

21 CHAIRMAN KOHN: With that we're ready for  
22 oral arguments, and we'll begin with Mr. Bednar.

23 Do you need a Black's Law Dictionary?

24 MR. BEDNAR: No, sir. I'm good.

25 May it please the Commission and

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1 Mr. Chairman.

2 My name is Joe Bednar. I have the privilege  
3 to represent Pinnacle Entertainment, as well as  
4 River City, PNK, in this disciplinary action.

5 I agree with the hearing officer. This is  
6 really a simple case. And it's an interesting case as  
7 well because it's not often that the number of issues  
8 that are related to the simple answer have had some  
9 impact.

10 The hearing officer has stated that, and  
11 distilled the issue down to this: Did PNK or Pinnacle  
12 violate 11 CSR 45-10.030, that is the mandate of prompt  
13 reporting to MGC, that a violation of minimum internal  
14 control standards or Commission rule has occurred.

15 Now, it's important to note within that  
16 definition that it says that the licensee had reasonable  
17 grounds to believe that a violation of minimum internal  
18 control standards or a Commission rule has been  
19 violated.

20 So we have a -- from the start there is a bit  
21 of a factual dispute as to the underlying basis for the  
22 hearing officer's findings.

23 Because he goes on to state that the problem  
24 herein is that 5,000 patrons of River City Lumiere and  
25 Pinnacle had been adversely affected, was recognized by

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1 River City and Pinnacle on April 19th, 2012 but no  
2 notice was given to the Gaming Commission for River City  
3 or Pinnacle until November 30th, 2012, some seven months  
4 later.

5 In fact, the fact is this: They did not --  
6 Pinnacle, the licensees -- now, there is three licensees  
7 involved in the facts of the case, my clients Pinnacle  
8 and River City, PNK, and then Ms. Hoffman who was  
9 previously referred to in the hearing officer's summary.

10 COMMISSIONER JAMISON: That would be four  
11 licensees.

12 MR. BEDNAR: Pardon?

13 COMMISSIONER JAMISON: That would be four.

14 MR. BEDNAR: River City, PNK, is one  
15 licensee, Pinnacle and Ms. Hoffman.

16 COMMISSIONER JAMISON: Okay.

17 MR. BEDNAR: The fourth licensee was Lumiere  
18 because of a reorganization.

19 COMMISSIONER JAMISON: But there was four  
20 originally?

21 MR. BEDNAR: Well, I guess, yeah, if you  
22 include Lumiere there was four.

23 COMMISSIONER JAMISON: Okay.

24 MR. BEDNAR: The importance is that what is  
25 also included in the same rule is that licensees shall

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1 take reasonable actions to safeguard from loss all  
2 tokens, tickets, chips, checks, funds and other gaming  
3 assets.

4 Ms. Hoffman as her responsibility, IT  
5 responsibility, for all of the licensees, Pinnacle,  
6 Lumiere and PNK, was -- had identified there could be a  
7 problem in the software of the MyChoice MyMillions  
8 campaign. And this campaign is correct. It ran from  
9 April 1st through December.

10 She went to the software designer, not an  
11 employee of any of the licensees, a separate third  
12 party. That software designer, the person who designed  
13 the actual software in which the game was promoted, told  
14 her that there was a problem and could be a problem in  
15 that these changes should be made. At his behest she  
16 made those changes and notified the property's marketing  
17 department.

18 She didn't -- there is no evidence that she  
19 ever notified anyone else in Pinnacle's operation, nor  
20 is there any evidence that she notified anyone other  
21 than marketing in Pinnacle.

22 COMMISSIONER JAMISON: I have a question at  
23 this point.

24 MR. BEDNAR: Sure.

25 COMMISSIONER JAMISON: Do you think that a

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1 notification was required by rule?

2 MR. BEDNAR: If it was, that's not at issue  
3 in this case. The issue --

4 COMMISSIONER JAMISON: I'm just asking, do  
5 you think a notification was required at that time? I'm  
6 just asking.

7 MR. BEDNAR: I couldn't speak to that.

8 COMMISSIONER JAMISON: Okay. So when --

9 MR. BEDNAR: Quite frankly --

10 COMMISSIONER JAMISON: When you say that it  
11 doesn't have anything to do with the case, I'm a little  
12 confused by that because you made a software change to  
13 the promotion at that time that negatively affected the  
14 promotion participants from that point forward. Is that  
15 correct?

16 MR. BEDNAR: No. The change that was made on  
17 April 19th was to prevent harm or anybody from being  
18 harmed subsequently to that. That was the first two  
19 weeks of the promotion.

20 COMMISSIONER JAMISON: Wasn't that an  
21 assumption that harm was occurring at the time at these  
22 two locations but there was no harm occurring because  
23 you mis-- there was a miscalculation of that software?

24 MR. BEDNAR: There was no evidence that any  
25 harm had occurred. It was taken upon -- Ms. Hoffman had

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1 made the decision, along with the software designer, who  
2 told her to make a change. She told the software  
3 designer there was some issues at other properties. He  
4 said change them all everywhere.

5           There had been no report, no evidence that  
6 there was a problem, so she took it as a precautionary  
7 measure.

8           COMMISSIONER JAMISON: But she did change an  
9 internal control?

10           MR. BEDNAR: She changed an internal control.  
11 I don't know if she changed an internal control. She  
12 changed the software. There is no identification in  
13 this case as to what the --

14           COMMISSIONER JAMISON: She changed the  
15 calculation of the software?

16           MR. BEDNAR: Yes. She thought she corrected  
17 the calculation --

18           COMMISSIONER JAMISON: In a promotion?

19           MR. BEDNAR: -- to follow the rules.

20           COMMISSIONER JAMISON: But you didn't notify  
21 us that you did it?

22           MR. BEDNAR: Right, and that's not an issue  
23 in this case.

24           The issue in this case is whether or not  
25 the -- the 5,000 patrons that are harmed, that wasn't

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1 identified until November.

2 COMMISSIONER JAMISON: I think the issue in  
3 the case is the notification.

4 MR. BEDNAR: The issue in the case, with all  
5 respect, is whether or not -- where was the violation,  
6 where was the harm and what caused the harm?

7 The act that caused the harm, that they  
8 thought they were preventing the harm, was the change in  
9 the software. Okay?

10 Ms. Hoffman thought she was actually  
11 complying with 4, Subsection 4, preventing harm to any  
12 gaming assets and preventing harm to the patrons. She  
13 had no idea that what she had done was actually the  
14 opposite, and no one knew that until November 29th of  
15 2012. That's the issue.

16 COMMISSIONER JAMISON: I'll take one point  
17 with that is that you made a change on April 19th.

18 MR. BEDNAR: Correct.

19 COMMISSIONER JAMISON: You assumed when you  
20 made that change that people had been mistreated in the  
21 system for 19 days, or --

22 MR. BEDNAR: No.

23 COMMISSIONER JAMISON: -- that the casino had  
24 been mistreated for 19 days. Because if you made a  
25 software change on April 20th, you assumed that there

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1 was a problem between April 1st and April 20th.

2 MR. BEDNAR: The evidence in the Hoffman case  
3 was that there could have been a problem. Okay?

4 COMMISSIONER JAMISON: But you assumed that  
5 there was a problem or you wouldn't have made a change.

6 MR. BEDNAR: Ms. Hoffman assumed there was a  
7 problem. She has been disciplined for that. I agree.

8 COMMISSIONER JAMISON: But if you assumed  
9 that there was a problem and you made a change, would  
10 you have not assumed that there was a problem for  
11 19 days?

12 MR. BEDNAR: Yes. I think that's why she  
13 made the change.

14 COMMISSIONER JAMISON: So if you assume there  
15 was a problem for 19 days and you thought --

16 MR. BEDNAR: Could have been.

17 COMMISSIONER JAMISON: -- there was a problem  
18 for 19 days, would that not be a reportable offense? If  
19 you thought there was a problem with your promotion  
20 enough to change the software, would that not be a  
21 reportable offense?

22 MR. BEDNAR: It could be interpreted as a  
23 reportable offense, correct.

24 COMMISSIONER JAMISON: So we're back to my  
25 question. On April 19th should there have been a report

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1 made, and if you thought there was a problem with the  
2 software up to for 19 days and you thought it was  
3 important enough to change the software, then for  
4 19 days should have been made a report to the Missouri  
5 Gaming Commission?

6 MR. BEDNAR: That is a possibility.

7 COMMISSIONER JAMISON: Okay.

8 MR. BEDNAR: The problem is is that's not the  
9 issue in this case. We're not being disciplined for  
10 that, sir. We're being disciplined for the change that  
11 was made and the harm done --

12 COMMISSIONER JAMISON: But if you would have  
13 made the report at that time we would have been aware of  
14 the issue, of the change that you did make?

15 MR. BEDNAR: You would have been aware of the  
16 change they did make, but you wouldn't have taken any  
17 action. You would assume that, yeah --

18 COMMISSIONER JAMISON: We would have been  
19 appropriately notified on April 19th, that would have  
20 been correct.

21 MR. BEDNAR: But that's not at issue in this  
22 case. I mean, I hate to be legal and technical about  
23 it, but the fact is that if that was the claim, it  
24 should have been brought as a claim, that, in fact, that  
25 instance should have been reported, not the fact that

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1 the --

2 COMMISSIONER JAMISON: So where do you think  
3 the promptly comes from?

4 Because the hearing officer did say that  
5 there was seven months from the time of the occurrence  
6 until the time of the notification. That would take me  
7 from November back to April. So I do think that the  
8 hearing officer noted that the prompt notification  
9 occurred seven months after the hearing officer's  
10 perception of when the notifications should have  
11 occurred.

12 MR. BEDNAR: It's a different issue, sir.

13 COMMISSIONER JAMISON: You say it is.

14 MR. BEDNAR: Well, it is, and I think  
15 everyone would agree to that for this reason: The harm  
16 that occurred was the result of somebody installing  
17 software that they thought was the appropriate software.

18 COMMISSIONER JAMISON: Correct. I'm in full  
19 agreement with you there.

20 MR. BEDNAR: Well, let me get through it.

21 COMMISSIONER JAMISON: Okay.

22 MR. BEDNAR: So there was no reason to report  
23 on April 19th from that perspective. We've installed  
24 appropriate software. The issue was -- let me finish.

25 The issue on April 19 is we didn't install

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1 appropriate software. We installed inappropriate  
2 software.

3 COMMISSIONER JAMISON: But when you go to the  
4 notification part, you're to notify when there is a  
5 problem, and you as the licensee -- not you because  
6 you're the attorney for the licensee -- but Ms. Hoffman,  
7 who is an employee of the licensee who has the  
8 responsibility of her parent licensee, assumed that  
9 there was a problem for 19 days and assumed that they  
10 fixed it. So they said, you know what, it's only  
11 19 days. No harm. No foul. We're not going to report  
12 it. And until it turned into a big problem, the 19th of  
13 April got exposed.

14 MR. BEDNAR: It's two different problems,  
15 sir.

16 COMMISSIONER JAMISON: Well, I don't agree  
17 with you.

18 MR. BEDNAR: Well, for purposes of compliance  
19 and discipline it's significantly relevant, because if  
20 the issue was we installed the wrong software from  
21 April 1st to April 19th and didn't report that, that's a  
22 separate issue. If the issue is the software installed  
23 between April 19th and November 20th was inappropriate  
24 software, that's what's under litigation today. And  
25 those things have to be separated under the rule of law.

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1                   And so the issue was as soon as Pinnacle --  
2 and again, the people at hearing today are Pinnacle and  
3 River City and when were they aware of the problem. So  
4 if they -- let me finish.

5                   If they weren't aware of the problem on  
6 April 19th, there is not a duty to report because it  
7 requires reasonable belief, and you can't have  
8 reasonable belief for something that you don't know.

9                   CHAIRMAN KOHN: So whose responsibility is it  
10 for them to know if their employee -- if their employee  
11 did not tell them? Is that our responsibility or is  
12 that their responsibility as the licensee?

13                   MR. BEDNAR: Well, No. 1, this Commission  
14 found it as Ms. Hoffman's responsibility because they  
15 disciplined her and suspended her for three days,  
16 despite arguments as to why she shouldn't be found to be  
17 disciplined.

18                   There is no -- these two licensees never even  
19 received a Notice of Investigation from the Commission  
20 staff. There has never been an allegation or  
21 identification of a single minimum internal control  
22 standard that they, in fact, violated. It wasn't until  
23 this final order, that, in fact, throughout the other  
24 three allegations and settled down on the prompt notice.

25                   And, in fact, Ms. Alonzo testified as a part

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1 of the Commission's case that Exhibit 6 was e-mails from  
2 the licensees to her, to the Commission notifying them  
3 on November 30th that there was a problem the day after  
4 they found out there was a problem.

5 COMMISSIONER JAMISON: Okay.

6 MR. BEDNAR: That's Exhibit 6.

7 So all that would indicate it was prompt  
8 notice, because the evidence in this case is they found  
9 out on November 29th and notified the Commission on  
10 November 30th. That's the facts of this case for the  
11 inappropriate software that was installed on April 19th.  
12 So I believe that from November 29th to November 30th  
13 is, in fact, prompt notice.

14 COMMISSIONER JAMISON: Okay.

15 MR. BEDNAR: And the issue of should they  
16 have reported what occurred between April 1st and  
17 April 19th is a different issue. And what's --

18 COMMISSIONER JAMISON: I wouldn't agree with  
19 you that it's a different issue. I don't understand but  
20 I'm not going to argue anymore.

21 MR. BEDNAR: I believe it constitutes a  
22 separate violation.

23 CHAIRMAN KOHN: Let's move on.

24 And I know that Ms. Hoffman is not before us  
25 today, and I know that we're not trying to govern

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1 Indiana's casino laws.

2 MR. BEDNAR: Right.

3 CHAIRMAN KOHN: But I am interested in her  
4 connection and experience with the Indiana issue, which  
5 I think was the same one as happened here --

6 MR. BEDNAR: Correct.

7 CHAIRMAN KOHN: -- and how that plays into  
8 this.

9 MR. BEDNAR: Ms. Hoffman's role was over  
10 IT for all of the properties of Pinnacle, and so the  
11 Indiana property was one of those issues. And in her  
12 testimony in her hearing -- and I believe it's actually  
13 in her -- her Notice of Investigation and the  
14 investigation that occurred for her, the reason why  
15 there is so much talk about Hoffman is the exact same  
16 file that was used to bring these disciplinary actions.  
17 There was not a separate file created for Pinnacle or a  
18 separate file created for River City.

19 Go back to that file. She discusses the fact  
20 that she had been -- and advised Sergeant Harrell in her  
21 statement that in the internal meetings that she was  
22 having with the various properties, that this issue had  
23 come up that there was a discrepancy potentially in the  
24 way it was allocating the credits.

25 And so upon hearing that from both the

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1 Indiana and Louisiana property, she called the software  
2 designer, who worked for a separate supplier licensee,  
3 not in any way a member of Pinnacle's holdings or  
4 River City's.

5           And he worked on it and he was identified as  
6 the expert for that software company and worked on it,  
7 and there is e-mails and they were submitted in the  
8 Hoffman case directing her to make the change. She made  
9 the change, so she then advised the marketing folks at  
10 both of the Missouri properties. So this was a case --  
11 quite frankly it's a shame.

12           CHAIRMAN KOHN: So she erroneously notified  
13 the Missouri properties that was an error that was  
14 there?

15           MR. BEDNAR: It turned out it was erroneous,  
16 yes. It turned out it was erroneous, but she thought  
17 there was.

18           CHAIRMAN KOHN: And didn't the casinos at  
19 that point, the Missouri casinos, have an obligation to  
20 say are you sure? I mean, do we need to do anything  
21 about it? They just accepted that what happened in  
22 Indiana would be the same thing that would happen in  
23 Missouri?

24           MR. BEDNAR: In the abundance of caution she  
25 thought the change -- and based upon the information

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1 from the software designer that there wasn't a problem,  
2 she made the change. That was her responsibility for  
3 both the properties and for Pinnacle.

4 CHAIRMAN KOHN: And that change did not  
5 require any kind of notification?

6 MR. BEDNAR: That -- as earlier discussed, it  
7 could have been notified. The Commission could have  
8 been notified at that point that, hey, there was an  
9 error in the software from April 1st to April 19th and  
10 that was corrected, when, in fact, apparently on  
11 April 1st through April 19th it was appropriate and  
12 there wasn't a problem with the software.

13 CHAIRMAN KOHN: As it turns out?

14 MR. BEDNAR: As it turns out.

15 So the second issue -- so there is two acts.  
16 There's the act of whether the installation on  
17 April 1st of the software, was that inappropriate? And  
18 if on April 19 they thought that was inappropriate, yes,  
19 there is an argument made they should have reported that  
20 at that time.

21 That's not at litigation here. The  
22 litigation here is they made a change on April 19 that  
23 they thought was a correct correction that turned out to  
24 be incorrect, and they didn't realize it was incorrect  
25 until November of 2012.

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1                   CHAIRMAN KOHN:  And a separate question --  
2   and again, I know that we're only dealing with the  
3   notice issue here, but I'm interested in knowing whether  
4   or not either any patrons of these two casinos or the  
5   State of Missouri lost any money or revenue or winnings  
6   as a result of this.

7                   MR. BEDNAR:  They did not.  All of the  
8   patrons were made whole and that has not been contested.  
9   We sent out -- we notified 5,000 patrons and made all  
10  those patrons whole.  So to our knowledge no one  
11  suffered any losses, nor did the State of Missouri  
12  suffer any losses.

13                  CHAIRMAN KOHN:  How do you make a patron  
14  whole?

15                  MR. BEDNAR:  You give them full credits and  
16  they have the same chances, same position they were in  
17  prior to the mistake.

18                  CHAIRMAN KOHN:  Okay.  So the drawing when  
19  they are made whole hadn't been held?

20                  MR. BEDNAR:  No.  That wasn't going to be  
21  held until December 31st.

22                  COMMISSIONER JAMISON:  Was there one drawing  
23  or was there multiple?

24                  MR. BEDNAR:  I believe there were multiple  
25  drawings because some of the people had already won.

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1 CHAIRMAN KOHN: But there was a final  
2 drawing?

3 MR. BEDNAR: There was a final drawing.

4 COMMISSIONER JAMISON: They didn't get to  
5 participate in the drawings that they would have been  
6 able to participate in --

7 MR. BEDNAR: No.

8 COMMISSIONER JAMISON: -- if they would have  
9 been credited properly? So making whole --

10 MR. BEDNAR: No, that's incorrect. That's  
11 incorrect. The rules were if you won previously you  
12 weren't eligible for the next, and that's been explained  
13 to staff what occurred and how they arrived at the 5,000  
14 patrons.

15 Because -- and I don't have the rules of the  
16 entire promotion in front of me, Commissioner, but there  
17 was no allegation that by not awarding credit somebody  
18 who won earlier was prohibited -- or penalized and not  
19 able to participate.

20 CHAIRMAN KOHN: Okay. Your time is up but  
21 we're going to add four minutes.

22 MR. BEDNAR: Thank you, Chairman.

23 So on the procedural issue, the res judicata  
24 issue is again there is process and substance, and  
25 people don't really like to get into the process in

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1 res judicata and collateral estoppel. It may be one of  
2 the more confusing legal issues out there.

3 But it's simple to say that whether you're  
4 civil or criminal, once you try somebody for an action  
5 you can't try them again for the same action.

6 In this particular case we'll take  
7 River City, PNK, first. They were actually disciplined  
8 in 2013 for improperly running this promotion. The  
9 language of that penalty was broad to include the whole  
10 promotion, didn't limit it to any particular  
11 circumstances in the way that violation was worded.

12 So as a result of the legal standard of  
13 res judicata, you can't litigate the same promotion  
14 twice and the way that promotion was run twice.

15 So again, to earlier point, it's Missouri  
16 law, not Black's Law Dictionary, but Missouri law says  
17 that all claims that were raised or could have been  
18 raised upon due diligence, the Plaintiff is barred from  
19 pursuing any other claims.

20 In this particular case the Commission was  
21 actually on notice there could be a problem with this  
22 promotion in August of 2012 apparently. River City paid  
23 a \$10,000 fine for that.

24 COMMISSIONER JAMISON: Is that 13-328?

25 MR. BEDNAR: Yes.

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1                   CHAIRMAN KOHN: In your opinion would August  
2 have been prompt?

3                   MR. BEDNAR: Well, they paid a penalty for  
4 that, Chairman.

5                   CHAIRMAN KOHN: I know, but on the notice  
6 issue. It occurred in April and notice was given in  
7 August. Would that have been prompt?

8                   MR. BEDNAR: Yeah. I mean, if it occurred in  
9 August, they should have reported in August.

10                  CHAIRMAN KOHN: If it occurred in April.

11                  MR. BEDNAR: No. I mean, what's prompt is up  
12 to this Commission. I mean -- you know, I'm asserting  
13 that the licensees today are asserting that they were  
14 aware of this particular problem with software, did not  
15 become aware of it until November 29th and they reported  
16 it on November 30th, their compliance officer e-mails,  
17 and that is well documented in this file.

18                  And so we believe that from November 29th to  
19 November 30th is prompt for the issue of the incorrect  
20 correction made in April.

21                  It's further stated in Ms. Alonzo's testimony  
22 that this Commission and this staff does not intend to  
23 penalize anyone for an honest mistake.

24                  What is occurring with the licensees today,  
25 with Pinnacle and for River City, PNK, is put you or

1 your respective businesses in the same position.  
2 Everybody has an IT department today and everybody's  
3 software is designed by somebody else and you have a  
4 problem on your computer. In fact, I had a problem on  
5 my computer this morning. I couldn't print anything  
6 off. I couldn't have access to my e-mails.

7           Should the Chairman of the firm pay a penalty  
8 or do you just go try to fix it with the IT people?  
9 And, you know, nothing against IT people. That's a  
10 different language entirely.

11           And so the fact is that Pinnacle, the  
12 licensee Pinnacle -- and there is no identification in  
13 any of the pleadings other than Pinnacle, the big guy,  
14 didn't notify appropriately.

15           Their compliance officer -- it's  
16 uncontested -- notified them on November 29th,  
17 November 30th, and that's in the record, Exhibit 6 of  
18 this hearing.

19           CHAIRMAN KOHN: You're going to have another  
20 five minutes if you want it.

21           MR. BEDNAR: Thank you.

22           CHAIRMAN KOHN: So we'll move on.

23           Thank you very much, Mr. Bednar. We're ready  
24 for Mr. Schube. I hope I'm pronouncing that correct.

25           MR. SCHUBE: That's correct. You're among

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1 the one-third of people who get it right the first time.

2 All right. So first of all I would like to  
3 introduce myself. This is my first time in front of  
4 this Commission. My name is Curtis Schube. I work for  
5 the Attorney General's Office, and I am representing the  
6 Gaming Commission here today.

7 I'd like to start with a reminder. The  
8 burden of proof in this case is upon the licensees. So  
9 they're to establish themselves that there were no  
10 violations that occurred in this case. Neither Pinnacle  
11 or River City put in any of their own evidence. Their  
12 evidence was limited to what they obtained from  
13 Ms. Alonzo during her cross-examination. But they  
14 didn't bring their own evidence to the case. They  
15 didn't establish anything.

16 But regardless of who the burden was upon,  
17 the record does support a violation that was found and a  
18 violation that was not found. So we'd like to start  
19 with the Point 1 -- I'm going to back up just a little  
20 bit.

21 Mr. Bednar mentioned that there were two  
22 separate issues, and we agree, but we pled both of those  
23 issues. So the first would be the failure to notify.  
24 That was pled. That is at issue here. The second is  
25 the failure to award the prizes according to the rules

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1 governing the event. That was pled and that's also at  
2 issue here, and that's what we ask this Commission to  
3 modify today.

4               So I'd like to start with first the failure  
5 to report, and I'd like to start by reading the rule.

6               Licensees shall, quote, promptly report to  
7 the Commission any facts which the licensee has, quote,  
8 reasonable grounds to believe -- that indicate a  
9 violation of the Commission rule.

10              So it's not a question of from April 1st to  
11 April 19th. It's not a question of whether there was a  
12 violation that had occurred. It's a question of whether  
13 there is a reasonable belief that a violation occurred.

14              And in this case it was certainly reasonable  
15 enough for them to make changes to their IT. So in  
16 their mind there was something wrong with the promotion,  
17 and they thought it was serious enough that they needed  
18 to correct it, yet they didn't report it to the  
19 Commission.

20              And I think that that's important. They  
21 didn't report it to the Commission, and as a result  
22 there was an issue with the rules. As a result 5,000  
23 patrons were affected.

24              If they had promptly reported it, the  
25 Commission might have pointed out to them that there was

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1 no problem here. They may have prevented the issues  
2 that did occur, but the cover-up led to a bigger issue.

3 COMMISSIONER JAMISON: Can you address  
4 Mr. Bednar's point that the April issue is not part of  
5 this notification?

6 I mean, when I questioned Mr. Bednar about  
7 that, he said the April issue was not the notification  
8 issue. It was the November issue. Can you clarify  
9 that?

10 MR. SCHUBE: The failure to notice -- we  
11 weren't taking notice from November 29th to  
12 November 30th. Clearly that would have been prompt if  
13 that would have been where the issue lie.

14 The issue was they found out about a  
15 reasonable -- or had a reasonable basis to believe that  
16 there was a problem on April 19th. They made the  
17 correction on April 20th, and nobody knew about it until  
18 November 30th.

19 And I think that that is important though  
20 again. They found out about a secondary issue that  
21 stemmed from the first one and that's when they reported  
22 it. So it became a bigger issue and then that's when  
23 they finally reported it. But they didn't report it  
24 from the beginning when there was the first discovery of  
25 a potential issue.

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1                   So to answer your question, the issue lies in  
2 April, not in November.

3                   So the record does support that Pinnacle knew  
4 of the issue and didn't report it, and there is four  
5 separate people that either knew or potentially knew.

6                   The first is from Ryan Miller. He had  
7 reported to the Gaming Commission that the error  
8 occurred on April 20th of 2012. He's the person who  
9 wrote the November 30th letter. He was the Deputy  
10 Director of Enforcement for Pinnacle.

11                   We also had have Joseph Branchek, who is the  
12 VP of Marketing, and he's the one who they requested the  
13 signature from to make the changes.

14                   Sinez Collins (phonetic sp.), she received  
15 the e-mail requesting the changes, again, on April 20th  
16 of 2012. And then you have Shannon Hoffman who is an  
17 employee of Pinnacle who managed River City and Lumiere.  
18 She learned of the issue. She's, in fact, the one who  
19 made the changes and she was also disciplined.

20                   CHAIRMAN KOHN: I'm sorry. She managed those  
21 casinos or she managed the IT?

22                   MR. SCHUBE: Her title was Regional Gaming  
23 Analyst Manager and -- give me one second.

24                   COMMISSIONER JAMISON: She wasn't the manager  
25 of the casinos, no.

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1                   MR. SCHUBE: She was employed by Pinnacle --  
2 at least how we had it in the request for admissions,  
3 employed by Pinnacle and manager for River City and  
4 Lumiere.

5                   CHAIRMAN KOHN: Like a casino manager of the  
6 property?

7                   COMMISSIONER JAMISON: I think she was a  
8 manager at the casino, not the casino manager.

9                   MR. SCHUBE: Correct.

10                  CHAIRMAN KOHN: I thought she was the IT  
11 manager. Is that not correct?

12                  MR. SCHUBE: Mr. Jamison identified it  
13 correctly.

14                  CHAIRMAN KOHN: I'm wanting an answer.  
15 Was she the IT manager or was she more than  
16 that?

17                  MR. SCHUBE: I don't recall. I know she had  
18 some input on IT, but I don't know to what extent she  
19 had authority. I'm sorry.

20                  CHAIRMAN KOHN: It wasn't beyond that? If  
21 you don't know, that's fine.

22                  MR. SCHUBE: I'd have to look at the record.  
23 I don't recall, Commissioner.

24                  CHAIRMAN KOHN: Okay.

25                  MR. SCHUBE: So again in summary, we had a

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1 potential issue discovered on April 19th. They made  
2 changes April 20th. And according to the testimony of  
3 Cheryl Alonzo, no notification to the Gaming Commission  
4 until November 30th.

5           So we have a seven-month gap between, quote,  
6 reasonable grounds to believe that a violation occurred  
7 and the actual reporting of November 30th.

8           So that was our Point 1. And the hearing  
9 officer did a good job of summarizing that concern, and  
10 his findings we agree with.

11           But where we'd like the Commission to modify  
12 is with our Point 2, and that is after April 20th to  
13 November 29th.

14           The players at Lumiere Place and River City  
15 were not receiving the entries in the way that they were  
16 supposed to. So that's a violation of 11 CSR  
17 45-5.181(2) and then (D), which says all prizes offered  
18 in the promotional activity shall be awarded according  
19 to the licensee's rules governing the event.

20           So after the correction -- again, that wasn't  
21 reported. After the correction was made, table game  
22 players were receiving one entry for every 50 points  
23 rather than 25 according to the rules.

24           So we had a seven-month period of time where  
25 patrons were not receiving those entries the way they

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1 were supposed to, and that fact alone should be a  
2 violation and a cause for discipline.

3 But there is also two other issues that kind  
4 of stem from that, and I think Commissioner Jamison had  
5 identified that briefly.

6 There was a drawing each Saturday for \$1,000,  
7 and the big drawing, the \$1 million drawing, was at the  
8 end of the year. But the patrons who should have  
9 received double what they actually received for those  
10 Saturdays weren't being entered, and as a result the --  
11 when they attempted to make them whole, they were going  
12 to be put into three different drawings in December.

13 So what that means is that the April to  
14 November drawings were undersaturated, so those drawings  
15 didn't have enough -- as many entrants as they were  
16 supposed to, and then the December drawings had more  
17 entrants than they were supposed to, so those were  
18 oversaturated. So the odds were affected.

19 COMMISSIONER JAMISON: So the odds of each  
20 weekly drawing were affected by the number of entries  
21 that were put in?

22 MR. SCHUBE: Correct.

23 CHAIRMAN KOHN: I asked Mr. Bednar if any  
24 patrons were harmed and they said no. They were all  
25 made whole. Do you disagree with that statement?

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1                   MR. SCHUBE: Correct. So that would be why  
2 they were harmed. The odds were affected either way.

3                   So let's look at it for someone --

4                   CHAIRMAN KOHN: And they were not made whole?

5                   MR. SCHUBE: That's our assertion.

6                   Let's look at also from someone who played in  
7 December. Their odds would be lesser than the ones from  
8 earlier in the year because they have a bunch of  
9 entrants being bunched into the same time period as  
10 them. So even the players that weren't affected by the  
11 glitch were still affected by the glitch.

12                   COMMISSIONER JAMISON: You're talking about  
13 the small drawings, not the --

14                   MR. SCHUBE: The small drawings, yes.

15                   COMMISSIONER JAMISON: The mega drawing --

16                   MR. SCHUBE: Correct.

17                   COMMISSIONER JAMISON: -- were corrected back  
18 to the same?

19                   MR. SCHUBE: Correct.

20                   COMMISSIONER JAMISON: If everybody brought  
21 their card in?

22                   MR. SCHUBE: And that gets to my second  
23 point. So the rules say that you, quote, must bring  
24 postcard, so you'd have to bring it into the physical  
25 location. So that added an extra burden.

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1                   You know, what the rules would say is you  
2 play and you get the points, but according to this you  
3 have to bring in a postcard, so that is an extra burden.

4                   Let's say you're from Maine. So you're  
5 vacationing in St. Louis and you played in -- I don't  
6 know -- June, and then you get this postcard in the mail  
7 saying, hey, you know, you bring your card in and you  
8 can get these extra entries. Are you going to travel  
9 all of the way back to St. Louis just to get that?

10                   So even though there is no evidence to say  
11 that not everybody got it, it is still as an added extra  
12 burden, and it's probably not likely that every patron  
13 was able to redeem their entries.

14                   So that's the second violation and way that  
15 the affected patrons weren't made whole.

16                   So as a result I think there is three reasons  
17 to find that the entrants -- the entries weren't awarded  
18 according to the rules.

19                   The first, the proportional issue. The  
20 second is having to bring it in and just the fact that,  
21 you know, there is an extra burden. You had to come in  
22 rather than just getting it by playing.

23                   We do have one additional modification we  
24 want this Commission to make.

25                   CHAIRMAN KOHN: I'm sorry. Let me interrupt.

0072

1                   You've said you want us to make modifications  
2 twice now. Do you have that language for us?

3                   MR. SCHUBE: We don't. We can get that to  
4 you if you'd like, but --

5                   CHAIRMAN KOHN: I'd like to know what it is  
6 you're asking us to consider.

7                   MR. SCHUBE: Well, we want the findings to be  
8 that they also violated all prizes offered in the  
9 promotional activities shall be awarded according to the  
10 Class A licensee's rules governing the event. So that's  
11 the modification we would ask that you make.

12                   The second just on a small factual question.

13                   Paragraph 5 of the hearing officer's orders  
14 says that Hoffman was, quote, for River City and  
15 Lumiere, but the requests for admissions which were  
16 admitted says that she's employed by Pinnacle. So we  
17 just want you to add that she's employed by Pinnacle to  
18 show that there's a connection between Pinnacle and  
19 River City and Lumiere.

20                   I'm sorry. I didn't bring in language to  
21 propose. If I would have known, I would have.

22                   CHAIRMAN KOHN: Okay. Go ahead.

23                   MR. SCHUBE: And then finally to just address  
24 Mr. Bednar's point about a former case with River City.

25                   MyChoice MyMillion was a problematic event,

0073

1 so that was a separate glitch that occurred with  
2 MyChoice MyMillions. So again, it's not res judicata  
3 because we don't have identical issues. That issue was  
4 something about zeroing out the points. I don't know  
5 the details. I didn't litigate it. But this one is the  
6 proportion, 1 to the 25 or 1 versus 50. So there's a  
7 separate glitch, so res judicata wouldn't apply because  
8 the issues are different.

9 Are there any other questions from the  
10 Commission?

11 CHAIRMAN KOHN: Would you between now and the  
12 time that we adjourn, could you give the language to our  
13 general counsel that you're asking that we include in  
14 the modification, the exact language?

15 MR. SCHUBE: We can try to draft something  
16 up.

17 COMMISSIONER JAMISON: And when you're asking  
18 for a modification, are you just asking for additional  
19 points to be put on to this discipline?

20 MR. SCHUBE: Yes.

21 COMMISSIONER JAMISON: It's just a  
22 clarification. It's not a substitute. Right?

23 CHAIRMAN KOHN: It's additional.

24 MR. SCHUBE: Yes, we want a second cause for  
25 discipline.

0074

1 COMMISSIONER JAMISON: Okay.

2 MR. SCHUBE: And the hearing officer based on  
3 my recollection didn't find one way or another on that  
4 issue, so --

5 CHAIRMAN KOHN: Was it presented to him?

6 MR. SCHUBE: It was pled, yes.

7 CHAIRMAN KOHN: And he didn't rule either  
8 way?

9 MR. SCHUBE: The final paragraph of the  
10 proposed order had a finding on the prompt notification  
11 but it didn't have a finding with regard to a violation  
12 of the rules themselves.

13 CHAIRMAN KOHN: Okay. Mr. Bednar.

14 MR. BEDNAR: Thank you, Mr. Chairman.

15 MR. SCHUBE: Would you prefer us to stay  
16 until the end of the arguments and then draft up  
17 something or should we leave now?

18 CHAIRMAN KOHN: Well, we're going to try and  
19 decide this today, so if you can get the language to Ed  
20 in the next 15 minutes. It sounds like it's just like a  
21 half a sentence.

22 MR. SCHUBE: Okay.

23 MR. BEDNAR: May it please the Commission.

24 CHAIRMAN KOHN: Yes, sir.

25 MR. BEDNAR: I must say it's a little

0075

1 disappointing that five years after the fact they still  
2 want to amend their pleadings and bring additional  
3 charges.

4 MR. SCHUBE: I'm going to object to that  
5 characterization. We're not amending any pleadings. So  
6 that's not true.

7 MR. BEDNAR: It is my understanding you want  
8 to bring additional charges today, which let's don't  
9 even get to the statute of limitation issues.

10 But there's a fundamental sense of due  
11 process and fairness, fundamental fairness, here, and it  
12 goes back to what Ms. Alonzo testified to in his side of  
13 the case, that innocent mistakes should not be  
14 penalized.

15 You have an interesting case here where  
16 Ms. Hoffman who in her responsibilities was an employee  
17 of Pinnacle, responsible for River City, PNK, and also  
18 for Lumiere Place as those properties in regards to the  
19 IT installation and IT software.

20 So she was not a manager of either casino.  
21 She was an IT manager for Pinnacle whose  
22 responsibilities included those two Missouri properties  
23 as well as other additional properties, which the record  
24 has all that information in.

25 This issue -- before I forget, the sealing of

0076

1 the records is outrageous. What I'm asking for was the  
2 results of cases. It's not -- the results of any case  
3 are public record. That was decided many years ago  
4 during the Webster administration that you cannot seal  
5 settlements. You cannot seal dispositions of official  
6 actions.

7 Not only did they say it was sealed, they  
8 ordered me not to discuss those exhibits with my client,  
9 which interferes with the attorney-client privilege as  
10 well. Now, I think that's outrageous.

11 So these are clearly public records. They  
12 should be unsealed so that the public has a right to  
13 determine whether or not there is anything inappropriate  
14 or appropriate.

15 This issue, the notice -- Ms. Alonzo  
16 testified -- and it's in Exhibit 6, which I can  
17 distribute, but she testified that they discovered --  
18 Mr. Miller notified her on November 30th after he found  
19 out about it on November 29th. That's the issue.

20 They didn't bring any charges for April 1st  
21 through April 19th. The idea that --

22 CHAIRMAN KOHN: I'm sorry. You lost me on  
23 those dates.

24 MR. BEDNAR: Okay.

25 CHAIRMAN KOHN: I thought the two dates were

0077

1 April 19th and April 20th.

2 MR. BEDNAR: That was when the software was  
3 changed, when they thought there was an error and the  
4 software was changed. They didn't know --

5 CHAIRMAN KOHN: What's the April 30th date?

6 MR. BEDNAR: I'm sorry. November 30th. I  
7 was talking too fast.

8 CHAIRMAN KOHN: Okay.

9 MR. BEDNAR: The issue of whether or not --  
10 when they were aware of the error in the software they  
11 installed on the 19th wasn't known to anybody until  
12 November 29th.

13 COMMISSIONER JAMISON: I have a question on  
14 that.

15 Ms. Hoffman did not notify anyone in the  
16 organization that she changed it. So the e-mail between  
17 her and the people that needed to sign off on it --

18 MR. BEDNAR: Her subordinates and  
19 Mr. Brancheck who was marketing director for River City.  
20 So she only contacted the marketing directors, not the  
21 compliance directors.

22 COMMISSIONER JAMISON: When we talk about  
23 responsibilities, is there supposed to be a  
24 responsibility for notifying up the chain from the IT to  
25 the appropriate compliance or management people? Should

0078

1 there have been steps in there of notification?

2 MR. BEDNAR: In retrospect should she have  
3 notified that there could have been a problem with  
4 April 1st through the 19th? It was widely discussed. I  
5 submitted all those e-mails amongst her subordinates and  
6 the software designer. Further up the chain, the CEO,  
7 I --

8 COMMISSIONER JAMISON: But who had the  
9 responsibility to notify that chain of the licensee?

10 MR. BEDNAR: She was the licensee in charge  
11 for IT.

12 COMMISSIONER JAMISON: But she's not the  
13 licensee that runs the casino?

14 MR. BEDNAR: No. The casino is a separate  
15 licensee from Pinnacle.

16 COMMISSIONER JAMISON: So my question is  
17 where is the responsibility for -- let's say you have a  
18 dealer that someone is cheating -- or a dealer is found  
19 cheating. Doesn't that pit boss have a responsibility  
20 to report that up?

21 MR. BEDNAR: There's an argument that she on  
22 November 19th should have notified com--

23 COMMISSIONER JAMISON: April 19th.

24 MR. BEDNAR: I'm sorry.

25 On April 19th should have notified the

1 compliance person at the casinos and compliance at  
2 Pinnacle.

3 She didn't notify anybody in compliance for  
4 whatever reason. She thought she was correcting a  
5 problem that she wasn't sure there was a problem. Her  
6 testimony -- and, you know, I'd be happy to submit her  
7 transcript. It wasn't allowed into this proceeding.

8 But again, it would have been clear as to her  
9 position and what she was doing. What she said was she  
10 didn't know whether or not there was a problem.

11 And so the rules says a reasonable belief.  
12 If you don't know whether or not there was a problem, is  
13 it a reasonable belief? You know, that's for you all to  
14 decide.

15 COMMISSIONER JAMISON: But you're hanging  
16 your hat that an IT person had a reasonable belief for a  
17 Class A license reasonable belief.

18 MR. BEDNAR: No.

19 COMMISSIONER JAMISON: So kind of my question  
20 is, what I'm trying to ask, is whose responsibility is  
21 it that she's properly trained and the compliance people  
22 are in the chain so that this -- I mean --

23 MR. BEDNAR: That's our responsibility.  
24 There is no allegation we didn't train her right. There  
25 is no allegation that --

1                   COMMISSIONER JAMISON: You didn't do it  
2     though.

3                   MR. BEDNAR: Well, again, that was brought up  
4     earlier in the past Commissions that if -- are you to be  
5     suspended if one of the staff makes an error? They  
6     didn't follow the rules you put in place. Should you be  
7     disciplined for that? No. Nobody wants to be  
8     disciplined for that.

9                   But from a supervisory perspective -- in this  
10    particular case my client, the licensee, had no  
11    knowledge. Okay? Ms. Hoffman had knowledge. She  
12    didn't transfer that knowledge to my clients.

13                  COMMISSIONER JAMISON: Well, whose  
14    responsibility is that?

15                  MR. BEDNAR: Well, apparently this Commission  
16    found it's Ms. Hoffman's responsibility because they  
17    suspended her for three days over a year ago, two years  
18    ago.

19                  COMMISSIONER JAMISON: Well, I disagree that  
20    we said it was just her responsibility only or we  
21    wouldn't have initiated this discipline to the A and B  
22    licensees who have ultimate responsibility.

23                  MR. BEDNAR: They didn't initiate this until  
24    after Ms. Hoffman was disciplined. Okay? So that goes  
25    back to res judicata and collateral estoppel. And in

0081

1 Missouri, not Black's Law Dictionary, but Missouri laws  
2 says that there is a defensive collateral estoppel,  
3 defensive res judicata that a nonparty can use.

4           The reality is this: This Commission staff  
5 had every opportunity to investigate this. They didn't.  
6 The investigator for this particular action didn't do  
7 anything but read e-mails. He didn't go out and  
8 interview anybody. He didn't interview the software  
9 supplier. He didn't interview anybody. He didn't give  
10 my clients even a Notice of Investigation.

11           So that's where we're at today, and yet today  
12 they want to add charges. That's outrageous. There is  
13 due process. There is fairness. This is not fair.

14           You know, the fact of the matter is, even --  
15 and I still maintain that discipline against Ms. Hoffman  
16 for what she was charged with wasn't fair. She thought  
17 she was correcting and preventing a problem and she paid  
18 the price. She was suspended three days, lost wages for  
19 that time period.

20           So again, you know, when you're evaluating a  
21 wrong, you know, they talk about in the law a mens rea,  
22 what was your state of mind? Did you know the law and  
23 you intentionally violated it? Did you know the law and  
24 negligently violate it? That's not --

25           CHAIRMAN KOHN: Are you saying she didn't

0082

1 know the rule of notification?

2 MR. BEDNAR: No. What I'm saying is she  
3 thought on April 20th she was correcting --

4 COMMISSIONER JAMISON: That wasn't my  
5 question. I'm not asking about--

6 MR. BEDNAR: She had an obligation to notify.  
7 Obviously everybody -- under these rules of this  
8 Commission, you know, should they have notified? I  
9 understand your point. We disagree, because I can't  
10 speak to all those facts.

11 But I'm not going to argue with you,  
12 Commissioner, as to whether or not she should have  
13 reported the issue of April 1st to April 19th. That's  
14 not under litigation here though.

15 What is under litigation is what occurred  
16 from April 20th to November 29th. That's what's at  
17 issue in this case, and that's all that the staff  
18 brought after five years.

19 COMMISSIONER FINNEY: Two questions for you.  
20 First of all, you said that she didn't  
21 reasonably know of the issue until November?

22 MR. BEDNAR: Correct.

23 COMMISSIONER FINNEY: Why not?

24 MR. BEDNAR: That's when they first was aware  
25 that there was a problem, that the damages came in

0083

1 from -- I believe it was compliance. I've got to go  
2 back to my file. But the issues with the campaign  
3 actually came to light on November 29th of 2012, that  
4 there was actually a bad calculation, that the original  
5 software that was -- the software that was installed on  
6 the 19th was incorrect.

7 And they weren't aware of that until -- in  
8 spite of the previous issue in August, they hadn't  
9 identified it there apparently.

10 COMMISSIONER FINNEY: Okay.

11 And the other question: You brought two  
12 legal issues, the collateral estoppel and the  
13 res judicata, and I think you cited Missouri case law as  
14 the basis for those?

15 MR. BEDNAR: Yes.

16 COMMISSIONER FINNEY: Do you by any chance  
17 have the elements to those?

18 MR. BEDNAR: Yeah, just a second.

19 COMMISSIONER FINNEY: If you don't. I'm not  
20 trying to put you on the spot. I'm just wondering if  
21 you have them handy.

22 MR. BEDNAR: I just don't want to say it off  
23 the top of my head.

24 Identical parties, No. 1. 2 could have been  
25 asserted. 3, same transactions. And the same

0084

1 transactions, that would be this entire promotion,  
2 not --

3 COMMISSIONER FINNEY: So that would be the  
4 res judicata or --

5 MR. BEDNAR: And then the previous proceeding  
6 must have been decided by a valid final judgment on the  
7 merits. And I've got a citation for you too.

8 COMMISSIONER FINNEY: Counsel, you can give  
9 it to me later.

10 MR. BEDNAR: It's right here.

11 It would be Chesterfield Village, Inc. versus  
12 City of Chesterfield, 64 S.W.3d 315 Mo.banc 2002.

13 And the important part of that is they also  
14 talk about the term transaction. It says the term  
15 transaction has a broad meaning, restatements. Second  
16 of judgment says a claim extinguish includes all rights  
17 of the Plaintiff to remedies against the Defendant with  
18 respect to all or any part of the transaction or series  
19 of connected transactions out of which the action arose.

20 So in this particular case the fact that they  
21 finally adjudicated the allegations in August of 2013  
22 against the entire promotion, that should have precluded  
23 them bringing additional action a year later in August  
24 of 2014.

25 So they didn't bring this action until a year

0085

1 after they previously adjudicated and River City, PNK,  
2 paid the \$10,000 fine. And in that language -- I've got  
3 copies of that previous order if you haven't seen it.

4 COMMISSIONER JAMISON: Was that connected to  
5 this software glitch?

6 MR. BEDNAR: It was connected to this  
7 promotion.

8 COMMISSIONER JAMISON: Just the promotion?

9 MR. BEDNAR: The promotion which is the  
10 transaction.

11 COMMISSIONER JAMISON: Okay.

12 MR. BEDNAR: And it would have been -- the  
13 issue there was the amount of credits that the patrons  
14 were getting. So that was an issue. It wasn't some  
15 other issue.

16 So again it goes back to -- it's been stated  
17 that if they would have known, they would have done this  
18 and they would have done that. They did know and they  
19 did nothing except fine us.

20 CHAIRMAN KOHN: Thank you very much.

21 Thanks to all who participated in this. As I  
22 told the Commission members, if any one of you wants to  
23 go into closed session to discuss this, we will do so.

24 So I will ask a question. Is there a motion  
25 regarding Resolution 17-039 or alternatively is there a

0086

1 motion to go into closed session to deliberate on those  
2 two cases?

3 COMMISSIONER JAMISON: I move for going into  
4 a closed.

5 CHAIRMAN KOHN: Do your magic words.

6 We're going to go into closed session,  
7 discuss this, vote. If we reach a conclusion or if we  
8 don't, either way, we'll come back out and announce what  
9 if anything we have done with respect to this matter.

10 And I don't know how long we'll be there. So  
11 if you don't want to wait, we will have Ed Grewach  
12 report to you what our conclusions are and that way you  
13 won't have to stick around. He'll report it to the  
14 Attorney General's Office and to Mr. Bednar both.

15 So with that go ahead.

16 COMMISSIONER JAMISON: I move for a closed  
17 meeting under Section 313.847, Revised Missouri  
18 Statutes, investigatory, proprietary and application  
19 records.

20 CHAIRMAN KOHN: Is there a second?

21 COMMISSIONER NEER: Second.

22 CHAIRMAN KOHN: Angie.

23 MS. FRANKS: Commissioner Neer.

24 COMMISSIONER NEER: Approve.

25 MS. FRANKS: Commissioner Finney.

0087

1 COMMISSIONER FINNEY: Approve.

2 MS. FRANKS: Commissioner Jamison.

3 COMMISSIONER JAMISON: Approve.

4 MS. FRANKS: Chairman Kohn.

5 CHAIRMAN KOHN: Approve.

6 So we will now adjourn into closed session,  
7 and if what I said about our process isn't clear, let me  
8 know and I'll go over it again, but that's what we'll do  
9 now.

10 (Closed session.)

11 CHAIRMAN KOHN: Angie, please call the roll.

12 MS. FRANKS: Commissioner Neer.

13 COMMISSIONER NEER: Present.

14 MS. FRANKS: Commissioner Finney.

15 COMMISSIONER FINNEY: Present.

16 MS. FRANKS: Commissioner Jamison.

17 COMMISSIONER JAMISON: Present.

18 MS. FRANKS: Chairman Kohn.

19 CHAIRMAN KOHN: Present.

20 Thank you all for staying and sorry that it  
21 took us longer than maybe you hoped it would.

22 But we have had a very good discussion and I  
23 think we reached a good conclusion, and that conclusion  
24 will be reflected in the resolutions that Commissioner  
25 Jamison will report in just a moment, but let me tell



0089

1 motion?

2 COMMISSIONER NEER: Second.

3 CHAIRMAN KOHN: Discussion on the motion?

4 COMMISSIONER JAMISON: No, sir.

5 CHAIRMAN KOHN: Angie.

6 MS. FRANKS: Commissioner Neer.

7 COMMISSIONER NEER: Approve.

8 MS. FRANKS: Commissioner Finney.

9 COMMISSIONER FINNEY: Approve.

10 MS. FRANKS: Commissioner Jamison.

11 COMMISSIONER JAMISON: Approve.

12 MS. FRANKS: Chairman Kohn.

13 CHAIRMAN KOHN: Approve.

14 MS. FRANKS: By your vote you've adopted

15 Resolution No. 17-039 as amended.

16 CHAIRMAN KOHN: And now as to River City.

17 CHAIRMAN JAMISON: I move for adoption of

18 17-040 as recommended.

19 CHAIRMAN KOHN: Is there a second?

20 COMMISSIONER FINNEY: I second the motion.

21 CHAIRMAN KOHN: Discussion on the motion?

22 Angie.

23 MS. FRANKS: Commissioner Neer.

24 COMMISSIONER NEER: Approve.

25 MS. FRANKS: Commissioner Finney.

0090

1 COMMISSIONER FINNEY: Approve.

2 MS. FRANKS: Commissioner Jamison.

3 COMMISSIONER JAMISON: Approve.

4 MS. FRANKS: Chairman Kohn.

5 CHAIRMAN KOHN: Approve.

6 MS. FRANKS: By your vote you've adopted

7 Resolution No. 17-040.

8 CHAIRMAN KOHN: Thank you.

9 We are now going to go again into our regular  
10 closed session.

11 Commissioner Jamison.

12 COMMISSIONER JAMISON: I move for a closed  
13 meeting under Sections 313.847 and 313.945, Revised  
14 Missouri Statutes, investigatory, proprietary and  
15 application records, and 610.021, Subparagraph 1,  
16 Revised Missouri Statutes, legal actions, Subparagraph 3  
17 and Subparagraph 13, personnel, and Subparagraph 14,  
18 records protected from disclosure by law.

19 CHAIRMAN KOHN: Is there a second?

20 COMMISSIONER NEER: Second.

21 CHAIRMAN KOHN: Angie.

22 MS. FRANKS: Commissioner Neer.

23 COMMISSIONER NEER: Approve.

24 MS. FRANKS: Commissioner Finney.

25 COMMISSIONER FINNEY: Approve.

0091

1 MS. FRANKS: Commissioner Jamison.

2 COMMISSIONER JAMISON: Approve.

3 MS. FRANKS: Chairman Kohn.

4 CHAIRMAN KOHN: Approve.

5 We are ready to adjourn this meeting and go  
6 into closed session. Obviously there is no reason  
7 unless you have some death wish to stick around while we  
8 go into our normal closed session because none of the  
9 matters that were discussed today will be discussed  
10 there that you have an interest in.

11 So thank you all for coming. Thank you for  
12 staying through this unusually long session that we had  
13 in the open meeting.

14 We're going into closed session.

15 WHEREIN, the meeting concluded at 12:20 p.m.

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CERTIFICATE OF REPORTER

I, Patricia A. Stewart, CCR, a Certified Court Reporter in the State of Missouri, do hereby certify that the testimony taken in the foregoing transcript was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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Patricia A. Stewart  
CCR 401

**MISSOURI GAMING COMMISSION**  
**Second Open Session Minutes**  
**August 30, 2017**

The Missouri Gaming Commission (the “Commission”) went back into open session at approximately 12:50 p.m. on August 30, 2017, at the Missouri Gaming Commission’s Jefferson City office.

**Commissioner Jamison moved to adjourn the open session. Commissioner Neer seconded the motion. After a roll call vote was taken, Finney– yes, Neer – yes, Jamison – yes, and Kohn – yes, the motion was unanimously approved.**

The meeting ended at 12:51 p.m.