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BEFORE THE MISSOURI GAMING COMMISSION

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3

Meeting

4

March 1, 2017

5

10:00 a.m.

6

Jefferson City, Missouri

7

BEFORE: Herbert M. Kohn, Chairman

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Brian Jamison, Vice Chairman

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Larry D. Hale, Commissioner

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Thomas Neer, Commissioner

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Richard F. Lombardo, Commissioner

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19 Reported by:

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7 (Start time: 10:00 a.m.)

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

9 CHAIRMAN KOHN: Good morning everybody. On
10 behalf of the Commission and the staff, thank you for
11 being here.

12 We'll call the March 1, 2017 Missouri Gaming
13 Commission meeting to order.

14 Angie, please call the roll.

15 MS. FRANKS: Commissioner Lombardo.

16 COMMISSIONER LOMBARDO: Present.

17 MS. FRANKS: Commissioner Neer.

18 COMMISSIONER NEER: Present.

19 MS. FRANKS: Commissioner Hale.

20 COMMISSIONER HALE: Present.

21 MS. FRANKS: Commissioner Jamison.

22 COMMISSIONER JAMISON: Present.

23 MS. FRANKS: Chairman Kohn.

24 CHAIRMAN KOHN: Present.

25 We have a quorum, ready to begin.

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1 The first item of business is Consideration
2 of Minutes from the meeting of January 11.

3 Is there a motion to approve those minutes?

4 COMMISSIONER HALE: So moved.

5 COMMISSIONER LOMBARDO: Second.

6 CHAIRMAN KOHN: Angie, please call the roll.

7 MS. FRANKS: Commissioner Lombardo.

8 COMMISSIONER LOMBARDO: Approve.

9 MS. FRANKS: Commissioner Neer.

10 COMMISSIONER NEER: Approve.

11 MS. FRANKS: Commissioner Hale.

12 COMMISSIONER HALE: Approve.

13 MS. FRANKS: Commissioner Jamison.

14 COMMISSIONER JAMISON: Approve.

15 MS. FRANKS: Chairman Kohn.

16 CHAIRMAN KOHN: Approve.

17 MS. FRANKS: By your vote you've adopted the
18 minutes of the January 11, 2017 meeting.

19 CHAIRMAN KOHN: Mr. Seibert, I think we're
20 ready to begin.

21 EXECUTIVE DIRECTOR SEIBERT: Yes, sir.

22 The first order of business, Mr. Chair, is
23 Consideration of Hearing Officer Recommendations, and
24 the presenter will be Mr. Chas Steib.

25 MR. STEIB: Good morning.

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1 CHAIRMAN/COMMISSIONERS: Good morning.

2 MR. STEIB: May it please the Commission.

3 The first item on the agenda at this point is
4 the consideration of Thressia Leahy, Resolution
5 No. 17-011. This is a failure to disclose matter.

6 The facts in this matter are as follows: On
7 July 7th, 2016 the applicant made an application for a
8 Level II occupational license.

9 That application at Question No. 14B asks,
10 and I quote, have you ever been arrested, detained,
11 charged, indicted, convicted, pled guilty or nolo
12 contendere or forfeited bail concerning any crime or
13 offense in any Federal, State or local jurisdiction,
14 including any findings or pleas in an SIS suspended
15 imposition of sentence?

16 Page 18 of the application is regarding
17 civil, criminal and investigatory matters, and states --
18 the next question asks about any arrests, charges,
19 offenses you have committed, and therein are
20 definitions.

21 The significant and salient definitions in
22 this matter are B, charge, means any indictment,
23 complaint, information, summons, ticket or other notice
24 or leads Commission of any offense.

25 And offense is defined as all felonies,

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1 crimes, misdemeanors, municipal ordinance violations,
2 court marshals.

3 Regarding that question the applicant
4 answered no, and she was granted a temporary license on
5 July 27th.

6 In response to the investigation, which is
7 always and customarily done by the Highway Patrol, it
8 was learned that the applicant received a charge of
9 Class A misdemeanor theft on July 6th, 2016, the day
10 before her application.

11 She stipulated in that court appearance that
12 she was charged with a Class A misdemeanor. She
13 admitted on September 12, 2016 that she did receive the
14 court summons.

15 The applicant in completing the application
16 admitted that she completely understood all of the
17 definitions in the application. She did admit in the
18 hearing that she, in fact, was charged with shoplifting
19 and admitted that she did not tell Bradley Baker, the
20 investigator, about this charge for shoplifting.

21 The issue that came to the floor on this
22 matter by the applicant and her husband who was
23 representing her was that she had never been arrested
24 and hence had no duty to disclose that in the
25 application.

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1 That argument and that position, however,
2 misses the mark. It is not a question and not an issue
3 of whether she was arrested. She did receive a summons
4 which she did not report, she was charged which she did
5 not report and she did appear in court regarding that
6 Class A misdemeanor of shoplifting.

7 Based on the record and based on the
8 testimony it is the hearing officer's recommendation
9 that she did not meet her burden of proof in this matter
10 to show clearly and convincingly that she should be
11 granted a license and that license should be denied to
12 this applicant.

13 CHAIRMAN KOHN: You said a few minutes ago
14 that she was represented by her husband. As I
15 understand it English is not her first language. Is
16 that right?

17 MR. STEIB: That's true, and her husband is
18 not an attorney, and that issue came up at the hearing.

19 And so I believe that she completely
20 understood the language at the hearing. The record
21 reflects that she said she did accurately understand all
22 of the definitions in the application.

23 So their position was not so much a language
24 issue, as he believed that she was not arrested and
25 hence she did not have to report that.

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1 CHAIRMAN KOHN: So you don't believe that the
2 language factor was a factor in whether or not she
3 correctly or honestly answered the question?

4 MR. STEIB: Based on her testimony at the
5 hearing I do not believe that the English language was a
6 problem in this matter.

7 CHAIRMAN KOHN: Any other questions of
8 Mr. Steib?

9 COMMISSIONER HALE: No.

10 COMMISSIONER LOMBARDO: No.

11 COMMISSIONER NEER: I believe in the
12 testimony she indicated that she did understand.

13 COMMISSIONER LOMBARDO: Right.

14 COMMISSIONER NEER: Is that correct?

15 COMMISSIONER LOMBARDO: That's what I read.

16 MR. STEIB: That appears in the transcript.

17 CHAIRMAN KOHN: Is Ms. Leahy here or her
18 husband or anyone representing her?

19 Okay. Is there a motion with respect to
20 Resolution 17-011?

21 COMMISSIONER JAMISON: I move for approval of
22 17-011.

23 CHAIRMAN KOHN: Is there a second?

24 COMMISSIONER NEER: Second

25 CHAIRMAN KOHN: Discussion on the motion?

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1 Angie.

2 MS. FRANKS: Commissioner Lombardo.

3 COMMISSIONER LOMBARDO: Approve.

4 MS. FRANKS: Commissioner Neer.

5 COMMISSIONER NEER: Approve.

6 MS. FRANKS: Commissioner Hale.

7 COMMISSIONER HALE: Approve.

8 MS. FRANKS: Commissioner Jamison.

9 COMMISSIONER JAMISON: Approve.

10 MS. FRANKS: Chairman Kohn.

11 CHAIRMAN KOHN: Approve.

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

13 Resolution No. 17-011.

14 CHAIRMAN KOHN: Okay. Mr. Steib, I believe
15 you're still up.

16 MR. STEIB: Thank you, sir.

17 The next item is Case No. DC-16-197, Michelle
18 McClendon.

19 On October 8th, 2015 the applicant executed
20 an applicant interview form in which she failed to
21 disclose an arrest on December 6th, 1992 in Ferguson,
22 Missouri by the police department for failure to appear,
23 an arrest on August 13th, 1994 by the University City
24 Police Department for speeding, an arrest on
25 December 15th, 1999 by the Edmundson, Missouri Police

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1 Department for felony stealing motor vehicle, and a
2 Federal fugitive warrant on June 16, 2005 by the
3 St. Charles, Missouri Police Department.

4 All of these items were introduced without
5 objection into the record, along with a certified mail
6 return receipt that the applicant did receive notice of
7 the December 20th hearing here in Jefferson City.

8 Although the room and the hauls were called
9 three times the applicant failed to appear. Based on
10 the evidence adduced at the hearing by counsel for the
11 Gaming Commission and the applicant's failure to appear,
12 it is the recommendation of the hearing officer that
13 since the applicant did not appear, did not meet her
14 burden of proof to show by clear and convincing evidence
15 that she should be granted a Level II occupational
16 gaming license, that same should be denied.

17 CHAIRMAN KOHN: Any questions of Mr. Steib on
18 this matter?

19 Is Ms. McClendon here or anyone representing
20 her?

21 Is there a motion with respect to
22 Resolution 17-012?

23 COMMISSIONER LOMBARDO: Motion to approve.

24 COMMISSIONER HALE: Second.

25 CHAIRMAN KOHN: Discussion on the motion?

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1 Angie.

2 MS. FRANKS: Commissioner Lombardo.

3 COMMISSIONER LOMBARDO: Approve.

4 MS. FRANKS: Commissioner Neer.

5 COMMISSIONER NEER: Approve.

6 MS. FRANKS: Commissioner Hale.

7 COMMISSIONER HALE: Approve.

8 MS. FRANKS: Commissioner Jamison.

9 COMMISSIONER JAMISON: Approve.

10 MS. FRANKS: Chairman Kohn.

11 CHAIRMAN KOHN: Approve.

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

13 Resolution No. 17-012.

14 COMMISSIONER JAMISON: I have a procedural
15 question.

16 If someone requests a hearing and then
17 doesn't appear for that hearing, do we still have to go
18 through the process of conducting the hearing and then
19 acting on that hearing when the person obviously didn't
20 want the hearing at some point, made the decision not to
21 want the hearing?

22 MR. GREWACH: We do.

23 Like default in a civil case, you would still
24 have to put on prima facia evidence of the fact that the
25 discipline is warranted by the evidence.

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1 There is a provision of the rule that says if
2 they fail to appear, then all of the allegations in the
3 Preliminary Order are deemed admitted, but we do have to
4 go ahead and put on enough evidence to support the
5 discipline, and, in fact, it has to be presented to the
6 Commission because the discipline is not final at that
7 point until the Commission rules on the resolution.

8 COMMISSIONER JAMISON: Okay.

9 CHAIRMAN KOHN: Okay.

10 COMMISSIONER JAMISON: Thanks.

11 MR. STEIB: For the record, at these hearings
12 I always make sure that the record is complete and
13 permit the counsel for the Gaming Commission to put on
14 the evidence, which in this particular situation is the
15 criminal past.

16 So these hearings where there is a default
17 are truncated, but nonetheless I want to make sure that
18 there's a record made that -- the purpose for which the
19 record has been made.

20 COMMISSIONER JAMISON: I figured that was the
21 case. I just wanted to check.

22 CHAIRMAN KOHN: You're still up with the
23 Hernandez matter.

24 MR. STEIB: The next item on the agenda is
25 Case No. DC-16-198, Jose Hernandez.

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1 On September 14, 2016 the applicant completed
2 the interview form and related an arrest in Houston,
3 Texas in 2003 for assault, an arrest in 2008 by
4 Las Vegas, Nevada Police Department for battery, an
5 arrest in 2009 by the Las Vegas, Nevada Police
6 Department for driving while intoxicated, and an arrest
7 in 2010 by the Las Vegas, Nevada Police Department,
8 driving while intoxicated. All of these records were
9 admitted without objection.

10 The applicant in this situation appeared
11 via video. He was afforded an opportunity to
12 cross-examine the witnesses and present his case.

13 His case can be summarized as this: Under
14 oath he testified that he did not think those things
15 would show up because his background record would not go
16 back that far.

17 Based on the evidence which was adduced,
18 including the testimony of the applicant, it is the
19 hearing officer's recommendation that the applicant did
20 not meet his burden of proof to show clearly and
21 convincingly that he should be granted an occupational
22 gaming license and that that should be denied.

23 CHAIRMAN KOHN: Any questions of Mr. Steib?

24 COMMISSIONER LOMBARDO: So he did not deny
25 the charges; he just said he didn't think that you would

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1 find them?

2 MR. STEIB: He did not think the Missouri
3 Highway Patrol would find them obviously.

4 COMMISSIONER LOMBARDO: All right. Okay.

5 CHAIRMAN KOHN: Is Mr. Hernandez present or
6 anyone representing him?

7 Okay. Is there a motion with respect to
8 Resolution 17-013?

9 COMMISSIONER JAMISON: Move for approval.

10 COMMISSIONER NEER: Second.

11 CHAIRMAN KOHN: Discussion on the motion?
12 Angie.

13 MS. FRANKS: Commissioner Lombardo.

14 COMMISSIONER LOMBARDO: Approve.

15 MS. FRANKS: Commissioner Neer.

16 COMMISSIONER NEER: Approve.

17 MS. FRANKS: Commissioner Hale.

18 COMMISSIONER HALE: Approve.

19 MS. FRANKS: Commissioner Jamison.

20 COMMISSIONER JAMISON: Approve.

21 MS. FRANKS: Chairman Kohn.

22 CHAIRMAN KOHN: Approve.

23 MS. FRANKS: By your voted you've adopted
24 Resolution No. 17-013.

25 CHAIRMAN KOHN: Mr. Steib, Mr. Thomas.

1 MR. STEIB: Gordon Thomas is Case
2 No. DC-16-199. Mr. Thomas completed an application and
3 a DOLA, Disposition of Occupational License, was dated
4 October 6th.

5 At this hearing the applicant did not appear.
6 However, he did disclose on September 9th, 2016 the
7 following: a 2003 driving while intoxicated, no
8 insurance, no operator's license in Junction City,
9 Kansas; a 1991 driving while intoxicated, no insurance,
10 no operator's license, Junction City, Kansas; a 1988
11 shoplifting charge, Junction City, Kansas; a 1988
12 possession of an open container, Junction City, Kansas;
13 a 1988 shoplifting, a 1987 conspiracy to distribute and
14 a 1986 shoplifting, all in Junction City, Kansas.

15 At the appointed time for the hearing the
16 applicant did not appear, although he had been noticed,
17 and the evidence adduced by the counsel for the Gaming
18 Commission was that he had received the notice of the
19 hearing but the hall and the roll call thrice, the
20 applicant did not appear.

21 Based on the evidence which was adduced and
22 based on Mr. Thomas's failure to appear, it is the
23 recommendation of the hearing officer that the applicant
24 did not meet by clear and convincing evidence that he
25 should be granted a license and hence that should be

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1 denied.

2 CHAIRMAN KOHN: One thing that I thought was
3 kind of strange here, in his written statement where
4 he's asked why did you fail to disclose your 1988 felony
5 conviction, he said I have no idea what this charge is.

6 Is there anything to that?

7 MR. STEIB: Nothing to it because --

8 CHAIRMAN KOHN: The charge was real?

9 MR. STEIB: -- the applicant did not appear
10 for me to interrogate him regarding that, or for
11 counsel, so it really wasn't an issue in this matter.

12 CHAIRMAN KOHN: How did this piece of paper
13 become an exhibit?

14 MR. STEIB: The charges?

15 COMMISSIONER JAMISON: His written statement.

16 He made a written statement to the Gaming
17 Commission and the Gaming Commission submitted it as a
18 piece of evidence.

19 MR. STEIB: Right. It was introduced into
20 evidence.

21 CHAIRMAN KOHN: So this was before the
22 hearing?

23 MR. STEIB: It was submitted into evidence at
24 the hearing, but the paper was submitted and the Gaming
25 Commission had access to that prior to the Commission.

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1 It was introduced by counsel for the Gaming Commission.

2 CHAIRMAN KOHN: Okay.

3 MR. GREWACH: If I could follow up on that.

4 Our investigator's practice is when the
5 record comes back and shows nondisclosed arrests or
6 convictions, the first thing they do is sit down with
7 the applicant and ask them about that and ask them to
8 provide a written statement relating to that, and that's
9 the document that you're talking about.

10 And I might also add that when the record
11 came back, it does show that the applicant was convicted
12 in 1988 and given probation on the felony theft charge
13 in Junction City, Kansas.

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

16 COMMISSIONER LOMBARDO: Yes.

17 It looks like he disclosed seven different,
18 let's say, arrests or other criminal charges and then he
19 failed to disclose an additional fourteen other. Am I
20 reading that right?

21 He actually disclosed seven but he forgot to
22 mention fourteen other ones?

23 MR. STEIB: I don't know about the others,
24 but the seven that he did disclose were certainly
25 resplendent enough to give serious consideration, and

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1 since he did not appear that sort of ended the matter.

2 COMMISSIONER LOMBARDO: Right. Right. Okay.

3 CHAIRMAN KOHN: Any other questions?

4 Is there a motion with respect to Resolution
5 17-014?

6 COMMISSIONER NEER: Motion to approve.

7 COMMISSIONER JAMISON: Seconded.

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

10 MS. FRANKS: Commissioner Lombardo.

11 COMMISSIONER LOMBARDO: Approve.

12 MS. FRANKS: Commissioner Neer.

13 COMMISSIONER NEER: Approve.

14 MS. FRANKS: Commissioner Hale.

15 COMMISSIONER HALE: Approve.

16 MS. FRANKS: Commissioner Jamison.

17 COMMISSIONER JAMISON: Approve.

18 MS. FRANKS: Chairman Kohn.

19 CHAIRMAN KOHN: Approve.

20 MS. FRANKS: By your vote you've adopted
21 Resolution No. 17-014.

22 MR. STEIB: Thank you.

23 CHAIRMAN KOHN: Mr. Seibert.

24 EXECUTIVE DIRECTOR SEIBERT: Mr. Chairman,
25 the next order of business is Consideration of

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1 Disciplinary Actions. Mr. Ed Grewach will present.

2 MR. GREWACH: Thank you, Director Seibert,
3 Mr. Chairman, Commissioners.

4 Under Tab F we have a Preliminary Order of
5 Discipline directed to Mark Twain Casino for followup
6 audit findings.

7 Commission staff performed a compliance audit
8 covering the time period from August 2013 through June
9 of 2015. After the audit was completed the staff met
10 with the casino personnel and presented the findings of
11 the audit, and the casino responded by listing the
12 remedial steps they planned to take to correct those
13 audit findings.

14 The staff then performed a followup of the
15 audit on March -- during March of 2016 and in that
16 followup found two significant findings that had not
17 been corrected.

18 The first involves a violation of Minimum
19 Internal Control Standards B1.05, which requires when an
20 employee who has key access changes position, that the
21 key status of that employee be updated within
22 72 hours of the transfer.

23 The reason for this rule is to prevent an
24 employee from having access to areas that their current
25 job duties would not authorize.

1 The original audit found that eight employees
2 during the audited time period had changed positions
3 while they had key access. One changed from a security
4 officer to a dealer, a second from a security officer to
5 a count team member.

6 In two of those eight instances we found that
7 their key access had not been updated within the
8 required 72 hours. As a matter of fact, in one it was
9 33 days before it was corrected and in the other it was
10 47 days.

11 During the followup the staff reviewed
12 records through December of 2015 and through the month
13 of February 2016.

14 They found during that time period there was
15 one employee who had key access who was transferred, in
16 this case from an audit clerk to a count team clerk, and
17 that key access had not been changed within 72 hours,
18 and the fact again, it had not been changed until
19 33 days after the transfer took place.

20 The second audit finding involved violation
21 of Minimum Internal Control Standard G7.10, which
22 requires count team members to clear their hands when
23 their hands are going to or from a table when funds are
24 present.

25 Now, clearing the hands involves a process

1 where you display both the palm and the top of your
2 hands both to surveillance and to the other people at
3 the count team to ensure that there is no improper
4 handling of the funds.

5 The original audit found the 57.7 percent
6 error rate in the sample that was reviewed. When the
7 staff did their followup in March, they found a
8 43.7 percent error rate.

9 In addition, one of the MGC agents on the
10 boat, Trooper Harrison, did a review of surveillance
11 during the month of February 2016 on various dates,
12 found varying error rates which averaged to 70 percent
13 during that time period.

14 The staff recommended a \$5,000 fine against
15 the casino for these followup audit findings. The
16 casino sent in a response to that recommendation in
17 which they indicated that they had changed the process
18 to attempt to remediate this problem and also pointed
19 out that there was no actual improper access to any
20 areas by the transferred employees during the time
21 period and asked for the staff to consider reducing the
22 recommended fine.

23 Staff met and it was the staff's position to
24 continue with the recommendation of a \$5,000 fine for
25 this violation.

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1 CHAIRMAN KOHN: Ed, you lost me a little bit
2 on the error rate.

3 Which one of the two were you referring to on
4 the 40, 70 whatever percent error rate was? The showing
5 of the hands or the --

6 MR. GREWACH: The showing of the hands.

7 CHAIRMAN KOHN: So half the time or more the
8 dealers are not showing their hands?

9 MR. GREWACH: It's the count team members not
10 showing their hands when they're taking their hands to
11 and from the table. And again, the significance of that
12 is to make sure no one is taking money off of the table.

13 COMMISSIONER JAMISON: But the 40 to
14 90 percent was over -- in a short timeframe review.
15 Correct? It was just in a week's period?

16 MR. GREWACH: Yes. There was several dates.

17 COMMISSIONER JAMISON: I mean, they did a
18 longer-term audit, is that correct, that showed
19 43 percent?

20 MR. GREWACH: Yes.

21 COMMISSIONER JAMISON: And then they did a
22 short audit that showed a higher rate but it wasn't as
23 long a term as the audit? Am I reading that correctly?

24 MR. GREWACH: There are actually two
25 different reviews that happened simultaneously. One was

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1 the MGC compliance auditor's, and that was the
2 43.7 percent. They looked at two days of surveillance
3 coverage to determine that percentage.

4 Separately Trooper Harrison did his own
5 review, and he picked several specific dates in the
6 month of February, which, of course, occurred, you know,
7 prior to the time we did our followup, and it's from
8 Trooper Harrison's report that we had the 70 percent
9 error rate that he observed and reported to us.

10 COMMISSIONER JAMISON: Okay.

11 And he did complete day audits on that?

12 MR. GREWACH: He did and I could tell you --

13 COMMISSIONER JAMISON: I'd like to hear a
14 little bit about that, because, I mean, if we're quoting
15 that in the report here, I'd kind of like to know the --
16 I mean, if he's not a normal -- I mean, I'm not saying
17 he didn't do a great job, but if he's not a normal audit
18 procedure process, I want to hear what his audit process
19 was.

20 MR. GREWACH: Trooper Harrison reviewed
21 surveillance on February 1st, 3rd, 5th, 6th, 8th and
22 10th and recorded the number of instances where the
23 count team members took their hands to or from the table
24 and also recorded the number of times they failed to
25 clear their hands, and then for each day came up with a

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1 different percentage, from a low of 40 percent to a high
2 of 91 percent, and then the average, when we averaged
3 those, that's how we in reviewing Trooper Harrison's
4 review came up with a 70 percent number.

5 COMMISSIONER JAMISON: So he had more towards
6 90 than he did towards 40?

7 MR. GREWACH: One was 40, one was 63, one was
8 84, one was 89, one was 55 and one was 91.

9 COMMISSIONER JAMISON: All right.

10 CHAIRMAN KOHN: All right. It seems like
11 something that is seemingly so standard, it almost looks
12 like it's a blatant disregard of the rule when you get
13 up to that high percentage, like we don't care.

14 MR. GREWACH: When it comes to, you know, our
15 audit process, you're never going to achieve
16 100 percent. There is always going to be some employees
17 that fail.

18 But I agree with you, Mr. Chairman. You
19 know, when we look at percentages this high, and
20 particularly when you look at the -- even when you just
21 look at just the compliance audit followup, just
22 reducing it from the 57 to 43 percent isn't a real
23 significant improvement between those two time periods.

24 Now, what the casino --

25 COMMISSIONER JAMISON: Better than 70?

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1 COMMISSIONER NEER: These were all different
2 count team members. Correct?

3 MR. GREWACH: Well, I mean, you look at a day
4 and you would have different shifts, you know. So, yes,
5 I mean, it cuts across probably every count team member
6 that they have working for them when you look at the
7 sample of days and shifts that you review in looking at
8 it.

9 CHAIRMAN KOHN: I think you're going easy on
10 them.

11 COMMISSIONER NEER: It's a systemic issue.

12 COMMISSIONER HALE: In one of the more
13 critical areas of the casino, the count room.

14 COMMISSIONER JAMISON: Now, he didn't say it
15 was in the count room, did you? Did you say it was the
16 count team at the tables?

17 COMMISSIONER HALE: Oh, at the tables.

18 MR. GREWACH: No. In the count room. It's
19 in the count room.

20 COMMISSIONER JAMISON: I thought you said it
21 was the count team at the tables.

22 MR. GREWACH: Well, there's a table in the
23 count room.

24 COMMISSIONER JAMISON: Okay. So you're not
25 talking at the gaming tables?

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1 COMMISSIONER HALE: Talking at the count
2 room.

3 MR. GREWACH: I apologize for that.

4 COMMISSIONER NEER: That's where they stack
5 the \$4 million against the wall periodically.

6 CHAIRMAN KOHN: Are there any other questions
7 of Ed or discussion?

8 Is there a motion with respect to DC-17-028
9 either as approved or different?

10 I'm sorry. Not as approved. As recommended
11 or different.

12 COMMISSIONER JAMISON: I would move for
13 approval as recommended.

14 COMMISSIONER NEER: I'd second it.

15 CHAIRMAN KOHN: Discussion on the motion?
16 Angie.

17 MS. FRANKS: Commissioner Lombardo.

18 COMMISSIONER LOMBARDO: Approve.

19 MS. FRANKS: Commissioner Neer.

20 COMMISSIONER NEER: Approve.

21 MS. FRANKS: Commissioner Hale.

22 COMMISSIONER HALE: Approve.

23 MS. FRANKS: Commissioner Jamison.

24 COMMISSIONER JAMISON: Approve.

25 MS. FRANKS: Chairman Kohn.

0028

1 CHAIRMAN KOHN: Approve.

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

3 DC-17-028.

4 EXECUTIVE DIRECTOR SEIBERT: The next order
5 of business is Consideration of Settlement Agreement.

6 Mr. Ed Grewach.

7 MR. GREWACH: Thank you.

8 Tab G is a resolution to approve the
9 settlement of a Preliminary Order of Discipline issued
10 to Gerard Smriga who is the general manager of the Mark
11 Twain Casino.

12 On May the 25th, 2016 the chief operating
13 officer, Jeffrey Solomon, of Affinity Gaming, who is the
14 parent company of Mark Twain Casino, was scheduled to
15 visit the Mark Twain Casino.

16 Our patrol boat sergeant at the boat met with
17 the security supervisor at the casino and reminded the
18 security supervisor to make sure that Mr. Solomon had
19 either a casino access badge or a visitor badge when he
20 visited the casino as is required by the rules.

21 The security supervisor passed that
22 information on to Mr. Smriga. Mr. Smriga disagreed with
23 that interpretation of the rule but, however, did not
24 meet with the gaming agent to discuss his understanding
25 of the rule.

0029

1 And then as a consequence Mr. Solomon came
2 and entered nonpublic and sensitive areas of the casino
3 without a casino access badge in violation of the rule.

4 In addition, as the Patrol agents were
5 investigating the matter, they found that on May 17,
6 2016 Mr. Smriga himself accessed the floor, nonpublic
7 areas of the casino, without wearing any of his required
8 badges.

9 The original Preliminary Order of Discipline
10 recommended a five-day suspension. Mr. Smriga hired an
11 attorney, Mr. Riffel. Through negotiations the staff
12 has entered into a tentative agreement to amend the
13 Preliminary Order of Discipline to two days subject to
14 the Commission's approval.

15 CHAIRMAN KOHN: Questions?

16 COMMISSIONER JAMISON: I don't ask this
17 kindly or uniquely.

18 COMMISSIONER NEER: You've never been bashful
19 before.

20 COMMISSIONER LOMBARDO: Come on, Brian. Spit
21 it out.

22 COMMISSIONER JAMISON: What mitigating
23 circumstances did you consider in going from five to
24 two?

25 I mean, I understand it's a negotiation. I

0030

1 understand we start at five. We end at two.

2 Is it just merely a number thing or did we
3 have mitigating circumstances?

4 MR. GREWACH: I would say one consideration
5 was that Mr. Smriga, although wrong, you know, was
6 acting on his belief that the rule didn't require
7 Mr. Solomon to have a casino access badge.

8 Now, the rule when you read it very clearly
9 says any occupational licensee, which Mr. Solomon is,
10 needs to have a casino access badge to enter any
11 nonpublic areas of the casino. So he was operating
12 under an incorrect interpretation.

13 I think the big failing that he had and the
14 reason it caused the problem in the first place, again,
15 was he should have met with the boat sergeant and
16 discussed his understanding and the problem could have
17 been avoided.

18 COMMISSIONER JAMISON: But during his
19 misunderstanding the message was relayed to him from a
20 Gaming Commission officer. Correct?

21 MR. GREWACH: Actually from a security
22 supervisor.

23 COMMISSIONER JAMISON: I know. It wasn't
24 from a Gaming Commission officer directly to him but it
25 was relayed to him that there was a different opinion by

0031

1 Gaming Commission personnel?

2 MR. GREWACH: That's correct.

3 COMMISSIONER JAMISON: And he did nothing to
4 address or talk about that when he was given that
5 information?

6 MR. GREWACH: That's correct.

7 COMMISSIONER JAMISON: So it isn't the fact
8 that he just was under a wrong opinion and was blindly
9 walking along with his wrong opinion. He was informed
10 that his opinion was wrong but did nothing to find out
11 if his opinion was right or just ignored the advice of
12 the gaming officer. Is that correct?

13 MR. GREWACH: I would say so.

14 Again, the exact sequence was the security
15 supervisor said, you know, Gaming says Mr. Solomon needs
16 a badge. Mr. Smriga says, no, he doesn't, and that was
17 basically that discussion between Mr. Smriga and his
18 security supervisor.

19 COMMISSIONER LOMBARDO: But he clearly
20 understood that the directive came from a Gaming
21 Commission officer?

22 MR. GREWACH: That's correct.

23 COMMISSIONER JAMISON: And he disregarded it?

24 MR. GREWACH: He did, yes.

25 COMMISSIONER JAMISON: So it wasn't -- I

0032

1 mean, I get how you're phrasing it, that he was
2 operating under a false opinion, but I would feel better
3 about that if he was operating under a false opinion and
4 hadn't been given advice, correct advice?

5 COMMISSIONER LOMBARDO: Or if he had perhaps
6 gone and checked out his opinion, which apparently was
7 wrong.

8 MR. GREWACH: Yes.

9 To me that's the main failing in this case,
10 you know. People can misread and misinterpret,
11 misunderstand things, disagree with us, but a discussion
12 with our agent would resolve the issue prior to it
13 becoming a disciplinary issue.

14 And I guess, Commissioner Jamison, the other
15 thing is that the underlying violation itself,
16 Mr. Solomon going onto the nonpublic areas of the casino
17 without a casino access badge, isn't in the realm of
18 seriousness --

19 COMMISSIONER JAMISON: He was with an
20 authorized person. It wasn't like he was allowed to go
21 there by himself without an escort?

22 MR. GREWACH: Correct. He was just -- if he
23 had the badge, it would have been fine. He didn't have
24 the badge. So it's more of a technical violation. So I
25 have to say that probably came into our consideration in

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1 agreeing to the two --

2 COMMISSIONER JAMISON: Maybe this is my
3 procedural day.

4 What's the procedure if we don't concur with
5 the settlement?

6 MR. GREWACH: Then we go forward with the
7 original Preliminary Order of Discipline recommending
8 the five-day suspension. That would go to a hearing, be
9 presented to you by the hearing officer and then you'd
10 make a final decision on it at that point.

11 COMMISSIONER JAMISON: Okay.

12 CHAIRMAN KOHN: But, Ed, you are satisfied in
13 your negotiations with Mr. Riffel that this result as
14 set out in the settlement is a fair one?

15 MR. GREWACH: You know, we do. And again, I
16 guess the one point is that when you look at the
17 underlying violation, you know, that wouldn't be
18 something we would necessarily even give a suspension
19 for itself, Mr. Solomon coming into the -- as a matter
20 of fact, no discipline was taken against Mr. Solomon for
21 coming into a nonpublic area without a casino access
22 badge.

23 COMMISSIONER JAMISON: I'm not as concerned
24 about the -- I would agree I'm not as concerned about
25 the violation or what the basis was, is for the

0034

1 disregard and the I know best disregard of an opinion.

2 MR. GREWACH: Yes.

3 CHAIRMAN KOHN: Any further questions?

4 Any further discussion?

5 Is there a motion with respect to Resolution
6 17-015?

7 COMMISSIONER HALE: Mr. Chairman, I move for
8 adoption of Resolution No. 17-015.

9 CHAIRMAN KOHN: Is there a second?

10 Motion dies for lack of a second.

11 I guess you and Mr. Riffel have some more
12 talking to do.

13 MR. GREWACH: Yes.

14 CHAIRMAN KOHN: Okay.

15 MR. GREWACH: We'll proceed accordingly.

16 CHAIRMAN KOHN: Mr. Seibert.

17 EXECUTIVE DIRECTOR SEIBERT: The next order
18 of business, Mr. Chairman, is Consideration of
19 Ratification of Chairman's Extension of Supplier's
20 License. Mr. Ed Grewach will present.

21 MR. GREWACH: Casino Tech is a holder of a
22 supplier's license. They were set to expire on
23 February 28th, 2017.

24 We have a rule, Rule 4.250, that requires
25 suppliers to file their renewal application 120 days

0035

1 prior to its expiration. The obvious reason for this
2 rule is to give us time to complete the investigation
3 and present the renewal to the Commission prior to the
4 expiration.

5 However, in this case we did not receive the
6 renewal application from Casino Tech until January 20th,
7 2017.

8 Now, the rule cited in the Resolution
9 Rule 1.020(4) grants the Chairman the authority, which
10 he has exercised here, to extend the license up to
11 60 days, and the extensions entered would extend the
12 license to April the 30th, 2017.

13 The rule further requires that the Commission
14 at its next regular meeting ratify the Chairman's act in
15 extending the license, and the purpose of the extension
16 then is for our staff to complete the investigation,
17 present it to the Commission at the April meeting.

18 CHAIRMAN KOHN: So you-all need to bail me
19 out here.

20 COMMISSIONER JAMISON: I move for adoption of
21 17-016.

22 CHAIRMAN KOHN: Is there a second?

23 COMMISSIONER LOMBARDO: Second.

24 CHAIRMAN KOHN: Discussion on the motion.

25 Angie.

0036

1 MS. FRANKS: Commissioner Lombardo.

2 COMMISSIONER LOMBARDO: Approve.

3 MS. FRANKS: Commissioner Neer.

4 COMMISSIONER NEER: Approve.

5 MS. FRANKS: Commissioner Hale.

6 COMMISSIONER HALE: Approve.

7 MS. FRANKS: Commissioner Jamison.

8 COMMISSIONER JAMISON: Approve.

9 MS. FRANKS: Chairman Kohn.

10 CHAIRMAN KOHN: Approve.

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

12 Resolution No. 17-016.

13 CHAIRMAN KOHN: Let's see. So we've got

14 17-017 next.

15 EXECUTIVE DIRECTOR SEIBERT: Yes. The next

16 order of business is Consideration of Level I/Key

17 Applicants. Trooper John Masters will present.

18 TROOPER MASTERS: Mr. Chairman and

19 Commissioners, good morning.

20 CHAIRMAN/COMMISSIONERS: Good morning.

21 TROOPER MASTERS: Missouri State Highway

22 Patrol investigators, along with MGC financial

23 investigators, conduct comprehensive background

24 investigations on key and Level I applicants.

25 The investigations include, but are not

0037

1 limited to, criminal, financial and general character
2 inquiries which are made in the jurisdictions where the
3 applicants lived, worked and visited.

4 The following individual is being presented
5 for your consideration: Brian Marsh, Vice President and
6 General Manager for Tropicana Entertainment.

7 The result of this investigation was provided
8 to the MGC staff for their review and you have the
9 related summary report before you.

10 Thank you.

11 CHAIRMAN KOHN: Is there a motion with
12 respect to Resolution 17-017?

13 COMMISSIONER LOMBARDO: Motion to approve.

14 COMMISSIONER HALE: Second.

15 CHAIRMAN KOHN: Discussion on the motion?
16 Angie.

17 MS. FRANKS: Commissioner Lombardo.

18 COMMISSIONER LOMBARDO: Approve.

19 MS. FRANKS: Commissioner Neer.

20 COMMISSIONER NEER: Approve.

21 MS. FRANKS: Commissioner Hale.

22 COMMISSIONER HALE: Approve.

23 MS. FRANKS: Commissioner Jamison.

24 COMMISSIONER JAMISON: Approve.

25 MS. FRANKS: Chairman Kohn.

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1 CHAIRMAN KOHN: Approve.

2 MS. FRANKS: By your vote you've adopted
3 Resolution No. 17-017.

4 CHAIRMAN KOHN: Mr. Seibert.

5 EXECUTIVE DIRECTOR SEIBERT: The next order
6 of business is Considerations of Rules and Regulations.

7 I believe Mr. Ed Grewach stepped out. No.
8 He's here.

9 MR. GREWACH: Okay. I assume I'm up.

10 CHAIRMAN KOHN: You're up.

11 MR. GREWACH: Sorry about that.

12 Under Tab J we have three Final Orders of
13 Rulemaking. The background of these rules is --

14 CHAIRMAN KOHN: Let me interrupt one second.

15 If you recall, these are -- tell me if I'm
16 right about this, Ed. These are the rules and
17 regulations that we did not take up a month ago because
18 of the Governor's edict on any new rules and
19 regulations, or is this not covered by those?

20 MR. GREWACH: No. This was covered by those
21 but these --

22 COMMISSIONER JAMISON: These were not
23 presented at the last meeting.

24 MR. GREWACH: Correct, because these are just
25 coming up -- or scheduled to come up now.

0039

1 In the Governor's Executive Order,
2 Order 17-03, prohibited all State agencies from adopting
3 any new rules -- proposing or adopting any new rules
4 without the Governor's Office's permission.

5 And we submitted these to the Governor's
6 Office, and did receive written permission from the
7 Governor's Office to proceed.

8 And the reason we wanted to do that was this
9 is a set where the Preliminary Orders of Rulemaking were
10 approved on October 26th of 2016. We went through the
11 hearing process. The public hearing was in January,
12 January 10th of this year.

13 And so they were -- we have to -- we had to
14 approve them on this date because of the timing of
15 Chapter 536. Otherwise, we'd have to go back to step --
16 to square one to start over again.

17 And we just received the authority from the
18 Governor's Office to present these final orders to the
19 Commission.

20 CHAIRMAN KOHN: And that's the point I wanted
21 to make, that we are now proceeding in accordance with
22 the Governor's Office approval.

23 MR. GREWACH: We are, yes. Yes.

24 Now, the background of these rules,
25 particularly 5.183 and 5.184, is that the existing rule

0040

1 required cards prior to be placed into play had to be
2 sorted by sequence and suit and the back of each card
3 inspected.

4 Now, several years ago manufacturers began
5 selling reshuffled cards, and the existing rule did not
6 allow those to be used.

7 There was a request from the casino industry
8 for us to amend the rule to allow that, and those
9 changes you'll see in 5.183 and 5.184 accommodate that
10 request by the industry while we feel still will protect
11 the integrity of the games and the process.

12 The -- they allow the use of reshuffled
13 decks, and they also allow the use of an automated
14 shuffler.

15 So the process, instead of having to separate
16 the cards out by sequence and by suit, the automated
17 shuffling machine can do that for them.

18 We also looked at the issue of inspecting the
19 back of cards. Now, we do still require them to inspect
20 the back of cards for any game where the cards are used
21 more than once, but we did give them an exemption for a
22 game in which cards were only used once.

23 And the reason there is, if there's a mark on
24 the back of a King of Spades and if I see that and I
25 know that's the King of Spades, then the next time it's

0041

1 dealt, even though it's facedown, I'll know that's a
2 King of Spades and would give someone an opportunity to
3 cheat or gain an unfair advantage from the game.

4 However, if you have a game -- and there are
5 several -- where the cards are just used once, then
6 there is no advantage to there being a mark on the back
7 of a card because it doesn't matter.

8 Now, that is significant to the casino
9 industry because their motivation in asking this is to
10 speed the game up, because the patrons -- when they
11 bring new decks into play, the patrons have to sit and
12 wait under the old rule while they got separated out
13 into sequence and suit and flipped them over and
14 inspected the back of the cards.

15 And the benefit of the rule change is it
16 speeds up the process both for the patrons and for the
17 casinos, because frankly they were concerned that people
18 would get up and leave, didn't want to wait for that
19 long process to take place at the table.

20 But still requiring the inspection on the
21 back of the cards that are going to be used more than
22 once, we felt we had to keep that requirement in to
23 maintain the integrity of the game.

24 Again, as I mentioned, these are rules that
25 were originally approved as preliminary rules on

0042

1 October 26th, 2016, and we've had the public hearing on
2 that. If the Commission today approves them, they would
3 have an effective date of June 30th, 2017.

4 CHAIRMAN KOHN: I'm just curious. What game
5 is there where the deck of cards is just used once?

6 MR. GREWACH: Can I call on our Compliance
7 Audit Manager Leshia Kempker to answer that question. I
8 could try but she'll know better.

9 MS. ALONZO: Cheryl Alonzo --

10 MR. GREWACH: Cheryl Alonzo, our Assistant
11 Deputy Director.

12 MS. ALONZO: Some of the casinos will use
13 alternative dealing procedures on baccarat, for example,
14 where -- because they let the patrons handle the cards
15 and they will crimp them, bend them, and so they don't
16 want to reuse them because that would mark those cards.

17 But some games can be dealt with or without
18 the alternative dealing, the same game. In some cases
19 they let them handle them and other table rules they
20 won't. It's at their discretion.

21 CHAIRMAN KOHN: Thank you.

22 Any questions of Ed?

23 Is there a motion with respect to --

24 COMMISSIONER JAMISON: I move for -- we can
25 do all three of them --

0043

1 CHAIRMAN KOHN: We can do all three at once?

2 MR. GREWACH: Yes.

3 CHAIRMAN KOHN: Okay.

4 COMMISSIONER JAMISON: I move for adoption of
5 11 CSR 45.5.183, 5.184 and 45-9.104.

6 CHAIRMAN KOHN: Is there a second?

7 COMMISSIONER NEER: Second.

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

10 MS. FRANKS: Commissioner Lombardo.

11 COMMISSIONER LOMBARDO: Approve.

12 MS. FRANKS: Commissioner Neer.

13 COMMISSIONER NEER: Approve.

14 MS. FRANKS: Commissioner Hale.

15 COMMISSIONER HALE: Approve.

16 MS. FRANKS: Commissioner Jamison.

17 COMMISSIONER JAMISON: Approve.

18 MS. FRANKS: Chairman Kohn.

19 CHAIRMAN KOHN: Approve.

20 MS. FRANKS: By your vote you've adopted the
21 Final Orders of Rulemaking 11 CSR 45-5.183, 5.184 and
22 9.104.

23 MR. GREWACH: If I could, Mr. Chairman, going
24 back to Tab G, I didn't realize Mr. Riffel was here, and
25 he asked if he could have permission to address the

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1 Commission on the issue of the approval of the
2 settlement agreement.

3 CHAIRMAN KOHN: All right.

4 I've never said no to Mr. Riffel.

5 MR. RIFFEL: Mr. Chairman, I can't talk to
6 you.

7 Mr. Chairman and Commissioners, Jerry Riffel,
8 Lathrop & Gage, 2345 Grand, Kansas City.

9 I am representing Gerry Smriga. I want to
10 say initially -- and I won't belabor this a long time --
11 I've known Gerry a long time, and the reason for that is
12 that I am also Affinity Gaming's Missouri counsel.

13 I have worked with him on many, many issues,
14 and I can assure you that in my opinion based upon that
15 relationship, I would be shocked if Mr. Smriga ever
16 intentionally violated any rule of the Commission or
17 regulation or minimum rule or whatever, absolutely
18 shocked. He's an outstanding general manager. He has
19 led that facility for a long, long time.

20 He's right here. Stand up, Gerry.

21 And he has felt a lot of remorse and suffered
22 a lot as a result of this, and I know that from
23 discussing it with him, and I just would like to ask you
24 to please reconsider whether to accept the settlement --
25 whether to vote for the settlement on this basis.

0045

1 First of all, in my opinion -- and I'm not --
2 he would never purposely violate a rule that he
3 understood was a rule and was interpreted in that way.

4 If you do read this particular regulation, it
5 is hard to understand. It is unclear. It could be read
6 in either way in my opinion.

7 What happened was Mr. Smriga had worked with
8 Clarence Greeno, who was earlier an operations person
9 for the Commission.

10 Mr. Greeno -- he had asked Mr. Greeno some
11 time ago about this particular regulation, and he was
12 relying on his interpretation.

13 We don't question whether the Commission's
14 representative contacted our security officer, but
15 Mr. Smriga -- and he'll come up and testify if you
16 want -- was not told of this contact until the end of
17 the morning after Mr. Solomon had done his tour, and so
18 that was the reason for the violation.

19 Obviously this will never occur again, and
20 this man is I think a credit to the gaming industry in
21 Missouri and certainly one of our finest, young officers
22 and leaders in our company, so please reconsider this.

23 Thank you.

24 CHAIRMAN KOHN: Thank you, Mr. Riffel.

25 The Commission has already acted on the

0046

1 settlement proposal. I thought maybe you and
2 Mr. Grewach had a different proposal for us to consider.

3 MR. RIFFEL: Well, we could consider that.

4 COMMISSIONER HALE: He's behind you.

5 MR. RIFFEL: Could we step outside?

6 CHAIRMAN KOHN: Yeah, we're going to be in --
7 we're going into closed session soon but we'll come back
8 into open session after that.

9 Is that okay with the Commissioners?

10 COMMISSIONER LOMBARDO: Yes.

11 COMMISSIONER HALE: Yes.

12 CHAIRMAN KOHN: All right.

13 MR. RIFFEL: Okay. Thank you, Mr. Chairman.

14 CHAIRMAN KOHN: That concludes our open
15 session.

16 COMMISSIONER JAMISON: Wait.

17 If Mr. Smriga is here and is willing to
18 testify, I would like to hear from him about when he was
19 notified. Is that appropriate?

20 COMMISSIONER LOMBARDO: I have a question
21 about that.

22 CHAIRMAN KOHN: I think --

23 COMMISSIONER LOMBARDO: I have a question
24 about that, because what we're getting into -- and, Ed,
25 maybe you can answer.

0048

1 we've already voted on it I think that's done.

2 COMMISSIONER JAMISON: I'm good with that,
3 but I got the impression that we were going to
4 revisit --

5 CHAIRMAN KOHN: Here is what we're going to
6 do. We're going into closed session. Mr. Riffel and
7 Mr. Grewach are going to have a further discussion. If
8 that discussion results in a further settlement
9 agreement for the Commission to consider, we will do so
10 when we come back in open session. If it doesn't, we
11 won't hear it. Okay.

12 So, Brian, do your thing.

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

21 COMMISSIONER LOMBARDO: Second.

22 Angie.

23 MS. FRANKS: Commissioner Lombardo.

24 COMMISSIONER LOMBARDO: Approve.

25 MS. FRANKS: Commissioner Neer.

0049

1 COMMISSIONER NEER: Approve.

2 MS. FRANKS: Commissioner Hale.

3 COMMISSIONER HALE: Approve.

4 MS. FRANKS: Commissioner Jamison.

5 COMMISSIONER JAMISON: Approve.

6 MS. FRANKS: Chairman Kohn.

7 CHAIRMAN KOHN: Approve.

8 We are going into closed session, and we will
9 come back out at the conclusion of the closed session
10 and reopen the open session if it's necessary.

11 WHEREIN, the meeting concluded at 11:30 a.m.

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CERTIFICATE OF REPORTER

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6

I, Patricia A. Stewart, CCR, a Certified

7

Court Reporter in the State of Missouri, do hereby

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certify that the testimony taken in the foregoing

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transcript was taken by me to the best of my ability and

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MISSOURI GAMING COMMISSION
Second Open Session Minutes
March 1, 2017

The Missouri Gaming Commission (the “Commission”) went back into open session at approximately 11:30 a.m. on March 1, 2017, at the Missouri Gaming Commission’s Jefferson City office.

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

The meeting ended at 11:32 a.m.