BEFORE THE MISSOURI GAMING COMMISSION
STATE OF MISSOURI

Meeting
April 29, 2014
1:00 p.m.
Central Office
3417 Knipp Drive
Jefferson City, Missouri

(Meeting start time: 1:00 p.m.)
AGENDA

I. Call to Order

II. Motion for Closed Meeting under Sections 313.847, RSMo., Investigatory, Proprietary and Application Records and 610.021(1), RSMo., Legal Actions, and (14) Records Protected from Disclosure by Law

III. Motion to Open Meeting

IV. Presentation by Hearing Officer on Ainsworth Game Technology LTD, Leonard Hastings Ainsworth and Daniel Gladstone

V. Arguments by the Applicants

VI. Argument by the Attorney General's Office Representing the Missouri Gaming Commission

VII. Rebuttal Argument by the Applicants

VIII. Motion for Closed Meeting under Sections 313.847, RSMo., Investigatory, Proprietary and Application Records and 610.021(1), RSMo., Legal Actions, and (14) Records Protected from Disclosure by Law

IX. Motion to Open Meeting

X. Consideration of Hearing Officer Recommendation

A. Ainsworth Game Technology LTD, Leonard Hastings Ainsworth and Daniel Gladstone

1. Resolution No. 14-014

XI. Adjournment
BEFORE THE MISSOURI GAMING COMMISSION

STATE OF MISSOURI

Meeting
April 29, 2014
1:00 p.m.
Central Office
3417 Knipp Drive
Jefferson City, Missouri

COMMISSIONERS PRESENT:
Dr. Barrett Hatches, Chairman
Suzanne Bocell Bradley
Darryl T. Jones
Diane C. Howard

REPORTED BY:
Patricia A. Stewart
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3432 West Truman Boulevard, Suite 207
Jefferson City, Missouri 65109
573-636-7551
EXECUTIVE DIRECTOR STOTTLEMYRE:

Mr. Chairman, we're ready to call the meeting to order.

CHAIRMAN HATCHES: Angie, would you call the roll, please.

MS. FRANKS: Commissioner Howard.

COMMISSIONER HOWARD: Present.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Present.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Present.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Present.

EXECUTIVE DIRECTOR STOTTLEMYRE: We need a motion to go into closed.

CHAIRMAN HATCHES: Chair would entertain a motion.

COMMISSIONER BRADLEY: I'll move to go into a closed meeting under Revised Statutes of Missouri, Chapter 313.847, under investigatory, propriety and application records, and Section 610.021, Subsection 1, legal actions, and Subsection 14, records protected from disclosure by Law.

COMMISSIONER HOWARD: I'll second.

CHAIRMAN HATCHES: Angie, call the roll,
please.

MS. FRANKS: Commissioner Howard.

COMMISSIONER HOWARD: Approve.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Approve.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Approve.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Approve.

Okay. We'll go into closed and come back sometime soon.

(Closed Meeting.)

CHAIRMAN HATCHES: All right. The first order of business is to remind all of you to please turn off your cell phones, and remind you that the reason we do that is because LeAnn really gets bothered over here. So I would never say that. She forces me to do it anyway.

No. Really, if you'd turn them off. Thank you.

Okay. A motion to go back on?

EXECUTIVE DIRECTOR STOTTLEMYRE: Yes, sir.

COMMISSIONER BRADLEY: Motion to reopen.

COMMISSIONER JONES: Second.

CHAIRMAN HATCHES: Angie.
MS. FRANKS: Commissioner Howard.

COMMISSIONER HOWARD: Approve.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Approve.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Approve.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Approve.

Mr. Stottlemyre.

EXECUTIVE DIRECTOR STOTTLEMYRE: Is it my understanding that the hearing officer will not make a presentation?

CHAIRMAN HATCHES: Yes.

EXECUTIVE DIRECTOR STOTTLEMYRE: Okay. So the next item on the agenda would be --

MR. GREWACH: I'm sorry.

I would ask that the counsel on the record indicate whether they agree -- and agree to waive the hearing officer making a presentation to the Commission.

CHAIRMAN HATCHES: Okay. I have a statement that will address that, but I think -- are we on?

Okay. There was a closed session to discuss procedural matters, and at the conclusion of the closed session all attorneys were present.

One procedural matter that was discussed was
for the hearing officer to make a presentation on the
findings of fact, conclusions of law and final order.

All of the attorneys, including Mr. Steib, waived this requirement since the findings of fact,
conclusions of law and final order are attached to the proposed resolution.

Do you think it's still --

MR. GREWACH: If the counsel could indicate on the record whether they agree to waive the presentation by the hearing officer.

MR. ELLINGER: Mr. Chairman, members of the Commission, my name is Marc Ellinger, along with Jim Deutsch and Stephanie Bell, from Blitz, Bardgett & Deutsch representing the Applicants, and we do waive the reading of the hearing officer's recommendation.

CHAIRMAN HATCHES: Thank you.

MS. CHURCHILL: Mr. Chairman, members of the Commission, I'm Patricia Churchill, Assistant Attorney General, representing the Commission, and we also agree to waive the reading.

CHAIRMAN HATCHES: Thank you.

This afternoon we are taking up Resolution No. 14-014, along with the findings of fact, conclusions of law and final order in the matter of Ainsworth Game Technology, Leonard Hastings Ainsworth and Daniel E.
Gladstone for oral arguments by parties as allowed by 11 CSR 45-13.070.

The purpose of the hearing this afternoon is to consider the proposed Resolution No. 14-014.

Now, the attorney for the Applicants will have a total of 15 minutes to present oral arguments. They may divide that time up between the Applicants and their attorneys as they see fit. At the end of their argument the Commissioners may ask questions.

Next the Attorney General's Office will have 15 minutes to argue the case on behalf of the Missouri Gaming Commission, which again may be followed by questions by the Commissioners.

The Applicants will then have five minutes to present rebuttal arguments, which may be followed by questions by the Commissioners.

We ask that the parties limit their answers to each question to two minutes. Mr. Stottlemyre will be keeping time during the arguments and will give a two-minute warning and will tell you when your time is up.

After the argument is concluded the Commission will make a motion to go into closed session in order to deliberate on the case.

The Commission may adopt, modify, reject or
remand the case back to the hearing officer for further proceedings.

We ask that all of the attorneys remain present in the building during the deliberations because we will go back into open session after our deliberations are finished and we will make an announcement on the Commission's position.

Questions?

We will begin now with arguments from the Applicants.

MR. ELLINGER: Thank you, Mr. Chairman, members of the Commission.

First of all, my name is Marc Ellinger, again, from the law firm of Blitz, Bardgett & Deutsch here in Jefferson City. My partner Jim Deutsch and associate Stephanie Bell represent the Applicants who are also here in person. I'd like to introduce them also.

Mr. Len Ainsworth is the Chairman, CEO of Ainsworth Game Technology, and Mr. Dan Gladstone is the Chief Executive Office of Ainsworth Game Technology. Both of them have traveled here from Australia to be present today.

And on behalf of my clients and on behalf of myself and my firm we very much appreciate the
opportunity to present these arguments to the Commission.

At any time obviously if you have questions, feel free to interrupt or engage me with them or Mr. Gladstone or Mr. Ainsworth at any time.

I'd like to start by just a very, very brief history of this case.

The applications in this case were filed in 2009. Ainsworth Game Technology, and for shortness I tend to refer to that as AGT -- I hope you'll work with me on that -- filed an application for a supplier's license.

There were two key license applications that were also filed on behalf of the key persons, Len Ainsworth and Danny Gladstone.

Those applications were filed with the Gaming Commission in 2009, and they were assigned to the Highway Patrol for investigation.

Unlike any investigation I've ever been involved in, there were no interviews conducted. Len Ainsworth is the key person license applicant, was never interviewed. Danny Gladstone is a key person license applicant, was never interviewed. In fact, no officer, director, employee, member of AGT was ever interviewed by the Missouri Highway Patrol.
The Missouri Highway Patrol never visited Australia where AGT is headquartered, never visited Nevada's headquarters of AGT during the course of this entire investigation. There is a Missouri -- or excuse me -- an American affiliate of AGT that has an office in Las Vegas.

There was a visit to Nevada made by the investigative staff but it was simply to the Nevada Gaming Control Board to review their files.

The only other matter of investigation that was done by the Missouri Highway Patrol -- and if you go through the record -- I'm not going to go through all of it. You all have seen how daunting it is.

It is hundreds -- literally hundreds of pages of testimony, I think about 1,800 pages of testimony, 2,900 pages of documents, pleadings that probably stack up four or five feet high.

If you look through all that record, you'll find that the Highway Patrol pulled the old investigative file of a different company, Aristocrat. And Aristocrat was a company that applied with the Missouri Gaming Commission for a Missouri gaming license in the late '90s after Len Ainsworth was no longer involved, no longer an owner, no longer a member of Aristocrat Gaming.
In fact, Len Ainsworth had never applied with Aristocrat Gaming back in 1996, is when the application was filed with the Missouri Gaming Commission, because he been diagnosed with prostate cancer, had been given a short period of time to live and he had divested himself entirely of all ownership in Aristocrat.

But I don't want to get into Aristocrat because they're not here and they're not the entity that is up for licensure. Ainsworth Game Technology is and Len and Danny are.

I will go back to point out that the Gaming Commission assigned this to the Highway Patrol, and the Highway Patrol did not do an independent investigation. And we'll get back to that in a minute because the investigation they did was they simply looked at old records.

They didn't interview any live witnesses. They didn't interview anybody who saw anything, had personal knowledge of anything. They simply looked at old records from a different applicant.

There was a preliminary order of denial that you all voted on to deny AGT, Len Ainsworth and Danny Gladstone their licenses and determined that they were unsuitable.

We immediately filed an appeal to that, a
hearing officer was assigned and that was Mr. Stark, Steve Stark, who I think was a longtime hearing officer for the Gaming Commission.

        After a lot of discovery and a lot of documentary transactions between ourselves and the Staff's counsel, there was a three-and-a-half-day trial that began in September of 2012.

        We presented the entirety of our case at that trial. Len Ainsworth personally testified. Danny Gladstone personally testified. Officers, employees and counsel for Ainsworth Game Technology directly testified in person as to matters they had personal knowledge of.

        They also at that time testified to a number of documents that we put in the record. As I said, there is nearly 3,000 pages of documents.

        All of the documents that were put in on our behalf were directly sponsored by a witness. They were testified to. No objection was made to the admissibility of those documents, and they were all admitted to the record.

        Hearing Officer Stark heard that entire case. It was about three -- slightly less than three full days of testimony, a couple nights that went into the evening because we had folks from Australia testifying by phone.

        The hearing officer was able to judge the
credibility of the witnesses. He was able to see them, see their demeanor.

On the fourth day of the hearing the staff attempted to put into -- put into evidence some things that they had not produced to us through the course of discovery.

After some discussion on the record we adjourned the hearing at that point, and the Applicants filed a motion to compel the production of that document, which was an investigative report that was unredacted. We'd only been produced the redacted version.

We also asked for sanctions because it had not been produced to us all of the way up through into the course of trial.

After another long round of briefing, a long round of oral arguments, the hearing officer, Mr. Stark, ordered that those documents be produced and actually imposed sanctions against the staff.

The hearing officer was then replaced, and we were not given notice of that replacement in advance. We had a trial date scheduled to resume the trial. Mr. Stark didn't communicate to us that he was ill or he was resigning. We were simply told that a new hearing officer had been assigned to the case and that he would
contact us shortly and move forward.

We asked why, we asked for an explanation, and we were told in no uncertain terms that we're not allowed to find that out, nor were we allowed to ask or inquire. So the trial continued with a new hearing officer, Mr. Steib.

We restarted that trial at the end of August. Mr. Steib only heard the staff's evidence. Our case had been submitted. We had closed our record. He only heard the staff's evidence.

One witness, Sergeant Phil Morrison, who is now Lieutenant Phil Morrison with the Missouri Highway Patrol, he was the entire case for the staff.

He had no direct testimony. He had no personal knowledge of any of the allegations against Mr. Gladstone, against Mr. Ainsworth. All of his testimony was hearsay. All of the documents that were entered into evidence to support any of the allegations against Mr. Gladstone or Mr. Ainsworth were hearsay and they were all objected to.

And I think that's critically important because the Missouri Constitution addresses the standard of evidence in these types of cases, and it expressly says in Article 5, Section 18, that the record must have competent and substantial evidence.
And the Missouri Supreme Court has held time
and time and time again, and we've cited it in our brief
and we cited it in our proposed findings of fact and
we've cited it in our objections, that hearsay is not
competent and substantial evidence if it's objected to,
and we did object to it.

So Mr. Steib heard the staff's testimony, all
which of was objected to. He did not hear the
Petitioners' evidence. He issued a recommendation, and
we waived his reading of the recommendation. Obviously
you all have had the opportunity to read it.

You will notice that in a six-day trial in
which the majority of the trial was put on by the
Applicants, the majority of the testimony was by the
Applicants, the vast majority of the documentary
evidence was by the Applicants, there is only one line,
one citation to one sentence in the entire
recommendation that relates to the testimony or the
evidence presented by the Applicants.

And that is one sentence pulled out of an
exhibit that was put on by the Applicants that was not
in relation to the count in which the citation was
referred to.

I'm not going to go again through the full
record. I'd like to kind of get into the counts because
I know my time is running very quickly here.

There were seven counts that dealt with Leonard Hastings Ainsworth. Those are Counts 3, 4, 6, 7, 8, 9 and 10. Every one of those counts is more than 30 years old.

Leonard Hastings Ainsworth testified extensively as to the facts in every single one of those counts. There was no -- and I emphasize that -- no contradicting evidence that was competent and substantial put on to counter one word that Leonard Hastings Ainsworth testified to.

There was hearsay but it was objected to, and as we've indicated, the Supreme Court says you can't rely on that. There were no authenticated documents. Records were put in over our objection without having been authenticated.

There was no custodian of records who said this is an actual record. There was nobody who said I prepared the record. Records were simply put into evidence over our objection.

There were -- these counts that are raised -- arose 30 years ago arose out of Australia. The Licensing Court of New South Wales Australia, where all these issues rose, had an extensive hearing and trial many years ago, and they did have direct testimony and
they did have direct witnesses testify who had personal knowledge, and the Licensing Court of New South Wales cleared Mr. Ainsworth of every single one of these allegations after hearing real testimony and real evidence.

Those decisions were submitted into the record. In fact, they were certified by the courts of Australia. We didn't want to take any chances. We got an official court certification as to the records.

They should be controlling on these seven counts because they're the only court that has ever addressed every single one of these and heard actual testimony. They're not referenced in the recommendation.

As I noted earlier, the Highway Patrol investigators went to Nevada and they looked at the Nevada files. Nevada did a full investigation of Mr. Gladstone, Mr. Ainsworth and AGT. All of these issues were in the Nevada investigation.

Nevada licensed AGT, Len Ainsworth and Danny Gladstone. And, in fact, Sergeant Morrison -- excuse me -- Lieutenant Morrison in his own notes wrote the following. And we've quoted it but I think it's instructive to hear this. This is what the chief investigator from Nevada wrote that Sergeant Morrison
thought was so important that he wrote it verbatim in his notes.

After 30 years of LHA, Len Ainsworth, fighting the allegations of wrongdoing, his reputation was damaged. He was forced to relinquish control of the company he built from the ground up, Aristocrat, and in the end there were never any criminal convictions or legal documentation to prove any of the allegations against Len Ainsworth. In 2009 Nevada licensed AGT, Len Ainsworth and Danny Gladstone.

There were two counts that involved Colorado and Missouri, and I call those the Colorado and Missouri counts because that's really what they arose out of. They don't arise out of anything that had to do with Mr. Ainsworth or AGT. They arise out of things that occurred with Aristocrat.

As I noted before, Mr. Ainsworth, AGT, Mr. Gladstone were never applicants in Colorado or in Missouri prior to the application that is in front of you today.

They agreed they would never talk to Len Ainsworth in return for getting a license. They entered into an affidavit to that effect, saying we promise we will not talk to Len Ainsworth.

Nobody told Len Ainsworth this. The Gaming Commission, as you all very well know after you --

EXECUTIVE DIRECTOR STOTTLEMYRE: Two minutes.

MR. ELLINGER: Thank you.

-- after you issued a resolution, you had sent certified mail that resolution. None was ever sent to Mr. Ainsworth. He never had knowledge of it.

The same thing happened in Colorado, almost exactly the same thing. Mr. Ainsworth fought it and he prevailed in the courts of Colorado, and Colorado withdrew everything related to Mr. Ainsworth.

As my time is running short, I would like to touch on a couple other things very quickly.

There were two counts that related to Mr. Gladstone, Counts 5 and 12, that dealt with gaming offenses in New South Wales more than 30 years ago.

The Highway Patrol, the staff's witness, said these are basically infractions. They were expunged as a matter of law in Australia ten years after they happened. They happened in the mid '80s -- or excuse me -- early '80s. They were expunged ten years later.
That's 20 years ago they've been expunged.

He reported them. They should not be held against him in light of the whole man. He's recognized with many awards, honors, recognitions across the nation, across Australia. He's even saved lives as a lifeguard.

There is even an error in the recommendation. We cited that in our objections, that everybody agreed there was a mistake in the original Order, and it's restated again in the hearing officer's recommendation.

There was never a finding of any denial or unsuitability with respect to Mr. Gladstone in Oregon as Count 12. It simply didn't exist.

Finally there's Count 1 that deals with the production of documents, and as I know my time is very short, I will say that a number of litigation files were requested going back in the '70s and early '80s, I think a couple from the very early '90s.

AGT left no stone unturned to find those documents. They went to their counsel. They no longer retained them. It was 30 years ago. They went to the Australian courts, and unlike American courts, Missouri courts, which I'm used to, they don't retain those records. They even certified that they didn't exist anymore.

We couldn't produce what we couldn't produce.
EXECUTIVE DIRECTOR STOTTLEMYRE: It's time.

MR. ELLINGER: Thank you.

I'd ask that you all adopt our findings of fact, conclusions of law and license AGT, Mr. Ainsworth, Mr. Gladstone.

I'd be happy to answer any questions.

CHAIRMAN HATCHES: Thank you.

Any questions from the Commissioners?

Thank you.

MR. ELLINGER: Thank you very much for your time.

CHAIRMAN HATCHES: Now we will hear arguments from the Attorney General's Office.

MS. CHURCHILL: Good afternoon, Chairman Hatches and members of the Commission. My name is Patricia Churchill and I'm here on behalf of the Commission today.

I wanted to start out by just -- with the concept that a gaming license is a privilege. It's not a right. Licensed gaming is a matter that is reserved to the states within the meaning of the Tenth Amendment of the United States Constitution and the states can decide where -- each state can decide for itself how and when to allow gaming and how to regulate it.

And the burden is on the Applicant to prove
their suitability, and they must prove that suitability
by clear and convincing evidence.

Mr. Ellinger made reference to and used
actually the same word I planned to use about this
record. It's daunting. I found it daunting to go
through it. The sheer volume could be overwhelming.

I kept the exhibit boxes in an office down
the hall and would go get one at a time when I needed it
so I wouldn't be overwhelmed by the number of boxes.

So I wanted to provide a little context today
in light of that large record, and the first is in the
context of who bears the burden of proof.

The burden of proof, suitability, lies with
the Applicants, and they must prove their suitability to
you by clear and convincing evidence.

The Court of Appeals in Teague, which is an
earlier gaming license denial case, put it this way:
The Commission bears no burden to demonstrate that an
applicant is suitable. The burden is entirely the
applicant's to prove suitability for licensure.

And the Petitioners mention that there were
no interviews, personal interviews, conducted. Well, in
part this is the Petitioners, the Applicants, burden to
prove. It's their burden to bring forward.

The court in Teague also said an applicant
can prove suitability only by fully and completely providing all of the information requested on the application.

The second context I'd like you to consider and keep in mind is the standard of proof. The Petitioners must prove their suitability by clear and convincing evidence. The clear and convincing standard has been addressed many times over the years.

One of the cases puts it like this. This is the case of Farnsworth. I have copies if you are interested in some light reading when you retire to deliberate.

But the clear and convincing standard refers to evidence that instantly tilts the scales in the affirmative when weighed against evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true.

This is a significantly higher standard than a preponderance of the evidence. It cannot simply be a little more likely than not. It must immediately tip the scales and leave you with an abiding conviction as to their suitability.

The final context that I ask you to remember today is that of the history of gaming in Missouri.
The court in Teague described it this way.

Excuse me. It wasn't Teague. It was Pen-Yan.

Gambling has historically been a crime in Missouri, Article III, Section 39(9). In fact, the Missouri Constitution prohibits games of chance.

Chapter 572 of the Revised Statutes criminalizes illegal gambling activities.

But Chapter 572 specifically excludes licensed activities by the Missouri Gaming Commission.

So what would otherwise be a criminal activity is rendered lawful by the granting of a license by the Commission.

The court said this -- and I'll try to do a direct quote -- in easing the total criminal prohibition against gambling in Missouri and to ensure that there the remaining restraints on this otherwise criminal activity are not violated, the State is necessarily concerned that riverboat gaming operations within its borders be strictly monitored and regulated.

Moreover, this concern is heightened in light of a legitimate concern that a riverboat gaming license in the state will fall prey to corruption and will attract related criminal activity.

This then, the court said, is the evil that the Commission seeks to cure, and they were referring to
in the regulation of licensed gaming activities.

Petitioners made a lot of the fact that they're licensed in other jurisdictions and that other jurisdictions have looked at some of these facts and found that they were suitable for licensure.

But as I mentioned in the beginning, this is -- the licensing of gaming activities is something that is reserved to the states, and each state can choose what standards it chooses to license entities by.

It made me think a little bit of -- it's a little hokey but I'm going to go with it. Woodworking 101 is you don't use Board No. 2 to cut Board No. 3 to cut Board No. 4. If you just look to what the last cut was, by the time you get to your final cut, you will be very far off your mark.

We can't just look to what other gaming commissions did. So it's not enough to do that, and the fact that a person may be licensed elsewhere is not clear and convincing evidence of their suitability for licensure in Missouri.

In the interest of time -- there is one other thing. Mr. Ellinger mentioned in his remarks that all hearsay testimony was objected to, and I wanted to point out that not all evidence was objected to, in particular Exhibits N1 through N6 were the unredacted report.
Those came in without objection by the attorneys for the Applicants. So there are things like that.

There are some things that I'll cover here, if I have time to get to them, on a few of the articles that are also not hearsay, that are substantial and competent evidence that you can rely on as you make your decision about suitability.

The first article is Article 1. That's related to Question 34, the disclosure of litigation that the Applicants are involved in or have been involved in.

And the question asks if you've ever been involved in a lawsuit either as a Plaintiff or a Defendant, and they list matrimonial matters, car accidents. It wants everything.

And then it says in bold letters, please provide a copy of all documentation in any of the above matters. It also says, yes, if you've been involved in litigation, please complete the following chart.

So if you read this question, you can tell that the Applicant is to provide two things if they've been involved in litigation. The first is the list of all of the lawsuits and the second, which is requested in bold print, is a copy of all of the documentation.

So this question requires Petitioners to
provide documentation for all of the listed cases. They didn't.

In their post-hearing brief the Petitioners themselves tell you that they didn't provide a copy of all that documentation but instead they provided a list of cases.

Even at that, the list doesn't include quite everything that is on the Question 34. There weren't addresses provided to the court. There were a few instances that the dates weren't fully set forth.

But it was an extensive list and I'll give them that. It was 266 cases. So subsequent to submitting this list of 266 cases, Sergeant Morrison did request some specific court records. He asked for all court records regarding 21 of the 266 cases. That's less than 8 percent of all of those cases.

AGT provided some documentation, though they concede that in at least one instance they inadvertently omitted 100 pages, roughly 100 pages.

AGT in their objections attempts to shift the blame -- or excuse me -- shift the burden to the Commission, complaining that the Commission didn't contact them to inform them that there were missing pages.

This is where I want to bring you back to
what the court said in Teague. The Commission doesn't bear the burden to prove the Applicant is suitable. The burden is the Applicant, and they can do that by providing full and complete information that's been requested.

So in not fully and completely providing all that information, they've failed to instantly tip the scales and they don't leave us with an abiding confidence as to their suitability.

The next article I would refer to is Article 5, which relates to Mr. Gladstone's disclosure in his application of one driving under the influence conviction. For gaming-related convictions I believe there were three premises betting, of one telephone betting, and I'll stay away from the dates because I don't have those in my notes.

The Petitioners contend that as infractions these gaming-related convictions should not be considered, yet the Gaming Commission's regs allow for the Commission to consider any criminal record, including even an ordinance violation.

The statutes and regs also allow the Commission to consider an Applicant if an Applicant has employed a person with a police record. The petition also argues that because the convictions are spent under
Australian law, they shouldn't be considered. That ignores the language really in Question 28 itself which requests disposition information, including specifically whether the Applicant has been pardoned.

If the Commission has an interest in knowing if someone has been pardoned or something, they are surely interested in knowing if the matter has been spent under Australian law, and Mr. Gladstone disclosed those.

In Missouri, even if the conviction is expunged or otherwise closed, it's available to law enforcement agencies and agencies like the Gaming Commission who are issuing a license.

Under 610.120 of the Revised Statutes, law enforcement records are closed and inaccessible like -- that are closed are inaccessible to the public but they're available to law enforcement agencies for issuing a license.

Under 610.140.8 of the statutes a person is specifically required to disclose an expunged conviction if they apply for a license under Chapter 313, the gaming chapter.

So the evidence shows that Mr. Gladstone had a police record and engaged in behavior that resulted in gaming-related convictions.
The Commission may consider this a substantial and competent evidence that this background would adversely affect the public confidence and trust in gaming.

And the last article that I'd like to get to is Article 12, which relates to AGT's license denial in Oregon due to Mr. Gladstone's convictions.

Evidence in the record shows that the Oregon State Police concluded in 2008, based on Mr. Gladstone's convictions, that AGT is, quote, not suitable.

Those were the words that they used to enter into contracts with four Oregon tribes, and that's in Commission Exhibit ZZ and Petitioners' Exhibit 11. They're the same.

The Petitioners' witness testified that AGT took umbrage at the use of that term and worked with the powers that be to try to change that language.

Petitioners also point out the 2008 letters were eventually replaced with new letters in 2010 with language that apparently was more palatable to them.

They also argued that Oregon tribes make no suitability determination.

I would refer you to Commission Exhibit AAA, which was admitted without objection, and in that 2011 letter Sergeant Dodd with the Oregon State Police
explained that the respective Tribal Gaming Commission issued the license but the Oregon State Police perform background investigations of gaming vendors and their key persons to determine if the vendors are suitable. Those are the words of the Oregon State Police. And based on the review that Sergeant Dodd concluded that AGT did not meet the criteria for four Oregon tribes. So they have failed to meet their burden and are subject denial under the provisions that we cited in our post-hearing brief.

I mentioned Exhibits N1 through N6 and I -- I am not positive because I didn't live through the hearing as my colleagues here, but I think that the reference to the Nevada Gaming Control Board about the 30 years, was that from Exhibit N, do you recall?

MR. ELLINGER: (Nods head.)

EXECUTIVE DIRECTOR STOTTLEMYRE: Two minutes.

MS. CHURCHILL: So I just wanted to reiterate to you that in addition to the ones I mentioned with the individual counts, I did not make a reference to the material in Exhibits N1 through N6 but that is something.

So just to wrap it back up, I want to bring it back to who has the burden. The Petitioners have the burden. It's their burden to prove to you their
suitability by clear and convincing evidence.
So when you weigh the evidence, the evidence
that shows their suitability must instantly tilt those
scales and leave you with that abiding conviction that
they are suitable.
We ask that you adopt the hearing officer's
findings of fact and conclusions of law and deny the
license to the Applicants.
CHAIRMAN HATCHES: Thank you.
MS. CHURCHILL: Questions?
CHAIRMAN HATCHES: Do the Commissioners have
any questions?
Next we will have rebuttal on behalf of the
Applicant.
MR. ELLINGER: Thank you, Mr. Chairman,
members of the Commission.
I will agree with Ms. Churchill that the
burden of proof does fall upon the Applicants. We know
that. We've all practiced gaming long enough to know
that the burden of proof is on the Applicants.
It is a clear and convincing standard, the
statutes and regulations say that, but to look at what
clear and convincing evidence means, she -- my opponent
indicated in a very nice quote, let's talk about tilting
the scale.
The key part of the citation that she gave you was not it shocks you into saying they're convincing. It is after weighing all of the evidence put on by one side against the evidence put on against it you come to that conclusion.

The only direct evidence in this case was put on by the Applicants. Len Ainsworth testified. Danny Gladstone testified. Nobody from Australia came to testify to counter any of those allegations.

You're supposed to weigh it against the other evidence, and the fact of the matter is there really isn't other evidence in this case.

Staff makes light of Exhibit N, and it's interesting that Exhibit N becomes the exhibit that they talk about. That was the one that was concealed. That was the one that was not produced in discovery. That was the one that was the subject of sanctions, because the original language that was given to us was Exhibit M.

Exhibit M didn't contain that language from the Nevada investigator. It didn't contain a lot of things that were exculpatory evidence, is ultimately why the sanctions were imposed.

So you look at the whole person. You look at the whole company. You look at Len Ainsworth. You look
at Danny Gladstone.

Len Ainsworth was inducted into the Gaming Hall of Fame in the United States and Australia. He received more awards and recognitions than I can literally spout off in my five minutes that I have up here, Manager Hall of Fame, Manager -- club Managers of the year. They received licenses in numerous states, all sorts of foreign jurisdictions. I mean, Danny Gladstone literally even saved lives. You have to look at all that in the entirety of evidence.

The evidence that is in the record proves far beyond clear and convincing standard, practically a criminal standard, beyond a reasonable doubt, that Len Ainsworth, Danny Gladstone and Ainsworth Game Technology are suitable.

They're upstanding members of the gaming industry. AGT is traded on the Australian Stock Exchange on the big board on the top 200 companies. These are mature gaming markets, mature gaming industry, and people that are vetted by everybody and every single time they've received licenses.

You know, I think the staff's comment is interesting that you can't just look at what other jurisdictions have done, and yet that's what the investigation consisted of, just looking at what other
jurisdictions did.

They never interviewed anyone. They never tried to find the actual answer to any of the questions. They raised allegations. We rebutted them.

EXECUTIVE DIRECTOR STOTTLEMYRE: Two minutes.

MR. ELLINGER: Not only did we rebut them, we showed all of the evidence to show that there was no support for those allegations.

We even put in certified court records that showed that these allegations were found to be meaningless.

You look at the Teague case, which staff relies upon, and you have a lot of familiarity with the Teague case.

The key part of the Teague case, and that dealt with the production of documents. In Teague, Mr. Teague did not disclose an arrest for -- I believe it was a drug offense, and the courts said that is material. That is a material issue you did not disclose.

When you go to every court in Australia and try to obtain court records, you cannot produce those court records. When you go to your lawyer and ask for a file and they tell you we've shredded the file, you cannot produce those records. That's not a material
violation.

The amount of time, effort, money that goes into trying to just produce one piece of paper that was unavailable was astronomical.

In fact, we had direct testimony by Mr. Dennis Vauran, who is Australian counsel, as to the efforts that they took, including sending lawyers to the courts to dig through files, still couldn't find them.

Finally, the staff talked about Oregon, and I think Oregon is instructive because there was a letter issued by the State police that said they were not -- that Mr. Gladstone was not suitable. It was withdrawn.

The staff has the other letter. It's in evidence. And it specifically says we withdraw the other letter. It was not correct. There was no determination of nonsuitability.

By the way, there was never a denial. That's undisputed. The word "denial" does not exist anywhere. It never occurred. And that's a unique term. Never anywhere does that exist.

Oregon withdrew that. Oregon sent a letter to the tribe saying if you have certain --

EXECUTIVE DIRECTOR STOTTLEMYRE: Time.

MR. ELLINGER: May I finish that one comment, Mr. Chairman?
CHAIRMAN HATCHES: Go ahead.

MR. ELLINGER: Oregon sent a letter to the tribe saying if you have Missouri-type language, look at the whole totality of the person's record. You can do business with them. Every tribe with that compact language, everyone is doing business with AGT.

Again, we'd ask that you find them suitable. I'd be happy to answer any questions

CHAIRMAN HATCHES: Any questions from the Commissioners?

Thank you.

MR. ELLINGER: Thank you very much.

CHAIRMAN HATCHES: Okay. The Chair would entertain a motion to go into closed session.

COMMISSIONER BRADLEY: I'll make a motion to go into closed session under Section 313.847, Revised Statutes of Missouri, covering investigatory, proprietary and application records, and Section 610.021, Subsection 1, concerning legal actions, and Subsection 14, Missouri records protected from disclosure by law.

COMMISSIONER JONES: Second.

CHAIRMAN HATCHES: Moved and seconded.

Angie, would you call the roll, please.

MS. FRANKS: Commissioner Howard.
COMMISSIONER HOWARD: Approve.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Approve.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Approve.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Approve.

Thank you. We're going into closed session.

(Closed meeting.)

CHAIRMAN HATCHES: Chair would entertain a motion to go back into open session.

COMMISSIONER BRADLEY: So moved.

COMMISSIONER JONES: Second.

CHAIRMAN HATCHES: Angie, would you call the roll, please.

MS. FRANKS: Commissioner Howard.

COMMISSIONER HOWARD: Approve.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Approve.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Approve.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Approve.

And you didn't even have to tell me.

Commissioner Jones was on top of it.
Before we move any further I would like to take just a minute to say a special thank you to the Commission for their hard work and deliberation. This was a tough process for us. This is one of the -- certainly one of I'll say the biggest deals we've worked on. They all have their value but this one has been really tough, and I certainly appreciate the Commissioners in their deliberation. It means a lot. And we are certainly a good team of independent thinkers and that too stretches the conversation. So again, thank you so much for staying here tonight and doing this. And we wanted to be able to at least get to a point where we could make a decision tonight rather than stop and start again tomorrow. So I appreciate your patience, too, in coming and going. And with that the Chair will now entertain a motion on the resolution.

COMMISSIONER HOWARD: I think I drew the short straw, didn't I, sir?

CHAIRMAN HATCHES: I don't remember.

COMMISSIONER HOWARD: I'll make the motion. I think we're in a position to be able to do this in the matter of Ainsworth Game Technology and Leonard Hastings Ainsworth and Daniel Gladstone, the
Missouri Gaming Commission Resolution No. 14-014.

Whereas, Ainsworth Game Technology, Leonard Hastings Ainsworth and Daniel Gladstone requested a hearing to contest the denial of their application for a supplier's licensure and key person's licensure by virtue of the Commission's resolution denying said application on September 28, 2011, Resolution No. 11-069, and whereas pursuant to 11 CSR 45-13.010, et. sequel, an administrative hearing has been held on the Applicants' request and the hearing officer has submitted the proposed findings of fact, conclusions of law and final order attached hereto, collectively the final order for approval by the Commission, and now therefore be it resolved that the Commission has reviewed the final order and hereby rejects the attached final order in the matter of Ainsworth Game Technology, Leonard Hastings Ainsworth and Daniel Gladstone and does hereby grant their application for licensure, and be it further resolved that this shall be considered a final decision of the Missouri Gaming Commission, that stated April 29th, 2014.

COMMISSIONER BRADLEY: I second the motion.

CHAIRMAN HATCHES: Angie, call the roll, please.

MS. FRANKS: Commissioner Howard.
COMMISSIONER HOWARD: Approve.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Approve.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Approve.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 14-014.

CHAIRMAN HATCHES: Hearing no other business, the Chair would entertain a motion for adjournment.

COMMISSIONER BRADLEY: Motion to adjourn.

COMMISSIONER JONES: Second.

CHAIRMAN HATCHES: Angie, call the roll, please.

MS. FRANKS: Commissioner Howard.

COMMISSIONER HOWARD: Approve.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Approve.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Approve.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Approve.

We're done. Thank you.

WHEREIN, the meeting concluded at 7:50 p.m.
CERTIFICATE OF REPORTER

I, Patricia A. Stewart, RMR, RPR, CCR, a Certified Court Reporter in the State of Missouri, do hereby certify that the testimony that appears in the foregoing transcript was taken by me to the best of my ability and thereafter reduced to typewriting by me; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing 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.

______________________________
Patricia A. Stewart
CCR No. 401