BEFORE THE MISSOURI GAMING COMMISSION

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

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

Reported by:
Patricia A. Stewart, CCR 401
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AGENDA

I. Call to Order

II. Geographic Pay Disparities

III. Consideration of Minutes
   A. June 27, 2017
   B. June 28, 2017

IV. Consideration of Disciplinary Action
   E. Gaming Partners International USA
      1. DC-17-11011
   F. Tropicana Entertainment, Inc.
      1. DC-17-11114

V. Consideration of Placement on Exclusion List
   G. Christopher M. Mandina
      1. Resolution No. 17-041
   H. Wayne C. Martin, III
      1. Resolution No. 17-042

VI. Consideration of Licensure of Certain Level I and Key Applicants
   I. Resolution No. 17-043

VII. Consideration of Relicensure of Certain Suppliers
      1. Resolution No. 17-044
   K. Gaming Partners International USA, Inc.
      1. Resolution No. 17-045

VIII. Consideration of Hearing Officer Recommendations
   C. Pinnacle Entertainment, Inc.
      1. Resolution No. 17-039
   D. PNK ("River City"), LLC
      1. Resolution No. 17-040

IX. Motion for Closed Meeting under
XI.  Motion for Closed Meeting under Sections 313.847 and 313.945, RSMo., Investigatory, Proprietary and Application Records and 610.021(1), RSMo., Legal Actions, (3) & (13) Personnel and (14) Records Protected from Disclosure by Law
PROCEEDINGS

CHAIRMAN KOHN: Good morning everybody.

We'll call the meeting of the August 30, 2017 Missouri Gaming Commission to order.

Angie, please call the roll.

MS. FRANKS: Commissioner Lombardo.

(No response.)

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Present.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Present.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Present.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Present.

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

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

MR. MCGRAIL: Thank you.

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

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

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

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

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

MS. CLUTTER: No.

MR. MCGRAIL: Pretty close.

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

(Applause.)

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

So thank you and congratulations.

MS. CLUTTER: Thank you.

CHAIRMAN KOHN: We have a new commissioner.

MR. MCGRAIL: I have one more.

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

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

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

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

This is an employee -- this is a person that is seen when people come to the Missouri Gaming Commission. She's always extremely pleasant, with a constant smile on her face and offers assistance to all employees in the public. This employee takes on an
extra responsibility that anyone asks her to do at a
drop of a hat and never complains. She remembers
everyone's birthday and anniversary. She's a leader in
promoting good office morale with her genuine happy
demeanor.

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

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

(Applause.)

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

But congratulations.

MS. MCDANIEL: Thank you very much.

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

MS. MCDANIEL: Thanks, guys.

CHAIRMAN KOHN: Quite a writeup that he read.

I want to introduce a new commissioner we
have with us. Larry Hale served for a long time and did
an outstanding job, and we want to thank him for his
service, and he has now been replaced by the Governor.
The Governor named Dan Finney who is an attorney from
the St. Louis area, and we welcome him and thank him for
being with us, and I hope you enjoy your service here as
much as the rest of us do. So welcome and
congratulations.

COMMISSIONER FINNEY: Thank you, Chairman.

CHAIRMAN KOHN: A couple of changes to the
agenda that I think will impact some of you.
First of all, you saw that we had a
presentation called on the agenda geographic pay
disparities, and that was going to be a presentation by
a Drew Juden, and he had to cancel this morning, so we
will not be having that presentation.

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

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

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

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

COMMISSIONER JAMISON: So moved.
COMMISSIONER NEER: Second.
CHAIRMAN KOHN: Angie.
MS. FRANKS: Commissioner Neer.
COMMISSIONER NEER: Approve.
MS. FRANKS: Commissioner Finney.
COMMISSIONER FINNEY: Approve.
MS. FRANKS: Commissioner Jamison.
COMMISSIONER JAMISON: Approve.
MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.
MS. FRANKS: By your vote you've adopted the minutes of the June 27, 2017 meeting.
CHAIRMAN KOHN: Now, if you recall, the June meeting was in Kansas City and it was actually a two-day meeting, so we also have minutes of the meeting of
June 28.

Is there a motion to approve those minutes?

COMMISSIONER NEER: Motion to approve.

COMMISSIONER JAMISON: Second.

CHAIRMAN KOHN: Angie.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

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

CHAIRMAN KOHN: Okay. Thank you very much.

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

Tim.

MR. MCGRAIL: Yes.

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

MR. GREWACH: Thank you, Deputy Director
McGrail, Mr. Chairman, Commissioners.

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

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

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

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

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

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

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

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

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

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

The supplier's response indicated that they had taken remedial action to address this problem, that they expanded their plant in Blue Springs, Missouri, that they invested substantial sums in new equipment. They increased staff to include a site manager, a manufacturing engineer and an equipment specialist.
They also indicated that they had a 99.7 accuracy rate for cards that were shipped in the state of Missouri. Considering that then the staff agreed to reduce its recommendation to $2,500, which is the recommendation we're presenting to the Commission today on this Preliminary Order of Discipline.

CHAIRMAN KOHN: Any questions of Ed?
COMMISSIONER JAMISON: No.
COMMISSIONER NEER: No, sir.

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

COMMISSIONER JAMISON: So moved.
COMMISSIONER NEER: Second.
CHAIRMAN KOHN: Any discussion on the motion? Angie.

MS. FRANKS: Commissioner Neer.
COMMISSIONER NEER: Approve.
MS. FRANKS: Commissioner Finney.
COMMISSIONER FINNEY: Approve.
MS. FRANKS: Commissioner Jamison.
COMMISSIONER JAMISON: Approve.
MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.
MS. FRANKS: By your vote you've adopted DC-17-110.
MR. GREWACH: Under Tab F we have a Preliminary Order of Discipline directed to Lumiere Place Casino for failing to properly collect cards and for falsifying information on card collection and destruction logs.

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

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

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

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

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

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

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

We knew that information, that log, was false because, in fact, there were 18 decks that were still locked in that pit podium. Further, when we looked at the destruction log, we saw that when we added up the numbers of cards returned to storage and the cards destroyed, those numbers again equaled the numbers
delivered, the numbers collected, so we knew that number was wrong because there were still 18 cards in the pit podium, which obviously had been indicated in the destruction log had been destroyed.

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

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

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

They indicated that they had also conducted additional training, and they also had just completed -- we do compliance audits on a regular basis, on a
rotating basis, and our most recent compliance audit of this particular property was completed on May 17, 2017. The property indicated that they were in response to the direction from that audit taking additional steps to try to address this particular problem.

The staff recommendation is a $10,000 fine.

CHAIRMAN KOHN: Any questions of Ed?

COMMISSIONER JAMISON: Yes.

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

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

COMMISSIONER JAMISON: Right.

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

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

MR. GREWACH: Right. They just carried the number down. They just plugged in the number saying, okay, here is what I started with. So then they just
put that same number in collection and then they, you know, did the same numbers to add up. So in those two stages where they should have been counting the cards, the decks of cards --

COMMISSIONER JAMISON: They were skipping that stage?

MR. GREWACH: -- they did not.

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

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

COMMISSIONER JAMISON: Okay.

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

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

CHAIRMAN KOHN: Ed, I have a question.

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

MR. GREWACH: My information is it was a result of a different problem, but I don't know the
definitive answer to that. He did receive as a result of this case a 30-day suspension.

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

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

CHAIRMAN KOHN: Any other questions?

COMMISSIONER FINNEY: One question. Did you learn as to why those 18 decks were not included, why they were left behind?

MR. GREWACH: No, we did not. As you see, when you look at some -- at one of the prior cases -- two of the prior cases, one involving cards, one involving dice, it was the same problem on those too, that decks were left and dice were left in a podium and not collected.

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

CHAIRMAN KOHN: Any other questions?

If not, is there a motion regarding DC-17-111?
COMMISSIONER JAMISON: I'll move for adoption.
CHAIRMAN KOHN: Is there a second?
COMMISSIONER FINNEY: I'll second.
CHAIRMAN KOHN: Further discussion on the motion?

If not, Angie, please call the roll.

MS. FRANKS: Commissioner Neer.
COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.
COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.
COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.

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

CHAIRMAN KOHN: Ed.

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

Our Rule 15.030 sets forth criteria for the placement of someone on the involuntary exclusion list, and from the list of causes that are applicable to place someone on that list, the two that apply in this
On February 23rd, 2007 Mr. Mandina placed himself on the voluntary exclusion list, or we refer to it as the disassociated person or DAP list.

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

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

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

So the slot supervisor approached Mandina with the paperwork. Now, Mandina at that point in time signed another person's name and gave another person's
Social Security number when he filled out that report. When the slot supervisor told him he would also need identification, then Mr. Mandina fled the casino.

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

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

On October 27th --

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

MR. GREWACH: By flee.

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

And the officers had, you know, told him to stop, told him to get out of the car and he resisted arrest by fleeing the officers.
On October 27th, 2015 Mr. Mandina pled guilty in the St. Louis City Circuit Court for two counts of a Class C felony of forgery, two counts for trespass for being a disassociated person on the casino floor and one count of a Class D felony of resisting arrest. He received a suspended imposition of sentence with a condition that he not enter Lumiere Place Casino during the term of his probation. His actions and his plea constitute a violation of 313.813 and also constitute an act adversely affecting public trust and confidence in gaming and, therefore, make him eligible for the involuntary exclusion list.

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

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

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

COMMISSIONER JAMISON: In Missouri?

MR. GREWACH: In Missouri, right.
CHAIRMAN KOHN: Okay. Any questions of Ed?
That's all this guy did?
MR. GREWACH: That was it.
COMMISSIONER JAMISON: A clarification between the DAP and the exclusion list. A person can put themselves on the DAP list and take themselves back off the DAP list because that's a voluntary list to be on. This exclusion list is not something he has any control over.
MR. GREWACH: That's correct.
Commissioner Jamison pointed out five years after you sign on to the list you can remove yourself from the list.
So that's the motivation for us pursuing this involuntary exclusion, so it is a permanent exclusion from all Missouri casinos.
CHAIRMAN KOHN: Any other questions of Ed?
Is there a motion regarding 17-112?
COMMISSIONER NEER: Motion to approve.
COMMISSIONER JAMISON: 17-041.
CHAIRMAN KOHN: I'm sorry. 17-041.
COMMISSIONER JAMISON: I move for adoption.
COMMISSIONER NEER: Second.
CHAIRMAN KOHN: Discussion on the motion?
Angie.
MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

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

CHAIRMAN KOHN: Okay. Ed, one more.

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

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

On March 28th, 2017 Mr. Martin pled guilty in Federal Court to wire fraud in relation to these
charges. He was placed on five years supervised
probation, ordered to pay restitution of $235,000 to his
business partner.

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

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

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

CHAIRMAN KOHN: Any questions?
Is there a motion with respect to Resolution
No. 17-042?

COMMISSIONER NEER: Motion to approve
Resolution 17-042.

CHAIRMAN KOHN: A second?
COMMISSIONER JAMISON: Second.
CHAIRMAN KOHN: Discussion on the motion?
Angie.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

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

CHAIRMAN KOHN: Mr. McGrail.

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

CHAIRMAN KOHN: Sergeant Bennett.

SERGEANT BENNETT: Good morning, Chairman, Commissioners.

CHAIRMAN/COMMISSIONERS: Good morning.

SERGEANT BENNETT: Missouri State Highway Patrol investigators, along with Missouri Gaming Commission financial investigators, conducted comprehensive background investigations on key and Level I applicants. The investigations included but
were not limited to criminal, financial and general
character inquiries which were made in the jurisdictions
in which the applicants lived, worked and frequented.

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

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

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

COMMISSIONER JAMISON: No, sir.

COMMISSIONER NEER: No, sir.

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

COMMISSIONER JAMISON: So moved.

COMMISSIONER NEER: Second.

CHAIRMAN KOHN: Discussion on the motion?
Angie.

MS. FRANKS: Commissioner Neer.
COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.
COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.
COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 17-043.

CHAIRMAN KOHN: Okay. Mr. McGrail.
MR. MCGRAIL: The next item on the agenda is Consideration of Relicensure of Certain Suppliers. Sergeant Julie Scerine will make the presentation.

SERGEANT SCERINE: Good morning, Chairman, Commissioners.

CHAIRMAN KOHN: Good morning, Sergeant Scerine. How are you?

SERGEANT SCERINE: Good. How are you?

Missouri State Highway Patrol investigators conducted the relicensing investigation of two supplier companies currently licensed in Missouri. These investigations consisted of jurisdictional inquiries, feedback from affected gaming company clients, a review
of disciplinary actions, litigation and business credit profiles, as well as a review of the key persons associated with each company.

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

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

CHAIRMAN KOHN: Are there any questions of Sergeant Scerine?

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

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

Now, for both of these, just to give background on how the process works, when it's
reported -- and it's a regulatory violation because the regulation requires them to file the renewal application within 120 days of the due date, and the reason behind that rule is that the investigation takes some time and their license expires on a certain day, so give us enough lead time to do that.

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

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

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

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

MR. GREWACH: We do.

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

MR. MCGRAIL: We can do that.

COMMISSIONER JAMISON: That would be appropriate.

CHAIRMAN KOHN: That's a good idea.

Any other questions or comments?

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

CHAIRMAN KOHN: Is there a second?

COMMISSIONER FINNEY: Second the motion.

CHAIRMAN KOHN: Thank you, Sergeant.

Any discussion on the motion?

Angie.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.
MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

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

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

COMMISSIONER JAMISON: So moved.

COMMISSIONER NEER: Second.

CHAIRMAN KOHN: Discussion on the motion? Angie.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

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

CHAIRMAN KOHN: Thank you.

Now we're going to go back up to the Item No. Roman Numeral IV on the agenda, which is Consideration of the Hearing Officer Recommendations with respect to Pinnacle Entertainment and PNK, or River City.
And before we start let me remind the participants in this matter, as well as the Commission, of the process we're going to follow, and this was set forth in the letter to the attorneys for the two sides on August 16.

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

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

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

After the arguments and questions have been answered as asked by the Commission members, we may go into closed session to discuss the matter, and as I said
at the beginning, we will then come out and report our
decision.

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

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

MR. STEIB: Good morning.
CHAIRMAN/COMMISSIONERS: Good morning.
MR. STEIB: May it please the Commission.
COMMISSIONER NEER: Two minutes are up.
(Laughter.)
MR. STEIB: We are here this morning to
address the issue of Pinnacle Entertainment DC-317 and
River City which is DC-319.

Pinnacle is a Nevada corporation and the
possessor of a Class A license. River City is a
Missouri corporation and a possessor of a Class B
license. Pinnacle is the parent corporation of
River City.

By agreement of counsel these matters were
considered as one during the discovery process, and one
hearing was held concerning both of these. And as the
Chairman points out, because of the commonality of
issues they will be addressed singularly today.

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

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

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

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

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

Further, 11 CSR 45-5.181(2)A provides that no
false or misleading statements shall be made by any licensee concerning a promotional activity.

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

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

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

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

The licensees base this on two theories, that of collateral estoppel and res judicata. The licensees attempted repeatedly to introduce into the record into
this hearing the case of In Re: Shannon Hoffman, which is DC-172.

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

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

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

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

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

Res judicata as defined in Black's Law
Dictionary, which is the Bible for most practicing attorneys, defines res judicata as a motion adjudged, a thing already decided to be applicable -- counsel requires eyes -- to be applicable requires the identity of the things sued for, as well as the identity of the cause of action of the persons and parties to the action.

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

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

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

At the hearing conducted in December a witness was called for the Commission, which that witness brought with her certain papers from which she testified. When she did that, the counsel for the licensees sought access to those papers. The counsel for the Commission objected saying that they contained
proprietary information.
CHAIRMAN KOHN: Who is this person?
COMMISSIONER JAMISON: It was one of our
staff. It was Cheryl.
MR. STEIB: The person was an employee of the
Commission.
CHAIRMAN KOHN: Of the Commission. Okay.
MR. STEIB: She appeared at the hearing, had
certain papers which she used and testified. Counsel
for the licensee requested access to those papers.
Counsel for the Commission objected saying that it
contained proprietary information.
COMMISSIONER NEER: Why were those papers
sealed, sir?
MR. STEIB: Let me get to that.
Based on that request and based on the
objection for proprietary information, as counsel knows,
when a witness comes to a hearing and brings certain
papers and testifies from them, opposing counsel has a
right to have access to those papers and a right to
interrogate the witness regarding those papers. Not
necessarily possession of them but has access to those
papers that that witness has used in testifying.
Counsel for the licensees requested access to
those papers, was given access to those papers,
interrogated the witness regarding those papers, but based upon the contention of the counsel for the Commission that these papers contained proprietary information, counsel for the licensees was not given possession of those papers, although he did have the opportunity to examine them and interrogate the witness regarding those papers.

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

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

Further, based upon the evidence adduced and the testimony of witnesses and the record as a whole, it's the recommendation of the hearing officer that River City did not meet its burden of proof to show by clear and convincing evidence that it should not be subject to discipline and, therefore, it should be fined
in the amount of $10,000.

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

MR. STEIB: That's true.

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

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

CHAIRMAN KOHN: Any other questions of Mr. Steib?

COMMISSIONER JAMISON: No, sir.

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

MR. STEIB: You're welcome.

CHAIRMAN KOHN: With that we're ready for oral arguments, and we'll begin with Mr. Bednar. Do you need a Black's Law Dictionary?

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

May it please the Commission and
Mr. Chairman.

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

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

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

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

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

Because he goes on to state that the problem herein is that 5,000 patrons of River City Lumiere and Pinnacle had been adversely affected, was recognized by
River City and Pinnacle on April 19th, 2012 but no notice was given to the Gaming Commission for River City or Pinnacle until November 30th, 2012, some seven months later.

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

COMMISSIONER JAMISON: That would be four licensees.

MR. BEDNAR: Pardon?

COMMISSIONER JAMISON: That would be four.

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

COMMISSIONER JAMISON: Okay.

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

COMMISSIONER JAMISON: But there was four originally?

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

COMMISSIONER JAMISON: Okay.

MR. BEDNAR: The importance is that what is also included in the same rule is that licensees shall
take reasonable actions to safeguard from loss all
tokens, tickets, chips, checks, funds and other gaming
assets.

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

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

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

COMMISSIONER JAMISON: I have a question at
this point.

MR. BEDNAR: Sure.

COMMISSIONER JAMISON: Do you think that a
notification was required by rule?

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

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

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

COMMISSIONER JAMISON: Okay. So when --

MR. BEDNAR: Quite frankly --

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

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

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

MR. BEDNAR: There was no evidence that any harm had occurred. It was taken upon -- Ms. Hoffman had
made the decision, along with the software designer, who
told her to make a change. She told the software
designer there was some issues at other properties. He
said change them all everywhere.

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

COMMISSIONER JAMISON: But she did change an
internal control?

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

COMMISSIONER JAMISON: She changed the
calculation of the software?

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

COMMISSIONER JAMISON: In a promotion?

MR. BEDNAR: -- to follow the rules.

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

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

The issue in this case is whether or not
the -- the 5,000 patrons that are harmed, that wasn't
identified until November.

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

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

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

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

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

MR. BEDNAR: Correct.

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

MR. BEDNAR: No.

COMMISSIONER JAMISON: -- that the casino had been mistreated for 19 days. Because if you made a software change on April 20th, you assumed that there
was a problem between April 1st and April 20th.

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

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

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

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

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

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

MR. BEDNAR: Could have been.

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

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

COMMISSIONER JAMISON: So we're back to my question. On April 19th should there have been a report
made, and if you thought there was a problem with the software up to for 19 days and you thought it was important enough to change the software, then for 19 days should have been made a report to the Missouri Gaming Commission?

MR. BEDNAR: That is a possibility.

COMMISSIONER JAMISON: Okay.

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

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

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

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

MR. BEDNAR: But that's not at issue in this case. I mean, I hate to be legal and technical about it, but the fact is that if that was the claim, it should have been brought as a claim, that, in fact, that instance should have been reported, not the fact that
COMMISSIONER JAMISON: So where do you think the promptly comes from? Because the hearing officer did say that there was seven months from the time of the occurrence until the time of the notification. That would take me from November back to April. So I do think that the hearing officer noted that the prompt notification occurred seven months after the hearing officer's perception of when the notifications should have occurred.

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

COMMISSIONER JAMISON: You say it is.

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

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

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

COMMISSIONER JAMISON: Okay.

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

The issue on April 19 is we didn't install
appropriate software. We installed inappropriate
software.

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

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

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

MR. BEDNAR: Well, for purposes of compliance
and discipline it's significantly relevant, because if
the issue was we installed the wrong software from
April 1st to April 19th and didn't report that, that's a
separate issue. If the issue is the software installed
between April 19th and November 20th was inappropriate
software, that's what's under litigation today. And
those things have to be separated under the rule of law.
And so the issue was as soon as Pinnacle --
and again, the people at hearing today are Pinnacle and
River City and when were they aware of the problem. So
if they -- let me finish.

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

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

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

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

And, in fact, Ms. Alonzo testified as a part
of the Commission's case that Exhibit 6 was e-mails from
the licensees to her, to the Commission notifying them
on November 30th that there was a problem the day after
they found out there was a problem.

COMMISSIONER JAMISON: Okay.
MR. BEDNAR: That's Exhibit 6.
So all that would indicate it was prompt
notice, because the evidence in this case is they found
out on November 29th and notified the Commission on
November 30th. That's the facts of this case for the
inappropriate software that was installed on April 19th.
So I believe that from November 29th to November 30th
is, in fact, prompt notice.

COMMISSIONER JAMISON: Okay.
MR. BEDNAR: And the issue of should they
have reported what occurred between April 1st and
April 19th is a different issue. And what's --
COMMISSIONER JAMISON: I wouldn't agree with
you that it's a different issue. I don't understand but
I'm not going to argue anymore.
MR. BEDNAR: I believe it constitutes a
separate violation.

CHAIRMAN KOHN: Let's move on.
And I know that Ms. Hoffman is not before us
today, and I know that we're not trying to govern
Indiana's casino laws.

MR. BEDNAR: Right.

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

MR. BEDNAR: Correct.

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

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

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

And so upon hearing that from both the
Indiana and Louisiana property, she called the software
designer, who worked for a separate supplier licensee,
not in any way a member of Pinnacle's holdings or
River City's.

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

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

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

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

MR. BEDNAR: In the abundance of caution she
thought the change -- and based upon the information
from the software designer that there wasn't a problem, she made the change. That was her responsibility for both the properties and for Pinnacle.

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

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

CHAIRMAN KOHN: As it turns out?

MR. BEDNAR: As it turns out.

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

That's not at litigation here. The litigation here is they made a change on April 19 that they thought was a correct correction that turned out to be incorrect, and they didn't realize it was incorrect until November of 2012.
CHAIRMAN Kohn: And a separate question -- and again, I know that we're only dealing with the notice issue here, but I'm interested in knowing whether or not either any patrons of these two casinos or the State of Missouri lost any money or revenue or winnings as a result of this.

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

CHAIRMAN KOHN: How do you make a patron whole?

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

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

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

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

MR. BEDNAR: I believe there were multiple drawings because some of the people had already won.
CHAIRMAN KOHN: But there was a final drawing?

MR. BEDNAR: There was a final drawing.

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

MR. BEDNAR: No.

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

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

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

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

MR. BEDNAR: Thank you, Chairman.

So on the procedural issue, the res judicata issue is again there is process and substance, and people don't really like to get into the process in
res judicata and collateral estoppel. It may be one of the more confusing legal issues out there.

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

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

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

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

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

   COMMISSIONER JAMISON: Is that 13-328?

   MR. BEDNAR: Yes.
CHAIRMAN KOHN: In your opinion would August have been prompt?

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

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

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

CHAIRMAN KOHN: If it occurred in April.

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

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

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

What is occurring with the licensees today, with Pinnacle and for River City, PNK, is put you or
your respective businesses in the same position.
Everybody has an IT department today and everybody's
software is designed by somebody else and you have a
problem on your computer. In fact, I had a problem on
my computer this morning. I couldn't print anything
off. I couldn't have access to my e-mails.
Should the Chairman of the firm pay a penalty
or do you just go try to fix it with the IT people?
And, you know, nothing against IT people. That's a
different language entirely.
And so the fact is that Pinnacle, the
licensee Pinnacle -- and there is no identification in
any of the pleadings other than Pinnacle, the big guy,
didn't notify appropriately.
Their compliance officer -- it's
uncontested -- notified them on November 29th,
November 30th, and that's in the record, Exhibit 6 of
this hearing.
CHAIRMAN KOHN: You're going to have another
five minutes if you want it.
MR. BEDNAR: Thank you.
CHAIRMAN KOHN: So we'll move on.
Thank you very much, Mr. Bednar. We're ready
for Mr. Schube. I hope I'm pronouncing that correct.
MR. SCHUBE: That's correct. You're among
the one-third of people who get it right the first time.

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

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

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

Mr. Bednar mentioned that there were two separate issues, and we agree, but we pled both of those issues. So the first would be the failure to notify. That was pled. That is at issue here. The second is the failure to award the prizes according to the rules
governing the event. That was pled and that's also at issue here, and that's what we ask this Commission to modify today.

So I'd like to start with first the failure to report, and I'd like to start by reading the rule. Licensees shall, quote, promptly report to the Commission any facts which the licensee has, quote, reasonable grounds to believe -- that indicate a violation of the Commission rule.

So it's not a question of from April 1st to April 19th. It's not a question of whether there was a violation that had occurred. It's a question of whether there is a reasonable belief that a violation occurred. And in this case it was certainly reasonable enough for them to make changes to their IT. So in their mind there was something wrong with the promotion, and they thought it was serious enough that they needed to correct it, yet they didn't report it to the Commission.

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

If they had promptly reported it, the Commission might have pointed out to them that there was
no problem here. They may have prevented the issues
that did occur, but the cover-up led to a bigger issue.

COMMISSIONER JAMISON: Can you address
Mr. Bednar's point that the April issue is not part of
this notification?
I mean, when I questioned Mr. Bednar about
that, he said the April issue was not the notification
issue. It was the November issue. Can you clarify
that?

MR. SCHUBE: The failure to notice -- we
weren't taking notice from November 29th to
November 30th. Clearly that would have been prompt if
that would have been where the issue lie.
The issue was they found out about a
reasonable -- or had a reasonable basis to believe that
there was a problem on April 19th. They made the
correction on April 20th, and nobody knew about it until
November 30th.
And I think that that is important though
again. They found out about a secondary issue that
stemmed from the first one and that's when they reported
it. So it became a bigger issue and then that's when
they finally reported it. But they didn't report it
from the beginning when there was the first discovery of
a potential issue.
So to answer your question, the issue lies in April, not in November.

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

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

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

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

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

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

COMMISSIONER JAMISON: She wasn't the manager of the casinos, no.
MR. SCHUBE: She was employed by Pinnacle --
at least how we had it in the request for admissions,
employed by Pinnacle and manager for River City and
Lumiere.

CHAIRMAN KOHN: Like a casino manager of the
property?

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

MR. SCHUBE: Correct.

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

MR. SCHUBE: Mr. Jamison identified it
correctly.

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

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

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

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

CHAIRMAN KOHN: Okay.

MR. SCHUBE: So again in summary, we had a
potential issue discovered on April 19th. They made changes April 20th. And according to the testimony of Cheryl Alonzo, no notification to the Gaming Commission until November 30th.

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

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

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

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

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

So we had a seven-month period of time where patrons were not receiving those entries the way they
were supposed to, and that fact alone should be a
violation and a cause for discipline.

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

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

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

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

MR. SCHUBE: Correct.

CHAIRMAN KOHN: I asked Mr. Bednar if any
patrons were harmed and they said no. They were all
made whole. Do you disagree with that statement?
MR. SCHUBE: Correct. So that would be why they were harmed. The odds were affected either way. So let's look at it for someone --
CHAIRMAN KOHN: And they were not made whole?
MR. SCHUBE: That's our assertion.
Let's look at also from someone who played in December. Their odds would be lesser than the ones from earlier in the year because they have a bunch of entrants being bunched into the same time period as them. So even the players that weren't affected by the glitch were still affected by the glitch.
COMMISSIONER JAMISON: You're talking about the small drawings, not the --
MR. SCHUBE: The small drawings, yes.
COMMISSIONER JAMISON: The mega drawing --
MR. SCHUBE: Correct.
COMMISSIONER JAMISON: -- were corrected back to the same?
MR. SCHUBE: Correct.
COMMISSIONER JAMISON: If everybody brought their card in?
MR. SCHUBE: And that gets to my second point. So the rules say that you, quote, must bring postcard, so you'd have to bring it into the physical location. So that added an extra burden.
You know, what the rules would say is you play and you get the points, but according to this you have to bring in a postcard, so that is an extra burden. Let's say you're from Maine. So you're vacationing in St. Louis and you played in -- I don't know -- June, and then you get this postcard in the mail saying, hey, you know, you bring your card in and you can get these extra entries. Are you going to travel all of the way back to St. Louis just to get that? So even though there is no evidence to say that not everybody got it, it is still as an added extra burden, and it's probably not likely that every patron was able to redeem their entries. So that's the second violation and way that the affected patrons weren't made whole. So as a result I think there is three reasons to find that the entrants -- the entries weren't awarded according to the rules. The first, the proportional issue. The second is having to bring it in and just the fact that, you know, there is an extra burden. You had to come in rather than just getting it by playing. We do have one additional modification we want this Commission to make.

CHAIRMAN KOHN: I'm sorry. Let me interrupt.
You've said you want us to make modifications twice now. Do you have that language for us?

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

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

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

The second just on a small factual question.

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

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

CHAIRMAN KOHN: Okay. Go ahead.

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

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

Are there any other questions from the Commission?

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

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

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

MR. SCHUBE: Yes.

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

CHAIRMAN KOHN: It's additional.

MR. SCHUBE: Yes, we want a second cause for discipline.
COMMISSIONER JAMISON: Okay.

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

CHAIRMAN KOHN: Was it presented to him?

MR. SCHUBE: It was pled, yes.

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

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

CHAIRMAN KOHN: Okay. Mr. Bednar.

MR. BEDNAR: Thank you, Mr. Chairman.

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

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

MR. SCHUBE: Okay.

MR. BEDNAR: May it please the Commission.

CHAIRMAN KOHN: Yes, sir.

MR. BEDNAR: I must say it's a little
disappointing that five years after the fact they still want to amend their pleadings and bring additional charges.

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

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

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

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

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

      This issue -- before I forget, the sealing of
the records is outrageous. What I'm asking for was the results of cases. It's not -- the results of any case are public record. That was decided many years ago during the Webster administration that you cannot seal settlements. You cannot seal dispositions of official actions.

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

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

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

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

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

MR. BEDNAR: Okay.

CHAIRMAN KOHN: I thought the two dates were
April 19th and April 20th.

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

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

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

CHAIRMAN KOHN: Okay.

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

COMMISSIONER JAMISON: I have a question on that.

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

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

COMMISSIONER JAMISON: When we talk about responsibilities, is there supposed to be a responsibility for notifying up the chain from the IT to the appropriate compliance or management people? Should
there have been steps in there of notification?

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

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

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

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

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

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

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

COMMISSIONER JAMISON: April 19th.

MR. BEDNAR: I'm sorry.

On April 19th should have notified the
compliance person at the casinos and compliance at
Pinnacle.

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

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

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

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

MR. BEDNAR: No.

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

MR. BEDNAR: That's our responsibility.

There is no allegation we didn't train her right. There
is no allegation that --
COMMISSIONER JAMISON: You didn't do it though.

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

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

COMMISSIONER JAMISON: Well, whose responsibility is that?

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

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

MR. BEDNAR: They didn't initiate this until after Ms. Hoffman was disciplined. Okay? So that goes back to res judicata and collateral estoppel. And in
Missouri, not Black's Law Dictionary, but Missouri laws says that there is a defensive collateral estoppel, defensive res judicata that a nonparty can use.

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

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

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

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

CHAIRMAN KOHN: Are you saying she didn't
know the rule of notification?

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

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

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

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

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

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

MR. BEDNAR: Correct.

COMMISSIONER FINNEY: Why not?

MR. BEDNAR: That's when they first was aware that there was a problem, that the damages came in
from -- I believe it was compliance. I've got to go
back to my file. But the issues with the campaign
actually came to light on November 29th of 2012, that
there was actually a bad calculation, that the original
software that was -- the software that was installed on
the 19th was incorrect.

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

COMMISSIONER FINNEY: Okay.

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

MR. BEDNAR: Yes.

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

MR. BEDNAR: Yeah, just a second.

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

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

Identical parties, No. 1. 2 could have been
asserted. 3, same transactions. And the same
transactions, that would be this entire promotion, not --

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

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

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

MR. BEDNAR: It's right here.

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

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

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

So they didn't bring this action until a year
after they previously adjudicated and River City, PNK, paid the $10,000 fine. And in that language -- I've got copies of that previous order if you haven't seen it.

COMMISSIONER JAMISON: Was that connected to this software glitch?

MR. BEDNAR: It was connected to this promotion.

COMMISSIONER JAMISON: Just the promotion?

MR. BEDNAR: The promotion which is the transaction.

COMMISSIONER JAMISON: Okay.

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

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

CHAIRMAN KOHN: Thank you very much.

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

So I will ask a question. Is there a motion regarding Resolution 17-039 or alternatively is there a
motion to go into closed session to deliberate on those
two cases?

COMMISSIONER JAMISON: I move for going into
a closed.

CHAIRMAN KOHN: Do your magic words.
We're going to go into closed session,
discuss this, vote. If we reach a conclusion or if we
don't, either way, we'll come back out and announce what
if anything we have done with respect to this matter.

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

So with that go ahead.

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

CHAIRMAN KOHN: Is there a second?

COMMISSIONER NEER: Second.

CHAIRMAN KOHN: Angie.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.
COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

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

(Closed session.)

CHAIRMAN KOHN: Angie, please call the roll.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Present.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Present.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Present.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Present.

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

But we have had a very good discussion and I think we reached a good conclusion, and that conclusion will be reflected in the resolutions that Commissioner Jamison will report in just a moment, but let me tell
you how we got to where we did.

And let me start by the additional -- the requests for the additional report or -- I'm not even sure what it was called -- additional modification to the resolution. We are not going to adopt that. So we are only dealing with the original report of the hearing officer.

And here is what we concluded. We find that the casino absolutely had a duty to report this change on or about April 19 or April 20.

The fact that Shannon did not report to management is a matter of either lack of training and/or lack of supervision. We acknowledge that the basic fault was Shannon's and she has paid a penalty for that. However, we also find the casinos at fault for, as I said earlier, the lack of training or lack of supervision.

Therefore, we're going to adopt in a modified form the recommendations of the hearing officer, and that will be in two resolutions, the first one dealing with Pinnacle and the second one with River City.

Commissioner Jamison.

COMMISSIONER JAMISON: I move for adoption of Resolution 17-039 with an amended fine of $15,000.

CHAIRMAN KOHN: Is there a second to the
motion?

COMMISSIONER NEER: Second.

CHAIRMAN KOHN: Discussion on the motion?

COMMISSIONER JAMISON: No, sir.

CHAIRMAN KOHN: Angie.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.

COMMISSIONER FINNEY: Approve.

MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

MS. FRANKS: By your vote you've adopted Resolution No. 17-039 as amended.

CHAIRMAN KOHN: And now as to River City.

CHAIRMAN JAMISON: I move for adoption of 17-040 as recommended.

CHAIRMAN KOHN: Is there a second?

COMMISSIONER FINNEY: I second the motion.

CHAIRMAN KOHN: Discussion on the motion?

Angie.

MS. FRANKS: Commissioner Neer.

COMMISSIONER NEER: Approve.

MS. FRANKS: Commissioner Finney.
COMMISSIONER FINNEY: Approve.
MS. FRANKS: Commissioner Jamison.
COMMISSIONER JAMISON: Approve.
MS. FRANKS: Chairman Kohn.
CHAIRMAN KOHN: Approve.
MS. FRANKS: By your vote you've adopted Resolution No. 17-040.
CHAIRMAN KOHN: Thank you.
We are now going to go again into our regular closed session.
Commissioner Jamison.
COMMISSIONER JAMISON: I move for a closed meeting under Sections 313.847 and 313.945, Revised Missouri Statutes, investigatory, proprietary and application records, and 610.021, Subparagraph 1, Revised Missouri Statutes, legal actions, Subparagraph 3 and Subparagraph 13, personnel, and Subparagraph 14, records protected from disclosure by law.
CHAIRMAN KOHN: Is there a second?
COMMISSIONER NEER: Second.
CHAIRMAN KOHN: Angie.
MS. FRANKS: Commissioner Neer.
COMMISSIONER NEER: Approve.
MS. FRANKS: Commissioner Finney.
COMMISSIONER FINNEY: Approve.
MS. FRANKS: Commissioner Jamison.

COMMISSIONER JAMISON: Approve.

MS. FRANKS: Chairman Kohn.

CHAIRMAN KOHN: Approve.

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

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

We're going into closed session.

WHEREIN, the meeting concluded at 12:20 p.m.
CERTIFICATE OF REPORTER

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

__________________________
Patricia A. Stewart
CCR 401
MISSOURI GAMING COMMISSION
Second Open Session Minutes
August 30, 2017

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

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

The meeting ended at 12:51 p.m.