

BEFORE THE INDIANA GAMING COMMISSION  
REGULAR BUSINESS MEETING

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OCT 23 1996

INDIANA GAMING COMMISSION

TRANSCRIPT OF PROCEEDINGS

DATE: October 11, 1996

PLACE: Indiana Government Center South  
Auditorium

MEMBERS OF THE COMMISSION PRESENT:

Alan I. Klineman, Chairman  
Thomas F. Milcarek  
Donald R. Vowels  
Ann Marie Bochnowski  
Robert Swan

ALSO PRESENT

John J. Thar, Executive Director,  
and Members of the Staff

REPORTED BY: Rebecca J. Swinney, RPR

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(Meeting called to order at 11:00 A.M.)

**CHAIRMAN KLINEMAN:** We'll call the meeting of the Gaming Commission to order. Let the record show that all the commissioners except Commissioner Sundwick and Commissioner Ross are present. We do have a quorum and therefore we will conduct business.

First item on our agenda is the approval of the minutes of the meeting of September 6th, 1996, which is in your packet. Do I hear a motion to approve the minutes?

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** Next item, we lead right to Mr. Thar's report. The report of our Executive Director.

**MR. THAR:** Thank you, Mr. Chairman, the Members of the Commission. A few personnel issues to address the Commission on. Pam Ayres who was the Executive Secretary to the Commission has taken a position as an administrative aide at the director of the blind school. Her

last day then was one week ago today. We have wished her well in her new position. Thanked her for her fine work and many accomplishments.

Commissioner, she was the fifth employee and was one of the original people to help put all this together. We wish her well and we'll miss her also.

We have hired another staff attorney. Her name is Deana Garner. And she is anticipating starting with the Commission the week of November 4th, if not on November 4th.

Some legislative updates. The Johnson Act. As of approximately September 19th of this past month, it appeared that the proposed amendment of Representative Viscosky to amend the Johnson Act which would, in essence, have allowed the boats on Lake Michigan to sail without violating federal law was dead and it simply needed to be buried. It appeared that by the 23rd however, it had not only regained life by it had passed both Houses. And the best information we presently have is that it is

awaiting signature in the White House. We have not been advised it has been signed.

We have advised the boats on Lake Michigan that they are to take all steps necessary to insure that once any federal impediments to cruising are eliminated they will be expected to cruise.

We have contacted the U.S. Attorneys Office for the Northern District of Indiana for data review of the amendment with the hope of attaining an opinion from them that the amendment removes any federal legal impediment to the boats cruising.

We have also begun discussions with the United States Coast Guard to insure that all tests and regulatory requirements that they may have will have been complied with by the boats. So that when the go ahead is given the boats will be able to sail.

We have not concluded either the discussions with the Coast Guard or the U.S. Attorneys Office. Moreover, we have yet to see what the actual bill that is supposedly pending in the White House says. We have

received what we believe to be an accurate draft. But you never know until you actually see what's been signed.

The other issue on that is we don't know whether or not it will have an effective date or whether because it's an appropriations bill it could be retroactively effective to October 1, January 1, or whether it has a date of its own.

So at this point in time the only thing we really know is that the intent of the legislation was to remove the impediment to allow the boats to cruise in Lake Michigan and it has passed the House and Senate.

The interim site committee on public gaming commissions commonly referred to as the committee chaired by Representative Bob Alderman held a meeting concerning riverboats in East Chicago on September 19th. We attended that meeting. And provided them with a report. The report contained the following type of information: The location of certificate of suitability

holders or license holders and tax revenue collected as from December of 1995 through July of 1996.

Cindy Dean, one of our staff attorneys, prepared at the request of Senator Bores a tax comparison chart which showed the various taxes that applied to riverboats, not only in Indiana but in other states that have them. Such as, we have a 20 percent wagering tax. Illinois has a 20 percent wagering tax. We have a 3 dollar admissions tax. I believe Illinois is 2 or 2.50. And made those comparisons on that.

We also had obtained at their request a copy of the draft bill that was not passed in Illinois, that would have set up a scale for wagering tax so that the lower performance casinos pay less than 20 percent, the higher performing casinos paid more than 20 percent. That bill did not pass in Illinois and we reported on that to them.

We further reported to them the amount of employment to date on the riverboats that are opened and operating.

We also reported to them at Senator Bores' request two articles one of the short form and one in the long format concerning different tax discussions that have been had by two different organizations. One was a comparison done by Professor Thompson out of the University of Nevada Las Vegas in which he compares and looks at supposedly the economic advantages that may accrue depending upon whether a casino is taxed using an Illinois model or not taxed using Indiana gaming as a model.

Our review of that article, while we gave that to them, we felt it didn't really add anything because we don't have Indiana gaming here. And that type of a structure would most likely never be approved by the State legislature in terms of privately owned casinos. So it was one of the only arguments we could find that did some comparisons between locally owned and taxed and nontaxed casinos.

The other article that was done by IGT through a professor whose name escapes me, basically, what that professor did was



study the economic benefits that should go to a local community based upon having gaming that has a tax structure. That was, in essence, the report we gave to the study commission.

You have to excuse me for a minute I just misplaced my notes.

Riverboat opening updates, Grand Victoria in Rising Sun, Indiana as you are aware the test cruise of September 16, 1996 did not allow the Commission to examine and test all the operation systems. The primary problem being the inability to utilize the bill acceptor on the slot machines. Therefore, it resulting in us not being able to check that system out at all.

The Grand Victoria was -- a second test cruise occurred on September 30th, 1996 which resulted in all systems being able to be utilized and also to be tested. The Grand Victoria was then allowed to open for regular gaming operations commencing Friday October 4, 1996. The Grand Victoria advised that they desired to open on a soft basis, meaning to give the employees and their

systems an opportunity to grow and get used to each other. They suggested eliminating the last cruise during the weekdays and the last two cruises on the weekends along with limiting the crowds by closing certain portions of the boat. More specifically, the forward portion of the first and third floor. We agreed with that observation by the Grand Victoria. So presently they're operating at not quite the full cruise schedule that they would like and they are not using 100 percent of their boat at this time. However it appears that their systems have improved quite a bit. The reports we are getting in this past week showed variances in the one percent area, which is below our 2 percent. On another day they had a variance of \$1.50 which is really excellent. And another day they didn't have a variance at all which was very suspect. So, in any event, they are moving along.

Indiana Gaming Co., LP, commonly known as the Argosy Casino that will be going in Lawrenceburg and the company is still awaiting final action in issuing the

Army Corps of Engineer permit.

We are aware that the Memorandum of Agreement between the Corps and Indiana Gaming Company and other parties that would be necessary to it, has been approved by Washington, D.C and sent back to Louisville. And so they are hoping that this permit will be issued shortly. And certainly, they hope by the end of this month.

If that schedule holds true they would anticipate opening in November, anywhere from early November to mid November to late November depending upon the timing in conjunction with the Corps permit. Staff has a meeting planned with them Tuesday. We will go over the finalization of the things we expect them to have prepared in anticipation of the opening.

Also with regard to casino openings, Aztar, the first casino to operate in this state will now be the first casino to move from a temporary to a permanent location. They will be opening their permanent pavilion with a preview opening on Tuesday October 15th, which is next Tuesday,

with an opening to the general public on Wednesday, October 16th.

I think the Commissioners will each note that in your file there is an invitation to attend, if you choose to, on Tuesday evening. And they have also provided an outline, which is something we had obtained from them some time ago, and thought it was very worthwhile. It's just a booklet which outlines what their commitment are to the city, what extent they fulfilled them, they're operating schedule, as well as employment, minority employment, minority vendors and other type information.

I think it's very satisfying to report that Aztar has been recognized as a very, very responsible corporate citizen in the City of Evansville, and has met everything that they said that they would do. And I believe, according to Commissioner Swan and Vowels have in fact exceeded what was expected of them.

Either of you have anything to add to that? Mr. Swan?

**MR. SWAN:** No, what I've observed

in the community is that the general comments in the community are that they have done, in fact, everything they said they would do and more. I've heard no negative comment about Aztar that they haven't done something or have done something derogatory in the community in any way. All feedback we get as a corporate citizen is very positive on Aztar.

**MR. VOWELS:** It's the same thing that I've heard, too. I was on the boat a week ago Saturday, and I was very pleased with the crowd that was on the boat. And the way that the employees of the Aztar handled themselves. I've been out on the river all day with friends and hadn't shaved, and wearing jeans and a somewhat clean shirt. So I don't think -- I didn't have any badge on me so I was able to walk around freely. And I think I saw them in their normal circumstances.

Of course, the second time I went on the boat I went in March, and I went then again the other night. And the thing cruises every time I go on it so I'm stuck

there for the entire time. So, I think if ever, there's ever a need for those boats to always cruise all you have to do is go on it and it goes out.

The same thing from what Bob said, I've not heard any complaints, you know, as far as I was in the State Police room, reviewed their ejection logs, and it looked like a lot of the majority, or a lot of those things were minors trying to get on the boat.

And you know, the fact I'm in defense work I'm in the courthouse all the time and it doesn't seem to be that there's anymore public intoxication cases that we see. Some rare thefts that you're aware of. But, as far as crime rate there doesn't seem to be any more of an increase than when Wal-Mart opened a new store and shoplifting went up a little bit. Say again what Bob said, no complaints. And they seem to fit in real well with them.

**MR. THAR:** Empress Casino Hammond. Empress has filed a quarterly report requested by the Commission advising the

Commission as to minority hiring and estimates on business with minority businesswomen, minority business enterprises and women business enterprises. You should have the pack, that letter in your packet. Dated October 1, 1996 and I'll just summarize it for you.

I note that there are representatives of Empress here should the Commission have any questions for them.

As of August 1, 1996 they had 1427 employees. As of October 1, 1996 they have 1496 employees. Of that employee number the number of females has increased from 52.4 percent to 53.1 which equates to 794 employees.

African American has gone from 16 percent to 17.6 percent for a total of 264. Hispanic has gone from 8.05 to 12.3 percent for a total of 184 employees. Asian and other minorities has gone from 1.26 percent to 1.7 percent or 26 percent.

They have a management breakdown on the second page of the letter in terms of what levels of management are female,

African American, Hispanics, and other minorities.

With regard to their vendor breakout. Hammond vendors to date from July 19 through September 14th, Hammond vendors was 13.5 percent. Indiana vendors excluding Hammond vendors is 21.7 percent. Out of state vendors 64.8 percent. Minority and women-owned vendors 14.9 percent.

As I indicated, they do have representatives here if any commissioners have questions on that.

**MR. SWAN:** Just a general question, Jack. Do we have the opportunity or the procedure in place to audit these percentages ourselves, or do we leave that up to someone else to handle, like the EEOC or other groups?

**MR. THAR:** With regard to the minority and women business enterprises, we have a memorandum of understanding that the certifications and the checking on that and the auditing will be done by minority business development, which is a, another state agency in the Department of



Administration. We have provided them to employees to help them with that workload from our staffing table. And so they have been able to beef up that division, and they are handling that, because that is what they do. Didn't want to create another agency. So they verify that.

We do have the ability to go check the employment numbers. We do not have another agency to do that, and to date we have not done that. I guess for the simple reason that we don't honestly believe they're going to misrepresent this to us at that stage of the game.

**MR. SWAN:** That is in place for all of the boats?

**MR. THAR:** That's correct.

Last item on the report as you're aware, and as will come up in the resolutions, at the last Commission meeting we had requested the ability from the Commission to discuss, prior to administrative law judge hearings, potential settlements with people who are employed at Aztar that we had suspended their temporary

license for one reason or another, primarily due to failure to completely disclose arrests and things like that. Commissioner gave us that authority and we will be dealing with simply the resolution of that authority during the business portion of the meeting.

I do wish to report that we did go down, as I reported, for and met with the ten individuals whose license had been suspended, which was all the people that did desire to meet with us.

Of the ten we recommended eight to receive their license back. Keeping the temporary license extended a little bit longer. Of the eight, six were rehired by Aztar. So that is the result of our occupational licensing reviews.

One last thing which I wasn't going to report but I feel I probably should. It was reported in the legislature, we gave to the legislative interim study committee on public gaming issues a breakdown on tax revenues. This is tax revenues from December 7, 1995 through

August 31, 1996. I'll be glad to provide to all of you with a copy of this after the meeting.

What it basically shows is that Casino Aztar as of August 31, 1996 had paid 5,209,000 and change in a total admissions tax. \$15.6 million in wagering tax. For total taxes paid of \$20.8 million.

Empress, who opened on June 29, 1996 has paid through August 31, \$2.5 million in admissions tax, \$6.1 million in wagering tax, for a total tax of 8.6 million.

Majestic Star, which opened on June 11, has through August 31 paid \$2.1 million in admissions tax, \$4.3 million in wagering tax, for total tax of 6.4 million.

And Trump that also opened on June 11 has paid total admissions tax of \$3.1 million. Wagering tax of \$6.6 million, for a total tax of 9.7 million.

That gets broken out as follows: State of Indiana Build Indiana fund has received from the wagering tax \$24.5 million.

City of Evansville has received \$1.7 million in admissions tax, \$3.9 million in wagering tax for a total of \$5.6 million.

City of Gary has received \$1.7 million in admissions tax, \$2.7 million in wagering tax, for a total tax of 4.4 million.

City of Hammond has received \$851,000 in admissions tax, 1.5 million in wagering tax, for a total of 2.3 million.

Lake County has received \$2.6 million in admissions tax and that will be the total tax that they have received.

Vanderburgh County has received 1.7 million in admissions tax. That's the total tax they have received.

The Division of Mental Health has received \$435,000 and that's the total tax they have received.

The Indiana Horse Racing Commission has received \$2.8 million from the admissions tax and that's the total tax they have received.

Lake County Convention and Visitors Bureau has received \$261,000 from

the admissions tax and that's the total tax they have received.

Vanderburgh County Convention and Visitors Bureau has received 173,000 and that's the total tax they have received.

And the State Fair Commission has received \$652,000 from the admissions tax which is the total tax they have received.

Total tax paid to date, admissions tax and wagering tax as of August 31, 1996 is 45.7 million dollars. I can provide you with all those figures after.

That will conclude my report. Are there any questions from any Commission members or any questions of any of the entities that were discussed during my report?

**CHAIRMAN KLINEMAN:** Any questions to ask of Mr. Thar?

Thank you very much.

Before we leave the topic of personnel, I just want to add to what you said about Pam Ayres. My personal thanks to her for all the fine work she did while she was with us. She was always a pleasant

person, a pleasant person to be around. And sometimes when things get rather hectic, it's always nice to have someone around who has a smile, and seems to relate well to what's going on and keep her head about her. So, we wish her well. I'm really sorry to see her leave. But, I presume she moved on to something that she felt would be in her interest. So, we wish her well.

**MR. THAR:** If I may add one thing, I forgot to mention Michelle Marston at the end of the table has been a secretary in the Commission for quite sometime now and she has now moved into Pam's position. So she's now the Executive Secretary to the Commission.

We're very happy to have Michelle in that spot. She's been a very hard worker, a delight to work with, and we know she'll be able to fill all of the things that Pam did for us.

**CHAIRMAN KLINEMAN:** Apparently one of the qualifications is you have to be a very nice person and Michelle fits that quality very well.

All right. The next item on our agenda is a resolution which is in your packet, 1996-51. This is a resolution that we actually passed at the last meeting. It concerns a penalty to be imposed upon Indiana Gaming Company, LP for failure to commence regular riverboat gaming excursions on a timely basis.

If you remember we settled on, and it was agreed by Indiana Gaming, that there would be imposed a fine of \$75,000 each day that they do not commence gaming on the later of December 1, 1996 or 15 days after they receive their 404 permit from the Corps of Engineers.

There are certain requirements that if the failure to commence is not, or is due to an act of God, or strike, or war, or rioting, or flooding, and the other things that lawyers usually put in as excuses, they would not be penalized in that amount.

But in order to make our records complete, even though we actually adopted a resolution along these lines, I would

present to the Commission Resolution 1996-51 in its formal sense to the Commission and ask if anyone wish to make a motion to adopt resolution 1996-51.

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** It's been moved and seconded. Any discussion? Any question? Hearing none all those in favor of adoption of resolution say eye. Contrary? The resolution is adopted.

(The motion was voted on and adopted at this time)

**CHAIRMAN KLINEMAN:** Next item on our agenda, well, then I guess we will move into this is another Resolution 1996-52. We in substance passed this at the last meeting, which is granting the Executive Director authority to enter into settlement agreements with applicants for occupational licenses. So we would wish to formalize that as a part of our permanent records.

It as indicated it grants the Executive Director the authority, which he's been operating through since we last



addressed this at the last meeting.

Do I here a position to adopt the resolution?

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** Any discussion? Hearing none all those in favor say eye. Contrary? Resolution is adopted.

(The motion was voted on and adopted at this time)

**CHAIRMAN KLINEMAN:** Okay. Now we move into the presentation of the Indiana Blue Chip concerning a proposed financing arrangement.

**MR. MCQUAID:** Thank you.

**CHAIRMAN KLINEMAN:** Would you identify yourself?

**MR. MCQUAID:** Mr. Chairman, Members of the Commission, my name is Joe McQuaid. I'm Senior Vice-president of Indiana Blue Chip.

I would like to take just a couple minutes to give a brief update of our progress. We have concluded all negotiations with the real estate necessary

for the property and the development that we wish to exercise. Those contracts are being executed as we speak. We've closed on many and we will continue those closings in the near future.

I know there was a question about the church property. We have successfully negotiated for that property. In fact that property will be closing next week.

Demolition on the site will begin as early as Monday. It will definitely begin next week we hope as early as Monday.

Steel has been ordered for the construction of the vessel and will be delivered by October the 28th. And the construction will begin the first week of November.

With that, I would like at this time to introduce Kevin Larson, President of Indiana Blue Chip, who will give the presentation concerning the financing. Thank you.

**CHAIRMAN KLINEMAN:** Mr. McQuaid, you want to tell me how much land you are acquiring? Do you know?

**MR. MCQUAID:** There's approximately 35 different parcels of property. I believe there is approximately 37 acres of property, sir.

**CHAIRMAN KLINEMAN:** It's a compact area.

**MR. MCQUAID:** It's all contiguous.

**CHAIRMAN KLINEMAN:** No offsets, or no exceptions I'll put it that way.

**MR. MCQUAID:** At this point there are none.

**CHAIRMAN KLINEMAN:** Okay.

**MR. MCQUAID:** Thank you.

**MR. LARSON:** Morning, Chairman Klein man, Members of the Commission, Mr. Thar, Staff. I'm Kevin Larson, President of Blue Chip Casino. We come before you today to request your consideration and approval of financing arrangements that we believe is more favorable than the one that you have approved for us at your meeting back in August. We feel that it's more favorable for the Commission, for Michigan City, and for Blue Chip.

As Joe has mentioned, since we received our extension of the certificate of suitability back in August, we have continued to progress on a number of fronts. We're particularly excited about the fact that tangibly there will be some steel shipments arriving before the end of this month. In fact, I think the number of shipments is in the mid 30s. The number of trucks that will actually be bringing steel to the site so we can begin construction of the vessel.

In addition, since August 20th we've continued to work diligently on other fronts. We've been able to identify and negotiate the terms for this more favorable financing package. Specifically, over the last six weeks we've worked very closely with the investment banking firm of Donaldson Lufkin and Jenrette, to structure an offering of senior security notes. We hope to raise as much as \$105 million with this offering.

That 105 million really has become a function of some extremely favorable

market conditions and is different from the 95 million that was on the draft document that I believe you've received for your review. We will talk in a little bit more detail shortly about those favorable market conditions.

The notes would be secured by a first lien on substantially all the company's assets. Principal would be due in 2003, seven years after the issuance of the notes. The offering would be structured to provide a completion reserve of \$20 million, which assures both the Commission and the note holders that the project would be built as designed and on a timely basis.

The structure of the transaction also provides that there would be a one year interest reserve that would insure that interest payments were made at the beginning of the term.

Perhaps, most importantly, the proceeds of the note offering can only be used to fund the design, development, and construction of our Michigan City gaming development. The indenture will be

structured to motivate reinvestment in Michigan City, and also, I'd like to note at this point, that the proceeds from this offering would be in addition to the \$20 million of equity that has already been contributed by HP of Indiana.

In the past several weeks we drafted documents and submitted them to Mr. Thar and staff for their review. We've met with the staff and Mr. Thar, discussed the merits of the financing proposal from our perspective. Responded to their questions and comments.

As we proceeded we've come to realize that market conditions are extremely favorable at this point for this sort of financing. It's a financing that's very typical for projects in the gaming industry, and is very similar to several financing proposals that have come before the Commission already in Indiana and been approved. The financial community has responded very favorably to our project, to our company, and to the project financing package that we've discussed with them.

At this point I'd like to introduce Mr. Scott Turicchi. Mr. Turicchi is managing director and head of the gaming group at Donaldson Lufkin and Jenrette. We've asked him to talk to you a bit about these marketing conditions. Scott.

**MR. TURICCHI:** Thank you, Kevin. Mr. Chairman, Commissioners, Mr. Executive Director and Staff, I'm pleased to have the opportunity to make a short presentation today in terms of --

**CHAIRMAN KLINEMAN:** Would you spell your name for the record?

**MR. TURICCHI:** Certainly.  
T-U-R-I-C-C-H-I.

And what I'd like to do is make a few comments in terms of following up on what Kevin said about market conditions today. We believe that there is a, an opportunity, given what we have seen in the marketplace over the last several weeks, for Blue Chip to enter the market and gain the most advantageous terms both in terms of its coupon, its contingent interest component, as well as flexibility for its covenants.

And there really are two things that are governing this opportunity. Given that this is a very traditional type of financing for the high yield market as it relates to gaming properties and boat construction, this will not require any unusual marketing period. It will take eight to ten business days to market the transaction.

That would give us the opportunity starting next week to price the deal prior to the general election in November. While we don't believe the general election will produce any surprises regarding the presidency, it is still uncertain who will control the House and the Senate, and it's one less risk relative to the high yield bond market and what will actually come out of it.

More importantly than that are the actual dynamics of the inflows and outflows of the actual cash into this marketplace and the backflow of transactions. High yield mutual funds are the primary buyers for gaming paper. And they have consistently,



over the last several weeks, seen inflows of 2 to 300 million dollars into the major funds per week.

At the same time, the number of transactions in the backlog has dropped from an average of about 4 billion dollars to less than two and-a-half billion. So there's a supply demand and balance that occurs right now that will give any issuer the opportunity accessing the market over the next two to three weeks, the ability to derive better pricing and better terms.

We know from our own backlog of deals that we're working on, as well as some of our competitors, that that backlog will begin to increase starting sometime around the election and building throughout November. Meaning that there will be more competition for capital.

So, for those reasons we have recommended to Blue Chip that the ability to market this deal as soon as possible and be able to price, on or as near to November 1st, will result in some very tangible benefits for them in one of the three

following components: Either the coupon, contingent interest or the covenants.

I will now turn the presentation back over to Kevin.

**MR. LARSON:** Thank you, Scott. Chairman Klineman, Members of the Commission, we respectfully request your approval for Blue Chip to issue as much as 105 million of senior secured notes structured as been described in the draft offering memorandum that we submitted for are your review.

We feel that this offering is a substantial improvement over the financing package that you approved back in August for several reasons. Specifically, we feel that it provides the benefit of long-term financing. Financing which we know the terms of, and which terms will not change over the term of the agreement, from a single source.

You'll remember that the financing package that we had presented to you back in August came, I believe, from five sources. And from our perspective, and I believe from

yours as well, there's the reality that we need to come before you for each ingredient to gain your approval, and the secured note offering would provide us with a single set of covenants with which we would feel comfortable moving forward with, rather than having to negotiate covenants and have what we wouldn't anticipate to be significant differences, but differences nonetheless, from one agreement to the other in our original financing package.

Secondly, relative to those covenants, we feel that again from our perspective it's a very flexible set of covenants. One that will allow us and in fact encourage us to complete a high quality project as we've anticipated and contemplated to do so on a timely basis, and will encourage reinvestment in the Michigan City property over the term of that agreement, the next seven years.

Timely close of this financing as we have talked about to this point we feel will benefit us with lower capital costs, and also, will provide us with some

flexibility that we feel could accelerate the opening of this project. To this point we felt very comfortable we'd be able to bring our permanent facility on line next September. And there's a very good chance that with your approval, and the successful issuance of these notes, that Blue Chip would be able to deliver the gaming facility that it's promised you and the people of Michigan City before the September timetable.

At this point I'd like to thank you for your consideration, and stand ready to address any questions you may have.

**MR. SWAN:** I can start with a question if you'd like. On the contingent interest aspect, can you run me through how that will be paid out, first of all, and then I may have a follow-up question on that, Mr. Larson?

**MR. LARSON:** Essentially, Commissioner Swan, the contingent interest is a percentage of the earnings before interest, taxes, depreciation, amortization of the company. That's calculated over a

period of time, I believe it's semi-annually, and then somewhat in conjunction with interest payment dates a percentage of that EBITDA, as it's referred to, will be paid to the note holders. One of the elements of that.

**MR. SWAN:** One of the elements of that particular calculation is taxes you mentioned. In a document I had it suggested that the company may elect to be Sub S, and that then the corporation itself would have no income taxes virtually.

Are the payment of tax distributions included in this EBITDA number? I'm not sure how you handle the shareholders' taxes in this calculation, I guess that's my question?

**MR. LARSON:** The specifics of the calculation I'd like to ask Walter Hanley, our General Counsel, to address that question for you, please.

**MR. HANLEY:** Good morning. Walter Hanley, General Counsel of Blue Chip.

As a calculation of earnings before interest, taxes, depreciation,

amortization, the calculation would be after gaming taxes but before income taxes, which in this case our shareholder-type obligations if indeed it is an S Corporation.

**MR. SWAN:** Let me follow-up on that particular aspect for a moment. Are there plans then to be an S Corp, and then you have distributions to pay taxes for shareholders, are those distributions in any way limited under this document as regular dividends might be limited in some documents like this?

I'm not sure I said that very clearly, but if you understand it I'd like the answer.

**MR. HANLEY:** I think so. I think the indenture pursuant to which these notes would be issued would allow the company to make distributions to the extent necessary to pay income taxes. Thus whether the company is a C corporation and pays taxes at the corporate level, or an S corporation and pays taxes at the shareholder level, in either case the company would pay the tax

obligation.

**MR. SWAN:** Well, there are other questions but they're really not relevant to this.

Let me follow-up one more question on the contingent interest aspect. And that had to do with whether or not the IRS might consider this package to be one of equity. I assume that would be just for IRS purposes that we're talking about. They can't obviously make an illegal equity move on the corporation. So we'd be talking about they would have deemed the corporation to be, have many owners, or however owns the notes may be owners of the corporation for their purposes. And the distribution then might be a regular taxable dividends of the corporation or the note payments would be dividends of the corporation.

I don't see this being a very significant issue to me, but I wonder if you would elaborate on it a little further.

**MR. HANLEY:** Yes. From the company's perspective it is an important issue and we do not want to create a second

class of common stock, or otherwise disallow interest deductions for the company. And in that regard we have the advice of tax professionals and advisors who have reviewed this proposed offering, and based on the effective yield of the fixed interest component as well as the contingent interest, the combined effective yield is of a level that our professionals are comfortable that all of the interest would be deductible to the company and that it would not create a second class of common stock. And thus the holders of the notes would truly be debt holders and would not be equity holders of the company.

**MR. SWAN:** One last question on that and then I'll get off. There isn't any conversion privileges whatsoever as far as debt holders becoming equity holders, is that correct?

**MR. HANLEY:** There are no conversion privileges and the contingent interest rights are capped such as some point the debt holders would not participate in contingent interest if the company



reached certain levels of earnings.

**MR. SWAN:** That's all.

**CHAIRMAN KLINEMAN:** Again along the contingent interest, the papers which you have submitted to us have a blank as to the percentage of the contingent interest of EBITDA. It's hard to -- it didn't exist when I went to school. EBITDA, is that it?

**MR. HANLEY:** EBITDA, yes.

**CHAIRMAN KLINEMAN:** What is the percentage that is going in that blank?

**MR. HANLEY:** That will be a function, as Mr. Turicchi explained, of the supply and demand and how well the offering is received by --

**CHAIRMAN KLINEMAN:** What figure did you use when you asked your tax advisors? What is the total interest rate that you anticipate in this deal?

**MR. HANLEY:** We expect contingent interest to come in at 5 percent EBITDA.

**CHAIRMAN KLINEMAN:** And what would be the total, fixed and contingent, that the people who buy these can be expected to receive?

**MR. HANLEY:** Assuming a 12.5 percent fixed interest rate, and 5 percent EBITDA contingent interest, the total effective yield would be 15.6 percent. At which level our tax advisors are comfortable that there are no equity characteristics to the security.

**CHAIRMAN KLINEMAN:** Has there been any discussion about selling these notes without the contingent interest aspect, because it bothers me a little bit. Even though I am aware that we approved it in Majestic financing, but that was different ballgame in my judgment.

**MR. HANLEY:** There have been no significant discussions at this point.

**CHAIRMAN KLINEMAN:** Could we have some opinion from Donaldson Lufkin about -- could we issue these bonds without the contingent interest and if so what do you think the effective fixed rate would be?

**MR. TURICCHI:** We don't think that at this time, given the type of financing this is which includes new construction risk, that it can be done without a

contingent interest. And in fact, there are probably --

**CHAIRMAN KLINEMAN:** It couldn't be done at any rate? There's got to be a rate.

**MR. TURICCHI:** Well, part of the reason we don't like to push a rate above 14 percent is it puts then a very large fixed obligation burden on the company. So in fact, most of the time the marketplace will not buy a deal that has a coupon greater than 14. And at that point you start negotiating more on the contingent interest aspect. Because they don't want to create a situation where there's such a large fixed component of the interest that it could jeopardize the payment of interest in a period.

**CHAIRMAN KLINEMAN:** Now, let's go into the aspect of kicking this from 95 to 105. How does that come about? Why are we doing that, and what is going to be done with the excess money?

As I view this, it has excess money in it already. It has the interest reserve, which I think will be necessary in

order to meet the obligations before the project is up and running fully. But the extra contingency which is \$20 million at 95, does that then get kicked to \$30 million at 105?

**MR. HANLEY:** Yes, it would be. It would provide additional assurances that the project could be completed faster, bigger, better.

**CHAIRMAN KLINEMAN:** I don't particularly like the extra money you're raising. I don't see that, how that benefits the project in all honesty. I mean, if your estimates of what it's going to cost to build this project are anyplace close to right, they are not going to be off by what, 30 percent.

I mean, we're establishing a reserve which is out of, out of any normal reserve that I'm familiar with percentage wise.

**MR. LARSON:** If I could answer a little bit from a layman's perspective. I think there's a couple of issues that come to mind relative to the increase in the

offering.

First is relative to the fact that we do feel very comfortable with the covenant package that we think we will be able to agree to with these note holders. And along the lines of getting in and getting in good, that's one perspective that we've taken, Chairman Klineman, relative to increasing or possibly increasing the note offering from 95 to 105.

Secondarily, relative to other aspects of the project, specifically, hotel development, may enable us to do some, some additional design features, accelerate construction, and just give us the flexibility to move forward more substantially, and more quickly than we otherwise would have.

I suppose the third point would be that the -- how do I want to say this? Relative to the completion reserve being at 20 million, that really isn't so much a choice of the company or the borrower at this point in time as it is what we perceive to be the potential market of these note

holders. That that's what they would require.

We feel very comfortable with our project cost estimates. Frankly, I would feel, you know, extremely comfortable with the 20 million completion reserve and one year interest reserve. The additional ten million again, we don't really view it so much as a reserve as an additional tool to move forward.

**CHAIRMAN KLINEMAN:** Well, my problem is that I don't want to see you raise too much money. I know there is a push with all due respects to investment bankers to go to the market with a larger and larger and larger issue. They make more money, and it tends to filter through the system.

This type of thing really reminds me of the people who say, I'll sell you a car and at the same time I'll finance your car and I'll also give you another \$2,000 to pay off your credit cards. I don't like that concept. I would rather see you borrow what you need, or what the market insists

that you borrow, in order to establish the reserves that make sense.

But I see no reason to kick this thing and saddle you even with 12 and-a-half percent fixed or an effective 15 on another \$10 million that you may not be able to deploy in order to earn the interest that you will be required to pay.

**MR. HANLEY:** Any money that would remain in the completion reserve account upon completion of the offering would be subject to two potential repurchases to redeem indebtedness and reduce the company's debt.

**CHAIRMAN KLINEMAN:** That's on a tenders basis if I'm satisfied with my 15 percent and nobody tenders to you I frankly got lost to where the money went. These papers are too thick to read.

**MR. HANLEY:** The first of those two opportunities would be a tender bases where the holder of the note could require the company to redeem --

**CHAIRMAN KLINEMAN:** But if I'm happy and nobody tenders then you've got a

bunch of money that's not at work.

**MR. HANLEY:** The second opportunity, the company has the right to require redemption on the proceeds of the completion reserves. If the company completes the project, has excess cash, and wants to use all of the excess cash to retire indebtedness, it absolutely has a contractual right to do that.

**CHAIRMAN KLINEMAN:** Can you call the notes?

**MR. HANLEY:** Yes, at a fixed price.

**MS. BOCHNOWSKI:** At any time or after a certain period?

**MR. HANLEY:** After the project is completed, whatever money is left the company can call the notes.

**MS. BOCHNOWSKI:** You don't have to wait five years?

**MR. HANLEY:** Not with respect to the completion reserves, no.

**MR. SWAN:** It's not an option on the holders to tender, it's a call on the company to --



**MR. HANLEY:** In the first instance it is an option by the holders to tender. If they decide not to, I believe, 30 or 60 days after that the company can exercise its call. So it's a put/call arrangement.

**MR. SWAN:** Between 30 and 60 days it says here.

**CHAIRMAN KLINEMAN:** Anyone else have any questions?

**MR. THAR:** I've got a couple follow-up with what Mr. Klineman was asking. Did you say the effective interest rate on the assumption of a 12 and-a-half fixed and 5 percent contingent rate would be 15.5 or 15?

**MR. HANLEY:** 15.6.

**MR. THAR:** 15.6. And then to go back to the draft offering memorandum we've reviewed suggested \$95 million is what you were raising. Have you upped that amount or are you suggesting that if it is oversubscribed, while you're looking for 95 million you'd be willing to go for 105 million, which one is it?

**MR. HANLEY:** The latter.

**MR. THAR:** So it's simply within the 15 percent oversubscription but you would cap that at 105 million?

**MR. HANLEY:** Yes.

**MR. THAR:** So you're not changing what the initial offering amount is?

**MR. HANLEY:** No, we would see how the market reacts.

**CHAIRMAN KLINEMAN:** Is this document going to go out saying 105 million or saying 95?

**MR. HANLEY:** It would go out saying 95.

**MS. BOCHNOWSKI:** It would go out as we have it written there?

**MR. HANLEY:** With the 95 and then if demand was such to consider increasing the amount, we would take that under consideration at that time.

**MR. THAR:** But not more than 105?

**MR. HANLEY:** That's what we're requesting the Commission approval to go up to 105 if market demand is sufficient, and market conditions are favorable.

**MR. THAR:** Is it a 15 percent

oversubscription that you are allowed or did I just dream that figure up?

**MR. TURICCHI:** That would be in the context of a public registration. There is no fixed amount of what you could take it up on a private deal, 144AD. So in theory we can come back with any other number.

**CHAIRMAN KLINEMAN:** We need to identify you for the record, please.

**MR. TURICCHI:** Turicchi.

**CHAIRMAN KLINEMAN:** Just state your name.

**MR. TURICCHI:** Scott Turicchi.

So in the context of a public deal the SEC imposes certain requirements on us which allow us to take the deal up 15 percent above what is on the stated cover. We don't have those same restrictions though in the context of a 144AD.

**CHAIRMAN KLINEMAN:** If we restrict you to 95 that's the most you'll issue, right?

**MR. TURICCHI:** Yes. That would be correct.

**CHAIRMAN KLINEMAN:** Okay. And

maybe I'll ask you in a different form the same question I've been asking these two gentlemen which is, as I would view it why kick this thing from 95 to 105, when if the estimates are even close you're going to have this excess fund which we now understand can either be given to those people who tender back the notes, or at the option of the company the notes can be called in. I mean, it's a circle.

And why go through the whole rigamarole, other than the fact that as an investment banker, your fees might be a little higher.

**MR. TURICCHI:** I think the primary reason from the company standpoint is purely one of additional flexibility. To the extent they decide they want to add more amenities to the property, they want to build either a larger hotel, or want to accelerate the building of those projects, that extra money would give them added comfort and flexibility to do that. But it's -- it would be solely in their discretion.

**CHAIRMAN KLINEMAN:** Anyone else have anything?

**MR. SWAN:** I have one more question. I wanted to know what happened from the land cost from the original purchase, or original proposal with what we ended up here of 10 million? I think, wasn't it like 3 or 4 on the original proposal?

**MR. MCQUAID:** Mr. Swan, I --

**CHAIRMAN KLINEMAN:** Joe, you want to identify yourself?

**MR. MCQUAID:** Joe McQuaid.

I think the original estimate for the purchase of the property was originally 6 million and it has escalated to about 10 and-a-half, 10 million. But there have been additional parcels purchased also for that.

**MR. SWAN:** I was curious if we got stuck in the marketplace because you had a certificate of suitability and the market price went up.

**MR. HANLEY:** I think as you're aware the price of the church was one of the issues, and some of the other real estate

owners took similar positions.

**MR. SWAN:** Did you get in a position with the bank? It seemed like they had foreclosed on a good portion of that land. Had you negotiated that price before the certificate was issued?

**CHAIRMAN KLINEMAN:** Whoever is going to answer please identify themselves before they start to talk. I know it's not easy but --

**MR. MCQUAID:** Joel McQuaid. I'll try to answer those questions. We didn't negotiate with the bank prior to the letter of suitability. I think there was an agreement not to and we abided by that agreement. We negotiated subsequent to April 17.

As far as the parcels, the bank did foreclose on approximately half of the acreage I believe. It's approximately 16 acres of the 33 acres that were on that section. Then we were able to purchase some property on the other side of the creek also, about seven acres.

**MR. SWAN:** I didn't mean to

belabor a point. I was just curious how that operation worked there. Thank you.

**MR. MCQUAID:** Sure.

**MR. MILCAREK:** I have an additional question for Mr. McQuaid. In our local paper they said the Silver Eagle was on the way, and the mayor commented she was not aware of a temporary boat. Would you like to comment on that?

**MR. MCQUAID:** Sure, what is happening, sir, and I feel uncomfortable to speak for the city. It would be my perspective. We talked to the City, I was with the mayor again yesterday on this issue. We need to, to show a great deal of progress on the permanent site. We would like to keep an option to execute our plan to open up a temporary facility. I think the mayor is aware, I know the mayor is aware of that proposal.

There has not been a commitment on the part of the City yet, and we need to earn that commitment. We are in the process of earning that commitment with again construction beginning as early as the first

week of November and demolition beginning next week.

As far as the Silver Eagle goes, it is underway from New Orleans where some modifications were made to it. And it is underway now with approximately four to six weeks to arrive at Michigan City.

**MR. MILCAREK:** Will it arrive in Michigan City before the lake freezes?

**MR. MCQUAID:** Yes, it is tentatively scheduled to arrive in Michigan City in the first two weeks in November.

**MR. MILCAREK:** Will it be docked in Michigan City? Do you have permission for that or where will it be stored?

**MR. MCQUAID:** At this time we have begun negotiations with the port authority for the facility. We have an option on some property that we feel would accommodate the storage of that vessel today.

**MR. MILCAREK:** Okay.

**MR. MCQUAID:** Thank you.

**CHAIRMAN KLINEMAN:** We have now talked about the financing aspects, and I guess we need to get into the questions



about the litigation which is whirling around this project. Anyone want to tell us about that?

**MR. HANLEY:** Walter Hanley.

**CHAIRMAN KLINEMAN:** Walter, why don't you just bend the mike so you don't have to hunch over?

**MR. HANLEY:** Thank you. Indiana Blue Chip is trying to get the shareholder dispute resolved as quickly as possible. There is a pending declaratory judgment action where we are still trying to serve all of the defendants in that action.

**CHAIRMAN KLINEMAN:** Whoa, you're leaping ahead. Some of the people on this commission are not that aware of what's going on. I happen to be somewhat aware.

Why don't you describe in detail the litigation which is pending and not updates on who's been served and who hasn't.

**MR. HANLEY:** A declaratory judgement action was filed to A, request the court --

**CHAIRMAN KLINEMAN:** By whom, against how.

**MR. HANLEY:** By Indiana Blue Chip and HP of Indiana against the eight individual, the original minority shareholders.

**CHAIRMAN KLINEMAN:** Okay. And where is that pending? Just go through the scenario.

**MR. HANLEY:** That is in Cook County, and that is the action to which I was referring where we are trying to serve all of the eight defendants.

**CHAIRMAN KLINEMAN:** And that's in Illinois?

**MR. HANLEY:** Yes, sir.

**MS. BOCHNOWSKI:** Why on earth did you go to Cook County with this kind of a problem?

**MR. HANLEY:** The stock purchase agreement, the January 15th stock purchase agreement which is the subject of the shareholders relationship is governed by Illinois law. HP of Indiana negotiated the contract through its attorneys in Illinois. And one of the eight individual defendants is a resident of Cook County.

**MR. VOWELS:** This agreement said the jurisdiction is to be Illinois?

**MR. HANLEY:** It said it is to be governed by Illinois law.

**CHAIRMAN KLINEMAN:** And when what was that filed?

**MR. HANLEY:** August 20th.

**MR. VOWELS:** Has there been any objection to jurisdiction there in Cook County, or you haven't received service on the defendants yet?

**MR. HANLEY:** Well, we've received service on some but not all. And the ones that have been served haven't yet filed their answers.

**CHAIRMAN KLINEMAN:** I didn't hear the last thing you said.

**MR. HANLEY:** The ones that were served have not yet filed their answers.

**CHAIRMAN KLINEMAN:** There have been no pleadings filed by the defendants in that case?

**MR. HANLEY:** I believe two of the defendants have filed general appearances but have not filed pleadings, no.

**CHAIRMAN KLINEMAN:** Okay.

**MR. VOWELS:** What's the, in Illinois what's the rule on the time frame of filing an answer after service?

**MR. HANLEY:** 30 days.

**MR. VOWELS:** And you filed this August 20th?

**MR. HANLEY:** Yes.

**MR. VOWELS:** And you've had the service on how many of the defendants?

**MR. HANLEY:** I believe five of the eight. And with respect to the other three, we've engaged special process service. And at least in one of the cases I've been told that at least eight attempts to serve have failed.

**MR. VOWELS:** Out of the five that you've gotten service on, have they all five put on answers?

**MR. HANLEY:** No, I think the 30 days have run only with respect to two of those five and those two are the ones that have filed.

**MR. VOWELS:** So they have answered?

**MR. HANLEY:** Yes.

**CHAIRMAN KLINEMAN:** You said they have not answered all they have done is filed general appearances, is that not correct?

**MR. HANLEY:** That's my understanding. He filed appearances.

**MR. VOWELS:** Did they ask for extension for the time to file an answer?

**MR. HANLEY:** Yes.

**MR. VOWELS:** Okay.

**MS. BOCHNOWSKI:** Do you think that these problems --

**CHAIRMAN KLINEMAN:** Ann, excuse me for a moment. There's another piece of litigation that you haven't told us about. Maybe that will answer some of your questions.

**MR. HANLEY:** In Hamilton County, Indiana, an action was filed, I believe, on September 19th, by six of the eight individuals against HP of Indiana and its five individual shareholders. Subsequent thereto that complaint was amended to add Indiana Blue Chip in connection with a

motion for a temporary restraining order to prevent Indiana Blue Chip from issuing additional shares to HP of Indiana in exchange for the \$20 million of capital which HP of Indiana contributed to Blue Chip.

**CHAIRMAN KLINEMAN:** Keep coming.

**MR. HANLEY:** In that lawsuit, as service on behalf of the defendants in that suit was recently filed, answers are pending.

**MR. VOWELS:** What about this hearing that was supposed to have been this morning at nine?

**MR. HANLEY:** That was deferred until Tuesday.

**MR. VOWELS:** There was a temporary restraining order for ten days, looks like it was filed on October 3rd. So that would be the 13. When is that, Sunday?

**MR. HANLEY:** Blue Chip has indicated that it would voluntarily agree to allow Tuesday.

**MR. VOWELS:** What is this other thing that we have, I've got this file

marked temporary restraining order with the judge's signature and then we received this preliminary injunction.

**CHAIRMAN KLINEMAN:** Don, I think that came from the attorney who represents the plaintiffs in the Hamilton County case. I don't know whether that's a proposed draft or what.

I think an attorney who represents the plaintiffs in this case is here, and after we've finished with your recitation of where we are, we'll hear from them, if we are not satisfied that we know where we are. Right now there's a restraining order against whom preventing them from doing what?

**MR. HANLEY:** There is a restraining order against HP of Indiana preventing them from selling, encumbering, pledging or voting 97,500 shares of Blue Chip common stock. Those shares represent the initial shares issued by Blue Chip in exchange for the \$20 million cash, \$20 million equity contributions.

Blue Chip only had 100,000 shares

authorized, so it didn't have the ability to issue all 20 million shares in exchange for the \$20 million until it amended its Articles of Incorporation to increase the number of authorized shares. Upon that amendment, which was approved at a shareholders meeting on Monday, Blue Chip intended to issue the additional shares to HP in exchange for the \$20 million capital contribution.

The restraining order further prohibits Indiana Blue Chip from issuing any shares except in accordance with its articles of incorporation and the January 15 stock purchase agreement, which in effect is the state of the law in any event. No company could ever issue shares except in accordance with its Articles of Incorporation or except to any contracts to which it is subject.

**CHAIRMAN KLINEMAN:** And what effect, if any, would this litigation have upon the financing that's being proposed? And maybe we ought to ask the gentlemen from Donaldson Lufkin.



State your name.

**MR. TURICCHI:** Scott Turicchi.

We have reviewed the litigation, in fact you'll find the document disclosure relating to this litigation. And it's our conclusion it will not have any impact on the financing. The primary reason is in all circumstances we can see --

**CHAIRMAN KLINEMAN:** You've faded away from me. The primary reasons what?

**MR. TURICCHI:** In all circumstances as we can see based upon our diligence HP of Indiana remains the controlling stockholder. It is disclosed in the document. We do not believe it will have any effect on the ability, timing or rate in getting this deal done.

**MR. SWAN:** Except that didn't you say that you are restrained from encumbering the assets of the entity, no?

**MR. HANLEY:** No, HP of Indiana is restrained from encumbering its common stock in Blue Chip, which Indiana statutory law prohibits the hypothecation or borrowing against the shares of Blue Chip.

**MR. SWAN:** All right.

**MS. BOCHNOWSKI:** I had hoped after we heard from you before that somehow this could be resolved. It's my feeling now that this will have to be resolved through the courts, so this will maybe drag out. How do you foresee this impacting not only, the question I was going to ask was the one that Alan just asked about the financing, but the operation of the project? I mean, having all this going on?

**MR. HANLEY:** It will have no impact on the company's continued progress towards getting the operation completed. It is the shareholders' view the company is moving forward with its progress and will continue to do so.

**CHAIRMAN KLINEMAN:** I forgot to ask before, we do have a letter from an attorney opining that the financing, that in no way does the financing encumber the license or pledge the license or provide that the license is security, which of course would be contrary to our law. We have such an opinion in our files, is that

correct?

**MR. HANLEY:** That is correct.

**CHAIRMAN KLINEMAN:** And from whom was that?

**MR. HANLEY:** That's from Bell, Boyd and Lloyd, outside counsel to the company.

**CHAIRMAN KLINEMAN:** And they reviewed the Indiana law and gave us their professional opinion?

**MR. HANLEY:** Yes, that's correct.

**CHAIRMAN KLINEMAN:** And the opinion runs to the Commission?

**MR. HANLEY:** Yes.

**CHAIRMAN KLINEMAN:** Anyone else have any questions?

I think we will have to hear from Mr. Price, who has previously requested that he appear and tell us -- he is the attorney for the people who brought the action in Hamilton County. And the minority, we'll call them for this purpose, shareholders.

So if you don't have anything else to tell us about this litigation, we'll hear from Mr. Price and what he has to say.

**MR. HANLEY:** Thank you.

**MR. PRICE:** Mr. Chairman, Members of the Commission, Staff, my name is Henry Price of Price and Findling in Indianapolis, I represent the six of the minority shareholders who are the plaintiffs in the Hamilton County action.

To correct, perhaps, the state of the record as represented by Mr. Heller, the, or Hanley, the service in the Cook County action has only been achieved on one of the six plaintiffs in the Hamilton County action. A general appearance has not been entered.

**CHAIRMAN KLINEMAN:** Whoa, I think you misspoke. Service has not been had on?

**MR. PRICE:** On -- the defendants in the Cook County action are the same, six of them are the same as the plaintiffs in the Hamilton County action.

**CHAIRMAN KLINEMAN:** Okay.

**MR. PRICE:** So I was describing my six clients, who are the plaintiffs in the Hamilton County action, and are six of the eight defendants in the Cook County action.

Service in the Cook County action has been had only on one.

**CHAIRMAN KLINEMAN:** I thought you said Hamilton County, but I understand. So in the Cook County case, only one of the defendants have been served under your --

**MS. BOCHNOWSKI:** One of the six.

**MR. THAR:** One of his clients.

**MR. PRICE:** Only one of the six who are defendants in the Cook County action have been served in the Cook County action.

**CHAIRMAN KLINEMAN:** Sometimes we have eight sometimes we have six.

**MR. PRICE:** There were two individuals who were minority shareholders who are not participating in the Hamilton County action but are negotiating settlement. So those two individuals, I believe, have also been served in the Cook County action. But I can't represent that because they're not my clients.

**MR. VOWELS:** I thought earlier that he said five of the eight in Cook County received service?

**MR. PRICE:** That's what I -- I

want to correct the record as I understand the record. I think that was an inaccurate representation.

**MR. VOWELS:** Do you represent any of the eight in the Cook County --

**MR. PRICE:** Yes, I do. I represent six of them. And only one has been served.

**MR. VOWELS:** We have two mystery service?

**MR. PRICE:** Right. And we have retained counsel in Chicago. Harold Emeriman. And Mr. Emeriman has entered a special appearance for the only one of my clients who had been served for purposes of contesting jurisdiction in the Cook County action.

And we do, as Chairman Klineman asked in one of his questions, I believe, we do intend to contest that jurisdiction. Arguing that over none of these individuals does the Cook County court, is it able to acquire personal jurisdiction. And those issues, of course will have to be fought out in that court.

But we have not entered a general appearance, we do not intend to enter a general appearance, we do not contend to consent to the Cook County jurisdiction but rather to contest it because these are Indiana residents. All of my clients are Indiana residents with the exception of one who is a south Dakota resident.

There are two Indiana corporations while the principal place of business is apparently going to be changed to Cook County, it was located in Michigan City. We have an Indiana gaming license, we have Indiana real estate, and we have six Indiana individuals.

So we believe that the only reason the case was filed in Cook County was to, in effect, get it in the backyard of the majority shareholders and to seek to have a resolution in Cook County. That's why we filed our cause of action in Hamilton County and we believe all of the issues will be resolved in Hamilton County in an Indiana court concerning these Indiana issues. So that's the status of the Cook County action.

The status of the Hamilton County action that you asked about, and I forget which of the commissioners asked about the tendered preliminary injunction, that was the preliminary injunction which we tendered to Judge Hughes and which will be the subject of a hearing on Tuesday. The, I supplied it to the commissioners for this purpose, to demonstrate to the Commission that we are not seeking relief, which would impede the progress of the development of this project.

You'll see the relief that we are seeking in the Hamilton County action is only to protect the minority shareholders. We did not even seek to impede their ability to authorize these additional shares. We only ask that if they were authorized, that 40 million out of the 100 million shares be placed in the name of our clients, which was the original intent of the stockholder purchase agreement. And that they be given to the court and placed in escrow until the issues in this litigation have been resolved.



We are not asking in any way to impede the majority's control of the operation of the business, nor the development of this project in this litigation. We are merely asking to not have our interest diluted in such a way that our effective relief is eliminated.

**MR. VOWELS:** This is what you're asking Judge Hughes? This is the proposed order that you wish he would sign if he would buy your argument?

**MR. PRICE:** Yes.

**MS. BOCHNOWSKI:** It's my understanding that while you say they didn't live up to their end of the bargain, in fact your clients didn't either because they were to provide some cash. So I mean how does this -- I wish you all could just resolve these things. But somehow it seems like there's some, there's things that have happened on both sides here.

**MR. PRICE:** There have been, Commissioner Bochnowski, but we have entered yesterday, and since I've been involved in representing these individuals for

approximately ten days now, we have not only filed the Hamilton County action and obtained the restraining order which is before you, but we have also acted to obtain, despite the fights about what we own, what interest we really own, we have acted to obtain the financing.

And I believe that we have, subject to the ability to get the majority to agree to certain protections of minority shareholder rights, we have \$8 million committed. Six million from one entity, two million from another entity. I'm meeting this afternoon to finalize the list of protection of minority shareholder rights that will be necessary to be signed off on simultaneously with the tender of the check or tender of the placing the eight million in escrow.

So I think there is a way to resolve this. We have made that offer in writing yesterday to the majority shareholder's outside counsel. I understand from a conversation here this morning that it has been communicated to the principals

of HP. We made, we suggested two other alternative resolutions as well different from our retaining our 40 percent interest. And they are considering these proposals, and will get a response to us.

While we are seeking to protect our rights in court, we are attempting to resolve simultaneously the issue through negotiations, either by protecting our rights as minority shareholders and paying the \$8 million, or making it available as needed, which is really what's required, or by offering some other alternative solution which would not involve our participation in this ongoing project.

**CHAIRMAN KLINEMAN:** That's an issue that Judge Hughes would decide on rather than the Gaming Commission?

**MR. PRICE:** Yes. Right.

**MR. VOWELS:** It's your position that this litigation that's going on in Hamilton County will not slow down the process of Blue Chip leading proposal in Michigan City?

**MR. PRICE:** I don't think that it

should. We're not asking in any way to impede that.

**MR. VOWELS:** Are you here asking us anything or are you informing us what the status is?

**MR. PRICE:** No, we're not asking the Commission to affirmatively take any action with respect to this ownership dispute of the shares. We are informing the Commission of the status. We are informing the Commission of our efforts to protect the minority shareholder's rights, the Indiana shareholder's rights. And inform the Commission of our willingness, of course, to negotiate a resolution of that as an alternative to proceeding with the litigation.

We are telling the Commission that we believe the case should be decided by an Indiana judge. It's Indiana law that controls the corporation. It's Illinois law that controls the contract, but these are all Indiana citizens. Two Indiana corporations and an Indiana gaming license.

**CHAIRMAN KLINEMAN:** I think we're

getting into matters that are not before us.

**MR. PRICE:** Sure. And that is --

**CHAIRMAN KLINEMAN:** Could I ask a question? Is there anything in the litigation, either pieces of litigation, that should in any way affect the financing, which is the subject of the hearing that we're having right now?

**MR. PRICE:** Well, based upon the representations of the experts in that area, the answer would be no. Apparently, there's -- I've not seen the documents.

**CHAIRMAN KLINEMAN:** I mean is there anything that you, you representing six of the eight people who are involved in this litigation, is there anything that you intend to do on behalf of your clients which would adversely affect this financing?

**MR. PRICE:** No, sir. We're not attempting to impede this financing in any way. We would be happy to see this financing go through. We will seek no relief, which in any way impedes this financing.

Finally, the document that I put

before the commissioners is a document which is a consent, which one of the corporate entities of an individual, a client of mine will sign, and it may indeed already be signed.

It's a minor issue as to the use of the name which a shortened version of the name that the Indiana Blue Chip wishes to utilize. That name had been reserved by my client. And we have consented, as soon as I can locate it, he will execute the, the consent letter which has been negotiated with Mr. O'Neal and placed before the commissioners. So there won't be any dispute about Blue Chip being able to use the name it wants to use.

**CHAIRMAN KLINEMAN:** So right now even though the financing documents with the name of Blue Chip Casino, Inc., that is not the name of the entity; is that what I'm understanding now?

**MR. PRICE:** It is the name of the entity as it's been authorized in an amendment to the Articles of Incorporation. It is not a name that is technically

available to be registered through the Indiana Secretary of State because it has been reserved.

That reservation, by execution of the document that's before you, will be delivered to CT Corporation as they requested, and they will then have the right to use it. So it's just a matter of getting that signed and delivered to CT Corporation.

But the Articles of Incorporation have been so amended. They're not going to put this bond to the market, as I understand it, until November anyway. It will be done today.

So -- if there are no other questions.

**CHAIRMAN KLINEMAN:** Anyone else have anything of Mr. Price?

**MR. VOWELS:** No, but I'd check and see who those other three that got served is. Maybe there's something you don't know?

**MR. PRICE:** All I know is what is reflected in the Cook County Court's Clerk of Court's records. And they only reflect service on one of my clients. And as soon

as the other ones have been served a special appearance will be entered for them. Thank you.

**CHAIRMAN KLINEMAN:** Anything that you gentlemen want to say with respect to what Mr. Price has said? And I don't want to get into whether it's been three people served or one, I find that to be irrelevant.

**MR. LARSON:** In that case, sir, we have nothing further.

**CHAIRMAN KLINEMAN:** The other thing that we didn't get into is a proposal that would change the majority interest in this project, which is, involves the Flynn's. You want to just briefly outline for the Commission's record what is being proposed vis-a-vis the memorandum who were originally granted this certificate, and what might happen in the future?

**MR. LARSON:** Certainly. We've submitted another material to Mr. Thar, I'm sure you're aware. I'd like to ask Mr. Hanley to provide that update.

**MR. HANLEY:** HP of Indiana has entered into an agreement which would sell a



fixed percentage of the company which varies, depending on the outcome of the pending shareholder dispute, either 12 percent or 24 percent subject to Gaming Commission approval. And then they would also issue options for additional shares of HP of Indiana to Flynn, again subject to Gaming Commission approval.

**CHAIRMAN KLINEMAN:** And to whom would the sale be made?

**MR. HANLEY:** HP of Indiana, subject to the suitability review which is ongoing with respect to certain members of the Flynn family, would be the purchasers of the common stock of HP of Indiana.

**MR. SWAN:** What would the maximum percentage be that they could acquire?

**MR. HANLEY:** It depends on the outcome of the pending shareholder dispute.

**CHAIRMAN KLINEMAN:** Let's say that the shareholders maintain their 40 percent, what would the Flynn group end up with?

**MR. HANLEY:** 12 percent interest and then with options.

**CHAIRMAN KLINEMAN:** And if the,

what are the stages? Are there stages if the eight go down to X percent then Flynn would acquire more? Is that where we are?

**MR. HANLEY:** I think Flynn has had a long relationship with certain principals of HP of Indiana, and they would agree to that after the outcome of the pending dispute. We haven't figured out every different permutation of what all the potential settlement procedures are with the individuals.

**CHAIRMAN KLINEMAN:** But if these eight are wiped out completely, then Flynn goes to 52?

**MR. HANLEY:** If Flynn chooses to exercise its options.

**CHAIRMAN KLINEMAN:** And when are you proposing to make this change?

**MR. HANLEY:** Only after the review of suitability is completed, which is pending.

**MR. THAR:** If the eight minority investors were to prevail and obtain 40 percent of the company, what is the maximum interest after the exercise of options the

Flynn group could acquire?

**MR. HANLEY:** I believe they could, they'd have a right to 12 subject to the Gaming Commission approval, and then they would have options to go up to 60 percent.

**MR. THAR:** So they could effectively remove the 60 percent stockholders before permission was -- the group that would hold 60 percent of the stock before the Flynn's could be approved would effectively be removed as owners?

**MR. HANLEY:** Yes. But you have to remember at the time this agreement was executed, HP of Indiana thought they owned either 80 or 100 percent of the company. So I think everybody will talk.

**CHAIRMAN KLINEMAN:** Anybody else have anything further?

One thing you could say about this job, you get into different aspects of the business world, and all sorts of things. I must admit that when I was delivered the, the information concerning this issue earlier this week, it was my inclination just to postpone this. And I hear the plea

that in some way the election is going to affect the interest rates.

To me the interest rates are affected by such things as Alan Greenspan making statements to the Treasurer of the Nation of Australia and other things. Who knows what's going to affect interest rates. I don't feel, myself, that the election is really going to affect interest rates. But that's not saying they won't move. They could move tomorrow morning and probably will.

So I'm really not excited about the idea that we should hurry up and do this because the election is going to be held in early November and we've got to get this deal done. However, I guess, I am somewhat persuaded if the market is right, vis-a-vis supply/demand, which we have no evidence to the contrary other than the statements here.

So I believe that that is a reason for you to go forward and get maybe a more favorable rate than you would be after the supply demand gets skewed the other way.

I'm however troubled by going up

to \$105 million. I really do feel as I stated before that you would end up borrowing more money than you need. And I guess without a proforma showing me where this money would go to increase hotel, make it nicer, you know, no plans, to me you get back to the situation where you'd just be borrowing more money than you need.

And I'm particularly interested in making sure that the project has at least \$20 million worth of equity. Now 20 million compared to, I think originally like 80, the debt equity ratio is getting a little skewed here in my judgment, because I like equity. And I like the concept. It marries people to projects a lot more than does debt.

So anyone else have anything they'd like to say concerning this? Should we, we have an option, we can consider it today, we can postpone it until our November meeting which will be the second Friday, which is about the 11th, I guess.

**MR. THAR:** We had to check that. It's the preceding Wednesday, I believe it's the 9th that we have the auditorium.

It's the 6th. It's the day after the election.

**CHAIRMAN KLINEMAN:** Oh, that's going to be interesting. I don't think I'll be here.

**MS. BOCHNOWSKI:** Well, anyway, on that, I was rather ambivalent about whether we should go ahead and wait. I can't really see much point in waiting because it's, I don't know whether the interest rates will go up or down but I don't see much point in waiting.

I tend to agree with you if waiting until November gives them time to show what they are going to do with the extra money otherwise stick with the 95.

**CHAIRMAN KLINEMAN:** That comes up with a good solution. If you could show us where we'd need the next \$10 million maybe we'd approve the 105. Otherwise, I'd be inclined to put it before the Commission at 95, with no ups today.

**MR. HANLEY:** We could certainly provide you with that detail.

**CHAIRMAN KLINEMAN:** So we'll

postpone it till November then?

What did Donaldson want to say about that?

**MR. LARSON:** Could we have a minute?

**CHAIRMAN KLINEMAN:** Sure. Maybe we'll take a quick break.

(At this time there was a brief recess taken, after which the following proceedings were had:).

**CHAIRMAN KLINEMAN:** I think we can come back to order.

Mr. Larson?

**MR. LARSON:** Yes. Chairman Klineman, Members of the Commission, representing Blue Chip and its management team we are prudent business people, and it is not our intention, nor do we feel it's prudent, to borrow money that you don't need.

However, we would request that if you would, to approve us for up to 105 million, because we feel that we have some very tangible ways to put that money to good use. Specifically, to make some

enhancements to the property that we might otherwise not be able to. And perhaps, most importantly, to bring benefits to all concerned a little bit more quickly.

To accelerate the construction schedule, and while in certain periods of the construction timetable we had contemplated double shifts, this would give us the flexibility to deal with a third shift. Or the unfortunate circumstance that there's some unusual weather delays that we again have another tool to be able to stay on track, and in fact, hopefully move this project along even more quickly and begin to operate and generate tax revenues.

So, we would respectfully request that, in fact, you grant us your approval today to raise as much as 105 million as we outlined for you today.

**MS. BOCHNOWSKI:** Now, I'm sure it's all written in here and I think that I read it but I just want to clarify. No portion of this could go outside of this project of the proceeds that could be used at another --



**MR. LARSON:** That's correct. All the proceeds need to be directed towards the Michigan City development.

**CHAIRMAN KLINEMAN:** It's actually going to be disbursed through a disbursing agent, is that correct?

**MR. LARSON:** Yes, it is. There's a trustee. After the funds are raised they go into designated accounts and we draw against those submitting draw requests to a trustee.

**CHAIRMAN KLINEMAN:** And showing that the money is being used for the Michigan City project?

**MR. LARSON:** Yes, sir.

**CHAIRMAN KLINEMAN:** And there's no way that any of this money could be given to the equity investors to diminish their equity. The equity will always be at least \$20 million?

**MR. LARSON:** The proceeds of the offering cannot be used to offset any equity contribution that's been made to date. The note holders, as well as the commissioners, expect that 20 million to remain there.

**CHAIRMAN KLINEMAN:** And if the excess is not used, it would be your intent to buy back the notes. If no notes are tendered, or if you have more money than the numbers of notes that are tendered for reduction that you would use that money then to call certain notes and redeem them?

**MR. LARSON:** That would be our intention, yes.

**CHAIRMAN KLINEMAN:** If there's an excess?

**MR. LARSON:** Yes.

**CHAIRMAN KLINEMAN:** Anyone else have anything?

**MR. SWAN:** No, I think it's appropriate. Mr. Larson has identified that these are prudent businessmen. They're not going to borrow more money than we really need. We want revenue for Indiana, and we want the most we can get. And if your project viability is going to be better sooner with this extra 20 million on there then I'm all for it. And I'd like to make that motion.

**CHAIRMAN KLINEMAN:** We do have a

resolution, 1996-53 that's before us. Based upon what we've learned today in Paragraph 3, that resolution would have to add on after the 95 million, not more than 105 million. And then when we come over to the second page we have the blank that says approved or disapproved. I guess we'd want to put approved there. And in the body of it maybe we would want to add request for approval of senior secured notes due in 2003 in an amount not less than 95 million or more than 105 million.

**MR. SWAN:** Yes.

**CHAIRMAN KLINEMAN:** Okay.

**MR. THAR:** We'll have that, if the Commission approves it with that amendment, we'll have that retyped for your signature.

**CHAIRMAN KLINEMAN:** Okay. Do the people here know what we're talking about in this amended motion? It's not really amended because it hasn't been presented.

**MS. BOCHNOWSKI:** It will be retyped as said.

**CHAIRMAN KLINEMAN:** Right.

(A motion was made and seconded at

this time.)

It's been moved and seconded to approve amended 1996-53. With approved to such a degree to Page 2. Any further discussion? Hearing none all those in favor say eye. Contrary? Resolution is approved. Thank you very much.

(The motion was voted on and adopted at this time)

**CHAIRMAN KLINEMAN:** The next item is the Majestic Star local investors. And we have a request to appear before the Commission submitted by Karen Freeman Wilson. Who is an attorney appearing on behalf of certain parties. Welcome.

**MS. WILSON:** Thank you, Mr. Chairman, Members of the Commission, Director Thar and Members of the Staff.

My name is Karen Freeman Wilson, as you know, and allow me to supplement my letter to Mr. Thar with my attorney number which is 8603-45A. And I do, in fact, represent certain, in fact three, of those individuals who thought themselves or who believe themselves to be local investors in

the Majestic Star Casino. And we are actually before the Commission at the behest, somewhat, of a previous ruling by Lake Superior Court which required certain other local investors in the Majestic Star Casino to exhaust their administrative remedies.

However, and I will certainly outline my position as I've presented it in the letter to you briefly, I am not sure, and I, in fact, believe that the Gaming Commission is not in the position to really grant the relief that my clients seek.

In December of '94 when the certificate of suitability was issued to Don Bardon as the principal of then Bardon Casino, LLC, he made representations there that there were ten local minority investors who were to purchase a 15 percent interest at an amount of \$375,000.

Because of changes in the project, and other factors, in December of '95, Mr. Bardon offered those local minority investors a smaller amount. As a result of negotiations between December of '95, and

April of '96, on April 11th, 1996 it was agreed that the local investors in the project, those who were again presented to you in the application for the certificate of suitability, would receive a 5 percent interest for a price of \$375,000. And there were further options placed on that, if, in fact, those individuals chose to put or call or sell their investment, there were certain returns attached to that investment.

That was outlined, and ultimately agreed upon by the parties in a communication sent to Barton's attorney, Frank Zinn on April 11, 1996. At that time that communication was sent by Tom Fraley, he and I represented the group.

At the time that that communication was made, there was no contingent provided. And I say that because subsequent to the April 11th communication, Mr. Zinn indicated to Mr. Fraley that the agreement was then contingent upon a larger or a majority of the group accepting the terms of the agreement.

It is our position, the position

of Felicia Flowers Smith, Emmanuel Echimuna, and Robert Lewis, who are my clients, that an agreement was reached on April 11th for those individuals who chose to enter into the agreement with Majestic Casino, LLC, to in fact, do that.

When the contingent was placed on the agreement on May 2nd, 1996, it is our position that the agreement had already been reached, and that was an effort to change the agreement after the fact.

As I stated earlier, it's, however, as I stated in my communication to the Gaming Commission, my clients now seek one of two things. One is to be able to purchase that 5 percent interest at a rate of \$375,000, or in the alternative, the return that was provided for in that agreement.

And as I stated earlier, I do not believe that the Commission at this time is in a position to grant that relief. Certainly, if the Commission chooses, you may hear further testimony, and get more facts, but I have set forth the position of

our clients. And we are simply here because if, in fact, we have to go further, we want to represent and be in a position to represent that we have, in fact, exhausted what remedies we know to be our administrative remedies.

So with that I will entertain questions that the commissioners may have regarding this issue.

**MS. BOCHNOWSKI:** I think your analysis is probably correct.

**CHAIRMAN KLINEMAN:** Well, to the extent that this Commission has felt, and it's been illustrated here today, that ultimately these questions need to be decided in a court of law. That we are not in a position to make these kind of decisions.

We are here to examine the capacity and capability of those people who apply for licenses, and that's what we do. And after we find that the people pass that muster we then grant the licenses. If later there comes a time when there is a conflict we are not in a position to decide those



questions. Because ultimately, the courts of law are places that these things should be decided and that's not what we are.

**MR. THAR:** Mr. Zinn, on behalf of Majestic Star is present also. Do you wish to address the Commission, Mr. Zinn?

**MR. ZINN:** I would.

Mr. Chairman, Members of the Commission, Mr. Thar, and Staff. My name is Frank Zinn, Z-I-N-N, law firm of Dykema Gossett in Detroit, and I'm here today representing Majestic Star Casino and Mr. Bardon. And I really would just like to provide the Commission with a brief response to Ms. Wilson's statements in the letter which I just received the other day.

There are really two issues in the position she states, and that is whether the terms of the license contain any requirements or any conditions that there shall be ten named local investors. On reviewing both the certificate of suitability and the license, there are no such conditions. And the license as it was issued in June of this year, was not

conditioned by local ownership.

**MS. BOCHNOWSKI:** Wait, just a second, though, if you say on the record, though, that you have a certain number of minority investors, and you have contracts or legal agreements, that is an issue.

**MR. ZINN:** Yes, but that's not what happened.

**MS. BOCHNOWSKI:** And I don't want to get into a big thing.

**MR. ZINN:** Well, I'll just finish my statement and I think I'll respond to that question. We certainly don't dispute the fact that in connection with presentations or the presentation made with the application of this Commission that a local investment complement of people were identified. The names were listed because the Commission needed to know who they were to do the necessary background checks.

And over the course of the months subsequent to that, even though the, and this was back in 1994, over the following two and-a-half, three years, substantial changes were made in the, in the, both the

cost of the project and the way it was going to be financed.

I asked the Secretary to distribute to the Commission two letters. And probably you've not had time to read them, but I know that Ms. Wilson had filed materials with the Commission, but I've not, I'm not just sure what's been filed. But I just want to point out the letter dated June 3, 1996, which I wrote to Mr. Fraley, who we had understood right along to be representing these ten investors. And this just briefly outlines, and I just might read the two paragraphs at the bottom.

It briefly outlines the, the extensive effort that has been made to conclude an arrangement with these people. During December 1995, and January 1996, Mr. Bardon makes specific offers to your local investor group for them to acquire a 15 percent beneficial interest through ownership in Gary Riverboat Gaming. None of these offers were accepted by your clients. Subsequently, we had a number of discussions in an effort to accommodate your clients,

culminating in Mayor Scott King's office on March 29.

And I might say at that meeting, there were a number of the local investors, Mr. Fraley, I believe Ms. Wilson was there, and Mr. Bardon was there, and I. At this meeting, Mr. Bardon personally offered the original 15 percent participation.

Following its rejection by your executive committee -- now that refers to the committee that Mr. Fraley said represented these ten investors, which consisted of the three people that were in the mayor's office, they rejected the offer. And said how about an investment which would give us a guaranteed return? And Mr. Bardon, in front of Mayor King said we will do that. That it will guarantee a 4 times return.

Well, I won't go on with the letter. I'll just say that after that, we received a letter probably two weeks later from Mr. Fraley, and now the local investor group wanted a 1,600 percent return. I wish I'd brought the letter with me, I would have distributed it to you. So at that point,

Mr. Bardon made the decision to, not to proceed, to attempt to negotiate with the local investors, but rather, to establish an educational foundation in the City of Gary, and took steps to do that.

And that was publicly announced and it was in the press, and I wrote a letter to Mr. Fraley advising him of that. Shortly after that, Mr. Fraley wrote back to us that they would like to now go forward with the investment with the 300 percent premium. We said -- and they wanted some further information.

We prepared a subscription agreement and other materials, I believe Ms. Wilson filed those with the Commission. And I sent those to Mr. Fraley, assuming that the nine or ten investors, it became confusing because there was Mr. Fraley at an Indiana law firm, there was Ms. Wilson, and we also were getting correspondence from a third lawyer who claimed to represent, if not all, most of these same ten people. So it became very difficult to sort these things out.

So Mr. Fraley writes we'll go back to the original agreement, or understanding. And before we were able to even send him the subscription agreements, we're served with a lawsuit by, and I believe the Commission is aware of it, by four of the investors, some local contractors, I forget all the plaintiffs, and I believe this Commission was one of the named defendants.

Notwithstanding this lawsuit, I responded to Mr. Fraley, if you would like to settle on the terms we've discussed, even for just three or four people, we will do it but we'll have to do it on a proportional basis. We won't give you the entire benefit with this large premium for just three people, because the other seven people are up in another court suing us. But we will give you 30 percent. Or if you have three of the ten, we will allocate on that basis.

And that's, frankly, where the, where the discussions, the dialogue broke off. I never received from Mr. Fraley or from Ms. Wilson or from anybody a signed subscription agreement. And Mr. Bardon has

proceeded with some funding of the foundation in Gary.

I will say, that the lawsuit filed by the other six investors, and the other plaintiffs was dismissed by the court in Gary. And we believe it's on appeal, but we're unsure.

So, Mr. Chairman, unless there are other questions I would ask that the Commission confirm, at least the terms of the license and the certificate of suitability. And that Majestic Star is in compliance, at least to date with those terms. And if the Commission is willing to undertake a review of the sort of back and forth events that I described, and Ms. Wilson has described, I'd be happy to have the Commission rule on that as well. But you may not choose to.

**MS. BOCHNOWSKI:** You know this is so funny because we're having so many problems with the local investors. We predicted this was going to happen because it what a selective group of people that had no representation. It was on the bad advice

of lawyers that these developers went out and thought they had to get local investors, which the law says nothing about. And you built this box for yourself. And I don't feel real sorry for anybody anymore.

**CHAIRMAN KLINEMAN:** Well, Mr. Zinn, we're only paid \$50 a day as I've announced to the group many times. We're not paid the salary of judges or lawyers in the federal system. We think those people are better equipped to settle some of these questions. I appreciate your offer that we work on it but I think we'll decline at this time.

**MS. BOCHNOWSKI:** I don't know, what's your opinion, Jack, the license doesn't say anything about it?

**CHAIRMAN KLINEMAN:** There's nothing before the Commission. No, it was addressed to you.

**MR. THAR:** There's a couple of different issues here, one of which hasn't been asked. I don't think the Commission should at this particular time define what a certificate of suitability requires or what



the license requires in terms of whether or not there's to be a local investor participation. We certainly know that was represented at the time of the license position.

As to whether or not agreements were entered into and whether or not or not, whether an agreement was entered into or not or whether or not an agreement was entered into and subsequently breached is really an issue for which the courts are equipped to handle and not the Commission is equipped to handle.

I would recommend that the minutes reflect that Ms. Wilson has presented to the Commission the opportunity to determine whether or not we should get involved in this, and Mr. Zinn has responded to that. And that the minutes further reflect that the Commission, after considering the matter, has determined that whether or not an agreement was made, and then if an agreement was made if it was breached, is not an issue for the Gaming Commission. It's an issue for the courts.

And that we do not take Mr. Zinn's request that we do any kind of finding of what the license may or may not require at this particular time.

**CHAIRMAN KLINEMAN:** That would be exactly where I would have the Commission end up. I think we're not equipped to, as Jack very well states, the problems as demonstrated here today with the two law suits, injunctions, all that kind of stuff. We're just not in that business.

We're sorry there's so many money involved in these things that it spawns this kind of controversy, but so be it.

Well, hearing no objections let's let the minutes reflect that it is the position today of the commission as outlined by our Executive Director, that we decline to get involved in deciding the questions of whether the contracts between certain parties and other parties, that we decline to get involved in the question of about whether or not the license or the original certificate of suitability contains anything concerning the relationship between the

parties represented by Ms. Wilson and Mr. Bardon and Majestic.

Hearing no objections the minutes will so reflect.

We move on to the next item in our agenda which are the felony waivers.

Thank you, Ms. Wilson, for coming down.

**MS. WILSON:** Thank you, Mr. Chairman.

**CHAIRMAN KLINEMAN:** We'll send you on your way having exhausted, we hope, your administrative remedies. And we'll send Mr. Zinn on to find out which court, and which plaintiffs represent whom, and what lawyers are to be dealt with in this matter. And we wish all of you luck.

All right. We have before us a couple of felony waiver requests. And they're backed up by some findings, recommendations and findings of fact which have been prepared by Kay Fleming, together with a transcript, I guess there are actually two of them? Three.

We have before us then, as the

first item Kim M. Moore. And if Kay will outline the matter concerning her.

**MS. FLEMING:** Thank you, Mr. Chairman. As a preliminary matter all of these applications were filed for employment on the Grand Victoria Riverboat in Rising Sun. All of the applications were filed after the effective date of the 1996 amendments to IC 433811. Therefore, the new amendments which took effect in July, on July 1, do apply to these requests for a waiver.

After conducting the review with Ms. Moore present, it was determined that pursuant to the new amendment, she would not be eligible for a waiver at this time since her probation expired within approximately the last six months.

So it is the recommendation that Ms. Moore's request for a felony waiver be denied.

**CHAIRMAN KLINEMAN:** Anyone have any questions of Ms. Fleming concerning Kim M. Moore?

Is Ms. Moore here? Anyone have

any questions?

Hearing none, would somebody make a motion to adopt the Commission order on the request of the felony waiver for Kim M. Moore, and to insert in the body of that order either adopts or rejects.

I guess if you wish to go with the recommendations of Ms. Fleming, we have adopts in the first paragraph, and denies in the second paragraph.

**MR. THAR:** Correct.

**CHAIRMAN KLINEMAN:** Have to go through carefully and make sure I don't make a mistake. Do you have a motion to adopt this order?

**MR. VOWELS:** I'll make a motion to adopt and the word denies.

**CHAIRMAN KLINEMAN:** Is there a second?

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** Any further discussion? All those in favor say aye. Contrary?

(The motion was voted on and

adopted at this time)

**CHAIRMAN KLINEMAN:** The Commission order on request for felony waiver is adopted for Ms. Moore.

The next item is J.B. White.

**MS. FLEMING:** Yes. Again Mr. White had applied for an occupational license to be employed with the Grand Victoria Riverboat. After conducting the review it is the recommendation, it is my recommendation, that Mr. White's request for a felony waiver be denied.

**CHAIRMAN KLINEMAN:** Is Mr. White here today? Okay.

Anyone have any questions of Ms. Fleming concerning J.B. White? If none, is there a motion to adopt the Commission order and insert the word adopts in the first blank, and denies in the second blank.

**MR. MILCAREK:** I will so motion.

**CHAIRMAN KLINEMAN:** Is there a second?

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** Any

discussion? Hearing none all those in favor of adoption of the commission order for J.B. White say aye. Contrary? The Commission order is adopted.

(The motion was voted on and adopted at this time)

**CHAIRMAN KLINEMAN:** Next is Linda Jansen.

**MS. FLEMING:** Yes. Again, Ms. Jansen applied for employment with the Grand Victoria Riverboat as a blackjack dealer. She was present at the review hearing, as was her attorney Douglas Holland. The documents that the Commission has received and by Ms. Jansen's own admission she is currently on probation for a felony conviction. As a result of the 1996 amendment she would not be eligible for a waiver at this time. Therefore, the recommendation is that her request for a waiver be denied.

**CHAIRMAN KLINEMAN:** Is Linda Jansen here or her representative?

We've heard the report. Is there any, anyone wish to make a motion to adopt

the Commission order for Linda Jansen and insert the words adopt in the first blank and denies in the second blank?

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** Any further discussion? Hearing none all whose in favor say aye. Contrary? And the motion is adopted.

(The motion was voted on and adopted at this time)

**CHAIRMAN KLINEMAN:** The Commission order is adopted.

**MS. FLEMING:** Mr. Chairman, if I may I want to add there is a fourth felony waiver request that was processed on September 17th. That person appeared and on the record requested that he be allowed to withdraw the request. So that would mean his file will be closed, and a copy of the transcript will be included within that. Again, the only part of this that will be made public will be the order that is signed adopting the written recommendations and findings of fact, as those other documents



do contain confidential criminal history information.

**CHAIRMAN KLINEMAN:** He withdrew. He came, he filed a motion to review, and he had a hearing.

**MS. FLEMING:** He was present for the hearing. He then determined since he was still on probation that it probably would not be, it would not be resolved to his benefit so he decided to withdraw.

**CHAIRMAN KLINEMAN:** But you went ahead and prepared the recommendation though.

**MS. FLEMING:** No, not for him. Since he withdrew voluntarily, I had him express that desire on the record. That has been transcribed. So it will be closed and the transcript will be in his file to show that he withdrew.

**CHAIRMAN KLINEMAN:** So there will be no Commission action?

**MR. THAR:** Just as a matter of explanation, under the new statute if a person has a certain type of felony the Commission may never waive. If a person has

another type of felony there's a ten-year waiting period from the date that they get out, or released from incarceration or off probation or parole, whichever later. And all other felonies are five years.

So obviously, when someone is on probation at the time they apply for the felony waiver, they are ineligible by the statute to apply at that time. I don't know if that was made clear in the explanation of why two of the three were denied today. They are by statute ineligible.

The one gentleman understood that and then withdrew it.

**MS. BOCHNOWSKI:** We still have to deal with it even though we have no choice but to deny it?

**MR. THAR:** Yes. The statute would not allow --

**CHAIRMAN KLINEMAN:** There ought to be some way that the Commission can summarily, where the record thus indicates, not even have a full hearing if they are -- sort of like a motion for summary judgment. I don't know, if anything like that would

work but, you know, as a matter of law.

**MS. FLEMING:** We can explore that possibility but there's nothing to prevent them from requesting the waiver. So we have to deal with each request that we receive.

**CHAIRMAN KLINEMAN:** Okay. I understand. All right. That brings us to a small matter of other business, which is contained in the Resolution 1996-54. It's entitled resolution granting Executive Director authority to initiate disciplinary actions against riverboat licensees, supplier licensees and occupational licensees. Mr. Thar?

**MR. THAR:** Yes, we're requesting the authority for the Executive Director, being me, or a designee, to institute disciplinary actions to take certain steps with regard to that and then bring the matters to the Commission.

At the present setup absent that, we would have to bring to the Commission, should we institute a disciplinary action, and then upon your permission then start the investigation or the proceeding.

We are asking that we be allowed to commence it. That any actions we take with regard to it then be brought to the Commission for approval. In other words, we ask you to allow us to begin investigation whether or not --

**MR. SWAN:** Not necessarily to take it on your own.

**MR. THAR:** To do the investigation and then present it to the Commission.

**MR. SWAN:** Move to approve.

**MR. VOWELS:** I'll second.

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** Any discussion of this resolution? I think it's well taken because Mr. Thar needs the ability to go forward and make the investigations in these matters.

If there's no further discussion all those in favor of adoption of resolution 1996-54 say aye.

Contrary?

Resolution is adopted.

(The motion was voted on and

adopted at this time)

**CHAIRMAN KLINEMAN:** That brings to us any other business, anything else that comes before the Commission?

**MR. THAR:** The only other thing I advise the Commission, and Mr. Chairman, is we do have the revised resolution on Blue Chip on the financing.

**CHAIRMAN KLINEMAN:** I think it was adopted correctly.

**MR. THAR:** Verifying, on the record I'm simply verifying that the new type does reflect the correct share of stock.

**CHAIRMAN KLINEMAN:** Well, it's, the resolution states what we said, which is the amount not less than 95 million nor more than 105 million. It's available for -- contains the word approved. It's available for signature by myself and Mr. Vowels as our loyal Secretary.

**MR. SWAN:** Overpaid Secretary.

**CHAIRMAN KLINEMAN:** Underpaid.

**MR. THAR:** Just the next meeting.

**CHAIRMAN KLINEMAN:** Next meeting

we probably have a little bit of a problem. I will not be here unless you have it in Evansville.

I think we probably will have to be put in a position where we will publicly announce our next meeting later.

**MR. THAR:** The anticipated issue of that particular, the November meeting, will be to address the opening of the Argosy. Indiana Gaming Co, LP, boat. And that will, the issuance of the license whether it's contingent, whether the Commission issues it is subject to staff and some other things and whether or not it's on site.

There exists the possibility of doing it in Lawrenceburg. It doesn't necessarily have to be on 6th. The 6th is the day we have the auditorium here.

**CHAIRMAN KLINEMAN:** I think we will announce our next meeting within the next two weeks. And we'll announce the time and the location and make that publicly known for those people who wish to attend. But I don't think we're in a position today,

at this point in time, to set the meeting and its place. We'll work on scheduling. And there are a couple members who aren't here today, we'll have to check their schedules, too. So with that we will postpone the setting of next meeting. I will hear a motion to adjourn.

(A motion was made and seconded at this time.)

**CHAIRMAN KLINEMAN:** So moved.

We hereby adjourn. Thank you all for coming.

(MEETING ADJOURNED AT 1:31 P.M.)