

**INDIANA GAMING COMMISSION  
TELECONFERENCE MEETING**

**10:30 a.m., March 13, 1996  
Hearing Room of  
Indiana Gaming Commission  
N190, 100 North Senate Avenue  
Indianapolis, IN 465204**

**PRESENT:** Commission (participating by phone) members Alan I. Klineman, Chair; Ann M. Bochnowski, Vice-chair; Donald R. Vowels; Thomas F. Milcarek; David E. Ross, Jr., M.D.; Robert W. Swan; Staff (present at hearing room) members Jack Thar, Floyd Hannon, Kay Fleming, Janine Hooley, Cindy Dean, Pam Ayres and members of the press, Argosy representatives and other interested parties.

**Call to Order and Roll Call**

Chair Alan Klineman called the meeting to order at approximately 10:46 a.m., noting that a quorum was present. Commissioner Robert Sundwick was absent.

**New Business**

Executive Director Jack Thar requested that commissioners bring their calendars to the March 20 meeting so that dates could be selected for the next series of hearings. He indicated that all commissioners, with the exception of Bob Sundwick, are hooked up via telephone network. Mr. Thar introduced the Indiana Gaming Commission (IGC) staff present, Argosy representatives, Thomas Long, President and C.E.O., Joe Uram, Chief Financial Officer; Joseph A. Walsh, Winston and Strawn, representing the financial transaction to be discussed; John Waldron, a Bear, Stearns & Co. Vice President, responsible for underwriting Argosy's debt offering; and Peter Rusthoven, attorney representing the entity that holds the Certificate of Suitability. He announced that upon Commission inquiry, the Argosy representatives are prepared to give short presentations or answer any questions.

Both Chair Alan Klineman and Vice-Chair Ann Bochnowski stated their dissatisfaction with the way Argosy has handled their initial offering to obtain \$200,000,000 via first mortgage notes and their initial decision **without any Indiana Gaming Commission approval** to price the offer on Friday, March 8, and close the offer on Friday, March 15. The telephone conference call meeting was necessary because the next official IGC regular meeting was not set until March 20. Mr. Thar had earlier explained that Commission staff had agreed with Argosy's proposal that if the market action was favorable, Argosy might price the issue **with notice that they need IGC approval**, and if that approval has not been obtained by the time of the closing, the funds would be escrowed until the Commission had ruled one way or another. He further stated that if the IGC rules adversely to Argosy's request, the money would then go back to the investors.

Argosy President and CEO Tom Long thanked the Indiana Gaming Commission for the opportunity to address them. The securities laws were not such that he could disclose or represent in any way at any earlier hearing that this bond offering transaction was contemplated or taking place prior to the time that Argosy was prepared to begin to file the transaction with the SEC. He indicated that their general reading of what they had received as the general requirements in Indiana had been the subject of a mis-diagnosis or mis-reading of what the statute required. As far as not providing the adequate time for Commission action, he sincerely apologized. He reported that they mailed their preliminary prospectus on February 23, with follow-up information provided after that time. He realized that any formal meeting with Mr. Thar and the IGC did get overlooked as far as the process and the pricing. Argosy had received an interpretation through reading the regulations that this particular offering did not fall within the formal approval process, as did the others they had tried to follow when filing their notice with the Commission on February 23. Mr. Long indicated that they had made a mistake.

Mr. Joseph Walsh, attorney from Winston and Strawn in Chicago, outlined the salient elements of the transaction. It is a \$235,000,000 first mortgage note offering with a maturity date of 2004. This offering is being made by Argosy Gaming Company which is a publicly-held company traded on NASDAQ, and is the parent company to Indiana Gaming Company, which in turn is the general partner of Indiana Gaming Company, L.P., the holder of the Certificate of Suitability in Lawrenceburg. Of the \$235,000,000, \$101,000,000 will be put in a disbursement account designated for expenditures for Argosy's portion of the Lawrenceburg project.

Alan Klineman interjected that his understanding is that the disbursement account is actually going to be placed with a third party in an escrow situation. Mr. Walsh indicated that is correct. The escrow agent is going to be the First Bank of America of Illinois, and there is a formal, cash disbursement agreement which is in the works as a reasonably final draft. The trustee under the indenture is the First Bank of Commerce in New Orleans, Louisiana. The disbursement account requirement has been placed on Argosy by the note holders pursuant to conversations with the underwriters. Mr. Walsh indicated he could leave a draft of the disbursement agreement with the Commission. A final draft on which both parties can sign off could be ready by Friday of next week.

Mr. Walsh reported that documentation will be presented to the disbursement agent to verify that costs are actually being spent for the Lawrenceburg project. The disbursement agent will then disburse the money. Under the disbursement agreement, the company gives the disbursement agent the instruction to pay any contractor whatever amount of money it is owed, and the disbursement agent will put it into the company's account at the First Bank of America of Illinois. At the outset, the company has to give the disbursing agent a budget for what is going to be spent in Lawrenceburg. Mr. Walsh reported that both kinds of documents, the documentation verifying costs and any budget information, will be made available to the Indiana Gaming Commission.

Executive Director Jack Thar broke down the \$235,000,000 as follows: \$70,000,000 for repayment of bank debt; \$101,000,000 into the disbursement account for the Lawrenceburg project, \$55.5 M for working capital, \$8.5 M for fees and expense of offering.

In terms of the collateral that will be used to secure these notes, Mr. Walsh continued, Argosy Gaming Company is the issuer and the notes will be guaranteed by various subsidiaries of Argosy. They will not be guaranteed by Indiana Gaming, L.P., the partnership. All of the assets at the Alton, Illinois, facility; all assets at the Riverside facility; and all of the assets at the Baton Rouge, Louisiana, facility, including the stock of the various subs that hold these, will be used to pledge these assets. However, excluded in each of these cases will be the gaming license, as specifically referenced in the security agreement. In terms of Indiana, there will be no assets pledged at the partnership level; not the gaming license, not property, not anything from the partnership. The wholly-owned subsidiary of the Indiana Gaming Company, which holds the 57.5 % partnership interest, will be pledging the partnership interest to the trustee and there is a clear, unequivocal statement in the offering memo that the trustee will not be able to foreclose on that interest, absent getting Indiana Gaming Commission approval.

Bear Stearns spokesman John Waldron indicated that in terms of the market and in terms of any underwriters on Wall Street's ability to finance a gaming project of this size and scope, they will need some form of pledge on the Indiana enterprise in order to get any kind of financing accomplished. Whether it is a bank or a bond financing, their noteholders will require a pledge of some sort on the Indiana enterprise. Many of these noteholders have asked Bear Stearns to give them a pledge of the assets, which would be a pledge of the boat, the land-based facility, and/or a pledge of the real property. Bear Stearns has indicated they are not willing to do this. They are unable to raise money on these kinds of projects without some kind of claim on the partnership that operates in Indiana.

In the unlikely event of a foreclosure, Alan Klineman asked who would operate the thing. Who would be in charge? Who would be operating during the interim while the assets are being liquidated? Of course, Chair Klineman added, this event would be highly unlikely.

Argosy CEO Tom Long answered that Argosy would, as an operating issue, enter into an operating agreement with whoever the receivers were and continue to operate under supervision of the Indiana Gaming Commission until everything has been taken care of. He presumed this would be done as it would be the most prudent and practical way to do it.

Should Argosy be put into a receivership, Executive Director Thar queried, does Argosy's offering memorandum provide or give notice that it is necessary for the receiver to come to the Indiana Gaming Commission to secure the ability to operate?

Mr. Long answered that it is clear that no successor in interest to Argosy could do anything without the approval of the Indiana Gaming Commission. If Argosy is removed as a result of foreclosure, it does give the limited partners the right to acquire their interest at fair-market

value, if they choose, with Indiana Gaming Commission approval.

Mr. Walsh added that Indiana is being treated differently and in a much more favorable way given that their assets are unencumbered at the partnership level and they get \$101,000,000 of the proceeds designated specifically and earmarked for the Lawrenceburg project.

Chairman Klineman asked about Consecos side of the transaction. What is anticipated in connection with the timing for them to make their investment in this project and is it going to be done through the same type of escrow-type arrangement previously described?

Mr. Long explained that Consecos investments are made under the partnership agreement at the time Argosy issues capital calls. Those capital calls have all been honored to date. Mr. Long indicated they will continue to issue capital calls as the project progresses as they make progress payments that are required for the boat, for landing facilities, etc. Argosy provides them with detailed information on what the progress calls relate to; i.e., construction, overhead costs, etc. Consecos then has a short period of time to review that information and then they fund their capital call.

Mr. Long added that Argosys controllers will budget out when payments are due; the contractors will have notified them. At that point in time they certify that the work has been done and notify and provide the required documentation to both the Bank of America and Consecos, Consecos funds with Argosy, they fund with the Bank of America and pay the contractor. Argosy is well satisfied with the substantial credit worthiness of Consecos.

Argosy Chief Financial Officer Joe Uram indicated that Argosy has prepared the partnership budget which describes in detail the project components; Argosy, as a matter of course, internally reports against that budget when they a) send a capital call to Consecos, and b) when they require the disbursing agent to disburse funds to vendors. This could be made available to the Indiana Gaming Commission as it goes. What Argosy has done to date could also be made available.

Tom Long reported that Argosy has purposely over funded in the event that there are any cost overruns so that there would not be any shortages. He indicated that there are actually excess funds in the \$101,000,000 to carry any cost overrun Argosy might incur on that project for their share.

Upon inquiry by Commissioner Bob Swan regarding the difference in the proposed financial package from the original one that was proposed in the Argosy application, Mr. Long indicated that Argosy has moved their financing from a letter of credit with the Bank of America for \$101,000,000 and that letter of credit is still in place, but it is a three-year letter of credit. They have a cash flow from their other operations (approximately \$50,000,000+ a year). Since the credit markets are now very favorable and Argosy now has the opportunity to go out and put permanent financing (rather than letter-of-credit, 3-year financing) in place, they have elected to try to do that so that Argosy can have a much stronger permanent capital base for the company

and provide some additional working capital for Argosy itself as the parent company. He further explained that what has changed is the financing of the Lawrenceburg project to a first mortgage financing and a more stable long-term financing piece of paper. The only difference is that from Argosy's letter-of-credit arrangement, they did not have the Indiana Certificate of Suitability when the letter of credit was obtained and they had first mortgage indebtedness for the letter of credit on all of the other Argosy paper. They had \$100,000,000 outstanding pledged against Argosy. From the Bank of America bank-line documents the Indiana asset itself probably is covered through the documentary language that extends mortgage interest to any assets one acquires in the future.

Much discussion followed regarding the possibility of delaying any Commission decision until the meeting on March 20, 1996. Mr. John Waldron, from Bear Sterns, reported that initially they were indicating a potential pricing date of last Friday, March 8, at which point the stock and bond markets took a lengthy drop. For various reasons including the fact they did not have approval from the IGC, they decided not to proceed. Because of this they spooked their lenders. They realized that the stock and bond markets were down and the concern over the Indiana approval process scares the lenders because of political processes they do not understand.

Chairman Klineman interjected that it was not the Indiana Gaming Commission's fault. He wants this clearly understood.

Mr. Waldron added that everything was exacerbated by a very volatile market. The stock market was down 171 points last Friday and the bond market was down over 3 points, which was the second single biggest bond drop in the history of the bond market. There was tremendous volatility on Friday. On Monday, the stock market rallied and the bond market rallied back up again. On Tuesday, the stock market fell another 95 points and the bond market fell as well. People are very nervous even away from any Argosy-specific issue. When you overlay that with Argosy's mistake of not getting to the IGC in time, there is a situation which will be very challenging for Bear Sterns and their other underwriters to maintain this group of lenders much past today or tomorrow. In Mr. Waldron's professional opinion, they are skating on very thin ice. He appreciates the position in which this puts the IGC.

Joe Walsh reported that assuming that Argosy was at a price today that they would be required to close in five business days or next Wednesday and that is the moment in time when the indenture would be signed, the cash disbursement agreement would be signed, the money would actually physically be transferred, and the notes would be issued. If priced today, they would sign an underwriting agreement which is an agreement between the company and the underwriters saying subject to the satisfaction to a number of conditions, they will buy this \$235,000,000 and Argosy would sell at this price.

The bottom line then, added Jack Thar, is that if the pricing cannot be done today, the deal cannot go. Bear Stearns indicated the deal cannot wait until March 20.

Joe Walsh stated that in his professional opinion they cannot wait until March 20. He believes that they can probably wait until the next day (March 14) without materially risking the transaction. By waiting longer, it will put the entire \$235,000,000 at risk. But he agreed that the Indiana Gaming Commission can approve the request if they so choose subject to the complete review of the documents prior to next Wednesday. One of the restrictions they work under is that once they price it today, they do not have the luxury of extending the closing date. If they cannot close next Wednesday, the deal dies at that point rather than if they couldn't price today.

A copy of the drafted disbursement agreement could be left with the Commission. Mr. Thar reported that if the IGC were to approve today, Chair Klineman is suggesting that it be a conditional approval. It would be approved, but be subject to being re-reviewed on March 20. He questioned what that would do to the deal.

As long as the Commission looks at the disbursement agreement and is comfortable, Joe Walsh indicated this is something they can handle. But if the Commission doesn't like the pledging of the partnership interest, this is a case where they couldn't even price today, because the book of investors has been put together on the key premise that that is a piece of collateral that is available to them. If it is just a matter of looking at documents or that sort of thing and not a substantive difference, then they would not have a problem.

Mr. Thar clarified the issue. Chairman Klineman is indicating that he doesn't believe that there is enough in the offering memorandum to satisfy him as to what he believes the disbursement agreement/escrow agreement should probably say and Joe Waldron is saying that it is basically going to be a standard type of agreement in the industry with which the IGC may not be familiar. Chairman Klineman seems to be stating that if the Commission approves it today as a tentative approval, subject to a re-review, a final approval is necessary for March 20.

Chairman Klineman stated his concern with the terms of the disbursement agreement is that he wants to be satisfied that the money is going to be used for the Lawrenceburg project and for the Lawrenceburg project alone.

Joe Walsh indicated that he feels very comfortable that when the Commission sees the document and when the \$101,000,000 goes into the disbursement account, that it cannot come out except for Lawrenceburg until the project is completed.

Mr. Klineman stated he might be disturbed by the money being used for soft costs (architectural fees, bonuses to people, etc.) so that the money runs short before the Commission sees brick, mortars and boat and dock in place. He does not want someone awarded "X" million dollars out of that money because they have done a good job in Lawrenceburg.

Argosy Chief Financial Officer Joe Uram indicated that he will be required, as a matter of course, with each disbursement from the disbursement account as an officer of the company to sign off saying that it is for a bonafide and appropriate use specifically related to Indiana. He

further added that Argosy will have more than \$50,000,000 of working capital outside of the scope of this disbursement account in addition to all the cash flow from the other casino projects. He echoed Mr. Walsh's comments that the disbursement agreement is very satisfactory.

Chair Alan Klineman stated he wants unconditional opinions from attorneys telling him that based upon their review of the Indiana law in respect to the pledging and the hypothecating of the license, that this transaction does not in any way violate that law. The Commission certainly wants such opinions in its file.

Barnes and Thornburg attorney Peter Rusthoven, representing the partnership, indicated that there have been preliminary discussions regarding this with Winston and Strawn. He reassured the Commission that they are quite comfortable that there is no violation of the prohibition on pledging or hypothecating the license itself.

**ACTION:** Upon motion by Bob Swan, second by Dr. David Ross, the Commission voted unanimously (6 out of 7 present by telephone) to approve the \$235,000,000 private bond sale proposed by Argosy Gaming Company, subject to Chairman Klineman's subsequent document review approval. Mr. Klineman will review final documents on Monday, March 18, 1996.

**Adjourn**

The meeting adjourned at 11:40 a.m.

Respectfully submitted,

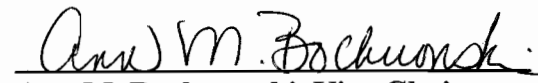


Pamela S. Ayres  
Executive Secretary  
to the Executive Director

**For the Indiana Gaming Commission:**

  
**Alan I. Klineman, Chair**

**ATTEST:**

  
**Ann M. Bochnowski, Vice-Chair**