

GAMING COMMISSION BUSINESS MEETING  
JUNE 8, 2006

**ORIGINAL**

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The above-captioned Indiana Gaming Commission hearing was stenographically taken down by me, Robin L. Helton, a notary public in and for the County of Marion, State of Indiana, at 1:30 p.m., on June 8, 2006, at the Indianapolis Hyatt Downtown, Regency Rooms A & B, 115 W. Washington Street, Indianapolis, Indiana, and the following transcript is a true and accurate transcript of the proceedings held.

**CIRCLE CITY REPORTING**  
2050 First Indiana Plaza  
135 North Pennsylvania  
Indianapolis, IN 46204  
(317) 635-7857

## A P P E A R A N C E S

## COMMISSION MEMBERS PRESENT:

Harold Calloway, Chairman  
Donald Raymond Vowels  
Bryan Robinson  
Marya Rose  
Tim Fesko  
Tim Murphy  
William Barrett  
Earnest Yelton, Executive Director  
Phil Sicuso, General Counsel  
Jennifer Arnold, Deputy Director  
Kevin Mahan, Superintendent  
Tami Timberland, Administrative Assistant

## ALSO PRESENT:

Steve Carter, Attorney General  
Charles J. Todd, Chief Counsel  
OFFICE OF THE ATTORNEY GENERAL  
302 West Washington Street  
IGCS 5th Floor  
Indianapolis, Indiana 46204

William Bock, III, Esq.  
KROGER, GARDIS & REGAS, LLP  
111 Monument Circle, Suite 900  
Indianapolis, Indiana 46204

J. Lee McNeely, Esq.  
McNEELY, STEPHENSON, THOPY & HARROLD  
30 East Washington Street, Suite 400  
P.O. Box 457  
Shelbyville, Indiana 46176

Ronald D. Gifford, Esq.  
BAKER & DANIELS, LLP  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204

1 CHAIRMAN CALLOWAY: Good afternoon. How is  
2 everybody doing back there? I would like to call  
3 this public meeting to order. At this time I would  
4 like to introduce myself. I'm Harold Calloway, I'm  
5 the Chairman of the Indiana Gaming Commission from  
6 Evansville, Indiana. To my left, if everybody  
7 would introduce themselves as I have.

8 COMMISSIONER VOWELS: I'm Don Vowels,  
9 Commissioner, from Vanderburgh.

10 COMMISSIONER ROBINSON: Bryan Robinson, Vice  
11 Chair, Floyd County, Greenville, Indiana.

12 COMMISSIONER ROSE: Marya Rose from  
13 Indianapolis.

14 COMMISSIONER FESCO: Tim Fesko, Lake County.

15 COMMISSIONER MURPHY: Tim Murphy, also from  
16 Indianapolis.

17 COMMISSIONER BARRETT: Bill Barrett from  
18 Greenwood.

19 COMMISSIONER CALLOWAY: Thank you.

20 I would also like to ask the executive staff to  
21 identify themselves.

22 EXECUTIVE DIRECTOR YELTON: Thank you,  
23 Mr. Chair. I'm Ernie Yelton, Executive Director.

24 GENERAL COUNSEL SICUSO: I'm Phillip Sicuso,  
25 General Counsel.

1 DEPUTY DIRECTOR ARNOLD: Jenny Arnold, Deputy  
2 Director.

3 SUPERINTENDENT MAHAN: Kevin Mahan,  
4 Superintendent, Indiana Gaming Commission.

5 MS. TIMBERLAND: Tami Timberland,  
6 Administrative Assistance.

7 CHAIRMAN CALLOWAY: Thank you. I don't believe  
8 we have any old business today. I'm going to ask  
9 our executive director if he would introduce our  
10 attorney general.

11 EXECUTIVE DIRECTOR YELTON: Thank you,  
12 Mr. Chair. According to the notice, this public  
13 meeting today has been called for the Indiana  
14 Gaming Commission to consider the operations of the  
15 local development agreement in East Chicago,  
16 Indiana as it relates to Resorts East Chicago, and  
17 East Chicago Second Century, Inc. With that in  
18 mind, we will open today's proceedings with the  
19 Attorney General of the State of Indiana,  
20 Steve Carter, who will present to you, and his  
21 staff will present to you, the fruits of the  
22 investigation that was conducted upon the request  
23 of the Indiana Gaming Commission into this issue.  
24 Attorney General.

25 ATTORNEY GENERAL STEVE CARTER: Thank you.

1 Thank you, Mr. Chairman, and thank you members of  
2 the commission for the opportunity to be of service  
3 to you. I think that this is the first time the  
4 Indiana Attorney General has ever attended a gaming  
5 commission meeting, and we hope that it will be  
6 viewed as productive in your mind.

7 You have a tremendous challenge with your  
8 responsibility of maintaining the integrity of an  
9 entire industry. And we hope that the information  
10 that the Attorney General's office has provided  
11 through this interim investigative report will be  
12 helpful to you as you fulfill that duty. I think  
13 it is easy to become distracted as we work through  
14 some of these issues. This responsibility  
15 certainly is much more than resolving a local  
16 dispute between two or three parties, but it's a  
17 decision that can have statewide impact and, again,  
18 will affect the entire industry.

19 It's also important that we recognize that  
20 gaming and gambling was not legal in Indiana for  
21 many years. Probably when most of us were born it  
22 was not legal in Indiana. But there was a public  
23 policy decision a few years ago to change that with  
24 tight regulations, that this was an industry that  
25 we could develop in this state in an appropriate

1 way. The legislature created a framework to  
2 develop this industry. The legislature is the  
3 public body that acted to create certain property  
4 interests that will be discussed later today, and  
5 protection of the integrity of the public's  
6 interest in those property interests is what is  
7 properly before you. Some may try to distract as  
8 to whether it is private interest or public  
9 interest, but this is all about a public process,  
10 and that's why we're here in public session.

11 I think it's also important to note the  
12 environment that this matter comes before you. The  
13 Attorney General's office has been involved with a  
14 number of public integrity issues related to  
15 Northwest Indiana, Lake County, and specifically  
16 the City of East Chicago. And I bring that up not  
17 from our perspective but that is the environment  
18 that the citizens of East Chicago see this matter  
19 as they continue to wrestle with extraordinary  
20 intervention by the federal courts, by the Indiana  
21 Supreme Court, by the Attorney General's office and  
22 by other regulators. It's all designed to restore  
23 public confidence in the governmental processes  
24 that have been lost in that city over a number of  
25 years.

1           So ultimately, I will turn things over to Chuck  
2 Todd, the chief deputy in charge of public  
3 integrity and litigation. But also the question, I  
4 think, is are the standards that were put in place  
5 a number of years ago and that were deemed  
6 acceptable at that time appropriate standards for  
7 the State of Indiana today and in the future.  
8 Thank you very much for our opportunity to be of  
9 assistance to you. With that, let me turn things  
10 over to Chuck Todd to present more detail.

11           MR. TODD: Thank you, Mr. Attorney General.  
12 Mr. Chairman, members of the commission,  
13 Mr. Executive Director, staff, thank you for the  
14 opportunity to provide this morning our interim  
15 investigative report specifically relating to East  
16 Chicago Second Century, Inc. The next slide shows  
17 that on November 4 of 2005, the commission made a  
18 request of our office to assist in investigating a  
19 number of allegations that have been raised by  
20 other parties appearing before the commission.  
21 Within your letter to our office in November you  
22 specifically state, "The Commission hereby requests  
23 an investigation on its behalf to determine if the  
24 performance of the Contract," -- and I might  
25 mention that the contract here is the local

1 development agreement that was originally  
2 established with the Showboat arena -- "is  
3 consistent with the stated purpose of the Riverboat  
4 Gambling Act and maintains the integrity of the  
5 riverboat gambling industry under 68 IAC 1-4-2(b)."  
6 That was the request that you made of us.

7 And this afternoon what we are presenting to  
8 you is an interim report, because you asked us to  
9 investigate the performance under the entire  
10 contract. And as I will demonstrate in a moment,  
11 that contract actually involved the receipt of  
12 monies from four different entities; the City of  
13 East Chicago, two foundations and Second Century.  
14 What we are presenting today is an interim report  
15 that concerns only Second Century. Now, we also  
16 understand that issues have been raised by other  
17 parties with respect to the jurisdiction and the  
18 authority of this commission to even consider a  
19 development agreement for further review by the  
20 commission. And in that respect, this commission  
21 requested that our office issue an adversary  
22 opinion to assist the commission in understanding  
23 the legal constraints which may or may not be  
24 placed upon the commission.

25 And in the next slide I have a quotation from

1 the "Attorney General's Official Opinion 2006-2"  
2 that I believe was issued yesterday for the benefit  
3 of the commission. And in that opinion letter we  
4 address the specific authority of this commission  
5 to consider local develop agreements. And as  
6 quoted on the slide, a summary conclusion is stated  
7 that "It is the opinion of this office that Indiana  
8 statutes and rules that govern the Indiana Gaming  
9 Commission provide sufficient authority for the  
10 commission to disapprove and cancel contracts,  
11 including local development agreements, and  
12 transactions that do not comply with laws or  
13 regulations governing riverboat gaming or that do  
14 not maintain the integrity of the riverboat  
15 gambling industry." So we would provide advice to  
16 this commission that it is well within its  
17 authority and duty to consider the matters that are  
18 being presented today and specifically those being  
19 presented by our interim report.

20 The next slide indicates -- I have a series of  
21 slides, actually, that relate to specific laws that  
22 we feel would be of interest and due consideration  
23 by the commission. The Riverboat Gambling Act  
24 indicates specific legislative intent; that as the  
25 Attorney General stated, gambling is illegal in

1 Indiana except when the legislature has provided a  
2 specific exception to that policy. And in the  
3 Riverboat Gambling Act, a specific exception is  
4 permitted to provide riverboat gambling but for  
5 specific reasons. And as indicated in section 2 in  
6 this code, "This article is intended to benefit the  
7 people of Indiana by promoting tourism and  
8 assisting economic development." And it goes on to  
9 indicate the necessity for this commission to  
10 engage in the strict regulation of facilities, and  
11 to have comprehensive law enforcement involvement  
12 with respect to riverboat gambling.

13 The act continues in the next slide which sets  
14 forth the number of powers -- a few of the listed  
15 powers and authority granted to this commission  
16 that, again, indicates the strong legislative  
17 intent that this commission engage in strict  
18 regulations and that it should have all of the  
19 power and authority necessary in order to engage in  
20 that regulations. Therefore, the statute expressly  
21 provides that you are to have "All powers necessary  
22 and proper to fully and effectively execute this  
23 article." That you are suppose to select among  
24 competing applicants to determine which applicant  
25 would provide the greatest economic development for

1 the area where the license is to be granted. And  
2 finally, the quote we provide you is "Take any  
3 reasonable or appropriate action to enforce this  
4 article."

5 The next slide continues the legislative  
6 purpose and intent by demonstrating that the  
7 commission has the express authority to adopt  
8 rules that the commission determines necessary to  
9 protect or enhance the credibility and integrity of  
10 gambling operations authorized by this statute or  
11 by this article. And in your pursuit of fulfilling  
12 the mandate placed upon you by the general  
13 assembly, you adopted a specific rule that relates  
14 directly to the issue before you. 68 IAC 1-4-2,  
15 you state in section 2(a), "The commission is  
16 required to maintain the integrity of the  
17 commission and riverboat gambling." And the rule  
18 continues on to further describe this policy and  
19 requirement.

20 And if we continue on to section b, subsection  
21 b of the same section, you will note on the slide  
22 with the highlight that "The commission reserves  
23 the right to disapprove and cancel any contract or  
24 transaction that does not comply with the act or  
25 this title or does not maintain the integrity of

1 the riverboat gambling industry."

2 It is upon these statutes and others that are  
3 fully expressed within the official opinion letter  
4 that we present to the commission to provide our  
5 official opinion that you do, indeed, have  
6 sufficient authority to review, disapprove or  
7 cancel contracts or transactions or parts of  
8 contracts that may be brought before you for due  
9 consideration.

10 The agreement that is before the commission  
11 today and the one over which you requested our  
12 office to investigate is the local development  
13 agreement that was originally entered into between  
14 Showboat and four different parties and it was  
15 approved at the time of the approval of the license  
16 to Showboat for a riverboat casino in East Chicago.  
17 That agreement, the local development agreement,  
18 specifically provided for the sharing of adjusted  
19 gross receipts through the four entities listed on  
20 the slide. The City of East Chicago was to receive  
21 1 percent. The East Chicago Community Foundation,  
22 1 percent. And the Twin City Education foundation,  
23 1 percent. In addition to the city and the two  
24 nonprofits that are listed as the two foundations,  
25 a fourth benefactor of the revenues from the casino

1 was to be the East Chicago Second Century, which is  
2 a for-profit corporation. And it was to receive  
3 three quarters of 1 percent of the adjusted gross  
4 receipts of the marina.

5 Now, the Showboat Marina was owned by a  
6 partnership, and the next slide reflects the  
7 ownership of that casino. 55 percent of that  
8 partnership was owned by the Showboat Indiana  
9 Investment Limited Partnership, an outside entity  
10 that has interest in other casinos.

11 In addition there was a junior partner,  
12 Waterfront Entertainment and Development, Inc.,  
13 and that partner was granted a 45 percent interest  
14 in the partnership and, therefore, in the casino  
15 license. And if you go down the list, you will see  
16 that there are a number of local individuals, local  
17 to the East Chicago community, who are part of that  
18 partnership -- of the Waterfront Entertainment and  
19 Development, Inc.

20 The agreement has been in effect since 1994 and  
21 payments began under the distribution in 1997. And  
22 over the past several years, from 1997, a number of  
23 payments -- or payments have been made annually for  
24 each of the entities. Now, the slide in front of  
25 you does not include the City of East Chicago but

1 the City of East Chicago had a 1 percent interest  
2 and it would be identical to the receipts received  
3 by either the Community Foundation or Twin City.  
4 So the 1 percent interest provided to the three  
5 entities shown on the slide would be the  
6 \$21,780,000 to the two foundations and, as I said,  
7 also to the city. And then the three quarter of 1  
8 percent payment to the Second Century Corporation  
9 amounts to slightly over \$16,000,000 as of May 31st  
10 of this year.

11 Now, Second Century was formed as a for-profit  
12 corporation, and it was organized on March 16,  
13 1994. The incorporator was Michael Pannos. The  
14 president was shown listed as Michael Pannos and  
15 the secretary Thomas Cappas. And this is all  
16 pursuant to public records and formal documents  
17 filed with the Secretary of State's Office.

18 However, as indicated by the next slide, this  
19 commission has had some conflicting statements  
20 presented to it over the years. In 1994 when you  
21 were first considering the Showboat license,  
22 Showboat represented that "Showboat has formed East  
23 Chicago Second Century, Inc., a for-profit  
24 corporation," even though it was formed by  
25 Mr. Pannos.

1           However, that statement was then contradicted  
2           in 1998 when discussions were being held in  
3           preparation of a potential application for transfer  
4           of license regarding Harrah's, that the East  
5           Chicago Second Century, Inc. is a for-profit  
6           corporation incorporated under Indiana business  
7           corporation law on March 16, '94 by Michael A.  
8           Pannos.

9           In addition, we have a representation  
10          continuing to this commission in 1998, as reflected  
11          in the commission's minutes, that "Pannos and  
12          Cappas would like to take leadership positions in  
13          regards to activities of Second Century,"  
14          when, in fact, Pannos and Cappas had served as the  
15          president and secretary since 1994.

16          The representations continue in the next slide  
17          that, again, in 1998 the commission was advised  
18          that "Pannos and Cappas would not be taking any  
19          compensation at this time but may be asking for a  
20          compensation package at some point in the future  
21          after Harrah's assumes responsibility of the  
22          riverboat operation in East Chicago."

23          Now if, in fact, Pannos and Cappas has received  
24          such compensation, the commission in 1998 noted  
25          that "The Commission reserves the right to rule on

1 any compensation." It is our understanding that no  
2 requests nor information has been provided to the  
3 commission that would indicate that such  
4 compensation has been paid.

5 Finally, and perhaps quite importantly for this  
6 commission was a representation made to this  
7 commission in 1999 when it was specifically  
8 considering the transfer of the license from  
9 Showboat to Harrah's. And in 1999 this commission  
10 conducted a lengthy hearing at which several people  
11 testified. One person was John Artis, who at the  
12 time was the director of East Chicago Department of  
13 Redevelopment. And in the course of this  
14 discussion, the commission was considering just  
15 what to do about the percentage that was being paid  
16 to Second Century. And there actually was some  
17 discussion and some expression of concern that this  
18 money was going to a for-profit corporation.

19 And at this time, in 1999, a number of  
20 representations were made to the commission that  
21 all of the development and activities of Second  
22 Century would be done through and under the  
23 auspicious of the City of East Chicago. That no  
24 development would be undertaken that would not be  
25 approved by the city. That the actions and conduct

1 of Second Century would be under the review of the  
2 city. And as Mr. Artis specifically stated in  
3 1999, "It would become the City's responsibility to  
4 ensure that the three quarters and 1 percent set  
5 aside is, in fact, being used -- not only used but  
6 also used for projects that are, in fact, approved  
7 by the city itself."

8 In fact, at the time this commission met at  
9 that hearing, it was further represented to the  
10 commission that reports of the disbursements made  
11 by Second Century would be provided to the city for  
12 its review and analysis and, in fact, passed on by  
13 the city to a nonprofit corporation that engages in  
14 a survey of development expenditures.

15 Based upon the representations made to this  
16 commission in 1999, a decision was made by the  
17 commission that it need not otherwise monitor or  
18 supervise Second Century. That such supervision  
19 would be done through the City of East Chicago.

20 However, in 2005 when the license was being  
21 sought to be transferred to Resorts, Mr. Artis  
22 appeared before the commission -- or submitted an  
23 affidavit to the commission at that time, and he  
24 stated "I was never required or requested by anyone  
25 to monitor the activities of Second Century

1       thereafter." And "thereafter" was referring to the  
2       1999 hearing. "The City of East Chicago has never  
3       received an accounting or any other financial  
4       information from Second Century since I made this  
5       representation to the Gaming Commission."

6               So as indicated, we have a number of public  
7       policy concerns that this commission needs to  
8       consider in the context of -- apparently the  
9       representation that a monitoring and reporting  
10      would occur that never occurred. We would go back  
11      to the public policy that the Attorney General  
12      originally mentioned in his opening remarks. That  
13      gambling is illegal except where specifically  
14      allowed for the purpose of creating a public  
15      benefit. "And public interest requires  
16      transparency to ensure that the public is indeed  
17      benefiting" as it was supposed to benefit according  
18      to the intent of the legislature.

19              The concern that the Attorney General has, or  
20      the office of the Attorney General has, is  
21      demonstrated in the next slide which indicates,  
22      "Where there is no means of public accountability,  
23      there is no way to ensure that legislatively  
24      prescribed limits are respected." And so the  
25      prescribed limits of the legislature that casino

1 revenues are to be expressly used for local  
2 development, and that there are to be no contracts  
3 or transactions that would impugn the integrity of  
4 the gaming industry; can only be affected if, in  
5 fact, this commission has the opportunity to review  
6 those facts and there is a public transparency so  
7 the citizens themselves can understand where these  
8 monies and how these monies are being used.

9 Now, we present to you in our next slide the  
10 issues that confronted us with respect to Second  
11 Century. Because Second Century is a for-profit  
12 privately owned corporation, it has no public  
13 transparency. It has no public accountability.  
14 There is no open door law that would apply to its  
15 board of directors or shareholder meetings. There  
16 is no public access to its records. There is no  
17 audit by the State Board of Accounts. And although  
18 it was represented that there would be, there have  
19 been no reports made to the City of East Chicago to  
20 the gaming commission or to the survey nonprofit  
21 that was represented in 1999 would be made. There  
22 is no public audit of any nature.

23 Now, you asked us in November of 2005 to  
24 commence an investigation into the local  
25 development agreement, which included the activity

1 of Second Century. But as this slide demonstrates,  
2 it has been extremely difficult for the office of  
3 the Attorney General to gather information with  
4 respect to Second Century. When we requested the  
5 information directly from Second Century, we were  
6 advised that they would not provide it. They  
7 indicated that they were in litigation and a stay  
8 order had been issued. Although we were not  
9 parties to that litigation at the time of the  
10 request, they declined to provide the information.

11 When we advised this commission of that result,  
12 the commission made its own specific request in its  
13 own name to Second Century to provide information.  
14 But once again, Second Century declined to provide  
15 the information to this commission and, of course,  
16 this commission is not a party to that litigation.  
17 Thus, it has been an arduous process to try to  
18 acquire information regarding just what use has  
19 Second Century made of the \$16,000,000 that it has  
20 received pursuant to a contract with a licensee of  
21 this commission.

22 Well, the next slide indicates that what the  
23 commission was told in 1994 and repeated in 1999 is  
24 that one reason a for-profit entity was selected as  
25 a recipient for development dollars is that they

1 thought it would be easier for a for-profit to  
2 leverage those dollars to provide greater benefit  
3 to the community. And it was estimated that the  
4 leverage could be as great as 8 to 1. That the  
5 economic benefit would be \$8 for every \$1 provided  
6 pursuant to the sharing of the revenue, which, of  
7 course, that wasn't a guarantee. It wasn't a  
8 contractual promise or obligation, it was a  
9 representation made to the commission for its  
10 consideration at the time.

11 Since Second Century has received \$16,000,000,  
12 if the 8 to 1 ratio would, in fact, apply, then it  
13 would seem that the City of East Chicago should  
14 have received by this date, almost 10 years after  
15 the fact, \$128,000,000 in projected development.

16 The next slide indicates what the projected  
17 \$128,000,000 has brought or, in actuality, the  
18 \$16,000,000 that it received. And it has -- the  
19 City of East Chicago has received 61 units of low  
20 income apartments, 32 single-family homes, and 12  
21 townhouses. We do not have formal appraisals of  
22 these properties, but it is our belief that it  
23 would be difficult to show a 1 to 1 ratio with  
24 respect to this development for the \$16,000,000,  
25 let alone an 8 to 1 ratio for that development.

1           So based upon the information that we have been  
2           able to acquire from public sources and the  
3           research that has been done by this office as well  
4           as the failure to respond to the several requests  
5           made for the information, our next slide summarizes  
6           the conclusion of the interim report as it  
7           specifically relates to Second Century.

8           The conclusion is that the existing agreement  
9           "directs economic development funds to a for-profit  
10          entity with no public oversight." That there has  
11          been "possible misrepresentations by Pannos, Cappas  
12          and the Pastrick administration to the Commission"  
13          with respect to the manner in which the local  
14          development agreement was to be implemented and  
15          performed. And that perhaps this commission would  
16          find that there is "Insufficient local development  
17          for the \$16,000,000 in casino funds that was  
18          projected to be leverage to \$128,000,000 in new  
19          development."

20          So based upon this information, these facts and  
21          circumstances, the conclusion that we reached, as  
22          indicated on the next slide, is that the office of  
23          the Attorney General "has found facts and  
24          circumstances that would permit the commission to  
25          disapprove the Showboat Agreement with respect to

1 Second Century if it should choose to do so."

2 So we thank you for the opportunity. I do want  
3 to mention that our investigation is continuing  
4 with respect to the local development agreement,  
5 specifically with respect to the receipt and use of  
6 the funds by the two foundations. And that it is  
7 the intent of our office to provide you with  
8 additional reports as our investigation continues  
9 in that respect.

10 And if I may answer any questions that you  
11 would have, I would be pleased to do so.

12 CHAIRMAN CALLOWAY: Thank you, Mr. Todd. Are  
13 there any questions for Mr. Todd at this time from  
14 the commissioners?

15 EXECUTIVE DIRECTOR YELTON: Mr. Todd, other  
16 than the evidence that you have displayed here this  
17 afternoon, was there other evidence gained or  
18 gleaned through your investigation on behalf of the  
19 commission? And if so, the status of that?

20 MR. TODD: Yes, there was information that was  
21 provided to us. We received information not only  
22 from the Secretary of State's Office, which is set  
23 forth in the public report, but we also received  
24 information from the Indiana Housing and Community  
25 Development authority, some of which is set forth

1 in the public report, but some which is  
2 confidential pursuant to their rules and,  
3 therefore, is not set forth in the public report.

4 We also -- through the auspicious of the  
5 commission, we received information from the  
6 Department of Revenue, which by statute is  
7 confidential. And that information was reviewed  
8 and summarized and we, actually, provided the  
9 commission earlier today with a confidential report  
10 of three volumes of materials that set forth all of  
11 the information that we have received. There is an  
12 exception to the confidential requirement of the  
13 Department of Revenue records that permits heads of  
14 agencies to secure information that is necessary  
15 for them with respect to the performance of their  
16 duties as a commission. It was upon that basis  
17 that the information was received on behalf of this  
18 commission. The statute, however, provides that  
19 the receiving entity continues to have an  
20 obligation to maintain that information in a  
21 confidential manner. Therefore, we provided the  
22 confidential report to this commission in executive  
23 session this morning, but we are unable, by law, to  
24 provide that information at a public meeting.

25 EXECUTIVE DIRECTOR YELTON: Thank you.

1           COMMISSIONER ROSE: Mr. Chairman, I have a  
2 question. You said that your investigation was  
3 ongoing; is that correct?

4           MR. TODD: Yes.

5           COMMISSIONER ROSE: And so when do we expect to  
6 hear from you again about the ongoing  
7 investigation?

8           MR. TODD: It's very difficult to give you a  
9 precise date because the Second Century sued  
10 Resorts, your licensee, in State Court in Marion  
11 County. Resorts then joined the two foundations  
12 and the city. The Attorney General's office has  
13 actually intervened in that action. There is,  
14 today, a stay of all discovery in that action. And  
15 it was on the basis of that stay that Second  
16 Century refused to provide information. And we  
17 have received a similar response, but not  
18 identical, from the foundations who are providing  
19 some information but they are concerned about the  
20 stay as well.

21           So consequently, the timing on a continuation  
22 of our investigation is going to be affected by  
23 what happens in that litigation, and the ability  
24 for our office to secure additional information.  
25 We are anticipating that it will probably be three

1 months before we will be in a position to make an  
2 additional meaningful report. But that, please, is  
3 only a guess.

4 CHAIRMAN CALLOWAY: Thank you, Mr. Todd.

5 MR. TODD: Thank you. Thank you,  
6 Commissioners.

7 EXECUTIVE DIRECTOR YELTON: We will now  
8 continue along the agenda. For the benefit of the  
9 audience, the interested parties were all notified  
10 that they each would be given or allotted a period  
11 of 30 minutes by which they may summarize their  
12 position on the issues raised by our investigation.  
13 And thereafter, the commission members will be  
14 entitled to ask any questions of those presenters  
15 that the members of the commission may have.

16 We will start with the representatives from the  
17 City of East Chicago. And I believe it will be  
18 presented by counsel, William Bock.

19 MR. BOCK: Thank you, Mr. Executive Director.  
20 Members of the Commission, my name is Bill Bock. I  
21 am with the law firm of Kroger Gardis & Regas  
22 here in Indianapolis. With me today is Steve  
23 Runyan and Larry McMillan from our office; the  
24 Mayor of East Chicago, the Honorable George Pabey;  
25 the Honorable Jesse Gomez, a member of East Chicago

1 Common Council; Mr. Richard Medina is sitting at  
2 the back, and he's the president of the East  
3 Chicago Common Council; and Ms. Christine Vasquez  
4 is also a counsel member and is representing the  
5 interest of the City and the Council here today.

6 I want to thank the commission members for the  
7 opportunity to address you. And I want to thank  
8 the office of the Attorney General and Mr. Todd for  
9 their presentation, both because of its content  
10 and, in particular, because it shortened my  
11 presentation, particularly in going through the  
12 statutes that Mr. Todd identified for you.

13 Let me, though, return to Indiana Code 4-33-1-2  
14 that Mr. Todd had on the screen. And that is the  
15 statute which points out the purpose of the Indiana  
16 riverboat gambling law. It says, "This article is  
17 intended to benefit the people of Indiana." And it  
18 goes on to say that, "The public's confidence and  
19 trust will be maintained only through comprehensive  
20 law enforcement supervision and the strict  
21 regulation of facilities, persons, associations,  
22 and gambling operations under this article."

23 I submit to the members of the commission that  
24 this hearing today in this matter that is before  
25 you, I believe on a motion by the City of East

1 Chicago that was filed 14 months ago requesting an  
2 investigation, is an issue of the public trust or,  
3 put more colloquially, it is an issue about the  
4 light of day. And I believe if you look at the  
5 statutes as the Attorney General believes, that you  
6 will see that you have all power that is necessary  
7 and proper as a commission to allow matters  
8 touching riverboat gambling to see the light of  
9 day. That has become particularly important in the  
10 City of East Chicago where, since we requested that  
11 this commission review the appropriations going to  
12 East Chicago, Second Century, and the foundations  
13 of East Chicago, over \$10,000,000 -- \$10,000,000  
14 has flowed not to the city and not to, we believe,  
15 public benefit, but to private unaccountable  
16 corporations, of which Second Century is one.

17 The regulations that are promulgated by this  
18 commission under that statute that calls for the  
19 commission to bring things to the light of day,  
20 they give you, as commission members, the authority  
21 to cancel a contract. And there is one contract  
22 that is at issue here. One contract that funds  
23 each of those entities that were on the screen.  
24 And let me make something perfectly clear, the  
25 riverboat licensee has committed to making these

1 3.75 percent of payments regardless of how you  
2 decide.

3 The question today is not whether the payments  
4 will be made, but the question is to whom it will  
5 be made. Will it be the City of East Chicago,  
6 which is subject to the open door law, the  
7 accountability provisions of state law that I will  
8 describe to you, or will it continue to be these  
9 private entities who refuse to provide information  
10 to the public, who hide how they are spending  
11 \$10,000,000 of the public's money over a 14-month  
12 period. It was 14 months ago that the City of East  
13 Chicago was before this commission, and we  
14 requested that you act that day. We are again  
15 requesting that you act today to end payments to  
16 any of the private entities in the City of East  
17 Chicago that are receiving funds from this  
18 riverboat gambling licensee. This money is  
19 desperately needed to build infrastructure and  
20 develop economic development in the City of East  
21 Chicago, the very purposes that the Attorney  
22 General has explained to you the riverboat gaming  
23 law was enacted to promote.

24 As the Attorney General has already pointed  
25 out, Second Century made representations to this

1 commission that have been unfulfilled. There is a  
2 record of nearly 10 years of inaction with respect  
3 to Second Century. Mr. McNeely has made some  
4 arguments and some filings that are before the  
5 commission and he has the opportunity to speak  
6 after I speak. He wants to make you nervous about  
7 your authority to act. But I submit to you that  
8 your authority to act is settled by one question,  
9 the statutory interpretation. Did the Indiana  
10 General Assembly give you the authority to protect  
11 public confidence in the integrity of the riverboat  
12 gambling industry in Indiana? The answer is  
13 clearly yes and the Attorney General has showed you  
14 the statutes. The very purpose of this law that  
15 you are sworn to uphold is to protect and maintain  
16 the public's trust and confidence in riverboat  
17 gambling and everything that is associated with it.

18 In order to bring riverboat gambling to the  
19 City of East Chicago, the citizens of that city had  
20 a vote. They undertook their right to vote and to  
21 bring gambling into their community; but not for an  
22 unlimited purpose and not so that private  
23 individuals could benefit; whether those private  
24 individuals are the recipients of grants of a  
25 nonpublic, not-for-profit or they are the private

1 owners of Second Century. The citizens of East  
2 Chicago voted to bring gambling into their  
3 community to promote economic development, and when  
4 they did that, a public trust was created.

5 Members of the Commission, I know you recognize  
6 that you are the guardians of that trust. It is  
7 your sworn duty, as you know, to uphold the  
8 integrity of the riverboat gambling industry in  
9 Indiana and that includes reviewing the single  
10 contract that is at issue today to make sure that  
11 all aspects and associations of that industry are  
12 above reproach, that the monies intended for  
13 economic development are spent openly and with  
14 sufficient oversight, and that they are spent for  
15 economic development.

16 Let me tell you what I think the public trust  
17 includes. This is what the public has a right to  
18 expect. And this is why we believe that this  
19 contract must be terminated with respect to Second  
20 Century and with respect to the foundations. The  
21 public has the right to expect that riverboat  
22 gambling monies committed to the public will be  
23 handled and spent in public, that they will see the  
24 light of day. This is a fundamental public policy  
25 of the State of Indiana that is articulated in

1 numerous statutes; Indiana open door law, in the  
2 public records act, public bidding statutes which  
3 are enacted to prevent corruption and ensure that  
4 public monies are spent only after public bids are  
5 taken. And through the State Board of Accounts  
6 statute, which requires that monies that come to a  
7 governmental entity are audited and reviewed by the  
8 State Board of Accounts.

9 The contract at issue in this case evades the  
10 protections of every one of those statutes by  
11 giving these monies committed to economic  
12 development to private entities that are not  
13 subject to the review provided for money that is  
14 provided directly to the government. As a result,  
15 this contract is against public policy and it is  
16 against the best interest of the State and it  
17 undermined the integrity of the riverboat gambling  
18 industry.

19 The response that Mr. McNeely will make,  
20 because I've heard him make it before, is that this  
21 is not public money. It's private money and they  
22 can spend it however they want and they don't have  
23 to tell anybody how they spend it.

24 The commitment -- ladies and gentlemen of the  
25 commission, the commitment that was made to receive

1           these funds was made by public officials in the  
2           City of East Chicago when they agreed to submit the  
3           application of Showboat for a gaming license before  
4           this commission. And you don't have to go anywhere  
5           beyond the very contractual documents that you are  
6           evaluating to see that. The representation is  
7           contained right in those letters that this money is  
8           being paid in return for the city's support of  
9           Showboat's license application before the  
10          commission. How anyone can say that that is  
11          private money, when it was paid for by public  
12          action is beyond me and ignores the facts.

13                 In addition, the statements of Resort's counsel  
14          indicates to you that this money is considered a  
15          public trust. They are willing to pay that money  
16          to whomever you tell them to for the public  
17          benefit. It is not private money.

18                 The second response that I have heard is that  
19          this case is political. Well, I suppose they are  
20          right, it's political and it's about the money.  
21          But Ladies and gentleman of the commission, it's  
22          not political in the way that they say it is. The  
23          political process in our country is democracy. And  
24          when you are told that this proceeding is  
25          political, I suppose you are being told that the

1 actions of the Attorney General are political.  
2 That's essentially -- and the actions of other  
3 state officials are political. Those are the  
4 statements or suggestions that were made by  
5 Mr. McNeely. But it's not political to want the  
6 public to know and that's what this is about, it's  
7 about the public process. And so when you are told  
8 it's political, you are being told we don't want a  
9 public process. We don't want public oversight.

10 At every turn, Second Century, as has been  
11 reported -- and I must assume the foundations,  
12 because we have seen no disclosures from them --  
13 have resisted providing this commission information  
14 about how this money is being spent, how it is  
15 being used, how decisions regarding it are being  
16 made.

17 The second thing that the public has the right  
18 to expect is that riverboat monies committed to the  
19 public good will be spent to address public  
20 priorities and that can't happen. It cannot happen  
21 under the current agreement.

22 The first thing that is wrong is that these  
23 transfers were not made in the light of day. The  
24 second thing is that they are being used for  
25 private benefit by the foundations and by Second

1 Century. In many cases, as we already know, not  
2 for the public good.

3 How do we know this? It has been 14 months;  
4 it's been 14 months since we brought this issue to  
5 the commission's attention. Has the foundation or  
6 Second Century come before you after they have been  
7 challenged? Have they asked you to demonstrate how  
8 they use the money? Do you have their records? If  
9 you do, can you share them with the public because  
10 the public would like to know. Have they invited  
11 the public to come in and open their books to the  
12 public? Have they invited the State Board of  
13 Accounts in to conduct an audit? Who has received  
14 an invitation to come in and check everything out?  
15 They haven't done this, far from it.

16 Over the last 14 months you have observed  
17 stonewalling, if not outright obstruction. You  
18 have heard a deafening silence. And ask your  
19 counsel, ask the Indiana Attorney General, what  
20 response have the foundations made to record  
21 requests. The public wants to know.

22 We submitted testimony to you 14 months ago  
23 from a board member of the foundations, Mr. Gomez,  
24 and now a current member of the council, who under  
25 oath testified to you regarding his tenure on one

1 of the foundation boards. He was on one of the  
2 foundation boards for seven years. And what did he  
3 tell you in an affidavit that you have in front of  
4 you that we resubmitted to the commission? He told  
5 you that the board of directors of the foundations  
6 are  
7 self-perpetuating. They simply renew their terms  
8 whenever they expire. And he told you the only  
9 exception was when a board member, Paul Snowgess  
10 (phonetic) moved out of the city. Mr. Snowgess'  
11 problem was, and this is a quote from Mr. Gomez,  
12 "The problem with Mr. Snowgoess is that he was  
13 meticulous in his review of the foundation's  
14 financial documents and bold in his inquiry  
15 regarding the organizations expenses."

16 EXECUTIVE DIRECTOR YELTON: Excuse me,  
17 Mr. Bock, for interrupting, I do apologize. We  
18 made it very clear and the notice made it very  
19 clear that the commission is not going to consider  
20 the issue of the foundations today. So if you want  
21 to use some of your allotted time to discuss that,  
22 feel free to do so, but I assure you it will not be  
23 considered today. And I understand your position.

24 MR. BOCK: I appreciate you saying that, but I  
25 don't believe the commission has the authority to

1 cancel part of a contract, to essentially carve out  
2 an exception in a contract, to remake a contract  
3 between parties that the commission is not a  
4 party -- the commission is not a party to that  
5 contract. The commission has the authority to  
6 cancel a contract and terminate a transaction. And  
7 that is in your rules. It does not have the  
8 authority to amend or modify a contract. So if you  
9 take action today, your actions will be to cancel  
10 the contract as a matter of law, I submit to you;  
11 and if you do not do that, then you will obviously  
12 elect to continue to allow these funds to go to  
13 these private entities. That's why I think it's  
14 important that the commission be informed about the  
15 strong basis on which to discontinue funding of all  
16 three entities.

17 There is no question that the foundation and  
18 Second Century are operated for the benefit of a  
19 privileged few who seek to control the right to  
20 dole out the perks of millions of dollars in gaming  
21 revenues without accountability, without  
22 transparency, and without any oversight by the  
23 people's elected leaders.

24 Are there worthwhile expenditures by the  
25 foundations? Perhaps there are some. But you have

1 before you the affidavits of Mayor Pabey; of David  
2 Ryan, the Director of the Lakeshore Chamber of  
3 Commerce; Richard Medina, the President of the  
4 Common Council; and all reflect a lack of  
5 measurable economic progress in the City of East  
6 Chicago resulting from these gaming revenues.

7 The situation with respect to measurable  
8 progress in terms of the foundations and Second  
9 Century is a little different. And as former  
10 foundation board member Jesse Gomez described, the  
11 foundation work is engaged in "extensive and  
12 significant duplication of programs and services."  
13 He has testified before you, in an affidavit that  
14 you have, that frequently grant applications are  
15 allowed to partner with churches that are used  
16 "solely as a conduit for the grant funds," because  
17 the grant applicant would otherwise be unable to  
18 apply for those funds.

19 The very records of the foundations that have  
20 been submitted to you, the only ones that we have  
21 been able to acquire, are from 2002 and 2003. And  
22 those records tell a tale. They demonstrate that  
23 out of spending of about \$2,000,000 a year, the  
24 foundations only give about \$500,000 to any  
25 third-party entities other than -- and this does

1 not include gifts that are made from the  
2 foundations directly back to the City of East  
3 Chicago, which is another inefficiency in the  
4 process.

5 Atrociously, foundation board members are paid  
6 a salary, and that's in the records and in the  
7 submissions that we've made to you. Not just a  
8 salary, but paid for meetings. My understanding is  
9 \$450 a meeting for some. Is that a good and wise  
10 expenditure of public funds?

11 We also have documentation that they have hired  
12 a public relations firm. And it's recommended  
13 attacking the City and its leadership. Is that how  
14 riverboat gaming revenues were supposed to be  
15 spent?

16 These unelected leaders of the foundation and  
17 Second Century have refused the record requests and  
18 demands for openness that have been made for 14  
19 months. And now they ask you to confirm their  
20 alleged right to operate forever without  
21 accountability.

22 Ms. Rose asked Mr. Todd how long would the  
23 investigation continue. And he told you three  
24 months, at least. I think I heard in his response  
25 he expected far longer. Those three months will

1 cost the people of the City of East Chicago  
2 \$1,500,000 that will go to the foundations even if  
3 somehow the money can be ended to Second Century.  
4 Without ending it as to Second Century, it will  
5 cost the people of East Chicago over \$2,300,000  
6 over the next three months. This is in the city  
7 whose water filtration treatment plant does not  
8 function. People cannot get clean water in the  
9 City of East Chicago because the infrastructure is  
10 so bad. There is a desperate need for this money  
11 in the City of East Chicago and we have asked the  
12 commission to address this issue. And over 14  
13 months these entities -- the foundations and Second  
14 Century -- have done nothing. And we submit it's  
15 time to act.

16 I think I have made my point clear. I don't  
17 think that it would be responsible action of this  
18 commission to, after 14 months, not take action on  
19 the entire contract. These foundations and Second  
20 Century have had every opportunity to open their  
21 books to the public. But beyond that, the whole  
22 structure is that we shouldn't have private  
23 entities receiving funds in this way. You know,  
24 the general assembly set out a statute so that  
25 foundations could receive riverboat gambling funds.

1 And we cited that statute in our materials to the  
2 commission. What that statute requires very  
3 reasonably is that there be a communication with  
4 the council and a commitment to the council to  
5 spend the money in accordance with the council's  
6 wishes. That's the process that is required under  
7 the statute. And that statute was in effect in  
8 1997 when these transactions took place and when  
9 the foundations were created. There is no reason  
10 that statute couldn't have been followed, it  
11 wasn't. And that's an additional reason why these  
12 relationships must be terminated.

13 In one matter and one matter only, we agree  
14 with Mr. McNeely from Second Century in their  
15 submission. And that is that the commission cannot  
16 invalidate this contract under which Second Century  
17 is paid without also invalidating payments to the  
18 foundations. As Mr. McNeely put it on page four of  
19 his memo to the commission, the commission  
20 "certainly cannot cancel only a part of the  
21 development agreement while ignoring the other  
22 portions." The commission does not have the  
23 authority to remake contracts. You weren't parties  
24 to the original contracts, and you can't remake  
25 them, but only cancel them.

1           I think that my time is getting short, so I  
2 will close with this. About 10 years ago, there  
3 was an election in East Chicago and the people  
4 voted to allow riverboat gambling in their city.  
5 When that vote happened, thousands of people placed  
6 their confidence in this commission to protect  
7 their trust and to assure that riverboat gambling  
8 and everything associated with it in their city was  
9 conducted in a manner open to the public and above  
10 reproach. And they intrusted this commission, each  
11 of you, with the responsibility to see that the  
12 promise made of public funding for economic  
13 development would be promises kept.

14           Today in East Chicago, the public trust is  
15 being abused to a significant degree, \$10,000,000,  
16 over the past 14 months. We submit that, on behalf  
17 of the people of East Chicago, on behalf of the  
18 East Chicago Common Council that adopted a  
19 resolution 14 months ago to have all of these  
20 monies paid in a way that the public had access to  
21 them, could see them, and know how they are being  
22 spent, and they are being spent for infrastructure  
23 needs that are desperate in the city, on behalf of  
24 the Mayor's Office, who was certainly supportive of  
25 the council's action, we submit that it's your

1 responsibility now to the people of East Chicago to  
2 end what we consider to be an unwholly  
3 unsupervised, unpublic, and unaccountable transfer  
4 of funds from the East Chicago riverboat licensee  
5 to Second Century and the foundations of East  
6 Chicago. And we ask you to immediate cancel the  
7 contract that provides for the distribution of  
8 those funds from the riverboat licensee over which  
9 you do have acknowledged control.

10 I thank you for your time and certainly will be  
11 happy to answer any questions that the commission  
12 might have.

13 CHAIRMAN CALLOWAY: Thank you, Mr. Bock. Any  
14 questions for Mr. Bock at this time?

15 COMMISSIONER VOWELS: Mr. Bock, your position  
16 seems to be that -- an all or nothing position,  
17 that if this commission wants to carve out a  
18 portion of the contract, that we can't do that; we  
19 have to do both, the foundations and Second  
20 Century. Is that my understanding?

21 MR. BOCK: That is correct, sir. And I would  
22 reference IC -- I believe 68 IAC 1-4-2. The  
23 language says they may cancel a contract or a  
24 transaction. In fact, the first part of that  
25 provision says "The commission is not undertaking

1 the policy of approving contracts but will maintain  
2 oversight over contracts and transactions." I  
3 think that is an indication of intent in the  
4 regulations for the commission not to engage in  
5 remaking contracts or for renegotiating them which,  
6 in essence, I think the commission would be doing  
7 if it did not simply invalidate the entire  
8 contract.

9 COMMISSIONER VOWELS: Well, tell me how it  
10 is -- explain to me how it is that you say if we  
11 disapprove portions of this agreement between the  
12 casino and Second Century that approve that  
13 portion -- how does that modify anything other than  
14 there is money to go somewhere else now?

15 MR. BOCK: Well, if you do that you say that  
16 this contract -- we are exercising our authority to  
17 invalidate this contract.

18 COMMISSIONER VOWELS: You don't think that  
19 there are parts that are severable to that  
20 contract?

21 MR. BOCK: No, sir, I don't think that that's  
22 actually, really, the issue so much, as to whether  
23 there are parts of the contract that are severable.  
24 We don't view your authority as of the court, to  
25 invalidate some parts of the contact that is

1           unreasonable and leave others to stand. We view  
2           your authority as that of an administrative body  
3           that has to live within the confines of its own  
4           regulations. And those regulations say that you  
5           have the authority to cancel a contract. But you  
6           haven't written into the regulations the authority  
7           to modify or amend a contract.

8           COMMISSIONER VOWELS: I have no other questions  
9           of Mr. Bock. I would like the Attorney General to  
10          give their thought on that particular issue; would  
11          that be a problem?

12          EXECUTIVE DIRECTOR YELTON: They can, but can I  
13          ask a question first and then we will ask the  
14          Attorney General?

15          So do I understand, Mr. Bock -- and I'm still  
16          standing on what I said earlier.

17          MR. BOCK: I understand.

18          EXECUTIVE DIRECTOR YELTON: But it's your  
19          position to the members of this commission that  
20          they do not have authority to alter the  
21          distribution of .75 percent? If they take action,  
22          they must address the entire 2.75 percent?

23          MR. BOCK: You must invalidate the contract.  
24          What the licensee has committed is to continue to  
25          pay the money for the public good and the licensee

1 is committed to pay it either to the City of East  
2 Chicago or those that are currently the recipients  
3 of those funds. And so we believe that the natural  
4 result then is that if the contract invalidated,  
5 that the licensee should be directed, according to  
6 the prior representations to this commission, which  
7 is included in my first letter to the commission --

8 EXECUTIVE DIRECTOR YELTON: So is that your  
9 explanation, how you get to keep your 1 percent  
10 regardless of what happens?

11 MR. BOCK: Well, the 1 percent is not at  
12 issue --

13 EXECUTIVE DIRECTOR YELTON: It's part of the  
14 contract, is it not?

15 MR. BOCK: Absolutely, it's part of the  
16 contract. And the reason I say it's not at issue  
17 is that I have never been informed by the licensee  
18 of any intent to not pay the full 3.75 percent.  
19 And there has never been one person that has  
20 suggested that 1 percent shouldn't go to the City  
21 of East Chicago. And the only one, to my  
22 knowledge, that has suggested that the 2.75 percent  
23 should go to anybody other than the City of East  
24 Chicago are the people that receive the money now,  
25 foundations and Second Century.

1           So if somebody else has some other theory about  
2 where the money should go, other than to the city  
3 to benefit the people who voted riverboat gambling  
4 into their community, then -- you know, they, I  
5 guess, can inform us of that. But nobody has ever  
6 represented anything other than that the money  
7 should either go to the city or to go to the people  
8 that receive the funds right now.

9           EXECUTIVE DIRECTOR YELTON: Please indicate  
10 where this commission has ever made that statement.

11          MR. BOCK: I don't know that the commission has  
12 ever taken any action on this issue.

13          EXECUTIVE DIRECTOR YELTON: Exactly, they have  
14 not -- or made a decision.

15          MR. BOCK: And I haven't said that the  
16 commission has made that statement. What I'm  
17 saying is that Mr. Gifford -- and it's in the first  
18 submission I made to the commission. Mr. Gifford  
19 repeatedly, when asked, said he viewed this kind of  
20 as an insurance situation. We will pay to whomever  
21 is entitled to receive it, whether that be the city  
22 or whether that be the foundations and Second  
23 Century. And I'm saying, I've never heard anyone  
24 else say that anyone else had any claim on the  
25 money.

1           COMMISSIONER ROSE: So under what theory is  
2 that? When you cancel a contract, are they  
3 obligated to pay the city any money?

4           MR. BOCK: They have made public  
5 representations --

6           COMMISSIONER ROSE: No, I'm asking, what  
7 contractual arrangements --

8           MR. BOCK: There is none. There is none.

9           COMMISSIONER VOWELS: So based upon what you've  
10 said, not only do we have the power to cancel this  
11 contract, that would also include the  
12 1 percent that goes to the City of East Chicago,  
13 and say to Resorts, "The predecessors have given  
14 enough money over the last nine years, everybody  
15 have a good day," and the city is out 1 percent. I  
16 mean, isn't that the risk you are running?

17           MR. BOCK: I suppose that that's the risk we  
18 are running. And certainly that would be a great  
19 disservice to the people of East Chicago, if the  
20 commission oversaw a result like that. But --

21           COMMISSIONER ROSE: Didn't you just ask us to  
22 do that?

23           MR. BOCK: We asked you to invalidate the  
24 contract. And we believe that Resorts will  
25 continue to pay that money to whomever the

1 commission says that Resorts should negotiate a  
2 new --

3 COMMISSIONER ROSE: You told us we don't have  
4 the ability to rewrite the contract.

5 MR. BOCK: You don't.

6 COMMISSIONER ROSE: Okay.

7 MR. BOCK: You have the authority to regulate  
8 your licensee. And you can tell your licensee what  
9 you think the licensee should do, including you can  
10 direct the licensee to reenter negotiations over  
11 the economic development agreement.

12 COMMISSIONER ROSE: Right, but there has been  
13 no obligation of Resorts to enter into a contract  
14 with the City of East Chicago; right?

15 MR. BOCK: They have made statements under  
16 oath --

17 COMMISSIONER ROSE: All I'm asking is that they  
18 might have agreed to do something but there  
19 is -- if we cancel the contract, there is no  
20 written obligation that they would have to pay any  
21 money to the City of East Chicago; is that correct?

22 MR. BOCK: There is no written obligation, that  
23 is correct.

24 COMMISSIONER BARRETT: So are you asking us for  
25 an order for a licensee --

1 MR. BOCK: Yes.

2 COMMISSIONER BARRETT: -- or are you asking us  
3 to rely on your representations of the licensee's  
4 willingness to make (inaudible) --

5 MR. BOCK: No, I think that in considering the  
6 totality of the circumstances what the commission  
7 ought to do, is that the commission ought to note  
8 that these representations have been made. And  
9 they ought to ask the licensee to enter into  
10 discussions for a new economic development  
11 agreement with the city.

12 COMMISSIONER BARRETT: What if those  
13 discussions result in less than a 3.75 percent to  
14 the city?

15 MR. BOCK: Well, then there is a license  
16 renewal process that eventually has to be met. And  
17 we would ask the commission to take into  
18 consideration any sort of deviation from their  
19 public statements about being willing to pay that  
20 3.75 percent that Resorts might make.

21 EXECUTIVE DIRECTOR YELTON: As a consequence,  
22 the commission cannot renew their license; correct?

23 MR. BOCK: If they went back on their public  
24 word to the commission, I think the commission  
25 could not renew their license.

1 EXECUTIVE DIRECTOR YELTON: Fine, then you  
2 wouldn't have an agreement, period, with anybody.

3 MR. BOCK: That's correct.

4 EXECUTIVE DIRECTOR YELTON: Does the Attorney  
5 General wish to respond to the ability of the  
6 commission to act as indicated in its notice of the  
7 meeting?

8 MR. TODD: I will be pleased to do so.

9 EXECUTIVE DIRECTOR YELTON: Please do so,  
10 Mr. Todd.

11 MR. TODD: In fact, this precise issue was  
12 addressed in our official opinion letter. I do  
13 want to bring back slide number 8. And notice the  
14 highlight -- the bold language, "The commission  
15 reserves the right to disapprove and cancel any  
16 contract or transaction." Now, that's the rule.  
17 That has been the rule. That has been your  
18 authority for some period of time.

19 Our official opinion points out on page 4, in  
20 the next to last paragraph right before the  
21 conclusion, "The commission may also disapprove or  
22 cancel transactions of licensee." Transaction is  
23 commonly defined as a business deal. Or a  
24 communicative action or activity involving two  
25 parties or things that reciprocally affect or

1 influence each other." Now, that's a quotation  
2 from Websters dictionary. And I want you to know  
3 that lawyers don't have a monopoly on language;  
4 okay.

5 But the point is that clearly the rule permits  
6 the cancellation of a transaction, that clearly the  
7 arrangement with Second Century would be considered  
8 a transaction. And quite apart from the rules of  
9 law regarding severability of provisions, this  
10 commission had the wisdom to adopt a rule so that  
11 it could, in fact, take into considered  
12 consequences or circumstances such has arisen in  
13 this case. So it is the firm opinion of the  
14 Attorney General's office that this commission  
15 clearly has the authority to take such action  
16 should it chose to do so.

17 Would anyone have any questions of me? Thank  
18 you.

19 EXECUTIVE DIRECTOR YELTON: Are there any more  
20 questions of Mr. Bock? I'm not sure it has been  
21 concluded. Thank you.

22 MR. BOCK: Thank you.

23 EXECUTIVE DIRECTOR YELTON: Next, according to  
24 our agenda, you will hear a summary position by  
25 East Chicago Second Century by counsel,

1 Mr. McNeely.

2 MR. McNEELY: The last response by the Attorney  
3 General, in my opinion, and I've been a lawyer for  
4 40 years, is so weak and sad that it just defies  
5 comprehension by those of us who bother to read the  
6 statutes. And I don't want to be unkind to  
7 anybody, but if you sit down here and actually --  
8 and many of us in this panel and this commission --  
9 by the way, my name is Lee McNeely, I apologize.  
10 I'm an attorney from Shelbyville, Indiana, and I'm  
11 here on behalf of East Chicago Second Century. I'm  
12 accompanied by Susan Ferguson from my firm and Mark  
13 McNeely from another firm in Shelbyville. I do  
14 appreciate the opportunity to appear before you  
15 today.

16 If you look at the Attorney General's report  
17 and his opinion that he referred to you, on page 3  
18 of your submission. Look at his official opinion.  
19 It says, "Authority to disapprove and cancel  
20 contracts." That's his opinion. That's what he  
21 wrote yesterday. Apparently, he wants to write  
22 something else today. But yesterday what he wrote  
23 was "disapprove and cancel contracts," not modify  
24 contracts, amend contracts, partial out contracts,  
25 separate contracts, et cetera. That is not what he

1       said. That is not what his opinion says. So one  
2       of the few times that Mr. Bock and I actually agree  
3       in this case is what he just said at the end of his  
4       presentation. He's exactly right, that has been  
5       our position all along. But you cannot alter or  
6       amend this agreement. It either stands or it  
7       falls. And it should stand. And let me talk to  
8       you a little bit about why it should stand.

9               And again, before I get into my planned  
10       presentation, I will just talk a little bit about  
11       the Attorney General's analysis. Now, I did give  
12       you a submission at one point. Susan, do we have  
13       the modified submission paper with regard to your  
14       statutory authority. I don't know if you're  
15       accepting any handouts today or not. If you're  
16       not --

17              MR. YELTON: On the notice we said we would  
18       not.

19              MR. McNEELY: Well, you said exhibits, and I  
20       didn't know if there would be any -- just handouts  
21       or things of that sort. I understand what you are  
22       saying.

23              MR. YELTON: If it is written material for  
24       consideration, no.

25              MR. McNEELY: That's fine.

1           When you look at Indiana Code 4-33-1-2,  
2           which is on page 4, it talks about assisting  
3           economic development. That is a general term in  
4           the lead in to that paragraph. But when you get  
5           down to the specific language of that, number 2,  
6           "The strict regulation of facilities, persons,  
7           associations, and gambling operations" -- what, in  
8           general? No. Universally? No. Whatever we might  
9           think it might be? No. It says, "under this  
10          article."

11          Now, if you turn to that article, you find  
12          nothing about economic development agreements, you  
13          find nothing about economic development. Under  
14          this article, which is what you are talking about  
15          here, that article is silent as to economic  
16          development agreements.

17          Likewise, when you continue, and he flashed up  
18          slide number 6 -- if you would turn to slide number  
19          6. And he talks in terms of -- again, this is  
20          code. Those of us who are lawyers understand this.  
21          But those of you who are not lawyers need to talk  
22          to lawyers about this because they will help you on  
23          this subject. What happens to you is that the  
24          legislature gives every commission statutory  
25          authority. It is very strict. It's construed

1 strictly. You get what you are given by the  
2 legislature; nothing more, nothing less. Then you  
3 make rules and regulations that must comply with  
4 and comport with that statutory authority. You can  
5 take less authority or less action than they gave  
6 you, but you can't take more rights and more action  
7 than they gave you.

8 If you look at page number 6 on their slide,  
9 they love to talk in general terms about the  
10 credibility and integrity -- I'm not making light  
11 of it. That's important. That is absolutely  
12 important. And we're not afraid, as Second  
13 Century, to stand here and talk to you about those  
14 concepts. But when we are talking about the law,  
15 Indiana Code 4-33-4-3, gambling operations is a  
16 defined term. Now, those of us who -- there's a  
17 CPA on the panel -- on the commission. You know --  
18 when you deal with the tax regulations and the tax  
19 codes, you know what a defined term is. And those  
20 of us who are lawyers, insurance people who read  
21 insurance policies, we know what defined terms  
22 mean. That is a defined term. And if you look at  
23 that defined term, talks about gambling operations,  
24 meaning the conduct of authorized gambling games on  
25 a riverboat. That's what it's talking about.

1           Now, it's hard for me to quarrel with the  
2 Attorney General. First of all, he's a friend of  
3 mine, and second of all, because I have great  
4 respect for the office. But in this case, I think  
5 you must take into consideration at all times what  
6 our positions are here. The Attorney General,  
7 prior to undertaking any investigation on your  
8 behalf, stated an adversary position to my client  
9 by attempting to intervene in the lawsuit which is  
10 pending in Judge Bradford's court. He then  
11 attempted to file a brief in that court stating a  
12 position, which is essentially what you heard  
13 today.

14           What I saw in the power point today is  
15 essentially what has already been filed in the  
16 court. It is a restatement of the position that  
17 the Attorney General had last fall. He doesn't  
18 like this, he doesn't like this arrangement, he  
19 doesn't like this contract; he has made it known.  
20 It was prior to any investigation.

21           I submit to you that the investigation results  
22 that you got today and the position of the Attorney  
23 General and position of Mr. Bock is nothing more  
24 than a restatement of the position that I heard  
25 right down the street on April 27th in Judge

1       Bradford's court, which is the court of competent  
2       jurisdiction, which has before it the very issue we  
3       are talking about. Is this a valid contract? Is  
4       this contract against public policy? The same  
5       issues they are bringing up to you. Is it against  
6       public policy? Can a private organization receive  
7       these private funds and expend them without the  
8       customary oversight that is associated with public  
9       funds which would go, for instance, to  
10      municipality? That is the very issue that Judge  
11      Bradford is getting ready to rule on right down the  
12      street in that court where we are all litigants.  
13      So the situation, if someone who comes to you as  
14      your investigator in this case who also happens to  
15      be my adversary in the very litigation that is  
16      going on.

17             I was told about this meeting, as everybody  
18      else, by receiving an announcement. But it wasn't  
19      until today that I received, after I requested from  
20      them, received late this afternoon or a few minutes  
21      before we began, an actual copy of what their  
22      recommendation is going to be. So it's a little  
23      difficult for me to prepare a formal presentation  
24      in response when you don't know what you are  
25      responding to and you don't know what people are

1 going to be saying.

2 What I do know is this, though, if you turn to  
3 page 8 on this handout, I'll tell you exactly what  
4 that means. And I'm doing this a little bit on the  
5 fly, but we understand this because much of this is  
6 what we've submitted to you already. When they  
7 talk about policy on contracts, again, ladies and  
8 gentlemen, especially those of us who are lawyers,  
9 that section is supplier's contracts. That's what  
10 it's all about. You cannot stretch supplier's  
11 contracts to mean economic development agreement.  
12 You cannot stretch gambling operations to mean  
13 something other than what the defined term is. You  
14 cannot stretch gambling operations under this  
15 article to mean anything other than what is under  
16 this article.

17 Now, I know that people like to argue as  
18 lawyers toward your conclusion. I submit to you  
19 what you need is an objective analysis. And I'm  
20 not objective on this. I'm an advocate for my  
21 client. I submit to you, the Attorney General is  
22 an advocate for his point of view, which was a  
23 point of view which was articulated and stated and  
24 made public prior to the time of his involvement in  
25 this processes. Mr. Bock, I suspect, is an able

1 advocate for his client. And we are all advocating  
2 for our clients in the proper forum. And that  
3 forum is down the street in Superior Court Number  
4 1.

5 Now, Mr. Bock said that there has been  
6 resounding silence on my part and on the part of my  
7 clients with respect to the commission since we met  
8 14 months ago, and that's about the time I filed my  
9 lawsuit. Well, the one reason there has been  
10 resounding silence, one reason I didn't appear  
11 before you, one reason I didn't submit evidence and  
12 testimony, et cetera, to you, is because for 10  
13 years you have absolutely stated and articulated a  
14 position which says economic development agreements  
15 are between the community and the gaming and the  
16 licensee and others who are associated with that  
17 arrangement. It is not under the purview of this  
18 commission, it has never been, it was not 14 months  
19 ago.

20 I have another handout which I won't give you  
21 because I don't have enough time to go through all  
22 of these individual things. But had I had an  
23 opportunity -- and somebody said, Mr. McNeely,  
24 somebody is going to come in here after months of  
25 investigation, present a position that says your

1 client's contract should be canceled and we may, in  
2 fact, act upon that -- and by the way, we don't  
3 want to hear any evidence from you, we don't want  
4 to hear any witnesses from you, we don't want to  
5 hear anything which might be to the contrary, but  
6 you get 30 minutes to kind of tell us verbally why  
7 you don't like it. Well, I will tell you why I  
8 don't like it. It's basically contrary to law in  
9 the State of Indiana. If you are going to have a  
10 hearing, then let's have a hearing, but this is not  
11 a hearing.

12 The Attorney General in one of the first  
13 comments he stated when he stood up here was you  
14 have an obligation to make sure that the standards  
15 established by this commission are adhered to.  
16 Ladies and gentlemen, that is an important part of  
17 the submission that I have already made to you.  
18 Here's the problem in the administrative law, and  
19 the lawyers know this; and candidly, I'm confident  
20 the CPAs knows this as far as their process is  
21 concerned. I know insurance men understand this as  
22 far as how you administer insurance contracts and  
23 things of that sort. You cannot approve a contract  
24 in 1994, approve the contract in 1999, approve the  
25 contract in 2002, say to everybody, "We have no

1 authority over this other than the basic approval,  
2 it's not under our jurisdiction or our  
3 supervision," and then come up and catch me on a  
4 Thursday afternoon and say, "Mr. McNeely, we don't  
5 believe that you have administered that contract  
6 properly and we're thinking about canceling you."  
7 The law requires that you not just have goals, but  
8 maintaining the integrity of gambling is a goal.  
9 Lawyers know the difference between goals and  
10 standards.

11 I was a special master for the federal courts  
12 in a very highly intensely litigated jail case for  
13 about 12 years. I know the difference between  
14 standards and goals. Goals are that you will have  
15 human treatment of prisoners, goals are that you  
16 have due process, goals are that you will do this,  
17 that or the other. Standards are that you get  
18 three meals a day, that you get 22 square feet per  
19 person per cell, that you get an hour-and-a-half of  
20 recreation a day, et cetera.

21 In this commission if you are going to judge  
22 our agreement then you must judge that agreement,  
23 and our performance under that agreement by some  
24 standard that is discernible and definable. The  
25 Federal Government doesn't say, "Tell me how much

1 money you made last year and we will decide how  
2 much is fair to take away from you." You plan your  
3 life because you know this rule says you have to  
4 pay taxes on this or you have to pay taxes on that.  
5 And guess what, this is a loophole over here, if  
6 you put your money here, you don't have to pay your  
7 taxes. Some people may not like that, some people  
8 may not think that's fair. Guess what, it's the  
9 law. And so when you do financial planning and  
10 when you do corporate planning for the development  
11 and the advancement of your corporation, you know  
12 what the rules are. And the question is: Have you  
13 followed the rules? There were no rules  
14 established here. There were no standards  
15 established.

16 When you come in now and say you've been found  
17 wanting, is it arbitrary as arbitrary can be. I  
18 can't imagine this commission, which governs a  
19 multimillion, if not multi-billion-dollar industry,  
20 is going to send the word out to gamers, "Come to  
21 Indiana, enter into an agreement, we won't set  
22 standards, but we will kind of tell you later on if  
23 you can measure up. And if we don't think you've  
24 measured up, then we think we will cancel your  
25 agreement. And by the way, in determining whether

1 or not you've measured up, we're not going to talk  
2 to you about it, we're not going to let you  
3 introduce evidence, but we're going to find your  
4 adversary and we're going to let him make an  
5 investigation, and we're going to let him give a  
6 presentation, and then we will make our decision."  
7 That is as wrong as wrong can be.

8 Now, why in the world would this commission do  
9 a 180-degree about face on 10 years of stating  
10 policy that you do not have authority over or do  
11 you have any interest in the administration of  
12 economic development contract until this one comes  
13 up.

14 Mr. Bock threatened that I might use that  
15 terrible word politics here today. Well, I'm going  
16 to use the word politics here today because nothing  
17 has changed -- in 1999 -- and I have all of this  
18 documentation but I can't give it to you.

19 I appreciate what you said to me, Mr. Yelton.  
20 You are a very fair man, you're a judge, I've known  
21 you most of our adult lives. And you said in your  
22 letter, "You will have to rest on the submissions  
23 that you previously made." The problem is at the  
24 time I made that presentation to you what I just  
25 thought the law was, I didn't know there was going

1 to be this hearing. I didn't know there was going  
2 to be a report by the Attorney General. I didn't  
3 know what he was going to say. I didn't have any  
4 idea what charges he would level against us. And  
5 to now say, "I'm sorry, Mr. McNeely, you can't  
6 give us anything now that you haven't given us  
7 before" -- I didn't know what was going to be  
8 brought before you up until now, except to rely  
9 upon the fact that for 10 years -- including  
10 speaking to the executive director recently, like  
11 in Michigan City, when he was quoted as saying, "We  
12 don't know go for agreements between gamers and  
13 cities," when some issue arose with whether or not  
14 the mayor acted appropriately and what he did in  
15 kind of rewriting that agreement, which by the way,  
16 nobody chooses to look into that. But I don't  
17 know, I can't give you any of this information.

18 But if you want to go back and take a look at  
19 what has changed here. What has changed, John  
20 Artis came before you in 1999 and told you -- or  
21 some of you and told you what was going to be the  
22 policy -- not policy, but the result of the  
23 participation by East Chicago Second Century. We  
24 have a handout here, also, which outlines the  
25 obligations of the city, the foundations, and the

1 private corporation; a three-legged stool of  
2 economic development, frankly quite innovative in  
3 its initial concept of how you get economic  
4 development done.

5 All right. Then he came back in 2002 and sang  
6 our praises. Now, the Attorney General didn't put  
7 that up there on the board. He put up, "I have  
8 never been asked to oversee these people. That's  
9 not our fault." The city never asked them to do  
10 it. Nobody ever asked him to do it. That's the  
11 big quote we want to put up there.

12 The real quote you need to look at is this  
13 quote in 2002. In 2002, he comes before this  
14 commission and he says that East Chicago Second  
15 Century has been an effective partner in economic  
16 development in East Chicago. Now they make light  
17 of what we have done. How many of you have  
18 actually been to East Chicago and have been through  
19 the neighborhoods that we're talking about?  
20 Mr. Fesco, I assume you have. You have been on the  
21 board a lot. Folks, this is not Carmel. This is  
22 not Fishers. Economic development in East Chicago  
23 is not an easy game. There are areas that some  
24 people refer to -- I would not do this, but some  
25 people refer to it as war zones, where gangs are

1 predominant. In that environment, East Chicago  
2 Second Century -- let's put into perspective what  
3 we have done.

4 Something that everybody likes to say, "It just  
5 doesn't quite meet our standards." Let me tell you  
6 what those standards are. In five years, we pulled  
7 115 building permits. It doesn't sound like much  
8 if you're from Carmel, Indiana; does it? It  
9 doesn't sound like much if you're from Fishers or  
10 Boone County, but if you are from East Chicago and  
11 you looked back at the previous 10 years, how many  
12 total permits have been pulled by all the  
13 developers combined? Mr. Robinson, I bet you don't  
14 know what that number is; do you? It's 71. In 10  
15 years prior to our commencement here, all of the  
16 development by all developers in East Chicago  
17 pulled 71 permits. In our first five years, we  
18 pulled over 100. Now they want to make light of  
19 that. It's not easy to develop up there.

20 Let me tell you a little bit something about  
21 you haven't met our goal. Do you remember the  
22 slide that talks about 8 to 1? First of all, we  
23 didn't say 8 to 1. John Artis said 8 to 1. We  
24 never made any representation on 8 to 1. You can  
25 search the record till you are blue in the face,

1       there is no representation by my client for East  
2       Chicago. But let me tell you what happened right  
3       after the election. You may like this story,  
4       Mr. Calloway, because I think it's something that  
5       you might appreciate being from your area of the  
6       state where you know that big cities sometimes get  
7       at it with each other.

8               Mr. Pabey becomes the mayor of East Chicago.  
9       My client sits down, who is his old friend years  
10      ago -- they were political allies, they were both  
11      shareholders in Waterfront together, he was the  
12      Chief of Police when Pastrick was the mayor, they  
13      were all buddies back then. I think his wife  
14      worked for Tom Pappas at one point, I think.  
15      People go way back up there. It's hard to know  
16      East Chicago politics, and I don't pretend to.

17             He wrote him a letter and said,  
18      "Congratulations on being elected. We want to work  
19      with you. We want to bring to your attention  
20      something, that in February a deadline will pass  
21      where applications have to be made for construction  
22      for development process. If that application  
23      deadline is missed, over \$50,000,000 of planned  
24      development in East Chicago will fail."

25             The letter we got back was, "We're not going to

1 do business with you until you show us all your  
2 books and records," because at that time -- and I  
3 will get to this later -- "we were having a fight  
4 about whether Mr. Pabey was a shareholder in Second  
5 Century," which he was asserting through his lawyer  
6 that he was a shareholder in Second Century, and we  
7 were denying it and they were fighting this back  
8 and forth. And we have the letters, but you don't  
9 have them in front of you because I didn't know  
10 this was going to come up and I didn't give it to  
11 you in a prior submission, but I have it here with  
12 me. A letter from his lawyer saying, "I own part  
13 of Second Century and I want my share." And he  
14 said, "No, you don't own part of Second Century.  
15 You own part of Waterfront, but you don't own part  
16 of Second Century."

17 So guess what happens, he gets elected mayor.  
18 We write him a letter that says, "Congratulations.  
19 Let's work together, let's continue to develop."  
20 He say, "No, I'm not going to work with you. We  
21 write him again and he writes us back. We write  
22 him three more times and he writes us back and  
23 eventually said, "My administration will not  
24 cooperate with you," in sum or substance. We wrote  
25 him a letter and said, "Look, even if we're not the

1 developer, for goodness sake, there is a deadline  
2 that's getting ready to pass and this deadline  
3 means over" -- and we have the letter. This letter  
4 was written on February 4th, 2005. In the third  
5 paragraph it says, "Total new investments that  
6 approach \$50,000,000. Help us reach that  
7 deadline." And they refused. And the deadline was  
8 missed. And the development didn't happen.

9 We have other development projects. I have  
10 stacks of information ready to give you on pending  
11 projects. Projects from first stage, second stage,  
12 environmental concerns have been met, et cetera.  
13 We have had no cooperation because this is a blood  
14 feud between former political allies. That's what  
15 it is. And now they want to say that you haven't  
16 measured up the last few years in your economic  
17 development; but guess what, they won't cooperate  
18 with us.

19 I'm reminded of a fellow that killed his father  
20 and mother and then said, I'm an orphan, I throw  
21 myself on the mercy of the court. Well, you can't  
22 block us and then say that we're not fulfilling our  
23 tasks and goals. I have documentation with me from  
24 Mr. Pabey's attorney asserting that he's an owner  
25 of Second Century. When I say "politics," that's

1 the politics you are getting yourself into in my  
2 judgment. This is the politics of East Chicago.  
3 This is the politics that now that I control the  
4 mayor's office, now that I control the trust funds,  
5 now that I control not only the \$25,000,000 a year  
6 that I get from gaming revenue on this one hand --  
7 by the way, they don't have water that they can  
8 drink in East Chicago and they have been getting  
9 \$25,000,000 a year all these years and they don't  
10 have drinkable water and that's my client's fault.  
11 If only we had your money, Mr. McNeely, then people  
12 can actually drink water in East Chicago, but what  
13 did you do with the \$25,000,000 a year? But that  
14 was the emotional argument you heard.

15 We have an affidavit from an individual, former  
16 associate, you saw his name on the list, who said  
17 that Mr. Pabey told him this is personal. This  
18 entire matter is personal. And that his goal --  
19 and we believe the goal is to destroy my clients.

20 Now, we have not been very forthcoming with  
21 information and there are a lot of reasons for  
22 that. Number one, we are under a stay. The judge  
23 knows what a stay is. When a judge tells you not  
24 to do something you don't do it. It seems like --

25 EXECUTIVE DIRECTOR YELTON: And we're not a

1 party to that stay, to make it clear.

2 MR. McNEELY: I know, you are not a party to  
3 that stay. It seems like a good idea, though, when  
4 they tell us not to do that, we didn't do it.

5 COMMISSIONER VOWELS: Wasn't it your motion to  
6 stay the discovery or was it not?

7 MR. McNEELY: Yes, absolutely.

8 COMMISSIONER VOWELS: Oh, okay. I would hate  
9 to see if you were really prepared.

10 MR. McNEELY: You don't think I'm prepared?

11 COMMISSIONER VOWELS: No, no.

12 MR. McNEELY: I thought I should do better next  
13 time.

14 COMMISSIONER VOWELS: I was complementing  
15 you --

16 MR. McNEELY: Thank you.

17 COMMISSIONER VOWELS: -- in a bad way -- round  
18 about way.

19 MR. McNEELY: The point being here, we are  
20 in --

21 COMMISSIONER VOWELS: Your articulation -- I  
22 love listening to you and watching you in action.  
23 You told us you didn't know what you were going to  
24 come up here and talk about, and you're doing a  
25 great job.

1           MR. McNEELY: Well, thank you. I appreciate  
2 that. Even a blind hog reaches an acorn now and  
3 then.

4           The point being here, we are in a lawsuit where  
5 people are not trying to cancel the contract.  
6 Understand this thing here. Both of you who are  
7 lawyers, and those of you who are business people,  
8 too. The lawsuit that they had filed seeks not  
9 just to cancel this contract, it argues  
10 improprieties of 10 and 12 years ago. It makes  
11 outrageous and outlandish allegations about  
12 political corruption which Judge Bradford said at  
13 the last hearing, "Folks, I don't want to hear any  
14 more about that. If you don't have the evidence, I  
15 don't want to hear that any more," and I'm glad he  
16 finally said that. But they seek the disgorgment  
17 of all the money and recaptured all of the money  
18 from my clients, every cent that has been paid to  
19 them for the last X number of years that this has  
20 been going on. They are seeking the financial  
21 destruction of my clients, that's what they're  
22 seeking.

23           And I dare say, candidly, as we sit here, if  
24 any one of you picked up the phone and said,  
25 "Mr. McNeely, I have a lawsuit pending against me

1 and the people on the other side just aren't trying  
2 to litigate this in good faith, but is this  
3 contract valid or is this contract not valid? They  
4 are trying to destroy me economically. They are  
5 trying to bankrupt me and my family." You would  
6 say to yourself, "I'm going to be very cautious  
7 what I did," especially when they run to the  
8 newspapers, editorials, stories, leaks and things  
9 of that sort.

10 So we're going to do what's legal, and we're  
11 going to do what's required, and we're going to do  
12 what we can do to help this process, but we're not  
13 going to hand the sword of our own destruction to  
14 our enemy and let them use it against us and beat  
15 us over the heads with it up in East Chicago and,  
16 frankly, we don't have to. We're a private  
17 corporation, these are private funds; they even  
18 admit that.

19 Let me close -- because I know I'm probably at  
20 the end, if not past the end. Let me close with  
21 just something that I think is very important for  
22 you to think about. I understand the generalities  
23 of the concern that has been presented to you, the  
24 openness, trustworthiness, integrity and things  
25 like that. I don't make light of it, I believe in

1       that. My clients believe in that. These men that  
2       I represent, who get slandered on almost a daily  
3       basis in filings in Circuit Court are attorneys and  
4       businessmen with good reputations in their  
5       community, who have been advisors to congressman,  
6       governors, and senators. People whose counsel has  
7       fault and received and valued at the highest level.  
8       They are engaged in a political battle for their  
9       life right now.

10       What we don't understand is why -- the  
11       commission, which in number one in my humble  
12       opinion -- not very humble but just my opinion; my  
13       opinion does not have the statutory authority to  
14       cancel this contract, period.

15       Number two, if you do, you certainly don't have  
16       the statutory authority to kind of slice and dice  
17       it as you want to. I know you don't have that  
18       authority. I think all of us, essentially, agree  
19       on that.

20       Number three, if you are going to hold me and  
21       stretch your authority to the point that you have  
22       some type of administrative control over me, then  
23       you have an obligation, as an administrative body,  
24       to set forth standards and specificity so that I  
25       know what goals and what bars I have to climb and

1        what hurdles I have to clear. And to not do that  
2        is just, basically, unfair. And it's not due  
3        process.

4                And I say to you that you're entering into an  
5        area -- I'm not trying to scare you, but you know  
6        what the result is going to be, it's going to be  
7        litigation. We don't need more litigation in this  
8        case.

9                If suddenly the commission, after 10 years of  
10        articulating on a daily basis -- and you've been  
11        around for almost that entire time -- over and over  
12        again we do not have any authority over or  
13        supervisory authority over -- or all of these  
14        records and say -- if somebody felt they do have,  
15        then why doesn't somebody pick up the phone and  
16        call me, say, "Mr. McNeely, we don't think that we  
17        did the right thing back 10 years ago when we did  
18        this contract and we don't think we set any  
19        standards, we don't think we had any guidelines  
20        that are important or reviewable, why don't you  
21        come in and let's talk about this." I would have  
22        come in and talked to you. I'm not going to do it  
23        in an adversary proceeding where people are  
24        fighting. But if you want to talk to me, I will  
25        come and talk to you. We will find out what we

1 want to do, work something out. Why are we  
2 suddenly now trying to take this type of action?

3 Final comment. I will tell you why we're going  
4 to take this action now. Because he knows and he  
5 knows that they aren't going to win it down the  
6 street. They know what the law is. And they know  
7 that Judge Bradford is going to rule according to  
8 the law. And they know the opportunity for them to  
9 prevail is not in the form where it should be  
10 handled, but the last refuge they have is the  
11 attempt to have you cancel this agreement out from  
12 underneath us. I think it would be ill-advised for  
13 you to do so. I think it would be ill-advised for  
14 you to do so under circumstances where there are no  
15 standards or goals or directives or measurements.  
16 And to do it on the basis of an investigation that  
17 is one-sided and result oriented.

18 Those of us who are lawyers, you give me a case  
19 and we will find the facts to support the case.  
20 Well, that's fine but that's not an independent  
21 investigation. When you are an investigator, you  
22 prejudge the case before you begin the  
23 investigation. And it's not just private  
24 information for me. You heard none of these other  
25 things, which are public information. You didn't

1 hear about the letters and things, you didn't hear  
2 any of that in that investigation. So I ask you  
3 not to rush to judgment. I ask you not to reverse  
4 the course on what you have done for the last 10  
5 years. I ask you not to violate either the  
6 statutes which established to you or your own rules  
7 and regulations. And I ask you not to adopt the  
8 resolution and the recommendation of the Attorney  
9 General. Thank you.

10 CHAIRMAN CALLOWAY: Thank you, Mr. McNeely.

11 I have a couple of questions for you, though,  
12 if it's okay.

13 You reference that your people pulled 100  
14 permits, how many years was that?

15 MR. McNEELY: Five years.

16 CHAIRMAN CALLOWAY: Now, when you pull a  
17 permit -- I'm not a contractor, so I don't know for  
18 sure; but when you pull a permit, that doesn't  
19 really mean you're going to build a house.

20 MR. McNEELY: No, you are exactly right. But  
21 the records that the Attorney General put up there  
22 showed over 110 or 115 actual constructions there.

23 CHAIRMAN CALLOWAY: And that's what I was going  
24 to ask you about. I had a chance to see that it  
25 looked like your clients got, like, \$16,000,000

1 over the last few years, so what -- do you know  
2 what all they have done with that?

3 MR. McNEELY: No.

4 CHAIRMAN CALLOWAY: Thank you.

5 MR. McNEELY: I know they have built what they  
6 have built, and I know they have done what they've  
7 done, I know their development fees, and I know  
8 they generated income from other sources other than  
9 that \$16,000,000, and I know there is an additional  
10 \$50,000,000 and development could have been  
11 accomplished if there had been cooperation. That I  
12 do know.

13 COMMISSIONER FESKO: Your testimony here and  
14 not --

15 DEPUTY DIRECTOR ARNOLD: Excuse me,  
16 Commissioner Fesko, the court reporter cannot hear  
17 you.

18 COMMISSIONER FESKO: General comment. You made  
19 the expression that someone is out for financial  
20 destruction of your clients. One thing I do recall  
21 in our local newspaper, in 1999 when they bought  
22 Showboat, that your clients cashed out -- Pannos  
23 and Cappas in particular -- and they received  
24 somewhere like \$6,000,000 or \$8,000,000 for their  
25 position. Have they gone through that money or are

1           they destitute now where they can't carry on --

2           MR. McNEELY: No, I'm sorry, I did not make my  
3 point clear, and that's my fault. If you stop the  
4 funding of East Chicago Second Century then you  
5 will destroy East Chicago Second Century and you  
6 will destroy every planned project which we have on  
7 the books. And we have started several, and I have  
8 the documentation; you will destroy that project.  
9 And those will be all in jeopardy.

10           I'm talking about the disclosure and the  
11 openness with which I deal with people whom I  
12 believe are out for our ultimate destruction,  
13 because in their lawsuits -- the lawsuits brought,  
14 the counterclaims brought -- you may not be aware  
15 of this, Mr. Fesko, but in the counterclaims  
16 brought by the City, it's not a request to simply  
17 terminate the contract. They have sued them for  
18 fraud, they have sued them for damages, they have  
19 attempted to have disbursement of all money and  
20 repayment of the entire \$16,000,000 back to the  
21 city personally by my client. They have sued my  
22 clients personally. And so I'm talking in terms --  
23 you say, "Well, Mr. McNeely, why aren't you very  
24 forthcoming and kind of sure, come on in and kind  
25 of dance around in our books for a while, because

1 we engage in mortal combat from an economic  
2 perspective, not with you.

3 COMMISSIONER ROSE: Mr. McNeely, do you think  
4 that the commission had the statutory authority to  
5 not approve the original development agreement?

6 MR. McNEELY: That's an excellent question. I  
7 think that my guess would be since it was silent as  
8 to economic development agreements, that your  
9 approval was not required for that agreement to be  
10 put into effect, since it was ultimately an  
11 agreement between Resorts and two foundations and  
12 Resorts and a private corporation.

13 Now, the process of openness -- and that's one  
14 of the other handouts I had. All of the open  
15 meetings and things of that sort, because I think  
16 somebody talked about secret deals or dark of  
17 night. We prepared a handout on all of that. It  
18 would be an interesting legal question, but I think  
19 probably your approval was not absolutely necessary  
20 with respect to the foundations and to the Second  
21 Century. At that point --

22 COMMISSIONER ROSE: Okay. And yet the  
23 commission has approved and considered, if you  
24 will -- considered every single development  
25 agreement that has been entered into with every, as

1 I understand, local authority in granting a  
2 license.

3 MR. McNEELY: Yes.

4 COMMISSIONER ROSE: And no one has asked  
5 whether or not the commission actually has the  
6 statutory authority to not include (audible).

7 MR. McNEELY: Because there are two types that  
8 we're talking about here. One is when the casino  
9 makes their application -- and I don't have as good  
10 a memory of this as probably some of the older  
11 members of your commission. The entire concept of  
12 individually negotiated economic development  
13 agreements between the city and potential gamers  
14 were never contemplated in the original statute. I  
15 know this from talking to members of the commission  
16 and past executive directors of the commission.  
17 For instance, in Lawrenceburg, Indiana, and at  
18 least one of the communities I know of where they  
19 essentially had a bidding war between various  
20 applicants who do the most for the city and then we  
21 will recommend that city to the commission. That  
22 was totally outside of the statutory or planned  
23 commission process. And I think that's unrefuted,  
24 that that was an unanticipated development; that it  
25 was essentially done because there was nothing to

1 -- how it was explained to me, they did it because  
2 there was nothing that said they couldn't do it.  
3 There was nothing that said a city could not go out  
4 and do an individual economic development agreement  
5 with Aztar and then agree to recommend Aztar to the  
6 commission. The commission didn't have to follow  
7 Aztar. In most cases they did, but they didn't  
8 have to. But there is nothing statutory about  
9 that. Search the statues day and night and you  
10 will not find that.

11 CHAIRMAN CALLOWAY: You indicated that you did  
12 pull 100 permits of work and received \$16,000,000  
13 and it was recommended that you should be able to  
14 do 8 to 1, which is around 222 or something of that  
15 nature.

16 MR. McNEELY: I came up with 160 or whatever  
17 they say. Yeah.

18 CHAIRMAN CALLOWAY: You must have a lot of  
19 employees. How many employees do you have?

20 MR. McNEELY: We don't have that many employees.  
21 We have consultants, we have the president, we have  
22 office staff, we have a developer, we have the  
23 officers of the corporation; we have less than 10  
24 employees.

25 COMMISSIONER VOWELS: If I understand you

1       correctly about the ability to deal with this  
2       agreement, that this says that the commission shall  
3       do the following and adopt the rules that the  
4       commission determines necessary to protect or  
5       enhance the credibility and integrity of the  
6       gambling operations authorized under this article.  
7       Your submission of May 26, 2006, on administrative  
8       agencies. Am I understanding you correctly that we  
9       are all aware that this commission is supposed to  
10      take into consideration the credibility and  
11      integrity of gambling operations, but we can only  
12      do it specifically as under the rules that we adopt  
13      and the rules we have adopted (inaudible)

14           MR. McNEELY: That's correct.

15           COMMISSIONER VOWELS: -- to be directly on  
16      point with what we are doing here today --

17           MR. McNEELY: That's correct. Exactly two  
18      points. That point plus, in all candor, as we  
19      search through, "economic development agreements"  
20      is not a defined term in the original statute. And  
21      when the legislature later on did start regulating  
22      with regard to economic development agreements,  
23      they did not include that in the gambling statute,  
24      nor make reference within the gambling statute.

25           As we pointed out, the case law in Indiana is

1 very clear, the judiciary presumes the legislature  
2 knows what it's talking about and if they wanted it  
3 included, they will include it, if they don't want  
4 it included, it won't be included. And that's just  
5 the law in Indiana. It's straightforward.

6 COMMISSIONER VOWELS: Real quick, I didn't  
7 bring the code book, but in your May 26, the  
8 submission on page 2, in footnote 2, it says,  
9 "Indiana law defines development agreement between  
10 the license owner and as defined in Indiana Code  
11 4-33-2-13, setting forth the license and financial  
12 commitments for economic development toward Indiana  
13 Code 4-33, gaming section of the statute." It  
14 certainly seems to me that development agreement is  
15 defined in your own footnote.

16 MR. McNELLY: What are you reading from is  
17 entitled 36 --

18 COMMISSIONER VOWELS: You have it on page 2,  
19 May 2006 submission. Footnote 2.

20 MR. McNEELY: I'm embarrassed to say this.  
21 That was later revised. And I was out of town and  
22 I called my secretary and told her to fax that to  
23 the commission and she faxed the wrong copy. So  
24 I'm going to have to take a look at that as opposed  
25 to the one I have, which is a different copy.

1           What footnote are you talking about?

2           COMMISSIONER VOWELS: Footnote 2. It says,  
3           "Indiana law defines development agreement" --

4           MR. McNEELY: I don't have that in front of me,  
5           I'm sorry.

6           COMMISSIONER VOWELS: Are you telling me that  
7           is a typographical error on the citation of that?

8           MR. McNEELY: Can I have what you have there?

9           COMMISSIONER VOWELS: Actually, it's so good  
10          that when I need the language I'm going to use it.

11          MR. McNEELY: Footnote 2? The reference in  
12          Code 4-33-2-13 is to licensed owner. The  
13          parenthetical phrase refers to license owner; do  
14          you know what I'm saying? Licensed owner --

15          COMMISSIONER VOWELS: Somewhere else within the  
16          Indiana code development agreement.

17          MR. McNEELY: That is the code. Read that code  
18          of license of economic development. Does that make  
19          sense? That parenthetical phrase 4-33-2-3 refers  
20          to the license owner, not the economic development  
21          agreement. Economic development agreement is  
22          referred to in Title 36. And that's what I say,  
23          when they inserted it in Title 36, if they had  
24          wanted to take that and also insert it in the  
25          gaming statute, or to make reference to it in the

1 gaming statute they could have and would have.  
2 They did not and the law in Indiana is, therefore,  
3 presumed that it wasn't. And as I pointed out in  
4 my memo to you, also, in that very public law there  
5 were other amendments to the gaming statute in that  
6 very public law. So if they wanted to make this  
7 economic development agreement part of the Indiana  
8 gaming law, they could have done it at that time,  
9 because in that public law there were other  
10 references to gaming activities.

11 COMMISSIONER VOWELS: Actually, if I would have  
12 read the bottom -- in that last paragraph you are  
13 talking about Title 36 and Indiana Code section.

14 MR. McNEELY: I'm sorry. Is it more clear now?

15 COMMISSIONER VOWELS: So we wasted a whole  
16 bunch of time there.

17 There was something somewhere that I read that  
18 somebody said on behalf of Second Century, whether  
19 they had the authority to do that or not, and I  
20 don't remember who it was, but referred to Second  
21 Century, that they would be operating in East  
22 Chicago. Do you remember that? Do you recall --

23 MR. McNEELY: I know exactly what you are  
24 talking about. And that's what Mr. Artis referred  
25 to in his correspondence -- in his testimony at one

1 point. One of the obligations that Second Century  
2 did agree to early on was that its economic  
3 development activity would take place within East  
4 Chicago, and they have. And there are no economic  
5 development activities taking place in Florida or  
6 Minnesota or Tennessee or Indianapolis, so economic  
7 development activities are taking place in East  
8 Chicago.

9 COMMISSIONER VOWELS: Has Second Century been  
10 involved in any investments or any other  
11 transactions outside of East Chicago?

12 MR. McNEELY: Not to my knowledge. I don't  
13 know. Not to my knowledge.

14 EXECUTIVE DIRECTOR YELTON: If they were, would  
15 that be inconsistent with your statement?

16 MR. McNEELY: No, I think we're talking about  
17 the development activities. When we talk about  
18 economic development activities taking place within  
19 the City of East Chicago and I think that's what  
20 that refers to.

21 COMMISSIONER VOWELS: I have no further  
22 questions.

23 COMMISSIONER BARRETT: How many permits was it  
24 in a five-year period?

25 MR. McNEELY: I would have to say 110 plus to

1 115.

2 COMMISSIONER BARRETT: And how many over a  
3 whole?

4 MR. McNEELY: I don't have that information. I  
5 don't know.

6 COMMISSIONER BARRETT: (Inaudible)

7 MR. McNEELY: I don't know. I know the Rona  
8 project was a press release the other day about the  
9 R-o-n-a, Rona project, which was 60 some, which is  
10 under development for the last year-and-a-half or  
11 two years. And that was announced and made public.

12 COURT REPORTER: Please speak up.

13 COMMISSIONER BARRETT: I just want to make sure  
14 we're all on the same page here. Permits and units  
15 -- as you stated, the Attorney General approved  
16 over 100 permits. And actually, the number based  
17 on 21 and 61 units, that is not all -- know that is  
18 not one unit but -- that is fewer.

19 MR. McNEELY: I'm sorry, I stand by that  
20 because I asked their developer with that and I  
21 asked how many permits we had pulled during that  
22 period prior to the time that Mr. Pabey became  
23 mayor and that figure he gave back to me was more  
24 than a 100. So I stand by that.

25 COMMISSIONER BARRETT: That's fine. But as to

1 this page, this page doesn't say 100.

2 MR. McNEELY: No. He's saying they're units  
3 and apartments and houses.

4 COMMISSIONER BARRETT: And out of those, how  
5 many were there in construction?

6 MR. McNEELY: I don't know. I know those were  
7 completed.

8 COMMISSIONER BARRETT: We can stipulate to  
9 that?

10 MR. McNEELY: This is the problem that we have,  
11 if we have those types of questions and -- we have  
12 that type of information needed, but to have it on  
13 my fingertips today, I don't have it.

14 COMMISSIONER BARRETT: Mr. Vowels asked you a  
15 question about the payroll and number of persons on  
16 the payroll.

17 MR. McNEELY: Mr. Calloway asked me that.

18 EXECUTIVE DIRECTOR YELTON: Commissioner  
19 Barrett, would you please speak up for the court  
20 reporter.

21 COMMISSIONER BARRETT: Yes, I'm sorry.

22 EXECUTIVE DIRECTOR YELTON: Thank you.

23 COMMISSIONER BARRETT: Let me restate that  
24 then. One of the other commissioners asked you  
25 about the payroll -- number of persons on the

1 payroll. What is the amount of the payroll?

2 MR. McNEELY: I don't know.

3 COMMISSIONER BARRETT: Do the principals  
4 that -- your clients' people you have referred to  
5 as lawyers and businessmen, do they draw  
6 salaries --

7 MR. McNEELY: Yes.

8 COMMISSIONER BARRETT: -- and what salaries do  
9 they draw?

10 MR. McNEELY: I don't know.

11 COMMISSIONER BARRETT: Do you know how much  
12 they have drawn out over the course of time?

13 MR. McNEELY: No.

14 COMMISSIONER BARRETT: Now, the leverage  
15 question, and that's discussed on page 22 and also  
16 page 20. I believe you stated that that figure had  
17 never been used by anybody on behalf of Second  
18 Century; is that right?

19 MR. McNEELY: It was used by John Artis, who  
20 was appearing on behalf of the city.

21 COMMISSIONER BARRETT: And it had also been  
22 used, I believe, previously on behalf of Showboat  
23 by Mr. Boner (phonetic).

24 MR. McNEELY: It may very well have been.

25 COMMISSIONER BARRETT: When did Mr. Artis

1 testify -- when did he make that statement?

2 MR. McNEELY: I believe that was the '99  
3 testimony.

4 COMMISSIONER BARRETT: We are now in 2006. How  
5 much leverage has been acquired in those years?

6 MR. McNEELY: I don't know.

7 COMMISSIONER BARRETT: Could it be as much as 8  
8 to 1, less than 8 to 1, or do you not have any  
9 idea?

10 MR. McNEELY: I have no idea. I saw 8 to 1 up  
11 there. I read the transcript and I remember him  
12 saying that in '99, like I remembered him saying in  
13 2002, what a great job we're doing, but I didn't  
14 come here prepared to talk in terms of 4 to 1 or 3  
15 to 1 or 2 to 1 or 8 to 1.

16 COMMISSIONER BARRETT: Did anybody at Second  
17 Century ever take the opportunity since that was  
18 stated, to gain the assertion that 8 to 1 is an  
19 appropriate figure to make on the  
20 representations --

21 MR. McNEELY: I don't think so. I think that  
22 was a statement and the world moved on.

23 COMMISSIONER BARRETT: There was some  
24 discussion by Mr. Bock regarding the affect of the  
25 stay in Judge Bradford's court. And I want to

1 follow up on the question that was asked earlier.  
2 The stay was at your request; correct?

3 MR. McNEELY: Yes.

4 COMMISSIONER BARRETT: And then the stay was  
5 not to seek an order against your client to  
6 prohibit it from providing information, but to  
7 prohibit opposing parties from seeking information;  
8 correct?

9 MR. McNEELY: It was to prohibit any  
10 discovery -- those of us who are lawyers understand  
11 cases where there are punitive damages and things  
12 of that sort and that there are thresholds that  
13 have to be reached before it's determined whether  
14 or not you can get into the financial -- that's the  
15 basic law in the State of Indiana. And in this  
16 instance, since they are suing my clients in the  
17 matters of fraud, and since they are suing my  
18 clients for personal damages and personal income,  
19 then we felt it was appropriate -- since all of  
20 those were subject to very solid and sound legal  
21 challenges, we said that there should be a stay of  
22 discovery until the judge decides whether or not  
23 that investigation by the other side is  
24 appropriate. That happens on a daily basis in  
25 courts throughout the State of Indiana, especially

1 for corporations who I do a lot of representation  
2 of; you do not get into our records until we have  
3 reached threshold levels with regard to your case  
4 and the judge is prepared to rule within the next  
5 month on those challenges to those allegations.

6 COMMISSIONER BARRETT: I think that answers my  
7 question. But I don't want anybody to leave this  
8 room thinking that you are prohibited, as a matter  
9 of Judge Bradford's order, to giving a stay. Is  
10 that correct, you are not prohibited?

11 MR. McNEELY: Well, probably not.

12 COMMISSIONER BARRETT: Mr. Bock is prohibited  
13 from seeking it, but you are not prohibited from  
14 providing it?

15 MR. McNEELY: Well, my problem here is that  
16 until recently -- and when we have had many of  
17 these discussions, I don't believe you were a  
18 member of the commission at that time -- the  
19 Attorney General didn't seek to intervene on his  
20 behalf. The Attorney General sought to intervene  
21 on behalf of the commission -- I believe Executive  
22 Director Yelton will recall that.

23 EXECUTIVE DIRECTOR YELTON: That is correct.

24 MR. McNEELY: And I believe we went quite some  
25 period of time before that was ever straightened

1 out as to whether or not he was intervening on his  
2 behalf or on your behalf, or he was your lawyer or  
3 his own lawyer or the lawyer for the people of the  
4 State of Indiana. The Executive Director recalls  
5 that, I think, probably as vividly as I do. So  
6 there are those periods of time when that is going  
7 on, yes, absolutely.

8 EXECUTIVE DIRECTOR YELTON: Can I follow up on  
9 that, Mr. McNeely? And there did come a time, did  
10 there not, that the Attorney General filed with  
11 Judge Bradford a request to withdraw his motion for  
12 the commission to intervene?

13 MR. McNEELY: Absolutely, I think at your  
14 request.

15 EXECUTIVE DIRECTOR YELTON: Yes, at our  
16 request.

17 MR. McNEELY: Yes.

18 EXECUTIVE DIRECTOR YELTON: After that fact  
19 occurred and we were no longer a pending applicant  
20 to intervene on behalf of the commission, did I  
21 make a request of you to provide us with the  
22 information -- relevant information regarding this  
23 issue?

24 MR. McNEELY: You did. And my reply to you, at  
25 that time, when we were in those discussions -- if

1       you recall --

2               EXECUTIVE DIRECTOR YELTON: I recall.

3               MR. McNEELY: -- I assume are confidential,  
4 maybe -- perhaps not. That's all right.

5               EXECUTIVE DIRECTOR: Indivisible, I agree,  
6 confidential, I will not.

7               MR. McNEELY: I don't know, you have your  
8 recollection and I have mine. My recollection of  
9 that is that at that point in time we said to you  
10 that we would not be in a position to do that  
11 because, once again, once any information was  
12 turned over to this commission, it became public  
13 record and public document. And this goes back to  
14 Mr. Barrett's conversation, you are right, he can't  
15 seek it from me, but if you seek it from me and I  
16 give it to you, whether I have to or not, then I  
17 have, in essence, given it to him. Because he can  
18 file a Freedom of Information Act and receive it  
19 all. And that's the problem.

20               COMMISSIONER BARRETT: I understand that. My  
21 question is not a matter of litigation strategy,  
22 advisable for you to do so. My question is not  
23 whether you are obligated by some court order or  
24 whomever, but my question is whether you are  
25 prohibited from responding --

1 MR. McNEELY: No, never had said that. No. I  
2 can give it to you tomorrow, but I'm not going to.

3 EXECUTIVE DIRECTOR YELTON: I still want to  
4 follow up -- excuse me.

5 MR. McNEELY: It's a fact. Facts are facts.

6 EXECUTIVE DIRECTOR YELTON: I still want to  
7 follow up on your issue there about confidentiality  
8 and that's allowing that information. Do you  
9 understand that this commission has volumes and  
10 volumes of documents that we deem confidential and  
11 we do not honor requests for public record access?

12 MR. McNEELY: No.

13 EXECUTIVE DIRECTOR YELTON: Are you aware  
14 Mr. Bock sued us when we refused to give him  
15 records that we deemed were confidential?

16 MR. McNEELY: He sued you, too? I was not  
17 aware of that, no. He's a little litigator; isn't  
18 he? We are all in this, aren't we?

19 COMMISSIONER ROSE: It sounds like there is a  
20 mechanism under which you could give this  
21 commission confidential information that would not  
22 be shared with your adversary. And so if that  
23 mechanism does exist and your client had some  
24 assurances that that information would remain  
25 confidential, would you give us the information?

1 MR. McNEELY: I will ask my clients.

2 EXECUTIVE DIRECTOR YELTON: Is your client  
3 here?

4 MR. McNEELY: No. I will ask him. I'm the  
5 lawyer, not the client. We all know the difference  
6 between one and the other. But we would need  
7 absolute strict assurances and I think it would  
8 have to be the question there as to whether or  
9 not -- what would happen with regard to that.  
10 Having read the pentagon papers over and over again  
11 after college, I recall some of those things.

12 May I say one thing with regard to that,  
13 though. And I do understand in the course of our  
14 conversations there was a request made.

15 EXECUTIVE DIRECTOR YELTON: And I want you to  
16 know, the commissioners have seen your response and  
17 they know exactly how you worded it.

18 MR. McNEELY: Okay. And my point being, the  
19 idea of -- we have not been running to the  
20 commission over the last 14 months or 10 or 20  
21 months before that. Take this -- whether you want  
22 to take it as gospel or not, is that we have been  
23 relying upon the off stated position of this  
24 commission that you are not the overseers and you  
25 are not the arbiters of the economic development

1 agreement or compliance. And the validity of those  
2 agreements, I believe we have language from the  
3 executive director, is appropriately in the  
4 jurisdiction of Judge Bradford. And that's where  
5 we are and that's where we're litigating that  
6 today.

7 So do I not come to Mr. Robinson and say,  
8 "Here, Mr. Robinson, I want you to see this." The  
9 answer is, until recently nobody has told me that  
10 you think that you had -- as a matter of fact, I  
11 don't think you thought you had it until the  
12 Attorney General told you that this afternoon. And  
13 by the way, I think he's wrong. So why would I  
14 come running to you last October or last November  
15 or last January saying, "Let's talk about this  
16 economic development agreement" when you have been  
17 telling me for 10 years it's not in our ballpark.

18 So I went down the street where I'm supposed to  
19 go, I think, and filed it with the judge and said,  
20 "Judge, is this valid or do the obligations -- it's  
21 a declaratory judgement action, straightforward,  
22 they came in and sued me in counterclaims to bring  
23 all the personal situation in. Mine was very  
24 straightforward, is it a valid agreement? Is it  
25 against public policy? Yes or no. Can we continue

1 to receive these funds? Yes or no. Are they  
2 private or public? Yes or no. Please, Judge, tell  
3 me." And that's all I'm trying to find out. Just  
4 tell me. What he tells me I will live with. I may  
5 appeal it but I will live with it.

6 Ultimately, when the Indiana Supreme Court and  
7 Court of Appeals rules, I will live with that. The  
8 point being, I have been doing what I thought was  
9 the appropriate thing to do and what the commission  
10 consistently has been telling us to do all these  
11 many years, especially recently, and that's why I'm  
12 down in a court waiting for a judge to make a  
13 decision.

14 EXECUTIVE DIRECTOR YELTON: And, Mr. McNeely,  
15 as I recall, you were present at the April 2005  
16 commission meeting and eloquently spoke to the  
17 commission; correct?

18 MR. McNEELY: Yes.

19 EXECUTIVE DIRECTOR YELTON: And you were there  
20 when I asked permission and granted permission to  
21 have the Department of Revenue and the State Board  
22 of Accounts investigate Second Century?

23 MR. McNEELY: Absolutely. Did I make any  
24 objection?

25 EXECUTIVE DIRECTOR YELTON: Today it sounds

1       like you had no idea that we were taking a look at  
2       this. We started this in April of 2005 and you  
3       were there when we did so.

4               MR. McNEELY: I don't think that's an  
5       appropriate characteristic of what I'm saying. I  
6       recall at that meeting -- I can't remember the  
7       lady's name.

8               EXECUTIVE DIRECTOR YELTON: Ann McCalsky  
9       (phonetic).

10              MR. McNEELY: Turned to you and said, "Are  
11       there any agencies in Indiana which could conduct  
12       an investigation of East Chicago?" And you turned  
13       to her and said, "Yes, I believe there are some."  
14       She said -- her words to this effect, "Well, would  
15       you ask them to do so?" You said yes. I think  
16       several weeks or a month went by and then,  
17       ultimately, you did make that request.

18              So the point being -- I don't want to be  
19       disingenuous here. I mean, have you known about  
20       this for the last two years? Has East Chicago been  
21       screaming their lungs out cancel it, cancel it,  
22       cancel it for the last 14 months? Of course, they  
23       have. I haven't been under a toad stool somewhere.

24              But has anybody written me a letter and said,  
25       "We are the commission, we have authority over this

1 development agreement, we are going to exercise  
2 that authority, and we expect you to bring us what  
3 information is necessary while we judge you  
4 according to the following standards which have  
5 been established by this commission."

6 And to answer that candidly -- and I don't want  
7 to argue with you, but to answer that candidly as  
8 no, that hasn't happened. Did she lean over and  
9 ask you to do that and did you do it, yes. Did you  
10 write me a letter, absolutely, and I responded to  
11 that letter appropriately. But the idea being that  
12 you now are thinking in terms of canceling these  
13 agreements.

14 I submit to you, in view of all of the evidence  
15 I have, it's a 180-degree U-turn from what the  
16 commission's position has been up to this point,  
17 which you have a right to do if you think you are  
18 supported by law and by authority, but I'm just  
19 telling you what I think the lay of the land is.

20 COMMISSIONER BARRETT: I have just a few more  
21 questions. As the Attorney General talked about,  
22 the foundations having a stay in Judge Bradford's  
23 court is that the reason not to provide Attorney  
24 General's office with requested documentation. So  
25 let me ask you a few questions. Do you know who

1       you told?

2               MR. McNEELY: I suppose the Board of Directors.

3               EXECUTIVE DIRECTOR YELTON: Please remember,  
4 Commissioner Barrett, that's not an agenda item  
5 today. And we have not allowed any other people to  
6 respond to that -- be given the opportunity to do  
7 so.

8               COMMISSIONER BARRETT: Very well, I will  
9 withdraw the question.

10              MR. McNEELY: By the way, in testing my memory,  
11 I was not backing off from you. I tried to be as  
12 forthcoming as I could. Technically, I may not  
13 have asked for the stay. It may have been the  
14 foundation and I joined in it -- or it may have  
15 been me and they joined in it. But what I was  
16 being candid with you about is was I a proponent of  
17 the stay and the answer is absolutely, I was a  
18 proponent of the stay. They may have, in fact,  
19 asked for the stay but I joined in it. I really  
20 acknowledge that because it was the right thing to  
21 do.

22              COMMISSIONER MURPHY: Given there is some  
23 question as to the validity of the contract pending  
24 in the court at this time, would it be prudent  
25 for --

1           DEPUTY DIRECTOR ARNOLD:  Commissioner Murphy,  
2           I'm sorry to interrupt you, but the court reporter  
3           is having a hard time hearing you.

4           COMMISSIONER MURPHY:  Given that there is some  
5           question as to the validity of the contract pending  
6           in the court at this time, would it be prudent for  
7           the funds that are flowing from Resorts into Second  
8           Century be put in escrow until such time as the  
9           validity of the contract --

10          MR. McNEELY:  Well, it would be prudent for  
11          that to be submitted to a judge for request.  It  
12          has been and it has been denied.  Okay.  So I  
13          understand that.  Just like what you are -- many  
14          things you are talking about doing here today, for  
15          instance, partially canceling the contract or  
16          rewrite it or however you want to characterize it,  
17          or Mr. Bock wants to characterize it -- again, that  
18          is the only area he and I agree upon.  But I think  
19          the judge has had that opportunity.  He's been  
20          asked to enter into a preliminary injunction and he  
21          said no.  He reviewed the facts and he's made those  
22          rulings.  I think you have to understand the  
23          irreparable harm that would be done if that were to  
24          happen.  In essence, we would then strangle  
25          economically every project -- we would go bankrupt,

1 it's just that simple.

2 EXECUTIVE DIRECTOR YELTON: Is that ruling on  
3 preliminary injunction or the injunction as a  
4 whole? Is that a final ruling?

5 MR. McNEELY: He deferred ruling on that until  
6 the substantive motions were determined; that's  
7 right.

8 EXECUTIVE DIRECTOR YELTON: Thank you.

9 MR. McNEELY: I know it wasn't granted. So  
10 what he did was he said that I will wait until I  
11 decide what part of this lawsuit lives and what  
12 part of this lawsuit dies. And then I will make my  
13 ruling. So that's still an option.

14 COMMISSIONER MURPHY: Well, my question is  
15 predisposed to voluntariness to put the money in  
16 escrow. (Inaudible)

17 COURT REPORTER: Please speak up.

18 MR. McNEELY: Well, if we put the money in  
19 escrow, then the economic development activity will  
20 die. I mean, they are done. And currently it just  
21 can't be done.

22 COMMISSIONER MURPHY: How much activity is  
23 going on?

24 MR. McNeely: There is activity going on. You  
25 don't know about it. And to not know about it and

1 say it doesn't happen is the trouble with this type  
2 of a procedure. When you have heard from one side  
3 and then you have a blabbermouth like me that gets  
4 up and goes way past his 30 minute verbal response,  
5 but you don't have any evidence. So I have  
6 information about development projects, et cetera,  
7 and they are in the works and things of that sort,  
8 but I can't give it to you.

9 EXECUTIVE DIRECTOR YELTON: Did I not  
10 specifically ask that question when I made a  
11 request for information from you?

12 MR. McNEELY: Absolutely.

13 EXECUTIVE DIRECTOR YELTON: And I did not  
14 receive an answer.

15 MR. McNEELY: You are right. You are exactly  
16 right. Your letter speaks for itself, you are  
17 absolutely right. I told you and I deferred --

18 EXECUTIVE DIRECTOR YELTON: I'm sorry, your  
19 statement right there, Mr. McNeely, implied that  
20 there was information out there that could be given  
21 and it was not given and we have asked for it.

22 MR. McNEELY: Well, it was asked for -- all  
23 right, what I did not do -- what I did not do was  
24 go through your request and say okay to A, okay to  
25 B, no to C, no to D, no to E, okay to F. I did not

1 do that. I said, no, it's inappropriate. You saw  
2 the answer. I gave the answer. That's what it  
3 was. I'm saying to you, that was in the context of  
4 the conversation that you and I were having, not in  
5 the context of -- expected there was going to be a  
6 hearing at which somebody would make a  
7 recommendation that the contract was going to be  
8 canceled. And in the context that you asked me,  
9 and I don't want to get cross with you, because you  
10 and I are friends --

11 EXECUTIVE DIRECTOR YELTON: I know that. We  
12 still are, sir.

13 MR. McNEELY: And I never misrepresented, I  
14 don't believe, anything you and I have ever said.  
15 But you and I were talking about another subject  
16 and you said, "Before I can move forward on that  
17 subject, I need to have the following information."  
18 I said, "I would love to give it to you but I  
19 can't," et cetera. No letter did I get saying,  
20 "Mr. McNeely, I'm your friend and we are going to  
21 have a hearing next Thursday and you better let me  
22 know what you have in process because the Attorney  
23 General is going to come up here and lay one on  
24 you. We would like to have that information." I  
25 never got that letter and you never sent it. And I

1 think it's appropriate because you probably didn't  
2 know until he got here today exactly what he was  
3 going to say, I assume.

4 CHAIRMAN CALLOWAY: Thank you, Mr. McNeely.

5 MR. McNEELY: Thank you. You've been patient  
6 with me and I appreciate that.

7 MR. BOCK: Okay. Mr. Chairman and Mr. Yelton,  
8 I wonder if I can make --

9 EXECUTIVE DIRECTOR YELTON: No. I made it very  
10 clear, there is no rebuttal. Mr. Bock, if the  
11 commissioners have questions, they will ask, but  
12 I'm applying the rules as stated to everybody.

13 MR. BOCK: I'm not asking for rebuttal, I'm  
14 asking for a point of order to ask if I can bring  
15 to the commission's attention two documents that --

16 EXECUTIVE DIRECTOR YELTON: No. Thank you,  
17 sir.

18 Finally, on the agenda, we have a  
19 representative from Resorts East Chicago.  
20 Representing them will be their local counsel,  
21 Ronald Gifford.

22 CHAIRMAN CALLOWAY: Mr. Gifford, how long are  
23 you going to be?

24 MR. GIFFORD: How many questions are you going  
25 to have, Mr. Chairman?

1 EXECUTIVE DIRECTOR YELTON: Yes, let's take a  
2 recess at this time.

3 (AT THIS TIME THERE WAS A BRIEF RECESS TAKEN,  
4 AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

5 CHAIRMAN CALLOWAY: It's all yours.

6 MR. GIFFORD: Thank you, Mr. Chairman and  
7 members of the commission and staff. I appreciate  
8 the opportunity to address you this afternoon.

9 My name is Ronald Gifford, I'm a lawyer with  
10 Baker & Daniels, and I represent Resorts. I would  
11 also like to introduce Mr. Nick Amato who is here  
12 in the audience. Mr. Amato is the senior vice  
13 president and general counsel of Resorts.

14 Hopefully, our remarks will be relatively  
15 brief. We thought it might be useful to provide  
16 some context as to our position in all of this. A  
17 little more than a year ago, of course, we came  
18 before you seeking the commission's approval to  
19 transfer the license of the East Chicago Riverboat  
20 from Harrah's to Resorts. As you know, in 2004,  
21 Resorts and Harrah's had entered into an agreement  
22 whereby Resorts would acquire certain of Harrah's  
23 gaming properties, including the casino in  
24 East Chicago. And it was in that context of that  
25 transaction that Resorts first became aware of the

1 economic development agreement that is at issue  
2 here today. It was in the normal course of  
3 performing due diligence in the Harrah's  
4 transaction that we received documents relevant to  
5 that property, which include, of course, the  
6 economic development agreement and other materials.  
7 And it's an obvious point, but I will make it  
8 anyway.

9 Neither Resorts nor any of its personnel had  
10 anything to do or any involvement with the creation  
11 or initial execution of those agreements. So as  
12 part of the due diligence, we reviewed the letter  
13 agreements, we looked at both the certificate of  
14 suitability that had been issued in the riverboat  
15 owner's license, we reviewed the proceedings of the  
16 commission as it related to the initial award of  
17 that license, the subsequent transfer to Harrah's  
18 and the proceedings that had accompanied all of  
19 that as we went about our due diligence in that  
20 transaction.

21 And based on how the commission has previously  
22 handled license transfers, we understood that if  
23 the transfer of the license was approved, Resorts  
24 would step into Harrah's shoes relating in regards  
25 to any obligations imposed by the license. And

1 that would include any responsibilities that  
2 existed under the existing economic development  
3 agreement. So at the transfer hearing in April, we  
4 told you that we would do exactly that. And for  
5 the past year that's what Resorts has done. We  
6 have continued making payments to the City of East  
7 Chicago, to Second Century, and to the two  
8 foundations just as Harrah's had done under those  
9 agreements.

10 We think you know this also, but again, let me  
11 make an obvious point or at least make this point.  
12 Resorts does not have and did not negotiate an  
13 independent agreement with the city, with Second  
14 Century and with the foundations. We have  
15 continued making those payments to them based on  
16 preexisting agreements, not based on any other  
17 separately negotiated contracts or agreements.

18 Now, some little more background. As some of  
19 you will recall, prior to that hearing in 2005,  
20 counsel for the city contacted Resorts and demanded  
21 that Resorts stop making payments to Second Century  
22 and the foundations if the license was transferred.  
23 The city insisted that at the point of transfer we  
24 would begin paying all those funds to the city.

25 Well, when Second Century and the foundations

1 learned about that, we got a similar phone call  
2 from them. It might have been a letter or call,  
3 but it had the same effect. They said they had a  
4 right to receive these payments under the contract  
5 and if we stopped making those kind of payments, we  
6 would be in breach and they would sue us. And, in  
7 fact, a week before the hearing last year, Second  
8 Century did sue us here in Marion County. You  
9 heard about that litigation. They sought a  
10 declaratory judgment from the court asking the  
11 court to declare their rights under the contract,  
12 that they had a continuing right to be paid under  
13 this letter agreement.

14 And because we saw this issue, really, as a  
15 dispute between, at that point, Second Century, the  
16 city, and the foundations laying claim to these  
17 funds under that contract and because we were not  
18 subject to these competing demands, we brought the  
19 city and the foundations into the lawsuit by the  
20 appropriate procedural mechanisms. Everybody came  
21 into court. And as you heard, the Attorney General  
22 ultimately came in.

23 Now in that litigation, as you heard, the city  
24 has asserted various claims against the foundations  
25 and Second Century, and the city has moved for

1 summary judgment on many of those claims. Has  
2 asked the court to declare the economic development  
3 agreement void on several grounds that they've  
4 asserted. And the city has also reiterated its  
5 demand that Resorts pay all the funds to the city  
6 and not to the other entities. Second Century and  
7 the foundations, on their part, have filed motions  
8 to dismiss most, if not all, of the claims that the  
9 city as asserted. And both -- the summary judgment  
10 motion and motions to dismiss have now been fully  
11 briefed. We had a lengthy hearing before  
12 Judge Bradford in late April and we understand the  
13 court is likely to rule on these motions within the  
14 next four or five weeks. Now, as we said at the  
15 hearing last April, and as we've told the court, we  
16 are prepared -- Resorts is prepared to do whatever  
17 our regulators or the court tells us to do with  
18 regards to these payments.

19 And I need to address something that came up  
20 here a little earlier as Mr. Bock, I think, made  
21 certain characterizations about comments that I  
22 made to you last year when we appeared before you.  
23 And in essence, I think what he said -- what I  
24 heard was, we promise to pass 3.75 percent to the  
25 city under some public trust theory. And so it

1 doesn't matter if I understood what he said, what  
2 you do here today, we owe that. And I just want to  
3 clarify and make clear what we actually said. This  
4 will be weird, I will read into the transcript the  
5 transcript from the last hearing when I addressed  
6 this issue. And the point is what I said, and I  
7 will say it again, is that we have an obligation  
8 under a contract to make these payments. And we  
9 said we would abide by that obligation.

10 Page 21 of the transcript. "We understand our  
11 obligation to continue to pay the 3.75 percent  
12 under the economic development agreement as it  
13 stands until we are ordered to do so otherwise by  
14 the Court or other other entity of jurisdiction."  
15 Commissioner said, "Okay, so you will continue  
16 paying that money out until you are ordered to do  
17 something different?" And I replied, "That's  
18 exactly right. We understand that's our  
19 obligation."

20 Then later on in the discussion I noted the  
21 insurance companies -- "Our position is comparable  
22 to that of an insurance company that recognizes an  
23 obligation to pay persons under a policy. But  
24 there is a dispute between the claimed  
25 beneficiaries."

1           And again, later on I said very clearly, "We  
2 understand our obligation to pay 3.75 percent of  
3 our adjusted gross receipts under the agreement."  
4 I said it then and I will say it today. We will  
5 comply with our obligations under that agreement  
6 and any regulatory or judicial interpretations of  
7 that agreement. That's what we said we will do and  
8 that's what we will do.

9           And last year when I was making these comments  
10 our obligation was to pay 3.75 percent of our  
11 adjusted gross receipts to four entities under an  
12 economic development agreement. And if that  
13 obligation has changed either by court order or by  
14 this commission's actions or otherwise, we will  
15 then take the action that is appropriate at the  
16 time those decisions are made. But I don't want to  
17 leave hanging the impression that we view our  
18 obligation to be rooted in anything other than the  
19 economic development agreement to which we  
20 succeeded when the license was transferred to us.

21           So in closing, we want to reiterate this  
22 position. Resorts understands that as a licensee  
23 its obligation is to comply fully with the rules  
24 and regulations and orders of this commission.  
25 That is what we will continue to do. And we want

1 to assure you that we will follow any direction  
2 that you give the company today in this matter. I  
3 appreciate your time. And if you have any  
4 questions, I will be happy to answer them.

5 CHAIRMAN: Thank you. Any questions? Thank  
6 you.

7 MR. GIFFORD: There is a benefit to going last.

8 EXECUTIVE DIRECTOR YELTON: Mr. Chair, Ladies  
9 and Gentlemen of the Commission, at this point in  
10 the agenda has been listed the staff recommendation  
11 for action. It has been over a year, I think,  
12 since we began traveling down this path. And after  
13 every few steps or so we have gathered bits of  
14 information here and bits of information there. It  
15 is our belief that this journey has been extended  
16 and challenged largely because the East Chicago  
17 Second Century would not provide relevant evidence  
18 for your consideration. But as we reviewed that  
19 which we have accumulated as a result of our  
20 investigation, both public and both confidential,  
21 your staff has led to one inescapable conclusion.  
22 The operation of the local development agreement as  
23 it relates to Resorts East Chicago and East Chicago  
24 Second Century is, by clear convincing evidence,  
25 repugnant to the statutory and regulatory mandates

1 as to the dedication to economic development, and  
2 maintaining of the integrity of the gambling  
3 industry in the State of Indiana. One of the  
4 keystones to the creation of the Indiana Gaming  
5 Commission was to safeguard the citizens of the  
6 State of Indiana from this very type of conduct.  
7 So as a result, your staff unanimously recommends  
8 that you adopt the following resolution. Indiana  
9 Gaming Commission adopts the following resolution  
10 pursuant to the authority granted to it under IC  
11 4-33 Title 68 of the Indiana Administrative code.  
12 The commission has considered the following  
13 factors. One, the commission, with assistance of  
14 its legal counsel, has commenced an investigation  
15 into the local development agreement and initially  
16 entered into by the City of East Chicago and  
17 Showboat Marina Partnership, and thereafter  
18 continued by subsequent riverboat licensee.

19 Two, to date the investigation has uncovered  
20 substantial evidence to support the conclusion that  
21 the operation of the portion of the agreement  
22 requiring the riverboat licensee to make payments  
23 to East Chicago Second Century, Inc., has been  
24 contrary to the state purpose of the Indiana's  
25 Riverboat Gambling Act and has failed to maintain

1 the integrity of the riverboat gambling industry in  
2 Indiana. The commission has no information  
3 indicating that to this point RIH acquisitions  
4 Indiana, LLC has had any knowledge of or has  
5 participated in any conduct that forms the basis of  
6 this conclusion.

7 Three, continued operation of the portion of  
8 the agreement requiring payments to Second Century  
9 would only perpetuate the inadequate economic  
10 development activities and overall undermine the  
11 integrity of the gambling industry in the State of  
12 Indiana; that has been evidenced by the  
13 commission's investigations.

14 Four, 68 IAC 1-4, along with the text of the  
15 agreement itself, authorizes the commission to  
16 disapprove of the agreement.

17 Five, after now analyzing the evidence gathered  
18 during the investigation to date, the commission  
19 staff has recommended that the commission  
20 disapprove of the portion of the agreement  
21 requiring the riverboat licensee to make payments  
22 to Second Century. The office of the Attorney  
23 General has advised that the commission is  
24 authorized to do so.

25 Six, because the majority of the investigatory

1 documents are confidential pursuant to statute,  
2 said documents have not and may not be disclosed to  
3 the public, including Resorts. The commission  
4 expects that Resorts will consider this resolution  
5 along with the public portion of the investigatory  
6 findings to assist it in developing an appropriate  
7 action plan aimed at adequately assisting in the  
8 economic development of the City of East Chicago in  
9 a manner that fully maintains the integrity of the  
10 riverboat gambling industry in Indiana.

11 Now, therefore, be it resolved by the Indiana  
12 Gaming Commission that the following resolution be  
13 adopted. That the commission hereby disapproves  
14 of the portion of the agreement requiring the  
15 riverboat licensee to make payments to Second  
16 Century. Resorts is invited to propose an action  
17 plan no later than June 15, 2006, which is aimed at  
18 adequately assisting in the economic development of  
19 the City of East Chicago in a manner that fully  
20 maintains the integrity of the gaming industry in  
21 Indiana. Failure to timely submit and effectuate  
22 an appropriate action plan may result in, one, a  
23 determination under 68 IAC 133 that Resorts has not  
24 made satisfactory progress in completing its  
25 economic development activity and/or, two, the

1 commencement of a disciplinary action against  
2 Resorts under 68 IAC 113. The action plan will be  
3 subject to administrative review by the commission.  
4 The commission maintains continuing jurisdiction  
5 over all or part of the agreement and operation  
6 thereof, including any subsequent changes or  
7 amendments thereto. The commission reserves the  
8 right to take any appropriate action with regard to  
9 the amendment, the agreement, or the operation at  
10 any time. This resolution will be effective  
11 immediately. And it is the recommendation of your  
12 executive staff that the resolution be adopted as  
13 presented, Mr. Chair.

14 CHAIRMAN CALLOWAY: Thank you, Mr. Executive  
15 Director. Are there any questions from the  
16 executive staff?

17 COMMISSIONER FESCO: We need to clarify one  
18 thing here. In early testimony regarding Mr. Bock  
19 and Mayor Pebay, it was alluded to that some people  
20 thought you may still have ownership position in  
21 the Waterfront Entertainment and Development and/or  
22 Second Century.

23 MAYOR PABEY: Okay. I want to thank you for  
24 allowing me to speak. The FBI and IRS agents came  
25 to my house to speak to me. And I told them I

1 would speak to them in front of my attorney. So we  
2 went to her office and they asked me if I knew  
3 anything about Second Century and I told them I was  
4 not part of it. They said, "Who told you that you  
5 were not part of it?" I said, "Well, the  
6 partners." He said, "Cappas and Pannos?" I said,  
7 "No. They have two other people that let me know  
8 that I wasn't a partner." So they said, "You are a  
9 partner in Second Century." So I mean the feds  
10 told me.

11 COMMISSIONER VOWELS: How recently was that  
12 conversation?

13 MAYOR PABEY: That was about a year-and-a-half  
14 ago.

15 COMMISSIONER VOWELS: As far as you know, based  
16 on that conversation, do you still have a  
17 percentage interest?

18 MAYOR PABEY: I really don't know. You know, I  
19 was part of Waterfront. And that's just to let you  
20 know, we all agreed in front of the commission back  
21 in 1996 or 1994 -- we all took an oath in front of  
22 the commissioners and said if we sold our  
23 part -- we were supposed to sell our parts to the  
24 partners. We couldn't go outside the partnership.  
25 This was done underneath the table. They started

1 Second Century and they got rid of the partners  
2 from Waterfront. They used us because they needed  
3 us at the time --

4 EXECUTIVE DIRECTOR YELTON: Excuse me,  
5 Mr. Mayor. Just limit your answer to --

6 MAYOR PABEY: I'm sorry. I was told by the IRS  
7 and the FBI agent that I was still a partner in  
8 Second Century.

9 COMMISSIONER FESKO: You sold your position in  
10 the Waterfront?

11 MAYOR PABEY: Yes.

12 COMMISSIONER FESKO: You received compensation  
13 for it at that time?

14 MAYOR PABEY: Yes.

15 COMMISSIONER FESKO: You have a position you  
16 are not aware of then in Second Century?

17 MAYOR PABEY: Correct.

18 COMMISSIONER FESKO: Okay, then. Thank you.

19 CHAIRMAN CALLOWAY: Any other questions?

20 COMMISSIONER BARRETT: I have a question. The  
21 scope of this resolution applies only to our  
22 licensee; is that correct?

23 EXECUTIVE DIRECTOR YELTON: Yes.

24 COMMISSIONER BARRETT: So we are not asserting  
25 jurisdiction, for lack of a better word. We do not

1 have to reach an issue of jurisdiction over any  
2 other party other than our licensee under this  
3 resolution?

4 EXECUTIVE DIRECTOR: That would be the legal  
5 effect of the resolution. I will refer to legal  
6 counsel.

7 GENERAL COUNSEL SICUSO: I agree with the  
8 executive director.

9 COMMISSIONER BARRETT: Thank you.

10 CHAIRMAN CALLOWAY: Any more discussion? Okay.  
11 The chairman will entertain a motion to accept the  
12 recommendation of the executive staff.

13 COMMISSIONER BARRETT: Move to approve.

14 COMMISSIONER MURPHY: Second.

15 CHAIRMAN CALLOWAY: The resolution be approved  
16 as read.

17 (COMMISSION MEMBERS VOTED AYE)

18 CHAIRMAN CALLOWAY: Those opposed?

19 (NONE)

20 CHAIRMAN CALLOWAY: That concludes the meeting  
21 for today. When is the next meeting?

22 EXECUTIVE DIRECTOR YELTON: September 14th.

23 CHAIRMAN CALLOWAY: Our next meeting is  
24 September 14th, and the place to be determined.  
25 Entertain a motion to adjourn at this time.

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(COMMISSION MEMBERS VOTED AYE)

(NONE OPPOSED)

(MEETING ADJOURNED)

1 STATE OF INDIANA )

2 ) SS:

3 COUNTY OF MARION )

4  
5  
6 I, Robin L. Helton, a Notary Public in and for  
7 said county and state, do hereby certify that the  
8 Indiana Gaming Commission hearing, June 8, 2006, at  
9 1:30 p.m., was taken down in stenograph notes and  
10 afterwards reduced to typewriting under my  
11 direction, and that the typewritten transcript is a  
12 true record of the proceedings held.

13 IN WITNESS WHEREFORE, I have hereunto set my  
14 hand and affixed my notarial seal this 15th day of  
15 June, 2006.

16  
17 *Robin L. Helton*  
18 \_\_\_\_\_



19 Robin L. Helton, Notary Public,  
20 Residing in Marion County, Indiana

21  
22  
23 My Commission Expires:  
24 June 6, 2009  
25