

BEFORE THE IOWA RACING AND GAMING COMMISSION
Capitol Medical Office Building
1300 Des Moines Street, Suite 100
Des Moines, IA 50309-5508

IN THE MATTER OF:)	
Belle of Sioux City, L.P.)	MOTION FOR STAY OF
d/b/a Argosy Casino Sioux City)	MARCH 5 2014 HEARING ON
100 Larsen Park Road)	NON-RENEWAL OF LICENSE
Sioux City, IA 51101)	
Applicant.)	

The Applicant, Belle of Sioux City, L.P. ("the Belle"), hereby moves the Iowa Racing and Gaming Commission to stay the hearing scheduled by it for March 5, 2014 on the issue of non-renewal of the license for the Belle. In support of its motion, the Belle states as follows:

1. The Iowa Racing and Gaming Commission (the "IRGC") on November 27, 2013 issued a Notice of Hearing regarding its decision to deny the Belle's renewal application to operate the Argosy Casino. A copy is attached hereto as Exhibit 1.
2. The Notice states that a hearing will be held on March 5, 2014 before the IRGC.
3. The Notice states that the hearing shall identify the following issue: "Whether the Applicant's lack of an operator's agreement with a qualified sponsoring organization that is presently licensed to conduct gambling games at the Argosy Casino in Sioux City, Iowa, precludes renewal of the Applicant's license to operate the Argosy Casino."
4. At the last IRGC meeting, on November 21, 2013, the IRGC found that the question whether there is or is not an operating agreement is pending before the Iowa courts and therefore *should not be addressed by the IRGC at this time*. At that meeting, the Belle requested that the IRGC approve a substitute Qualified Sponsoring Organization ("QSO") to replace

MRHD in light of MRHD's disavowal of its operating agreement with the Belle. The IRGC rejected that request based, in part, on its belief that the existence and validity of the agreement is a question the courts should decide before the IRGC takes action. Hence, the Chairman stated:

And I also would reference the letter to the Commission of November 6th from Mr. [Weinhardt] where he makes reference to the agreement would permit GSIA [Greater Siouxland Improvement Association] to step into the role as the QSO for Argosy Casino in the event that the agreement between Belle and MRHD is determined to no longer be in effect. Obviously that is the subject matter of ongoing litigation, and that has not been determined, which is why I also believe that that issue is not [ripe] (SIC).

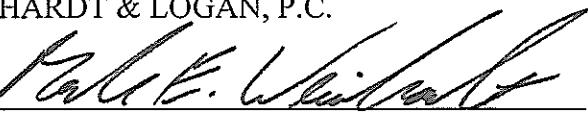
See excerpt of transcript of IRGC meeting of November 21, 2013, attached hereto as Exhibit 2.

5. If the existence of an agreement between the Belle and MRHD had not been determined as of four weeks ago, and therefore rendered the Belle's request for a substitute QSO "not ripe," it is certainly true that the issue remains un-determined and therefore any proceeding purporting to use the Belle's purported lack of an agreement as a basis not to renew the Belle's license is also "not ripe." Accordingly, the only fair and consistent action is for the IRGC to stay the hearing identified in its November 27, 2013 Notice of Hearing until the issue to be addressed in that hearing has been fully and finally resolved in the Iowa courts.

WHEREFORE, the Applicant, Belle of Sioux City, L.P. prays the IRGC for an order that stay the proceedings identified by its November 27, 2013 Notice of Hearing until the issues identified in that Notice of Hearing that are currently in litigation are fully and finally resolved in the Iowa courts.

WEINHARDT & LOGAN, P.C.

By


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ATTORNEYS FOR PETITIONER BELLE OF
SIOUX CITY, L.P.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on Dec 24 2013 by

U.S. Mail FAX
 Hand Delivered Electronic Mail
 FedEx/ Overnight Carrier Other

Jeffrey C. Peterzalek
Assistant Attorney General
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John R. Lundquist
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Signature: 

BEFORE THE IOWA RACING AND GAMING COMMISSION
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1300 Des Moines Street, Suite 100
Des Moines, IA 50309-5508

IN THE MATTER OF:)
Belle of Sioux City, L.P.)
d/b/a Argosy Casino Sioux City)
100 Larsen Park Road)
Sioux City, IA 51101)
Applicant.)

NOTICE OF HEARING

The Iowa Racing and Gaming Commission (“Commission”) issues this Notice of Hearing pursuant to Iowa Code sections 17A.12(2) and 17A.18 (2013). The Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A and 99F. The hearing shall address the following issues cited by the Commission for the denial of the Belle of Sioux City, L.P.’s (“Applicant”) application for renewal of its operator’s license for the Argosy Casino in Sioux City:

Whether the Applicant's lack of an operator's agreement with a qualified sponsoring organization that is presently licensed to conduct gambling games at the Argosy Casino in Sioux City, Iowa, precludes renewal of the Applicant's license to operate the Argosy Casino. See Iowa Code §§ 99F.3, 99F.4, 99F.5(1), 99F.6(1), 99F.7; 491 Iowa Admin. Code §§ 1.7, 5.1, 5.4.

NOTICE OF HEARING

1. HEARING. A contested case hearing will be held concerning the denial of the Applicant's casino operator's renewal license application before the Iowa Racing and Gaming Commission on the 5th day of March, 2014, at 9:00 o'clock AM, and reconvening, if necessary, on the 6th day of March, 2014, at 1:00 o'clock PM, at the Meadows Events and Conference Center, Prairie Meadows Casino, 1 Prairie Meadows Drive, Altoona, Iowa 50009.

2. ACKNOWLEDGMENT. The Commission requests that you file a statement to acknowledge receipt of the notice of hearing within 10 days of the date you are served with this Notice.

3. PREHEARING CONFERENCE. A prehearing conference will be held by telephone on the 24th day of February, 2014 at 10:00 o'clock AM before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALJ"). You are responsible for notifying the



Commission office or the telephone number at which you or your counsel can be reached. Commission rules on prehearing conferences may be found at 491 Iowa Administrative Code section 4.32

4. PRESIDING OFFICER. The full Commission shall serve as presiding officer at hearing pursuant to Iowa Code section 17A.11 and 491 Iowa Administrative Code section 4.22. The Commission may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Commission at hearing. Any party wishing to request, pursuant to Iowa Code section 17A.11(1)(a) and 491 Iowa Administrative Code section 4.22(1), that an ALJ employed by the Iowa Department of Inspections and Appeals be assigned as presiding officer to render a proposed decision must do so within 20 days of the receipt of this notice of hearing by filing a written request with the Commission's Administrator.

5. HEARING PROCEDURES. Commission rules on hearing procedures may be found at 491 Iowa Administrative Code chapter 4. You have the right to respond to the reasons cited for denial of your license renewal, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally and be represented by counsel at your own expense. Consult rule 491 Iowa Administrative Code 4.33 if you need to request an alternative time or date. The hearing will be open to the public. The burden of proving all necessary qualifications to receive and retain any Commission issued license is on a license applicant at all times. *See* 491 Iowa Administrative Code 5.1.

6. DEFAULT. If you fail to appear at hearing, the Commission may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 491 Iowa Administrative Code 4.38.

7. PROSECUTION. Contested cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Commission, with copies mailed to:

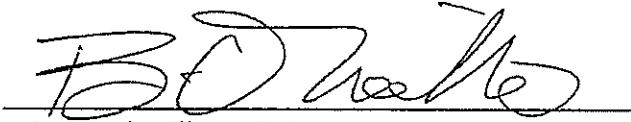
John R. Lundquist
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Phone: 515-281-3658
jlundqui@ag.state.ia.us

8. APPLICANT'S COUNSEL. Copies of all pleadings filed with the Commission shall also be provided to Applicant's counsel of record:

Mark E. Weinhardt
Weinhardt & Logan, P.C.
2600 Grand Avenue, Suite 450
Des Moines, Iowa 50312
Phone: 515-564-5270
mweinhardt@weinhardtlogan.com

9. COMMUNICATIONS. You may not contact Commission members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or your pending renewal license application. Commission members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Commission office and serve upon all parties in the case. You should direct any questions to Assistant Attorney General John R. Lundquist at 515-281-3658, or the Commission's Administrator at 515-281-7352.

This Notice of Hearing is filed and issued on the 27th day of November, 2013.



Brian J. Ohorilko, Administrator
Iowa Racing and Gaming Commission

Copies to:
Assistant Attorney General, John R. Lundquist
Applicant's Counsel, Mark E. Weinhardt
Iowa Department of Inspections and Appeals, assigned Administrative Law Judge

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6 Iowa Racing and Gaming Commission meeting
7 taken before Karen J. Eichmann, Certified
8 Shorthand Reporter and Notary Public of the
9 State of Iowa, commencing at 8:30 a.m., on the
10 21st day of November, 2013, at Stoney Creek Inn,
11 5291 Stoney Creek Court Pioneer Room, Johnston,
12 Iowa.

13

14 A P P E A R A N C E S

15 Belle of Sioux
16 City, L.P., by: CHRISTOPHER TAYBACK
17 Attorney at Law
18 Quinn Emanuel Urquhart &
19 Sullivan, LLP
20 865 South Figueroa Street
21 10th Floor
22 Los Angeles, CA 90017
23 (213) 443-3000

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23 Reported by: Karen J. Eichmann, C.S.R.

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1 P R O C E E D I N G S

2 THE CHAIR: The next item that we have
3 on the agenda is a request from Belle of Sioux



16 criteria, I do not believe that Belle has met
17 the burden.

18 And so I will make a motion to deny
19 the request of Belle of Sioux City, L.P., for a
20 stay of the issuance of the licenses to Sioux
21 City Entertainment and Missouri Historical
22 River Development and the other actions of this
23 Commission authorizing the development of the
24 Hard Rock Sioux City Casino. That would be my
25 motion. Do I have a second?

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1 THE COMMISSIONER: Second.

2 THE CHAIR: Any discussion? If not,
3 those in favor say "Aye."

4 THE COMMISSIONERS: Aye.

5 THE CHAIR: Those opposed no.

6 Motion prevails. Thank you.

12 THE CHAIR: Next we do have Belle of
13 Sioux City on a request with respect to the
14 Greater Siouxland Improvement Association.

5 MR. TAYBACK: Good morning. My name
6 is still Christopher Tayback, and I'm still
7 here representing the Belle of Sioux City, its
8 hundreds of employees and affected parties that
9 work for its casino the Argosy.

0 We submitted for your approval a

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21 single contract with the Greater Siouxland
22 Improvement Association, the GSIA, and would
23 make GSIA the alternate QSO for the Belle.
24 It's a way and it may be the only way at this
25 point to get the money earned by the Argosy to

19

1 the charities as required by Iowa law by the
2 Statute Code 99F.

3 I do not intend to beat around the
4 bush. The situation is this, and it has been
5 described before, the Belle wants to give and
6 is obligated to provide 3 percent of its gaming
7 revenues to charity. By contract for over
8 20 years the QSO that did that was MHRD; but as
9 you well know, MHRD has disavowed its contract
10 with the Belle. And, moreover, has declared
11 it's the QSO of another casino operator, SCE
12 and its proposed casino Hard Rock Casino.

13 On top of that you, this body, the
14 IRGC has recently made it clear that you do
15 not believe that the Belle has a contract
16 with -- has a QSO, at least that's what
17 Mr. Arelico (phonetic) said at the meeting held
18 last month when he indicated the Belle's
19 license would not be renewed.

20 And, in fact, earlier this morning
21 Mr. Lindquist just said that that was --
22 represented that that was the basis upon which
23 the IRGC put the matter of the Woodbury County
24 license up for an RFP to begin with.

25 But the reality is this, the Belle is

1 still operating, and Mr. Lindquist just made a
2 point of saying it's still operating. And as
3 Mr. Arelco said a month or two ago at a
4 hearing, there's at least a possibility, and I
5 would submit a strong probability, that the
6 Argosy will continue operating for quite a long
7 time yet. And whether it's a matter of months
8 or a matter of years, the fact remains that
9 although, as Mr. Lindquist said, the parties
10 are free to proceed at their own risk. The one
11 party that should not have to proceed at its
12 own risk are the impacted charities. So the
13 Belle stands here ready, willing and able to
14 distribute 3 percent of its moneys to charity
15 as provided by the statutes. And this body
16 should want that to happen.

17 It is just finding a way to make that
18 happen, and the easiest, although not easy, but
19 certainly maybe now the only way to make that
20 happen is to approve GSIA as an alternative
21 QSO.

22 Now, as you know, the Belle went to
23 court to seek a receiver, that is a judicial
24 process by which a court of law, not a body
25 like this, can follow a statute and allow

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1 moneys to be held pending the outcome of a
2 litigation. We did that in order to avoid this
3 very issue.

4 I was a little troubled to see
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5 comments attributed to Mr. Lamberti just in the
6 last couple of days, and I sent a letter to
7 this Commission as well as to the attorney
8 general, assistant attorney general
9 Mr. Lindquist outlining our concern with that
10 which is the statements attributed, at least in
11 that article, suggested that the matter be
12 raised on behalf of the Belle with the court
13 was the same as the matter we are now
14 approaching this body about. Well, it is not.

15 A receiver is very different than what
16 we're asking here. We are asking for an
17 alternative QSO. That wasn't something we put
18 before the court nor is it something that is
19 really the province of the court. It is the
20 province of this body as opposed to a receiver,
21 which is the province of a court.

22 And the court in ruling on the
23 receiver made it clear that it wasn't ruling on
24 whether or not an alternative QSO was
25 appropriate or not. In fact, the court's

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1 reason for denying the receiver that we sought
2 was simply the technical legal requirement that
3 a receiver -- that the requirements for a
4 receiver were not met because the money at
5 issue, the 3 percent that the Belle is
6 obligated to provide to the charities is not
7 the Belle's. It belongs to someone else. But
8 one thing is clear, it is not MRHD's money
9 either, not if they don't have a contract with

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10 the Belle to act as its QSO, a contract that
11 both MHRD and now this body have both
12 disavowed.

13 The court specifically said as much.
14 It said Chapter 99F, that is the relevant Iowa
15 law, makes clear that MHRD is not the only
16 entity which may distribute the 3 percent
17 throughout the Sioux City community.

18 So let me tell you a little bit about
19 GSIA and why it makes sense to approve that
20 organization as the Belle's alternative QSO.
21 First, it is comprised of prominent business,
22 political, charitable and community leaders of
23 Woodbury County, a former county treasurer, the
24 director of a community house, a high school
25 principal, a controller of a local business, a

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1 founder of a youth camp and organizer of the
2 local soccer association, the organizer of the
3 annual cancer survivors benefit. There are
4 others, half a dozen or so people like that
5 with resumes like that that are on the board of
6 the GSIA that are committed to making sure that
7 the work done by the QSO is transparent, fair
8 and efficient, that the money actually gets
9 distributed.

10 Second, GSIA has effectively already
11 been approved by this body, certainly it has
12 been found suitable in April just seven months
13 ago, eight months ago when you reviewed the
14 various applications in response to the RFP.

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15 The Belle submitted one with GSIA as its
16 proposed QSO. And this body described how
17 difficult that decision was in trying to decide
18 between the competing proposals, find them all
19 meritorious and that all the applicants
20 including the various QSOs were licensable.

21 These are some statements from the
22 commission during the April 18th hearing
23 considering these applicants including GSIA.
24 All four being discussed showed a criteria for
25 a license. Quote, there is a diverse and well-

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24

1 qualified sponsoring organization which advises
2 the community leaders with no elected political
3 officials. That is a description of GSIA.

4 Quote, any of those remaining proposals meet
5 the statutory requirements. Quote, all of them
6 meet those requirements. Quote, all the
7 applicants meet and exceed anything we would
8 have expected when we started this process.

9 Quote, all four projects show criteria for a
10 license. Quote, integrity of the organizations
11 making a proposal all had integrity. Quote,
12 all applicants meet and exceeded anything we
13 would have expected.

14 It is clear that GSIA was vetted, and
15 GSIA was found to be suitable. Suitable to act
16 just as MHRD acted that is to be a pass-through
17 so that the charitable contributions required
18 by statute are satisfied.

19 Finally GSIA will actually distribute
Page 20

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20 the 3 percent that it receives to the charities
21 in the Sioux City community. Now you might
22 say, wait a minute. What does that mean?
23 Well, as you may or may not realize,
24 MHRD does not actually distribute all the money
25 it takes in, and I'm not talking about its

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1 Litigation with the Belle.

2 Putting that aside, in 2012 alone MHRD
3 spent \$244,000, almost a quarter of a million
4 dollars on a law firm Lane & Waterman not to
5 litigate but to provide business advice. In
6 the past three years MHRD has spent \$400,000 on
7 development efforts. In fact, even now it is
8 sitting on over a million dollars, which is all
9 money derived over the years from the Argosy,
10 which is its only source of revenue, but is not
11 being distributed to charity.

12 GSIA will not forward the cash for its
13 own benefit. It will distribute it as the
14 statute requires. That's what GSIA wants.
15 That's what the Belle wants, and that is what
16 this body should want.

17 I ask you to approve the contract
18 immediately and show the Sioux City charities
19 that you do want them to receive these moneys
20 notwithstanding whatever disputes exist, may
21 exist, may not exist going forward between who
22 or who should not be a licensed casino operator
23 in Woodbury County. The fact is the charity
24 should not be made to suffer. And this is the

25 best opportunity to ensure that the moneys that

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1 they are entitled to get distributed pursuant
2 to the statute. Thank you.

3 THE CHAIR: Thank you. I believe
4 staff has reviewed this as well, and, Brian,
5 you may have some comments or recommendations.

6 COMMISSIONER BRIAN: Thank you,
7 Chairman. A couple of comments after taking
8 this request under review, I think Belle and
9 Penn, for that matter, is free to distribute
10 their profits as they would like so long as
11 they get the necessary approvals from the
12 Commission.

13 However, this request seems to
14 contemplate that the Greater Siouxland
15 Improvement Association is serving or stepping
16 into that role as the QSO, the qualified
17 sponsoring organization. I want to point out
18 that GSIA, they do not hold a license to
19 conduct gambling games in the state of Iowa.
20 There is no pending application. In fact, the
21 license was denied back in June as part of the
22 Woodbury County application process. So parts
23 of this subject matter has been addressed
24 recently in district court when the petition
25 for receivership was denied.

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1 At this point the question in my
2 opinion does not seem right for discussion. It

3 seems premature, and the staff recommendation
4 is to deny this request.

5 THE CHAIR: Questions? Comments?

6 I will make a couple comments. First,
7 I do want to make the comment to correct my
8 statement with respect to the recent court
9 action. It is correct as was stated that that
10 court action only dealt with the issue of the
11 appointment of a receiver. That is correct.

12 Obviously we've got the request before
13 us in terms of approving the proposed
14 management and operation agreement with GSIA.
15 For the reasons stated by Brian, I agree with
16 those. And I also would reference the letter
17 to the commission of November 6th from
18 Mr. Rinehart where he makes reference to the
19 agreement would permit GSIA to step into the
20 role as the QSO for Argosy Casino in the event
21 that the agreement between Belle and MHRD is
22 determined to no longer be in effect.

23 Obviously that is the subject matter
24 of ongoing litigation, and that has not been
25 determined, which is why I also believe that

1 that issue is not right.

2 Obviously we want the money to get to
3 the local charities, and I believe probably
4 there's other methods and there will be ongoing
5 litigation regarding that as things move
6 forward.

⁷ But for the reasons set forth in the

8 staff recommendation, I would make a motion to
9 deny the request of Belle of Sioux City, L.P.,
10 to have the management and operation agreement
11 between Belle and GSIA approved. Do I have a
12 second to that motion?

13 THE COMMISSIONER: Second.

14 THE CHAIR: Any further discussion?

15 If not, all those in favor say aye.

16 THE COMMISSIONERS: Aye.

17 THE CHAIR: Opposed no. The motion is
18 approved.

19 (The selected portion of the meeting
20 concluded at 9:30 a.m.)

21 The selected portion of the meeting
22 is now complete. When transcribed, the
23 selected portion of the meeting shall be given
24 to Mr. Tayback.

25 (UNLESS OTHERWISE DIRECTED BY COUNSEL
OR THE PARTIES HERETO, THE STENOGRAPHIC NOTES
FOR THE FOREGOING MEETING SHALL BE DESTROYED
AFTER A PERIOD OF THREE YEARS FROM THE DATE OF
TAKING OF SAID MEETING.)

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1 C E R T I F I C A T E

2 I, the undersigned, a Certified
3 Shorthand Reporter and Notary Public of the
4 State of Iowa, do hereby certify that I acted as
5 the Certified Shorthand Reporter in the
6 foregoing matter at the time and place indicated
7 herein; that I took in shorthand the proceedings
8 had at said time and place; that said shorthand
notes were reduced to typewriting under my
supervision and direction, and that the
foregoing pages are a full and correct
transcript of the shorthand notes so taken; that
said deposition was not submitted for review.

9 I further certify that I am
10 neither attorney nor counsel for, or related to
11 or employed by any of the parties in the
foregoing matter, and further that I am not a
relative or employee of any attorney or counsel
employed by the parties hereto, or financially
interested in the action.

12

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13 IN WITNESS WHEREOF, I have
hereunto set my hand and seal this ____ day of
14 _____, 2013.

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CERTIFIED SHORTHAND REPORTER
18 AND NOTARY PUBLIC

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