

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

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.

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 currently licensed to conduct gambling games at the Argosy Casino in Sioux City, Iowa, justifies denial of renewal of the Applicant’s license to operate the Argosy Casino.”

- 1 -

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 6<sup>th</sup> 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).

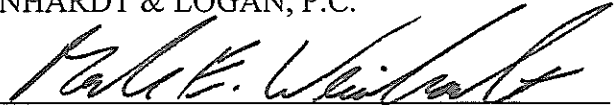
*See* excerpt of transcript of IRGC meeting of November 21, 2013, attached hereto as Exhibit 2.

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

- |   |   |
|---|---|
| <input type="checkbox"/> U.S. Mail                | <input type="checkbox"/> FAX                        |
| <input type="checkbox"/> Hand Delivered           | <input checked="" type="checkbox"/> Electronic Mail |
| <input type="checkbox"/> FedEx/ Overnight Carrier | <input type="checkbox"/> Other                      |

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John R. Lundquist  
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Des Moines, IA 50319  
jlundqui@ag.state.ia.us

Signature: \_\_\_\_\_

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.  
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:

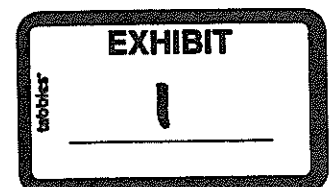
Whether the Applicant's lack of an operator's agreement with a qualified sponsoring organization that is presently licensed to conduct gambling games at the Argosy Casino in Sioux City, Iowa, precludes renewal of the Applicant's license to operate the Argosy Casino. See Iowa Code §§ 99F.3, 99F.4, 99F.5(1), 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 5<sup>th</sup> day of March, 2014, at 9:00 o'clock AM, and reconvening, if necessary, on the 6<sup>th</sup> 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 24<sup>th</sup> day of February, 2014 at 10:00 o'clock AM before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALI"). You are responsible for notifying the



Commission office of 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  
2<sup>nd</sup> 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 27<sup>th</sup> 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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Iowa Racing and Gaming Commission meeting  
taken before Karen J. Eichmann, Certified  
Shorthand Reporter and Notary Public of the  
State of Iowa, commencing at 8:30 a.m., on the  
21st day of November, 2013, at Stoney Creek Inn,  
5291 Stoney Creek Court Pioneer Room, Johnston,  
Iowa.

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A P P E A R A N C E S

15

Belle of Sioux  
City, L.P., by:

16

CHRISTOPHER TAYBACK  
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Reported by: Karen J. Eichmann, C.S.R.

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P R O C E E D I N G S

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THE CHAIR: The next item that we have  
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?

18

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.

7

8 (Belle of Sioux City, L.P.: Greater  
9 Siouxland Improvement Association -  
10 Management & Operation Agreement/Amendment)

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

15 MR. TAYBACK: Good morning. My name  
16 is still Christopher Tayback, and I'm still  
17 here representing the Belle of Sioux City, its  
18 hundreds of employees and affected parties that  
19 work for its casino the Argosy.

20 We submitted for your approval a

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. Arelco (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  
Page 17

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

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.

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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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

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

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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  
9 notes were reduced to typewriting under my  
10 supervision and direction, and that the  
11 foregoing pages are a full and correct  
12 transcript of the shorthand notes so taken; that  
said deposition was not submitted for review.

I further certify that I am  
neither attorney nor counsel for, or related to  
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.

tp112113.txt

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

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CERTIFIED SHORTHAND REPORTER  
AND NOTARY PUBLIC

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