

Florida Gaming Control Commission

Audio Transcription

February 8, 2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPTION OF AUDIO RECORDING
FLORIDA GAMING CONTROL COMMISSION (1)
FEBRUARY 8, 2023
9:33 A.M.

1 FEBRUARY 8, 2023

2 9:33 A.M.

3 VICE-CHAIR YAWORSKY: Good morning,
4 everyone. For the record, today is February 8, 2023.
5 The time is 9:33. We are now beginning this meeting
6 of the Florida Gaming Control Commission.

7 At this time, I'll ask Commissioner D'Aquila
8 from the lower chamber to lead us in the pledge.

9 COMMISSIONER D'AQUILA: Please rise for the
10 pledge of allegiance.

11 (Pledge of Allegiance)

12 VICE-CHAIR YAWORSKY: Without objection
13 from Commissioners, we're going to do a quick agenda
14 change and take the executive director's report first
15 and quickly before we move into much more substantive
16 fact findings this afternoon.

17 So, Director Trombetta, please begin.

18 MR. TROMBETTA: Thank you,
19 Mr. Chair. Good morning.

20 So I have a few updates, and I'll, again,
21 try to be quick because, as you mentioned, we do have
22 a lengthy agenda today.

23 First, on a good note, we did a
24 presentation yesterday for a subcommittee in the
25 House. It went very well. A lot of the committee

1 members were interested in what was happening with
2 gaming, so there was a presentation by EDR, by the
3 Florida Gaming Control Commission, and by the
4 Department of Lottery.

5 They asked a whole bunch of questions and
6 seemed to show a lot of interest in sort of what we
7 were doing, and they seem pleased with sort of the
8 direction we were at. So that went pretty well.

9 I wanted to touch on the schedule for
10 essentially going forward. So as was discussed in a
11 previous meeting, we're trying to figure out how to
12 do these operational licenses in a like efficient
13 manner. So the first Thursday of March is March 2nd,
14 I'd recommend, or with -- I'm kind of seeking from
15 the Commission to meet on that day.

16 I think if we meet the 2nd, it will give
17 the division of PMW enough time to prepare these
18 license applications as best we can. And then if
19 there's any problems or any issues, we have a week to
20 fix it. The statutory deadline to issue these
21 licenses, I believe, March 14th. So meeting the 2nd
22 would give us time that, if we needed, we could have
23 a second meeting before the deadline.

24 VICE-CHAIR YAWORSKY: Give the Commission a
25 second to check.

1 MR. TROMBETTA: Sure. Yes, sir.

2 VICE-CHAIR YAWORSKY: Okay.

3 MR. TROMBETTA: March 2nd works?

4 VICE-CHAIR YAWORSKY: Yes.

5 MR. TROMBETTA: Thank you, sir.

6 And then moving into April or May,
7 there's been a lot of interest from some of the permit
8 holders in South Florida about conducting a meeting
9 in South Florida.

10 So I wanted to kind of get the
11 Commissioner's feedback on the availability of doing
12 it. It would be during session, but I think we could
13 still make that work. Potentially doing a meeting,
14 the April meeting, somewhere in South Florida and
15 engaging the, you know, pari-mutuel businesses down
16 there to kind of come and get some input and just
17 kind of show up and talk to us.

18 One of the other meeting items that I've
19 been talking about is rulemaking. It might be a good
20 opportunity to hear some of the issues that they're
21 facing and some of the kind of other kind of matters
22 that they'd like to discuss with you. So I wanted to
23 kind of just get some feedback on that possibility
24 too.

25 VICE-CHAIR YAWORSKY: I think that's a

1 great idea. I think that kind of as we go forward
2 into the next discussion topic of rulemaking, I think
3 one of the most important components of that is to
4 make sure that with this new gaming Commission, as we
5 move forward, that we are soliciting input from all
6 stakeholders' industry, and probably most
7 importantly, the public as we go forward.

8 I think there been a lot of discussion from
9 folks who have presented information to us and also
10 from the Commissioners themselves, that we do want to
11 move forward at a great pace. And I think amending
12 rules and perhaps recommending legislative changes
13 over time. I think that this is a great first step
14 towards us.

15 And I think it will be the lengthy process,
16 but I think working with all the stakeholders
17 throughout that process is a great way to proceed.

18 MR. TROMBETTA: All right.
19 So then with your kind of approval, I'll go ahead and
20 try to set up. We can still work out the date, but
21 I'll try to start working with my team to find a
22 suitable location and kind of go down that road.

23 VICE-CHAIR YAWORSKY: Yeah. Commission
24 Brown.

25 COMMISSIONER BROWN: Chair, we're

1 (indiscernible).

2 MR. TROMBETTA: Oh, really?

3 COMMISSIONER BROWN: I completely support
4 and concur with the Chair on this. I think it's a
5 great way to connect with other stakeholders. One
6 thing I wanted to ask is how do we advertise our
7 meetings so that we're not just catering to those in
8 the industry, but possibly those that may be
9 interested themselves.

10 MR. TROMBETTA: So you know, generally
11 we provide a notice in FAR. We post it on our webpage,
12 and we try to make available for both people to show up
13 in person. And as you see right now, we have - I
14 can't see the number, but there's people -- there's 25
15 people on the go-to meeting right now.

16 So I think this one, I think we do the
17 same, but I could also kind of reach out to some of
18 the permit holders and make sure that they're aware
19 that we're going to be meeting within distance for
20 them to make an easy drive or easy enough for South
21 Florida.

22 COMMISSIONER DRAGO: I can follow up on
23 that. I think it's really important that we do get
24 an opportunity to reach out to the general public.
25 So if we could find a way to notice that to the

1 general public that people are interested. As you
2 saw yesterday, there's a lot of interest in what's
3 going on --

4 MR. TROMBETTA: Yeah.

5 COMMISSIONER DRAGO: -- in gaming the
6 state. So in addition to the industry being able to
7 come, which I think is great, I think it's a great
8 opportunity for folks who can't get up to Tallahassee
9 normally and the general public who have interest as
10 well. So if we could figure out a way to announce
11 this to the general public, I think it would be very
12 helpful.

13 MR. TROMBETTA: Yes, sir.

14 COMMISSIONER D'AQUILA: I might add. You
15 might want to (indiscernible) just based on the number
16 of permit holders for the population of the state is
17 just (indiscernible) effectively.

18 MR. TROMBETTA: Okay. All right. Thank you.
19 I can go ahead and do that. And then, so moving to the
20 rulemaking section, there's provisions in Chapter 120
22 that allow agencies to delegate or that allow
23 Commissions to delegate the initiation of rulemaking to
24 staff.

25 And the benefit here would be that we could

1 be able to open up rules and get the ball rolling
2 without having to do it around Commission meeting.
3 It's very clear that -- and I'm not suggesting
4 otherwise -- but as rulemaking process progresses,
5 you initiate kind of open rules. You announce that
6 you're going to develop these rules.

7 You hold a series of workshops or hearings
8 depending on facts. And then when rules are ready to
9 be formally adopted, they would come back to the
10 Commission for approval. So you guys, the
11 Commission, would still be the ones approving all
12 these rules prior to adoption. It would just allow
13 the agency to kind of get the ball rolling on
14 initiating the rulemaking. And I would make sure to
15 provide updates, as I'm doing, about where we are,
16 what's been going on.

17 Our staff internally has met with staff
18 within the division. We talked with people in the
19 different bureaus in different areas and just kind of
20 got their temperature on if there were rules that
21 they could see fixed. I know that rules have come up
22 in some of our conversations in prior meetings
23 particularly with like the forums and some of these
24 other things. So I think doing -- allowing my staff
25 to initiate the rulemaking process, I think would

1 help the agency as a whole.

2 VICE-CHAIR YAWORSKY: And just to be clear
3 on that, what you're seeking today is an
4 authorization to begin a broad scope rule or
5 presumably would be more like other Commissions,
6 whereas you begin to develop -- once you develop the
7 rule, you seek permission of the Commission to
8 develop that rule, and then you go through the
9 workshop process. Which is it?

10 MR. TROMBETTA: I'm seeking a more of the
11 broader allowance to initiate the rulemaking. But to
12 your question, Mr. Vice-Chair, the plan is not to just
13 go crazy and initiate hundreds of rules.

14 I think, honestly, we'd like to kind of
15 take some low hanging fruit, make sure that our
16 process is in order because it's going to be the
17 first rule that we do as a Commission. And then I
18 mean -- I've been saying it for a while; I don't mind
19 saying it publicly -- slots need a clean-up. It's
20 been a while since we touch slot rules. The goal
21 would be to be able to, you know, get into slot
22 rulemaking at some point in the next few months.

23 COMMISSIONER BROWN: In general, it's very
24 Supportive of delegating the authority to avoid
25 Regulatory lab on some of these items. Some of the

1 bigger, maybe more controversial rules before
2 initiating making though, if you have discretion to
3 bring it to the Commission to discuss it prior to
4 initiating making, that may be helpful.

5 And in addition, I think having the monthly
6 report and the status of rules and where we are on
7 all of the rules that have been delegated so that we
8 know it's in the pipeline, and we can research prior
9 to the coming weeks.

10 MR. TROMBETTA: Yes, ma'am. We can do that.
11 Just for purposes of, you know, being transparent here,
12 we're thinking of doing a greyhound cleanup. We still
13 have lots of mentions of greyhound racing in our rules
14 and potential touching on application forms because
15 those are kind of the two things that have come up
16 frequently in these meetings. Those are kind of the
17 areas that we're looking at doing this initial kind of
18 review.

19 COMMISSIONER DRAGO: Can you just tell me,
20 just for my information, when you say initiate, what
21 you mean by that?

22 MR. TROMBETTA: Sure. So in chapter 120, I
23 think it's 120.54, there's a statutory process for
24 how rules get created. Initiation is essentially
25 the first step. The agencies will file a notice of

1 development, which kind of kicks off the rulemaking
2 process. Once that notice is filed, agencies can then
3 hold workshops to kind of gather information.

4 At that point, there's kind of a second
5 phase where after development, you start moving
6 towards an actual proposed rule, and then instead of
7 workshops, you have to hold actual hearings. And
8 then there's more stringent timelines in that second
9 phase. What I'm asking for is more about that first
10 phase, just being allowed to get the ball rolling, to
11 develop the rules, and to start getting feedback.

12 COMMISSIONER DRAGO: I see. Thank you.

13 VICE-CHAIR YAWORSKY: I think you have
14 enough direction. I think all the points are well
15 taken, I would just kind of compound prior discussion
16 along with everyone. I think the sentiment is very much
17 so that we expect not only compliance with the law comes
18 to noticing and announcing these matters, but a full
19 effort on the part of the Commission to make sure that
20 as much as possible, the public is aware of what we're
21 doing. And also that as this process goes on,
22 Commissioners have understood what we are doing.

23 MR. TROMBETTA: Okay. Yes, sir.

24 VICE-CHAIR YAWORSKY: All right.

25 MR. TROMBETTA: And then, finally, I'd like

1 to bring Carl Herold up, who's the director of our law
2 enforcement division to kind of talk law enforcement
3 and provide an update for the Commission.

4 MR. HEROLD: Good morning.

5 VICE-CHAIR YAWORSKY: Good morning.

6 Welcome.

7 MR. HEROLD: Thank you for this
8 opportunity to speak to you. Are you my bodyguard?

9 MR. TROMBETTA: Yes.

10 MR. HEROLD: So since I was selected
11 by the Commission in August, this is my first
12 opportunity to kind of speak to the Commission en
13 banc, and then also allow the public and our
14 stakeholders to kind of hear what we've done in the
15 law enforcement unit.

16 And so I wanted to have that opportunity to
17 kind of share what we were doing. And so I will tell
18 you that the initiation of this was much more
19 involved than I, you know, had ever envisioned, but
20 then again, this is the first time that a standup law
21 enforcement agency has been created in the state in
22 over 30 years. And so there was no book written for
23 this.

24 But it's been incredibly interesting and
25 challenging. But you know, we're up to the

1 challenge, so we're going to be fine. What we've
2 done up to this point is law enforcement is very
3 information and database driven and technology
4 driven.

5 And since we've had no existing structure,
6 we've had to get with the FCIC, NCIC and I apologize,
7 this is where cops make themselves look smart by
8 saying a lot of acronyms that nobody knows what those
9 mean. But anyway, building those databases and those
10 structures to make an effective law enforcement unit
11 and get all those information technologies wrapped up
12 together.

13 And so we are continuing to do that, and we
14 are very nearly finished with that. We then -- you
15 know, with law enforcement, you have to have all the
16 equipment and the kit and the vehicles, and it's been
17 no small difficulty with the supply chain and
18 vehicles.

19 If you've gone out to purchase a vehicle
20 recently, you just can't get one off the lot, and
21 it's no different for us. We do have, finally, law
22 enforcement vehicles, and they're in the process of
23 being outfitted with radios, and sirens, and
24 lights, and all the emergency equipment that's
25 necessary. So that's moving along. Purchasing

1 the firearms and other equipment, first aid kits and
2 all those kind of things continue to go on, but they
3 are somewhat difficult.

4 And where are we headed? That's enough
5 about the background. You know, I could get down in
6 the details, and nobody would want to hear it. Where
7 we're headed right now is that with consultation with
8 the Executive Director, we realize that law
9 enforcement is going to be most effective when we
10 collaborate, and we support local law enforcement and
11 help them extend their law enforcement activities
12 into the anti-gambling, anti-gaming.

13 So to that end, I have and I -- but it's
14 really the whole unit. But the unit has been going
15 out and speaking to local law enforcement
16 stakeholders trying to tell them what we are going to
17 do, but also listening to what they need because
18 we're not going to be terribly effective if we are
19 not listening to our stakeholders and finding out
20 what they need.

21 And we've taken that, and we've turned
22 That into kind of an internal mission on how we
23 want to do those things. I've been fortunate enough
24 - I was invited to the Florida Sheriff's
25 Association two weeks ago and spoke directly to the

1 sheriffs in a closed forum. That was extremely well
2 received.

3 A few months ago, I sent letters out to law
4 enforcement kind of introducing the Gaming Commission
5 and what our mission is and how we hope to assist and
6 take some action across the state.

7 And to that point, we've been contacted by
8 six different -- and actually, I got another phone
9 call yesterday -- now seven different sheriffs'
10 offices about assisting them in their activities with
11 anti-gambling and anti-gaming in their jurisdiction.

12 And even though I don't have law
13 enforcement officers yet, I actually have three
14 active investigations that I will not share with you,
15 but we are working on those; and as we go along,
16 there should be more significant interaction with law
17 enforcement.

18 So to that end, we're doing outreach to our
19 partners out there. We're, you know, I'd go with Lou
20 whenever possible and speak to these stakeholders
21 and other folks.

22 I think it's incredible important that
23 The law enforcement mission is communicated to our
24 stakeholders and to our local law enforcement to
25 help them understand how we intend to function and

1 how we intend to help them and make the mission of the
2 Commission successful for everybody.

3 So any questions?

4 COMMISSIONER D'AQUILA: Thank you for that,
5 Director Herold. What has been the general reaction
6 in the reach-out for (indiscernible)?

7 MR. HEROLD: Well, and I don't want to
8 get too far in the weeds, but the overall response
9 has been incredibly positive.

10 Most of these law enforcement agencies
11 recognize that the illegal gambling places, the
12 illegal slot machine arcades and those types of
13 things are not just breaking the law, but they seem
14 be a nexus for bad actors who come in and try to rob
15 the patrons that are there.

16 These folks that are running these illegal
17 slot machine operations are also involved in money
18 laundering. They're also involved in drugs and all
19 these types of things. And so they're very thankful
20 to have somebody that's going to come in.

21 And our intent is to be the subject
22 matter experts in gambling law and illegal gambling
23 in the state of Florida. And we want to leverage
24 that opportunity to help them be more successful.
25 And so resoundingly, it's very, very positive from

1 everybody that we spoke to. But they also, at the
2 same time tell us where their difficulties are, and
3 where they could be shored up to help them.

4 And so part of my outreach is also
5 education to law enforcement. I've spoken to not
6 just the police administrators, but I've had
7 opportunities to speak to the rank and file and share
8 information with them that will help them be more
9 successful in their law enforcement endeavors.

10 COMMISSIONER D'AQUILA: Has there been any
11 reaction to our effort to gather leads and tips, you
12 know, website? Is that an effective thing? Are you
13 aware of that? (Indiscernible) contacting you, the
14 office directly or combination thereof?

15 MR. HEROLD: Well, thank you for the
16 question. That's a great question. What we are
17 doing right now, since I don't have any law
18 enforcement officers to bring to bear, what we do is
19 as we get those reports -- and we're getting them at
20 quite a volume. And believe or not it's not just on
21 the make-a-complaint on our portal, but it's also
22 law enforcement are calling in and going, what can
23 I do about this? And how can I, you know, how can I
24 take some action.

25 For the things that come in on the make-a-

1 complaint, I send an email or contact the person
2 that's making that report and tell them that we --
3 you know, that we're going to take some action, but I
4 don't have the resources at this time.

5 And then we send a notice to the local law
6 enforcement with a copy of the complaint saying, we
7 received this report of illegal gambling or whatever
8 the activity is, and would you please investigate it?
9 And that's been very successful as well.

10 COMMISSIONER D'AQUILA: Thank you.

11 COMMISSIONER DRAGO: Carl, a
12 comment, I guess, the same question in terms of the
13 feedback from the law enforcement community. And I
14 know that you've done a great job of getting that
15 information out and reaching as many people as you
16 can.

17 MR. HEROLD: Thank you.

18 COMMISSIONER DRAGO: And I know
19 it's difficult with the staffing as it is and so
20 forth, and trying to grow a police department from
21 ground. It's tough.

22 MR. HEROLD: Yes.

23 COMMISSIONER DRAGO: But I'm real
24 interested as we go along in hearing feedback from
25 law enforcement organizations and how we're

1 relating to them in that regard.

2 Hopefully, we're going to be able to get
3 our law enforcement folks off and running as soon as
4 possible and get out there and be effective. But
5 thank you for all that you've done because you really
6 have done a great job. Again, this going from the
7 ground up, and I appreciate you for all your effort.

8 MR. HEROLD: Thank you.

9 COMMISSIONER BROWN: Echo the same
10 sentiment. You've been a very lean machine, and
11 you've been able to achieve so much in the time that
12 you've been with us. And you're doing a great job.

13 You have great future plans too, and I'm
14 happy that you're able to communicate that to the
15 public and the stakeholders so that they know the
16 ongoing efforts that you're meeting.

17 MR. HEROLD: Thank you. And this is
18 just the beginning.

19 COMMISSIONER BROWN: Thank You.

20 VICE-CHAIR YAWORSKY: Yeah. And I
21 would just add, I want to thank you for your
22 accessibility. I know you mentioned the meeting,
23 you hadn't met with us all at once together for
24 public recording purposes and sunshine purposes,
25 but you've been extraordinarily available.

1 I've met with you at least a dozen times, I
2 think, since you came on. I bet the other
3 Commissioners could say similarly and all the other
4 sentiments that have been shared, I would agree with.

5 MR. HEROLD: Well, thank you very
6 much. That's very kind. I take this role very
7 seriously, have incredible support from Lou, and I
8 appreciate the interaction that I have with -- you
9 know, and the guidance that I get from you guys. So
10 thank you so much.

11 VICE-CHAIR YAWORSKY: Thank you.

12 MR. TROMBETTA: And,
13 Mr. Vice Chair, that's all that I have for the
14 update.

15 VICE-CHAIR YAWORSKY: Okay. Thank you very
16 much.

17 Moving on to back to agenda item 1.1, which
18 is the approval of the minutes for October 6, 2022.

19 Is there a motion? COMMISSIONER BROWN: Move to
20 approve.

21 COMMISSIONER D'AQUILA: Second.

22 VICE-CHAIR YAWORSKY: Follow up Mr.
23 D'Aquila on that one? He was louder.

24 Then moving right into item 2.1,
25 transaction of West Flag Associates.

1 Mr. Marshman.

2 MR. MARSHMAN: Good morning, Mr. Vice
3 Chair, Commissioners, members of the fake jury.

4 If I may, I'd like to start with just a
5 roadmap of how I would suggest that the Commission
6 discuss this matter, given the level of interests
7 we've received and the speaker cards that have
8 already been submitted. There are additional
9 speakers that may yet have identified themselves on
10 the video because we don't have a way for them to
11 fill out a card.

12 So in terms of a roadmap, I would suggest
13 that I'd be allowed to just do a brief overview of
14 the issue and then allow public comment, allow the
15 applicant's counsel the chance to speak, of course,
16 after I think the public comment, so he has a chance
17 to respond. So we don't have to get up back and
18 forth.

19 And then allow me to come up again and have
20 A dialogue with any of the Commissioners about any
21 of the comments we've received, comments made by
22 the applicant's counsel, or any else the Commission
23 would like to discuss with me.

24 VICE-CHAIR YAWORSKY: Any objection to
25 that?

1 MEMBERS: No objection.

2 MR. MARSHMAN: So moving right along then
3 to the overview. You have a then and you have a now.
4 Then you had PCI gaming and unincorporated charter
5 instrumentality of the Poarch Band of Creek Indians
6 submitting an application to purchase assets. These
7 assets are permits and licenses.

8 They eventually wanted to put those
9 permits, put those licenses into separate LLC, Wind
10 Creek. So Wind Creek was the purchaser or PCI Gaming
11 was the purchaser. They were the applicant in other
12 words.

13 There are certain restrictions, however, in
14 Florida law, on who can hold these permits, who can
15 have these licenses. And PCI Gaming, although it has
16 a wholly owned subsidiary, Gretna Racing, LLC, that
17 possesses a permit, possesses a license at the right
18 place at the right time.

19 In December, when you are considering this
20 matter at your publicly scheduled meeting, that was
21 not the case. That was not the purchaser. The
22 purchaser was PCI Gaming and Wind Creek. So
23 ultimately, that transaction was not going to be
24 allowed to go through, in my opinion. I would not
25 have recommended that the Commission approve that

1 because it was not the right purchaser.

2 Let's talk about now. January 13, 2023,
3 we, the Commission received a new series of
4 materials, a new application with a new purchaser
5 trying to get the same assets from the first time
6 around, permit, some licenses. So what exactly has
7 changed, the seller is still the same.

8 It's West Flagler Associates Limited. The
9 targeted assets that are trying to be acquired, those
10 are the same - permit, licenses. The purchaser
11 though, that's the important part to keep in mind as
12 we consider this today and hear comment from the
13 public and the applicant's counsel.

14 Gretna Racing, LLC, is now -- the purchaser
15 is now the applicant. And if this Commission votes
16 to approve this transaction, the Commission would
17 issue a permit, issue a license in their name. And
18 again, that matters because as of 2018, Gretna
19 Racing, LLC, had 100 percent interest and a pari-mutuel
20 Wagering permit, permit 155.

21 And it have a series of license issues to
22 It starting in 2018. There was no other entity, in
23 other words, for license -- I think for cardroom
24 and a pari-mutuel wagering operating license, also
25 number 155 tried to the permit. Those were all

1 issued as of 2018 to Gretna Racing, LLC.

2 The statutes require that the purchaser,
3 the applicant, they had that license. They had those
4 permits, and they had them for fiscal year 2020-2021.
5 Gretna Racing satisfies those requirements.

6 And I'm not going to reread you everything
7 else that I wrote in the memo, but of course, I'm
8 available to answer any questions you may have about
9 it now after comment, after applicant's counsel has a
10 chance to speak to you. But there is a path forward
11 for this transaction to be approved.

12 I believe that there are express provisions
13 in chapter 550, 551 and 849 that allow this type of
14 transaction to occur. And if there are no other
15 questions, I'll have a seat and let the Commission
16 begin receiving public comment. If that's what
17 Mr. Vice Chair would like.

18 VICE-CHAIR YAWORSKY: I think that that
19 will be appropriate.

20 MR. MARSHMAN: Thank you.

21 VICE-CHAIR YAWORSKY: Public comments. I
22 think when these were entered, there was some
23 question of possible -- whether or not they would
24 be -- individuals would speak. We're going to
25 start with comment cards that we received.

1 And then before we then go into
2 Mr. Lockwood's discussion period, we'll somehow opine
3 as to whether or not there's anyone on - remotely
4 that would like to speak on the issue.

5 So beginning first we have Venus Prince
6 with Wind Creek Hospitality.

7 MR. LOCKWOOD: Vice Chair. Ms. Prince is
8 here simply to answer any questions that we might
9 have in our presentation. So we are going to waive
10 her at this time.

11 VICE-CHAIR YAWORSKY: You have a Link
12 Loegler with the Poarch.

13 MR. LOEGLER: Same.

14 VICE-CHAIR YAWORSKY: Same situation.
15 Okay, great. This is moving along quite quickly.

16 Next, we have Marc Dunbar with Dean Mead.

17 MARC DUNBAR: I would like to say same
18 situation, unfortunately.

19 VICE-CHAIR YAWORSKY: Come on up.

20 MR. DUNBAR: Thank you, Commissioner.
21 And if I'm a little brain fogged, it's because I
22 was on a late-night flight last night back from
23 overseas. And so and I apologized to John,
24 particularly because we had last night and early
25 this morning, we were putting together a

1 presentation notebooks. It looks like I miscounted.

2 VICE-CHAIR YAWORSKY: Really quick.

3 MARC DUNBAR: Yes.

4 VICE-CHAIR YAWORSKY: I just want -- your
5 intention was for the --

6 MARC DUNBAR: Yes. My intention is there's
7 a notebook for each one of you. And again, sorry for
8 the record, my name is Marc Dunbar.

9 I'm here on behalf of the Seminole Tribe of
10 Florida. I'm a shareholder with the Dean Mead law
11 firm. So to set the stage, John, sorry about that.
12 But the documents that are in there are all public
13 documents.

14 There's no advocacy or anything just for
15 record purposes and for people that aren't in the
16 room. But my presentation, I'm going to walk through
17 some of these statutes. Even the Pennsylvania Gaming
18 Control Board meeting minutes and meeting materials
19 are in the internet. They're public documents. As
20 it relates to the Zoom call, I appreciate that
21 because my law students are actually getting extra
22 credit if they log in. So to the extent you can.
23 please be somewhat generous, so they think I'm
24 somewhat competent.

25 Anyway, there's some, you know I guess

1 serendipity in coincidence. So I was overseas
2 speaking on regulatory best practices. And that's
3 really what I'd like to focus on here. This really
4 is not about the applicant.

5 On behalf of the tribe, this is not about
6 PCI Gaming and whether or not they should hold a
7 license. It certainly is not about whether Gretna
8 Racing should be able to hold a license, even though,
9 just for context purposes, Gretna Racing, I believe,
10 is the second lowest revenue-producing permit holder
11 in the state.

12 And Gretna Racing is acquiring the number
13 one revenue-producing permit holder in the state.
14 And that's relevant for a rate from a big picture
15 regulatory best practices, because gaming licenses
16 are afforded in a very limited fashion by government.
17 And this goes back to before the founding of our
18 country when we were trying to build bridges in
19 universities.

20 In fact, FSU was funded on a territory -- granted
21 lottery. Government grants limited gaming
22 authorizations for two reasons. One, gambling is a
23 public nuisance. IT's a noxious activity. It's
24 viewed as a sin industry, and is only allowed under
25 very strict circumstances and limited government

1 grants.

2 The only other reason is to make money for
3 the state. Those are the only two reasons, and those
4 are the reasons that the Supreme Court and the United
5 States Supreme Court have looked at the industry and
6 said that regulators have the ability to look
7 arbitrarily at the industry because they are, one,
8 protecting the public from the sin industry itself.
9 And, two, they're trying to figure out how to
10 maximize revenues.

11 So if there was Gretna Racing by itself
12 without the Poarch behind them, this would probably
13 be a pretty quick review. You would say they made --
14 their revenue was \$1.7 million last year off the
15 cardroom, and they're buying for several hundred
16 million dollars, a slot machine license.

17 The financial wherewithal back when me, and
18 Gene, and I think David Romanic on the phone, the
19 original partners put Gretna together before we
20 partnered with the Poarch, you would have looked at
21 us and laughed us out of the room because I have a
22 credit card limit, but it's not that high. Okay.

23 This is the most expensive gaming
24 transaction if you believe industry rumors in
25 Florida's history. And so what I would say is, I

1 would encourage you to proceed with diligence. You
2 know, the court upstairs where I thought we were
3 presenting had the seal of the Florida court system
4 on it.

5 And the Latin phrase for that is --
6 translates to soon enough if correct. And I would
7 encourage you all to proceed the same way here. You
8 know, soon enough, but let's just make sure we get it
9 all right. And so that's kind of the overarching
10 backdrop for this presentation.

11 This presentation is about this application
12 and regulatory best practices, not about the
13 applicants themselves. And so I want to make sure we
14 separate this. The Seminole Tribe is not opposed to
15 West Flagler selling its permit or any slot machine
16 licensee down there selling its permit. It's just
17 making sure that it complies with the statutes.

18 So I'm going to begin by pointing out in
19 the pocket there is a copy of Section 16.7124
20 statute. And I've tried to highlight relevant
21 provisions. So as you flip through the tabs, things
22 will jump out at you.

23 When the Legislature created this -- and
24 this is something that was very important to the
25 tribe and advocated for it in the Legislature. The

1 new Commission, we hoped, would review the
2 procedures, which are used to qualify applicants
3 applying for a license or a permit.

4 And the reason why that was relevant is
5 because permit transfers, permit re-issuances, permit
6 sales, we'll say, have a legendary history of
7 happening sort of in the dark, particularly in the
8 modern era, okay. We used to have a racing
9 commission.

10 We used to have a pari-mutuel commission,
11 but since the 25 years that I've been in the
12 industry, it's been for the most part, something that
13 is handled by the division. It was handled by the
14 division. There wasn't a public input, and no one
15 had standing after the fact really to challenge the
16 transfer.

17 As Mr. Lockwood will point out, you know,
18 we actually argued a case. I actually argued a
19 case and won in here for people that were trying
20 to argue against the issuance of the underlying
21 Gretna Racing permit right out to the get-go. And
22 the court said, competitors don't have the ability
23 to stick their nose essentially into the
24 permitting licensing process. And so that is the
25 case law.

1 The idea on having a sunshine meeting to
2 discuss permit dispositions is so the public can come
3 in, and they can hear; and they can interact with
4 their officials to point out things on why the
5 expansion of gaming may or may not be desired in a
6 community.

7 A change in ownership may or may not be
8 desired for a community. Now, can they, after the
9 fact challenge it? That may be somewhat difficult.
10 You would have to probably deviate from the
11 underlying laws, and then it would be more of a
12 mandamus action, writ probation, extraordinary writ.

13 It's not that a permit holder as a matter
14 right, can just challenge the transfer of another
15 permit. So that was the intention is that we would
16 create a process that would be very transparent, and
17 the current rules that govern permit transfers are
18 found in one single section, really, of the Florida
19 Administrative Code. And its behind tab 2 at 61D-
20 4.02.

21 Now, this rule was put in place in 1996
22 and really didn't change much since then. If you
23 look through the rule history. If you were to
24 probably run this through JAPC, I don't think JAPC
25 would say that this rule complies with the statue.

1 At a minimum, I can tell you the cross references down
2 at the bottom are wrong.

3 The references to 550.054(a)(b) probably
4 doesn't make any sense to this particular rule right
5 now. But these are the standards, you know, that are
6 out there. And what we wanted was before permits
7 started changing hands, that the Commission would
8 quickly get up and running, review their rules, and
9 notice for workshops, and get through a rewrite of
10 the rules to essentially define how the industry was
11 going to proceed.

12 Now, I can see completely this is the most
13 overworked, probably group in state government. I
14 mean, there was music to our ears, Carl, here, all
15 the efforts you've done. Appreciate you pointing out
16 because it's something that we've certainly talked a
17 lot about. And I know you guys have been asked to
18 jump on one leg with one hand tied behind your back
19 blindfolded.

20 So I understand why you haven't been able
21 to get there, but I wanted to make sure you guys
22 realized at the beginning that when you were
23 created, the idea that the rules for permit
24 changing hands and qualifying applicants and all
25 that stuff, Legislature recognized were flawed

1 and were hopeful that you will update that.

2 So what you have here is an application
3 that has come in, you know, under this rule and the
4 statutes. And so I would tell you, having worked in
5 a lot of jurisdictions in this hemisphere; having,
6 you know, served as you know, somewhat of an
7 instructor to standing regulatory Commissions up and
8 training the regulators and things like that, there
9 isn't a single Commission that I know of that would
10 approve this application in its current form. And
11 I'm going to explain why. And this is not to
12 discourage the applicant, okay. This is stating what
13 you have in front of you, okay.

14 In front of you, you have -- it started
15 with 130 pages all redacted, and then it evolved to
16 about 300 pages, you know, with only minor
17 redactions. And now it's about 500 pages with minor
18 redactions, which we'll talk about in a little bit.

19 It's not the deal documents, okay.
20 Understand, me and my partner sold Gretna Racing to
21 the Poarch. They became out partners, right. I know
22 that those deals documents look like. Okay.
23 Our business plan was not redacted. Our
24 Purchase price was not redacted. They're still in
25 the file. Public can see them. Everyone can

1 understand what happened there. They were longer
2 than this, but more importantly, they were complete.
3 They were complete.

4 These documents are -- basically there's
5 like a two or three-page letter from Skadden, very
6 good law firm, that's basically saying Gretna Racing
7 is triggering the swap-in provision of the deal
8 documents is now standing in the place of Wind Creek.
9 And these are all Wind Creek documents that were
10 filed back before in December.

11 There are forms that are not completed.
12 They're exhibits that refer to documents that are not
13 included. And that is just cleanup work that
14 corporate counsel is going to do at the time of
15 closing. If I had to bet, this packet will probably
16 go by at least a couple hundred pages.

17 So the first thing I would say to you is
18 for any application, because this is going to set the
19 precedent on which the new rules are going to be
20 written and which all of the other applicants that
21 may want to buy a slot machine license in South
22 Florida will proceed.

23 Any so it's sort of like, you know, a
24 Teacher signing off on a pass-fail exam, when
25 really, you got to go A, B, C, D or F. You guys, this

1 is the first one. I think you should want A work, and
2 you have time.

3 As Ross pointed out, it essentially is a
4 new application that's come in. And one of the
5 things that I think is important for you to
6 understand that I'd like to point out to you is, and
7 this goes back to, you know, memos for the first two
8 hearings, that if you look behind tab 1, 550.054 --
9 and this is essentially the kind of governing statute
10 that we're operating under.

11 I'd like for you to look on the second
12 page of the attachment to 550.054 (3) (k). And it
13 deals with applications and the process for a permit
14 holder.

15 And the critical part is part of the
16 application process is such other information is the
17 Commission requires. And so we're now proceeding as
18 it should.

19 Now you interact with the applicant and
20 you might interact with them again next month. And
21 you have questions that you have and you have
22 documents that you'd like to see and you would
23 like. This is, you have the ability to now require
24 certain things to complete the application.

25 This application is not complete. There's

1 a statement in the memo back in November for staff
2 that the application is deemed complete on November
3 something or whatever. And then that was carried
4 forward.

5 And I apologize, you know, to Ross and Lou
6 because some of these arguments we've talked about,
7 but I have not been able to -- because I wasn't able
8 to really see the full packet until like midnight two
9 days ago, UK time or whatever.

10 So I haven't been able to give them all of
11 this presentation, which I normally would like to do.
12 I don't want to blindside them on these arguments
13 because I want Ross to be able to respond and
14 everybody else to be able to respond. But as a
15 matter of law, you determine when the application is
16 complete.

17 It's the Commission's authority. When
18 you're done and you have all the information that you
19 would require, then you can deem it complete. And at
20 that point in time, the clock is triggered. And you
21 can, you know, move on from there.

22 So, I will tell you -- this is just kind of
23 the beginning of the process. And so what I'll tell
24 you is take your time, and let's make sure we get
25 documents right.

1 At its core, I would require that the
2 actual deal documents be put in here. That's the
3 industry's standard. That's what regulators do.

4 And I would say normally if -- and in a
5 second I'll talk about the Pennsylvania Gaming
6 Commission, but if you look at the transcript of the
7 Pennsylvania Gaming Commission, the very first thing
8 that they do is they have all the applicant
9 representatives in the House on all the people that
10 are licensed and on the form, which they're not here
11 -- a couple of them are here.

12 They stand up, and they're all sworn in.
13 And the reason for that is because the other
14 Commissions want to make sure that the interactions
15 that they have are under penalty of perjury, right.
16 And I'm not saying that they would ever come up and
17 lie.

18 And I'm not saying that they lied in
19 Pennsylvania either. They're very honorable people.
20 It's just that's what normally happens. But I will
21 pose you this question when Mr. Lockwood or anybody
22 else comes up. I'm not saying an experiment or
23 anything like that. Ask this question: are these the
24 actual deal documents that will be used for closing?
25 The is 100 percent no.

1 They may be some of the documents, but this
2 is not the deal documents. And that's something that
3 I think you have the ability to require, and that's
4 what other Commissions require, okay.

5 The other thing that's lacking in this, and
6 we can, you know, talk about this, is the financing
7 documents that are in here, the financing reference.
8 And I'll ask you to flip over to tab 4. This is an
9 excerpt from the application that's titled Source of
10 Financing for the Acquisition of Magic City Casino.

11 Now, in this, you see the sections, I
12 highlighted it talks about a credit agreement as
13 provided by Credit Swiss and various other
14 institutional lenders in this first sentence of the
15 second paragraph.

16 At a minimum, who are the other lenders?
17 You should know that. That should be something that
18 is part of the materials. Now, maybe it is. Maybe
19 it's in summary redacted document or something that
20 I haven't seen. Because it was my understanding
21 from Lou when I left to go overseas, that
22 additional documents were even coming in this week
23 from the applicant, which is a side note, not sort
24 of typical.

25 Usually, you had a cutoff date in advance

1 Usually, you had a cutoff date in advance
2 of a hearing documents, you know, you need to have
3 them in week or two before the hearing. You can
4 bring in others, but we're not going to consider
5 those at this coming here. Usually you kind of set a
6 deadline, but that's more of something for rulemaking
7 down the road.

8 But I can tell you the disclosure of the
9 other lenders is important because you would like to
10 know. And why is this? Let's just back up.

11 In the 1930s when we authorized gambling in
12 Florida and gambling spread across the country, one
13 of the big things that they wanted to know: is
14 organized crime getting in the industry? One of the
15 easiest way for organized crime to get in the
16 industry was to run the catering of the operation or
17 to loan the money.

18 And again, I'm not inferring that any of
19 these other lenders, you know, might have a dubious
20 past, but you still would want to know if the Chinese
21 Triad, you know, and one of their financing
22 subsidiaries may have an interest in one of these
23 lenders. It's relevant. It's relevant to the
24 public. It's part of the process.

25 The other part about it -- and this goes to

1 the underlying, you know, kind of thing I would
2 encourage you to ask about is this describes a credit
3 facility that exists who's the Poarch's principle
4 pledge are the casinos in Pennsylvania, okay.

5 They've spent \$1.3 million on that. It's a
6 public record. You can see. The credit facility is
7 both financing expansions and capital improvements
8 they did up there, as discussed in the meeting
9 minutes that I've attached. And also is, you know,
10 is being paid for out of the operations.

11 What they're proposing is to amend that
12 credit facility to include the Magic City Casino and
13 its revenues, and there's a mortgage, foreign
14 mortgage, that's in these documents.

15 That would be the underlying mortgage under
16 that facility. And so I would say that's a great
17 first start in terms of disclosure. But here's a
18 couple things that you need to be aware of. First,
19 the applicant is Gretna Racing, right. There isn't a
20 blending institution out there that's not going to
21 require Gretna Racing and the Gretna Racing's dirt to
22 not be pledged as well. Those aren't here, okay.
23 There's going to be a mortgage on Gretna
24 Racing's dirt by these lenders that's going to be
25 required. It's one of the things I would think you

1 would want to inquire about and maybe have a lender
2 or some financial expert talk to about that. Because
3 again, this goes to who has the hooks in the borrower
4 because you can't go to the tribe because the tribe's
5 sovereign.

6 So there's a very infamous story of a law
7 firm that went under because it's malpractice
8 couldn't cover the mistakes it made in a tribal deal.
9 And they couldn't hold the management company that
10 they represented to recover from the tribe because
11 they didn't properly document things.

12 And so I will tell you, there's going to be
13 a lot of documentation to make sure that these
14 lenders and anybody else have hooks into all of the
15 assets they can, which will include the Gretna Racing
16 land and its assets and revenues.

17 The other part about this, though, that's
18 really important -- and Lou and I talked about it
19 really briefly when I first learned about this,
20 because I -- you know, this was just before I got on
21 a plane. Pennsylvania requires approval of the
22 credit facility.

23 When you look and you read the transcript,
24 This credit facility was a subject of discussion
25 when they acquired Bethlehem Saints. They're now

1 a credit agreement whose core is pledged basically to
2 Pennsylvania, okay.

3 The Pennsylvania Gaming Commission is
4 probably going to need to approve the amendment here.
5 I've talked to Pennsylvania council, again, from
6 London trying to, you know, make sure that I didn't
7 misrepresent things.

8 I talked to a lawyer, very seasoned in
9 Pennsylvania. He said, "Yes," an amendment to that
10 credit facility and other documents and everything
11 else like that are going to need to have some level
12 of approval. It might not be a formal full
13 commission meeting. It could be happening at staff
14 level. But what happens -- let's just say, what
15 happens if you approve this today and Pennsylvania
16 denies the amendment to the credit facility; what
17 happens?

18 Again, something that I don't necessarily
19 know the answer to, this sure could be maybe unwind
20 clauses. There aren't any of those in the deal
21 documents now. Again, going back to these aren't the
22 deal documents that this transaction is going to
23 close on. If I was a lawyer involved in this deal, I
24 would definitely want to have that covered.

25 So at a minimum, I would say, again, as

1 you're looking for additional information, I would
2 encourage you to reach out to your Pennsylvania
3 colleagues and understand how they're doing it.
4 Because here's another part -- I mentioned that it's
5 about -- you regulate the ability for the state to
6 make money off of this grant of gambling to this
7 franchise.

8 Okay. Let's say that behind this redacted
9 tab right here, the purchase price is \$2 billion.
10 Two billion dollars, okay. That does not financially
11 work. It's too expensive. That asset can't carry
12 that kind of debt.

13 I've been involved in two different
14 transactions down in the Miami marketplace where I've
15 represented lenders.

16 I'm very familiar with sort of their
17 capacity and what the projections are on these
18 facilities. And I can tell you that the lender would
19 say, we're not going to underwrite a \$2 billion deal.
20 You're going to have to come in with significant
21 additional capital and cash pledges into the deal.
22 We don't know, you know, because it's
23 redacted. I know you can see it, but that's part of
24 the process. And so one of the things I will tell
25 you is it relates to the financing terms. You want

1 to know that. And you also want to know where
2 Florida sits and sort of the pecking order on this
3 credit facility.

4 One thing I'll tell you is, again, your
5 staff is dancing, you know, on one leg, one hand tied
6 behind their back blindfolded, when other
7 jurisdictions, when Commissions are short staffed,
8 they don't have financial experts like they have in
9 Pennsylvania or New Jersey or Nevada on staff will
10 outsource it.

11 They will bring, they will contract with
12 financial consultant will help advise the Commission
13 on please, look break apart lease credit agreement.
14 Please tell us, is this a good deal? Or could this
15 potentially bankrupt Magic City? Because if it
16 bankrupts Magic City as Commissioner Drago knows
17 because I represented a casino that went bankrupt
18 when he was secretary, that's a problem.

19 You know, we put into that bankruptcy, you
20 know, we were current on our taxes, but we were able
21 to dump six figures and fines and some other
22 things, and yet walk away from them.

23 They are the state liabilities and that
24 bankruptcy proceeding. And so you want to make sure
25 that you understand like could that be a problem?

1 And you want to make sure the documents reflect that.

2 So, encouraging you to seek, you know, what
3 Pennsylvania's attitude is and requiring all of the
4 documents I think is critical. And then finally, you
5 know, the financial analysis on this transaction's
6 viability, I think is important that you want to have
7 so that you could do this.

8 Now, I'm going to switch to another part of
9 the deal that, you know, to me on a face would be a
10 stop today. And we've talked about it a little bit.
11 I've talked about it with staff and it's captured in
12 a footnote in Ross' memo. In this transaction is an
13 illegal lease.

14 The West Flagler is selling its dog track
15 entitlements and it is keeping its Jai Alai
16 entitlements and the Poarch, you're buying the
17 Jai Alai Fronton.

18 And in the deal documents is a lease from
19 Gretna Racing to -- from the West Flagler and its
20 Jai Alai interest. Now, I'll direct you now just to
21 sort of help you understand the statutory framework
22 around it to tab 5 -- tab 7. Tab 7 which is 550.475.
23 And then behind that is the definitions section from
24 550. 002.

25 The critical part of this, and even Ross

1 captured in the memo, you can't cross entity lease,
2 you can a dog track leases to a dog track or horse
3 track to a horse track a Jai Alia Fronton to a
4 Jai Alia Fronton. This is now going to be a dog
5 track leasing to a Jai Alia Fronton.

6 Now, Ross references that the deal is not
7 conditioned upon this, but there's no evidence in
8 these deal documents and that's true.

9 Now, maybe he's had interactions. Maybe
10 there're other documents that we haven't that aren't
11 in the packet, but it is an ancillary document, which
12 is a prerequisite to close in the underlying deal
13 document is that lease.

14 Now, if the lease is an ancillary document
15 and is prerequisite to close, that means to me it's a
16 condition precedent or it's a condition subsequent.
17 Either way, it's an important part of the deal. And
18 I don't know how this problem is solved because
19 there's, you know, there hasn't been any cross entity
20 leases in the 25 years I've been doing all these, I've
21 been doing a lot longer than I had him.
22 He might be able to tell you if there have
23 been others, but I don't think there has. And again,
24 there are not the deal documents. So I would say
25 moving forward, as Ross suggested that this is

1 really an issue for West Flagler's licensure, I
2 disagree with that. Your job is to make sure that the
3 Pari-mutuel laws are enforced.

4 If you allow a transaction to close knowing
5 one of the statutes is violated and an applicant
6 comes in with another deal, you know, you could see
7 how it could be used prejudicially against you in the
8 future.

9 Again, let's make sure it's right. Let's
10 make sure it's compliant with the law. I don't think
11 this transaction can move forward with an illegal
12 lease.

13 The next item I want to point out, and
14 again, as a general charge is you enforce all the
15 laws, not just, you know, some of them on these
16 applicants. The idea that the price of this
17 transaction is a trade secret has no support in law
18 anywhere.

19 I spent a bunch of time on Westlaw over the
20 weekend, couldn't find a single case for that. I've
21 included behind section let me see, tab 6, the
22 relevant Florida laws on trade secrets.

23 Now understand this, when you litigate a
24 trade secret issue, you, as the claiming entity,
25 have the burden to prove its trade secret. That's

1 just forget it being a public circumstance. You
2 overlay the public records law, and now you've got a
3 double burden, okay.

4 It's a very, very high bar that has to be
5 met. You can't just claim it and just walk away with
6 it. And an agency doesn't have to take your word for
7 it. They can say, we disagree, and if you want to
8 keep it, you go over there and enjoin us. We
9 shouldn't have to go and vet this issue.

10 Again, I'm saying this transaction isn't
11 right. There's additional things that should come.
12 These deal documents should be right. The public
13 should know the purchase price because the public
14 always knows the purchase price for the most part of
15 these transactions. It's part of the deal. It's
16 part of you stepping forward and saying, I want a
17 limited right to gamble in your state.

18 That's a grant from government. For
19 Gretna, it's not a perpetual grant to a private
20 enterprise that forevermore they can trade on.
21 You could get rid of that tomorrow, right.
22 And so the public has a right to know. But I will
23 tell you, I was able to find a case from South
24 Carolina Supreme Court that I think is very
25 analogous that I'd point out to you.

1 It involved the purchase of medical
2 practices by, I think, a hospital group. And the
3 exact issue was: is the purchase price a trade
4 secret? And the court said, no, it's a government
5 license. Freedom of Information Act law applies.
6 And they went through the trade secret analysis
7 looking to the asserting entity that you have the
8 burden of proof. And it said, absolutely not.

9 The purchase price is public. Now, if they
10 were producing widgets, and the pricing of the widget
11 had to do with underlying manufacturing technologies
12 and things like that, I can understand how that
13 pricing methodology definitely could be and should be
14 protected. This is not that.

15 This is: I'm buying a house for \$150,000
16 and the appraiser says it's \$125,000. And you sort
17 of have that discussion, and that -- if you do bring
18 in a financial analyst to help you understand whether
19 this is a good transaction and viable and won't go
20 bankrupt, they're going to need to look at that, and
21 they're going to look in the marketplace. They're
22 going to, you know, appraise it and see whether or
23 not it makes any sense. So another item on why I
24 just don't think this deal is ready to go forward.

25 Again, not rejecting the applicant,

1 rejecting the -- you know, asking for additional
2 information under your authority.

3 I think that the purchase price should be
4 public, and I think you guys should take that
5 interpretation as a matter of law. And if they
6 disagree, they can have a quick hearing over there in
7 enjoining. But I think the presumption of this body
8 should be purchase prices are public. When I sold
9 it, it was public. When Boyd Gaming bought Damian,
10 it was public. I think Bill Ruffin's deal was public
11 when he bought Miami Jai Alia. So on and on.

12 The last thing that I'll cover, and then --
13 I know I've been up here for a little while -- is the
14 idea of transferability. And I know it's been a lot
15 of subject.

16 I want to back up and give you so a little
17 bit of a historic perspective, both as it relates in
18 the near -- in the more recent history for slot
19 machine licenses, but in the big history as it
20 relates to pari-mutuel permits.

21 Since Jeb Bush, he's the one that put this
22 law in place in special session and basically tried
23 to bankrupt the industry with a 55 percent tax rate
24 and incredible operating restrictions.

25 That statute that I've highlighted in

1 behind tab 8. I believe it's tab 8, at the bottom of
2 the second page, (5), 551.104(5).

3 A slot machine license is not
4 transferrable. Full stop, no qualifications, no
5 reference to relocation, which all talk about in a
6 second, okay. That's what was required. And the
7 idea was to essentially lock these, you know, things
8 in place and make them somewhat difficult to trade.

9 Now that language is almost identical to
10 the language. It was passed in 1931, pari-mutuel
11 wagering first started. I'm going to put a pin in
12 that though, and I want you to follow me before I go
13 back to the history. Flip over to 551.107. It's the
14 next tab, 551.107(2)(c), highlighted language. It is
15 identical slot machine occupational licenses are non-
16 transferrable.

17 Now, the difference between these two
18 sections is one of them is the slot machine entity
19 running slot machines. The other one are the
20 employees that are working at the entity, okay.

21 If you subscribe to the view that's in
22 Ross' memo, okay, that it really involves relocation
23 and not trading a piece of paper with someone, okay,
24 and the entitlements under that piece of paper.

25 This is what it would mean for occupational

1 licensees. They can't move and they can't change
2 their jobs, which I know is not what was intended
3 there.

4 Human beings apply for a license. You give
5 them a license. They're not allowed to go to their
6 neighbor and go, I got a slot machine license to work
7 as a slot tech. You want to buy it from me for \$500?
8 That's is what is prohibited right here.

9 Okay. Now, the interesting thing about it
10 is businesses can get slot machine licensees,
11 occupational licenses. So if I'm XYZ slot machine
12 company, okay, I have a license from you guys.
13 Somebody has to buy me out.

14 I can't sell that to somebody else.
15 Someone has to basically buy my stock, become my
16 company, and then let you know that there's been an
17 ownership changed to keep that license, okay.

18 So I hope, hope you understand these two
19 should be linked in your mind. These are identical
20 words passed at the identical time by the same
21 Legislature. They have to mean what they say, which
22 is it about the piece of paper transferring as a
23 commodity as opposed to where people can be.

24 Ross' interpretation is that this needs to
25 be sort of superseded by some language that you

1 know, was, was put in 550.054. I just disagree. And
2 now I'm going to explain to you the history on why that
3 language is found in 550, and maybe it'll help you
4 understand why, as it relates to the slot machine
5 license, they can't be sold. The corporate entity
6 needs to be the one that is the interest in the
7 corporate entity are the ones that need to be
8 purchased, okay.

9 Again, the tribe is not here opposed to the
10 transaction. They're not opposed to the Poarch
11 acquiring Magic City casino. It's a form issue, and
12 it's important for this marketplace.

13 So in 1931, as I referenced, and there's a
14 lot of these historical documents that I'm not
15 expecting you guys to go through necessarily today,
16 but if you go behind 10, 11, what I tried to do is
17 walk through the history of transferability and as I
18 mentioned it came in in 1931 as Section 21 under the
19 Racing Act. And right on the get go, people started
20 to have problems. And the first one that had problem
21 with West Flagler. West Flagler had problems. They
22 went into bankruptcy. A trustee was appointed and
23 people wanted to buy West Flagler.

24 And there were multiple attempts to try
25 and get Attorney General in the Racing Commission

1 at the time to allow them to transfer the paper from
2 West Flagler to XYZ NewCo, okay. And the language
3 was consistently interpreted to not allow that.
4 Didn't have anything to do with relocation.

5 There was no language allowing relocation
6 in 1931. You had a referendum, you were locked in
7 your location. You couldn't go anywhere. So the
8 idea that that section, which is now carried forward
9 to be 551.104 sub -- or 550.054(9) or whatever it is,
10 it started prohibiting exactly the transaction that's
11 going on right now.

12 Now, the Racing Commission went to the
13 Legislature and in the mid '30s, said this is really
14 kind of hurting us because we have to then have these
15 new applications. We need to have discretion to
16 allow these permits to trade, okay. And so they were
17 given discretionary language, which for the most part
18 is still kind of the wording of the current statute,
19 which says you're can apply to the Commission back
20 then.

21 And with their approval, the permits can
22 transfer, okay.

23 The stock -- most of the deals were stock
24 deals back then, but not all of them. Occasionally,
25 like Tampa Bay Downs was originally a partnership

1 with two individuals that later became a corporation.
2 And then that corporation stock was purchased, and
3 then later on it was transferred to another
4 corporation.

5 So that one went from a partnership to a
6 corporation, went through a stock sale transfer, and
7 then another transfer, all of which went in front of
8 a Commission and was blessed. Okay? I'm not saying
9 here; I'm not standing before you that say Pari-
10 mutuel permits cannot trade like that.

11 You have the discretion, you guys can grant
12 that, right? The problem is the Pari-mutuel and the
13 Pari-mutuel license are one thing.

14 The slot machine license is different,
15 okay? A Pari-mutuel permit entitles you to apply for
16 a license. A license is a limited license.

17 It is a one-year license in one year only.
18 It is not renewable; it dies at the end of the year.
19 You're about to go through the re-licensure period
20 we're in it right now on March 15th, they're going to
21 get the last amendments, I guess. And then you guys
22 are going to grant the licenses for next year.

23 The reason why they were one-year licenses
24 was because you were afforded racing dates and the
25 Commission would evaluate who made the most money and

1 they would shift dates around, right? So there was
2 no perpetual nature in a Pari-mutuel license.

3 It was a one-time grant and ended, it was a
4 one-time grant end. And there was another reason for
5 that. During the same area as Prohibition, people
6 had liquor licenses that all of a sudden were
7 valueless and they litigated.

8 It's taking and there's a lot of case law
9 around the litigation over the value and the license
10 that evaporated when the constitution was amended and
11 Prohibition was put in place in the country and in
12 the states.

13 And one of the things they've said, they
14 looked and said, "Nope, it's the same license, we can
15 take it away from you. " But they also looked in some
16 states that it's an annual license, not a renewal
17 license. You have no perpetual right to it.

18 You were able to use it for the year, your
19 year's up. You're not entitled in anything in the
20 next year. Okay? So that's the Pari-mutuel license.
21 Card licenses and slot machine licenses are
22 different.

23 There are perpetual licenses that are
24 subject to renewal. And as a matter of law, if you
25 have a professional license grant by the government

1 that's subject to a renewal, the government can't
2 come in and automatically take it away from you. And
3 then you litigate to get it back.

4 You're allowed to go into court and say,
5 Hey, I really didn't do that. And stay in the game
6 in some form or fashion while you litigate your
7 rights to your renewal. And that's an important
8 distinction because this license, you guys do not
9 want to cut off.

10 You don't want to issue a new license. And
11 here's the principle reason why. You issue a new
12 license, and then you come back two years from now
13 with a whistleblower that says, "Hey, by the way,
14 someone was stealing a bunch of money. " And you want
15 to go back and try and recover the money that you
16 were entitled to from the state tax standpoint, and
17 it's a new entity with a new license, guess what?
18 You can't go back and get those folks.

19 That license is gone; those people are
20 gone. Now you could go after him criminally or
21 things like that, but if you have continuity of the
22 license and the license holder, you have the ability
23 to get the next license holder, and the next license
24 holder, and the next license holder because it's the
25 same entity.

1 All that's changing entity, liability stays
2 the same. And there's another part of it that's
3 important. Their bonds that are for operating Pari-
4 mutuel slot machines and poker. Bond continuity was
5 another reason why you wanted to be able to keep the
6 corporate entity intact because you want to be able
7 to recover under a bond for prior acts.

8 If you cut it off and change the license
9 holder, you essentially are getting a new bond and
10 that bond isn't going to cover you for the window of
11 time. You may be out money. And so it's important
12 for you guys to understand.

13 There's a very, very important reason why
14 that statute state exactly how it is, the slot
15 machine license is non-transferrable.

16 Now, how has it been interpreted? Okay.
17 How's it been interpreted? I talked about the
18 Attorney General and how interpreted through the 30s,
19 but when the slot machine license came into the game,
20 I represented the first one to go under, Gulfstream
21 Park.

22 Commissioner Drago was a secretary; Charlie
23 Charisma was the Governor. The interpretation at
24 that time, well, Jeb, not transferable, nobody
25 transferred anything during that. Okay? Then you

1 get to Charlie, not transfer, Gulfstream had to go
2 through a series of hoops with a very unique
3 bankruptcy trustee situation, cancel an entire class
4 of stock, reissue another class of stock to try and
5 create a new shell that was not subject to the debts
6 of the past, including the money that was owed to you
7 guys.

8 So first two Governors non-transferrable,
9 Rick Scott, Rick Scott allowed a slot machine license
10 to trade Miami Jai Alai.

11 And there was, you know, there's a lot of
12 Miami Jai Alai was a publicly traded entity that
13 had some penny stocks that went to another entity
14 that then ultimately went to Mr. Ruffle.

15 When the transaction went down, you know, I
16 talked to staff a little bit about it. You know, I
17 just was a voyeur really just saying, I don't
18 understand how you're doing this because I don't know
19 how that slot machine license can go from here to
20 here because you're essentially cutting off your
21 rights to what had happened before.

22 Now, that's what Scott's called, you
23 know, different time, you know, but that was, that
24 was the call back then. You guys are a new
25 independent Commission intentionally in the

1 statutes. It says, you know, you're (indiscernible)
2 off the attorney general's office. You are
3 independent.

4 This interpretation that you make on this
5 section right now is essentially going to be binding
6 moving forward. And I can only tell you if it's a
7 jump ball and it's gray because one governor allowed
8 it to happen and two governors didn't, I don't know.

9 I would encourage you to look at the
10 history, look at the statute, and look at the public
11 policy on why you want to keep this corporate entity
12 assigned to this slot machine license for public
13 purposes to protect the state revenue. And so from
14 that standpoint, I will say the deal documents just
15 aren't right.

16 They're multiple aspects under the law
17 where they're flawed, and they're also incomplete on
18 their own face. And so from that standpoint, I will
19 tell you, you have plenty of time. You have plenty
20 of time. You have the ability to request a lot of
21 information for these guys. They have incredibly
22 diligent counsel that will meet, I'm sure, every "I"
23 that needs to be dotted and "T" that needs to be
24 crossed.

25 I just think that you should seriously look

1 at this transaction because it has major presidential
2 values. And again, you have the low, one of the
3 lowest performing permit holders buying the number
4 one permanent holder in the marketplace.

5 So if you're going to exercise due care and
6 time and diligence, this is definitely the
7 transaction doing it. So with that -- I know I've
8 been talking for a long time -- I'll hush. And I'm
9 happy to answer any questions you have, or I'll go
10 sit down, maybe get a drink of water, come back up
11 and answer questions if you like, whatever you want
12 to do.

13 VICE-CHAIR YAWORSKY: Thank you,
14 Mr. Dunbar. Commissioner Brown.

15 COMMISSIONER BROWN: Unless you want to get
16 a glass of water.

17 MR. DUNBAR: I'm good.

18 COMMISSIONER BROWN: Thank you for your
19 presentation. Also, the more importantly, thank you
20 for representing the hard work by yourself.

21 Globally but also on this particular matter
22 a lot of man hours have been logged, women hours
23 that have been logged.

24 When you first started, you said something
25 about the case that competitors don't -- you

1 reference competitors don't have (indiscernible)
2 traditionally to interfere in the permitting process.

3 MR. DUNBAR: Uh-huh (affirmative).

4 COMMISSIONER BROWN: Can you talk about
5 that? Because I looked up two cases and that were
6 not challenged that were similar in nature to this
7 transaction. Miami Jai-Alai and then another one,
8 the Big Easy. Both were asset purchase agreements.
9 They weren't challenged. And I don't know if that's
10 because of the case that you're referencing.

11 MARC DUNBAR: Yeah. Yes, Commissioner.
12 That's exactly right. There's no process to get in
13 and to stick your -- I mean, there was a change under
14 the Rick Scott administration. There was.

15 There was no ability for anybody to go in
16 other than to sue the division in mandamus, right.
17 And to say, hold on just a second. You don't have
18 the authority to do this.

19 And you know, I can't speak for the rest of
20 the industry on who was concerned about those
21 transactions or not. You know, they were allowed to
22 go through.

23 And it was sort of like once -- because I
24 believe Miami Jai-Alai happened first, once that
25 happened, there was no way to really, you know, to

1 say, okay, well, don't let (indiscernible), you
2 know, Mardi Gras, you know what I mean, or Big Easy.

3 But that -- that sort of ends here, the
4 creation, right. The idea is -- and I'm sure it's
5 been affirmed by your discussions with the Governor's
6 office, particularly on this issue -- you guys are
7 independent. It's your call de novo right now,
8 looking at all the history. You get to decide on
9 whether there is or isn't.

10 Do I think a client has standing to go
11 litigate your decision on this? Maybe, you know,
12 maybe. I'm certainly not authorized to sit here and
13 rattle and say, well, if you get it wrong, we're
14 going to go sue you, because that's not what this is
15 about.

16 I'm trying to point out to you what the
17 public policy reasons are on what's behind those
18 words. Those words are put in the statute
19 intentionally to mean something. And I would say
20 that they mean the same thing for an occupational
21 license holder as they do to a slot machine license
22 holder. You're not bound by prior transactions.
23 Now, the applicant may choose -- they may
24 choose to litigate it, you know. You're protecting
25 the State's ability to go back in history if there

1 are bad acts against this permit holder. That is
2 pretty defensible, particularly when you think about
3 the Supreme Court case law is entirely on your side.

4 You get to act with arbitrariness and
5 discretion because what you're granting is a gambling
6 contract.

7 COMMISSIONER BROWN: Thank you. And I do
8 think that this is a unique forum that the public can
9 participate in this process. It is an interesting
10 posture that we're in.

11 The staff is recommending a conditional
12 approval, so I think that there's several ability --
13 bites of the apple to act, even after a final
14 approval. I discussed it with the staff that whether
15 it dies after permitting (indiscernible), legal
16 counsel believes that there are avenues of
17 (indiscernible). That's very important, of course,
18 that people -- just so the parties have an
19 opportunity to challenge it if we get it wrong --

20 MR. DUNBAR: Uh-huh (affirmative).

21 COMMISSIONER BROWN: -- today. You talk a
22 lot about the slot -- and this has been so
23 educational too. Appreciate that as well. But talk
24 about the history of slot license not being
25 transferable and provide us with some information.

1 If this were a truly stock purchase
2 agreement of a 100 percent sale from Magic City to
3 Gretna, would you be here today?

4 MARC DUNBAR: I'd be here on all the other
5 issues that I raised. I intentionally saved
6 transferability, thinking that that question would
7 come. If it wasn't stock, we wouldn't need talk
8 about in terms of that part of the transaction.

9 But that doesn't mean that there aren't
10 serious holes in these deal documents and additional
11 information that you would want to have as
12 Commissioners that your colleagues in other states
13 would require for this exact transaction. And at a
14 minimum, Pennsylvania required when they bought
15 Bethlehem Sands.

16 COMMISSIONER BROWN: Thank you. And it's a
17 question that I intend to ask about the completion of
18 the documents (indiscernible). So I appreciate you
19 bringing that up in other states. So thank you
20 again.

21 MR. DUNBAR: Okay.

22 VICE-CHAIR YAWORSKY: Commissioner
23 D'Aquila.

24 COMMISSIONER D'AQUILA: Thank you,
25 Mr. Dunbar. The point about revenue being small,

1 isn't it common today in deals in all industries,
2 including the gaming industry to have whole
3 subsidiaries in place for various reasons, whether
4 that will be legal, tax, structural, operational, et
5 cetera?

6 Why is it relevant that the holding cover,
7 for lack of a better term, give sensibility really
8 isn't an operating (indiscernible). Aren't we
9 looking at collectively financial strength for PCI
10 and in this case the tribe and Gretna area evaluating
11 a potential bankruptcy, the financial qualification.
12 Can you elaborate why going that direction
13 (indiscernible)?

14 MARC DUNBAR: Sure. So I use Brenna's
15 revenue compared to Magic City just from scope, but
16 you're absolutely right. There's a big brother that
17 really is -- or sister that matters a lot.

18 If it was Las Vegas Sands, it probably
19 would be a little different discussion because your
20 jurisdiction, the jurisdiction of lenders, vendors,
21 you know, in the event of a default runs up
22 against a nearly impenetrable wall at the reservation
23 line of the Poarch Band of Creek Indians because of
24 their sovereignty, okay

25 So it's really what happens on

1 the other side of the wall. When tribes are buying
2 commercial casinos, commissions take a lot of time
3 making sure the deal documents are right because you
4 guys can't -- let's say they just stop paying taxes,
5 right. You can't go sue the Poarch Band of Creek
6 Indians for 20 million in taxes. They're sovereign.
7 They're protected. You can't get the money from them.
8 Nor would they waive it, and they haven't waived it in
9 these documents.

10 Now, there are limited waivers. There are
11 things that can be done, all of which are part of
12 the, you know, due diligence that the, frankly, the
13 lenders -- you want the lenders in the credit
14 facility. And that's why I'm saying. Is you want
15 your own people to look at the full credit facility
16 and to have knowledge of these transactions and say,
17 yes, everything is in there to cover the state that
18 we possibly can, and if there is a default, these are
19 the series of dominoes that will happen.

20 So yes and no. Yes. And that's why I say,
21 like (indiscernible) and they operate casinos all
22 over this hemisphere to the best of my
23 knowledge, and I think it's born out in the
24 documents that, you know, we can't see, nor
25 should we see, with the background checks and

1 everything like that.

2 Other than, you know, occasional fines or
3 things like that that all casino companies have,
4 they're incredibly reputable operators. And you
5 know, I think that from the State standpoint, we
6 should welcome into the marketplace in open arms.
7 They're good operators. I'm just saying, you just
8 want to make sure the deal documents are right.

9 COMMISSIONER D'AQUILA: What was the
10 finding to the follow up to that? What was the length
11 of time that the banks, in your example of
12 Pennsylvania, took to effect the lending documents in
13 this world when it comes to liens and credit
14 facilities for a very sensitive piece of any
15 acquisition? Are we talking years here or months?
16 And are we comparing apples and apples in the
17 financial acquisition? Can you elaborate on that?

18 MARC DUNBAR: Yeah. It's apples and
19 apples, and it is months, usually. I mean, it can
20 take up to a year. I mean, it really depends. But
21 because they have already been proven to have an
22 established credit facility that they've been paying
23 on -- you know, if this was two years ago, it would
24 be a different answer because in -- you know, during
25 COVID, like a lot of gaming companies, Fitch came

1 out and gave them a negative credit rate, which would
2 have been material, I think, for the financial
3 analysis of this transaction.

4 But when they came out, gaming has come
5 back roaring and Fitch, this past year, increased
6 their credit rating from negative to State. And so
7 from that standpoint, I would say there are probably
8 plenty of lenders out there that will take a bite of
9 the overall credit facility liability, but it's the
10 cart before the horse.

11 If Pennsylvania doesn't approve it, that's
12 -- the big money is coming out of Bethlehem's
13 property. They make more money up there, and it
14 pledged more. So if Pennsylvania says, no, we want
15 different terms, that could be material to you down
16 here. And so you kind of, you know, one, I think
17 defer to make sure that when you get it right, it's
18 right up there first, and then you come down here and
19 approve it.

20 COMMISSIONER D'AQUAILA: As a follow up
21 (indiscernible) that the size of the entity, the
22 trend in the industry, the nature of the industry
23 and so forth. You used the term bankruptcy, when
24 you put this together. You don't have specifics.
25 (indiscernible) I understand.

1 MARC DUNBAR: I missed -- are you asking me
2 if do I have knowledge that they may
3 be --

4 COMMISSIONER D'AQUILA: Yes.

5 MR. DUNBAR: -- catering on bankruptcy? I
6 have no knowledge, and I don't want to infer that at
7 all.

8 COMMISSIONER D'AQUILA: Follow up
9 question, Mr. Vice-Chairman.

10 VICE-CHAIR YAWORSKY: Yes, you may.

11 COMMISSIONER D'AQUILA: Thank you,
12 Mr. Vice-Chairman.

13 Are you inferring that, going back to the
14 example of the 1930, obviously, I trust you to several
15 deals, several the industries, the asset acquisition
16 in the middle market, let's say over the market --

17 MR. DUNBAR: Uh-huh (affirmative).

18 COMMISSIONER D'AQUILA: -- has become the
19 structure of choice, not only in many industries. Are
20 you inferring that, that we should only consider stock
21 sales, which for a number of reasons can be
22 disadvantageous, not to mention last for tax
23 purposes before for certain parties to deal with?
24 What is that, an executive decision?

25 MR. DUNBAR: I am inferring that you follow

1 the law and the Legislature made the determination
2 that when it put that sentence in there exactly like
3 as made in 1931, if the Legislature wants to qualify,
4 they can do exactly what they did in 1935 and insert
5 discretion on the transferability.

6 And the reason why it matters is because
7 there are other aspects to, you know, beyond just the
8 per mutual taxes that could potentially be an issue.

9 I mean, I don't know in terms of revenues
10 and how it necessarily works, but there is a corporate
11 income tax threshold that may be implicated if you're
12 able to change to a different transaction in this
13 material.

14 I can't get into the mind of the
15 Legislature or the Governor Bush when he basically ran
16 this down at the industry's throat because it was
17 going to be self-implemented by Broward County Judge.

18 And Jeb hauled everybody back in a December
19 special session, and we got basically two days to
20 look at a piece of legislation and, you know, it
21 wasn't friendly.

22 And so I will tell you, if you think about
23 legislative history and all that stuff, and I agree
24 with you, it is much more favorable to a taxpayer
25 to be able to go in lots of different directions.

1 They knew that back then, right. Jeb knew
2 he was putting some difficult handcuffs on some of us
3 because I was representing a group that was trying to
4 figure out what we could do because Magna
5 Entertainment that owned it at the time was
6 considering lots of different transactions, and the
7 restructuring Gulfstream Park was basically taken off
8 the table because of borrowing.

9 COMMISSIONER D'AQUILA: So, but borrowing
10 your term "blindside"? I did my best to provide
11 listening to (indiscernible).

12 MARC DUNBAR: Uh-huh (affirmative).

13 COMMISSIONER D'AQUILA: But I can see -- is
14 there anywhere where -- this is a very specific term.
15 A deal must be a stock purchase versus
16 (indiscernible).

17 We want purchase the assets, but we want to
18 purchase the stock and we understand why, you know,
19 there's pluses and minuses of both. But is
20 prohibiting anywhere honor in all laws? I see you
21 been referred here and some of the highlights and so
22 forth. Does it specifically (indiscernible) to the
23 contrary and your professional opinion?

24 MR. DUNBAR: Yes. Because it says slot
25 machine license is non-transferable, and then

1 underneath that it immediately gives you the options
2 on what to do when you're transferring stock.
3 The other thing is the Legislature is a
4 matter of laws we all know, is presumed to know, that
5 the facts inside the industry is regulating. Right.
6 So when it passed this, it knew that every permit
7 holder in the state was in some sort of corporate
8 existence.

9 There wasn't a single person that owned one
10 individual, okay. So knowing that, it knew and what
11 it was doing when it essentially set that forward.
12 And then if you, again, look at the history of, from
13 1931 as it evolved and as the Legislature changed and
14 said, it used to be all transfers of stock had to be
15 approved. Then they created a 10 percent threshold,
16 then 5 percent threshold. Then they did a publicly
17 traded exemption.

18 And so they created all of these sort of
19 avenues to essentially allow this to happen. If you
20 were inside of a partnership, same thing, you know, I
21 mean, maybe a partnership interest would be
22 difficult. An LLC, that's what we were at Gretna.
23 That's what Gretna Racing is, you know, when we sold
24 it. It was membership interest. But I will tell
25 you, you know, the words are, you know, I come back

1 difficult. An LLC, that's what we were at Gretna.
2 That's what Gretna Racing is, you know, when we sold
3 it. It was membership interest. But I will tell you,
4 you know, the words are, you know, I come back to
5 the words are what the words are and they -

6 COMMISSIONER D'AQUILA: So if I understand
7 you correctly, a slot machine, in your opinion, a
8 slot machine and license cannot be transferred other
9 than in form of a stock transaction?

10 MR. DUNBAR: That's right. That's right.

11 COMMISSIONER D'AQUILA: Cannot and
12 specifically cannot be done so in asset acquisition
13 transaction.

14 MR. DUNBAR: That's correct.

15 COMMISSIONER D'AQUILA: That's just what we
16 have. That's the point (indiscernible) counsel.

17 MARC DUNBAR: That's correct. And one of
18 the things too that I know that was talked about was
19 this language of transferability to location somehow
20 is incorporated in the Florida statutes. And the
21 history on that is pretty simple.

22 In 1974, two horse tracks ran aggressively
23 at each other and one of them is in the room, Hialeah
24 Park ran against my client, Gulfstream Park, and they
25 were always competing for the middle racing dates.

1 And there's legendary case law on that. You were
2 locked into racing periods back then, and you could
3 not run in two racing periods.

4 And so in '74 there was an effort
5 by Gulfstream Park, an overture to purchase Hialeah
6 Park provided that the racing would move to Gulfstream
7 Park from Dade County to Broward County and be raced
8 there.

9 And they asked the Attorney General in
10 1974, if it is okay, because the Commission would not
11 grant the license, you know, subject to
12 interpretation. The answer is no. Included in your
13 packet, the attorney general opinion from 1975
14 because then Gulfstream, and Hialeah, and the city,
15 and the county, and they passed the legislation which
16 exists today related to the dual referendum.

17 It's two sections down, I guess, in like
18 550.104 maybe (12). That language in 13, survives
19 basically unamended since it passed 1975. And it
20 actually was replicated and put over in the cardroom
21 statute to lock cardrooms in their location unless
22 they do a referendum release.

23 That language, when it originally passed,
24 as you'll see in the materials that I provided you
25 was never put in this section, the predecessor

1 550.05.

2 It was in the referendum section, the
3 locations, okay. So there's no argument that
4 you read this in para material because when
5 they were passed. They were never linked.

6 They were never linked. And the only reason
7 they got linked was in 1992 when the pari- mutuel
8 industry was sunsetted, under sunset review. They
9 couldn't agree on a piece of legislation, so there was a
10 period of time where pari-mutuels were illegal; and
11 there were no regulations on them.

12 There was a special session was called by
13 Lawton Childs and a body of law was quickly put
14 together, you know, in that off season. And revisers
15 took chapter 551, which back then regulated highlights
16 on to in chapter 550, and merged them together into what
17 we have today.

18 And the way some of these things have been
19 married up, and some of the provisions in 550.054, which
20 are there, like the phrase in (11) (a), except
21 that a holder of a permit that has been converted to
22 a highlight permit, except that language, as well as
23 the other language, were dropped into the statute
24 without any legislative intent whatsoever just by
25 function, advisors trying to clean it up.

1 So I will tell you, there is no legislative
2 history that supports the idea that transfer means
3 anything other than the trading and the piece of
4 paper, except the specific sections that have been
5 merged in here that are unrelated, and the historical
6 documents are in there to back that up.

7 COMMISSIONER D'AQUILA: Is it not uncommon
8 that even with the length of time closure of a
9 complex asset acquisition was still on sale? Is not
10 common that in most situations they've put on had at
11 least some 11th-hour changes when two parties are
12 being closing the transaction? Is it unrealistic to
13 say that every piece in the document must match the
14 time of closing?

15 MARC DUNBAR: Depends on the industry.
16 Depends on the industry.

17 COMMISSIONER D'AQUILA: So --

18 MARC DUNBAR: I will tell you that it would
19 not be unusual for this transaction to close with
20 subsequent agreements that need to be in place. It
21 could be conditioned as a matter of license. That's
22 certainly, you're right, you have the ability to do
23 that.

24 But you would want have the base documents,
25 the base financing, the base disclosures, the lease

1 contingency, I mean, get those right.

2 And then if there is some issue related to
3 the transfer, the bill of sale of the automobile,
4 which is in this transaction because DMV is not
5 processing the title, whatever, you know, those are
6 covered in sort of the arm statement and deal
7 documents that you're aware of, that the parties
8 agree, you know, that we will sign such other
9 documents that are needed to effectuate the transfer.

10 But I can tell you if one of those is to
11 amend a credit facility that's underlying about 2
12 billion in assets, which is what this is, the
13 regulators in all jurisdictions want to know about
14 that and typically require that in advance. I'm not
15 aware of one that is going to green light and
16 undisclosed credit facility that still has to be
17 approved in another jurisdiction.

18 Usually, what they do is they defer the
19 jurisdiction that created it, and then if it's
20 expanded, then they will allow it to domino from the
21 initial jurisdiction. If it started in Vegas,
22 everybody would defer to Vegas. I promise you that
23 they would want them to vet it, and then they would
24 roll in after it is approved.

25 COMMISSIONER D'AQUILA: Thank you.

1 MARC DUNBAR: Sure.

2 VICE-CHAIR YAWORSKY: We are going to take
3 a quick five-minute break before we continue.
4 Thank you.

5 (Recess taken)

6 Thank you. I will just give a second for
7 everyone to take their seats.

8 Our next public comment is from the
9 applicant, Mr. John Lockwood, from the Lockwood Law
10 Firm.

11 Welcome, Mr. Lockwood.

12 MR. LOCKWOOD: Thank you very much,
13 Mr. Vice-Chair, and the Commissioners. My
14 presentation today is probably going to jump around a
15 little bit just in due to what we just were presented
16 with by Mr. Dunbar. I did get a copy of his notes
17 that he prepared today and provided to the
18 Commission.

19 One thing I will say is that we do agree
20 on one thing. My client, PCI Gaming, is an
21 incredibly reputable operator that's been approved in
22 multiple gaming jurisdictions, including Florida.

23 One thing I would note here is the
24 Seminole Tribe's motivation in being here today.
25 You know, they've said over and over again, not

1 opposed to this transaction, have no issue with
2 whatsoever. They just want to make sure the
3 Commission is following the laws here.

4 Well, we're now in -- I don't know if this
5 is the sixth or seventh public Commission meeting --
6 and I have not seen them testify on any other agenda
7 item of this nature that's come before them.

8 Any of the number of slot machine license
9 renewals, any of the other matters that have come
10 before the Commission. Their motivation here stems
11 from animosity toward the seller, West Flagler, who
12 has a lawsuit pending against them and potentially
13 against competition. I mean, quite frankly, they're
14 the beneficiary, one of the greatest gaming deals of
15 all gaming deals in the state of Florida.

16 They pay very little revenue share to the
17 State of Florida when you compare it to the other
18 operators, and quite frankly, this is all to do about
19 competition and delaying an operator that's a very
20 reputable multi-state gaming operator from coming
21 into the South Florida market and creating additional
22 competition. Let's see here. Again, getting into
23 delay.

24 When we showed up on our first agenda back
25 in December, we were actually recommended for

1 approval at that time under that transaction that
2 we presented to the Commission.

3 The Seminole Tribe, again, on the eve
4 of that Commission hearing, filed a number of
5 allegations, positions, whatever you may call it,
6 whatever their filing was that asserted that this
7 transaction couldn't go forward, asset deals can't be
8 allowed, et cetera.

9 We responded to all those worked tirelessly
10 through the night, working with staff, getting them
11 information, making sure we had all the statutory
12 sites correct, presented that. Here we are for round
13 two, and again, the deal did change in working with
14 staff.

15 We did move this because, it's important to
16 note that we're operating under a rule that allows
17 for kind of an expedited approval for an operator
18 that's already existing in the state of Florida.

19 And that's why this is being done under
20 Gretna Racing because Gretna Racing is the subsidiary
21 of the Racing Indians that's already been licensed in
22 the state of Florida, and they have been licensed.
23 They've been operating since the 2011 and 12 state
24 fiscal year, and most recently they obtained complete
25 control of that facility around 2018.

1 They've been a great operator.
2 They've paid all their taxes. They've paid all
3 their license fees and funds associated with
4 that. I don't think staff has noted any issues
5 whatsoever with their operator, and again,
6 they've operated in multiple other jurisdictions.

7 Notably, Pennsylvania Gaming Control has
8 approved them, and they acquired \$1.3 billion
9 facilities there, Sands Bethlehem.

10 One thing I did want to note, there was a
11 lot of discussion about, you know, this credit
12 facility and whether or not it had been submitted and
13 that we couldn't do this until it been submitted to
14 Pennsylvania.

15 We have gaming council in Pennsylvania, it
16 has been submitted to the Gaming Control Board in
17 Pennsylvania. And even if there was a scenario
18 where, let's say we had not submitted it to
19 Pennsylvania Gaming Control Board and they rejected
20 that credit facility, right?

21 Commissioner Brown, you mentioned this is a
22 conditional approval. It's a condition that we
23 actually close, so as an operator in Pennsylvania, we
24 have to make sure we secure that approval.

25 If we don't secure that approval, then we

1 wouldn't be able to tap that credit facility and
2 likely this deal wouldn't close, so at that point in
3 time, there would be no harm, no foul anyway because
4 the transaction wouldn't move forward.

5 There was a lot of discussion here about
6 what we've provided in the deal docs that are not the
7 complete deal docs. Skadden Arps in New York is our
8 corporate council in this transaction, exceptional
9 law firm. I can't tell you the tireless work that
10 these gentlemen have done in helping us move through
11 this transaction. These are the complete deal docs.

12 Commissioner, you mentioned a lot of this
13 stuff gets signed at closing. A lot of these
14 documents, generally, all of them, to my knowledge
15 are unrelated to this transaction because we're not
16 changing the ownership. We're not going to change
17 the credit facility, and anything of that nature. We
18 have intellectual property agreements.

19 I mean, again, this is a very large
20 operation that's going on. There's a lot of nuts and
21 bolts that go into closing a transaction like this.

22 What's going to happen is after that
23 conditional approval and we actually close this
24 transaction, we will come back and provide the
25 department with the complete deal docs that were

1 issued at closing, and that is what will be necessary
2 in order for us to get a final order that will
3 transfer the permit, the cardroom license.

4 It's been alleged that we're transferring
5 the slot machine license, but we're not. We're
6 actually applying for a new one. That's an
7 additional cost of about a million dollars to PCI
8 Gaming in this. In consultation with the state and
9 looking at how some of these past transactions have
10 been handled, it did come up. But in some of those
11 transactions in an asset transfer, they actually were
12 not allowed to transfer the slot license. They would
13 have to apply for a new one, even if they were six
14 months, like in this case, that were left on the slot
15 license for Magic City Casino. So essentially, we
16 would be abandoning that slot license, and we're
17 obtaining a new one. That application is before the
18 Commission as well in this package that's before you.

19 Talking about the documents, public
20 records, all of that nature. That became an issue at
21 the December public hearing. No casinos, the Miami
22 Herald had filed a number of public records requests.
23 They were interested in this transaction.

24 When I walked away from the podium that
25 day, I went up specifically, immediately to John

1 Solinski with (Indiscernible) Casino, and I said,
2 "What can I do? I can give you these documents.
3 I'll be at your office tomorrow, walk you through
4 this, answer any questions you had." I did the same
5 thing with the reporter for the Miami Herald. Any
6 questions they had, happy to answer.

7 We also, within probably less than 24
8 hours, turned around a much less redacted document to
9 the State for this. There was no nefarious act on
10 our part. Quite frankly, I had no -- at this point,
11 this was the first transaction that had going before
12 the Commission.

13 I had no idea that the fully redacted
14 documents would be placed on the website and it would
15 cause an issue. If anybody had ever alerted to me
16 that that was going to be the case, we would have
17 immediately said, look, we can narrow these
18 redactions.

19 I think I'd explained it in great detail at
20 that point. Why we do this as a matter of practice
21 is -- generally, we would redact everything just to
22 make sure that if there was a records request, that
23 someone didn't inadvertently send out things. Then
24 we would have an opportunity to narrow the
25 redactions, which we did immediately for the

1 Commission.

2 One thing I do want to address and I think
3 -- because it was a theme through Mr. Dunbar's
4 discussion as to what's done in other jurisdictions,
5 I don't disagree with a lot of the stuff that he said
6 in that. And quite frankly, one of the comments I
7 made at the December public hearing was, this is the
8 Florida Gaming Commission.

9 This is not Nevada Gaming Commission. This
10 isn't Pennsylvania Gaming Commission. That was not
11 in any way meant as a derogatory term or anything
12 against this gaming Commission, this gaming
13 Commission is set up wonderfully.

14 The issue -- and I think he outlined it --
15 is we have antiquated statutes that are over these.
16 We have to look at how these statutes have been
17 interpreted, how they've been applied, how people
18 have relied upon them and this staff, Ross, Lou,
19 Jamie Pouncey, Joe Dillmore, all of them have gone
20 through leaps and bounds to make sure that what's
21 before the Commission today is consistent with how
22 these transactions have occurred in the past.

23 And we have worked tirelessly with them to
24 make sure and we have responded to every request you
25 can ask them.

1 There's not a single document that they
2 asked us for that we have not provided. And to that
3 effect, anything that we did want or the Commission
4 did want, we will provide that; there is nothing that
5 we're trying to hide here. And of course, the
6 Commission has the fully unredacted documents for all
7 of these materials.

8 You know, talking about past transactions,
9 we most recently had an asset transfer with the Big
10 Easy Casino, the Miami Jai Alai Casino. Dania, has
11 done an asset transfer.

12 These are all just south Florida slot
13 facilities that have been done. This acquisition,
14 very similar. All of those were asset transfers.
15 Commissioner, you mentioned asset transfers
16 are the preferred way of doing business now. Most
17 everybody, if they have the opportunity, are going to
18 do an asset transfer. The only, I would say, outlier
19 is sometimes when you have public companies, there
20 may be stock swaps amongst other public companies.

21 Neither one of these, the buyer or the
22 seller, neither one are public companies, and that's
23 why the purchase price has been redacted in this
24 because they're not public companies. It was
25 mentioned Boyd Gaming, when they did their

1 acquisition, that that price was announced. Of
2 course, it was. They're a publicly traded company.
3 That is the case.

4 The lease issue. First off, this applies
5 to both financing and the lease. This deal has no
6 contingencies as it relates to financing. PCI Gaming
7 is prepared to close this transaction with cash on
8 hand, and they can do that; and they're prepared to
9 do that.

10 They are going to do a credit facility with
11 that. We've disclosed the credit facility. We
12 disclosed it initially. It's not like when we
13 brought this transaction in October, we didn't say
14 anything about a credit facility. We did. We
15 provide information about a credit facility.

16 We have been informed by staff that because
17 this is a transaction that involves an existing
18 permit holder that's in the state of Florida, that
19 pursuant to that rule -- and if you read the form and
20 notably, that form was submitted from Mr. Dunbar's
21 presentation about transferees between permit holders
22 that are already licensed in the state of Florida.
23 That form doesn't ask for those credit documents. It
24 asks for a description of those documents.
25 If you want the documents, I don't think there's any

1 issue in us providing them. We've provided them in
2 other jurisdictions. I don't want to hold up the
3 transaction to that because, quite frankly, it's
4 immaterial.

5 Because what's going to happen is -- let's
6 assume worst case scenario; PCI defaults in this.
7 The creditors cannot come before this Commission or
8 -- well, let's put this away. They can't just take
9 control of the facility. Under the law, they would
10 have to come before the facility and -- or before the
11 Gaming Commission and actually move to transfer the
12 ownership and take the ownership of those assets.
13 That's certainly the case. And this Commission will
14 have all the ability to make the determination at
15 that time, what happens. In the last 20 years, I
16 think we've had one facility that went into
17 receivership, and that was Miami Jai Alai.

18 A lot of us here in the room were involved
19 at that point in time, and the Commission was very
20 much involved in that acquisition and, ultimately,
21 became a bankruptcy proceeding that morphed into a
22 public option. People bid on the asset. All of it
23 was done within the confines of these existing
24 statutes, and it resulted in an asset transfer.
25 It was a slot machine facility. Everything

2 worked just as it was supposed to, as it will in this
3 transaction.

4 The lease. The lease is not a condition of
5 this, but also 550.475 has no relevance whatsoever to
6 this lease. The reason is 550.475 applies when you
7 have a permit that is fixed for one particular
8 location that is now going to operate at a different
9 location.

10 We have scenarios where there is a permit
11 known as the Bet Miami Permit fixated. It's an old
12 greyhound permit located in Miami Dade County. It
13 operated by Lees and Broward County at the Mardi Gras
14 Greyhound track.

15 The only way in which it could operate
16 across that county line was pursuant to 475. We have
17 this situation in Jacksonville. We have this
18 situation that operates in Tampa. There's other
19 areas around the state, and it always evolves.

20 A permit that's located at a facility,
21 going to operate at another facility within 35 miles
22 that it is not permitted for. The lease here has to
23 do with a Jai Alai permit that is situated at the
24 Magic City Casino; that is its location.

25 Post-closing, they're not going to own the

1 facility anymore. They're simply going to have a
2 ground lease to be able to continue to operate
3 Jai Alai there.

4 This would be no different if they were any
5 other location where they did a (indiscernible) or
6 something of that nature. They could sell their real
7 estate off. They no longer own their real estate.
8 They're just going to have a ground lease. That is
9 what's going to have the basis for them to operate at
10 that facility. It's no different in this case, 550.
11 475 doesn't apply to this particular lease.

12 You know, getting back to, you know, the
13 transaction, this is similar to what we initially
14 filed in October of last year.

15 What was initially recommended for approval
16 at the December public hearing and what's now
17 recommended for approval at this hearing. The only
18 change, as I mentioned, we're going to be using
19 Gretna Racing, which is the entity and the permit
20 holder that has held the license in Florida and is
21 allowed to operate and move under this particular
22 administrative rule.

23 And the only other difference being that we
24 filed a slot machine application with the State in
25 order to avoid -- we're not going to transfer that

1 slot machine license. We're going to operate just as
2 if the Big Easy transaction, the Miami Jai Alai
3 transaction, the Dania transaction where those
4 entities applied for a new slot license.

5 No new documents there. The documents that
6 are included with that slot application as far as the
7 security protocols, internal procedures, et cetera,
8 those have already been approved by the state because
9 those are going to be the ones that are associated
10 with Magic City Casino. They've already been
11 approved for that license, and we intend to make no
12 changes initially at this facility. So there's
13 nothing different about those documents that the
14 Commission has already seen.

15 I know I've jumped around a lot. Again, I
16 wanted to try to hit a lot of the high points there
17 that were addressed by Mr. Dunbar in that.

18 And with that, you know, I would say I
19 think we need to look at the motivations in this
20 transaction; why they're here; what they're trying to
21 do. Again, it's just delay tactic.

22 If we provide any -- if we're -- if this
23 hearing is delayed for another month, they're going
24 to find another reason to criticize the documents at
25 that point in time. They're going to find another

1 reason for this thing off.

2 They want a stock sale because they know
3 it's very difficult to consummate a stock deal for an
4 entity that's been in business for 80 years. That's
5 very, very difficult to do most, and it makes it even
6 harder in this situation because there's assets that
7 West Flagler has that they don't want to sell in an
8 asset transaction here.

9 They have real estate. They have other
10 pari-mutuel permits. Those things are not going to
11 be associated with the end transaction. So they're
12 simply selling a certain number of assets that's
13 associated with the Magic City Casino, and they're
14 going to retain their other assets. And that's what
15 they should.

16 I mean, when you look at everything that we
17 hear about this administration, we're open for
18 business. We're not going to allow government to get
19 in the way. That is what we're talking about right
20 now today. I think we need to move this transaction
21 forward, issue a conditional approval, allow us to
22 close this transaction.

23 We're going to come back. We're going to
24 provide the State with a complete closing file of all
25 of these documents, and everything is going to be the

1 same. Sure. There may be some innocuous little
2 documents there that relate to the title of a Camry.
3 It could be things related to certain
4 intellectual property agreements, any of that stuff,
5 any questions you have. We have been open with this
6 Commission and its staff. We've responded to every
7 single request that they've had, and we're going to
8 continue to do that.

9 So with that, I don't know if I really have
10 anything else to add, and if you have any questions,
11 I'm happy to answer them.

12 VICE-CHAIR YAWORSKY: Commissioners?
13 Commissioner Brown.

14 COMMISSIONER BROWN: Thank you,
15 Mr. Lockwood. I know that a lot of measures have
16 been provided on your behalf too and your team's
17 behalf, and interaction with our staff to get here
18 didn't happen by close of end of the year, which I
19 imagine has some tax applications.

20 But I appreciate you providing additional
21 information and trying to be as transparent as we
22 have been directing you to. So thank you to that
23 about the transparency component.

24 Mr. Dunbar talked about trade secret and
25 the purchase price aspect, and you made a little

1 comment about that. With regard to a publicly traded
2 company, I just haven't seen a purchase price in my
3 years of experience being deemed a trade secret.
4 Can you elaborate on why you believe it's in your
5 client's best interest but not public's best
6 interest?

7 MR. LOCKWOOD: The seller is a private,
8 closely held family business in Miami. I think
9 there's a lot of sensitivity when you're in a market
10 like that announcing what that price is.

11 I mean, certainly since this transaction
12 was announced that this was going to go down, they've
13 been reached out by a lot of people because now it's,
14 oh, you're selling this asset. You're going to get a
15 lot of money. I think for them it's certainly a
16 privacy concern.

17 As it relates to trade secret, you know,
18 that is our assertion at this point in time. I mean,
19 if it's the Commission's, you know, intent that, you
20 know, we have to disclose this, I've got a cell
21 phone. I can go out in the hall and discuss that.
22 I'd rather not, to be honest, I mean, unless
23 somebody, you know, really wants to fight over that
24 issue. We really would, you know, prefer not to
25 disclose the purchase price.

1 COMMISSIONER BROWN: Okay. I appreciate
2 that. I just don't necessarily think it falls within
3 the parameters of what trade secret statute intended.
4 So I just want to give you an opportunity to elaborate
5 on why you thought -- opined that.

6 Another couple of questions, if you don't
7 mind, is just regarding some of the additional
8 documents that were provided. Switching, replacing,
9 assigning Gretna, finding PCI Gaming and Gretna. In
10 the new documents -- and I'm assuming that you pardon
11 me the final documents will have all of them complete
12 because there are still some documents that say Wind
13 Creek and then like (Indiscernible) --

14 MR. LOCKWOOD: Correct.

15 COMMISSIONER BROWN: -- security measures.
16 Those are the ones I have.

17 MR. LOCKWOOD: I thought that we had
18 updated those with Gretna Racing. I apologize if
19 not, but it will definitely be operating Gretna
20 Racing DBA as Magic City Casino.

21 COMMISSIONER BROWN: Thank you for that
22 confirmation. In the new documents, there's also a
23 consulting contract in there, PCI Gaming for a
24 significant amount. I didn't know if that was trade
25 secret or not, if I have the unredacted or redacted

1 version.

2 MR. LOCKWOOD: I believe the compensation
3 was redacted.

4 COMMISSIONER BROWN: Okay. Can you just
5 elaborate how the rule of PCI Gaming in this
6 transaction post-closing? And I know that they will
6 be (indiscernible) member.

7 MR. LOCKWOOD: Sure. So the reason the
8 deal documents and the consulting agreement all apply
9 to the parent company primarily relates to the fact
10 that Gretna Racing is a subsidiary. And in these
11 transactions, generally the seller is looking to
12 engage with the parent organization because that's
13 generally where all the general finances are.

14 The -- you know, that would be their relief
15 in the event of a breach. So that's why that
16 agreement was done with PCI Gaming.

17 COMMISSIONER BROWN: Are they going to be
18 the day-to-day operators of the facility? I know a
19 lot of managing members are outside of the state of
20 Florida.

21 MR. LOCKWOOD: So initially there a lot of
22 the team is going to stay on the ground in Magic
23 City. There is a certain number of executive staff
24 that are going to leave.

1 We've already brought in licensure for the
2 individuals that are from out of state that are going
3 to be immediately taking it, you know, as far as
4 board members, officers and directors, and things of
5 that nature.

6 I would say that across all the course of
7 all of these entities in south Florida, most of them
8 operate with some type of a parent corporation
9 subsidiary. So there are going to be some
10 individuals in the parent company that may have some
11 involvement, and when they do, they will get
12 licensed.

13 So that would be the case. Any individual
14 at the parent company that has any involvement in any
15 day-to-day activity at the Magic City Casino, they
16 will be licensed. And we've already -- separate and
17 apart from what you have here today, we've already
18 submitted a number of those individual license
19 occupations for them to ensure that they have the
20 requisite licensing in place.

21 COMMISSIONER BROWN: Okay. And in the
22 asset purchase agreement, there's a section that
23 references unlimited sovereign community, and that
24 was again prior to the PCI Gaming.

25 MR. LOCKWOOD: Uh-huh (affirmative).

1 COMMISSIONER BROWN: And then the bill of
2 sale (indiscernible) talks about that too. I just
3 want confirmation on the record that Gretna is not,
4 even though they are fully owned subsidiary of a
5 tribal related entity is not -- does not claim
6 sovereign immunity from our regulatory review as well.

7 MR. LOCKWOOD: That is correct. We will be
8 operating as a commercial operator in the state of
9 Florida, just as in any other commercial operator in
10 the state of Florida. That's correct. And that's
11 how they operate everywhere outside of Alabama.

12 The Alabama locations are travel
13 properties, and Florida, Pennsylvania, and the other
14 locations, they operate as a commercial operator. So
15 you would have full recourse against them if they
16 don't pay any taxes, things of that nature, license
17 fees. So --

18 COMMISSIONER BROWN: Can you talk a little
19 bit about the measures to protect the public interest
20 and ensuring slot revenues are received to the state?
21 You mentioned about being willing to provide all of
22 the credit facility information, which I think is
23 necessary.

24 MR. LOCKWOOD: Sure.

25 COMMISSIONER BROWN: But what other

1 additional measures just to protect public interest
2 beyond the revenue in the state.

3 MR. LOCKWOOD: So that's a question I
4 haven't seen yet from the Commission staff. So I can
5 tell you this, again, we're going to be operating
6 here as a commercial operator, not a tribal operator.
7 So we won't be claiming that we're, you know, immune
8 to any type of enforcement proceedings as far as tax
9 collections and things like that.

10 You know, I certainly could arrange a very
11 quick meeting with staff, or I could possibly bring
12 someone to talk, you know, more in depth about that.
13 I guess I would say that, you know, just that alone
14 references our intent as how we would be operating in
15 the state.

16 If there's anything specific I guess that
17 the Commission would have that felt like that was not
18 sufficient, then you know, we can certainly address
19 that as well.

20 So I guess I'm just not -- I'm not sure,
21 you know, at this point with the limited waiver of
22 sovereign immunity and how they would be operating
23 this as a, you know, Florida, LLC, how this would be
24 any different at that point from, you know, any other
25 operator.

26 And again our intent is certainly not to

1 claim any special treatment of that. Again, we're
2 not looking to operate, you know, any other way than,
3 you know, a regular Florida business that would be
4 operated by, you know, citizens of the state.

5 COMMISSIONER BROWN: Two more questions.

6 Okay. I'm --

7 MR. LOCKWOOD: Okay.

8 COMMISSIONER BROWN: -- sure -- I know you
9 were involved in one of the cases. It was either the
10 Big Easy asset purchase agreement with the most
11 recent ones that involved an asset purchase agreement
12 or it was -- that was the 2018 case for Dania
13 Entertainment.

14 MR. LOCKWOOD: I did represent Dania
15 Entertainment. Correct.

16 COMMISSIONER BROWN: Was there any
17 opposition at that time to the transaction from
18 interested parties?

19 MR. LOCKWOOD: So generally in these that
20 I've been involved in, we've seen records requests
21 things of that nature. But I mean, quite frankly, I
22 have never been a part of a transaction in Florida
23 where we've seen any type of organized opposition of
24 this.

25 I would say this, I mean, what's surprising

1 to me is that they're so concerned, the Seminole
2 Tribe being so concerned with this transaction, but
3 where were they in the Miami Jai Alai acquisition?
4 Where were they in the Big Easy acquisition? Where
5 were they in the Dania Entertainment acquisition? I
6 mean, those are all acquisitions, asset transfers
7 that were done under these same exact laws.

8 The only difference is: we don't have a
9 gaming Commission, but at the same time, the laws,
10 regulations, things of that nature, the rules,
11 they're all the exact same.

12 So we've certainly had no, you know,
13 opposition to any of these transactions. And the
14 only one being on the issuance of a permit had, quite
15 frankly, been the cases that Mark and I were involved
16 in regarding, ironically, Gretna where -- and
17 candidly, I mentioned this, I lost that case.

18 I mean, I thought that, you know, we would
19 be able to intervene in there and make some headway
20 and you know, unfortunately, we were not. And that's
21 the case law, that is -- that case was decided in --
22 you know, I don't know if it -- we argued that case
23 in this building as the DCA, but you know, it was
24 decided by the first DCA.

25 COMMISSIONER BROWN: Can you provide us

1 with what was the holding by the first DCA?

2 MR. LOCKWOOD: That a competitor in the
3 para-mutuel industry does not have standing to
4 intervene. And basically that's not a gaming
5 commission or a division of para-mutuel wagering
6 rule.

7 That's under chapter 120 under the
8 Administrative Procedures Act, which essentially
9 provides, unless there's a specific statute, right,
10 that gives an opportunity to a competitor to
11 intervening, then there is no right of entry into
12 those proceedings.

13 And so I would give you one, one in which
14 the greyhound permit relocation statute and the
15 Jai Alai permit relocation statute and 550.0554, they
16 provide an express right for certain affected permit
17 holders to challenge those proceedings, but there's
18 nothing of that nature here in this proceeding.

19 Quite frankly, the best they can do is do
20 what they do now and before the Commission and, you
21 know, complain, and here we are.

22 COMMISSIONER BROWN: They do have another
23 bite at the apple after the final Commission is
24 approved. There is an opportunity for them to
25 appeal.

1 MR. LOCKWOOD: Anybody could always file a
2 lawsuit. I'm just saying that the holding of that
3 case is that a competitor would not have standing to
4 challenge, you know, that. I mean, you know, you can
5 file a lawsuit for at any place, any time against
6 anyone, but at the end of the day, they simply don't
7 have standing to maintain that appeal.

8 COMMISSIONER BROWN: Okay. And finally,
9 just interpretation of the (indiscernible), the slot
10 license not being transferrable. Can you talk a
11 little bit about it? If you could just succinctly
12 summarize your view of the statute as opposed to
13 Mr. Dunbar's?

14 MR. LOCKWOOD: Well, you know, he reads a
15 lot into the statute as to what the intent was behind
16 that and holding people to stock transfers. But I
17 think that it would, you know, the Legislature,
18 that's what they intended was that this phrase here,
19 that a slot license is non-transferrable and that the
20 intent here was to freeze people in so they cannot
21 transfer assets and things of that nature. There
22 would be a lot more to that statute in that case.

23 So you know, quite frankly, there is no
24 legislative history as to what that means. You go
25 back and you look at the staff reports, you look at

1 the Commission hearings, there's nothing of that
2 nature.

3 But also there's nothing anywhere in these
4 -- you know, since this law has been around that ever
5 indicated that there could not be an asset transfer
6 in the slot machine facility transaction, and the
7 Legislature's presumed to know what's occurring, you
8 know, in the industry. And so since 2006, we've had
9 numerous asset transfers that have occurred, and
10 they've been very public.

11 And the Legislature has never taken issue
12 with that. They've never sought to clarify the law
13 and say, hey, look, we understand all of these asset
14 transfers are going on, and that's not what we
15 wanted; and we're going to come in and fix the law.

16 They could have done that in 2021; that is
17 not what they did. And so at this point in time,
18 they're presumed to understand how this -- the
19 predecessor agency has been operating and how this
20 Commission has been operating. And that an asset
21 transfer is, you know, totally acceptable.

22 And in this case, we're not going to
23 transfer the slot license. We're going to, you know,
24 apply for a new slot license under, you know, that
25 permit, which is qualified to hold a slot license.

1 COMMISSIONER BROWN: Thank you.

2 MR. TROMBETTA: Thank you, Commissioner
3 Brown

4 COMMISSIONER D'AQUILA: Earlier you made a
5 statement that PCI is prepared to close on the
6 transaction without the credit facility, if need be, has
7 the ability to do such. I don't recall reading that in
8 the documents submitted.

9 MR. LOCKWOOD: Well, so bear in mind when
10 we started this, you know, a lot of this has caught
11 up to us, right. Like we were thinking this
12 transaction was going to close in early December.
13 And at that point in time, in the asset purchase
14 agreement, there is no financing contingency, so the
15 deal can be closed, and it's not conditioned on any
16 closing at this point in time.

17 Now, we we're into February, a lot of this
18 revolving this credit agreement has come more into
19 focus at this point in time, so, you know, we will
20 likely be closing this at the same time at closing
21 with both of those.

22 So -- but the asset purchase agreement does
23 not have a condition of financing, which, if you
24 think about like a house of that nature, right. Like
25 by a house, I've got a financing contingency on this.

1 COMMISSIONER BROWN: Do you believe that
2 the Pennsylvania Gaming Control Board is a condition
3 to approval of this transaction?

4 MR. LOCKWOOD: A condition to approval.
5 So, one, I did not draft the asset purchase
6 agreement. I do not believe it is a --

7 COMMISSIONER BROWN: You don't take credit
8 of that?

9 MR. LOCKWOOD: I'd love to. Look, I mean,
10 it's a work of art, but I don't believe it's a
11 condition of closing. But because we operate at the
12 Sands Bethlehem former facility in Pennsylvania, a
13 condition of maintaining that very expensive asset in
14 good standing in Pennsylvania is to update them with
15 those documents.

16 And so we have Pennsylvania Gaming Council,
17 and my understanding is that has already been taken
18 care of at this point in time. I mean, there was
19 other things as related to the financing of, you
20 know, PCI operating with the National Indian Gaming
21 Commission, there was a process in which they had to
22 go through and submit those documents to the National
23 Indian Gaming Commission; that's been done as well.

24 So like I said, there's a lot of things
25 that move in the orbit outside of the traditional

1 asset purchase agreement, but we've complied with
2 those and are moving forward with those.

3 COMMISSIONER BROWN: Do any of those things
4 that you just mentioned, though, are not objected?
5 Does that affect transaction?

6 MR. LOCKWOOD: I don't believe so because,
7 I mean, I get like I said, if -- again, because there
8 is no financing contingency right. If something
9 happens to the financing, then there is no financing
10 contingency for this. So I don't believe there would
11 be any way for them to back out at this point.

12 VICE-CHAIR YAWORSKY: I just have one
13 question, it was mentioned and Commissioner Brown
14 asked a follow up question on it related to trade
15 secret (indiscernible) this document.

16 I believe that one of the thoughts that was
17 presented was that the Commission -- by prior speaker
18 was that the Commission should go forth and
19 potentially file that assertion as werre made by the
20 entity.

21 Are you aware of case law over the past
22 decade or so of any state agencies that have
23 attempted that? And if not, I'll simply ask --

24 MR. LOCKWOOD: My understanding with the
25 public records law, or if someone was to request

1 that, say, Seminole Tribe or, you know, a media
2 outlet and make a public records request for that
3 document -- I may be wrong; I'm no public record --
4 my understanding is that essentially --

5 VICE-CHAIR YAWORSKY: It's okay.

6 MR. LOCKWOOD: -- there would be,
7 potentially, a circuit court proceeding over the
8 validity of that assertion.

9 But I mean, look, we don't necessarily want
10 to get into any litigation mode. That's not our
11 intent. I mean, it is our desire that, you know,
12 this information we redacted stay redacted. But you
13 know, again, it's certainly not our intent to get
14 sideways with the Commission if this information is
15 being relevant.

16 VICE-CHAIR YAWORSKY: Okay. Anything else?
17 No questions.

18 So thank you very much, Mr. Lockwood.

19 MR. LOCKWOOD: Thank you.

20 VICE-CHAIR YAWORSKY: We're going to go
21 ahead -- and we're looking at the clock. It's 11:45.
22 This will be a very long day for us, so we are going
23 to go ahead and take an hour lunch, reconvening at
24 12:45.

25 And then at that point we'll hear from

1 Mr. Marshman and then have discussion with Commissioner
2 about this issue, one of the reason is following this
3 item we have, basically the entire page -- other
4 documents. We want to make sure that Commissioners and
5 everyone is rested and(indiscernible).

6 So we are adjourned until 12:45. Thank you
7 very much.

8 (RECESS TAKEN AT 12:45)

9 VICE-CHAIR YAWORSKY: Okay. We're going to
10 reconvene now. I hope everyone had a good, brief
11 lunch. Before we recognize our general counsel,
12 Ross Marshman, I'm go ahead and ask if there is --
13 though we have not received any. I think we
14 received one request for a presenter to present to
15 make comment remotely, but for another item, but I
16 want to make sure that there's no one on the stream
17 right now that wishes to comment on this particular
18 issue.

19 So if there is someone, if you would please
20 utilize the chat feature. State your name and who
21 you represent if anyone. And we'll just give it a
22 minute to see if anyone comes forward.

23 (No response)

24 I'm not seeing anyone. And when I said a
25 minute, probably substantially less than that.

1 Okay. Seeing none, Mr. Marshman, you're
2 recognized to comment, and then Commissioners will
3 (indiscernible) questions.

4 MR. MARSHMAN: Thank you, Mr. Vice-Chair.

5 The initial issue I would like to address
6 that was mentioned in public comment was the level
7 of arbitrariness that can be applied by a regulatory
8 body against the regulatory industry. In a vacuum,
9 it is correct that government regulators can treat
10 sin licenses or regulated industries differently.
11 There is a lower expectation of how the government
12 would ordinarily be allowed to treat them. So that
13 statement in and of itself is correct.

14 However, there is a limit to the
15 arbitrariness that can be applied in any situation,
16 and particularly, this one, and it's the letter of
17 the law. There are still due process concerns.
18 There's notice. There's an opportunity to be heard.
19 There's everything else that's in 550, 551, and 849
20 that applies to this situation.

21 So the general idea, the general concept
22 that we can treat permits, licenses, gamblers,
23 drinkers, the idea that we can treat them
24 differently doesn't mean that we can treat them
25 however we want and ignore the language of the

1 statutes. We have to confine ourselves with the
2 state of the law now, as the regulators making a
3 decision now as it stands.

4 And that leads to just what the law is and
5 what it says. It was suggested that there's a
6 provision in 550 that would allow the Commission to
7 require of an applicant anything and without prior
8 notice, without an opportunity for them to be heard,
9 without adopting that prior rule. And that cannot
10 be so. It's the limits of that arbitrariness that I
11 mentioned. It's due process.

12 Just because there's a statute that says
13 that you can require something doesn't give you
14 carte blanche to then ignore the rest of the
15 protections that are afforded to a licensee. You
16 cannot act arbitrarily in that way. You cannot
17 ignore the other process in say Chapter 120 for the
18 adoption of rulemaking.

19 So that isn't a mechanism for the
20 Commission to begin an ad hoc inquiry for this
21 application, for any other application, to come up
22 with requirements on the fly and subject the
23 applicant, unwittingly, unknowingly, to these new
24 requirements. That is the limit, and it applies
25 here and it will apply in every other decision that

1 the Commission makes today and in the future.

2 The language of the law itself.

3 550.054(12) describes, and permits, and authorizes
4 changes of ownership of permits. 551.104(4)
5 describes changes of ownerships of slot machine
6 gaming licenses. It is true that other portions of
7 the statute describe the conditions in which a
8 transfer is or is not allowed. And let's start with
9 the more blanket restriction in 551.104(5). "Slot
10 machine gaming license is not transferrable."

11 Well, as I lay out in the memo, the
12 legislature chooses words for a reason, we have to
13 presume that. And we can't assume that the
14 legislature would use two different words, two
15 different terms to describe the same thing. So if
16 they're talking about a transfer in one scenario but
17 a change of ownership in another, that means they
18 are different things being contemplated by the law.

19 So if there is an express permission for
20 these items, the license, the permit to change hands
21 to be bought and sold, then that's not a transfer,
22 that's a change of ownership, as permitted in 550
23 and 551. An analysis of this issue just cannot
24 ignore those provisions. We cannot rely on language
25 describing or prohibiting transfers. You have to

1 read everything.

2 That's not using one definition from one
3 statute against another definition, that is just
4 reading it as it's laid out within each section
5 even. I'm not trying to compare transfer of one
6 statute to transfer in another. I'm looking at
7 transfer within 550, transfer within 551, and then
8 transfer within 849. I'm not, in effect,
9 crosspollinating what 849's definition of transfer
10 means and putting that into 550. I'm just looking
11 at the language of 550 and comparing it to the same
12 language later in the section, which I think the
13 Commission is required to do.

14 I want to underscore just the importance of
15 a conditional final order here. I think all of the
16 public comment and the comment provided by the
17 applicant's counsel has emphasized that this is a
18 complex transaction. We have received numerous
19 documents. And pursuant to the asset purchase
20 agreement itself which spans hundreds of pages, some
21 of those terms may change. Some of the deliverables
22 might be modified, they might be changed.

23 I'm not recommending that the Commission
24 approve any deal, I'm recommending that the
25 Commission enter a conditional final order that the

1 deal as described, if it happens as described, can
2 be approved. But we have to actually see evidence
3 that what has been described actually takes place.
4 You know, it's not just the deed of a vehicle. You
5 know, that's ancillary. It's everything else, the
6 core of this agreement.

7 You know, who is the actual purchaser here?
8 Who is the purchaser? Who is writing the check?
9 Those are the things that matter and we're going to
10 receive proof of all of this and then staff will go
11 through it, and we will come back before you and
12 represent to you, yes, this matches the agreement
13 that we previously discussed and I recommended that
14 you conditionally approve, or no, it doesn't. And
15 then we'll have to discuss, if there are changes,
16 what that means for the Commission to do that.

17 But that's why the conditional final order
18 matters. If there are changes to this, if there are
19 additional documents, a conditional final order does
20 not preclude you all from having us look at that and
21 then recommend to you, is this deal still good or
22 not? Did things actually happen the way they have
23 been represented?

24 There are a lot of moving parts, as we've
25 heard, repeatedly. There's many materials that

1 you've reviewed, and we've reviewed. This is a
2 large undertaking to be done. But if it is done the
3 way it appears it can be, then I don't think my
4 recommendation would change. It's permissible.

5 The issue of trade secret public records
6 was brought up. I can touch on that briefly. I
7 think Vice-Chair Yaworsky already started saying
8 what I was going to say anyway which is the Gaming
9 Control Commission is not the arbiter of what is or
10 is not a trade secret. If the Commission or any
11 government agency receives a claim of trade secret,
12 we must honor that. And if there is specific
13 request for something that has been marked as trade
14 secret, then we as the Commission would have to then
15 notify the claimant saying, "Hey, that's a trade
16 secret." We have to basically tell them, "Hey,
17 unless you sue us in court, unless you move to
18 enjoin us from releasing this information, we are
19 obligated under public records laws to reveal that
20 information."

21 So a court of the proper jurisdiction, most
22 likely circuit court, will be able to tell the
23 Commission whether or not any of the material that
24 has been marked by the applicant as trade secret is
25 in fact trade secret. But until then, we have to

1 take their representations as true, and until a
2 court tells us otherwise, there's nothing else we
3 can do about it.

4 That's really the comments that I prepared
5 but I'm prepared to address any other questions or
6 concerns the Commission has. And if you would like
7 me to reiterate anything that I've already reduced
8 to writing in the memorandum, I can, but I know time
9 is precious, so Mr. Vice-Chair, I look to you on how
10 to proceed.

11 VICE-CHAIR YAWORSKY: Commissioners, any
12 questions?

13 Commissioner Brown.

14 COMMISSIONER BROWN: Thank you. Thank you.
15 And Ross, thank you for the time you've spent on
16 this and the amount of briefings we've all had with
17 you. I appreciate and respect your legal opinion as
18 I do the other folks that have appeared before us
19 today, as well.

20 But I did want you to touch on the lease
21 agreement. And you do touch on it in the memo in
22 the footnote, but could you elaborate why you don't
23 think that approval of this agreement without more
24 details on the lease is not a condition precedent.

25 MR. MARSHMAN: So the lease itself does

1 pose an issue for the Commission to consider. I
2 don't disagree with any of the comments we've
3 received about that so far. And I would also note
4 that if there's any discrepancy between what was
5 presented today versus what the materials actually
6 reflect regarding how the lease is written, that
7 just underscores the importance of why I'm asking
8 you to do a conditional final order. Because if
9 representations here actually reflect reality of the
10 deal and we see that in writing later, then that's
11 something that we can point out for you.

12 But again, going to why I don't think it
13 matters right now. There is no pari-mutuel wagering
14 activity taking place of the lease facility by way
15 of the lease agreement between Gretna Racing and
16 West Flagler. It doesn't exist. And we're not
17 being asked pursuant to its petition for declaratory
18 statement to opine about future activity. We're
19 looking at an asset purchase agreement that has
20 within it a lease. And the asset purchase agreement
21 does require that a lease be part of the items due
22 at closing, but there are also provisions in the
23 asset purchase agreement that can leave room for
24 when these documents are actually necessary.

25 So in my opinion, the proper time, the

1 proper place for the Commission to consider the
2 legality of the lease is when we have, one, an
3 actual lease, and two, when we know that pari-mutuel
4 wagering activity is going to be taking place at a
5 leased facility. And then it will be important to
6 know who is the lessor and who is the lessee. What
7 are the terms and conditions of the lease?
8 Everything like that. I think that there are
9 statutory restrictions on who can lease to other
10 people and that might not apply the same way on from
11 who you can lease. I see the restrictions on the
12 lessor and not the lessee.

13 But again, all of that is to say, it's not
14 at issue yet. It's not ripe. Because nothing is
15 actually before you to say definitively these are
16 the terms of the lease, this is the duration of the
17 lease, and these are the parties of the lease. So
18 until we have that before us, I don't believe it's
19 ripe.

20 COMMISSIONER BROWN: Okay. Thank you. And
21 then with regard to the completion of the documents
22 as presented to us at this juncture, has it been
23 customary in prior transactions to have a condition
24 -- if a conditional approval is issued, not all the
25 documents are fully complete until after closing?

1 MR. MARSHMAN: Yes. In revising the
2 previous transactions that the Division of
3 Pari-mutuel Wagering approved or was asked to
4 approve, conditional final orders were issued.

5 COMMISSIONER BROWN: I saw that and I
6 looked up two of them and I can appreciate the Big
7 Easy one and then Dania, those two cases, and they
8 seem to be very similar and on point. Would you
9 agree?

10 MR. MARSHMAN: There are certain
11 similarities between the arrangements in those cases
12 to this one. Yes.

13 COMMISSIONER BROWN: I mean, it's not
14 nearly the magnitude of this case. Mr. Dunbar
15 talked about, he opened his comments on regulatory
16 best practices and then he cited the statute 16.712
17 Creating the Gaming Commission. Particularly
18 reviewing the procedures of the Commission which are
19 used to qualify applicants applying for a license,
20 permit, or registration. We are doing that right
21 here today. We have been doing that.

22 MR. MARSHMAN: Yes. And I think the
23 legislature may have contemplated us doing that
24 outside of the confines of an application for
25 licensure and transfer of a permit or an acquisition

1 of a permit. Again, this goes back to the limit of
2 arbitrariness, the limit of our regulatory power.
3 We have to always stay within the confines of the
4 law at the time, the confines of the rule at the
5 time.

6 We cannot use this application as, I guess
7 justification to ignore the way the law is written
8 or ignore the way our rules currently stand. So
9 yes, the legislature has asked us to substantively
10 review the materials you pointed out but we can't do
11 that in this way and subject an applicant, or any
12 applicant to a set of requirements that it doesn't
13 know about.

14 VICE-CHAIR YAWORSKY: To that point, if I'm
15 correct in my reading of this, the legislature did
16 not authorize or direct any kind of a holding period
17 or put any other matters in place that would have
18 effectively paused the current regulatory framework
19 and the Commission's enforcement of it to facilitate
20 that review.

21 MR. MARSHMAN: I agree with that. Yes,
22 Mr. Vice-Chairman. There's provisions in Section
23 120.60(1) that put timelines on the consideration of
24 applications such as these and there is no provision
25 that they are waived or enlarged pursuant to the

1 legislature's directive for us to substantively
2 review our process and make recommendations to the
3 legislature.

4 COMMISSIONER BROWN: But my
5 understanding --

6 Thank you, Mr. Vice-Chair. That is a great
7 thing to point out too and I appreciate that.

8 My understanding is we are going to be
9 starting rulemaking. We are going to be enacting.
10 We have a lot of things on our plate right now and
11 this may be an area, maybe not immediate, but
12 shortly down the road that your office is looking at
13 as well.

14 MR. MARSHMAN: Yes, ma'am. That's
15 correct. I mean, we are starting the processes. As
16 Director Trombetta indicated, we want to begin
17 rulemaking. We want to begin the substantive
18 review. But it's still important to realize the
19 limit on the Commission's ability to act and to
20 regulate. That lies with the statutes and the
21 statutes can be changed by the legislature.

22 So to the extent anything today has been
23 brought up that could be an issue, the Commission
24 cannot solve that if the problem lies with the
25 language of the statute. You know, we follow the

1 law as it is written. The legislature can change
2 the law, they can tell us exactly what they mean by
3 changing the law. In the meantime, we're confined
4 with the language of the law as it is written now,
5 today.

6 COMMISSIONER BROWN: I agree. Thank you.

7 VICE-CHAIR YAWORSKY: Further questions.
8 Commissioner D'Aquila?

9 COMMISSIONER D'AQUILA: No.

10 VICE-CHAIR YAWORSKY: Commissioner Drago?

11 COMMISSIONER DRAGO: It's been brought up
12 about whether or not -- or who the lenders are, the
13 financing is for Gretna Racing, whether or not their
14 viable or whether or not the financial backing is
15 viable. Is that something that we should be
16 considering in this? Is that something we have the
17 authority to consider and how would we do that?

18 MR. MARSHMAN: So the type of qualitative
19 or quantitative analysis that has been suggested,
20 the condition exercise for transactions like this,
21 they may be desirable and they may be best
22 practices. But addressing the second part of your
23 question, Commissioner Drago, there is no --
24 currently, there is not express granted statutory
25 authority for us to hold a credit agreement to a

1 certain set of standards and say, "You failed to
2 meet these marks, therefore, this agreement cannot
3 proceed." Because there is none.

4 There's no statute or rule that says this
5 is what an acceptable credit agreement looks like.
6 This is what an acceptable anything looks like. For
7 terms of the credit agreement, the mortgage, things
8 like that, the bill of sale, the intellectual
9 property agreement. All of these attachments. They
10 can each be attacked and say well, there's no way
11 that we can approve this because it's not the best
12 way this intellectual property agreement can be
13 written.

14 Again, we are bound by the law, we're bound
15 by rules as they stand now. So while it may be
16 desirable with best practices in the future, the law
17 can be developed, but the law can be developed by
18 the legislature. We cannot expand beyond the scope
19 of what the law is.

20 COMMISSIONER DRAGO: And I guess the short
21 of it is, have we done all our due diligence in this
22 process to the point we are at today? Are you
23 confident that we've done all our due diligence in
24 every respect to make sure that we can make a sound
25 decision today?

1 MR. MARSHMAN: Within the confines of the
2 Commission's existing authority to exercise the type
3 of due diligence the legislature contemplated, yes.
4 At this moment, we have done what the statutes, what
5 our rules say we have to do and must do.

6 COMMISSIONER D'AQUILA: Earlier the comment
7 was made in comparison to another state,
8 specifically, Pennsylvania. And then the comment
9 was driven home to what the legislature intended
10 when they created the condition and so forth. It's
11 clear we cannot find that in the statutes. Does
12 that have any relevance here, in your opinion?
13 Where does that come about? Is that interpreted
14 from the statutes? I'm trying to understand the
15 earlier point from your perspective.

16 MR. MARSHMAN: So legislative intent is
17 the pull star that guides the interpretation of the
18 law. But the best evidence we have of legislative
19 intent is the language of the statute themselves.
20 The legislature says what they mean and mean what
21 they say. They choose their words carefully. And
22 as speakers have already noted, they are presumed to
23 know what's going on industries such as this. So
24 when they write a statute, we have to presume that
25 they know exactly what's going on and what they

1 write, that's their legislative intent.

2 What Pennsylvania does, you know, we would
3 have to compare whatever Pennsylvania does to what
4 Florida law allows and what Florida law
5 contemplates. It appears from this transaction that
6 Pennsylvania may have some say in this agreement and
7 that may or may not play out and we may see that
8 reflected in the materials we get later. But we're
9 only going to be able to review that and compare it
10 to Florida law, 550, 551, 849. It would be very
11 difficult to hold a Florida applicant to
12 Pennsylvania law if there is not there is some
13 Florida law expressly incorporated in other
14 jurisdictions' restriction, or license requirement.

15 COMMISSIONER D'AQUILA: Thank you.

16 VICE-CHAIR YAWORSKY: Further questions?

17 (No response)

18 Just one. This is a broader question but I
19 am curious about it, to the extent you're
20 experienced in it. Rulemaking, for example, can be
21 a lengthy process. It requires a lot of
22 stakeholders and other interests to be intertwined.
23 And when it comes to rulemaking timeline, would the
24 history with PMW be -- on a strip kind of on a wage
25 and average between quickest to be able to

1 promulgate a rule and the longest to be able to
2 promulgate a rule, where would you think that PMW
3 would lie? If you can answer that.

4 Or just give an example of -- if that's too
5 chronological information, maybe an example of how
6 long a more controversial rule may take to work
7 through, if you know.

8 MR. MARSHMAN: I don't think that the
9 pari-mutuel wagering rule process would be as
10 contentious as let's say the alcoholic beverage
11 industry, which I'm also familiar with. I think
12 that rulemaking that began in my tenor at DBPR is
13 still ongoing.

14 So comparing it to that, there are many
15 people aligned behind me that will have an interest
16 in what the rules are. There are many people
17 listening and watching and they'll be told later
18 what the Commission is doing and how they're going
19 to start rulemaking.

20 So I don't know if the type of rulemaking
21 that Director Trombetta envisions and what the
22 legislature has asked us to do has been done before.
23 I don't know if there's been a substantial rewrite,
24 let's say, of pari-mutuel wagering rules, even the
25 slots rules, since a long time ago. So it's

1 difficult for me to anticipate the length of time
2 it would take.

3 But I can say that there will be ample
4 opportunity for shareholders, stakeholders,
5 interested parties to provide feedback and that the
6 Commission would do well to listen to the feedback
7 from the industry because they know their industry
8 well and they can help us with the rulemaking
9 process.

10 VICE-CHAIR YAWORSKY: I think that's it for
11 questions.

12 COMMISSIONER D'AQUILA: A clarification.

13 VICE-CHAIR YAWORSKY: Yes.

14 COMMISSIONER D'AQUILA: I just want to be
15 clear, the -- following up on Commissioner Brown's
16 point, the lease matter, there's not anything there
17 that prohibits this transaction. It's a separate
18 ancillary issue as I understand you. Correct?

19 MR. MARSHMAN: That's correct. And the
20 conditional order that I would advise you to enter
21 would not approve of the legality of a proposed
22 lease that's attached to an asset purchase
23 agreement. It's focused on the agreement. The
24 lease, again, is something that will be subject to

1 regulatory scrutiny at the proper time if the
2 Commission approves the transaction, if the lease
3 actually goes through as described. Again, there's
4 just a lot of predicates there that haven't really
5 occurred yet for us, I think, to analyze that fully.

6 COMMISSIONER D'AQUILA: Thank you for that
7 clarification.

8 VICE-CHAIR YAWORSKY: Okay. Thank you very
9 much, Mr. Marshman.

10 Is there any discussion now? Starting with
11 any -- starting with Commissioner Brown.

12 COMMISSIONER BROWN: Well, on that, again,
13 a lot of time and energy has gone into this, and I
14 think our staff has done a really fine job analyzing
15 it and scrutinizing it, making sure that the
16 requisite documents are in the record. You know,
17 our job here is to uphold the correct laws that are
18 in the statute and to enforce them.

19 And based on the evidence, I think the most
20 compelling factors to me are the prior cases that
21 have supported this very type of transaction and
22 have interpreted the statutes and rules and have
23 allowed this type of action to proceed. And I think
24 that the purchaser is making every effort to fulfill
25 the needs of the Commission staff to carry out and

1 so that we have enough information so that this is
2 a sound decision and it's based on sound law and 1
3 policies, so I would support this application.

4 VICE-CHAIR YAWORSKY: Any other
5 Commissioners wish to (indiscernible)?

6 COMMISSIONER DRAGO: As we have spoken
7 about many times here, we are tasked with the
8 balance of protecting the integrity of the industry
9 for benefit of everyone in the state, and also to
10 get out of the way of business and make it as easy
11 as possible for legitimate business to succeed in
12 this state.

13 We've been going over this, as everyone
14 knows, for months. We've been back and forth on all
15 these different issues. I've been schooled on a lot
16 in those few months about this. I feel comfortable
17 with the recommendations that are coming from the
18 staff. I believe that the applicant has met the
19 conditions and the requirements set by law. I think
20 they are qualified to hold the permit, as well as
21 its paired licenses. And think they presented a
22 permissible acquisition proposal.

23 So having said that, I think that I believe
24 we should accept the recommendation of staff and
25 approve the sale.

1 VICE-CHAIR YAWORSKY: Commissioner
2 D'Aquila, any comments?

3 COMMISSIONER D'AQUILA: It's always
4 interesting to go last.

5 Some of the factors that I think are
6 important: quality of the purchaser; the great
7 effort that's been put in; the intent of the
8 parties; and the quality of the expenditure of
9 professional resources to get to the right answer, I
10 think are important. I think -- not taking anything
11 away from the state of Pennsylvania, I think as
12 earlier mentioned, in the spirit of commerce and
13 what the state is, it seems that this transaction is
14 a good transaction.

15 I also recognize that no transaction I've
16 ever seen, and I've seen quite a few, is ever 100
17 percent organized and addressed. That's not
18 reality. But I think it's adhering to the statutes,
19 and I believe that we should proceed as the staff
20 has suggested and approve this transaction
21 conditionally and with the other conditions as
22 mentioned in previous discussion. So I say we vote.

23 VICE-CHAIR YAWORSKY: So I'll just make
24 a few comments and I'll accept a motion if there is
25 one. But throughout this process, I agree with all

1 of the Commissioners that staff has done a great job,
2 the stakeholders have done a great job of presenting
3 various arguments to us.

4 One of the -- we touched on this briefly
5 here and there about where the law is and how it
6 stands now, and the fact that decisions must be made
7 off of the legal interpretation of where we are
8 today. It might -- maybe not surprise folks that,
9 in spirit I am very much so, at least in spirit,
10 agree with some of Mr. Dunbar's comments and that
11 this is not a perfect process. That there is
12 clearly legislative intent for the Commission to
13 overhaul that process and to bring about what I hope
14 would ultimately be a great bit of verification
15 working with the legislature, stakeholders, any
16 other parties, and the public to bring about some
17 more finality and certainty in the laws that govern
18 this space.

19 And I would hope throughout that process
20 that owners and anyone interested would join in
21 that. And that it comes to be recognized that the
22 Commission will work in good faith with anybody who
23 is working in good faith with us. And at least,
24 while there may be disagreements along the way, it
25 doesn't mean that it is anything other than people

1 following what they believe is in their best
2 interest and working together to bring about some
3 evolution in this industry space and the regulation
4 on it.

5 I think that that is perhaps, stepping
6 back, something that is kind of an overarching theme
7 in all of this. And I think the Commission has more
8 to do in that space, as well. I think that one of
9 the reasons that I view the upcoming meeting in May
10 as a milestone -- April or May, as a milestone
11 moment for the Commission where we finally have the
12 resources to take on things like rulemaking,
13 receiving meaningful input on things that need
14 change, things that need to change, public comments
15 in that space. I think it's a moment for us to step
16 away from the business that's going on currently and
17 take a real sound look at the future.

18 And I think that it's important that, as
19 everyone recognized -- and I think everyone has
20 because as we've had all these discussions
21 throughout this record meeting, there is hope and
22 fear that sort of arrives with what the Commission
23 is going to do. And I think that the best way the
24 Commission can approach that is through an honest
25 and transparent process that I think will probably

1 span years by the time it's all over. There's a lot
2 of stuff to go through.

3 But we're going to be a regulator but we're
4 also going to work with all of the parties involved
5 as we move along. So with that, if there is a
6 motion, I'll take, and we can proceed.

7 Commission D'Aquila.

8 COMMISSIONER D'AQUILA: Make a motion to
9 approve the transaction, conditionally, as
10 previously described.

11 VICE-CHAIR YAWORSKY: Is there a second on
12 that?

13 COMMISSIONER DRAGO: Second.

14 VICE-CHAIR YAWORSKY: And Mr. Marshman,
15 would that be a condition on any recommended timing
16 period or --

17 MR. MARSHMAN: I would suggest that the
18 Commission set a time limit on the conditional order
19 and that it expires at a certain point if we haven't
20 been provided evidence that this transaction has
21 been completed. I would suggest perhaps a 30-day
22 conditional order, but applicant's counsel is here,
23 as well. I mean, he may have a different conception
24 of time or he may know something that I don't about
25 the details of the closing.

1 But I would also, regardless of the time, I
2 would make it a condition within however many days
3 of closing the Commission wants that they disclose
4 those perfected closing materials to the Commission,
5 so that we can review it. So say we allow them 30
6 days to close, 5 days after closing, the Commission
7 would want to receive all of the documents that were
8 executed, the actual closing materials, so that
9 staff can review that. I would add those two
10 provisos to my recommendation.

11 VICE-CHAIR YAWORSKY: Are you willing to
12 amend your motion to that end?

13 COMMISSIONER D'AQUILA: I would amend the
14 motion as Mr. Marshman is saying.

15 MR. MARSHMAN: And I think just out of an
16 abundance of caution, I mean, Mr. Lockwood, is 30
17 days sufficient time?

18 MR. LOCKWOOD: Thirty days from the
19 written conditional approval should be more than
20 sufficient. And as far as a time to provide, I
21 would say, you know, maybe five business days. I
22 don't think we'll need that many but again, this is
23 a lot of documents, so we'll certainly them in as
24 soon as possible upon closing.

25 VICE-CHAIR YAWORSKY: Okay. Thank you.

1 Is there a second to that motion?

2 COMMISSIONER DRAGO: Second.

3 VICE-CHAIR YAWORSKY: All those in favor?

4 (Unanimous ayes)

5 Hearing no noes. So that motion will be
6 approved.

7 Moving on to item number -- to 3.1 Ramsey
8 (indiscernible).

9 MS. ALVARADO: Good
10 afternoon. This is Emily Alvarado for the record.
11 Item 3.1 is Ramsey Zimmerman versus FGCC in Case
12 Number 2022-05909.

13 VICE-CHAIR YAWORSKY: Emily, let's give you
14 a microphone -- thank you.

15 MR. MARSHMAN: Mr. Vice-Chair, if I may,
16 there is a speaker, Tom Gittio (phonetic), that
17 wants to make public comment regarding this.
18 Because there's a lag between technology and having
19 him actually pulled up, I would respectfully
20 recommend that we just wait a few moments, so that
21 we can confirm that the public commenter can hear
22 what's being said about this, and then he's ready to
23 provide comment at the end of that.

24 VICE-CHAIR YAWORSKY: You would recommend
25 that we do that now?

1 MR. MARSHMAN: Yes, sir. I understand
2 Mr. Romanick isn't here. We're just trying to get
3 him pulled up, so that he can confirm that he's
4 hearing this; he can see you; you can see him.

5 VICE-CHAIR YAWORSKY: Okay. Very well.
6 We'll do that.

7 MR. MARSHMAN: Thank you.

8 (Pause)

9 VICE-CHAIR YAWORSKY: Mr. Romanick are you
10 able to hear us?

11 MR. ROMANIK: I am.

12 VICE-CHAIR YAWORSKY: Okay. Great.

13 Ms. Alvarado, if you can continue, please.

14 MS. ALVARADO: Okay. So
15 this is item 3.1, Ramsey Zimmerman versus FGCC in
16 Case Number 2022-015909.

17 This case comes before you following a
18 recommended order that was issued by the hearing
19 officer on January 31, 2022. The informal hearing
20 was conducted on November 16, 2022, regarding the
21 notice of intent to deny Mr. Zimmerman's pari-mutuel
22 wagering professional individual occupational
23 license that was issued on June 24, 2022.

24 The denial was based upon the applicant's
25 felony offenses which consisted of two grand theft

1 convictions for 2019 and 2018.

2 At the hearing, the applicant provided one
3 -- prior to the hearing, the applicant provided one
4 character witness letter, and at the hearing, the
5 applicant was present and provided one witness.
6 Therefore, the division would ask that the hearing
7 officer -- sorry, that the Commission adopt the
8 hearing officer's recommended order denying the
9 applicant's pari-mutuel wagering professional
10 individual occupational license.

11 VICE-CHAIR YAWORSKY: Any initial
12 questions?

13 (No response)

14 Seeing none.

15 Mr. Romanick, you are recognized.

16 MR. ROMANIK: Thank you very much. Good
17 afternoon. Can you hear me okay?

18 VICE-CHAIR YAWORSKY: Yes.

19 MR. ROMANIK: All right. Because my
20 video is messing up at the moment. But that
21 probably doesn't matter. My name is David Romanick.
22 I've been a member of the Florida bar since 1976.
23 I've practiced pari-mutuel wagering law since that
24 time. My address is 2355 Southeast 5th Street,
25 Ocala, Florida. And I represented Ramsey Zimmerman,

1 who was seeking a felony waiver, so that he could
2 restart his career as a thoroughbred racehorse
3 jockey.

4 I trust that the members of the Commission
5 have been provided with the exceptions that I filed
6 on January the 2nd, to which I attached three prior
7 decisions of the Division of Pari-mutuel Wagering in
8 other felony waiver cases involving jockeys and
9 exercise riders. And those were the decisions in
10 Tyler Gaffalione, Macey La Pala (phonetic), and
11 Nicholas Juarez.

12 Now, as I referenced in my pleading,
13 Section 120.68(7)(e) of the Florida statutes is
14 applicable to appellate court review of
15 administrative agency decisions. It provides as
16 follows: the court shall remand the case through the
17 agency for further proceedings, consistent with the
18 court's decision, or set that aside agency action as
19 appropriate when it finds that the agency's exercise
20 of discretion was inconsistent with officially
21 stated agency policy, or prior agency practice, if
22 deviation therefrom is not explained by the agency."

23 Now, this statutory provision conforms with
24 the principle of administrative (indiscernible),
25 which is what I mentioned in the exceptions that I

1 filed. And that principle calls for like cases to
2 be treated alike and in a manner consistent with
3 prior decisions, unless the deviation from prior
4 precedent is satisfactorily explained by the agency.

5 As a lawyer, from my standpoint, all I can
6 ever ask for from an agency, or a hearing officer,
7 or for a judge, is to follow the law. And since
8 that wasn't done here, that's the reason that I'm
9 making this presentation today.

10 With regard to felony waivers for jockeys
11 and exercise riders, the agency's policy and prior
12 agency practice can be found within the three
13 decisions that I attached to my pleading, which is
14 Gaffalione, La Pala, and Juarez. Now, Gaffalione
15 involved felony battery. La Pala involved felony
16 battery on a police officer. And Juarez involved
17 armed robbery which resulted in a one year stay in a
18 penitentiary.

19 In Gaffalione and La Pala, each was granted
20 a waiver one year following their conviction. And
21 in Juarez, he was granted a waiver five years later.
22 The hearing officer took judicial notice of those
23 three decisions as well as other decisions that were
24 submitted at the hearing.

25 And by the way, with regard to the La Pala

1 case, I represented the applicant in that case, and
2 Mr. Trombetta, then a lawyer with the Division of
3 Pari-mutuel Wagering, represented the division. And
4 I just checked my file last night to make sure my
5 recollection was correct, but I never had to file a
6 proposed recommended order in the La Pala case
7 because the division's recommended order prepared by
8 Mr. Trombetta recommended that the hearing officer
9 grant La Pala's waiver request despite that her
10 conviction was only one year prior to the time that
11 the waiver was granted.

12 Now, that tells me two things. First, one
13 year can be long enough, and secondly, the denial
14 recommended in the recommended order did not happen
15 because I don't know how to present a winning felony
16 waiver case. In as much as I presented this case
17 exactly the same way I presented La Pala. The only
18 difference here is we were four or five years after
19 the fact here as opposed to one year in La Pala.

20 So during the hearing that happened,
21 Ms. Alvarado presented no evidence for the purpose
22 of explaining why the Commission believed that the
23 facts and circumstances in Zimmerman's case were
24 distinguishable from the facts and circumstances in
25 Gaffalione or La Pala or Juarez, so as to disqualify

1 Zimmerman from being treated exactly the same way
2 that those three applicants were treated.

3 Similarly, in the proposed recommended
4 order that Ms. Alvarado filed, it was silent with
5 regard to any argument that Zimmerman should be
6 treated differently and more harshly than
7 Gaffalione, La Pala, or Juarez were treated.

8 Now, when the recommended order was issued,
9 there were two reasons given why this application
10 was denied. First was the felony convictions are
11 serious crimes. Well, let's stop with that one. So
12 if we look at Gaffalione, La Pala, and Juarez,
13 weren't they all serious crimes also? Felony
14 battery, felony battery on a police officer, and
15 armed robbery. Yet, there was no attempt made in
16 the recommended order to distinguish this case from
17 those cases to explain why auto theft under the
18 weird circumstances that are described on the
19 recommended order was more serious than these other
20 crimes that involved physical injuries to other
21 people or involving a weapon.

22 The next reason was that the convictions
23 occurred only a few years ago. Well, I wouldn't --
24 you know, three, or four, or five years ago I'm not
25 sure was a few years ago, but again, no attempt was

1 made to distinguish Gaffalione and La Pala which
2 only required a one year waiting period, and Juarez
3 which was five years. But again, that was after he
4 went to the federal penitentiary and was convicted
5 of armed robbery.

6 The recommended order also says it's
7 difficult for an applicant to prove rehabilitation
8 from such serious convictions in a short period of
9 time. Well, I completely agree that proving or
10 disproving a negative is almost impossible. But
11 when it's tied to a period of time, again, there was
12 no attempt made to distinguish the other three cases
13 because this time frame is all consistent with
14 those, and in fact is longer than Gaffalione or La
15 Pala.

16 So there's actually very little case law,
17 you know, regarding this area, but there is one case
18 that I would like to bring to the attention of the
19 Commission, and that's the case of Courts versus ACA
20 965 Southern 2nd 154. It's a First District Court
21 decision of 2007. And that addressed a similar
22 situation from a final order, not from a recommended
23 order. But today, you're being asked to adopt this
24 recommended order as your final order, so that -- if
25 you do that, then all of the deficiencies in the
26 recommended order become deficiencies in the final

1 order.

2 So in the Court's case, ACA denied a
3 Medicare recipient benefit that ACA had previously
4 approved for that recipient and brothers. With ACA
5 knowingly changing its existing nonruled policy, it
6 did so without adequate explanation for the change
7 in its final order and without the adoption of a
8 rule. In reversing the denial of the benefit, the
9 court said a few things.

10 First, when an agency changes its standards
11 with regard to a particular person without
12 explaining the reason for the change, such activity
13 gives the appearance of a decision being made on the
14 whim of a bureaucrat.

15 Second, an agencies failure to explicate
16 its new non-rule policy at the hearing is even more
17 egregious when the agency changes the application of
18 its policy to a particular case.

19 And third, because ACA's policy change was
20 made to this particular recipient without rulemaking
21 and without an explanation of the new policy during
22 the hearing process, the policy change was made
23 contrary to law and cannot stand.

24 So we have the exact same situation here.
25 At the hearing no attempt was made to distinguish

1 this case from those other three cases in explaining
2 why this circumstance was more serious or why one
3 year was okay for Gaffalione or La Pala but not for
4 Zimmerman, or why five years was okay for Juarez but
5 not for Zimmerman.

6 Similarly, when the recommended order was
7 issued, there was no attempt to distinguish those
8 other three cases from this case. Even though I
9 read to you the fact that the reasons that were
10 cited were contrary to the decisions in those three
11 cases. And I suggest to you the reason there was no
12 attempt to distinguish, because the hearing officer,
13 Ms. Stinson, is a very good lawyer and she knows
14 that she was required to distinguish these things in
15 order to make her order valid, she didn't even
16 attempt to do it because they're indistinguishable.
17 So she just ignored that whole provision in 120.68
18 that requires an explanation when there's a
19 deviation from established agency policy, which we
20 have through Gaffalione, La Pala, and Juarez.

21 So my position here is that this Commission
22 has the authority to grant Mr. Zimmerman his
23 license. Or you have the authority to remand this
24 back to the hearing officer and requiring the
25 hearing officer to follow the law and to explain the

1 deviation from those three decisions as applied to
2 this case, so as to disqualify Zimmerman from
3 receiving the same treatment that the three
4 applicants in Gaffalione, La Pala, and Juarez
5 received.

6 Now, I'm happy to answer any questions that
7 the Commission may have. And I will point out, by
8 the way, that Gaffalione's approval -- and you know,
9 I think you kind of have to look -- some of these
10 things you have to kind of look at historical
11 perspective. Gaffalione had a conditional
12 probational order. He hasn't violated it and he's
13 one of the top five jockeys in America now because
14 he was given a second chance. La Pala hasn't had
15 any issues and Juarez hasn't had any issues. And
16 really, the only way you can show rehabilitation in
17 this field is to go out and do it and show that
18 you're not going to violate the law.

19 Now, you've seen the presentation that I
20 made. It's voluminous. People don't go through
21 this whole waiver process with the intention of now
22 doing the same stuff that got them in trouble in the
23 first place. And La Pala, Gaffalione, and Juarez
24 are all proof of that. These people were given a
25 second chance and they haven't violated it. And I'm

1 asking for the same thing for Ramsey Zimmerman.

2 Now, he is riding again. He was licensed
3 in Arkansas. And in fact, he won his first race
4 back after not racing since 2017. And his picture
5 appeared in three national publications because
6 people were happy to see him back. He was a very
7 popular jockey in certain parts of the country.
8 He's been the leading rider at race meets. And
9 these jockeys are like professional athletes, they
10 all have followings. Everyone knows these people.
11 Everything they do on the racetrack is seen by a
12 camera. Everyone watches.

13 So this whole process he's going through
14 just to try to get back what he had before, not
15 excusing the events that caused him to not race for
16 five years. But like these other people, he's
17 looking for a second chance. That's all he's
18 looking for here, and I think under the precedent,
19 he deserves it. Thank you.

20 VICE-CHAIR YAWORSKY: Thank you,
21 Mr. Romanick.

22 Ms. Alvarado, do you have any comments
23 before we go into questions?

24 MS. ALVARADO: I think Mr. Marshman has
25 something to say.

1 VIC-CHAIR YAWORSKY: Mr. Marshman.

2 MR MARSHMAN: Good afternoon again.

3 Mrs. Alvarado can correct me, of course, if
4 I get any of the particulars incorrect. But
5 (indiscernible) is only as good as the parties being
6 so similarly situated that it makes sense to apply a
7 policy or apply a rule the same way because they're
8 so similarly situated. It's impossible to compare
9 -- in my suggestion it's impossible to compare the
10 types of crimes and say that one criminal act is
11 less or more than another. It's -- they're not
12 similarly situated.

13 I mean, I agree that robbery is different
14 than grand theft auto. I also agree that someone
15 such as Mr. Zimmerman who stole a car from a
16 pari-mutuel wagering facility may be treated
17 differently than someone who committed a battery on
18 a law enforcement officer. But in either case, they
19 are not similarly situated parties so exactly that
20 how you treated -- how the division treated an armed
21 robber means that you have to treat someone who
22 stole a car the same way. They're not so similarly
23 situated, in other words, that what you did for one
24 means you have to do it for every other criminal
25 because it fails to meet an arbitrary distinction

1 about the seriousness of the offense.

2 So I say all of that to say I don't see
3 these parties as being so similarly situated that
4 the Commission is bound by these three cases plucked
5 out of hundreds, if not thousands, that mean that
6 you must do this. I think that there are
7 distinctions. The distinctions matter. And I think
8 that the recommended order of Mrs. Alvarado's
9 representations, I think that's given the Commission
10 grounds to deny Mr. Zimmerman his license.

11 And I think the most persuasive or
12 convincing evidence I've heard that goes towards
13 rehabilitation is what Mr. Romanick pointed which he
14 is racing in another jurisdiction. We can't change
15 that fact. That is noteworthy to Mr. Zimmerman's
16 credit. That other jurisdiction had the exact same
17 information before it and it reached its own
18 conclusion about whether or not he was entitled to a
19 license in that jurisdiction.

20 So I think that more than perhaps his
21 explanations during the hearing related to drug use,
22 and diet pills, and crash diets, I think that that
23 is not convincing to a hearing officer as was
24 evidenced by a recommended order suggesting we not
25 issue a license here. I think that is a reason to

1 perhaps deny his license here. But to
2 Mr. Zimmerman's credit, he does have a license
3 elsewhere and that is something that the Commission
4 can take into consideration.

5 Procedurally, you are not bound by the
6 terms of the recommended order. You can direct
7 staff to issue a final order however you see fit,
8 taking into consideration the recommended order.
9 Mr. Romanick has filed exceptions to the recommended
10 order. Those are permitted in the 125.71 proceeding
11 but they're not expressly permitted in informal
12 hearing. But his advocacy is taken in all the same
13 anyway.

14 So the final order is not going to have to,
15 in other words, address every exception that's
16 raised because there's no provision in 125.72
17 mandating that the Commission do that.

18 So with that, I would ask Mrs. Alvarado to
19 correct me if I made any misrepresentations or add
20 any of her thoughts. But the Commission is in a
21 posture to make a decision today or, as Mr. Romanick
22 suggested, remand the case back to the hearing
23 officer for further fact finding. That's also
24 something they can do. But I believe that you have
25 a recommended order, you have the representations

1 that were made during that, the ball is in your
2 court, so to speak, on how to handle it from here.

3 Ms. Alvarado, did I misstate anything or
4 have anything else you wish to add?

5 MS. ALVARADO: No. I have nothing
6 additional at this time.

7 VICE-CHAIR YAWORSKY: Any questions or
8 discussion?

9 (No response)

10 Okay. Is there a motion?

11 MR. ROMANIK: May I add one thing,
12 please? May I be heard? One more comment.

13 The recommended order does not --

14 MR. MARSHMAN: One second, Mr. Romanick.
15 So it's important just to contextualize what's
16 happening here. This really isn't a point of entry
17 for Mr. Zimmerman to come and make additional
18 arguments. That was the informal hearing. That was
19 the election of rights that were already made.

20 Mr. Romanick can provide all the public
21 comment that this Commission allows but it's
22 important just to note that this is public comment
23 and a back and forth is perhaps not as contemplated
24 by public comment than it would be for the
25 applicant's counsel speaking on behalf of West

1 Flagler. I mean, he was the applicant, there was a
2 point of entry for him at that point to consider
3 whether or not we're going to do anything.

4 Here we're already beyond the election of
5 rights. We're at the recommended order being
6 discussed if you want to adopt it or not. As a
7 member of the public, he can provide comment but a
8 back and forth is perhaps not envisioned by public
9 comment. Advocacy is not necessarily envisioned by
10 public comment. And again, there's no discreet
11 point of entry here for Mr. Zimmerman to come and
12 make additional argument outside of public comment.

13 VICE-CHAIR YAWORSKY: Thank you,
14 Mr. Marshman.

15 In the interest of -- since that wasn't --
16 this has not occurred at a prior meeting, this
17 particular thing, Mr. Romanick, I'll give you one
18 minute to make any final thoughts you have.

19 MR. ROMANIK: Okay. Thank you very much.

20 Irrespective of whether this is a 120.57(1)
21 or a 120.57(2), if an action is taken by an agency
22 that is inconsistent with officially stated policy
23 or private prior agency policy, the deviation must
24 be explained in the order. It's not optional. It's
25 a statutory requirement. That was not done here.

1 Those three cases that I cited which
2 establish the agency's policy with regard to
3 felony waivers for jockeys and exercise riders,
4 different than all the other 300 or so, there were
5 only 3 that I found dealing with jockeys or exercise
6 riders. That dealing with them, deviation from the
7 prior practice has to be explained or the order is
8 defective. And there's been no explanation as to
9 why he's different than the other three. And it's
10 the requirement of the hearing officer to go through
11 the distinctions and to lay them out in the
12 recommended order before presenting them to this
13 Commission for you to adopt. That wasn't done here.

14 VICE-CHAIR YAWORSKY: Okay. Thank you,
15 Mr. Romanick.

16 MR. ROMANIK: Thank you, sir.

17 VICE-CHAIR YAWORSKY: Is there a motion?

18 COMMISSIONER BROWN: I just didn't know if
19 Ms. Alvarado wanted to respond.

20 VICE-CHAIR YAWORSKY: Ms. Alvarado, do you
21 have a response to that?

22 MS. ALVARADO: No. I
23 have no response.

24 VICE-CHAIR YAWORSKY: Okay.

25 Is there a motion?

1 COMMISSIONER BROWN: Move to approve the
2 recommended recommendation of the board as presented
3 to us denying the license.

4 VICE-CHAIR YAWORSKY: Okay. The motion has
5 been made. Is there a second?

6 COMMISSIONER DRAGO: I'll second.

7 VICE-CHAIR YAWORSKY: Second by
8 Commissioner Drago.

9 Any opposed?

10 (No response)

11 Hearing none, show this recommended order
12 adopted.

13 Item 3.2.

14 MR. TAUPIER: Mark Taupier for the record
15 presenting item 3.2. This is Freddie Hughes versus
16 the Florida Gaming Control Commission in Case Number
17 2022-024632.

18 This is a recommended order before you for
19 adoption by our hearing officer. Procedural history
20 is that notice of intent to deny was authorized by
21 this Commission in September at its duly noticed
22 meeting. We did receive an election of rights from
23 Mr. Hughes electing an informal hearing.

24 An informal hearing was conducted on
25 November 15th of 2022 via teleconference. After

1 hearing from both parties and presenting evidence
2 from both parties, a recommended order was filed
3 with the division clerk on 2/2 of '23, recommending
4 that the applicant's application be denied. And the
5 division's posture and recommendation to this
6 Commission is to adopt that recommended order.

7 VICE-CHAIR YAWORSKY: Okay. We have no
8 public comment cards on this matter, so we will
9 proceed with any discussion or questions.

10 COMMISSIONER DRAGO: No questions.

11 VICE-CHAIR YAWORSKY: Okay. Is there a
12 motion?

13 COMMISSIONER BROWN: I will make a motion
14 but I just want to make a point on this particular
15 one. This applicant has had multiple, multiple
16 infractions, criminal infractions. License was
17 refused in another state and also was revoked in
18 Florida, prior. I think the hearing officer did a
19 good job on this and I would move to approve the
20 recommended order on this.

21 VICE-CHAIR YAWORSKY: Okay. Is there a
22 second?

23 COMMISSIONER D'AQUILA: Second.

24 VICE-CHAIR YAWORSKY: Commissioner D'Aquila
25 with a second.

1 Any opposed?

2 (No response)

3 Hearing none, show this recommended order
4 adopted.

5 Next item.

6 CHIEF ATTORNEY MARC TAUPIER: Item 3.3.
7 Marc Taupier for the record, presenting Alfredo Fong
8 versus the Florida Gaming Control Commission in Case
9 Number 2022-028758.

10 This matter is before you on a recommended
11 order from our hearing officer. Procedural posture
12 of this case is that in September of 2022, this
13 Commission authorized the issuance of a notice of
14 intent to deny. That notice of intent to deny was
15 served upon Mr. Fong where his election was to have
16 an informal hearing pursuant to Section 120.57(2) of
17 the Florida statutes.

18 The hearing was conducted via GoTo Meeting
19 on November 15th of 2022, to which both parties were
20 able to present mitigation. After that hearing, the
21 hearing officer did file with the clerk of the
22 Commission on February 1st of 2023, a hearing
23 officer's recommended order recommending the denial
24 of Mr. Fong's application.

25 The division's recommendation for this

1 matter is to adopt the recommended order from the
2 hearing officer.

3 VICE-CHAIR YAWORSKY: Okay. We have no
4 public comment cards on this item in. Is there any
5 discussion amongst Commissioners?

6 (No response)

7 Is there a motion.

8 COMMISSIONER BROWN: Again, I would agree,
9 it's the exact same thing I just said. This is the
10 same (indiscernible), the same crimes as well, and I
11 would move to approve the recommended order.

12 VICE-CHAIR YAWORSKY: Okay. There is a
13 motion to approve. And I believe there's a second.

14 COMMISSIONER D'AQUILA: Second.

15 VICE-CHAIR YAWORSKY: From Commissioner
16 D'Aquila.

17 Any opposed?

18 (No response)

19 Hearing none, show that approved.

20 Next item.

21 MR. MARSHMAN: Mr. Vice-Chair?

22 VICE-CHAIR YAWORSKY: Yes.

23 MR. MARSHMAN: If I may suggest, just
24 based on representatives that are here that we take
25 three cases out of order. All similar to the same

1 issue, I guess.

2 Okay. Basically, I would suggest that we
3 move to item five so that an attorney who is here
4 can make representations. Then if he's needed
5 elsewhere, he can then leave.

6 VICE-CHAIR YAWORSKY: Okay. We can do
7 that. And that would be item 5.1, beginning with --

8 MR. MARSHMAN: I believe we would
9 discuss, if we do as I suggest, 5.1, 5.2, 5.3, 5.4,
10 and I believe there's another attorney here as well
11 for item 5.9.

12 VICE-CHAIR YAWORSKY: Okay.

13 MR. MARSHMAN: It might be easier to
14 treat this as a court docket and just have the
15 lawyers begin to stand and then approach
16 (indiscernible)

17 VICE-CHAIR YAWORSKY: But we may not get that
18 far. But because it has been a long day and there are
19 attorneys here, we'll go ahead and make this exception
20 at this time. But that may not always be the case.

21 So for the moment, I think it would be --
22 I'm guessing, I believe 5.1 would be Tampa Bay
23 Downs. Would that be an appropriate --

24 MR. MARSHMAN: Yeah. I think that
25 would be a good place to start.

1 VICE-CHAIR YAWORSKY: Okay. Great. Thank
2 you.

3 MS. ALVARADO: Item 5.1. Emily Alvarado for
4 the record. Tampa Bay Downs, 2022-033589. In this
5 case you were provided the administrative complaint
6 alleging that respondent allowed a massage therapist
7 to work on the cardroom without a current pari-mutuel
8 wagering occupational license.

9 You were presented the same issue back in
10 the October meeting. (Indiscernible) for a \$250
11 penalty. (Indiscernible) a chance to provide some
12 litigation regarding this issue.

13 VICE-CHAIR YAWORSKY: Okay.

14 Mr. Rutledge, you are recognized.

15 GARY RUTLEDGE: Gary Rutledge of Rutledge
16 of Rutledge Ecenia here in Tallahassee.

17 First of all, it wasn't outside of the
18 length of the meeting. Your executive director said
19 he was going to sign off on my CLEs for the time
20 that I've spent today. So hopefully, that will work
21 out with the bar and will be much appreciated,
22 because my deadline is coming up the end of the next
23 month and I'm about half of the hour short.

24 I'll be brief on this, Mr. Vice-Chairman
25 and Commissioners. This issue came before you

1 previously, and I was not in attendance at that
2 meeting. The practice has changed somewhat because
3 of your direction and some of your desires to
4 streamline and enhance, should I say, penalties when
5 appropriate.

6 The facts of this, very briefly put, are
7 that there was a massage therapist, a therapist
8 which they use in cardrooms to -- 10, \$20 somebody
9 can pay and then they can massage their neck, or
10 shoulders, or whatever while they're playing cards.
11 It's not something that is a sensitive position,
12 other than for the person getting the massage and --
13 in terms of the person that's licensed.

14 The other difference about this, and there
15 was concern about aggravation because of there being
16 the prior violation. The prior violation had to do
17 with an employee. This is not an employee of the
18 establishment, it's an independent contractor. And
19 they were there for only two occasions for some
20 brief period of time before they left and they're
21 not working there any further.

22 So out of respect of the Commission and
23 discussions with Emily, we did double what was
24 previously proposed to \$500 and we appreciate your
25 consideration.

1 VICE-CHAIR YAWORSKY Okay. Thank you.

2 Is this what we have?

3 MS. ALVARADO: No. We do

4 have a signed (indiscernible), like he mentioned.

5 It's for \$500. At the last meeting, you did

6 recommend \$1000, so I want to give him a chance to

7 present, as well, his mitigation.

8 VICE-CHAIR YAWORSKY: Okay. Thank you.

9 Any discussion? Questions from any of the

10 Commissioners?

11 COMMISSIONER BROWN: Move to approve the

12 consent order as presented.

13 VICE-CHAIR YAWORSKY: Is there a second?

14 COMMISSIONER D'AQUILA: Second.

15 VICE-CHAIR YAWORSKY: Any opposed?

16 (No response)

17 Hearing none, show that consent order

18 approved.

19 Okay. Item -- I believe that we will still

20 be in a good space to go with item 5.2.

21 MS. ALVARADO: The first five are going to

22 be the Gary also, so we can just go through those.

23 VICE-CHAIR YAWORSKY: You might just want

24 to say right where you are.

25 It is -- what's the item number?

1 MS. ALVARADO: 5.2.

2 VICE-CHAIR YAWORSKY: 5.2. Thank you.

3 MS. ALVARADO: That is FGCC versus TBD
4 Entertainment, LLC, 2022-035114. In this case, you
5 were provided the one count administrative complaint
6 alleging that respondent violated rule 61D-11.1066 by
7 having more cardroom tables in operation than
8 permitted by their operating license. In this case,
9 they had 15 tables and 14 on their operating license.

10 This was presented at the November meeting
11 as a default and Mr. Rutledge was also there and
12 asked that we have settlement negotiations. And
13 right now, we have a signed settlement
14 (indiscernible) in this case.

15 VICE-CHAIR YAWORSKY: Okay, Mr. Rutledge.
16 You are recognized.

17 MR. RUTLEDGE: Mr. Vice-Chairman and
18 Commissioners, this is TBD Entertainment which is
19 the Tampa greyhound track permit which has got a
20 common ownership with Tampa Bay Downs. As you all
21 probably know, they operate that cardroom, so this
22 is a different license than the previous one.

23 If there was ever a case that shouldn't
24 lead to a penalty and should only lead to a warning,

1 this is the poster child of those cases. This is a
2 situation where the cardroom, in the previous
3 license year, had amended their application, paid
4 the additional cardroom license fee and the like.
5 And during the overlap from that license year to the
6 next year, they had refiled their application having
7 the previously low number.

8 You apply between December 15th and January
9 4th of each year, and the overlap is not until July
10 1st of the following year. So they didn't realize
11 they were going to have the need for an extra table
12 or two when they filed their application.

13 So they filed their application.
14 Subsequently, it was issued. July 1st rolls around,
15 and they didn't have the correct number of tables.
16 There was one table, two tables, you know,
17 difference. And so there was appropriately a
18 technical violation, but they have paid their fees,
19 they were licensed, they've been licensed. There
20 was no integrity of the games or anything else that
21 was going on there.

22 And so we agreed with counsel that they
23 should be reprimanded, warned, whatever it is that's
24 appropriate, but it shouldn't require a penalty, and
25 we appreciate your consideration again.

1 VICE-CHAIR YAWORSKY: Thank you. Thank
2 you, Mr. Rutledge. Appreciate it.

3 Ms. Alvarado, can you just clarify the
4 timeline on the --

5 MS. ALVARADO: I believe it was within a
6 week. This was presented to you guys, actually to
7 amend the operating license. So now they have -- the
8 operating license lists 16. I believe, they have now.
9 They realized the issue within a week or so that they
10 were (indiscernible).

11 VICE-CHAIR YAWORSKY: Okay. So an
12 amendment was filed but not yet approved and there
13 were two additional tables on the floor --

14 MS. ALVARADO: Right.

15 VICE-CHAIR YAWORSKY: -- at that time.

16 I'm not sure I understand the timeline. So
17 can you explain that again?

18 MS. ALVARADO: One second.

19 Okay. So on July 22nd -- or on July 20th,
20 it was determined that they had 15 tables in
21 operation, and on July 27th, they amended their
22 operating license to have 17 tables. So 7 days. It
23 was 7 days from when they found out that they had 1
24 more than their operating license and that license

1 would have taken effect July 1st.

2 VICE-CHAIR YAWORSKY: So do we know how
3 long the extra table was there?

4 MS. ALVARADO: From July 1st to the 20th.
5 So it must have been 20 days.

6 VICE-CHAIR YAWORSKY: How many days?

7 MS. ALVARADO: 20 days. From July 1st to the
8 20th.

9 VICE-CHAIR YAWORSKY: Thank you. I
10 believe, just to clarify this process for me, but
11 typical appropriate process would be -- to add or
12 remove cardroom tables would be to make a filing
13 that's pretty exhaustive based on some of the other
14 ones we've approved, but before you add the tables.

15 MS. ALVARADO: And in the fiscal year prior,
16 they did have 15 tables. So I believe what happened is
17 they didn't change it for the following year, for this
18 fiscal year, and kept going with the prior operating
19 license number.

20 MR. TROMBETTA: Thank you, Mr. Vice-
21 Chair, if I may.

22 Ms. Alvarado, just for purpose of
23 clarifying, and I have seen -- but the fiscal year
24 actually changes in July. What is sounds like
25 happened was that they had been operating more

1 tables the previous fiscal year, applied for their
2 new license. It took effect, it had a different
3 number. And then there was a time period before
4 they could adjust to get back to what they had. Is
5 that --

6 MS. ALVARADO: Right. They had amended it
7 for the prior fiscal year but they hadn't done it for
8 the current.

9 VICE-CHAIR YAWORSKY: They had amended it?

10 MS. ALVARADO: Yes. The prior fiscal year
11 they had amended it.

12 VICE-CHAIR YAWORSKY: Okay.

13 MS. ALVARADO: And then they tried using the
14 same amount of tables into the new fiscal year and
15 their operating license had one less than what they
16 operating on.

17 VICE-CHAIR YAWORSKY: Okay. So there had
18 been -- thank you. Appreciate that.

19 MS ALVARADO: Yeah.

20 VICE-CHAIR YAWORSKY: Is there Commissioner
21 -- is there a motion?

22 COMMISSIONER DRAGO: I'll make a motion to
23 adopt the settlement order.

24 COMMISSIONER BROWN: Second.

25 VICE-CHAIR YAWORSKY: I want to thank the

1 staff -- I do remember this item and I want to thank
2 the staff for taking the time to investigate
3 (indiscernible). Thank you.

4 I think 5.3, we can go ahead and go into.

5 MS. ALVARADO: Yes. That's FGCC versus TBD
6 Entertainment in Case Number 2022-043911. In this
7 case there was a one count administrative complaint
8 alleging that respondent violated 61D-11.014(4)(b)(1)
9 by failing to remove an entire deck of cards when the
10 damaged card was discovered.

11 We have a signed consent order with a \$250
12 fine. They do have one prior from 2020 which had
13 multiple counts but this count would have been \$125
14 fine. And Mr. Rutledge is here for any questions
15 specifically for the facility, but this is the first
16 time that they presented to you guys.

17 VICE-CHAIR YAWORSKY: Okay. Mr. Rutledge,
18 do you want to present or are you just available for
19 questions?

20 MR. RUTLEDGE: Questions.

21 VICE-CHAIR YAWORSKY: We do have a
22 question.

23 MR. RUTLEDGE: Yes, sir.

24 VICE-CHAIR YAWORSKY: Come on up. Sorry,

1 you're not getting out of it that easy.

2 COMMISSIONER BROWN: We thought you wanted
3 to present, so I figured I'd ask a few questions to
4 the penalty. Just wanted to find out what
5 mitigating factors are there, so that this type of
6 -- that there are measures that it won't happen
7 again.

8 MR. RUTLEDGE: I've already turned the
9 page.

10 As Emily said, the prior violation that led
11 to a penalty had a series of violations that they
12 were fined for. This was just one of those. So the
13 mitigation really is less than mitigation because
14 you're going to be doubling or more the penalty that
15 they receive because the other one was a fine for a
16 series of violations. This was just the isolated
17 violation of not removing the cards.

18 So you are in fact penalizing them more
19 than they were penalized before because, as Emily
20 said, the prior violation that they were penalized
21 for, while it seems to be the same amount, it's
22 because they had a number of violations. This did
23 not. It was singular.

24 COMMISSIONER BROWN: Thank you. And what
25 measures are being put in place so that this type of

1 activity doesn't happen at TBD?

2 MR. RUTLEDGE: The most important measure
3 is that I tell them and my other clients there's a
4 new sheriff in town.

5 VICE-CHAIR YAWORSKY: Any other questions?
6 We have a question, Ms. Alvarado.

7 COMMISSIONER DRAGO: Can you tell me what
8 was the fines on the last one? I know there were
9 multiple offenses but what was the --

10 MS. ALVARADO: So the total was \$500.
11 They didn't differentiate between penalty. I would
12 assume (indiscernible) which one would be considered
13 one. So \$125, if you split that between the
14 penalties.

15 COMMISSIONER DRAGO: Okay. Thank you.

16 VICE-CHAIR YAWORSKY: Okay. Any other
17 questions, Commissioner D'Aquila?

18 COMMISSIONER D'AQUILA: No.

19 VICE-CHAIR YAWORSKY: Okay. Is there a
20 motion?

21 COMMISSIONER BROWN: Motion to approve the
22 recommended order.

23 VICE-CHAIR YAWORSKY: And so moved. Is
24 there a second?

25 COMMISSIONER D'AQUILA: Second.

1 VICE-CHAIR YAWORSKY: D'Aquila seconds.

2 Any opposed?

3 (No response)

4 Hearing none, show the recommended order
5 approved.

6 The next item is, I believe --

7 COMMISSIONER D'AQUILA: 5.4.

8 VICE-CHAIR YAWORSKY: -- 5.4. I think we're
9 still in the right space to do that, so
10 Ms. Alvarado, please.

11 MS. ALVARADO: FGCC versus Washington County
12 Kennel Club, Case Number 2022-034237. In this case
13 there was a one count administrative complaint filed
14 alleging that respondent failed to report a
15 description of the attack activity being monitored on
16 the surveillance logs. This was also presented at the
17 October meeting with a \$250 penalty that the
18 Commission did not accept.

19 I have had further settlement negotiations
20 with Mr. Rutledge, and we have decided on an order
21 of 750. This case had five prior violations, but
22 this was the first offense since December 2021. The
23 range of priors was from 250 to 500 for those cases.
24 And I think Mr. Rutledge wanted a chance to present,

1 as well, for this one.

2 VICE-CHAIR YAWORSKY: Mr. Rutledge.

3 MR. RUTLEDGER: Briefly, this is the first
4 similar violation in the last several years, and
5 just to put into perspective again, this does not
6 have to do with the licensee's inability to record
7 the activities that are there to make them
8 available. This was simply the separate logging of
9 I didn't like the way they, you know, parted their
10 hair, so I wanted to surveil them, whatever.

11 So as it relates to the integrity, most
12 importantly, of what was going on, this was not an
13 issue. When it came to the Commission before,
14 similarly, we had negotiated settlement and conceded
15 and agreed with the Commission attorney for the \$250
16 you all had determined, as was your prerogative,
17 that that was not adequate. We tried to double it
18 to \$500 but you had a tough negotiator. She said,
19 "I'm not going to present this back for
20 recommendation unless it's \$750."

21 VICE-CHAIR YAWORSKY: Okay. Any questions
22 from the Commissioners?

23 COMMISSIONER BROWN: Move to approve the
24 recommended order. And thank our counsel for their
25 hearty work.

1 COMMISSIONER D'AQUILA: I'll second that.

2 VICE-CHAIR YAWORSKY: Consider moved and

3 seconded. Any opposed?

4 (No response)

5 Hearing none, show that approved.

6 Next item.

7 MS. ALVARADO: Item 5.5 FGCC versus Sarasota
8 Kennel Club, Case Number 2022- 052199. This case was
9 a one count administrative complaint alleging that
10 respondent violated 61D-11.020(5)(e) by failing to
11 record the date and time that a key was returned in a
12 written log. There was a \$500 consent order on the
13 issue. And they have one prior violation from last
14 year, 2022, which had a \$250 fine.

15 And Mr. Rutledge is also representing them,
16 as well, for any questions.

17 VICE-CHAIR YAWORSKY: For questions,
18 Mr. Rutledge, or --

19 MR. RUTLEDGE: If you have any.

20 VICE-CHAIR YAWORSKY: Yes, sir.

21 MR. RUTLEDGE: Okay.

22 VICE-CHAIR YAWORSKY: Okay. Is there any
23 discussion or a motion?

24 COMMISSIONER DRAGO: I'll make a motion to

1 adopt the settlement and consent order.

2 COMMISSIONER BROWN: Second.

3 VICE-CHAIR YAWORSKY: Okay. Any opposed?

4 COMMISSIONER D'AQUILA: No.

5 VICE-CHAIR YAWORSKY: Okay. Hearing none,
6 show that approved.

7 Next item is --

8 MS. ALVARADO: Item 5.9.

9 VICE-CHAIR YAWORSKY: 5.9.

10 MS. ALVARADO: Yes.

11 VICE-CHAIR YAWORSKY: 7 and 8?

12 MS. ALVARADO: That is FGCC versus South
13 Marion Real Estate Holdings. It's two cases. Case
14 Number 2022-051624 and 2022-055140.

15 In this case there was a three-count
16 administrative complaint alleging that respondent
17 violated Rule 61D-11.014(4)(d)(2) and 11.014(4)(c),
18 and 11.012(9), by failing to indicate a time the
19 damage card was withdrawn from play on the damage
20 card envelope; failing to permanently alter the
21 damaged card when it was removed from play; and
22 failing to provide photo identification cards for
23 multiple employees in the facility.

24 There is a \$750 consent order that's
25 (indiscernible), and respondent has no prior

1 violations of any of these rules.

2 (Indiscernible) is here, as well, if
3 there's any further questions on this.

4 VICE-CHAIR YAWORSKY: Okay. Do we have any
5 questions for --

6 COMMISSIONER DRAGO: Just a comment, I
7 guess. The one offense being that not identifying
8 themselves, not showing their ID.

9 MS. ALVARADO: They had IDs, but they didn't
10 have photos on the ID. The rule requires a picture on
11 the ID and they were providing identification cards
12 that didn't have pictures.

13 COMMISSIONER DRAGO: Oh, I got you. Thank
14 you for clarifying that.

15 VICE-CHAIR YAWORSKY: Okay. Any other
16 questions or comments?

17 COMMISSIONER D'AQUILA: I'll make a motion.

18 VICE-CHAIR YAWORSKY: Commissioner D'Aquila
19 with a motion.

20 COMMISSIONER DRAGO: Second.

21 VICE-CHAIR YAWORSKY: Okay. Moved and
22 seconded. Any opposed?

23 (No response)

24 Okay. Show the settlement consent order

1 adopted.

2 Our next item is going to be --

3 MS. ALVARADO: Do you want to continue with
4 the consent orders?

5 VICE-CHAIR YAWORSKY: Yes. Yes.

6 MS. ALVARADO: Okay. Let's do item 5.6.
7 That is FGCC versus Sanford Orlando Kennel Club in
8 Case Number 2022-043887. In this case there was a one
9 count administrative complaint filed alleging that
10 respondent violated Section 550.105(2) (a) (3) by
11 allowing an individual have access to the control
12 machines without a valid occupational license.

13 They accepted a signed consent order with a
14 \$1000 fine, and they had no priors of this violation
15 of this section.

16 VICE-CHAIR YAWORSKY: Okay. Any questions
17 or comments? Are there any speakers?

18 (No response)

19 I believe the answer is no. Any questions
20 or comments from Commissioners or a motion?

21 COMMISSIONER DRAGO: I'll make a motion to
22 adopt the settlement consent order.

23 VICE-CHAIR YAWORSKY: So moved. And is
24 there a second?

1 COMMISSIONER D'AQUILA: Second.

2 VICE-CHAIR YAWORSKY: Commissioner D'Aquila
3 seconds. Any opposed?

4 (No response)

5 Hearing none, show that settlement consent
6 order adopted.

7 Next item.

8 MS. ALVARADO: FGCC versus Daytona Beach
9 Kennel Club in Case Number 2022-046021. In this case
10 there is a one count administrative complaint alleging
11 that respondent violated 61D-11.0251(1)(d)(2)
12 by failing to report the name of the employee
13 providing access to an unlicensed person into a
14 secured area. They have no prior violations of this
15 rule and they have sent in a signed consent order
16 for a \$250 fine.

17 VICE-CHAIR YAWORSKY: Okay. I see no
18 public comment cards. Is there any discussion or
19 questions from the Commissioners?

20 (No response)

21 Seeing none, is there a motion.

22 COMMISSIONER DRAGO: Motion to adopt the
23 settlement and consent order.

24 COMMISSIONER BROWN: Second.

1 VICE-CHAIR YAWORSKY: So moved and
2 seconded. Any opposed?

3 COMMISSIONER D'AQUILA: No.

4 VICE-CHAIR YAWORSKY: Hearing none, we'll
5 show that adopted.

6 Next item.

7 MS.ALVARADO: Item 5.8 is FGCC versus
8 Brayan Lopez, Case Number 2022-047408. In this
9 case there was a one count administrative account
10 filed alleging a violation of 61D-2.003 by the
11 respondent engaged in conduct that distracted the
12 division employee from (indiscernible) of her
13 duties.

14 They have no prior violations of this rule
15 and there was a signed consent order issuing \$100
16 fine that we have received.

17 COMMISSIONER BROWN: Well, I just want to
18 say, you know, I feel for the investigator that was
19 involved in this. And with that, I would support
20 the consent order and move to adopt it.

21 COMMISSIONER DRAGO: Can I ask you a
22 question. When he grabbed and made an inappropriate
23 remark, grabbed how? I guess is -- I mean, what's
24 the extent of this? Besides being battered, what's
25 the extent, how far this went?

1 COMMISSIONER BROWN: It's in there.

2 COMMISSIONER DRAGO: Is it in the paper?

3 COMMISSIONER BROWN: We have
4 (indiscernible).

5 COMMISSIONER DRAGO: I don't remember.

6 VICE-CHAIR YAWORSKY: Ms. Alvarado, are you
7 ready to respond on this?

8 MS. ALVARADO: One moment, let me just look
9 really quick.

10 VICE-CHAIR YAWORSKY: Okay. Commissioner
11 Brown (indiscernible).

12 COMMISSIONER BROWN: This one stuck out for
13 me.

14 MS. ALVARADO: The investigator report
15 states that the respondent went behind the
16 investigator and grabbed her arm while making a remark
17 in Spanish saying that she was a very good-looking
18 woman. So it seems like he grabbed her arm and then
19 she walked away.

20 I did email the investigator, as well,
21 prior to opening the case, and I think they stopped
22 the investigation, and she went to Gulfstream to
23 report what had happened to them.

24 COMMISSIONER D'AQUILA: Are you aware of
25 any action Gulfstream has taken?

1 MS. ALVARADO: Yes. They gave him \$100
2 fine as well.

3 COMMISSIONER D'AQUILA: Can I ask a
4 question? Was he placed on probation?

5 MS. ALVARADO: I don't believe so. At least
6 that's not in the record that I've read. He was
7 removed that day from the property and then fined \$100
8 by the security at Gulfstream.

9 COMMISSIONER BROWN: She didn't pursue
10 criminal --

11 MS. ALVARADO: No.

12 COMMISSIONER BROWN: In the record it shows
13 that she didn't pursue it but the security officer
14 was reprimanded and fined.

15 MS. ALVARADO: Right.

16 COMMISSIONER DRAGO: I find this very
17 troubling. This is one of our folks and there
18 should be, without question, not any concern about
19 ever being assaulted, battered, sexually harassed,
20 or anything like that when they're working with us.
21 So I find a \$100 fine really almost offensive to the
22 employee to be honest with you.

23 I think we should send a very clear message
24 that we will not tolerate our people being, as I
25 said, assaulted, battered, sexually harassed, or

1 anything close to that. I mean, it is battery, he
2 could have been arrested for it. And in many
3 workplaces, it would be workplace violence and he
4 would have been fired.

5 So I mean, this is serious. This is
6 serious, I think. So my opinion is that I think
7 this is too low and that we should go back and
8 review this one.

9 COMMISSIONER BROWN: I will withdraw that
10 motion and completely agree but I thought this was
11 something that was agreed to by staff including the
12 investigator.

13 COMMISSIONER D'AQUILA: Vice-Chair, I have
14 a question.

15 VICE-CHAIR YAWORSKY: Yes, Commissioner
16 D'Aquila.

17 COMMISSIONER D'AQUILA: Ms. Alvarado, was
18 there any record of a meeting, apology, any kind of
19 internal hearing? I would imagine that Gulfstream
20 being the size and quality organization that
21 it does have a policy manual and HR department for
22 such things. How was -- from my perspective reading
23 this, it's a small slap on what is a serious
24 violation. So when I first read this, you know,
25 thought that it transpired but now going back in, I

1 don't see any evidence of that.

2 MS. ALVARADO: No, I don't, as well. I just
3 see a written notice and a verbal warning, and they
4 did ask him to leave that day but I don't think he was
5 suspended from the property.

6 COMMISSIONER D'AQUILA: So he was suspended
7 from the property for one day, fined \$100 by
8 Gulfstream, if I understand correctly.

9 MS. ALVARADO: According to this report,
10 yes. With the information I have, yes.

11 VICE-CHAIR YAWORSKY: I think what -- if
12 it's acceptable with the Commissioners, I think what
13 I would like to do is to table this item for now and
14 maybe allow Commissioners individually to ask some
15 -- I think there's a lot -- there's probably a lot
16 here and to fully understand what took place and
17 what the circumstances where. I'd like to table
18 this and allow Commissioners to ask questions of
19 staff to gain a full understanding before we act in
20 one way or another, if that's acceptable.

21 COMMISSIONER BROWN: I think that's a great
22 idea. And I would actually ask staff that, in the
23 meantime, before this comes back before us, to reach
24 out to the investigator about that and get more
25 information.

1 COMMISSIONER D'AQUILA: I'd like to
2 intercept.

3 VICE-CHAIR YAWORSKY: Sure.

4 COMMISSIONER D'AQUILA: I would like to
5 hear from Gulfstream with more details about what
6 transpired and why. You know, what is their
7 treatment? I mean, from a concern of our employees
8 who are required to do their job and go there. Any
9 employer this day and age has to provide a safe work
10 environment.

11 MS.ALVARADO: I will note that the
12 investigative report does say that the investigator
13 was satisfied with the actions that Gulfstream took.
14 And she did say that to me in an email, as well, that
15 they did take action and she was satisfied with that.

16 COMMISSIONER DRAGO: They did?

17 MS. ALVARADO: Yeah.

18 VICE-CHAIR YAWORSKY: Let's allow
19 Commissioners to independently ask questions on this
20 and then bring it back.

21 MS. ALVARADO: Okay.

22 VICE-CHAIR YAWORSKY: Thank you. 5.10.

23 MS. ALVARADO: This is FGCC versus Gary
24 Kosakowski, Case Number 2022-052397. This is a one
25 count administrative complaint alleging that

1 respondent extended a loan to a player at a poker
2 table while respondent was working as a poker dealer.
3 This is the first violation of this rule and there's a
4 signed consent order for \$100 in this case, as well.

5 VICE-CHAIR YAWORSKY: Okay. Commissioners,
6 any questions or comments?

7 COMMISSIONER BROWN: I just have a
8 question. This is a designated player table, right?
9 And the loan that was being rendered by the dealer,
10 was it to -- who was it to?

11 MS. ALVARADO: What was caught on security
12 was that the person who he loaned this won something
13 and then gave him three chips back that he must have
14 wanted prior to the play.

15 COMMISSIONER BROWN: Because he's
16 superstitious about and he's a regular.

17 MS. ALVARADO: Yeah.

18 COMMISSIONER BROWN: Are there protocols in
19 place at this facility to make sure this type of
20 violation doesn't happen again?

21 MS. ALVARADO: I'm not sure. I don't think
22 that's in the record.

23 COMMISSIONER BROWN: I know it's against
24 the individual, but the facility.

25 MS. ALVARADO: Right. I don't believe so.

1 No.

2 MR. TAUPIER: Here, should we enter
3 protocols on designated player games pursuant to our
4 rule? I don't know exactly what they are at this
5 facility, but they would be required to have
6 protocols on how to handle designated player games.

7 COMMISSIONER BROWN: And the inspectors
8 regularly go back to Hialeah Park to make sure that
9 -- how frequently are they in facilities? Because
10 this was pointed out to the inspector from someone.
11 The only reason the inspector reviewed it was
12 because somebody noticed it and so the inspector
13 went and looked at the surveillance.

14 MR. DILLMORE: Just wanted to --

15 VICE-CHAIR YAWORSKY: Go ahead,
16 (indiscernible).

17 MR. DILLMORE: Thank you. Yeah. Our
18 investigators make regular trips into the cardrooms
19 doing their checklist they go through, or any of the
20 previous things they've seen. So they're really
21 diligent in duties, they would go back and check on
22 this again.

23 And also, in general, we approve patrols
24 for the cardrooms to protect against a lot of
25 things from the security points, surveillance, and

1 everything else, and you know, those are the
2 protocols that they're typically following. And
3 this is something that happened inside of the game.
4 There's probably thousands of these transactions
5 that take place every day and so they will go by and
6 check on them again and review surveillance tape.

7 COMMISSIONER BROWN: Wonderful. It's great
8 that they caught it.

9 VICE-CHAIR YAWORSKY: Any other questions
10 or comments, Commissioners?

11 (No response)

12 Is there a motion?

13 COMMISSIONER BROWN: Move to approve the
14 recommended sum and consent order.

15 VICE-CHAIR YAWORSKY: Moved, is there a
16 second?

17 COMMISSIONER D'AQUILA: Second.

18 VICE-CHAIR YAWORSKY: Commission D'Aquila
19 seconds. Any opposed?

20 (No response)

21 Okay. Hearing none, show the consent
22 order adopted.

23 I believe, if my math is correct, we are
24 now on item --

25 COMMISSIONER BROWN: 4.1.

1 VICE-CHAIR YAWORSKY: -- 4.1. Okay, great.

2 MS. ALVARADO: Item 4.1 is FGCC versus Jose
3 Chrinos in Case Number 2021-055168. In this case
4 there was a one count administrative complaint filed
5 alleging that respondent was excluded from Magic City
6 Casino on June 28, 2021, for not following the
7 policies of the casino and for pushing and slapping an
8 employee.

9 He was excluded from the facility and is
10 therefore subject to exclusion under sections
11 550.02516 and 551.112 of the Florida statutes. He
12 was served with a USPS mail and did not respond
13 within 21 days. Therefore, the division would ask
14 the Commission to enter an order finding that
15 respondent was properly served and did not respond
16 within 21 days; that the facts in the administrative
17 complaint are the facts of finding in this case; and
18 that respondent is added to the permanent exclusion
19 list of all pari-mutuel and slot machine facilities.

20 VICE-CHAIR YAWORSKY: Thank you,
21 Ms. Alvarado.

22 Is there a motion?

23 COMMISSIONER BROWN: There's a motion but
24 just a question about the timing on this one. 4.1
25 and 4.2, both are 2021 cases. Is there a reason for

1 the --

2 MS. ALVARADO: We had a problem with
3 service for that one. It came back and we tried
4 multiple times to get service and we actually weren't
5 able to get it, so --

6 COMMISSIONER BROWN: I would move to
7 approve the recommendation.

8 VICE-CHAIR YAWORSKY: Okay. Is there a
9 second?

10 COMMISSIONER DRAGO: Second.

11 VICE-CHAIR YAWORSKY: Moved and seconded.
12 Hearing none opposed, show that item approved.

13 MS. ALVARADO: Item 4.2 is FGCC versus
14 Enrique Hernandez in Case Number 2022-024925. In this
15 case there was a one-time administrative complaint
16 filed alleging respondent was excluded from Casino
17 Miami on December 27, 2021, for manipulating a slot
18 machine in order to gain \$1700 in winnings.

19 He was served with this USPS certified
20 mail and did not respond within 21 days. Therefore,
21 the divisions asks the Commission to enter an order
22 finding that the respondent was properly served;
23 did not respond within 21 days, that the facts in
24 the administrative complaint of the facts of
25 finding in this case; and that respondent is added

1 to the permanent exclusion list of all pari-mutuel and
2 slot machine facilities.

3 VICE-CHAIR YAWORSKY: I believe that
4 Commissioner Brown's earlier question applies to
5 this one as well on the timing.

6 MS. ALVARADO: Yes. We actually closed a
7 case in December against a co-conspirator in this
8 case, but this one took longer to give service.

9 VICE-CHAIR YAWORSKY: Okay. Are there any
10 questions, comments, Commissioners? Commissioner Brown.

11 COMMISSIONER BROWN: I have a question
12 about the key, and this may be a more technical
13 question for Mr. Dillmore about this key scheme
14 on these let slot machines. What happens with that
15 particular machine? I know that it was reset, that
16 there are these type of keys that are all over the
17 internet. Did they seize this? Do they replace the
18 machine? What do they do with that?

19 MR. DILLMORE: Yes. It's understanding as
20 well is that these keys were being sold on eBay or
21 Google. But talking to our chief of slot
22 operations, we've been working with facilities.
23 They've either gone in and installed a lock on
24 these, so you know, those keys won't work anymore
25 or -- and also, they're keeping extra surveillance

1 on the machines, as well. The biggest thing is they
2 either changed the locking mechanism or access to
3 them.

4 COMMISSIONER BROWN: And I mean, is it
5 legal to have these things sold on eBay throughout
6 these illegal keys?

7 MR. DILLMORE: No. Probably not. I
8 mean, obviously, someone somehow made a copy,
9 whether it was an employee that left and had it or
10 how they got it, but somebody found out they worked
11 (indiscernible) on that specific machine. Keep in
12 mind, this wasn't all slot machines, this was a
13 specific model, from my understanding.

14 COMMISSIONER BROWN: It just started making
15 me think about this type of activity. This is a
16 bigger scene, based on the record, it looks like this
17 type roulette slot machine, or the slot machines they
18 were going after with these
19 conspirators and how to stop that from happening
20 other than changing the lock.

21 VICE-CHAIR YAWORSKY: Commissioner
22 D'Aquila.

1 COMMISSIONER D'AQUILA: Isn't that theft of
2 company property?

3 MR. DILLMORE: Can you repeat that? I
4 couldn't hear you.

5 COMMISSIONER D'AQUILA: Is that theft of
6 company property?

7 MR. DILLMORE: Essentially, depending
8 on what they got away with. If it was an actual
9 cashing machine, it would be. As far as the actual
10 key itself?

11 COMMISSIONER D'AQUILA: Yes.

12 MR. DILLMORE: I don't know if you
13 could find a way to tie it back to the individual.
14 Potentially, it would be.

15 COMMISSIONER BROWN: Mr. Chair, would this
16 be something our law enforcement team would work
17 with the facility to take the possession of that
18 type of equipment to test it to make sure that there
19 are secure measures in place to prevent it from
20 happening again, so that at least they have the
21 machine back after we know for sure that it's
22 secure? Other than them putting a new lock it.

23 MR. DILLMORE: I mean, potentially. I
24 think that they had addressed -- I mean, the slot
25 machine operators have as much eagerness to get this

1 corrected as the (indiscernible), I'm sure. It's
2 their machine. It's their slot machine and actually
3 their revenue.

4 So I think the thing that -- the action
5 they took seemed to address the problem, and like I
6 said, it's that one specific machine, so it wasn't
7 like a general problem across all different types of
8 (indiscernible). So I think they addressed it
9 adequately at this time.

10 And again, we'll keep an eye on it. Our
11 investigator typically go there. They look at --
12 our slot people are there every day to interact with
13 the staff and double check if the devices are
14 working and locking properly.

15 COMMISSIONER BROWN: Thank you.

16 VICE-CHAIR YAWORSKY: Any other questions
17 or comments, Commissioners?

18 MR. HEROLD: Mr. Vice-Chair?

19 I think the only thing that I would add is
20 that, just for some clarity, under my
21 understanding, there's no violation of Florida
22 statute for possession of that key, much like a
23 card reader, the criminal action comes from what
24 you do with it. So while the key may have the
25 ability to get into some slot machine whatever,

1 the mere possession of it is not a violation, it's the
2 action that they're taking.

3 Now, to the point of, you know, should it
4 be rekeyed or whatever, I don't have any input on
5 that. But just for clarity, my understanding is
6 that the key is -- there's no violation for having
7 the key. You could buy those keys and make a nice
8 necklace or whatever. It's the intent that you look
9 at.

10 VICE-CHAIR YAWORSKY: That was our director
11 of law enforcement.

12 MR. HEROLD: Yes.

13 VICE-CHAIR YAWORSKY: Juror number seven.
14 Okay. Any other questions or comments?

15 (No response)

16 Is there a motion?

17 COMMISSIONER BROWN: Move to approve the
18 default final order.

19 VICE-CHAIR YAWORSKY: Motion has been made
20 to approve the default final order. Any objections?

21 (No response)

22 Hearing none, let's show that approved.

23 MS. ALVARADO: Item number 4.3, FGCC
24 versus Mauricio Pazos in Case Numeber 2022-39095.
25 IN this case, there was a two-count administrative

1 account alleging respondent was excluded from
2 (indiscernible) Spring Poker Room at Magic City
3 Casino.

4 He's therefore subject to exclusion by two
5 sections, 550.025 (indiscernible) and 551.112. We
6 also provided the USPS tracking number as well as
7 the delivery confirmation. He failed to respond
8 within 21 days, therefore, the division ask the
9 Commission enter an order finding that he was
10 properly served and did not respond within 21 days.
11 That the factual obligations in the AC are attached
12 as findings in this case. And that he's added to
13 the permanent exclusion list for all slot machine
14 and pari-mutuel facilities.

15 VICE-CHAIR YAWORSKY: Okay. Is there any
16 question or discussion?

17 (No response)

18 Seeing none, and I see head shaking no,
19 I'll take that as no. Is there a motion?

20 COMMISSIONER DRAGO: Motion to approve the
21 final order.

22 VICE-CHAIR YAWORSKY: Motion to approve the
23 final order from excluding Mr. Pazos. Is ther a
24 second?

25 COMMISSIONER D'AQUILA: Second.

1 VICE-CHAIR YAWORSKY: Seeing a second.
2 We'll give this one to Ms. Brown. And with no
3 opposition, show that final order adopted.

4 MS. ALVARADO: Item number 4.4 is FGCC
5 versus Hector Garci in Case Number 2022-042508. This
6 case bears a one count administrative complaint filed
7 that alleged that respondent is excluded from Hialeah
8 Park for casting his bet. He is subject to subject
9 from all slot machine and pari-mutuel facilities.

10 You've also been provided the USPS tracking
11 as well as the confirmation delivery. He failed to
12 respond within 21 days. Division would ask that the
13 Commission enter an order finding that respondent
14 was properly served; did not respond within 21 days,
15 that the facts in the AC are accepted as the facts
16 in this case; and that respondent will be added to
17 the permanent exclusion list for all pari-mutuel and
18 slot machine facilities.

19 VICE-CHAIR YAWORSKY: Any question or
20 comments , Commissioners?

21 COMMISSIONER BROWN: Move to approve
22 default final order.

23 VICE-CHAIR YAWORSKY: Thank you,
24 Commissioner Brown.

25 Is there a second?

1 COMMISSIONER D'AQUILA: Second.

2 VICE-CHAIR YAWORSKY: Hearing no objection,
3 show that final order approved.

4 Next item.

5 MS. ALVARADO: Item

6 number 4.5 is FGCC versus Edi Gonzalez in 2022-
7 048601. This case was a one count administrative
8 complaint alleging that respondent violated 61D-
9 2.003 by refusing to produce his license or provide
10 his name or date of birth to an investigator during
11 a routine search at Palm Meadows Training Center.

12 You were also provided a USPS tracking as
13 well as a delivery confirmation. Here the
14 respondent is subject to an administrative fine up
15 to \$1000 for this violation. He failed to respond
16 within 21 days, therefore, the division would ask
17 that the Commission enter an order finding that the
18 respondent was properly served, filed to respond
19 within 21 days. That the facts in the
20 administrative complaint are accepted as the facts
21 in this case, and concluding that he is subject o a
22 fine of \$100.

23 VICE-CHAIR YAWORKSY: Commissioner Drago,
24 with a question.

25 COMMISSIONER DRAGO: to go back to the

1 other action item before this one where he was
2 refusing to identify himself and show his ID. Do
3 you have any more details on that? Did he ever show
4 his ID? Was it like a two-minute thing and then
5 turned and showed his or --

6 MS. ALVARADO: No. It doesn't look
7 like it. It looks like they walked away and they went
8 to the security supervisor to ask who he was and they
9 figured out who he was. And later on they -- by they
10 went back to the bar, he had left and later on they
11 fined him -- Gulfstream fined him \$100 as well. He
12 is licensed with us. He has a current license until
13 June of 2024. I think he said he didn't want to look
14 for his license while he was working and that he was
15 (indiscernible) and didn't want to dig deeper and he
16 walked away.

17 COMMISSIONER DRAGO: I mean, this seems to
18 me like one of the most basic things you have to do
19 as a licensee is to identify yourself. It's like
20 driving a car and getting pulled over, if you go,
21 "I'm not just going to have to show you my driver's
22 license today." So I think it warrants more than the
23 \$100 in my opinion. This is a more serious
24 offense. Making it much more difficult for our
25 people to try to conduct an investigation, refusing

1 to cooperate, basically. So I would think that it
2 should be a higher fine.

3 COMMISSIONER BROWN: I flagged this one,
4 too. I thought it was a little bit shady, quite
5 frankly, and thought that there was an investigation
6 that needed to carve out a little bit more why did
7 he give a false name? Why did he then lie to our
8 investigator saying that he never spoke with -- or
9 to Gulfstream and told -- pardon me -- the facility,
10 and flat out told him that he never spoke to our
11 investigators. I think this is really, really
12 concerning behavior.

13 MS. ALVARADO: And (indiscernible)
14 default you can tell me or suggest if I need to
15 respond. So the fine can be up to \$1000. After
16 speaking with the division, 100 is what we came up
17 with but of course, we're open to whatever you guys
18 say.

19 VICE-CHAIR YAWORSKY: Commissioner
20 D'Aquila.

21 COMMISSIONER D'AQUILA: My understanding
22 reading through all of this, it's the first
23 offense?

24 MS. ALVARADO: Right

25 COMMISSIONER D'AQUILA: They've had nothing

1 else happen with this individual?

2 MS. ALVARADO: No.

3 COMMISSIONER D'AQUILA: At all?

4 MS. ALVARADO: No.

5 COMMISSIONER D'AQUILA: Is there a
6 possibility of just a bad day? I mean, we have
7 nothing else.

8 MS. ALVARADO: No. (Indiscernible)
9 I'd have to check his record to see if there's any
10 other type of violation but there was no prior of
11 this.

12 VICE-CHAIR YAWORSKY: You know, they're,
13 honestly, unrelated but I think you're hearing from
14 the Commission a sentiment that we expect our folks
15 on the ground to be able to get un-harassed and to
16 be able to get the information they need, so that
17 they can do their jobs quickly. I don't know if
18 there may be somewhat differing views on what we
19 should do here. But is there a motion?

20 COMMISSIONER D'AQUILA: I would make a
21 motion to let it stand as suggested with a \$100
22 fine. But I think there's a separate message going
23 on here that we take a bit aggressively, for lack
24 of a better term. Lack of cooperation with our
25 employees in doing what they supposed to be doing

1 seriously.

2 I would be fine to not accept just \$100 the
3 next time, and I would also look at and expect
4 cooperation from the facilities, not just by the
5 individual not just the facilities, especially the
6 earlier one. (Indiscernible) This one is not as
7 serious, but it's problematic. We don't mean to make
8 light of a first-time offense.

9 MR. TROMBETTA: Commissioner D'Aquila,
10 do you mind just speaking in the microphone a little
11 bit. It's a little tough to hear you at some point.

12 COMMISSIONER D'AQUILA: Would you like me
13 to repeat that?

14 VICE-CHAIR YAWORSKY: Did you make a
15 motion?

16 COMMISSIONER D'AQUILA: I make a motion to
17 approve it as quoted by counsel for the \$100.

18 VICE-CHAIR YAWORSKY: Is there a second to
19 that?

20 I do wonder if in lieu of moving on that
21 Commissioner D'Aquila, would you consider allowing us
22 to go back to staff for further review? Based on --
23 to make sure (indiscernible) larger, larger thought
24 process of (indiscernible).

25 COMMISSIONER D'AQUILA: Yes, I would.

1 we get our licensing system, document management
2 system, customer relationship management, do you
3 perceive changes to this particular policy or is it
4 a completely separate policy?

5 MS. WHITMIRE: So there will be changes
6 to this policy. This will be a living, breathing
7 document. As we take on new technologies, there
8 will be amendments to it, but there will be
9 additional requirements that are built into the
10 policy on how to access any system we bring in. It
11 could be a procedure but there would be something
12 that we would bring back here to work out acceptable
13 use through bifurcation and disclosure. Because
14 while we have a privacy disclosure, in this policy,
15 we'll (indiscernible) more specifically when we get
16 the licensing system.

17 COMMISSIONER BROWN: Thank you. I think
18 that it was a very exhaustive take, and I mean, I
19 don't have changes. I mean, you covered a lot of
20 material in it, and 60 days remains, I guess, last
21 words.

22 MS. WHITMIRE: The current deadline we're
23 working on is the end of March to have it running
24 and most everybody at headquarters operating. So
25 that includes you guys. So new email address, new