



FORENSIC INVESTIGATION REPORT
AUGUST 18, 2008

PURSUANT TO THE OCTOBER 10, 2007, SUPREME COURT ORDER OF THE CHEYENNE AND ARAPAHO TRIBES
(CASE No. CNA-SC-07-03)

This report contains sensitive and confidential information proprietary to the Cheyenne and Arapaho Tribes. It is restricted for the use of the Executive Branch of the Cheyenne and Arapaho Tribes; however, this restriction is not intended to limit distribution after acceptance by the Executive Branch, at which time this report may become a public record of the Cheyenne and Arapaho Tribes.

SUBJECT TO PRIVILEGE – CONFIDENTIAL

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August 18, 2008

The Honorable Governor Flyingman
The Cheyenne and Arapaho Tribes
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RE: TRANSMITTAL LETTER FOR FORENSIC INVESTIGATION REPORT

Honorable Governor Flyingman:

Accompanying this letter, please find our summary report in connection with the services provided to the Executive Branch of the Cheyenne and Arapaho Tribes as documented in the engagement letter dated January 3, 2008. Our services included a forensic investigation related to the October 10, 2007 Order from the Supreme Court of the Cheyenne and Arapaho Tribes "...that a complete forensic audit occur of the Gaming Commission and gaming revenues and Lucky Star and other casinos operating for the Cheyenne and Arapaho Tribes..." (Case No. CNA-SC-07-03, attached at **Appendix B-1**). We prepared this summary report at your request. We previously communicated more detailed findings to you, but have not included all information in this report. We understand you may ask us to perform additional work.

We conducted this engagement in accordance with consulting standards established by the American Institute of Certified Public Accountants. The services do not constitute a rendering by Grant Thornton LLP, or its partners or staff, of any legal advice, nor do they include the compilation, review or audit of financial statements. Because the services were limited in nature and scope, they cannot be relied upon to discover all documents and other information, or provide all analyses, that may be of importance in this matter. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. The lead investigator for the services was Michael A. Fahlman, Senior Manager.

The information supporting our analysis was obtained during the performance of our procedures and through discussions with Tribal officials, management, employees and other parties. Unless otherwise noted in the accompanying report, we have not performed any procedures to corroborate the completeness or accuracy of the information or the explanations provided to us.

This report contains sensitive and confidential information proprietary to the Cheyenne and Arapaho Tribes. It is restricted for the use of the Executive Branch of the Cheyenne and Arapaho Tribes; however, this restriction is not intended to limit distribution after acceptance by the Executive Branch, at which time this report may become a public record of the Cheyenne and Arapaho Tribes.

Sincerely,
GRANT THORNTON LLP

/e/ Bradley J. Preber

By Bradley J. Preber

/e/ Michael A. Fahlman

Lead Investigator
Michael A. Fahlman, CPA, CFF

The accompanying Transmittal Letter dated August 18, 2008, and the accompanying Appendices are integral parts of this Report.

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INTRODUCTION

I. FORENSIC ORDER

On October 10, 2007, in Case No. CNA-SC-07-03, the Supreme Court of the Cheyenne and Arapaho Tribes (“Tribal Supreme Court”) affirmed and ordered “...that a complete forensic audit occur of the Gaming Commission and gaming revenues and Lucky Star and other casinos operating for the Cheyenne and Arapaho Tribes...” (hereafter referred to as the “Forensic Order”, attached at **Appendix B-1**). Grant Thornton LLP (“Grant Thornton”, “we” or “us”) was engaged on January 3, 2008, by the Executive Branch of the Cheyenne and Arapaho Tribes (“Tribe”) to provide forensic investigative services (“Services”) related to the Forensic Order.

This report has been prepared at the request of the Executive Branch of the Tribe. It contains sensitive and confidential information proprietary to the Tribe. It is restricted for the use of the Executive Branch of the Tribe; however, this restriction is not intended to limit distribution after acceptance by the Executive Branch, at which time this report may become a public record of the Tribe.

II. GAMING HISTORY OF THE TRIBE

During the course of performing the Services, we obtained an understanding of the gaming history of the Tribe. We believe that knowledge of this background may enhance the usefulness of this report to the reader. Therefore, we have provided a brief summary of our understanding of the Tribe’s gaming history in this section of the report.

Indian Gaming Regulatory Act

Following the enactment of the Indian Gaming Regulatory Act of 1988 (25 U.S.C. Section 2701-2721, “IGRA”), the Tribe undertook efforts to establish gaming operations primarily to encourage economic development and provide for Tribe members. IGRA established the National Indian Gaming Commission (“NIGC”) in 1988 to “...regulate gaming activities on Indian lands for the purpose of shielding Indian tribes from organized crime and other corrupting influences; to ensure that Indian tribes are the primary beneficiaries of gaming revenue; and to assure that gaming is conducted fairly and honestly by both operators and players.” Among many other things, the NIGC Chairman generally must “...approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands...” Additionally, IGRA and the NIGC set forth that “...[a]n Indian tribe may enter into a management contract for the operation and management of its gaming activity subject to the approval of the NIGC Chairman. Unapproved management contracts are void.” Refer to www.nigc.gov for additional information.

Southwest Casino Corporation Agreements

In the early 1990s, the Tribe explored entrance into gaming and the associated operations and management with the non-Indian corporation Southwest Casino Corporation (“Southwest”).

On April 3, 1993, the Tribe adopted the CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA GAMING ORDINANCE (“Gaming Ordinance”, attached at **Appendix B-2**). Among other things, the Gaming Ordinance established a Tribal Gaming Board (referred to in the Forensic Order and hereafter as the “Gaming Commission”) to provide orderly development, administration and regulation of Tribe gaming.

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Subsequently, the Tribe and Southwest continued negotiations and entered into the SECOND AMENDED AND RESTATED GAMING MANAGEMENT AGREEMENT on October 8, 1993 ("2nd Management Agreement", note that the First Management Agreement was not approved by the NIGC). We understand that the 2nd Management Agreement is the first agreement approved by the NIGC for any Indian tribe. In general, Southwest was to receive a fee in exchange for constructing, operating, managing and marketing gaming and gaming facilities for the Tribe. Following the approval of the 2nd Management Agreement, the Tribe opened the Lucky Star Bingo and Casino in a temporary facility in Concho, Oklahoma on May 20, 1994.

The 2nd Management Agreement was scheduled to expire after seven (7) years; however, the Tribe and Southwest negotiated and entered into an amended agreement less than two years into the term. The NIGC approved a THIRD AMENDED AND RESTATED GAMING MANAGEMENT AGREEMENT between the Tribe and Southwest dated June 16th, 1995 ("3rd Management Agreement", attached at **Appendix B-3**).

The 3rd Management Agreement generally sets forth that in exchange for a management fee (approximately thirty percent (30%) of net revenue), Southwest would provide capital to build a gaming facility, assist with the construction of a gaming facility, and manage and market the gaming facility and operations. Among other things, Southwest was required to keep financial books and records, and to calculate and pay amounts due to each party under the agreement. The amount due to each party (or distribution) was determined by a contractual calculation based on a management fee percentage that changed over time. The amount distributed to Southwest was its management fee and the amount distributed to the Tribe was gaming revenue.

The 3rd Management Agreement remained in place until at least May 19, 2007. Since its inception, there have been several proposed amendments to the 3rd Management Agreement; however, not all were approved by the NIGC. The following is a summary of the three approved amendments for the 3rd Management Agreement:

- Amendment No. 2 (signed on June 5, 1999) – Extended the term of the agreement by three years (from May 19, 2001 to May 19, 2004) and increased the management fee paid to Southwest to approximately thirty-five percent (35%) of net revenue. Those changes were made in exchange for approximately 50 acres of land near Elk City, Oklahoma given to the Tribe by Southwest (attached at **Appendix B-4**);
- Amendment No. 3 (signed on November 13, 2000) – Extended the scope of the agreement to include a casino in Clinton, Oklahoma (attached at **Appendix B-5**); and
- Amendment No. 7 (signed on September 4, 2003) – Extended the term of the agreement by three years (from May 19, 2004 to May 19, 2007) and lowered the management fee paid to Southwest to approximately twenty percent (20%) of net revenue. Those changes were made in exchange for approximately 1,500 acres of land generally referred to as the Sand Creek Massacre Site in Colorado given to the Tribe by Southwest (attached at **Appendix B-6**).

Unless specifically noted otherwise, references to the 3rd Management Agreement hereafter includes these amendments. There is an Amendment No. 11 to the 3rd Management Agreement that was inappropriately in place during a four (4) month period in 2007. The NIGC reversed its approval in August 2007 following a decision by the Tribal Supreme Court that invalidated the attempted extension in April 2007. These events are discussed in decisions of the Tribal Supreme Court attached at **Appendices B-7, B-8 and B-9**.

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Southwest operated, managed and marketed one casino in Concho, Oklahoma (“Lucky Star Concho”) and another casino in Clinton, Oklahoma (“Lucky Star Clinton”) (collectively the “Lucky Star Casinos”) under the 3rd Management Agreement. The Lucky Star Casinos initially operated as bingo halls and transitioned into Class III gaming facilities (as defined by NIGC) that include gaming machines and card games.

The Lucky Star Casinos have generated hundreds of millions of dollars in revenues. From May 1, 2002 through April 30, 2007 (the five year period leading up the expiration of the 3rd Management Agreement in May 2007), the Lucky Star Casinos distributed approximately \$23,000,000 in management fees to Southwest and approximately \$77,000,000 to the Tribe.

III. EVENTS LEADING UP TO THE FORENSIC ORDER

From April 19, 1975 to April 4, 2006, the government of the Tribe operated under the CONSTITUTION AND BY-LAWS OF THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA (“Superseded Constitution,” attached at **Appendix B-10**). On April 4, 2006, the Tribe ratified the current constitution (CONSTITUTION OF THE CHEYENNE AND ARAPAHO TRIBES ratified on April 4, 2006, hereafter the “Current Constitution”, see **Appendix B-11**).

Superseded Constitution (Tribal Council and Business Committee)

Under the Superseded Constitution, the Tribe’s government consisted of two (2) branches, the:

1. Tribal Council (“Tribal Council”); and
2. Business Committee (“Business Committee”).

The Tribal Council was the governing body of the Tribe composed of all enrolled Tribal members at least eighteen (18) years of age. The Tribal Council generally had authority to approve several matters, including annual budgets, matters related to land claims, legal counsel contracts, tribal membership, and amendments to the Superseded Constitution and district boundaries. Additionally, the Tribal Council had general authority to limit or restrict the powers of the Business Committee. The Business Committee was comprised of eight (8) elected members empowered to act on substantially all matters not specifically vested in the Tribal Council, or required through referendum.

The Tribal Supreme Court stated in its JUDGMENT filed March 23, 2007 in Case No. CNA-SC-07-01 (the Tribal Supreme Court’s “07-01 Judgment”, attached at **Appendix B-12**) that “as a practical matter, the Business Committee...exercised virtually all of the governmental powers of the Tribes.” The contention over this power dates back to at least 1993 when threats of legal action were made at a community meeting regarding whether the Business Committee could enter into a gaming management contract without the approval of the Tribal Council.

Gaming Revenue

From at least the late 1990s through the ratification of the Current Constitution in 2006, there were concerns that the members of the Business Committee (“Business Committee Member(s)”) inappropriately used this power to control the gaming management contracts with Southwest, and improperly used the Lucky Star Casinos’ monies.

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IGRA requires tribe's gaming ordinance to set forth the uses of gaming revenues and that the money be used for the following purposes (refer to www.nigc.gov):

- to fund tribal government operations or programs;
- to provide for the general welfare of the Indian tribe and its members;
- to promote tribal economic development;
- to donate to charitable organizations; or
- to help fund operations of local government agencies.

However, IGRA also establishes that a tribe may use gaming revenue to make per capita payments (i.e. individual payments to tribal members), if, among other things, a tribe has submitted a gaming revenue allocation plan ("GRAP") to, and received approval from, the NIGC. Consequently, absent a GRAP, a tribe's gaming ordinance generally establishes how the money is to be used.

In 2004, following several years of governmental power disputes, the Tribe submitted and received approval of its GRAP from the NIGC. Prior to then, the Gaming Ordinance established how the Tribe's gaming revenues were to be used. This provided the Tribe's Gaming Commission with authority, and correspondingly responsibility, to regulate the Tribe's use of Lucky Star Casinos' monies.

In addition to the powers afforded to the Business Committee related to the Lucky Star Casinos monies, the Business Committee had influence over the Gaming Commission. Per the Gaming Ordinance, the Gaming Commission "shall consist of three (3) board members *appointed by the Business Committee*". [*emphasis added*] From approximately 1996 to June 2005, it was comprised of two commissioners ("Gaming Commissioner(s)") and one attorney ("Prior Gaming Commission Attorney"). From approximately June 2005 to January 2008, it was only comprised of the two (2) Gaming Commissioners, although it has been alleged that, in at least 2007, the Gaming Commission was effectively run by one Gaming Commissioner ("Sole Gaming Commissioner").

Effectively, prior to the approval of the GRAP and the ratification of the Current Constitution, the Business Committee influenced or controlled Southwest's activities under the 3rd Management Agreement, the distribution or use of the Tribe's gaming revenues, the Lucky Star Casinos and the Gaming Commission. There have also been allegations that the Gaming Commission and its members had conflicts of interest with the Business Committee and Southwest, and were inappropriately paid with the Lucky Star Casinos' monies. In addition, multiple Business Committee Members that served during this time have since been indicted, pled guilty or have been convicted of crimes, including embezzlement and corruption related to gaming revenue. Over the years, the Tribe received multiple communications from the NIGC regarding violations of IGRA relating to both the Lucky Star Casinos and the Gaming Commission.

Governmental Power Disputes: 2004 - 2006

Starting in approximately 2004, two (2) members of the thirty-fourth (34th) Business Committee joined efforts to improve the Tribe and its use of the Lucky Star Casinos' monies. However, certain events occurred that limited their ability to make improvements. Some of these issues were raised to the Tribal Supreme Court. The Tribal Supreme Court stated in its 07-01 Judgment:

- "a quorum of five of the eight Business Committee [Members] was required to lawfully transact business at Business Committee meetings";

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- “for most practical purposes, the 1975 Constitution...created an omnipotent one-branch tribal government...in which any four of the eight Business Committee [Members] could prevent that Committee from ever meeting”, and further, “were that not enough, in 2002 the then-current Business Committee Chairman (with support of two former Chairmen) took the position in open court that...any Chairman could also *independently* prevent the Business Committee from ever conducting a meeting by simply refusing to call one”;
- “the thirty-fourth [(34th)] Business Committee had apparently failed to lawfully convene during the entirety of its two-year existence”; and
- “So while some Business Committee [Members] either ‘strategically’ or through simple neglect-of-duty refused to participate in the convening of constitutionally required meetings (and consequently the Business Committee could not lawfully convene), some [Business Committee Members] (and/or others) embezzled or otherwise diverted tribal funds while the Business Committee as an entity did absolutely nothing at all.”

In response to the efforts of the (2) new Business Committee Members seeking to make improvements, the remaining Business Committee Members from the thirty-third (33rd) Business Committee apparently resisted reform. We understand that the Federal Bureau of Investigation (“FBI”) has performed investigations into the acts of certain members of the thirty-third (33rd) Business Committee; and subsequently, some have been indicted, convicted or have pled guilty to crimes, including embezzlement and corruption.

The Tribal Supreme Court in the 07-01 Judgment, summarized some of these events by stating that the Tribe’s effective “one-branch, Business Committee-type government...had proven ineffective at preventing corruption, and...tempted far too many Business Committee Representatives into self-interested ‘gaming’ of the system, passive-aggression, and the ultimate abandonment of their responsibilities to the Tribes.”

Current Constitution (Four Separate Branches of Government)

On April 4, 2006, the Tribe ratified the Current Constitution establishing four (4) separate branches of government, the:

1. Tribal Council (“Tribal Council” hereafter);
2. Legislative Branch (collectively, “Legislature,” or if an individual, “Legislator(s)”);
3. Executive Branch (collectively, “Executive Branch,” or if an individual “Governor,” “Lt. Governor,” or “Treasurer”); and
4. Judicial Branch (“Tribal Court” and the “Tribal Supreme Court”).

Please refer to the Current Constitution attached as **Appendix B-11** and the Tribal Supreme Court’s decisions at **Appendices B-7** and **B-12** for information regarding the powers afforded to the Tribe’s branches of government.

Governmental Power Disputes: 2006 - 2007

Numerous disputes arose after the adoption of the Current Constitution, including disagreements about the powers of each branch of government and the management of gaming activities and revenues. Some of the matters related to authorities provided under the Superseded Constitution as compared to the Current Constitution. Southwest and the NIGC were involved in some of these disputes from 2006 to 2007. The

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Tribal Court, and ultimately the Tribal Supreme Court, ruled on many of these issues. The Tribal Supreme Court found in its 07-01 Judgment that:

“...the [Current Constitution] is not the [Superseded Constitution]. The new structure of government is not the old structure of government. The new Legislature is not the old Business Committee. The new Governor is not the old Business Manager. The new Treasurer is not the old Treasurer”.

There were dozens of allegations, disputes and lawsuits during 2006 to 2007. Many of them were raised to the Tribal Supreme Court; and many have since been resolved. A substantial portion of these matters related to:

1. The Gaming Commission, its membership and alleged conflicts of interest with the Business Committee, the Legislature and Southwest;
2. The improper control and alleged misuse of the Tribe's Gaming Revenue (after receipt of distribution from the Tribe's casinos); and
3. The 3rd Management Agreement with Southwest that was scheduled to expire on May 19, 2007, and alleged bad acts by Southwest.

Forensic Order

These matters resulted in formal and informal actions, inquiries and investigations into the actions of certain members of the Tribe, Tribal government, Gaming Commission and of the Lucky Star Casinos and Southwest, among others. We understand that these numerous and ongoing allegations and disputes lead, in part, to the Tribal Court Order issued January 19, 2007, “...that a complete forensic audit occur of the Gaming Commission and Gaming Revenues and Lucky Star and Other [Southwest casinos operating for the Tribe]” (Case No. CNA-CIV-07-04, attached at **Appendix B-13**, the “Tribal Court Forensic Order”). Subsequent to the Tribal Court Forensic Order, we understand that several disputes and items have been resolved.

On October 10, 2007, the Tribe's Supreme Court adopted the Tribal Court's Forensic Order “...to the extent that the [Tribal Court's]...January 19 Order directing ‘that a complete forensic audit occur of the Gaming Commission and gaming revenues and Lucky Star and other casinos operating for the [Tribe]’ has not been complied with *in its entirety*.” This order of the Tribe's Supreme Court is the “Forensic Order” defined above. Subsequent to the Forensic Order, we understand that even more disputes and items have been resolved (attached at **Appendix B-1**).

The following provides a summary of our understanding of events and resolutions associated with the Tribal Court Forensic Order or the Forensic Order (bold items refer to terms used in the orders):

1. **Gaming Commission** - The Gaming Commission, its membership and alleged conflicts of interest with the Business Committee, the Legislature and Southwest;
 - We understand this has not been completely resolved; and therefore has been included in the scope of our procedures.
2. **Gaming Revenue** - The control and misuse of the Tribe's Gaming Revenue (after receipt of distribution from the Tribe's casinos);
 - On March 23, 2007, subsequent to the Tribal Court Forensic Order, the Tribal Supreme Court issued the 07-01 Judgment (attached at **Appendix B-12**) that established under the

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Current Constitution that the Treasurer was to be in the Executive Branch and the Lucky Star Casinos' monies should be sent to the Treasurer in the Executive Branch.

- On May 27, 2008, subsequent to the Tribal Supreme Court Forensic order, the NIGC issued its "Revenue Allocation Plan Investigation Report."
 - We understand this part of the Forensic Order has been addressed; and therefore, has not been included in our procedures.
3. **Lucky Star Casinos** - The 3rd Management Agreement with Southwest that was scheduled to expire on May 19, 2007, and alleged bad acts by Southwest; and
- We understand this has not been completely resolved; and therefore, has been included in the scope of our procedures.
4. **Other Casinos**
- Due to inconsistencies between the Tribal Court Forensic Order and the Forensic Order, the significance of the Lucky Star Casinos to the Tribe, and our understanding that the FBI has investigated other casinos of the Tribe, we therefore, did not include other casinos in our procedures.

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SCOPE OF SERVICES AND WORK PERFORMED

I. SCOPE OF SERVICES

Grant Thornton was engaged January 3, 2008, by the Executive Branch of the Cheyenne and Arapaho Tribes to perform a forensic investigation related to the Forensic Order (Case No. CNA-SC-07-03, attached at **Appendix B-1**). We have prepared this report at the request of the Honorable Governor Flyingman.

As described above, the scope of our procedures included the following items:

- **Gaming Commission** - The Gaming Commission, its membership and alleged conflicts of interest with the Business Committee, the Legislature and Southwest; and
- **Lucky Star Casinos** - The 3rd Management Agreement with Southwest that was scheduled to expire on May 19, 2007 and alleged bad acts by Southwest.

II. WORK PERFORMED

We performed our work in a four (4) phase process as follows:

- Phase I: Information Gathering & Planning;
- Phase II: Preliminary Investigation & Analysis;
- Phase III: Investigation & Findings Analysis; and
- Phase IV: Reporting of Findings.

In connection with our Services, we obtained an understanding of the gaming history of the Tribe and the events leading up to the issuance of the Forensic Order. Using this knowledge we identified the scope of our investigative procedures as described above. We then requested relevant information available through the Executive Branch to perform our procedures, including without limitation official records, agreements, computers and electronic data, reports, regulatory communications, public litigation documents and correspondence, the Lucky Star Casinos books, records and financial statements, and other materials. In addition, we interviewed the Tribe's and the Lucky Star Casinos' officials, management and employees. The information we considered dated from the early 1990's, and we completed our fieldwork on August 3, 2008.

In summary, we identified, obtained, considered and analyzed the following information:

- Tens of thousands of pages of hard copy documents;
- Over 30 gigabytes (approximately over 2.25 million pages) of e-mail data;
- Over 1,700 gigabytes of data on individually used computer hard drives;
- Over 30 gigabytes of data hosted on computer servers;
- Approximately 400,000 general ledger accounting entries for the Lucky Star Casinos; and
- Over 100 hours of interviews.

In certain cases, we were unable to obtain requested information and/or interview persons believed to have information potentially relevant to our work. These situations are described in the following **Limitations** section.

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III. LIMITATIONS

A forensic investigation requires professional judgment regarding, among other matters, the nature, timing and extent of procedures to be performed; the weight, quality and reliability of evidential matter; and the cost versus benefit of acquiring and testing evidence.

The information supporting our analysis was obtained during the performance of our procedures and through discussions with Tribal officials, management, employees and other parties. Unless otherwise noted herein, we have not performed any procedures to corroborate the completeness or accuracy of the information or the explanations provided to us.

Certain information requested for our procedures was not produced to us for a variety of reasons, including certain documents in the possession of governmental or regulatory bodies. Additionally, in our experience, certain types of older records are unavailable. Generally, more recently prepared information was readily available and stored in electronic form as compared to older materials that were mostly hard copy. The form, availability and completeness of information were taken into consideration during the course of performing our procedures and significant limitations are reported herein.

In addition, we requested interviews from certain individuals believed by us to have information and materials potentially relevant to our work that we were unable to conduct. These requested but unsuccessful interviews are summarized below.

Legislature

We requested an interview with a current member of the Legislature that was refused (other members of the Legislature were interviewed). This individual initially agreed to meet with us, but subsequently denied our request for an interview.

Gaming Commission

We requested an interview with the individual whom we understood was the sole member of the Gaming Commission prior to January 2008 (defined above and hereafter as the "Sole Gaming Commissioner"); however, this individual denied our request. We did interview two (2) employees of the Gaming Commission.

In addition, we requested Gaming Commission documents believed to be in the possession of the Sole Gaming Commissioner that were not available at the Gaming Commission's office. We were informed that Sole Gaming Commissioner removed certain documents and data from the Gaming Commission office prior to his/her departure from the Gaming Commission. We requested the return of these alleged improperly removed documents from the Sole Gaming Commissioner; however, we understand the Sole Gaming Commissioner did not respond and that these records have not yet been recovered. In addition, we understand that members and employees of the Gaming Commission worked remotely from the Gaming Commission offices. In connection with these remote activities, it is possible that certain information requested by us is maintained off site from the Gaming Commission offices that also was not produced to us.

We requested access to the computers used by the Gaming Commission members and employees in order to obtain a forensic copy of the hard drive data for analysis. We were permitted access and made forensic copies of the computer hard drives provided to us. Through our analysis, we discovered that a Gaming

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Commission employee, whom we understand is a family relative of the Sole Gaming Commissioner, used scrubbing software in an attempt to destroy data on the hard drives of two computers . Both computer hard drives subjected to the scrubbing software had limited recoverable data for our analysis. Additionally, we were unable to recover any e-mail for the Sole Gaming Commissioner, or any other employee of the Gaming Commission.

Southwest

We requested interviews from officials of Southwest, and we requested information believed to be in the sole possession of Southwest related to our investigation. Southwest communicated that they would not comply with either request.

We sought to conduct interviews of the previous General Manager of the Lucky Star Casinos hired by Southwest. We did not receive a response to our request.

Lucky Star Casinos

We requested interviews with former Lucky Star Casinos' management and employees, including without limitation the former Assistant General Manager. We did not receive a response to any of our requests.

We performed a forensic analysis of electronic e-mail communications for Southwest management and employees, and the other employees of the Lucky Star Casinos. However, we found that the Lucky Star Casinos did not use a centralized e-mail system (eg, MS Outlook). Instead, we understand that primarily management level personnel used web-based e-mail systems (eg, Yahoo, Hotmail, etc.). We found this web-based e-mail more difficult to obtain, and consequently, we had a limited amount of e-mail available to us for analysis.

The Lucky Star Casinos current accounting software package was implemented in approximately April 2001. Due to difficulties recovering and converting accounting data processed by the software package in place prior to this time, we did not analyze this data. In addition, documentation supporting accounting transactions prior to 2006 was stored at a number of off-site locations, making identification, recovery and retrieval of relevant information more difficult. Therefore, in certain instances, our requests were more targeted.

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SUMMARY OF FINDINGS AND OBSERVATIONS

As stated above in the **SCOPE OF SERVICES AND WORK PERFORMED** section, we performed our investigative procedures related to:

- **Gaming Commission** - The Gaming Commission, its membership and alleged conflicts of interest with the Business Committee, the Legislature and Southwest; and
- **Lucky Star Casinos** - The 3rd Management Agreement with Southwest that was scheduled to expire on May 19, 2007 and alleged bad acts by Southwest.

We have not set forth to determine, nor does this Report document, any legal opinions, interpretations or conclusions related to statute, contract, constitutional or any other laws or regulations.

However, as part of our procedures, we sought to evaluate information against a standard, provision, law, agreement or other measure. For the Gaming Commission we evaluated information against the Gaming Ordinance which establishes the duties of the Gaming Commission and its members. For the Lucky Star Casinos and the alleged bad acts by Southwest, we evaluated information against the 3rd Management Agreement.

As part of the 3rd Management Agreement, Southwest was required to "...manage [the Lucky Star Casinos] on behalf of the Tribe in compliance with (i) the terms of [the 3rd Management Agreement]; (ii) In accordance with [IGRA] or other applicable Tribal and/or Federal law; and (iii) In accordance with the [Gaming Ordinance]." Further, the 3rd Management Agreement also states that Southwest "agrees that no payments have been and no payments will be made to any elected member of the Tribal government or the relative of any elected member of the Tribal government for the purpose of obtaining or maintaining the contract or any other privilege for [Southwest]."

In connection with Southwest's compliance with IGRA, we understand the NIGC issued a letter dated November 8, 2007 regarding the "Undue Influence Allegations", specifically that "the Chairman of the NIGC shall not approve any contract if [the Chairman] determines that the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity." We understand the "Undue Influence Allegations" include claims of improper payments to the Gaming Commission and elected members of the Tribe's government, and that Southwest was inappropriately involved in the Tribe's internal politics and governmental activities related to extending the 3rd Management Agreement.

Consistent with our scope of work described above, and considering the alleged improper influence matters, we presented our findings in the following three (3) categories:

1. **Gaming Commission** – Compliance with the Gaming Ordinance and alleged conflicts of interest;
2. **Lucky Star Casinos** – Compliance with the 3rd Management Agreement and alleged bad acts by Southwest; and
3. **Lucky Star Casinos** – Compliance with the 3rd Management Agreement and IGRA related to extensions of management contracts.

Please note that certain observations and findings relate to one or more than one of the findings categories above, and are not mutually exclusive.

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We found that the evidence supports that:

1. **Gaming Commission** - Prior to the appointment of three (3) new members of the Gaming Commission in January 2008, the Gaming Commission:
 - Did not comply with the Gaming Ordinance (see **Appendix B-2**), that sets forth, among other things, in **Section 202. Gaming Board Duties**, that the “[Gaming Commission] shall be charged with the responsibility of administering and enforcing the provisions of [the Gaming Ordinance]”, and
 - Had conflicts of interest with the Prior Gaming Commission Attorney, the Business Committee, the Legislature and Southwest.

2. **Lucky Star Casinos – Southwest**:
 - Did not comply with the 3rd Management Agreement, including the Gaming Ordinance and IGRA as integral parts of the agreement; and
 - Had conflicts of interest with, and made inappropriate payments to, the Prior Gaming Commission Attorney, the Business Committee and the Legislature.

3. **Lucky Star Casinos – Southwest**:
 - Did not comply with IGRA by “attempt[ing] to, unduly interfere or influence for its gain or advantage [the] decision or process of [the Tribe’s] government related to the [Lucky Star Casinos]”; and
 - Did not comply with the 3rd Management Agreement as a result of:
 - i. IGRA violations; and
 - ii. Inappropriate payments and participation in the Tribe’s governmental activities, during or around the amendments to the 3rd Management Agreement.

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FINDINGS AND OBSERVATIONS

1. Gaming Commission – Compliance with the Gaming Ordinance and alleged conflicts of interest

We found that the evidence supports that:

Prior to the appointment of three (3) new members of the Gaming Commission in January 2008, the Gaming Commission:

- Did not comply with the Gaming Ordinance (see **Appendix B-2**), that sets forth, among other things, in **Section 202. Gaming Board Duties**, that the “[Gaming Commission] shall be charged with the responsibility of administering and enforcing the provisions of [the Gaming Ordinance]”, and
- Had conflicts of interest with the Prior Gaming Commission Attorney, the Business Committee, the Legislature and Southwest.

In connection with the preceding, we understand the following allegations have been made:

- The Gaming Commission historically did not demonstrate a high standard of regulatory oversight, or carry out its duties as established in the Gaming Ordinance;
- In the recent years prior to the appointment of three (3) new Gaming Commissioners in January 2008, the Gaming Commission was substantially run by one Gaming Commissioner, even though the Gaming Ordinance requires three (3) Gaming Commissioners;
- Conflicts of interest existed, and inappropriate payments were made, between the Gaming Commission, the Prior Gaming Commission Attorney, Southwest, the Business Committee and the Legislature;
- Lack of proper and timely processing and approval of gaming licenses;
- Southwest inappropriately paid the expenses of the Tribe’s Gaming Commission, including travel expenses; and
- The Tribe’s Gaming Commission was not “utilizing legal services judicially”.

Our procedures were designed, in part, to address these allegations. The evidence and our analysis support the allegations and that prior to January 2008:

The Gaming Commission did not fulfill its regulatory oversight responsibilities. The Gaming Commission, including the Prior Gaming Commission Attorney, had conflicts of interest with Southwest, the Business Committee and the Legislature. In at least 2007, the Gaming Commission was effectively run by the Sole Gaming Commissioner. In addition, the Gaming Commission was notified by 2005 of allegations that the Lucky Star Casinos’ monies were being misused; however, we were unable to find any information that indicated the Gaming Commission appropriately responded to these allegations. Further, following this notice, the Lucky Star Casinos’ monies continued to be misused.

Licensing and Taxes

The Gaming Commission historically did not regulate or comply with the provisions of the Gaming Ordinance related to gaming licenses. The Gaming Commission failed to collect, and Southwest failed to pay, license fees required by the Gaming Ordinance. Further, the Tribe received multiple

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notices of licensing violations, and we understand the Tribe recently settled with the NIGC for some of these violations.

The Gaming Ordinance requires the Lucky Star Casinos, and consequently Southwest, to pay employee and machine licensing fees to the Tribe's Tax Commission. Gaming license fees were collected only for employees that were **approved** by the Gaming Commission. However, per the Gaming Ordinance, "each **application** for an initial or renewal license shall be accompanied by payment of the license fee." [**emphasis added**] This caused the Lucky Star Casinos to delay, and in some cases all together avoid, paying some taxes. Consequently, Southwest's management fee was higher and amounts owed to the Tribe's Tax Commission were not paid.

From May 2005 to May 2007, licensing fees were not paid. Once this failure to comply was identified, approximately \$65,000 due was paid by the Lucky Star Casinos. However, when the expense was paid on May 3, 2007 (during the 2007 disputes related to the extension of Southwest's 3rd Management Agreement) it was inappropriately recorded as an amount due to the Lucky Star Casinos; rather than an expense. If it was appropriately recorded as an expense, it would have lowered the management fee Southwest received for May 2007. The \$65,000 payment was later reclassified as an expense of the Lucky Star Casinos, but not until after Southwest was removed as the manager and consequently Southwest' management fee was not reduced by this amount.

Gaming Commission Expenses & Travel

The Gaming Commission was inappropriately funded by Southwest using the Lucky Star Casinos' monies, which threatened its ability to independently regulate the Lucky Star Casinos. Following the Governor's request to stop funding the Gaming Commission in May 2006, the Lucky Star Casinos' monies were used to pay travel costs of the Gaming Commission and its attorney. Allegedly, Southwest inappropriately provided cash to certain tribal members for **claimed travel expenses**, including the Gaming Commissioners.

However, as discussed below, some payments to tribal officials were subsequently reported as **income** to the individual. Employees and commissioners of the Gaming Commission were issued Internal Revenue Service Forms 1099-Misc (miscellaneous income form) from the Lucky Star Casinos. The Lucky Star Casinos issued these forms to individuals that received cash for **claimed travel expenses**, but did not provide receipts or support for the claimed travel.

In 2004 and 2005 alone, (following a three (3) year extension of the 3rd Management Agreement with Southwest in the fall of 2003, during the implementation of the GRAP and during the potential "neglect" by the Business Committee described above in the **Introduction** section) the Lucky Star Casinos, through its manager Southwest, issued two (2) IRS Forms 1099-Misc totaling approximately \$36,000 to the Sole Gaming Commissioner and two (2) totaling approximately \$29,000 to the other Gaming Commissioner for **claimed but unsupported** travel. These amounts were reported as expenses in the financial statements provided to the Lucky Star Casinos' external auditors, the Tribe and the NIGC; however, they were reported as income to the IRS.

An employee of the Gaming Commission informed us that certain Gaming Commission expenses included personal non-gaming related travel. Another employee of the Gaming Commission informed us that the Sole Gaming Commissioner had an expectation of travel from Southwest that

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would be missed once Southwest was gone. This comment by an employee of the Gaming Commission is consistent with comments from employees of the Lucky Star Casinos.

Conflicts of Interest

The Prior Gaming Commission Attorney worked with the Gaming Commission from approximately 1996 to June 2005. The Prior Gaming Commission Attorney was involved in many activities unrelated to the Tribe that appear to be conflicts of interest. The activities with the Tribe date back to at least the early 1990's, and have involved multiple disputes regarding the payment of legal fees.

Potential conflicts of interest of the Prior Gaming Commission Attorney include:

- A side entertainment business with the previous General Manager of the Lucky Star Casinos hired by Southwest ("Southwest's GM"). In addition, another individual involved in this side business previously worked for a vendor of the Lucky Star Casinos and was a family relative of Southwest's GM;
- Involvement with Southwest's gaming ventures for other tribes; and
- In February 2005, the Prior Gaming Commission Attorney informed the Gaming Commission that:

"[the Prior Gaming Commission Attorney] believe[d] that the NIGC would like to close [Lucky Star Casinos] because they believe the Tribe is negatively portraying Indian Gaming to the public by spending the money in a fashion they believe inappropriate. The problem is as long as the Tribe is following the rules and regulations they can spend the money however they want to and since most of the money goes to general welfare its not even taxable. Therefore, they are using any means possible including getting between long-standing fiduciary relationships of the Tribe[,] [Southwest] and their attorneys to accomplish the goal they believe is in the best interest of everyone involved including the industry as a whole."

- In 2007, the Prior Gaming Commission Attorney represented the Legislature and the Lucky Star Casinos at the same time, received approximately \$350,000 from the Lucky Star Casinos and worked with a lobbyist hired by Southwest to extend Southwest's 3rd Management Agreement (these events are discussed below); and
- Received over \$1,200,000 in total from the Lucky Star Casinos from 2001 to 2007.

The Sole Gaming Commissioner is married to a member of the Business Committee and current member of the Legislature. During 2007, this Legislator was involved in the events related to the extension of Southwest's 3rd Management Agreement and the multiple attempts to recall the Governor with the Prior Gaming Commission Attorney and Southwest.

Following the removal of Southwest in August 2007, the Sole Gaming Commissioner attempted to order Southwest to continue operating the Lucky Star Casinos and revoked the gaming license of the individual appointed to manage the Lucky Star Casinos after Southwest. These attempts were in direct contradiction of the NIGC's and the Tribal Supreme Court's decisions. The Tribal Supreme Court stated that certain actions of the Sole Gaming Commissioner were "unconstitutional", and it took "judicial notice that the [Tribe's Gaming Commission's] *ultimate conclusions (if not every*

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subcomponent of its reasoning) are not materially distinguishable from Southwest's...
[emphasis added] (attached at Appendix B-8)

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2. Lucky Star Casinos – Compliance with the 3rd Management Agreement and alleged bad acts by Southwest

We found that the evidence supports that Southwest:

- Did not comply with the 3rd Management Agreement, including the Gaming Ordinance and IGRA as integral parts of the agreement; and
- Had conflicts of interest with, and made inappropriate payments to, the Prior Gaming Commission Attorney, the Business Committee and the Legislature.

In connection with the preceding, we understand the following allegations have been made:

- Lucky Star Casinos' monies were misused;
- Southwest breached the 3rd Management Agreement; and
- Southwest had conflicts of interest with the Gaming Commission, the Business Committee, and the Legislature.

Our procedures were designed, in part, to address these allegations. The evidence and our analysis support the allegations and that:

Lucky Star Casinos' monies were inappropriately used by, advanced or provided to elected officials of the Tribe's government, the Gaming Commission and Southwest in violation of the 3rd Management Agreement. Additionally, money required to be paid to the Tribe's government from Lucky Star Casinos was not paid.

General Responsibilities, General Manager & Fiduciary

The 3rd Management Agreement generally sets forth that Southwest had complete responsibility to manage the Lucky Star Casinos in compliance with laws and regulations, was responsible for the appropriate use and accounting of the Lucky Star Casinos monies, had a fiduciary duty to the Tribe, and was responsible for selecting and employing a General Manager. This General Manager generally had the same responsibilities under the 3rd Management Agreement as Southwest. Specifically, sections 1.9, 2.1, 3.2, 3.2.A and 5.3 of the 3rd Management Agreement state:

General Responsibilities of [Southwest]

“...manage [the Lucky Star Casinos] on behalf of the Tribe in compliance with (i) the terms of [the 3rd Management Agreement]; (ii) In accordance with [IGRA] or other applicable Tribal and/or Federal law; and (iii) In accordance with the [Gaming Ordinance].”

Fiduciary Relationship of Manager to Tribe

“In the carrying out of Manager's duties and responsibilities under this agreement, Manager acts as the fiduciary of Tribe and shall be held to the traditional standards of a fiduciary therein.”

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Manager's Representative

"[Southwest] shall appoint and hire as its representative on site the General Manager..."

[Southwest's] Representative – General Manager

"General Manager of the Facility with primary authority over all other employees and who will make, or delegate to an appropriate staff-member responsibility and authority for the making of all day-to-day business decisions required at the Facility. The General Manager shall have ultimate authority over such delegated tasks and shall adequately supervise and monitor same to secure the successful exercise of such authority by his staff."

General Manager

"General Manager" shall mean the person selected by [Southwest] and approved by the Tribal Representative, who is experienced in the operation, maintenance and **accounting** for a Gaming Operation. Such General Manager shall be employed by [Southwest] and shall be the person responsible for and with the necessary authority for carrying out the duties and responsibilities of [Southwest] as set forth herein in connection with the operation of the [Lucky Star Casinos]. The General Manager shall be engaged during the term of this agreement. [**emphasis added**]

Southwest appointed a General Manager of the Lucky Star Casinos that served in this role from the 1990s until the removal of Southwest in August 2007 (defined above and hereafter as "Southwest's GM"). Southwest's GM operated the Lucky Star Casinos on behalf of Southwest and was also a Vice President of Southwest. Other executives of Southwest ("Southwest Executives") have been involved in the operations and accounting of the Lucky Star Casinos since the start of the Lucky Star Casinos in the early 1990s.

Some management decisions were made by Southwest Executives and others by Southwest's GM. Southwest's GM was knowledgeable of, and made management decisions about, the Lucky Star Casinos operations and monies; however, this individual was not knowledgeable about accounting and financial reporting. Consequently, Southwest Executives oversaw and directed the accounting and financial reporting of the Lucky Star Casinos. (see "**Accounting, Financial Reporting & Uses of Money**" section below)

Even though Southwest's GM was paid to manage the Lucky Star Casinos, he/she did not dedicate all of his/her efforts to the Lucky Star Casinos. Southwest's GM was also a Vice President of Southwest, and the Chairman of the Oklahoma Indian Gaming Association ("OIGA"). In addition, as noted above, this individual had a separate business together with the Prior Gaming Commission Attorney and a prior representative of a Lucky Star Casinos vendor, who is a family relative. We also discovered a number of other relationships and activities indicative of conflicts of interest and self-dealing, including associated misuses of the Lucky Star Casinos' monies.

In connection with the role as a Vice President of Southwest, Southwest's GM (or Southwest Executives) directed employees of the Lucky Star Casinos to perform work related to other ventures

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of Southwest, including other Indian tribe casinos. The Prior Gaming Commission Attorney was also involved with Southwest in these efforts. The Lucky Star Casinos' monies were used to pay the time and expenses incurred for these efforts. In most cases, Southwest repaid the Lucky Star Casinos; however, not all of the costs were repaid and the Tribe's distribution of money from the Lucky Star Casinos was lower as a result.

In connection with Southwest's GM's executive role with OIGA, he/she inappropriately directed the Lucky Star Casinos to pay operating expenses of the OIGA, including over \$20,000 for a vehicle. The OIGA failed to repay all of the amounts advanced by the Lucky Star Casinos. These types of transactions significantly increased in 2007 during the allegations of wrongdoing by Southwest and during Southwest's attempts to extend the 3rd Management Agreement. However, even if these expenses are later deemed to be appropriate, they were recorded in a manner that caused Southwest's management fee to be higher than it should have been.

Accounting, Financial Reporting & Uses of Money

Certified Public Accountant

The 3rd Management Agreement states in section 4.1.A that:

Certified Public Accountant

“[Southwest] shall employ, as an Operating Expense, a bookkeeper, certified public accountant or accounting firm to ***oversee the performance of such accounting tasks as are required to meet the requirements of [the 3rd Management Agreement]***, and in order to assist [Southwest] ***with the financial information needed to fully and properly carry out the general duties and responsibilities of [Southwest] hereunder.*** [Southwest] shall design and install systems for insuring the security of all funds and maintain and police such systems as [Southwest] sees fit.” ***[emphasis added]***

Dating back to the early 1990s, a Southwest Executive was involved with and functioned in this role. This Southwest Executive is a Certified Public Accountant and was involved with the budgeting, financial reporting and overall responsibility for accounting and financial reporting.

Southwest hired an individual to fulfill the general daily accounting duties of the Lucky Star Casinos (“Accounting Manager”). The Accounting Manager acted as the bookkeeper since the 1990s. This individual had very specific and detailed knowledge, information and documentation of the financial activity, cash payments and operations of the Lucky Star Casinos. The Accounting Manager referred to the Southwest Executive for technical financial and accounting guidance and compliance.

Collection, Deposit and Disbursement

The 3rd Management Agreement required Southwest to properly collect, deposit, disburse and report gaming revenue. Southwest misused the Lucky Star Casinos' monies for payments to officials of the Tribe, to fund Southwest's own activities and to influence the Business Committee and the Legislature to support and approve extensions to its 3rd Management Agreement.

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The timing of some of these events corresponds with political events in the Tribe and amendments to the 3rd Management Agreement. Additionally, Southwest repaid certain amounts immediately prior to year end making the balance \$0 for the financial statement audit.

The 3rd Management Agreement section 3.4.C states that:

Collection, Deposit and Disbursement of Revenues

“As Tribe’s Independent Contractor, [Southwest] shall collect, receive and account for, on behalf of Tribe, all revenues generated and resulting from the operation of the Gaming Facility. Such revenues shall be deposited into an account or accounts of the Gaming Operation with such bank or banks as [Southwest] may choose, with the approval of Tribe, with the sole signatories to be [Southwest] or [Southwest’s] duly authorized representatives designated for those purposes. ***[Southwest] is hereby authorized to make all such disbursements and expenditures as are necessary*** from said account in order to fund all Gaming Operations and other expenses related to the Gaming Facility, including, but not limited to, Operating Expenses and non-gaming operation expenses; and the disbursement of Net Revenues and Non-Gaming Net Revenues due Tribe and [Southwest]. ***All such expenditures and disbursements shall be clearly represented within and on the regular monthly financial statement or report provided by [Southwest] to Tribe*** as more specifically set forth herein below.” ***[emphasis added]***

In violation of the 3rd Management Agreement, accounts and disbursements were not “***clearly represented within and on the regular monthly financial statement or report provided by [Southwest] to [the Tribe].***” Two (2) receivable accounts (i.e. amounts reported as advances due to the Lucky Star Casinos) were used by Southwest and Southwest’s GM for inappropriate activity, including commingled expenditures and interest free advances of money for Southwest’s benefit. The two accounts Southwest used were named “A/R – Southwest Casino” and “A/R – Other”.

Generally, the Lucky Star Casinos were to be repaid by Southwest or other parties for amounts recorded, although certain amounts remained uncollected at Southwest’s departure. These two (2) accounts included the following activity:

- Travel expenses for Legislators and the Tribal Council Coordinator;
- Expenses for meetings (generally referred to as “Southwest Community Meetings”) occurring during the events from 2006 to 2007 related to the extension of the 3rd Management Agreement;
- Expenses for Southwest’s other Indian gaming activities unrelated to the Tribe, including the time and expense for the Lucky Star Casinos’ employees efforts for these activities;
- Expenses of the OIGA, including over \$20,000 for a car;
- Licensing fees due to the Tribe’s Tax Commission (discussed above in finding “**1. Gaming Commission**”); and
- Expenses for an attorney that filed a petition to assist Southwest with obtaining an extension to the 3rd Management Agreement.

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Even if these are later deemed appropriate, the uncollected amounts caused Southwest's management fee to be higher than it otherwise would have been. In the weeks following Southwest's departure in August 2007, approximately \$90,000 in the "A/R – Other" account was written-off as uncollectible, but only lowered the amount paid to the Tribe (with no impact to Southwest).

In addition, as stated above, the Gaming Commission was inappropriately funded by the Lucky Star Casinos. Even if these disbursements are later deemed appropriate, the funding activity was reported inconsistently for approximately two (2) years and benefited Southwest. During this time, approximately \$380,000 was recorded as a receivable owed by the Gaming Commission to the Lucky Star Casinos (using the account named "A/R – Gaming Commission"). This amount was not included in the calculation of Southwest's management fee until it was ultimately written-off as an expense after Southwest's management fee percentage was lowered from 30% to 20%.

Even though Southwest used multiple receivable accounts, the Lucky Star Casinos' monthly financial statement provided to the Tribe by Southwest only reported one (1) accounts receivable named "Accounts Receivable – Net", thereby omitting the names of the "A/R – Southwest Casino", "A/R – Other" and "A/R – Gaming Commission."

Distribution of Profits

Southwest distributed the Tribe's distribution and its management fee in violation of the 3rd Management Agreement. The 3rd Management Agreement states:

Section 5.2 – Distribution of Profits

"The distribution of profits shall be made within twenty (20) days of the close of each calendar month, following calculation of Net Revenues and Non-Gaming Net Revenues by Manager and after report of said calculations and the resulting distribution plan is delivered to Tribe. All payments to the Tribe of its share of Net Revenues and Non-Gaming Net Revenues or its guaranteed payment shall be deposited as instructed, in writing, from time to time." [emphasis added]

Southwest's Distribution of Profits

On May 14, 2007, during the time that the extension of Southwest's 3rd Management Agreement was uncertain, Southwest advanced itself \$500,000 for the May 2007 management fees. However, the amount advanced was higher than the actual management fee once it was subsequently calculated.

Tribe's Distribution of Profits

Prior to 2005, in connection with the misuse of the Tribe's gaming revenue described herein, Southwest improperly classified early payments to the Tribe (or on behalf of the Tribe) as advances of, or deductions from, distributions to the Tribe. Subsequent to 2005, this practice ceased.

Other Misuses of the Lucky Star Casinos' Monies

Contrary to several provisions of the 3rd Management Agreement, there were many other misuses of the Lucky Star Casinos' monies. Due to the timing of this activity in relation to amendments and

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extensions of the 3rd Management Agreement, we have more fully described some of these matters below in finding “**3. Lucky Star Casinos.**”

An illustration of the general flow and corresponding misuses of the Lucky Star Casinos’ monies is attached at **Appendix C**. In summary, misuses include, among others:

- Coupons and other winnings / free play;
- Gaming Commission expenses;
- Inappropriate legal fees;
- Payments for attempted recall efforts;
- Payments related to Tribal Council meetings;
- Profit Distribution advances;
- Southwest’s other ventures;
- Southwest’s GM’s other ventures;
- Travel: Gaming Related;
- Travel: Non-Gaming Related; and
- Uncollectible checks (aka “Hot Checks”).

These types of transactions involved the following parties:

- Gaming Commission and its employees and members;
- Members of the Business Committee or Legislature;
- Tribal Council Coordinator;
- Southwest;
- Southwest’s GM;
- Prior Gaming Commission Attorney; and
- Other Parties.

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3. Lucky Star Casinos - Compliance with the 3rd Management Agreement and IGRA related to extensions of management contracts

We found that the evidence supports that Southwest:

- Did not comply with IGRA by “attempt[ing] to, unduly interfere or influence for its gain or advantage [the] decision or process of [the Tribe’s] government related to the [Lucky Star Casinos]”; and
- Did not comply with the 3rd Management Agreement as a result of:
 - i. IGRA violations; and
 - ii. Inappropriate payments and participation in the Tribe’s governmental activities, during or around the amendments to the 3rd Management Agreement.

In connection with the preceding, we understand the following allegations have been made:

- Southwest unduly interfered with the Tribe’s government;
- Southwest used the Lucky Star Casinos’ monies to make inappropriate payments to officials of the Tribe for the purpose of obtaining an extension of the 3rd Management Agreement;
- Southwest violated IGRA;
- Southwest breached the 3rd Management Agreement; and
- Southwest had conflicts of interest with the Gaming Commission, the Business Committee, and the Legislature.

Our procedures were designed, in part, to address these allegations. The evidence and our analysis support the allegations and that:

The Gaming Commission did not regulate, and Southwest did not operate, the Lucky Star Casinos in compliance with the Gaming Ordinance and IGRA. In addition, Southwest had conflicts of interest with officials of the Tribe. Southwest misused the Lucky Star Casinos’ monies to influence officials of the Tribe to secure extensions of the 3rd Management Agreement. These officials of the Tribe included members of the Business Committee, members of the Legislature and the Tribal Council Coordinator (a position appointed by the Tribal Council). Southwest’s financial viability was dependent on the Lucky Star Casinos and obtaining extensions of the 3rd Management Agreement.

Superseded Constitution

Prior to the ratification of the Current Constitution, the Business Committee negotiated and approved gaming management contracts and amendments on behalf of the Tribe. There were ten (10) attempted amendments to the 3rd Management Agreement between the Business Committee and Southwest from approximately 1996 to 2005. Seven (7) of these were in the April 2002 to January 2005 timeframe. Three (3) of the ten (10) amendments were executed and approved by the NIGC, including changes in the management fee and extension of the term.

Two (2) of the approved amendments included the exchange of land for a three (3) year extension of the 3rd Management Agreement, among other items. A professional services firm was hired to analyze these transactions in the early 2000s, and reported the following:

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“...we are confident that the data does demonstrate that the assets exchanged or to be exchanged by the [Tribe] for both the Elk City and Sand Creek lands *far exceeds the purported value of those lands.*” [*emphasis added*]

Additionally, the Business Committee received hundreds of thousands of dollars in cash and other benefits from the Lucky Star Casinos in the form of bad checks exchanged for cash and advances of cash for claimed travel. Payments to the Business Committee significantly increased at times during amendments and extensions to the 3rd Management Agreement.

Hot Checks

The Lucky Star Casinos' accepted checks in exchange for cash. Checks returned for non-payment have generally been referred to as “hot checks”, “bad checks” and “NSF checks.” The NIGC reported violations related to hot checks totaling approximately \$82,000 for years prior to 2000. Up until 2000, we understand that the Business Committee issued hot checks from both personal and the tribal accounts to receive money from the Lucky Star Casinos, but did not always repay the money. This practice stopped following an email from Southwest's GM in 2000.

Hot check activity started again in 2002 and continued until 2005, which corresponds to the seven (7) amendments noted above. During this time, more than \$300,000 of “hot checks” were accepted by the Lucky Star Casinos, almost entirely issued by members of the Business Committee. The cash provided in exchange for the hot checks significantly increased in periods that correspond with Southwest's negotiations for amendments to the 3rd Management Agreement. Southwest's GM was aware of this activity, and instructed the employees of the Lucky Star Casinos to provide the money to the members of the Business Committee.

Travel

There were significant issues related to the payment of claimed travel expenses by the Lucky Star Casinos. As discussed above, officials of the Tribe were issued IRS Forms 1099-misc to report *income* for unsupported *claimed travel*. Similar to the hot checks, the cash provided to members of the Business Committee for claimed travel significantly increased during periods Southwest was negotiating amendments to the 3rd Management Agreement. In 2003 alone, when Southwest received a three (3) year extension from the Business Committee, members of the Business Committee were issued IRS Forms 1099-misc totaling approximately \$100,000 for *claimed travel*. For example, forms used to report income for one member of the Business Committee from 2001 to 2004 are attached at **Appendix B-14**.

Southwest's Dependence on the Lucky Star Casinos

The 3rd Management Agreement was very important to Southwest. In fact, the failure to extend the 3rd Management Agreement threatened the financial viability of Southwest. In its public filings with the SEC, Southwest stated that “[i]f the [3rd Management Agreement] is not extended beyond May 19, 2007, or if it is unilaterally terminated, it would eliminate the primary source of our operating revenue and have a material adverse impact on our business.” This situation created significant pressure for Southwest to extend the 3rd Management Agreement, and likely contributed to Southwest's actions to influence officials of the Tribe in connection with this matter.

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Southwest's Executives' Compensation

Southwest's Executives, including Southwest's GM, were provided significant rewards and compensation related to the 3rd Management Agreement.

In 1997, Southwest's GM was paid an annual salary of approximately \$50,000 from the Lucky Star Casinos. In 1999, the year Southwest received a three (3) year extension of the 3rd Management Agreement, Southwest's GM's annual salary was raised to \$100,000. Starting in at least 2003, Southwest's GM received compensation from both Southwest and the Lucky Star Casinos. From 2004 to 2007, following the three (3) year extension of the 3rd Management Agreement in 2003, Southwest's GM received over \$1,500,000 in total compensation, bonuses and other payments from the Lucky Star Casinos and Southwest. In addition, Southwest's GM was issued 250,000 stock options to purchase publicly traded stock of Southwest. Southwest's GM had a car and meal allowance, as well as a discretionary expense account paid by the Lucky Star Casinos.

Southwest Executives also made hundreds of thousands of dollars in compensation from Southwest per year and had options to purchase publicly traded stock of Southwest. From 2004 to 2007, following the three (3) year extension of the 3rd Management Agreement in 2003, Southwest earned approximately eighteen million dollars (\$18,000,000) in management fees from the Lucky Star Casinos.

Current Constitution

Southwest's 3rd Management Agreement was to expire on May 19, 2007, following the last three (3) year extension Southwest received from the Business Committee in 2003. As stated above, the Current Constitution ratified on April 4, 2006 changed the governmental process and power for negotiating and executing gaming management contracts. The Tribal Supreme Court addressed this process and authority, and events that transpired in 2006 and 2007 concerning Southwest's temporary extension (Amendment No. 11) in several decisions attached at **Appendices B-7, B-8 and B-9**.

In summary, the activities related to the extension of Amendment No. 11 fall into four (4) timeframes, as follows:

1. Tribal Council and Community Events (November 2006 – March 2007):
 - Southwest recognized that the Governor would not support an extension of the 3rd Management Agreement;
 - Tribal Council conducted meetings;
 - Tribal Council authorized Governor to sign a gaming contract;
 - Southwest sponsored community meetings ("Community Meetings");
 - Tribal Council authorized Governor to sign a gaming contract with Southwest;
 - Governor refused to sign a gaming contract with Southwest; and
 - Governor made allegations of wrong doing by Southwest and notified the NIGC about these concerns.
2. Invalid Extension of the 3rd Management Agreement (April – May 2007):

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- Legislature and Southwest executed Amendment No. 11 to the 3rd Management Agreement;
 - Legislature and Southwest attempted to recall the Governor;
 - NIGC found that Current Constitution requires Governor's signature, and therefore, did not approve;
 - Tribal Court issued decision that validated Amendment No. 11;
 - NIGC approved Amendment No. 11 based on the Tribal Court decision;
 - Governor appealed to the Tribal Supreme Court; and
 - NIGC started investigation into allegations made by the Governor.
3. Ongoing Allegations and Investigation (June – August 2007):
- Governor notified the NIGC of additional and continuing concerns of bad acts by Southwest;
 - Tribal Supreme Court ruling on the appeal pending; and
 - NIGC continued investigation.
4. Tribal Supreme Court Decision and Investigation (August – November 2007):
- Tribal Supreme Court issued decision that invalidated Amendment No. 11;
 - NIGC withdrew approval of Amendment No. 11;
 - Southwest was removed as the manager of the Lucky Star Casinos; and
 - NIGC issued a letter regarding its investigation into "Undue Influence Allegations".

The evidence and our analysis support that the following occurred during these timeframes.

1. Tribal Council and Community Events (November 2006 – March 2007):

Southwest sponsored Community Meetings since 1993. In 2003, Southwest retained a former Chairman of the Business Committee, the chair at the time the 3rd Management Agreement was executed in 1995, to organize a series of meetings to address a rumor "...that Southwest was stealing money from the [Lucky Star Casinos]." In the five (5) month period ended March 2007, these meetings focused on getting support for Southwest's continued management of the Tribe's gaming activities, and Southwest once again retained the former Chairman to assist with these meetings.

As a result of the meetings in 2006 and 2007, the Governor notified the NIGC of the following concerns about these meetings:

"[Southwest] has also sponsored and hosted numerous political meetings for casino employees and others to promote the 5-year extension of the [Southwest] contract with the Tribes. [Southwest] sponsored and/or supplemented these meetings with paid meeting rooms at an off-site hotel, refreshments, casino employees' delivery of refreshments for such meetings, and transportation. [Southwest] directly promoted, and/or allowed selected Legislators to use these meetings as a platform to promote, the 5-year extension of the [3rd Management Agreement]. [Southwest] has also permitted the use of casino vans to

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transport casino employees and others to meetings of the Tribal Council where the issue of [Southwest's] contract extension was under consideration.”

Southwest responded to the Governor regarding these allegations, and included the following in its response:

“Between late November 2006 and February 2007, **Southwest hosted and paid for, from its funds and not from funds of Lucky Star** or the Tribes, numerous meetings with members of the Tribes in Tribal communities.” “Southwest retained a member of the [Tribe] who is **not an elected official or government employee**, to assist us in organizing these information meetings.” “Southwest often provided transportation to the Tribal community meetings it hosted. When Southwest did so, it paid for the transportation from its own funds and not from funds of Lucky Star or the Tribes. Southwest rented the vehicles used commercially and did not use Lucky Star vans to provide transportation.” [**emphasis added**]

Contrary to Southwest's assertion, the Lucky Star Casinos' monies were used to host and pay for the Community Meetings and the expenses of the former Chairman of the Business Committee. Additionally, employees of the Lucky Star Casinos were encouraged by Southwest to spend time assisting Southwest with organizing, coordinating and attending these events.

In addition, Southwest used the A/R – Southwest and Southwest's GM's expense accounts described above to provide cash payments to members of the Tribe, pay claimed travel of the Legislature and the Tribal Council Coordinator and other payments as “...a means by which Southwest presented its management proposal to the Tribe's general membership.” During this five (5) month period, these payments exceeded \$55,000. These cash payments included Wal-Mart gift cards and travel for non-gaming activity (examples attached at **Appendices B-15 and B-16**).

2. Invalid Extension of the 3rd Management Agreement (April – May 2007):

Following the Governor's allegations and refusal to enter into a gaming management contract with Southwest, Southwest and the Legislature executed the invalid Amendment No. 11. Immediately after, Southwest used its own money, and the Lucky Star Casinos' monies, to improperly (i) pay consultants to lobby government officials in Washington DC; (ii) support an unsuccessful recall of the Governor; (iii) influence elders of the Tribe and pay legal fees on behalf of the Legislature, among other items.

Southwest paid a Washington DC area consulting firm “handsomely” to, among other things, “draw up a media and public relations strategy and...most importantly we will access our relations with government official[s] at NIGC...” The invoice from this firm indicated that the services included “Lobby Related Activities.” Southwest paid the firm to send a consultant to Oklahoma to attend meetings targeted at an unsuccessful recall of the Governor paid for with the Lucky Star Casinos' monies. The consultant prepared collateral material, including “GOTV [Get out the Vote] Flyers Support Material”, and the Legislature sent a press advisory about the attempted recall meeting (the firm's invoice is attached at **Appendix B-17**, the Legislature's press advisory is attached at **Appendix B-18**, and the Lucky Star Casinos payment of the meeting rooms is attached at **Appendix B-19**).

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Contrary to Southwest's own statement that it was "...inappropriate for Southwest to be involved in any way in the politics of the [Tribe]," Southwest drafted documents and language for the Legislature related to obtaining the invalid extension of the 3rd Management Agreement. Further, Southwest or its consultant prepared press releases, correspondence and communications with members of the Tribe and governmental officials in Washington DC. Southwest's GM also used his/her expense account to pay a Legislator's trip to Washington DC to discuss Southwest's contract with the NIGC.

Days after the retention of the consultant, the Lucky Star Casinos' monies were used to pay elders of the Tribe for a non-gaming related trip (example attached at **Appendix B-20**). Furthermore, the Lieutenant Governor, the official to replace the Governor in the case that the attempted recall was successful, received an "excessive amount of free play" from the Lucky Star Casinos in the words of a member of management from the Lucky Star Casinos.

Around the same time in May 2007, Lucky Star Casinos' monies were used to pay an attorney to represent employees of the Lucky Star Casinos in legal proceedings against the Governor. On May 17, 2007, a petition was filed to restrain the Governor "from interfering with the operations or employment at Lucky Star Casinos..." This is the day after the NIGC refused to extend the 3rd Management Agreement, and the day before the Tribal Court issued its ruling that allowed Southwest to continue managing the Lucky Star Casinos (until the Tribal Supreme Court subsequently overruled the Tribal Court in August 2007).

3. Ongoing Allegations and Investigation (June – August 2007):

The Governor continued to allege wrong doing by Southwest, and notified the NIGC about these concerns. Despite ongoing concerns, Southwest continued to pay non-gaming related travel to members of the Legislature.

In August 2007, Southwest paid a personal non-gaming travel expense for a member of the Legislature, as described below:

- On August 13, 2007, a Legislator addressed a letter to Southwest, "...requesting a rental vehicle for the week of **8/15-8/22**. I'm taking a **vacation**, and would appreciate your assistance in this matter." [**emphasis added**];
- The next day on August 14, 2007, the same Legislator addressed another letter to Southwest "...requesting assistance with a rental van and per diem to travel to Montana. I will be meeting with [Jane Doe] to **discuss casino games**. I will depart on **8/15/07 and return on 8/22/07**." [**emphasis added**]; and
- The next day on August 15, 2007, the Lucky Star Casinos issued a \$659 check to this Legislator, and recorded the transaction as a gaming related travel expense.

Redacted copies of these documents are attached at **Appendix B-21**. Southwest knew, or should have known, to avoid business dealings with this individual. This Legislator was a prior member of the Business Committee and involved in the power disputes related to the Tribe's Treasurer. At one time, Southwest issued a \$1.4 million distribution of the Tribe's profits from the Lucky Star Casinos to this individual as the claimed acting Treasurer of the Tribe. Subsequently, all but approximately \$60,000 was returned to the Tribe, and Southwest paid the difference on behalf of this individual. This same individual received tens of thousands of dollars from the Lucky Star Casinos for hot

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checks. This individual recently pled guilty in Federal Court to misuses of the Lucky Star Casinos' monies.

4. Tribal Supreme Court Decision and Investigation (August – November 2007):

Following the Tribal Supreme Court's and the NIGC's decisions to invalidate Amendment No. 11, Southwest was removed as the manager of the Lucky Star Casinos. Correspondence between Southwest, Southwest's lobbying consultant, the Prior Gaming Commission Attorney and a member of the Legislature reflects events related to Amendment No. 11, as well as the NIGC's investigation into the allegations made by the Governor.

In addition to fees and expense, Southwest's agreement with the lobbying consultant included a \$250,000 "Success Performance Fee" if Southwest received an extension of the 3rd Management Agreement.

It was Southwest's position that the "Success Performance Fee" was unearned, as follows:

"[Southwest] reviewed our contract with you and unfortunately under that contract the success fee was payable only if [Southwest's] management contract remained in effect. The action taken by the NIGC on August 17, 2007 terminated our contract and has left us in a position where we can not make any financial commitments at this time. We are hopeful that the events of next week will clarify our future and at that time [Southwest] would be able to discuss your roll [sic] in securing a new contract with the [Tribe]. Thank you for your efforts on behalf of [Southwest] and we are hopeful that we can work together in the future."

The lobbying consultant took exception to this position and appealed to a member of the Legislature, as follows:

"[Southwest] rolled us under the bus...I have been funding this and what [Southwest] said as late as last Friday about helping is now not going to happen. It is B.S."

In response to Southwest's position, the lobbying consultant replied to Southwest in the following email correspondence entitled, "NIGC, C&A & Your Word and Our Work":

"...I must respectfully disagree with your analysis of the terms of our agreement."

In that same email, the lobbying consultant described some of the efforts, as follows:

- "We also continued to help manage policy issues associated with the contract extension and mitigated any possible risks to your organization here in Washington.";
- "...AND TODAY AS WE SIT WE CONTINUE TO CARRY YOUR MESSAGE HERE IN WASHINGTON AND DO WORK THAT IS SAVING YOUR BACON!";
- "We are the only source of support for the Legislature and without us all of this would have been moot."; and
- "...the Tribe has counted on [Southwest] and me to assist. I have not let them down."

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In response, Southwest stated:

- “Like you we are waiting to see if the result of the September 1, 2007 recall election will stand. If so, we hope to again submit our contracts to the NIGC for approval and would like your assistance in seeking approval of those agreements.”;
- “We engaged [your firm] for two purposes: (1) to assist in receiving NIGC approval of the 5-year extension of our management relationship with the [Tribe] and (2) to insure that our management of the [Tribe’s] casinos remain uninterrupted.”;
- “The success fee that was part of our original deal has not been earned and, because our management of the casinos has been interrupted, it is now impossible to earn.”; and
- “...under our contract with the [Tribe] we are prohibited from involvement of the internal politics of the [Tribe], except to the extent they directly affect the [Tribe’s] gaming enterprise. Southwest has paid you, and paid you handsomely, for your work on our behalf with the NIGC and the federal government...”

Despite these apparent disagreements, the lobbying consultant continued to work on behalf of Southwest and the Legislature. On October 1, 2007, the lobbying consultant sent an email to Southwest, a member of the Legislature and the Prior Gaming Commission Attorney, with the subject line “Men of our word”, that stated in part:

- “We continue to fight a fight on your behalf and that of the Legislature.”;
- “We are outlaying our own funds to avert the traditional tribes prescribed disaster. We are close to an agreement with the NIGC on non shutdown of the [Lucky Star Casinos] and a supervised election which does not include the current governor.”; and
- “We are getting a ruling that invalidates the tribal courts actions but have had to engage some high powered folks who do not work without an advance. If we stop the [Tribe] and you have very little recourse. Let’s not go there because we do not have funds. We have put our personal money into this AND WE HAVE NO DOG IN THIS FIGHT.”

On this same day, the Tribal Supreme Court decided that its prior conclusion that there was no valid gaming agreement between Southwest and the Tribe “was valid as a matter of substantive tribal law as of August 17, 2007, and that conclusion is today judicially enforceable in [the Tribe’s] courts as a matter of [the Tribe’s] law.”

On November 8, 2007, the NIGC issued a letter regarding its investigation into “...allegations made by [the Governor] that [Southwest] unduly influenced and impermissibly interfered in the [Tribe’s] internal politics, including tribal government processes related to the [Tribe’s] gaming activity.”

Three days later, the lobbying consultant emailed Southwest, Southwest’s GM and a member of the Legislature, stating “YOUR [sic] WELCOME..HEVY [sic] LIFT RESULTS..NO ASSISTANCE FROM [SOUTHWEST]..NIGC CLEAN BILL OF HEALTH.”

Southwest’s GM responded “Did u [sic] get [the NIGC’s Chairman] to write that letter?” The lobbying consultant replied that “I HELPED>I CALLED HIM LAST WEEK AND KICKED HIS ASS. TOLD HIM I WAS GOING TO THE MEDIA..HE SAID I WAS HURTING OUR FRIENDSHIP. I TOLD HIM HE WAS HURTING 12,000 native Americans...I believe that helped!”

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