

MEMO

DATE: April 10, 1995  
TO: Tuffy Lunderman  
BY: Terry *TrP*  
RE: Buy Out of Boyd Interest

I have reviewed the various documents that Wayne and you have sent me pertaining to this matter. I have the following thoughts.

First, it seems to me that the BBC minutes of October 25, 1994, conflict with the agreement between BBC and the Boyds of March 11, 1994. For example, the agreement states that "shareholders John Boyd and Wayne Boyd's ownership interest in BBC ownership shall terminate." However, later on October 25, 1994, it appears that the Boyds have preferred stock. Yet Wayne's letter to the Tribe on the buyout relies upon the formula the Boyds were to be paid under the October 25 agreement. If anyone is going to buy Boyds out, you have to make certain what you are buying and getting. The confusion here has to be cleared up.

You would also need to review the bylaws and the conditions of the stock to make sure that Boyds indeed can sell their shares to the Tribe (as opposed to BBC having the first right to buy the shares) and the nature of the voting rights that you would be buying. The important thing here is that the stock give you some voting power in decisions of BBC and in significant amount so that you have input into the operation of BBC.

One thing that the Tribe would also want to consider, simply from a policy point of view, is whether it is wise to have the Tribe owning any interest in BBC, who the Tribe hired in the first place to manage the casino. If the Tribe and BBC are constantly in disagreement, what effect would this have on the overall operation of the casino and could one reasonably conclude that this would keep people from coming to the casino?

Second, Boyds proposes two options by which they could be bought out. A \$300,000 up front payment is to be made and then monthly payments over the next 36 months based either on the average of February, March, and April, 1995 times the number of months remaining on the BBC agreement with the Tribe, or monthly payments based on 6.3% of the casino net profits.

In considering this matter, you have to keep in mind that the success of the casino is based on people gambling. This in turn can be affected by government policy, the service provided by the people in the casino, quality of food, entertainment, comfort of the facility in terms of lack of smoke, cleanliness, etc., lack of customer defection to other casinos, and a plethora of other considerations. Casino revenues are, in the final analysis, uncertain.

Boyd's source of income from the casino is uncertain just as the Tribe's and BBC, depending on the above. However, they want to go from a position of uncertainty to a position of certainty. If the Tribe buys them out and casino revenues nose dive, the Tribe is sitting there with the obligation to make monthly payments that might not be generated by casino revenues in addition to possibly never recovering the \$300,000 up front payment. This is particular the case under the first option.

When you consider the risk that the Tribe is taking, one has to wonder whether the 10% discount is sufficient. If Boyds were to sell their interest on the open market in the commercial world, I have no idea of the discount that they would have to make, but I bet that it would be much more than 10%. The Tribe should have someone who is an expert in these kinds of sales to review the discount.

These are my initial thoughts.