

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

In the Matter of)
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C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent PNG is a corporation organized, existing and doing business under and by virtue of the laws of the state of Pennsylvania, with its offices and principal place of business located at 825 Berkshire Blvd., Suite 200, Wyomissing, Pennsylvania 19610.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. "PNG" or "Respondent" means Penn National Gaming, Inc., its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; and its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Penn National Gaming, Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. "Argosy" means Argosy Gaming Company a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 219 Piasa Street, Alton, Illinois 62002; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Argosy Gaming Company.
- C. "Columbia Sussex" means Columbia Sussex Corporation a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its offices and principal place of business located at 206 Grandview Drive, Fort Mitchell, Kentucky 41017; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Columbia Sussex Corporation and/or William J. Yung III
- D. "Commission" means the Federal Trade Commission.
- E. "Acquisition" means the proposed acquisition by merger of Argosy by Respondent pursuant to the "Agreement and Plan of Merger" dated November 3, 2004 (as amended), by and among Argosy, Respondent and a subsidiary of Respondent, whereby Respondent agreed to acquire Argosy.

- F. "Acquisition Date" means the date the Acquisition is consummated.
- G. "Actual Cost" means all direct and indirect costs, including but not limited to, third party costs, labor, materials, and appropriately allocated overhead expenses and depreciation of capital equipment used to provide the relevant assistance or service, but "Actual Cost" does not include general administrative expenses.
- H. "Application" means the forms and schedules, including, but not limited to, any information, disclosure statements, or financial statements prescribed by the LAGC upon which the applicant seeks a license, permit, or renewal or any other approval by the LAGC for the operation of a casino.
- I. "Argosy Baton Rouge Assets" means all of the outstanding shares of capital stock, limited liability company interest, and partnership interests, as the case may be, of any of the ACBR Entities, and all of the real and personal, tangible and intangible, assets of the ACBR Entities, and any other assets of Respondent or Argosy, or any of their other subsidiaries used in or related to the Argosy Casino Baton Rouge, Catfish Town, and Centroplex Centre, including, but not limited to:
1. the Argosy Casino Baton Rouge;
 2. Catfish Town;
 3. Centroplex;
 4. all owned or leased parking structures, parking garages, and parking lots used by or related to the Argosy Casino Baton Rouge, Catfish Town, or the Centroplex, including, but not limited to the Leased Properties;
 5. all personal property (including, but not limited to, deck barges), fixtures, and improvements owned, placed on, located at, used in connection with the operation of, or related to the ACBR;
 6. all studies, surveys, research, audio and video recordings, data (including, but not limited to, the Argosy Casino Baton Rouge Database), information, and documents relating to marketing, advertising, promotion of the ACBR, Catfish Town, and Centroplex;
 7. all leases, agreements, and contracts of any kind relating to the ACBR, Catfish Town, and Centroplex, including, but not limited to:
 - a. upon the consent of Sheraton, a license to use the Sheraton name in

connection with the operation of the Centroplex; and,

- b. leases related to the Levee Building/Argosy Landing, Maritime I Building, Beauregard Building, Armour Building, Corner of Europe Street and St. Phillip Street in Baton Rouge, LA, S. Front Street in Baton Rouge, LA, and the dock and walkway in the Maritime Building;
8. all governmental approvals, consents, licenses, waivers, or other authorizations related to the Argosy Casino Baton Rouge;
9. all trademarks, trade names, or copyrights owned or used by the ACBR, Catfish Town, and Centroplex, including, but not limited to irrevocable licenses for the use of all trade names related to Catfish Town and Centroplex; and,
10. all books and records related to the ACBR, Catfish Town, and Centroplex, including but not limited to:
 - a. documents containing information about customers or patrons of the ACBR, Catfi ACxTjETEMC /LI_Label <</MCID 5 >1>BDC BT/TT0 1

Agreement to Execute Securities Purchase Agreement.

- J. "Argosy Baton Rouge Employees" means:
1. all of those individuals compensated for at least thirty-five (35) hours a week for at least forty (40) weeks within the twelve (12) month period immediately prior to the Effective Date of Divestiture whose duties related primarily to the Argosy Casino Baton Rouge; and,
 2. all of those individuals employed by Argosy (including, but not limited to, Centroplex Centre Convention Hotel, L.L.C.) within the twelve (12) month period immediately prior to the Effective Date of Divestiture in the positions of Director of Hotel Operations, Rooms Division Manager, Revenue Manager, Sales & Catering Manager, Hotel Controller, or Executive Chef.
- K. "Argosy Baton Rouge Primary Employees" means all Argosy Baton Rouge Employees:
1. who are required to be licensed or to hold a permit from either the State of Louisiana or the United States Coast Guard as a condition of employment with one or more of the ACBR Entities; and,
 2. compensated at a base hourly rate of \$8.00 or more immediately prior to the Effective Date of Divestiture.
- L. "Argosy Casino Baton Rouge" or "ACBR" means the Land, Vessel, and all other rights related to and required for the operation of the Land and/or Vessel.
- M. "Argosy Casino Baton Rouge Entities" or "ACBR Entities" means Argosy of Louisiana, Inc., Jazz Enterprises, Inc., Centroplex Centre Convention Hotel, L.L.C., and Catfish Queen Partnership in Commendam.
- N. "Argosy Casino Baton Rouge Database" means all customer databases, customer lists, historical records of customers, and any other customer information collected and used by Argosy for marketing, promotional, or any other purposes related to the operation of ACBR, Catfish Town, and Centroplex;
- provided, however, Argosy Casino Baton Rouge Database does not include any customer databases, customer lists, historical records of customers, or any other customer information collected and used by Argosy solely for the marketing or promotion of any assets other than the Argosy Baton Rouge Assets.*

- O. “Argosy License” means Louisiana Riverboat License Number R011700009 issued by the LAGC.
- P. “Catfish Town” means all owned and leased real property and any servitudes appurtenant thereto, structures, fixtures, and personal property constituting, on, or relating to the property commonly know as Catfish Town.
- Q. “Centroplex” means all owned and leased real property and any servitudes appurtenant thereto, structures, fixtures, and personal property constituting, on, or relating to the property commonly known as the Centroplex Centre Convention Hotel.
- R. "Commission-approved Acquirer" means any Person approved by the Commission to acquire the Argosy Baton Rouge Assets that the Respondent is required to divest pursuant to this Order.
- S. “Condition to Closing” means a condition to the closing of the divestiture specified in the Divestiture Agreement, but not including a condition that requires the delivery of a certificate or other document, or the purchase price, at or immediately prior to the closing.
- T. “Confidential Business Information” means any information relating to the Argosy Baton Rouge Assets (before or after the divestiture required by this Order) that is not in the public domain, including, but not limited to:
1. All contracts, agreements, bids, purchase orders, or other documents or information relating to any acquisitions of goods or services related to the Argosy Baton Rouge Assets;
 2. All marketing studies, marketing plans, data (including, but not limited to, the Argosy Casino Baton Rouge Database), or other documents or information relating to marketing of any of the Argosy Baton Rouge Assets;
 3. All records, applications, data, reports, correspondence, and documents or information relating to any gaming license or other regulation by any political subdivision of the State of Louisiana of the business or operation of the Argosy Baton Rouge Assets; and,
 4. All records, data, or other information relating to visits, spending, or other activity by any patrons or customers of the Argosy Baton Rouge Assets.
- U. “Divestiture Agreement” means:

1. if Respondent divests the Argosy Casino Baton Rouge Assets to Columbia Sussex, the Agreement to Execute Securities Purchase Agreement (dated as of June 20, 2005) among CP Baton Rouge Casino, L.L.C., Columbia Sussex Corporation, and Penn National Gaming, Inc., and any contract, exhibit, attachment or schedule, or agreement related thereto, including, but not limited to:
 - a. the Securities Purchase Agreement attached as Annex A to the Agreement to Execute Securities Purchase Agreement and all exhibits attached thereto;
 - b. the Seller Disclosure Letter attached as Annex B to the Agreement to Execute Securities Purchase Agreement and all exhibits or schedules attached thereto;
 - c. the Letter Agreement (October 3, 2005) between Columbia Sussex Corporation, CP Baton Rouge Casino, L.L.C., Wimar Tahoe Corporation, Penn National Gaming, Inc., and Argosy Gaming Company; and,
 - d. Any modifications of any such agreement, exhibit, attachment or schedule required by the Commission pursuant to Paragraph II. of this Order; or,
 2. if Respondent (or the Divestiture Trustee) divests the Argosy Casino Baton Rouge Assets to any Commission-approved Acquirer other than Columbia Sussex, any agreement that receives the prior approval of the Commission between Respondent and a Commission-approved Acquirer (or between the Divestiture Trustee and a Commission-approved Acquirer) related to the Argosy Baton Rouge Assets required to be divested pursuant to Paragraphs II or IV of this Order and the rights or assets to be licensed or otherwise made available to the Commission-approved Acquirer pursuant to Paragraph II of this Order, including, but not limited to, any agreement between the Respondent and the Commission-approved Acquirer required or permitted by or pursuant to Paragraph II. of this Order.
- V. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- W. "Effective Date of Divestiture" means the date on which Respondent (or a Divestiture Trustee) divests to a Commission-approved Acquirer the Argosy Baton Rouge Assets completely and as required by Paragraph II or IV of this Order.
- X. "Governmental Entity" means any Federal, state, local or non-U.S. government or

any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.

- Y. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- Z. "Hold Separate Trustee" mea

owner or possessor of those plans to transfer such plans to the Commission-approved Acquirer.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest, absolutely and in good faith and at no minimum price, the Argosy Baton Rouge Assets to Columbia Sussex pursuant to and in accordance with the Divestiture Agreement by the earlier of: (1) three (3) days after the date upon which the LAGC grants the Application to

becomes final, shall divest the Argosy Baton Rouge Assets to a Commission-approved Acquirer absolutely and in good faith, at no minimum price, and only in a manner that receives the prior approval of the Commission; or,

2. the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, pursuant to Paragraph IV. of this Order, to effect within sixty (60) days such modifications (including, but not limited to, entering into additional agreements or arrangements) as may be necessary to satisfy the requirements of this Order.

provided further that, if the LAGC has failed to issue a decision on Columbia Sussex's Application within one hundred and twenty (120) days after this Order is final, and:

1. Respondent has not violated this Order or the Hold Separate Order;
2. Respondent has not breached the Divestiture Agreement; and,
3. the sole remaining Condition to Closing (determined as if the closing were to occur one hundred and twenty (120) days after this Order is final) is the failure to obtain one or more approvals, licenses, permits, rulings or decisions by the LAGC,

Respondent shall have until six (6) months from the date this Order is final to divest the Argosy Baton Rouge Assets to Columbia Sussex in a manner that receives the prior approval of the Commission; if Respondent has not divested the Argosy Baton Rouge Assets to Columbia Sussex within six (6) months after this Order is final, the Commission may appoint a Divestiture Trustee.

provided further that if the LAGC has disapproved Columbia Sussex's Application less than one hundred and twenty (120) days after the date this Order becomes final, and:

1. Respondent has not violated this Order or the Hold Separate Order;
2. Respondent has not breached the Divestiture Agreement; and,
3. the sole remaining Condition to Closing (determined as if the closing were to occur on the date of such LAGC disapproval) the divestiture is the failure to obtain one or more approvals, licenses, permits, rulings or decisions by the LAGC,

Respondent shall have until six (6) months from the date of such LAGC disapproval to divest the Argosy Baton Rouge Assets to a Commission-approved Acquirer in a manner that receives the prior approval of the Commission; if Respondent has not divested the Argosy Baton Rouge Assets within six (6) months from the date of such LAGC disapproval, the Commission may appoint a Divestiture Trustee.

- D. Subject to the prior approval of the Commission, the Divestiture Agreement shall include the following provisions and terms:
1. The Commission-approved Acquirer shall use best efforts expeditiously to file an application with the LAGC to acquire a gaming license and any other approvals required by the State of Louisiana to own and operate any of the Argosy Baton Rouge Assets;
 2. Respondent shall cooperate fully (including, but not limited to, providing to the Commission-approved Acquirer or the LAGC any books, records, and information, and any required consents) and expeditiously with the Commission-approved Acquirer in obtaining a gaming license and any other approvals required by the State of Louisiana to own and operate any of the Argosy Baton Rouge Assets;
 3. Respondent shall:
 - a. Not provide, disclose, or otherwise make available any Confidential Business Information to any Person; and,
 - b. Not use any Confidential Business Information for any reason other than as required or permitted by this Order;
- Provided, however,* that the Divestiture Agreement shall permit Respondent to use Confidential Business Information only: (i) for the purpose of performing or complying with the Respondent's obligations under this Order, the Hold Separate Order, and the Divestiture Agreement; or, (ii) for the purpose of complying with Respondent's financial, tax reporting, health, safety, and environmental obligations or any other disclosure obligations imposed by law, regulation, or judicial order (including, but not limited to, complying with laws of the state of Louisiana or requests by the LAGC).
- E. At the option of the Commission-approved Acquirer, and subject to the prior approval of the Commission, Respondent may retain the real property, together with buildings or improvements thereon, listed on Exhibit A to this Order.

F. At the option of the Commission-approved Acquirer, and subject to the prior approval of the Commission, the Divestiture Agreement shall include the following provisions, terms, and agreements:

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Respondent and Argosy that may deter these employees from accepting employment with a Commission-approved Acquirer, including, but not

monetary compensation and a substantially similar or better package of benefits and other compensation as the employee received immediately prior to the Effective Date of Divestiture;

4. No later than three (3) days after the Acquisition Date:
 - a. circulate to all directors and managers of the Held Separate Business, and to Respondent's or Argosy's employees who have responsibilities associated with the Held Separate Business, a copy of the Hold Separate Order and this Order; and,
 - b. circulate, in lieu of Exhibit A to the Hold Separate Order, a document in the form of Exhibit B to this Order to all employees of the Held Separate Business.

- I. Prior to the Effective Date of Divestiture, Respondent shall secure all consents and waivers from all Persons that are necessary for the divestiture of the Argosy Baton Rouge Assets to a Commission-approved Acquirer.

- J. Respondent shall comply with all terms of the Divestiture Agreement, and any breach by Respondent of any term of the Divestiture Agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreement, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreement,rgosy

Business Information to any Person; and,

2. Not use any Confidential Business Information for any reason or purpose other than as required or permitted by this Order.

B. Notwithstanding Paragraph III.A. of this Order and subject to the Hold Separate Order, Respondent shall use Confidential Business Information only: (i) for the purpose of performing and complying with Respondent's obligations under this Order, the Hold Separate Order, or the Divestiture Agreement; or, (ii) for the purpose of complying with Respondent's financial, tax reporting, health, safety, and environmental obligations or any other disclosure obligations imposed by law, regulation or judicial order (including, but not limited to, complying with laws of the state of Louisiana or requests by the LAGC).

IV.

IT IS FURTHER ORDERED that:

A. If Respondent has not fully complied with the obligations to divest the Argosy Baton Rouge Assets as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Argosy Baton Rouge Assets in a manner that satisfies the requirements of Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the Argosy Baton Rouge Assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee,

Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph IV, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Argosy Baton Rouge Assets.
 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information (including, but not limited to, information related to any regulation of the Argosy Baton Rouge Assets by the LAGC), as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission.
 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission

determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After the approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however*, that the Divestiture Trustee appointed pursuant to Paragraph IV of this Order may be the same Person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order in this matter.
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confide

communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- D. One (1) year after the date this Order becomes final, annually until Respondent has complied fully with its obligations under Paragraphs II and IV of this Order, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondent, (2) acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of the Order, including, but not limited to, assignment and the creation or dissolution of subsidiaries.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondent, in the presence of counsel, and as permitted by and in accordance with the laws, rules and regulations of the LAGC, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on October 27, 2015.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: October 27, 2005