In the United States Bankruptcy Court

for the Northern District of Iowa

NATIONAL CATTLE CONGRESS INC. *Debtor(s).*	Bankruptcy No. 93-61986KW Chapter 11

ORDER RE CONFIRMATION

On December 18 and December 19, 1995, the above-captioned matter came on for final confirmation hearing on the Chapter 11 Plan of Debtor and the Chapter 11 Plan of Creditor Jamco, Inc. Attorney John Titler appeared on behalf of Debtor. Attorneys Gordon Conn and John Holmes appeared on behalf of Jamco, Inc. The Unsecured Creditors' Committee was represented by Attorney Tom Fiegen. The Iowa Department of Revenue was represented by Attorney Dale Baker. Evidence was presented and the parties were allowed to submit briefs. The time for filing of briefs has now passed and this matter is ready for determination. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

I. FINDINGS OF FACT

Debtor filed its Chapter 11 Petition seeking reorganization on December 10, 1993. At the time of filing of the Petition, Debtor's Schedules reflected obligations comprised of secured claims of $4.8 million, unsecured priority claims of $94,000, and unsecured non-priority claims of approximately $1.0 million. Debtor's assets consisted of real property with a then- undetermined value and personal property with a value of approximately $700,000.

Debtor is a corporation which has conducted business in Waterloo since 1910. It was incorporated in 1913 as a non-profit organization whose stated purpose was to conduct annual fairs with primary emphasis on agricultural and livestock presentation. Beginning in the 1980's, revenues decreased and the Cattle Congress decided to venture into the then-fairly new arena of race track gambling. A greyhound park was constructed on the National Cattle Congress grounds financed from bonds held by a group of local banks (hereinafter the "Bonderholder Banks") as well as private Noteholders. The Waterloo Greyhound Park was opened in October of 1986.

The greyhound racing operation was initially successful but profits eventually diminished. A major cause of this diminution has been attributed to the advent of riverboat gambling along both the Missouri and the Mississippi Rivers as well as the opening of Native American land-based casinos in Iowa. By August of 1993, Debtor had defaulted on its payments to the individual Noteholders and by October of 1993 had defaulted on its payment to the Bondholder Banks. Debtor apparently sought relief from the Iowa legislature. When this relief was not forthcoming, Debtor sought reorganization by filing this Chapter 11 petition. At the time of filing, Debtor's business structure was divided into five divisions which included the traditional National Cattle Congress exhibition, the Waterloo Greyhound Park, the Electric Park Ballroom, the National Cattle Congress Pavilion/Bingo, and the final division, Parlez Marketing, which is an in-house advertising and marketing agency which serviced the other four divisions.

After the filing of the Petition, the Iowa Legislature amended Chapter 99 of the Iowa Code to allow certain gaming and gambling activities on a county-wide basis if approved on a local level by referendum elections. A referendum was scheduled in Black Hawk County for May 17, 1994 in which Debtor sought approval of such gaming. Debtor stated that approval of such a gambling referendum could provide a source of revenue through which Debtor could provide full payment to all creditors within a reasonable period of time. Debtor sought authority to obtain credit with which to promote the referendum. After notice and a hearing, the Court, in an Order dated April 21, 1994, authorized Debtor to obtain credit to be expended in promoting passage of the referendum.

In a county-wide referendum held on May 17, 1994, the voters of Black Hawk County defeated the proposal for expanded gambling. After failure of this referendum, the National Bank of Waterloo, as Trustee for the Bondholder Banks, filed a notice of continuing default with the Court on May 20, 1994. It asked the Court to modify the automatic stay to allow the Bondholder Banks to proceed with all rights and remedies allowed in the underlying mortgages, security agreements, loan agreements and other security documents. In other words, the Bondholder Banks sought foreclosure of their mortgages on both the National Cattle Congress exhibition property as well as the race track property.

On June 8, 1994, a stipulation was filed authorizing entry of a Court Order modifying the automatic stay to allow the Bondholder Banks initiate State Court enforcement of Debtor's obligations. Specifically, it authorized the National Bank of Waterloo, as Trustee, to initiate legal proceedings in the Iowa District Court, in and for Black Hawk County, which could include all legal pleadings and processes up to entry of a judgment of foreclosure. An Order approving this stipulation was entered on June 9, 1994.

On July 11, 1994, Debtor filed its first Plan of Reorganization. This Plan proposed that a portion of the obligations of Debtor would be paid through a second referendum under legislation adopted by the Iowa Legislature in 1994 as Iowa Code sec. 99F.7(10). Debtor proposed that a second referendum be conducted, and if successful, Debtor intended to negotiate contracts with corporate managers for the operation of an expanded gaming facility at the Waterloo Greyhound Park. If the referendum was defeated, the Plan would not reach its effective date and would be null and void.

Initially, the Unsecured Creditors' Committee was an active participant in the reorganization process. On March 9, 1995, it filed a Motion for Appointment of a Trustee. Multiple allegations were asserted including mismanagement as a basis for appointment of an independent trustee. Debtor resisted this Motion and a hearing was held on March 29, 1995 on the issue of appointment of a trustee. The Court entered its ruling on April 20 denying the Unsecured Creditors' Motion and denying appointment of a trustee. The Court concluded that the evidentiary record established no cause to replace the existing management with the appointment of a trustee.

The Unsecured Creditors' Committee continued to remain active and opposed the Debtor's existing management structure by filing its own Plan of Reorganization on July 15, 1995. This Plan also envisioned a second referendum. If the referendum passed, a condition of the Unsecured Creditors' Committee Plan was to sell the Waterloo Greyhound Park to a gambling consortium for approximately $7 million. These funds, as well as net profits from operation of the Electric Park Ballroom, bingo parlor and fees charged to users of the fairground, would supply additional funding to the Plan. If the referendum failed the Plan would be funded by potential recovery of certain preferences, by post-petition operation of the Electric Park Ballroom, bingo parlor and users fees from the fairground.

A hearing was held on July 28, 1994 on Motion filed by Debtor seeking determination on whether the Unsecured Creditors' Committee had a right to file a Plan. After hearing and notice, the Court determined that Debtor's Plan was filed within the exclusivity period and the Unsecured Creditors' Committee was prohibited from filing a Plan. The Committee's Plan was stricken and it was prohibited from filing a Plan.

The Unsecured Creditors' Committee became less active in the reorganization after it became apparent that several entities were prepared to place substantial capital into Debtor's enterprise thereby assuring two alternative Plans with full payment to all creditors.

At a hearing held July 28, 1994, counsel for Debtor requested permission to amend its previously filed Plan by incorporating into the Plan a Master Agreement between Debtor and Casino Magic Corporation. Casino Magic Corporation is the entity which Debtor proposed to manage the gambling facilities if the second referendum were successful. This amendment was granted.

On August 11, 1994, Debtor submitted a Second Amended Plan of Reorganization. A hearing was held on August 12, 1994 on Debtor's Claims Report. Debtor was granted until August 22, 1994, to amend the Claims Report. In an Order of August 12, 1994, the Court approved Debtor's Amended Disclosure Statement. A confirmation hearing was held in Court on September 20, 1994. As a result of that hearing, the Court ordered that execution of any confirmation order would be deferred until after the second referendum; which was to be held on September 27, 1994. On September 28, 1994, Debtor filed an affidavit stating that the special election regarding operation of gambling games at Waterloo

Greyhound Park was held on September 27, 1994. An initial tabulation indicated a narrow defeat of the referendum. A canvas of the results was subsequently held and the defeat of the second referendum was confirmed.

After the defeat of the second referendum, representatives of Debtor attended a meeting with the Iowa Racing and Gaming Commission. The National Cattle Congress, Inc., as Debtor-in-possession, is the holder of a pari-mutuel license granted to them by the Iowa Racing and Gaming Commission pursuant to the provisions of Chapter 99D of the Iowa Code. That license authorizes Debtor to conduct pari-mutuel activities at the Waterloo Greyhound Park which include simultaneous telecast of live Greyhound races pursuant to sec. 99D.11(6)(b) of the Iowa Code.

At the November 4, 1994 meeting, the Iowa Racing and Gaming Commission enacted a resolution which sought to revoke the parimutuel license of the National Cattle Congress effective November 11, 1994 unless Debtor surrendered its license prior to that date. Debtor filed a motion on November 10, 1994, seeking a determination whether the automatic stay provisions of the Bankruptcy Code applied to revocation of this license by the Iowa Racing and Gaming Commission. An emergency hearing was scheduled by telephone conference on November 10, 1994. At the hearing, the parties-in-interest agreed that the revocation resolution enacted by the Iowa Racing and Gaming Commission would be held on abeyance and not enforced until a hearing could be held on the merits by the Court. A full hearing was held on December 12, 1994.

In a ruling filed January 20, 1995, this Court concluded that the Iowa Racing and Gaming Commission had the authority to hold proceedings relating to the revocation of Debtor's racing license. However, the actual act of revocation by the Iowa Racing and Gaming Commission involved control over property of the Bankruptcy estate and, therefore, violated the automatic stay as the Iowa Racing and Gaming Commission had not previously sought relief from the automatic stay. As the revocation of Debtor's racing license was void ab initio, the Court determined that the Iowa Racing and Gaming Commission could not revoke Debtor's racing license without first requesting relief from the automatic stay and having a hearing on the merits. This ruling was appealed by the Iowa Racing and Gaming Commission and affirmed on appeal by District Court Judge Edward McManus.

On June 14, 1995, the Iowa Racing and Gaming Commission filed a Motion to Lift Stay which the Court had stated was the appropriate remedy if it desired to proceed with revocation of Debtor's racing license. This Motion to Lift Stay was resisted by Debtor as well as by the Unsecured Creditors' Committee.

Initially, the Iowa Racing and Gaming Commission seriously sought to lift the stay to allow hearing on the merits of whether Debtor's license should be revoked. During this time, however, substantial overtures by the Mesquaki tribe, suggesting an infusion of capital, led the Iowa Racing and Gaming Commission to forego pursuit of the motion until the negotiations between Debtor and the Mesquaki tribe were fully explored. Eventually, final hearing was held on August 22, 1995 and by stipulation of the parties final hearing on the Iowa Racing and Gaming Commission's Motion to Lift Stay was continued indefinitely with approval by the Court to any party to reset the matter for hearing upon application. No further hearing has been sought by any party on this issue as of the time of the confirmation hearing.

As previously stated, on February 15, 1994, Homeland Bank, formerly known as the National Bank of Waterloo and acting as Trustee for the Bondholder Banks, filed a Motion for Further Relief from Automatic Stay. The Court, in its Order of June 9, 1994, authorized the Bondholder Banks to commence legal foreclosure proceedings in the Iowa District Court, in and for Black Hawk County. These proceedings were commenced on August 19, 1994. On January 13, 1995, the Iowa District Court granted a summary judgment motion and entered a decree of foreclosure. In a February 15, 1995 Motion, the Bondholder Banks requested the Court to enter a supplemental order lifting the automatic stay to enable them to proceed in State court with execution of the foreclosure decree and the Sheriff's sale of the real estate. The Bondholder Banks proposed that the Sheriff's sale of the personal property not be held until expiration of the period of statutory redemption relating to the real property or entry of a final order of this Court dismissing the Chapter 11 bankruptcy.

Initially, objections were raised to modification of the automatic stay by the Unsecured Creditors' Committee and other creditors. However, these differences were resolved and on April 25, 1995, the Court entered a Stipulated Order granting relief from the automatic stay. This Order authorized the Bondholder Banks to proceed with a sheriff's sale of the real estate. The sheriff's sale was held on June 7, 1995. The Bondholder Banks submitted a credit bid and were the

ultimate purchasers at the sheriff's sale. A corporation known as Jamco, Inc. had also submitted a bid at the sheriff's sale but was an unsuccessful bidder. A Sheriff's Certificate was issued to the Bondholder Banks in the amount of $3,731,700.

On July 17, 1995, the Bondholder Banks executed a contract with Jamco, Inc. in which the Bondholder Banks assigned their interest in the Sheriff's Certificate to Jamco for a sum substantially less than the face value of the certificate. As of the date of confirmation hearing, Jamco, Inc. holds the Sheriff's Certificate. If the property is not redeemed as provided by Iowa law, Jamco, Inc. will receive clear title and become record owner of all of the real estate involved in this bankruptcy.

On July 27, 1995, Jamco, Inc. filed its appearance in these bankruptcy proceedings and requested notice of all future filed documents. On August 16, 1995, Jamco, Inc. filed a notice of transfer of claim pursuant to Bankruptcy Rule 3001. This notice stated in applicable part that Basic Materials, Inc. of Waterloo, Iowa had previously filed a proof of claim in the amount of $941.10. The proof of claim was filed on April 14, 1994. The notice states that the claim was transferred from Basic Materials to Jamco for good and valuable consideration. Since then, Jamco, Inc. has been actively involved in these proceedings. On August 29, 1995, Jamco filed a competing Plan of Reorganization. It filed a Disclosure Statement and Claims Report on August 31, 1995.

On August 28, 1995, Debtor filed its Disclosure Statement with an attached Plan which for the first time reveals that this Plan, as part of its payment mechanism, would contain an infusion of capital from the Mesquaki Indian Tribe. Without specifying each particular proceeding, the Court notes that numerous amendments were made to the respective Plans of Jamco and Debtor as well as modification of the Disclosure Statements over the next several months. Numerous hearings were held relating to the procedural posture of the Plans in terms of their ultimate presentation. Both Plans were modified to the point that they were eventually characterized as full payment Plans with no impaired creditors.

Because of the unique situation whereby both Plans claim no creditors will be impaired, the requirements for the Disclosure Statements were more abbreviated than in the presentation of impaired Plans. As both Plans purported to be full payment Plans with no impaired creditors, balloting was determined to be unnecessary. The Court ultimately approved the Disclosure Statements of both Debtor and Jamco, Inc. and scheduled both Plans for final confirmation hearing on December 18 and December 19, 1995.

II. DEBTOR'S PLAN

The centerpiece of Debtor's Plan[(1)] is Debtor's agreement with the Mesquaki Indian Tribe in which the Mesquaki agree to advance sufficient funds to satisfy all of Debtor's allowed claims ten days before the effective date of the Plan. The Mesquaki have executed a $9.1 million Letter of Credit in favor of Debtor which originally expired on December 31, 1995, but which has been extended through March 31, 1996. The Letter of Credit, however, is not the primary payment mechanism under the Plan, but is rather a security instrument which allows Debtor to draw on the Letter of Credit if the Mesquaki fail in their underlying obligation to advance funds at the time provided under the Plan.

The Mesquaki also agree to advance $700,000 to Debtor immediately upon the confirmation order becoming final. These advanced funds are intended to cover anticipated operational costs for the coming racing season as well as to pay any administrative claims approved under the Plan.

Finally, the Mesquaki agree to advance sufficient funds to Debtor to redeem the Sheriff's Certificate held by Jamco, Inc. Redemption of the Sheriff's Certificate would return to Debtor title to the fairgrounds and the dog track properties free and clear of all prior liens and encumbrances.

The repayment of all funds advanced by the Mesquaki under this Plan is secured by a mortgage on the real estate property of Debtor, namely the fairgrounds and the Waterloo Greyhound Park. The mortgages granted by Debtor to the Mesquaki in exchange for the above advances would be the only liens upon the property. All advances under this Plan carry an interest rate of 10%.

In addition to the foregoing financial terms, Debtor agrees to grant to the Mesquaki the exclusive right to a management

contract for the dog track as well as the exclusive rights to a management contract for any expansion of gaming at any Debtor- owned facility. The Plan provides that, if the Mesquaki elect not to exercise their option to the management contracts and/or until such management is approved by the Iowa Racing and Gaming Commission, Debtor shall continue to manage the dog track. The Mesquaki may exercise their right to the contracts at any time with 120 days advance notice. The management agreement is unexecuted and most of the terms are not stated in the Plan. The terms of the management agreement are to be subsequently negotiated between Debtor and the Mesquaki with approval by the Iowa Racing and Gaming Commission being a requirement. The only term of the agreement that appears to have been firmly established is that the management contract, if approved as a part of the Master Agreement, shall not be for less than 30 years.

As indicated, the Master Agreement was made part of Debtor's Plan of Reorganization. The original Master Agreement contained provisions to which Jamco, Inc. made substantial objection on anti-trust grounds. The initial objection focused on paragraph 12 of the original Master Agreement. In this paragraph, Debtor agrees that any expansion of gaming within a 40 mile radius of the dog track by any person, or under Debtor's license at any of its facilities, without consent from the Mesquaki constitutes a breach of the Master Agreement. Under original paragraph 13, if such a breach were to take place, all sums advanced to Debtor under this Plan would have become immediately due and payable. Further, the Mesquaki would have had the option to take over full management of all facilities owned by Debtor and/or require the immediate transfer of any and all property owned by Debtor to the Mesquaki. The Mesquaki's rights under paragraph 13 were limited to the dog track property only if the breach is caused by a non-debtor party.

Presumably, because of the objections to this language, Debtor entered into a new Master Agreement with the Mesquaki on November 14, 1995. This new Master Agreement was made part of Debtor's Plan by amendment. The new Master Agreement deleted the agreement that Debtor would not endorse, support or in any way attempt to affect or initiate any legislation or referendum activities relating to expanded gaming. Additionally, the new Master Agreement completely deleted paragraph 12 relating to gaming within a 40-mile radius of the dog track. Jamco, Inc., however, has continued to maintain that these changes in the Master Agreement do not eliminate anti-trust problems in the agreement.

In addition to management of the dog track, paragraph 16 of the Plan provides that Debtor shall ensure the appointment of three Mesquaki designees to Debtor's Board of Directors. Placement of three Mesquaki designees on the Board of Directors would constitute a minority of the existing directorships. Finally, Debtor agrees, under the Plan, to allow the Mesquaki to lease any available space at the dog track to facilitate the development of other profit-making activities so long as such activities do not interfere with the existing pari-mutuel racing activities. All costs of such development would be the responsibility of the Mesquaki and all profits therefrom would be the property of the Mesquaki.

III. JAMCO, INC.'S PLAN

The Fourth Amended Plan of Jamco, Inc. proposes to pay all allowed claims, in full and in cash, on or before the effective date of the Plan. Jamco, Inc. consists of a consortium of Iowa businessmen who will advance the money to fund this Plan. Jamco, Inc. has deposited into two escrow accounts a total of $5.5 million.

Escrow account "A" has a beginning balance of $4.5 million and will be the funding/payment mechanism for satisfying all of the allowed claims. The Plan provides that Attorney Larry Eide of Mason City, Iowa be named agent for the creditors listed in the Report of Claims of Jamco, Inc. and is authorized, under the Plan, to draw on this escrow account to pay creditors in the event Jamco fails to do so in a timely manner.

Escrow account "B" has a $1.0 million balance. On this account, Mr. Eide is authorized as "agent for the Debtor" to draw on the account to pay for operating deficiencies which Debtor may incur in the 12-month period following the effective date of the Plan.

As the funds from both accounts are drawn upon, they will become loans from Jamco, Inc. to Debtor. The repayment terms of these loans in the Plan are not set out with specificity but state that the terms shall be determined by "taking into account the cash flow of the Debtor and commercially reasonable terms in light thereof".

The Plan provides that none of the funds from either escrow account are to be used to redeem Jamco's Sheriff's

Certificate which includes both the fairgrounds property and the Waterloo Greyhound Park. The Plan proposes that Debtor's redemption rights become non-assignable and will eventually lapse with the result that Jamco would become the owner of both properties by virtue of the Sheriff's Deed which will be issued after July 7, 1996.

The Plan proposes that Jamco, Inc. will lease the fairgrounds and Greyhound Park properties to Debtor. The term of the leases is 15 years with a proposed commencement date of August 1, 1996. The Plan contains no provisions relating to any renewal of either lease. The rent for the fairgrounds will be $75,000 per year payable at a rate of $6,250 per month. The rent for the dog track property would be 16% of the net income from the current pari-mutuel activities at the track as well as any expanded gaming which may occur in the future.

In addition to the base rents, Debtor will be obligated to pay a pro-rata share of all of the costs which Jamco, Inc. will incur in maintaining and operating the two properties. These costs include real estate taxes, special assessments, heating, cooling, utilities, a variety of insurance coverages, security, landscaping, janitorial services, Jamco's rental of a property management office, management fees, and all maintenance and repairs. In addition, Debtor is required to pay at least $1,000 per month per property to establish a promotional fund for the two properties and spend at least 5% of gross sales on advertising and promotion.

The Plan provides that Debtor cannot mortgage or encumber the lease, sublet or assign the lease, or allow third parties to use the premises without the consent of Jamco, Inc. Jamco, Inc. has complete discretion in withholding such consent. All alterations, decorations and improvement to the properties will ultimately become the property of Jamco, Inc. at the expiration of the leases with the exception of movable furniture, furnishings and trade fixtures. These items also become the property of Jamco if Debtor is in default on its leases at the time of their expiration.

A key element of Jamco, Inc.'s Plan is the formulation of an Operating Agreement between Jamco, Inc., Debtor, and Jamco LC. Jamco LC is a limited liability corporation which is to be created post-confirmation and whose members will be the shareholders of Jamco, Inc. The proposed Operating Agreement provides that Jamco LC will act as manager of the dog track as well as any expanded gaming which may eventually be approved. Under this agreement, Jamco LC will be paid 40% of the net income from the pari-mutuel and expanded gaming operations, after the payment of gaming taxes, as compensation for providing management.

The management agreement will not extend to the fairgrounds and the net income from activities at the fairgrounds will not be included in Jamco LC's compensation. The term of the agreement will be through October 15, 2000 with Jamco LC having the option to renew for up to two additional terms each consisting of five years. If Jamco LC exercises both options, the management agreement would terminate in October of 2010 which is slightly less than one year prior to the expiration of Debtor's leases with Jamco, Inc. in July of 2011.

The Jamco, Inc. Plan proposes to replace the existing Board of Directors with its own three-member Board. These members are T. Manatt, M. Dakovich, and S. Jackson. The Operating Agreement provides that Debtor's Board of Directors would have complete discretion in deciding whether to ask the Black Hawk County Board of Supervisors to schedule a third referendum on expanded gaming in the County. If Debtor's Board of Directors decides to pursue a third referendum, all costs incurred in the referendum will be advanced to Debtor by Jamco, Inc. Ultimately, these advancements will be treated as loans and must be repaid.

Jamco, Inc.'s Plan provides that if an expanded gaming referendum passes, Debtor will borrow approximately $5.0 million from Jamco, Inc. to make improvements to the dog track to provide facilities for a casino. Jamco, Inc. will be granted a security interest in all furniture, fixtures and equipment to secure the repayment of this loan. This security interest will extend to Debtor's interest in distributions receivable under the Operating Agreement, that is, the 44% of net income left after Jamco LC's 40% management fee and Jamco, Inc.'s 16% rent.

Jamco, Inc. will undertake, on Debtor's behalf, the construction of improvements necessary to establish a casino at the dog track and to procure the equipment needed to operate the casino. The funds for construction and necessary purchases will also be treated as advancements from Jamco, Inc. to Debtor and ultimately repayable to Jamco, Inc. It is not clear if these funds are included in the $5.0 million loan or if they are in addition to the initial $5.0 million loan.

The financial terms of the Plan and Operating Agreement provide, in summary that if a referendum passes allowing

expanded gambling, Debtor's indebtedness to Jamco will be set at a minimum of $10.5 million. This will consist of the $4.5 million to satisfy allowed claims, $1.0 million to fund the first year of operating costs, and $5.0 million to make improvements for expanded gambling. This figure will not cover the costs of any referendum or other incidental costs specified in the Operating Agreement.

The foregoing constitute the Court's basic findings of fact as they relate to this case. Other findings of fact and factual conclusions will be set out hereafter in the body of this opinion as necessary to support the Court's conclusions.

IV. BURDEN OF PROOF

The case law is well established that a Plan proponent has the burden of proof to establish all the requirements for confirmation enumerated under 11 U.S.C. § 1129. In re Patrician St. Joseph Partners Ltd. Partnership, 169 B.R. 669, 679 (D. Ariz. 1994). If objections are filed, most courts allocate the burden of proof such that a party objecting to confirmation must "initially bear the burden of proving the validity of the objections and must set forth adequate reasons". In re Valley Park Group, Inc., 96 B.R. 16, 21 (Bankr. N.D.N.Y. 1989) (citing In re Future Energy Corp., 83 B.R. 470, 481 (Bankr. S.D. Ohio 1988) and In re Northeast Dairy Coop. Fed'n, Inc., 73 B.R. 239, 248 (Bankr. N.D.N.Y. 1987)). As such, in this case, the objecting parties must first go forward to establish the validity of their objections. However, if this initial burden is met, the Plan proponent still must assume the ultimate burden of establishing all requirements under 11 U.S.C. § 1129. See In re Dawson Foundry, Inc., No. L-90-00454W, slip op. at 9-10 (Bankr. N.D. Iowa, Aug. 12, 1991).

This Court will initially examine the objections made by the respective objecting parties to determine whether they have met their burden of proof of establishing sustainable objections. The Court will then examine each respective Plan Proponent's Plans to determine if each Plan meets the standards set forth in 11 U.S.C. § 1129.

V. OBJECTION OF THE IOWA RACING & GAMING COMMISSION

The Iowa Racing and Gaming Commission filed its objection to Debtor's Plan on November 13, 1995. While the Iowa Racing and Gaming Commission's pleading is denominated an objection, it merely recites that the Iowa Racing and Gaming Commission is statutorily charged with oversight of all gambling operations in Iowa except those involving the Indian tribes. As the responsible agency charged with overseeing gambling interests, the Commission did not wish to be perceived as agreeing that whichever Plan is confirmed would ultimately be acceptable to the Commission. Rather, the Commission points out in its objection that it must first review the entire Plan to ensure that it is in compliance with Iowa Racing and Gaming Commission standards as authorized by Iowa law.

In summary, the Commission asserts that it "intends to maintain its oft-stated position that the Commission will consider all resulting agreements and new business relationships created by any reorganization plan at the time such plan is implemented." The Iowa Racing and Gaming Commission requests the Court to consider this position in the confirmation process.

The Iowa Racing and Gaming Commission has maintained this position throughout these proceedings and has often expressed its independence in making its statutorily mandated evaluation of the requirements for approval of a gaming license. As the Commission presents no specific objection to confirmability of Debtor's Plan and as no party has challenged the authority of the Iowa Racing and Gaming Commission to perform its statutory obligation, the Court feels it need not address further the stated objection of the Iowa Racing and Gaming Commission.

VI. OBJECTION OF THE IOWA DEPARTMENT OF REVENUE AND FINANCE

The Iowa Department of Revenue and Finance (IDOR) also filed an objection to Debtor's Plan of Reorganization on November 13, 1995. The IDOR states that the original Letter of Credit was to expire on December 31, 1995. It expresses concern that if the Letter of Credit expired before the Plan was fully consummated, the IDOR, as well as other creditors, could be jeopardized by losing the assurance of payment provided by the Letter of Credit. Since the filing of the objection by the Iowa Department of Revenue, however, Debtor has received an extension on the irrevocable Letter

of Credit through March 31, 1996. As such, the basis for IDOR's objection no longer exists. The objection is moot and does not constitute a bar to confirmation.

VII. OBJECTION OF HOMELAND BANK

Homeland Bank, as Trustee for the Bondholder Banks, filed its objection to Debtor's Amended Plan on November 13, 1995. It asserts that the Amended Plan purports to provide full payment in cash of all allowed claims. Homeland Bank asserts that while the Amended Plan of Reorganization provides for full payment of the claim of the Bondholder Banks which is secured by personal property, it fails to provide for any payment of the unsecured portion of the claim of the Bondholder Banks.

This objection was discussed at the time of the pretrial conference on confirmation. The parties in interest stipulated, at that time, that the computation of the extent of payment for the unsecured portion of the claim, if any, was a question of law that could be decided by summary proceedings upon stipulated facts. Debtor stipulated that, if the matter were determined prior to confirmation, Debtor would pay the amount, if any, which constituted a claim for the unsecured portion of the Bondholder Banks' claim.

This matter was scheduled for separate hearing prior to confirmation and the Court entered its ruling making its determination as to the appropriate amount of the unsecured claim of the Bondholder Banks. As this matter has been resolved by a ruling of this Court, this objection by the Bondholder Banks, is now moot.

VIII. OBJECTIONS OF JAMCO, INC.

Jamco, Inc. has filed multiple objections to Debtor's proposed Plan. Many of these objections can be divided into general categories. One of the primary objections by Jamco to Debtor's Plan involves the allegation that the Plan constitutes a violation of the Sherman Anti-Trust Act 15 U.S.C. § 1 et seq. Second, Jamco asserts that the Mesquaki tribe has sovereign immunity which has not been waived and, therefore, any contracts involving Debtor and the Mesquaki tribe are invalid.

Third, Jamco claims that the agreements between the Mesquaki tribe and Debtor violate 25 U.S.C. § 81. Jamco asserts that any agreements between the Mesquaki and Debtor involve Indians lands. If a contract is entered into between an Indian tribe and a non-tribal third party, § 81 requires execution and approval by the Secretary of the Interior and the Commissioner of Indian Affairs. As such approval and signatures have not been obtained, Jamco asserts that confirmation must be denied. Fourth, Jamco asserts that Debtor is in violation of § 1129 in that it fails to disclose officers, directors and the insiders in the reorganized company. Fifth, it asserts that certain classes are impaired contrary to Debtor's Plan and, therefore, balloting should occur and confirmation of Debtor's Plan must be denied. Sixth, Jamco alleges that the Plan is not offered in good faith largely on the basis of the alleged anti-trust violations. Seventh, it argues that the Plan is not feasible on economic grounds. Finally, Jamco asserts that Debtor will effectively be transferring all of its assets to the Mesquaki tribe without adequate consideration.

A. Sherman Act, Section 1

The Court will first address allegations of anti-trust violations. Debtor originally presented a Plan with an attached Master Agreement between Debtor and the Mesquaki tribe. This Master Agreement controlled the payment mechanism whereby the Mesquaki would pay $9.1 million into an irrevocable Letter of Credit. This Master Agreement contains provisions which Jamco asserts constituted anti-trust violations. These provisions were found in the original Master Agreement at paragraphs 7, 9, and 12. Read together these provisions provide that, subject to approval of the Iowa Racing and Gaming Commission, Debtor would give to the Mesquaki tribe the exclusive right to a management contract for the Waterloo Greyhound Park together with the exclusive right to a management contract for any expansion of gaming which occurs or takes place at any facilities owned by Debtor including the Waterloo Greyhound Park, now or in the future. At the same time, Debtor agreed to retain and employ a lobbyist to promote the mutual interests of Debtor as well as the Mesquaki.

The most critical provisions are contained in paragraph 9(b) and paragraph 12. Paragraph 9(b) states that Debtor agreed that it would not institute or lobby for any legislation which would change current Iowa law on gaming or public referendum on expanded gaming without the expressed written consent of the Mesquaki tribe. Debtor further agreed that it would not endorse, support or in any way attempt to influence, affect or initiate any legislation or referendum activities on expanded gaming on its property or at any other location without the express written consent of the Mesquaki. Paragraph 12 provided that Debtor agreed that any expansion of gaming which occurred within a 40-mile radius of Waterloo Greyhound Park by any person or under Debtor's license at any of its facilities without the express consent of the Mesquaki tribe would constitute a breach of this agreement. It was these interlocking provisions which Jamco asserts constitute a violation of Section 1 of the Sherman Anti-Trust Act. The original Master Agreement was executed October 13, 1995 as part of the Amended Plan executed October 17, 1995.

Subsequent to the allegations of anti-trust violation, Debtor entered into an amended Master Agreement between Debtor and the Mesquaki tribe on November 14, 1995. This was made a part of an amendment to the Plan of Reorganization filed with the Court on November 15, 1995. The new Master Agreement retained all of the provisions of the original Master Agreement except those matters asserted to constitute anti-trust violations by Jamco. In that regard, paragraph 7 of the Management Contract remained intact in that Debtor continued to grant to the Mesquaki the exclusive right to a Management Contract of Waterloo Greyhound Park subject to necessary approval by the Iowa Racing and Gaming Commission. Additionally, the Mesquaki retained the exclusive right to a Management Contract for any expansion of gaming which occurs or takes place at any facilities owned by Debtor, including Waterloo Greyhound Park, now and in the future. However, Debtor eliminated paragraph 9(b) relating to the expansion of gambling or the initiation of any referendum activities on expanded gambling in Black Hawk County. Also, the amended Master Agreement deleted paragraph 12 which stated that any expansion of gambling occurring within a 40-mile radius of the Waterloo Greyhound Park without the written consent of the Mesquaki would constitute a breach of the Master Agreement.

Jamco, at trial and in its post-trial brief, asserts that these changes do not eliminate the anti-trust aspects of this agreement. They state that the Master Agreement continues to violate Section 1 of the Sherman Anti-Trust Act and in addition, the changes now also implicate Section 2 of the Sherman Anti-Trust Act relating to monopoly action.

Section 1 of the Sherman Anti-Trust Act provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1.

Iowa law contains similar provisions under the Iowa Competition Law. This Chapter provides that: "A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market." Iowa Code sec. 553.4. The Iowa Code also provides as to monopolistic practices that: "A person shall not attempt to establish or establish, maintain, or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or of controlling, fixing or maintaining prices." Iowa Code sec. 553.5.

Section 2 of the Sherman Anti-Trust Act provides: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . ." 15 U.S.C. § 2.

In order to properly analyze the position of Jamco, it is first necessary to define factually the relationship between the Mesquaki and Debtor arising out of their business relationship. The Mesquaki agreed to advance $9.1 million to Debtor in return for certain concessions. Certain of those concessions were set forth in the original Master Agreement which included Debtor's agreement that it would not attempt, through a change in Iowa law or a referendum, to obtain expanded gaming at its facilities. Additionally, it agreed that any expansion of gaming occurring within a 40-mile radius would constitute a breach of the Master Agreement. These provisions, in conjunction with the underlying negotiations memorialized in minutes of Debtor's Board of Directors and a Letter of Intent dated July 19, 1995, formed the basis for Jamco's assertions of anti-trust violations. However, the terms which Jamco found offensive have now been eliminated. Nevertheless, Jamco continues to assert that these changes do not eliminate the fundamental problem. Jamco states in its post-trial brief:

> . . . the proponent of the NCC/Mesquaki plan now implies that the plan is not to exclude NCC from entering

> expanded gaming but to have expanded gaming through the management agreement with the Mesquaki. This final metamorphosis, however, does not avoid the antitrust problem but rather exacerbates it, by demonstrating a violation of Section 2 of the Sherman Act as well as of Section 1.

Post-Trial Brief of Jamco, Inc., page 12, December 27, 1995.

Jamco infers that despite the removal of the terms defined, the Mesquaki and Debtor continue to maintain a relationship which would somehow involve implementation of these terms. The clear evidentiary record, however, establishes that those terms are no longer part of the agreement and there no longer exists a bar to Debtor obtaining expanded gaming as long as the Mesquaki are granted a management contract for that expanded gaming. No evidence exists in the entire record to contravene that conclusion. Even if such conclusion could be inferred, the document controlling the relationship between Debtor and the Mesquaki is the Master Agreement, as amended, and none of the other documents reflect the present intent of the parties. It is clear that there is no presently existing prohibition against Debtor seeking expanded gaming, if Debtor determined that it was in its best interest to do so. It is, therefore, impossible to conclude that an anti-trust or a monopolistic conspiracy exists between the Mesquaki and Debtor under this record.

Thus, the Court concludes that the appropriate relationship to be analyzed in determining whether any anti-competitive conduct exists must be based upon the existing Master Agreement which provides that the Mesquaki, or its designee, would have the exclusive right to a management contract for the Waterloo Greyhound Park together with the exclusive rights to a management contract for any expansion of gaming which occurs or takes place at any facilities owned by Debtor.

In arguing a violation of Section 1 of the Sherman Act, Jamco asserts both a "per se" violation of the Sherman Act as well as a "rule of reason" violation. The parties agreed that the Court would consider application of the per se rule prior to the confirmation hearing. After oral arguments and briefing, the Court entered its ruling on December 11, 1995 finding that there was no "per se" violation of Section 1 of the Sherman Act. Prior to the confirmation hearing, Jamco filed a Motion for Reconsideration. At the confirmation hearing, additional evidence was presented by both Jamco and Debtor on the issues of anti-competitive conduct.

The Court will first revisit Jamco's allegations of a per se violation of Section 1 of the Sherman Act. In so doing, the Court considers the record which has already been made, the subsequent briefs, the subsequent Motion to Reconsider, the subsequent evidence presented at the time of confirmation hearing, as well as post-confirmation hearing briefs. The Court will not, in so doing, completely reanalyze the per se arguments.

Contracts are determined to be per se violative of the Sherman Act when "their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable" and therefore illegal. Five Smiths v. National Football Players League Ass'n, 788 F.Supp. 1042, 1045 (D. Minn. 1992). Application of the "per se" analysis precludes the necessity of the elaborate factual inquiries involved in a "rule of reason" analysis. While the "per se" rule provides for expedient determinations, its application is limited to relatively narrow circumstances Courts have sufficient expertise and experience with the activity in question to recognize that it is plainly anti-competitive and lacks any redeeming value. Broadcast Music, Inc. v. Columbia Broadcasting Sys., Inc., 441 U.S. 1, 8 (1979). A particular course of conduct will generally be determined to be a "per se" violation only after the Courts have had considerable experience with the type of conduct challenged and the application of the "rule of reason" has resulted in the finding of anti-competitive effects in similar circumstances. U.S. Trotting Ass'n v. Chicago Downs Ass'n, Inc., 665 F.2d 781 (7th Cir. 1981). Because of this narrow application, there is a presumption in favor of the "rule of reason". Broadcast Music, 441 U.S. at 8.

Jamco asserts that the conduct previously defined constitutes a "per se" violation of the Sherman Act. Jamco characterizes the Master Agreement as an agreement which allocates territory in which the Mesquaki and Debtor will compete in the "legal gambling market". In support of its market allocation theory, Jamco contends that the Master Agreement permanently allocates to the Mesquaki a monopoly on the legal gambling market in the Waterloo area. Jamco asserts that because Debtor holds a pari-mutuel racing license, Debtor is the primary, if not only, entity that could potentially challenge the Mesquaki's monopoly.

Jamco has cited various cases which hold territory allocation agreements are "per se" violations of the Sherman Act in

support of its contention that this issue is capable of a "per se" determination. However, the cases cited by Jamco, to a large extent, involve businesses which were clearly competitors. See, e.g., Palmer v. BRG of Georgia, Inc., 498 U.S. 46 (1990) (bar review courses); United States v. Brown, 936 F.2d 1042 (9th Cir. 1991) (billboard companies). That is, they provided roughly identical goods or services to the public. While both the Mesquaki's and Debtor's businesses revolve around legal gambling, the types of gambling provided by each are mutually exclusive: casino style gambling by the Mesquaki and dog race betting at Debtor's facilities. As such, it is not at all obvious that the Master Agreement, even before modification, allocates market territories in the same manner as the agreements in the authorities cited by Jamco. Neither Jamco nor Debtor cite any authorities in which a market allocation agreement was at issue in the gambling issue. This Court has searched and has also failed to find any cases involving a gambling industry allocation agreement.

In summary, it is the finding of this Court that the now existing Master Agreement and the evidentiary record made in this case fail to establish a "per se" violation. This conclusion is supported by the fact no cases exist analyzing issues involving gambling industry market allocation agreements. As such, it is inappropriate to conclude that Court's have had sufficient experience with this type of contract or that previous applications of the "rule of reason" in similar circumstances have resulted in the finding of unreasonable anti-competitive effects. Broadcast Music, 441 U.S. at 8. This Court concludes, based on this abbreviated analysis as well as the more complete analysis in its prior ruling, that Jamco has failed to establish a "per se" violation of the Sherman Act.

The alternative to a "per se" violation is an analysis under the "rule of reason". A "rule of reason" analysis is a complete and complex analysis of the market as well as of the impact of the parties' conduct on the market. National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679, 692 (1978). This involves expert opinions defining the precise industry in question, the relative geographic and product services markets, as well as the effect of State regulation on competition within a given industry. In order to proceed with an anti-trust claim, the movant must establish the relevant market. Morgenstern v. Wilson, 29 F.3d 1291, 1296 (8th Cir. 1994), cert. denied, 115 S. Ct. 1100 (1995). The Court in Morgenstern stated that: "An actual monopolization claim often succeeds or fails strictly on the definition of the product or geographic market." Morgenstern, 29 F.3d at 1296. In this case, the relevant market is not clearly defined nor is it conceded by the parties.

In anti-trust litigation, the relevant market is considered to have two components: a product market and a geographic market. Before the Court can make a determination of the appropriate product market, the evidence must establish a well-defined product. Bathke v. Casey's Gen. Stores, Inc., 64 F.3d 340, 345 (8th Cir. 1995). The geographic market encompasses the geographic area to which consumers can practically turn for alternative sources of the product and in which the anti-trust defendant faces competition. Bathke, 64 F.3d at 345. Both product market and geographic market determinations must be based on factual determinations gleaned from a market analysis established by expert testimony.

Both Debtor and Jamco proffered witnesses on these issues. Debtor called Dr. Richard Eadington to testify on the impact of Debtor's agreement with the Mesquaki. Dr. Eadington is a professor at the University of Nevada, Reno and has taught in the area of anti-trust since 1970. He has been employed by the Iowa Racing and Gaming Commission to provide gambling and gaming analyses. He is generally conceded to be a leading expert in this field and is conceded by Jamco's expert to be one of the leading experts in this area in the country.

Dr. Eadington provided the Court with both a geographic and a product market analysis. He testified that "market" means the interaction of groups of buyers and sellers to a particular product. He stated that it is appropriate to determine a geographic market for anti-trust purposes by evaluating the buying patterns of the consumer. This can be accomplished by establishing the geographic area that someone will travel to seek out a substitute. In the gambling industry, generally the closer a potential gambler is to a gambling facility, the greater is the propensity to gamble. Gambling consumers tend to gamble more if they are closer to a facility.

Secondly, the market place incorporates consumer desires such as the nature of the games offered, amounts paid, percentage payout, and the general decor and ambiance of the gambling facility. Analyzing all of the factors in the geographic market, Dr. Eadington concluded that the market area for the Tama Mesquaki gambling facility is in a circle with an approximate 100-mile radius.

Dr. Eadington provided his expert opinion that the Mesquaki facility and the Waterloo gambling facility belong to

different markets though there is some degree of overlap. He concluded that Tama and Waterloo have different markets because of market outreach. That is, Tama must directly compete with Prairie Meadows in Des Moines as well as, to some extent, with the riverboats. Tama must also compete with other dog tracks and gambling facilities.

Dr. Eadington testified that gambling and gaming does not consist of a single product market. Analysis of the product market involves an analysis of substitutes. In certain instances, close substitutes can be interchangeable. However, he testified that pari-mutuel betting and gaming are both considered gambling but are not generally considered to be close substitutes. Casino gaming is not always a close substitute either. It was the opinion of Dr. Eadington that the present gambling facility at Tama and the present gambling facility at Waterloo do not comprise the same product market.

Dr. Eadington incorporated into his analysis the degree of regulation of the gambling industry imposed by the State of Iowa. He testified that Iowa has imposed a substantial degree of regulation over gaming. The regulation, to some extent, is driven by a desire of the State to stimulate local economies. Even so, the State has not chosen to maximize gaming in Iowa and the State has expressed reservations over the possibility of an overabundance of gambling facilities in the State of Iowa.

In summary, Dr. Eadington testified that, based upon his analysis, any agreement between the Mesquaki and Debtor would be ineffective to exert any type of monopolistic power. He testified that the Mesquaki and Debtor are incapable of fixing prices because, in the present market place, they do not constitute major competition against each other. He concluded that there was a sound business reason for Debtor to enter into this relationship which was financial survival. He testified that the nature of these arrangements do not present grounds for finding any type of anti-trust conspiracy. He testified that the overlap between the Mesquaki and Debtor's facility is weak. The geographic separation puts them in different markets. There are legitimate reasons for this business relationship. In conclusion, Dr. Eadington testified that this business relationship does not unreasonably restrain competition nor does it present any type of anti-competitive action.

Jamco presented evidence from Mr. Will Cummings who is an associate of Christiansen/Cummings Associates. Mr. Cummings has a bachelor's degree and a MS degree in management. He studied some economics while obtaining his master's degree. His primary focus has been in the marketing of leisure activities. He has done feasibility studies for horse racing and has done feasibility studies for the Dubuque Greyhound Racing facility. He has testified concerning gaming by the Native American tribes. The primary focus of Mr. Cummings' occupation is to do marketing analysis.

Mr. Cummings testified concerning competition between the Mesquaki facility and Debtor's facility. He testified that, in his opinion, the Mesquaki facility does compete with Debtor's facility. He testified that his market analysis reflects that Tama gets approximately $12.0 million per year from the Waterloo area. He testified, in his opinion, that if slot machines were placed at Debtor's facility in Waterloo there would be direct competition with the Mesquaki facility. He testified that, in his opinion, the Waterloo facility would generate $15.0 million if slot machines were placed at Debtor's facility in Waterloo. He concluded that the relevant market encompassed both the Tama facility and the Waterloo facility. He defined the product market as all legal gambling. He testified that the Mesquaki facility gets 85-90% of the gambling revenues spent by Black Hawk County residents. He concluded that the arrangement between the Mesquaki and Debtor would have an anti-competitive effect.

Debtor objected to Mr. Cummings' qualifications as an expert. Debtor asserts that it is the Court's duty, as a gate keeper, to make the initial determination whether a proposed expert meets minimum qualifications. Daubert v. Merrell Dow Pharmaceuticals, Inc., __ U.S. __, 113 S. Ct. 2786 (1993). The Court has considered the credentials of Mr. Cummings. Certainly, Mr. Cummings is well-qualified in the area of management and in the area of marketing leisure activities including gaming and gambling pursuits. However, he has no degree in economics and has had no serious academic training or background in anti-trust law. Even if the Court were to conclude that Mr. Cummings is a competent witness to provide expert opinions on anti-trust economics, his opinions are general in nature and are based upon a product and geographic analysis which is rudimentary and much less complete than that provided by Dr. Eadington. It is the determination of this Court that Jamco's expert testimony and evidence do not meet the test necessary to adequately define the product market and geographic market in this industry. Morgenstern, 29 F.3d at 1296; Bathke, 64 F.3d at 345. It is the ultimate conclusion of this Court that the underlying conclusions provided by Mr. Cummings are insufficient to support an expert opinion of anti-trust violations. Bathke, 64 F.3d at 346-47.

This Court concludes that considering the entire evidentiary record and considering the testimony of both individuals presented as experts, the testimony of Dr. Eadington is entitled to substantial weight. The conclusions presented by Jamco's expert are based on unsupported premises and, if entitled to any weight at all, are certainly insufficient to support a finding of anti-trust violations.

The entire focus of anti-trust laws and anti-trust litigation is to protect consumers when artificially manipulated reduced competition exists in the relevant market place. Bathke, 64 F.3d at 344; Brown Shoe Co. v. United States, 370 U.S. 294, 320, 82 S. Ct. 1502, 1521 (1962). The evidentiary record, in this case, when viewed as a whole fails to establish that the Mesquaki and Debtor entered into a contract, combination or conspiracy with the intent to restrain trade or which actually does restrain trade or commerce. There is a complete failure of the evidence to establish that the gambling and gaming consumer has been adversely affected in any manner through any agreements between the Mesquaki tribe and Debtor. As such, there is no violation of Section 1 of the Sherman Act.

B. Sherman Act, Section 2

Jamco additionally asserts that the amendments to the Master Agreement now reveal a violation of Section 2 of the Sherman Act. Section 2 of the Sherman Act provides: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . ." 15 U.S.C. § 2 (1988).

The Court does not feel that it is necessary to completely restate the previous analysis. The provisions and the testimony provided on the issue of a potential violation of Section 1 of the Sherman Act are equally applicable here. Individuals asserting claims of monopolization, in violation of Section 2 of the Sherman Act, are required to establish the relevant geographic markets. Additionally, they must prove that the monopolizing parties have the market power to control the market. Brook Group Ltd. v. Brown & Williamson Tobacco Corp., __ U.S. __, 113 S. Ct. 2578 (1993); Spectrum Sports, Inc. v. McQuillan, __ U.S. __, 113 S. Ct. 884 (1993).

Dr. Eadington provided expert and compelling testimony that the Mesquaki facility and Debtor's facility are incapable of fixing prices because of major competition from other sources. His conclusion, which this Court finds compelling, is that neither the Mesquaki nor Debtor, either individually or together, are capable of exerting monopolistic power as that term is defined by Section 2 of the Sherman Act. This Court concludes that Jamco has failed to establish a violation of Section 2 of the Sherman Act.

C. Iowa Competition Law

Finally, Jamco has asserted that independent of the Sherman Act, the conduct in question also violates the Iowa Competition Law, Iowa Code sec. 553.1. This law provides: "A contract, combination or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market." This law is very similar to the relevant portions of the Sherman Act and is applied in a similar manner. Again, the Court feels no purpose would be served by analyzing in great length the evidence which has already been discussed. This Court has concluded that, under similar language contained in Section 1 and Section 2 of the Sherman Act, no conduct is established between the Mesquaki and Debtor which was intended to, or does in fact, restrain or monopolize trade or commerce in a relevant market.

It is the conclusion of this Court, for all the reasons previously discussed, that Jamco has failed to establish any anti-trust violation under the Federal Sherman Anti-Trust Act or the Iowa Competition Law.

D. Section 1129(a)(3) and Anti-Trust

Jamco asserts the alleged anti-trust violation has applicability under various confirmation standards. The primary standard which Jamco says is violated by its anti-trust allegations was § 1129(a)(3). This provision, in applicable part, states that:

a. The court shall confirm a plan only if all of the following requirements are met:

. . .

3. The Plan has been proposed in good faith and not by any means forbidden by law.

11 U.S.C. § 1129(a)(3).

Jamco asserts that the alleged anti-trust violation constitutes a violation of law and, therefore, Debtor could not comply with the requirements of § 1129(a)(3). The Court has already concluded that Jamco has failed to establish any anti-trust violation. However, even assuming that Jamco had succeeded in its argument, an anti-trust violation, in and of itself, does not preclude confirmation of a Plan.

The language contained in § 1129(a)(3) bars confirmation of a Plan which is proposed in violation of law but does not necessarily bar confirmation of a Plan that contains terms that may ultimately be determined to be in contravention of the law. In re General Dev. Corp., 135 B.R. 1002, 1007 (Bankr. S.D. Fla. 1991). The proper inquiry in this situation is whether the Plan represents a legitimate pursuit of reorganization or whether the pertinent provisions are an attempt to abuse the confirmation process to achieve some improper purpose. In re Food City, Inc., 110 B.R. 808, 814 (Bankr. W.D. Tex. 1990). Plans have been confirmed although the potential exists for an illegality but it is determined that the Plan is proposed for appropriate purposes. Food City, Inc., 110 B.R. at 814; In re Buttonwood Partners, Ltd., 111 B.R. 57 (Bankr. S.D.N.Y. 1990); In re Sovereign Group, 88 B.R. 325 (Bankr. D. Col. 1988).

The ultimate test, which has been recognized in this Circuit, is that a Plan meets the requirements of § 1129(a)(3) "if there is a reasonable likelihood that the Plan will achieve a result consistent with the standards prescribed under the Code". Hanson v. First Bank, 828 F.2d 1310, 1315 (8th Cir. 1987).

Here, even if Jamco had established a violation of the anti-trust laws, this Court concludes that in the present factual context, such a potential violation would not preclude confirmation. The law is clear that the purpose of the Bankruptcy Code and reorganization is to protect the interests of creditors. In re Texas Extrusion Corp., 844 F.2d 1142, 1159 (5th Cir.) cert. denied, 488 U.S. 926 (1988). The purpose and function of anti-trust laws is to protect consumers from anti-competitive conduct. Anti-trust laws were created to protect competition. Brown Shoe Co., 370 U.S. at 320, 82 S. Ct. at 1521; Bathke, 64 F.3d at 344.

Confirmation of a plan which may contain some "illegalities" does not, in and of itself, confer a "clean bill of health" on Debtor as long as confirmation or discharge does not preclude subsequent prosecution or enforcement by appropriate agencies. Food City, Inc., 110 B.R. at 813. Even if an anti-trust violation did exist, the protection of the gambling public has little, if any, significance in terms of reorganization of this Debtor. The purpose of reorganization is to protect the interests of creditors. There is nothing in the allegations made by Jamco relative to anti-trust violations which have an impact upon payment of creditors in this case. In other words, if anti-trust violations did exist, such conduct would have no impact as the creditors in this case will all be completely paid.

Ultimately, Jamco relies on dicta in the case of Foods City, Inc., 110 B.R. at 814, where the court stated that if conduct is blatantly illegal, the Plan is less likely to be found to have been proposed in good faith. Here, Debtor has acquired financing with which to pay creditors completely. It is the conclusion of this Court that there exists no blatantly illegal provisions in this Plan. It is further the conclusion of this Court that none of the conduct complained of by Jamco would eliminate a finding of good faith on the part of Debtor in proposing this Plan.

E. Federal Indian Statute, 25 U.S.C. § 81

Jamco has previously, in oral argument and in evidence, asserted that the Plan violates Federal Indian statutes because the Mesquaki entered into the agreement without the approval of the Secretary of the Interior and the Commissioner of Indian Affairs. 25 U.S.C. § 81. This argument is easily addressed. Section 81, in relevant part, states:

No agreement shall be made by any person with any tribe of Indians . . . for the payment or delivery of any

> money or other thing of value, . . . relative to their lands . . . unless such contract or agreement be executed and approved as follows:
>
> . . .

25 U.S.C. § 81.

The statute requires execution and approval by the Secretary of Interior and the Commissioner of Indian Affairs when a contract involves Indian land. This section goes on to state that all contracts made in violation of this section are null and void. However, not all contracts entered into by a tribe are subject to 25 U.S.C. § 81. Only those contracts which are "relative to" Indian lands are subject to the provisions of § 81. Courts have established a four-part test to determine which contracts are relative to Indian lands as follows:

> 1) Does the contract relate to the management of a facility to be located on Indians lands? 2) If so, does the non-Indian party have the exclusive right to operate that facility? 3) Are the Indians forbidden from encumbering the property? 4) Does the operation of the facility depend on the legal status of an Indian tribe being a separate sovereign? To quote the Ninth Circuit, none of the above factors are the "*sine qua non*" of a contract which relates to Indians lands.

Altheimer & Gray v. Sioux Mfg. Corp., 983 F.2d 803, 811 (7th Cir.), cert. denied, 114 S. Ct. 621 (1993). These factors were applied in In re United States ex rel. Hall, 825 F. Supp. 1422, 1433 (D. Minn. 1993) aff'd, 27 F.2d 572 (8th Cir. 1994), in determining whether contracts for goods and services related to Indian gaming operations were "relative to Indian lands". The court held that such contracts are not relative to Indian lands and thus need not comply with the requirements of § 81. Id. at 1434.

Applying the foregoing test to the facts of this case, it is clear that the contract is completely independent of any facility to be located on Indian property. The operation of Debtor's facilities in Waterloo are completely independent of the legal status of the Mesquaki tribe being a separate sovereign. As this agreement has no relationship to the Mesquaki as a separate sovereign, there is no requirement under 25 U.S.C. § 81 that prior approval by the Secretary of the Interior and the Commissioner of Indian Affairs is necessary. It is the conclusion of this Court that, to the extent that Jamco asserts that the contract between the Mesquaki and Debtor is null and void pursuant to 25 U.S.C. § 81, the same is specifically found to be non-applicable and the objection is, therefore, denied.

F. Mesquaki Sovereign Immunity

Jamco, Inc. also claims that the Mesquaki tribe has not waived its tribal sovereign immunity and as such, Jamco asserts that Debtor's Plan is proposed by "means forbidden by law" as defined in 11 U.S.C. § 1129(a)(3). It is true that Indian tribes, including the Mesquaki, enjoy sovereign immunity. The Eighth Circuit Court has stated that: "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." Weeks Construction, Inc. v. Oglala Sioux Hous. Auth., 797 F.2d 668, 670 (8th Cir. 1986); see also Iowa ex rel. Whitebreast v. Whitebreast, 409 N.W.2d 460, 461 (Iowa, 1987).

In a breach of contract action by a non-Indian against an Indian tribe, the law is clear that to be effective, the tribe must waive its sovereign immunity and the waver must be unequivocally expressed. American Indian Agric. Credit Consortium, Inc. v. Standing Rock Sioux Tribe, 780 F.2d 1374, 1378 (8th Cir. 1985). It is unchallenged that in this case the Mesquaki have not waived their sovereign immunity. Jamco asserts that, because of the lack of waiver, Debtor's Plan is proposed by a means forbidden by law. However, as in the area of alleged anti-trust violations, sec. 1129(a)(3) requires that the Plan not be proposed by any means forbidden by law. It does not require a guarantee that the Plan not contain any violations of law. Food City, Inc., 110 B.R. at 812.

It is the conclusion of this Court that Jamco's assertions fail on two grounds: one legal and one factual. Legally, Jamco fails to establish, in any respect, that the non-waiver of sovereign immunity violates any law. There is no requirement legally that Debtor obtain a waiver of sovereign immunity nor is there any legal obligation that the Mesquaki must give a waiver of sovereign immunity prior to entering into any type of contractual arrangement. Therefore, Jamco's initial

premise that the failure to obtain a waiver of sovereign immunity violates the law is incorrect. Even if such a requirement did violate any known law, such a violation would not necessarily preclude confirmation. This is true for the reasons previously discussed concerning the anti-trust issues in that a Plan may be confirmed which may ultimately be determined to be in contravention of some law. General Dev., 135 B.R. at 1007.

Secondly, Jamco's argument fails factually. Much of the agreement between the Mesquaki and Debtor involves the transfer of $9.1 million. The second part of the agreement involves future management agreements between Debtor and the Mesquaki. That portion of the agreement which involves a transfer of funds is, in all respects, an executed contract. The Mesquaki have placed the $9.1 million in an irrevocable Letter of Credit with an expiration date of March 31, 1996. Those funds are available for immediate payment of creditors. There is no need for a waiver of sovereign immunity for this portion of the agreement.

The second part of the agreement involves future management contracts. While the general outline of these management contracts has been discussed, the final negotiations remain to be completed. Debtor states, and the Court concurs in the conclusion, that there is no reason to assume that Debtor will be incapable of protecting its interest in the negotiation of these contracts. To assume that Debtor would enter into these contracts without a waiver of sovereign immunity or other protection would be speculation.

The Court concludes that the non-waiver of sovereign immunity does not qualify as a impediment to confirmation under § 1129(a)(3) as it does not involve conduct forbidden by law. Additionally, there is no reason factually to assume that the non-waiver is a long-term impediment to implementation of Debtor's Plan. This Court concludes that Jamco's claim concerning the non-waiver of sovereign immunity does not constitute a valid objection to this Plan under § 1129(a)(3) and is, therefore, denied.

G. Means of Implementation, 11 U.S.C. § 1129(a)(5)

Jamco asserts that the three major issues previously discussed require denial of Debtor's proposed Plan under § 1129(a)(3) as Jamco contends that the Plan was proposed by a means forbidden by law. Secondly, Jamco argues that these matters implicate 11 U.S.C. § 1123(a)(5). Section 1123(a)(5) states that a Plan must provide adequate means of implementation. Section 1129(a)(1) states that the Plan must comply with all applicable provisions of this title. It is the position of Jamco that the means of implementation of Debtor's Plan which is set forth in the Master Agreement constitutes an anti-trust violation and, therefore, is illegal and by definition cannot be adequate. In summary, it is the conclusion of this Court that for all of the reasons previously set forth herein, this objection implicating the foregoing Code sections presents no bar to confirmation and Jamco's objection on these grounds is denied.

H. Good Faith, 11 U.S.C. § 1129(a)(3)

Jamco also asserts that Debtor's Plan cannot be confirmed under § 1129(a)(3) as it was not proposed in good faith but rather for the benefit of an insider. This objection is premised largely on factual contentions. Jamco alleges that in July, 1995, Debtor received a proposal from the Winnebago tribe to provide funding to Debtor. The proposal provided that the Winnebago would loan $1.0 million to Debtor for operating expenses with a proposal to loan an additional $7.0 million if there were a successful referendum. The terms which Jamco claim form the basis of bad faith benefiting an insider involve a condition in the Winnebago proposal that Debtor's President and CEO August Masciotra retire from these positions. Secondly, the proposal conditioned its offer on Debtor's agreement to broaden its community representation by adjusting its Board of Directors.

Jamco asserts that, while Debtor's Board of Directors was considering this proposal, they received an offer from the Mesquaki tribe which Jamco implies was an inferior offer in that it did not offer the potential for full payment to creditors. Jamco asserts that bad faith occurred when Debtor accepted this Plan because it did not contain provisions to terminate Mr. Masciotra nor to change the composition of Debtor's Board of Directors. Eventually, Debtor did terminate its relationship with the Winnebago and continued its negotiations with the Mesquaki culminating in the present agreements. Jamco makes the foregoing assertions without any citation of legal authority.

This objection fails for two factual reasons. First, based solely on the foregoing facts, Jamco concludes that rejection of

the Winnebago proposal and acceptance of the Mesquaki proposal was based only on the two provisions which Jamco highlights. However, a cursory examination of the Winnebago proposal establishes that the initial offer was for $1.0 million and no successive funds would be forthcoming until passage of a expanded gambling referendum. The Mesquaki offer was not contingent upon a successful referendum. Jamco's assertions must be examined in light of the fact that there had already been two special elections concerning this referendum, the most recent defeat being September 27, 1994.

The evidence does not establish with certainty why the Mesquaki proposal was pursued and the Winnebago proposal was abandoned. However, all of Jamco's assertions are made on the basis of inferences gleaned from Board of Directors' Minutes. Factually, it is at least as consistent with this record to conclude that the Winnebago proposal was abandoned because of the requirement of a referendum it is to conclude that it was done to protect Mr. Masciotra or the Board of Directors. Factually, the conclusion which Jamco seeks cannot be reached on this record.

Secondly, even if the conclusion could be drawn that Debtor abandoned the Winnebago proposal for the reasons Jamco asserts, such a conclusion still fails to establish bad faith or that this Plan was proposed for the benefit of an insider. Again, Jamco does not cite any authority for the proposition that a debtor must terminate its present CEO and readjust its board of directors based on a proposal made by a lending institution. There is a substantial difference between a debtor-corporation protecting its officers and board of directors and an allegation of bad faith for the benefit of insiders.

This record is devoid of any evidence that under the Mesquaki proposal, Debtor's President/CEO and the existing Board of Directors are to receive any benefit other than retain their existing positions. No supportable allegations of misconduct are alleged. The assertion that Debtor rejected the Winnebago proposal because Debtor chose not to terminate its President/CEO and reorganize its Board of Directors is not supported in this record. Jamco's assertion that Debtor's Plan should be rejected under § 1129(a)(3), as not being proposed in good faith but rather for the benefit of an insider, is denied.

I. Disclosure, 11 U.S.C. § 1129(a)(5)

Jamco asserts that Debtor's Plan violates Bankruptcy Code § 1129(a)(5) concerning disclosure of officers, directors, and insiders. Under this section, a Plan of Reorganization must identify proposed officers and directors, to the extent known, and must demonstrate that their appointment will be consistent with the interests of creditors and equity holders and with public policy. In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 770 (Bankr. S.D.N.Y. 1992). Under this section, the Court has an independent duty at the time of confirmation to ensure that initial management and the board of directors will be sufficiently independent and free from conflict to serve all creditors and interested parties on an even and loyal basis. In re W.E. Parks Lumber Co., 19 B.R. 285, 292 (Bankr. W.D. La. 1982).

Some uncertainty as to the identity of the individuals who are to be appointed in the future is not inexplicable. In re Landau Boat Co., 13 B.R. 788, 791 (Bankr. W.D. Mo. 1981). Although it is preferable that this information be set out in the disclosure statement, it is acceptable that the principal parties be identified in testimony at the time of the confirmation hearing or in filings with the Court.

Confirmation is possible where the plan proponent is unable to specifically identify future board members as of the time of the confirmation hearing. In re American Solar King Corp., 90 B.R. 808, 815 (Bankr. W.D. Tex. 1988). If no proposed slate of directors exist at the time, no disclosure is required under § 1129(a)(5)(A)(i). Id. Under those circumstances, interested parties are sufficiently protected if board composition changes only as allowed by the corporation's system of governance as set out in its articles of incorporation and bylaws, and in accordance with state and federal law. Id.

Additionally, the appointment of directors to a board of a debtor-corporation whose interest may be arguably inconsistent with the purposes of the corporation, does not, in and of itself, violate § 1129(a)(5). If the new directors do not control the board, and the majority of the board remain disinterested, such factors are sufficient for finding that the appointment is consistent with the interest of creditors and with public policy under § 1129(a)(5)(A)(i). W.E. Parks, 19 B.R. at 291.

Based on the foregoing principles, it is the conclusion of this Court that the entire record, including Court hearings and the hearing on confirmation, provide adequate disclosure as defined in § 1129(a)(5). The Court concludes that Jamco's objection to Debtor's Plan on the foregoing grounds, does not constitute a violation of the Bankruptcy Code nor does it preclude confirmation of Debtor's Plan.

J. Impairment of Junior Lienholders

Next, Jamco asserts that Debtor's Plan impairs the rights to junior lien holders and poses unacceptable risks to the payment of creditors. Jamco asserts that junior lien holders have a period of time after foreclosure within which to redeem. In this case, the redemption period for junior lien holders will apparently expire on April 9, 1996. Jamco states that, if Debtor redeems before that date, the liens of these junior lien holders will reattach. It claims that these creditors are owed less than a total of $1.5 million and that the value of the real estate is far in excess of this figure thereby making these creditors oversecured and entitled to interest as required by § 506 of the Code. No provision is made for the payment of interest in the Plan and Jamco asserts that the claims of these creditors would be impaired. If the creditors' claims are impaired, then the entire balloting procedure would need to be completed in order to comply with Code provisions.

This argument remains tied in part to the original expiration date of the Letter of Credit which was December 29, 1995. Jamco argues that because of the proximity of the date for expiration of the Letter of Credit, no guarantee could be made that payments would be made in appropriate order, or at all for that matter. As a result, Jamco asserts that the Plan is highly speculative and, therefore fails to meet the feasibility requirements of § 1129(a)(11).

It is not controverted that the feasibility requirements of § 1129(a)(11) require a firm commitment and not unenforceable statements of intent. Stratford, 145 B.R. at 699. However, Jamco's analysis is based largely on incorrect premises. The Letter of Intent has been extended through March 31, 1996. This allows sufficient time to make payment of all allowed claims to pay creditors as provided in the Plan and redeem the real estate under Chapter 628 of the Iowa Code. If performed in the proper sequence as delineated in the proposed Master Agreement, the hypothetical situation envisioned by Jamco will not occur. As the construct set out by Jamco is highly speculative and because a more reasonable alternative payment schedule appears to be forthcoming, Jamco's objection on this ground is denied and poses no prohibition to confirmation of this Plan.

K. Feasibility, 11 U.S.C. § 1129(a)(11)

Jamco also asserts that the Plan does not meet feasibility requirements of 1129(a)(11). Jamco asserts that Debtor has not shown the financial ability to meet the financial requirements of the Plan and payoff of the indebtedness to the Mesquaki under the terms of the Plan.

The Bankruptcy Code provides that a Plan must be feasible pursuant to § 1129(a)(11). The Court is required to scrutinize a Plan to determine whether the Plan offers a reasonable prospect of success and is workable. In re Monnier Bros., 755 F.2d 1336, 1341 (8th Cir. 1985). This test contemplates the probability of actual performance of the provisions of the Plan. In re Clarkson, 767 F.2d 417, 420 (8th Cir. 1985). The Court must consider, under case law and the provisions of § 1129(a)(11), whether the things which are committed to be done by the Plan after confirmation can be accomplished as a practical matter. Pertinent factors to be considered include the business's earning power, the sufficiency of the capital structure, economic conditions, managerial efficiency, and whether the same management will continue to operate the company. Id. Factors enumerated by other courts include prospective income and cash flow projections as well as the availability of credit. In re Canal Place, 921 F.2d 569, 579 (5th Cir. 1991). Included in Jamco's objection to the feasibility of Debtor's Plan is Jamco's objection to that portion of the Plan relating to post-confirmation management and any potential conflicts of interest.

Beyond the list of specific factors which are to be considered in applying the feasibility test under § 1129(a)(11), it is not clear from the Code nor existing case law what actually must be evaluated under the feasibility test as applied to the two current Plans. If a successful Plan is considered to be one which is consummated; that is, that all the distributions and financial provisions of the Plan relating to creditors are completed, then it is substantially certain that both Plans

meet this standard. See Susan Jenson-Conklin, Do Confirmed Chapter 11 Plans Consummate?, 97 Com.L.J. 297 1992). Debtor's Plan calls for the full payment of all allowed claims on or before the effective date of the Plan. The money for the claims payment is already in place under an irrevocable Letter of Credit which continues through March 31, 1996.

Consummation is determined by the payment mechanism. Consummation of Debtor's Plan is not based upon speculation nor does the Plan present a substantial chance of failing to pay all of the claims. As a general proposition, the case law appears to support the conclusion that it is generally the prospect of failure to consummate which requires substantial analysis in terms of feasibility. As to the non-claims payment provisions of the Plan, it also appears reasonable under this analysis to conclude that these Plan provisions will be completed, as the Plans will be binding on all interested parties as previously discussed in this ruling.

Recognizing, however, that the literal language of § 1129(a)(11) seems to provide for an examination which goes beyond consummation of the Plan as previously discussed, this Court has been unable to find any cases in which such an analysis was completed or even discussed. Nevertheless, it seems appropriate to consider post-consummation economic feasibility of Debtor's Plan. Jamco asserts that the Plan is not economically feasible because of the debt-load assumed by Debtor and based upon Jamco's assertion of a limited stream of income.

In analyzing the future economic viability of Debtor, the Plan need not guarantee success. A Plan need only present a workable scheme from which it can be concluded that there may be a reasonable expectation of success. The key element is whether there exists a reasonable probability of performance. Clarkson, 767 F.2d at 420. Here, the President and CEO of Debtor testified that, upon confirmation, all creditors will be paid. He testified that Debtor will be able to operate with a net positive cash flow in 1996 of approximately $150,000. While the future inputs from an organization known as Silos and Smokestacks is uncertain, Debtor is dealing with this development group to obtain additional financing and to rehabilitate Debtor's properties on a long-term basis.

Under either Plan, Debtor will be assuming a substantial debt-load which will be difficult but not impossible to satisfy. Significant alternatives are being explored including the possibility of expanded gaming, planning and financial help through a local development group and a positive cash flow through 1996. It is the conclusion of this Court that Debtor's Plan meets the feasibility requirements of § 1129(a)(11).

L. Public Policy, 11 U.S.C. §§ 1123(a)(7) and1129(a)(5)

Jamco asserts Debtor's Plan is inconsistent with public policy. Jamco states that Debtor surrenders excessive control to the Mesquaki tribe. It also asserts that any management agreement and placement of mesquaki on the Board of Directors is an impermissible conflict of interest.

While it is possible that members of the Mesquaki tribe will sit on the Board of Directors and provide management services in the area of gambling, the Mesquaki will not constitute a majority of the members of the Board of Directors and management of Debtor will remain independent. Additionally, as established in the testimony at the confirmation hearing, it is apparently not unusual that the same management team would provide management of gambling facilities to more than one entity.

Placement of individuals not previously associated with Debtor on the Board of Directors does not, in and of itself, establish that the appointments of these directors is inconsistent with the interest of creditors or with public policy under § 1129(a)(5)(A)(ii). W.E. Parks, 19 B.R. at 291. Factors which courts examine in determining whether appointments of individuals comport with § 1129(a)(5)(A)(ii) include the individuals' background and business acumen, experience, competence, prior involvement in mismanagement, and affiliation with interests possibly inimical to the best interests of Debtor. In re Landau Boat Co., 13 B.R. 788, 791 (Bankr. W.D. Mo. 1981); In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992); In re Rusty Jones, Inc., 110 B.R. 362, 366-67 (Bankr. N.D. Ill. 1990); In re Polytherm Indus., Inc., 33 B.R. 823, 829 (W.D. Wis. 1983). The Court has examined the entire record herein and the fact that these three proposed directors will not control the Board and the majority are disinterested is sufficient, in this case, to find that the appointments would be consistent with the interests of creditors and public policy under § 1129.

As such, this Court cannot conclude a conflict of interest exists which impacts public policy sufficiently to constitute a

valid objection to this Plan. It is the conclusion of this Court that Jamco's objections to Debtor's Plan on these grounds are denied and does not constitute a bar to confirmation of this Plan.

M. Summary

In summary, the burden of proof, by a preponderance of evidence, is upon the proponent of a Plan to establish that the Plan meets all of the requisite elements of § 1129(a) of the Code. It is the conclusion of this Court that Debtor, by testimony at the confirmation hearing, has established all of the requisite elements of 1129(a) of the Code by a preponderance of evidence.

Jamco, Inc., Homeland Bank, the Iowa Department of Revenue, and the Iowa Racing and Gaming Commission have asserted objections to Debtor's Plan. However, for all of the reasons set forth in this opinion, the Court finds that the objectors have failed to establish valid objections to the Plan. The Court ultimately concludes that Debtor's Plan is proposed in good faith and not by any means forbidden by law and that it is feasible as defined in the Bankruptcy Code. It is, therefore, the conclusion of this Court that Debtor's Plan complies with all provisions of 11 U.S.C. § 1129 and is confirmable.

IX. DEBTOR'S OBJECTIONS TO CONFIRMATION OF JAMCO, INC.'S PLAN

Debtor has filed numerous objections to the Plan filed by Jamco, Inc.

A. Inadequate Funding

Debtor first asserts that the Jamco Plan fails to comply with §§ 1124(3), 1126(f), 1129(a)(1), 1129(a)(2), 1129(a)(3), 1129(a)(8), and 1129(a)(10). Debtor claims that Jamco's Plan provides for full payment of all claims and provides a maximum of $4.0 million which has been placed in a Letter of Credit. Debtor asserts that this amount is insufficient as shown by the Claims Report to pay all claims as proposed in the Plan. However, the Amended Claims Report establishes claims of $3.55 million. As the amount on deposit exceeds the amount of claims, this objection, by Debtor, is not supported by the evidence and does not constitute a bar to confirmation.

B. Impairment, 11 U.S.C. § 1124

Debtor objects that Jamco's Plan impairs the claim of August Masciotra. Debtor asserts that the Jamco Plan disputes the claim of Mr. Masciotra and Jamco intends to contest any payment to him. Mr. Masciotra's claim is contained in Class 8 of Jamco's Plan as a disputed claim. In Jamco's treatment of various claims, it states, under paragraph 3.03(B), that:

> . . . such payment in respect of any claim which at such date or time is disputed shall not be made until such claim becomes an Allowed Claim whereupon such payment shall be made promptly and in accord with the provisions of this Plan.

Jamco's Plan, paragraph 3.03(B), page 13.

Debtor asserts that this treatment makes Mr. Masciotra's claim impaired. Debtor argues that if Mr. Masciotra's claim is impaired, balloting should have occurred and Mr. Masciotra should have been allowed to cast his vote on the Jamco Plan.

The Plan language is clear that Jamco does not intend to pay Mr. Masciotra's claim on the effective date of the Plan, as the claim is disputed and unresolved prior to confirmation. However, § 502(a) provides that a claim is deemed to be allowed, unless a party-in-interest objects. Jamco, as a creditor, is a party-in-interest and has standing to object to Mr. Masciotra's claim. Once the objection was lodged, the claim is no longer deemed to be allowed, but rather, the allowed amount of the claim must be determined by independent proceedings.

Until the Court has made a determination as to the allowed amount of the claim, the claim is not considered an "allowed

claim". Claims which are not "allowed" need not be satisfied in cash on or before the effective date of the Plan in order to be unimpaired under § 1124. Therefore, Mr. Masciotra's claim need not be satisfied with cash on the effective date if the dispute regarding its status is pending on such date and provisions are made for full payment upon Court determination. The Plan provides that the amount of the approved claim will be paid in full. It is the conclusion of this Court that Debtor's objection to the Class 8 claim of August Masciotra must be denied and this objection does not bar confirmation of Jamco's Plan.

C. Injunctive Relief and 11 U.S.C. § 524(e)

Debtor asserts that the Jamco Plan violates § 524(e) of the Code. This section provides that: "Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e).

Debtor claims that the Jamco Plan not only seeks to enjoin future litigation against Debtor, but also seeks to enjoin creditor action against Jamco, Inc. Debtor also claims that § 524(e) expressly provides that Debtor's discharge does not affect the liability of any other entity. Debtor concludes, therefore, that Jamco's Plan enjoining action against entities other than Debtor does not meet the requirements of § 524(e).

It is generally held that § 524(e) only defines the effect of a discharge under § 524. It does not determine the power of the Court under Code sections to issue injunctions under appropriate circumstances. In re Heron, Burchette, Ruckert & Rothwell, 148 B.R. 660, 687 (Bankr. D. Colo. 1992). Independent of § 524(e), substantial authority exists for the proposition that a bankruptcy court has authority under § 105(a) to enter permanent injunctions which effectively enjoin suits against non-debtor parties who have funded a reorganization plan, if the Court determines that the best interests of the creditors and the debtor require such injunctive relief. SEC v. Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 293 (2d Cir. 1992). The test is ordinarily whether the party receiving the benefit of the injunctive relief has made a substantial contribution to the Plan and whether its protection is necessary to effectuate the Plan. Id. If the party benefiting from an injunction has made a substantial contribution toward the obligations of the debtor and are undertaking obligations to the creditors in place of the original obligations, the courts are much more receptive to the granting of such injunctive relief. Heron, 148 B.R. at 687.

The present circumstances of this case, standing by themselves, establish that Jamco proposes to contribute substantial sums toward the implementation of this Plan. If approved, Jamco would provide the entire funding mechanism for Debtor's Plan. Jamco is effectively undertaking obligations in place of the original obligations of Debtor. Therefore, as stated in Heron, 148 B.R. at 687:

> Thus, at a functional level the nondebtors are not receiving a discharge of their obligations to the creditors; they are merely exchanging one obligation for another. The exercise of the court's power under § 105(a) to issue an injunction therefore is not inconsistent with § 524(e).
>
> Likewise, in this case, the Jamco Plan does not violate

§ 524(e) and no specific prohibition exists against the issuance of an injunction under § 105 under appropriate circumstances. The Court finds that Debtor's objection on this ground must be denied and this objection does not constitute a bar to confirmation.

D. Impairment of Redemption Rights, 11 U.S.C. § 1129(a)(3)

Debtor argues that the Jamco Plan divests Debtor of its redemption rights in the foreclosure proceeding without consideration. It further argues that redemption rights are governed by Iowa property law and cannot be divested without specific authority. Thus, Debtor asserts that this provision violates § 1129(a)(3).

The law is clear that after foreclosure sale, a Debtor retains an interest in the property and a right to redeem under Iowa law. The right of redemption constitutes a property right which is property of the estate under § 541 of the Bankruptcy Code. In re McKeon, 86 B.R. 350, 373 (Bankr. D.N.J. 1988); In re Mocco, 176 B.R. 335, 346 (Bankr. D.N.J. 1995).

Iowa law provides that the right of redemption is assignable. Iowa Code sec. 628.25. Bankruptcy law provides for a transfer of property of the estate as part of the reorganization process.

The Court is authorized to modify a creditor's state law property rights through a Chapter 11 reorganization plan. Wade v. Bradford, 39 F.3d 1126, 1130 (10th Cir. 1994); 11 U.S.C. § 1123(a)(5)(E) (debtor's right to satisfy or modify a lien); 11 U.S.C. § 1123(b)(1) (debtor's right to impair both secured and unsecured claims). The debtor's right to redeem real property after a judgment of foreclosure, for example, can give the estate sufficient interest in the property to allow it to modify the creditor's rights by replacing the debtor's right to redeem with a right to cure the default. In re Thompson, 894 F.2d 1227, 1230-31 (10th Cir. 1990) (Chapter 13).

A more troubling issue, not discussed in Wade, is whether this type of modification of rights constitutes impairment under § 1124. Resolution of the question is important as unimpaired creditors are deemed to accept the plan under § 1126(f) and are not able to vote against confirmation. In re Elijah, 41 B.R. 348, 349 (Bankr. W.D. Mo. 1984). Under § 1124(1), a class of claims or interests is impaired "unless, with respect to each claim or interest of such class, the plan [] leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." Reading § 1124 broadly, "alteration" is synonymous with "impairment". Elijah, 41 B.R. at 350. In other words, any change in the arrangement between the debtor and a creditor constitutes impairment. Id. For example, changing buyers under a trust deed constitutes an impairment. In re Barrington Oaks Gen. Partnership, 15 B.R. 952, 953 (Bankr. D. Utah 1981). The sale to a third party with the third party assuming the obligations to secured creditors changes obligors and therefore alters the rights of the secured creditors under § 1124(1). Id. at 956.

The importance of this analysis in this case is evident as both Debtor and Jamco characterize their respective Plans as leaving all creditors unimpaired. Jamco has previously asserted that redemption of the real property by Debtor would allow the liens of junior lienholders to reattach to the property. The Court finds that, conversely, Jamco's plan proposing to prohibit redemption of the real property by any party alters the rights of these junior lienholders and creates an impaired class. Under Iowa law, redemption may be made by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption if no redemption is made by the debtor. Iowa Code § 628.5. Jamco is attempting to limit not only Debtor's statutory right of redemption but also the redemption rights of all junior lienholders. This creates an impairment of the junior lienholders' rights.

As these creditors' claims are therefore impaired, these creditors are not deemed to have accepted the Plan under 11 U.S.C. § 1126(f). As the factual record reflects, these creditors were not offered the opportunity to vote on the Plan as the Plan was presented as unimpaired. As they were not provided the opportunity to vote under 11 U.S.C. § 1125, they cannot be determined to have accepted the Plan. Therefore, the Jamco Plan does not comply with all of the applicable provisions of Chapter 11 under the standards set out in 11 U.S.C. § 1129(a)(2), and for this reason, confirmation must be denied.

E. Conflict of Interest, 11 U.S.C. §§ 1123(a)(7) and 1129(a)(5)(A)(ii)

Debtor objects that the Jamco Plan proposes to replace the entire Board of Directors of Debtor with three members of the Jamco Board of Directors who also are shareholders of Jamco, Inc. and who will be members of the limited liability company proposed as manager of any pari-mutuel or extended gaming facility at the Waterloo Greyhound Park.

Jamco replies that its Plan contains only provisions consistent with the interest of creditors, equity security holders, and public policy with respect to the manner of selection of officers and directors in compliance with 11 U.S.C. § 1123(a)(7). This Code section relates to requirements of contents of the Plan and states:

a. notwithstanding any otherwise applicable nonbankruptcy law, a plan shall -

   . . .

   7. contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee.

11 U.S.C. § 1123(a)(7).

Jamco asserts that Debtor's claim that the Jamco Plan impermissibly purges Debtor's management in Board of Directors is without merit. Jamco says in its brief that:

> NCC offers no evidence, however, that the alleged "purging" violates the best interests of creditors, equity security holders and public policy. Section 1123(a)(7) does not require that a debtor's board of directors remain in office if the interests of creditors and public policy lie elsewhere.

Post-Trial Brief of Jamco, Inc., Appendix A, page 6.

Debtor has proposed Restated Articles of Incorporation which were attached to the original Plan filed July 11, 1994. Under these Articles of Incorporation, Debtor-Corporation would consist of not less than seven nor more than eleven directors. The composition of the Board of Directors would be such that one director would be nominated by the Waterloo City Council and/or Mayor; one director would be nominated by the Cedar Falls City Council and/or Mayor; one director would be nominated by the Black Hawk County Board of Supervisors; one director would be nominated by the Black Hawk County Fair Board; and the remaining directorships would be filled by the existing directors as deemed appropriate to maintain the required expertise, experience and racial/gender balance representative of the community as a whole.

The Board of Directors, under Jamco's Plan, is set out in paragraph 6.01, Board of Directors. This provision provides that:

> On the Confirmation Date, the Board of Directors of Cattle Congress shall consist of T. Manatt, M. Dakovich, and S. Jackson. The term of Mr. Manatt shall expire one year after the Confirmation Date and thereafter his seat shall serve for a term of three years. The term of Mr. Jackson shall expire two years after the Confirmation Date and thereafter his seat shall serve for a term of three years. The term of Mr. Dakovich shall expire three years after the Confirmation Date and thereafter his seat shall serve for a term of three years. They shall have staggered three year terms with the power to name their successors and to fill any vacancy. . . .

Jamco's Plan, paragraph 6.01, page 19.

Jamco has cited compliance with § 1123(a)(7). This provision, however, relates to the contents of the proposed Plan. Similar standards are contained in § 1129 relating to confirmation of the plan. The applicable provisions are found in § 1129(a)(5)(A)(ii) which states that:

> a. The court shall confirm a plan only if all of the following requirements are met:
>
> . . .
>
> 5. (A) (ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy . . .

11 U.S.C. § 1129(a)(5)(A)(ii).

The Court reiterates that under § 1129(a)(5), a plan of reorganization must adequately identify proposed officers and directors, to the extent known, to demonstrate that their appointment will be consistent with the interests of creditors and equity holders and with public policy. Drexel, 138 B.R. at 770. The Court has an independent duty at the time of confirmation to ensure that initial management and the board of directors will be sufficiently independent and free from conflict to serve all creditors and interested parties on an even and loyal basis. W.E. Parks, 19 B.R. at 292.

Factors which courts have examined in determining whether the appointment of individuals to a board of directors meets the requirements of loyalty, independence and absence of a conflict of interest under § 1129(a)(5)(A)(ii) include the proposed director's background and business acumen, experience, competence, prior involvement in

mismanagement and affiliation with interests which may be possibly inimical to the best interests of the debtor. See Landau Boat Co., 13 B.R. at 791; Drexel, 138 B.R. at 760; Rusty Jones, Inc., 110 B.R. at 366-67, 375; Polytherm Indus., Inc., 33 B.R. at 829.

In its response to Debtor's objection, Jamco asserts that: "NCC offers no evidence, however, that the alleged "purging" violates the best interest of creditors, equity security holders and public policy." Post-Trial Brief of Jamco, Inc., Exhibit A, page 6. As a requirement of confirmation, the burden of proof is upon Jamco, Inc. to prove compliance with § 1129. In this regard, there is no burden upon Debtor to prove noncompliance. This Court concludes that the Plan Proponent, Jamco, Inc., has failed to prove compliance with § 1129(a)(5) of the Code.

Applying the criteria set out in case law, Jamco's post-confirmation directorship structure is inimical to the best interests of Debtor and constitutes an impermissible conflict of interest. Under Debtor's post-confirmation structure, the Board will consist of between seven and eleven directors. These directorships will be filled on the basis of substantial community input from various governmental agencies and private businesses and entities in the community. Expiring directorships will be filled in a similar manner thereby maintaining diversity.

The Jamco Plan seeks to immediately terminate all existing directorships and substitute those directors with a Board of Directors consisting of three individuals. The new Board would consist entirely of people who are shareholders, directors, or have a significant interest in Jamco, Inc. and Jamco LC. Jamco LC will be the limited liability company managing the pari-mutuel and extended gaming facility at Waterloo Greyhound Park.

The conflict becomes apparent upon examination of the Jamco Plan. Under the Jamco Plan, Jamco, Inc. will retain ownership of all of the real estate of Debtor and will be Debtor's lessor. The lease agreement, the management contract, and the terms for certain loans will be negotiated post-confirmation between Jamco, Inc. and Debtor. The post-confirmation managers of Jamco, Inc., Jamco LC and Debtor will be, for all practical purposes, identical. Significant leases, management provisions, and Debtor obligations remain to be negotiated in what is described in section 5.04 of the Jamco, Inc. Plan as "commercially reasonable terms". A more significant conflict of interest is difficult to envision. The complete replacement of the existing Board of Directors by a Board controlled by and consisting of members of the Board of Directors of Jamco, Inc. and Jamco LC, constitutes a clear conflict of interest which is inconsistent with the interests of future creditors, Debtor, and public policy.

Jamco argues that § 1123(a)(7) does not require that a debtor's board of directors remain in office if the interest of creditors and public policy lie elsewhere, citing In re Acequia, Inc., 787 F.2d 1352, 1362 (9th Cir. 1986). It is correct that under a Chapter 11 reorganization, a debtor's board of directors has no vested interest in retaining office if the best interests of the debtor, creditors, and public policy demand otherwise. However, the burden of proof is upon the plan proponent to establish such interests.

Jamco has repeatedly made the assertion that: "Under the Jamco Plan, NCC and its gaming activities would be under the management of life-long Iowa residents who care about the Cattle Congress and its impact on the Northern Iowa community." Post-Trial Brief of Jamco, Inc., page 5. Jamco also asserts that Jamco's management would be objectively preferable because they have the confidence of other creditors and the community. Id. However, the record lacks evidentiary support for these assertions. Even more compelling is the fact that the evidentiary record is devoid of evidence from which it could be concluded that cause exists to replace the existing management of Debtor through the drastic means urged by Jamco, Inc. Accordingly, Jamco, Inc., the Plan Proponent, has failed to establish that the Plan meets the requirements of 11 U.S.C. § 1129(a)(5).

F. Good Faith, 11 U.S.C. § 1129(a)(3)

Debtor objects that the Jamco Plan fails to comply with the requirements of § 1129(a)(3) in that it is not proposed in good faith. Debtor asserts that Jamco's Fourth Amended Plan is a thinly veiled hostile takeover of all of the property and associated affairs of Debtor. In this objection, Debtor relies in part upon the previously discussed issues concerning the replacement Board of Directors. Debtor states that, through the proposed changes in management and the Board of Directors, Jamco is attempting to substitute its judgment and control for existing management of Debtor under its existing By-Laws and Articles of Incorporation. Debtor asserts that this management and control will be implemented

through the series of agreements, leases and other instruments which are to be subsequently negotiated and executed post-confirmation. Debtor asserts that the Jamco Plan is not a Debtor reorganization but rather a defacto liquidation in which all of Debtor's assets, as well as control, will be conveyed to Jamco, Inc.

Jamco, Inc. denies that its Plan constitutes a hostile takeover. Jamco, Inc. asserts that almost every Plan which is not proposed by a debtor under Chapter 11 could be characterized as "hostile". Jamco argues that, nevertheless, creditor Plans are authorized under 11 U.S.C. § 1121(c).

Jamco's argument is invalid for two reasons. First, there can be no argument that creditors have the right to file competing Plans under § 1121(c). However, having the right to file a Plan is not synonymous with the right to file a Plan which envisions an almost complete takeover of Debtor. Second, Jamco, Inc.'s response defines at substantial length the term "hostile". While it is correct that Debtor's may view a valid creditor Plan as "hostile", nowhere does Jamco address the takeover aspects of Debtor's argument.

Good faith is a requirement of the confirmation process under § 1129(a)(3). This section provides that:

a. The court shall confirm a plan only if all of the following requirements are met:

. . .

3. The Plan has been proposed in good faith and not by any means forbidden by law.

11 U.S.C. § 1129(a)(3).

In determining whether a Plan of Reorganization is proposed in good faith under § 1129(a)(3), the primary inquiry is whether the Plan will achieve a result which is consistent with the objectives and purposes of the Bankruptcy Code. The primary policy and goal of Chapter 11 is the financial rehabilitation of Debtor. Liquidation of Debtor's business is not a desirable goal of Chapter 11 because a successful rehabilitation allows Debtor to satisfy creditors, provide jobs, and turn a profit for its owners. United States v. Whiting Pools, Inc., 462 U.S. 198, 203 (1983). "The fundamental purpose of reorganization is to prevent Debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984).

Under the Jamco Plan, Jamco, Inc. will retain ownership of all of the real estate under the Sheriff's Certificate with assurance that the right of redemption held by any party would be specifically prevented by Plan provisions. Under the Plan, Debtor is reduced to a lessee required to pay $75,000 per year rent for the fairgrounds and 16% of net income as rent for the Greyhound Park. In addition, Debtor is required to pay $24,000 per year in promotional fees and a minimum of 5% of the net income for advertising. Debtor will be required to pay a pro-rata share of all business costs. Under the management of Jamco LC, Debtor will be required to pay 40% of net income generated from gambling.

Total control of management will be in Jamco, Inc. and its limited liability corporation, Jamco LC. Under the provisions relating to replacement of directorships, three individuals who are directors or have a substantial financial interest in Jamco, Inc. and Jamco LC will be the only three members of the Board of Directors of Debtor. The Directors will not be replaced upon the expiration of their term through a process involving community input, but will be replaced by directors of their own choosing.

The new management will have the right to negotiate the terms of multiple agreements which remain to be executed post- confirmation. This includes terms of mandatory loans which are required of Debtor in the Plan. Specifically, it includes a $5.0 million plus advancement from Jamco to Debtor if an expanded gambling referendum passes. The purpose of this advancement would be to construct appropriate gambling facilities. In addition, Jamco, Inc. would advance the costs of a referendum which would become a loan and repayable by Jamco, Inc. Jamco, Inc. and Jamco LC, because of the nature of the relationship between the proposed Board of Directors of Debtor and of Jamco, Inc. and Jamco LC could effectively set any terms which they choose because, for all practical purposes, they will be negotiating with themselves.

Jamco, Inc. offers this Plan as an opportunity to restore financial stability to Debtor and allow it the opportunity and

resources to potentially pursue tremendous revenues through expanded gambling at a casino, if a referendum were successful. However, upon closer examination, Jamco, Inc.'s Plan is shown to be unevenly tilted in favor of Jamco, Inc.

Jamco, Inc. has placed itself in a no-lose position. It purchased the Sheriff's Certificate from the Bondholder Banks for significantly less than the face value of $3.7 million. If Jamco's Plan is rejected and Debtor's Plan is accepted, Debtor will be required to pay Jamco the full face value of the Sheriff's Certificate at a substantial gain. If Jamco's Plan is accepted, Jamco will become the owner of all of the real estate and will have effective management control over Debtor.

Again, as the de facto manager of Debtor, Jamco will be advancing costs for improvements as well as the funds necessary to build a casino if a referendum passes. With expanded gambling, Debtor would effectively owe Jamco, Inc. total debts in excess of $12.0 million.

If Jamco, Inc.'s Plan is confirmed, under a best case scenario, the revenues from the expanded gambling would be sufficient for Debtor to repay its debt to Jamco within the 15 year term of the lease. However, the Plan makes no provisions for Debtor to renew the lease and under the terms of the Plan, if the lease were not renewed, Jamco, Inc. would take over the property which it already owns with the improvements which Debtor had paid for during the term of the lease without compensation. Likewise, if the projected revenues are insufficient for Debtor to repay the debt within the 15 year term of the lease, Jamco, Inc., under the Plan, can terminate the lease and take over the appreciated property without compensation to Debtor at the time of the breach.

This entire proposal by Jamco, Inc. must be considered with a view toward the fact that Jamco, Inc. was not a creditor at the time of filing of this bankruptcy petition. It purchased the Sheriff's Certificate from the Trustee Banks after which it purchased a claim thereby giving itself standing to be involved in this case. Subsequently, it has become a voluntary investor in Debtor's future. In a strikingly similar case, the bankruptcy court, in finding bad faith, determined that a plan was not proposed to rehabilitate the debtor. The court stated that:

> The instant proposed plan does not serve that purpose. Rather, as outlined earlier, the plan serves to an unacceptable extent as a vehicle for the personal profit of "investors" who purchased the debtor for $1 and since sought to operate it in bankruptcy for their personal benefit and contrary to the interests of creditors.

Rusty Jones, Inc., 110 B.R. at 375.

G. Summary

In summary, this Court can reach no other conclusion than to find that the Jamco, Inc. Plan transfers absolute control of Debtor's corporation to Jamco, Inc. and Jamco LC through the proposed management structure. Additionally, Jamco, Inc. admits to a substantial profit motive in investing in Debtor's corporation. While some control and some profit are not, in and of themselves, objectionable, this Court can only conclude that, under this Plan, the control provisions as well as the financial terms are tilted too favorably to Jamco, Inc. and are too adverse to the long-term rehabilitation of Debtor. For these reasons, it is the conclusion of this Court that Jamco, Inc. has failed to establish that its Plan has been proposed in good faith. The Court concludes that the Jamco, Inc. Plan fails to meet the requirements of 11 U.S.C. § 1129(a)(3).

X. OTHER OBJECTIONS

Additional objections have been lodged by Debtor to the Jamco, Inc. Plan. Objections have also been lodged by the Iowa Department of Revenue and the Iowa Racing and Gaming Commission. While not attempting to diminish the nature of the objections made, the Court concludes that certain of the objections are already incorporated into the Court's ruling and the remainder are of comparatively less substance. Rather than extend this opinion further, it is the conclusion of this Court that the remainder of the objections need not be specifically addressed and are, therefore, denied as moot at this time.

ORDER

Based upon the foregoing facts and conclusions of law, it is the order of this Court that:

1. All objections made to Debtor's Plan are DENIED.
2. Debtor has established compliance with all of the requirements of 11 U.S.C. § 1129.
3. The objections made to the Jamco, Inc. Plan are SUSTAINED for the reasons and on the legal grounds set forth in this opinion.
4. Jamco, Inc. has failed to establish compliance with 11 U.S.C. § 1129, both factually and legally, for the reasons set forth in this ruling.
5. Confirmation of the Jamco, Inc. Plan is DENIED.
6. The Plan of National Cattle Congress, Inc. is CONFIRMED.
7. Counsel for Debtor is directed to prepare an appropriate confirmation order for the Court's consideration.

SO ORDERED this 17th day of January, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge

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1. Continuous references have been made throughout these proceedings to the Cattle Congress/Mesquaki Plan. Such references are incorrect. The Mesquaki Indian tribe has not proposed a Plan in this Chapter 11 case. The appropriate reference is to either of the two Plans proposed; that is, either the Plan of Jamco, Inc. or Debtor's Plan.