

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

* * * * *

PUBLIC HEARING

BEFORE: MARY DIGIACOMO COLINS, CHAIRMAN
Raymond S. Angeli (Via Telephone),
Jeffrey W. Coy, James B. Ginty,
Kenneth T. McCabe, Sanford Rivers,
and Gary A. Sojka, Members
Keith Welks, Ex-officio Designee

HEARING: Wednesday, January 21, 2009
11:45 a.m.

LOCATION: North Office Building
Commonwealth and North Street
Hearing Room One
400 North Street, West
Harrisburg, PA 17105

WITNESSES: Nelson Smiles, Cyrus Pitre, Nan Davenport,
Dr. Anthony Ceddia, Joseph D'Amato

Reporter: Cynthia Piro-Simpson

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

A P P E A R A N C E S

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

NAN DAVENPORT, ESQUIRE
Deputy Chief Enforcement Counsel
Pennsylvania Gaming Control Board
603 Stanwix Street
Suite 1200
Pittsburgh, PA 15222

DONALD P. SHIFFER, III, ESQUIRE
303 Walnut Street
P.O. Box 64060
Harrisburg, PA 17106

PETER M. LAUGHLIN, ESQUIRE
Graham Curtin
4 Headquarters Plaza
P.O. Box 1991
Morristown, NJ 07962-1991

I N D E X

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

STATEMENT

By Attorney Shiffer

5 - 6

PRESENTATION

By Attorney Laughlin

6 - 10

WITNESS: JOSEPH D'AMATO

EXAMINATION

By Attorney Shiffer

10 - 14

TESTIMONY

By Dr. Ceddia

14 - 17

QUESTIONS BY THE BOARD

17 - 21

WITNESS: NELSON SMILES

EXAMINATION

By Attorney Davenport

21 - 27

QUESTIONS BY THE BOARD

27 - 40

DISCUSSION AMONG PARTIES

40 - 57

CERTIFICATE

58

E X H I B I T S

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

<u>Number</u>	<u>Description</u>	<u>Page</u> <u>Offered</u>
---------------	--------------------	-------------------------------

NONE OFFERED

P R O C E E D I N G S

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

CHAIRMAN COLINS:

The next matter is the Mount Airy matter. All right. This is the Petition regarding Mount Airy to amend its Revolving Credit and Term Loan Agreement. And all parties who are going to testify, other than Counsel, I ask you to please take an oath.

WITNESSES SWORN EN MASSE:

CHAIRMAN COLINS:

Thank you. All right. Who are we going to start with?

ATTORNEY SHIFFER:

Good morning, Chair. My name is Don Shiffer, I'm the General Counsel for Mount Airy Casino Resort. To my left is Mount Airy's Trustee, Dr. Anthony Ceddia, and Trustee Counsel, Attorney Brian Bisignani. To my right is Mount Airy's CEO, Joseph D'Amato, and Mount Airy's Restructuring Counsel, Mr. Peter Laughlin from the Law Firm of Graham Curtin.

Mount Airy's before the Board this morning seeking the approval of a second amendment to its original credit facility with JPMorgan Chase Bank,

1 JPMorgan Securities, Inc. and PNC Bank. These lenders
2 have provided Mount Airy financing for the development
3 and the operation of its facility during both its
4 construction phase and after.

5 In June of 2008, Mount Airy sought and
6 the Board approved the restructuring of its original
7 credit facility. However, in light of certain
8 economic, financial and market conditions facing Mount
9 Airy and the gaming industry as a whole, Mount Airy is
10 before the Board at this time seeking permission to
11 amend its credit facility once again. Mount Airy
12 feels that this will better enable it to meet its
13 operational and financial needs.

14 At this time, I'm going to turn over
15 the presentation to Mount Airy's Restructuring
16 Counsel, Peter Laughlin, to go into some of the
17 particularity of the Petition's content with regard to
18 financials.

19 ATTORNEY LAUGHLIN:

20 Thank you. Judge Colins, members of the
21 Board, Mount Airy has worked with its lenders in the
22 last two months to negotiate some further amendments
23 to its credit facility. By way of past history, the
24 Board will recall that we came before you in June for
25 approval of the first omnibus amendment and closed

1 that following your approval.

2 One of the provisions of that first
3 amendment was principal reductions, made at the time
4 of the closing, plus a further principal reduction or
5 the posting of further collateral that was scheduled
6 to occur in October. Over the course of the summer,
7 however, business did not meet projections, and as of
8 September 30, by virtue of not meeting the projections
9 and tripping a covenant, we found ourselves again in
10 discussions with the lender. Those discussions led to
11 the proposed omnibus second amendment that's before
12 the Board today.

13 One of the keys to the second amendment
14 would be a further reduction of the term loan in the
15 amount of \$20 million. That is the same \$20 million
16 that was contemplated on the first amendment, at that
17 time, the deal with the lenders was that it would
18 either be \$20 million or additional collateral, this
19 time it will be \$20 million, and that reduction will
20 occur as soon as we close this facility, following
21 approval of the Board.

22 That \$20 million will come from a \$15
23 million payment from Mr. DeNaples, and a \$5 million
24 payment from Mount Airy. So that is the same \$20
25 million that was contemplated last spring.

1 The other aspects of the amendment that's
2 before the Board further relax the financial and other
3 covenants that Mount Airy had in the amended credit
4 facility in order to give Mount Airy financial
5 flexibility to be able to meet the challenges of the
6 current environment. By highlight, those include
7 relaxing, and in some instances eliminating financial
8 covenants, eliminating the requirement that Mount Airy
9 make quarterly principal payments, suspending a
10 requirement that Mount Airy maintain ratings with
11 rating agencies for the benefit of the lender and
12 pushing back the deadline for completion of the
13 project, which had been set at December 30, there's
14 remaining roadwork, very minor, but remaining roadwork
15 that needs to be completed in the spring, and the
16 lenders are agreeable to that.

17 The second thing that the amendment
18 before you does is puts in place procedures that
19 follow up on the protocol that was approved by the
20 Board on December 18 for Mount Airy to be able to make
21 some further capital improvements based on
22 contributions from Mr. DeNaples. And under the
23 amendment, we have in place --- that under that
24 protocol which contemplated getting permission of the
25 lenders, this second amendment constitutes permission

1 of the lenders for Mount Airy to be able to move
2 forward and make some of those capital improvement
3 projects.

4 The second amendment places some
5 additional requirements on Mount Airy that are
6 customary for a construction lender, matters such as
7 making sure that the funds are in the sole source
8 account in advance of starting any project, making
9 sure that the construction contracts, permits, plans
10 and specs have been submitted to the administrative
11 agent of the lender and so forth.

12 The procedures also require that before
13 contractors are paid that there be appropriate lien
14 waivers in place, title rundowns, giving the lenders
15 very customary construction type, lending type
16 arrangements. And that dovetails well with the
17 protocol of the Board.

18 The third area that the amendments do is
19 have Mr. DeNaples assume some of the financial burdens
20 from Mount Airy. Mount Airy is no longer required to
21 make the principal amortization payments on a
22 quarterly basis. Mr. DeNaples will, on a go-forward
23 basis, make quarterly principal payments of \$1 million
24 to further reduce the term loan. And the term
25 guarantee, which under certain circumstances could

1 have been reduced, will remain at a full guarantee of
2 the full amount of the credit facility for the life of
3 the credit facility.

4 With these amendments, which we're
5 prepared to close, the lenders will waive all current
6 defaults and reopen the revolving credit facility,
7 which is essential to Mount Airy for its financial
8 stability as the safety net it needs to have in these
9 winter months. And so we --- you know, we ask the
10 Board to approve this amendment, which we're prepared
11 to close, quite promptly upon the approval of the
12 Board. Thank you.

13 ATTORNEY SHIFFER:

14 Members, I will now call Mount Airy's
15 CEO, Joseph D'Amato to testify.

16 -----

17 JOSEPH D'AMATO, HAVING BEEN PREVIOUSLY SWORN,
18 TESTIFIED AS FOLLOWS:

19 -----

20 EXAMINATION

21 BY ATTORNEY SHIFFER:

22 Q. Could you please state your name for the record?

23 A. Joseph D'Amato, D, apostrophe A-M-A-T-O.

24 Q. Mr. D'Amato, are you familiar with the Petition
25 that Mount Airy has filed and the contents therein?

1 A. Yes, I am.

2 Q. Okay. Could you please provide the Board with a
3 brief overview on the state of Mount Airy's operations
4 over the past six months?

5 A. Yes. We have faced significant challenges, not
6 only from the economy, but also on the liquidity
7 crisis that has affected, I believe, a lot of the
8 operations in the gaming industry. During the last
9 six months, we have continued to be very aggressive in
10 our marketing and our promotions and our advertising
11 programs. We have focused on building our database
12 for the past seven, eight months, we have focused on
13 our cost effectiveness of our operations. We have
14 looked at everything from not only personnel and
15 labor, but we have looked at our slot leases and the
16 way we buy and the contracts that we have, and we have
17 affected substantial reductions and operating costs
18 that go way beyond, or substantially beyond, payroll.

19 And this is something, quite frankly, in today's
20 environment is ongoing. Ineffectively, during the
21 months of November and December '08 compared to the
22 same two months in '07, our revenues are up
23 effectively 23 percent. But again, we face challenges
24 like most of the other operators, not only in
25 Pennsylvania, but I think in the industry as a whole.

1 And I believe some of the things that we have done
2 have put us on the right track, because we are
3 extremely focused now on two items. One is building
4 revenues, and the second one is on profitability.

5 Q. Thank you. Along those lines, could you summarize
6 for the Board, your view as to the underlying basis
7 for Mount Airy's current amendment?

8 A. Yes. I agree with what Mr. Laughlin stated. One
9 of the outcomes of the negotiations was a reduction,
10 or in some cases elimination of certain financial
11 covenants, which were drafted in economic times and
12 conditions in using forecast that just, quite frankly,
13 we were unable to achieve.

14 Those relaxations, along with what I discussed
15 previously, gives us the opportunity to focus on what
16 I stated, which was we had to focus on continuing to
17 grow our revenues and on an increase in our
18 profitability.

19 Q. Thank you. In light of the issues that you just
20 articulated to the Board, in your view, what steps
21 were taken to arrive at the current amendment to Mount
22 Airy's credit facility?

23 A. I think the lenders --- based on what I observed,
24 the lenders, the Trustee and the sponsor worked very
25 diligently together in order to affect this

1 transaction, or the proposed transaction. I think
2 everyone was focused on the fact, let's get this over
3 with, let's get the loan in a position with covenants
4 and with conditions that the property can meet in the
5 current economic and liquidity environment that we
6 deal with. And I think to that end, the parties
7 worked, as I said, very diligently to achieve that,
8 and I think that's what we have here right now.
9 Because I think it's everyone's intent that we prefer
10 not to come back to the Board again to discuss
11 additional restructurings.

12 Q. In light of the foregoing, globally, how is, in
13 your view, Mount Airy poised to meet its new debt
14 obligations under this revised credit facility?

15 A. Again, I believe with the new --- of the covenants
16 that either have been modified or eliminated, and as
17 Mr. Laughlin also stated, the elimination of the ---
18 any principal payments on scheduled principal
19 reduction payments on our behalf by Mount Airy. And
20 with the items I discussed previously, everything from
21 our marketing programs to our focus on cost effective
22 operations, I believe we are well poised. We have
23 been committed for the last six months to the --- like
24 I said, and I hate to be repetitive, but we are
25 focused on growing revenues and producing additional

1 operating income.

2 ATTORNEY SHIFFER:

3 Thank you. I have no more questions for
4 this witness at this time.

5 CHAIRMAN COLINS:

6 Dr. Ceddia.

7 DR. CEDDIA:

8 Thank you, Madam Chair. As Trustee of
9 Mount Airy #1, LLC, I've been involved with the review
10 of the Petition. And the second amendment, as
11 negotiated by and between the lenders, Mr. DeNaples
12 and Mount Airy, I've been assisted and advised in that
13 process by Post & Schell and my legal counsel and by
14 Gleason & Associates, my accountants and forensic
15 auditors.

16 As you know, Mount Airy faces a difficult
17 economic environment, difficult economic and financial
18 conditions not only have been an impact on the economy
19 in general, but also on casino and casino projects in
20 particular. Mount Airy has not been immune to these
21 conditions. Since the fall of 2008, Mount Airy has
22 experienced reduced liquidity and has put certain
23 capital projects on hold. Mount Airy has also been
24 challenged to meet some of its larger obligations, but
25 in spite of the difficulty, has fully paid those

1 obligations.

2 On or about October 20th, 2008, Mount
3 Airy's lenders, JPMorgan Chase and PNC Bank,
4 collectively the lenders, notified Mount Airy of their
5 view that one or more events of default had occurred
6 under the revolving term credit and credit agreement,
7 which was previously approved by this Board and
8 amended in June 2008.

9 Extensive discussions and negotiations
10 with the lenders have resulted in a proposed limited
11 restructuring of the credit facility, which is
12 reflected in the second amendment approval of which is
13 currently pending before this Board. The second
14 amendment weighs various defaults asserted by the
15 lenders, eliminates or modifies various financial
16 covenants which were problematic for Mount Airy, and
17 obligates Mr. DeNaples to make certain loan principal
18 reductions and also to make quarterly principal
19 payments to the lenders instead of Mount Airy.

20 I, along with my associates from Post &
21 Schell and from Gleason & Associates, have reviewed
22 and discussed, A. Mount Airy's current financial
23 condition and projected cash flow forecast. B. Mount
24 Airy's relationship with the --- with obligations to
25 the lenders. And C. restructuring documents,

1 including the Petition, the term sheet and the second
2 amendment. We also have participated in various
3 meetings and conference calls with Mount Airy and its
4 Restructuring Counsel, the lenders and their Counsel,
5 the PGCB staff and Counsel, and Mr. DeNaples and his
6 accountants and Restructuring Counsel.

7 I believe that the proposed restructuring
8 of the credit facility is in the best --- is the best
9 that can be achieved under the circumstances, and in
10 these difficult economic times.

11 Implementation of the restructuring will
12 provide Mount Airy with some financial relief and also
13 allow it to focus energy and attention on its business
14 and its financial performance rather than on default
15 issues with the lenders. I note that Mr. DeNaples
16 remains fully committed to the project, a commitment
17 which the lenders have noted.

18 I want to emphasize that this proposed
19 restructuring is not a solution to, or cure-all of,
20 Mount Airy's financial problems. Based upon my review
21 of the situation and after consultation with my
22 advisors, I believe that Mount Airy will continue to
23 face financial challenges, at least through 2009. The
24 state of the economy, competition from other gaming
25 facilities coming online, and/or adverse weather

1 conditions may contribute to these challenges.

2 Much hard work remains to be done,
3 however, the restructuring, as reflected by the term
4 sheet and the second amendment is an important and
5 necessary step in that ongoing process which includes
6 targeted marketing and revenue generation initiatives
7 and cost reduction initiatives comprised of, among
8 other things, reduction in operating expenses.

9 Based upon the foregoing, I, in my
10 capacity as Trustee for Mount Airy, recommend that the
11 Board approve the Petition and the associated
12 restructuring of the credit facilities with the
13 lenders, all as detailed in the term sheet and in the
14 second amendment. Thank you, Madam Chair.

15 ATTORNEY DAVENPORT:

16 Madam Chair, Office of Enforcement
17 Counsel (OEC) has one question for Dr. Ceddia.

18 DR. CEDDIA:

19 Yes.

20 ATTORNEY DAVENPORT:

21 Dr. Ceddia, is the relief requested in
22 the Petition consistent with the terms of the Board's
23 December 18th, 2008 Order with respect to the approval
24 of the protocol for payments by Mr. DeNaples to
25 creditors, contractors and vendors, as well as prior

1 Board Orders?

2 DR. CEDDIA:

3 Yes.

4 ATTORNEY DAVENPORT:

5 Thank you.

6 CHAIRMAN COLINS:

7 Are there any questions? Any questions
8 from the Board at this point?

9 COMMISSIONER MCCABE:

10 Yes. I have a few questions.

11 CHAIRMAN COLINS:

12 All right.

13 COMMISSIONER MCCABE:

14 First, for the Restructuring Attorney,
15 we're hearing, okay, \$20 million, \$15 million coming
16 from DeNaples, \$5 million from Mount Airy. If Mount
17 Airy's in this much financial problems, where are they
18 going to get \$5 million to put up to --- for this \$20
19 million?

20 ATTORNEY LAUGHLIN:

21 The \$5 million in funds that Mount Airy
22 will pay to the lenders is really --- are really funds
23 that are available to Mount Airy by virtue of the fact
24 that prior to this date, Mr. DeNaples, under the
25 protocol of December 18th, was able to make payments

1 of \$9 million, which were --- which defrayed real
2 estate taxes and gaming taxes on behalf of Mount Airy.
3 So in essence, it's almost a timing issue, so as a
4 result of Mr. DeNaples being able to make those
5 payments, that takes that burden off of Mount Airy, so
6 that creates the \$5 million that Mount Airy would have
7 dedicated to those sources to now go in to pay off the
8 term loan, down that extra fund.

9 COMMISSIONER MCCABE:

10 I have a concern about the source of the
11 funds. The source of the \$15 million. Where is this
12 money coming from, from Mr. DeNaples?

13 ATTORNEY LAUGHLIN:

14 I recognize that there is a firewall in
15 place between Mount Airy and Mr. DeNaples by virtue of
16 the Board's prior Order, so neither myself, on behalf
17 of Mount Airy, nor Mount Airy addresses any issues
18 with ---.

19 COMMISSIONER MCCABE:

20 Dr. Ceddia?

21 DR. CEDDIA:

22 The contribution by Mr. DeNaples is
23 coming from his other businesses, and I believe that
24 BIE has been involved in reviewing and certification
25 in getting the supportive Affidavits in place in

1 terms of where that contribution is coming.

2 I wanted to mention, just to follow-up,
3 Mr. McCabe, to your earlier question that Attorney
4 Laughlin responded to. I think it's important to note
5 that since last February, February '08, Mount Airy has
6 had limited or no access to its revolving credit line.
7 The utilization of the contributions that were just
8 noted by Attorney Laughlin, in terms of paying the
9 real estate taxes and the fair share amount, were
10 necessitated because that revolving credit line was
11 locked up as far as Mount Airy was concerned. We had
12 no access. So in essence, what happens is, when this
13 credit facility is approved and signed, the money that
14 Mr. DeNaples forwarded and we utilized through the
15 protocols to pay the fair share and the local tax will
16 then be contributed from the credit line to the credit
17 --- to creditors to the lenders. Thereby the 15 and
18 the 5. I just wanted to add that note.

19 COMMISSIONER MCCABE:

20 Go back to OEC and maybe BIE, the source
21 of these funds, have we corroborated and found where
22 these monies are coming from?

23 ATTORNEY DAVENPORT:

24 Commissioner, I'm going to have Nelson
25 Smiles, who's with the Financial Investigative Unit

1 testify with respect to that. So if you want me to
2 have him testify now ---?

3 DR. CEDDIA:

4 Whatever the Board ---.

5 COMMISSIONER MCCABE:

6 That's fine.

7 CHAIRMAN COLINS:

8 That's fine.

9 ATTORNEY DAVENPORT:

10 Okay. Thank you.

11 -----

12 NELSON SMILES, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
13 AS FOLLOWS:

14 -----

15 EXAMINATION

16 BY ATTORNEY DAVENPORT:

17 Q. Mr. Smiles, can you please state your full name
18 and spell it for the record?

19 A. Yes. My name is Nelson, N-E-L-S-O-N, first name,
20 last name Smiles, S-M-I-L-E-S.

21 Q. And what is your title, sir?

22 A. My title is Forensic Accountant, and I'm based in
23 the Northeast Office of the Gaming Control Board in
24 Scranton, Pennsylvania.

25 Q. As part of your duties and looking back several

1 months, were you assigned to review Mount Airy's June
2 2008 Petition for the Approval of Modifications to the
3 Financing Project Development Plan?

4 A. Yes, I was.

5 Q. Okay. And with respect to that June 2008
6 Petition, there was an Omnibus Waiver and Amendment
7 Agreement and proposed modifications that were
8 outlined in the Petition and supporting documentation.
9 Did you familiarize yourself with the section?

10 A. Yes, I did. That's correct.

11 Q. So you're familiar with the terms and conditions
12 that were contained in that Omnibus Waiver and
13 Amendment Agreement?

14 A. Yes.

15 Q. With respect to the current petition that's before
16 the Board today, are you familiar with that Petition?

17 A. Yes.

18 Q. As well as the second Omnibus Waiver and Amendment
19 Agreement and supporting documentation, have you made
20 yourself familiar with respect to those documents?

21 A. Yes.

22 Q. Did you review Louis DeNaples' confidential
23 Affidavits regarding some of the sources of its equity
24 contributions?

25 A. Yes, I did.

1 ATTORNEY DAVENPORT:

2 Okay. And just for the record, the
3 parties entered into a Stipulation Agreement last week
4 between Mount Airy and OEC, which the Board should
5 have before you. If you don't, I have extra copies.
6 Mr. DeNaples' Affidavits are attached as Exhibit B to
7 that Stipulation, Dr. Ceddia's Statement and
8 Recommendation is attached to that Stipulation as
9 Exhibit D, and Mr. Smiles also created an amended lump
10 summary, facility summary, which is attached as
11 Exhibit C, summarizing the transactions.

12 Both Exhibits B, C and D to the
13 Stipulation Agreement contain business and other
14 proprietary information regarding not only Mount Airy
15 but also Louis DeNaples, including financial
16 covenants, interest rates and other financial data,
17 and therefore shall be treated as confidential and
18 remain under seal. I'd like to admit that into the
19 record.

20 CHAIRMAN COLINS:

21 Let me ask you a question, Ms. Davenport.

22 ATTORNEY DAVENPORT:

23 Yes.

24 CHAIRMAN COLINS:

25 In other matters that this Board has

1 entertained, where there have been financial
2 negotiations, or financial deals, agreements, have
3 those matters been maintained as confidential? For
4 example, in suitability hearings, or in the --- I'm
5 thinking of the Pittsburgh acquisition of the matter
6 that occurred over the summer. Did we consider those
7 financial dealings confidential?

8 ATTORNEY PITRE:

9 I can speak to that. Yes, we did.

10 CHAIRMAN COLINS:

11 All right. Under what authority?

12 ATTORNEY PITRE:

13 That would be pursuant to 1206 of the
14 Act, if I'm not mistaken.

15 CHAIRMAN COLINS:

16 That being ---.

17 ATTORNEY PITRE:

18 The confidentiality provision.

19 CHAIRMAN COLINS:

20 Is that being categorized as propriety
21 information?

22 ATTORNEY PITRE:

23 That's correct.

24 ATTORNEY DAVENPORT:

25 And also, the Regulations, Section

1 407a.3.

2 CHAIRMAN COLINS:

3 Okay. Thank you.

4 ATTORNEY DAVENPORT:

5 I can only speak to matters in the
6 Central Region, specifically Mount Airy with respect
7 to that, with things remaining confidential. I know
8 we did the same thing with respect to the June 2008
9 Petition, and things remained under seal because of
10 proprietary information.

11 CHAIRMAN COLINS:

12 Okay. So this would be consistent ---
13 your request would be consistent with the applications
14 we've made in the past of that Regulation and then of
15 the Act?

16 ATTORNEY PITRE:

17 That's correct.

18 ATTORNEY DAVENPORT:

19 Yes.

20 CHAIRMAN COLINS:

21 Thank you.

22 BY ATTORNEY DAVENPORT:

23 Q. Mr. Smiles, after reviewing the documents, you
24 created an Amended Loan Facility Summary regarding the
25 December 2008 Petition; is that correct?

1 A. That's correct.

2 Q. Is the Financial Investigation Unit's review of
3 the sources of Mr. DeNaples' capital contributions
4 ongoing?

5 A. Yes, it is.

6 Q. So we can expect more Affidavits with respect to
7 the sources of the capital contributions?

8 A. Yes, with regard to the specific Affidavits of the
9 funds, I believe that I have personally seen two of
10 them. I believe there are two more coming, they may
11 be part of the record at this point in time, but in
12 addition to that, I have done substantial work to
13 determine what bank accounts were involved and where
14 the initial source of the funds was coming from.

15 Additional sources of funds certainly came from
16 the accounts of the sponsor, but at this particular
17 --- those particular funds were recently transferred
18 into the individual sponsor's account within a week or
19 so prior from various companies controlled by the
20 sponsor. From our advantage point, at this point in
21 time, we are not uncomfortable with the circumstance,
22 because this certainly fits the profile of the
23 sponsor's business activities that we're aware of.

24 That being said, our next step on these particular
25 funds, as well as other funds, it's an ongoing

1 process, where we are going to get in to these
2 companies and basically check out the funds of these
3 particular companies, to make sure that there's
4 commercial reasonableness involved in these funds.

5 COMMISSIONER GINTY:

6 Is the name of the sponsor confidential?

7 A. No, it's Mr. Louis DeNaples.

8 COMMISSIONER GINTY:

9 Okay.

10 A. It's a simple way with regard to loan documents,
11 and we're kind of oriented with that at this point in
12 time.

13 CHAIRMAN COLINS:

14 All right.

15 COMMISSIONER SOJKA:

16 One of the things that concerns me is,
17 and I understand what you need to do, but I believe
18 it's clear that what this Board is deeply concerned
19 with is the source of those funds and to be absolutely
20 as certain as it's possible to be, that those funds
21 are funds of Louis DeNaples solely and no one else.
22 The fact that you will have to get into that work in
23 the future, and we're faced with this decision today,
24 having received all of these materials late yesterday
25 afternoon, is for me, and I think possibly other

1 members of this Board, something of a concern.

2 What you're telling me is, you're giving
3 us a preliminary best estimate that these funds are Mr.
4 DeNaples, but you do need to do further and ongoing
5 work to verify that; is that correct?

6 MR. SMILES:

7 Well, first of all, with regards to the
8 dollar amount and the existence, we have confirmed
9 that. With regard to going back to the other
10 companies, that is, in fact, future work that has to
11 be performed. In terms of actually performing the
12 work, our time frame was such that the Petition was
13 filed December 23rd, giving the holiday circumstance
14 and the fact that our work had to be completed, you
15 know, about a week or so ago, given that time frame,
16 it was about 10 to 12 business days.

17 That being the circumstance, we weren't able to
18 proceed any further. Now, to give you some type of
19 general assurance as to what our intention is and what
20 the Financial Investigative Unit plans to do, I'll use
21 the analogy, the word that we kind of coined in terms
22 of researching these funds, and the term is vintage.
23 We've used the term fund vintage, taking from the
24 great production and line making, and basically when
25 we get in these companies, we want to know the

1 location of the funds, the region of the funds, the
2 vineyard of the funds, and in what time frame these
3 funds were generated. So that's the nature of the
4 work that we intend to do when we get into these
5 companies.

6 CHAIRMAN COLINS:

7 All right, question. Dr. Ceddia, when's
8 this deal scheduled to close?

9 DR. CEDDIA:

10 Well, Madam Chair, we were scheduled to
11 close today, but for point of information, if I could,
12 the money in question that we're talking about, the
13 capital contribution that's to be made today at the
14 closing, the \$15 million was part of the original \$20
15 million that was approved by this Board last June,
16 which, in fact, was also certified by Board staff.

17 CHAIRMAN COLINS:

18 Right. That's already --- that money has
19 already been tracked. Is that correct, Mr. Smiles,
20 that the money has already been tracked by you?

21 MR. SMILES:

22 Excuse me. Would you repeat ---?

23 CHAIRMAN COLINS:

24 Dr. Ceddia, repeat that.

25 DR. CEDDIA:

1 We're talking about the \$15 million that's
2 going to be due by Mr. DeNaples at this closing today,
3 is actually \$15 million of the \$20 million that was
4 approved and certified by this Board back at the June
5 meeting 1st Amendment to the Credit Agreement. That
6 money had never been transferred to the lender because
7 there was a 90-day extension beyond the signing of that
8 credit amendment, which involved either \$20 million
9 being put in or a piece of land that would have equal
10 value. But the \$20 million was, indeed, reviewed by
11 Board staff and certified at that time; was it not?

12 CHAIRMAN COLINS:

13 Did you track that money already?

14 MR. SMILES:

15 No, not that \$20 million, because ---
16 okay, the \$15 million that we're talking about now,
17 this is part and parcel, and the question hasn't been
18 raised, and I don't want to complicate matters, but
19 there was, going back to the protocol, for payments by
20 Louis DeNaples, all this happened in the same time
21 frame. So with regard to payments that were made
22 under the protocol, okay, which dovetailed into the
23 payments that we're talking now, we're talking about a
24 total of \$26 million, okay.

25 This \$26 million, in terms of tracking, is the \$26

1 million I'm referring to. And yes, in fact, it
2 exists. Yes, in fact, it is in the sponsor's bank
3 account, but going one step further ---.

4 CHAIRMAN COLINS:

5 So you have to still track it?

6 MR. SMILES:

7 That's correct.

8 CHAIRMAN COLINS:

9 Okay. Now, let me ask you this. Hold on,
10 let me just ask a few questions then. Now, with
11 respect to this tracking, okay, how long does it take
12 you to do this?

13 MR. SMILES:

14 At this point in time, I'm not certain,
15 in that we are talking about five privately held
16 companies that have never been vetted in any matter,
17 to the best of my knowledge, never even had Audit
18 Financial Statements. So in terms of doing the work
19 and performing to our satisfaction, at this moment, we
20 really won't know until we get into it.

21 CHAIRMAN COLINS:

22 Okay. Now ---.

23 MR. SMILES:

24 It would not be unrealistic for us to
25 come back in a short period of time and give you an

1 estimate of time.

2 CHAIRMAN COLINS:

3 Okay. So now, with respect to this
4 refinancing, Dr. Ceddia, let me ask you a question. I
5 heard testimony earlier that the revenues were up 23
6 percent for a period of time; is that correct, Mr.
7 D'Amato?

8 ATTORNEY D'AMATO:

9 Yes, it is, Judge.

10 CHAIRMAN COLINS:

11 All right. So the revenues are up, but
12 yet we're in a situation where you're presenting to us
13 a need to refinance. What's the reason for this; is
14 it basically the cost of the deal that was originally
15 made by the Licensee back in December of '06 when the
16 license was awarded?

17 DR. CEDDIA:

18 When you look at the original structure
19 of the financial arrangements made at origin of this
20 company, it's clear that you have a property that may
21 well have been over leveraged for its ability to
22 produce to the bottom line. When you examine the
23 original business plan of the facility, it at one time
24 projected out a \$72 and a half million EBITA in its
25 first year of operation. Candidly, that was, to put

1 it mildly, an overstatement.

2 CHAIRMAN COLINS:

3 Okay. But let's go back to the original
4 --- this original deal, where you say there was
5 excessive leveraging. That was --- that deal, is it
6 not true, was guaranteed by the owner, Louis DeNaples;
7 correct?

8 DR. CEDDIA:

9 Yes.

10 CHAIRMAN COLINS:

11 At the time that the Board approved this
12 deal, we had the leveraging ratios before us, as well
13 as a guarantee by DeNaples; correct?

14 DR. CEDDIA:

15 Right. Exactly right. And that
16 guarantee is continued.

17 CHAIRMAN COLINS:

18 Okay. Now, so let's get into the
19 scenario now where we are approached by the Licensee
20 and by you with a refinancing plan that asks for
21 contribution by the Guarantor; correct?

22 DR. CEDDIA:

23 Yes.

24 CHAIRMAN COLINS:

25 And this was a guarantee scenario that

1 the Board had reviewed in '06; correct?

2 DR. CEDDIA:

3 Yes.

4 CHAIRMAN COLINS:

5 All right. So this is not a new
6 guarantee.

7 DR. CEDDIA:

8 No.

9 CHAIRMAN COLINS:

10 The financial wherewithal the Board had
11 reviewed back prior to December 20th of '06, the
12 financial wherewithal of the Guarantor, ---

13 DR. CEDDIA:

14 That's right. And it was again ---.

15 CHAIRMAN COLINS:

16 --- which you referred to as a sponsor.

17 DR. CEDDIA:

18 Right. And it was again reviewed in June
19 when we came before this Board for the first amendment
20 to the Credit Agreement.

21 CHAIRMAN COLINS:

22 But what it appears from Mr. Smiles'
23 testimony today is that the money is in place because
24 the Guarantor does, in fact, have the financial
25 wherewithal to provide that money, but the tracking of

1 those funds has not been completed as of yet; is that
2 correct?

3 MR. SMILES:

4 That's correct.

5 CHAIRMAN COLINS:

6 Now, the deal, obviously, cannot be
7 completed --- there can't be a settlement until we
8 approve it; correct?

9 DR. CEDDIA:

10 That's right.

11 CHAIRMAN COLINS:

12 Okay. Obviously, there's an obstacle of
13 the approving of this deal until we have tracked the
14 funds. Maybe not obviously, but that is a potential
15 obstacle. Is that correct, Enforcement Counsel?

16 ATTORNEY PITRE:

17 That's correct.

18 ATTORNEY DAVENPORT:

19 That's correct.

20 CHAIRMAN COLINS:

21 Okay.

22 COMMISSIONER RIVERS:

23 Madam Chair, question. I thought I heard
24 Mr. Smiles say that they can confirm the \$26 million;
25 is that correct?

1 MR. SMILES:

2 That's correct.

3 COMMISSIONER RIVERS:

4 And how long has this \$26 million been
5 sitting there for us to review?

6 MR. SMILES:

7 Are we talking about the time frame of
8 the money with the records we have?

9 COMMISSIONER RIVERS:

10 Yes.

11 MR. SMILES:

12 There were transfers from the other
13 companies, so the bulk of it had been transferred
14 within a week or so of, you know, the --- you know, my
15 observation on the bank statements.

16 COMMISSIONER MCCABE:

17 A week from when?

18 MR. SMILES:

19 A week ---.

20 COMMISSIONER MCCABE:

21 From December ---?

22 MR. SMILES:

23 The end of December beginning of January
24 and out of the \$26 million, \$25 million was
25 transferred in from other companies a week or so

1 before any disbursements were made.

2 COMMISSIONER RIVERS:

3 When did you first confirm that there was
4 \$26 million available?

5 MR. SMILES:

6 Today is Wednesday, it would have been a
7 week ago yesterday.

8 CHAIRMAN COLINS:

9 And basically you're telling us that it
10 can be traced and tracked, but it hasn't been done yet?
11 You can follow the tracks?

12 MR. SMILES:

13 Ultimately, that's correct. But it is
14 going to be a time consuming process.

15 CHAIRMAN COLINS:

16 Okay.

17 COMMISSIONER GINTY:

18 I'm still a little confused. We
19 authorized the transfer of --- was it \$20 million back
20 in, was it November?

21 DR. CEDDIA:

22 June.

23 COMMISSIONER GINTY:

24 In June. So we authorized the transfer
25 of \$20 million back in June. Was that transfer made?

1 DR. CEDDIA:

2 No, it was not. There was a 90-day
3 extension on that transfer based on the negotiations
4 with the lender and the sponsor, and part of that was
5 that the sponsor could put in the \$20 million cash or
6 put up of equal value land, the title to the land that
7 he owned, and there was a review of the land, and then
8 there was an additional month's extension on that, and
9 then we wound up in default.

10 COMMISSIONER GINTY:

11 I guess the issue here is that we
12 approved a transfer of \$20 million.

13 DR. CEDDIA:

14 Yes. And at that time, I believe, it was
15 clear that we presented that as part of the case, yes.

16 COMMISSIONER GINTY:

17 And I understand that. But there was no
18 --- because it was at least \$15 million of it was
19 never transferred, we don't have any tracking of that
20 money?

21 DR. CEDDIA:

22 We knew where the sources of the --- the
23 sources of funds for the \$20 million were coming, yes,
24 we did, and we passed that on to Board staff, that was
25 part of the refinance back in June.

1 COMMISSIONER GINTY:

2 Did Board staff look at that --- the
3 source of that \$20 million? Did the Board staff look
4 at the source of the \$20 million that we approved in
5 June of last year?

6 MR. SMILES:

7 Well, the \$20 million, once again, was a
8 piece of land or a payment, and in terms of the land
9 itself, you know, we know what parcel of land it was,
10 but the final answer on that \$20 million, the answer
11 is no.

12 DR. CEDDIA:

13 Well, with all due respect, I'm just
14 adding to the record, which is part of what occurred in
15 June. Mr. DeNaples did submit an Affidavit in terms of
16 the origin of those funds at that time. That was part
17 of the --- that was part of the submission of the
18 Trustee team and Mount Airy #1, LLC.

19 MR. SMILES:

20 Going back to the June Petition, there
21 was, in fact, a pay down of, I believe the number was
22 \$55 million, which actually did, in fact, happen, of
23 the term loan, and that particular money we were able
24 to identify.

25 COMMISSIONER MCCABE:

1 Identify and track the source of that
2 money?

3 MR. SMILES:

4 Yes.

5 CHAIRMAN COLINS:

6 All right. And you're saying that only
7 applied to \$5 million?

8 MR. SMILES:

9 No, \$55 --- \$55 million. And then the
10 \$20 million was something that would happen in the
11 future, either land or cash and with regard to cash
12 tracking, that did not occur.

13 COMMISSIONER GINTY:

14 Mr. DeNaples provided us with an
15 Affidavit saying that the \$20 million we're talking
16 about is coming from his landfill operations one way
17 or the other; is that true?

18 DR. CEDDIA:

19 Yes.

20 COMMISSIONER GINTY:

21 And did you look at that Affidavit to
22 determine whether that was correct or not?

23 A. I'm not sure that there was an Affidavit on the
24 \$20 million, and if there was, you know, I made the
25 mistake and missed it, because my prime focus in June

1 was the actual cash, okay, the \$55 million.

2 CHAIRMAN COLINS:

3 Well, we'll ask some more questions, but
4 at this point, I think that every one needs more time,
5 more time before we proceed with this matter to clear
6 up some of these questions and/or to do more review if
7 what you're telling us, Mr. Smiles, is that you
8 haven't completed your review. So I mean, we'll ask
9 more questions now, if there are any, but ---.

10 ATTORNEY LAUGHLIN:

11 If I may add, Judge Colins, one of the
12 --- I think one of the distinctions that the Board
13 should keep in mind is that this \$15 million payment
14 that we're talking about that would be made upon our
15 closing of our second amendment is a payment for Mr.
16 DeNaples to the lenders. It's not the money that goes
17 into Mount Airy, and I think one of the premises, and
18 we need to keep that in mind as they --- you know, Mr.
19 DeNaples is a Guarantor that was approved at the
20 outset ---

21 CHAIRMAN COLINS:

22 Right.

23 ATTORNEY LAUGHLIN:

24 --- that guarantee has continued. And I
25 believe Mr. DeNaples has really always had the right

1 to be able to satisfy his obligations under that
2 guarantee. I think it's perfectly understandable that
3 the Board would want to --- from its due diligence
4 point of view in connection with licensing and its
5 powers to be able to trace the source of those funds.
6 But in terms of a predicate, what I might suggest is
7 that we, in fact, could close this transaction.

8 Mr. DeNaples has provided evidence that
9 the funds are, in fact, from him from his company.
10 And that evidence is before the Board and of the
11 record. And again, that money is going not to Mount
12 Airy, but is going to satisfy his guarantee
13 obligations to the lender.

14 Staff will continue their investigation.
15 If, in fact, you know, the representations that were
16 made by Mr. DeNaples, you know, raised some further
17 questions, I think the Board always has the
18 jurisdiction to address that in respect of Mr.
19 DeNaples, but what I would like to see candidly is
20 that we not place Mount Airy in further jeopardy at a
21 fairly critical time, to not be able to complete its
22 loan amendment and be able to get its credit line open
23 at a very difficult time of the year economically for
24 this property.

25 ATTORNEY SHIFFER:

1 In addition, excuse me, I would like to
2 also add to that. When Mount Airy filed its Petition
3 on the 23rd of December, the structure of the deal was
4 very transparent at that time, so there was absolutely
5 --- when we're talking about the physical transfer of
6 funds, the source of funds and the documentation, as
7 it was presented, was presented to the Board in a
8 timely manner pursuant to the regulations.

9 COMMISSIONER SOJKA:

10 I understand that. Madam Chair, can I
11 ask another quick question?

12 CHAIRMAN COLINS:

13 Yes.

14 COMMISSIONER SOJKA:

15 Just in follow-up to your comment. I
16 understand that the money being paid to the lender is
17 not going directly to Mount Airy, but would it be
18 reasonable to say that that payment by Mr. DeNaples to
19 the bank or banks for that purpose does, in fact,
20 increase his equity position in Mount Airy as a result
21 of that payment?

22 ATTORNEY LAUGHLIN:

23 Yes, that's correct. It is a booked
24 transaction that it increases ---.

25 COMMISSIONER SOJKA:

1 Right. So that's still an issue for us.

2 COMMISSIONER GINTY:

3 Let me try and see if I can get this
4 squared in my head. We have evidence of the source of
5 the \$26 million in here that consists of Affidavits,
6 sworn Affidavits by Mr. DeNaples that he is the source
7 of that income; is that a true statement?

8 ATTORNEY SHIFFER:

9 Yes.

10 DR. CEDDIA:

11 Yes.

12 COMMISSIONER GINTY:

13 Staff has begun a process of tracing that
14 source, you have at least, as I understand your
15 testimony, determined that he, in fact, has that
16 money ---

17 MR. SMILES:

18 That's correct.

19 COMMISSIONER GINTY:

20 --- in a bank account? And you should,
21 and we would want you to, is to continue to trace that
22 money back to what Mr. DeNaples represents as companies
23 solely owned by him; am I okay so far?

24 MR. SMILES:

25 Well, some of them aren't solely owned,

1 but they are controlled by Mr. DeNaples.

2 COMMISSIONER GINTY:

3 Okay. But we will --- all right that ---
4 all right. In any event, controlled by Mr. DeNaples,
5 and you would have to determine that the money being
6 taken out of that is his money and not ---?

7 MR. SMILES:

8 That's correct. Now, to clarify matters
9 with the solely-owned situation, the representation
10 that was made to me verbally by Mr. DeNaples' personal
11 financial advisor was that even though there was some
12 other ownership, and a lot of them were Mr. DeNaples
13 and Mr. DeNaples' brother, that, in fact, the funds
14 that came out of those companies were in repayment of
15 loans on their books to Mr. DeNaples personally.

16 COMMISSIONER GINTY:

17 All right. And so you would be able ---

18 MR. SMILES:

19 Yes.

20 COMMISSIONER GINTY:

21 --- to determine that as we go?

22 MR. SMILES:

23 Yes.

24 COMMISSIONER GINTY:

25 You know, the one thing that we haven't

1 discussed here are the very extensive conditions that
2 OEC has dictated here, I guess is a word for ongoing.
3 You know, it might help if you --- Mary, if it's okay,
4 to read those conditions so we'll have sort of the
5 full picture of what we have before us. Is that okay?

6 COMMISSIONER RIVERS:

7 Yes. One of the things I'd like to talk
8 about, and that is at the time that we consummated
9 this deal in the very, very beginning, is it true that
10 Mr. DeNaples basically provided documentation to
11 underwrite this project, ---

12 DR. CEDDIA:

13 Yes.

14 COMMISSIONER RIVERS:

15 --- that's why we awarded him the
16 license; correct or not correct?

17 DR. CEDDIA:

18 That's correct.

19 COMMISSIONER RIVERS:

20 Has anything changed other than him not
21 being able to participate in the day-to-day
22 operations? Has anything of his --- has any of his
23 finances changed to make his concern about that issue?

24 COMMISSIONER GINTY:

25 Put it another way. Does anyone doubt

1 that Mr. DeNaples has \$25 million?

2 CHAIRMAN COLINS:

3 No.

4 COMMISSIONER GINTY:

5 I mean, has anything changed?

6 CHAIRMAN COLINS:

7 Okay. That brings us down to the issue.

8 The issue that we have to determine. The money is

9 there. You've stated that, Mr. Smiles, ---

10 MR. SMILES:

11 Yes.

12 CHAIRMAN COLINS:

13 --- you've confirmed that. We have an
14 Affidavit --- here's the record before us. We have an
15 Affidavit from the Guarantor, Mr. DeNaples saying that
16 that --- identifying that as money that is his, okay.

17 ATTORNEY DAVENPORT:

18 That's only for a part of the monies.

19 CHAIRMAN COLINS:

20 Okay.

21 ATTORNEY DAVENPORT:

22 There's two Affidavits, but it's not for
23 the entire amount.

24 CHAIRMAN COLINS:

25 Okay. And we still have to --- what you

1 still have to do to your satisfaction is to trace the
2 source of these funds, this \$26 million, which as of
3 yet you have not done; is that correct?

4 ATTORNEY DAVENPORT:

5 Correct.

6 MR. SMILES:

7 That's correct.

8 CHAIRMAN COLINS:

9 All right. Now, are there conditions on
10 the Orders that are in effect that provide this Board
11 with guarantees at this point that allowing this deal
12 to go forward would not violate the original Order?

13 ATTORNEY DAVENPORT:

14 After extensive work with Mount Airy and
15 Dr. Ceddia and his advisors we came up with a total of
16 seven conditions. So ---.

17 CHAIRMAN COLINS:

18 What are those?

19 ATTORNEY DAVENPORT:

20 They are in --- they are attached to our
21 Answer, and I can read those into the record.

22 CHAIRMAN COLINS:

23 Read them, please.

24 ATTORNEY DAVENPORT:

25 Number one, Mount Airy shall provide the

1 Financial Investigation Unit with monthly internal
2 financial statements, as available.

3 Mount Airy shall provide the Financial
4 Investigation Unit with loan covenant calculations,
5 and reporting between JPMorgan and Mount Airy,
6 including copies of all worksheets and correspondence
7 upon the availability of same.

8 Number three, Mount Airy shall provide
9 the Financial Investigations Unit with all final loan
10 documents and closing information promptly upon
11 execution of same.

12 Number four, Louis DeNaples shall
13 promptly provide the Financial Investigation Unit with
14 the following documents. Louis DeNaples' Statement of
15 Assets and Statement of Liabilities of October 30th,
16 2008, as delivered to the letter identified in the
17 second Omnibus Waiver and Amendment Agreement.

18 All requested documents, books and
19 records of the five companies referenced in the Mount
20 Airy Amended Loan Facility Summary prepared by the
21 Financial Investigative Unit. And a final narrative
22 statement of funds sources, as described in Section
23 14(f), page 21 of the second Omnibus Waiver and
24 Amended Agreement.

25 Number Five, Mount Airy shall insure that

1 investments made pursuant to the Omnibus Waiver and
2 Amendment Agreement by Louis A. DeNaples are capital
3 investments to Mount Airy and will not encumber Mount
4 Airy to any loan obligation.

5 Number six, Mount Airy shall provide the
6 Financial Investigative Unit with detailed schedules
7 of all capital contributions, loan receipts, loan
8 principal payments and capital distributions from the
9 inception of Mount Airy to date.

10 And finally, number seven, Louis DeNaples
11 shall provide the Financial Investigations Unit with
12 documentation to support the loan transfer to Louis A.
13 DeNaples from the five companies referenced in the
14 Mount Airy Amended Loan Facility Summary prepared by
15 the Financial Investigation Unit.

16 CHAIRMAN COLINS:

17 All right. And these conditions are
18 ongoing obligations; correct?

19 ATTORNEY DAVENPORT:

20 That is correct.

21 CHAIRMAN COLINS:

22 And with those conditions, is OEC
23 satisfied that if these conditions are met, that there
24 will be information sufficient to --- on a continuing
25 basis to track this money?

1 ATTORNEY DAVENPORT:

2 Yes.

3 CHAIRMAN COLINS:

4 Any other questions?

5 COMMISSIONER SOJKA:

6 Yeah. Again, one additional one. And
7 maybe it was buried in there, but I wonder what
8 remedies remain available to us should in tearing out
9 those conditions you discover things that are not to
10 your satisfaction.

11 ATTORNEY PITRE:

12 Everything up to revocation.

13 COMMISSIONER SOJKA:

14 So that would be the immediate response?

15 ATTORNEY PITRE:

16 The immediate response --- well, it would
17 be to get an explanation, but if Mr. DeNaples is not
18 willing to cooperate with us, we'd probably file a
19 complaint to revoke his license.

20 COMMISSIONER SOJKA:

21 Right. So that is the one and only ---?

22 ATTORNEY PITRE:

23 Well, that's the worst response.

24 COMMISSIONER GINTY:

25 Well, he's executed a sworn Affidavit;

1 has he not?

2 ATTORNEY PITRE:

3 Yes, he has. And there's also criminal
4 charges that could probably come from that.

5 COMMISSIONER GINTY:

6 Okay.

7 CHAIRMAN COLINS:

8 All right. Okay. Anything further,
9 because we're going to have to do some deliberation?

10 COMMISSIONER SOJKA:

11 Well, just for the record, I'd like to
12 know what happens if we do not meet --- or essentially
13 grant this request today. What happens?

14 DR. CEDDIA:

15 Well, I think, Commissioner Sojka, two
16 things leap to mind right away. First, the lenders
17 are fully expecting, based on the ongoing process that
18 we've had with them, with the sponsor, with the
19 Trustee team, with Mount Airy and also with Board
20 staff, that this credit amendment was to be approved
21 today. If it is not, it triggers the continuation of
22 the defaults we are in with the lenders, which means
23 that at any time they could call the loan.

24 Secondly, and even more probably
25 important, is the fact that the facility continues to

1 operate without access to a credit line, which it
2 needs particularly at this time of year. I might add
3 to those comments also, that I, as your Trustee, feel
4 somewhat embarrassed today before you, because quite
5 candidly, my team and I felt that we were rigorously
6 adhering to the Board Order which we accepted
7 responsibility for last February in terms of ensuring
8 transparency all the way through the process.

9 We are under the understanding that, in
10 fact, all of the steps have been taken. We would
11 never put this Board or its staff in a position where
12 they could be challenged later or second guessed. As
13 we did in June, we tried, in the process of this
14 second credit amendment, to provide this Board with
15 timely information as to where we were and where the
16 source of funds were coming from.

17 I'm somewhat disappointed today that
18 Board staff was not provided with what they suggest as
19 certain information. We fully expected that
20 information to be shared, and I have no reason to
21 believe that it won't be shared. The only last
22 concern that I have in this matter is that based on
23 what's been outlined in terms of the follow-up of
24 ascertaining the source of these funds, going back to
25 the fact that the sponsor was reviewed and cleared in

1 terms of support of this activity when he originally
2 got his license, this process could take a long time,
3 and this puts the facility at risk. That's the
4 concern I have.

5 COMMISSIONER SOJKA:

6 And when you say at risk, you mean the
7 jobs and the revenue?

8 DR. CEDDIA:

9 Yes, I mean the jobs and --- you know,
10 this facility has generated nearly \$107 or \$108
11 million in tax revenue for the Commonwealth. We have
12 almost 900-plus jobs. And beyond that, you know, I
13 think it speaks for itself.

14 COMMISSIONER SOJKA:

15 Well, Dr. Ceddia, to help allay any
16 embarrassment you might have, you may rest assured
17 that we'll be second guessed regardless of the
18 outcome.

19 DR. CEDDIA:

20 I understand that.

21 CHAIRMAN COLINS:

22 And Commissioners ---.

23 COMMISSIONER MCCABE:

24 I want to bring up a point that I'm
25 fuming about, too. Is whoever led the bank to believe

1 that this was a done deal and that we would approve
2 this today and that you can automatically move as soon
3 as you finish here to do a closing is wrong. And they
4 should have never been led to believe that this is an
5 automatic done deal.

6 DR. CEDDIA:

7 I don't think --- if I suggested
8 automatic, I misstated, Commissioner. It was assumed
9 that based on the process, as we had completed the
10 first credit amendment in June, that we were close to
11 getting that done today. But the banks respect,
12 clearly, the Board's rule. I know they do.

13 CHAIRMAN COLINS:

14 And Commissioner, just to respond ---.

15 COMMISSIONER RIVERS:

16 Can you say that in conversations with
17 our staff, that none of the concerns that we're
18 hearing today were ever made --- have never been
19 brought before you before?

20 DR. CEDDIA:

21 Well, I know there were ongoing
22 conversations. To the extent to which the
23 verification of funds had not been completed, that
24 was, I must say, a surprise this morning.

25 CHAIRMAN COLINS:

1 Well, Chief Enforcement Counsel, let me
2 ask you a question. Isn't that why those conditions
3 are in the Order? Is that not the reason?

4 ATTORNEY DAVENPORT:

5 That is correct.

6 CHAIRMAN COLINS:

7 Because it's a detailed matter, and those
8 conditions were specifically negotiated ---
9 recommended to us so that you can track the money;
10 correct?

11 ATTORNEY DAVENPORT:

12 That is correct. And then to address
13 the ---.

14 CHAIRMAN COLINS:

15 And we have enforcement power; is that
16 not correct?

17 ATTORNEY DAVENPORT:

18 That is correct.

19 CHAIRMAN COLINS:

20 All right. So go on.

21 ATTORNEY DAVENPORT:

22 And to address Dr. Ceddia's comments.
23 When the Petition was filed on December 23rd, the
24 Financial Investigation Unit did not find out the
25 sources, the five sources of those monies until a

1 little while later. So therefore, you know, it's one
2 thing we need the time in order to fully vet those
3 sources. So it's just a matter of timing.

4 CHAIRMAN COLINS:

5 Right. But are you --- is Enforcement
6 Counsel comfortable and confident that those specific
7 conditions give you the tools to track this on an
8 ongoing basis, and such that you can proceed with
9 enforcement if you find there's a problem?

10 ATTORNEY DAVENPORT:

11 Yes.

12 CHAIRMAN COLINS:

13 Or are you convinced of that?

14 ATTORNEY DAVENPORT:

15 Yes, we are.

16 CHAIRMAN COLINS:

17 Okay. All right. What we're going to do
18 now is we're going to break, we're going to take a
19 recess, we'll come back after we do some deliberation
20 on this and then we got to get into our meeting; all
21 right? Thank you.

22 SHORT BREAK TAKEN

23 WHEREUPON HEARING WAS CONCLUDED

24 * * * * *

25 HEARING CONCLUDED AT 12:37 P.M.