

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

\* \* \* \* \*

IN RE: VALLEY FORGE CONVENTION CENTER PARTNERS, LP -  
PETITION FOR APPROVAL OF CORPORATE RESTRUCTURING

\* \* \* \* \*

PUBLIC HEARING

BEFORE: GREGORY C. FAJT, CHAIRMAN  
Raymond S. Angeli, James B. Ginty,  
Keith R. McCall, Anthony C. Moscato,  
Gary A. Sojka, Kenneth I. Trujillo; Members  
Christopher Craig, Representing Robert M.  
McCord, State Treasurer  
Robert Coyne, Representing Daniel P.  
Meuser, Secretary of Revenue  
Daniel Tufano, Representing George Greig,  
Secretary of Agriculture  
HEARING: Thursday, April 28, 2011  
10:00 a.m.  
LOCATION: Hearing Room One  
North Office Building  
401 North Street  
Harrisburg, PA 17120  
WITNESSES: Ira Lubert, Saverio Scheri  
Reporter: Cynthia Piro Simpson

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

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

A P P E A R A N C E S

OFFICE OF ENFORCEMENT COUNSEL

DALE MILLER, ESQUIRE

Deputy Chief Enforcement Counsel

DUSTIN MILLER, ESQUIRE

Assistant Counsel

Pennsylvania Gaming Control Board

P.O. Box 69060

Harrisburg, PA 17106-9060

Counsel for the Pennsylvania Gaming Control Board

ROBERT P. KRAUSS, ESQUIRE

ADRIAN R. KING, JR., ESQUIRE

MICHAEL D. FABIUS, ESQUIRE

Ballard Spahr, LLP

1735 Market Street

51st Floor

Philadelphia, PA 19103-7599

Counsel for Valley Forge

KEVIN C. HAYES, ESQUIRE

Doherty Hayes, LLC

321 Spruce Street

Scranton, PA 18503

Counsel for Valley Forge

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

OPENING REMARKS

By Chairman 5 - 7

STATEMENT

By Attorney King 7

By Mr. Lubert 8 - 9

PRESENTATION

By Attorney King 9 - 18

By Attorney Krauss 18 - 26

QUESTIONS BY BOARD

27 - 44

STATEMENT

By Attorney Dale Miller 44 - 47

By Attorney Krauss 47

DISCUSSION AMONG PARTIES

47 - 51

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 Offered</u>	<u>Page Admitted</u>
--	Presentation Regarding Petition for Approval of Corporate Restructuring	--	31*

\* Exhibit not attached

## 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:

Good morning, everyone. I'm Greg Fajt, Chairman of the Pennsylvania Gaming Control Board. And as a matter of housekeeping, I'd just like to ask everybody to please turn off your cell phones and other PDAs. They tend to interfere with the communications system here.

Joining us today is Christopher Craig, representing Treasurer Rob McCord; Bob Coyne, who is representing the Secretary of the Department of Revenue Dan Meuser. And I don't see Dan Tufano here. And if he shows up, we will make sure we introduce him. A quorum of the Board is present. I'd like to call today's meeting to order. As the first order of business, please join me in the Pledge of Allegiance.

PLEDGE OF ALLEGIENCE RECITED

CHAIRMAN:

We have three items before the Board today by way of public hearings, which will take place prior to our public meeting. The first public hearing pertains to Valley Forge Convention Center Partner, LP's petition for the approval of corporate restructuring.

1                   Immediately following our first hearing,  
 2 we will move directly into Valley Forge's second  
 3 petition for approval of a revised master plan. Our  
 4 third and last hearing pertains to Washington Trotting  
 5 Association. Their petition is to change its gaming  
 6 floor. At the conclusion of these hearings and  
 7 presentations, we'll take a recess, conduct quasi-  
 8 judicial deliberations before returning to conduct our  
 9 regularly scheduled meeting.

10                   I see that Valley Forge is at the table.  
 11 Prior to our presentation --- prior to your  
 12 presentation, could all the witnesses who are non-  
 13 lawyers and who will be presenting evidence today by  
 14 Valley Forge for both of your petitions, and also, the  
 15 Office of Enforcement Counsel (OEC), if you have any  
 16 non-lawyers, would you please have them stand to be  
 17 sworn in?

18                   And I would also like to ask that all  
 19 persons speaking to --- before you start to speak,  
 20 including Counsel, please state and spell your name  
 21 for the stenographer. And with that, could we please  
 22 swear our witnesses in?

23 -----  
 24 WITNESSES SWORN EN MASSE  
 25 -----

1                   CHAIRMAN:

2                   Thank you very much. And with that,  
3 Valley Forge, you may begin.

4                   ATTORNEY KING:

5                   Thank you, Your Honor, members of the  
6 Board. Good morning. For the record, I'll introduce  
7 myself and my colleagues. Adrian King from Ballard  
8 Spahr firm. With me at the table is my partner, Bob  
9 Krauss, our colleague, Mike Fabius. As you know,  
10 we're going to present on two different petitions, the  
11 restructuring petition and the site plan petition.  
12 The site plan will be handled by our co-Counsel, Kevin  
13 Hayes.

14                   With me here today, representing the  
15 restructuring petition first, is Mr. Ira Lubert, who  
16 is the chief principal of the Valley Forge project.  
17 And I also just want to recognize that we also have  
18 with us Mr. Bill Landman --- I ask Mr. Landman to  
19 stand --- who is the principal of the CMS companies  
20 and is available to answer the questions that you may  
21 have.

22                   Before we get into the nuts and bolts of  
23 the presentation, Mr. Lubert is just going to address  
24 the Board. He hasn't been in front of you in a while  
25 and would like to make a statement.

1                   MR. LUBERT:

2                   It's Ira Lubert, I-R-A, L-U-B-E-R-T. I'm  
3 extremely pleased to be here today. Incredibly, it's  
4 been nearly four years since we sent in our  
5 application, just over two years since the Board  
6 awarded Valley Forge a Class 3 license, and just over  
7 two years since I've been before this group.

8                   And after such a long delay, I'm excited  
9 that we'll finally be able to move forward with our  
10 project. It will create additional tax revenues in  
11 the Commonwealth and jobs for Pennsylvanians, and  
12 that's something we can all be very proud of.

13                   When you awarded Valley Forge a license,  
14 we were in the midst of a global crisis, as everybody  
15 knows. Project financing was hard to come by for any  
16 business, not just Valley Forge.

17                   Despite the adverse environment, I  
18 pledged to you that I would risk and get Valley Forge  
19 funding, and put my personal assets and reputation at  
20 risk to do so. I'm pleased to report that even after  
21 this inordinate delay that this project has  
22 experienced and the major change in the Gaming Act  
23 that has significantly increased the project costs,  
24 which are more slots and table games, I've  
25 successfully assembled and maintained a solid



1 financing package that will enable us to build a first  
2 class facility.

3           Even though the costs originally in 2009  
4 were \$107 million, those costs now exceed \$130  
5 million. I'll now turn things over to our attorneys  
6 that will review the financing package in detail, and  
7 our revised site plan. In closing, thank you very  
8 much for your attention, and thank you for the trust  
9 and confidence you've put in me and our team. I look  
10 forward to involving your staff at our opening. Thank  
11 you.

12                           ATTORNEY KING:

13           Thank you, Mr. Lubert. We have a  
14 presentation, and we'll go through it as efficiently  
15 as possible. Since we had several new members on the  
16 Board since our license was granted, I thought it  
17 might be helpful to first go --- just quickly go  
18 through the procedural history just so everyone has a  
19 good base to start with.

20           As Mr. Lubert mentioned, our application  
21 was filed just under, well, almost four years ago in  
22 June of '07. We had our eligibility hearings in  
23 October of '07, the public input hearing in May of  
24 '08, suitability hearing in October of '08, and then  
25 things got a little interesting for everybody with

1 global crisis, and we all know what was going on  
2 there.

3           In January of '09, responding to what was  
4 going on in the financial markets, the Board reopened  
5 the record for all the then applicants to obtain  
6 additional information, particularly about financing.  
7 And there were two different occasions in which we  
8 appeared before the Board, in February of 2009 and  
9 again in April 2009, where we came in with a revised  
10 financial plan, which included a commitment letter  
11 from Mr. Lubert, where he committed to put his  
12 personal wealth and the wealth of the other partners  
13 to the tune of \$54 million behind this project.

14           Based on that, in April of '09 the Board  
15 awarded a Category 3 license to Valley Forge. The  
16 Board issued its adjudication in May of '09.  
17 Thereafter, there was an appeal filed in Pennsylvania  
18 Supreme Court in June of '09. We had oral arguments  
19 in front of the Supreme Court on that appeal in  
20 October of '09. And then as you know, just recently,  
21 March of this year, the Supreme Court issued a  
22 decision affirming the award.

23           So at the time that this award was made,  
24 back, again, in April of 2009, the project budget at  
25 the time was \$107 million. Of that financing at the

1 time, the plan was to assume a loan that was then  
2 outstanding by General Electric Capital Corporation.  
3 It was going to be debt financing to assume that loan.

4           There was money that was going to be put  
5 up, \$25 million by the Delaware Valley Real Estate  
6 Investment Fund, which is a collection of Union  
7 pension plans. And then, as I mentioned, Mr. Lubert  
8 provided a commitment letter in March of '09,  
9 committing to put up \$54 million. And importantly,  
10 the commitment letter also stated that Mr. Lubert  
11 would continue efforts to obtain financing.

12           Okay. As we know, we had a pretty  
13 significant delay. Things changed. The Gaming Act  
14 changed. And quite frankly, having lenders stand  
15 still for two years is difficult. And so things have  
16 changed and we now developed new relationships.

17           And what I'm here to talk about today  
18 through this restructuring petition is additional  
19 capital we want to bring in through an equity  
20 investment by CMS. And I want to tell you and inform  
21 the Board about a new debt package, debt financing  
22 package that we've assembled through Susquehanna Bank.  
23 We have submitted many, many records that I'll quickly  
24 walk you through to Board Staff, keeping them advised  
25 of all these developments.

1 All right. Well, let's talk about ---.  
2 Obviously, something you are well aware, one  
3 significant event was Act 1 of 2010 Senate Bill 711,  
4 which for Category 3 Licensees provides 100 additional  
5 slot machines and 50 table games, but also includes a  
6 \$7.5 million licensing fee on top of the \$5 million  
7 for the original slots license. We obviously will be  
8 intending to petition the Board for a table games  
9 certificate, and we'll be going through that process  
10 in due course before the Board.

11 We are proposing --- and as we will get  
12 into with the site plan petition --- to extend the  
13 facility from 18,000 square feet to 32,980 square feet  
14 to accommodate the additional slot machines, as well  
15 as table games and some additional items in the casino  
16 facility. The next slide is just to demonstrate that  
17 the budget has now increased from \$107 million to \$130  
18 million.

19 And it is conceivable that we may  
20 actually make some additional investments to put  
21 actually additional money into this project. And if  
22 we do so, when we do so, we will certainly keep you  
23 advised, as well as the staff.

24 So before we get into the new financing  
25 package, where does that \$130 million come from?

1 First, there's 130 --- or I'm sorry, \$100 million in  
2 commitments from lenders, and in a moment I'll go  
3 specifically who --- through who those lenders are.  
4 And there was a \$30 million equity investment from the  
5 CMS Companies. And as I mentioned, Bill Landman, the  
6 principal of CMS, is here to the extent you have any  
7 questions.

8 CMS is an investment firm based in  
9 Wynnewood, Pennsylvania, right outside of  
10 Philadelphia, that looks for a variety of investments  
11 for wealthy individuals. And CMS has identified  
12 gaming as something that these investors would be  
13 interested in putting their money into.

14 Again, as you know, you've seen CMS  
15 before. They had planned --- or one of the projects  
16 they had identified and looked at was Valley Forge.  
17 And then two of the other Cat 3 applicants have talked  
18 to CMS, the Wyomissing project and the Canonsburg  
19 project.

20 But as we all know, the Valley Forge  
21 project that's moving forward, and that's where they  
22 want to put their money and make their \$30 million  
23 equity investment. That \$30 million could be for a 30  
24 percent interest in the Valley Forge venture, with the  
25 remaining 70 percent held by the existing licensee

1 principals of the Valley Forge application, Mr. Lubert  
2 and his colleagues and associates, Mr. Michael Heller,  
3 Barbara Evans, Ken Kochenour and Mr. Lubert's son,  
4 Jonathan Lubert. And all those folks were licensed at  
5 the beginning with the granting of the application.

6 I'll also just point out, you know, what  
7 is the investment of the partnership? What else do  
8 they have in this project? And I thought, you know,  
9 it would be important for us to point out, to date we  
10 put about 6 point --- actually, \$6.25 million,  
11 actually \$6,025,000 in transactional expenses into  
12 this project, grant fees, legal fees, costs associated  
13 with the real estate transaction. So, that money is  
14 into this deal.

15 And in addition, we submitted guarantees  
16 to the staff for review, indicating that Mr. Lubert  
17 and his colleagues are on the hook for the \$100  
18 million through personal guarantees. So, you know,  
19 there's significant investment in seeing this game  
20 continuing with our partnership.

21 Next slide. This slide is maybe a little  
22 too overly complicated, but let me try to work through  
23 it. First of all, the lending syndicate drawn by  
24 Susquehanna Bank, Susquehanna itself has \$20 million  
25 in the \$100 million syndicate. \$10 million of that is

1 immediately available. The other \$10 million is  
2 available upon granting of the table games  
3 certificate, so that's \$20 million from Susquehanna  
4 Bank.

5 \$4 million would come from the Carpenters  
6 Pension Fund in Philadelphia. I think that's  
7 important for a couple reasons. There is great  
8 interest in the license that was originally granted  
9 with respect to Union participation in the project and  
10 I believe will be withdrawn from this appeal but  
11 substituted by the Carpenters. So, effectively, we're  
12 substituting a combined pension fund loan with a loan  
13 just specifically from the Carpenters Union Pension  
14 Fund.

15 And then the remaining \$40 million is  
16 from an entity called Can-Am, and that is an issue  
17 that will come before the Board in probably the next  
18 30 to 60 days. And Can-Am is a lender under the  
19 Federal Government's EB5 program, and we'll be getting  
20 into discussion about that, I think, at another  
21 meeting. But so that you know, the EB5 program has  
22 been very successful used here in Pennsylvania through  
23 the Pennsylvania Department of Community and Economic  
24 Development in the Philadelphia --- by the  
25 Philadelphia Industrial Development Corporation among

1 other things.

2           It's paid loans of \$100 million to the  
3 Pennsylvania Convention Center expansion in  
4 Philadelphia. It's put money into Temple University  
5 Health System, University of Pennsylvania Health  
6 System, put money into the expansion of a helicopter  
7 assembly plant in northeast Philadelphia for  
8 aerospace. It's been a great source of low interest  
9 loans for economic development projects across the  
10 state.

11           Now, given that the Can-Am loan is  
12 contingent on Board approval, we would also set up a  
13 bridge loan commitment through Susquehanna Bank for an  
14 --- to cover that \$40 million pending, hopefully,  
15 approval by the Board of that component of the  
16 financing structure. So, that's where this other \$40  
17 million that you see on the chart comes from. So,  
18 that's the debt side of this transaction. And again,  
19 the equity side is \$30 million from CMS.

20           On this slide, I just want to demonstrate  
21 and make clear, these are all various documents that  
22 we've been sharing with the staff as they've been  
23 going through this transaction with great detail, Rich  
24 O'Neil (phonetic) and his team, financial  
25 investigation team, at the BIE. And then on the



1 following slide is just a list of the various  
2 documents that have been submitted with respect to the  
3 transaction by CMS Investment. So, the public is  
4 aware and the Board is aware, really gone through in  
5 extensive detail, exhaustive detail, all the aspects  
6 of this financing transaction.

7                   Next slide, I just want to quickly go  
8 through ---. I know it's very hard to see up on the  
9 screen, but what this is intending to demonstrate is  
10 how the ownership interests will change to accommodate  
11 a 30 percent ownership interest by CMS. At the very  
12 top, shows the ownership interest in the Valley Forge  
13 Convention Center, GP, which is effectively the  
14 operating partner in the entity.

15                   Before this restructuring, Mr. Lubert  
16 controls 57.8 percent of that entity, Jonathan Lubert,  
17 22.2 percent, and Michael Heller, 20 percent. And the  
18 GP owns one percent of the project. Down below, with  
19 respect to Valley Forge Convention Center Partners  
20 itself, Mr. Lubert holds 51.42 percent interest;  
21 Jonathan Lubert, 19.7 percent interest; Michael  
22 Heller, 17.8; Barbara Evans, 5 percent; and Mr.  
23 Kochenour, 5 percent.

24                   Next slide. If the Board approves the  
25 equity investment by CMS, the percentages would change

1 as follows. First of all, with respect to GP, CMS  
 2 would not have a piece of the general partner;  
 3 however, Mr. Kochenour and Ms. Evans, who were part of  
 4 the original partnership upon licensure, would hold a  
 5 piece of that one --- well, actually, now 0.7 percent.  
 6 But if you go across the top, Mr. Lubert at 52,  
 7 Jonathan Lubert at 19, Michael Heller at 18, Barbara  
 8 Evans at 5 and Ken Kochenour at 5.

9           The remaining partnership interest, you  
 10 have Mr. Lubert adjusting to 36 percent, CMS at 30,  
 11 Jonathan Lubert at 13.8, Michael Heller at 12.4,  
 12 Barbara Evans at 3.4 and Ken Kochenour at 3.4. So,  
 13 that is effectively the financing part of this  
 14 presentation. Effectively, what we're asking the  
 15 Board to do primarily is approve two key things, which  
 16 would be the 30 percent equity investment by CMS in  
 17 this project and, secondly, to approve the revised  
 18 ownership percentages that I've just reviewed.

19           What I would like to do now is turn it  
 20 over to Mr. Krauss. He's going to address one related  
 21 but very important issue, which is the issue of  
 22 whether there should be a change of control fee with  
 23 respect to this 30 percent interest. Bob?

24           ATTORNEY KRAUSS:

25           Thank you very much. Mr. Chairman,

1 members of the Board, it's Robert Krauss, K-R-A-U-S-S,  
2 Ballard Spahr. Let me go back just one step and talk  
3 about 1328. I'm glad Christopher Craig's here today  
4 as we spent a lot of time on these issues and when Act  
5 71 was first passed.

6           Section 1328 originally was put in  
7 because of the remaining legislators who were  
8 concerned that applicants would get a license and then  
9 flip their license. And they would flip their  
10 license, and a lot of the legislators thought the  
11 license issued should be auctioned off.

12           And there was a lot of discussion that it  
13 would get a high auction fee and up front fee, but  
14 that the tax rate of that would be lower. So, which  
15 was better for the Commonwealth, to add more money up  
16 front or to have a higher tax rate, which goes on for  
17 a much longer period of time?

18           And so part of the backing and  
19 coordinating of all of that was to say, hold on. If  
20 somebody flips and they get their license and they  
21 immediately flip it to somebody else even before they  
22 open, the State ought to have a piece of that, because  
23 somebody should ---. Everybody was thinking what the  
24 front page of the Inquirer would look like and the  
25 rest of the newspapers would state and see that

1 somebody got a license and the State charged them \$50  
2 million and they just flipped it for \$200 million or  
3 whatever the number was.

4           So the 1328 was put into the Act to be  
5 sure that that would be covered. And that was the  
6 original intent of 1328.

7           In this particular --- before we get into  
8 the nuts and bolts of 1328, in this particular  
9 transaction, we have always come before you and said,  
10 this is Ira. It's Ira's company. It was Ira's  
11 company before. It was Ira's company afterwards.  
12 It's Ira. And this is not a situation where  
13 somebody's flipping and getting anything out of it.

14           Ira's not getting anything out of it.  
15 The money that's coming in from CMS, it's going into  
16 the project to fund the additional costs of the  
17 project as they've come, because of the passage of  
18 time and because of the table game situation. So,  
19 when people were doing it, it really wasn't there.

20           If there's any doubt about Ira's  
21 importance ---. Michael, will you go back to slide  
22 eight for a second? All those documents there, you  
23 see seven or eight different guarantees. Why are  
24 there seven or eight guarantees? Because every time  
25 the bank said, well, Ira, how do I know that's going

1 to happen, Ira said, because I'm going to make sure it  
2 happens and put it on paper. And so Ira's got those  
3 guarantees, not just one. He's got seven to make sure  
4 that everything happens.

5           So, this is Ira's project, it was Ira's  
6 project, it will continue to be Ira's project and not  
7 CMS, which is an approved partner now to have along on  
8 financing and structure to have, and that's very good.  
9 But this is not the kind of transaction that 1328  
10 contemplated.

11           So, having said that, now let's look at  
12 1328. 1328, interestingly, applies a fee on change in  
13 control, assuming there is a change in control ---  
14 we'll get there in a second --- to a --- and it  
15 excludes someone at the time of initial licensing and  
16 then payment of the slot machine license fee. Well,  
17 the license has not been issued to Valley Forge. It  
18 has been awarded, not yet issued.

19           And the license fee, of course, is not  
20 yet conveyed. So, the transfer we're asking for,  
21 which is equitably done already --- it's pending your  
22 approval, is all that it awaits --- is before the  
23 technical application of 1328.

24           And I can tell you, when we were drafting  
25 the legislation, there was a lot of discussion about

1 the difference between awarding and licensing. And  
2 the discussion all came down that everybody knew  
3 people had to know they had a license so they could go  
4 out and get financing and hire people.

5           So that, therefore, distinction between  
6 awarding and licensing was made, and if you go through  
7 the Act, you will find in all sorts of places,  
8 sometimes it says award and sometimes it says  
9 licensing. And I can tell you probably each and every  
10 time, it was challenged which one it was supposed to  
11 be.

12           So this was well thought out. This  
13 wasn't just a, woops, we used license here and we  
14 could've used award. No, every time it was used, the  
15 word license, it was well thought out. So, we have  
16 that, and what we got here is a technical provision  
17 that only applies to a licensee. And Valley Forge is  
18 not yet a licensee, and accordingly, it ought not to  
19 apply.

20           I want to go ---. Michael, let's skip  
21 ahead to 15. And let's talk about, for a minute, what  
22 we think is --- what we hope --- we know you will  
23 consider. First, under the technicalities of 1328,  
24 the license fee is not applicable, and therefore, no  
25 license fee should be applied here. It should be held

1 that way, and we believe that is the correct reading  
2 of 1328. And it's also consistent with the intention  
3 of 1328.

4                   So let's now go forward and say ---  
5 because we don't want to keep coming back, and  
6 hopefully we can get this all done at once. If  
7 someone should decide, for whatever the reason, that  
8 1328 does apply, then what is the amount of the fee?

9                   1328 was clear in giving the Board, of  
10 course, the capability of reducing the fee but not  
11 less than zero. So, you couldn't go down to zero.  
12 You had to have at least a dollar, so it had to be  
13 more than zero. That's the way 1328 was written.

14                   And Commissioner Ginty, on December 18,  
15 2007, moved in the first transfer transaction that ---  
16 he said the \$2.5 million, that was for a Category 1  
17 license that was being transferred, and that would be  
18 five percent of the license fee. And 1209 used to be  
19 clear on the application of the fee. It's just the  
20 original license fee. It's not the table games fee.  
21 It's 1209 and 1305, not 13A under the right section.

22                   So if we were going to apply the same  
23 methodology that he adopted, absent other  
24 circumstances, which is what Commissioner Ginty's  
25 motion talked about, unless special circumstances

1 would indicate or dictate otherwise, the pure  
2 application of that precedent which has been followed  
3 by the Board in all but one other transfer case would  
4 be five percent of the fee or \$250,000. So, we  
5 believe that ---. Well, we believe the fee doesn't  
6 apply at all. If it does apply, the maximum number  
7 would be \$250,000.

8           So now we are required to ask, are there  
9 any special circumstances that would dictate a  
10 different answer? And we submit to you that four  
11 years is a long time. Mr. Lubert and his investors  
12 have spent over \$6 million during that period of time  
13 in bank extension fees and other fees. And in today's  
14 world of getting any financing, it was a heroic task  
15 by them, holding it together for the last two years.

16           I remember going to the bank meetings,  
17 and after we had the license awarded, they said, good.  
18 When are we going to close? We said we hope in 90  
19 days, and everybody said, good. Let's all get to  
20 work. And then of course there was the appeal, and we  
21 said, well, how long should the Supreme Court take?  
22 And we said, well, Supreme Court's taken four to six  
23 months in every other case, except the original case.  
24 And so we hoped for six months, and of course we got  
25 through the four to six months, and that didn't



1 happen.

2                   And then I get a call every Thursday,  
3 hey, Bob, did you hear if there's going to be an  
4 opinion next Tuesday? And it came almost every  
5 Thursday. And of course, everybody ---. And a couple  
6 times we actually believed it and we revved up the  
7 machine again. We all took the papers out and started  
8 working on them again and, you know, we had to put the  
9 papers back away about three or four different times.

10                   So that's starting and stopping was  
11 holding the bank together. You know banks. They  
12 don't like to ---. They like certainty, and there was  
13 a great deal of uncertainty, and you must give this  
14 team credit for holding the whole thing together. It  
15 was an amazing task.

16                   So the second part that I think is  
17 important, talking about special circumstances or  
18 other circumstances, is Mr. Lubert testified back in  
19 2008, hey, this is a work in process. It's still  
20 going. We'll be bringing here CMS as a part of the  
21 initial capitalization company. It isn't licensed  
22 yet. It's still not up and running.

23                   And most companies that are being formed  
24 have different ownership interests along the way while  
25 they get it all together, so this is really all part

1 of the initial capitalization of Valley Forge  
2 Convention Center Partners. So, we don't think it's a  
3 change in control at all. It's part of the initial  
4 capitalization. And of course, through half the  
5 litigation that we've been through, we haven't had to  
6 comment.

7                   So, we respectfully request that the  
8 Board determine that 1328 does not apply because of  
9 the technical language in 1328 and because of the  
10 intention of the legislature when it was passed. And  
11 if the Board should determine that it does apply for  
12 whatever reason it determines, that the license fee be  
13 set at the lowest possible amount. Thank you very  
14 much.

15                   ATTORNEY KING:

16                   And that, in terms of the restructuring  
17 petition, is the conclusion of this presentation.  
18 We'd be happy to answer any question that you may have  
19 on this particular piece of why we're here today.

20                   CHAIRMAN:

21                   Thank you very much. Before we move over  
22 to Enforcement Counsel, just like to recognize Dan  
23 Tufano, who is here, representing Agriculture  
24 Secretary Greig. Welcome, Dan.

25                   ATTORNEY TUFANO:

1 Thank you.

2 CHAIRMAN:

3 OEC?

4 ATTORNEY DALE MILLER:

5 Thank you, Mr. Chairman, members of the  
6 Board. My name is Dale Miller, D-A-L-E, M-I-L-L-E-R.  
7 I'm the Deputy Chief Enforcement Counsel for Eastern  
8 Region. With me at the table is Dustin Miller,  
9 D-U-S-T-I-N, no relation. He is Assistant to the  
10 Enforcement Counsel for the Eastern Region. And if I  
11 may, Mr. Chairman, I'd like to ask a few questions.

12 Just to be clear ---. And I'll just ask  
13 a question. You all can determine who can best answer  
14 it. You are not at this time asking the Board to  
15 approve the change of control; is that correct?

16 ATTORNEY KRAUSS:

17 We're asking for the ---. We will be  
18 asking for CMS ---. The restructuring petition  
19 provides that CMS will become a 30 percent partner.  
20 That is in the restructuring petition.

21 ATTORNEY DALE MILLER:

22 So the answer is no; correct? You're not  
23 asking for a change of control?

24 ATTORNEY KING:

25 Yeah. Well, we don't believe there's a

1 change of control. There's a transfer to 30 percent  
2 interest in the entity that will continue to be run  
3 and operated by Mr. Lubert and his partners.

4 ATTORNEY KRAUSS:

5 It's not a transfer. It's an issuance,  
6 an original issuance of 30 percent. It's not a  
7 transfer from somebody to somebody. It's an original  
8 issuance.

9 ATTORNEY DALE MILLER:

10 I understand. I'm just asking, you are  
11 requesting or not requesting a ---?

12 ATTORNEY KING:

13 Right.

14 ATTORNEY DALE MILLER:

15 It is not a change in control; okay. The  
16 corporate restructuring that you're asking for is  
17 based upon the submission of applications for CMS and  
18 affiliated entities. Have all those applications been  
19 submitted?

20 ATTORNEY KING:

21 Yes, sir.

22 ATTORNEY DALE MILLER:

23 The corporate restructuring that you're  
24 asking for and the percentage that you're asking for  
25 in your pleading, have those in any way changed from

1 the date of the pleading, which was July 9th, 2010?

2 ATTORNEY KING:

3 No, and when they were submitted, they  
4 were proposed pending Board approval. It was not  
5 changed.

6 ATTORNEY DALE MILLER:

7 All right. Besides the \$30 million  
8 equity effusion by CMS, is there anyone else or any  
9 other entity that's going to or contemplated to effuse  
10 any other equity into the Valley Forge financing?

11 ATTORNEY KING:

12 No.

13 ATTORNEY KRAUSS:

14 To be clear, there may be more money  
15 needed, and partners necessary, as they already have  
16 the funds and fees that we've identified in the  
17 presentation will be made by a partner from time to  
18 time as required.

19 ATTORNEY KING:

20 Correct. No new partners.

21 ATTORNEY KRAUSS:

22 No new financing.

23 ATTORNEY DALE MILLER:

24 Oh, okay.

25 ATTORNEY KRAUSS:

1           And those partners, excuse me, will, you  
2 know, submit their --- will pay their portion share.

3           ATTORNEY DALE MILLER:

4           Has a slot machine license been issued to  
5 Valley Forge?

6           ATTORNEY KING:

7           Not yet, no.

8           ATTORNEY DALE MILLER:

9           Okay. You stated on the record that you  
10 contemplated filing a petition with the Board for a  
11 table game certificate. Can you give us an estimate  
12 of when you will file such a request?

13          ATTORNEY KING:

14          Well, we would like to do it as soon as  
15 the Board is ready to receive it. And I would presume  
16 that would be sometime over the summer.

17          ATTORNEY DALE MILLER:

18          That's all the questions I have, and I  
19 defer any further questions to the Board.

20          CHAIRMAN:

21          Thank you. Does OEC have a separate  
22 presentation?

23          ATTORNEY DALE MILLER:

24          We do not, sir.

25          CHAIRMAN:

1                   Okay. Thank you. Valley Forge, any  
2 follow-up questions for the Enforcement Counsel?

3                   ATTORNEY KING:

4                   Yes, sir. Just --- only housekeeping is  
5 we'd like to move our presentation into the record.

6                   CHAIRMAN:

7                   So noted, and it'll be moved into the  
8 record.

9                   ATTORNEY DALE MILLER:

10                  Mr. Chairman, I apologize for the  
11 interruption. We would like to make our position  
12 clear at the conclusion of the Board questions if we  
13 may.

14                  CHAIRMAN:

15                  Great. Thank you. With that I'll take  
16 questions from the Board. Commissioner Trujillo?

17                  MR. TRUJILLO:

18                  I guess where I'd like to start is on the  
19 resulting ownership. As I read your organizational  
20 chart pre and post, pre-completion of capitalization,  
21 as it's described, Mr. Lubert owns 51.422 percent, and  
22 post-completion of capitalization, Mr. Lubert owns  
23 36.036 percent; am I correct?

24                  ATTORNEY KING:

25                  That's correct.

1                   MR. TRUJILLO:

2                   And so, is there something in the  
3 corporate structure, in the corporate government's  
4 documents that ensures that Mr. Lubert's control,  
5 quote, unquote, is the same at 51.422 percent as it  
6 was at 36.036 percent?

7                   ATTORNEY KING:

8                   Yes, by virtue of the fact that he  
9 continues to hold majority interest in the general  
10 partner.

11                   MR. TRUJILLO:

12                   And walk me to the ---. And you're  
13 talking about the Valley Forge Convention Center  
14 Partner, GP, LLC?

15                   ATTORNEY KING:

16                   Correct. And you'll see there that the  
17 interest that he maintains is 52.02 percent. And  
18 previously, it only decreases a bit. Before the  
19 petition, if granted, his holding is 57.8 percent.  
20 But he continues to be the majority controlling  
21 partner of the GP, which then controls the underlying  
22 partnership.

23                   MR. TRUJILLO:

24                   So, what you have post restructuring,  
25 then, is a financial participation that is diluted,



1 but a control that remains unchanged, as I read this;  
2 am I correct?

3 ATTORNEY KING:

4 That's correct.

5 MR. TRUJILLO:

6 Okay. And Mr. Krauss, if this  
7 transaction were to be taking place not today but the  
8 day after the license was issued to your client, would  
9 you still be of the opinion that no change of control  
10 is taking place?

11 ATTORNEY KRAUSS:

12 I would be of the opinion that  
13 technically, no change of control is taking place, but  
14 under the way 1328 is drafted, if it took place the  
15 day after the license had been issued, then the  
16 technical language would apply. And then we would  
17 argue for special circumstances and drive the fee down  
18 as low as possible.

19 MR. TRUJILLO:

20 I understand. And I'm just trying to get  
21 a feel. We're going to speak as candid as I can. I  
22 just want to get to what's real, you know, what the  
23 substance of the transaction is. And then I'll state  
24 again what my concern is, and you can maybe just  
25 explain to me as best you can.

1           The notion of the entry of the 30 percent  
2 equity investor at this stage, post hearing, the 30  
3 percent equity investor, I understand, is not a ---  
4 doesn't appear to be an issue whatsoever, but have not  
5 gone through the whole ---- the same licensing rigor  
6 from start to finish. So to me, the notion of --- and  
7 we could just as easily postpone a decision on this  
8 issue until after the issuance of the license.

9           And so I guess I'm just trying to avoid  
10 cuteness with respect to the license. I want to get  
11 just to the substance of what's really going on here.  
12 And it seems to me that the 30 percent is still  
13 greater than the 20 percent, and so under the language  
14 of the statute, if you want to talk intent, it seems  
15 to me that somebody entering --- and that you can flip  
16 an option just as easily as you can flip a license.

17           And so I don't know that there's a great  
18 deal of difference between the transfer or the entry,  
19 whether it's an initial capitalization entry of a 30  
20 percent investor, than there is selling somebody's  
21 interest to that same person. So, maybe you can help  
22 me with that, because I'm still struggling with the  
23 substance of the transaction.

24                   ATTORNEY KRAUSS:

25           We struggled with it, too, so ---. In

1 fact there is no change of control, in fact. We've  
2 just been over that. Under Pennsylvania law, the  
3 general partner controls the partnership and Ira  
4 Lubert controls the general partner and controlled it  
5 before and controlled it after. So just forget the  
6 technicalities. In fact there is no change in  
7 control.

8 MR. TRUJILLO:

9 But with respect to the Gaming Act, is  
10 what I'm talking about.

11 ATTORNEY KRAUSS:

12 Well, now, under the way 1328 was drafted  
13 ---. We picked 20 percent, by the way, because that's  
14 what the Pennsylvania anti-takeover statute used, and  
15 that's why the 20 percent was used. And it was kind  
16 of a benchmark that we wanted to point to to say, hey,  
17 that's the right number.

18 Nobody made a distinction between the  
19 partnership interests and general partnership interest  
20 of voting and not voting and everything else, and then  
21 as I recall, there were no such discussions. And I  
22 think under the technical language, if you want to go,  
23 as you just did, then there would be an issuance of  
24 more than 20 percent.

25 Now, the difference, though, is, again,

1 changing control connotes transfer. There is no  
2 transfer here. There's no issuance. So you ask me if  
3 it happened two days later, what would that ---?

4 Well, if we didn't meet your approval, we  
5 would've issued CMS their 30 percent a long time ago.  
6 And we were waiting. We had to wait while the Supreme  
7 Court was doing its actions under the law. We were  
8 all frozen during that period of time, so you're  
9 right.

10 MR. TRUJILLO:

11 With respect to the guarantees of Mr.  
12 Lubert, I think you'd mentioned there were seven  
13 guarantees. How many of them, Mr. Lubert, are you  
14 personally guaranteeing, rather than having ---?  
15 Because I understand ---. I know several entities  
16 were the ones, as I understood them, to be guarantees,  
17 because ---. I know you can't wait to answer this  
18 question. I can tell.

19 ATTORNEY KRAUSS:

20 Thank you very much.

21 MR. LUBERT:

22 All seven.

23 MR. TRUJILLO:

24 Okay. That was intended to be outside.  
25 And the \$6.025 million of expenses and the like,

1 what's happened with that 6.025? Has that gone back  
2 out or is that still within the transaction?

3 MR. LUBERT:

4 That's still in the transaction.

5 MR. TRUJILLO:

6 And then finally --- I think finally,  
7 which we're showing you, with the ---? One thing I  
8 didn't quite understand, but I think I understand is  
9 that my horrible math indicates that for 30 percent  
10 equity CMS, 30 percent, they're adding --- putting in  
11 about 22 percent of the total of project cost,  
12 because, again, my bad math is ---. Okay. That \$30  
13 million divided between \$136 million change, and I end  
14 up at around 22 percent.

15 So they're getting about ---? Am I  
16 correct; it'd be eight percent premium, if you will,  
17 because of the equity component? Or can you explain  
18 to me why they're getting a little bit of a bump on  
19 their ---? I don't think it's because you're a bad  
20 negotiator, Mr. Lubert, so I ---.

21 MR. LUBERT:

22 I'm going to approach it that way.  
23 Actually, it was used before table games were passed  
24 so that you have to take into consideration of  
25 approximately \$30 million increase in cost, or more

1 than that. It really wasn't part of the process.  
2 It's just ---. So, we didn't know exactly what the  
3 number was going to be.

4 So, you requested a lot of things. You  
5 request also the tough economic times that we were  
6 confronted with at the time.

7 MR. TRUJILLO:

8 And what was the time of the commitment,  
9 or at least ---. And I won't say commitment for  
10 purposes of speaking to, but actually, you know, when  
11 was this whole thing conceptualized, that CMS would be  
12 the \$30 million --- or it doesn't have to be the even  
13 \$30 million, but had ---. Yeah, go ahead.

14 ATTORNEY KING:

15 Yeah, if you would recall from last week.

16 MR. TRUJILLO:

17 Last week, yeah ---.

18 ATTORNEY KING:

19 There was a term sheet that was signed in  
20 August ---

21 MR. TRUJILLO:

22 2010?

23 ATTORNEY KING:

24 --- of 2010, yeah. And I was just  
25 pointing out, you know, again, one of the special

1 circumstances was the reason why that discussion  
2 happened was because of the passage of Act One. And  
3 you know, we believe that we're going to have to spend  
4 additional costs that need to be addressed with, you  
5 know, Act One, so ---.

6 MR. TRUJILLO:

7 And I thought that was my last question.

8 MR. LUBERT:

9 When I sat before this --- the last time  
10 I was here and pledged that I would get this financed,  
11 table games were two to three years away, if ever.  
12 And right after that happened, which is a positive for  
13 everyone, the cost of proposals that we were getting  
14 were such that we felt it was necessary to make sure  
15 to fill the pledging obligation that we were properly  
16 capitalized. That's when these conversations started,  
17 culminating with this term sheet.

18 MR. TRUJILLO:

19 And one final, I think, is ---. Mr.  
20 Krauss or anyone can take a stab at this. If we were  
21 to determine that a change of control has taken place  
22 and a changing of control fee does apply, and if we  
23 were to --- and I don't think it was meant to dissent,  
24 but if we were to give credit to Commissioner Ginty's  
25 view of the five percent maximum, what's your boggy on

1 what the license fee cost could be? And if we took  
2 into consideration the circumstances over the last  
3 couple of years that your client has found itself in,  
4 what's your bogy?

5 ATTORNEY KING:

6 I can stab at it. Yeah, I think that we  
7 can see where the staff has come to find that maybe  
8 offer a compromise position. I mean first of all, it  
9 shouldn't be \$2.5 million for the reasons we stated.  
10 It should be proportional to what's gone on with the  
11 whole transfer of an entity. And that's where that  
12 \$2.5 million came in.

13 ATTORNEY KRAUSS:

14 Excuse me. 1328 talks about a  
15 proportionate reduction.

16 MR. TRUJILLO:

17 I understand, I understand.

18 ATTORNEY KING:

19 So what we've just been talking about  
20 here is if you continue on with that logic where we  
21 don't have a full transfer of 100 percent, and we  
22 don't have a transfer of control, technically, not  
23 1328, then it wouldn't be logical to say it should be  
24 30 percent of \$250,000.

25 MR. TRUJILLO:



1                   That's all I have, Mr. Chairman.

2                   MR. GINTY:

3                   Yeah.

4                   CHAIRMAN:

5                   Commissioner Ginty?

6                   MR. GINTY:

7                   I tried this before. You know, I  
8 understand the issue of control and changing control,  
9 but you don't have a license to give anybody now, do  
10 you? Under 1328, if you're going to have a change in  
11 control of the license ---

12                   ATTORNEY KING:

13                   It has not been issued.

14                   MR. GINTY:

15                   --- you got to have a license?

16                   ATTORNEY KING:

17                   Correct.

18                   MR. GINTY:

19                   Okay. I just wanted to make sure I  
20 wasn't missing something.

21                   ATTORNEY KING:

22                   You're not.

23                   CHAIRMAN:

24                   Thank you. Commissioner ---? Any other  
25 questions? I have one quick question. Go back, Mike,

1 if you can, to slide seven. Make sure I understand  
2 this right. The total loan commitments, Mr. King, I  
3 thought I heard you say were \$100 million, so if I'm  
4 reading this chart right, the \$40 million from  
5 Susquehanna gets swapped out with the \$40 million from  
6 Can-Am at the end of the day?

7 ATTORNEY KING:

8 That's assuming the Board approves the  
9 Can-Am transaction.

10 CHAIRMAN:

11 Right. So what happens ---? My question  
12 is, what happens if Can-Am is not approved?

13 ATTORNEY KRAUSS:

14 It goes back to what I was talking about.  
15 There's a loan guarantee by Ira Lubert ---

16 CHAIRMAN:

17 Okay.

18 ATTORNEY KRAUSS:

19 --- and other partners.

20 CHAIRMAN:

21 So if Can-Am is not approved, the bridge  
22 loan commitment from Susquehanna stays in place?

23 ATTORNEY KING:

24 Yes.

25 ATTORNEY KRAUSS:

1                   For 18 months, and that has to be  
2 replaced. And if it's not replaced, then it's on Mr.  
3 Lubert to replace it.

4                   CHAIRMAN:

5                   Thank you. Commissioner Trujillo?

6                   MR. TRUJILLO:

7                   One follow-up to that. Does anybody  
8 other than Mr. Lubert act as a backstop on these  
9 loans?

10                  ATTORNEY KRAUSS:

11                  Okay. Mr. Lubert is and CMS is, to a  
12 degree, and the other partners are to their  
13 percentage.

14                  MR. TRUJILLO:

15                  So are they proportionate ---.

16                  ATTORNEY KRAUSS:

17                  Those banks --- said at the meeting last  
18 week. You know how banks operate. If they want to go  
19 after somebody, they go after the one person and let  
20 that person worry about it, so ---.

21                  MR. TRUJILLO:

22                  So is it proportionate to their equity  
23 participation, and they're limited, or what's the  
24 proportion?

25                  MR. LUBERT:

1                   It's proportionate to their ownership  
2 interest.

3                   MR. TRUJILLO:

4                   Okay. Thank you.

5                   CHAIRMAN:

6                   Commissioner McCall?

7                   MR. MCCALL:

8                   Just a question for clarification in my  
9 own mind. I understand this is ---. \$130 million is  
10 invested, but the \$23 million, additional dollars that  
11 you were budgeting in this plan, how much of that \$23  
12 million is inflationary, and how much of it is  
13 actually invested in the infrastructure and the  
14 building of the --- the expanding of the facilities?

15                   MR. LUBERT:

16                   Interesting question. Actually, all  
17 additional costs, no inflationary dollars at all,  
18 zero.

19                   MR. MCCALL:

20                   Thank you.

21                   CHAIRMAN:

22                   Okay. Any other questions? Okay. Mr.  
23 Miller, you want to make one last statement?

24                   ATTORNEY DALE MILLER:

25                   Yes, Mr. Chairman, members of the Board.

1 I want to make the position clear on the OEC. First  
2 of all, when the petition was filed, the OEC made a  
3 number of suggestions to the petition, some of which  
4 involved --- required that Valley Forge make a  
5 presentation at a public hearing. They've done that,  
6 and for the record, we do not object to the corporate  
7 restructuring and withdraw those objections at this  
8 time.

9                   However, with regard to the payment of a  
10 fee in Section 28 --- or excuse me, 1328 and whether  
11 that is applicable or not, we do have a  
12 recommendation. We understand that Valley Forge is  
13 not seeking a change of control here. That's why I  
14 specifically asked them that question. They're not  
15 seeking a change of control, because as Commissioner  
16 Ginty said, they don't have a license. And you have  
17 to have a license issued to you in order to do that.

18                   So we don't believe that Section 1328  
19 directly applies in this case. Therefore, we don't  
20 think it's technically a change of control, but we  
21 recommend that this transaction be treated similarly  
22 to a change of control.

23                   Now, the Board can do that in two ways.  
24 The Board, as Commissioner Trujillo stated, can defer  
25 action on this until Valley Forge's license is issued.

1 And at that point, Valley Forge would either have to  
2 repetition and ask for a change of control of the  
3 issued license, or the Board can make a decision on  
4 this request after the license is issued, and it would  
5 in fact be a change in control under 1328.

6           The other thing the Board can do is to  
7 condition the issuance of the license, when it is in  
8 fact time to issue that license, on the payment of a  
9 fee. The Board under Section 1202(b)(12) of the Act  
10 has the discretion to issue, renew, condition or deny  
11 the issuance of a slot machine license. You could  
12 condition any license any way you see fit.

13           If you decide to do that, we recommend  
14 that you condition the license for the payment of a  
15 fee, and that fee should be in line with what the  
16 Board has done in the past, \$250,000, which is the  
17 percentage of the original fee for the license in the  
18 first place. It's up to the Board. The Board has the  
19 discretion on this, and the Board can do whatever it  
20 feels is appropriate in this matter.

21           We feel that Valley Forge has a very  
22 valuable commodity in the gaming license. In this  
23 particular ---. And that license is worth a lot of  
24 money. In this particular case, had the license been  
25 issued, this would in fact be a change in control, and

1 the fee would be required. The Board is not permitted  
2 to not assess a fee on change of control. I think  
3 1328 is clear on that.

4 That would be our recommendation, those  
5 two options, and it's up to the Board to decide which  
6 one to --- or any --- to take. Thank you.

7 CHAIRMAN:

8 Any questions?

9 ATTORNEY KRAUSS:

10 Chairman, if I might?

11 CHAIRMAN:

12 Yes.

13 ATTORNEY KRAUSS:

14 We would just respectfully request that  
15 whatever decision the Board makes that it then make a  
16 complete, finished decision. All of the financing is  
17 contingent on everything else happening, and we can't  
18 have things that happen later, because CMS has to come  
19 in to complete the financing package, and we have to  
20 get this thing going already. So whatever your  
21 decision is, we respectfully request a final decision.  
22 Thank you.

23 CHAIRMAN:

24 I have a couple questions for Mr. Miller.  
25 Mr. Miller, I think we heard here today that the

1 change of control trigger, if you will, doesn't apply  
2 here. You're not moved by that?

3 ATTORNEY DALE MILLER:

4 The change of control trigger, sir?

5 CHAIRMAN:

6 Right. They do not have a slot machine  
7 license?

8 ATTORNEY DALE MILLER:

9 A slot machine license has not been  
10 issued to Valley Forge; that is correct.

11 CHAIRMAN:

12 So how do you square with your  
13 recommendation that we charge them a change of control  
14 fee?

15 ATTORNEY DALE MILLER:

16 I'm not saying that you charge them the  
17 change of control fee. I'm recommending that you  
18 condition their license upon the payment of \$250,000.  
19 That would be the amount of a change of control fee  
20 that we would recommend had a license been issued and  
21 this was a natural change of control.

22 It's clearly, technically, not a change  
23 of control. However, we're recommending that you  
24 treat it like one and condition the license on the  
25 payment of the fee. You have the discretion. You



1 have the ability under the Act to condition the  
2 license in any way you feel is appropriate.

3           We're offering that as an option,  
4 because, again, we're dealing with technicalities  
5 here. If the license was issued tomorrow and you made  
6 a decision the next day, they'd have to pay the fee.  
7 I'm not saying that they are in any way --- Valley  
8 Forge is in any way attempting to avoid the payment of  
9 the fee, but the facts are the facts, and they're not  
10 going to change.

11           CHAIRMAN:

12           Well, the facts are that the change in  
13 control fee, as we sit here today, in this matter  
14 before us doesn't apply.

15           ATTORNEY DALE MILLER:

16           That is correct.

17           CHAIRMAN:

18           Are you not moved by the fact that they  
19 had at least two years of delay because of the Supreme  
20 Court decision that was beyond their control?

21           ATTORNEY DALE MILLER:

22           I understand Valley Forge's position. I  
23 understand the circumstances surrounding the license  
24 and the problems they've had with the long wait, and  
25 I'm absolutely ---. I am sympathetic, I am. I'm just

1 offering the Board options because of the  
2 technicalities involved in this case. Were I  
3 representing Valley Forge, I'm certain that I would be  
4 arguing the same --- in the same way. But I'm not. I  
5 don't represent Valley Forge. I represent the Board.

6 CHAIRMAN:

7 All right. Thank you. Any other  
8 questions? Okay.

9 MR. TRUJILLO:

10 I don't want to beat a dead horse, but I  
11 just want to ---.

12 CHAIRMAN:

13 Sure. Commissioner Trujillo?

14 MR. TRUJILLO:

15 Do I understand you, then, to take the  
16 position that the basis for the Board's alternative  
17 action to impose --- to condition the issuance of the  
18 license on the payment fee is because, in effect, the  
19 substance of the transaction is the equivalent of a  
20 change in control, but that it technically does not  
21 meet the standard change of control; is that ---?

22 ATTORNEY DALE MILLER:

23 That is correct.

24 MR. TRUJILLO:

25 Okay. Thank you. That's all I have.

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:

Thank you. Okay. With that, the matter is now closed ---

ATTORNEY KRAUSS:

Thank you.

CHAIRMAN:

--- and ---. I'm sorry. Mr. Krauss?

ATTORNEY KRAUSS:

Thank you.

CHAIRMAN:

Okay.

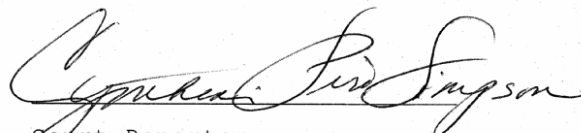
\* \* \* \* \*

HEARING CONCLUDED AT 11:00 A.M.

\* \* \* \* \*

CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Chairman Fajt, was reported by me on 04/28/2011 and that I Cynthia Piro Simpson read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.

  
Court Reporter