

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

* * * * *

IN RE: VALLEY FORGE CONVENTION CENTER PARTNERS, LP -
PETITION FOR PARTIAL RECONSIDERATION OF THE BOARD'S
OCTOBER 31, 2011 ORDER AND ADJUDICATION APPROVING
MODIFYING VALLEY FORGE'S ACCESS PLAN

* * * * *

BEFORE: WILLIAM H. RYAN, JR., CHAIRMAN
Gregory C. Fajt, James B. Ginty,
Keith R. McCall, Anthony C. Moscato,
Gary A. Sojka, Kenneth I. Trujillo; Members
Christopher Craig, Representing Robert
McCord, State Treasurer
Robert Coyne, Representing Daniel P.
Meuser, Secretary of Revenue
Matthew Meals, Representing George Greig,
Secretary of Agriculture

HEARING: December 6, 2011, 10:02 a.m.

LOCATION: PUC Keystone Building
Hearing Room #1
Harrisburg, PA 17120

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

OFFICE OF ENFORCEMENT COUNSEL

CYRUS PITRE, ESQUIRE

Chief Enforcement Counsel

PA Gaming Control Board

P.O. Box 69060

Harrisburg, PA 17106-9060

Counsel for Pennsylvania Gaming Control Board

RAYMOND A. QUAGLIA, ESQUIRE

ADRIAN R. KING, JR., ESQUIRE

Ballard, Spahr, Andrews & Ingersoll, LLP

1735 Market Street

51st Floor

Philadelphia, PA 19103-7599

Counsel for Valley Forge Convention Center

Partners, LP

KEVIN C. HAYES, ESQUIRE

Doherty Hayes, LLC

321 Spruce Street

Scranton, PA 18503

Co-Counsel for Valley Forge Convention Center

Partners, LP

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 (cont.)

ALAN C. KOHLER, ESQUIRE
Eckert, Seamans, Cherin & Mellott, LLC
213 Market Street
Eighth Floor
Harrisburg, PA 17101
Counsel for Greenwood Gaming and Entertainment

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 Ryan 5 - 7

PRESENTATION

By Attorney Quaglia 7 - 15

QUESTIONS BY BOARD MEMBERS 15 - 25

PRESENTATION

By Attorney Kohler 25 - 31

QUESTIONS BY BOARD MEMBERS 31 - 41

PRESENTATION

By Attorney Pitre 41 - 43

CLOSING REMARKS

By Chairman Ryan 43 - 44

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>
---------------	--------------------	---------------------	----------------------

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:

I'm Bill Ryan, Chairman of the Pennsylvania Gaming Control Board. Before we begin, I would like to ask everyone, as we always do, to please turn off your cell phones, PDAs and other electronic devices. Thank you. In addition to the seven members of the Board, joining us today is Christopher Craig, representing State Treasurer, Robert McCord; Robert Coyne, representing Secretary for the Department of Revenue, Daniel Meuser; and Matthew Meals, representing the Secretary of Agriculture, George Greig. Thank you all for coming.

A quorum of members being present, so I will call today's meeting to order. The first order of business, I would like to ask everybody to stand for the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN:

We have oral argument scheduled for the Board today which will take place prior to our public meeting. Specifically, the item before us today is two petitions for reconsideration which are being sought today for consideration by the Board. Each

1 petition pertains to the Board's October 31st, 2011
2 Adjudication and Order approving Valley Forge
3 Convention Center Partners' Casino Access Plan with
4 certain modifications.

5 Today we will hear first from Valley
6 Forge, then Greenwood Gaming, and finally from the
7 Office of Enforcement Counsel. We will then open it
8 up to Board questions. I would ask each party to keep
9 your arguments to approximately ten minutes.

10 Finally, I would note for the record that
11 the Board has also received a brief in this matter
12 from Woodlands Fayette, holders of the second Category
13 3 License. The Board will consider the argument
14 raised in that brief, but we will not be hearing from
15 Woodlands today.

16 Valley Forge present? Come forward,
17 please. I would appreciate it if whoever is speaking
18 first states their name. And spell your last name so
19 the court reporter has a clear idea who it is who is
20 speaking on behalf of Valley Forge. And that goes, of
21 course, for everybody else. Thank you.

22 ATTORNEY QUAGLIA:

23 Thank you, Mr. Chairman, good morning
24 members of the Board. Ray Quaglia, Q-U-A-G-L-I-A,
25 from the Ballard Spahr Firm on behalf of Valley Forge.

1 With me at counsel table, I have on my left my
2 partner, Adrian King, K-I-N-G, from Ballard Spahr, and
3 on my right, Kevin Hayes, H-A-Y-E-S, from the firm of
4 Doherty Hayes. And Mr. Chairman, by the Board's
5 suggested time, I think we got about ten minutes here.

6 CHAIRMAN:

7 If you go a couple minutes less, we won't
8 mind.

9 ATTORNEY QUAGLIA:

10 We'd like to just begin by putting this
11 in context, Mr. Chairman, that it is an explicit
12 legislative purpose, as set forth in the Gaming Act,
13 to enhance the further development of the tourism
14 market, including but not limited to year-round
15 recreational and tourism locations in this
16 Commonwealth. In that context, we submit that the
17 Board must interpret the access restrictions of
18 Section 1305. In other words, they should be read
19 consistent with the legislative intentions, induce
20 tourism and have successful functioning in Category 3
21 facilities, and obviously not in such a way that there
22 would be a question about the intention. In the
23 cleanest sense, the addition of a gaming amenity would
24 make it more likely that someone considering whether
25 or not to hold an event at Valley Forge Resort would

1 elect to do so because of the availability of gaming
2 as an additional attraction to their guests.
3 Alternatively, it may be someone just primarily
4 interested in going into a casino, but it's, in fact,
5 required before he or she enters to buy a hamburger,
6 buy a couple drinks, patronize another amenity, making
7 exposure that he wouldn't otherwise get, and thinks to
8 himself, wow, that's a good burger, I like that bar,
9 and then come back. So, there are a number of ways
10 that the two can be partners.

11 We have spent significant time working
12 with the Board staff to develop a plan that is
13 consistent with the legislative intent of operating a
14 successful facility, while also keeping mindful of the
15 access limitations imposed by Section 1305. And we're
16 seeking consideration here today of a very limited
17 portion of the Board's Order. What we want at this
18 point primarily is get open and operating and start
19 generating revenue for the facility, for the
20 Commonwealth, for taxes. So, what we are requesting
21 here today, which I think is even more limited in our
22 petition, is that the Board modify its October 31st
23 Adjudication and Order to relieve us, to relieve
24 Valley Forge from the obligation of requesting
25 identification and conducting, in effect, a background

1 check cross referencing against the Self Exclusion
2 List solely for members of the transient public whose
3 access to the casino is premised by their personal
4 expenditure of ten dollars or more on one of the
5 amenities.

6 To be clear, we are not requesting relief
7 from the Board's Order with respect to any hotel
8 guests, whether the room is in their name or someone
9 else staying in their room. We will get ID from those
10 people. We will run a background check and cross
11 reference them against the Exclusion List. We're not
12 requesting relief for any attendee at a social event.
13 If someone's there for a wedding, for a bachelor
14 party, for a family reunion, if they want to go to the
15 casino, we'll get their ID, we'll run the background
16 information to make sure they're not on the Exclusion
17 List. We're not requesting relief for anyone who is
18 attending a convention or a conference at which the
19 host is paying their non de minimis consideration.
20 So, they attend and aren't paying any money
21 themselves, they want to go to a casino, we'll go get
22 their background information. We're going to get ---
23 run a cross reference against the Exclusion List. The
24 only people that we're requesting relief, the only
25 category of patrons, are again members of the

1 transient public who are not registered guests and who
2 are seeking casino access based on their personal
3 expenditure of ten dollars or more on one of the
4 amenities.

5 That is, we submit, consistent with the
6 statute, which in its definition of paying for the
7 amenities specifically distinguishes --- or the
8 amenities specifically distinguishes between
9 registered guests on the one hand and members of the
10 transient public on the other hand. It is equally
11 important for us, consistent with customer
12 expectations. Someone registering for a hotel room,
13 someone checking into a room is not going to be put
14 off by requesting their ID. It's become the normal.
15 Someone, an adult, who is clearly of age, who
16 understands that if he only spend ten dollars on food
17 and beverage and other amenities to get into the
18 casino may not appreciate being carded, having to turn
19 over his ID, having to wait while a background check
20 is conducted on him to see whether he's on the Board's
21 list. It is our concern that that type of experience
22 for a member of the transient public will have a
23 significant deterrent effect on their inclination to
24 visit our facility either in the first instance or
25 perhaps, more dangerously, to come back or return.

1 And there is empirical data that supports that
2 concern. And that was addressed I think very nicely
3 in the brief submitted by Woodlands with respect to
4 the prior experience with loss limit regulations in
5 Missouri and Iowa, which imposes a capital requirement
6 of checking ID and running a check on anyone who
7 wishes to come into a casino and gamble. And what
8 both of those states found, and subsequently repealing
9 those regulations, was that people were sufficiently
10 put off by what they perceive as the intrusion into
11 their personal privacy, that they would be less
12 inclined to come spend money at those facilities.
13 Now, that's even --- I'm more concerned here with
14 Valley Forge because this is not a statewide
15 requirement. This would be a requirement imposed
16 solely on Valley Forge Casino. So, business that
17 would otherwise be coming to Valley Forge, and
18 further, the legislative intent of boosting tourism is
19 now going to be a supported diversion of other
20 facilities, either in the Commonwealth or elsewhere,
21 which would frustrate the goal of the General
22 Assembly.

23 Now, we understand there are two concerns
24 that the Board has raised with respect to the relief
25 we're seeking. They are that otherwise excluded

1 persons could gain entry to the casino and there may
2 be a transfer of cards to otherwise eligible persons.
3 We submit neither of those concerns is sufficient to
4 outweigh the demonstrable adversity on our business
5 that requiring ID for members of the transient public
6 would have.

7 With respect to excluded persons, we
8 begin --- people on the Exclusion and Self-Exclusion
9 Lists, we begin by noting that they are not addressed
10 by Section 1305. There is nothing in the legislative
11 access plan requirement that mandates the exclusion of
12 otherwise excluded persons as part of the access plan.
13 The exclusion of excluded persons is separately
14 addressed. And it's addressed not with respect to
15 Category 3 facilities but with respect to all
16 facilities in this Commonwealth, which certainly
17 suggests that there should be an equally applicable
18 standard and processes that apply to all facilities
19 and not an overly burdensome one apply to the small
20 facilities of all.

21 Now, although, as was said in the --- I
22 think the petitions say we should be required no more
23 than any other operator with respect to excluded
24 persons, I know that, in fact, we are doing
25 exponentially more as things now stand because, as I

1 stated, we will be getting IDs, we will be running
2 background checks on a significant portion of our
3 patrons, on all registered guests, on all attending
4 social events, on all people who significant
5 consideration is being paid by a third party. We will
6 be checking all of their IDs. We will be referencing
7 all them against the Exclusion Lists. Parx does
8 nothing. No other operator in the Commonwealth does
9 that. We are significantly far ahead of any other
10 operator in terms of the steps we are taking,
11 undertaking, to keep excluded persons down. We submit
12 that, again, given the demonstrable adverse impact on
13 our business, it would not make sense to take what is
14 already gold standard, if you will, and make it more
15 adverse. That's with respect to excluded persons.

16 With respect to transferability, we come
17 back to this idea that this is all speculation in
18 contrast to the empirical data on what happens when
19 you impose this registration requirement on people.
20 There is absolutely no data to suggest that there is
21 going to be any material problem with the transfer of
22 access cards. And in fact, common sense suggests
23 otherwise. It suggests otherwise because there is no
24 motive for an ineligible person to violate the law to
25 obtain an access card to which he or she is not

1 entitled in order to enter a casino when that same
2 person could go to any other casino in the
3 Commonwealth and not have to deal with access cards at
4 all and not have to deal with any other applicable
5 standard that would make it more difficult for them to
6 get in. So, there would be no --- there is no common
7 sense motive for anyone to try to obtain one of these
8 access cards. And instead, there's no economic motive
9 for someone else to try to transfer those cards.
10 Because in order to get an access card you have to
11 spend a minimum of ten dollars. So, if a person is
12 able to acquire an access card and wants to transfer
13 it, how --- what are they going to sell it for? They
14 can't sell it for what they paid for it because then
15 the person can spend the same amount of money and not
16 have to violate the law. So, all of this concern
17 about transferability of cards and Parx is
18 recommending a second ID check to prevent this
19 transferability is entirely speculative at this point.
20 And significantly we address it now because if it
21 turns out --- if contrary to common sense, that it
22 turns out that this --- turns out to be an empirical
23 problem with people obtaining access cards that
24 they're not entitled to at the casino, the board
25 retains discretion, obviously, to address that problem

1 going forward. The Board can impose restrictions.
2 The Board can change regulations entirely to address a
3 problem that emerges. We don't get a second chance to
4 make a first impression, to be ever so cliché. Once
5 someone comes and feels that we've been overly
6 intrusive and they don't want to feel like they're
7 going through airport security and they can go to any
8 other facility, assuming they're of age, they're not
9 going to be inclined to come back. And if the Board
10 softens its requirements down the road, that is
11 probably going to be too late for us in the majority
12 of circumstances.

13 I'm going to conclude with a quote from
14 our prolific commentator on the impact plan of access
15 plan requirements, Mr. Kohler, who observed to the
16 Board in his November 7th, 2006 letter that the
17 legislative intent of the access plan was to create a
18 required nexus to the resort hotel for casino patrons
19 but not such a restrictive nexus that the requirement
20 would adversely impact the economics of the Category 3
21 facility. That's simply our position today. And
22 that's why we're asking that the Board reconsider its
23 October 31st Adjudication and Order on the very
24 limited matter that we're proposing.

25 CHAIRMAN:

1 Thank you, Counselor. Any questions from
2 any members of the Board?

3 MR. TRUJILLO:

4 Mr. Quaglia, you raise this issue in the
5 context of it being potentially problematic to your
6 transient guests; am I correct?

7 ATTORNEY QUAGLIA:

8 Yes.

9 MR. TRUJILLO:

10 And so of your --- in your plan for this,
11 what portion of your clientele do you expect to be
12 transient guests?

13 ATTORNEY QUAGLIA:

14 I don't think we made that determination.

15 MR. TRUJILLO:

16 So in that case, you don't know whether
17 that's a problem for one percent or whether it's a
18 material problem or whether it has actually no
19 materiality?

20 ATTORNEY HAYES:

21 Commissioner Trujillo, I'm Kevin Hayes.
22 Because of this unique requirement we have with regard
23 to --- or unique set of ways people can gain access to
24 resort membership, the patrons of the amenities who
25 are registered attendees, we are not absolutely

1 certain as to what percent. We assert certain parts
2 with regard to number of memberships, number of
3 patrons of amenities, but we don't have the exact
4 percentage. We are anticipating a great number of
5 people because of our non-gaming amenities, our
6 reinvestment in new restaurants and a new food court
7 will cause a greater number of our patrons to be the
8 ten-dollar patron of the amenities patrons. So, we
9 don't have the exact number because it would really be
10 speculation, but I can tell you that part of the
11 business plan would be a significant number.

12 MR. TRUJILLO:

13 The problem I have is that you are asking
14 us to reconsider our decision based upon an impact and
15 you won't tell me whether you think it's half a
16 percent or whether --- any kind of materially
17 threshold or whether it's now greater. I don't speak
18 that language, so I don't know what a great number is.
19 So, for me to make an intelligent decision I have to
20 have a better sense of what that scale is. If you say
21 we think it's half, then I expect a size number. I
22 don't have to be inclined to like it and make a number
23 of assumptions, but I have to have some level of sense
24 as to whether it's more than half your guests, half of
25 the guests, third of the guests, you know, something.

1 Because otherwise, as far as I'm concerned, it could
2 be one transient guest as opposed to 100,000 transient
3 guests. I just have no idea based on what is before
4 me right now.

5 ATTORNEY HAYES:

6 Commissioner, I can tell you this, that
7 we expect that a great number, if not the greatest
8 number of patrons of our facility will obtain access
9 through the de minimis consideration portion of the
10 amenities and obvious consideration for the facility
11 at one of our other amenities.

12 ATTORNEY QUAGLIA:

13 Fifty (50) percent or more.

14 MR. TRUJILLO:

15 Okay. So, you expect it to be more than
16 half of your guests would be of the transient nature,
17 not of those that are either hotel guests or attending
18 maybe a function at the convention center?

19 ATTORNEY QUAGLIA:

20 If we do our job right, yes.

21 MR. TRUJILLO:

22 That's all I needed. Thank you.

23 CHAIRMAN:

24 Greg?

25 MR. FAJT:

1 Thank you, Mr. Chairman. Mr. Quaglia,
2 I've heard you walk through the issue of, as you
3 referred to them, background checks, bouncing IDs off
4 of underage, make sure people are of age and also
5 whether they're on the Excluded Persons List. I
6 didn't hear you address the issue of membership,
7 unless I missed it. I heard you talk about hotel
8 guests, and I heard you talk about guests at a
9 convention, weddings and Bar Mitzvahs and that type of
10 thing, but I did not hear you address the membership
11 issue. What is your position on that?

12 ATTORNEY QUAGLIA:

13 Yes, you are correct, Commissioner. I
14 didn't address memberships. But for members we would
15 also be requiring identification and running names
16 against the Exclusion and Self-Exclusion Lists.

17 MR. FAJT:

18 Thank you.

19 CHAIRMAN:

20 Gary?

21 MR. SOJKA:

22 Thank you, Mr. Chairman. I just want
23 clarification for the basis of this appeal. On
24 October 31st this Board, in think in its zeal to be
25 sure that we were following every intent of the

1 statute and were doing our job to protect the public
 2 and integrity of gaming, we were getting excited about
 3 the fact that, as a Category 3, you had additional
 4 opportunities to screen people coming in that people
 5 in Category 2s and Category 1s, don't have. And at
 6 that time, if I remember correctly, you, as a group,
 7 were pretty much on board with that. But now we have
 8 this appeal, and I want to be sure --- is it based on
 9 real life new information, that is the information you
 10 supposedly have gleaned from Iowa, Indiana and other
 11 places, where you think there is real data that
 12 touches on this one specific issue of transient
 13 guests. So, is this appeal to a great degree simply
 14 based on new data and new research?

15 ATTORNEY QUAGLIA:

16 Yes, it is based, obviously, on we now
 17 have the benefit of the post-hearing briefs submitted
 18 by Woodlands, which lays out the empirical data of the
 19 experience they had in Missouri and Iowa.

20 MR. SOJKA:

21 And that was not available to you on
 22 October 31st, and it's not available to us?

23 ATTORNEY QUAGLIA:

24 Yes.

25 MR. SOJKA:

1 That's fine. Thank you.

2 CHAIRMAN:

3 Jim?

4 MR. GINTY:

5 I was present the last time around and
6 you are volunteering to do background checks and
7 people of exclusions. The last point, too, as you
8 mentioned, are the remaining requirements to do that.
9 Do you feel that you're under some statutory
10 requirement to check nametags of guests?

11 ATTORNEY QUAGLIA:

12 No, Commissioner, we don't feel that the
13 statute requires us to do --- we don't feel that the
14 statute requires us to do anything more with respect
15 to excluded and self-excluded people than the other
16 categories of licenses.

17 MR. GINTY:

18 So, this is voluntary on your part?

19 ATTORNEY QUAGLIA:

20 It is voluntary because, as I said, our
21 primary goal here is to get open and get operating,
22 and that degree --- we're continuing to try to work
23 with the Board and work with the staff to really kind
24 of limit --- we're trying to limit our area of
25 disagreement with the Board to what we deem to be the

1 really significant matter.

2 MR. GINTY:

3 I'm not sure we would be here if you
4 hadn't volunteered in the first place. Let me ask you
5 this. You would have no objection if this Board did
6 not require you to conduct these background exclusion
7 member checks?

8 ATTORNEY QUAGLIA:

9 No, absolutely not.

10 ATTORNEY KING:

11 If I can just add one thing. This is
12 Adrian King. With respect to the classes that we went
13 through, where we had agreed to check the background,
14 the Exclusion List, registered guests, members and
15 registered attendees. The reason why we volunteered
16 was simply because we knew we had an opportunity to
17 take a person's ID card and run the check. So, to
18 some degree we felt as if we were bending over
19 backwards trying to be very respectful of those
20 issues. And since we had an opportunity, you know,
21 obviously we volunteered to do it. And quite frankly,
22 I think we were somewhat surprised that it then
23 applied to the entire enterprise because, A, we don't
24 believe it was required, and effectively we were
25 caught off guard by that.

1 MR. GINTY:

2 You made it Sound like such a good idea.

3 CHAIRMAN:

4 Gentlemen, I have two questions. Let's
5 assume that you have an event, say it's an antique
6 show, for which a person has to pay ten dollars to
7 enter. I assume that gets the person the status to
8 then use the casino. Would that be correct?

9 ATTORNEY QUAGLIA:

10 Correct. Yes.

11 CHAIRMAN:

12 And that person would not be a person
13 whose ID would be checked or whose background would be
14 checked; correct?

15 ATTORNEY QUAGLIA:

16 Correct.

17 CHAIRMAN:

18 Is it, therefore, the way of putting it,
19 that if another person is paying the fee, the ten
20 dollars, instead of the person who was actually taking
21 advantage of it, is that the line of demarcation that
22 you're making separating one from the other?

23 ATTORNEY QUAGLIA:

24 Yes, it is, Mr. Chairman. The basis for
25 that, again, is really expectation, someone who is

1 there as a guest of another who's having their ---
2 they're paid by another, is going to be, we believe,
3 less troubled by the concept of having to present
4 identification to show who they are because they're to
5 take advantage of the opportunities being provided by
6 another. And again, it's all about customer
7 expectation for us. If the customer will not be put
8 off by turning over their ID, we're happy we can
9 volunteer. We're not troubled. The Board wants us to
10 run that ID against the Exclusion and Self-Exclusion
11 List. Our concern is simply with respect to the
12 patrons who did not have any expectation and will, in
13 all likelihood, object to being, in effect, subjected
14 to a background check when they would not otherwise.

15 CHAIRMAN:

16 Do either of the ex-officio members have
17 questions? Okay. Thank you, Counselor. Appreciate
18 your help here.

19 ATTORNEY KOHLER:

20 Alan Kohler, K-O-H-L-E-R. I'm with
21 Eckert Seamans and representing Greenwood Gaming here
22 this morning.

23 CHAIRMAN:

24 You may begin, sir.

25 ATTORNEY KOHLER:

1 Thank you, Chairman. I think the request
2 to reconsider is pretty straightforward. I think you
3 basically understand them through and through, so I'm
4 not going to waste your time by stating issues or
5 summarizing what's in our papers. But what I would
6 like to do is just address a few very specific points
7 that I think are important.

8 The first point more than papers this
9 morning about Valley Forge's, the relief we request is
10 extremely self-serving. And I'll start by admitting
11 that the self-serving component --- and I believe
12 everything both of us say is self-serving or we
13 wouldn't be representing our clients. But the relief
14 is not extreme. We are not arguing with the
15 consideration that casino access cards should have
16 photographs on them. That point has been raised here.
17 We also are not arguing that personalized information
18 should be stored on the cards or any other of the
19 various ideas floating around at this hearing, except
20 to provide further safeguards, further protection, but
21 also further burden.

22 What we try to do is focused on one
23 thing. We are merely asking that there be ID checks
24 that bear signatures at the point of entry of a casino
25 floor. And we are asking this because it's clear to

1 us that without this necessary safeguard, the chance
2 of avoiding widespread illegal access is unlikely.

3 I have an analogy for you this morning.
4 But before I do that, I'd like to address the analogy
5 that was raised by Valley Forge, that being the loss
6 of face, if you will, where IDs were checked to assure
7 if a patron had exceeded their loss limit. I think
8 that's a poor analogy. I know it's been reported that
9 the patrons didn't like their IDs checked. But I
10 think you have to look beyond that. The reason that
11 the ID checks were being looked at in those particular
12 instances was to assure that a person hadn't lost too
13 much money. And I think from a common sense point of
14 view, any of us can understand why that might be
15 offensive to patrons, particularly if they have lost a
16 lot of money. I think that's not such a good analogy
17 in the gaming context. What's being done here is to
18 check to see if someone's on a list which apparently
19 involves relatively few people. I can think of ---.

20 The other thing I would add, the loss
21 limit study is not of the record. It's been presented
22 by legal memorandum and by oral argument here this
23 morning. It was not presented at hearings. It was
24 not presented by witnesses. It was not subject to
25 Cross Examination. But again, if we're through oral

1 argument, arguing factual situations, the analogy I
2 think is best, and this hasn't been discussed at the
3 hearings, is retail stores like Costco and Sam's
4 Clubs. These stores check identification at three
5 points in their process. They check it when they
6 issue a membership card, of course. They check it
7 when you enter the store and, lastly, when you check
8 out at the cashier. Now, why do they do this? they
9 don't do it because they're legally required to do it
10 but because they have decided from a business
11 perspective that these set of steps are necessary to
12 assure that only members gain access. Would they
13 rather not have to do it? I suggest, of course they
14 would rather not have to do it for the exact same
15 reason Valley Forge has shared with you, atmospheric
16 concerns. But they have found that if they don't do
17 it, these multiple identification steps, including,
18 most importantly, checking at the cashier, that card
19 swapping, the word I'm using here this morning for
20 giving your card to someone else, between members and
21 non-members becomes very, very widespread. Even
22 though those cards, like the ones here, are not
23 transferrable, it's our position that without checks
24 at the point of entry, the system will be unworkable
25 and card swapping will be rampant. Furthermore,

1 checking one person every half hour, as indicated in
2 paragraph nine of the Order, is of insufficient
3 frequency to the extreme, which will provide no
4 assurance of anything.

5 My next point is in response to Valley
6 Forge's request to eliminate only ID check for patrons
7 of the amenities, that being at the time of issuance
8 of the card. Valley Forge's claim that Parx has not
9 identified any legitimate purpose for this ID check is
10 not true. We do understand that checking IDs of
11 patrons at the time of the card's issuance will not
12 keep them from card swapping after they receive a
13 card. That can only be accomplished effectively by ID
14 checking. However, as was raised earlier, the ID
15 check at the time of the issuance of the cards is
16 important in that it gives the process some
17 credibility. The ID check conveys to the patron that
18 it is only that person that is permitted to use the
19 card. Furthermore, it assures that the person who
20 signs the acknowledgement and waiver form, actually
21 signs his signature, signs that person's signature.
22 Otherwise, Valley Forge has no idea whether the actual
23 name of the person has been signed. For example, we
24 can presume or at least suggest that an excluded or
25 self-excluded person would not sign his or her name to

1 the waiver or acknowledgment form. Again, it gives
2 some credibility to the process. I don't think it
3 goes far enough, but it certainly has value.
4 Otherwise, Valley Forge has no idea who they are
5 giving these cards to.

6 The last point pertains to checks on the
7 Exclusion List. And we freely admit this is not our
8 issue. But we'd like to clear up something that
9 appears to have gotten confused in the debate. The
10 scanners and hand-held computers that are used to
11 crosscheck these lists operate by merely swapping the
12 card through the mechanism or by running it through a
13 laser. This does not require manual input of
14 information. The computer check is literally
15 completed in a matter of seconds. Only in an unusual
16 instance that the scanning device does not read the
17 card is further inquiry required. In a normal
18 scenario, the patron does not even know that the check
19 is being made and the process being completed.
20 Furthermore, this --- this is not a background check,
21 by the way, as I've heard the term thrown around, it's
22 just a crosscheck against the Exclusion and
23 Self-Exclusion List, can be done more quickly than the
24 execution of an acknowledgement and waiver form or the
25 explanation of admission which Valley Forge already

1 plans to do at the time of card issuance. So, it's
2 certainly not a matter of extending the process.
3 It's, frankly, no different than swiping a credit
4 card. Furthermore, it does not require hotel staff to
5 serve the role of security officers. A card swipe
6 that comes up positive, security should become
7 involved at that point in time. We understand the
8 Board's public policy on excluded and self-excluded
9 patrons, and believe this may be accomplished without
10 any significant hurdle on Valley Forge or its patrons.

11 Finally, the Board should not treat this
12 as an experiment, which if down the road it doesn't
13 work, we can try something else. Preventing
14 ineligible access is a condition of licensure, a
15 statutory condition of licensure, and there are very
16 few statutory conditions of licensure in the Gaming
17 Act itself. The Board needs to adopt a system that
18 will --- not might work or hope it might work.
19 Otherwise, the condition will simply not be met.
20 Overall, we request the Board maintain the process in
21 its order and ID checks at the point of entry. Thank
22 you.

23 CHAIRMAN:

24 Thank you, Counselor. Any questions?
25 Greg?

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

MR. FAJT:

Thank you, Mr. Chairman. Mr. Kohler, where in the law, in your opinion, is the requirement that IDs be checked for a Category 3?

ATTORNEY KOHLER:

Commissioner Fajt, there's no specific requirement in the law that the IDs be checked, but there is a conditional --- condition of licensure in 1305 that says that only certain --- that you do not meet the condition of licensure unless only certain three classes of persons are permitted into the casino. So, the question is how do you get from A to B to achieve compliance with the statutory condition. And that's what this proceeding is all about. But as to a specific requirement in the law that IDs be checked, there is none. This is left up to the Board, based on the evidence, to determine how to get from A to B to achieve compliance with the condition of licensure.

MR. FAJT:

Thank you.

CHAIRMAN:

Jim?

MR. GINTY:

I have a question. When Parx gives a

1 card to somebody and then that person gives the card,
2 I guess, to the Blackjack table or craps table, does
3 the card dealer's manager check the person's ID to
4 make sure that the person giving him the card is, in
5 fact, the person in whose name the card is?

6 ATTORNEY KOHLER:

7 Well, they check the ID if the person
8 appeared to be under ---.

9 MR. GINTY:

10 No.

11 ATTORNEY KOHLER:

12 To make sure that the Player's Card was
13 that person's Player Card, no. But if the --- it's a
14 completely different situation because if you give
15 your Player's Card to someone else and they play on
16 your Player's Card, those points accumulate to the
17 original person. It's not to the benefit of the
18 person that you lent your card to. And I think I know
19 where you're going with this. It would be, to some
20 extent, the casino's financial loss to the extent they
21 give credit or free play or promotions of some sort if
22 someone uses another person's player card to put
23 additional points on that card.

24 MR. GINTY:

25 I think an example was Parx or whatever

1 you mentioned before, Costco, Sam's Club. What would
2 be the difference if, you know, ID'd somebody like a
3 Costco's card saying, go shop?

4 ATTORNEY KOHLER:

5 Well, I think if you look at it from
6 Costco's perspective, the difference is that they ---
7 they're in the business of --- in addition to selling
8 goods, of getting revenue from memberships. And if
9 they allow card swapping to occur --- and I believe in
10 the early days of those membership stores there was
11 lots and lots of card swapping. If they allow card
12 swapping to occur, essentially a large number of their
13 potential customers won't bother to buy cards, to pay
14 a membership fee to get a card. I'm a little lost
15 here now that we have the Player's Club Cards. I'll
16 say this. If that became, again, from a business
17 incentive, a big enough problem for casinos that they
18 were losing promotional dollars by awarding --- Player
19 Card points apparently were put on a card by another
20 patron, the business incentive would require the
21 casino to implement that sort of system apparently.
22 I'm not aware, Commissioner Ginty, of the details of
23 how that occurred, but apparently not enough to create
24 the business incentive to, for example, check cards.

25 CHAIRMAN:

1 Gary?

2 MR. SOJKA:

3 Mr. Kohler, I've got just one question to
4 try to help me understand your position. I think it's
5 very clear to me and I think to everyone here that you
6 and your client would have a strong interest in making
7 sure that the people who gain access to the gaming
8 floor at Valley Forge meet the statutory requirements
9 having to do with a patron of the amenities and the
10 fact that it's the right person and all that sort of
11 thing. That's in your interest and part of what
12 distinguishes Category 2 from Category 3. But I want
13 to make sure that I understand one of the comments you
14 made about someone handling or swiping a card. It
15 takes just a few seconds for a computer to do things.
16 And one of the things you're suggesting is that it
17 check the existence of a person on one of the various
18 Exclusion Lists. Now, it's true that this Board
19 talked with Valley Forge about isn't it nice that we
20 have this additional opportunity to check whether or
21 not people are on the Exclusion List. I think we've
22 heard them say that in most of their cases they would
23 volunteer to do that even though they don't feel
24 they're required to. What I'm asking you is, is it
25 appropriate for you or your client to be concerned

1 with that issue, that is whether or not they check the
2 Exclusion List. That has nothing to do specifically
3 with the difference between a Category 2 and a
4 Category 3. Do you really want to still present that?

5 ATTORNEY KOHLER:

6 As I introduced that point, maybe I
7 wasn't as clear as I had hoped. I started out by
8 saying that it really wasn't our point. I mean, it
9 really isn't within --- it's not in the specific
10 Section 1305. That was one thing I wanted to make
11 clear to the Board, but it was just trying to --- as I
12 read the papers going back and forth, heard some
13 discussion, I thought there was some confusion on what
14 was actually involved in ---.

15 MR. SOJKA:

16 But you're not saying ---?

17 ATTORNEY KOHLER:

18 It's not real urgent.

19 MR. SOJKA:

20 Okay.

21 CHAIRMAN:

22 Mr. Trujillo?

23 MR. TRUJILLO:

24 Mr. Kohler, I guess first I'd like to
25 ask, you said earlier the remarks of card swapping

1 would be rampant. What evidence do you have of that
2 and tell me where that comes from?

3 ATTORNEY KOHLER:

4 I think it's --- as Valley Forge
5 indicated, because the model in Pennsylvania for
6 Category 3s is so unique, but there is no statistical
7 evidence out there that I can point you to that really
8 sheds any guidance. You know, it's speculative as to
9 what's going to work and what's not going to work. We
10 just believe that the Board should --- given this
11 statutory condition of licensure, that the Board
12 should err on the side of something that's going ---
13 it's not going to violate a condition.

14 MR. TRUJILLO:

15 Does that mean that you have no basis on
16 which to say that the card swapping will be rampant?

17 ATTORNEY KOHLER:

18 It's our belief, based on our particular
19 situation, ---.

20 MR. TRUJILLO:

21 Do you have any evidence?

22 ATTORNEY KOHLER:

23 We have no empirical evidence that would
24 shed any guidance on what actually will occur in the
25 future, correct.

1 MR. TRUJILLO:

2 Not whether it's occurred in the past?
3 Not whether it's occurred in the past, present or
4 future? Mr. Kohler, you came in and you said card
5 swapping will be rampant. And I'm just trying ---.

6 ATTORNEY KOHLER:

7 Our concern is that card swapping will be
8 rampant.

9 MR. TRUJILLO:

10 But it's your concern, it's not a fact?

11 ATTORNEY KOHLER:

12 It's not a fact.

13 MR. TRUJILLO:

14 Okay. Thank you. Mr. Kohler,
15 Commissioner Fajt asked you about the statutory
16 requirements that IDs be checked, and I believe you
17 said there are no statutory requirements that IDs need
18 to be checked; am I correct?

19 ATTORNEY KOHLER:

20 Correct.

21 MR. TRUJILLO:

22 And there's similarly no requirement that
23 only IDs be checked --- there's no requirement that
24 they be checked for age, is there?

25 ATTORNEY KOHLER:

1 I believe you're right.

2 MR. TRUJILLO:

3 Does Parx have a requirement that it
4 check its patrons for age?

5 ATTORNEY KOHLER:

6 Yes, for ---.

7 MR. TRUJILLO:

8 Every patron who walks into Parx, check
9 to see whether they're over 21?

10 ATTORNEY KOHLER:

11 Every person --- our policy is that every
12 person that appears to be under 30.

13 MR. TRUJILLO:

14 Not saying appears. Do you ID everyone
15 who walks into Parx and check and make sure that
16 they're 21 or over?

17 ATTORNEY KOHLER:

18 Do we ID everyone and make sure they're
19 over 21, no.

20 MR. TRUJILLO:

21 And do you check everyone that walks in
22 to make sure that they're not on the Exclusion List?

23 ATTORNEY KOHLER:

24 No.

25 MR. TRUJILLO:

1 And you said in your papers that the ---
2 referring to Section 1305, that the plan expressed
3 text focuses on imposing strict limitation to gaming
4 floor access at Category 3 facilities and then
5 elevating those restrictions to an express condition
6 on the ability to have a license at all. Are you
7 speaking about anything other than 1305(a)(1)? Is
8 there some other provision of 1305 that I'm missing
9 that says that there are strict --- requires imposing
10 strict limitations to gaming floor access to Category
11 3 facilities?

12 ATTORNEY KOHLER:

13 No.

14 MR. TRUJILLO:

15 That's the only place I can find.

16 ATTORNEY KOHLER:

17 Yes.

18 MR. TRUJILLO:

19 And finally, Mr. Kohler, when you
20 appealed this --- whatever you appealed, do you feel
21 that the standard view that the Court will impose or
22 utilize in reviewing our decision would be what's the
23 standard view?

24 ATTORNEY KOHLER:

25 I believe it --- don't quote me on this,

1 but I believe the standard of review is essentially
2 not the standard for this issue, although I'm not
3 going to clarify that question.

4 MR. TRUJILLO:

5 All right. I have no further questions.

6 CHAIRMAN:

7 Nick?

8 MR. MCCALL:

9 I think Commissioner Trujillo hit most of
10 those points. But just for clarification again, you
11 do not check everyone that comes into your casino to
12 verify whether or not they're on the Exclusion List?

13 ATTORNEY KOHLER:

14 That's correct. We don't check it ---.

15 MR. MCCALL:

16 Have you ever been cited for allowing
17 someone who is on the Exclusion List for gambling in
18 your facility?

19 ATTORNEY KOHLER:

20 Yes.

21 CHAIRMAN:

22 Mr. Craig?

23 MR. CRAIG:

24 No.

25 CHAIRMAN:

1 Mr. Coyne?

2 MR. COYNE:

3 No.

4 CHAIRMAN:

5 Thank you, Counselor. Okay. We will now
6 hear from the Office of Enforcement Counsel (OEC).

7 ATTORNEY PITRE:

8 Cyrus Pitre, Chief Enforcement Counsel.
9 I'm not going to belabor this issue any more than it
10 has been. Category 3s have the same requirement with
11 regard to self-excluded individuals, excluded
12 individuals, underage individuals, as Category 1s and
13 2s, and they shouldn't be treated any differently than
14 those other category licensures, in my opinion.

15 Category 3s have an extra provision that
16 basically lays out the condition of the amenity,
17 overnight guests are a minimum. All that is, is an
18 extra provision that is going to be regulated.
19 Admittedly, it shouldn't be treated as something
20 that's profound or something that is felt that ---
21 that makes it overly restrictive. With regard to
22 self-excluded individuals, excluded individuals,
23 underage individuals, we tweak the internal controls
24 to make sure that the facility has a plan in place and
25 they're following that plan. Shouldn't be any

1 different from Category to Category as it relates to
2 those areas in addition to the area with regard to the
3 patron of the amenities and membership of the
4 overnight guests. Those matters should be
5 specifically addressed in the internal controls so
6 that if they need to be tweaked, we can tweak them.
7 If there are any deficiencies that occur, those
8 deficiencies can be addressed in the internal
9 controls. It's nothing any different than what we do
10 with Category 1s and 2s, because each facility is
11 going to be different. They're going to have a
12 different clientele. They're going to be different
13 surroundings. So, you may need to tweak those
14 internal controls to reflect that. Outside of that,
15 we don't have much to add to that. We believe that
16 the Board established a regulatory framework that we
17 --- that gives us the ability to go forward with the
18 internal controls. If the Board wants to change its
19 order upon reconsideration, that's fine also. But we
20 don't think that the Board has done anything --- or
21 that Valley Forge has submitted a plan that is overall
22 deficient. It's a framework for us to begin to work
23 with regard to internal controls towards that opening.
24 And if those internal controls are deficient, we have
25 processes in place to boost those internal controls.

1 That's all we have to add. If the Board would like to
2 ask any questions?

3 CHAIRMAN:

4 Questions from the Board? Mr. Craig?
5 Okay. Thank you very much. Thank you all for your
6 presentations. This matter is now closed. The Board
7 will schedule this matter for vote at our December
8 20th meeting.

9 * * * * *
10 HEARING CONCLUDED
11 * * * * *

12
13
14 CERTIFICATE

15 I hereby certify that the foregoing
16 proceedings, hearing held before Chairman Ryan, was
17 reported by me on 12/06/2011 and that I Cynthia Piro
18 Simpson read this transcript and that I attest that
19 this transcript is a true and accurate record of the
20 proceeding.

21 
22 Court Reporter
23

24
25