

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: ENDEKA ENTERTAINMENT, L.P.

PETITION FOR EXTENSION OF TIME

* * * * *

PUBLIC HEARING

* * * * *

BEFORE: WILLIAM H. RYAN, JR., CHAIRMAN

Gregory C. Fajt; Annmarie Kaiser; Keith R. McCall; John J. McNally, III; Anthony C. Moscato; David W. Woods, Member, Jennifer Langan Representing State Treasurer Robert McCord; Robert Coyne Representing Acting Secretary of the Department of Revenue Eileen McNulty; Jorge Gusto Representing Secretary of Agriculture Russell Redding

HEARING: May 20, 2015

LOCATION: Pennsylvania Gaming Control Board
Strawberry Square Complex
2nd Floor
Harrisburg, PA 17101

Reporter: Rhonda K. Thorpe

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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
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18
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I N D E X

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13
14
15
16
17
18
19
20
21
22
23
24
25

OPENING REMARKS

By Chairman

6

DISCUSSION AMONG PARTIES

6 - 8

PRESENTATION

By Attorney Doherty

8 - 11

By Mr. Stamatakis

12 - 16

By Attorney O'Riordan

17 - 21

By Mr. Ferro

21 - 23

By Mr. Vogler

23 - 26

STATEMENT

By Attorney Pitre

27 - 30

DISCUSSION AMONG PARTIES

30 - 32

QUESTIONS FROM BOARD

32 - 48

CONCLUDING REMARKS

By Chairman

48

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>
--	Letter of Support from Representative Sainato	26	26

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
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CHAIRMAN:

Next we'll turn to Endeka Entertainment. I would ask all those involved in this matter to please come forward. Okay. Once again, this is Endeka Entertainment, L.P.'s Petition for Extension of Time. I will turn it over to Endeka.

ATTORNEY DOHERTY:

Thank you, Mr. Chairman. Jim Doherty, D-O-H-E-R-T-Y. Chairman Ryan, Board members, good morning. My name is Jim Doherty from the firm Doherty Hayes, and I am here before you on behalf of Endeka Entertainment, an entity who has been issued a live harness racing license by the Pennsylvania Racing Commission, who has a Category 1 Slot License Application pending with this Board. Would you like the members now to be sworn in who will be providing testimony?

CHAIRMAN:

Anyone who will speak and is not an attorney, we should take care of that now, yes, Counselor.

WITNESSES SWORN EN MASSE

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CHAIRMAN:

Before you sit down, gentlemen, let me just ask each of you to state your name for the record, spell your last name and what your position is.

MR. STAMATAKIS:

Manuel Stamatakis, S-T-A-M-A-T-A-K-I-S, and I'm an investor in Endeka.

CHAIRMAN:

Thank you, sir.

MR. VOGLER:

Dan Vogler, V-O-G-L-E-R. I serve as Chairman of the Lawrence County Board of Commissioners.

CHAIRMAN:

Thank you, sir.

MR. FERRO:

Peter Ferro, F-E-R-R-O, president of Merit PHL.

CHAIRMAN:

Thank you.

MR. PROCACCI:

Joe Procacci, Procacci Brothers.

CHAIRMAN:

1 How do you spell your last name, sir?

2 MR. PROCACCI:

3 P-R-O-C-A-C-C-I.

4 CHAIRMAN:

5 Thank you very much. You may be seated.
6 Counselor?

7 ATTORNEY DOHERTY:

8 Thank you, Mr. Chairman. Thank you again
9 for this opportunity to appear before you today, for
10 your attention to the request for relief which Endeka
11 is seeking from the Board.

12 To be certain, the only matter that
13 Endeka Entertainment is presenting today for the
14 Board's consideration is its Petition for an Extension
15 of Time, which was filed on April 10th, 2015, and
16 seeks at least a six-month extension to provide
17 certain materials to the Bureau of Investigations and
18 Enforcement (BIE). And I won't bore this Commission
19 with recitation of facts that we just heard, and
20 rather I would agree with Attorney King's summation of
21 the actual factual background of the case.

22 CHAIRMAN:

23 Okay. And we thank you for that.

24 ATTORNEY DOHERTY:

25 Endeka Entertainment is pleased today to

1 announce that Mr. Joseph Procacci has agreed to serve
2 as the primary project investor and general partner of
3 Endeka. I know that this is not Mr. Procacci's first
4 introduction to this Board, and his personal history
5 and business acumen were fully evaluated as part of
6 PHL Local Gaming's application for Category 2
7 licensure.

8 As will be described later in this
9 presentation, if Endeka's petition is approved, Mr.
10 Procacci will serve as a major equity investor in the
11 project and will submit a \$50 million letter of credit
12 on behalf of Endeka and the gaming application by June
13 1st, 2015, the date as earlier testified the current
14 letter of credit is scheduled to expire.

15 Further, Endeka has also identified a
16 casino management company named Merit Management
17 Group, a company also evaluated as part of PHL Local
18 Gaming's application, and recognized by the Board as
19 having experience in developing racetracks, casinos,
20 ancillary facilities, including hotels and spas.

21 Despite the withdrawal of Penn National
22 Gaming from this project, Endeka Entertainment's
23 original investors remain committed to this project
24 and confident that they will see a positive return on
25 the millions of dollars which they have already

1 invested in the proposed Lawrence County Downs
2 project. As you know, this Philadelphia-based group
3 of accomplished business entrepreneurs and
4 professionals includes Manny Stamatakis, Ed Snider,
5 Peter DePaul and Tom Leonard. They continue to enjoy
6 the support of the Pennsylvania Harness Racing
7 Commission and the Lawrence County Board of
8 Commissioners and have a positive working relationship
9 with each entity. We believe that this relationship
10 has endured various challenges because Endeka has
11 always recognized that one of the primary intents of
12 the Gaming Act with regard to the development of the
13 Category 1 licensed facilities was to advance the
14 Commonwealth's horseracing industry. We fully
15 appreciate the Board's concern with the delay in the
16 development of the seventh Category 1 Slot Machine
17 License in this Commonwealth.

18 As the Board knows, the Mid-Atlantic's
19 gaming market is a dynamic one with the recent ongoing
20 developments of gaming in neighboring states.
21 However, Endeka shares this Board's opinion as
22 described in its November 2014 adjudication regarding
23 the Philadelphia license, that Pennsylvania is still a
24 growing market for gaming.

25 What Endeka is seeking today is at least

1 a six-month extension of time to work with Mr.
2 Procacci to finalize agreements and project financing.
3 We are confident that within the next six months we
4 will be able to provide Board staff with all of the
5 requisite documents to confirm the financial
6 suitability of this project.

7 A number of individuals will speak today
8 in support of Endeka's petition as part of our
9 presentation. The first speaker is Manny Stamatakis,
10 who will be speaking on behalf of the original
11 investors of Endeka Entertainment. Next, John
12 O'Riordan, counsel for Mr. Procacci, will speak
13 regarding his client's interest and commitment to this
14 project. Peter Ferro will discuss the attributes of
15 fair gaming and how the same will be used here.
16 Lawrence County Commissioner Dan Vogler will speak on
17 behalf of the Lawrence County Board of Commissioners.
18 And lastly, we are pleased to have written remarks of
19 State Representative Chris Sainato entered into the
20 record in support of our petition.

21 Again, I thank you for your attention
22 and, with your permission, I would now like to call
23 Mr. Stamatakis to provide some short testimony.

24 CHAIRMAN:

25 Fine. Go ahead.

1 MR. STAMATAKIS:

2 Good morning, Mr. Chairman and
3 Commissioners. Thank you for allowing me this
4 opportunity to speak to you today in support of
5 Endeka's pending Petition for Extension of Time. As
6 some of you may know, I have been involved in gaming
7 in Pennsylvania even before the current gaming statute
8 became law. In early 2000, I, along with a group of
9 investors, sought to secure the area surrounding the
10 Philadelphia Naval Shipyard to place a Category 1
11 casino, an area I still believe would have been an
12 excellent location for a casino and would spark a
13 further community redevelopment. Unfortunately, the
14 legislature included a distance requirement between
15 Category 1 gaming facilities in the Gaming Act, which
16 eliminated the possibility of the Category 1 casino
17 for the shipyard. However, I, along with my partners
18 in SDSSL Tuxepo, LLC, have always remained interested
19 in gaming opportunities in Pennsylvania.

20 In June of 2012 my partners and I were
21 asked to consider taking over a project to bring a
22 racing and gaming facility to Lawrence County. Based
23 on due diligence and internal market assessments, I
24 was and remain confident, based on all the information
25 currently available to me, that the proposed Lawrence

1 County facility is viable and will have a
2 transformative effect on the local community and
3 generate millions of dollars of taxable revenue for
4 not only Lawrence County but also the Commonwealth of
5 Pennsylvania.

6 My confidence in the viability of this
7 project is based, in part, on the tremendous support
8 of the local Lawrence County community and its public
9 officials. Over the last several decades I've been
10 involved in a number of projects and have created a
11 variety of new businesses. However, I can say without
12 hesitation that the unwavering support demonstrated by
13 the people of Lawrence County, including but not
14 limited to the support of Commissioner Vogler and
15 Representative Sainato is second to none. Their
16 public support for this project has only furthered my
17 resolve to work to deliver a quality racing and gaming
18 facility to this community.

19 I believe in a minute you will hear from
20 Commissioner Vogler and Representative Sainato, who I
21 anticipate will express to you in their own words what
22 this project will mean to the Lawrence County
23 community and the tireless efforts that they have made
24 and will continue to make to help ensure that our
25 proposed facility becomes a reality as soon as

1 possible, should this Board grant our pending
2 petition.

3 As the Board is aware, Tuxepo became an
4 equity investor in this project in June of 2012, and
5 to date has invested nearly \$2 million towards its
6 effort at success. Because Tuxepo and its investors
7 are not gaming experts, we needed to find a gaming
8 company to run the Lawrence County project. Endeke
9 entered into a binding agreement with Penn National
10 Gaming on May 31st, 2013, the same day that Endeke
11 submitted its application to the PGCB for
12 consideration.

13 From May 31st, 2013 through today, Penn
14 National and its wholly-owned subsidiary, Western PA
15 Gaming Ventures, LLC, has been the general partner and
16 managing member of Endeke, with the responsibility for
17 project development.

18 On April 6th, 2015, Penn provided Tuxepo
19 and the Pennsylvania Gaming Control Board with a
20 formal written confirmation of its filing of a
21 Petition to Withdraw from the project. While
22 disappointed with this development, Tuxepo's desire to
23 move forward with this project remains undeterred.
24 Over the last month my partners and I have worked
25 tirelessly to identify and secure a replacement

1 financier and general partner for this project who
2 will not only bring financial stability but also bring
3 a proven track record of developing projects which
4 support and enhance their surrounding community. I am
5 pleased to say that our efforts were successful and,
6 in fact, far exceeded our expectations as Endeke has
7 secured an agreement with Joseph Procacci and Merit
8 Gaming to become the general partner and lead equity
9 investor in Endeke.

10 If this petition is approved, the
11 Procacci team will be in a position to not only raise
12 the funds necessary for this project but to also
13 replace Endeke's \$50 million letter of credit once the
14 current letter of credit expires on June 1st, 2015.
15 I believe that the addition of the Procacci Merit team
16 is a tremendously invigorating step towards bringing
17 this project closer to completion. There is, however,
18 still a significant amount of work that needs to be
19 completed to allow Endeke to be in the position to
20 fully satisfy the requests for information and
21 documentation that have been raised by the Office of
22 Enforcement Counsel (OEC) and BIE. For this reason I
23 am here today on behalf of Endeke to request an
24 extension of at least six months so that our new team
25 can continue with its efforts to finalize the details

1 of this project and secure, if possible, the documents
2 and financial commitments necessary to satisfy the
3 requests of both OEC and BIE.

4 I understand and appreciate that Endeka's
5 application has been pending with the Board for nearly
6 two years and that everyone, including myself, would
7 have liked this process to evolve at a more expedited
8 pace. Unfortunately, for a variety of reasons beyond
9 our control, that did not occur. If Endeka's pending
10 petition is granted, we have full confidence that our
11 new partners of the Procacci team will work tirelessly
12 to place this project in the best possible position to
13 succeed and will work conscientiously to secure the
14 financing necessary to support the project and to
15 respond to all outstanding requests of BIE and OEC. I
16 offer you my commitment that if this petition is
17 approved, we will continue to work diligently to
18 construct and operate a Category 1 racing and gaming
19 facility in Lawrence County.

20 In conclusion, I would like to again
21 thank you for this opportunity to speak with you today
22 and for your consideration of Endeka's petition for an
23 extension of time. I would be happy to respond to any
24 questions you may have following our presentation.

25 CHAIRMAN:

1 Thank you, sir. Mr. Doherty?

2 ATTORNEY DOHERTY:

3 Yes, Mr. Chairman. I would like to ask
4 Attorney John O'Riordan to provide testimony at this
5 point in time.

6 ATTORNEY O'RIORDAN:

7 Chairman Ryan, all the Board members,
8 good morning. My name is John O'Riordan. It's O,
9 apostrophe R-I-O-R-D-A-N. I'm counsel for Procacci
10 Local Gaming, LLC, and its principal, Mr. Joseph
11 Procacci, who I'm sure you remember when he appeared
12 before the Board last year, seeking a Category 2
13 License in Philadelphia on behalf of PHL Local Gaming.

14 When Mr. Procacci last appeared before
15 you he expressed two main interests. One was he was
16 very interested in becoming involved in the gaming
17 industry here in Pennsylvania. Secondly, he expressed
18 a lifelong interest of pursuing profitable financial
19 investment opportunities for he and for his family.
20 Those two same reasons bring him here today.

21 The Board's decision to award the
22 Category 2 License to someone other than PHL Local
23 Gaming did not dampen his enthusiasm in the least but
24 merely wetted his appetite. He remains enthusiastic
25 about becoming involved in gambling here in the

1 Commonwealth. And, as he has all of his life, he
2 remains enthusiastic about an attractive investment
3 opportunities. It was the confluence of those two
4 interests with the opportunity presented by the
5 withdrawal of Penn National's application and
6 participation in the Endeka application that sparked
7 his interest to team with Mr. Stamatakis and his group
8 of accomplished entrepreneurs to bring a casino and
9 racetrack to Lawrence County. Mr. Procacci learned of
10 this opportunity from a standing partner, Joe Canfora
11 from Merit Management Group. Joe Canfora was born and
12 raised in New Castle, Pennsylvania, not far from the
13 location where Manny and his team proposed to build a
14 casino and racetrack. He knows the area, he knows the
15 people and is familiar with the Endeka project, as he
16 has tracked it since its inception.

17 The Procacci/Merit team, after learning
18 of this opportunity, moved quickly to gather
19 information and economic studies about the Endeka
20 project and analyzed the project's economic potential.
21 Based on their own internal review, which is ongoing,
22 Mr. Procacci believes that the Endeka project has
23 tremendous economic potential for the people of
24 Lawrence County, for the Commonwealth of Pennsylvania,
25 and for the investors in Endeka. He and the Procacci

1 team are excited by the prospect of moving the project
2 forward, are undeterred by the withdrawal of Penn
3 National from the Endeka project and believe the
4 project will be financially profitable for all
5 involved. However, finalizing the project details,
6 entering into definitive agreements, identifying our
7 construction and financing partners and putting that
8 financing in place take time. While we are moving at
9 and will continue to move at breakneck speed, we are
10 here today in support of Endeka's request for an
11 extension of time of at least six months so that the
12 Procacci team has sufficient time to put the necessary
13 project team, details and funding in place.

14 If the Board sees fit to grant Endeka's
15 requested extension of at least six months, Procacci
16 Gaming, LLC, has arranged to have a \$50 million letter
17 of credit put in place by June 1st to replace the Penn
18 National bond. Procacci Local Gaming will become the
19 new general partner of Endeka, LP, and will submit its
20 entity application for licensure to the Board by June
21 1st.

22 I'm sure the Board is aware that PHL
23 Local Gaming is one of several parties to the appeal
24 of the Board's decision to award the Category 2
25 License to Philadelphia. Prior to submitting the

1 Procacci Local Gaming application and posting a \$50
2 million bond on June 1st, Mr. Procacci will have PHL
3 Local Gaming withdraw its appeal of the board's
4 decision in Philadelphia to the Stadium Casino folks
5 so there are no conflicts of Section 1308(c) of the
6 Gaming Act.

7 We are also excited to be joined in this
8 endeavor by our gaming partner, Joe Canfora, and his
9 Merit team. Mr. Procacci and Mr. Canfora teamed
10 together in the PHL Local Gaming project. They know
11 each other very well, they have an excellent working
12 relationship, and that relationship will ensure that
13 the Endeka project progresses quickly and smoothly.
14 Mr. Canfora couldn't be here today, he's traveling
15 abroad, but Merit's president, Peter Ferro, will
16 appear briefly and give you some brief remarks about
17 the work that Merit's done and its analysis.

18 It's clear that there's been a tremendous
19 amount of work done and money expended on the Endeka
20 project by a group of very dedicated people to get
21 that project where it is today. Mr. Procacci and
22 Merit intend to move the project forward and, with the
23 Board's blessing, carry that project across the goal
24 line, opening the door to a racetrack and casino in
25 Lawrence County.

1 Mr. Procacci and our Merit partners have
2 already been vetted and found suitable for licensing
3 by the Board and its staff. Mr. Procacci in
4 particular has been found financially suitable to
5 develop a project double the size of the project in
6 Lawrence County. Therefore, after we submit our
7 application on June 1st, all of our efforts will be
8 devoted to finalizing project details with our new
9 partners and putting project financing in place as
10 quickly as humanly possible. We've got a lot of work
11 to do. We've done it before. And with your blessing,
12 we'll do it again if you give us the time. Thank you
13 for your attention. And I'd like to introduce Mr.
14 Peter Ferro from Merit Management to say a few words.

15 MR. FERRO:

16 Thank you. I'll be brief. Good morning,
17 Mr. Chairman and members of the Board. My name is
18 Peter Ferro. I'm the President of Merit PHL, which
19 will be the gaming company applicant for this project.

20 Merit PHL, as John mentioned, has
21 previously submitted an application for a gaming
22 license with the Board for the Philadelphia license.
23 The entity and the principals of Merit PHL are the
24 same as those included in the Philadelphia
25 application, which should expedite the review process

1 for this project.

2 Merit executives have designed, financed,
3 constructed and operated start-up casinos throughout
4 the country, specifically in Illinois, Indiana,
5 Missouri, Nevada, California, Washington, Colorado and
6 as well as internationally. These projects have
7 included hotels, spas, entertainment venues and
8 award-winning restaurants. All of these projects have
9 been developed and operated in highly competitive
10 local markets, similar to the competitive environment
11 of this project. In the Chicago, Illinois market we
12 competed with six casinos within a 40-mile radius. In
13 Washington State we were the last casino in the
14 market, competing with four established existing
15 casinos. And in Colorado there are four casinos
16 within one-half mile of our facility, yet we maintain
17 the leading market share.

18 We followed this --- the evolution of
19 this New Castle project from its inception, which I
20 thought was ten years ago, but I believe it's 12, so
21 we are fully aware of the competition in the area.
22 We've done our projections of our own. We reviewed
23 independent studies.

24 Our CEO, Joseph Canfora, as was
25 mentioned, was born and raised in New Castle, the site

1 of the project. Being a native, Joe brings a unique
2 knowledge of the local conditions from demographic
3 trends to traffic flows and customer preferences.

4 We have operated in environments very
5 similar to this one and we are confident that this
6 project will produce satisfactory returns for all the
7 stakeholders, its investors, the local community and
8 the Commonwealth of Pennsylvania. Thank you for your
9 consideration, and we hope you will give us the
10 opportunity to deliver a project that we will all be
11 proud of. Thank you.

12 ATTORNEY DOHERTY:

13 Mr. Chairman, our last live witness if
14 you would allow, Commissioner Dan Vogler.

15 CHAIRMAN:

16 Okay.

17 MR. VOGLER:

18 Thank you, Counselor. Good morning, Mr.
19 Chairman, members of the Board, ex-officio members.
20 As mentioned, I'm Dan Vogler. I serve as Chairman of
21 the Lawrence County Board of Commissioners, and I
22 thank you very kindly for allowing me the opportunity
23 to speak with you this morning.

24 One year ago you and the members of your
25 staff traveled to Lawrence County to hear testimony

1 relative to Endeka Entertainment's Gaming License
2 Application. And during that five-hour hearing over
3 30 witnesses, most of whom reside in Lawrence County,
4 testified in support of the application. In fact, the
5 positive testimony from Lawrence County residents, as
6 you may recall, was unanimous. No one from our county
7 testified against Endeka's application. And today I
8 can ensure you that our community continues to
9 strongly support the proposed racetrack and casino.
10 The economic benefits that will result from this
11 project cannot be understated.

12 This morning I appear before you on
13 behalf of my two fellow Commissioners to respectfully
14 request your support for Endeka's Petition for an
15 Extension of Time. Based upon the information that
16 has been presented to you so far this morning I am
17 hopeful, very hopeful, that your decision will be an
18 affirmative one.

19 And today I'd like to focus very briefly
20 on the bond issuance that the County Commissioners
21 have proposed. As you may recall, we have committed
22 up to \$50 million in the form of a bond that would be
23 floated through the Lawrence County Industrial
24 Development Authority to assist with the financing of
25 the project. The dollars used to pay back the bond

1 would come from a portion of the casino revenue that
2 is earmarked for the host county, in this case
3 Lawrence county. And should any of you have specific
4 questions about the bond issuance, I'd like to note
5 that in the audience today is Mr. Michael Bova, who is
6 the Managing Director of Boenning & Scattergood, Inc.
7 of Pittsburgh and who is serving as financial advisor
8 to the County on this matter.

9 The proposed bond is a very key component
10 in this project. And I can assure the Board that my
11 two fellow Commissioners and I, as well as the members
12 of the Industrial Development Authority, of which
13 there are five, continue to support this very critical
14 element of the financing.

15 I'd like to close by saying this. The
16 concept of a harness racetrack and casino in Lawrence
17 County has existed --- my statement here says 11
18 years. We've heard 10, 12, 11. We'll just say it's
19 existed for a long time, as you know. In fact, I was
20 in my first year as a Commissioner when this matter
21 first came before the Harness Racing Commission. And
22 as you also know, there have been a number of
23 applicants who have come and gone over this period of
24 time. To say that people's patience has been put to
25 the test is an understatement. Each of you and the

1 members of your staff --- I look down to Mr. Pitre, as
2 well as the members of the Harness Racing Commission
3 and their staff, need to be recognized and they need
4 to be thanked for the patience that each and every one
5 of you have shown. So, this morning I would
6 respectfully ask you to continue to show just a little
7 more additional patience as Endeka and their new
8 partners move forward. I truly believe that our
9 collective patience can soon be rewarded and that the
10 proposed facility that so many of us have worked hard
11 for can finally come to fruition. And when that
12 happens we will all benefit, the Commonwealth, the
13 region and specifically my home county, Lawrence
14 County. Thank you very much.

15 CHAIRMAN:

16 Thank you, sir.

17 ATTORNEY DOHERTY:

18 Mr. Chairman, with that we end our
19 presentation, with the single exception I'd like to
20 submit into the record a letter of support from
21 Representative Sainato, who cannot be here today.

22 ATTORNEY PITRE:

23 No objection.

24 CHAIRMAN:

25 It's admitted.

1 (Exhibit marked for identification.)

2 ATTORNEY DOHERTY:

3 Thank you. Thank you, Mr. Chairman.

4 CHAIRMAN:

5 All right. Cyrus, any response from OEC?

6 ATTORNEY PITRE:

7 Mr. Chairman, members of the Board, we
8 don't have any questions for Endeka. Pretty much are
9 aware of what's been going on with Endeka inside-out
10 for some time now.

11 OEC filed its Answer to Endeka's request
12 on May 18th --- May 8th, 2015. Attached to that
13 Answer was 44 exhibits that we submitted into the
14 record for the Board's consideration. Yesterday we
15 amended those exhibits and added Exhibit 45. A review
16 of those exhibits will tell the whole story, that
17 Endeka has been granted numerous extensions by this
18 office to provide the requested information.

19 This application was filed on May 31st,
20 2013, and at the time of submitting an application to
21 the Board all funding and agreements for the project
22 should have been in place or, at the very minimum, the
23 funding should have been close to final or near
24 certain. But it wasn't.

25 On March 23rd, 2014 I sent a letter to

1 the Applicant requesting additional applications and
2 explaining to the Applicant that funding must be near
3 certain and that all agreements must be finalized and
4 executed. I requested that the Applicant submit this
5 information to my office within 30 days. That's
6 Exhibit 23 in OEC's evidence.

7 Over the next year the same information,
8 along with additional information at various times,
9 was requested from the Applicant, as is evident by all
10 the exhibits we submitted to the Board. That
11 information afforded the Applicant numerous
12 extensions. The Board can review Exhibits 15, 16, 17,
13 18, 19, 20, 21, 22, 23, 24, 26, 27 and 30. Those
14 letters, their request for extensions, the information
15 provided, has been well documented.

16 On March 10th, 2015 I sent a final letter
17 to the Applicant, requesting several pieces of
18 information and again requesting the filing of
19 applications. The Applicant was given until April
20 10th, 2015, and May 9th, 2015, to provide all
21 requested information. That's Exhibit 22.

22 On April 15, 2015, OEC issued a
23 Recommendation of Denial to the Applicant. That's
24 Exhibit 41.

25 On April 17th, 2015, the Applicant

1 requested a hearing to OEC's recommendation.

2 On May 14th, 2015, OEC issued an amended
3 Recommendation of Denial to the Applicant based upon
4 the information that remained outstanding. And as a
5 result, based upon Section 1309, 1310 and 1313 of the
6 Act, OEC recommended that the application be denied.

7 It is our opinion that the Applicant has
8 failed to file the requested or submit the requested
9 information to BIE and cooperate in the background
10 investigation process, that the Applicant has failed
11 to file requested applications, that the Applicant has
12 failed to establish its suitability by clear and
13 convincing evidence, and that the Applicant has failed
14 to establish financial fitness by clear and convincing
15 evidence. That amended denial letter is Exhibit 45.

16 At this time the OEC objects to any
17 further extensions in this matter and requests that
18 the Board schedule a hearing to determine whether or
19 not this application should be denied. However, if
20 the Board has more patience than OEC, OEC would
21 request that firm deadlines be put in place for this
22 Applicant to submit the requested information and that
23 there be sanctions for any missed deadlines. Mr.
24 Procacci has already agreed to withdraw his lawsuit.
25 That would be one more condition, because we cannot

1 consider his application until that lawsuit has been
2 withdrawn.

3 CHAIRMAN:

4 And that really is a requirement of the
5 law; correct, Cyrus?

6 ATTORNEY PITRE:

7 That's correct, under 1308(c) of the Act,
8 that a bond be posted immediately, at least within
9 five days, but no later than June 1st, 2015 should the
10 Board allow the Penn National bond to remain in place,
11 and that the Board be cognizant that any extension
12 that's granted to this Applicant does not include the
13 investigative time and the review time by BIE, FIU and
14 OEC, which can tack on an additional six months to a
15 year from the time that information is received in the
16 BIE offices.

17 So based upon what's before us today
18 while I have nothing but great things to say about
19 Commissioner Vogler and the people of Lawrence County
20 and my heart really goes out to them. This Applicant
21 has failed on numerous times to submit the requested
22 information and we would request that a hearing be
23 scheduled to determine whether or not this application
24 should be denied.

25 CHAIRMAN:

1 Mr. Doherty, Mr. Pitre is unhappy?

2 ATTORNEY DOHERTY:

3 I understand that, Mr. Chairman.

4 CHAIRMAN:

5 Any response?

6 ATTORNEY DOHERTY:

7 We don't dispute that the documents
8 referenced in the letters for request for information
9 were made to us. There are a large amount of
10 information regarding financial structure and the
11 definitive documents for this project that are
12 outstanding. We are here today asking this Board to
13 consider allowing the project to move forward. We
14 appreciate that it has been almost two full years
15 since we applied for license. We understand that the
16 patience with everyone is wearing thin on that matter.
17 We do believe that our new partner needs some time to
18 be caught up to the project and to allow us to enter
19 into what are admittedly complicated definitive
20 documents related to financing will take at least six
21 months. And I would argue that any harm that this
22 Board or OEC respectfully believe would be brought
23 about by denying our request would be far outweighed
24 by the benefits of us bringing a casino to Lawrence
25 County and ultimately fulfilling the promise that was

1 made to them 11, 12 years ago on that matter. I would
2 ask and urge the Board to consider that part of our
3 petition and allow us to move forward with it.

4 CHAIRMAN:

5 Any questions from members of the Board?
6 Annmarie?

7 MS. KAISER:

8 Yes, just one question. Do you
9 contemplate any changes to the project now that there
10 are new investors?

11 ATTORNEY DOHERTY:

12 If I may I'd like the Procacci team to
13 address that.

14 ATTORNEY O'RIORDAN:

15 I'm sorry. You had ---?

16 MS. KAISER:

17 What changes do you contemplate to the
18 project now that you're involved ---?

19 ATTORNEY O'RIORDAN:

20 I don't think we contemplate any changes.
21 It's pretty much similar to what it would be and now
22 we've got to into the details of the construction, but
23 as far as the general overall project would be
24 basically the same.

25 MS. KAISER:

1 And just real quickly, just to reiterate,
2 you would withdraw the appeal so that there would no
3 longer be a conflict under the Act and when would you
4 anticipate doing that?

5 ATTORNEY O'RIORDAN:

6 We would do that prior to June 1st, prior
7 to submitting our applications, prior to posting a \$50
8 million letter of credit.

9 MS. KAISER:

10 Thank you.

11 CHAIRMAN:

12 David?

13 MR. WOODS:

14 Obviously a Cat 1 license for slots is
15 connected to the harness racing license. Can you tell
16 us what discussion, if any, you had with the
17 Department of Agriculture, specifically the Harness
18 Racing Commission, and are there any requirements to
19 amend your application with them for the harness
20 racing lines that has been issued to you?

21 ATTORNEY DOHERTY:

22 Yes, Commissioner, I could address that.
23 I don't want to speak for Attorney Augusto who's here
24 today, but it's my understanding I believe it's both
25 of ours since we submitted a Joint Petition on one of

1 the matters pending, that there are no conditions on
2 the license as of this time. But that we are going to
3 move forward with the design and the implementation of
4 the harness racing track as ordered by the Commission,
5 but at this time I believe we're in good standing with
6 the Commission and have no additional components to
7 our license.

8 MR. WOODS:

9 Thank you.

10 CHAIRMAN:

11 Keith?

12 MR. MCCALL:

13 Thank you, Mr. Chairman. Again, on
14 bonding, just for the record and for my clarification.
15 Mr. Pitre will be providing a \$50 million bond by June
16 1st, '15?

17 ATTORNEY DOHERTY:

18 Yes, Commissioner.

19 MR. MCCALL:

20 Do you have a signed term sheet?

21 ATTORNEY DOHERTY:

22 Yes. We have shared that with OEC.

23 MR. MCCALL:

24 And on the scope of the project what was
25 submitted was \$225 million. Is that to assume the \$50

1 million licensing fee is included in that \$225
2 million, and as well as the Table Games licensing fee
3 would be part of that \$225 million. Is the \$160
4 million enough to bring this project home? I mean,
5 you're going to build a one-mile racetrack; correct?
6 That hasn't changed.

7 ATTORNEY DOHERTY:

8 Correct.

9 MR. MCCALL:

10 And a casino. Is the money suffice to do
11 that?

12 ATTORNEY DOHERTY:

13 To your first point, yes, that is our
14 budget still and that is still the design with the
15 race track and casino to be built for \$225 million
16 with the fees included. As to the design, I believe
17 the Procacci team can better address but I do believe
18 they would recommend that that can be done within the
19 budget as we have recommended.

20 MR. MCCALL:

21 And when do you contemplate a full
22 financing package --- submission of a full financing
23 package for the BIE. Do you understand the
24 frustration?

25 ATTORNEY DOHERTY:

1 I do and I appreciate Attorney Pitre's
2 position on this. I can only tell you we need the
3 full six months to get that completed. But we would
4 be happy to provide incremental updates at and any
5 amount of time that the Board or OEC believes would be
6 beneficial to establish that we are continuing to work
7 with this project and are getting towards the final
8 goal of producing those final form documents by the
9 end of the six-month extension that we asked for.

10 ATTORNEY O'RIORDAN:

11 And if I could just add to that. In our
12 previous application we have a very good working
13 relationship with Mr. Pitre's office and we're going
14 to get our stuff in on time. We're not going to be
15 back here seeking further delay.

16 MR. MCCALL:

17 Western PA Gaming paid a lot of expenses.
18 Who will pay those expenses going forward, Mr.
19 Procacci?

20 ATTORNEY O'RIORDAN:

21 You mean the project expenses going
22 forward?

23 MR. MCCALL:

24 Yes.

25 ATTORNEY O'RIORDAN:

1 Yes. Procacci Local Gaming.

2 MR. MCCALL:

3 And Cyrus, a question for you. The fact
4 that Mr. Procacci and PHL Local Gaming, we found ---
5 we did a suitability work on their application when
6 they filed with Philadelphia. How would that help
7 expedite the process? Would we have to go through an
8 entirely new background check or could you just update
9 the information that you currently have?

10 ATTORNEY PITRE:

11 I would have to speak to Director Morrow,
12 but our past experience is that we would update the
13 information from the date that the BIE's investigation
14 was completed and move forward. So, if it's the same
15 individuals, ---

16 ATTORNEY DOHERTY:

17 Yes, it is.

18 ATTORNEY PITRE:

19 --- then I would think --- I think we
20 submitted background investigation reports to the
21 Board at the end of 2013, if I remember correctly.
22 That means the BIE's investigation was probably
23 complete sometime around that fall. So, we'd probably
24 be going back to mid 2013 forward. That's just off
25 the top of my heard. I can't guarantee that.

1 MR. MCCALL:

2 That's good enough. No more questions.
3 Thank you, Cyrus.

4 CHAIRMAN:

5 John?

6 MR. MCNALLY:

7 Just a couple quick questions. Initially
8 I understand the plea for patience particularly with
9 the new White Knight coming in when we look at the
10 financial. I will tell you was troubled by hearing
11 Cyrus say, that there is a lack of cooperation with
12 regard to background checks. So, I'm going to ask,
13 Cyrus, do you believe that the Applicant has made
14 diligent and good faith effort to meet your requests?

15 ATTORNEY PITRE:

16 No.

17 MR. MCNALLY:

18 With regard to the study that we heard
19 of, the HLT advisory study, has that been provided to
20 PHL and Merit?

21 ATTORNEY O'RIORDAN:

22 It has.

23 MR. MCNALLY:

24 Has it been provided to Chairman Vogler?

25 ATTORNEY DOHERTY:

1 I don't believe so.

2 MR. MCNALLY:

3 With regard to the plea for time frames,
4 are you willing to agree to a shorter time frame with
5 specific benchmarks as established by Attorney Cyrus
6 Pitre?

7 MR. FERRO:

8 Commissioner, from a business
9 perspective, we don't think we can get this done in
10 less time and we don't want to fail. We need six
11 months. We've been through this before. I personally
12 have seen how long it takes to do these things. And I
13 just think trying to ask for less and come back here
14 again it's just not what we want to do. We don't want
15 to come back here again for an extension. I won't be
16 back, so if we can't get it done in six months we're
17 not going to be back. You'll be talking to someone
18 else.

19 MR. MCNALLY:

20 Sure. I understand that process, but
21 overall there are certain things that are can be done
22 right, for instance, cooperation can be done right
23 now.

24 MR. FERRO:

25 We're fully committed to cooperating with

1 this Board and counsel with OEC. We always wanted to
2 be cooperative. We have no reason not to be
3 cooperative. My vocabulary doesn't understand not
4 being cooperative. We are here to try to accomplish
5 the project and it doesn't get served if there is not
6 cooperation. I'm disappointed that we are where we
7 are, but from our perspective we'll be plenty
8 cooperative.

9 ATTORNEY O'RIORDAN:

10 We'll be stepping in as the new general
11 partner. You'll have all of our cooperation. We'll
12 be the ones driving the project.

13 CHAIRMAN:

14 Thank you.

15 MR. MCNALLY:

16 That's all the questions I have.

17 CHAIRMAN:

18 Greg?

19 MR. FAJT:

20 Thank you, Mr. Chairman. Again, to
21 follow up on two of my colleagues earlier questions
22 and I'll stay with Commissioner McNally since he just
23 finished. Mr. Doherty, to peel back the onion a
24 little bit. I too am troubled by the noncooperation
25 issue and when I look at the prior players versus the

1 current players, the only people that have changed is
2 Penn National and now we have Merit and Mr. Procacci.
3 So, are you saying that Penn National was
4 uncooperative in the past two years? Who was the
5 problem and where are they now? Are they still in the
6 deal?

7 ATTORNEY DOHERTY:

8 Commissioner, I'm not saying anyone was
9 uncooperative.

10 MR. FAJT:

11 Well, Cyrus Pitre just said that there
12 was a significant lack of cooperation for two years.
13 So, who was responsible, was it you? Was it Mr.
14 Stamatakis? Was it Penn National? Was it Mr. Ferro?
15 Who was uncooperative and what is going to change to
16 make this whole entity now all of the sudden get
17 religion and be cooperative?

18 ATTORNEY DOHERTY:

19 Mr. Commissioner, I think that's a very
20 valid point.

21 MR. FAJT:

22 I just want an answer. What's the
23 answer?

24 ATTORNEY DOHERTY:

25 Moving forward with the project the

1 responsibility will be with Merit.

2 MR. FAJT:

3 Who is responsible for the uncooperative
4 --- for the noncooperation in the past two years?

5 ATTORNEY DOHERTY:

6 Commissioner, it's my opinion that we did
7 try to cooperate.

8 MR. FAJT:

9 Well, obviously you didn't. I mean Mr.
10 Pitre went through a litany of eight or nine letters
11 that he sent to you folks over a period of time and
12 there was no response. I mean, that's a problem for
13 this Board. And now, again, if it wasn't Penn
14 National then nobody has changed in your entity that
15 was responsible for the lack of cooperation over the
16 last two years.

17 ATTORNEY DOHERTY:

18 We are changing the general partner.

19 MR. FAJT:

20 Was it Penn National that was the delay?

21 ATTORNEY DOHERTY:

22 Again, Mr. Commissioner, I can't answer
23 that because I don't --- I believe the project
24 attempted to be cooperative and responsive.

25 MR. FAJT:

1 Okay. My second question was I, too, am
2 very concerned about the cost of this project. \$225
3 million is going to be, you know, 66 and a half or \$74
4 million maybe now with the increase in the Table Games
5 fee that gets peeled off of that \$225 million. So,
6 you're telling me that you're going to build a
7 racetrack, a backside and a casino for \$150 million
8 when the average cost of a casino alone in
9 Pennsylvania --- a casino alone, no track, no
10 backside, no grandstands, no anything else, is in the
11 neighborhood of \$300 million to \$400 million? You're
12 going to do a casino, the track, the backside and the
13 grandstand for 150? What's that going to look like?

14 ATTORNEY DOHERTY:

15 I'd defer that to Mr. Procacci, but
16 we ---.

17 MR. STAMATAKIS:

18 Let me just answer that. We've been ---
19 we're not contractors. We're investors. We've been
20 told by professionals that the project that we have
21 submitted can be built for \$225 million. We wouldn't
22 be taking on this project if it was for more money
23 because we're not in the position to --- we don't feel
24 that that --- we don't want to do that. So, all we
25 can tell you is all the people that have been working

1 on this, the general partner, it's their contractors,
2 their advisors have given us a budget of \$225 million.
3 I have to believe that's a correct budget.

4 MR. FAJT:

5 Well, let me ask you, Mr. Stamatakis,
6 because you were involved in the, you know, casino
7 back in the day in Philadelphia. Do you remember what
8 the cost --- the estimated cost of your project was in
9 the shipyard?

10 MR. STAMATAKIS:

11 It wasn't much different than this. This
12 casino is only 100,000 square feet. That's all it is.
13 And so, it is not a Taj Mahal casino. It's a first-
14 class casino that can be --- that we've tried to put
15 together within the budget and framework. I
16 understand that there might be other projects that are
17 bigger in scope and more expensive, but what we ended
18 up settling for is a casino that will deliver both
19 table games and slot machines to Lawrence County. It
20 was not going to be an excessive casino. And we've
21 been told that \$140 million --- or \$150 million ---
22 \$160 million that is going to --- is the difference
23 between where we are and the fees will be adequate to
24 build that. So, we're hoping that that's correct.
25 And we have information and budgets given to us by the

1 general partner that say that that is correct.

2 MR. FAJT:

3 Thank you.

4 CHAIRMAN:

5 Okay. Until Mr. Stamatakis spoke a
6 moment ago and indicated that he wanted this done in
7 six months, a number of you indicated that the
8 extension would have to be for at least six months.
9 Given the litany of delays and extensions referred to
10 by Mr. Pitre, can the Board now infer from what we're
11 hearing that all this can be done in six months, not
12 in seven months, not in seven-and-a-half or eight or
13 twelve?

14 ATTORNEY DOHERTY:

15 Yes, Commissioner. The point ---
16 probably my mistake to begin with was to just
17 establish a need for the six months, that nothing less
18 would be sufficient, in our opinion.

19 CHAIRMAN:

20 Okay.

21 ATTORNEY DOHERTY:

22 And that was the reason for using
23 the terminology.

24 CHAIRMAN:

25 All right. I understand. Any questions

1 from ex-officio members?

2 ATTORNEY AUGUSTO:

3 Thank you, Chairman. I sit here as a
4 designee of the Secretary of Agriculture, but I also
5 sit as the counsel for the Racing Commission. We
6 would like to have all of the documents that have been
7 submitted with respect to the HLT report to the new
8 investors and Merit Gaming. If there's a way that we
9 can exchange and share the data, that might help in
10 terms of the timing. But the Commission will also
11 have to vet out these individuals, and we need to
12 start now.

13 ATTORNEY DOHERTY:

14 Attorney Augusto, we have no problem
15 providing any of that information.

16 ATTORNEY AUGUSTO:

17 Thank you.

18 CHAIRMAN:

19 John?

20 MR. MCNALLY:

21 So, would you authorize the Pennsylvania
22 Gaming Control Board to share the information that
23 Merit and PHL submitted in support of their
24 Philadelphia license, not only to re-review that
25 information in the context of this license, but to

1 share it with Jorge and the Department of Agriculture?

2 ATTORNEY O'RIORDAN:

3 Subject to the same confidentiality
4 protections, absolutely.

5 CHAIRMAN:

6 David?

7 MR. WOODS:

8 A question for Cyrus. Do you believe
9 that anything is needed from the Department of
10 Agriculture, specifically the Harness Racing
11 Commission, before you can go forward on any
12 additional investigation of this new entity?

13 ATTORNEY PITRE:

14 Well, I would assume that you guys are
15 going to have to license Mr. Procacci and his group.
16 We just need their okay that Mr. Procacci is going to
17 be licensed. So, we'll probably be doing that
18 simultaneously. Their licensure would have to come
19 before any Board consideration.

20 ATTORNEY O'RIORDAN:

21 Agreed.

22 ATTORNEY DOHERTY:

23 And Commissioner, the application with
24 the Racing Commission would be submitted at the same
25 time.

1 MR. MCNALLY:

2 Would that affect your timing of the six-
3 month extension?

4 ATTORNEY AUGUSTO:

5 Not from our perspective. We have a
6 different standard than the Gaming Control Board by
7 the Racing Act. It's a slightly different standard,
8 so it can be done.

9 CHAIRMAN:

10 Any other questions from the Board? Ex-
11 officio members?

12 ATTORNEY PITRE:

13 I might note, Mr. Chairman, that the HLT
14 report that we received ---

15 CHAIRMAN:

16 Yes, sir.

17 ATTORNEY PITRE:

18 --- was a final draft. We did not
19 receive a final report.

20 CHAIRMAN:

21 Okay.

22 ATTORNEY PITRE:

23 And the assumption from the HLT report is
24 1,000 slot machines. As the Board knows, the
25 Applicant may open with a thousand slot machines, but

1 it must ramp up to 1,500 within a year.

2 CHAIRMAN:

3 Understand that. Mr. Doherty?

4 ATTORNEY DOHERTY;

5 We understand the requirements of the
6 Act.

7 CHAIRMAN:

8 Thank you, Mr. Pitre. All right.

9 Anything further? All right. Thank you, ladies and
10 gentlemen. Appreciate it.

11 All right. Thank you all. A vote on
12 this petition is also scheduled today. We'll go to
13 the Office of Chief Counsel section of the agenda. At
14 this time the Board will take let's say a 15-minute
15 break so we can deliberate on the two matters we have
16 just heard. Now looking at the clock on the wall it
17 is ten after 11:00. We'll be back at 11:25. Thank
18 you.

19 * * * * *

20 HEARING CONCLUDED

21 * * * * *

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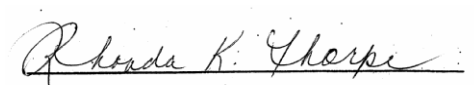
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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Chairman Ryan was reported by me on 5/20/2015 and that I Rhonda K. Thorpe read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.


Court Reporter