

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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PUBLIC HEARING

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BEFORE: DAVID M. BARASCH, CHAIRMAN  
Gregory C. Fajt; Richard G. Jewell; Keith  
R. McCall; Anthony C. Moscato; William H.  
Ryan, Jr.; David W. Woods; Members  
Fred Strathmeyer, Jr., representing Russell  
Redding, Secretary of Agriculture  
Jennifer Langan, representing Timothy  
Reese, State Treasurer  
Robert P. Coyne, representing Eileen H.  
McNulty, Secretary of Revenue  
HEARING: Wednesday, February 10, 2016, 10:01 a.m.  
LOCATION: Bureau of Hearings and Appeals  
Strawberry Square Complex  
Suite 261  
Harrisburg, PA 17106  
WITNESSES: Brian DiMattia, Frank Quigley

Reporter: Samantha Bruer

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## A P P E A R A N C E S

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CHAIRMAN:

All of you were honored today for your service to the Board and to the citizens of the Commonwealth. Moving on, I believe we have oral arguments scheduled. The first pertains to Office of Enforcement Counsel's (OEC) Complaint for Judgment and Penalties against Greenwood Gaming. Would Counsel for Greenwood Gaming and whoever else is arguing on behalf of OEC please step forward? And I would ask Counsel to state and spell your name for the court reporter.

ATTORNEY MILLER:

Good morning, Chairman Barasch, members of the Board. Dustin Miller on behalf of the OEC.

ATTORNEY STEWART:

Mr. Chairman and members of the Board, Mark Stewart, S-T-E-W-A-R-T, on behalf of Greenwood Gaming.

ATTORNEY BONNER:

Thomas Bonner, B-O-N-N-E-R, General Counsel for Greenwood Gaming.

CHAIRMAN:

Thank you. Excuse me. Please proceed.

ATTORNEY MILLER:

1                   Thank you, Chairman Barasch. In its  
2 complaint against Greenwood Gaming and Entertainment,  
3 Inc., the OEC has alleged numerous violations of the  
4 Pennsylvania Race Horse Development and Gaming Act and  
5 the regulations promulgated under the Act regarding  
6 what the OEC considers the untimely notification to  
7 the Board by Greenwood of its plan to refinance its  
8 debt.

9                   At this time, I would like to focus on  
10 two provisions in the regulations most applicable to  
11 this situation. 58 Pa. Code Section 441A.11 states  
12 that each slot machine Applicant or Licensee shall  
13 notify the Board in writing as soon as it becomes  
14 aware that it intends to enter into a transaction  
15 which may result in any new financial backers. The  
16 notice shall be sent to the Bureau of Licensing and  
17 what has become the Financial Investigations Unit of  
18 the BIE.

19                   In this instance, Greenwood entered into  
20 an agreement with Merrill Lynch on or about May 18th,  
21 2015, to seek lenders to refinance its debt.  
22 Greenwood did not provide this agreement to the Board  
23 or the Financial Investigations Unit until over a  
24 month later on June 19th, 2015. Prior to that date,  
25 nobody had any notice that Greenwood was seeking to



1 refinance its debt.

2                   Further, a summary of indicative terms  
3 of the transaction that was enclosed with the  
4 agreement with Merrill Lynch indicated that the  
5 anticipated date to close on this transaction was June  
6 30th, 2015. In fact, Greenwood sent the agreement and  
7 summary of the terms on June 19th, 2015, which was a  
8 Friday. It was not received by the OEC until Monday,  
9 June 22nd.

10                   At that point, as far as we knew, the  
11 Financial Investigations Unit had six business days to  
12 thoroughly review this transaction before Greenwood  
13 closed on the transaction. The May agreement between  
14 Greenwood and Merrill Lynch is documentary evidence of  
15 intent to enter into a transaction, and Greenwood had  
16 no definitive knowledge who the proposed lenders would  
17 be at that time. So, it was possible that the  
18 transaction may have involved new financial backers,  
19 which triggers the regulation.

20                   The second regulation I want to address  
21 is 58 Pa. Code Section 423(a)(6)(b), subparagraphs 4  
22 and 5. And they state that an individual who has  
23 applied for issuance or renewal of a license shall  
24 execute a statement of conditions in the manner and  
25 form required by the Board.

1           The execution of the statement of  
2 conditions constitutes the acceptance of each  
3 provision contained in the statement of conditions.  
4 Failure to comply with any provision contained in an  
5 executed statement of conditions constitutes a  
6 violation and may result in Board imposed  
7 administrative sanctions, up to and including  
8 revocation, against the individual or entity to whom  
9 the license was issued.

10           Now, paragraph 15 of Greenwood's  
11 executed statement of conditions shows that Greenwood  
12 agreed to notify the Board on a confidential basis  
13 prior to or immediately upon becoming aware of any  
14 impending change of ownership or change in control,  
15 material change in financial status including debt  
16 position, restructuring, receivership, merger,  
17 dissolution, bankruptcy or transfer of assets to any  
18 third party.

19           The transaction at issue today increased  
20 Greenwood's borrowing ability by tens of millions of  
21 dollars. Thus, it's always --- it's the OEC's  
22 position that the transaction in question qualifies  
23 under paragraph 15 of the executed statement of  
24 conditions and notification should've been made prior  
25 to or immediately upon becoming aware that they were

1 going to pursue this transaction, which was May at the  
2 latest.

3           The OEC has cited other sections of the  
4 Act and regulations that we feel are applicable, even  
5 though they primarily target Applicants. It's the  
6 OEC's position and belief that Licensees should not be  
7 held to any less of a standard than Applicants, and  
8 that is why the OEC cited those regulations in its  
9 complaint. The underlying reason for these  
10 regulations is that financial suitability is ongoing  
11 for any Licensee.

12           In order for the BIE and the OEC to be  
13 able to properly monitor the financial suitability of  
14 a slot machine Licensee, we need timely notice of  
15 impending major financial transactions, such as  
16 refinancing of debt, in order to have the time and  
17 opportunity to thoroughly review the transaction to  
18 see what impact, if any, it has on the Licensee's  
19 financial suitability.

20           Thus, regulations such as Section  
21 441A.11 and Contingent 15 of Greenwood's executed  
22 statement of conditions, which require immediate  
23 notice to the Board when a transaction like this is  
24 being planned. This is a financial transaction that  
25 involved hundreds of millions of dollars. It's not

1 like refinancing a home mortgage.

2                   Just the summary of indicative terms  
3 alone indicated numerous affirmative covenants,  
4 negative covenants and financial covenants that  
5 immediately raised questions for the Financial  
6 Investigations Unit and the OEC. And those questions  
7 were based only on a cursory review of the documents  
8 that were provided at that time.

9                   Examples of these questions include  
10 potential changes in the ownership structure and  
11 potential encumbrance of the casino assets to fund  
12 developments of other projects. The OEC and the  
13 Financial Investigations Unit were not aware of these  
14 potential events until it began to review the  
15 documents provided, and six business days is not  
16 enough time to thoroughly analyze these types of  
17 transactions to provide a competent analysis to the  
18 Board.

19                   Greenwood may have put pen to paper with  
20 Merrill Lynch to seek out lenders on May 18th, but it  
21 is highly improbable that the decision to refinance  
22 its debt was made around that time. We're still  
23 unaware of when the actual decision to refinance  
24 occurred. Greenwood should've at least informally  
25 advised the Bureau of Investigations and the OEC when

1 the decision was made to refinance its debt and kept  
2 us updated on a confidential basis as the transaction  
3 progressed.

4           Other slot machines also recently  
5 refinanced debt, and in each instance, notification  
6 was given in a timely manner. Even a phone call or an  
7 email at the beginning of the process followed by a  
8 more formal notification is sufficient and has been  
9 past practice in all prior refinance matters, of which  
10 there have been many. In this case, the lack of any  
11 notification until the formal notification raised red  
12 flags, especially in light of the approaching closing  
13 date.

14           The Financial Investigations Unit has an  
15 excellent staff and are veterans in reviewing and  
16 digesting the documents involved in these transactions  
17 and the intended financial implications. But they do  
18 not have unlimited manpower. They need timely notice  
19 when these transactions are on the horizon so that  
20 they can prepare and plan accordingly. The OEC is  
21 concerned that if this complaint is dismissed, it will  
22 send a signal to other Licensees that liberties can be  
23 taken with Board notification in this context and  
24 perhaps other contexts. Parx has been and continues  
25 to be a very --- continues to be very healthy

1 financially.

2                   But other Licensees may require greater  
3 scrutiny. For example, the situations regarding  
4 Foxwoods, PITG/Majestic Star, Atlantic City Coin and  
5 Slot and Caesar's spring to mind as instances where  
6 timely notification of significant financial  
7 transactions was absolutely imperative to Board  
8 action.

9                   Without timely notification, the  
10 Financial Investigations Unit is not going to have the  
11 necessary time to thoroughly review these transactions  
12 and advise the Board, through the OEC, before the  
13 actual transaction takes place. At a minimum, the  
14 Financial Investigations Unit --- the Financial  
15 Investigation Unit's review provides a second set of  
16 eyes on the transaction, and its questions could  
17 result in favorable changes to the terms of the  
18 agreement.

19                   Although involving an Applicant instead  
20 of a Licensee, the OEC asks the Board to take a look  
21 at the underlying principles of the Consent Agreement  
22 that was approved by the Board in 2011 between the OEC  
23 and Valley Forge Convention Center Partners. In that  
24 particular case, Valley Forge, while still an  
25 Applicant, entered into a term sheet with a lender

1 approximately four months before it was disclosed to  
2 the Board.

3           As stated previously, it's the OEC's  
4 position and belief that Licensees should not be held  
5 to any less of a standard than Applicants. And that  
6 is why the OEC cited regulations implicating  
7 Applicants in its complaint. While not as egregious  
8 as the Valley Forge matter, this matter involving  
9 Greenwood is nonetheless a violation of the Board's  
10 regulations.

11           In the Valley Forge matter, the OEC and  
12 Valley Forge settled on a civil penalty of \$10,000.  
13 Although in our complaint with Greenwood, we sought a  
14 considerably higher civil penalty, at this time, we  
15 recommend to the Board a civil penalty of \$5,000, plus  
16 payment of a Bill of Costs reflecting the time and  
17 expense spent by the OEC and BIE staff on this matter.

18           Finally, even if the Board does not feel  
19 that a civil penalty is warranted in this matter, the  
20 OEC urges the Board to still find Greenwood in  
21 violation of Board regulations so as not to set a  
22 precedent that may hamper the BIE and the OEC in  
23 trying to enforce these regulations in the future.  
24 Thank you.

25                           CHAIRMAN:

1 Thank you. Greenwood?

2 ATTORNEY STEWART:

3 Please.

4 ATTORNEY BONNER:

5 Mr. Chairman, Mr. Stewart will make the  
6 formal oral argument. I just wanted to offer some  
7 orienting overview comments. I think it's fitting  
8 that you're honoring ten year employees today, because  
9 one of the things I'd like to talk about is Greenwood  
10 Gaming, Parx Casino's almost ten-year history of  
11 gaming in Pennsylvania. We were the second casino to  
12 open. We opened in December of 2006. We've been at  
13 it for a little bit over nine years. Look forward to  
14 our tenth anniversary celebration in December.

15 Over the course of that nine plus years,  
16 OEC has knocked on our door 22 times to tell us, we  
17 think your colleagues committed some errors, didn't  
18 follow the regulations, didn't do things properly, and  
19 we're going to file an Enforcement Action unless we  
20 can agree by way of Consent Agreement. And you're  
21 well familiar with that process.

22 Twenty-one (21) of those 22 times, we  
23 have agreed. The 21st is before you later in today's  
24 agenda. I'm addressing the 22nd time. We don't  
25 agree. We believe that we've followed the



1 regulations. We believe that we gave timely notice to  
2 the Board. As Dustin has indicated, notice was given  
3 in advance of the transaction. We gave notice the day  
4 that we finally knew who the group of lenders would  
5 be.

6 We had lenders competing to be part of  
7 the consortium for the amendment and restatement of  
8 our existing loan, and on the day we knew who they  
9 were, we gave notice, as Dustin said, and mailed it on  
10 the --- on a Friday. And it was received on a Monday.  
11 Although, at that time, we did say we thought we were  
12 going to --- the targeted date for closing was June  
13 30. In fact, we closed about four weeks after that,  
14 so the Board had five weeks' notice prior to the  
15 closing.

16 FIU had time to review and evaluate the  
17 transaction, and although it's important that FIU have  
18 the information available, my recollection is that no  
19 significant questions or concerns were raised by FIU.  
20 They had the terms. They didn't ask for any  
21 amendments, didn't ask for any significant  
22 explanations. They understood the deal, so there was  
23 really no concern. So, my point is that we engage in  
24 tens of thousands of regulated transactions every day  
25 in our casino.

1           On very few occasions have --- has there  
2 been need for OEC to bring a matter before you. In  
3 all but one, this one, we have agreed that OEC had the  
4 facts that warranted an appropriate civil penalty, and  
5 we've done it by consent. We know they're not asking  
6 for much money. This is a case in which we think \$1  
7 is too much, because we believe we followed the  
8 regulations and gave the notice that was required.

9           CHAIRMAN:

10           Thank you.

11           ATTORNEY BONNER:

12           Thank you.

13           ATTORNEY STEWART:

14           I'll be brief. Thank you very much. We  
15 believe there's a very narrow issue here, which is  
16 when must notice be given under Section 441A.11 of the  
17 regulations? All of the other provisions cited by the  
18 OEC are not applicable on their face by their own  
19 terms.

20           In terms of the comments from  
21 Enforcement Counsel about the need to ensure Parx's  
22 remaining financial suitability, we would submit that  
23 that's fairly obvious on the facts of its performance,  
24 on the fact that this Board found Parx to be  
25 financially suitable six months prior to the

1 refinancing. And frankly, the terms of the  
2 refinancing themselves confirm the ongoing financial  
3 suitability of Greenwood Gaming.

4           And there's a regulation that addresses  
5 that duty to maintain financial suitability. It's  
6 441A.11(a), and if there's a concern about that, the  
7 proper avenue to express that concern or raise that  
8 concern would be for the OEC and BIE to investigate  
9 under that regulation. If you look at its terms and  
10 the elements that are to be considered, Parx passes  
11 each one with flying colors.

12           Turning to the question of when notice  
13 must be given, we believe that there's two elements  
14 that must be present in order to trigger the notice  
15 requirement. The first is that there must be a new  
16 financial backer or a new financial source involved.  
17 That's right in the text of the regulation. In our  
18 view, Enforcement Counsel has ignored this fact and  
19 overreached throughout this process. They have  
20 demanded notice of all refinancings, even if no new  
21 financial backer is involved.

22           And that is inconsistent with the text  
23 of the regulation, and you know, it may be something  
24 that has been done in the past. You saw --- by other  
25 casinos. You saw it in Mr. O'Neil's affidavit, if you

1 looked at that. But there's a key distinction between  
2 what is voluntarily done and what is required to be  
3 done upon --- and what can be penalized for a breach.  
4 So, the first trigger is, there must be a new bank  
5 involved.

6           The second is that there must be a  
7 transaction for the casino to intend to enter into.  
8 The regulation does not require us to give notice to  
9 you of every thought or every idea that we have.  
10 Transactions, by their definition, require there to be  
11 two sides. A casino could propose terms that were  
12 unrealistic, that no bank would finance. Is that a  
13 transaction? Is that something that has to be  
14 provided notice for?

15           Here we submit, as Mr. Bonner stated,  
16 that there is no violation because notice was timely  
17 given. No transaction existed until --- in our view  
18 until we received commitments from the lenders. Those  
19 commitments were not accepted on the date that they  
20 were received, but we at least received commitments  
21 from a pool of lenders on June 17th after 5:00 p.m.  
22 Notice was promptly provided within two days, and that  
23 --- those commitments did include one new bank.

24           Every other bank involved that gave  
25 commitments was a preexisting lender, and that bank's

1 commitment included conditions which were not accepted  
2 at the time. Negotiations ensued, and actually, the  
3 participating lenders and the fact that there would be  
4 one new lender was not even confirmed until June 30th  
5 in this matter, several days after notice had been  
6 provided.

7                   So, we believe that the June 19th notice  
8 was timely. In terms of the questions raised, as Mr.  
9 Bonner stated, they were not material, and they were  
10 ---. One was about a buyback of stock which did not  
11 even meet the threshold transaction under any of the  
12 regulations for review. The other was about a very  
13 known project --- finance related to another project  
14 that was before this Board just months before.

15                   In terms of taking any liberties, even  
16 if this matter is viewed slightly differently  
17 factually, it's hard to believe that liberties have  
18 been taken here. At worst, we knew of the possibility  
19 of a financial --- a new financial source on June 3rd.  
20 And certainly, two weeks to get that in is not taking  
21 liberties with the notice, but again, there was no  
22 transaction at that time for us to enter into. There  
23 were no commitments. So, with that, we request that  
24 you dismiss the complaint. Thank you.

25                   CHAIRMAN:

1 Thank you. Have you ---? I don't want  
2 to get into rebuttal and counter rebuttal here, but if  
3 you'd like to just summarize where you are, briefly?

4 ATTORNEY MILLER:

5 Yeah, I don't ---- you know, if we want  
6 to go back and forth. And you know, we obviously  
7 think that 441 ---. We have a different  
8 interpretation of 441A.11, and I would just ask the  
9 Board to apply the plain meaning of the language in  
10 that regulation. It clearly says that, as soon as the  
11 Licensee becomes aware that it intends to enter into a  
12 transaction which may result in a new financial  
13 backer, you know, it's our position that when they  
14 entered that agreement in May ---

15 CHAIRMAN:

16 Yes.

17 ATTORNEY MILLER:

18 --- they clearly knew they were  
19 intending to enter into a transaction. And they did  
20 not know who the lenders would be, so they could ---.  
21 They may --- it may have involved a new financial  
22 backer, so that's where we are.

23 CHAIRMAN:

24 Okay.

25 ATTORNEY BONNER:

1                   We'll just keep going back and forth,  
2 Mr. Chairman, I think.

3                   CHAIRMAN:

4                   Yeah. I just wanted to make sure that  
5 we were there. Thank you very much.

6                   ATTORNEY STEWART:

7                   Thank you.

8                   ATTORNEY MILLER:

9                   Thank you.

10                  ATTORNEY BONNER:

11                  Yeah, thank you.

12                  ATTORNEY MILLER:

13                  Chairman, I do have the Bill of Costs  
14 that I referred to in my oral argument, and I think I  
15 would want to submit that to the ---

16                  CHAIRMAN:

17                  Fine.

18                  ATTORNEY MILLER:

19                  --- Board's Secretary. I have provided  
20 a copy of that to the opposing party, and then if you  
21 do find a violation ---.

22                  CHAIRMAN:

23                  Oh. Oh, excuse me. I'm sorry. I  
24 skipped something. It's always good to have a former  
25 Chair to tell me when I'm drifting. If I could

1 interrupt you, are there questions from the Board?

2 MR. WOODS:

3 I just have one question for you,  
4 Dustin. You said it would've been helpful or  
5 appropriate, probably, for an informal contact, a  
6 telephone call or whatnot. What would you have done  
7 with an informal contact that said that there may be a  
8 lender? I mean, would there --- an investigation  
9 begin? Would there have been any work done?

10 ATTORNEY MILLER:

11 Pretty much the past practice has been  
12 --- is that we have gotten sort of an informal  
13 contact. Hey, we're thinking about doing this. And  
14 pretty much what we tell the Licensees is, well, when  
15 you have documents, please provide them. Well, you  
16 know, when you know something, let us know something.  
17 That's pretty much how these have been handled in the  
18 past.

19 MR. WOODS:

20 Thank you.

21 MR. RYAN:

22 Well, I think that ---.

23 ATTORNEY STEWART:

24 And if I may? I would say that when we  
25 did know something, we did let them know.



1                   CHAIRMAN:

2                   Okay. Other questions? I --- you do?

3                   MR. RYAN:

4                   Yeah.

5                   CHAIRMAN:

6                   Okay.

7                   MR. RYAN:

8                   With all due respect, Counsel, it seems  
9 to me that this is ---. I'm not sure why we're here.  
10 I understand your position, but you agree with  
11 Greenwood that your interpretation of the regulations  
12 is --- it sounds to me strikingly different from  
13 Greenwood's.

14                   ATTORNEY MILLER:

15                   Right.

16                   MR. RYAN:

17                   And therefore, if the Board were to  
18 agree with Greenwood, you understand that your  
19 position has to fall?

20                   ATTORNEY MILLER:

21                   Right.

22                   ATTORNEY PITRE:

23                   Yes, we do understand that. And to  
24 answer your question, Commissioner Woods, we would ask  
25 questions. There would be a dialogue back and forth.

1 There was a lender presentation that was --- that  
2 Greenwood made in early June. We never received that.  
3 We received those because we would have a dialogue  
4 going back and forth. If you interpret it the way  
5 Greenwood argues, it would be no skin off my back.

6 It'd be less work for us, actually,  
7 because in the end, when we --- by the time we got the  
8 transaction, they'd be nearing closing. They'd be  
9 near to closing, and by the time the Board got the  
10 information, the closing probably would've occurred.

11 MR. RYAN:

12 And the bottom line, Cyrus, is they  
13 can't do anything without you signing off on it  
14 anyway; right?

15 ATTORNEY PITRE:

16 Yes, they can.

17 MR. RYAN:

18 Why?

19 ATTORNEY PITRE:

20 Yes, they can. They can go to closing  
21 without me knowing anything about it.

22 MR. RYAN:

23 Would they?

24 ATTORNEY PITRE:

25 Yes, they would.

1                   MR. RYAN:

2                   As a practical matter?

3                   ATTORNEY PITRE:

4                   Yes, they would. That's what led us to  
5 PITG and Holdings Acquisition and the whole problems  
6 at Rivers in the past. These protocols were put in  
7 place to ensure that we would not run into the same  
8 situation again with any Applicant or any Licensee, be  
9 that who they may --- who they may be, whether they're  
10 financially fit or whether they're teetering on the  
11 brink. It has saved us in various ways with Foxwoods,  
12 Caesar's, Atlantic City Coin and Slot and Mount Airy.

13                   Without knowing those things in advance,  
14 without being aware of what's going on in advance, it  
15 encumbers us from tracking the finances of our  
16 Licensees. It can lead to --- possibly to more  
17 bankruptcies. It could possibly lead to us being  
18 behind the eight ball and the casinos entering into  
19 transactions and us finding out after the fact and not  
20 being able to do anything about them.

21                   While I applaud Greenwood for its  
22 operations, it's not something that I think would be  
23 logical for us to do at this time frame with the  
24 industry coming under attack in all fronts from other  
25 jurisdictions and competitions from other areas.

1                   MR. RYAN:

2                   Okay.

3                   ATTORNEY BONNER:

4                   Mr. Chairman --- oh, I'm sorry.

5                   CHAIRMAN:

6                   Please hold on. Go ahead, please.

7                   ATTORNEY BONNER:

8                   Mr. Chairman, just with response --- in  
9 response to Cyrus's comment about we would have gone  
10 to closing, in fact, we pushed back the closing date.  
11 In part, we weren't ready to close with respect to the  
12 bank and the business terms, but in part, we did not  
13 want to close knowing that we were in discussions with  
14 OEC about a possible resolution of the disagreements  
15 that we had. We entered into a stipulated statement  
16 that we both signed.

17                   And as you know, continued our attempted  
18 to try to do things by agreement. You have a set of  
19 stipulated, agreed facts before you. We agree on what  
20 the facts are. We just disagree on the conclusion you  
21 should draw from them. But we delayed closing beyond  
22 June 30 by almost four weeks in part in an attempt not  
23 to have Cyrus say we close, giving you the back of our  
24 hand.

25                   ATTORNEY PITRE:

1 That closing was delayed ---.

2 ATTORNEY BONNER:

3 In part.

4 ATTORNEY PITRE:

5 That closing was delayed because I made  
6 numerous threats; okay?

7 CHAIRMAN:

8 Okay.

9 ATTORNEY BONNER:

10 Whatever, we listened to them.

11 ATTORNEY PITRE:

12 It was not my ---.

13 CHAIRMAN:

14 Let's --- enough. Enough for now.

15 MR. WOODS:

16 I can't believe that, Cyrus.

17 CHAIRMAN:

18 I have two questions, but did you have  
19 one?

20 MR. FAJT:

21 Yeah, I do.

22 CHAIRMAN:

23 Go ahead.

24 MR. FAJT:

25 Thank you, Mr. Chairman. I'm probably

1 --- well, I'm not probably. I'm with Commissioner  
2 Ryan. I'm not sure why we're here either, and you  
3 know, I look at this, and a pox on both your houses.  
4 I think a little notice, a phone call, an email in  
5 May, early June, June 3rd when you knew who the lender  
6 was wouldn't have hurt. Heads up, this is coming. We  
7 don't know when it's coming.

8                   You know, if you're looking at a June  
9 30th closing, notification, you know, on June 19th,  
10 Friday, late in the day, arrives Monday, you know, the  
11 21st, 22nd, whatever that day is --- you don't know  
12 what they do. And so, to assume that you can --- they  
13 can do what they need to do, both background checks on  
14 the new lender, looking, you know, at Mr. Green again,  
15 updating his background, looking at the use of funds  
16 that the money's going to go for ---.

17                   You can't just assume that that's going  
18 to be done in six, seven, eight days, five or six  
19 business days. And so, a little heads up wouldn't  
20 hurt. To you guys, you know, this --- again, I think  
21 that each transaction ---. I know you're worried that  
22 if we rule on behalf of Greenwood that it's going to  
23 set a precedent. We don't look at it that way. We  
24 look at every transaction as a specific facts and  
25 circumstances.

1                   We have the authority on this Board to  
2 rule as we wish. And if we rule in their favor and  
3 there's a similar situation down the road where  
4 somebody doesn't give you proper notice, you feel, you  
5 know, that they violated the regulations, you should  
6 come back before this Board. And we will look at that  
7 transaction in a facts and circumstances test.

8                   But I really --- I don't think we should  
9 be here. I don't like the fact that we're wasting  
10 time on this, and again, I think there's enough fault  
11 in both houses to be equally shared.

12                   CHAIRMAN:

13                   Two questions for you, Cyrus or ---. At  
14 one --- so you get the notice on, effectively, June  
15 19th or whatever. Did you, at that point or at any  
16 point ---? At what point did you express concern that  
17 you were being ---? When did you first tell Greenwood  
18 that you were troubled by the fact that you were  
19 expected to do something in six or seven work days?

20                   ATTORNEY PITRE:

21                   Was it the 22nd?

22                   ATTORNEY MILLER:

23                   I think it was the 23rd.

24                   ATTORNEY PITRE:

25                   The 20 --- the very next day.

1                   ATTORNEY MILLER:

2                   Yeah.

3                   CHAIRMAN:

4                   The very next day? Okay. And for you  
5 all, it's a very common ---. I'm stating as a  
6 question, as opposed to Commissioner Fajt. You knew  
7 you were well past the ---. I can't agree with Mr.  
8 Stewart. It was hardly a question of telling  
9 everybody every thought you ever had. You had  
10 documents. You had a lot of work that had happened by  
11 May 18th. What's the reason why? Just explain to me  
12 why you didn't let them know sometime between May 18th  
13 and ---

14                   ATTORNEY BONNER:

15                   Mr. Chairman, we were ---

16                   CHAIRMAN:

17                   --- and June 19th.

18                   ATTORNEY BONNER:

19                   --- we were awaiting a confirmation of  
20 who the lenders would be in the group. We did have  
21 documents that pre-date that. Obviously, a  
22 transaction of this --- like this doesn't get done in  
23 a week. We were awaiting confirmation so that we  
24 could tell the Board specifically who the lenders  
25 would be, and that's what we did when we learned who



1 that final seventh bank was.

2 CHAIRMAN:

3 Okay. But the reason why I'm asking  
4 that is, we're up to June 19th. You're still hoping  
5 to close on the 30th. By definition, I presume you  
6 recognized that they weren't going to have a whole lot  
7 of time to review things.

8 ATTORNEY BONNER:

9 If you'd asked me then, Chairman, I  
10 probably would've told you we thought we wouldn't make  
11 that date. But that was the date that was in the  
12 document ---

13 CHAIRMAN:

14 Uh-huh (yes).

15 ATTORNEY BONNER:

16 --- the June 30 target date. In fact,  
17 we closed about when we figured we might, knowing what  
18 we had.

19 CHAIRMAN:

20 So, when they contacted you on the 23rd  
21 or whatever and expressed concerns, did you tell them,  
22 don't worry about June 30th?

23 ATTORNEY BONNER:

24 We began extensive discussions. Part of  
25 them were about delaying the closing date, and I

1 believe I indicated relatively early in the process,  
2 don't worry about the closing date. We'll hold off,  
3 try to resolve things before we close. And in fact,  
4 we did. That was important to us, not to close  
5 without some attempt to agree with the Board.

6 CHAIRMAN:

7 Well, I would assume ---.

8 ATTORNEY PITRE:

9 I ---.

10 CHAIRMAN:

11 I assume that would be the case ---

12 ATTORNEY BONNER:

13 And ---.

14 CHAIRMAN:

15 --- in any of your transactions. I  
16 guess my comment is similar to Commissioner Fajt's,  
17 which is it was inevitable that there was going to be  
18 a disagreement given the short length of time. And to  
19 assume that because they didn't ask a lot of questions  
20 that there was no need to give them more notice just  
21 seems to me ---. You guys are going to be working  
22 together for the next 20 or 30 years, and ---.

23 ATTORNEY STEWART:

24 Well, we've been for ten.

25 CHAIRMAN:

1                   Yeah.

2                   ATTORNEY STEWART:

3                   This is an aberration, but yeah.

4                   ATTORNEY BONNER:

5                   Chairman, one other important point, I  
6 think, as you deliberate --- we did enter into a  
7 stipulated statement of conditions. We agree to do  
8 certain things, give certain notice to the Board if  
9 certain things were to happen related to the  
10 financing. That's signed by both parties. That was  
11 prior to the closing. So, we came to an agreement  
12 with OEC with respect to how we would handle the  
13 matter.

14                   CHAIRMAN:

15                   Uh-huh (yes).

16                   ATTORNEY BONNER:

17                   It obviously didn't, you know, forestall  
18 this argument that we were late anyway, but we came to  
19 an agreement on the terms that seemed to matter  
20 substantively in the deal, and we did that before  
21 closing.

22                   CHAIRMAN:

23                   I understand. Any other questions?

24                   MR. RYAN:

25                   If I may? With all due respect to

1 Commissioner Fajt, with whom I never disagree, I'm  
 2 going to --- not going to be quite as tough. I have  
 3 to say for my --- speaking for myself, I think, with  
 4 all due respect to OEC, that Greenwood acted  
 5 appropriately here given the regulations, given what  
 6 they were trying to do, given the situation they were  
 7 in. That's all.

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HEARING CONCLUDED

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## CERTIFICATE

1  
2 I hereby certify that the foregoing  
3 proceedings, hearing held before Chairman Barasch was  
4 reported by me on 2/10/16 and that I, Samantha Bruer,  
5 read this transcript, and that I attest that this  
6 transcript is a true and accurate record of the  
7 proceeding.

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10 Court Reporter

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Samantha Bruer