

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: WOODLANDS FAYETTE, LLC - PETITION FOR
RECONSIDERATION OF THE BOARD'S APRIL 25, 2013 ORDER
PUBLIC HEARING

BEFORE: William H. Ryan, Jr., Chairman
Gregory C. Fajt, James B. Ginty, Annmarie
Kaiser, Keith R. McCall, John J. McNally,
III, Anthony C. Moscato, Members; Jennifer
Langan, representing State Treasurer,
Robert M. McCord, Robert Coyne,
representing Secretary of the Department of
Revenue, Daniel Meuser, Mathew Meals,
representing Secretary of Agriculture,
George Greig

HEARING: Wednesday, May 15, 2013, 10:05 a.m.

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

WITNESSES: Chris Plummer, Eric, Siegel, Eric Hausler,
Richard Laudon

Reporter: Cynthia Piro Simpson

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I N D E X

| | | |
|----|--|---------|
| 1 | | |
| 2 | | |
| 3 | OPENING REMARKS | |
| 4 | By Chairman | 6 - 10 |
| 5 | <u>WITNESS:</u> CHRIS PLUMMER | |
| 6 | DIRECT EXAMINATION | |
| 7 | By Attorney Kirchner | 10 - 12 |
| 8 | <u>WITNESS:</u> ERIC SIEGEL | |
| 9 | EXAMINATION ON QUALIFICATIONS | |
| 10 | By Attorney Kirchner | 13 - 16 |
| 11 | DIRECT EXAMINATION | |
| 12 | By Attorney Kirchner | 17 - 28 |
| 13 | <u>WITNESS:</u> CHRIS PLUMMER (recalled) | |
| 14 | CROSS EXAMINATION | |
| 15 | By Attorney Pitre | 29 - 32 |
| 16 | <u>WITNESS:</u> ERIC SIEGEL (recalled) | |
| 17 | CROSS EXAMINATION | |
| 18 | By Attorney Pitre | 33 - 44 |
| 19 | CROSS EXAMINATION | |
| 20 | By Attorney Stuart | 44 - 49 |
| 21 | <u>WITNESS:</u> CHRIS PLUMMER (recalled) | |
| 22 | CROSS EXAMINATION | |
| 23 | By Attorney Stuart | 49 - 54 |
| 24 | CROSS EXAMINATION | |
| 25 | By Attorney Creany | 54 - 56 |

I N D E X (cont.)

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

WITNESS: ERIC SIEGEL (recalled)

CROSS EXAMINATION

By Attorney Creany 56 - 59

QUESTIONS FROM BOARD MEMBERS 59 - 74

DISCUSSION AMONG PARTIES 74 - 76

CLOSING REMARKS

By Chairman 76

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> |
|---------------|--|---------------------|----------------------|
| *1 | Written expert report of Mr. Siegel | 18 | 18 |
| *2 | Document | 76 | 76 |

* CONFIDENTIAL EXHIBIT

P R O C E E D I N G S

1
2
3
4
5
6
7
8
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11
12
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CHAIRMAN:

Thank you, ladies and gentlemen. We have a presentation this morning and also two public hearings on the agenda. And these items will be taken up prior to our public meeting.

And we're going to change the order, if we can, and the first --- we will first handle the public hearing involving Nemacolin Woodlands. Everybody here from Nemacolin Woodlands?

ATTORNEY KIRCHNER:

Yes.

CHAIRMAN:

And Cyrus, everyone here?

ATTORNEY PITRE:

Everyone here.

CHAIRMAN:

Okay. Give me one moment, ladies and gentlemen.

OFF RECORD DISCUSSION

CHAIRMAN:

As a wrap-up from a prior hearing, let me just state that this hearing today results from Woodlands Fayette, LLC's request for reconsideration

1 of the Board's Order approving its casino access plan
2 generally but not approving its proposed \$25-per-year
3 Nemacolin Experience membership. Specifically,
4 they're asking the Board to reconsider the denial of
5 the Nemacolin Experience membership and want to put
6 into the record additional evidence in support of that
7 membership.

8 Because Woodlands plans on opening on or
9 about July 1st, they understandably want some
10 resolution as to whether the Nemacolin Experience
11 membership will be in place. As a result, what we are
12 going to do today is first take up a motion as to
13 whether the Board is willing to grant reconsideration.
14 And if that passes, we will immediately have a hearing
15 on the underlying merits and take any additional
16 evidence either Woodlands or OEC would like to put on
17 the record. So, I would first ask my colleagues for a
18 motion approving Woodlands Fayette, LLC's request for
19 reconsideration. May I have such a motion?

20 MR. MCCALL:

21 Mr. Chairman, I would move that the
22 Board approve the motion for reconsideration of the
23 Woodland Fayette, LLC.

24 MR. MCNALLY:

25 Second.

1 CHAIRMAN:

2 All in favor?

3 AYES RESPOND

4 CHAIRMAN:

5 Opposed? The motion carries. Having
6 granted reconsideration, let us now hear from the
7 parties on the underlying merits. I believe
8 everybody's in place. I would ask that any fact
9 witnesses who are not attorneys please be sworn in.
10 And I'll let counsel take care of that. Gentlemen?

11 -----

12 WITNESSES SWORN EN MASSE

13 -----

14 CHAIRMAN:

15 If I can, one by one, could you just
16 stand, state your name, position for the record, and
17 spell your last name for the court reporter?

18 MR. SIEGEL:

19 Yes. My name is Eric Siegel,
20 S-I-E-G-E-L, president of Siegel Management Company.

21 MR. PLUMMER:

22 I'm Chris Plummer. I'm the general
23 manager at Nemaocolin Woodlands Resort. And that's
24 P-L-U-M-M-E-R.

25 MR. LAUDON:

1 I am Richard Laudon, L-A-U-D-O-N. I'm
2 the vice president and general manager of Lady Luck
3 Casino, Nemaocolin.

4 MR. HAUSLER:

5 I'm Eric Hausler, H-A-U-S-L-E-R, Chief
6 Strategic Officer at Isle of Capri Casinos.

7 CHAIRMAN:

8 Sir, why don't you come up forward and
9 sit right there (indicating), if you will. Make it
10 easier for everybody. Counselor?

11 ATTORNEY KIRCHNER:

12 Thank you. And thank you to the Board
13 and to SugarHouse for allowing us to present our
14 motion first. I appreciate that. As you said, this
15 is our motion --- Petition for Reconsideration of that
16 portion of the Board's Order that denied approval of
17 the Nemaocolin Experience membership. And we're going
18 to present the expert testimony of Mr. Siegel today in
19 support of that application.

20 But before we do that, we have some
21 clarification. There were apparently some errors in
22 Mr. Plummer's testimony at the last hearing. Some of
23 the numbers that he testified about have changed. And
24 just to clarify the record, I'd like to ask Mr.
25 Plummer to --- call him to testify about those changes

1 so that the record is perfectly clear and accurate
2 about what it is we're asking for here.

3 -----
4 CHRIS PLUMMER, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
5 AS FOLLOWS:

6 -----
7 DIRECT EXAMINATION

8 BY ATTORNEY KIRCHNER:

9 Q. So, Mr. Plummer, you testified at the last
10 hearing about the amenities included in the Nemaocolin
11 Experience membership and the prices offered to
12 members for those amenities; is that right?

13 A. Yes.

14 Q. And following that hearing, did you discover that
15 there were some errors in some of those numbers?

16 A. Yes, we did.

17 Q. Okay. Could you please explain to the Board what
18 it is you found and how you've corrected those
19 numbers?

20 A. Yes, absolutely. Really, what we want is just to
21 clarify some misinformation we provided last month in
22 regard to some of our non-member pricing, is really
23 where it lied. At the time we were putting this all
24 together, over the last few months, we were in the
25 process of setting a lot of our amenity rates for the

1 season, and it caused just a couple of errors.

2 I'll start with the links. Nemaocolin Experience
3 members will receive a \$15 twilight cart fee on
4 Sundays. We presented that the non-guest fee was \$60.
5 The non-guest fee is actually \$45 during our peak
6 season, twilight, and \$30 during our non-peak season.

7 On Mystic Rock, Nemaocolin Experience members will
8 receive an \$85 twilight cart and greens fees on
9 Sundays, peak season, and a \$50 cart and green fees
10 during our off-peak season. We presented that the
11 non-member pricing was \$185 when actually the twilight
12 rate for Mystic Rock is \$99 in our peak season and \$65
13 in our off-peak season. We also added the \$50 member
14 rate, the Nemaocolin Experience member rate, to Mystic
15 Rock to provide a better value for our Nemaocolin
16 Experience members in the off-peak season. Small one
17 and the Woodlands Spa, we had presented that our
18 Nemaocolin Experience members would receive member
19 pricing after 4:00 p.m., but we have changed that time
20 to after 3:00 p.m. We also presented our non-guest
21 pricing as \$30 when it is now \$15 for access after
22 3:00 p.m. The price we are offering our Nemaocolin
23 Experience members is \$10, which has not changed, and
24 that is a 33 percent discount.

25 So, overall, the only thing that has

1 changed is the gap between what our Nemacolin
2 Experience members will pay and what our non-members
3 will pay for those amenities that I just spoke about.

4 Q. And has that gap increased or narrowed, Mr.
5 Plummer?

6 A. That --- between member pricing and non-member
7 pricing has narrowed a little bit.

8 Q. Okay. Considering these changes that you've just
9 described to the Board, do any of these changes alter
10 in any way your conclusion that you expressed to the
11 Board at the last hearing, that you believed the \$25
12 price being proposed by Woodlands Fayette for this
13 membership is a fair price for both the members and
14 the resort?

15 A. Yeah, that is a very fair price, absolutely.

16 Q. So your opinion has not changed?

17 A. Has not changed.

18 Q. Okay. Thank you.

19 ATTORNEY KIRCHNER:

20 That's all I have for Mr. Plummer.

21 A. Okay.

22 ATTORNEY KIRCHNER:

23 I'd like now to present the testimony of
24 Mr. Eric Siegel. Mr. Siegel testified earlier before
25 this Board as an expert in the Valley Forge case. And

1 I know the Board has a full agenda today. I'm happy
2 to put on the record Mr. Siegel's qualifications as an
3 expert in the area of valuation of assets, businesses,
4 including such things as memberships. But if the
5 Board approves, we can dispense with that and ask the
6 Board just to recognize Mr. Siegel as someone that is
7 already recognized as an expert before.

8 CHAIRMAN:

9 You know, we have the time, sir. Why
10 don't you just have the gentleman put his ---

11 ATTORNEY KIRCHNER:

12 Okay.

13 CHAIRMAN:

14 --- credentials on the record.

15 ATTORNEY KIRCHNER:

16 Very good. We'll put it on the record
17 then. And for the record, we're offering Mr. Siegel
18 as an expert in the field of analyzing the fair market
19 value of assets and business entities, including such
20 things as membership.

21 -----

22 ERIC SIEGEL, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
23 AS FOLLOWS:

24 -----

25 EXAMINATION ON QUALIFICATIONS

1 BY ATTORNEY KIRCHNER:

2 Q. Mr. Siegel, would you please give us --- give the
3 Board a brief synopsis of your background, starting
4 with your education?

5 A. Okay. Thank you. I have two Bachelor's degrees
6 from the University of Pennsylvania, a Bachelor of
7 Arts and a Bachelor of Science in economics. I went
8 on to get an MBA at the Wharton School, and graduated
9 from there in 1980. I'm sorry?

10 CHAIRMAN:

11 Keep your voice up, sir.

12 A. Sure. Sorry. For the last 30-plus years I have
13 done principally two things. I've been president of
14 Siegel Management Company. We advise growth
15 companies, primarily middle-market companies, I would
16 say lower middle-market and middle-market companies,
17 in the size range of Nemaocolin, ranging from \$10
18 million to \$100 million in annual revenue. We've also
19 advised much smaller companies, including start-ups,
20 and much larger companies, such as Caesars
21 Entertainment, Gaylord Entertainment, Bloomingdale's,
22 Fox Sports and the like. And primarily what we're
23 doing is one of two things for these companies. We
24 are helping to devise strategy that they can then
25 implement in an effort to grow their companies, and

1 then we help often on a transactional basis with
2 respect to their interest in buying like companies or
3 dissimilar companies, selling equity interest in their
4 companies and so forth. And it's through that latter
5 area, the transactional support, that we very often
6 have gotten involved in questions of valuation and
7 fairness. I've also sat on the boards of a number of
8 companies, including public companies, where I've been
9 asked to offer input with respect to the fairness of
10 perspective acquisition candidates. So, that Siegel
11 Management is --- been a pretty consistent train for
12 the last 30-plus years. I've also taught at the
13 Wharton School since 1981 in entrepreneurship. As a
14 consequence of those two activities, I have been asked
15 on perhaps 15 or more occasions to serve in an expert
16 witness capacity, generally offering opinions with
17 respect to valuation and fairness.

18 BY ATTORNEY KIRCHNER:

19 Q. Okay. Mr. Siegel, you say you've testified in
20 the past as an expert. Could you just give us a few
21 examples of some of the matters you've testified as an
22 expert?

23 A. Sure. Generally they have to do with the
24 behavior or alleged misbehavior of one party and the
25 damages that that has created or not created for the

1 aggrieved party or the alleged aggrieved party.

2 So, recently we advised --- or offered expert
3 testimony on behalf of a minority shareholder in a
4 company who believed that he --- the behavior of the
5 majority shareholder was diminishing the equity value
6 of the minority shareholder, and we then, therefore,
7 had to opine as to what that value was.

8 As you've noted, we've done two expert witness
9 assignments for Valley Forge Casino Resorts. In each
10 case offered opinions with respect to the fairness of
11 the proposed pricing of their membership programs. Do
12 you want me to ---?

13 Q. Was that testimony before this Board?

14 A. Yes, it was.

15 Q. Okay.

16 ATTORNEY KIRCHNER:

17 Mr. Chairman, I proffer Mr. Siegel as an
18 expert in the field of valuation of memberships?

19 CHAIRMAN:

20 Any questions, Cyrus?

21 ATTORNEY PITRE:

22 No objection.

23 CHAIRMAN:

24 Okay. He's accepted by the Board.

25 ATTORNEY KIRCHNER:

1 Thank you.

2 DIRECT EXAMINATION

3 BY ATTORNEY KIRCHNER:

4 Q. Mr. Siegel, did you produce a written expert
5 report in connection with this engagement?

6 A. Yes, I did.

7 Q. Okay.

8 ATTORNEY KIRCHNER:

9 And for the record, we've produced Mr.
10 Siegel's written expert report as part of the record
11 in support of our petition. We submitted it as a
12 confidential document because it contains proprietary
13 financial information, primarily of Woodlands Fayette,
14 but also, to some extent, of Isle of Capri, the
15 management partner. And so we have asked the Board to
16 treat this as a confidential document, and that's part
17 of our application today.

18 CHAIRMAN:

19 Cyrus, any comment on that?

20 ATTORNEY PITRE:

21 We don't have any objection to that.

22 CHAIRMAN:

23 Okay. It will be so admitted.

24 ATTORNEY KIRCHNER:

25 Thank you.

1 (Woodlands Fayette, LLC, Exhibit One
2 marked for identification.)

3 BY ATTORNEY KIRCHNER:

4 Q. Mr. Siegel, what was the scope of the work that
5 you were retained to perform?

6 A. We were asked to evaluate the fairness of the
7 proposed pricing for the Nemaocolin Experience
8 membership to sort of look at a discreet value and
9 then also look at whether that discreet value would
10 fall within a range of fairness.

11 Q. And were you asked to express your opinion to a
12 reasonable degree of certainty as to the fairness to
13 both members and Woodlands Fayette?

14 A. Yes, sir.

15 Q. And did you do that?

16 A. Yes, sir.

17 Q. Could you describe for the Board the methodology
18 that you employed in going about your assigned task?

19 A. Yes. We had to start by thinking through the
20 question what's fair. What is the definition of
21 fairness? You can't just look at a question like this
22 and say, well, at a gut level it seems fair to me. So
23 we looked for what I would call authoritative
24 definitions of fairness in this regard. We found
25 three sources, one the Internal Revenue Service,

1 another, the AICPA, which is the American Institute of
2 Certified Public Accountants, and the third was
3 Barron's Dictionary of Business Terms. And all three
4 defined fairness in substantially the same terms,
5 which is the price at which a willing buyer and a
6 willing seller would transact business, with neither
7 being under any compulsion or pressure to complete
8 that transaction. So that was the starting point.

9 We then used essentially two methods to evaluate
10 fairness. One was to look at what I would call a
11 quantitative approach, to see if, from a financial
12 perspective, this --- the proposed pricing of the
13 membership would meet the standards of fairness as
14 represented by the three sources that I've mentioned.
15 We've looked at that from both the perspective of
16 Nemacolin and also from the perspective of the
17 potential Nemacolin Experience members. So, that was
18 one method.

19 And the second method was we looked at comparable
20 values on the market today to see if the proposed
21 pricing would stack up reasonably in a fair fashion to
22 other similar offerings on the market today.

23 Q. And in performing those two analyses, did you
24 rely on certain facts?

25 A. Yes, I did.

1 Q. And where did you get those facts from?

2 A. Primarily two sources. Well, more than two
3 sources. From an interview perspective, I relied on
4 two sources. For the most part, the facts that I
5 received was from the gentleman sitting to my left,
6 Chris Plummer, the general manager of Nemaquin. His
7 input was very important because there's no one that
8 would understand the offerings and the proposed target
9 markets as would Mr. Plummer. I also spoke to Eric
10 Hausler, who, for the most part, just furnished
11 background on the case and also some written
12 materials, which I understand have been submitted to
13 the Board already, publicly-available materials.
14 Beyond that, from the comparable analysis, we did go
15 and search publicly-available information to try and
16 find appropriate comps.

17 Q. For the record, Mr. Eric Hausler is the chief
18 strategic officer of Isle of Capri Casinos, Inc.; is
19 that right?

20 A. That's correct.

21 Q. Okay. Now, in going about the fair market value
22 analysis, could you explain how you performed that
23 analysis?

24 A. Yes, sir. Well, from a quantitative perspective,
25 what we did is we tried to develop a set of

1 assumptions. The we in this case was Mr. Plummer and
2 myself. It's a process that I've gone through often.
3 It's a collaborative process. Generally, the person
4 charged with running the business is the --- is where
5 the information begins. As I like to say sometimes,
6 if I know more about his business than he knows about
7 his business, he should pick another business to be
8 in. Having said that, we don't simply accept the
9 assumptions as given. We'll discuss them. We'll test
10 them. We'll challenge them. And through that
11 collaboration, we'll come up with a set of
12 assumptions, which becomes the underpinning for the
13 financial analysis that I referenced previously,
14 so, ---.

15 CHAIRMAN:

16 Excuse me, sir, if I can. When you say
17 we will challenge, what do you mean? Who's the we?
18 You just said ---.

19 A. Oh, I'm sorry. In this case, me.

20 CHAIRMAN:

21 Okay.

22 A. That's the royal Siegel Management Company.

23 CHAIRMAN:

24 Okay.

25 A. Sorry.

1 CHAIRMAN:

2 I just want to be clear myself.

3 A. I was the only party involved in this analysis.

4 CHAIRMAN:

5 Okay.

6 A. So, those assumptions became the underpinning for
7 the financial analysis that we then did. We prepared
8 a pro forma income statement relating to this business
9 within a business, looking at the membership program
10 as its own profit center. And we determined that
11 the --- that at the proposed pricing, the program
12 would deliver a profit to Nemacolin.

13 We then looked at the equation from the other
14 side, meaning from the perspective of the potential
15 consumers, the potential members at Nemacolin, to see
16 if the proposed membership would create an adequate
17 return for people who chose to purchase a membership.
18 And we determined that that would be the case as well,
19 that they would derive an adequate return. So, from
20 the quantitative perspective, we were able to check
21 both boxes, that this was, per the definitions I
22 mentioned earlier, a transaction that a willing buyer
23 and a willing seller would enter into.

24 But we didn't want to stop there. I didn't ---
25 sorry, I didn't want to stop there. As is often the

1 case in these kinds of analyses, I wanted to use a
2 second methodology that would support what I had found
3 in the first. So, we went out, we looked at
4 comparable memberships. There are no perfectly
5 comparable memberships to what is proposed. They're
6 just not out there because of the nature of a Category
7 3 --- or Class 3 casino. But we did find --- I did
8 find what I thought was reasonable comparables,
9 consisting of both resort memberships, generally
10 speaking, not with any kind of casino offering
11 involved but with similar kinds of leisure-oriented
12 amenities, and also golf memberships, not --- sorry,
13 not golf memberships, golf promotional offers,
14 discount offerings. Coupon booklets you might call
15 them, which would allow a member to then play golf at
16 a variety of venues, offering discounts at those
17 venues. And that also corroborated the value. So,
18 that got us comfortable with the proposed pricing,
19 which was \$25 for an annual membership.

20 Typically, one would not think of fairness as a
21 point on a line but rather a line segment on a line.
22 I mean, if \$25 is fair, does that mean \$26 is unfair
23 or \$22 is unfair? So I tried to look at it in a
24 broader context. And based upon the research that I
25 did, based on consideration, importantly, of the

1 market that Nemaocolin would be targeting their efforts
2 to, we ended up with a range of \$0 to \$44 as a fair
3 market value. I think the greatest sensitivity
4 was --- and especially after hearing about the slight
5 changes that Mr. Plummer just described before I began
6 my testimony, we were sensitive to the notion that the
7 members would get an adequate return on this \$25
8 investment.

9 Nemaocolin is going to be marketing this program
10 to a diverse group, but to simplify, a group that can
11 be thought of as being in two baskets. One basket
12 would be local residents who, I understand from Mr.
13 Plummer, Nemaocolin would like to involve more in their
14 offerings. And through our research we learned that
15 Fayette County is one of the poorest and I believe the
16 poorest county in the state. That raised some concern
17 about the price not being too high.

18 The second basket of potential members was sort
19 of what I would call Nemaocolin's core target market
20 now, and that's a regional market generally consisting
21 of the Mid-Atlantic region, Baltimore, Washington,
22 State of Pennsylvania, eastern Ohio, New Jersey to
23 some extent. And those people aren't going to come to
24 Nemaocolin on a daily or a weekly basis. They're
25 probably going to come annually or maybe, in some

1 cases, a couple of times per year. And the frequency
2 of visit limits their ability to get a return on that
3 425 investment. So, we thought that within that
4 broader range that I expressed, the \$0 to, I believe,
5 \$40 --- I said \$44. I think it was \$45 range, that
6 the \$25 was a fair place to be. If anything, the
7 slight changes that I've heard from Mr. Plummer now
8 would incline me to offer caution in terms of moving
9 the price into the higher end of that range.

10 BY ATTORNEY KIRCHNER:

11 Q. Mr. Siegel, let's go back to the first part of
12 your analysis, the --- I think you call it the fair
13 market value analysis. Would you just tell the Board
14 --- you said you met with Mr. Plummer and you
15 developed a pro forma?

16 A. Yes.

17 Q. And in the process of doing that, I assume you
18 made certain assumptions. And without revealing the
19 numbers, could you just describe to the Board the
20 types of assumptions involved in that process?

21 A. Right. Just to modify what you said slightly, I
22 didn't do the assumptions on my own. They were
23 created in collaboration with Mr. Plummer. We looked
24 at projected number of members who would sign up for
25 the program. We looked at the revenue sources that

1 the members would then create, including the actual
2 membership fees, \$25 per member, and then also use of
3 the amenities, the greens fees for golf, visitation
4 fees for the spa and for their Adventure Center and so
5 forth. So we looked at all of the revenue
6 implications of offering the membership and then also
7 considered the expenses that would go along with
8 supporting that revenue, including the cost of
9 creating some --- I think what are called Experience
10 Centers, where people actually can go and receive
11 customer service and purchase the membership and so
12 forth. We looked at payroll associated with
13 supporting the effort. Looked at --- I'm trying to
14 recall.

15 ATTORNEY KIRCHNER:

16 Was it marketing?

17 A. Marketing, miscellaneous administrative supplies,
18 that sort of thing. So that became the guts of the
19 income analysis that we created.

20 BY ATTORNEY KIRCHNER:

21 Q. And when you went through that analysis and
22 crunched the numbers from all those assumptions, did
23 you conclude that the resort would derive a profit
24 from the sale of the Nemaocolin membership at the \$25
25 price?

1 A. Yes, I did.

2 Q. And I guess while we're on this topic, you
3 listened to Mr. Plummer's testimony earlier about some
4 of the changes in those numbers; is that right?

5 A. I did.

6 Q. And did you also speak to Mr. Plummer about those
7 changes yesterday?

8 A. Yes, I did.

9 Q. And did you have a chance to go back and relook
10 at the numbers in your calculations based upon the
11 changes that Mr. Plummer described?

12 A. I did. Mr. Plummer and I spoke, and we talked
13 about how these changes would impact the income
14 analysis. And it does have an impact, but it's very
15 marginal. It's a couple --- I think one to a couple
16 percent reduction in income as a consequence of the
17 changes that Mr. Plummer has explained. So from the
18 Nemacolin side of the equation, things are still
19 favorable.

20 From the consumer side of the equation, I would
21 say it's still favorable. As I mentioned a moment
22 ago, the savings that a member will derive from
23 being --- or an individual will derive from becoming a
24 member have reduced slightly. Instead of getting a
25 return with one or one and a fraction uses, if I can

1 call it that, of the membership privileges, now it
2 could be anywhere from one-and-a-half to two times,
3 which I still think would represent a fair deal for
4 most members. But as I indicated earlier, if
5 anything, because the savings --- as a consequence of
6 these changes, savings related to being a member are
7 being slightly reduced, that would create a little bit
8 of downward pressure on what would be a fair
9 membership price.

10 Q. So could you just please state for the board your
11 conclusion with respect to the Nemaocolin Experience
12 membership and its price being proposed by Woodlands
13 Fayette?

14 A. Yes. The proposed price of \$25 is fair, based
15 upon my analysis and based upon the definitions of
16 fairness that I've relied upon.

17 Q. And is that your opinion to a reasonable degree
18 of certainty?

19 A. Yes, sir.

20 ATTORNEY KIRCHNER:

21 I believe that concludes our testimony
22 and our presentation today.

23 CHAIRMAN:

24 Thank you, Counselor. Cyrus?

25 ATTORNEY PITRE:

1 Yeah. I have a couple of questions.
2 I'd like to start with Mr. Plummer first.

3 -----
4 CHRIS PLUMMER, HAVING BEEN PREVIOUSLY SWORN, RECALLED
5 TO TESTIFY

6 -----
7 CROSS EXAMINATION

8 BY ATTORNEY PITRE:

9 Q. Mr. Plummer, Mr. Siegel noted in his report that
10 Valley Forge was previously approved by the Board to
11 have a membership at a market value or sale price of
12 \$20 per quarter. Are you familiar with that part of
13 the report?

14 A. I am, yes.

15 Q. And you previously testified, I believe, and you
16 can correct me if I'm wrong, that based upon the
17 season, whether it be spring, summer, winter or fall,
18 that the offerings under the Nemaocolin Experience
19 might be subject to change. Is that correct?

20 A. Yeah. We'd like to have that ability.

21 Q. Okay. So, if the Board were, say, to set up a
22 market value on a per-quarter basis that would allow
23 you to have four distinct Nemaocolin Experience
24 packages for the spring, summer, winter and fall,
25 would that pose any particular problems for you in

1 your operation?

2 A. The price point could pose some problems. I
3 wouldn't be aware of what price point we were talking
4 about, but ---.

5 Q. Okay. Let's say if the price point was set up at
6 \$20 per quarter, \$25 per quarter, do you think that
7 would pose a problem?

8 A. We'd have to look at the analysis. I couldn't
9 testify to that.

10 Q. Outside of the price point, do you see any other
11 problems that that might cause?

12 A. Operationally, maybe some confusion just with
13 changing so much all the time. That could cause some
14 confusion with guests and associates. As far as the
15 Experience goes, it could.

16 Q. Okay. Now, if the Nemaocolin Experience
17 membership is not approved by the Board, would you
18 still move forward to offer the Nemaocolin Experience
19 membership to your patrons?

20 ATTORNEY KIRCHNER:

21 Just to clarify, you mean move ahead
22 without the casino component?

23 ATTORNEY PITRE:

24 Right.

25 ATTORNEY KIRCHNER:

1 Just as a membership, without that?

2 ATTORNEY PITRE:

3 Right.

4 A. We'd have to look at it, Cyrus. I couldn't say
5 yes or no right now.

6 BY ATTORNEY PITRE:

7 Q. So you would agree that the casino component is a
8 big part of this then?

9 A. The market that the casino brings, which we've
10 discussed the market that we've testified to is a big
11 reason for this. And like we said before, the only
12 way Nemacolin benefits is from the increased demand
13 and that demand that the casino creates getting them
14 to Nemacolin to use our amenities.

15 Q. So, you'd ---?

16 A. I think we would sell the membership, but I don't
17 know the success it would have without the demand
18 that's there. There might not be a demand for that
19 membership if there wasn't a casino.

20 Q. So you basically --- you're saying that you would
21 have problems selling the membership if there was no
22 casino access?

23 A. No, not if there was no casino access. If there
24 was no casino to bring --- if there was no casino to
25 bring --- obviously, the casino is going to create a

1 new demand. Nemaocolin has never had a casino before.
2 Because we have a casino, there's going to be people
3 that are interested in Nemaocolin that weren't before
4 because we did --- the access isn't what the
5 membership drives. It's the new people that are now
6 on our property, and now this membership is the
7 vehicle to get them up. You know, we've got to get
8 them up onto our property, using our amenities. So
9 the access isn't the seller, it's the demand that the
10 casino creates.

11 Q. But individuals can't access a casino unless they
12 have a membership or unless they're a patron of the
13 amenities. So, I'm a little bit confused when you say
14 that the casino was driving the membership, but --- if
15 the casino --- if you're not allowed the casino
16 membership, as Mr. Siegel testified, you can still
17 make a profit on this membership. So, would you be
18 opposed to offering the membership if there was no
19 casino access? Would you still offer that membership?

20 A. We could, yeah. Absolutely. I don't think ---
21 it wouldn't be as profitable, but we could offer that
22 membership. I would be --- that membership,
23 regardless of a casino, helps Nemaocolin, if we can
24 sell enough.

25 ATTORNEY PITRE:

1 I'd like to turn my question to Mr.
2 Siegel for a moment.

3 -----
4 ERIC SIEGEL, HAVING BEEN PREVIOUSLY SWORN, RECALLED TO
5 TESTIFY

6 -----
7 CROSS EXAMINATION

8 BY ATTORNEY PITRE:

9 Q. Mr. Siegel, I believe you testified that the
10 price differences described by Mr. Plummer today would
11 cause the membership --- between the membership and
12 the non-member rates to narrow.

13 A. That was Mr. Plummer's testimony.

14 Q. Oh, that was his testimony. But do you believe
15 that it --- I think your response was that it may
16 cause a problem or that maybe less revenue can be
17 expected from Nemacolin as a result of that? I think
18 you said one or two percent.

19 A. Yes. Nemacolin's profit from the program would
20 drop very marginally ---

21 Q. Okay.

22 A. --- as a consequence of the changes that Mr.
23 Plummer described.

24 Q. And did you take into consideration any
25 motivation that Nemacolin would have with regard to

1 getting people on site to go to the casino or that
2 patrons would be willing to pay this price in order to
3 have access to the casino? Was that any type of
4 motivating factor behind it?

5 A. No. The study simply looked at the proposed
6 members. Now, you would have to ask Mr. Plummer, in
7 terms of the absolute members created, how significant
8 the casino element is. But with that membership base
9 and the utilization of the membership privileges, the
10 usage of the golf and the spa and so forth, it would
11 still be profitable. Really the only difference in
12 the analysis is Mr. Plummer changed the greens fees
13 very slightly, and that reduces the revenue that
14 Nemacolin would receive as a consequence of the
15 program. The expense structure does not change. So,
16 that very small decrease in revenue ripples through to
17 the bottom line.

18 Q. So, you believe that the membership could derive
19 a profit, whether or not there is casino access?

20 A. I believe --- well, the answer is I believe so.
21 But I would defer to Mr. Plummer because ---.

22 Q. But was that an assumption that you took into
23 account? Was that one of the assumptions that you
24 took into account when you developed the financial
25 outlook?

1 A. You know what, I don't remember explicitly
2 discussing that question with Mr. Plummer. What we
3 discussed where the analysis began, it was literally
4 like a top-to-bottom analysis, an income statement.
5 And where it began, the first question was how many
6 members do we expect to sign up? And we talked about
7 that. But we didn't talk about how significant the
8 casino was versus the golfing privileges versus the
9 skiing privileges or the Adventure Center privileges.
10 We didn't break it out.

11 Q. Okay.

12 A. So, it was not a question that we specifically
13 explored.

14 Q. So, I have your report.

15 A. Yes, sir.

16 Q. Page eight starts with your quantitative review.
17 And turn to page nine. There is casino access.

18 A. That's right.

19 Q. Okay?

20 A. Yes.

21 Q. And you want to note --- you note that, if I may,
22 that NWR receives a very small share of gaming
23 revenue. So, even if this was to be --- were to be
24 considered in the analysis, its impact would be
25 modest.

1 A. Yes.

2 Q. Okay. So, that --- you're basically saying that
3 the casino has a very modest impact on the --- your
4 exhibit on page 18.

5 A. No. Sir, that's really not what I'm saying.

6 Q. Okay. So, tell me what you're saying then in
7 that sentence.

8 A. What I'm saying in this sentence is that with the
9 proposed membership volume that is projected, this is
10 a profitable enterprise, not giving any consideration
11 to revenue from a casino, because we think that that
12 will be marginal. However, it begins with the premise
13 of a certain number of members. And what I'm saying I
14 cannot comment on is whether that number of members
15 would diminish without the casino access.

16 Q. Okay.

17 A. Did I say that clearly?

18 Q. Yes, you did. So, let's then turn to the
19 assumptions. Now, in what ways did you challenge the
20 assumptions that were given --- or that you discussed
21 with Mr. Plummer when you did the report? You said
22 you challenged the assumptions?

23 A. Yes, sir.

24 Q. In what ways do you do that?

25 A. We went through --- if you look at page 18, the

1 Nemacolin Experience Membership Economic Analysis,
2 line by line we would discuss assumptions. So, just
3 as an example, to pick one out, payroll, there is ---
4 I'm not going into specific numbers because I think
5 that's considered ---

6 Q. No, that's fine.

7 A. --- confidential information, but there is an
8 overall payroll cost associated with supporting this
9 program. But there would be other functions that
10 those staff members would be performing outside of the
11 membership program. So, in that instance, as an
12 example, Mr. Plummer gave me a total payroll number.
13 And in that instance, I said, well, is that --- will
14 all these people be wholly dedicated to the membership
15 program. And he said, no, they would be performing
16 other functions as well. So, that gave rise to a
17 discussion of what would be a fair allocation of that
18 total payroll to the membership program versus the
19 other functions that the staff would be providing.
20 So, that would be an example of where Mr. Plummer
21 started with an assumption, and we asked him
22 questions, and at the end of it --- now, if he
23 objected to a conclusion that I was reaching, then we
24 would keep discussing it. If, in that case, he said,
25 well, I don't see why there should be such an

1 allocation, we would just keep communicating until we
2 got to a point where, you know, we're sort of seeing
3 things in the same way.

4 Q. Is it possible to develop assumptions that could
5 lead to a higher or a lower price point?

6 A. Yes, sir.

7 Q. Okay. So, the assumptions that are made
8 basically are really just projections or guesses that,
9 you know --- and you talking to Mr. Plummer, and
10 basically there is no real raw data associated with
11 this?

12 A. I would disagree with that, ---

13 Q. Okay.

14 A. --- especially the word guesses.

15 Q. Okay. So, projections? Are you okay with that
16 word?

17 A. Sure.

18 Q. Okay.

19 A. This is a projection.

20 Q. So, it's a projection based upon certain things
21 that Mr. Plummer thinks will occur?

22 A. Yes, in collaboration with my comments.

23 Q. So, do you think that it's --- what's a better
24 tool to determine market value, actual raw data that
25 exists or assumptions or projections?

1 A. So, let me answer your question this way.

2 Q. Okay.

3 A. No forecast is right. I've never seen a forecast
4 that's right. It may be a dollar high or a dollar low
5 or a million dollars high or a million dollar low.
6 We're looking into a crystal ball, okay. So, --- and
7 that's true of Google projecting its earnings for
8 2013. And it's true of an artificial intelligence
9 company I'm advising now that's just getting out of
10 the gate. So, what you do is you draw upon what
11 information that you have to put together the best
12 forecast you can. I would agree, if this program had
13 been in place for ten years and we were doing a
14 forecast for the 11th year, that actual operating
15 experience would add reliability to the forecast. But
16 we do forecasts for early-stage companies with little
17 or no operating history all the time, and we do the
18 best that we can do.

19 In this particular instance, especially because
20 of the absence of operating history for this
21 particular program, that's when we go and we look at
22 comparable values. That becomes sort of a checkpoint,
23 a sanity check.

24 Q. How long do you think a program or a membership
25 of this sort would have to operate before you could

1 really peg a decent fair market --- an accurate fair
2 market value to it?

3 A. I feel I've pegged an accurate fair market value
4 to it now. I've done it both through the discussion
5 of the assumptions and through the look at the
6 comparable values. Now, if you're asking ---.

7 Q. But based upon the assumptions. But you just
8 agreed that ---.

9 A. Assumptions are never perfect.

10 Q. Exactly. And so, I'm asking that --- let's say
11 the Board --- and I'm just throwing a hypothetical
12 out, the Board said, okay, we'd like to see this
13 membership operate for a while and --- but no patron
14 could have casino access. Okay, Nemaocolin, let's see
15 how you do on a six-month trial basis. Would that be
16 enough for you to say \$25 is the right price point
17 definitely?

18 A. Definitely, no. And this is ---.

19 Q. Would you feel more --- would it be more accurate
20 than basing it upon assumptions, the assumptions that
21 --- in your report, if you had six months of raw data
22 to point to?

23 A. I would say the more operating data that's
24 available, generally, but not always, the better the
25 basis for formulating projection.

1 Q. Okay.

2 ATTORNEY KIRCHNER:

3 Could I just add that, you know,
4 removing the casino access from the mix changes the
5 whole model that Mr. Siegel based his assumptions on.
6 So, I'm not sure how accurate --- how accurately you
7 could project a membership that included casino access
8 from experience operating one that does not include
9 casino access. I just think that's an unknown.

10 MR. HAUSLER:

11 If I may, I'll concur with that. On the
12 casino side --- I would just say, from the casino
13 side, remember, you have casino guests that are coming
14 in that are new to Nemaquin. And we know from
15 research that those guests spend money other places.
16 But if you bring them on and then sell them a
17 membership, I still don't think if they can't use the
18 casino that there's necessarily an accurate forecast
19 of what the run rate would be in terms of membership
20 sales. A little bit of apples and oranges in terms of
21 understanding what the benefits versus the costs are.

22 CHAIRMAN:

23 Sir, could you state, I'm sorry, your
24 name for the record again so ---?

25 MR. HAUSLER:

1 Eric Hausler.

2 CHAIRMAN:

3 You're with IOC; correct?

4 MR. HAUSLER:

5 With IOC.

6 CHAIRMAN:

7 Thank you.

8 A. And just to follow, forgive me, I may have
9 misunderstood your question. I thought that you were
10 saying the program as proposed to me. If we have
11 operating experience on that program, does that allow
12 one to more accurately forecast performance? The
13 answer is yes. To the extent that you take out
14 elements of the program, ---.

15 BY ATTORNEY PITRE:

16 Q. I know that that will change.

17 A. That changes it. And then it becomes a new
18 analysis, where I would have to sit down with Mr.
19 Plummer and I would have to see how the assumptions
20 would be modified, given the change of casino access
21 versus no casino access.

22 The other thing I should mention is the market
23 comparable analysis is significant, at least as
24 significant --- you talk about the uncertainty as it
25 relates to this forecast. And I've acknowledged there

1 is a degree of uncertainty there. That's why we do
2 the market analysis as well. And we try to find a
3 good set of comparable offerings. You mentioned the
4 Valley Forge program I think in leading into the ---
5 your discussion with Mr. Plummer. And I would
6 encourage caution in that regard because, you know,
7 Valley Forge, from what I've seen and heard has a
8 great program, generally speaking. But they're
9 offering as a dining offering. That's different than
10 a golf offering or a resort offering, okay.

11 They also are in a very different marketplace in
12 terms of the economic profile in terms of the people
13 there. And now I'm on a little bit of thin ice, but I
14 would imagine that Nemaquin is drawing from a much
15 wider radius. It's more of a multi-night destination.
16 Valley Forge --- I don't know this --- I would think
17 is drawing from a smaller radius. So, I don't think
18 that you can just, you know, pick comparables without
19 thinking through the implications of all the moving
20 pieces within the offering.

21 Q. No, I understand. I also understand that casino
22 access is a big motivating factor behind these
23 lower-tiered memberships. Despite what everyone
24 proposes, that's a big motivating factor and ---
25 because without it, I don't think the memberships are

1 going to be offered.

2 ATTORNEY PITRE:

3 So, I don't have any more questions, but
4 I would like to turn it over to Glenn Stuart to see if
5 he has any follow-up questions that he has to ask of
6 Nemacolin.

7 ATTORNEY STUART:

8 I just have a few questions. Glenn
9 Stuart, S-T-U-A-R-T. I'll start with Mr. Siegel.

10 CROSS EXAMINATION

11 BY ATTORNEY STUART:

12 Q. Mr. Siegel, did you visit the property as part of
13 your analysis?

14 A. Yes, I did.

15 Q. And did that have any bearing on whether that
16 agreed with your fair market value analysis? Did it
17 detract from it? Did it enhance it?

18 A. It was, I would say, meaningful background
19 information ---

20 Q. Okay.

21 A. --- when I looked at the nature of the golf
22 courses and the spa. I didn't have a good feel for
23 what the Activity Center was. So, yeah, sometimes
24 when I'm doing this kind of economic analysis, I'll
25 say that the words drive the numbers. In other words,

1 understanding the business dynamics behind the
2 projection can be helpful.

3 Q. All right.

4 A. So, I would call it useful background
5 information.

6 Q. And you had discussed a lot about talking with
7 Mr. Plummer about the business end from Nemacolin's
8 side in determining the fair market value.

9 A. Yes.

10 Q. Did you discuss whether this fair market value
11 was fair on the other side, from the consumer end,
12 i.e. local residents, whether that was a fair price
13 for them?

14 A. We did discuss that.

15 Q. With those residents or just with Mr. Plummer?

16 A. I'm sorry. With Mr. Plummer.

17 Q. Okay. So, there was no discussion with the
18 residents, there was no discussions with resort guests
19 on whether it was fair?

20 A. No. That would have gone --- that's really a
21 market research analysis. It's not what I was hired
22 to do.

23 Q. Okay. Were you asked to just justify the \$25
24 price point that Nemacolin had already formulated?

25 A. When I was contacted, I was told that they were

1 considering a \$25 price point and would I evaluate
2 whether or not that was a fair price point.

3 Q. That was fair. So, you didn't come in blindly
4 and just analyze all the amenities that were included
5 and the duration and then come up with your own
6 number, it was kind of trying to fit that into the \$25
7 price point?

8 A. I would say yes and no.

9 Q. Okay.

10 A. The no part of it is when we looked at the bound,
11 the upward bound and lower bound, as indicated in the
12 report, there was no guidance there. That's when I
13 went to the income analysis, the forecast income
14 analysis and the market comparable analysis to
15 establish that range.

16 Q. When you used your comparatives, where are those
17 comparatives located? Are they located in the market,
18 around Farmington, or are they located throughout the
19 country?

20 A. I would say the golf memberships, if I recall
21 correctly, were mostly Mid-Atlantic regional but not
22 within the county. And the resort memberships I think
23 were more diverse geographically.

24 Q. And why was that? Could you not find any or what
25 was the ---?

1 A. This is not an easy membership. As I think I
2 testified, there really is nothing that's perfectly
3 comparable, so what we look for is what --- what I
4 look for is what I thought would be most
5 representative in terms of comparable. And I felt
6 comfortable that we had found good comparables.

7 Q. Okay. When you formulated the projections, I
8 think your report says that you were projecting about
9 15,000 people buying this membership. Was that on the
10 higher end or the lower end of your projections?

11 Could it have been higher? Could more people have
12 bought this? Could fewer people have purchased this?

13 A. Do you mind me commenting on specific numbers in
14 the report? I ask this only because I was --- the
15 confidentiality ---.

16 ATTORNEY KIRCHNER:

17 If you would answer it more generally,
18 that would be ---.

19 A. In that particular instance, Mr. Plummer
20 initially had a more robust view of the memberships
21 that could be --- or the members that could be signed.
22 I think he still feels that the --- that the actual
23 performance in terms of number of members will exceed
24 what's in the forecast. But I thought a bit more
25 conservatism was in order because of the lack of

1 operating experience, as we talked about.

2 BY ATTORNEY STUART:

3 Q. Kind of to piggyback on what Cyrus was saying,
4 did you use the casino access as part of your
5 analysis?

6 ATTORNEY KIRCHNER:

7 You mean was that one of the assumptions
8 included ---?

9 ATTORNEY STUART:

10 Correct, as an amenity.

11 A. So, what I would say is it was embedded into the
12 assumption of how many members would actually be
13 signed up. If you carved that out and just had
14 membership of the non-gaming amenities and there was
15 no access provided, we didn't discuss that. So, I
16 can't tell you what the impact of that would be on the
17 forecast.

18 BY ATTORNEY STUART:

19 Q. Do you think it might have been lower? Because
20 it sounds like everything's driving towards the
21 casino. And if you take the casino aspect out of it,
22 it sounds like the numbers might be lower.

23 A. Well, so I don't know how much is driving towards
24 the casino aspect of this, but I would think that any
25 amenity that was taken away would lower the

1 membership. I mean, you know, if you look at this big
2 pool of individuals out there as a market, some may be
3 super avid golfers, and they don't give a damn about
4 anything else. And they see that proposed \$25
5 price --- I've done this myself. I have a golf
6 booklet that I buy, and I look at what the offers are
7 and what the savings are, and am I likely to get a
8 return on it. So, it would just depend on the member.
9 And I don't know within that universe how many members
10 would drop out. It just wasn't the subject of our
11 discussion.

12 Q. Okay.

13 ATTORNEY STUART:

14 I'm going to jump to Mr. Plummer, if
15 that's all right.

16 -----
17 CHRIS PLUMMER, HAVING BEEN PREVIOUSLY SWORN, RECALLED
18 TO TESTIFY

19 -----
20 CROSS EXAMINATION

21 BY ATTORNEY STUART:

22 Q. Mr. Plummer, we kind of talked about this a
23 little bit, but the target market for this membership,
24 is that going to be primarily towards the local
25 residents, the local Farmington, Uniontown, Fayette

1 County, or is that ---?

2 A. That would be stretching it a little bit. I
3 think I've always had my mind about a 45-minute ---

4 Q. Okay.

5 A. --- window around the resort.

6 Q. So that's going to be the hard market. And then
7 the softer market is going to be the overnight resort
8 guests. Then they come periodically throughout the
9 year?

10 A. I would say softer might be a good word, but they
11 would be lesser because of just their access to the
12 resort already. But I do think that some overnight
13 guests would benefit if they're there on a Sunday and
14 they see an opportunity to play The Links or Mystics
15 Rock at that rate, they'd absolutely be interested in
16 buying it, or the spa or any of the benefits that are
17 there.

18 Q. Have you had any discussions with the locals
19 about whether or not this was a good membership? Has
20 this even come up at any ---?

21 A. Nothing more than ---.

22 Q. Nothing?

23 A. No, nothing ---.

24 Q. Okay. As it came out in the beginning of the
25 presentation, there are some differences in what

1 you're proposing now with the pricing of the amenities
2 as opposed to what is listed on your website. Can I
3 just briefly go through and just do some clarification
4 on what is actually going to be offered with this
5 membership if the Board does approve it?

6 For the first one it's Sunday, \$15 twilight
7 golf --- or cart fee on The Links course. Will greens
8 fees be included in that \$15 price?

9 A. The greens fee --- it would just be the cart fee.
10 So, there would not be a charge ---

11 Q. Just the cart fee?

12 A. --- for the greens fee.

13 Q. So, how much is the green fee then?

14 A. It would not be --- it wouldn't be ---.

15 Q. Oh, it's just \$15 flat?

16 A. Right, \$15 would --- yep.

17 Q. And will a range fee be included in that \$15 ---?

18 A. That would get you access to the range as well.

19 Q. Okay. And you kind of clarified this with the
20 Mystic Rock course. But will this \$15 member price
21 stay the same throughout the summer or will it
22 increase?

23 A. On The Links course?

24 Q. On The Links course.

25 A. No, that will be the price.

1 Q. That will stay static, okay.

2 A. Will stay --- that will be the established price.

3 ATTORNEY KIRCHNER:

4 Just to clarify, you're talking about
5 The Links course, not the Mystic Rock course?

6 ATTORNEY STUART:

7 Correct. Correct.

8 BY ATTORNEY STUART:

9 Q. The paper that you've handed out just says
10 twilight cart fee, and then on the Mystic Rock it says
11 cart and green fees. I just wanted to clarify that
12 you would be getting greens fees as well with that
13 \$15.

14 Kind of the same question with the spa. You
15 include \$10 access to the fitness center, Olympic pool
16 and steam and sauna room. It's now after 3:00. Your
17 website also mentions something about a whirlpool and
18 fitness classes. Will those --- will the whirlpool
19 and fitness classes be accessible for the \$10 ---?

20 A. Yes.

21 Q. Okay. The single-use offers, if those are still
22 valid, you've made no changes to those?

23 A. No.

24 Q. Those are still going to be ---?

25 A. Yes.

1 Q. Okay. One of those single-use offers was a buy
2 one/get one Adventure pass. How much is an Adventure
3 pass?

4 A. \$25. Well, it fluctuates seasonality-wise. But
5 peak season, it's \$25.

6 Q. Okay. One thing that we did notice was that for
7 the Mystic Mountain lift ticket your presentation
8 still says it's \$42 for non-members. Our research has
9 indicated on your website it says \$38. That's not a
10 huge difference, but ---.

11 A. Yeah. No, ---.

12 Q. It's \$42?

13 A. It's \$42, yes.

14 Q. Okay. And one of your single-use offers was a
15 buy one/get one lift ticket. If I'm a member and I
16 got the \$25 lift ticket, would I get the \$5 off of
17 that lift --- or would my buy one/get one be \$25 or
18 would it be the \$42?

19 A. If you were a member, ---

20 Q. I'm a member.

21 A. --- you were taking advantage of a \$25 lift
22 ticket, and you had a buy one/get one lift ticket?

23 Q. Right.

24 A. I'd probably say we'd honor that.

25 Q. Okay.

1 ATTORNEY STUART:

2 Those are the questions I have for right
3 now. Mr. Barry Creany --- I'd like to pass the ---.

4 ATTORNEY CREANY:

5 Eugene Barry Creany, and with the Office
6 of Enforcement Counsel (OEC). A couple of questions
7 for Mr. Plummer.

8 CROSS EXAMINATION

9 BY ATTORNEY CREANY:

10 Q. First, when Mr. Siegel was testifying, he was
11 talking about things like the promotional offers and
12 coupon books. In the past, has Nemaocolin Woodlands
13 ever done any sort of spot marketing of its amenities,
14 any --- like of the several amenities, special lift
15 ticket discounts, special marketing for the course, or
16 any of those amenities?

17 A. Absolutely. We're --- absolutely.

18 Q. And how do you do that marketing?

19 A. Various ways.

20 Q. Is it media or paper, you know, mail marketing?

21 A. All of the above. Generally, we like to --- our
22 most targeted marketing is membership, is our core
23 data bases. So, that's where we'd start. But if we
24 needed additional support, we would go to
25 traditional ---.

1 Q. But my question's more not to the members itself
2 but to people who are non-members. Have you ever done
3 any spot marketing of that kind?

4 A. Sure. Every day.

5 Q. And you know, those people don't have to purchase
6 a Nemaocolin Experience membership in order to enjoy
7 the benefits of those offers; correct?

8 A. Currently, we don't have --- no, of course not.

9 Q. Okay. How is the pricing different? If you can
10 give me an example of maybe some of the marketing
11 you've done in the past. How would that be different
12 from the marketing in the Nemaocolin Experience
13 membership? Have you ever --- for example, have you
14 ever used the Mystic Mountain ski package type of
15 discounts?

16 A. Sure.

17 Q. And what were you offering those at? You had
18 said ---.

19 A. Just for example, on Friday nights we have a
20 Mystic Mountain Locals Night, where we offer very,
21 very discounted rentals and lift tickets. I mean, if
22 we generally had a slow period, we'd --- if we have a
23 slow period, we analyze why we have a slow period, and
24 we go after it to make it unslow. And discounts are a
25 big part of that.

1 Q. And for example, in that case, instead of the \$42
2 that you have for a non-member ticket, what is the
3 price you'd offer at some of those discounted times?

4 A. It could be --- it could be --- for just ---
5 you're just speaking skiing on Friday night?

6 Q. Yes. One example is what I'm looking for.

7 A. I believe our locals can get rentals for \$15,
8 lessons for \$5.

9 Q. And at the present time, what are the plans that
10 you've made --- assuming that there's an approval of
11 the Nemaquin Experience membership, what are your
12 plans for marketing that membership?

13 A. We'll do a traditional kind of marketing. It
14 will be across all mediums that we do all of our
15 marketing on. It won't be any different than what we
16 always do.

17 ATTORNEY CREANY:

18 And just one question for Mr. Siegel.

19 -----
20 ERIC SIEGEL, HAVING BEEN PREVIOUSLY SWORN, RECALLED TO
21 TESTIFY

22 -----
23 CROSS EXAMINATION

24 BY ATTORNEY CREANY:

25 Q. You had explained in your testimony you had

1 basically two tracks of analysis, the quantitative
2 analysis and also the comparables.

3 A. Yes.

4 Q. And when I was looking at your report, as far as
5 comparables go, there are none except for Valley Forge
6 that have a Category 3 casino attached; correct?

7 A. That's correct.

8 Q. And so I understand, you know, the demographics
9 and the geographic differences with respect to Valley
10 Forge, but of those others that are non-Category 3
11 that you used in your market analysis or comparable
12 analysis, ---

13 A. Yes.

14 Q. --- do any of them have any broad range of these
15 multi-amenities such as Nemaocolin?

16 A. The answer is the resorts that I list do. The
17 golf memberships do not. But I thought that they
18 represented a good proxy because Nemaocolin is offering
19 discounts at a range of venues. The golf comps that I
20 use is offering discounts at a range of venues. And
21 with greatest respect due, I really didn't think much
22 about what's Category 3 and what's not Category 3,
23 because I don't think that's the way the consumer
24 views things. I looked at it more from a consumer
25 perspective. And Valley Forge, as a Category 3

1 casino, was something that I had to at least look at
2 and think about. But because --- as I've said once,
3 because of the nature of the offering and the nature
4 of the markets served, I thought it was not a very
5 good comparable.

6 Q. And some of the resorts that were in your
7 comparables that you reviewed, could you give us your
8 evaluation as to the range of the amenities that are
9 included? In this one we had --- on one of the
10 descriptions, about six different pricings for some of
11 the amenities, the golf, the spa, the shooting, the
12 Adventure Center, and then there's those one-time
13 offers and buy one/get one type of offers. But with
14 the resorts that you looked at for your comparables,
15 how did their memberships shake out in terms of, you
16 know, this membership? How do they compare?

17 A. Do you want me to just read from the report what
18 they offer?

19 Q. Just generally if you could describe whether you
20 see the Nemaquin Experience as being representative
21 or maybe lesser or more than what you're seeing at
22 some of the other resorts.

23 A. I would say similar. I would say that just
24 scanning through this, because I didn't memorize all
25 of it, scanning through it, I would say pretty

1 similar. The one distinction that I do note is that a
2 number of the offerings do include some food or
3 discounted food in their packages. But there are
4 different kinds of attractions and spas and golf
5 and --- so, in that respect, yes, very similar to the
6 Nemaocolin Experience.

7 Q. Okay. Thank you.

8 ATTORNEY CREANY:

9 I have no further questions.

10 CHAIRMAN:

11 Okay. Do you have anything to offer?

12 ATTORNEY PITRE:

13 We have nothing to offer. We turn it
14 over to Board questioning.

15 CHAIRMAN:

16 Questions from the Board. Greg?

17 MR. FAJT:

18 Thank you, Mr. Chairman. Mr. Siegel, I
19 want to follow up with your response to Mr. Stuart.

20 MR. SIEGEL:

21 Yes.

22 MR. FAJT:

23 I believe you stated that the premise,
24 the starting point for your analysis was a
25 presentation by Nemaocolin that we think this is worth

1 \$25. You tell us if that's fair.

2 MR. SIEGEL:

3 I don't think that's the wording that
4 they used. They sent me background materials. When I
5 say they, Eric Hausler, the chief strategy officer of
6 IOC, sent background materials to me, explaining the
7 programs. And in those materials was the proposed
8 pricing.

9 MR. FAJT:

10 Okay. But again, not to play wordsmith
11 here, but ---

12 MR. SIEGEL:

13 Right.

14 MR. FAJT:

15 --- they laid the \$25 ---?

16 MR. SIEGEL:

17 The inference was clearly is this a fair
18 price.

19 MR. FAJT:

20 Got it.

21 MR. SIEGEL:

22 Yes.

23 MR. FAJT:

24 Okay. Do you ever do work for
25 businesses where they come to you and say you tell us

1 what the fair price is?

2 MR. SIEGEL:

3 Yes.

4 MR. FAJT:

5 Okay. My last question is the annual
6 fee. And this is, I guess, to you, Mr. Plummer. I'm
7 sure this is on the record, but the annual fee of \$25
8 is for a member and a guest 365 days a year?

9 MR. PLUMMER:

10 Correct.

11 MR. FAJT:

12 Thank you.

13 MR. MCCALL:

14 One question. And we certainly
15 understand. We're sympathetic. We want you to be
16 successful. We want you to have a lot of gamblers in
17 your casino. But we still have to abide by the
18 relevant law and fair market value, and that's what
19 we're haggling over. Now, I'm on your website right
20 now. And if I want to buy a spa membership, the
21 individual membership is \$2,000. And if I want to add
22 my spouse, it's \$1,500 more. So husband and wife,
23 it's \$3,500. If we approve this, that husband and
24 wife that just spent \$3,500 can get that same
25 membership for a \$25 fee and \$10? How do you ---?

1 Fair market value, you're saying --- you know, we're
2 supposed to determine what the fair market value is.
3 If my wife and I want to buy a membership for your
4 spa, it's \$3,500. If we approve this Nemaocolin
5 Experience membership, I'm going to get my membership
6 for \$25, and then I'll have the ability to go to your
7 spa after 4:00 p.m. and access it for \$10. I need you
8 to tell me how you get that to be fair market value
9 when you're selling it for \$3,500, and now, all of a
10 sudden, I can get that same thing for \$35.

11 MR. PLUMMER:

12 Well, the benefits in that spa
13 membership are much, much greater than just getting
14 access to our wet areas and sauna areas. I mean, I
15 don't know it off the top of my head what the benefits
16 are, but there's services every --- for complimentary
17 services once a month you get discounts on all kinds
18 of services. I mean, that is for a very traditional,
19 hardcore spa-goer that would want to go to the spa
20 weekly, maybe --- we have some. We don't have a lot
21 of those, but daily sometimes. I mean, that's really
22 what that's for. That's for a hardcore spa-goer.
23 That would not just be access to the wet areas and the
24 fitness room.

25 MR. MCCALL:

1 It's just one monthly promotional
2 service, one monthly complimentary 30-minute personal
3 training session. That's basically about it. There's
4 other discounts, like 25 percent off Sunday, but ---.

5 MR. PLUMMER:

6 Yeah, there could be.

7 MR. MCCALL:

8 But what I'm saying is, you know, when
9 you --- you're asking us to say this experience is
10 fair market value, that \$25 plus \$10, when on your own
11 website you're selling it for \$3,500, it's pretty
12 difficult for me to say that's fair market value for
13 what I'm getting for this \$25 membership.

14 MR. HAUSLER:

15 I don't think they're really comparable.
16 And I don't want to speak for Chris, but an average
17 massage is how much?

18 MR. PLUMMER:

19 \$180.

20 MR. HAUSLER:

21 \$180? So, if you have one a month,
22 that's quite a difference than what's in the Nemaquin
23 Experience membership, as proposed.

24 MR. PLUMMER:

25 Just using the spa, I mean, for the

1 complimentary --- well, not complimentary.

2 MR. MCCALL:

3 So that just gets me in ---

4 MR. PLUMMER:

5 I mean, that could be \$6,000 right
6 there.

7 MR. MCCALL:

8 --- the center to use the pool, to use
9 the steam room and the sauna and nothing else?

10 MR. PLUMMER:

11 Nothing else.

12 MR. MCCALL:

13 All right.

14 CHAIRMAN:

15 John?

16 MR. MCNALLY:

17 Mr. Plummer, Mr. Siegel identified two
18 broad market segments, one being folks outside of your
19 45-mile radius and the folks inside the 45-mile;
20 correct?

21 MR. PLUMMER:

22 Correct.

23 MR. MCNALLY:

24 And the Nemaclin Experience is designed
25 for off-peak hours; correct?

1 MR. PLUMMER:

2 Correct.

3 MR. MCNALLY:

4 So, it's really designed to draw the
5 locals more so than the persons that are going to
6 travel a distance?

7 MR. PLUMMER:

8 Whoever wants to use it at off peak
9 would be really --- we wouldn't --- I mean, the locals
10 would probably be the target. Like we said, that
11 would be the primary 45-minute radius. But I
12 think --- like I said, like I testified before,
13 someone that was here from Washington for three days,
14 if he saw an opportunity to go play The Links for \$15
15 on Sunday, I'm sure it would pay for itself in one
16 time.

17 MR. MCNALLY:

18 Sure. But again, Mr. Siegel points out
19 that these locals are not likely, because of their
20 economics, to use the other amenities. Do you agree
21 with that?

22 MR. PLUMMER:

23 Economics and probably a few other
24 things. I think there's a certain percentage that ---
25 yeah, there's probably a certain group that couldn't

1 use it economically. Absolutely.

2 MR. MCNALLY:

3 Okay. I have no further questions.

4 CHAIRMAN:

5 Jim?

6 MR. GINTY:

7 I have a few. Mr. Siegel, in your
8 analysis, did you take into consideration the number
9 of people who would be using the Nemaocolin Experience
10 based on the current plan?

11 MR. SIEGEL:

12 Yes. Amenity by amenity we went ---.

13 MR. GINTY:

14 So, if that --- if the volume of members
15 was less, your conclusions would be different?

16 MR. SIEGEL:

17 If the volume of membership goes down,
18 then the --- it would depend on how precipitous the
19 decline, but the conclusion might be different.

20 MR. GINTY:

21 You know, there seems to be a question
22 of what's motivating Nemaocolin here, so let's put it
23 out on the table. There are those who might think
24 that the motivation --- and this is to Mr. Plummer, by
25 the way --- is to encourage the use of a casino. I

1 believe it's your testimony that the motivating
2 factor, from your perspective, is to encourage the use
3 of Nemaocolin's amenities. Am I right, that's your
4 motivating factor?

5 MR. PLUMMER:

6 Absolutely.

7 MR. GINTY:

8 The fact of the matter is that you're
9 seeking to both have them use your facilities and use
10 the casino, and it's perfectly logical that, in my
11 opinion, and we'll see if it's yours, that the
12 Nemaocolin Experience creates a larger market for you
13 to sell your products in or memberships in. And that
14 goes to the volume that I mentioned earlier. And it
15 creates that market by encouraging people --- patrons
16 to use the casino and to use it repeatedly, to take
17 advantage of the Nemaocolin Experience offer; is
18 that ---

19 MR. PLUMMER:

20 Yes.

21 MR. GINTY:

22 --- correct? If the --- there was a
23 suggestion made that --- or a question asked whether
24 you would offer the Nemaocolin Experience if there were
25 no casino or if the access was not part of it. I

1 believe your answer is you would have to go back and
2 crunch the numbers, and you would crunch the numbers
3 because --- let me suggest there would be a smaller
4 market without access to the casino; is that correct?

5 MR. PLUMMER:

6 I would anticipate that, yes.

7 MR. GINTY:

8 So, your pricing is dependent on the
9 volume of membership or on the market you're
10 addressing; is that a fair statement?

11 MR. PLUMMER:

12 I'm sorry?

13 MR. GINTY:

14 Your pricing is based on volume or the
15 number of memberships?

16 MR. SIEGEL:

17 Pricing, I would think from the
18 Nemacolin perspective, is based upon the economic
19 benefit, an optimal economic benefit they would derive
20 as a consequence of that pricing. And volume
21 certainly fits into that.

22 MR. GINTY:

23 I have no further questions.

24 CHAIRMAN:

25 Annmarie?

1 MS. KAISER:

2 Just one quick question. And you may
3 have covered this before, but have you ever considered
4 this type of membership before, or are you now
5 considering it because you think there will be the
6 influx of traffic?

7 MR. PLUMMER:

8 We've considered membership types
9 before, but this is as a result of the influx of the
10 demand that's created.

11 MS. KAISER:

12 Okay. Thank you.

13 CHAIRMAN:

14 Greg?

15 MR. FAJT:

16 Thank you, Mr. Chairman. Just a quick
17 follow-up. Mr. Siegel, I believe you stated that IOC
18 hired you?

19 MR. SIEGEL:

20 Technically, yes, they hired me. They
21 sent me a letter ---. They signed the contract. They
22 sent me a letter asking me to perform my analysis on
23 behalf of Nemaocolin Woodlands.

24 MR. FAJT:

25 And Mr. Plummer, then if this whole

1 membership thing is, you know, to get more patrons to
2 Nemacolin, I guess I'm a little confused why IOC would
3 hire Mr. Siegel and not Nemacolin?

4 MR. HAUSLER:

5 I can answer that.

6 MR. FAJT:

7 Pardon me?

8 MR. HAUSLER:

9 Our management agreement with Nemacolin
10 stipulates that we cover all of the costs related to
11 the regulatory fees and licensing related to Lady Luck
12 Casino and ancillary things. So we're covering all
13 the capital costs as well at the project, as you
14 know, ---

15 MR. FAJT:

16 Yeah, related to the casino.

17 MR. HAUSLER:

18 --- as well as the employee hiring and
19 everything else. And so, the management agreement
20 itself stipulates that we cover the fees related to
21 licensing and, you know, the access plan itself. The
22 access plan --- this is a component of the access
23 plan, but the access plan itself, which you previously
24 approved, is related to how does a patron of the
25 resort get in the casino. And a membership is just

1 one component of it. And so, our obligation is to
2 cover all of those costs.

3 MR. FAJT:

4 Okay. Thank you.

5 CHAIRMAN:

6 Tony, do you have any questions?

7 MR. MOSCATO:

8 I do not, Bill.

9 CHAIRMAN:

10 If I can, Mr. Siegel, page seven of your
11 report, the last paragraph, stated differently, the
12 Nemacolin Experience Membership Program must stand on
13 its own economically, without meaningful benefit
14 related to return related to the casino.

15 MR. SIEGEL:

16 Yes.

17 CHAIRMAN:

18 What do you mean by that?

19 MR. SIEGEL:

20 The way the relationship between IOC and
21 Nemacolin was described to me, Nemacolin benefits very
22 little as it relates to enhanced gaming revenues.
23 They don't have real economic --- a material economic
24 incentive to make that a more profitable enterprise
25 because I guess --- so, therefore, the revenue that

1 they derive principally is from non-gaming activities.
2 So, we looked at the membership program, as I said, as
3 a little business within a business, looking at the
4 material revenue and expense implications. Gave
5 virtually no consideration to anything gaming related,
6 the relationship, because there's so little economic
7 benefit that comes to Nemaocolin based upon the way the
8 relationship has been described to me.

9 CHAIRMAN:

10 You were here when Mr. Pitre, the Chief
11 Enforcement Counsel, asked Mr. Plummer if, without the
12 approval today, this membership program would still be
13 offered. And Mr. Plummer couldn't --- wouldn't give a
14 definitive answer of yes; correct?

15 MR. SIEGEL:

16 That's correct. But I think there's a
17 reason for that. Again, there's little economic
18 benefit coming from gaming revenue. But what we did
19 not explore is if you parse out the casino access,
20 what that does to the pro forma. We just didn't
21 analyze that.

22 CHAIRMAN:

23 You also say in the next sentence, same
24 paragraph, in this context, NWR, Nemaocolin Woodlands
25 Resort, and IOC management credibly indicate that the

1 membership program has been designed and priced so as
2 to create maximum financial benefit as a consequence
3 of financial performance unrelated to gaming.

4 MR. SIEGEL:

5 Yes, sir.

6 CHAIRMAN:

7 What does that mean?

8 MR. SIEGEL:

9 Essentially what I just said, that it
10 must create --- let me roll back just a moment. I
11 started with the premise of what's fair. How do we
12 define fair? And I tried to find authoritative
13 sources in that regard.

14 The next step is what --- from the Nema
15 --- it has to be a win/win for the consumer and for
16 Nemacolin. So, from the Nemacolin perspective, what
17 creates a win? A profitable program. We don't have
18 any gaming revenue --- shouldn't say any. We don't
19 have material gaming revenue, as I understand it, that
20 factors into that equation, from the revenue
21 perspective. That's separate and distinct from how
22 integral is gaming access to the overall appeal of the
23 program. And forgive me, I know I'm repeating myself,
24 but that's just not a question that we explored, what
25 happens to membership and subsequent financial

1 performance if you pull that out of the program.

2 CHAIRMAN:

3 Okay. Thank you. Any other questions
4 from the Board? Ex-officio members? Are we finished,
5 ladies and gentlemen?

6 ATTORNEY KIRCHNER:

7 I just have one follow-up question.

8 CHAIRMAN:

9 Yes, Counselor.

10 ATTORNEY KIRCHNER:

11 I'd like to ask Mr. Siegel to respond to
12 the question that Mr. McCall raised about the spa
13 membership.

14 MR. SIEGEL:

15 Yeah. Mr. McCall went on his
16 BlackBerry, I think it was, and really followed in a
17 narrow way one of the paths that I followed. He ---
18 Mr. McCall, you looked for a comparable that could be
19 used as a point with which one could then justify or
20 not justify the proposed \$25 pricing. And in process,
21 in terms of a thought process, I think that that's ---
22 obviously, I think that's a good way to go, because
23 it's the way that I went.

24 I thought the comparable was not a good
25 comparable, however, based on my discussions with Mr.

1 Plummer. And again, I don't know if I should be
2 indicating an actual number, but the actual number of
3 individuals who have signed up for that spa membership
4 --- am I allowed to mention ---

5 MR. PLUMMER:

6 Sure.

7 MR. SIEGEL:

8 --- that? It's like five members. So,
9 the notion of saying, well, since this program has
10 five members that have signed up for it --- is that
11 number correct ---

12 MR. PLUMMER:

13 Uh-huh (yes). It's correct.

14 MR. SIEGEL:

15 --- five members that have signed up for
16 it, that, therefore, is a good comparable for the kind
17 of volume we're trying to drive --- they're trying to
18 drive in this membership is, I think, not a useful
19 comparable. So, I do agree with the thought process
20 generally, but I think that that's worth ---.

21 MR. GINTY:

22 Can I follow up on that as well? By
23 encouraging these people, as part of the membership,
24 to use the spa, they might well decide to get a \$180
25 massage?

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MR. SIEGEL:

Yes. And that was factored into the analysis.

ATTORNEY KIRCHNER:

That's all I have. Before we close, I'd like to ask that Mr. Siegel's report and the one page that we submitted today be admitted into evidence.

ATTORNEY PITRE:

No objection.

CHAIRMAN:

Both will be admitted.
(Woodlands Fayette, LLC, Exhibit Two marked for identification.)

ATTORNEY KIRCHNER:

Thank you.

CHAIRMAN:

I want to thank all of you. This matter is now closed and will be considered later today, during our public meeting. Thank you, ladies and gentlemen.

* * * * *

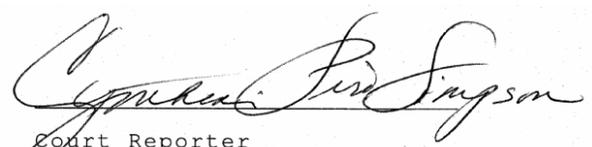
HEARING CONCLUDED AT 11:30 A.M.

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CERTIFICATE

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I hereby certify that the foregoing proceedings,
hearing held before Chairman Ryan was reported by me
on 5/13/2013 and that I Cynthia Piro Simpson read this
transcript and that I attest that this transcript is a
true and accurate record of the proceeding.



Cynthia Piro Simpson
Court Reporter