

BEFORE THE GAMING CONTROL BOARD
OF COMMONWEALTH OF PENNSYLVANIA
IN RE: APPLICATIONS OF VALLEY FORGE CONVENTION CENTER
PARTNERS, LP AND VACATION CHARTERS LIMITED

* * * * *

BEFORE: MARY DIGIACOMO COLINS, Chairman
Sanford Rivers, Member
Gary A. Sojka, Member
James Ginty, Member
Kenneth T. McCabe, Member
Jeffrey W. Coy, Member
Raymond Angeli, Member

LOCATION: Keystone Building, Hearing Room 1
400 North Street
Harrisburg, PA

HEARING: Tuesday, October 16, 2007
11:45 a.m.

WITNESSES: Michael Forman, Daniel Hatch, Peter Tyson,
C. Patrick McCoy, Gregory Newell, Charles
Dickinson, Ricky Moyer, David Gifford,
Robert F. Krauss, Ira Lubert, Frank
Donaghue, Mary Jones, Thomas Bonner

Reporter: KENNETH D. O'HEARN

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A P P E A R A N C E S

1
2
3
4
5
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11
12
13
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18
19
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I N D E X

(Valley Forge Convention Center Partners, LP)

OPENING REMARKS

By Attorney Donaghue 6 - 9

By Chair Colins 9 - 13

STATEMENT

By Attorney Quaglia 13 - 14

WITNESS: Michael Forman

EXAMINATION

By Attorney Quaglia 15

WITNESS: Daniel Hatch

EXAMINATION

By Attorney Quaglia 16 - 20

WITNESS: Peter Tyson

EXAMINATION

By Attorney Quaglia 21 - 25

WITNESS: C. Patrick McCoy

EXAMINATION

By Attorney Quaglia 25 - 27

WITNESS: Gregory Newell

EXAMINATION

By Attorney Quaglia 28 - 30

WITNESS: David Gifford

EXAMINATION

By Attorney Quaglia 31 - 34

1	I N D E X (cont.)	
2		
3	TESTIMONY	
4	by Mr. Krauss	34 - 38
5	by Mr. Lubert	39 - 41
6	by Mr. Moyer	43 - 47
7		
8	(Vacation Charters LTD)	
9	TESTIMONY	
10	by Attorney Kennard	48 - 49
11	by Mr. Dickinson	49 - 54
12		
13	(Bushkill)	
14	TESTIMONY	
15	by Ms. Jones	55 - 58
16		
17	(Greenwood Gaming)	
18	TESTIMONY	
19	by Attorney Wyland	59 - 60
20	by Mr. Bonner	60 - 65
21		
22	QUESTIONS	
23	by Board	66 - 90
24	CERTIFICATE	91
25		

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

		Page
<u>Number</u>	<u>Description</u>	<u>Offered</u>
	(Valley Forge Convention Center Partners, LP)	
One	Application CD	42
Two	Prehearing Memorandum	42
Three	Supplemental Prehearing Memorandum	42
Four	Nave Newell Report	42
Five	Deeds	42
Six	Memorandum of Law	42
Seven	Merger Agreement	42
Eight	Waiver	42
Nine	Keynote Presentation	42
	(Vacation Charters LTD)	
One	Statement & IACC Rules	55

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
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CHAIR:

All right. Good morning everyone. I'm Mary Colins, and I'm going to call to order this meeting of the Pennsylvania Gaming Control Board in the matter of the Category 3 eligibility hearing. All members of the Board are here and present for these hearings. And the purpose of these proceedings is to provide the opportunity for the Applicant to prove to the Board's satisfaction that they satisfied the Gaming Act eligibility requirements for a Category 3 license. And also for them to answer any and all questions that the Board may have relating to these issues. Now, I'm going to ask the Gaming Board's Chief Counsel, Frank Donaghue, to address the issue of the eligibility requirements.

ATTORNEY DONAGHUE:

Okay. Thank you, Chairman Colins. The Pennsylvania Racehorse Development and Gaming Act provides the authorization for two slot machine gaming licenses, referred to as Category 3 licenses, to be granted to well-established resort/hotel facilities under the provisions of Section 1305 and 1307 of the Act.

1 The applications had been received from
2 Valley Forge Convention Center Partners, LP; CE
3 Palace, LP; Vacation Charters and Bushkill Group. The
4 Gaming Act sets forth very specific eligibility
5 criteria for Category 3 applicants to gain a slot
6 machine license. Those criteria are set forth in
7 Section 1305 of the Act and require that each
8 Applicant must demonstrate to the Board's satisfaction
9 that it meets those criteria. Specifically, each
10 Applicant should establish that the Applicant, its
11 affiliates intermediary, subsidiary or holding company
12 has not applied for or has been approved or issued a
13 Category 1 or 2 license.

14 The Applicant is seeking to locate the
15 Category 3 licensed facility in a well-established
16 resort/hotel having no fewer than 275 guest rooms
17 under common ownership and having substantial year
18 round recreational amenities. Third, the Applicant is
19 the owner or the wholly-owned subsidiary of the owner
20 of the established resort hotel. Fourth, the
21 Applicant will only permit an individual to enter a
22 gaming area if that person is a registered overnight
23 guest of the established resort or if the individual
24 is a patron of one or more of the amenities provided
25 at the established resort hotel.

1 Also, any Applicant would not have been a
2 public official or an executive level public employee
3 for one year prior to the issuance of the license.
4 Compliance with 1305(a)(3) is applicable. And
5 finally, the Category 3 licensed facility would not be
6 located within 15 linear miles of another licensed
7 facility. If after consideration of all the evidence
8 the Board is satisfied that an Applicant meets the
9 basic eligibility criteria for licensure, Board staff
10 will then undertake an extensive background
11 investigation process of the Applicant.

12 To be clear, the purpose of these
13 hearings is for the Board to determine as a threshold
14 matter whether the Applicants satisfy the statutory
15 eligibility criteria such that they should proceed to
16 the investigatory stage of the process. The Board has
17 an ongoing obligation to ensure that each Applicant is
18 eligible for licensure at all stages of licensing
19 proceedings. If during the course of the
20 investigatory process the Board obtains subsequent
21 information that bears on a determination of
22 eligibility, the Board may revisit the eligibility
23 issue based upon the information as appropriate.

24 The Board will also be scheduling public
25 input hearings in the municipalities where the

1 facilities would be located and will schedule final
2 suitability hearings to permit the Board to obtain
3 full investigative reports by staff, as well as
4 presentations by the Applicants to demonstrate their
5 suitability for one of the two limited Category 3
6 licenses.

7 CHAIR:

8 Thank you. Now, each Category 3 licensee
9 will be making their presentation to the Board today
10 and address all of the elements of eligibility that
11 has been outlined by Counsel. In addition, the Board
12 has retained the services of an engineer to measure
13 distances between Applicants and other licensed
14 facilities in order to ensure compliance with the Act.
15 A representative of the engineering firm hired for
16 that purpose will also present the results of their
17 findings.

18 And following all these presentations the
19 Board will hear from other Category 3 applicants or
20 Category 1 or 2 licensees who have evidence to present
21 to the Board concerning the eligibility issues of the
22 Applicants. The Board will also have the opportunity
23 to ask questions of any entity presenting evidence
24 during these proceedings. Please be aware that the
25 evidence to be received is limited in these

1 proceedings to the eligibility issues, not suitability
2 factors including which Applicants are best situated
3 to receive a license or what effect any Applicant
4 receiving a license would have on another license.
5 That type of comparative or competitive evidence will
6 be received in the suitability hearings, not today.

7 Today the Board will be hearing first
8 from Valley Forge Convention Center Partners followed
9 at about two o'clock by the hearing for Vacation
10 Charters. Then tomorrow the Board will hear from CE
11 Palace at 9:00 a.m. followed by the Bushkill Group at
12 about 11:00 a.m. We ask that all participants be
13 ready to present when called and that all persons
14 remain present through the Applicant's entire hearing
15 to permit the Board to receive answers to any
16 questions which the Board may have.

17 After the hearings, which will occur
18 today and tomorrow, the Board will permit any
19 Applicant or Licensee who contest the eligibility of
20 another Applicant a period of 15 days in which to
21 submit any supplemental evidentiary materials or
22 memorandum to the Board to contest the eligibility of
23 an Applicant. Any Applicant subject to such
24 post-hearing submissions may file a final response
25 within seven days. No further filings will then be

1 accepted. Thereafter, the record will be closed, and
2 the Board will undertake an examination of the record
3 and subsequently issue an order concerning the
4 licensing status of each Applicant and determine
5 whether the Applicant will proceed to the
6 investigative stage of the licensing process.

7 Now, the representatives of Applicants
8 for Valley Forge Convention Center who are going to
9 testify, please stand and identify yourselves for the
10 record, and then we will ask you to be sworn. If you
11 would do that, please. Could you state your names for
12 the record, please?

13 ATTORNEY QUAGLIA:

14 Raymond Quaglia, Your Honor, Counsel for
15 the Applicant.

16 CHAIR:

17 Very good. Thank you.

18 MR. LUBERT:

19 Ira Lubert, Your Honor.

20 CHAIR:

21 Thank you.

22 ATTORNEY KING:

23 Adrienne King, Counsel for the Applicant.

24 MR. KRAUSS:

25 Bob Krauss, Counsel for the Applicant.

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MR. FORMAN:

Michael Forman, president, CEO of the
Applicant.

CHAIR:

Very good. And do you want to --- or you
could just identify who ---.

MR. MCCOY:

Patrick McCoy.

CHAIR:

Thank you, sir.

MR. HATCH:

Dan Hatch, managing director.

MR. TYSON:

Peter Tyson.

MR. NEWELL:

Greg Newell.

MR. GIFFORD:

David Gifford.

CHAIR:

Very good. Would you administer an oath,
please.

WITNESSES SWORN EN MASSE

CHAIR:

1 Very good. Thank you. You can be
2 seated, and I'll ask Counsel to proceed with your
3 matter.

4 ATTORNEY QUAGLIA:

5 Thank you, Judge Colins. And good
6 morning to you, members of the Board. I'm Ray Quaglia
7 with the Ballard Spahr Firm. And it is my privilege
8 and my pleasure to be back before you today on behalf
9 of the Applicant, Valley Forge Convention Center
10 Partners, LP. I'd like to begin, as always, by
11 extending our appreciation to the Board staff for
12 their ongoing efforts with respect to our application.
13 I would like to thank, in particular, at this juncture
14 Doug Sherman and Linda Lloyd.

15 An eligibility hearing is something new
16 for us, and Doug and Linda have guided us through the
17 process with the efficiency and professionalism that
18 has characterized the Board's staff throughout the
19 licensing process on all categories. In accordance
20 with the Board's directive, our presentation today is
21 limited to the issue of eligibility. We intend to
22 demonstrate through all testimony and documentary
23 evidence of record that Valley Forge Convention Center
24 Partners, LP satisfies each and all of the statutory
25 requirements for a Category 3 slot machine license set

1 forth in Section 1305 of the Gaming Act.

2 In recognition of our schedule we've made
3 every effort to limit out case in chief to something
4 less than one hour in length. We should know within
5 60 minutes whether we've met that salutary goal. But
6 without further a due I will call our first witness,
7 who is Michael Forman, Applicant's president and chief
8 executive officer, to address certain preliminary
9 eligibility requirements. Mr. Forman is a long-time
10 investor and entrepreneur in the hospitality industry.
11 He has extensive experience in the gaming industry,
12 including a number of new jurisdiction projects and is
13 currently involved with a gaming project in Colorado.
14 Good morning, Mr. Forman.

15 -----

16 MICHAEL FORMAN, HAVING PREVIOUSLY BEEN SWORN,
17 TESTIFIED AS FOLLOWS:

18 -----

19 A. Good morning.

20 ATTORNEY QUAGLIA:

21 Would you prefer the witness to stand at
22 the podium?

23 CHAIR:

24 Whatever is most comfortable.

25 A. Good morning.

1 EXAMINATION

2 BY ATTORNEY QUAGLIA:

3 Q. Mr. Forman, has the Applicant, Valley Forge
4 Convention Center Partners, LP or any other affiliate
5 intermediatary subsidiary or holding company of the
6 Applicant applied for or been approved for or issued a
7 Category 1 or a Category 2 license in Pennsylvania?

8 A. No.

9 Q. Has the Applicant or any person affiliated with
10 the Applicant served as a public official or executive
11 level public employee in the one-year period prior to
12 the filing of the Applicant's Category 3 application?

13 A. No.

14 ATTORNEY QUAGLIA:

15 Thank you, Mr. Forman. Our next witness
16 is Daniel Hatch, the managing director of the Valley
17 Forge Convention Center, who will address the resort
18 facility and amenities for the Applicant's facility.
19 Mr. Hatch has 32 years experience in the hotel
20 industry including 18 years managing resort hotels in
21 Myrtle Beach, Cape Cod, Steamboat Springs and
22 Lancaster, Pennsylvania. He has spent the last four
23 years with the Valley Forge Convention Center.

24 -----

25 DANIEL HATCH, HAVING PREVIOUSLY BEEN SWORN, TESTIFIED

1 AS FOLLOWS:

2 -----

3 EXAMINATION

4 BY ATTORNEY QUAGLIA:

5 Q. Mr. Hatch, if you would, please orientate the
6 Board as to the location of the Valley Forge
7 Convention Center.

8 A. Good morning. We are located in King of Prussia.
9 We are 1.6 miles from the King of Prussia Mall, one of
10 the largest malls in the country with over 26 million
11 visitors per year. We are also adjacent to the Valley
12 Forge National Park. It has over 6 million visits per
13 year. We're going to be within two miles of the
14 proposed American Revolutionary Center, and we're also
15 two miles to the Audubon Wildlife Sanctuary.

16 Q. If you would, please describe for the record the
17 Valley Forge Convention Center's facility and
18 amenities?

19 A. Yes. We have 850,000 square feet of space. We
20 have 488 guest rooms, 58 of those guest rooms are
21 fantasy suites or theme rooms. We have three full
22 service restaurants, we have convention, meeting,
23 banquet facilities and exhibit and trade space, trade
24 show space. We have the Waterford Ballroom and
25 Showroom. We have Ice Nightclub. We have a 3,000

1 square foot fitness health club, and we'll be opening
2 a full service spa in 2009. We have racquetball
3 facilities. We have an outdoor swimming pool. We
4 have golf course affiliations. We have hiking, biking
5 and jogging trails. We have shuttles to and from the
6 mall and we have a gift shop.

7 The complex has two hotels. The Radisson has 328
8 rooms and Scanticon has 160 rooms. All of the
9 Scanticon rooms have Jacuzzis. The Scanticon also is
10 an approved conference center, approved by the
11 International Association of Conference Centers or
12 IAC. We operate both of the hotels under a licensed
13 agreement.

14 This slide here will give you a little bit of
15 orientation. This slide will provide an overview of
16 the complex. The Radisson and Scanticon are on each
17 end of the complex, and the convention center and
18 conference center sits between the two. This allows
19 guests greater mobility throughout the building and
20 access to the hotel amenities. These are all
21 connected so you can walk through the entire building.
22 What you see next are examples of our getaway fantasy
23 suites. These suites have become very popular for
24 weekend escapes and vacations. This is the Cape May
25 suite with a Victorian theme, and as you can see, you

1 don't have to go to Cape May to get the experience.

2 We have it in King of Prussia.

3 The next one is Caesar's Palace. This is what you
4 might find in the Poconos. The next slide is
5 Cleopatra's Tent, my favorite. And the last example
6 is the cottage in the woods, classic bed and breakfast
7 scene. As I said earlier, we have 58 of these fantasy
8 suites and theme rooms. As you saw earlier, we have
9 three full service restaurants, two are located in the
10 Radisson and one is located in the Scanticon.

11 Chumley's Steakhouse and Sports Bar is located in the
12 Radisson and has 120 seats. We have a fine dining
13 area with a menu that features steaks and seafood, and
14 the sports bar is very popular to our hotel guests and
15 conventioneers.

16 Café Soleil is another restaurant that we have
17 with 135 seats. It also is located in the Radisson
18 Hotel. We use the café for breakfast and lunch for
19 our hotel guests. The Blue Grotto Italian bistro is
20 our third restaurant. This is located in the
21 Scanticon hotel. We also use the Blue Grotto for our
22 groups that are using the Scanticon conference center.

23 This is a shot of the convention center that has
24 108,000 square feet of exhibit, exhibition and meeting
25 space. The next one will show you the space when it

1 is occupied with a show. The 8,000 square foot
2 two-level Waterford Ballroom and Showroom, which is a
3 multi-use space located in the Radisson. This room is
4 used for weddings and other social events, corporate
5 meetings and corporate presentations. The ballroom
6 has a totally equipped theatrical stage and it can be
7 used for live shows and entertainment. This one also
8 can be used for a benefit dinner. We have the Ice
9 Nightclub, which is our high energy club used by our
10 hotel guests and locals as well.

11 We have a 3,000 square foot fitness center
12 equipped with treadmills, weights, nautilus equipment,
13 steam rooms, saunas and racquetball. Next we have the
14 rendering of the new spa scheduled to open in 2009.
15 This will show you the reception area and the
16 treatment rooms.

17 Q. Just to be clear for the record, Mr. Hatch, do the
18 hotel franchisers, Radisson and Scanticon, have any
19 ownership interests in the Valley Forge Convention
20 Center?

21 A. No.

22 Q. What are the center's guests demographic as
23 between business and leisure?

24 A. We've broken the graph into two segments. The
25 first being the leisure segment, which represents

1 two-thirds of our total room nights. This segment
 2 includes just visiting the cultural attractions in the
 3 area, shoppers, convention guests, wedding guests,
 4 reunions, religious and other social events. This
 5 segment also includes regional guests that are looking
 6 for a mini vacation to get away in the area. The
 7 corporate segment represents 34 percent of our
 8 business. This segment includes the corporate
 9 transient business, corporate group business,
 10 government group and government transiting business.

11 ATTORNEY QUAGLIA:

12 Thank you, Mr. Hatch. Our next witness
 13 who has been previously identified as an expert is
 14 Peter Tyson, the vice president of PKF Consulting, who
 15 will present expert testimony on the Applicant's
 16 resort status. Mr. Tyson is a marketing financial
 17 expert in the hotel, resort and gaming industries. He
 18 has 35 years of experience in the Pennsylvania
 19 hospitality industry. Mr. Tyson is a consultant for
 20 the Greater Philadelphia Tourism and Marketing
 21 Corporation as well as the Philadelphia Convention and
 22 Visitors Bureau and has extensive experience in market
 23 evaluations and property positioning.

24 -----
 25 PETER TYSON, HAVING PREVIOUSLY BEEN SWORN, TESTIFIED

1 AS FOLLOWS:

2 -----

3 EXAMINATION

4 BY ATTORNEY QUAGLIA:

5 Q. Mr. Tyson, what was the scope of your engagement
6 by the Applicant?

7 A. First of all, let me say good afternoon, Madam
8 Chairman, members of the Board. The scope of my
9 involvement in this particular engagement was twofold.
10 Number one, to prepare casino revenue protections for
11 the project, and number two to provide an opinion as
12 to the propriety of a resort classification for the
13 Valley Forge Convention Center.

14 Q. Please describe for the Board your methodology for
15 determining the propriety of a resort classification.

16 A. I first reviewed the Section 1305(e) of the Gaming
17 Act that relates to or provides somewhat of a
18 definition for the types of facilities that should be
19 included in a Category 3 Applicant. Number two, I
20 reviewed a definition for resort properties from the
21 PKF annual trends report, which is sort of the
22 financial --- one of the financial Bibles for the
23 industry ever year and they classify different types
24 of hotels. Number three, I applied my extensive
25 experience with resort properties over the past 40

1 years in terms of a practical application of whether
2 this complex constitutes a resort. I toured the
3 property. I met with management, and I reviewed the
4 market mixed data that Mr. Hatch just testified to.

5 Q. What conclusion, if any, did you reach as to the
6 propriety of a resort classification?

7 A. My overall conclusion is that the property
8 certainly would, by many standards, qualify as a
9 resort. Specifically, number one, the facilities
10 included are offered by the Valley Forge Convention
11 Center do agree or encompass those facilities,
12 services and amenities mentioned in Section 1305(e) of
13 the Act. The depth of the complex certainly falls
14 under the definition of a resort or a definition of a
15 resort as published in PKF's trend report, which I ---
16 if I may quote quickly, a hotel usually in a suburban
17 or isolated rural location with special recreational
18 amenities.

19 Number two, the market mix for the hotel, as
20 testified to by Mr. Hatch, certainly supports a resort
21 classification, as it is greater than the majority of
22 its customers who are leisure in nature. I believe he
23 stated somewhere in the neighborhood of 65 percent,
24 which if you'll look at all of the hotels in the
25 Philadelphia area, the leisure category typically

1 accounts for somewhere in the neighborhood of 40
2 percent. So it's almost a 50 percent greater
3 contribution from the leisure segment to the market
4 mix than what you would see in the overall area. And
5 those people, in experience having worked in that
6 market for virtually all of my 35 years in
7 Philadelphia, does constitute a vacation traveler's
8 weekend escape package, participants, people
9 participating in social events, be it weddings,
10 reunions, bar mitzvahs, whatever going on, they stay
11 at the hotel. They get an awful lot of shopping
12 business, similar to the way outlets draw people to
13 Lancaster, the Poconos, to Reading. People who come
14 from around the region and spend overnight visits to
15 shop, that's what King of Prussia Mall does for this
16 property. And finally, we've got Valley Forge Park
17 next door, which is a great attraction and draws
18 overnight guests.

19 Finally, the facilities and amenities at the
20 resort, certainly many of them are quite appropriate
21 to a resort-type property and are unique to a degree
22 for hotels in the Philadelphia area. Specifically, 58
23 fantasy and theme rooms. You very rarely find those
24 types of properties in commercial or more traditional
25 orientated hotels. Those are geared to escape

1 weekend, special events, holidays, birthdays,
2 anniversaries, that sort of thing.

3 220 of the rooms in the complex, roughly, have
4 Jacuzzis. Again, that is not a feature found in most
5 commercial hotels or standard hotels. That's
6 typically a resort feature. The property, as was
7 mentioned, has 108,000 square feet of exhibit space.
8 It also has about 37,000 square feet of meeting,
9 banquet and convention space. That makes this
10 property roughly three times bigger in terms of that
11 type of space that any other property in the
12 Philadelphia area. And again, that leads to a lot of
13 social grouping and other types of group business.

14 It's got several restaurants, as was testified to.
15 It's got a night club, it's got a showroom, pool,
16 fitness, racquetball, availability of golf nearby,
17 golf --- pardon me, jogging, biking, hiking trails
18 next door. And finally it's got a gift and souvenir
19 shop. Its location next to a historical attraction
20 such as Valley Forge National Park and the King of
21 Prussia Mall are also characteristics that help me
22 conclude that the facility certainly qualifies as a
23 suburban resort.

24 ATTORNEY QUAGLIA:

25 Thank you very much, Mr. Tyson.

1 A. Thank you.

2 ATTORNEY QUAGLIA:

3 The Applicant next calls C. Patrick
4 McCoy, the president of Real McCoy Gaming and
5 Applicant's proposed vice president of gaming
6 operations to address the issue of gaming area access.
7 Mr. McCoy has more than 25 years gaming experience and
8 has helped senior management posed at a number of
9 major Atlantic City casinos, including Caesars, Ballys
10 and the Atlantic for the Hilton. He's the former
11 chief executive officer and president of the Riverwalk
12 Casino project here in Philadelphia in which context
13 he has previously been found suitable for licensure by
14 the Board.

15 -----

16 C. PATRICK MCCOY, HAVING PREVIOUSLY BEEN SWORN,
17 TESTIFIED AS FOLLOWS:

18 -----

19 EXAMINATION

20 BY ATTORNEY QUAGLIA:

21 Q. Mr. McCoy, for the Board, how did the Applicant
22 plan to limit gaming area access to registered hotel
23 guests and/or patrons of hotel amenities?

24 A. Good morning, Chair Colins and Board members. I
25 propose development of an integrated, computerized

1 system that will provide approved guests and patrons
2 with a computer generated access pass allowing them
3 into the gaming area. Our casino floor plan includes
4 a turnstile-type access at the casino entrance that
5 will present a more secure focus point of entry.
6 Patrons will need a valid access pass to get to the
7 turnstiles. Those access passes will be issued at
8 various areas depending on the type of patron.
9 Registered hotel guests will be issued access passes
10 at the front desk upon checking in. Convention and
11 banquet guests will be issued passes based on only
12 those registered with the convention services
13 department or at convention registration desk. Guests
14 at other amenity areas such as the restaurant, the
15 spa, et cetera will be issued access passes at those
16 outlets based on purchases that exceed the required
17 per person limits.

18 The system would also provide for guests to prepay
19 for usage of amenities and obtain access passes. All
20 access passes would include an expiration period,
21 which would generally be the date of check out for
22 hotel guests and primarily 24 hours for most other
23 patrons.

24 The computerized system would also provide an
25 audit trail, attaching each access pass to its source

1 such as hotel registration, convention group or
2 amenity check. All procedures related to this system
3 would be incorporated into our internal controls to be
4 submitted for review and approval by Board staff. And
5 lastly, the casino entrance will be manned during all
6 casino hours by security personnel who will enforce
7 our responsible gaming program with respect to
8 underage patrons as well as any other casino access
9 issues that may arise.

10 Q. To your knowledge, Mr. McCoy, is your plan to
11 assist with the process described in appendix 34 to
12 the Applicant's application?

13 A. It is.

14 ATTORNEY QUAGLIA:

15 Thank you very much, sir. The Applicant
16 next calls Greg Newell, a principal at Nave Newell to
17 provide expert testimony on linear distance and
18 ownership requirements. Mr. Newell has 20 years
19 experience as a professional engineer and has been for
20 the last 15 years an owner of Nave Newell, a
21 Pennsylvania surveying and engineering firm. He has
22 personally overseen hundreds of land development
23 projects requiring surveying and engineering including
24 analyzing property records to determine ownership and
25 to establish the boundaries of individual properties.

1 -----

2 GREGORY NEWELL, HAVING PREVIOUSLY BEEN SWORN,
3 TESTIFIED AS FOLLOWS:

4 -----

5 EXAMINATION

6 BY ATTORNEY QUAGLIA:

7 Q. Mr. Newell, what was the scope of Nave Newell's
8 engagement by the Applicant?

9 A. The Applicant asked us to investigate two specific
10 provisions within the Gaming Act. Those provisions
11 were sections 1305(b)(1), dealing with the
12 determination of linear distance between facility, and
13 the second one was section 1305(a)(1), which deals
14 with common ownership.

15 Q. How, if at all, does the industry define linear
16 distance?

17 A. A more simply layman's term for the engineer and
18 surveying profession. We call it the direct line
19 distance or direct distance between two points, making
20 --- taking it a little step further, going into a
21 little bit of the professional vernacular. We went to
22 a professional textbook surveying practice by
23 Nathanson and Kissam. And in there it defines ---
24 linear is defined by two points that follows a
25 straight line on the X, Y plane.

1 Q. Did Newell prepare a report with respect to linear
2 distance?

3 A. Yes, we did. We prepared a report dated October
4 5th, 2007. In that report we investigated the
5 distance, the linear distance, between the Applicant's
6 facility and the approved Category 1 and Category 2
7 facilities within the Philadelphia area. Our research
8 and determination indicated that both facilities to
9 the distance, linear distance, from the Applicant's
10 location to these four existing approved locations
11 significantly exceeded the 15-mile distance as
12 required. I believe our reports --- the result of our
13 reports come almost exactly to the same measurement as
14 the proxsimary report prepared by your consultant,
15 your engineering consultant.

16 Q. Please describe for the Board the methodology and
17 the results of your analysis of the ownership of the
18 Valley Forge Convention Center.

19 A. Our office went and examined public records, both
20 of tax official's office and recorder of deeds
21 Montgomery County. We were able to determine through
22 that research that there are three deeds of records
23 that reflect and/or encompass the application of the
24 property in question. The names on those deeds are
25 Valley Forge Colonial Limited Partnership. The three

1 deeds actually encompass 11 parcels or units. The
2 first of those deeds is found and identified on deed
3 book 5153, page 2131 recorded July 10th, 1996, and
4 that actually encompasses six units or parcels. E2
5 can be located --- determined or located on deed book
6 5091, page 0983 recorded September 9th, 1994 and that
7 encompasses one unit or parcel. The last one, E3, was
8 found in deed book 5101, page 1244 recorded December
9 30th, 1994 and that encompassed four units. As a
10 whole, these three deeds encompassed the area of both
11 hotels, the convention center and its associated
12 parking. We then went on to take that information and
13 compare it to both an Agreement of Sale and the
14 application itself. The Agreement of Sale transfers
15 ownership from Valley Forge Colonial Limited
16 Partnership, which is shown on the deed, to Valley
17 Forge Convention Center Partners, LP, which is the
18 name on the application.

19 ATTORNEY QUAGLIA:

20 Thank you very much, Mr. Newell. Discuss
21 further the legalities of the ownership requirement.
22 My partner, David Gifford. Mr. Gifford has 28 years
23 experience practicing real estate law. He's a former
24 chairman of the Philadelphia Bar Association, real
25 estate law section and has participated in hundreds of

1 complex real estate transactions including complex
2 Agreement for Sale, title reviews and property
3 conveyances.

4 -----

5 DAVID GIFFORD, HAVING PREVIOUSLY BEEN SWORN, TESTIFIED
6 AS FOLLOWS:

7 -----

8 EXAMINATION

9 BY ATTORNEY QUAGLIA

10 Q. David, please summarize briefly for the Board the
11 legal grounds for the Applicant's ownership interests
12 in the Valley Forge Convention Center.

13 A. Good morning. As we heard earlier, Section 1305
14 requires that the Applicant be the owner or
15 wholly-owned subsidiary of the owner of well
16 established resort hotel. And as we've just heard
17 from Mr. Newell, record title to the properties in
18 question is held in the name of Valley Forge Colonial
19 Limited Partnership. On June 27th of this year the
20 Applicant entered into an Agreement of Sale to
21 purchase the complex from Valley Forge Colonial
22 Limited Partnership, the record owner. On June 29th
23 the Applicant filed this application for a Category 3
24 license.

25 Pennsylvania recognizes the ancient memorable

1 common law document known as equitable conversion. By
2 entering into an Agreement of Sale, the buyer is
3 vested with equitable title and becomes the equitable
4 owner of the property. The seller obtains record
5 title and holds the property in trust until the
6 closing occurs and the conveyance is made to the
7 buyer. Subject to the parties allocation of the risk
8 between them by contract the purchaser bears the risk
9 of loss, risk of changed circumstances concerning the
10 property meaning casualties, changes of zoning and
11 assessments for such things as sewer. The doctrine
12 applies notwithstanding that the purchase price
13 remains unpaid and notwithstanding that the parties
14 must discharge various administrative obligations
15 before the deed is exchanged at the closing.

16 The Applicant's Agreement of Sale originally
17 provided a condition under which the Applicant's
18 obligations were contingent upon the issuance of a
19 license. The Applicant, I note, has waived that
20 condition. Nevertheless, Pennsylvania courts have
21 routinely applied the doctrine of equitable conversion
22 even to cases where the buyer's obligation to close
23 are subject to certain conditions. This has been
24 applied in many instances to protect the purchaser
25 against matters that arise between the signing and the

1 closing.

2 There are some Pennsylvania decisions that have
3 muddled the application of conditional agreements, but
4 I note that this has happened primarily in situations
5 where the courts have viewed the contracts as mere
6 options. And they also appear primarily in cases
7 dealing with statutory condemnations. Generally
8 contracts subject to conditions are not mere options.
9 The purchaser is bound to use good faith to satisfy
10 the conditions. Conditional contracts are viewed by
11 the courts as executory agreements in which the
12 parties have mutual rights and mutual obligations
13 which they may enforce. Even in a situation where a
14 court used an agreement as a mere option. Upon the
15 exercise of the option the purchaser's equitable title
16 relates back to the inception of the agreement. As a
17 result the purchaser is deemed to hold equitable
18 ownership from the time the agreement was executed and
19 nearly the time of the exercise of the option. So
20 even if a court were to deal with conditional
21 agreement as equivalent to an option, the satisfaction
22 or waiver of that condition like the exercise of the
23 option would result in relation equitable title in the
24 buyer after the inception of the agreement.

25 By entering into the Agreement of Sale the

1 Applicant became the equitable owner of the Valley
2 Forge Convention Center. This equitable conversion
3 occurred notwithstanding the conditions originally
4 contained in the Agreement of Sale, regardless the
5 Applicant has waived the condition through its
6 purchase, and as a result equitable ownership with
7 Valley Forge Convention Center relates back to the
8 inception of the agreement as a matter of Pennsylvania
9 law. Thank you.

10 ATTORNEY QUAGLIA:

11 Thank you, David. The Applicant's next
12 witness is my partner, Robert Krauss to address the
13 way that the ownership was negotiated between Valley
14 Forge Colonial and the Applicant. Mr. Krauss has 40
15 years experience representing racing and gaming
16 entities in Pennsylvania and elsewhere.

17 MR. KRAUSS:

18 He had to say that.

19 ATTORNEY QUAGLIA:

20 But still retains his youthful vigor. He
21 is the vice chairman of the Pennsylvania Bar
22 Association, Gaming Law Committee and a frequent
23 lecturer on gaming law.

24 MR. KRAUSS:

25 Thank you, my younger partner, Ray.

1 Thank you for giving me the opportunity to speak to
2 you this morning. I thought it would be instructive
3 to quickly revisit the history of Section 1305 of the
4 Act. As you know, I had the pleasure of working with
5 many people in the public and private sector for over
6 ten years in crafting this legislation. The final
7 push after Ed Rendell was elected Governor in February
8 of '03 was for a piece of legislation for slots and
9 tracks only. As the political forces took hold the
10 final pieces were put together with the addition of
11 five freestanding facilities, and finally in March of
12 2004 the addition of two limited licenses to further
13 support tourism.

14 The term resort hotel is not defined and
15 the legislator inferred the definition by including
16 language that the resort/hotel shall have not more
17 than 275 guest rooms and substantial year round
18 recreation guest amenities. The amenities are further
19 defined in Section 13059(e), which prior speakers have
20 referred to. The limited licenses were not designed
21 to compete with Category 1 or Category 2 licenses, but
22 rather to attract additional tourism including large
23 groups who attend conventions. The legislator guarded
24 against flipping by requiring that the owner of the
25 facility be the Applicant. As you have heard from the

1 testimony here today, the Valley Forge Convention
2 Center complex meets the eligibility requirements set
3 forth in the Act. As a matter of fact --- and that it
4 is a well established resort/hotel and convention
5 center which has more than 275 rooms in the common
6 ownership, and has numerous guest amenities of the
7 type described in Section 1305(e).

8 The last item of focus which my partner,
9 David Gifford, addressed was the ownership question.
10 Once again the legislator did not define the term
11 owner, nor limit the term to require record owner
12 versus equitable owner versus any other type of owner
13 provided for under Pennsylvania law.

14 Before the application was filed I
15 conferred with your general Counsel and other members
16 of your staff to determine who the Applicant should
17 be. In fact, this project has been Ira Lubert's
18 project for many years, and you'll hear from him in a
19 minute. He originally purchased the convention center
20 by forming Colonial Limited Partnership where he and
21 his affiliates controlled the partnership and had an
22 additional 30-some financial partners. When he
23 decided to seek a Category 3 license, it was clear
24 that many of the limited partners would not subject
25 themselves to your rigorous filing requirements. And

1 accordingly he created a new entity, Valley Forge
2 Convention Center Partners, LP, where he and his
3 affiliates continued to control the entity and the new
4 limited partners rather than being financial partners
5 where partners who had experiences which would be
6 helpful in gaining a Category 3 license and operating
7 a complex as a resort and limited slot parlor.

8 Colonial entered into the Agreement of
9 Sale to sell substantially all of its assets to Valley
10 Forge Convention Partners, LP. There was no
11 stripping. Ira controlled it before, he controlled it
12 after it, he still controls it.

13 Under applicable Pennsylvania law,
14 Applicant became the equitable owner of the Valley
15 Forge Hotel and Convention Center when it entered into
16 the Agreement of Sale. The Applicant filed a Category
17 3 application in disclosure form after it became the
18 equitable owner. In recognition of the fact that the
19 legislator did not define owner we were careful and we
20 also filed applications for Colonial Limited Partners,
21 the legal owner of the entire complex and for Ira
22 Lubert so that we would have everyone covered.

23 To further evidence the continuity of
24 ownership throughout this process, it was subsequently
25 determined by the party that the Agreement of Sale

1 actually did them a disservice in that there were
2 several tax disadvantages to the way they had
3 structured the deal. And accordingly yesterday they
4 entered into a merger agreement, which has an
5 unconditional merger agreement, and pursuant to the
6 merger agreement Colonial will become at the closing a
7 fully owned subsidiary of the Applicant, Valley Forge
8 Convention Partners.

9 The original Agreement of Sale has not
10 been terminated and will not be terminated, and will
11 remain in effect throughout these proceedings. So
12 what we have before you is Valley Forge Convention
13 Center complex controlled by Ira Lubert and its
14 affiliates before and after the application process.
15 Thank you very much.

16 ATTORNEY QUAGLIA:

17 Thank you. The Applicant's final witness
18 for today will be Mr. Lubert, the chairman of the
19 Valley Forge Convention Center Partners, LP. Mr.
20 Lubert has more than 35 years of real estate and hotel
21 experience, the co-founder of Independent Capital
22 Partners, a \$7 billion family of private equity and
23 real estate funds. He's a general partner of Valley
24 Forge Colonial, LP as well as of the Applicant. Mr.
25 Lubert graduated Penn State Food Service and Hotel

1 Management School in 1973 and is a past and present
2 member of the Penn State Board of Trustees.

3 MR. LUBERT:

4 Thank you for having us today. I first
5 became involved in this property in 1994 ---
6 properties I should say. Some of you might recall
7 those properties were owned by Leon Altemose, and in
8 approximately late '91, early 1992 entered a series of
9 bankruptcies controlling these three entities. And I
10 started in 1994 to acquire the properties, and it took
11 over two years. So in 1994 we acquired the first
12 property which was what is today the Scanticon Hotel.
13 And then went to the convention center second and then
14 finally the large Radisson hotel, although at the time
15 it was called the Sheridan, and then the other parcel
16 with that.

17 It was a very complex bankruptcy. As you
18 might imagine over a three-year bankruptcy, the hotel
19 became very disarrayed and a lot of people lost their
20 jobs. We then set out to turn the property around and
21 reposition it with a hotel resort property in that
22 area. We've made many improvements to the property
23 over the years, all of the guest rooms, the convention
24 center, renovations, the restaurants, et cetera, all
25 the meeting space. Over the 13 years ownership from

1 the start, we've completely revamped and repositioned
2 the property.

3 I reviewed this gaming license as an
4 opportunity to take the property to its next level.
5 Limited gaming will enhance the property's reputation
6 as a first-class suburban resort, convention area.
7 And as such in that area, there's a lot of other
8 products that will come to the market and coming into
9 the market. It's really also a huge opportunity for
10 the Commonwealth to tap a significant customer base of
11 conventioners and leisure travelers.

12 There's over seven million people who
13 reside in the region's King of Prussia market. And
14 today's leisure travelers really are looking for
15 opportunities closer to home. People are not taking
16 that one, two or three-week vacation every year.
17 They're trying to get away more often, and we are one
18 of several entities that allow that to happen. The
19 property provides a unique mix of cultural
20 attractions, shopping opportunities as you heard
21 before, dining options, the fantasy lodging, and it's
22 really just the perfect weekend escape in addition to
23 having the convention center for people to go and go
24 to the convention center for the different hobbies and
25 things of interest to them.

1 From an ownership position, as I've
2 mentioned earlier and it's been testified earlier,
3 it's been under my leadership and control since 1994
4 when I bought the first property and then proceeded in
5 buying the other two. I myself and my close
6 affiliates we do own a majority of the property and
7 have since day one. My affiliates include Ken
8 Kochenour, Barbara Evans and John Lubert. And what
9 I've done is simply swamp out our investor limited
10 partners to 30-plus people you've heard about before
11 for a number of limited partners that had gaming
12 experience. So that concludes my thoughts. Thank you
13 very much for having us today.

14 ATTORNEY QUAGLIA:

15 Thank you, Mr. Lubert. Your Honor, one
16 housekeeping matter. We have several exhibits we
17 would like to move for admission into the record if I
18 could identify them for the record? Exhibit One would
19 be our application CD excluding confidential portion,
20 which was submitted to the Board on June 29th, 2007.
21 Exhibit Two is Applicant's prehearing memorandum,
22 which was submitted on September 26th, 2007. Exhibit
23 Three is Applicant supplement to prehearing memorandum
24 submitted October 11th, 2007. Exhibit Four is the
25 report of Nave Newell on the linear distance issue,

1 which was submitted to the Board on October 11th,
2 2007. Exhibit Five are the various deeds for the
3 parcels of the property referenced in the testimony of
4 Mr. Newell, which we had today for presentation to the
5 clerk. Exhibit Six is the memorandum of law prepared
6 by Mr. Gifford, which was submitted to the Board
7 yesterday. Exhibit Seven is the merger agreement
8 referenced by Mr. Krauss, which was signed and
9 submitted yesterday. Exhibit Eight is the waiver of
10 the condition of the original Agreement of Sale, which
11 was submitted to the Board yesterday. Exhibit Nine
12 would be the keynote presentation that we have been
13 shown to accompany our presentation.

14 I presume we will mark as an exhibit the
15 proximity report prepared by the Board consultants.
16 Maybe we should wait for the consultants to speak to
17 that before we move, but with that clarification, we
18 respectfully move that those exhibits be admitted into
19 evidence on the eligibility question.

20 (Valley Forge Exhibits One through Nine
21 marked for identification.)

22 CHAIR:

23 Any objection?

24 ATTORNEY DONAGHUE:

25 I have no objection.

1 CHAIR:

2 All right. They're accepted.

3 ATTORNEY QUAGLIA:

4 Thank you, Your Honor. And with that,
5 the Applicant concludes its case in chief in support
6 of eligibility for Category 3 license. Thank you very
7 much.

8 CHAIR:

9 Now, I will ask the expert, Ricky Moyer,
10 who is the chief surveyor of McTish, Kunkle &
11 Associates to offer his testimony. You can begin.

12 MR. MOYER:

13 Thank you, Chairman.

14 ATTORNEY DONAGHUE:

15 Chairman Colins, I would ask if we could
16 have the expert witness sworn in?

17 CHAIR:

18 Good idea. Thank you.

19 -----
20 RICKY MOYER, HAVING BEEN FIRST DULY SWORN, TESTIFIED
21 AS FOLLOWS:

22 -----

23 CHAIR:

24 Thank you.

25 MR. MOYER:

1 This is my first time using a clicker
2 like this. I want to make sure. Okay. Thank you,
3 Chairman Colins. Good afternoon everyone. My name is
4 Ricky Moyer. I am the chief surveys from McTish,
5 Kunkle & Associates with over 14 years of surveying
6 experience. We provide professional consultant,
7 engineering, surveying, environmental and construction
8 management services for various governmental and
9 private clients. I'm a professional engineer and a
10 professional land surveyor in the State of
11 Pennsylvania.

12 Some of my responsibilities as a chief of
13 surveyors is to process and review the survey data,
14 help make property boundaries and to oversee and
15 coordinate the survey crews. The issue being section
16 4 PACS 1305 reads, facilities located in Pennsylvania
17 and to qualify for a Category 3 gaming operator's
18 license cannot be located within 15 linear miles of
19 any other licensed slot machine casino.

20 MK was hired by the Pennsylvania Gaming
21 Control Board to measure the straight line distance
22 between facilities for these five scenarios. One, two
23 closest points on property boundaries. Two, front
24 entrance to front entrance. Three, two closest points
25 on the gaming floor. Four, two closest points on

1 building out of the gaming floor, and the fifth one,
2 primary roadway entrance to primary roadway entrance.

3 The methodology we used was we measured
4 everything on the Pennsylvania State Gaming Board
5 system, topographic mapping and aerial photograph we
6 obtained from the Pennsylvania Special Data Access
7 website and dropped and overlaid that onto the
8 Pennsylvania State Gaming Board system. Land
9 development or site plans were solicited from the
10 currently or pending licensed facility along with the
11 Applicant. From the plans provided, a series of
12 points from the closest direction to the opposing
13 facility were identified for field verification.

14 MK surveyors under my direction utilized
15 a Trimble probe, SHGPS backpack unit with an accuracy
16 of two feet plus or minus in either direction. And we
17 located where possible property corners, corners of
18 buildings and front door locations. Locations which
19 could not be obtained by GPS or interpreted from the
20 plans provided. Calculations, by having everything
21 --- all the data on the same coordinate system. The
22 northern and eastern coordinates reach point could be
23 obtained and the horizontal distances calculated by
24 inversions between points. From these calculations,
25 the results were as follows. From Valley Forge to

1 Foxwoods, number one, two closest points of property
2 boundaries, 18.3 miles. Two, front entrance to front
3 entrance, 18.6 miles. Two closest points on gaming
4 floors, 18.5 miles. Four, two closest points on
5 buildings out of the gaming floor, 18.4 miles. The
6 fifth one, primary roadway entrance to primary roadway
7 entrance, 18.6 miles.

8 Valley Forge to Sugarhouse, number one,
9 two closest points from property boundaries, 17.3
10 miles. Two, front entrance to front entrance, 17.6
11 miles. Two closest points on gaming floors, 17.6
12 miles. Four, two closest points from building out of
13 the gaming floor, 17.5. Primary roadway entrance to
14 primary roadway entrance, 17.6. From Valley Forge to
15 Chester Downs, one, two closest points of property
16 boundaries, 17.1 miles. Front entrance to front
17 entrance, 17.4 miles. Three, two closest points on
18 gaming floors, 17.3 miles. Four, two closest points
19 on buildings out of the gaming floor, 17.2 miles. The
20 fifth one, primary roadway entrance to primary roadway
21 entrance, 17.2 miles.

22 Our conclusions for Valley Forge, using
23 the straight line measurements from the Pennsylvania
24 state plan coordinate system, Valley Forge exceeds the
25 15-mile distance from all currently licensed of any

1 facility under any scenario. Thank you.

2 CHAIR:

3 Thank you, sir. All right. We have
4 three other entities who have filed notices of their
5 intent to present evidence today concerning the
6 eligibility of Valley Forge Convention Center. And
7 they are Vacation Charters, Bushkill Group and
8 Greenwood Gaming. Vacation Charters will begin first,
9 and then we'll hear from Bushkill and then Greenwood.
10 I'll ask that all three entities avoid duplication of
11 argument and Vacation Charters can come forward.
12 Okay? Would you identify yourself for the record,
13 please?

14 ATTORNEY KENNARD:

15 My name is Norman Kennard. I am the
16 principal with Kennard Law Offices, representing
17 Vacation Charters.

18 CHAIR:

19 Okay. And you, sir?

20 MR. DICKINSON:

21 Good afternoon. Charles Dickinson,
22 Vacation Charters.

23 CHAIR:

24 All right. Can we administer an oath,
25 please?

1 -----

2 WITNESSES SWORN EN MASSE:

3 -----

4 CHAIR:

5 Thank you. All right. Counsel, you can
6 go on.

7 ATTORNEY KENNARD:

8 Thanks for having us this afternoon,
9 Chairman and Board members. I want to echo the
10 comments on how good a job the staff has done to put
11 together in such a professional way what could
12 otherwise be a rather tumultuous process. I represent
13 Vacation Charters, who is the owner of the Split Rock
14 Resorts and Mount Laurel Resort and Spa, an Applicant
15 for Category 3 license. The definition we're applying
16 here today is for a well-established resort/hotel,
17 having no fewer than 275 guest rooms with a common
18 ownership and having year round recreational
19 facilities.

20 In our notice to contest, Vacation
21 Charters' raised three issues relative to Valley Forge
22 Partners qualifications. The first is common
23 ownership, 275 rooms must be under common ownership.
24 Second issue we raised is relative to the status as a
25 resort/hotel. Resort/hotel at this date in term, is a

1 subcategory of the Genis Hotel and its key features
2 are leisure and recreational purposes. Clearly
3 commodities of a key and mandatory aspect of
4 qualification as a resort/hotel. I do not believe
5 that a convention center meets the criteria of a
6 resort/hotel. Further, the amenities must be
7 substantial, recreational, year round and on the site
8 of the resort/hotel. Mr. Dickinson is going to
9 address himself to the factual issues underlying our
10 points of contest.

11 MR. DICKINSON:

12 Good afternoon, again, Chairman Colins
13 and Pennsylvania Gaming Control Board. Thanks for the
14 opportunity to make this presentation to you this
15 morning. My name is Charles Dickinson. I'm the
16 director of special projects for Vacation Charters
17 Limited, the owner/operator of Split Rock Resort and
18 Mount Laurel Resort and Spa in the Poconos. While
19 I've worked for the company for the last 13 years, my
20 background includes having opened and later operated
21 as director of room operation at the Tropicana Hotel
22 and Casino in Atlantic City. I have 31 years of
23 experience in the industry, holding positions as
24 general manager and other executive capacities.

25 The purpose of my testimony is to address

1 the issues raised in the Vacation Charters' notice of
2 intent to contest and explain why we believe that
3 Valley Forge Partners, LP does not meet the criteria
4 for a Category 3 license. Issue one, whether the
5 entities participating in the partners are a
6 resort/hotel. I've investigated the facilities
7 located at Valley Forge Convention Center, which are
8 encompassed within the VF Partners group, including
9 the two hotels, Valley Forge Scanticon Hotel and
10 Conference Center and the Radisson Valley Forge Hotel.

11 Vacation Charters agreed that the VF
12 partners are well-established entities, but these are
13 both convention centers, one of them being a
14 conference center. In my opinion, neither are
15 resort/hotels. In my experience and in reviewing
16 definitions from various sources, dictionaries,
17 encyclopedias, the hotel industry, there emerge
18 several important differences between a resort/hotel
19 and a convention center. A resort is leisurely and
20 recreational. A resort/hotel is typically located in
21 a resort area and a resort area is a recreational area
22 geared to leisure travelers where the hotel would
23 frequently include an onsite restaurant, nightclub, a
24 pool.

25 A resort/hotel would typically offer many

1 more amenities including onsite recreational
2 facilities, golf, movie theaters, bowling alley and
3 other types of amenities listed by the Board in its
4 own regulations. Many resorts feature an indoor water
5 park, winter skiing, ski out capability where a hotel
6 would generally not do so. A resort typically offers
7 everything needed for the guests' entire stay and an
8 inclusive experience so that the guest does not have
9 to leave for anything.

10 Additionally, many resorts have seasons
11 where they'll absolutely be full or potentially empty.
12 Most resorts strive to improve those year round
13 capabilities. So for example, Gaming Act requires
14 substantial year round facilities. A conference
15 center on the other hand is a distinctively different
16 industry concept, and it should not be confused with a
17 resort/hotel. Perhaps the best way to describe the
18 difference is through those definitions and criteria
19 that are applied by the International Association of
20 Conference Centers, IACC, as it describes itself in
21 the documents provided in our Exhibit One is an
22 industry trade group and a
23 non-profit organization who's mission is to assist
24 members, provide the most productive meeting
25 facilities around the world. The Association members

1 are conference centers that comply with 30 stringent
2 standards of universal criteria, as explained in
3 Exhibit One.

4 I would note that the Valley Forge
5 Scanticon Hotel and Conference Center is a member of
6 IAC, and it's required by IACC rules to meet the
7 requirements of a conference center. The Scanticon's
8 meeting guide provided by VF Partners in their
9 appendix 29 of their application states that the
10 facilities have been built to IACC standards. In its
11 universal criteria, IAC requires a minimum of 60
12 percent of meeting space be dedicated and that that
13 minimum of 60 percent of total revenue from guest
14 rooms and other sources be conference related rules
15 one and two.

16 Within the conference center there must
17 be a staff business service center or desk that can
18 provide various business traveler services, rule 20.
19 Guest rooms must have work areas, carbureting
20 services, internet access, easily accessible car
21 outlets among other requirements, their rule 27. A
22 conference center must be named in a way that readily
23 identifies the conference center and differentiates it
24 from the remainder of the complex according to IACC
25 rules, number 29.

1 The use of the Valley Forge Scanticon
2 Hotel and Conference Center name indicates quite
3 clearly that the Scanticon is a hotel and conference
4 center. The Radisson does not appear to be an IACC
5 certified conference center. It's focus is also the
6 business traveler, however, offering accommodations
7 that are labeled business class, it does appear to
8 seek non-business customers as well in the leisure
9 group market.

10 Issue two, whether the guest rooms at the
11 Radisson and Scanticon are under the common ownership
12 of the Applicant. We'll defer on that issue at the
13 moment. Issue three, whether the entities
14 comprising the VF Partners offer substantial year
15 round recreational guest amenities. Consistent with
16 the requirement that the licensed entity be a
17 resort/hotel, the Gaming Act requires that, quote,
18 substantial year round recreational guest amenities,
19 unquote, be offered. The Board's regulations further
20 testified that the amenities must be located at the
21 resort/hotel.

22 In reviewing information provided by VF
23 Partners at appendix 29 on their website, there's very
24 little indication of recreational facilities at the
25 Scanticon. There is some exercise, fitness, steam

1 room, saunas, racquetball court as well as a pool on
2 their premises. Jogging and hiking trails on the
3 other hand are off premises in the Valley Forge
4 National Park. The Radisson Hotel at Valley Forge's
5 amenities include an onsite restaurant, theater
6 otherwise standard hotel fare, exercise equipment,
7 sauna, massage therapy, tanning beds, also an outdoor
8 pool. The other amenities listed are offsite and
9 include King of Prussia Mall in downtown Philadelphia
10 and other attractions.

11 I've visited both the Radisson and
12 Scanticon and they are definitely fine facilities.
13 However, they do not offer substantial amenities of a
14 resort/hotel onsite, a requirement of the Gaming Act.
15 They're a business traveler orientated and do not
16 offer year round amenities that a resort/hotel would
17 normally provide. In summary, I do not believe and
18 Vacation Charters does not believe that VF Partners
19 meets the eligibility criteria for a Category 3 gaming
20 license. I thank you and I'd be glad to answer any
21 questions at this time or at another time.

22 CHAIR:

23 Thank you. We're going to reserve our
24 questions until the end, but stay around. Thank you.

25 MR. DICKINSON:

1 Thank you.

2 ATTORNEY KENNARD:

3 We'd be glad to do that, Chairman. And
4 can we move --- we would like to move at this point
5 Mr. Dickinson's statement as well as his Exhibit
6 Number One that he referenced in his testimony into
7 the record. Adequate copies have been previously
8 provided to the court and also the other side, and VF
9 Partners has copies as well at this point.

10 (Vacation Charters Exhibit One
11 marked for identification.)

12 CHAIR:

13 Any objection?

14 ATTORNEY DONAGHUE:

15 No objection.

16 CHAIR:

17 Okay. Thank you.

18 ATTORNEY KENNARD:

19 Thank you very much.

20 CHAIR:

21 Thank you. Bushkill now. Mary Jones.

22 -----
23 MARY JONES, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
24 FOLLOWS:
25 -----

1 MS. JONES:

2 Good morning, Chairman Colins and Board
3 members. I'm Mary Jones from Fox Rothchild here on
4 behalf of the Bushkill Group. First we'd like to
5 thank you for the opportunity ---.

6 MR. RIVERS:

7 Could you move closer to the microphone?

8 MS. JONES:

9 First, we'd like to thank you for the
10 opportunity to present our statements today regarding
11 the Category 3 application, and we concur with the
12 comments made by Vacation Charters. We similarly
13 believe that Valley Forge Convention Center does not
14 meet the requirements of Section 1305 of a
15 well-established resort/hotel having now fewer than
16 275 guest rooms under common ownership and having
17 substantial year round amenities.

18 First, Valley Forge is not a well
19 established resort/hotel. As stated by their own
20 expert, Mr. Tyson, a resort is a facility with special
21 recreational amenities. This resort --- it's not a
22 resort, it's a convention center. It does not have
23 amenities that a normal resort would have such as
24 horseback riding, golf course or snow tubing. It has
25 a convention center amenities, it has meeting rooms,

1 it has restaurants. Any of the amenities that they
2 have indicated such as hiking, biking, golf courses
3 are not at the facility. They are adjacent or
4 affiliated, but they are not part of the resort
5 building.

6 A resort facility is someplace where
7 people take their families to go for a vacation or a
8 trip, stay for more than a day or two for a
9 convention. It is somewhere that is a vacation
10 destination. As stated by Valley Forge's title, they
11 are a convention center, not a resort/hotel.

12 Also, they provided a graph which
13 indicated that they have so many individuals that are
14 on the leisure side and they also stated that that did
15 not include certain guests that are of their
16 convention business. That is mixing both a convention
17 permit with a resort facility. Those type of guests
18 are different.

19 Further, Valley Forge does not meet the
20 eligibility requirement under Section 1305, it is the
21 owner or a wholly-owned subsidiary of the owner. We
22 heard certain testimony today regarding equitable
23 ownership, but that is not what the statute says. The
24 Act says they need to be the owner. If the
25 legislature wanted them to be a contract purchaser or

1 equitable owner, it would have left that provision
2 broader.

3 We also heard testimony today that there
4 were certain mergers, memorandums of law, certain
5 Agreements of Sales that were just filed. We have not
6 had the opportunity to see things. In fact, appendix
7 31, the actual Agreement of Sale which was redacted
8 from the Board's public file. We would like the
9 opportunity to review those documents and provide
10 additional original information and input on this
11 issue. For the reasons we've stated, we do not
12 believe this is a resort facility, and we do not
13 believe that Valley Forge Convention Center meet the
14 eligibility requirements. Thank you.

15 CHAIR:

16 Now, regarding your request I'll ask Mr.
17 Donaghue to talk to you about the availability of
18 non-proprietary or non-confidential documents being
19 made available, because there's an opportunity to file
20 a supplemental briefs. All right.

21 ATTORNEY DONAGHUE:

22 That was just a comment that I was going
23 to make, that as you outlined today there will be an
24 opportunity for the parties to file supplementary
25 briefs. I believe by the 15 days for the parties to

1 file those briefs based on the evidence that's been
2 presented today.

3 CHAIR:

4 Thank you.

5 MS. JONES:

6 Thank you.

7 CHAIR:

8 All right. Greenwood Gaming. All right.
9 Why don't you remain standing, state your names for
10 the record. We'll ask you to take this oath.

11 -----

12 WITNESSES SWORN EN MASSE:

13 -----

14 ATTORNEY WYLAND:

15 My name is Scott Wyland, Counsel to
16 Greenwood Gaming and Entertainment.

17 MR. BONNER:

18 Thomas Bonner, vice president, general
19 Counsel for Greenwood Gaming.

20 ATTORNEY WYLAND:

21 First, thank you for the opportunity to
22 address the Board today. Greenwood agrees, with an
23 adoption of its own, the remarks that were just made
24 by Vacation Charters and Bushkill Group. They ---
25 Greenwood will be presenting testimony of Mr. Bonner,

1 vice president, general Counsel with Greenwood.

2 We appreciate the Board's granting an
3 additional 15 days and the opportunity to comment on
4 the presentation that we just saw today from the
5 Applicants for the first time. I wanted to explain,
6 though, that Mr. Bonner's remarks today will vary from
7 the written remarks that we distributed in advance to
8 the Board, due to the Board's adoption of this 15-day
9 post-presentation opportunity to address additional
10 comments. With that I'll ask Mr. Bonner to provide
11 the comments of Greenwood.

12 ATTORNEY BONNER:

13 Good afternoon, Madam Chair, Board
14 members. Thank you for the opportunity to present our
15 comments today on behalf of Greenwood Gaming and
16 Entertainment, which operates the Philadelphia Park,
17 Casino and Racetrack in Bensalem. Greenwood is a
18 Category 1 licensee. The operation is located
19 approximately 20 to 25 miles from Valley Forge.

20 Upon our review of the limited
21 information that was made available to us concerning
22 Valley Forge's Category 3 application, we are of the
23 view that Valley Forge's application does not meet the
24 eligibility criteria of the Gaming Act. Because the
25 Applicant is not a facility owner, and the facility is

1 not a well-established resort/hotel, and for these
2 reasons, we believe that the application should be
3 denied.

4 The issue of Valley Forge has purported
5 eligibility for a Category 3 license is of greater
6 importance to Greenwood. Granting Valley Forge's
7 application would establish a Category 3 licensee in
8 Greenwood's core market area and would cause financial
9 harm for Greenwood resulting on the overlap of a
10 substantial portion of Greenwood's core market area
11 with the anticipated Valley Forge core market area.

12 We were not given any advance notice of
13 the substance of Valley Forge's testimony, the
14 exhibits and evidence concerning its eligibility
15 presentation until 5:30 yesterday evening. We had
16 raised with the Board prior to that concerns about due
17 process rights and an opportunity to be heard. We
18 filed a motion with the Board to ask it to modify its
19 procedures for this hearing to allow the parties
20 advance notice of the Applicant's exhibits. And that
21 motion included a request that the contesting parties
22 be given at least 14 days after the hearing to review
23 the evidence presented for the first time today and to
24 prepare rebuttal. You've just granted that request
25 and we will use that 15 days to address the issues

1 that have been raised today, the 40-plus page merger
2 agreement that we saw for the first time last evening,
3 the 20-page legal memorandum, the 50-slide
4 presentation that we saw today.

5 Turning to the merits of Valley Forge's
6 purported eligibility section 1305(a)(1) of the Act
7 requires, as you've heard today, that the Applicant be
8 a well-established resort/hotel with substantial year
9 round recreational guest amenities with no fewer than
10 275 guest rooms under common ownership. Valley Forge
11 must be either the owner of the established hotel or
12 the wholly-owned subsidiary of the owner of the
13 established resort/hotel at the time with the
14 Applicant's filing. Valley Forge did not and does not
15 meet these criteria.

16 With respect to ownership, Valley Forge
17 is required to submit ownership documentation in
18 appendix 31 of its application. Unfortunately the
19 public version of the application contained only
20 portions of the first and last pages of the Agreement
21 of Sale along with an appendix that contains legal
22 descriptions of various parcels, which were discussed
23 earlier today. By designating the agreement
24 confidential when it filed its application, Valley
25 Forge was able to prevent us from learning the facts

1 about Valley Forge's proposed ownership structure.

2 Yesterday, as I indicated, Valley Forge
3 made the full agreement available to us for the first
4 time. Our brief review indicates that the Applicant
5 itself is a purchaser under an Agreement of Sale
6 subject to numerous conditions. Valley Forge also
7 provided to us late yesterday an agreement that
8 modified the Agreement of Sale purporting to waive
9 certain conditions. Together with the legal
10 memorandum that apparently is intended to explain the
11 ownership issue. In reality, however, the memorandum
12 does nothing but highlight the complexity and the
13 uncertainty of the ownership issue in some cases
14 basing its conclusions on the ability to distinguish
15 control in Pennsylvania Supreme Court decisions.

16 Yesterday we were also provided for the
17 first time a complicated merger agreement that either
18 supersedes or substantially modifies the Agreement of
19 Sale that was filed with the application in the first
20 place to provide evidence of common ownership at the
21 time of the filing. We will study these documents and
22 respond in the 15 days allowed by the Board.

23 We think it's important that the Gaming
24 Act does not state that an executed Agreement of Sale
25 or an agreement of merger can satisfy the requirement

1 that the property be owned by the Applicant at the
2 time of the application. Pennsylvania legislature
3 could have --- could have not, provided a broader
4 definition of ownership that might include options to
5 purchase or rights to acquisition based on a contract.
6 It is notable that the legislature broaden the
7 definition of the landowner under the municipality's
8 planning code when it defined landowner to include a
9 beneficial owner or owners of the land including the
10 holder of an option or contract purchase, whether or
11 not such options or contract was subject to any
12 condition. Lessees, option holders those with
13 beneficial contract based interests and the like
14 clearly under the language of the Gaming Act are not
15 any ownership interests of the property.

16 Turning to the nature of the Valley Forge
17 facility, it may be a convention center but it
18 certainly is not a well-established resort/hotel
19 within the common meaning and understanding of that
20 term. Recreational amenities that would draw
21 customers to Valley Forge's location purely for onsite
22 recreation on a year round basis are simply
23 non-existent. And with all due difference to the
24 fantasy suites we think the statute has more in mind
25 for well established resort/hotel.

1 So in conclusion, Valley Forge's
2 Convention Center Partners, LP is not the owner of an
3 established resort/hotel. Valley Forge's facility is
4 not a well established resort/hotel and do not contain
5 or offer substantial year round recreational guest
6 amenities. They may be a nice convention center
7 complex, but they are not the type of resort complex
8 contemplated by the statute, and accordingly we
9 respectfully submit that the application should be
10 found ineligible under the statute. Thank you.

11 CHAIR:

12 Thank you very much.

13 ATTORNEY WYLAND:

14 In conclusion we just move Mr. Bonner's
15 remarks into the evidentiary record to the extent
16 that's necessary.

17 CHAIR:

18 Well, you can certainly offer the
19 document. It's already been transcribed, but we'll
20 accept the document as well. Thank you.

21 ATTORNEY QUAGLIA:

22 Excuse me, Your Honor. We object to the
23 portion of Mr. Bonner's testimony that it does not
24 address the merits insofar as he speaks to alleged
25 competitive harm which is not properly on the agenda

1 for today. And insofar as he has expressed, obvious
2 dissatisfaction with the way the Board had previously
3 conducted the proceedings, we don't believe that
4 testimony is germane to the eligibility of the
5 Applicant that we're hearing today, and we object.

6 CHAIR:

7 Well, I don't agree with you, so we're
8 going to accept the document and all of his comments
9 for review. Thank you. Okay. Now, I'd like to turn
10 this over to the Board for purposes of questions, and
11 I'll start --- actually, I'll go left to right. Ask
12 Mr. Angeli if he has any questions. The Applicant ---
13 any of the Applicants, of anyone at this time.

14 MR. ANGELI:

15 Yes. As you went through the amenities
16 at the resort/hotel do you have amenities that really
17 aren't on your property? I think it was golf and some
18 other things, jogging trail. How do you plan on
19 controlling that to be able to incorporate that within
20 the resort complex?

21 MR. HATCH:

22 Basically, we have ---.

23 ATTORNEY QUAGLIA:

24 This is Mr. Hatch.

25 MR. HATCH:

1 I'm sorry. We have facilities available
2 to us that we can send our guests to. Obviously, the
3 park is adjacent to the property. People go over to
4 the park all the time and use the jogging trails, bike
5 trails. We also have affiliations with the golf
6 courses where we're able to send our guests to these
7 courses as a group in-house that wants to use --- do
8 an outing. We're able to do that as well.

9 MR. ANGELI:

10 You don't actually have control over
11 them, that's just a scheduling thing on your part?

12 MR. HATCH:

13 No, we don't own them.

14 MR. ANGELI:

15 Thank you. Excuse me, I got to look
16 through this ownership thing again. The Radisson, the
17 --- is it the Scantian (phonetic)?

18 ATTORNEY QUAGLIA:

19 Scanticon (corrects pronunciation).

20 MR. ANGELI:

21 Scanticon. And there's a convention
22 center. All right. All three are owned by someone
23 else now?

24 ATTORNEY QUAGLIA:

25 No.

1 MR. ANGELI:

2 Please.

3 ATTORNEY QUAGLIA:

4 You want to address the --- Ira Lubert.

5 MR. LUBERT:

6 The three properties you mentioned were
7 purchased at different times between 1994 and 1996
8 while properties were in bankruptcy proceedings and
9 controlled by different lenders. So each lender
10 actually during the bankruptcy controlled their
11 individual assets during that foreclosure. And over a
12 period of approximately two years I was able to
13 purchase all three of those entities under the same
14 partnership of which I am the general partner of each.

15 MR. ANGELI:

16 Okay. Thank you.

17 ATTORNEY QUAGLIA:

18 Just to clarify, Mr. Lubert, acquired the
19 properties through the vehicle of Valley Forge
20 Colonial, LP, Valley Forge Colonial, LP entered into
21 an Agreement of Sale with the Applicant, another
22 vehicle of Mr. Lubert's, prior to the submission of
23 our application. There was a condition of sale, but
24 it was contingent upon the acquisition of a license.
25 Given some concern expressed by the staff as to the

1 existence of that condition in a belt and suspenders
2 decision a formal waiver was subsequently executed of
3 the condition. And in addition, there's been a merger
4 agreement whereby irrespective of the Agreement of
5 Sale the previous owner of record, Valley Forge
6 Colonial, has been merged into the Applicant.

7 MR. ANGELI:

8 And we have all the conditions of sale of
9 that agreement?

10 ATTORNEY QUAGLIA:

11 Correct. Correct. The Agreement of Sale
12 was previously submitted with the application,
13 Commissioner, and the other documents have all been
14 moved into admission --- moved into evidence as
15 exhibits today.

16 MR. ANGELI:

17 Thank you.

18 CHAIR:

19 Commissioner McCabe?

20 MR. MCCABE:

21 Yes. I'm still a little bit confused
22 over the ownership. Please help me with this. Right
23 now you own all three properties, but there is a
24 potential sale to the Radisson. If the Radisson
25 decides to come in and buy their tower, the other two

1 owners ---.

2 MR. LUBERT:

3 Sir, the three properties are owned in a
4 partnership, Valley Forge Colonial Partners, of which
5 I am a general partner, and along with my associates
6 control the property. We've entered into an agreement
7 whereby we have limited partners, some of which don't
8 want to put themselves through the gaming licensing
9 application. So we have --- we are selling to the
10 same group of the three of us that control, plus we've
11 added individuals that have gaming experience. The
12 actual hotel, the Radisson --- which is a franchise.
13 The Radisson company offers us a franchise as did the
14 Scanticon. They're not owners of the hotel at all.
15 Never have been.

16 What they do is offer us under contract,
17 under a franchise right, the use of their name,
18 reservation systems, et cetera, et cetera. We use
19 that to secure leisure travelers, et cetera, people
20 recognizing the names of those entities, but the
21 ownership has been the same since 1994 through '96
22 when I acquired the three properties. Those three
23 entities have been under my control since '94, and I'm
24 merely just now transferring them to a merger to
25 another group where we're taking out our limited ---

1 some of our limited partners who did not want to get
2 into the gaming licensing situation and adding a
3 couple of other people that have gaming experience.

4 MR. MCCABE:

5 So that's the Agreement ---

6 MR. LUBERT:

7 Yes.

8 MR. MCCABE:

9 --- of Sale?

10 MR. LUBERT:

11 Yes.

12 MR. MCCABE:

13 And Radisson ---

14 MR. LUBERT:

15 Radisson is ---.

16 MR. MCCABE:

17 --- is an international or whatever?

18 MR. LUBERT:

19 A company located in Minneapolis,

20 Minnesota is --- was a franchisor to the property by

21 which under contract, we pay them a franchise fee.

22 And we'll do that tomorrow as well. Nothing would

23 change under that contract, ---

24 MR. MCCABE:

25 The Agreement ---

1 MR. LUBERT:

2 --- but the ownership.

3 MR. MCCABE:

4 --- of Sale is not with them?

5 MR. LUBERT:

6 Not at all. Radisson or Scanticon have
7 nothing to do with the Agreement of Sale.

8 MR. MCCABE:

9 Okay. Thank you.

10 UNIDENTIFIED SPEAKER:

11 Commissioner McCabe, just to be really
12 clear, the franchise --- the flag that's flown by each
13 hotel, if the ownership decided they wanted to have
14 the Marriott or Hyatt or Ritz or anything else
15 tomorrow they could terminate their agreement when it
16 was terminable and its under its terms and change the
17 flag from Radisson to any other name they wanted. So
18 it's just merely the reservation system and the flag
19 that they fly over their hotel, but it's their hotel.
20 It's not the franchisor's hotel.

21 MR. MCCABE:

22 Thank you. You helped me.

23 ATTORNEY QUAGLIA:

24 And then the Agreement of Sale is between
25 Valley Forge Colonial, LP, Mr. Lubert's vehicle

1 pursuant to which he acquired all these properties in
2 the '90s and the Applicant.

3 CHAIR:

4 Thank you. Commissioner Rivers?

5 MR. RIVERS:

6 Yes. My comments are for Mr. Hatch.

7 MR. HATCH:

8 Yes.

9 MR. RIVERS:

10 I think in one of your earlier slides you
11 indicated that 66 percent of visitors were
12 vacationers, visitors on vacation and 34 percent were
13 corporate visitors; is that correct?

14 MR. HATCH:

15 Yes. The slide show that we represented,
16 66 percent of our guests is what we categorize as
17 leisure travelers, and that is made up of several
18 different subsets. It could be convention people, it
19 could be AAA, it could be internet, it could be any
20 number of different markets.

21 MR. RIVERS:

22 Okay. If you look at those two numbers,
23 can you tell me the number of total visitors that are
24 represented in the 66 percent population?

25 MR. HATCH:

1 The total number of leisure visitors?

2 MR. RIVERS:

3 Yes.

4 MR. HATCH:

5 Well, it's hard to --- we have the
6 categories broken down in a way that would show ---
7 the way we track them they're either hotel packages,
8 they're entertainment rate, they're AAA. We have our
9 internet rates, so that would be in that group.

10 MR. RIVERS:

11 Okay. Within that group can you give me
12 a numerical number? Can you give me a number as the
13 number of people represented in that total group, a
14 ballpark figure?

15 MR. HATCH:

16 I would say --- out of that 66 I would
17 say probably 35 percent of that.

18 MR. RIVERS:

19 Total guests.

20 MR. HATCH:

21 Oh.

22 MR. RIVERS:

23 Not a percentage. How many people are
24 you talking ---?

25 MR. HATCH:

1 Are you looking for guests, not
2 percentage?

3 MR. RIVERS:

4 Yes.

5 MR. HATCH:

6 We have approximately 650,000 guests that
7 come through our property a year, so we're looking at
8 I would say guest-wise 400,000 of that.

9 MR. RIVERS:

10 And the average length of stay per guest?

11 MR. HATCH:

12 It's probably 1.52 nights.

13 MR. RIVERS:

14 As you look at your geographical area,
15 what area are you basically relying upon in terms of
16 people participating and using the amenities of your
17 facility?

18 MR. HATCH:

19 We're somewhat regional, Pennsylvania,
20 Delaware, New Jersey, New York. People from in that
21 region travel to the Valley Forge area.

22 MR. RIVERS:

23 Okay. Thank you.

24 MR. SOJKA:

25 Question for you, Madam Chairman. I have

1 a small technical question that I would like to direct
2 to Mr. Moyer, the engineer for MKA. Is that
3 appropriate? And maybe this is the best time to do it
4 because the distances that you presented are not what
5 we would call close calls. So maybe I'll ask the
6 technical questions now as we get closer to the
7 subsequent hearings. These are GPS measurements to
8 give you two points that match what we heard earlier
9 for a definition of linearity meaning two points on an
10 X, Y coordinate --- or a flat coordinate.

11 MR. MOYER:

12 Yeah, X, Y. Yes. Flat coordinate.

13 MR. SOJKA:

14 Right. And the two things that always
15 bedeviled that are land forms or irregularities on the
16 surface, and the second would be the fact that you
17 have a point in space looking at two points on a
18 curved surface. The GPS simply eliminates issues of
19 land form; right?

20 MR. MOYER:

21 Correct. This is done on a plain.

22 MR. SOJKA:

23 Is there some sort of uniform conversion
24 factor that's applied in your calculations to take
25 care of the curvature issue?

1 MR. MOYER:

2 Basically we use a scale factor. It all
3 depends where you are in the Pennsylvania coordinate
4 system. You're going to have a scale factor weigh
5 from the --- how do I say this?

6 MR. SOJKA:

7 Well, clearly the further the points, the
8 greater the factor; right?

9 MR. MOYER:

10 Not necessarily.

11 MR. SOJKA:

12 Not necessarily.

13 MR. MOYER:

14 If they are on the same
15 latitude/longitude. If they're on the same --- let's
16 go with the X, Y. X access, they're on the same ---
17 you're not going to have a different scale back
18 elevation. You have an elevation factor involved
19 there, too. One is down at sea level, one's up at
20 1,000 feet. The one at 1,000 feet you're going to
21 have more of a scale factor to get it down to a plain
22 surface.

23 MR. SOJKA:

24 Okay. Would it be reasonable for us to
25 ask for some sort of plus, minus number on the close

1 calls based on some of these issues?

2 MR. MOYER:

3 Yes.

4 MR. SOJKA:

5 Okay. We might do that.

6 MR. MOYER:

7 Okay.

8 MR. SOJKA:

9 Thank you.

10 MR. GINTY:

11 Commissioner, I'm glad that you didn't
12 ask Chief Counsel those questions. Maybe we'll get
13 around to that. I think first of all --- Mr. Moyer, I
14 think you and your partners are to be commended for
15 what you have done at the convention center and for
16 taking it out of bankruptcy. It's an economic engine
17 for the area and you should be at least acknowledged
18 for doing that.

19 I have similar questions to those that
20 Commissioner Rivers raised. I'm not sure I'm smart
21 enough to tell the difference between a resort and a
22 convention and such hotel. But in your supplemental
23 pleadings, could you address those issues as average
24 stay, what your market is in terms of regional reach,
25 whether your occupancy rates differ by season? You

1 indicate that 66 percent of your hotel guests are
2 leisure guests. That includes conventioners. I
3 don't know if you can break it down, but it would be
4 interesting to see if you could identify how many of
5 those are tourists.

6 And I don't know if there is such data in
7 the hotel industry that would compare one hotel such
8 as the Valley Forge complex with, say, Nemaquin or
9 Seven Springs or other such so that we can get some
10 kind of measurement as to where this complex stands in
11 terms of those data. There isn't much guidance in the
12 statute, and I think Mr. Krauss at least identified one
13 of the legislative attempts that we are going to have
14 to take into consideration in defining resort. And
15 that is increasing tourism, and in your supplemental
16 pleadings if you could address that that would be
17 helpful as well.

18 ATTORNEY QUAGLIA:

19 Absolutely.

20 MR. GINTY:

21 And again, those in opposition here I
22 would invite you to take your shot at it as well. So
23 Madam Chairman, that's all I have.

24 CHAIR:

25 I have a few questions. Someone from

1 Valley Forge which could respond to questions about
2 your marketing and advertising. Would that be Mr.
3 Hatch? Who would that be? How, sir, do you advertise
4 or market the facility presently? Do you use the
5 phrase, resort at any time in any of your marketing or
6 ad campaigns?

7 MR. HATCH:

8 We do not.

9 CHAIR:

10 Do you market packages or advertise
11 packages that are specifically designed to the leisure
12 market?

13 MR. HATCH:

14 Yes, we do.

15 CHAIR:

16 And how do you do that?

17 MR. HATCH:

18 We market packages. For instance, the
19 mall packages where we have a package that includes
20 coupons for --- a certificate, a credit card, credit
21 for the mall, it includes a room and a meal.

22 CHAIR:

23 Do any of your ads or marketing efforts
24 provide information about your amenities?

25 MR. HATCH:

1 Yes. All of our marketing material would
2 include our amenities, our restaurants, our fitness
3 center. It would include the fantasy suites for
4 instance, or a marketing package that we have we would
5 also market all the area facilities that are available
6 to our guests whether they're on property or around
7 the facility.

8 CHAIR:

9 Do any of your signage throughout any of
10 the facility use the term resort?

11 MR. HATCH:

12 No, they don't.

13 CHAIR:

14 Okay. Do any of your ads placed in
15 magazines or telephone books or whatever refer to your
16 facility --- how do they refer to your facility?

17 MR. HATCH:

18 They refer to the facility --- not as a
19 resort, but as Valley Forge Convention.

20 CHAIR:

21 Okay. I have a couple of questions for
22 Mr. Tyson who was your hospitality expert. Thank you.

23 MR. TYSON:

24 Yes, ma'am.

25 CHAIR:

1 How are you?

2 MR. TYSON:

3 I'm fine. Yourself?

4 CHAIR:

5 Good, good. Did I see that you went to
6 Cornell, sir?

7 MR. TYSON:

8 Yes, ma'am.

9 CHAIR:

10 And I can assume that there are textbooks
11 that are used in hospitality and tourism that talk in
12 terms of different types of hotels and the marketing
13 of hotels and resorts; is that correct?

14 MR. TYSON:

15 There are textbooks and there are other
16 industry publications that are out there that talk
17 about the different types of hotels.

18 CHAIR:

19 And so you would be able to provide us
20 through supplementary briefs with what would be
21 standard concepts as to what a spa/resort would be?
22 Would that information be out there within the
23 hospitality ---?

24 MR. TYSON:

25 Absolutely. One of the difficult ---.

1 CHAIR:

2 And it would be cited? You would be able
3 to cite it to a textbook or an article or some sort of
4 treatise?

5 MR. TYSON:

6 Absolutely, Judge. One of the problems
7 with a resort is that it's a generic term and there's
8 no one type of resort. I think in this room we're
9 represented --- we have people representing what would
10 you call mountain resorts, you have lake resorts,
11 beach resorts, gaming resorts, suburban resorts,
12 conference resorts. This could be explained in detail
13 with citing that ---.

14 CHAIR:

15 So there is literature within the
16 hospitality and tourism field that could enlighten us
17 on that definition?

18 MR. TYSON:

19 Absolutely.

20 CHAIR:

21 And in your expertise, in your experience
22 is a convention center --- is the term convention
23 center and resort, are they mutually exclusive or can
24 they overlap?

25 MR. TYSON:

1 Generally ---.

2 CHAIR:

3 Does one mean that it's not the other?
4 Do you know what I'm getting at?

5 MR. TYSON:

6 Generally --- yes, ma'am. Generally
7 there is some overlappage, because for you to attract
8 a meeting planner, conventions to your hotel you have
9 to offer other amenities that entertain and recreate
10 the attendees. Where the line gets to be hazy is
11 certain areas --- and you'll find golf courses, as
12 used here today as an example, probably less than five
13 percent of all resorts in the country have a golf
14 course because it's takes 140 acres to do it.

15 CHAIR:

16 That's very helpful.

17 MR. TYSON:

18 Very few beach hotels are on the beach,
19 but it's nearby and that's the important thing. These
20 sorts of things as well as anecdotal are examples of
21 resorts that may be very comparable to what we're
22 talking about here, can be put into a supplementary
23 material.

24 CHAIR:

25 Okay. Who was --- there was an expert

1 who testified on behalf of Vacation; am I correct?

2 Yes. I've forgotten your name, sir. I'm sorry. Your
3 name again, sir?

4 MR. DICKINSON:

5 Charles Dickinson from Vacation Charters.

6 CHAIR:

7 And you are an expert in hospitality and
8 tourism; is that correct?

9 MR. DICKINSON:

10 I would certainly consider myself to be.
11 I've worked in it since I was 11 and I'm 52 this year.

12 CHAIR:

13 Okay. All right. And so would you agree
14 that there are treatises, textbooks and articles that
15 explain the concept of a resort?

16 MR. DICKINSON:

17 Certainly.

18 CHAIR:

19 Okay. And is there any possibility in
20 your experience, based on your experience and
21 knowledge, for the overlap of a convention conference
22 center with a resort, an overlap such that one could
23 be both things at the same time?

24 MR. DICKINSON:

25 There's a difference between a conference

1 center and convention center, and the Scanticon
2 facility truly is a conference center. Having worked
3 that facility that I converted it with another
4 management team. They're very, very specific
5 facilities. I think that you're more apt to see a
6 convention center/resort as opposed to a conference
7 center/resort.

8 CHAIR:

9 But they can be overlappage?

10 MR. DICKINSON:

11 Absolutely.

12 CHAIR:

13 Right.

14 MR. DICKINSON:

15 Yes, ma'am.

16 CHAIR:

17 I guess that's all. Commissioner Ginty
18 has outlined these issues and I reiterate his request
19 for more enlightenment in your supplementary brief,
20 more guidance in these expert areas for us to look at.
21 Commissioner Angeli, did you have some other
22 questions?

23 MR. ANGELI:

24 I just have a follow-up, and part of it
25 was answered when we talked about the franchises that

1 Radisson and Scanticon were just franchises, and that
2 they could come or go depending on how you develop the
3 process. But the question came to mind, are there any
4 impediments to the ownership that --- right now that
5 may hinder your pursuit of this license? Are there
6 options that either hotel has or someone else has?

7 MR. LUBERT:

8 None that I'm aware of, so the answer to
9 that is no.

10 MR. ANGELI:

11 Thank you. No further questions. Thank
12 you, sir.

13 CHAIR:

14 Before you all go, Counsel's reminded me
15 that each of the presenters who's filing a
16 supplemental brief please make sure you serve all the
17 parties, every entity who's presented today. Serve
18 them with it electronically, please, and hard copies
19 so that timely responses can be made within the
20 appropriate time frame. All right. Thank you very
21 much. Did you want to ---?

22 ATTORNEY QUAGLIA:

23 I'm sorry, Your Honor. I have one
24 administrative inquiry in lieu of our question and
25 answer here. My understanding from the initial

1 comments was that the other presenters, the opponents
2 were going to submit a brief to which we would then
3 respond. Are we going to do simultaneous briefs, or
4 it sounds like you would like a brief from the
5 Applicant in any event?

6 CHAIR:

7 I would like simultaneous briefs. I
8 think that's the way to go. And then if there's a
9 need to respond to those you have the seven-day period
10 for response.

11 ATTORNEY QUAGLIA:

12 Thank you.

13 CHAIR:

14 Okay. Commissioner Coy?

15 MR. COY:

16 Yeah. Thank you, Madam Chair. I wasn't
17 going to ask anything, but I mean --- Mr. Lubert, I
18 guess I have a question for you. It's pretty simple,
19 I think. And that is, do you think you own a
20 convention center or a resort?

21 MR. LUBERT:

22 I believe I own two hotels, a convention
23 center that make up a resort and hotel complex that
24 attract both leisure and business travelers.

25 MR. COY:

1 And in your reading of the Act and your
2 preparation for this application, do you think that
3 there's anything that you could offer either in terms
4 of amenities or anything that you could do better as a
5 resort --- the definition in the Act notwithstanding,
6 than as a conference center to bring revenue, meaning
7 revenue to Pennsylvania?

8 MR. LUBERT:

9 I believe this property is well suited to
10 help the Commonwealth. A lot of, I think, very good
11 testimony from both sides has been given today about
12 what a resort is and what represents leisure. You've
13 heard examples of what goes on in the Poconos with
14 golf and skiing and things like that, but I would
15 submit to you that that's not just all leisure or all
16 resort. How about the folks that love to collect
17 antiques that come to our convention center for
18 antique shows on numerous occasions during the year or
19 people that have art shows who come out there and find
20 art, display art?

21 Leisure and resort just doesn't mean
22 physical activity. It means, in my opinion, hobbies
23 and what everyone likes to do, and not everyone likes
24 to do the same thing. So we have an amenity called
25 the Valley Forge Convention Center with just under 500

1 rooms that for a period --- before the bankruptcy and
2 then after I acquired it after the bankruptcy, has I
3 think been a very big generator to the region in
4 tourism and in revenue. And then finally with the
5 Valley Forge National Park that's been there well
6 before us and the proposed revolutionary museum
7 coming, tourism will be extensive and even more so
8 going forward in the future. And that to me is all
9 part of leisure and resort. I hope I've answered your
10 question.

11 MR. COY:

12 Thank you. Oh, one more.

13 CHAIR:

14 Let's see, a recess before we come back
15 and go to the next hearing. That's the second hearing
16 of the day.

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19 HEARING CONCLUDED AT 1:30 P.M.

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