

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: MOUNT AIRY

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PUBLIC HEARING

* * * * *

BEFORE: MARY DIGIACOMO COLINS, CHAIRMAN
Raymond S. Angeli, Jeffrey W. Coy, James B.
Ginty, Kenneth T. McCabe, Sanford Rivers,
and Gary A. Sojka, Members
Keith Welks, Ex-officio Designee

HEARING: Thursday, December 18, 2008
2:03 p.m.

LOCATION: North Office Building
Commonwealth and North Street
Hearing Room One
400 North Street, West
Harrisburg, PA 17105

WITNESSES: Dr. Anthony Ceddia, Joseph D'Amato,
Nelson Smiles

Reporter: Cynthia Piro-Simpson
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CHAIRMAN COLINS:

Good afternoon, everyone. I'm Mary Colins, Chairman of the Pennsylvania Gaming Control Board. I'll ask now, since we're about to start, to turn your cell phones and Blackberries off. And I'll welcome Keith Welks, representing the State Treasurer, Stacie Amsler, the Secretary of Revenue, and Frank Jurbala, representing Secretary Wolff of Agriculture. Welcome everyone.

The second matter before the Board is the Petition of the Mount Airy #1, LLC Trustee. All right. All those who are going to testify, if you would rise and I'll administer an oath.

WITNESSES SWORN EN MASSE:

CHAIRMAN COLINS:

All right. Thank you very much. All right. Mr. Levine, your name for the record.

ATTORNEY LEVINE:

Good afternoon, Madam Chair and Board Members. My name is Ron Levine along with Brian Bisignani. We're from the firm of Post & Schell and

1 we represent the Trustee to Mount Airy #1, LLC, known
2 as the Mount Airy Casino Resort. The Trustee, of
3 course, is Dr. Anthony F. Ceddia. With me at my table
4 is Dr. Ceddia and to my immediate left is Joseph
5 D'Amato, Mount Airy's CEO, and Donald Shiffer, Mount
6 Airy's in-house Counsel.

7 Before the Board for its consideration
8 today is the Trustee's amended Petition, which seeks
9 approval of a Protocol which would permit the sole
10 owner of the LLC, Mr. Louis DeNaples, to infuse
11 capital to Mount Airy for the payment of certain tax
12 and local share assessment bills and for certain
13 capital improvements. We very much appreciate the
14 Board's expedited attention to this Petition. After
15 my remarks, I anticipate there'll be some testimony by
16 both Dr. Ceddia and CEO D'Amato and, of course, we all
17 stand ready to answer any questions from the staff or
18 the Board.

19 Boiled down to its essence, this Protocol
20 allows Mr. DeNaples to make a deposit into a sole
21 source account created by Mount Airy and controlled by
22 the Trustee in order to fund certain expenditures and
23 capital projects which are determined solely, solely
24 by Mount Airy Management in consultation with the
25 Trustee. And as we explain in our Petition, the

1 expenditures and projects which are foremost in the
2 minds of Mount Airy Management at the moment are some
3 substantial real estate taxes due at the end of the
4 year, a local share assessment due in January and the
5 installation of a dishwasher.

6 The Trustee and his team, of course, is
7 very much aware of the constraints imposed by the
8 Board's February 5th, 2008 Order and we believe this
9 Protocol's been carefully constructed to fall well
10 within those constraints. Notably, and this will be
11 elaborated by the Trustee, I believe, Mr. DeNaples
12 will have no role in selecting the expenditures to be
13 made or the capital projects to be undertaken or
14 communicating with Mount Airy Management about them.
15 Second, he does not profit and will not profit from
16 any transaction. Third, as I noted, his payments will
17 be made into a sole source account controlled by the
18 Trustee. Fourth, his payments will be treated as
19 capital contributions. In other words, this is not a
20 loan from Mr. DeNaples to Mount Airy to be repaid to
21 Mr. DeNaples.

22 And I might add that the capital projects
23 listed on Exhibit A to our Petition certainly will not
24 be undertaken to the prejudice of operating expenses,
25 meeting obligations and operating expenses, state

1 taxes and fair share assessments.

2 I do want to point out one modification
3 to the Protocol to which we alerted the Board staff
4 and which is reflected in a revised Exhibit B which
5 has been filed. The original Exhibit B Protocol
6 contemplated that Mr. DeNaples would fund or pay ---
7 make a deposit into the sole source Trustee-controlled
8 account after a particular project was completed. In
9 further consultation and conference with various
10 parties involved in this matter, including
11 restructuring counsel, we are advised that Mount
12 Airy's lenders might likely require that Mr. DeNaples
13 fund that account or make a deposit into that account
14 before the project is started as opposed to after.
15 And we have revised Exhibit B and filed this revised
16 exhibit just to reflect this slight change. But
17 please note, because I think it is the material point
18 here, that whether Mr. DeNaples funds the sole source
19 account before the project or after, and we now have
20 revised it to make it before, the account will still
21 be controlled by the Trustee, and Mr. DeNaples has no
22 say in either the selection of the project or the
23 ultimate payment.

24 As you will hear in their testimony
25 today, both the Trustee and his advisors and Mount

1 Airy's Management believe that this Petition should be
 2 granted so that Mount Airy is able to maximize its
 3 ability to access funds during the next quarters while
 4 the Nation's economy is in recession and credit
 5 markets remain extremely tight. I will now turn the
 6 microphone over to Dr. Ceddia, ask him to identify
 7 himself by name and title and proceed to his
 8 presentation. Thank you.

9 -----
 10 DR. ANTHONY F. CEDDIA, HAVING BEEN PREVIOUSLY SWORN,
 11 TESTIFIED AS FOLLOWS:

12 -----

13 DR. CEDDIA:

14 Madam Chair, good evening --- good
 15 afternoon. I'm Tony Ceddia, the Trustee for the Mount
 16 Airy Casino and Lodge, as designated by this Board
 17 back in February of 2008.

18 Mount Airy Casino and Resort is indeed a
 19 growing business. And as Trustee, it's my fudiciary
 20 duty to take steps to ensure the continued financial
 21 health of the property. To achieve this, I'm working
 22 closely with the Mount Airy Management almost on a
 23 weekly basis.

24 We seek by this amended Petition, ladies
 25 and gentlemen, to address the potential liquidity

1 challenges that the facility faces and to provide the
2 flexibility to access funding that will enable the
3 casino resort to move forward with certain
4 expenditures and capital projects. This proactive
5 effort comes in the midst of an economic downturn that
6 has impacted the entire gaming industry.

7 I note that when other casino properties
8 encounter liquidity issues, they typically look to the
9 parent company to infuse capital. As an
10 independently-owned entity, Mount Airy Casino and
11 Resort must look to its owner. Mr. DeNaples has
12 indicated to the Trustee that he remains fully
13 supportive of the Mount Airy entity. The amended
14 Petition before the Board today seeks approval of a
15 Protocol by which Louis DeNaples can infuse cash, if
16 needed, into the property to help meet its real
17 estate, tax and local share assessment obligations and
18 move forward with prospective capital projects that
19 are required. This infusion may be necessary to
20 provide the liquidity while Mount Airy and I and Mr.
21 DeNaples are currently negotiating with Mount Airy's
22 lenders regarding an amendment to the current credit
23 facility. And I would add, ladies and gentlemen, that
24 we would be coming back to this Board in January with
25 a proposed amendment to that credit facility. In the

1 meantime, the property is indeed facing some liquidity
2 matters.

3 In this Protocol, we have also sought to
4 follow certain principles to help ensure adherence to
5 the Board's February 5th, 2008 Order. I believe the
6 Proposed Protocol adheres to the letter and the spirit
7 of this Order. Mount Airy Management, in consultation
8 with the Trustee, has created a prioritized list of
9 proposed capital projects and other creditor or vendor
10 expenditures. Mr. DeNaples has played no role in
11 determining this list, nor will he profit from it.

12 As indicated by Counsel, Mr. DeNaples
13 shall deposit monies for these payables into a
14 dedicated sole source account established by Mount
15 Airy and controlled by our Trustee. Once a funded
16 project creditor, contractor or vendor presents an
17 invoice for payment to Mount Airy and the Mount Airy
18 Management and Trustee certify that the invoice is
19 true, correct and owing, the Trustee shall deliver
20 that invoice to Mr. DeNaples' financial advisors. The
21 Trustee will also direct that funds in the special
22 account be used to pay the creditor, contractor or
23 vendor. Proof of this payment will be entered into
24 Mount Airy's books and records in accordance with the
25 Generally Accepted Accounting Principles. Mr.

1 DeNaples will be credited with a capital contribution
2 in the amount of that payment and will not be treated
3 as either a loan from Mr. DeNaples as the sole member
4 of the LLC or repaid to Mr. DeNaples.

5 To ensure compliance with this Protocol,
6 Mount Airy's in-house Counsel will document by
7 memorandum to Mount Airy's files with a copy to the
8 Trustee each funded project, and the Trustee will
9 review with Mount Airy Management at least on a weekly
10 basis the progress of and process related to all such
11 projects and expenditures.

12 In conclusion, I believe that such
13 deposits by Mr. DeNaples in the sole source account
14 can be made in a manner consistent with the Board's
15 Order. I further believe that this funding is
16 important to the improvement of Mount Airy's property
17 and financial condition. And finally, I appreciate
18 the Board's consideration of this Petition because it
19 is very germane to the current financial status of the
20 property in its immediate future. Thank you.

21 ATTORNEY LEVINE:

22 Madam Chair, I would now turn the
23 microphone over to CEO D'Amato, ask him to identify
24 himself and comment on the Petition.

25 -----

1 JOSEPH D'AMATO, HAVING BEEN PREVIOUSLY SWORN,
2 TESTIFIED AS FOLLOWS:

3 -----

4 MR. D'AMATO:

5 Thank you, Ron. Joseph D'Amato, CEO of
6 Mount Airy Casino and Resort.

7 Madam Chair and members of the Board,
8 good afternoon. On behalf of Mount Airy's Management,
9 I join in the Trustee's presentation to the Board. I
10 would like to make the following additional points.

11 Mount Airy Casino and Resort continues to
12 see a revenue growth as evidenced by our 31 percent
13 increase in revenues in November of 2008 as compared
14 with November of last year. We are continue --- our
15 revenues have expanded approximately 31 percent over
16 November of 2007.

17 We are continuing to expand our database,
18 and our marketing efforts have been extremely
19 successful. There is, however, room for improvement.
20 Capital projects such as the addition of a swimming
21 pool and the rehabilitation of the golf course will
22 help to fuel our continued growth and increase
23 revenue. However, like every gaming facility and many
24 other businesses, we do face potential liquidity
25 challenges. We are moving to negotiate an amended

1 credit agreement with our lenders, but we see this
2 Proposed Protocol as providing a bridge for funding in
3 the interim and going forward.

4 I have reviewed this Protocol with the
5 Trustee and I too think it is workable and comports
6 with the Board's February 5th, 2008 Order. I also
7 think it is necessary to have this Protocol promptly
8 in place to ensure immediate flexibility for Mount
9 Airy this month and in the coming quarters. While
10 Mount Airy is current on its obligations, until the
11 amended credit agreement is completed and reviewed by
12 the Board in January of 2009, the equity contributions
13 by the owner will provide additional financial
14 flexibility during the slower winter periods and for
15 future quarters.

16 Finally, I note with pride that in a
17 relatively short period of time, a little over a year,
18 Mount Airy has become an important and good corporate
19 citizen for the Commonwealth. We employ over 900
20 people, 98 percent of whom reside in northeastern
21 Pennsylvania. We have won praise as one of the most
22 diverse --- having one of the most diverse workforces
23 in the gaming industry in the Commonwealth. We
24 provide a significant boost to the local economy
25 through our commitment to local vendors for our

1 purchasing and service needs and provide our workforce
2 with excellent benefits, including healthcare
3 coverage. In addition, since October 22nd, 2007,
4 Mount Airy has paid approximately \$96 million in taxes
5 to state, county and local governmental bodies.

6 Like the Trustee, I appreciate very much
7 the Board's expedited consideration of this amended
8 Petition and I, too, am available for any questions
9 the Board might have. Thank you.

10 CHAIRMAN COLINS:

11 All right. Thank you. Do you have any
12 further witnesses?

13 ATTORNEY LEVINE:

14 Madam Chair, we have no further
15 witnesses.

16 CHAIRMAN COLINS:

17 All right. Then let me turn it over to
18 Enforcement Counsel for Cross Examination.

19 ATTORNEY DAVENPORT:

20 Thank you, Madam Chairman. Nan
21 Davenport, Deputy Chief Enforcement Counsel for the
22 Office of Enforcement Counsel (OEC).

23 -----

24 DR. ANTHONY F. CEDDIA, HAVING BEEN PREVIOUSLY SWORN,
25 TESTIFIES AS FOLLOWS:

1 -----

2 EXAMINATION

3 BY ATTORNEY DAVENPORT:

4 Q. Dr. Ceddia, have you had an opportunity to review
5 the OEC's proposed conditions?

6 A. Yes, I have.

7 Q. And do you foresee any problems with complying
8 with those conditions?

9 A. No, I do not.

10 ATTORNEY DAVENPORT:

11 Thank you. I have no further questions.

12 CHAIRMAN COLINS:

13 Well, what are those conditions?

14 ATTORNEY DAVENPORT:

15 Madam Chairman, I could read those into
16 the record now or I could read them after my witness
17 testifies.

18 CHAIRMAN COLINS:

19 Okay. It's your choice.

20 ATTORNEY DAVENPORT:

21 Okay. I think I'll wait.

22 CHAIRMAN COLINS:

23 Okay. Thank you.

24 ATTORNEY DAVENPORT:

25 Thank you.

1 CHAIRMAN COLINS:

2 Any questions from the Board of Dr.
3 Ceddia or Mr. D'Amato?

4 COMMISSIONER GINTY:

5 Just one quick one. This is --- this
6 Protocol is intended as a bridge. It has no
7 termination date affixed to it. Will it simply be
8 withdrawn if the credit instrument is renegotiated in
9 an adequate fashion?

10 DR. CEDDIA:

11 Well, it is an instrument that we think
12 ought to continue. And we believe it ought to
13 continue because it does provide the possibility of
14 continuing some capital expenditures that need to be
15 made that might be outside the credit facility that's
16 agreed to. This is being --- this Petition has been
17 fully reviewed and it's been in a very transparent
18 presentation to the lenders, so they're aware of it.
19 And we would just seek the opportunity to keep it in
20 place so that, for example, the property may not be
21 able to set aside through its --- through the bottom
22 line appropriate funds for capital projects that need
23 to be done, but this would provide a way in which it
24 could be done to enhance the asset and also provide
25 for more amenities for the patrons of the facility.

1 And as we continue to market the facility, it's
2 becoming more and more apparent that if we could add a
3 couple of other amenities, the swimming pool and
4 rehabbing the golf course, that those two variables
5 would add significantly to our ability to retract and
6 retain customers.

7 COMMISSIONER GINTY:

8 That's your decision?

9 DR. CEDDIA:

10 Yes. But we would keep --- please be
11 assured that we would keep the Board fully apprised in
12 our monthly meetings with the Board and through my
13 reports as to what would be intended in terms of the
14 capital expenditures. We want this process to be as
15 transparent and to remain as transparent as possible
16 given the current conditions under which the Trustee
17 is operating, this Board, and indeed, the facility.

18 COMMISSIONER GINTY:

19 Thank you, Dr. Ceddia.

20 CHAIRMAN COLINS:

21 Dr. Ceddia, I have a question or two. It
22 seems to me that this proposal --- tell me if this is
23 what your thinking is on this, that this proposal is
24 intended to address short-term liquidity issues that
25 are resulting from exterior or world economic forces

1 that are affecting all major companies and projects;
2 is that correct? That's one part.

3 DR. CEDDIA:

4 Yes, it is. Your assessment is quite
5 accurate, Madam Chair. I think like all other
6 properties in Pennsylvania or in the gaming industry,
7 we're experiencing some significant challenges.
8 Although Mr. D'Amato reported to you just a few
9 moments ago that our revenues are up as opposed to the
10 same time last year versus this year, we still have
11 some challenges.

12 In addition to that, given the nature of
13 the LLC and the fact it's solely owned, we do not have
14 access, as I mentioned in my earlier testimony, to a
15 corporate organization or entity which, through its
16 devices, financial devices and programs could offer
17 liquidity support during the ups and downs of a
18 challenging market and thereby allow the entity to
19 continue unabated.

20 CHAIRMAN COLINS:

21 But also in addition to the issues that
22 you've just explained, is it accurate to say that
23 there is a certain long-range planning in your thought
24 processes that have caused us to --- that's bringing
25 this before us in that these are all part --- these

1 are all Phase One projects that you've alluded to that
2 this Board has already agreed to, that you are
3 projecting will need to be done --- you and Mr.
4 D'Amato, that you're projecting are part of Phase One
5 and will need to be accomplished in the longer term;
6 is that correct?

7 DR. CEDDIA:

8 Yes, Madam Chair. Clearly what we're
9 trying to do is remain consistent with the Phase One
10 plan of the property. In addition, you challenged me
11 as your appointment as Trustee not only to preserve
12 and protect the Commonwealth's interest in this
13 project, but also to preserve and protect the asset in
14 terms of its ability long term to contribute to the
15 Commonwealth of Pennsylvania. And to that end, we
16 believe that these Protocols will assist us in
17 achieving that goal. It will provide not only the
18 momentary flexibility that we need financially right
19 now over the next few weeks as the credit facility is
20 being renegotiated, but it certainly will provide us
21 the instrumentality to complete some of the capital
22 projects that were indeed cited in the original Phase
23 One of the proposal when this Board approved the Mount
24 Airy Casino and Resort License.

25 CHAIRMAN COLINS:

1 In your opinion, is the --- would the
2 adoption of this Protocol by the Board be a
3 significant factor that would bode well or be
4 favorably reviewed by the --- in the refinancing
5 negotiations going on on this property?

6 DR. CEDDIA:

7 Yes. JP Morgan and PNC, the two major
8 lenders, with JP Morgan being the lead in that
9 arrangement, is fully aware of our appearance today
10 before you. They are cognizant of the fact that given
11 the timeline for the amendment to the credit facility,
12 which will obviously spill over into next month, that
13 these --- this Protocol will provide the property with
14 indeed the alternatives it needs to be able to
15 maintain its liquidity until the credit facility is
16 finalized and approved by this Board.

17 In addition, there is a strong
18 recognition on the part of the lenders, particularly
19 JP Morgan, that anything that the property can do to
20 enhance the asset, that is anything it can do to meet
21 more --- provide more amenities for its patrons bodes
22 well for the success --- the ultimate success of the
23 casino and the resort itself. So this all fits
24 together with the original plan and is consistent with
25 where the lenders hope to see this property go and

1 develop as we do and certainly as Mr. DeNaples does,
2 because as I said earlier, he remains totally
3 committed to this project.

4 COMMISSIONER ANGELI:

5 Mr. Ceddia, does this bind Mr. DeNaples
6 --- is he obligated to pay for each project that you
7 bring before him?

8 DR. CEDDIA:

9 We will --- we would present to him a
10 list of projects or a project that we believe needs to
11 be supported. He is fully cognizant of these
12 Protocols being presented today. He understands the
13 conditions under which he would be asked to
14 participate and he has assured me that he would be
15 willing to do that, because again, he remains
16 steadfast in his commitment to me that he wants to do
17 everything possible to stay consistent with the
18 February 5th Order that this Board has issued and he
19 wants everything to be as transparent as possible, but
20 in addition, he wants to do what he can to continue to
21 support the projects that the facility needs and the
22 facility itself even during his time of suspension.

23 COMMISSIONER ANGELI:

24 I know you said that most of these are
25 --- going back to the Chairman's comments about these

1 are mostly Phase One projects.

2 DR. CEDDIA:

3 Yes, sir.

4 COMMISSIONER ANGELI:

5 Is there anything out of there that he
6 --- if he said, I don't want to fund that, is he
7 obligated, you know ---?

8 DR. CEDDIA:

9 No, he would not be. He would --- if, in
10 fact, I presented to him one of the projects and he
11 said at this point he refuses to do it, that would be
12 his decision.

13 CHAIRMAN COLINS:

14 And obviously, you're committed to the
15 most commercially reasonable way to carry on your
16 duties and to pay for these matters; is that correct?

17 DR. CEDDIA:

18 Yes, yes.

19 CHAIRMAN COLINS:

20 Whether it be through this fund that
21 we're talking about or through alternate sources?

22 DR. CEDDIA:

23 Yes. Let me just explain briefly the
24 alternate source that we would be looking at. The
25 credit facility amendment that we're seeking, during

1 the time we're renegotiating that, the current line of
2 credit is not accessible to the property. That's part
3 of the challenge we're facing. We're moving ahead and
4 as we complete the amendment to the credit facility
5 there will be --- the line of credit will be
6 accessible and that line of credit actually will be
7 enhanced so that there would be less of a need for
8 utilization of the Protocol as a result of that.

9 COMMISSIONER SOJKA:

10 Could I ask another one then?

11 CHAIRMAN COLINS:

12 Sure.

13 COMMISSIONER SOJKA:

14 Are you through? If not ---.

15 COMMISSIONER ANGELI:

16 I just want to follow up on that.

17 COMMISSIONER SOJKA:

18 And that was what I wanted to do, too.

19 COMMISSIONER ANGELI:

20 I'm just looking at the Protocol because
21 it says in no way will solicit Mr. DeNaples' advice
22 about or reaction to these projects or expenditures.
23 So the way I see this is that you would just have a
24 project and you're presenting him with that and then
25 he pays for it. There's no interaction between Mr.

1 DeNaples and you as far as he accepts that, doesn't
2 accept that?

3 DR. CEDDIA:

4 Well, there is interaction because we
5 have direct communication. Under the Protocol set by
6 --- forth by the Board, you know, and I've been
7 reporting to this Board, Mr. DeNaples and I have had
8 frequent conversations, which have been necessary for
9 a number of reasons, most particularly the major
10 refinance that we went through last June and now more
11 currently the amendment to the credit agreement that
12 we're renegotiating with the lenders. But we also
13 have talked about --- I have informed him about the
14 performance of the property to keep him posted on
15 that, but in no way has he influenced nor demanded or
16 required or suggested that the property do certain
17 things.

18 COMMISSIONER ANGELI:

19 If one of these projects go over the
20 estimated amount of what you were going to do, then he
21 just is stuck with paying that?

22 DR. CEDDIA:

23 Well, we would make sure that when we
24 went forward with a project, we would have as accurate
25 a cost as we needed. Clearly, if the project went

1 over, then we would in turn seek either internal ways
2 of covering the cost or reaching out to Mr. DeNaples
3 and asking him to commit to the rest of the capital
4 cost.

5 COMMISSIONER ANGELI:

6 And just as an administrative thing, when
7 you --- let's just pick the swimming pool, for
8 example, and let's say it's going to be \$7 million or
9 something.

10 DR. CEDDIA:

11 Let's hope not.

12 COMMISSIONER ANGELI:

13 Okay. Well, let's just say it's \$7
14 million. And so you put on the project that you're
15 going to do the swimming pool and then he deposits
16 that money into the Trustee account at that point, and
17 then you do the project?

18 DR. CEDDIA:

19 Yes. And if there's any money remaining,
20 it stays in that account.

21 COMMISSIONER ANGELI:

22 Okay. You just --- thank you.

23 DR. CEDDIA:

24 There is no exchange --- this is ---
25 there's no duality here. It's a one-way proposition.

1 COMMISSIONER SOJKA:

2 Now I would like to follow up. And that
3 is --- and it's a hypothetical. I understand. But if
4 Mr. DeNaples does have the right to deny payment, he
5 says I just --- I'm not going to do it or I don't have
6 it, and you would subsequently submit another list
7 with a different request and he paid that, in fact,
8 would he not be making the decision and what do we do
9 about that?

10 DR. CEDDIA:

11 I'll let Counsel answer that.

12 ATTORNEY LEVINE:

13 If I may, I think that's a fair --- a
14 fair question, and here's our take on it. Number one,
15 the list as presently constituted, which is a fairly
16 extensive list of projects, are things that as the
17 Chair mentioned, most of which were already included
18 in Phase One, and we don't have any reason to believe
19 that Mr. DeNaples would not be supportive in terms of
20 paying into the special account funds to support those
21 projects. If we presented project A on that list to
22 him and he refused to pay, then to the extent the
23 Trustee and Mount Airy Management thought this project
24 needed to go forward, Mount Airy would need to find
25 other commercially reasonable sources of funds, be it

1 via the credit facility or some other instrument.

2 This is a hypothetical, and so I'm, of
3 course, somewhat speculative here. But I would think
4 if in this generally accepted group of projects Mr.
5 DeNaples was to say no, that might affect whether the
6 Trustee would be going back to Mr. DeNaples for any
7 subsequent project because of the very point you
8 raised, which we are committed under the Board's
9 February 5th Order not to get into a situation where
10 --- and I don't think Mr. DeNaples at all intends
11 this, by the way, but where he would be in a position
12 to pick and choose.

13 COMMISSIONER SOJKA:

14 Thank you.

15 CHAIRMAN COLINS:

16 I mean, let me just state one comment and
17 then it's all yours, Ken. But it seems to me that
18 it's quite simple. You're looking for a source of
19 funding. You're looking for a source of funding
20 that's reasonable in terms of the cost of the money.
21 And if, in fact, we authorize this and you go to Mr.
22 DeNaples with the Trustee approved projects and he
23 refuses to provide the funding according to this
24 Protocol, then the corporation just goes and looks for
25 the money elsewhere. If you find it at a reasonably

1 commercial price, then you get it. If you don't,
2 then, you know, the consequences are addressed. So
3 it's --- it really --- there really should be no
4 duality from what I can see.

5 DR. CEDDIA:

6 No. And please understand that I have
7 every intent and have had every intent not be
8 gerrymandered into decision making by virtue of what
9 Mr. DeNaples would like or wouldn't like. There's
10 been open communication, but the decisions have been
11 mine, in consultation with the management of the
12 facility and the Trustee Team. And again, I don't
13 think that we'll be exhausting the current list. So I
14 think we're just looking for --- there's two or three
15 items on that list that are in priority order, and I
16 think primarily that's the direction we're going in
17 right now.

18 COMMISSIONER MCCABE:

19 I have a quick question. What would the
20 consequences be if we do not approve your Petition?

21 DR. CEDDIA:

22 I think clearly we would be in serious
23 financial --- a serious financial situation over the
24 next four to five weeks, which would cause us some
25 problems on making some payments with real estate

1 taxes and fair share payments.

2 COMMISSIONER MCCABE:

3 Dr. Ceddia, as we sit here today, is
4 there a comfort level on your part that we're moving
5 in the right direction and what you're asking us for
6 today does, in fact, fall in line with what we had
7 asked you to do?

8 DR. CEDDIA:

9 I think it does and I believe it does,
10 Mr. Commissioner. I can tell you why. We are
11 confident that we are very near completion of the
12 amendment to the credit facility. In fact, we believe
13 that we might be filing a Petition as early as Friday
14 or no later than Monday with this Board.

15 The new amendment to the credit facility
16 should be able to put the property in a position where
17 it can compete based on the conditions that are being
18 now set forth. Back in June when I was before you, I
19 indicated that some of the covenants and conditions
20 that we were dealing with, with the refinance at that
21 time, were going to be challenging for the property,
22 especially where the property had not been through one
23 calendar year. We have since passed that milestone of
24 a first year anniversary. Mr. D'Amato and his team
25 have done an excellent job of revising the business

1 plan, developing a revised marketing plan. They've
2 also done, I believe, a significantly important job of
3 looking at the operating budget for '09 and have made
4 a number of adjustments to that.

5 In addition, we believe that the
6 covenants that are now before us in the amended credit
7 facility will provide the --- will provide Mount Airy
8 Casino and Resort the opportunity to succeed next year
9 in a much more reasonable way than it has. But I
10 would caution the Board, too, that there will be some
11 conditions set forth by the lenders that will be a
12 burden for Mr. DeNaples to bear. And yet, even though
13 that is probably going to unfold in the final
14 documents, he remains committed to the property and he
15 will do what needs to be done from reducing the
16 exposure of the loan this time around so that the
17 property can continue to function.

18 COMMISSIONER RIVERS:

19 So it's safe to say that as we talk about
20 these hypothetical situations, that we do have a
21 process in place that would prohibit a lot of that
22 from happening?

23 DR. CEDDIA:

24 Yes.

25 COMMISSIONER RIVERS:

1 Thank you.

2 CHAIRMAN COLINS:

3 Okay. Thank you. Does that conclude
4 your presentation?

5 ATTORNEY LEVINE:

6 It does, Madam Chair.

7 CHAIRMAN COLINS:

8 Please go on.

9 ATTORNEY DAVENPORT:

10 Okay. I have a follow-up question for
11 Dr. Ceddia.

12 CHAIRMAN COLINS:

13 Okay.

14 RE-EXAMINATION

15 BY ATTORNEY DAVENPORT:

16 Q. With respect to any vendors that might be chosen
17 for these proposed projects, will Mr. DeNaples have
18 any role whatsoever in picking or choosing those
19 vendors?

20 A. No. We will identify the vendors, and where
21 required by policy, they will be licensed as
22 necessary.

23 ATTORNEY DAVENPORT:

24 Thank you. At this time, I'd like to
25 have my witness, Nelson Smiles, testify.

1 -----
2 NELSON SMILES, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
3 AS FOLLOWS:

4 -----
5 EXAMINATION

6 BY ATTORNEY DAVENPORT:

7 Q. You've been previously sworn in, Mr. Smiles?

8 A. Yes, I have.

9 Q. Could you please state your name and spell it for
10 the record?

11 A. Nelson Smiles. First name N-E-L-S-O-N, last name
12 Smiles, S-M-I-L-E-S.

13 Q. And sir, what is your title?

14 A. My title is Forensic Accountant with the
15 Pennsylvania Gaming Control Board, the Financial
16 Investigation Unit of the Bureau of Investigations and
17 Enforcement (BIE).

18 Q. And what is your background?

19 A. Background, I have a BS degree from Wilkes
20 College, now Wilkes University, in Wilkes-Barre,
21 Pennsylvania, a BS in Commerce and Finance, major in
22 Accounting. I've been a CPA since 1973, have held
23 numerous positions in both Public Accounting and in
24 Industry, and the past three years, several financial
25 review positions with the Gaming Control Board.

1 Q. And what is the role generally of the Financial
2 Investigation Unit?

3 A. The Financial Investigation Unit assists the BIE
4 dealing with technical financial matters.

5 Q. And has the Financial Investigation Unit been in
6 communication with Dr. Ceddia since his appointment by
7 the Board on February 5th, 2008, regarding Mount Airy
8 financial matters?

9 A. Yes, we have.

10 Q. And since his appointment, has Trustee Ceddia
11 fully cooperated with BIE with respect to providing
12 complete access to personnel, books, records, papers
13 and facilities related to the operation of Mount Airy?

14 A. Yes, definitely. We've had absolute total
15 communication with Trustee Ceddia as well as with the
16 management and staff at Mount Airy.

17 Q. As part of your duties, were you assigned to
18 review the Trustee's Amended Petition for Approval of
19 Protocol for Payments by Louis DeNaples for creditors,
20 contractors and vendors?

21 A. Yes, I was.

22 Q. And did you also have an opportunity to review the
23 revised Exhibit B, which is the Proposed Protocol?

24 A. Yes.

25 Q. Did you have an opportunity to discuss the

1 Proposed Protocol with Mount Airy's Trustee and its
2 staff?

3 A. Yes, I have, particularly in, you know, several
4 teleconference conferences.

5 Q. What, if any, conditions should be required to
6 ensure the Proposed Protocol does not violate the
7 February 5th Board Order?

8 A. Well, to put a summary or a perspective on it, the
9 February 5th Order basically required that the owner,
10 Mr. DeNaples, should receive no funds or profit from
11 Mount Airy. Certainly, when you're operating in this
12 circumstance and we're talking about an unusual amount
13 of funding or cash coming in and with regard to
14 disbursements that are being made, it would be very
15 important to make sure that there were appropriate
16 tracking mechanisms to make sure that everything was
17 appropriate.

18 Q. So, you would need to track that?

19 A. That's correct. Basically you would be very much
20 interested in the funds that were coming in and also
21 in terms of the particular Petition that we're
22 reviewing or dealing with right now, that it was in
23 accordance with that Petition also.

24 Q. So would you need to track the money that was
25 coming from Mr. DeNaples?

1 A. That's correct.

2 Q. Would you also need to track payments from the
3 account that's set up by the Trustee?

4 A. That's correct.

5 Q. Would you also need to review invoices that come
6 in to be paid from that account?

7 A. That's correct.

8 Q. Have you reviewed the OEC's Proposed Conditions
9 that should be required if the Board grants the relief
10 requested in this Petition?

11 A. Yes, I have.

12 Q. And in your opinion, do the Proposed Conditions
13 provide the necessary oversight required by the
14 Financial Investigation Unit?

15 A. Yes, they do. The five conditions certainly give
16 us the mechanism and the appropriate tools to do our
17 job.

18 Q. Based upon your review of the Proposed Protocol as
19 well as discussions that you had with the Trustee and
20 the staff, in your opinion, will the Proposed Protocol
21 in this Petition assist the continued financial
22 viability of the licensee Mount Airy?

23 A. Yes, definitely. The term liquidity has been
24 mentioned many times, and certainly that's very, very
25 important in the circumstances we're dealing with

1 today both to gaming in general and certainly at Mount
2 Airy. So this would be helpful.

3 Q. And based upon your review and discussions, in
4 your opinion, would the Proposed Protocol assist Mount
5 Airy in maintaining a steady level of growth of
6 revenue in the Commonwealth?

7 A. I would say yes, definitely, in the sense that it
8 certainly provides the necessary operating capital
9 right now. It certainly provides a mechanism for
10 capital improvements, all of which are important, in
11 my opinion, to maintain certainly from the
12 Commonwealth of Pennsylvania's standpoint the tax
13 revenue, which I double checked right before the
14 hearing. The tax revenue for calendar year 2008 is
15 certainly, from the gaming tax revenue, going to
16 exceed \$100 million from this facility.

17 ATTORNEY DAVENPORT:

18 Thank you.

19 CHAIRMAN COLINS:

20 Any questions? Mr. Levine, do you have
21 any questions?

22 ATTORNEY LEVINE:

23 I have none.

24 CHAIRMAN COLINS:

25 Does anyone on the Board have any

1 questions for Mr. Smiles? Thank you. Anything
2 further, Ms. Davenport?

3 ATTORNEY DAVENPORT:

4 Yes. At this point, I'd like to read the
5 Conditions in.

6 CHAIRMAN COLINS:

7 Yes. Good. Thank you.

8 ATTORNEY DAVENPORT:

9 Thank you. After consultation with
10 Trustee Ceddia and his staff on the Proposed Protocol
11 contemplated in this Petition, the OEC does not object
12 to the relief requested by the amended Petition
13 provided that Mount Airy abide by the following
14 conditions.

15 The first one, number one, Mount Airy
16 shall continue to provide the Financial Investigations
17 Unit with monthly internal financial statements as
18 available. Number two, that any project or
19 transaction funded pursuant to this Protocol, one, be
20 approved by the lenders via written consent which the
21 Trustee will provide to the Board, and two, be
22 pursuant to the Board's approval of Amendment to the
23 Revolving Credit and Term Loan Agreement or the credit
24 facility.

25 Number three, concurrently with each

1 capital contribution, Louis DeNaples shall provide the
2 Trustee with an affidavit listing the original source
3 of the funds and supply supporting documentation.
4 Number four, the Trustee shall provide the Financial
5 Investigation Unit with a copy of Mount Airy's file
6 memorandum of each funded project including the
7 project invoicing and chain of custody for any and all
8 payments under this Protocol. And finally, number
9 five, that Louis DeNaples, Mount Airy and the Trustee
10 shall at all times abide by the dictates of the
11 February 5th, 2008 Board Order, the Pennsylvania
12 Racehorse Development and Gaming Act and the
13 regulations promulgated thereunder as well as
14 agreements between the OEC and Mount Airy with respect
15 to vendors doing business with the licensed facility.
16 Thank you.

17 CHAIRMAN COLINS:

18 Thank you. Any other questions? Very
19 good.

20 DR. CEDDIA:

21 Thank you very much, Madam Chair. Thank
22 you, members of the Board.

23 CHAIRMAN COLINS:

24 Thank you, Dr. Ceddia, very much. What
25 we're going to do, though, is pursuant to the Sunshine

1 Act, in order to engage in quasi-judicial
2 deliberations on this matter, we're going to take a
3 recess for that purpose and then we will resume
4 briefly, maybe --- we'll see. We'll go in and
5 deliberate and then we'll be back. Thank you.

6 BRIEF RECESS TAKEN

7 * * * * *

8 HEARING CONCLUDED

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