

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: VALLEY FORGE CASINO

PETITION FOR APPROVAL OF REVISED RESORT

MEMBERSHIP PROGRAM

\* \* \* \* \*

PUBLIC HEARING

\* \* \* \* \*

BEFORE: WILLIAM H. RYAN, JR., CHAIRMAN  
James B. Ginty, Keith R. McCall,  
Gary A. Sojka, Gregory C. Fajt,  
Anthony C. Moscato, Annmarie Kaiser;  
Members  
Jennifer Langdon, representing  
Robert McCord, State Treasurer  
Robert Coyne, representing  
Daniel Meuser, Secretary of Revenue  
Jorge Augusto, representing George Greig,  
Secretary of Agriculture

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

Reporter: Jennifer T. Alves  
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HEARING: Tuesday, November 20, 2012

11:00 a.m.

WITNESSES: Michael Bowman, Lauren Feiner,

Alex Figueras, Eric Siegel

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CHAIRMAN:

Next Valley Forge Casino. Petition for Approval of Revised Resort Membership Program. Counselor, same request. We've been through this drill a million times.

ATTORNEY HAYES:

Mr. Chairman, Kevin Hayes from the law firm of Doherty Hayes. It's H-A-Y-E-S. Testifying here today on behalf of Valley Forge will be four individuals; Michael Bowman, Lauren Feiner, Alex Figueras and Eric Siegel. In addition on behalf of Valley Forge we have Mr. Christopher Plummer who's general manager for Nemaocolin Woodlands who is here to show support of the petition.

CHAIRMAN:

Okay. I'll tell you what, I would assume --- you just have witnesses. Some of these people who will be offering testimony are laypersons?

ATTORNEY HAYES:

They're all laypersons.

CHAIRMAN:

Okay. Why don't we have them sworn?

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1 WITNESSES SWORN EN MASSE:

2 -----

3 CHAIRMAN:

4 Go ahead, Mr. Hayes.

5 ATTORNEY HAYES:

6 Mr. Chairman, members of the Board, good  
7 morning. I'm here today on behalf of my client,  
8 Valley Forge Casino Resort, to present their --- to  
9 seek your approval of a revised resort membership  
10 program. As part of the petition Valley Forge is only  
11 seeking approval to offer a new membership at its  
12 resort hotel. To be clear, we are not seeking  
13 modifications or amendments to the Board approved  
14 procedures for securing access to the gaming floor in  
15 accordance with the Category 3 Access Restrictions.  
16 The relief requested here today by Valley Forge is  
17 necessary to address an immediate and critical need of  
18 our facility.

19 In this presentation you will hear  
20 testimony about a new annual membership, which is  
21 priced at \$10. At the outset I would like to address  
22 some of the concerns raised by the Office of  
23 Enforcement Counsel (OEC) relating to this membership.  
24 The first issue relates to the \$10 price point for  
25 this annual membership and whether it represents fair

1 market value. As you know, neither the Gaming Act nor  
2 the Board regulations provide a definition of fair  
3 market value for resort memberships. To assist Valley  
4 Forge in determining whether the pricing of this new  
5 resort membership represents fair market value Valley  
6 Forge retained an expert in the field of business  
7 management, marketing and entrepreneurship, Mr. Eric  
8 Siegel, who authored a report and offered the opinion  
9 that the price point of the proposed new membership by  
10 Valley Forge did, in fact, represent fair market  
11 value.

12           The reason that we were able to reduce  
13 the price point for this new membership is because  
14 there are no freebies and there's no giveaways.  
15 Whenever a patron redeems a discount Valley Forge will  
16 realize revenue that is equal to or greater than that  
17 discount.

18           Another concern may be that the proposed  
19 resort membership does not have the qualities of a  
20 legitimate club or membership. This new resort  
21 membership proposed by Valley Forge has the same  
22 characteristics as our Board approved Dining Club  
23 membership namely discounts, and member only  
24 privileges and invitations to events. As such the  
25 Board has established precedent that a program with

1 these components, discounts, and member only benefits,  
2 qualifies as a resort membership under the Gaming Act.

3           Lastly I want to address any concerns  
4 that this program is designed for the sole purpose of  
5 providing a fast, easy and inexpensive way to get  
6 people onto the gaming floor. There is no doubt that  
7 this program was designed to address current customer  
8 confusion, however, this plan was designed to address  
9 a very immediate need relating to the non-gaming  
10 amenities of Valley Forge Casino Resort. As our CEO  
11 will describe for you later, Valley Forge made a  
12 significant investment in its restaurants and  
13 nightclub prior to its opening. Up to this point we  
14 have not seen a return on that investment. The  
15 majority of layoffs that have been made since the  
16 March 31st, 2010 opening have been in the non-gaming  
17 department. It is important to remember that this is  
18 an 850,000 square foot facility and only approximately  
19 34 square feet of it is devoted to gaming. This  
20 program is designed to draw visitation and revenue at  
21 the non-gaming amenities. At this time I would like  
22 to introduce Valley Forge Casino Resort's President  
23 and CEO, Mike Bowman.

24                           MR. BOWMAN:

25                           Mike Bowman, B-O-W-M-A-N. Mr. Chairman

1 and members of the Board, I want to thank you for the  
2 opportunity to appear here today. We're here today  
3 asking for your approval for the new membership, which  
4 we believe is vital --- which is a vital component to  
5 the growth of our business. Your approval of the new  
6 membership is needed to address two important issues  
7 of Valley Forge Casino. One, improving customer  
8 experience and, two, increasing visitation and  
9 spending at our restaurants and clubs. As you know,  
10 the access plan proposed by Valley Forge and approved  
11 by this Board relies on a card system, as we have  
12 several here, to identify patrons who are eligible to  
13 enter the gaming floor. There's a casino access card  
14 and four different membership cards. So there are  
15 four different memberships. In addition, we have a  
16 tier player's card.

17           Upon opening, we offered four different  
18 memberships; seasonal and annual dining, seasonal and  
19 annual entertainment. All these different cards and  
20 membership offers have caused extreme customer  
21 confusion, frustration and has basically --- it has  
22 complicated the customer experience at the resort and  
23 the hotel. We believe that this has contributed to  
24 the fact that a far higher percentage of our patrons  
25 have come to our casino for only one occasion and have

1 not returned. We've collected customer comments, and  
2 the overwhelming complaint that we receive from our  
3 patrons is that the current system, including the  
4 membership program is just too confusing. In order to  
5 be successful a business must address the complaints  
6 of its customers by making modifications to improve  
7 their customer experience and create loyalty and  
8 repeat visitation.

9           The second major need that this new  
10 member --- that the new membership is intending to  
11 address is improving our current membership offerings  
12 in order to drive a greater visitation to our  
13 restaurants and clubs. After this Board approved both  
14 the entertainment and dining memberships, our  
15 ownership and management teams determined that we  
16 needed to improve the existing non-gaming amenities  
17 and create additional restaurants in order to entice  
18 patrons to purchase these memberships.

19           Specifically we invested over \$5 million  
20 in our non-gaming amenities including our nightclub,  
21 our high end steakhouse Pacific Prime, our fine  
22 Italian restaurant Vivianos, Nosh Deli, Valley Tavern  
23 and our food court. We expected the sale of  
24 memberships to drive greater visitations to these non-  
25 gaming amenities. It actually has not occurred.

1 Unfortunately since our March 2012 opening we've  
2 reduced our hours of operation in the nightclub and  
3 restaurants, and I've personally had to layoff a  
4 significant number of food and beverage department  
5 employees.

6 I challenged our team to simplify this  
7 process and come up with a plan for improving  
8 visitation in our non-gaming amenities. They studied  
9 this problem for months to determine that we can  
10 reduce customer confusion and improve our customer  
11 experience by offering a single annual membership,  
12 which we will describe later in this presentation. To  
13 improve sales of memberships and the redemption of the  
14 membership offerings, our team has designed a  
15 membership program with a more targeted and strategic  
16 offering.

17 To describe the challenges that Valley  
18 Forge has encountered in marketing and its current  
19 memberships and describe the proposed new membership  
20 program I will now turn it over to our Director of  
21 Marketing Strategies, Lauren Feiner. Thank you.

22 MS. FEINER:

23 Lauren Feiner, F-E-I-N-E-R. Thank you,  
24 Mike. Members of the Board, it's a privilege to  
25 appear before you today. As Mike stated, I'm the

1 Director of Marketing Strategy with Valley Forge.  
2 Before I describe our new membership program I think  
3 it is important to provide you with an overview of the  
4 various strategies we've utilized to market Valley  
5 Forge's current memberships as well as customer  
6 feedback which we have received. I can tell you that  
7 upon this Board's approval of the dining and  
8 entertainment memberships we have spent significant  
9 time and financial resources in marketing these  
10 memberships. These efforts have included outdoor  
11 media, direct mailings to the membership holders  
12 within our database and the placement of sales booths  
13 at the King of Prussia Mall and Philadelphia  
14 professional sporting events.

15                   In addition, in order to provide  
16 purchasers of our \$69 annual entertainment membership  
17 with headlining entertainment events where they can  
18 redeem their free offering, we established an  
19 aggressive lineup of headlining acts including Sinbad,  
20 Boys II Men and Better than Ezra. Despite these  
21 efforts and selling out the events, we have  
22 experienced poor redemption of these memberships. Let  
23 me be specific. Twenty-three (23) percent of the  
24 annual dining club membership holders have redeemed  
25 their free meal. Ten percent of the dining club

1 membership holders have redeemed the ten percent  
2 discount at one of our restaurants. Four percent of  
3 the annual entertainment club membership holders have  
4 redeemed the free ticket to a headlining entertainment  
5 event even though the ticket price was in excess of  
6 the cost of the membership which they purchased. And  
7 lastly only one percent of the entertainment club  
8 membership holders redeemed the ten percent discount  
9 on a ticket price of a headlining entertainment act.

10           As Mike Bowman mentioned earlier, we had  
11 solicited feedback from our patrons regarding their  
12 experience at Valley Forge. An overwhelming majority  
13 of patrons have reported to us that they do not like  
14 the current membership program and that the number of  
15 membership offerings create significant confusion. By  
16 way of example here are two of the colorful comments  
17 which I have received in my e-mail inbox. Comment  
18 one, I saw in the newspaper and on the news before  
19 your opening that a \$10 dining receipt from one of  
20 your restaurants could be used to gain access to the  
21 casino. Now I see from your website that the lowest  
22 price to gain access is a \$20 membership. There are a  
23 lot of people not happy about this, Roseanne S.,  
24 Norristown, Pennsylvania.

25           Comment two, tonight after buying two

1 weeks ago what I thought was a membership I showed up  
2 ready to play some craps with \$300. It would have  
3 been my second visit. After being rejected because my  
4 membership was expired I went to the service desk  
5 where I was insultingly told that my \$10 last time  
6 only bought me a 24 hour membership. I asked how much  
7 to play tonight and was sneeringly told another \$10.  
8 I thought about paying it and then decided I didn't  
9 need to be talked to that way and threw my cards on  
10 the counter. So not a question. I go to Vegas, AC  
11 and Hollywood casinos and like to play craps. I don't  
12 need to be treated that way and won't be back. I had  
13 a membership for myself and my daughter and my wife  
14 has yet to play at VF. Of course, she never will now,  
15 Eric H., Cumberland, Maryland.

16                   It takes four to six minutes to explain  
17 the membership offerings to patrons of our casino.  
18 Further in those four to six minutes we are providing  
19 our customers with too much information for them to  
20 process. As you know, our business is dependent upon  
21 keeping people moving and avoiding long lines and wait  
22 times. As such we need ways to explain the membership  
23 offerings in as efficient and effective manner as  
24 possible. To address these complaints of customer  
25 confusion in August we stopped selling three of the

1 four approved memberships and began only selling the  
2 seasonal dining and club. While this has reduced  
3 customer confusion, the redemption rate of the  
4 membership offerings continues to languish and patrons  
5 now complain that it will cost them over \$80 to hold a  
6 membership over the course of a year.

7           After compiling customer and employee  
8 feedback we have determined that we must provide a  
9 single membership at a reasonable price point with  
10 more targeted discount offerings as opposed to a flat  
11 discount rate of ten percent. Moreover instead of  
12 confining patrons to the use of one type of an amenity  
13 as is provided in our dining club and entertainment  
14 club memberships, the new resort membership will allow  
15 patrons to redeem benefits throughout the entire  
16 resort hotel including at all dining outlets, retail  
17 outlets, entertainment venues as well as the two hotel  
18 towers.

19           The resort membership provides patrons  
20 with two distinct benefits; discounts and privileges.  
21 Purchasers of the resort membership will be provided  
22 with a booklet similar to the one in front of you,  
23 which contains all the benefits included in the resort  
24 membership program. This booklet will identify those  
25 discounted offerings, which are available for each of

1 the 12 months of the membership's term. As part of  
2 this program no more than three discounts will be  
3 available for redemption during any given month except  
4 for the three offerings that can be redeemed at any  
5 time over the course of the year. As such, each  
6 discount may only be redeemed during a one month  
7 period and will expire at the end of its designated  
8 period.

9           One important difference between our  
10 current annual memberships and the proposed resort  
11 membership is that there are no free meals or free  
12 admission to events. In order to redeem any of the  
13 discounts provided in the booklet a membership holder  
14 must first purchase an item at one of our non-gaming  
15 outlets. In other words, the membership holder must  
16 spend money at Valley Forge before they can obtain the  
17 benefits of the discounted offering.

18           The second major component of Valley  
19 Forge's resort membership program will be the  
20 privileges made available only to membership holders.  
21 We will provide the following privileges to membership  
22 holders. Number one, free valet parking at all times.  
23 Two, free room upgrades when available. Three,  
24 invitations to exclusive food and beverage events, and  
25 four, other member only promotional offers.

1           The membership benefit booklet will be  
2 updated on a monthly basis. This membership benefits  
3 booklet is only available to membership holders. A  
4 membership holder will be required to present his or  
5 her membership card each time they redeem one of the  
6 benefits included in the package. If a membership  
7 holder loses his booklet he or she must pay an  
8 additional \$10 prior to receiving a replacement. We  
9 would like the capability of going green and offering  
10 membership holders the option of administering their  
11 membership account online where the discounts can be  
12 printed. Of course, the discount can only be printed  
13 once.

14           The new resort membership program is  
15 focused on creating customer loyalty. We believe that  
16 limited time offers are proven to drive greater  
17 redemption. From a marketing standpoint the new  
18 membership program provides us with greater  
19 flexibility in marketing our resort in order to  
20 address trends in the marketplace and competition. We  
21 need the flexibility to listen to our customer  
22 feedback and revise the offerings. Our offers will  
23 always stay within the confines of requiring a  
24 purchase to receive a discount. I cannot emphasize  
25 how important this new membership program is to

1 address the negative customer reaction relating to the  
2 current memberships which we have received since our  
3 opening. We understand that as a Category 3 casino we  
4 have to operate within the confines of the Gaming Act.  
5 We are only asking for another method to market our  
6 resort and improve our customer's experience.

7                   Thank you for your time and attention and  
8 I will be happy to field questions at the end of the  
9 presentation. I will now turn it over to our Vice-  
10 President of Finance, Alex Figueras.

11                   MR. FIGUERAS:

12                   Good morning. My name is Alex Figueras,  
13 F-I-G-U-E-R-A-S. I'm the Vice-President of Finance  
14 for Valley Forge Casino Resort. As you know, I was  
15 here before this Board last September to testify  
16 regarding our proposed memberships and their pricing.  
17 At that time I offered the opinion that the pricing of  
18 those memberships represented fair market value. I  
19 still hold the opinion that those points --- I hold  
20 that opinion that those price points are still correct  
21 for the offerings that are included in those  
22 memberships. I also offered the opinion that we  
23 intended to make a profit from those memberships and  
24 we have, however, our business objectives, which were  
25 based on using the memberships to drive patronage of

1 our non-gaming amenities as well as resort royalty,  
2 have not been fully realized.

3           As you heard earlier, one of the issues  
4 of our current membership program is that our  
5 offerings for the memberships are not meeting the  
6 customer's expectations to the degree that we would  
7 like. Sales in our non-gaming outlets and sales of  
8 memberships have lagged expectations and as a result  
9 this has contributed to lower gaming revenues as well.

10           In the development of the new resort  
11 membership we were able to reduce the cost of an  
12 annual membership from the current pricing levels  
13 because we are no longer offering free meals or  
14 admission to headline entertainment acts. Moreover  
15 every time a patron redeems a discount Valley Forge  
16 will immediately realize revenues at its non-gaming  
17 amenities. I am confident that the discount offerings  
18 will result in incremental revenues at our non-gaming  
19 amenities, which we would not have otherwise realized.

20           What we are packaging in this membership program is  
21 different than what was packaged in the original  
22 membership plan.

23           As you heard from Lauren, the flat  
24 generic discounts of our current memberships are not  
25 driving loyalty and incremental trips. We believe

1 these targeted offerings over the course of a year  
2 will encourage repeat visitation and create loyalty to  
3 both our brand and to our resort. We do not  
4 anticipate that most membership holders will redeem  
5 all of the offerings, however, if a membership holder  
6 redeems all of the discounts over the course of a 12  
7 month membership term then Valley Forge would realize  
8 revenues that are more than three times the discounted  
9 amount from the membership holder's expenditures at  
10 our non-gaming amenities. Many of these discounts  
11 encourage patrons to bring another guest with them.  
12 For instance, purchase one meal and get 50 percent off  
13 the second.

14                   Our current membership plan was primarily  
15 focused solely on the member and his or her discount.  
16 The \$10 price point allows us to recover our costs  
17 including the cost of advertising, printing and other  
18 marketing costs to run the membership program and  
19 guarantees an investment in our property. Based on  
20 this I'm certain that the \$10 cost of this membership  
21 represents fair market value. In an effort to further  
22 incentivize patronage at our non-gaming amenities any  
23 patron who has spent \$100 or more in a single  
24 transaction at one of our non-gaming outlets will  
25 receive a resort membership without further

1 consideration. Remember, my goal is to make sure that  
2 I am covering my costs of running the program. If  
3 someone is willing to spend a substantial amount in a  
4 single transaction the cost of the membership can be  
5 embedded in the purchase price of that other amenity.

6 Our facility is situated in close  
7 proximity to several corporate office parks and other  
8 businesses in Upper Marion Township in Montgomery  
9 County. Multiple local businesses have reached out to  
10 us inquiring about purchasing memberships for their  
11 employees and clients. However, virtually all  
12 requested a discount for purchasing large quantities  
13 of the memberships. In order to market our resort  
14 membership to these businesses we would like to offer  
15 corporate and group discounts on purchases of the  
16 memberships. Specifically we would like the option of  
17 offering these corporate group discounts to encourage  
18 business owners to purchase memberships for their  
19 employees. The corporate group discount schedule  
20 would be as follows. Ten percent discount for  
21 purchases of 5 to 25 memberships. Fifteen (15)  
22 percent discount for purchases of 26 to 100  
23 memberships and 20 percent discount for purchases of  
24 100 or more members.

25 Before I conclude my presentation I would

1 like to emphasize to the Board that this resort, I  
2 believe, still has much growth potential and the  
3 resort will best succeed when strong non-gaming  
4 revenues help to drive also our gaming revenues, which  
5 have also been lagging since opening. What we're  
6 asking to do is what any good business does. We react  
7 to the data that we've received coming in and adjust  
8 our marketing programs to better meet the consumer  
9 demand. Thank you for your time and I'll be happy to  
10 answer questions at the end of our presentation.

11 ATTORNEY HAYES:

12 Mr. Chairman, at this time I'd like to  
13 call our expert witness, Mr. Eric Siegel.

14 CHAIRMAN:

15 Okay.

16 ATTORNEY HAYES:

17 Now, Mr. Siegel has been offered as an  
18 expert in approximately 15 separate court proceedings,  
19 many of which involve opining on fair market value.  
20 He was previously accepted as an expert by this Board  
21 when he testified at the September 14, 2011 public  
22 hearing relating to Valley Forge's resort memberships.  
23 I would ask again that he be accepted as an expert in  
24 the field of business development, marketing and  
25 entrepreneurship and someone who is qualified to offer

1 opinions relating to the fair market value of resort  
2 memberships.

3 CHAIRMAN:

4 Enforcement Counsel have any response?

5 ATTORNEY STUART:

6 No objection

7 CHAIRMAN:

8 He's accepted.

9 ATTORNEY HAYES:

10 Okay.

11 -----

12 ERIC SIEGEL, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED  
13 AS FOLLOWS:

14 -----

15 DIRECT EXAMINATION

16 BY ATTORNEY HAYES:

17 Q. Mr. Siegel, you were retained by Valley Forge  
18 Casino Resort?

19 A. Yes, that's correct.

20 Q. And for the benefit of the Board could you provide  
21 a description of the scope of your engagement for  
22 Valley Forge as it relates to the new membership  
23 program?

24 A. Yes. The scope was rather focused. It was a look  
25 at the fairness of the propose \$10 pricing of the

1 resort membership.

2 Q. Now, did you prepare a report which detailed your  
3 findings and opinions?

4 A. Yes, I did.

5 Q. Now, I have a report here that's dated August  
6 31st, 2012. Is this the report that you authored?

7 A. It is.

8 Q. Mr. Siegel, what methods, if any, did you utilize  
9 to evaluate the fair market value of the resort  
10 membership that Valley Forge is proposing?

11 A. We used two primary methods. The first method was  
12 a quantitative analysis to look at the expected  
13 financial benefit from the perspective of both the  
14 customer and Valley Forge. The second method was to  
15 look at the pricing of comparable memberships on the  
16 market. Those are the two primary approaches.  
17 Because I have access to a very rich database through  
18 my teaching of the Wharton School, I did do a  
19 literature review and that's contained in the report  
20 also looking at the favorable impact that these kinds  
21 of programs can have.

22 Q. Mr. Siegel, is there an authoritative definition  
23 of fair market value for resort clubs or memberships?

24 A. There's not to my knowledge an authoritative  
25 source for fair market value of this kind of

1 membership. There are authoritative resources for  
2 other kinds of transactions and offerings, but I was  
3 able to identify three sources, which I think spoke  
4 directly to this question. One was the Internal  
5 Revenue Service. A second was the American Institute  
6 of Certified Public Accountants and the third was the  
7 Dictionary of Business Terms published by Barron's.

8 And in each case there were slight differentials, but  
9 the essence of the definition was the same and that is  
10 that a buyer and seller would enter into a transaction  
11 willingly, under no compulsion to buy or to sell and  
12 with knowledge of all relevant facts.

13 Q. Now, earlier in this presentation you heard Ms.  
14 Feiner describe the benefits and offerings included in  
15 this resort membership. Is that consistent in all  
16 material respects with the package or the program that  
17 you reviewed as part of your engagement?

18 A. Yes, sir.

19 Q. Okay. And describe for the Board the quantitative  
20 benefits, if any, that Valley Forge would through the  
21 redemption of discounts by its patrons or its  
22 membership holders.

23 A. The quantitative benefits come in two baskets  
24 essentially. The first basket is very direct and very  
25 calculable. It relates to the amount of membership

1 revenue that has been generated and from that one  
2 would deduct the direct out of pocket costs related to  
3 pulling together the membership booklets and  
4 distributing them and so forth. That's the first  
5 basket.

6 Q. Just to stop you there. When you say the direct  
7 revenue do you mean the \$10 purchase price?

8 A. Yes, the \$10 purchase price.

9 Q. Go on. Sorry to interrupt you.

10 A. No. Of course. The second basket really, I  
11 think, is the more favorable one as it relates to  
12 Valley Forge. Valley Forge has been, I think, very  
13 astute in the way that they have defined the  
14 membership offerings. Those offerings will create a  
15 heightened frequency of patronage in non-gaming  
16 amenities. It will result in higher levels of  
17 expenditure. It will create enhanced loyalty. It  
18 will create greater awareness as it relates to the  
19 facility, Valley Forge generally. Taking together as  
20 mentioned by Mr. Figueras, if one were to avail  
21 themselves of all of the offerings, it would result in  
22 \$2,000 of purchasing at retail, actually \$1,500 with  
23 the discounts applied. There is a greater than 50  
24 percent contribution margin related to that \$1,500 in  
25 actual purchasing. It far exceeds the \$460 in

1 benefits that the patron would receive, so from that  
2 financial perspective it's clearly a win.

3 Q. Just so we're clear, the \$1,500, is that net  
4 profit to --- net revenue to Valley Forge?

5 A. Yes. That's revenue net of the discounts.

6 There's also benefits related to privileges that come  
7 along with membership. Again, I think Valley Forge  
8 has been very strategic in the way they've pulled  
9 these together. The benefits include extended room  
10 stays and upgrades of rooms when available, free valet  
11 parking. Benefits that really result in no  
12 incremental out of pocket cost, so this in no way  
13 takes away from the profit that's otherwise generated  
14 by the program.

15 Q. Were you able to determine what the quantitative  
16 benefits of the membership are for the patrons?

17 A. Yes. For the patrons it's a very appealing  
18 picture as well. The patrons would --- just utilizing  
19 one or maybe two of the discounts will find that they  
20 have more than paid for the \$10 cost of membership.

21 Q. Now, based on your quantitative analysis of the  
22 membership program were you able to arrive at a  
23 conclusion as to whether the \$10 pricing of the  
24 membership represents fair market value?

25 A. I was.

1 Q. And what was that conclusion?

2 A. That the pricing is fair.

3 Q. Okay. In brief summary, what is that based on?

4 A. Both sides make out. It's economically favorable  
5 for Valley Forge, it's economically favorable for the  
6 patron and therefore it fits into the three  
7 definitions that I had alluded to earlier in this  
8 presentation.

9 Q. And how are you able to justify the \$10 price  
10 point in light of the current --- the pricing of the  
11 current annual memberships, which is significantly  
12 higher?

13 A. Right. It's an apples to oranges comparison.  
14 There's a different profile of benefits in the old  
15 program. There were free giveaways, free meal. In  
16 the new program there are no free giveaways, so it's  
17 just --- it's like buying a new car, you know,  
18 different accessories, different models. You're going  
19 to have different prices.

20 Q. Mr. Siegel, did you have the opportunity to review  
21 Valley Forge's proposal of offering a membership to  
22 patrons who spend \$100 at one of the --- in one  
23 transaction at one of the amenities without requiring  
24 further consideration from that patron?

25 A. I did.

1 Q. Okay. And did you believe that aspect of the  
2 program would still represent fair market value?

3 A. It does because the contribution margin realized  
4 from the \$100 sale exceeds the foregone cost of the  
5 \$10.

6 Q. Did you have the opportunity to review Valley  
7 Forge's proposed corporate and group sale discount  
8 schedule?

9 A. I did.

10 Q. Okay. Does that component of the program still  
11 represent fair market value?

12 A. It does. First of all, even at the deepest level  
13 of discount of 20 percent the contribution margin is  
14 exceeding the level of discount, so it's an add to the  
15 profitability of Valley Forge. It also serves the  
16 purpose of attracting a larger group of patrons,  
17 building business in clubs rather than one and two at  
18 a time.

19 Q. Mr. Siegel, were you able to identify comparable  
20 memberships in the marketplace? When I say comparable  
21 I mean comparable to the new membership program by  
22 Valley Forge.

23 A. Yes, I was.

24 Q. And based on your review of the comparable  
25 membership offerings do you still hold the opinion

1 that \$10 represents fair market value for the pricing  
2 of resort membership?

3 A. Yes, I do.

4 Q. Now, the comparable memberships that you  
5 identified in your report, did they have similar  
6 components to what is contained in Valley Forge resort  
7 membership namely discounts and privileges?

8 A. They did. I looked at several different kinds of  
9 offerings from restaurants to casinos to resorts. I  
10 thought that within those groups a couple were  
11 probably more closely relevant to Valley Forge, but I  
12 thought they were all helpful in opining on the fair  
13 value.

14 Q. Lastly, Mr. Siegel, have all your opinions that  
15 you've offered here today been within a reasonable  
16 degree of certainty in your field of expertise?

17 A. Yes, sir.

18 ATTORNEY HAYES:

19 Thank you. That's all for that. He'll  
20 be available for questions at the end of ---

21 CHAIRMAN:

22 Okay.

23 ATTORNEY HAYES:

24 --- the presentation.

25 CHAIRMAN:

1                   Anything else, Mr. Hayes?

2                   ATTORNEY HAYES:

3                   Just a few concluding remarks and  
4 housekeeping items. Mr. Chairman and members of the  
5 Board, as part of this petition Valley Forge is  
6 requesting that authority be delegated to the  
7 executive director to approve Valley Forge's proposed  
8 modifications to the composition of the offerings in  
9 the event that we want --- as long as they're  
10 consistent with what is proposed here today just so  
11 that we won't have to --- if we wanted to change the  
12 lineup that we could from time to time.

13                   As you know well, one of the express  
14 legislative intents of the introduction of gaming was  
15 to enhance the further development of the tourism  
16 market in this Commonwealth including but not limited  
17 to year-round recreational and tourism locations in  
18 this Commonwealth. This Board in its brief in  
19 response to Greenwood Gaming Entertainment's Supreme  
20 Court challenge to the Valley Forge License confirmed  
21 that Category 3 Slot Machine Licenses were designed to  
22 increase the flow of tourism at well-established  
23 resort hotels in the Commonwealth and in turn boost  
24 said businesses and related ancillary services.

25                   Well, to date the introduction of gaming

1 at Valley Forge has not bolstered the non-gaming  
2 amenities including the restaurants and the nightclub  
3 to the level anticipated. In fact, only 20 percent of  
4 Valley Forge's gaming patrons have purchased  
5 memberships. As a result the hours of operation of  
6 those facilities has been reduced as has the number of  
7 employees throughout the resort and casino. Our  
8 gaming business has certainly suffered by the failure  
9 or the struggling of our non-gaming amenities as  
10 there's been no nexus established between the non-  
11 gaming amenities carrying over to the gaming amenity  
12 and vice versa. Valley Forge believes that the  
13 Board's approval of this membership program will allow  
14 it to achieve its potential and fulfill the  
15 legislative intent of increasing the flow of tourism  
16 as resort, hotel. We believe this will also have a  
17 great impact on our gaming revenues, which will  
18 benefit the Commonwealth and its taxpayers.

19                   Before I close I would like to offer into  
20 the record a letter which we have received from  
21 Margaret Magerko, President of Woodlands Fayette, the  
22 Commonwealth's other Category 3 Licensee. In this  
23 letter Ms. Magerko expresses her support of Valley  
24 Forge's new membership program. In particular Ms.  
25 Magerko indicates, and I quote, like Valley Forge

1 Woodlands would like to offer a broad resort  
2 membership that grants members certain percentage in  
3 bulk discounts through the resort at a modest price  
4 point to drive every potential casino customer into  
5 the broader resort. Woodlands is cognizant that  
6 Valley Forge's current membership offerings,  
7 particularly the more expensive annual memberships,  
8 are simply too costly based on demonstrated membership  
9 sales. The lower price point proposed by Valley Forge  
10 as part of its revised membership program is a direct  
11 response to market conditions. So long as the  
12 membership generates more non-gaming revenue for the  
13 resort than the percentage or bulk discount costs the  
14 membership should constitute fair market value.  
15 Woodlands respectfully asks that the Board then  
16 approve the membership. As I indicated earlier, Chris  
17 Plummer, general manager of Nemaquin Woodlands Resort  
18 is here to show his support for this petition today.

19           That concludes our presentation of our  
20 case in chief. Again, I'd like to thank you for your  
21 time and attention. Before turning it over to the OEC  
22 I would ask that certain items be placed into  
23 evidence. First would be the electronic copy of our  
24 PowerPoint, which has been pre-marked as Exhibit One,  
25 the membership booklet which is marked as Exhibit Two,

1 the confidential report of Mr. Eric Siegel which is  
2 marked as Exhibit Three and finally Ms. Magerko's  
3 letter which would be marked as Exhibit Four.

4 (Valley Forge Exhibits One through Four  
5 marked for identification.)

6 CHAIRMAN:

7 Enforcement Counsel have any objections  
8 to the admission of those four exhibits?

9 ATTORNEY STUART:

10 No objection.

11 CHAIRMAN:

12 They'll be admitted, Mr. Hayes.

13 ATTORNEY HAYES:

14 Okay.

15 CHAIRMAN:

16 OEC have any response or questions?

17 ATTORNEY STUART:

18 We have some questions, sir. Glenn  
19 Stuart from the OEC. S-T-U-A-R-T. It's kind of a  
20 potpourri of questions and they go over a range of  
21 issues that were presented today, so I'll start with  
22 Mr. Siegel and if we can jump around. I'm sure the  
23 Board has a lot of questions, too. So I'll try to be  
24 brief.

25 First, Mr. Siegel, you did a comparative

1 analysis you said in your analysis?

2 MR. SIEGEL:

3 Yes, that was one of the two methods.

4 ATTORNEY STUART:

5 Okay. And you said that you used  
6 comparative restaurants, entertainment facilities,  
7 resort orientated discount packages. Were those  
8 located in the Mid-Atlantic region?

9 MR. SIEGEL:

10 They were located in the Mid-Atlantic  
11 region and all over, not exclusively in the Mid-  
12 Atlantic region.

13 ATTORNEY STUART:

14 Were any located in the southeastern  
15 Pennsylvania region?

16 MR. SIEGEL:

17 Yes.

18 ATTORNEY STUART:

19 You also noted that in your comparative  
20 analysis that a lot of the memberships for the  
21 restaurants and entertainment facilities, discount  
22 packages, they're mostly over \$10; is that correct?

23 MR. SIEGEL:

24 No, I don't think so. I mean, we have to  
25 count them up, but, no, I think that's not correct.

1                   ATTORNEY STUART:

2                   What was the average median price per  
3 membership?

4                   MR. SIEGEL:

5                   I didn't calculate that. There could be  
6 some confusion or misunderstanding. There are  
7 examples in the comparables, if I can just get to  
8 them. For example, the Palm, I thought the  
9 restaurants were good, very good comps because most of  
10 the benefits being proposed by Valley Forge have to do  
11 with food and beverage. So with the Palm you have a  
12 \$25 price, but you get a \$25 gift certificate. The  
13 effective cost is nothing, so if you would consider  
14 that above \$10 I would contend that no one would ever  
15 buy that unless they're going to go there once. And  
16 the real price is zero in that case. That would be  
17 true of McCormick and Schmick's, it would be true of  
18 Del Frisco's and so forth.

19                   ATTORNEY STUART:

20                   Is the Palm a national restaurant or is  
21 it located in the Philadelphia region?

22                   MR. SIEGEL:

23                   I believe it's a national restaurant  
24 chain with a restaurant in Philadelphia.

25                   ATTORNEY STUART:

1 Same with McCormick and Schmick's and ---

2 MR. SIEGEL:

3 Yes.

4 ATTORNEY STUART:

5 --- Del Frisco's? Those are national  
6 chains, so those aren't exclusive to the southeastern  
7 Pennsylvania region or the Mid-Atlantic region?

8 MR. SIEGEL:

9 I believe they all have restaurants in  
10 the Philadelphia area. I don't think any of them are  
11 exclusive to the Philadelphia area.

12 ATTORNEY STUART:

13 Okay.

14 MR. BOWMAN:

15 No, I can say they're certainly national  
16 chains.

17 ATTORNEY STUART:

18 Are those documents specific to the  
19 Philadelphia region or are those across the board on  
20 all the restaurants?

21 MR. SIEGEL:

22 I'm sorry. I'm not sure I understood.  
23 Could you repeat ---?

24 ATTORNEY STUART:

25 Do you get that \$25 membership ---?

1                   MR. SIEGEL:

2                   Oh, sorry. It's across the board.

3                   ATTORNEY STUART:

4                   Okay. Now, you talked about the coupon  
5 book. If no one uses the coupon book when they buy  
6 the resort membership what is the value then of the  
7 membership?

8                   MS. FEINER:

9                   The value comes from the other privileges  
10 as well, such as the exclusive food and beverage  
11 events, the free valet parking and the free membership  
12 promotional offerings.

13                   ATTORNEY STUART:

14                   And did you do quantitative analysis or  
15 qualitative analysis on those?

16                   MR. SIEGEL:

17                   No. No, I didn't do that, but I should  
18 make the point that when one talks about fairness it's  
19 not fairness for every person in the world. So, as an  
20 example, if I could join Augusta National Golf Club, I  
21 like to golf and it costs \$10 a round I'd be pretty  
22 happy with that. If you don't know how to play golf  
23 and you don't care to learn and the prospect is not  
24 enjoyable to you, it's worth nothing to you. Right?  
25 Fairness has to be looked at within certain bounds.

1 And Lauren's point is well taken, there will be some  
2 value ascribed to the privileges certainly, but even  
3 for one who doesn't plan to avail themselves of any of  
4 these offerings then one could argue that it has  
5 limited value.

6 ATTORNEY STUART:

7 I mean, what would that limited value be,  
8 assuming also that you don't use any of the  
9 privileges, you don't take advantage of the free valet  
10 parking, or you don't attend any of the free  
11 invitational events?

12 MR. SIEGEL:

13 I guess nothing. You know, in that rare  
14 case where someone who is --- who's not going to take  
15 advantage of ---. Any benefit of that membership  
16 that's what you're saying?

17 ATTORNEY STUART:

18 Right.

19 MR. SIEGEL:

20 Free rides to the moon, no benefits.

21 Then I guess there's no value.

22 ATTORNEY STUART:

23 Okay.

24 ATTORNEY HAYES:

25 For example, I have a gym membership, but

1 I never use it. So, it has no value --- no value to  
2 me.

3 ATTORNEY STUART:

4 I guess my point is if you're paying \$10  
5 and you don't use any of the benefits, you don't take  
6 advantage of any of the privileges, would the fair  
7 market value then be \$10 for the membership?

8 MR. SIEGEL:

9 We're getting into kind of an esoteric  
10 question. Would one have some --- attach some  
11 psychological benefit affiliation ---. This is not  
12 something I studied in my report. Okay. The  
13 presumption was there would be some usage and the  
14 fairness conclusion was based on the fact that across  
15 this whole array of privileges --- I'm sorry, benefits  
16 you only need to use one or two to more than pay for  
17 the \$10. If no one used any of those offerings,  
18 discounts and if one used none of the room upgrades,  
19 and free valet parking and so forth, then what would  
20 be left is whatever value might be ascribed to the  
21 affiliation, being a member of the club so to speak.  
22 And I didn't study that. And I'm not quite sure how I  
23 would calculate that. I'd have to think about it.

24 ATTORNEY HAYES:

25 With your membership do you get

1 unfettered access to the casino for the duration of  
2 the membership?

3 MS. FEINER:

4 Yes, you do for one year.

5 ATTORNEY STUART:

6 Would that be part of the value to  
7 someone buying the membership?

8 MS. FEINER:

9 That is another benefit of the  
10 membership.

11 ATTORNEY STUART:

12 Mr. Siegel, did you perform the fair  
13 market value analysis on Valley Forge's current  
14 memberships?

15 MR. SIEGEL:

16 Yes, I did.

17 ATTORNEY STUART:

18 Okay. And did you use qualitative  
19 comparative analysis in that analysis?

20 MR. SIEGEL:

21 Not precisely the same, but similar.

22 ATTORNEY STUART:

23 Okay. If you can remember, what kind of  
24 analysis did you use?

25 MR. SIEGEL:

1 Oh, it was the same thing. I mean, it  
2 was the same from the context of evaluating the  
3 perspective gain from both --- perspective of Valley  
4 Forge and from the consumer. This was a simpler  
5 program and therefore a simpler analysis.

6 ATTORNEY STUART:

7 Well, how did you determine that there's  
8 a fair market value for the dining membership and the  
9 entertainment membership? It's \$59 for dining  
10 membership and \$69 for the entertainment  
11 membership ---

12 MR. SIEGEL:

13 Right.

14 ATTORNEY STUART:

15 --- you know, a year ago? How is it now?  
16 You know, has the program changed that drastically  
17 that it now qualifies for about an 80 percent  
18 discount?

19 MR. SIEGEL:

20 Yes, I said this is --- let me say a few  
21 things. First, this is what I would consider to be an  
22 apples to oranges comparison. If you have two cars  
23 and maybe it's even the same manufacturer depending  
24 upon how they're outfitted, what all the features are,  
25 they would be priced differently. And I would go a

1 step further and say that this was not something that  
2 was a close call. When you apply the standards of  
3 fairness as determined by the sources that I used it's  
4 a clear win for Valley Forge and it's a clear win for  
5 the patron at that price and that price therefore is  
6 fair.

7 ATTORNEY STUART:

8 Do you believe the current dining and  
9 entertainment memberships are still offered at fair  
10 market value?

11 MR. SIEGEL:

12 I would say yes.

13 ATTORNEY STUART:

14 This might be going out to a different  
15 party other than Mr. Siegel. How long has Valley  
16 Forge been open to the public?

17 ATTORNEY HAYES:

18 Since March 31st, 2012.

19 ATTORNEY STUART:

20 Okay. So about seven --- eight months.  
21 Do you guys believe that seven to eight months is  
22 really long enough to assess whether your current  
23 membership is a success?

24 ATTORNEY HAYES:

25 I think the person to be best suited to

1 answer that question would be the one who supervises  
2 the employees who are dealing with the questions and  
3 is trying to market it. So, Lauren, why don't you  
4 provide a response if you can.

5 MS. FEINER:

6 Since we've been open for seven months we  
7 are starting to see the same issues over and over, and  
8 I'm in charge of running the player club booth and  
9 that's exactly where we see the confusion with the  
10 memberships. And just explaining it, like I said, in  
11 my presentation, it's four to six minutes to say,  
12 well, you can have the annual dining and for that it's  
13 \$59 and you get a free meal, entrée, you know, you can  
14 get an appetizer, dessert. You also get ten percent  
15 off. And just as I start to explain it we see people  
16 walk out the door. We hear people say, I'm not going  
17 to wait in line for this, I'm just leaving. So, we  
18 know we don't want to lose any more business. So, I  
19 think that even if I saw that once I would react, but  
20 now I have over seven months of seeing it. And so  
21 over that time we've just decided we need to combat  
22 that and that's what this was designed for. I believe  
23 six months would be adequate time.

24 ATTORNEY STUART:

25 Do you think the proposed membership plan

1 would be less confusing to those patrons?

2 MS. FEINER:

3 Yes. So our plan now is to say, welcome.  
4 Is this your first time? Okay. If you'd like to buy  
5 a membership it's \$10 and here's what you get. It  
6 eliminates that entire thing and it puts the onus on  
7 the customer. They can read through it at their  
8 leisure, but we don't have to sit there and say, in  
9 March you get buy one entrée, get one free. So, we  
10 can just hand it to them and that simplifies the whole  
11 process.

12 ATTORNEY STUART:

13 Why haven't you utilized the booklet now,  
14 you know, instead of sitting there and explaining the  
15 program to them now? Why didn't you give them the  
16 booklet?

17 MS. FEINER:

18 When we have our --- a free appetizer,  
19 entrée and dessert or a free movie ticket or ---  
20 sorry, a free entertainment act and we don't have ---.  
21 You know, those are dynamic things that change. We  
22 don't have the entertainment lined up for the next,  
23 you know, six months, so what we would have done if we  
24 had that is to say, okay, here is our lineup. But  
25 things are so dynamic in our first year of operation

1 and they're changing every day that we didn't want to  
2 put that on paper. Now we know what our restaurants  
3 are and we know our retail, our hotel. We've  
4 identified the offerings that we like to give and now  
5 we can put it down on paper. We just don't believe  
6 that the current membership offerings are targeted  
7 enough for our customers. I wouldn't want to hand  
8 them a piece of paper that says here's a free entrée.  
9 I want to make them go to Viviano, I want to make them  
10 go to Prime and I don't think that we're doing that  
11 today. That's why our redemption is so poor.

12 MR. BOWMAN:

13 As we all know in the gaming business,  
14 and gaming industry --- there's some operators in the  
15 room right now. Things need to be kept pretty simple  
16 for the patrons. They don't like things complicated  
17 and this entire program is complicated. We're trying  
18 to get approval to simplify the program and to abide  
19 to the law.

20 ATTORNEY STUART:

21 Do you know how many total memberships  
22 Valley Forge has sold thus far?

23 ATTORNEY HAYES:

24 With all due respect, we'd be happy to  
25 provide that information in, you know, Executive

1 Session or --- I don't know if we feel completely  
2 comfortable putting that out on public record as to  
3 our number of sales.

4 ATTORNEY PITRE:

5 I don't see what's so --- what's  
6 confidential about the ---

7 CHAIRMAN:

8 I don't either.

9 ATTORNEY PITRE:

10 --- number of sales.

11 CHAIRMAN:

12 So I'm going to ask you to answer the  
13 question.

14 MS. FEINER:

15 The total memberships sold is roughly  
16 40,000. Of that to less than 20,000 unique members,  
17 so a lot of the three month may have renewed or  
18 something.

19 CHAIRMAN:

20 I'm sorry, ma'am. What did you say?

21 MS. FEINER:

22 There are 40,000 memberships sold. Of  
23 those to 20,000 unique membership holders, so only  
24 20,000 unique people have bought a membership.

25 CHAIRMAN:

1                   And can you tell the Board at the average  
2 cost of ---?

3                   MS. FEINER:

4                   Since we've stopped selling the other  
5 three memberships in August, roughly now it's just the  
6 \$20 annual dining. That was our most popular and  
7 that's why we chose to stay with that membership.

8                   ATTORNEY STUART:

9                   So roughly 40,000 memberships for seven  
10 months of operation?

11                  MS. FEINER:

12                  Yes.

13                  ATTORNEY STUART:

14                  In one of your slides you have a slide  
15 saying --- talking about membership utilization, and  
16 you say that for the free offering only 23 percent of  
17 the dining members have utilized that free meal. So,  
18 77 percent have not taken advantage of something  
19 that's being given away for free? Is that correct?

20                  ATTORNEY HAYES:

21                  Lauren, do you want to answer that?

22                  MS. FEINER:

23                  Yes. So, both the quarterly or seasonal  
24 dining and annual dining have the ability to have ten  
25 percent off. So, you have to combine those two

1 memberships. Of those they comprise about close to  
2 40,000. We haven't sold very many annual or seasonal  
3 entertainment, so of that, yes.

4 ATTORNEY STUART:

5 Okay. So, how can you expect to get more  
6 people utilizing the restaurants if they have to spend  
7 money to get something for free when they're --- 77  
8 percent of your current members are not utilizing  
9 something that's given to them?

10 MS. FEINER:

11 Well, we feel like the problem is they  
12 don't know we have seven restaurants. We run into  
13 this with the current dining membership we have today  
14 and we want to explicitly send them to certain  
15 restaurants and target their spending. I think  
16 they're just not aware and they can't see them from  
17 where we actually give out the books at the Valley  
18 services desk. Valley Tavern and Nosh Deli are  
19 actually a little bit of a walk away, so here we were  
20 trying to entice them to go there.

21 ATTORNEY STUART:

22 I'm going to skip to Dale.

23 CHAIRMAN:

24 Excuse me?

25 ATTORNEY STUART:

1 I'm going to skip to Mr. Miller briefly.

2 CHAIRMAN:

3 Fine. Thank you.

4 ATTORNEY MILLER:

5 I want to cut to the chase here if I can.  
6 The presentation has been pretty much about increasing  
7 your non-gaming business; correct?

8 ATTORNEY HAYES:

9 Correct.

10 MS. FEINER:

11 Yes.

12 ATTORNEY MILLER:

13 Is it not true that if someone buys one  
14 of these memberships they will be able to --- and plus  
15 a guest, enter the gaming floor literally 365 days a  
16 year?

17 ATTORNEY HAYES:

18 That's correct. You know, that's clearly  
19 stated in our petition.

20 ATTORNEY MILLER:

21 Right. Paragraph eight says, upon  
22 purchase of the resort membership the membership  
23 holder will be granted unlimited access to the gaming  
24 floor during the one year term of the membership. In  
25 addition they'll be allowed to have a guest. Now, if

1 I go to Valley Forge out of the blue, I walk in and I  
2 try to access the gaming floor, and I just want to be  
3 there for one day what do I have to do?

4 ATTORNEY HAYES:

5 If you just want to be there for ten days  
6 and this isn't appealing to you, you have to go spend  
7 \$10 at one of the non-gaming amenities.

8 ATTORNEY MILLER:

9 And if I want can I go to a machine and  
10 buy a one day membership for \$10?

11 ATTORNEY HAYES:

12 We are currently not utilizing those  
13 because we're able to handle --- but technically we  
14 have the capabilities to do that, yes. For the one  
15 day membership? Yeah, if they're ---.

16 MS. FEINER:

17 You cannot buy access for a one day  
18 membership.

19 ATTORNEY HAYES:

20 Right. It's only for that memberships.

21 ATTORNEY MILLER:

22 All right. But I have to spend \$10 or in  
23 some way spend \$10 to get access for one day; correct?

24 ATTORNEY HAYES:

25 That's correct.

1                   ATTORNEY MILLER:

2                   All right. So if I want to get access  
3 for 365 days without buying this membership I have to  
4 spend 10 times \$365? Wouldn't that be correct?

5                   ATTORNEY HAYES:

6                   If that was the only --- yeah, if you  
7 came every day and wanted to spend \$10 every day that  
8 is the way you would do it.

9                   ATTORNEY MILLER:

10                  But your resort membership will give me  
11 that same access for \$10 and you're saying that that's  
12 fair market value? Is that the testimony?

13                  ATTORNEY HAYES:

14                  That's correct.

15                  ATTORNEY MILLER:

16                  Okay.

17                  ATTORNEY HAYES:

18                  Let me, Dale, just extrapolate on that.  
19 The value of getting casino access is not really a  
20 consideration as to whether the membership itself  
21 represents fair market value. I don't think it's  
22 required under the Act. The access to the casino was  
23 not an element that we evaluated as to the value of  
24 the membership.

25                  ATTORNEY PITRE:

1           Is the compulsion for an individual to  
2 gamble or a compulsion for a casino operator to make  
3 money something that Mr. Siegel took into account in  
4 this study of the fair market value?

5           ATTORNEY HAYES:

6           No. The scope of his retention was to  
7 evaluate whether the membership represented fair  
8 market value, what was offered in it. You know, Dale,  
9 I think where you're going with this is you're trying  
10 to say well, \$10 gets you a one day pass and \$10 gets  
11 you a \$365 (sic) pass. Well, as you know, under the  
12 Act there's two separate analysis. \$10 was what the  
13 Board determined represented di minimus consideration.  
14 Okay? So, that's one analysis. Over here when it  
15 deals with the membership is whether or not it  
16 represents fair market value, so if you're trying to  
17 make the representation that they should be somehow  
18 compared to each other it's not what's required under  
19 the Act and it's misplaced.

20           ATTORNEY PITRE:

21           I disagree from the standpoint that fair  
22 market value in his report says the buyer's not under  
23 any compulsion, the seller's not under any compulsion.  
24 I think the casino is the elephant in the room that  
25 creates a compulsion on both sides. I mean, it's our

1 opinion, my opinion, for whatever it's worth and I'm  
2 not going to sit here and go back and forth with you  
3 on it. It's just my opinion. Mr. Siegel, you have  
4 your own opinion. The Board's going to make a  
5 decision on it.

6 ATTORNEY HAYES:

7 If I could just clarify that point. Can  
8 you explain what you mean by compulsion to buy? Is  
9 that a term used in your report?

10 MR. SIEGEL:

11 Compulsion would mean under some economic  
12 duress, forced to sell to raise funds to pay off some  
13 debt or something like that.

14 ATTORNEY PITRE:

15 Yeah, I understand what compulsion means.  
16 That's my point. We're going to defer to the Board  
17 for any further questioning.

18 CHAIRMAN:

19 Were you finished, Mr. Stuart?

20 ATTORNEY STUART:

21 We are.

22 CHAIRMAN:

23 All right. Greg?

24 MR. FAJT:

25 Thank you, Mr. Chairman. Mr. Miller, you

1 used my phrase. I had it written down here about  
2 cutting to the chase. Look, as I see this what you're  
3 asking this Board to do is to allow you to sell a  
4 membership for \$10 for two people to gain access to  
5 your casino for 365 days a year? Right? Wrong? And,  
6 again, I get the nuance, Mr. Hayes, about, you know,  
7 the different categories and all of that, but that in  
8 essence is what we're talking about. \$10, two people,  
9 access to the casino for 365 days a year?

10 ATTORNEY HAYES:

11 There's no question we're here in part  
12 because we're struggling from a gaming revenue  
13 perspective.

14 MR. FAJT:

15 I get that. You know, is my ---?

16 ATTORNEY HAYES:

17 But that's not the sole reason.

18 MR. FAJT:

19 I understand that, but what I said, is  
20 that true?

21 ATTORNEY HAYES:

22 What?

23 MR. FAJT:

24 \$10, two people get access to the casino  
25 all year?

1                   ATTORNEY HAYES:

2                   That's not the sole ---.

3                   MR. FAJT:

4                   Just is that --- if I come in tomorrow  
5 --- please. And I'll get to your point. I understand  
6 your point, but \$10, two people access to the casino  
7 for a year; right?

8                   ATTORNEY HAYES:

9                   That's one of the benefits.

10                  MR. FAJT:

11                  Okay. Thank you. You guys are resort  
12 casino. We want you to make money. We understand  
13 that, but you are a different animal than a Category 1  
14 and a Category 2. You knew that going in and so one  
15 of the questions I have and maybe, Mr. Bowman, you're  
16 the best person to answer this, did you guys do focus  
17 groups on these initial membership fees and things of  
18 that sort before you opened?

19                  MR. BOWMAN:

20                  Of course, I wasn't the president and CEO  
21 when the casino opened.

22                  MR. FAJT:

23                  I understand that.

24                  MR. BOWMAN:

25                  I was involved with the construction and

1 staffing and various ---.

2 MR. FAJT:

3 You were part of the organization?

4 MR. BOWMAN:

5 I was part of the top organization.

6 There were some focus discussions. There's nothing  
7 per se with hiring an outside company to do focus  
8 groups. There were discussions from ownership and  
9 investors to various colleagues of theirs and what  
10 they thought. And I'll be honest with you I sat in a  
11 meeting where people thought \$59 dining membership,  
12 everyone in the world's going to line up for this  
13 because we did build an incredible steak, seafood  
14 restaurant. So, for \$59 and you get this annual  
15 membership, everyone's going to want it. It's  
16 incredible. They didn't.

17 So, there were heavy discussions. We  
18 looked at the types of memberships, entertainment. We  
19 did do our homework in entertainment. We went out and  
20 hired consultants, some of the best consultants in the  
21 area. We brought in headline entertainers. This  
22 entertainment membership was going to be incredible  
23 in the Valley Forge area. Those people going to  
24 Jersey Shore in July and August were all going to  
25 come. They're going to go see Boyz II Men, Better

1 than Ezra, get a steak dinner. It was going to be  
2 great. Our ticket sales were a mess for various  
3 reasons, but consumers don't like the memberships.

4 MR. FAJT:

5 And I get that. As I said earlier, Mr.  
6 Hayes, you know you're a resort casino and you paid \$5  
7 million for your Slot License. Category 1s and  
8 Category 2 paid \$50 million. I get that, you know,  
9 they can have 5,000 slots, you're limited to 600, but  
10 you knew what you were buying when you bought it and  
11 so this Board struggles --- I personally struggle. I  
12 don't want to say the rest of the Board, but I  
13 personally struggle with being fair to you and putting  
14 something on the table that allows you to make money  
15 and be profitable, because that's good, versus unfair  
16 competition to people who paid ten times what you paid  
17 for your license and do not have to have a patron of  
18 the amenity issue or price of admission to get into  
19 your casino. And that's what I personally struggle  
20 with. So, but I'll get off my horse and let you move  
21 on, Mr. Chairman. Thank you.

22 CHAIRMAN:

23 Okay. Gary?

24 MR. SOJKA:

25 Greg, I think you said it. Again, I see

1 that we got multiple problems that are conflating and  
2 that's the issue. I would love to see you build  
3 loyalty, I would love to see you build traffic, I  
4 would love to see you be successful, love to see you  
5 get in there. We all get a Sunday paper. We all open  
6 it and when we do something just like this falls out,  
7 coupons for half off on a --- whatever, buy one get  
8 one free. They're free. People give them away. Why?  
9 Because they want to build traffic and they want to  
10 build loyalty, but that's free. Okay?

11                   If you want to do that I think that's  
12 wonderful, but now we get into the complication of  
13 this business where you've got to have a membership or  
14 something. And to try to take something that is to do  
15 one thing, build loyalty, build traffic and whatnot,  
16 and satisfy the other requirement that Commissioner  
17 Fajt has very clearly laid out, the huge difference in  
18 price between the licenses and whatnot and to keep a  
19 level playing field, I don't see the two going  
20 together. That's my problem. It's not so much  
21 touching the --- you know, crossing the T and dotting  
22 the I about fair market value. It's two totally  
23 different things. And I would love to see you do  
24 whatever you need to do to build loyalty and to make  
25 it look more like a real live resort because that's

1 where we went out on a limb. We said you were an  
2 existing resort. You needed to be that for us to give  
3 you the license. People challenged us. We gave it to  
4 you. We want you to be a resort, but I don't think  
5 you can get around the corner that way.

6 ATTORNEY HAYES:

7 Commissioner, may I just respond to that?  
8 I'm partly to blame for the current memberships. I  
9 was a part of that group and we had a consulting firm,  
10 CD gaming consulting firm with us sitting in a room  
11 saying, what can we offer that will be attractive to  
12 patrons? They were an experienced gaming company. I  
13 had obviously never been presented with this type of  
14 challenge and the overall --- we all believed that the  
15 offering would be so good --- you know, the offering  
16 would be so attractive it would be natural for them to  
17 want to buy it instead of driving to a competitor or  
18 ---. We thought it would work. But the overall  
19 feeling was we didn't know.

20 It was July of 2011 prior to us --- six  
21 months prior to us opening. We didn't know how the  
22 public would react. Now we know how the public will  
23 react and it's been negative. It's been very  
24 negative. I understand we did not have to pay the  
25 same licensing fee that everybody else did, but it's

1 important to remember that our expenses for entering  
2 into the market are the same. We still have to have  
3 the surveillance system, we still have to have a  
4 full ---.

5 MR. SOJKA:

6 And as everybody said, you knew what you  
7 were buying.

8 ATTORNEY HAYES:

9 Exactly, but the thing is we did not know  
10 --- no one knew I don't think how the public would  
11 react to the access restrictions.

12 MR. SOJKA:

13 Well, again, if the issue is confusion  
14 and I look at some of the stuff --- it's --- part of  
15 those newspaper things you put up there, rather than  
16 confusion looked to me like bad customer relations.  
17 If your people are sneering and snarling and you put  
18 that up as your evidentiary piece I don't know that  
19 we're responsible for that. And if they're not  
20 redeeming a better deal --- if they're redeeming at a  
21 four percent or a five percent rate are we to suspect  
22 they're going to redeem these at a better rate? Why  
23 don't you just give these away?

24 MS. FEINER:

25 Well, our current seasonal dining

1 membership is \$20. It gets you and a guest in for  
2 three months and you get ten percent off all food and  
3 beverage, and you get the benefit of being a part of  
4 our membership. We've just taken that membership and  
5 tweaked it. That's really what we wanted to  
6 concentrate on. We knew that was already approved by  
7 the Board, so we said, how can we make it better and  
8 more beneficial to our non-gaming amenities? That's  
9 the real difference and why we're here today. We're  
10 not asking that, you know, the memberships go away,  
11 the access restrictions go away. We just want to  
12 tweak our current memberships that we're selling in  
13 order to better target our non-gaming amenities.

14 MR. GINTY:

15 I have a few questions. First of all, on  
16 the licensing fee --- I forget offhand, but how many  
17 slot machines is a Class 3 permitted?

18 MS. FEINER:

19 We have 600.

20 MR. BOWMAN:

21 600.

22 MR. GINTY:

23 And do you recall, Mr. Hayes, what the  
24 Class 1s and 2s are?

25 ATTORNEY HAYES:

1                   2,500 and then we can petition after a  
2 year to go up to 5,000.

3                   MR. GINTY:

4                   So perhaps your licensing fee was  
5 somewhat related to the number of slot machines and  
6 table games you're able to have.

7                   ATTORNEY HAYES:

8                   Correct.

9                   MR. GINTY:

10                  Secondly, Ms. Feiner, you said something  
11 I guess I wasn't aware of it. In addition to your  
12 dining and entertainment plan you already have a \$20  
13 membership plan.

14                  MS. FEINER:

15                  Our current membership is a three month  
16 dining that costs \$20.

17                  MR. GINTY:

18                  Okay. And how do you go about getting  
19 that? Is it a membership type thing?

20                  MS. FEINER:

21                  Yeah, that's our membership that we  
22 currently sale. You can purchase it at the Valley  
23 services department. It gets you a membership card  
24 that Mike showed earlier and that's good for you and a  
25 guest to enter the casino for three months.

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MR. GINTY:

For three months. So, what we're talking about here is prices and length of time?

MS. FEINER:

There are different offerings.

MR. GINTY:

And in your opinion the current plans you have are not boosting your other business and related ancillary services. Is that your opinion?

MS. FEINER:

That's correct.

MR. GINTY:

Mr. Hayes, maybe you can recall where this quote comes from. Category 3 Slot Machine Licenses were designed to increase flow of tourism at well-established resort hotel in the Commonwealth and in turn boost said businesses and related ancillary services. Do you recall where that came from?

ATTORNEY HAYES:

That's very similar to the one that was just --- I thought I just read into the record as --- from the Board.

MR. GINTY:

From whom?

ATTORNEY HAYES:

1 I thought it was from the Board, but ---.

2 MR. GINTY:

3 From us?

4 ATTORNEY HAYES:

5 Yeah.

6 MR. GINTY:

7 From our Office of Chief Counsel (OCC)?

8 ATTORNEY HAYES:

9 Yes.

10 MR. GINTY:

11 Oh, okay. I have no further questions.

12 CHAIRMAN:

13 Keith.

14 MR. MCCALL:

15 I just want to reiterate what Greg said.  
16 I mean, you know, the Board has been toiling over this  
17 for some time. And you know, I was a member of the  
18 legislature when we debated this whole --- the Act and  
19 the whole issue of patron of the amenities. It was a  
20 very intense debate and, you know, what Commissioner  
21 Fajt had said, you know, the difference between ---  
22 and the reason why we have that debate was, the  
23 difference between the amounts of money paid, the \$50  
24 million versus the \$5 million, and that resort license  
25 so to speak, resort license was kind of an offshoot to

1 get more licenses in the Commonwealth. And the  
2 requirement was that, you know, they were not going to  
3 be open to the public, that it was up to the resort to  
4 entice people to come into their resort, spend money,  
5 be a patron of their amenity to use that facility. We  
6 as a Board want you to be successful. If we would  
7 grant your petition today you're going to be in court  
8 tomorrow because all of your competitors are going to  
9 argue that it is not fair market value what you're  
10 offering and that you'd actually be usurping the law.  
11 I personally think that if you want to change this  
12 you're going to have to go across the street and ask  
13 the legislature to change the law, to liberalize the  
14 law for your entity. That's going to be a tough sell.  
15                   Again, you're going to have competitors  
16 that spend \$50 million versus your facility that spent  
17 \$5 million and have 600 slot machines as opposed to  
18 5,000 slot machines, but really when it gets down to  
19 it we think the argument --- you know, this debate  
20 should take place across the street and not with this  
21 Board. We think we have --- we're operating within  
22 the confines of the law. Our hands are tied to that  
23 aspect of the law and therefore our decision more than  
24 likely is going to be based on what the law dictates.  
25 So I think if you're looking for relief the relief

1 really should come from the legislature and not from  
2 this Board.

3 CHAIRMAN:

4 Tony.

5 MR. MOSCATO:

6 Yes. Thank you, Mr. Chairman. Just a  
7 few questions. Most of my comments my colleagues have  
8 already stated and I definitely have to agree with  
9 what Commissioner McCall just said with regard to  
10 going across the street. I don't want to get too far  
11 into the weeds, but just a few points of  
12 clarification. Mr. Bowman, you said that you've laid  
13 off people?

14 MR. BOWMAN:

15 Yes, sir.

16 MR. MOSCATO:

17 What's your employment from March when  
18 you opened 'til now?

19 MR. FIGUERAS:

20 We were probably approximately 1,100 full  
21 time equivalent at the time that we opened and we are  
22 somewhere in the neighborhood of between 850 and 900  
23 full time equivalents currently today. A lot of that  
24 was based on the operational cuts on hours of  
25 operation in various restaurants and bars.

1                   MR. MOSCATO:

2                   Okay. Thank you. Your entertainment  
3 tickets you stated have been anemic, the ticket sales.  
4 Is that total ticket sales or is that just for  
5 members?

6                   MR. FIGUERAS:

7                   Each of the entertainment venues that we  
8 had actually sold out. It was the membership  
9 redemptions ---

10                  MR. BOWMAN:

11                  Membership redemptions.

12                  MR. FIGUERAS:

13                  --- were surprisingly low for people that  
14 we thought would have bought a membership and did not  
15 redeem them for their free concert.

16                  MR. MOSCATO:

17                  I'm one of those crazy people --- and  
18 before I say that I got to tell you that I maybe heard  
19 of Sinbad, so apparently I'm really ---. My  
20 Goddaughter's telling me the truth. I'm really not as  
21 happening as I think I am. I don't know who Better  
22 than Ezra is, I don't even know who Ezra is. Frank  
23 and Dean, you know, I'm there. Do you track --- as I  
24 was saying, I'm one of those crazy people that will  
25 buy, you know, if football boosters are selling a

1 ticket and get ten percent off on pizza back home I'll  
2 buy the ticket to support the kids, but I never use  
3 the ten percent off. I'm just one of those crazy  
4 people who just throw it in a drawer. Do you track  
5 the number of memberships who are at your  
6 entertainment event, but don't use the discount?

7 MR. FIGUERAS:

8 I guess it would be strange. Why would  
9 someone that bought an entertainment ticket, not  
10 identify themselves in purchasing the ticket? If they  
11 don't identify themselves I would think that they're  
12 just a member of the general public.

13 MR. MOSCATO:

14 So, you don't track?

15 MR. FIGUERAS:

16 I wouldn't track that in particular.

17 MR. MOSCATO:

18 Okay. And my last question --- and I  
19 heard repeatedly free valet parking. What do you  
20 currently charge for valet parking?

21 MR. FIGUERAS:

22 Well, currently our valet is free. In  
23 the opening phase of our casino it was not envisioned  
24 to stay free and that we would yield to parking that  
25 we have going forward. And one of the ways that we

1 thought we would add value in order for a member is  
2 for that free benefit to continue for them.

3 MR. MOSCATO:

4 Okay.

5 MR. FIGUERAS:

6 We do believe, Commissioner, in the long  
7 run the success of the entire resort facility also is  
8 very highly dependent on how the non-gaming amenities  
9 perform. We want to improve how we found the resort  
10 before the casino started.

11 MR. MOSCATO:

12 Thank you.

13 CHAIRMAN:

14 Okay. Annmarie?

15 MS. KAISER:

16 No.

17 CHAIRMAN:

18 Any questions from ex officio members?  
19 Any presentation from Enforcement Counsel?

20 ATTORNEY STUART:

21 No, sir. We would just maintain our  
22 objection, however, it's at the discretion of the  
23 Board to either approve or deny the petition.

24 CHAIRMAN:

25 Okay. Thank you, everyone. I appreciate

1 your time and your effort. Ladies and gentlemen, this  
2 matter's now closed and this also concludes our public  
3 hearings. The Board will adjourn for about 15 minutes  
4 to meet in Executive Session and to hopefully discuss  
5 intelligently the matters this morning. We will  
6 reconvene for our regular public meeting in  
7 approximately 15 minutes at 12:30 p.m. Thank you all.

8 \* \* \* \* \*

9 HEARING CONCLUDED AT 12:15 P.M.

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CERTIFICATE

I hereby certify that the foregoing  
proceedings, hearing held before Chairman Ryan was  
reported by me on 11/20/2012 and that I Jennifer T.  
Alves read this transcript and that I attest that this  
transcript is a true and accurate record of the

1 proceeding.

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Jennifer T. Alvo  
Court Reporter

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