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THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION  
ADJUDICATORY HEARING

\*\*\*\*\*

IN THE MATTER OF: APPLICATION OF OURWAY REALTY, LLC  
FOR PHASE 1 SUITABILITY DETERMINATION FOR  
CATEGORY 2 GAMING LICENSE

\*\*\*\*\*

July 25, 2013, 10:11 a.m. - 5:45 p.m.  
BOSTON CONVENTION AND EXHIBITION CENTER  
415 Summer Street, Room 102-B  
Boston, Massachusetts 02210

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APPEARANCES:

ON BEHALF OF THE MASSACHUSETTS GAMING COMMISSION:

MASSACHUSETTS GAMING COMMISSION

Investigations and Enforcement Bureau

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3 Seaport West

4 155 Seaport Boulevard

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6 BY: Dean Richlin, Esq.

7 Kevin Conroy, Esq.

8 (617) 832-1000

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WITNESSES: JOHN GROGAN  
STANLEY FULTON  
ALFRED ROSS

EXHIBITS (Ourway Applicant):

Exhibit 1,.....Ourway Realty, LLC Governance and  
Internal Control Plan  
Exhibit 2,.....Manager's Appointment of  
President/Authority and Duties  
Exhibit 3,.....July 24, 2013 Foley Hoag, LLP  
Memorandum Regarding Request to Withdraw  
the Application of Timothy Peterson as  
Qualifier

EXHIBITS (Massachusetts Gaming Commission):

Exhibit 1,.....July 10, 2013 Massachusetts Gaming  
Commission Notice of Adjudicatory Proceeding  
Exhibit 2,.....July 3, 2013 Massachusetts Gaming  
Commission Memorandum Regarding Suitability  
Investigation For Ourway Realty, LLC,  
Applicant for a Category 2 Gaming License  
Exhibit 3,.....Ourway Realty, LLC, Executive  
Summary

- 1 EXHIBITS (Massachusetts Gaming Commission):
- 2 Exhibit 4,.....Investigative Report for the
- 3           Massachusetts Gaming Commission, Applicant
- 4           Ourway Realty, LLC for Category 2 Gaming
- 5           License
- 6 Exhibit 5,.....February 7, 2012 Gosule, Butkus &
- 7           Jesson, LLP Memorandum
- 8 Exhibit 6,.....Ourway Realty, LLC Manager's Action:
- 9           Appointment of Officers, July 17, 2013
- 10 Exhibit 7,.....June 25, 2008 Husted & Husted,
- 11           Certified Public Accountants Memorandum
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1 P R O C E E D I N G S :

2

3 CHAIRMAN CROSBY: We will now be  
4 starting on the suitability hearing. Because  
5 this is an adjudicatory hearing, we will be  
6 conducting this a little bit more formally than  
7 we do our other regular public meetings. So, I  
8 will be reading from a script for a good part of  
9 this just to make sure we are doing this right.

10 Good morning, this is Thursday, July  
11 25,2013. This is a Phase 1 suitability hearing  
12 before the Massachusetts Gaming Commission  
13 relative to the application of Ourway Realty,  
14 LLC. My name is Steve Crosby and I am the Chair  
15 of the Mass. Gaming Commission. I am joined  
16 today by Commissioners Cameron, McHugh, Zuniga  
17 and Stebbins.

18 The entire Commission will preside  
19 over the hearing and decision of this matter.  
20 This is an adjudicatory proceeding which is  
21 convened in accordance with 205 CMR 115.04,  
22 paragraph three and will be conducted pursuant  
23 to the formal rules outlined in 801 CMR 1.01,  
24 subject to the clarifications contained in 205

1 CMR 101.03 in chapter 30a of the General Laws.

2 Before we begin this process, I'd  
3 like to explain the procedural history that led  
4 us here, as well as the process that will govern  
5 this proceeding. Ourway Realty, LLC submitted a  
6 Phase 1 application to the Commission. The  
7 Commission then instructed our Investigations  
8 and Enforcement Bureau to commence an  
9 investigation into the suitability of the  
10 applicant to hold the gaming license in  
11 Massachusetts.

12 The Bureau has conducted such an  
13 investigation into the qualifications and  
14 suitability of the applicant and its qualifiers  
15 and generated an investigative report of its  
16 findings, which it submitted to the Commission.  
17 A copy of that investigative report was provided  
18 to the applicant by the Commission. Based on  
19 the report, the Commission has scheduled this  
20 proceeding on its own initiative.

21 I see that a number of lawyers are  
22 present with us here today on behalf both of the  
23 applicant and of the Bureau. Before I go  
24 further, I'd like to ask each of you to identify

1 yourselves and advise the Commission whom you  
2 represent. Why don't we start with the  
3 applicant side.

4 MR. RICHLIN: Thank you Mr. Chairman  
5 and members of the Commission. My name is Dean  
6 Richlin with me is Kevin Conroy also my  
7 colleague Jesse Alderman. All of us are from  
8 the firm Foley Hoag.

9 CHAIRMAN CROSBY: And you represent?

10 MR. RICHLIN: We represent the  
11 applicant and the qualifiers who are part of  
12 that application and still associated with  
13 Ourway.

14 CHAIRMAN CROSBY: And representing  
15 the Bureau?

16 MR. MACKEY: Yes. Good morning, Mr.  
17 Chairman, Commissioners. My name is David  
18 Mackey from the firm of Anderson Kreiger. With  
19 me is Steve Anderson also of Anderson Kreiger.  
20 And we will be representing the Investigations  
21 and Enforcement Bureau this morning.

22 CHAIRMAN CROSBY: Thank you. At the  
23 conclusion of my opening - Did we miss counsel?

24 MR. MICHAEL: I am Guy Michael with



1 Michael and Carroll from the Michael and Carroll  
2 IEB consulting team with Bob Carroll, Mike  
3 Bohrer and behind me is Bernard Murphy and  
4 Bessie Sacco.

5 CHAIRMAN CROSBY: Thank you. At the  
6 conclusion of my opening comments, we will  
7 address a preliminary matter involving the  
8 withdrawal of a qualifier to this applicant.  
9 Once that issue is addressed, this suitably  
10 proceeding will commence with a recitation and  
11 explanation of the investigative report by the  
12 Bureau.

13 We will ask that the Bureau outline  
14 the manner in which the investigation was  
15 conducted and outline the findings relative to  
16 each qualifier. The Bureau's presentation will  
17 largely be made by Director Karen Wells.

18 Director Wells is joined by the  
19 consultants from Michael and Carroll whom you've  
20 just met who assisted in the conduct of the  
21 investigation. We will allow the consultants to  
22 offer any clarification or answer any questions  
23 during Director Wells' presentation. Any  
24 Commissioner may ask a question of Director

1 Wells or a consultant at any point during or  
2 following her presentation.

3           At the conclusion of the Bureau's  
4 presentation, the applicant through its counsel  
5 will be afforded an opportunity to cross-examine  
6 Director Wells or a consultant relative to any  
7 information contained in the investigative  
8 report or to which they testified. The  
9 applicant may also reserve this right to cross-  
10 examine until the end of their own presentation,  
11 if they so choose.

12           Next, the applicant will be given an  
13 opportunity to present its case. The burden in  
14 this law is on the applicant to demonstrate by  
15 clear and convincing evidence both its  
16 affirmative qualification for licensure and the  
17 absence of any disqualification for licensure.

18           To that end, the applicant has  
19 already subjected itself to a thorough  
20 background investigation. The results of which  
21 are set out in the investigative report. Those  
22 findings will be considered in determining  
23 whether the burden of clear and convincing  
24 evidence has been satisfied.

1           For purposes of this proceeding  
2           however, the applicant may call any witnesses  
3           and present any other evidence it desires in an  
4           effort to satisfy its burden. The Commission  
5           has directed at a minimum John Grogan in Timothy  
6           Peterson present testimony as to the issues set  
7           forth in the notice of this hearing that was  
8           provided to the applicant.

9           I understand that counsel for the  
10          applicant has had an opportunity to meet with  
11          counsel for the Bureau and the Commission to  
12          discuss this proceeding.

13          The purpose in part was to clarify  
14          some of the issues that the applicant should  
15          address in its presentation. Those are  
16          primarily the issues that was set forth in the  
17          written notice of this hearing. Is that correct  
18          applicant that just has transpired?

19          MR. RICHLIN: That is correct, Mr.  
20          Chairman.

21          CHAIRMAN CROSBY: While those areas  
22          should be included in the applicant's  
23          presentation, it may certainly address any other  
24          issues it believes may be relevant to its

1 suitability determination. Similarly, the  
2 Commissioners may certainly inquire into any  
3 issue that is of interest to us.

4 At the conclusion of each witness's  
5 direct testimony, counsel for the Bureau will be  
6 provided an opportunity to conduct cross-  
7 examination of that witness. Then each  
8 Commissioner will be afforded an opportunity to  
9 ask questions of the witness.

10 Any Commissioner may however ask any  
11 question of any witness at any time during an  
12 examination or at the conclusion of the  
13 examinations. We will allow very limited  
14 redirect and recross of the witness if it is  
15 absolutely necessary at the end of the process.

16 Either party may raise any objective  
17 they desire at any time. However, the basis for  
18 all objections must be clearly stated.

19 Finally, at the conclusion of all of  
20 the evidence, the applicant will be provided an  
21 opportunity to make a closing statement, summing  
22 up why it believes it is suitable to be issued a  
23 gaming license and should be allowed to proceed  
24 to the Phase 2 portion of the application

1 process.

2 Before we begin, I understand that  
3 there are a number of premarked exhibits that  
4 have been provided to the applicant in advance;  
5 is that correct?

6 MR. RICHLIN: That's correct.

7 CHAIRMAN CROSBY: Are there any  
8 objection to the exhibits being marked and  
9 entered into evidence?

10 MR. RICHLIN: There are no  
11 objection.

12 MR. MACKEY: Mr. Chairman, we have  
13 the four exhibits that were marked previous  
14 today's hearing. And there is no objection from  
15 Mr. Richlin as I understand. We've added a  
16 fifth exhibit as well with Mr. Richlin's  
17 concurrence.

18 CHAIRMAN CROSBY: Those exhibits are  
19 briefly?

20 MR. MACKEY: The four exhibits are  
21 Exhibit 1 is the three-page notice of this  
22 hearing. Exhibit 2 is the cover letter dated  
23 July 3, 2013 from Director Wells to the  
24 Commission. Exhibit 3 is the nine-page

1 executive summary related to the qualifications  
2 of Ourway Realty, LLC. Exhibit 4 is a redacted  
3 copy of the 85-page investigative report  
4 prepared by the Bureau. And we have a fifth  
5 exhibit again with the agreement of counsel for  
6 the applicant, which is a February 7, 2012 fax  
7 letter to Mr. Fulton and Mr. Ross from a  
8 gentleman named James Oslin, O-S-L-I-N, CPA from  
9 Gosule, Butkus and Jesson, LLP. And I have  
10 additional copies of that document for the  
11 Commission.

12 CHAIRMAN CROSBY: I don't think  
13 we've seen that exhibit. The redacted version  
14 of the investigative report is available on our  
15 website for those of you who are interested.

16 MR. MACKEY: With respect to Exhibit  
17 Number 5 that I just handed out we made a minor  
18 redaction to make the redactions consistent with  
19 the redactions that are contained in the report  
20 itself.

21 CHAIRMAN CROSBY: Okay. Let us just  
22 take one second so we can read this. Is  
23 everybody all set with that? Commissioner  
24 Stebbins, you ready?

1                   COMMISSIONER ZUNIGA: I have a  
2 question relative to the exhibit numbers. Are  
3 the five exhibits that just outlined exhibits  
4 for the IEB?

5                   MR. MACKEY: Yes.

6                   COMMISSIONER ZUNIGA: And there are  
7 additional exhibits from the applicant?

8                   MR. MACKEY: As I understand it, the  
9 applicant has --

10                  CHAIRMAN CROSBY: There may be  
11 exhibits from the applicant.

12                  COMMISSIONER ZUNIGA: Okay.

13                  MR. RICHLIN: If I may address that,  
14 Mr. Chairman. Consistent with the condition  
15 that Counsel discussed in its prehearing  
16 conference, we have marked and presented  
17 exhibits as well. Initially we presented two  
18 exhibits. And I understand all of these  
19 processes are new. Regrettably, we have  
20 numbered them numerically. So, they also bear  
21 numbers one and two although they are marked  
22 Ourway/applicant exhibit. So, those have been  
23 premarked. There is a third exhibit, which I  
24 think were just about to be discussed relative

1 to Mr. Peterson.

2 CHAIRMAN CROSBY: And you will  
3 present those exhibits sometime later on.

4 MR. RICHLIN: Yes.

5 CHAIRMAN CROSBY: Anything else, Mr.  
6 Mackey?

7 MR. MACKEY: No.

8 CHAIRMAN CROSBY: Are there  
9 objections to these exhibits being marked and  
10 entered into evidence? I gather there are none?

11 MR. RICHLIN: There are not.

12 CHAIRMAN CROSBY: If either party  
13 plans on using any additional documents above  
14 and beyond the exhibits that you've already  
15 referred to, I would ask that it at least be  
16 noted for identification. If you were to use  
17 something to refresh a memory of a witness or  
18 something like that, at least be noted for  
19 identification if it is not ultimately  
20 introduced into evidence. Okay.

21 MR. RICHLIN: Mr. Chairman, if I  
22 might make inquiry. One of the concerns I know  
23 the Commission has as well is about  
24 confidentiality, particularly around proprietary



1 issues. One of the reasons that there are not  
2 more exhibits is because of that concern. I  
3 wonder if you could simply address whether  
4 documents that may be marked for identification  
5 only will become part of the public record?

6 CHAIRMAN CROSBY: Go ahead, can you  
7 speak to this?

8 MR. MACKEY: I can respond to that,  
9 Mr. Chairman and Commissioners. There are two  
10 or three documents that I shared with Mr.  
11 Richlin in advance of this morning's proceeding,  
12 which I do not intend to introduce into evidence  
13 but which I wanted just as a matter of courtesy  
14 to Mr. Richlin and his witnesses to have before  
15 them. So, that when I am referring in my  
16 questioning to a particular document they at  
17 least know what I am talking about.

18 It may refresh their recollection.  
19 It may just simply orient them in terms of what  
20 exactly it is I am questioning them about. I  
21 had not intended to mark those as exhibits or  
22 introduce them into evidence. If that's the  
23 Commission's preference, we can do that. I do  
24 want to remind for the confidentiality issues

1 that were raised by Mr. Richlin out of fairness  
2 to the applicant.

3 MR. RICHLIN: Mr. Chairman, if I  
4 could just be heard further on this issue.  
5 Typically, I think about marking exhibits for  
6 identification in order to protect the record  
7 should those exhibits be not admitted into  
8 evidence.

9 I think Mr. Mackey are talking about  
10 the use of exhibits or the use of documents in  
11 ways that don't reflect our wish to put them  
12 into the record. So, although I understand the  
13 Commission's interest in the interest of knowing  
14 what was discussed at a hearing, is to have  
15 those kinds of documents marked for  
16 identification.

17 I would ask that we not mark them  
18 for identification unless either side decides to  
19 move them into the record, simply because I  
20 think all of these issues are new. The public  
21 record consequences, unfortunately, there's not  
22 a big body of experience regarding that.

23 So, I would suggest that rather than  
24 mark the kind of documents that Mr. Mackey has

1 described, we simply allow counsel to use them.  
2 And then if either counsel on the other side  
3 wants to move them into the record that we then  
4 take up the issue.

5 MR. MACKEY: And I have no objection  
6 to that.

7 CHAIRMAN CROSBY: Okay. That's  
8 fine.

9 COMMISSIONER MCHUGH: May I ask a  
10 question? If we follow that procedure then does  
11 the record consist solely of the verbal  
12 references to the document or does the record  
13 include the document itself?

14 MR. RICHLIN: It includes only the  
15 verbal references, Commissioner McHugh. My  
16 experience would say that there might be  
17 evidentiary objections in a court of law to the  
18 use of a document that way --

19 COMMISSIONER MCHUGH: I understand  
20 that distinction. I just want that to be clear.  
21 That insofar as the Commission consideration is  
22 concerned, the verbal references alone are the  
23 uses to which the document may be put.

24 MR. RICHLIN: Correct.

1                   CHAIRMAN CROSBY: I just would  
2 remind people, not so much the lawyers, but the  
3 rest of the folks watching that this is an  
4 adjudicatory hearing not subject to the public  
5 record laws in the same way as our traditional  
6 public meetings are. As you say, this is an  
7 evolving area of law and there's a lot of  
8 uncertainty. But this is not subject to the  
9 customary open meeting constraints on the  
10 availability, public accessibility of documents.  
11 Okay. You all right with that?

12                   The Commission anticipates that its  
13 inquiry at the proceeding will be limited to the  
14 matters addressed in the report. In the event  
15 that a line of questioning conducted by the  
16 Commission or Bureau moves into an area that has  
17 not been included in the reports but that is  
18 included in part of the investigative file and  
19 is material to the suitability determination,  
20 the applicant may request a recess in the  
21 proceedings so as to review the issue.

22                   This request would be an unlikely  
23 happenstance however, as the Commission  
24 anticipates addressing solely those issues

1 covered in the investigative report. No final  
2 decisions will be made here today. That's  
3 something important for everybody to understand.  
4 The matter will be taken under advisement at the  
5 conclusion of the proceeding by the Commission.  
6 And after private deliberations, a written  
7 decision will be issued.

8 If at any point during the  
9 Commission's deliberations it determines that  
10 further testimony or documentary evidence is  
11 desirable, it reserves the right to ask the  
12 applicant to provide such evidence prior to a  
13 suitability decision being made.

14 We will now swear all of the  
15 witnesses in. Anyone who will be testifying at  
16 this proceeding, please stand and raise your  
17 right hand.

18  
19 WITNESSES, SWORN

20  
21 CHAIRMAN CROSBY: Thank you. All have  
22 responded in the affirmative. Let's now turn to  
23 the matter involving the withdrawal of the  
24 qualifier.

1           The Commission has before it the  
2 petition filed by the applicant for the  
3 withdrawal of qualifier Peterson. Generally,  
4 the regulations allow for withdrawal request to  
5 be allowed as a matter of course. However, once  
6 a hearing like this suitability proceeding has  
7 been scheduled, a qualifier by our rules may  
8 only withdraw with the approval of the  
9 Commission upon the finding of good cause. I'd  
10 like to ask the applicant's counsel to present  
11 and address this petition.

12           MR. RICHLIN: Thank you, Mr.  
13 Chairman. As you know, pursuant to 205 CMR  
14 111.05, we have that is Ourway submitted a  
15 notice of request to withdraw regarding Timothy  
16 Peterson. We think and believe and hope you  
17 agree that there is good cause shown for  
18 approving that withdrawal.

19           As laid out in a letter that I sent  
20 to the Commission yesterday, which has been at  
21 the direction of the attorneys for the  
22 Commission, been marked as an exhibit. That  
23 exhibit has been given to the stenographer and  
24 copies have also been given to Counsel. I

1 believe you have a copy of the letter. The  
2 letter that has been marked Ourway/applicant's  
3 Exhibit 3. And in that letter, I describe the  
4 events that have occurred over the last 48  
5 hours.

6 In particular, and not included in  
7 the letter but it's just additional information,  
8 I met with Mr. Peterson on Monday the 22nd to  
9 prepare for this hearing in furtherance of the  
10 notice of hearing that the Commission issued  
11 indicating that it wanted to hear from Mr.  
12 Peterson. When that session was over, I had  
13 every expectation that he would be appearing  
14 today.

15 About 24 hours later on Tuesday the  
16 23rd, I received a call from an individual who  
17 identified himself as Mr. Peterson's lawyer and  
18 indicated that Mr. Peterson was resigning his  
19 position. And also further said that if Ourway  
20 believed there was value in retaining him as an  
21 employee, that he would remain only if he  
22 received a contract for a one-year term.

23 I reported this information to Mr.  
24 Grogan. There was some conversations within

1 Ourway about this request.

2 I will tell you and as I indicated  
3 in my letter, it was apparent to me there was  
4 discomfort about considering any contract for a  
5 term of providing any additional benefit to Mr.  
6 Peterson on the eve of this hearing.

7 Before receiving this, there was no  
8 consideration, certainly no discussion with Mr.  
9 Peterson that his employment would not continue.  
10 So, this came as a surprise.

11 But the decision was made by Ourway  
12 and I was asked to communicate to Counsel that  
13 there would be no contract. That we will accept  
14 his resignation if that's what he was doing, but  
15 that we still expected him to appear at this  
16 hearing. I reported that conversation to  
17 Counsel for the Commission soon after that  
18 conversation.

19 The chronology is then detailed  
20 further in my letter but there was a request by  
21 Commission's attorney to speak directly to  
22 counsel for Mr. Peterson. I certainly had no  
23 objection. He did ask me to speak to him in  
24 advance of that to see if I could persuade



1 again, Mr. Peterson to a here today. I could  
2 not.

3           Counsel offered to speak to  
4 Commission attorneys. I know that they did have  
5 a conversation with him. And as indicated in my  
6 letter, I did receive a voicemail at the end of  
7 the day on Tuesday from Counsel confirming his  
8 conversation with Commission attorneys. And  
9 further confirming that he would advise his  
10 client not to appear today.

11           That is by way of background to the  
12 events. I don't see Mr. Peterson here today to  
13 speak to the petition request for withdrawal.  
14 In the absence of him making that request to  
15 this Commission, Ourway thought it was  
16 imperative that it make the request.

17           And the basis for that is simply  
18 this. It is Ourway's understanding that Mr.  
19 Peterson stood as a qualifier based on the title  
20 he bore. And he bore that title as a result of  
21 his employment with Ourway. The title he bore  
22 was CFO, chief financial officer. As you know  
23 from the review of the investigative report,  
24 although he bore that title, he readily

1 acknowledged that that was not a role that he  
2 discharged to the organization.

3           And evident in the report are  
4 subsidiary facts, which bear this out.  
5 Primarily, that he did not feel it was his place  
6 to have any direct reporting relationship with  
7 the members of Ourway, which would be common for  
8 a CFO to have a direct channel of communication  
9 with members of the board of a corporation or  
10 members of an LLC.

11           So, upon his resignation and the  
12 cessation of his employment, it seems to Ourway  
13 that there is now no basis for him to serve as a  
14 qualifier on this application. And given that  
15 he is not here to offer testimony as requested  
16 by the Commission or to offer testimony in  
17 support of his motion of withdrawal, those  
18 reasons in addition we think constitute good  
19 cause to approve this withdrawal and remove his  
20 name from the application.

21           CHAIRMAN CROSBY: Commissioners?

22           COMMISSIONER CAMERON: Mr. Richlin,  
23 I find that problematic. I think that this  
24 qualifier was the only person left as a

1     qualifier with firsthand knowledge of the  
2     activities at the track.  And that's critical  
3     information for us to move forward.  I find that  
4     to be problematic that he's not here and there  
5     is really no further explanation as to why he is  
6     not here.

7                     MR. RICHLIN:  I understand the  
8     position that you've articulated.  And I want to  
9     assure you in the strongest terms I can use that  
10    it is Ourway's preference and it has been  
11    Ourway's preference and it was Ourway's intent  
12    that he be here.  So, that's the first point.  
13    The second point --

14                    CHAIRMAN CROSBY:  If you had agreed  
15    to hire him for a year, he would be here.

16                    MR. RICHLIN:  That's right.  And we  
17    would need to disclose to you the circumstances  
18    under which we entered into that contract, which  
19    frankly again, I have no basis to believe to  
20    know what his motivations or counsel's  
21    motivations were in requesting that kind of job  
22    security.

23                    But given the timing and the  
24    circumstances in the interest of objecting for

1 you and giving meaning to the words that this is  
2 a new organization in terms of its internal  
3 controls and governance. A new organization in  
4 terms of its integrity to be providing a benefit  
5 to a critical witness that you want to see on  
6 the eve of trial is frankly seen as distasteful  
7 to the organization and would undermine exactly  
8 what the organization has been working to  
9 achieve since April. That's point one.

10           The second point about the issue of  
11 speaking to those past events, which again I  
12 appreciate we're prepared to do that as best we  
13 can, I do note that in the Investigative  
14 Bureau's Commission report that one of their  
15 concerns that they expressed was the fact that  
16 some people who have an involvement with some  
17 past investigations and events that will be the  
18 subject of today's hearings had an ongoing role.

19           That was expressed not as a positive  
20 thing as we read it, but as a negative thing, in  
21 other words, continuing ties to the way things  
22 were done. As I mentioned, it was clear that  
23 Mr. Peterson was not acting as a CFO. But was  
24 also communicated to him that we will disclose

1 this because he got a copy of the unredacted  
2 reports. So, this is not news to him, is that  
3 he would not have been considered for a CFO  
4 position on the assumption that the gaming  
5 license is granted.

6 So, we can speak to those events.  
7 But the fact that -- And he could have spoken to  
8 them as well whether he was an employee or not.  
9 But the fact that he's not an employee, we think  
10 means there is no basis to consider him being a  
11 qualifier.

12 The issue of his testimony, his  
13 appearance frankly informs the decisions about  
14 whether he should be a qualifier. But it is a  
15 separate issue. It is a separate issue. The  
16 key issue about qualifications is whether he is  
17 still employed. And by any stretch, this was a  
18 voluntary and sudden decision on his part.

19 COMMISSIONER MCHUGH: I understand  
20 your concern about the appearance of bias if the  
21 contract were granted in accordance with his  
22 request. At the same time, he is potentially a  
23 key link in the discovery of whether this truly  
24 is a new organization. He is a person at the

1 apex of a number of historical facts and strands  
2 of behavior.

3           And it seems to me that his  
4 testimony is critical. And it seems to me that  
5 the determination of this Commission as to  
6 whether he personally is qualified, apart from  
7 the qualifications of Ourway, is particularly  
8 important under the circumstances you've just  
9 described.

10           One of the reasons that that  
11 permissive withdrawal only roll was inserted  
12 into the regs. was to avoid precisely this kind  
13 of a situation with respect both to entities and  
14 individuals. Mr. Peterson has been in this  
15 regulated industry in one of its incarnations or  
16 others for years.

17           And it seems to me, as a single  
18 Commissioner, important that the Commission  
19 follow through on this. And the only way that  
20 it can in precisely the way the regulations  
21 envision, and that is through a statement about  
22 qualifications of the individual, as I said,  
23 regardless of what the ultimate determination is  
24 regarding the entity.

1           So, I say that so that you have an  
2 opportunity to respond to that. I'm thinking  
3 out loud a bit with you. And it is of course  
4 only the statement of one Commissioner.

5           MR. RICHLIN: I appreciate that  
6 Commissioner. And I understand the fact that an  
7 option before you is to keep him in that  
8 position so that you can issue such a statement.  
9 And if that is the decision of the Commission,  
10 although that is not our favored path, then we  
11 would simply request that there be a separate  
12 ruling relative to his suitability apart from  
13 Ourway's and the other qualifiers.

14           Once he hired separate counsel and  
15 once he was no longer an employee, as a matter  
16 of fact at law, Ourway lost the ability to  
17 produce him as a witness. So, that's where we  
18 are.

19           And while I understand the interest  
20 and the importance of him serving as a link, I  
21 do want to say that you are about to hear from  
22 Director Wells you know this from the very  
23 comprehensive report that you have before that  
24 it's not as though there is not evidence already

1 on the record and evidence that supports what's  
2 on the record. He was interviewed under oath.  
3 The facts and circumstances that he spoke to,  
4 others were questioned about, documents were  
5 gathered and reviewed. So, there is a record.

6 But I understand that it would be  
7 important, and as I say, our preference that he  
8 was here so you could gauge his credibility and  
9 assess that in connection with some of the  
10 answers that he gave. That would be our - But  
11 that still is our preference that his  
12 application to be withdrawn but I do understand  
13 the option. And if that's the option of this  
14 Commission pursues, I do request that a separate  
15 decision be made relative to his suitability.

16 CHAIRMAN CROSBY: Other comments or  
17 questions? Do our counsel have anything they  
18 want to add to this conversation?

19 MR. MACKEY: Mr. Chairman, I don't  
20 think the Bureau has a specific position with  
21 respect to the petition to withdraw. Though I  
22 think Director Wells would like to speak to the  
23 effect of the attempt to withdraw on the  
24 potential suitability of the applicant.



1 MS. WELLS: Thank you. Good  
2 morning, Mr. Chairman and members of the  
3 Commission. Before beginning my summary  
4 presentation of report findings, I do think it's  
5 appropriate as the Director of the IEB that I  
6 comment about the abrupt withdrawal of Timothy  
7 Peterson from the application.

8 I find it extremely troubling that  
9 Peterson is not here present this morning,  
10 despite the directive from the Commission that  
11 be here to answer questions.

12 As an investigator that raises  
13 grievous concerns in my mind as to the reasoning  
14 behind the abrupt departure 48 hours before the  
15 hearing. It is certainly appropriate for the  
16 IEB and the Commission to make negative  
17 inferences as a result of this change in  
18 circumstance.

19 I am particularly concerned that he  
20 is not present to address questions regarding  
21 the money room practices of Gary Piontkowski,  
22 including question regarding who it knew what  
23 when and when they knew it.

24 For example, as detailed in the

1 report, there is some question as to Mr.  
2 Fulton's knowledge of the practice. And  
3 Peterson would be an important witness as to the  
4 letters from the outside auditor. As the  
5 Commission is aware, the IEB did not recommend  
6 an unconditional finding of suitability.

7 The applicant was required to come  
8 in and participate in this adjudicatory hearing.  
9 The basis for this hearing is the investigative  
10 report concerns over the business practice of  
11 the applicant, and now the CFO is not present to  
12 address those concerns.

13 This latest development calls into  
14 question what is going on behind the scenes here  
15 particularly in light of similarly abrupt  
16 departure of Gary Piontkowski from the  
17 application. As we have stated numerous times  
18 in public meetings, determination of suitability  
19 is an ongoing process. And obviously, this  
20 additional development should impact the  
21 ultimate finding. Thank you.

22 CHAIRMAN CROSBY: Thank you. Any  
23 other comments?

24 MR. RICHLIN: If I could just

1 briefly respond to some of the comments that  
2 Director Wells made. Again, we understand that  
3 this is unsettling to the Commission and the  
4 IEB. It is unsettling to the applicant.

5           As soon as we heard from counsel,  
6 literally within minutes the information was  
7 communicated to counsel of both the Commission  
8 and the IEB. At the same time, an offer was  
9 made to address any questions at any time  
10 between then and now. And that offer included  
11 me and Mr. Grogan so that any questions that the  
12 IEB wanted to have answered in advance of today,  
13 and we understand and are prepared to address  
14 any questions you have in the context of the  
15 application about his departure. Mr. Grogan  
16 will speak to that, and welcomes the opportunity  
17 to do so.

18           I simply make this point so that to  
19 underscore that from Ourway's perspective given  
20 this sudden change, it did everything it could  
21 to address it in a responsible way and to try to  
22 deal with the absence that would be caused by  
23 his nonappearance. We did everything we could,  
24 short of agreeing to a contract for a term under

1 the alternative that he was going to resign two  
2 days before this hearing, short of that.

3 And as to that Mr. Grogan is very  
4 ready to testify as to why that was not seen in  
5 his view or of those with whom he consulted as  
6 an appropriate choice or a real choice. So, I  
7 do want to speak that.

8 And the second thing I do want to  
9 say is the issue of an inference I understand  
10 that as well. Certainly at this point, Mr.  
11 Peterson is not an agent or a representative of  
12 Ourway. As soon as he resigned, he ceased  
13 becoming an agent. And whether in fact you  
14 might find him to be the CFO, other than that he  
15 bore the title, so that there is some  
16 consequence for what he says as it affects  
17 Ourway, that doesn't exist anymore.

18 And unless you find, and I dare say  
19 you won't find any basis to conclude that Ourway  
20 was responsible for his nonappearance. And I  
21 think there is no basis from his nonappearance  
22 alone to infer anything adverse to Ourway.

23 Obviously, you will hear the  
24 evidence, you'll consider it. But I do believe

1 that's what the evidence will show. And under  
2 those circumstances, an inference may be drawn  
3 as to Mr. Peterson but I do not believe an  
4 inference can be drawn as to Ourway.

5 COMMISSIONER MCHUGH: Isn't his  
6 termination of his agency relationship itself  
7 the act of an agent? It's metaphysical perhaps,  
8 but isn't that so?

9 MR. RICHLIN: I would suggest not.  
10 I would suggest that that is a personal and not  
11 a representative act at that moment.

12 COMMISSIONER MCHUGH: Does that  
13 depend on the agent's motivation?

14 MR. RICHLIN: It may but I think  
15 that even assuming a motivation that was in the  
16 nature of a whistleblower motivation, that given  
17 some of the other ways to communicate that I  
18 think the use of a resignation would not  
19 constitute admission.

20 And even in a whistleblower, and I  
21 don't think that a whistleblower's communication  
22 is then chargeable to the entity for whom he  
23 works. In other words, that may be evidence of  
24 wrongdoing but it's not as though it's an

1 admission of wrongdoing by the applicant.

2 COMMISSIONER MCHUGH: I don't want  
3 to speculate on motivations.

4 MR. RICHLIN: Nor can we.

5 COMMISSIONER MCHUGH: Because if you  
6 start down that path, there's a whole bunch of  
7 them there that one can think about.

8 CHAIRMAN CROSBY: Other  
9 Commissioners?

10 COMMISSIONER ZUNIGA: I have a  
11 question perhaps also for us or for our counsel.  
12 Do we need to resolve this request before we can  
13 continue the proceedings?

14 CHAIRMAN CROSBY: Our expectation is  
15 that we will not. That we will take it under  
16 advisement and deal with it at the same time as  
17 we deal with suitability.

18 COMMISSIONER MCHUGH: Our  
19 expectation for this is that?

20 CHAIRMAN CROSBY: Is that we would  
21 not make this decision right at the moment.  
22 Nothing cast in stone about that if you feel  
23 differently, we can talk about that.

24 But in talking with counsel, we had

1 established that sort of as a presumption that  
2 we would not deliberate on this and decide it  
3 now. We would roll it into the deliberation on  
4 suitability. But I am totally happy to discuss  
5 that.

6           There are two issues. One is the  
7 permissibility of the withdrawal of Mr. Peterson  
8 and the suitability of Ourway. And we want to  
9 try to keep them separate as much as we can,  
10 although clearly they connect.

11           But if Mr. Grogan has comments about  
12 the withdrawal of Mr. Peterson that lies in the  
13 wherefores, the whys, what his reaction were,  
14 what Ourway's are, it does seem to me that  
15 that's an appropriate testimony to hear now. Do  
16 you disagree with that, Judge?

17           COMMISSIONER MCHUGH: No, that's  
18 fine. I as one Commissioner am not convinced  
19 that the two are separate, although as I said to  
20 Mr. Richlin, I think we have to make separate  
21 ruling.

22           The ruling on the withdrawal does  
23 not necessarily create a force that drives the  
24 ruling on Ourway. But I don't agree that they

1 necessarily are two separate things. I just  
2 want to be precise about that.

3 CHAIRMAN CROSBY: I agree. If I  
4 said something different, I totally agree. I  
5 accept that characterization. So, Mr.  
6 Grogan, do you want to speak to this, to the  
7 issue of the withdrawal and its relationship to  
8 everything else that's going on here?

9 MR. GROGAN: Thank you, Chairman  
10 Crosby, Commissioners, good morning. At some  
11 level, it seems to be a bit odd to be having a  
12 discussion about the resignation of a CFO having  
13 counsel and being the president of the company.  
14 And the fact that we talked about that the  
15 reason for that is Mr. Peterson resigned through  
16 his counsel through our counsel. So, we in fact  
17 had finished a staff meeting, I believe, on  
18 Tuesday and at which point I got a call from Mr.  
19 Richlin explaining that Mr. Peterson had  
20 resigned.

21 CHAIRMAN CROSBY: Was he at your  
22 staff meeting?

23 MR. GROGAN: He was not at our staff  
24 meeting. So, from the time -- He had been on



1 vacation last week. -- met with Mr. Richlin  
2 Monday morning. And I had not seen him since  
3 that time.

4           So, the first thing that I heard was  
5 he was resigning when I got the call from  
6 counsel. Needless to say, we were -- I was  
7 greatly surprised. Then I had conversation --  
8 In fact, in that meeting our Chairman Al Ross  
9 was there, had a conversation with Al about this  
10 as it was described to me he was resigning.  
11 However, that if there were a one-year  
12 employment agreement, he would consider staying.

13           It felt at the time coercive. And I  
14 would point out, if we had done that that would  
15 be the only employment agreement in the company.  
16 I do not have one. And on its face it would  
17 appear wrong. As you know, and as counsel  
18 testified, in terms of what Mr. Peterson's role  
19 with the company and what we saw going forward  
20 was clear.

21           And while seemingly odd from a  
22 timing perspective, again, you can infer no  
23 inference that there was something else that was  
24 known. It was a total surprise. We expected

1 Mr. Peterson to come talk about what was in the  
2 report. Again, I think earlier Commissioner you  
3 had a question about was could he testify as to  
4 the change that is going on. I hope and I will  
5 later talk about what is happening and what we  
6 are doing and the changes that are being made.  
7 And I don't think that his departure, his choice  
8 to leave reflects on that. I do understand and  
9 appreciate how it looks, but it is stunning,  
10 surprising.

11 CHAIRMAN CROSBY: Okay.

12 MR. MACKEY: Mr. Chairman, if I  
13 might, listening to conversation and  
14 understanding that Mr. Peterson's absence here  
15 today is something of a hole, and I have not  
16 discussed this with the applicant, but one  
17 opportunity here might be his sworn -- we have a  
18 sworn interview for him, which has not been  
19 marked into evidence, and there may be some  
20 confidentiality issues associated with that.

21 But if it were the Commission's  
22 desire, we could have a discussion with the  
23 applicant and the applicant's counsel about the  
24 introduction into evidence of pieces of that

1 sworn testimony if that would be helpful.  
2 Presumably, with reserving a right to at least  
3 attempt to bring him back and to answer  
4 questions if the Commission had further  
5 questions upon reviewing that testimony.

6 CHAIRMAN CROSBY: We have access to  
7 that. That is part of the investigative file.  
8 And it is something that we may bring into  
9 consideration in our deliberations. If so, we  
10 will make it clear that that was a part of our  
11 deliberations, not just the investigative  
12 report.

13 I don't know that it's necessary to  
14 bring it, put it on the record now as an  
15 exhibit. We have access to it. We know about  
16 it. We can use it if we feel we want to. I  
17 don't know that it adds anything to be added as  
18 an exhibit at the moment. Again, I'd defer to  
19 others if you disagree.

20 COMMISSIONER CAMERON: It's  
21 precisely that interview that I had many, many  
22 questions about. There were many areas that  
23 were not fully explored as far as his answers to  
24 questions. So again, I get back to why he's not

1 here and you can't give us that answer why he's  
2 not here. And that's critical to what we are  
3 doing here.

4 COMMISSIONER MCHUGH: I think that  
5 it should, Mr. Chairman, be marked as an exhibit  
6 under all of the circumstances after  
7 consultation with counsel.

8 I don't think, as one Commissioner  
9 speaking, that it's a substitute for his  
10 appearance, but I do think it's an important  
11 piece of material for the Commission's  
12 consideration in making its ultimate judgment.

13 So, I would request through you if  
14 it's consistent with the wishes of the  
15 Commission that Counsel Mackey engage in  
16 conversation with Counsel Richlin and come up  
17 with some agreed-upon mechanism for marking that  
18 as an exhibit so that it is clearly part of the  
19 record of these proceedings.

20 CHAIRMAN CROSBY: Just for my  
21 edification, what is the difference between this  
22 being an exhibit and its being brought into our  
23 conversations and made part of the record  
24 subsequent to this?

1                   COMMISSIONER MCHUGH: That if we  
2 bring something into our conversations later, if  
3 indeed we can do that, and under the  
4 circumstances we do it, we need to give people  
5 notice that we've done it so that they have an  
6 opportunity either to object to our doing it or  
7 an opportunity to respond to things in it that  
8 they think need response. And if we do it in  
9 this fashion upfront everybody's on notice as to  
10 what it is.

11                   CHAIRMAN CROSBY: So, Mr. Mackey and  
12 Counsel would discuss it today you're talking  
13 about?

14                   COMMISSIONER MCHUGH: Would discuss  
15 it today and then the questions could be  
16 addressed if they wanted to during the course of  
17 the proceedings. If they wanted to defer  
18 discussion until later, they could do that as  
19 well.

20                   I would request that they take the  
21 first crack at that and that it be formally  
22 marked as an exhibit.

23                   CHAIRMAN CROSBY: That's fine with  
24 me. Is everybody okay with that?

1                   We'll probably have a lunch break  
2 where maybe that could be discussed or you can  
3 deputize a team or however you want to do that.  
4 Then once that's resolved and as soon as it is  
5 in, whether that's today or whenever, let us  
6 know what the implications of that are and how  
7 it works.

8                   MR. RICHLIN: Mr. Chairman, first of  
9 all, I just want to let you know that that is  
10 completely acceptable to the applicant.

11                   And the second thing, I would also  
12 simply also remind you that the Commission does  
13 have subpoena power. And while I don't know  
14 whether Mr. Peterson is within subpoena power  
15 you do have it. And it seems to me that you  
16 could make a determination to hold a session,  
17 see if he appears and subject him to questions  
18 you have.

19                   CHAIRMAN CROSBY: We're aware of  
20 that. Other --

21                   COMMISSIONER MCHUGH: He lives in  
22 Rhode Island, doesn't he?

23                   MR. RICHLIN: That is our  
24 information.

1 COMMISSIONER MCHUGH: Right.

2 CHAIRMAN CROSBY: Is there anything  
3 else about the issue of the withdrawal of Mr.  
4 Peterson? Commissioner Stebbins.

5 COMMISSIONER STEBBINS: Just, I  
6 guess, one question for clarification. In the  
7 letter, Counsel, that you marked as your own  
8 applicant Exhibit 3, he would remain only if he  
9 received a contract of employment for a one-year  
10 term. Is that a contract of employment in the  
11 position that he currently held? Is that  
12 detailed that way?

13 MR. RICHLIN: That was not detailed.  
14 So, I am reporting what I heard. I did not ask  
15 questions as to what position that would be a  
16 contract for. My own impression was that that  
17 was an open issue, but nevertheless what was  
18 significant to me and I think to Ourway was the  
19 contract for a term.

20 CHAIRMAN CROSBY: Okay. If we do  
21 get this in as an exhibit, we can come back to  
22 this topic. It's clearly directly relevant to  
23 the suitability issue even more probably than to  
24 the issue of the withdrawal. So, it's

1 appropriate to bring this up later on in the  
2 discussion once we get it determined whether or  
3 not it's an exhibit.

4 If there are no other preliminary  
5 issues or objections for proceeding from  
6 applicant's counsel, I will ask Attorney Mackey  
7 to begin the Bureau's presentation on the  
8 suitability of Ourway Realty, LLC to be an  
9 applicant for a license in Massachusetts.

10 MR. MACKEY: Yes, Sir. Thank you.  
11 Mr. Chairman and members of the Commission, good  
12 morning again. At this point without any  
13 further ado, I am going to ask Director Wells,  
14 the Director of the Investigations and  
15 Enforcement Bureau to summarize for the  
16 Commission the June 18, 2013 suitability report  
17 on Ourway Realty. And she can proceed.

18 MS. WELLS: Thank you much. Good  
19 morning, again. As a preliminary matter, I just  
20 want to thank the consulting firm of Michael and  
21 Carroll for all of their hard work on this  
22 project. Guy Michael and Robert Carroll are the  
23 principles for that entity. And they have done  
24 outstanding work. And I'd like to commend them



1 on both their integrity and their performance.

2 As the Commission is aware, this  
3 investigation is conducted in conjunction with  
4 the members of the Massachusetts State Police  
5 assigned to the Investigations and Enforcement  
6 Bureau. We are very fortunate to have a group  
7 of first-rate troopers assigned to the office  
8 with extensive investigative experience who did  
9 an outstanding job on this and other  
10 investigations. And I would like to publicly  
11 thank them as well.

12 I'd like to refer back to our prior  
13 meetings where I have in fact publicly gone over  
14 the investigative process that the consultants  
15 and the IEB have undergone for all of these  
16 applicants. Because it was such an extensive  
17 presentation, I won't reiterate the details of  
18 the process but I'll just refer back to the  
19 presentation I've done before. And that the  
20 investigation in this case into this applicant  
21 followed that same procedure.

22 Ourway Realty, LLC has applied for a  
23 Category 2, a slots license. The applicant has  
24 plans to construct a slots parlor at Plainridge

1 Racecourse. That's located at 301 Washington  
2 Street, Plainville, Massachusetts. The  
3 investigation confirmed that the company does  
4 hold the title to the property.

5 Ourway was established as a domestic  
6 Massachusetts limited liability company in  
7 February 2000 for the purpose of acquiring  
8 ownership of the Plainridge Racecourse in  
9 Plainville, Mass. I will note that Plainville  
10 is the only remaining harness racetrack in the  
11 Commonwealth.

12 Ourway is owned by a small group of  
13 investors, with the two largest investors being  
14 Stanley Fulton and Alfred Ross. Three  
15 additional owners have also been deemed  
16 qualifiers. That would be George Chimento,  
17 Richard Tuch and Fred Chanowski. The remaining  
18 owners were not deemed qualifiers based upon  
19 their very small ownership interests. None of  
20 the owners have been actively involved in the  
21 day-to-day management of applicant's racetrack  
22 operation. For the most part, they have been  
23 passive investors.

24 I was recently notified that Mr.

1 Fulton will be the new CEO. This change took  
2 place after the completion of the report. And I  
3 expect that will be an element of the  
4 applicant's presentation.

5 As of submission of the report, the  
6 applicant did not identify key operational  
7 employees who will be responsible for the  
8 proposed facility. The applicant advises that  
9 it's conducting searches for experienced gaming  
10 management.

11 I just want to give the Commission a  
12 little bit of financial history of the  
13 applicant. The investigation revealed that  
14 Ourway has had steadily declining revenues and  
15 negative earnings and negative cash flow from  
16 operations. Ourway depends on cash infusions  
17 from its members to satisfy its obligations and  
18 thereafter it is unable to repay those  
19 infusions, which are considered to be loans for  
20 which neither principal nor interest is paid.

21 It is recognized, however, that  
22 declining revenues has been the fate of all  
23 racetracks in the Commonwealth. The financial  
24 viability of racetracks within the Commonwealth

1 is in part an impetus for the passage of the  
2 Expanded Gaming Act.

3 In terms of financial resources, the  
4 applicant Ourway raises capital borrows funds  
5 from its members and a related company Anchor  
6 Partners. It has little to no third-party  
7 borrowings from financial institutions such as  
8 banks or other licensed lending institutions.

9 Fulton and Ross are the sole members  
10 of Anchor Partners, which is the applicant's  
11 second largest financial source. Fulton is  
12 currently the applicant's largest financial  
13 source. In addition to having made  
14 contributions of capital, Fulton has lent and  
15 continues to lend significant amounts to Ourway.

16 Aside from the amount lent to Ourway  
17 by Fulton to date, Fulton has committed in  
18 writing to lend that which is needed to fund the  
19 construction of Ourway's proposed Category 2  
20 gaming facility.

21 To date, Fulton has provided the  
22 financing necessary for construction of the  
23 parking garage at the Plainville Racecourse  
24 site. Fulton is a wealthy man having adequate

1 assets to fund this project.

2 Ross also has significant assets and  
3 is in a position to make additional  
4 contributions if required. If there are any new  
5 investors, vetting will be required.

6 The projected estimate for this  
7 project is about \$160 million total. It's  
8 broken down into \$125 million for construction,  
9 \$25 million for licensing fees and \$10 million  
10 for working capital and pre-operating expenses.

11 Next, I'd like to give the  
12 Commission just an overview of the applicant's  
13 background. In March of 1999, Plainridge opened  
14 as a harness horse racing track in  
15 Massachusetts. Currently, live harness horse  
16 racing is offered from April through December  
17 each year.

18 In addition to live harness horse  
19 racing, Plainridge provides pari-mutuel betting  
20 on live simulcasting from various domestic and  
21 international racetracks offering harness,  
22 thoroughbred and greyhound racing events.

23 Ourway is currently the sole owner  
24 and operator of Plainridge and has held its

1 Norfolk County harness racing license to operate  
2 Plainridge since 2004. This license was issued  
3 by the Massachusetts Racing Commission, which  
4 has now been operationally merged into the  
5 Massachusetts Gaming Commission.

6 The investigation also confirmed  
7 that the former licensee and operator of  
8 Plainridge was the Plainville Racing Company,  
9 LLC, which held the license from 1999 through  
10 2003. PRC as it is known is currently inactive.

11 Ross was one of the initial  
12 investors in PRC along with George Chimento,  
13 Richard Tuch and Fred Chanowski, investors who  
14 have also been deemed individual qualifies for  
15 this applicant. PRC was formed by Gary  
16 Piontkowski in 1998 to apply for the Norfolk  
17 County harness racing license to operate  
18 Plainridge.

19 Ross then sought out Fulton to  
20 solicit his interest in the venture around 1999  
21 to 2000. Fulton agreed on behalf of Anchor  
22 Gaming to speculatively invest in anticipation  
23 of Massachusetts legalizing gaming at some point  
24 in the future.

1           Anchor Partners was formed in March  
2           2000 to provide financing to Ourway to purchase  
3           the property. PRC leased the racetrack from  
4           Ourway and held the racing license to operate  
5           Plainridge through the 2003 racing season. In  
6           2004, Ourway applied for and was granted the  
7           license for the Norfolk County harness racing  
8           license to operate Plainridge, which continues  
9           to operate up until the present time.

10           Mr. Fulton is also the founder and  
11           owner of Anchor Coin, which subsequently was  
12           acquired by Anchor Gaming, a publicly traded  
13           company also funded by Fulton. Anchor Gaming  
14           later acquired by IGT -- was later acquired by  
15           IGT. Fulton has since sold all of his interest  
16           in Anchor Gaming and no longer has any  
17           affiliation with IGT.

18           Fulton is also the owner of Sunland  
19           Park Racetrack and Casino in Sunland Park, New  
20           Mexico. Fulton acquired ownership of Sunland  
21           and is the sole beneficial holder of the Sunland  
22           ownership interest.

23           Mr. Ross has been involved in the  
24           pari-mutuel racing industry since 1941 when he

1 began working for his uncle who purchased and  
2 reopened Taunton Greyhound Park, at that time a  
3 defunct nonfunctional racetrack.

4 Ross eventually became an owner and  
5 operator of three dog tracks in Colorado, a dog  
6 and horse track in South Dakota, and held an  
7 ownership interest and operated Lincoln Downs in  
8 Rhode Island. Ross has since sold all of his  
9 interest in those racetracks having done so over  
10 25 years ago in 1989. Ourway is currently the  
11 only racetrack in which Ross presently maintains  
12 any ownership interest.

13 I'd like to note that from  
14 approximately 2004 through April 3, 2013 the  
15 management and control of Ourway operations was  
16 vested exclusively in Gary Piontkowski.  
17 Piontkowski was for the last several years the  
18 public face and voice of Plainridge, and has  
19 been responsible for leading Ourway's pursuit of  
20 a Category 2 gaming license for Plainridge.

21 He had been the president of  
22 Plainridge Racecourse as it first obtained a  
23 license in 1999. He was president of Plainridge  
24 during the time Plainville Racing Company



1 operated the racecourse. And also assumed this  
2 role when Ourway became the licensee and  
3 operator of Plainridge.

4 Piontkowski was also appointed  
5 manager of Ourway in July 2008 after Tuch  
6 resigned from that position. Gary Piontkowski  
7 also became the manager of Anchor Partners in  
8 January 2012 when Tuch resigned from that  
9 position.

10 Prior to Piontkowski development of  
11 Plainridge Racecourse, our investigation  
12 confirmed that Piontkowski was previously the  
13 Chairman of the Massachusetts Racing Commission  
14 from 1991 to 1993.

15 As the investigation commenced, it  
16 quickly focused on Gary Piontkowski. During the  
17 years of Piontkowski's leadership of Plainridge,  
18 numerous significant and reportable events  
19 occurred. The most concerning situation was his  
20 practice of withdrawing cash from the Plainridge  
21 Racetrack money room.

22 During this investigation, it was  
23 learned that Piontkowski routinely, almost on a  
24 daily basis withdrew small amounts of cash from

1 the Plainridge Racetrack money room. These  
2 direct cash withdrawals were reported by  
3 Peterson as monies owed by Piontkowski. When  
4 this money was not repaid, it was  
5 recharacterized at the end of each year as a  
6 distribution to Piontkowski.

7 Overall, the investigation confirmed  
8 that these yearly withdrawals amounted to a very  
9 large sum of money. These withdrawals have been  
10 described by some of the members of the  
11 applicant as well as Mr. Grogan as an  
12 accommodation to Piontkowski.

13 When questioned further in the  
14 current IEB investigation about these  
15 withdrawals, Mr. Peterson stated he did not feel  
16 at the time of their occurrence it was his place  
17 to bring this practice to the attention of  
18 Ourway majority owners Ross and Fulton.  
19 Peterson indicated that Piontkowski was the  
20 president and thus his supervisor. And he  
21 trusted that Piontkowski received the approval  
22 of Fulton and Ross.

23 However, Peterson also advised  
24 investigators that in approximately in 2006 --

1 And it may be that this actually occurred in  
2 2008. I'll refer to that later in my  
3 presentation. -- and due to his concerns about  
4 the money room practices, Peterson requested  
5 that the Plainridge outside auditor prepare a  
6 letter each year having the annual withdrawals  
7 taken by Piontkowski and request approval by the  
8 majority members Fulton and Ross to treat as a  
9 distribution to Piontkowski.

10 As part of this investigation, the  
11 outside auditor for the applicant was questioned  
12 concerning this annual money withdrawal letter.  
13 Peterson may have been mistaken with respect to  
14 the year when these annual money withdrawal  
15 letters actually began being prepared by the  
16 outside auditor. The outside auditor indicated  
17 that the first letter prepared was for calendar  
18 year 2008.

19 Each year these letters were  
20 submitted to Piontkowski in his capacity as  
21 manager for Ourway. However, the outside  
22 auditor indicated that although these letters  
23 were submitted to Piontkowski each year, it was  
24 not until February 2012 when he actually

1 received the letter back signed by Fulton and  
2 Ross. The February 2012 letter listed the  
3 advances made to Piontkowski for calendar year  
4 2011. The 2012 letter also now reported the  
5 previous advances made to Piontkowski for  
6 calendar years 2004 through 2011.

7 In his sworn interview, Fulton  
8 indicated he was unaware of these practices  
9 despite the letter having his signature.

10 Shortly following Fulton's sworn  
11 interview with investigators where he was  
12 informed and questioned about these money room  
13 practices, it was reported by the applicant that  
14 these money room withdrawals taken by  
15 Piontkowski, which became the focus of  
16 questioning during the investigation, resulted  
17 in applicant internal discussions about the need  
18 for better internal controls and proper  
19 corporate governance.

20 The resignation of Piontkowski and  
21 the appointment of John Grogan as president then  
22 followed. During Ross's interview, he stated  
23 that he realized there was a need for better  
24 internal controls. And he also realized there

1 had been too much control vested in Piontkowski.

2 Ross has stated that Grogan had been  
3 engaged by Piontkowski in 2009 when the  
4 applicant began exploring the proposed expansion  
5 of its operation into gaming. And he was  
6 confident that Grogan would put immediate  
7 measures in place to improve the corporate  
8 governance and internal control environment of  
9 the applicant.

10 Mr. Fulton stated that after his  
11 first interview with the IEB investigators, he  
12 immediately began to more closely review the job  
13 responsibilities and the business practices of  
14 Piontkowski. In particular, the additional  
15 distributions Piontkowski was receiving over and  
16 above his compensation and were cross-referenced  
17 to the periodic money room withdrawals were now  
18 examined by Fulton.

19 Although the investigation confirmed  
20 that such money room distributions did occur, it  
21 could not definitively confirm whether such  
22 distributions were known or approved by Fulton.  
23 In fact, in his first interview Fulton denied  
24 having any recollection of having approved these

1 distributions.

2           Fulton stated that after his first  
3 investigational interview, he met with Grogan  
4 and other highly trusted business associates,  
5 and after reviewing the conduct of Piontkowski  
6 they decided it was not in the company's best  
7 interest at have Piontkowski remain as the  
8 president of Ourway.

9           Earlier in this investigation, when  
10 questioned about the applicant's compliance plan  
11 and internal controls, Mr. Grogan reported that  
12 Ourway operates a small harness racing business  
13 and not a full-blown gaming operation. As such,  
14 it was represented that Ourway does not maintain  
15 a compliance committee and does not have a  
16 current compliance plan.

17           It was further represented that all  
18 issues regarding compliance were elevated to and  
19 handled by former president Piontkowski. Ourway  
20 also reported it had no formal anti-money-  
21 laundering policy. And the applicant did report  
22 that consistent with applicable federal law, it  
23 does file the appropriate currency transaction  
24 reports or CTRs when transactions are \$10,000 or

1 greater.

2           From our consultants' experience in  
3 the gaming industry, they are aware that some  
4 smaller non-casino operations do not always have  
5 thorough and effective compliance plans and/or  
6 functional committees. However, due to the  
7 various past investigations that evidenced  
8 questionable money room transactions and  
9 apparently limited ownership awareness of the  
10 actual business practices being utilized at the  
11 Plainridge facility, the lack of an effective  
12 compliance and internal control structure  
13 represented a significant operational  
14 deficiency.

15           As this investigation developed,  
16 additional investigation was requested by  
17 investigators with respect to internal control  
18 procedures. In this regard, during Peterson's  
19 sworn interview he did indicate that money  
20 handling control procedures are in fact in place  
21 for the pari-mutuel windows.

22           Peterson explained various  
23 procedures in place in which pari-mutuel clerks  
24 are required to follow with respect to the daily

1 reconciliation and settlement of their windows  
2 including procedures for opening and closing  
3 windows, turning in bankrolls, punching tickets,  
4 etc.

5           When questioned why there were no  
6 written internal procedures for money room  
7 operations at Plainridge, Peterson stated there  
8 were only four people in the money room, two of  
9 which have 60 years of experience between them.  
10 Therefore, he did not feel it was necessary to  
11 document the processes that were in place.  
12 Peterson indicated as new employees were hired,  
13 it would be at that point he would feel it would  
14 be appropriate to institute written procedures.

15           Peterson also stated that at one  
16 point he attempted to develop an employee  
17 handbook with policies and procedures. But  
18 president Piontkowski was not supportive of such  
19 an effort. Peterson did convey at least a  
20 general awareness that if the applicant was  
21 awarded a Category 2 gaming license substantial  
22 additional financial internal control and other  
23 industry-standard money handling policies and  
24 procedures would need to be implemented and



1 documented.

2 More recently, during the latter  
3 part of the investigation and after Grogan's  
4 appointment, the investigative team was  
5 supplied with new documentation consisting of  
6 Ourway's new written internal controls with  
7 respect to the Plainridge operation.

8 Specifically, the new written  
9 internal control with respect to Plainridge --  
10 pardon me. Specifically, the internal control  
11 standards implemented by the applicant involved  
12 enhanced controls over authorization,  
13 accountability, safekeeping, the use of paper  
14 document safeguards, electronic records,  
15 physical premise and employee safekeeping and a  
16 more stringent human oversight and reporting  
17 requirements.

18 The applicant also provided  
19 documentation evidencing a better defined  
20 internal administrative and organizational  
21 system with improved checks and balances.  
22 Example, the improvements include the separation  
23 of the positions of manager and president.  
24 Implementation of additional signature controls,

1 petty cash approvals, personal expense  
2 reimbursement procedures, Ourway manager  
3 approval for the president's expense account.  
4 Two signature requirements for checks over  
5 certain amounts, prohibition of employee betting  
6 at the track, revising and refining pari-mutuel  
7 teller policies and procedures, and the  
8 development of a new employee personnel  
9 handbook.

10           Mr. Grogan has also provided  
11 documents entitled Ourway Realty Management  
12 Systems and Internal Plan dated May 2, 2013,  
13 which provides for the creation of an advisory  
14 board.

15           The investigation undertaken in this  
16 matter was not limited to only to the qualifiers  
17 and the qualifying entities. In order to gain a  
18 better understanding of the owner Fulton's  
19 history of regulatory compliance and gaming and  
20 racetrack operational prowess, the investigators  
21 also contacted the New Mexico Gaming Control  
22 Board as well as the New Mexico Alcohol Gaming  
23 Division with respect to the compliance record  
24 of Sunland, his casino there in which he owns in

1 its entirety.

2           This racetrack and slot machine  
3 facility is owned by Fulton through a holding  
4 company, My Way Holdings, LLC. Although the  
5 applicant's representatives have indicated that  
6 Sunland management will not perform an active  
7 role in the management of Ourway's proposed  
8 Massachusetts gaming facility, given Fulton's  
9 ownership of the Sunland facility and its  
10 similar size, scope and nature to what is  
11 statutorily anticipated in the Commonwealth's  
12 Category 2 license award, the investigative team  
13 concluded it would be of assistance to the IEB  
14 to examine the regulatory record of Sunland.

15           The investigation confirmed that  
16 Sunland received its New Mexico gaming license  
17 in 1999 and is licensed and regulated by the New  
18 Mexico Gaming Control Board. The acting  
19 Executive Director confirmed that Fulton has  
20 been found suitable in connection with his  
21 ownership of Sunland.

22                           There have been certain  
23 gaming regulatory violations that have been  
24 documented in New Mexico concerning Sunland.  
However, these violations can be described as

1 minor and typical of the type and frequency that  
2 is common in the casino gaming industry.

3           During the last five years, two of  
4 the violations against Sunland involved having  
5 minors below the age of 21 on the casino slot.  
6 The first citation in January 2010 resulted in a  
7 payment of a fine of \$100. The second citation  
8 in 2010 resulted in payment of a fine of \$1000.

9           Additionally, in June 2011, Sunland  
10 was cited for having alcohol in the casino,  
11 which is prohibited by regulation. This  
12 resulted in a \$1000 fine. The investigation  
13 also revealed two charges brought against  
14 Sunland by the New Mexico Alcohol and Gaming  
15 Division in June 2010 in connection with the  
16 sale of alcohol to minors. This resulted in a  
17 \$1000 fine per incident and the suspension of  
18 alcohol sales for two separate days. In sum,  
19 those violations are the like and kind not  
20 uncommon in the casino gaming industry in North  
21 America.

22           In fact, according to our  
23 consultants only three gaming related violations  
24 and two alcohol related violations of this type

1 over a span of five years does not represent a  
2 pattern of noncompliance and/or disregard for  
3 gaming regulators or regulations.

4 Equally important, these violations  
5 were self-reported by the gaming property  
6 manager to the regulatory agency and have been  
7 addressed with remedial actions. The two  
8 incidents of alcohol sales to a minor were the  
9 result of an undercover sting operation.

10 Remedial action which was taken included the  
11 termination of the bartender and additional  
12 training to the property staff. Acting  
13 Executive Director Baca from New Mexico has  
14 confirmed in writing Fulton has never been the  
15 subject of any disciplinary action by the NMGCB  
16 and has further confirmed that in view of NMGCB,  
17 Sunland is one of the better run and managed  
18 facility in New Mexico. And that this casino  
19 has a long history of compliance and cooperation  
20 with that agency.

21 The investigators also took a look  
22 at the litigation history of the applicant and  
23 the qualifiers. The investigation which  
24 reviewed all documented civil litigation for the

1 applicant and the entity qualifiers and has  
2 requested and been provided explanations by the  
3 applicant for each material and relevant action.  
4 The specific cases are identified in the report  
5 that you have before you.

6           After review and evaluation of the  
7 matters and the applicant explanation and other  
8 relevant materials with the exception of the  
9 litigation referred to in the report as the  
10 Giuliano litigation, those instances appear to  
11 be those that would be ordinarily expected in  
12 the course of a typical business.

13           It is to be noted, however, that the  
14 Giuliano litigation also involved Plainville  
15 Racing Company or PRC, the former licensee for  
16 the Plainridge Racecourse and Piontkowski.  
17 Although there were allegations of fraud and  
18 deceptive practices by both sides the Giuliano  
19 litigation ultimately resolved in favor of the  
20 applicant and the other defendants. As such,  
21 litigation in which the applicant has been  
22 involved cannot be said to demonstrate conduct  
23 evidencing any unacceptable business practices  
24 on behalf of the applicant or any of the

1     qualifiers.

2                     Going to the licensing and the  
3     compliance history of the applicant, the  
4     Massachusetts Racing license at Plainridge is  
5     currently in good standing.

6                     Investigators conducted a review of  
7     relevant investigation reports from 1997 through  
8     2007. This inquiry resulted -- revealed a  
9     record of certain incidents, allegations and  
10    conduct that was investigated. Although these  
11    investigations were 10 years or more old and  
12    they did not lead to the imposition of any  
13    formal regulatory sanctions or criminal  
14    prosecution, and indeed most occurred during the  
15    PRC ownership period, which preceded Ourway  
16    involvement, the involvement and/or continued  
17    presence of some of the individual persons  
18    involved in the investigations, and particularly  
19    the nature and scope of some of the allegations  
20    clearly merits reporting to the Commission.

21                    More detail about the incidents is  
22    in the report. But just to highlight for the  
23    Commissioners, in 2000 there was an  
24    investigation into unlawful telephone wagering.

1 Both Piontkowski and Peterson were questioned  
2 during this investigation. Notable is that  
3 Piontkowski testified before the Racing  
4 Commission that he would provide additional  
5 information about suspect checks, but nothing  
6 was ever produced and no law enforcement or  
7 regulatory action was taken.

8           In addition in 2003, there was  
9 another investigation concerning the activity of  
10 what's called 10 percenting. This is the  
11 process whereby pari-mutuel clerks obscures a  
12 winning bettor's identification by using the  
13 name and Social Security number of another  
14 person for completion of the IRS W-2G forms to  
15 report the winnings to the IRS for tax purposes.  
16 This other person rather than the actual winner  
17 takes the reported winnings as income and  
18 receives a 10 percent commission. The actual  
19 winner thus avoids taxation.

20           Several pari-mutuel clerks at  
21 Plainridge who were interviewed and confirmed at  
22 that time that the 10-percent activity was  
23 ongoing and widespread. The investigation  
24 culminated in July 29, 2003 when they appeared



1 at Plainridge and took possession of W-2G forms  
2 to examine the signatures to identify the  
3 alleged 10 percenters.

4 After the W-2G forms were provided  
5 to investigators, an attorney for Plainridge  
6 called the Massachusetts Racing Commission the  
7 same day asking for the return of those forms.  
8 Although at the time there was no claim by  
9 Plainridge track management that the W-2G forms  
10 were illegally obtained, one of the racing  
11 commissioners ordered that the investigators  
12 return the forms to Plainridge, which was in  
13 fact done. As a result, without this  
14 documentary evidence, investigators were unable  
15 to further pursue the investigation.

16 In 2003, an employee of the  
17 racetrack confiscated a loaded syringe and in  
18 contravention of Racing Commission regulations  
19 kept it in his office for two weeks instead of  
20 turning it over to investigators only after  
21 being confronted about it.

22 In 2004, there was an investigation  
23 regarding telephone line split and suspected  
24 interception. This case was referred to the

1 Attorney General's office. However, no criminal  
2 violations could be substantiated in that  
3 matter.

4 Of additional concern particularly  
5 to me, an employee was interviewed during the  
6 course of this investigation who indicated that  
7 Piontkowski gave him orders not to speak with  
8 the State Police assigned to the track. If the  
9 employee did speak with the trooper, he was  
10 approached by Piontkowski and questioned as to  
11 the contents of the conversation. Additionally,  
12 the employee was instructed by Gary Piontkowski  
13 never write anything down.

14 Now I'd direct your attention to the  
15 individual and entity qualifiers and give you  
16 just a summary overview of their review. All  
17 qualifiers were subject to scrutiny including  
18 the analysis of financial and tax returns,  
19 litigation history, licensing history, political  
20 contributions, criminal record, driver's license  
21 check, open source information and further  
22 analysis as described in the report itself and  
23 my cover letter to the Commission.

24 There were the entity qualifiers

1 that were investigated, obviously Ourway LLC,  
2 which I have already -- the applicant, which I  
3 have already discussed in detail and concerns  
4 were noted.

5 In addition, investigators checked  
6 Mass Way, LLC. This is a holding company for  
7 the ownership and investment interests of Fulton  
8 and Ourway, which was formed in 2005. It was  
9 referred to as a disregarded entity by the IRS.  
10 It doesn't file tax returns. Financial  
11 activities flow directly to Fulton's personal  
12 tax returns.

13 In addition, investigated My Way  
14 Management Incorporated. This is a noneconomic  
15 member and manager of Mass Way, which was formed  
16 in 2003.

17 And also Anchor Partners formed in  
18 March 2000. The sole purpose of that entity is  
19 to lending money to the applicant Ourway. This  
20 is owned by Mr. Fulton and Mr. Ross. A loan was  
21 made in 2000. That still has not been paid.  
22 They are a creditor. There is little bank  
23 activity for this entity consistent with its  
24 reported function.

1 All three entity qualifiers  
2 presented sufficient evidence to be deemed  
3 suitable, no material concerns issued.

4 I will note, however, for the entity  
5 Ourway, LLC obviously, the recommendation of the  
6 IEB is conditional a recommendation of  
7 suitability subject to their presentation to the  
8 Commission regarding their business practices.

9 As to the individual person  
10 qualifiers, I start with Stanley Fulton. He is  
11 the key principal in this operation. The future  
12 financial success of Ourway is largely dependent  
13 on him. He has significant income, very  
14 significant net worth and he could in fact fund  
15 this project.

16 Investigation revealed that he is  
17 philanthropically generous. He was the founder  
18 and owner of Anchor Coin. As I indicated  
19 earlier, Anchor Coin subsequently was acquired  
20 by Anchor Gaming, a publicly traded company,  
21 also founded by Mr. Fulton., which was later  
22 acquired by IGT. He has subsequently sold his  
23 interest.

24 He is the owner of Sunland Park

1 Racetrack and Casino in New Mexico. As I  
2 indicated, by reports from the gaming control  
3 board there, that is one of the better run and  
4 managed facilities in New Mexico. It has a long  
5 history of compliance and cooperation.

6 Mr. Fulton has been licensed and/or  
7 found suitable in numerous gaming jurisdictions.  
8 We found for gaming licenses two active and  
9 seven inactive, for racing licenses one active  
10 and 10 inactive, no derogatory information was  
11 discovered concerning any of the licenses or  
12 findings of suitability. We discovered no  
13 litigation precluding suitability. And he  
14 clearly demonstrates sufficient business and  
15 ability and experience through his career.

16 We were recently notified he is  
17 going to be the CEO. Generally, he passed  
18 muster with respect to the statutory  
19 requirements including financial integrity and  
20 responsibility, integrity, honesty and good  
21 character and business ability. No material  
22 findings questioning his suitability subject to  
23 obviously, for all of these qualifiers, subject  
24 to the condition required by the IEB in their

1 presentation here. So, I won't reiterate that  
2 for all of the qualifiers.

3 The next qualifier is Alfred Ross.  
4 He has been involved in, as I said, involved in  
5 the pari-mutuel racing industry since 1941. He  
6 worked his way up through that industry. He is  
7 the owner and operator of three dog tracks in  
8 Colorado and a dog and horse track in South  
9 Dakota. He held an ownership interest and  
10 operated Lincoln Downs in Rhode Island. Ourway  
11 is currently the only racetrack in which he has  
12 an interest. He is the second-largest owner.

13 He is currently the manager of  
14 Ourway. That took place upon Gary Piontkowski's  
15 resignation. He's not involved in the day-to-  
16 day operations. He does not anticipate being  
17 involved in the operational management of the  
18 proposed slots parlor rather he would be  
19 involved in the strategic decision-making.

20 He is licensed in a number of  
21 jurisdictions. As to racing licenses, we  
22 discovered four active and six inactive licenses  
23 confirmed. There were a few other jurisdictions  
24 where they were unable to locate the record. No

1 derogatory information about any licenses was  
2 discovered.

3 I will note that there was an  
4 article in the Milwaukee Journal Sentinel in  
5 2007 raising concerns about a business associate  
6 of his. Investigators did check with the  
7 Wisconsin Division of Gaming regarding the  
8 association, and did confirm there was no  
9 derogatory information about Ross pertaining to  
10 this issue. And that the associate's problems  
11 arose subsequent to his association with Ross.

12 He does have significant business  
13 ability and experience. And similar to Mr.  
14 Fulton, he does appear to have, presented  
15 evidence regarding his financial integrity and  
16 responsibility, honesty and good character and  
17 business ability. There have been no findings  
18 that would question his suitability.

19 The next three individual qualifiers  
20 are sort of minority interest in Ourway the  
21 smaller interest. We have Fred Chanowski. He  
22 has an ownership in Ourway. He can basically be  
23 described as a passive investor. He's been  
24 retired since 1990. He stays active through

1 philanthropic work. He is not anticipated to be  
2 involved in the operational aspects of the  
3 project. He has no gaming license or non-gaming  
4 professional licenses. He was subject to the  
5 same scrutiny. No derogatory information was  
6 discovered. And appears to have met his burden  
7 by clear and convincing evidence that he is  
8 suitable.

9           George Chimento also an ownership in  
10 Ourway as a passive investor. He is an attorney  
11 licensed in Rhode Island, Massachusetts and New  
12 Hampshire. He also has held gaming licenses  
13 from the New York Racing and Wagering Board as a  
14 thoroughbred racehorse owner. The New Hampshire  
15 Racing and Charitable Gaming Commission as a  
16 thoroughbred racehorse owner and from the  
17 Massachusetts State Racing Commission as both a  
18 thoroughbred racehorse and harness racehorse  
19 owner.

20           No disciplinary actions were taken  
21 against Chimento in these capacities. And like  
22 Mr. Chanowski, had also presented sufficient  
23 evidence as to good character, financial  
24 stability, etc. to be found suitable



1           The next individual, Richard Tuch  
2 also has an ownership interest in Ourway. He  
3 was the manager until 2008, a passive investor.  
4 He's been generally retired for 10 years.

5           Prior to retirement, he was involved  
6 in a number of businesses, including Leisure  
7 Time Marketing, Venture Management Consultants,  
8 LRF Investments -- and LRF Investments. He was  
9 one of the original investors in Plainville  
10 Racing Company. He was also one of the original  
11 investors along with Ross and Anchor Gaming, Mr.  
12 Fulton, and Anchor Partners. The bulk of his  
13 income now derived from his investments. Also  
14 subject to the same scrutiny by investigators,  
15 no material issues discovered, no concerns  
16 regarding his suitability.

17           The next individual is Mr. Grogan  
18 who is here before us today. He is the current  
19 president of Ourway. He took over after Gary  
20 Piontkowski resigned. He is significant in this  
21 application. He is generally charged with  
22 implementing the improved internal control,  
23 which is a critical piece to this suitability  
24 determination.

1           He had known Mr. Piontkowski for 25  
2 years. He was originally brought into the  
3 operation as a consultant. He is well-educated  
4 with a BA and a master's in business. He worked  
5 in investment banking and consulting, has also  
6 served as Vice Chairman for the Westwood Finance  
7 Commission in his hometown.

8           He generally will oversee the  
9 development of the proposed gaming project. In  
10 addition to his former experience and knowledge  
11 of the regulated banking industry, this  
12 investigation has established that following  
13 additional information relative to his  
14 suitability with respect to the oversight of the  
15 gaming operation.

16           Since taking over as president of  
17 Ourway as promised during his April 4, 2013  
18 sworn interview, Grogan has overseen the  
19 documentation of several policies and  
20 procedures, and instituted new policies and  
21 procedures, copies of which were provided to  
22 investigators as part of this investigation.

23           Grogan has also sought to establish  
24 better corporate governance by (1) implementing

1 separation of duties between Ourway's manager  
2 and the president of operations, (2)  
3 establishing a board of advisors consisting of  
4 two outside advisors. And (3) the establishment  
5 of an audit subcommittee to the board of  
6 advisors.

7 He does not have gaming, racing or  
8 professional licenses. He does have credibility  
9 in investment banking and financial consulting  
10 experience and a demonstrated history of  
11 regulatory compliance in that industry.

12 He's passed muster with respect to  
13 the statutory requirements including financial  
14 integrity and responsibility, integrity, honesty  
15 and good character and business ability. There  
16 were no material findings questioning  
17 suitability.

18 Clearly, the report demonstrates a  
19 serious failing by the applicant as to internal  
20 controls up until the departure of Gary  
21 Piontkowski. Grogan appears to recognize the  
22 need for the required improvements and has shown  
23 preliminary efforts in this regard over the last  
24 three months.

1           He is aware that he needs to come  
2 before the Commission here today and present  
3 evidence of the adoption of and adherence to  
4 these procedures to the satisfaction of the  
5 Commission. It is obviously concerning for  
6 reasons I've already stated that the CFO is not  
7 here to participate in the process.

8           And that leads me to the final  
9 qualifier from the report, which is Timothy  
10 Peterson. Less than 48 hours ago we received  
11 notice that he had resigned. And we have now  
12 received a request to withdraw.

13           He's been the CFO since 1999, worked  
14 for several of Ross's racetracks. He's been  
15 described as more of a controller than a  
16 traditional CFO. He does the day-to-day  
17 financials rather than participate in the  
18 executive level decisions. He held a license  
19 from Massachusetts Racing in 2000. We noted no  
20 derogatory information from that license. And  
21 he does not currently hold any gaming license.

22           He did have an Iowa CPA license but  
23 let that lapse in 2003. He did make payments  
24 for the previously referenced illegal phone

1 wiring tapping investigation. He said during  
2 his sworn interview that Gary Piontkowski had  
3 advised him that these payments were for  
4 promotional services.

5           Clearly, he acknowledged the Gary  
6 Piontkowski money room practices. In that  
7 particular avenue, I think his testimony here  
8 would have been extremely relevant. It was  
9 documented that he contacted the outside auditor  
10 to create a record of that issue.

11           He has a credible history of  
12 accounting experience and a demonstrated history  
13 of regulatory compliance. However, as to  
14 suitability, I find it completely unacceptable  
15 that despite the Commission's directive that he  
16 appear here today, he has chosen not to do so.  
17 The burden is on him to show by clear and  
18 convincing evidence that he is suitable. And I  
19 think this is a major failure on his part to  
20 disregard the requirement of the Commission and  
21 not appear before you today.

22           Overall, as the Commission is aware,  
23 this was not an unconditional finding of  
24 suitability. The applicant needs to come before

1 the Commission and meet its burden. And I  
2 stated in my cover letter to the Commission that  
3 the attached report details concerns regarding  
4 the lack of historical corporate governance and  
5 effective internal controls under the former  
6 president.

7 The new controls and corporate  
8 governance, which the applicant either have been  
9 or will be implemented by new management does  
10 confirm the applicant's recognition of past  
11 shortcomings and further reflects an  
12 acknowledgment that a new and more comprehensive  
13 oversight, internal financial controls,  
14 recordkeeping and experienced personnel  
15 selection will be necessary if casino gaming  
16 were to be undertaken.

17 The applicant pledged its commitment  
18 to such improvement. As such, the IEB  
19 recommends the Commission require that the  
20 applicant institute these new internal controls  
21 immediately. And the applicant present evidence  
22 of adoption of and adherence to these procedures  
23 to the satisfaction of the Commission. That's  
24 why we're here today.

1                   So, that concludes my summary of  
2 report. I am certainly happy to answer any  
3 questions by the Commission.

4                   CHAIRMAN CROSBY: Thank you,  
5 Director Wells. It's quarter to 12. Why don't  
6 we finish the reactions from the Commissioners  
7 or the applicants. We'll finish the Bureau's  
8 presentation. And then we'll take a lunch break  
9 and go to the applicant.

10                  Were there any questions, first of  
11 all from the applicant?

12                  MR. RICHLAN: At this time, we would  
13 defer.

14                  CHAIRMAN CROSBY: Commissioners?

15                  COMMISISONER CAMERON: I had a  
16 couple questions, Director Wells, I was  
17 particularly concerned in reading the report  
18 about State Police investigations. When I read  
19 that section, it appears to me that there were  
20 real efforts on behalf of the management team to  
21 thwart investigations or a complete lack of  
22 cooperation, which of course makes it difficult  
23 for any agency trying to be responsible for the  
24 regulatory and criminal activity.

1                   Is that your understanding in  
2                   reading that as well?

3                   MS. WELLS: Yes. I certainly had  
4                   concerns. Although, I recognize that there was  
5                   no regulatory action or criminal enforcement  
6                   action taken. Taken as a whole --

7                   COMMISSIONER CAMERON: But would  
8                   that have been possible without the cooperation  
9                   on behalf of the agency regulated?

10                  MS. WELLS: Exactly. So, I think  
11                  that that certainly raises concerns. And as a  
12                  part of these new internal controls and  
13                  procedures and basically it's how they do  
14                  business, working with law enforcement in a  
15                  cooperative manner should be part of that  
16                  analysis.

17                  COMMISSIONER CAMERON: Is it also  
18                  your understanding that all of these  
19                  deficiencies were brought up by the IEB? The  
20                  applicant themselves were either not aware or  
21                  had not taken steps to solve some of these  
22                  issues until they were brought up by this  
23                  investigation? Is that accurate?

24                  MS. WELLS: The timeline of how



1 things occurred and the reaction of individuals  
2 associated with the applicant when this  
3 information was brought up would confirm that,  
4 correct.

5 CHAIRMAN CROSBY: This is relative  
6 to the money room practices.

7 MS. WELLS: Correct.

8 COMMISSIONER CAMERON: Or all of the  
9 other issues.

10 CHAIRMAN CROSBY: The other ones,  
11 the earlier problems in 2004, 2003 they were  
12 already on the record. That wasn't discovered  
13 by us.

14 COMMISSIONER CAMERON: I'm just  
15 saying that there was no action taken on behalf  
16 of the management team to change.

17 CHAIRMAN CROSBY: To tighten things  
18 up.

19 COMMISSIONER CAMERON: Yes.

20 MS. WELLS: That's correct.

21 CHAIRMAN CROSBY: Other questions  
22 from the Commission?

23 CHAIRMAN CROSBY: I am going to  
24 suggest that we adjourn for how long? It's 10

1 minutes of 12. Shall we come back at quarter of  
2 one?

3

4 (A recess was taken)

5

6 CHAIRMAN CROSBY: We will now  
7 reconvene the adjudicatory hearing of the  
8 Massachusetts Gaming Commission on the  
9 suitability background check for Ourway Realty,  
10 LLC. Before we go to the applicant, do we have  
11 any determination on the transcript or anything  
12 else to add?

13 MR. MACKEY: Yes, Mr. Chairman, what  
14 we agree is that the applicant's counsel is  
15 going to review a copy of the transcript, which  
16 they of course have. They'll suggest  
17 appropriate redactions, if any, get the document  
18 to us. We'll review the redactions and then  
19 provide it to the Commission as soon as we can.  
20 It is unlikely to happen today, I think, just  
21 given the fact that they are here and we are  
22 here. But we will get it into the Commission.

23 CHAIRMAN CROSBY: So, what is the  
24 consequence of that relative to our ability to

1 use it at this meeting?

2 COMMISSIONER MCHUGH: In effect,  
3 there's a stipulation between counsel that this  
4 will be admitted under those circumstances. And  
5 we can simply take it and mark it as the next  
6 exhibit in the line of exhibits when we get it.

7 MR. MACKEY: Exhibit number six.

8 CHAIRMAN CROSBY: Can we use it in  
9 today's conversation?

10 MR. MACKEY: In your closed  
11 deliberation.

12 CHAIRMAN CROSBY: I know we can use  
13 it in the deliberation. Can I use it now in the  
14 conversation, if Commissioner Cameron referred  
15 to it that she thought that that was an  
16 important document?

17 MR. MACKEY: What I had initially  
18 intended to do, because the document was not in  
19 evidence, we hadn't marked it, was to provide  
20 the applicant's witnesses, and I've done that,  
21 with the one or two pages of that sworn  
22 testimony that I was going to allude to.

23 But I had not intended until today,  
24 in discussions we've had today to put the entire

1 document into evidence. I think that I will  
2 make reference to it in connection with my  
3 questioning on a couple of occasions. But I was  
4 not intending to use it extensively in cross-  
5 examination. I don't believe Mr. Richlin had  
6 any intention to use it either.

7 MR. RICHLIN: I think the position  
8 -- If I could just have a moment to confer with  
9 Mr. Grogan on this.

10 CHAIRMAN CROSBY: Okay.

11 MR. RICHLIN: The position of the  
12 applicant is that we will go through the process  
13 that Mr. Mackey described. To the extent any  
14 Commissioner wants to make use of that at  
15 today's hearing, we have no objection. We  
16 understand there is a risk if we later seek to  
17 redact that information, but I accept that that  
18 would effectively be a waiver and will accept  
19 the consequences of that waiver.

20 CHAIRMAN CROSBY: Okay, thank you.

21 MS. WELLS: I do have one  
22 correction. I spoke to Mr. Ross out in the  
23 hallway and made an error. He's been involved  
24 in the pari-mutuel racing industry since 1956.

1 I apologize. The 1941 date was the day they had  
2 taken over the racetrack. So, I wanted to  
3 clarify that for the record.

4 CHAIRMAN CROSBY: I was impressed by  
5 your good health, Mr. Ross. Okay. We now pass  
6 the baton to the applicant to make a  
7 presentation and their counsel on behalf of  
8 Ourway.

9 MR. GROGAN: Good afternoon,  
10 Chairman Crosby, Commissioners. By way of  
11 introduction, my name is John Grogan and I am  
12 the president of Ourway Realty. And on behalf  
13 of Ourway, I want to thank the Commission for  
14 the opportunity to be here at this adjudicatory  
15 hearing concerning the suitability of Ourway or  
16 Plainridge Racecourse as we are more commonly  
17 known.

18 But we understand that we need to  
19 establish by clear and convincing evidence our  
20 affirmative qualification for licensure and  
21 believe that is our hope and intent that we have  
22 today.

23 As you well know, we are well, I  
24 believe, represented by Foley Hoag here, with

1 Dean Richlin and Kevin Conroy. I will testify  
2 in narrative form. And of course with the help  
3 of Mr. Richlin to ask questions to the extent I  
4 omitted some information.

5 I want to thank the IEB and the  
6 Michael and Carroll investigation team for their  
7 very fair and detailed investigation. In fact,  
8 it was that very investigation that led to a  
9 particular set of individuals that you are going  
10 to see here today.

11 We would also stipulate to the  
12 accuracy of the report and don't question the  
13 findings of fact within it. I guess, however  
14 there are -- we may differ on a few contractual  
15 and tax conclusions from that. But other than  
16 that, we not only don't question that but  
17 actually applaud them for the work that was  
18 done.

19 By way of my background, you heard a  
20 little bit about it this morning. I live in  
21 Westwood, Massachusetts. I am the president of  
22 Ourway and was appointed in that position on  
23 April 3. I have an undergraduate degree in  
24 biochemistry from Harvard College. I have an

1 MBA from Harvard Business School. I was an  
2 investment banker for 25 years starting in New  
3 York and then in Boston.

4 In my current position, I began  
5 working for Plainridge in 2009 as a consultant  
6 to help the development of both the business and  
7 financial model for their plan for Plainridge's  
8 expansion into casino gaming. I was also the  
9 point of contact for the Phase 1 process. So,  
10 all of that information sort of went through me.

11 As an aside, we view the regulatory  
12 process as a fundamental business process. This  
13 was not something that was outsourced to counsel  
14 but sort of kept inside as a fundamental  
15 business process because of how we view the  
16 regulation. And I was appointed the president  
17 on April 3 upon the resignation of the former  
18 president as I'll talk about later.

19 Stanley Fulton is our CEO. He took  
20 the position of CEO on July 17. And I report  
21 directly to Stan. I have dotted line  
22 responsibility to Al Ross, who is the managing  
23 member where he's more commonly thought of as  
24 the chairman of our company.

1           As the president, the general  
2 manager and director of racing reports to me, as  
3 well as director of operations, director of  
4 customer service and until Tuesday the financial  
5 officer.

6           Just to touch a little bit about the  
7 history of Plainridge, and I know in Director  
8 Wells covered a little bit about that this  
9 morning, we started this 15 years ago. As the  
10 business was started 15 years ago where 15 local  
11 investors whose vision really was to revive the  
12 horse racing in the Commonwealth and  
13 specifically in Norfolk County.

14           Gary Piontkowski was the founder of  
15 the company. And he had a vision for  
16 horseracing in the Commonwealth, himself being a  
17 horseracing owner. And he found two principal  
18 investors, if we sort of skip a little bit of  
19 the timeline how that all happened, but found  
20 two investors in Mr. Ross and Mr. Fulton to  
21 support his vision.

22           And through a series of transactions  
23 as described in the report, they became both the  
24 largest shareholders and the largest creditors



1 and lenders to the company.

2           Notwithstanding the size of the  
3 investment that they had in the company they  
4 were passive investors. They had no oversight,  
5 no executive functions. They did not have, want  
6 or feel necessary any oversight responsibilities  
7 or authority. And they had trust, and the trust  
8 in the former president was complete.

9           We currently employ 140 people  
10 directly and indirectly support hundreds of  
11 people through racing and it's reach throughout  
12 the Commonwealth. Interestingly enough racing  
13 for 72 standard bred horse farms in the  
14 Commonwealth, four in the town of Plainville.  
15 As Director Wells mentioned, we are funded  
16 entirely by our members or shareholders. And  
17 regardless of the nature of whether we call that  
18 a debt or equity, it is their contributions each  
19 year that keep the track running.

20           The track as described loses money.  
21 It has. And they have continued to support that  
22 business endeavor. And really they were content  
23 in the passive investment really prior to the  
24 gaming application which certainly changed the

1 nature of our business and as we are here today  
2 changed the nature of oversight.

3           What I am going to is talk about the  
4 events and much of my conversation today will  
5 focus on what the IEB concerns regarding  
6 internal controls and governance. I know  
7 there's a lot in the report. I'll be happy to  
8 address that at any point. But most of my  
9 comments now will bear on the internal controls  
10 and governance and things that led up to that,  
11 where we are presently and where we will be in  
12 the future.

13           Again, all of the events started  
14 with the IEB interview with Mr. Fulton in  
15 Nevada. I was in fact present for that  
16 interview because at that time I was a  
17 consultant to the company not a qualifier. And  
18 in that interview through Mike Bohrer began a  
19 series of questions regarding the money room  
20 withdrawals, the frequency, the methodology were  
21 presented in great detail to Mr. Fulton.

22           And that began as reported in the  
23 IEB report a series of discussions about those  
24 issues, the lack of controls that led to that,

1 the lack of oversight that led to that. And  
2 resulted in the resignation of Mr. Piontkowski  
3 from the company.

4           Upon that resignation, he  
5 surrendered his offices in Anchor Partners and  
6 Ourway. He sold his stock in the company to Mr.  
7 Fulton and Mr. Ross. And other than a  
8 separation agreement that provided for some  
9 salary continuation for a point in time, he has  
10 no contact, influence, involvement in the  
11 company right now.

12           As the report points out, Ourway has  
13 a historic lack of effective governance and  
14 internal controls, the report is replete with  
15 incidences that are a result of those things. I  
16 myself learned about a number of them from  
17 reading the report. And it was clear that there  
18 was behaviors that were questionable and should  
19 not have happened. And I acknowledge those  
20 deficiencies and we don't dispute that.

21           How did this all happen? My  
22 analysis of how this happened is from 2007  
23 onward, the president and the manager were the  
24 same. And therefore, that person had total

1 control over the organization. There was no  
2 oversight and there was no accountability for  
3 the actions of that person.

4 Also, as Director Wells mentioned,  
5 there were no written policies or procedures  
6 within the company. The result of that is that  
7 employees were unaware of what was expected of  
8 them, and also what do if something went wrong.  
9 And in fact, as Director Wells mentioned  
10 managers were in fact told not to write things  
11 down.

12 What comes with that also was sort  
13 of a deference to senior management. And what  
14 happened is you create a culture that people  
15 were unwilling to confront issues of concern and  
16 did not raise issues to the investors, and fear  
17 of losing their jobs limited their actions.

18 Coupled with that there was a lack  
19 of engagement and attention by the members.  
20 They were willing to accept the information they  
21 received or willing not to accept information  
22 they should have had. So, there was an  
23 inadequate flow of information to the members.

24 Having said all that there were

1 certain things the company was doing correctly.  
2 If we made the distinction between internal  
3 controls and financial accounting, Ourway's  
4 financial accounting was appropriate.

5           The experience as we talked about in  
6 terms of people we have in the money room on the  
7 financial side, they had established a pattern  
8 of practice. It was not written down. But we  
9 had people who had been doing this for a very  
10 long time. And those established practices were  
11 able to track all of the withdrawals that were  
12 discussed. They were tracked, documented and  
13 recorded all to the auditors, and again, as  
14 we'll talk in a minute in that letter from the  
15 auditors to Mr. Fulton and Mr. Ross in 2012.  
16 So, the auditors did bring information regarding  
17 that to the attention of the majority owners.

18           I was appointed to this position on  
19 April 3 around 5:00 at night. And at 8:00 that  
20 night I got a call from the IEB investigator  
21 asking me to come and give testimony to the IEB  
22 on April 4. So, the things that have happened  
23 since then. I was appointed president. I am  
24 subject to a written agreement, not an

1 employment agreement but a written agreement  
2 that defines my duties and my authority. And  
3 part of that written agreement not to self-deal  
4 or to benefit financially from my position other  
5 than my salary.

6 We have also separated the roles of  
7 president and manager. Al Ross is the Chairman.  
8 Again, as I mentioned, Stan Fulton is now the  
9 CEO. So, we have that role of oversight.

10 The other thing that happened  
11 subsequent to April 3 was matrix reporting of  
12 the financial officer. I had met with Mr.  
13 Peterson and Mr. Ross to make sure that the  
14 lines of communication from the financial  
15 officer to the Chairman was open. And that if  
16 there were any questions regarding actions the  
17 company was taking, I was taking, Mr. Peterson  
18 should feel totally comfortable to go directly  
19 to the Chairman.

20 We also created a board of advisors  
21 with an independent director. And I will talk  
22 about them in just a minute. All this will part  
23 of a plan.

24 So, when I testified to the IEB on

1 April 4, I had a one-week plan and a one-month  
2 plan about what would happen. Director Wells  
3 outlined many of those things that would be  
4 taken. That one-week plan was very simple  
5 things that I know I could do. We could end the  
6 money room withdrawals. They would not happen.  
7 There were certain patterns of behavior around  
8 the tellers I wanted to correct. Those were  
9 sort of immediate things that we changed.

10 We had a one-month plan and part of  
11 that -- I'm sorry. Part of that one-week plan  
12 was the matrix reporting for the financial  
13 officer. So, we wanted to make sure that we  
14 corrected those lines of communication, those  
15 questions. And we wanted to end the immediate  
16 questionable practices. We also created a board  
17 of advisors with an independent director.

18 If I can, I'd like to talk about who  
19 those members of our board out. You have heard  
20 -- Director Wells has described Stan Fulton.  
21 Stan has a long and distinguished career in the  
22 gaming equipment business. He was one of the  
23 original creators of the Wheel of Fortune, the  
24 most successful slot machine perhaps ever. And

1 was also part owner of the TITO, ticket-in,  
2 ticket-out into a property patents are all as a  
3 result of Stan. He was the CEO of Anchor  
4 Gaming. Aside from his gaming equipment  
5 business, he is also a casino operator. As  
6 described, Anchor was sold to IGT in early 2000.  
7 And he now owns Sunland Park, a casino in  
8 Sunland. He's had numerous gaming licenses.  
9 His career in the gaming business is  
10 outstanding.

11 So, Stan is our CEO. He is actively  
12 now involved in what we're doing. And he has  
13 also provided, beside from being our largest  
14 creditor, as Director Wells mentioned, he is  
15 also providing the financing commitment for our  
16 project if we were to receive the Category 2  
17 license.

18 So, that has is a substantial  
19 commitment and measure of his faith in our  
20 ability and the people who are at the company  
21 today. You'll hear from Mr. Fulton a little  
22 today.

23 Al Ross has a distinguished career  
24 in the pari-mutuel business. Interestingly



1 enough, he at one point owned Taunton Greyhound  
2 Park, he owned Twin River. He had an ownership  
3 interest in Suffolk Downs. Interestingly, a  
4 competitive market for licenses here in the  
5 Commonwealth. Again, as the Chairman, he is  
6 responsible and leads our board of advisors.

7           And I'll say our board is composed  
8 of three inside members. So, Mr. Fulton, Mr.  
9 Ross and Mr. Levine, Mark Levine who is a member  
10 of our LLC, a small minority member. He is a  
11 partner in Core Capital, a venture capital firm  
12 in Washington, DC. He is an experienced venture  
13 capitalist, has sat on over 50 boards, both  
14 public, private and nonprofit. And currently  
15 sits on nine boards right now not including  
16 Ourway. So, as we think of Mr. Levine sort of  
17 an experienced, a professional director who  
18 understands what is required of a company and  
19 the controls and governance necessary.

20           Our independent advisor is a man by  
21 the name of Schorr Berman. Schorr Berman was  
22 the president of the Memorial Drive Trust.  
23 Memorial Drive Trust was the pension fund of  
24 Arthur D. Little and has an extensive venture

1 capital background and sat on numerous boards  
2 much like Mr. Levine is a professional director.  
3 He brings to the board not only that expertise  
4 but also is an independent, has no ownership and  
5 is an independent sort of financial director.

6 We did that in part because in our  
7 one-month plan, we were going to form an audit  
8 subcommittee of our board of advisors.  
9 Traditionally, that's done because of the heavy  
10 lifting that's required of the audit committee.  
11 Right now because of -- As we begin to introduce  
12 the board to the things that we're doing, we  
13 don't have a subcommittee. The board that's  
14 involved in every aspect of that.

15 And in fact, we started on April 3.  
16 And the board met at the end of the month and  
17 reviewed our financials with our auditor and the  
18 draft statements. That was done by the whole  
19 board rather than any subcommittee thereof. So,  
20 that is our board of advisors.

21 In fact, we met in April to review  
22 that. We also met earlier this month to sort of  
23 get the sense of what we do. This is the board  
24 package that went out. And there was a

1 discussion that was both strategic and operating  
2 reviews of budgets, where we were. Discussing  
3 where we were with the IEB. Issues around our  
4 host community agreement. We have talked about  
5 our internal control plans with the board and  
6 gone through operating budgets in both our, as  
7 we characterize them, both in our operating  
8 business and also the budgets that we have  
9 regarding our gaming application.

10 We have also begun a process of  
11 written policies and procedures. And part of  
12 that is an attempt to create a culture based  
13 around rules and hierarchy as opposed to a  
14 business ruled by exception.

15 So, our money room and teller  
16 policies have been provided to the IEB. And all  
17 departments are now in the process of doing  
18 their own written policies and procedures  
19 nearing completion on many of them. And as  
20 described, we are in the process of our employee  
21 handbook and making it clear so that our  
22 employees will understand what is expected of  
23 them.

24 Beyond creating policies and

1 procedures, what's necessary is also to create a  
2 system both to implement, monitor and enforce  
3 those policies. Aside from writing them down,  
4 you have to make sure that they are followed.  
5 And you also have to have consequences for the  
6 lack of following them. So, we are both  
7 creating those and creating a system to make  
8 sure that we continue to implement them.

9           Then we are also defining limits of  
10 authority within the organization at the  
11 operating level. Signature authority, whether  
12 it's checks, contracts and the like. It is  
13 being made clear to everybody within the  
14 company.

15           Perhaps the greatest change that  
16 I'll say we're doing is creating a culture  
17 that's based on integrity, accountability and  
18 responsibility. That starts with both a  
19 department manager level and employee level who  
20 take responsibility for their actions rather  
21 than being accepting being told to do things. I  
22 am endeavoring to create an environment where  
23 people are encouraged to ask questions. It's  
24 based upon the idea that we are going to have a

1 reason basis for why we do what we do. And if  
2 we can't answer that we'll figure it out. We in  
3 fact want questions coming from why do we do  
4 this.

5           And recently I got an email from an  
6 employee of the company asking why we were doing  
7 certain things. In her mind, what we were doing  
8 didn't seem to make sense. And I said that  
9 everything we do will make sense if you  
10 understood what was sort of encompassed within  
11 that decision. And as a result of that we  
12 actually changed certain operating practices of  
13 the company. So, that we are creating that  
14 environment.

15           What's also part of that is creating  
16 a culture that is accepting of mistakes. I  
17 would say here fore there was concern about  
18 making mistakes and ramifications of making  
19 mistakes. And I want to make sure that as an  
20 organization, we accept mistakes, learn from  
21 mistakes. I would say the only mistake that we  
22 could make is not learning from the mistakes  
23 that we do make. We are a human organization.  
24 We will make mistakes. And I want to make sure

1 everybody understands that that is okay.

2 In our commitment to a culture of  
3 oversight and compliance, we understand the  
4 significance of the license we're seeking. And  
5 a gaming license is a public trust. And as a  
6 result, we know we will be subject to regular  
7 and ongoing scrutiny and we welcome that  
8 scrutiny.

9 We begun that process in April. And  
10 we are building a company that we hope and  
11 believe will be worthy of such trust. And as we  
12 think about that, this culture of integrity,  
13 accountability and responsibility starts with  
14 our board of advisors.

15 The board is now actively engaged.  
16 Each and every member has put their personal  
17 reputation on the line to join this company. I  
18 know what they will demand of me. And I know  
19 what I will require from the people that work  
20 there. We will always do the right thing. And  
21 integrity and accountability and responsibility  
22 is the cornerstone of the company that we are  
23 looking to build.

24 So, those are my general comments.

1 I know you will have specific questions about  
2 things that happened. But I did want to put  
3 this in a framework of internal controls and  
4 governance and the things that we're doing and  
5 we endeavor to do.

6 MR. RICHLIN: Mr. Chairman, if I  
7 could just ask a few questions --

8 CHAIRMAN CROSBY: Sure.

9 MR. RICHLIN: -- to elicit some  
10 additional information from Mr. Grogan. Mr.  
11 Grogan, in your testimony to the IEB  
12 investigators, I think you described the  
13 reclassification of the advances to the former  
14 president as an accommodation. And I think the  
15 report also recognizes that statement. Could  
16 you tell the Commission what you meant by that?

17 MR. GROGAN: The understanding was  
18 that if you saw the accountants characterize  
19 this, the withdrawals were characterized in the  
20 financial statement in a due to/due from. So,  
21 they were characterized as a form of a loan. At  
22 the end of the year, the question was what to do  
23 with that loan.

24 So, it was an understanding that

1 would be treated as a capital withdrawal again  
2 as an accommodation to the president at the  
3 time.

4 MR. RICHLIN: Again, when you say  
5 accommodation what did you mean by the word?

6 MR. GROGAN: It was an  
7 acknowledgement of how to characterize that.  
8 Rather than force it as a loan to be repaid, it  
9 was treated as a capital withdrawal for him.

10 MR. RICHLIN: And as a result of  
11 that, did you have an understanding as to  
12 whether he would be required to repay that  
13 amount?

14 MR. GROGAN: Yes. it was treated as  
15 part of his capital account. So, yes.

16 CHAIRMAN CROSBY: Yes he would repay  
17 it?

18 MR. GROGAN: Again, it was  
19 characterized as a capital account that would  
20 eventually get settled as positive amounts flow  
21 through the capital account from an LLC  
22 accounting basis.

23 CHAIRMAN CROSBY: Did he pay taxes  
24 on that? It was not a K-1 distribution?



1 MR. GROGAN: It was a capital  
2 account withdrawal. So, I don't believe that  
3 taxes were paid on that withdrawal because that  
4 was not a taxable event.

5 MR. RICHLIN: It wasn't a taxable  
6 event why?

7 MR. GROGAN: That I can't answer.

8 MR. RICHLIN: Did the entity have a  
9 profit?

10 MR. GROGAN: The entity did not have  
11 a profit.

12 MR. RICHLIN: Was the distribution  
13 -- Was it categorized as a distribution even  
14 though no one else was receiving such  
15 distributions?

16 MR. GROGAN: Yes, it was.

17 MR. RICHLIN: So, he was the only  
18 one --

19 MR. GROGAN: -- receiving a  
20 distribution, correct.

21 MR. RICHLIN: Then to follow up on  
22 the Chairman's question. If the former  
23 president had remained in office, and profits  
24 had flowed to the members, if you're able to do

1 so, what would have been the consequence of this  
2 distribution to the former president?

3 CHAIRMAN CROSBY: I understand. He  
4 would have not gotten profits distributed up to  
5 the extent that he already had in effect an  
6 advance payment.

7 MR. RICHLIN: That's correct.

8 COMMISSIONER CAMERON: Can we follow  
9 up on that now?

10 MR. RICHLIN: Yes, of course you  
11 can.

12 COMMISSIONER CAMERON: Who  
13 characterized this as a distribution and who  
14 knew about this distribution?

15 MR. GROGAN: The accountants  
16 characterized this as a distribution. So, at  
17 the end of the year --

18 COMMISSIONER CAMERON: The  
19 accountant didn't know how to characterize it.  
20 He was trying to figure out what he should do.

21 MR. GROGAN: Ultimately, I think it  
22 was their determination that it was a --

23 COMMISSIONER CAMERON: And who knew  
24 about these distributions?

1 MR. GROGAN: As you see there's that  
2 letter in that 2012 timeframe --

3 COMMISSIONER CAMERON: Which Mr.  
4 Fulton said he didn't know about it. And you  
5 didn't know about, Mr. Grogan; is that accurate?

6 MR. GROGAN: That is accurate.

7 COMMISSIONER CAMERON: So, you were  
8 surprised to find this out on April 4?

9 MR. GROGAN: Absolutely.

10 COMMISSIONER CAMERON: So, the word  
11 distribution is try to give us a word that can  
12 account for this behavior?

13 MR. GROGAN: Again, I would want to  
14 distinguish between accounting treatment and  
15 behavior.

16 COMMISSIONER CAMERON: You want me  
17 to rephrase that question?

18 MR. GROGAN: Reframe it, yes.

19 COMMISSIONER CAMERON: Is this the  
20 way the accountant tried to explain the taking  
21 of money from the money room by calling it a  
22 distribution?

23 MR. GROGAN: I'm not sure I'd say  
24 the accountants are trying to explain. So, now

1 you have something that showed up on the balance  
2 sheet as a due to and from. And now you're  
3 sitting there saying how are we going to  
4 characterize that as it sits there.

5 COMMISSIONER CAMERON: So, he was  
6 trying to figure out how to characterize it; is  
7 that accurate?

8 MR. GROGAN: I would say purely  
9 account for it.

10 MR. RICHLIN: If I could bring to  
11 the Commission's attention, the IEB's Exhibit  
12 Number 5, although I would just note that this  
13 document refers to attachments, I don't think  
14 we've seen the attachments. We've just seen the  
15 letter. I understand it's based on the report  
16 that was produced by the auditor to the IEB.

17 If I could draw your attention to  
18 this document, Mr. Grogan, and simply ask you  
19 again to explain how the auditor treated what he  
20 calls advances from the moment the money left  
21 the money room, went into the former president's  
22 hand and was held for at least a year and  
23 longer. How did the auditor treat the  
24 proceeding? How did he consider it initially?

1 And how did he consider it later on? What were  
2 the choices that he laid out for the members?

3 MR. GROGAN: Again, I'll read from  
4 this letter that said the former president  
5 received advances from the company. And the  
6 advances were charged as distribution against  
7 his capital account. For 2011 the advances  
8 totaled X made up of various transactions as you  
9 can see from the attached summary. For  
10 financial statement and tax purposes, it's not  
11 proper to continue to reflect this amount as a  
12 due from receivable for several reasons too  
13 lengthy to summarize in a letter to you.

14 As such the appropriate amounts of  
15 the receivable should either be reclassified as  
16 compensation or adjusted through his capital  
17 account.

18 MR. RICHLIN: I direct your  
19 attention to the second to last sentence, if you  
20 would read that to the Commission.

21 MR. GROGAN: The second to last  
22 sentence, unless otherwise indicated, we will  
23 assume you prefer the adjustments of the  
24 advances to be reclassified to his capital

1 account and not as compensation.

2 COMMISSIONER MCHUGH: Are you  
3 finished? Can I --

4 COMMISSIONER CAMERON: No, I'm not.  
5 But please continue. I'll ask a question after  
6 you, Commissioner.

7 COMMISSIONER MCHUGH: So, if I read  
8 this letter correctly, the reclassification to  
9 the capital account meant that there was a  
10 negative balance in the capital account, right?

11 MR. GROGAN: Correct.

12 COMMISSIONER MCHUGH: That negative  
13 balance had he remained a member of the  
14 corporation or the company would have been  
15 offset by gains in the future.

16 MR. GROGAN: Right.

17 COMMISSIONER MCHUGH: But he didn't  
18 remain a member of the company. So, there will  
19 be no gains attributable to him in the future to  
20 offset that negative balance, right?

21 MR. GROGAN: You're right. He is no  
22 longer a member.

23 COMMISSIONER MCHUGH: So, the net  
24 effect of this is that when the company learned

1 of these unauthorized transactions, they created  
2 a debit in his capital account then allowed him  
3 to withdraw. Thus converting the debit into an  
4 authorization to keep the money he had not been  
5 authorized to withdraw. That's how that all  
6 winds up right?

7 MR. GROGAN: Yes.

8 COMMISSIONER MCHUGH: And in  
9 addition to that, gave him the money that was  
10 the value of his shares of stock and gave him a  
11 salary severance stretching over a period of  
12 years?

13 MR. GROGAN: That's right.

14 COMMISSIONER MCHUGH: That was the  
15 consequence of learning of the unauthorized  
16 withdrawals of substantial sums of money over a  
17 several-year period?

18 MR. GROGAN: Separation from the  
19 company, yes.

20 COMMISSIONER MCHUGH: Why? You were  
21 involved in that. Mr. Fulton was involved in  
22 that. Mr. Ross was involved in that. Why?

23 MR. GROGAN: I think it was an  
24 acknowledgment of -- Let me go back. His stock

1 was purchased as a separation agreement. I  
2 think part of that was acknowledgment of what he  
3 had done to advance -- What he had done for the  
4 company over the prior 14 years. And part of  
5 that was an acknowledgment of that.

6 COMMISSIONER MCHUGH: I asked that  
7 question because there is and you've spelled it  
8 out here, a strong suggestion that this is now  
9 going to be a different company from the company  
10 that is described in the IEB report. But the  
11 principles, the three principles of this new  
12 company were three people who approved of this  
13 way of dealing with what in many other  
14 circumstances would have had a very different  
15 outcome.

16 So, I am trying to understand why it  
17 didn't have a very different kind of outcome  
18 here.

19 CHAIRMAN CROSBY: If you're looking  
20 to establish principles of integrity,  
21 accountability and honesty, or whatever your  
22 three principles were, is this indicative of  
23 that?

24 COMMISSIONER MCHUGH: How is this



1 consistent with that?

2 MR. GROGAN: Again, the withdrawals  
3 that were taken were the financial figure and as  
4 a pattern of practice that if known would have  
5 not occurred. I think the separation and how  
6 that was done, I don't think that repurchasing  
7 his shares and severing him would question would  
8 be a practice that is -- would question the  
9 integrity of the people involved in that  
10 decision. So, when you say is that --

11 COMMISSIONER MCHUGH: I'm not  
12 suggesting a lack of integrity on the part of  
13 the people who authorized it. I am simply  
14 looking at wondering how that method of treating  
15 a serious, serious departure from normal  
16 business practices to say the least, how  
17 treating that in the fashion that the three  
18 future leaders of the company chose to treat it  
19 sends a signal to this Commission that the  
20 future is in fact going to be different.

21 MR. GROGAN: When you say the future  
22 will be different --

23 COMMISSIONER MCHUGH: That this kind  
24 of conduct will -- that significant

1 irregularities in the company will not occur.  
2 And that controls are in place to ensure that  
3 they don't occur. How does this method of  
4 dealing with that, let's use the right word  
5 defalcation convince this Commission that that's  
6 not going to occur in the future?

7 MR. GROGAN: In two aspects,  
8 Commissioner McHugh. One is that what we  
9 understood at that time is in fact different  
10 from the IEB report that was done. The  
11 involvement of the individuals at that time and  
12 what they knew was limited to this letter. And  
13 those withdrawals -- and his capital account  
14 withdrawals, the frequency, the practice wasn't  
15 perfectly clear. There was a problem. And  
16 understood the problem in a larger context as  
17 opposed to specific methodology of that.

18 Because this letter talks about  
19 those advances. And it doesn't talk about where  
20 those advances were coming from. So, this  
21 started that conversation.

22 So, that pattern -- what they knew  
23 and how they solved that I don't think relates  
24 to the future actions. So, that if this were to

1 happen tomorrow, would they do the same thing,  
2 the answer is absolutely not.

3 COMMISSIONER MCHUGH: Okay, Mr.  
4 Grogan, I hear you as of February 7. But the  
5 withdrawal agreement and the permission to  
6 withdraw and the circumstances under which the  
7 withdrawal was accompanied, and the financial  
8 considerations with which the withdrawal was  
9 accompanied, came a month later or three weeks  
10 later after all of the circumstances - or two  
11 months later after all of the circumstances were  
12 known on April 3.

13 MR. GROGAN: I think that this  
14 letter was brought to the attention at the end  
15 of March, regardless of the date.

16 COMMISSIONER MCHUGH: But Mr.  
17 Fulton, Ross and Mr. Piontkowski signed it -- I  
18 see the letter is dated April 7.

19 MR. RICHLIN: -- Of 2012.

20 MR. GROGAN: That was 2012. So,  
21 this letter began that series of conversations  
22 when presented in fact by Mr. Ford to Mr. Fulton  
23 in the end of March 2013.

24 MR. RICHLIN: May I follow up with

1 some questions which I hope may be helpful to  
2 your point as well.

3 COMMISSIONER MCHUGH: Right.

4 MR. RICHLIN: Mr. Grogan, at the  
5 point that management you, Mr. Ross and Mr.  
6 Fulton were beginning to appreciate what the IEB  
7 was revealing by way of questions, what value  
8 did you place in removing or reaching an  
9 agreement with Mr. -- your former president as  
10 quickly as possible so that change could occur?

11 MR. GROGAN: While the letter is  
12 dated in 2012, when that was brought and  
13 pointedly brought to Mr. Fulton -- and as you  
14 see in his testimony when presented with that  
15 did not recall signing that document. But when  
16 faced with the questions, it was sort of very  
17 quickly determined it would be important to  
18 separate Mr. Piontkowski from the organization.

19 MR. RICHLIN: Additionally, you're  
20 aware that both Mr. Ross and Mr. Fulton  
21 confirmed that they did in fact sign this  
22 document?

23 COMMISSIONER CAMERON: I'm not aware  
24 of that, Sir.

1           Mr. Fulton said he did not recall  
2   AND if he did so, he was told to do it. And he  
3   was not aware of the actions to which that  
4   document speaks.

5           MR. RICHLIN: Commissioner Cameron,  
6   I think what I am recalling in the report is on  
7   the second interview, he acknowledged that that  
8   was his signature.

9           COMMISSIONER CAMERON: He said it  
10   may be his signature. He couldn't tell for  
11   sure. And if it was, he might have just been  
12   given that to sign.

13          MR. RICHLIN: In any event, he  
14   didn't dispute that it was his signature.

15          COMMISSIONER CAMERON: But he wasn't  
16   sure either. I think the validity of that  
17   document is in question.

18          MR. RICHLIN: Mr. Fulton will speak  
19   to that. The question I wanted to ask Mr.  
20   Grogan is this which is that did there appear to  
21   be at least some evidence that whether they  
22   appreciated the significance of their signatures  
23   or not that the advances and the  
24   reclassification of the advances had been

1 approved by the members?

2 COMMISSIONER CAMERON: I don't think  
3 there is evidence of that. I haven't seen it in  
4 what I've read.

5 MR. RICHLIN: I don't want to engage  
6 in argument at this point. I think that the  
7 letter itself is evidence.

8 COMMISSIONER CAMERON: A document  
9 that the principle does not remember signing and  
10 says he has no knowledge of what the document  
11 speaks to which are these disbursements?

12 MR. RICHLIN: Let me move on and ask  
13 this question. Part of what you were trying to  
14 do relative to the separation of Mr. Piontkowski  
15 was to resolve all of his connections with  
16 Ourway; is that right?

17 MR. GROGAN: That's true.

18 MR. RICHLIN: And in terms of the  
19 period of negotiations, how much time elapsed  
20 between when management reached the decision  
21 that he was not appropriate to continue in the  
22 position of president and in fact reach an  
23 agreement for his departure?

24 MR. GROGAN: Very short, I would say

1 perhaps a week.

2 MR. RICHLIN: And in that week's  
3 time, it's true is that not just his role as an  
4 officer but also his ownership of stock was  
5 resolved as well?

6 MR. GROGAN: Correct.

7 MR. RICHLIN: Again, did urgency  
8 place some role in the fact that this process  
9 was ongoing that is this process of  
10 investigation and consideration and suitability  
11 played some role in how Ourway approached the  
12 negotiations with Mr. Piontkowski?

13 MR. GROGAN: Absolutely. It was  
14 important to do this and to do it quickly and to  
15 make that separation and to move forward. So,  
16 it was done to effect change as quickly as  
17 possible.

18 MR. RICHLIN: Getting back to  
19 Commissioner McHugh's question, what was the  
20 relationship between the complete separation of  
21 Mr. Piontkowski from Ourway and your efforts to  
22 create a culture of integrity, accountability  
23 and responsibility?

24 MR. GROGAN: Can you ask that?

1 MR. RICHLIN: Yes, I'll ask again.  
2 What was relationship between the resolution of  
3 Mr. Piontkowski's relationship to Ourway and  
4 your efforts to create a culture of integrity,  
5 accountability and responsibility?

6 MR. GROGAN: We wanted to separate  
7 that as quickly as we could to begin that path  
8 into the new direction. So, it was important to  
9 do it quickly, to make it clean and to move  
10 forward in a very different direction.

11 MR. RICHLIN: Is there any open  
12 dispute that you know of between Ourway and the  
13 former president?

14 MR. GROGAN: No.

15 MR. RICHLIN: Is there any threat of  
16 litigation that you know of between Ourway and  
17 the former president?

18 MR. GROGAN: No.

19 MR. RICHLIN: Has there been any  
20 continuing communication from him to the  
21 organization since his departure?

22 MR. GROGAN: I have received a few  
23 emails from him asking some questions about some  
24 old tax matters, but it's very limited.



1           CHAIRMAN CROSBY:  If I could just  
2 follow up.  I think the direction Commissioner  
3 McHugh was going, and it is at least as I hear  
4 it, it's an important point to make that the  
5 gist of what Mr. Grogan is saying is trust me.  
6 We are going to fix this.  And we are going to  
7 establish a culture of integrity and  
8 responsibility and accountability going forward.

9           One of the most powerful ways to  
10 establish a culture such as that is to hold  
11 people accountable who do inappropriate things,  
12 particularly when they're your friends whom you  
13 like and have liked for a long time.

14           And it appears here that the way it  
15 was handled was after a series of at least  
16 inappropriate acts, and overseeing a system  
17 which was utterly bereft of the most normal  
18 kinds of controls and operating standards, that  
19 Mr. Piontkowski was handled with kid gloves,  
20 with respect, with appreciation for his prior  
21 life and prior friendship.  And I can appreciate  
22 that as a human being.  But that does not strike  
23 me as a way to tell us to the people in your  
24 operation that you better follow the rules.

1                   What you've done here is taken  
2 someone who didn't follow the rules and was  
3 treated pretty gracefully, it seems to me.

4                   MR. RICHLIN: If I could put that  
5 into a question. Why didn't Ourway terminate  
6 his employment without an agreement? Why didn't  
7 Ourway simply terminate him, put him out the  
8 door on the basis of what you had learned in the  
9 investigation?

10                  MR. GROGAN: What was important was  
11 to make that transition as cleanly and as  
12 smoothly, and as counsel suggested protracted  
13 litigation with the former president would have  
14 been detrimental to the company.

15                  But I want to come back to two  
16 points that you made, Mr. Chairman. One is when  
17 you're saying trust me, this is what we're  
18 doing. This is not an act of a single  
19 individual in terms of me in terms of creating  
20 that culture. This is, it starts at our board.  
21 It starts with the active involvement of the  
22 members, the two major shareholders, which  
23 weren't before. So, this is not a trust me,  
24 we'll do this. This is being done by starting

1 at the board and moving through.

2           The second thing is that how the  
3 former president was treated in those  
4 negotiations, I think that he would not  
5 characterize them as you did in that  
6 conversations were extraordinarily difficult.  
7 And I don't think that would be characterized as  
8 trust or respect regardless of the appearance.  
9 And I think the repurchase of the stock was done  
10 and the salary continuation was an effective way  
11 to make the separation happen.

12           CHAIRMAN CROSBY: Okay. I think we  
13 interrupted you in the middle of questions. Do  
14 you want to go ahead? Are you still in your  
15 follow-up?

16           MR. RICHLIN: Yes, I do have a few  
17 more. Just to kind of finish up this topic of  
18 these withdrawals. In doing your analysis and  
19 based on what you've learned through the  
20 investigation, did you come to some  
21 understanding as to what role, if any, Mr.  
22 Fulton and Mr. Ross played relative to either  
23 the approval of sanctioning, or reclassification  
24 of these withdrawals that Mr. Piontkowski had

1 taken?

2 MR. GROGAN: Again, they were as  
3 passive investors, they were not to my knowledge  
4 involved in all of those decisions. They were  
5 not a part of that.

6 MR. RICHLIN: And did you come to  
7 some understanding as to why it appears that  
8 their signatures on this document that is  
9 Exhibit 5?

10 MR. GROGAN: Again, it was presented  
11 for their signature. But what was explained to  
12 them, what it was, I don't know.

13 MR. RICHLIN: I want to at this time  
14 show you what has been marked as  
15 Ourway/applicant Exhibit Number 1. I believe  
16 that this was part of our prehearing submission.  
17 And I believe the Commission has this already.  
18 And if not, I'm happy to give you copies of  
19 that. The one-page document and it's labeled  
20 Governance and Internal Control.

21 CHAIRMAN CROSBY: Yes, right.

22 MR. RICHLIN: So, I want to put that  
23 before you and ask you if you recognize that  
24 document?

1 MR. GROGAN: I do.

2 MR. RICHLIN: Is this something you  
3 created?

4 MR. GROGAN: Yes, it is.

5 MR. RICHLIN: Can you date that  
6 version of the document?

7 MR. GROGAN: Absolutely. This would  
8 be dated post July 17 because it references Mr.  
9 Fulton as the CEO.

10 MR. RICHLIN: And were there earlier  
11 versions of this document?

12 MR. GROGAN: There was. The basis  
13 of this was what I called my one-week, one-month  
14 plan that I presented to the IEB on April 4.  
15 It's evolved slightly since then. And it had  
16 some subsequent information regarding our first  
17 board of advisors. But it's along the lines of  
18 my one-month plan.

19 MR. RICHLIN: What was the purpose  
20 of creating this document?

21 MR. GROGAN: It was done for me --  
22 it was done by me sort of saying here is my  
23 plan. When I got the job, what was I going to  
24 do? What was I going to do instantly? What was

1 I going to do in the longer-term basis in terms  
2 of address the issues of oversight and controls  
3 which we were lacking.

4 MR. RICHLIN: And does this version  
5 of the document reflect some of the items of  
6 change that you described in your narrative  
7 presentation?

8 MR. GROGAN: They do. I think it's  
9 almost all of that is what we have done.

10 MR. RICHLIN: Members of the  
11 Commission, I would move that this be admitted  
12 into the record at this time.

13 MR. MACKEY: No objection.

14 MR. RICHLIN: Now, Mr. Grogan, I  
15 want to show you what has been marked as Exhibit  
16 2. And you referred to this document in your  
17 narrative. And that's a two-page document that  
18 is entitled Manager's Appointment of President/  
19 Authority and Duties. Do you recognize that  
20 document?

21 MR. GROGAN: I do.

22 MR. RICHLIN: And do you know who  
23 prepared this document?

24 MR. GROGAN: Counsel to Ourway

1 (INAUDIBLE).

2 MR. RICHLIN: And does this document  
3 bear your signature?

4 MR. GROGAN: It does indeed.

5 MR. RICHLIN: And does it appear the  
6 signature of Mr. Ross?

7 MR. GROGAN: It does indeed.

8 MR. RICHLIN: And is this a document  
9 that you were referring to in your testimony  
10 regarding some limitation on your authorities  
11 and some description of your duties?

12 MR. GROGAN: It is.

13 MR. RICHLIN: And I want to direct  
14 your attention to paragraph seven and ask you to  
15 read that paragraph.

16 MR. GROGAN: John will not engage in  
17 self-dealing with Ourway. This includes any  
18 unilateral action without my written consent to  
19 pay himself compensation or benefits not  
20 specifically authorized by me, or to transact  
21 personal business with Ourway. John agrees he  
22 will not hire or engage for Ourway in any  
23 capacity his family members or associates in  
24 other businesses in which he maintains ownership

1 stake without my specific written consent.

2 MR. RICHLIN: Again, at this time, I  
3 would move that this document be moved into the  
4 record as an exhibit.

5 MR. MACKEY: No objection.

6 MR. RICHLIN: As part of your plans,  
7 Mr. Grogan, have you created an organizational  
8 chart?

9 MR. GROGAN: Yes, I have.

10 MR. RICHLIN: Is that an  
11 organizational chart that assumes gaming  
12 functions?

13 MR. GROGAN: We have two  
14 organization charts. We have the existing  
15 organization chart of operating business, what  
16 we refer to as the harness business. And also  
17 as our plan is developing for our Phase 2  
18 application, our gaming organization chart.

19 We envision that were we to receive  
20 the Category 2 license that we have an  
21 organization chart that has in the heads of  
22 gaming operations, slot operations, human  
23 resources, IT, finance, security and  
24 surveillance and the like. So, we contemplate



1 that with that we would go out and search for  
2 the very best people in each of those categories  
3 if we were to move forward.

4 MR. RICHLIN: And are there specific  
5 positions reflected on that chart that relate to  
6 the compliance function?

7 MR. GROGAN: It does. We expect to  
8 have General Counsel there. So, we've got  
9 compliance at both a corporate and an operating  
10 level. Corporate level being both financial  
11 compliance, legal compliance as well as  
12 operating compliance within the organization.  
13 We understand the regulations that we're going  
14 to be faced and be required to comply with and  
15 we have built into our organizational chart  
16 people in those capacities.

17 MR. RICHLIN: Will there be anybody  
18 who will have responsibilities specifically for  
19 compliance and that will bear a job title that  
20 relates to compliance?

21 MR. GROGAN: Envisioned to be  
22 through General Counsel would be the chief  
23 compliance officer. And both the financial  
24 officer and legal counsel would have matrix

1 reporting to the board of advisors as well as to  
2 the president of the company.

3 MR. RICHLIN: in the course of the  
4 investigation, you were asked, and this is  
5 reflected in the report, about the role that Mr.  
6 Peterson has played in the organization up to  
7 his resignation. How would you describe the  
8 function that he performed?

9 MR. GROGAN: In the report, Mr.  
10 Peterson has described his functions as the  
11 controller. He was responsible for the cash  
12 management, check processing sort of aspect of  
13 that business. And the executive functions as  
14 described was something that he did not do. In  
15 the report, he has described as following the  
16 direction from the president of the company.

17 As I got this job on April 3, on  
18 April 4 in my testimony to the IEB, I told them  
19 at that time that Mr. Peterson, if we were to  
20 receive a gaming license would not be the chief  
21 financial officer of the department.

22 MR. RICHLIN: To your knowledge, did  
23 Mr. Peterson know that that was your view?

24 MR. GROGAN: Yes. That was not

1 redacted in the unredacted reports as far as the  
2 confidential IEB report. And Mr. Peterson as a  
3 qualifier got the confidential IEB report. So,  
4 he was aware of that.

5 MR. RICHLIN: Did you at any time  
6 have a specific conversation with him about  
7 whether he would be considered for the role of  
8 CFO sometime in the future?

9 MR. GROGAN: CFO of Plainridge Park?

10 MR. RICHLIN: Yes.

11 MR. GROGAN: It was clear that we  
12 would be looking for somebody as a CFO. He  
13 would know it. He was more of a controller.  
14 And that we were going to find a more  
15 traditional chief financial officer.

16 MR. RICHLIN: As of Tuesday morning  
17 when you described that staff meeting, had you  
18 communicated with Mr. Peterson anything about  
19 your expectation regarding his future employment  
20 with the company as opposed to his role as CFO?

21 MR. GROGAN: No. The assumption was  
22 he would continue.

23 MR. RICHLIN: There was some  
24 discussion in the report and certainly by

1 Director Wells this morning that certain  
2 investigations that occurred in the period  
3 between of 2004 or five and I think that  
4 involved State investigators. The question I  
5 want to ask you is do the State Police have an  
6 office or are they present on the premises of  
7 the racecourse?

8 MR. GROGAN: They are. They have an  
9 office. The Racing Commission does as well as  
10 the State Police. So, there is a State Police  
11 presence on the property daily.

12 MR. RICHLIN: Did you upon assuming  
13 your responsibilities have some communication  
14 with the trooper that is present at the  
15 racecourse?

16 MR. GROGAN: I did. After I got  
17 this position, I learned about a difficult  
18 relationship between the State Police and the  
19 former president. The trooper that is there has  
20 an office right next to our director of  
21 operations. I met him. I had a conversation  
22 with him and explained how the practices at the  
23 track were changing. And wanted him to  
24 understand that we have a different view of our

1 relationship with the State Police. And I told  
2 him I wanted him to come down to my office and  
3 we would talk about it.

4 He has been in our building five  
5 days a week for 15 years. He told me he had  
6 never been in that office before. I said come  
7 on down, sit down. I want to talk to you about  
8 what we're doing and I want to change what we're  
9 doing.

10 And I explained to him that our  
11 standards, the standards that we set were a very  
12 high bar. And that if you had any concerns that  
13 there were regulations, laws being broke that he  
14 should absolutely come to me.

15 I told him that our standards are  
16 much higher than simply complying with the law.  
17 I want to know about it instantly. He said the  
18 practice before was that he was not allowed to  
19 talk to people unless management were present.  
20 And I said that's no longer the case. I said  
21 you are here. You have access. And if  
22 something is wrong, we will fix it. I want you  
23 to know that we will. Something might be wrong  
24 and we will fix it. Bring it to me and we will

1 take care of it. He explained that you have to  
2 understand that's very different than how it's  
3 been. I said I understand that. I want you to  
4 know that's how it is.

5 CHAIRMAN CROSBY: Just for the  
6 record I would not want our State Police to be  
7 able to be told by the manager of any facility  
8 that they couldn't talk to anybody they wanted  
9 to talk to. So I see our troopers back there.  
10 There's two levels of accountability in that  
11 conversation.

12 MR. RICHLIN: Finally Mr. Grogan, I  
13 want to direct your attention to Exhibit 1 to  
14 this hearing, which is the notice of  
15 adjudicatory proceeding. This is the July 10,  
16 2013 letter of Chairman Crosby.

17 And I want to direct your attention  
18 to page two, which identifies three topics in  
19 particular that the Commission wanted to  
20 address.

21 So, I want to direct your attention  
22 to that. The first one, and I'll paraphrase,  
23 asks for confirmation whether the applicant  
24 historically lacked effective corporate

1 governance and internal controls. Have you made  
2 a conclusion as to whether that statement is  
3 true?

4 MR. GROGAN: Yes, I have. And as I  
5 said before, clearly that we have lacked  
6 effective controls in that aspect.

7 MR. RICHLIN: And also that same  
8 question asks for the nature, source, cause,  
9 duration, effects of responsibility and  
10 correction of those problems. Have you in your  
11 analysis of the deficiencies in the past made  
12 some determination about nature, source, cause,  
13 duration and effects?

14 MR. GROGAN: Yes that went back to  
15 sort of my analysis of what happens with the  
16 responsibility spread both by the prior  
17 management and the lack of governance.

18 MR. RICHLIN: And the second  
19 question or the second paragraph asks the  
20 applicant to be prepared to address whether the  
21 applicant has instituted or will immediately  
22 institute internal controls, financial  
23 accounting practices, etc. for the proper  
24 financial management and accounting required for

1 a Category 2 gaming establishment.

2 And have you to the best of your  
3 knowledge and ability first of all, addressed  
4 that question in your narrative testimony?

5 MR. GROGAN: I think we have. I  
6 think that we can make the distinction between  
7 financial accounting and internal controls. So,  
8 our accounting systems tracks and do all of  
9 that. So, I think we have the financial  
10 management in place.

11 And then what we are putting in are  
12 the practices to make sure any issues that as it  
13 relates to communication between the board and  
14 financial officer as well as the auditor. As we  
15 met with the auditor in April to go over the  
16 financial statements, this was the first time  
17 that the auditor had met with both the president  
18 and the board. The board of course didn't exist  
19 before, but had gone over the financials with  
20 the president.

21 MR. RICHLIN: And finally the third  
22 paragraph there asks for an attestation that  
23 measures implemented and to be implemented will  
24 conform to standards as determined by the



1 Commission for proper financial management and  
2 accounting. And will prevent the recurrence of  
3 some of the events causing concern. Can you so  
4 attest before this Commission?

5 MR. GROGAN: I can. In fact,  
6 Chairman Crosby, I want to come back to this  
7 idea of trust me. One of the things that we are  
8 trying to do and I believe we will be successful  
9 is not making this individual. This is not up  
10 to me.

11 We want to institutionalize this.  
12 This is not solely dependent upon me. It is an  
13 institutional process that starts at our board,  
14 runs through me and runs down throughout the  
15 entire organization. So, there's controls and  
16 governance that starts at the top and comes all  
17 the way down.

18 People in our money room are raising  
19 issues, making sure that we are complying in  
20 every aspect of that organization. So, it's not  
21 on an individual basis. The problems we had in  
22 the past is that we were an individual-based  
23 organization. And the goal now was to put this  
24 in a system in a culture of not only compliance

1 as sort of a regulatory term but in fact in the  
2 practice of doing the right thing.

3 When you translate this to somebody  
4 in the money room, when you translate this to a  
5 teller you say we are going to do the right  
6 thing, compliance at some level might get lost  
7 in translation. It's do the right thing. And  
8 that's a culture. It's not individual. It is  
9 not up to me. This up to everybody starting at  
10 the board and working its way down.

11 CHAIRMAN CROSBY: Trust us is what's  
12 being said.

13 MR. GROGAN: And I want it to be  
14 it's an institutional process. And that it is  
15 something that given our history is something we  
16 all feel committed to and be involved in from  
17 our members are here to ensure that both for  
18 them and for you that it will not happen.

19 MR. RICHLIN: That's all I have.

20 CHAIRMAN CROSBY: Counsel for the  
21 Bureau or the Bureau?

22 MR. MACKEY: The Bureau does have  
23 some questions of Mr. Grogan. I understand, Mr.  
24 Grogan, Mr. Piontkowski brought you on board as

1 a business and a financial consultant in  
2 approximately 2009? I know you had other  
3 dealings with him but with respect to the  
4 applicant, 2009?

5 MR. GROGAN: Right.

6 MR. MACKEY: At some point, you  
7 stopped consulting with them. In fact, there  
8 was a break and then you came back in 2011 and  
9 continued in an advisory capacity on the  
10 financial and business side; is that correct?

11 MR. GROGAN: Yes.

12 MR. MACKEY: So, in connection with  
13 the work that Mr. Piontkowski wanted you to do  
14 when he brought you on board as a consultant,  
15 did he give you access to the financial records  
16 and financial material of Ourway?

17 MR. GROGAN: I saw the annual  
18 financial statements. Just to understand, I  
19 worked in a separate building. The Plainridge  
20 Racecourse is at 301 Washington Street and my  
21 office was in a different part of Plainville.  
22 But in that I have read some of the financial  
23 statements.

24 MR. MACKEY: I understand. And

1 specifically these documents are not going to be  
2 marked or introduced into evidence, the  
3 financial statements for 2007 were prepared by a  
4 firm in Husted and Husted. I'm not sure I'm  
5 pronouncing that right. You have to answer.

6 MR. GROGAN: I don't recall.

7 MR. MACKEY: You recall seeing in  
8 the annual audit financial statements but you  
9 can't recall particular --

10 MR. GROGAN: Who prepared them, I  
11 have no idea.

12 MR. MACKEY: I take it from your  
13 previous testimony that the financial statements  
14 reflected Ourway's financial position. And that  
15 position was declining in a fairly dramatic way  
16 from the period of time say 2007 to 2011?

17 MR. GROGAN: Yes, dramatic in  
18 revenues were down.

19 MR. MACKEY: Declining revenues?

20 MR. GROGAN: Declining revenues.

21 MR. MACKEY: Negative cash flow?

22 MR. GROGAN: Negative cash flow.

23 MR. MACKEY: And that in particular,  
24 Ourway was depending for literally its day-to-

1 day existence on ongoing cash infusions from  
2 some of its members.

3 MR. GROGAN: From all of its  
4 members.

5 MR. MACKEY: From all of its  
6 members. When you looked at these financial  
7 statements and the financial statements  
8 reflected the red ink that seemed to be  
9 prevalent during this period, did you also note  
10 in the financial statements that they were  
11 reflecting a distribution on an annual basis to  
12 a member?

13 MR. GROGAN: Again, while I had  
14 access to those financial statements, I was not  
15 analyzing what we call the existing business.  
16 Most of my efforts were focused on the business  
17 and financial model of the gaming business.

18 So, as we looked at that we  
19 separated that into two businesses, the gaming  
20 and the harness. So, I had access to that to  
21 the financial statements simply to help forecast  
22 the performance of the harness business as  
23 supposed to analyzing and reviewing and reading  
24 the footnotes. I was not reading them in that

1 regards.

2 MR. MACKEY: Understood. So, your  
3 focus was going forward to the next generation  
4 of the company as it were.

5 MR. GROGAN: Yes.

6 MR. MACKEY: But nonetheless,  
7 you're sitting here today do you remember when  
8 you saw the financial statements noting the fact  
9 that on the statements it did reflect on an  
10 annual basis a significant distribution to a  
11 member?

12 MR. GROGAN: No. I did not read  
13 those footnotes to see it that way.

14 MR. MACKEY: You did not. At some  
15 point Mr. Grogan, despite the declining  
16 financial position of the company, you did learn  
17 in fact of these ongoing apparently very regular  
18 distributions to one of the members, Mr.  
19 Piontkowski?

20 MR. GROGAN: Yes.

21 MR. MACKEY: How did you learn about  
22 this specifically?

23 MR. GROGAN: It came about in the  
24 interview with Mr. Fulton at the end of March.

1                   MR. MACKEY: So, prior to the sworn  
2 interview that you had with the folks from the  
3 IEB, you had never spoken to Mr. Piontkowski  
4 about distributions?

5                   MR. GROGAN: No.

6                   MR. MACKEY: And you had never  
7 spoken, I take it, to Mr. Peterson about the  
8 distributions?

9                   MR. GROGAN: No.

10                  MR. MACKEY: Had you ever spoken in  
11 your role as a financial and business consultant  
12 to Ourway to Ourway's outside audit?

13                  MR. GROGAN: No. The only way would  
14 have been in collecting information in the Phase  
15 1 process. My consulting at that time was  
16 really not focused on that.

17                  MR. MACKEY: The specific question  
18 is did you ever have a conversation with Mr.  
19 Piontkowski, Mr. Peterson or the auditors for  
20 Ourway about these ongoing distributions?

21                  MR. GROGAN: No.

22                  MR. MACKEY: The first you learned  
23 was your sworn interview?

24                  MR. GROGAN: Not mine, Mr. Fulton's.

1 MR. MACKEY: I'm sorry, Mr. Fulton's  
2 sworn interview. I apologize. Do you have a  
3 copy of that Exhibit 4, the report before you?  
4 That might be helpful because I am just going to  
5 point to a couple of points in that. I just  
6 want to make sure we are on the same page.

7 This is Exhibit Number 4. It's the  
8 redacted report. I just want to draw your  
9 attention, Mr. Grogan, to page 37. And it's in  
10 section three there about two-thirds of the way  
11 down the page. It was the line that was  
12 referenced previously. Do you see the sentence  
13 beginning with these withdrawals?

14 MR. GROGAN: Yes.

15 MR. MACKEY: And for the record, the  
16 report states these withdrawals have been  
17 described by some of the members of the  
18 applicant as well as Grogan as an accommodation  
19 to Piontkowski.

20 MR. GROGAN: Uh-huh (affirmative).

21 MR. MACKEY: And I think you  
22 described it earlier today as an accommodation.  
23 But you also used the word acknowledgment and  
24 you used the words understanding; is that



1 correct?

2 MR. GROGAN: Yes.

3 MR. MACKEY: What I want to more  
4 fully understand is if it was an accommodation,  
5 if it was an understanding, if it was an  
6 acknowledgment, it was an understanding by whom?  
7 It was an accommodation by whom?

8 MR. GROGAN: Again, the  
9 accommodation and understanding by the members,  
10 the major members, major shareholders.

11 MR. MACKEY: By the major  
12 shareholders.

13 MR. GROGAN: Major shareholders.

14 MR. MACKEY: And by major  
15 shareholders, just for the record, tell us who  
16 you mean.

17 MR. GROGAN: Mr. Fulton and Mr.  
18 Ross.

19 MR. MACKEY: And who were the other  
20 members who are not the major shareholders?

21 MR. GROGAN: We have a total of 15  
22 members in the LLC.

23 MR. MACKEY: So, two of the 15 are  
24 major shareholders.

1 MR. GROGAN: Two.

2 MR. MACKEY: I gave to your counsel  
3 this morning, Mr. Grogan, a very brief excerpt  
4 from your sworn testimony. I don't know if you  
5 have that before you, do you recall your sworn  
6 testimony of April 4, 2013?

7 MR. GROGAN: I do.

8 MR. MACKEY: Ms. Chardell asked you  
9 a series of questions. And I am just giving you  
10 an excerpt because I want to make sure the  
11 record is clear about this. At the bottom of  
12 page 13, and this is during your sworn  
13 interview, Ms. Chardell asked you the question.  
14 She says and she's asking about the  
15 distributions that have been the subject of your  
16 testimony today. This is Ms. Chardell: I'm  
17 sorry, if I can interrupt, when you say nothing  
18 was wrong, you mean in terms of operation?

19 And you answered, and this is line  
20 three through the bottom of page 15: Nothing  
21 was done wrong. The draws were an accommodation  
22 for the president and it happened to be a  
23 member.

24 Do you recall that answer?

1 MR. GROGAN: I do.

2 MR. RICHLIN: In the interest of  
3 completeness, and since you quoted from it, it's  
4 a rather lengthy answer I think, but we might as  
5 well have the benefit of the full answer.

6 MR. MACKEY: That's fair enough.  
7 Because I was going to get to the remainder of  
8 the question and I will.

9 Let me just simply read the entire  
10 answer into the record: Nothing was done wrong.  
11 The draws were an accommodation for the  
12 president and it happened to be a member. So,  
13 it was you rounded corners. This is a money  
14 losing track. So, most of the communication to  
15 the members over the years was what's the check  
16 this year? They're writing a check. So, it  
17 sort of didn't matter. The budgets and the  
18 numbers as opposed to is it a million one, a  
19 million two, a million five? That was the  
20 question. They got one capital call a year to  
21 fund losses and that was it.

22 So, again you sit here -- excuse me.  
23 Again, you sit there and say should the controls  
24 have been better, absolutely yes. Sort of

1 nothing was, I'm thinking sort of bad/wrong as  
2 opposed to poor governance and controls.

3 MR. GROGAN: If I can, I was trying  
4 to make that distinction between legal versus  
5 control. And when I sit there and say wrong  
6 from a control perspective, absolutely. The  
7 question was the legality question was they were  
8 tracked and monitored. It was tracked from an  
9 accounting perspective. So, that I don't want  
10 to convey the sense that it wasn't wrong in that  
11 regard it was not is what I was intending to  
12 say.

13 MR. MACKEY: That's helpful. Just  
14 going back to this issue of your  
15 characterization of this as an accommodation and  
16 then today you described it as an understanding  
17 or an acknowledgment. If it was an  
18 acknowledgment by the owners or an accommodation  
19 by the owners, Mr. Fulton and Mr. Ross I take it  
20 in particular, then I take it you had some basis  
21 for believing that the owners were aware of  
22 these distributions as they were happening?

23 MR. GROGAN: I'm not sure as they  
24 were happening. What happened was in the week

1 between -- roughly the week between Mr. Fulton's  
2 interview and I don't have the date of that.  
3 So, this was all a set of information that  
4 happened between then sometime the end of March  
5 and April 4. This was the understanding that  
6 came about as a result of conversations in that  
7 period of time.

8 MR. MACKEY: I understand. So, what  
9 you're saying that when this pattern of conduct  
10 began many, many years ago, that it's not your  
11 testimony that at that time when it began that  
12 there was an acknowledgement or an accommodation  
13 or an understanding that Mr. Piontkowski was  
14 engaged in this.

15 But in connection with the  
16 resolution of the issue in 2013, this year, it  
17 was treated in the fashion it was as an  
18 accommodation by the owners to him.

19 MR. GROGAN: The resolution was the  
20 method of the transfer versus the resolution are  
21 different. I mean the resolution was different  
22 from the capital withdrawal. What I said was  
23 that the capital withdrawal was treated as an  
24 accommodation. The capital withdrawal was an

1 accommodation to the member, that capital  
2 withdrawal.

3           The method, the nature of how that  
4 happened was I don't believe known to the  
5 members. What they saw was a number at the end  
6 of the year as opposed to how did that happen?  
7 Was that a series of money transfers or was that  
8 a check or something different? I don't believe  
9 they understood the nature of how that capital  
10 distribution came about.

11           MR. MACKEY: Let me draw your  
12 attention back again to your sworn testimony.  
13 This is the previous page, page 13. This is  
14 your sworn testimony taken at the Gaming  
15 Commission offices on Thursday, April 4, 2013.  
16 And I just want to make sure that the record is  
17 clear here.

18           For the purposes of the record, let  
19 me read your entire answer on page 13. And then  
20 there are going to be parts of it that I want to  
21 focus in on. And I'm sure Mr. Richlin is going  
22 to make me read the entire answer. So, why  
23 don't I start with that.

24           The question from Ms. Chardell

1 relates to the CFO, the then CFO and would he  
2 have been responsible for putting some of these  
3 controls in place, some of the controls that you  
4 talked about earlier today.

5           And your answer is: I am thinking  
6 no in that I think the CFO would say to his boss  
7 this is what I think we ought to do. So, I  
8 think ultimately that responsibility is the  
9 boss's.

10           Now you've seen the annual -- the  
11 letter, our letter about the draws. Those were  
12 done annually so that the auditor was saying,  
13 hey, we need to make sure this is okay. So, it  
14 was done annually. Some of those things where  
15 there.

16           I think ultimately it runs to the  
17 top and also it runs to, you know, I'll say the  
18 board even though the board didn't quite exist.  
19 These were a bunch of passive investors, a  
20 controller question. I think it's important we  
21 are talking about controls.

22           From our side, we think nothing was  
23 wrong. It was sloppy, nothing was wrong. Did  
24 some of the members? I know you talked to them.

1 Did they know, no, they did not. I'm not sure  
2 they should. Five percent passive investors.  
3 What did they know, I am not sure.

4 So, let me just ask a specific  
5 question, because you're probably anticipating  
6 correctly where I'm going. So, it was your  
7 understanding at the point of your sworn  
8 interview on April 4, 2013 that the members --  
9 that none of the members knew or some of the  
10 members knew?

11 MR. GROGAN: It was my understanding  
12 that the majority of the members did not know.  
13 That prior to -- There were two qualifiers Mr.  
14 Tuch and Mr. Chanowski that were specifically  
15 asked about these and they did not know.

16 MR. MACKEY: And when you say they  
17 were specifically asked, would that be by the  
18 IEB team --

19 MR. GROGAN: By the IEB team.

20 MR. MACKEY: -- during their  
21 interviews?

22 MR. GROGAN: Of that February letter  
23 from 2012, I believe they were asked did they  
24 know. And it was my understanding that they did



1 not know.

2 MR. MACKEY: And you've identified  
3 those members who did not know. But what about  
4 Mr. Fulton and Mr. Ross?

5 MR. GROGAN: It's in the report that  
6 Mr. Ross when asked he did not have a  
7 recollection of the document. I know that's  
8 what he said.

9 MR. MACKEY: Not only did he not  
10 have recollection of the document but the report  
11 reflects, does it not, that Mr. Fulton denied  
12 knowing about the distributions that were taking  
13 place in the fashion that they were taking  
14 place?

15 MR. GROGAN: Yes.

16 MR. MACKEY: Just to be clear, page  
17 39 of the report that middle paragraph there  
18 between the two blacked out areas, right in the  
19 middle of it it says: Although the  
20 investigation confirmed that such money room  
21 distributions did occur, it could not  
22 definitively confirm whether such distributions  
23 were knowingly approved by Fulton.

24 In fact, in his first interview,

1 Fulton denied having any recollection of having  
2 approved these distributions. I take it from  
3 your testimony that you don't have any  
4 information that Mr. Fulton did approve the  
5 distributions. But as a resolution to the  
6 issues with Mr. Piontkowski, an accommodation  
7 was made that enabled a resolution?

8 MR. GROGAN: Yes. I will come back  
9 and the interview with Mr. Fulton again, it was  
10 unique and somewhat unusual that I was there for  
11 that was a startling interview. There was a  
12 number of things came out in that that I think  
13 was certainly unknown. It was pattern and  
14 practice, all of that was brought out in that  
15 interview. And it was new information certainly  
16 to Mr. Fulton and certainly to me.

17 MR. MACKEY: After the sworn  
18 interview with Mr. Fulton, which you say was the  
19 first that you learned of this and the first  
20 that Mr. Fulton learned of this pattern of  
21 conduct, did you then have conversations with  
22 the members, with any of the members, Mr.  
23 Fulton, Mr. Ross?

24 MR. GROGAN: Mr. Fulton, Mr. Ross.

1 MR. MACKEY: Can you share those?

2 MR. GROGAN: Yes. We began to  
3 again, with the questions, with the line of  
4 questions, with all of the things that were  
5 coming up, we began to fully appreciate for the  
6 moment that the practice of controls and what  
7 was going on was not good. And that needed to  
8 be fixed and again as we come back, it was  
9 something that needed to be done quickly,  
10 efficiently, the best way thinking about the  
11 company rather than saying how are we treating  
12 Mr. Piontkowski at the time. The question was  
13 what was the right thing for Ourway moving  
14 forward in a pragmatic business perspective.

15 MR. MACKEY: So, it sounds like the  
16 focus was on moving forward attempting to  
17 address the problem.

18 MR. GROGAN: Again, deal with the  
19 issue with the then former president and then  
20 fixing that going forward.

21 MR. MACKEY: In any of the  
22 conversations you had after this interview with  
23 Mr. Fulton when it all came to light, did either  
24 Mr. Fulton or Mr. Ross or any of the other

1 members said, no problem. I told Mr.  
2 Piontkowski he could do that. I was aware of  
3 it. I let him do it. Any conversation to that  
4 effect whatsoever?

5 MR. GROGAN: No.

6 COMMISSIONER MCHUGH: Was that a no?

7 MR. GROGAN: I'm sorry, no.

8 MR. MACKEY: Do you have Exhibit 5  
9 in front of you? That's the letter from outside  
10 auditors addressed to Mr. Fulton and Mr. Ross.  
11 and you have the report in front of you too,  
12 please. So, let me just first, just to orient  
13 ourselves, page 38 of the report, the first full  
14 paragraph on page 38, are you there?

15 The first full paragraph on page 38,  
16 about halfway down that paragraph, the sentence  
17 beginning with the word -- let me go up a couple  
18 of sentences. The sentence beginning with the  
19 outside auditor. Do you see that?

20 MR. GROGAN: Yes.

21 MR. MACKEY: The outside auditor  
22 indicated -- I'm reading from the report now,  
23 page 38. -- that the first letter prepared was  
24 for calendar year 2008. Each year these letters

1 were submitted to Piontkowski in his capacity as  
2 the manager for Ourway. However, the outside  
3 auditor indicated that although these letters  
4 were submitted to Piontkowski each year, it was  
5 not until February 2012 when he actually  
6 received the letter back signed by Fulton and  
7 Ross.

8 The February 2012 letter listed the  
9 advances made to Piontkowski for calendar year  
10 2011. The 2012 letter also now reported the  
11 previous advances made to Piontkowski for  
12 calendar years 2004 through 2010.

13 Now you understand that Exhibit  
14 Number 5 is this last letter that's referenced  
15 in the report?

16 MR. GROGAN: Yes.

17 MR. MACKEY: There are not only  
18 Exhibit Number 5, but the outside auditor  
19 apparently reported that similar letters were  
20 prepared on an annual basis. Have you ever seen  
21 any of these letters?

22 MR. GROGAN: No. That there is a  
23 letter from, I believe, a 2008 letter that I  
24 have seen.

1 MR. MACKEY: Tell me who it's to and  
2 who it's from.

3 MR. GROGAN: It was 2008, Mr. Tuch  
4 was the manager at the time. And it listed the  
5 distributions. So, I'll say bookend letters.

6 MR. MACKEY: And you haven't seen a  
7 letter from in between?

8 MR. GROGAN: Correct.

9 MR. MACKEY: You say 2008?

10 MR. GROGAN: That's my memory.

11 MR. MACKEY: Was it a letter similar  
12 in form addressed to Mr. Fulton and Mr. Ross?

13 MR. GROGAN: Fulton and Ross, I  
14 think Tuch was the manager at the time.

15 MR. MACKEY: Okay. When was the --  
16 Would it be fair to say that as of February 7,  
17 2012 you were a consultant to the company at  
18 that point acting in a business advisor,  
19 financial advisor capacity?

20 MR. GROGAN: Yes.

21 MR. MACKEY: Did either Mr. Fulton  
22 or Mr. Ross or Mr. Piontkowski show you this  
23 letter?

24 MR. GROGAN: No.

1 MR. MACKEY: When is the first time  
2 you saw the letter?

3 MR. GROGAN: The February 12 letter?

4 MR. MACKEY: Yes.

5 MR. GROGAN: In Mr. Fulton's  
6 interview. It might have been before that. So,  
7 when it went, it would've gone through me as  
8 part of the Phase 1 process. So, I know it went  
9 some period of time before the end of March.  
10 So, it went from the company to the IEB.

11 MR. MACKEY: In 2012, it was  
12 something you had seen in connection with this  
13 investigation, not in and around the time that  
14 it was prepared or signed on?

15 MR. GROGAN: Right.

16 MR. MACKEY: After you first saw the  
17 letter when it came to light during this  
18 process, did you ever discuss the letter with  
19 Mr. Fulton or Mr. Ross?

20 MR. GROGAN: You're talking about  
21 this letter?

22 MR. MACKEY: Yes, Exhibit 5.

23 MR. GROGAN: It generated a lot of  
24 conversation post that.

1 MR. MACKEY: Describe that  
2 conversation.

3 MR. GROGAN: Again, the concerns  
4 about what was happening. Again, and even still  
5 this letter doesn't talk about the method that  
6 those were happening. Again, the levels and the  
7 concerns were expressed. And we talked about  
8 that.

9 MR. MACKEY: Did Mr. Fulton tell you  
10 when the letter came to light during his sworn  
11 interview in 2013 and you had conversations with  
12 him, did he tell you that he recalled seeing the  
13 letter a year previously and recalled signing  
14 it?

15 MR. GROGAN: No. If you have his  
16 statement, he doesn't recall.

17 MR. MACKEY: He never said anything  
18 to you that was inconsistent with that?

19 MR. GROGAN: No.

20 MR. MACKEY: What about Mr. Ross,  
21 did Mr. Ross ever acknowledge to you that in  
22 fact, yes, he had seen the letter in  
23 approximately 2012 and that he had signed the  
24 letter?



1 MR. GROGAN: I believe he had a  
2 better recollection of the signing of the  
3 letter. But I would say done without fully  
4 understanding what was in it.

5 MR. MACKEY: What specifically did  
6 Mr. Ross say to you about the letter?

7 MR. GROGAN: I would have trouble  
8 recalling a specific conversation about that.  
9 That he recalled seeing it and understanding but  
10 not the nature of it.

11 MR. MACKEY: Mr. Richlin, we do not  
12 have a copy of the 2008 letter in our files.  
13 So, I would ask if you find it and you could  
14 produce it that would be very helpful. Thank  
15 you.

16 MR. RICHLIN: Yes.

17 MR. MACKEY: I take it these  
18 discussions that you had with Mr. Ross about  
19 this letter, these were after the letter came to  
20 light in March 2013?

21 MR. GROGAN: Yes.

22 MR. MACKEY: I just want the record  
23 to be as clear as it can be. As you sit here  
24 today, you don't have any reason to believe that

1 the distributions to Mr. Piontkowski from the  
2 money room were done with the assent or  
3 understanding or agreement of any of the members  
4 of Ourway?

5 MR. GROGAN: Right.

6 MR. MACKEY: Thank you. Shortly  
7 after you learned about the distributions in  
8 March of this year, at that point you were a  
9 consultant, I understand. Only later then did  
10 you become president. But either as a  
11 consultant or when you became president, did you  
12 suggest or direct any further investigation into  
13 the matter?

14 MR. GROGAN: I did not.

15 MR. MACKEY: For example, did you  
16 suggest or direct either as a consultant or as  
17 the president that an investigation into -- that  
18 there be an investigation into whether others at  
19 Ourway may have been involved in facilitating  
20 these distributions in some way?

21 MR. GROGAN: I did not.

22 MR. MACKEY: And do you recall  
23 suggesting or directing an investigation or  
24 inquiry into whether others at Ourway in

1 addition to Mr. Piontkowski might have benefited  
2 from these distributions to Mr. Piontkowski?

3 MR. GROGAN: I did not.

4 MR. MACKEY: I want to touch briefly  
5 on the internal controls that Ourway is, I  
6 understand, working very hard to get up to speed  
7 and running now. You actually, I think,  
8 mentioned this in your testimony, Mr. Grogan,  
9 but correct me if I'm wrong. Wouldn't it be  
10 fair to say that one of the internal control  
11 problems or cultural problems, I'm not sure  
12 exactly what you'd call it, but one of the  
13 issues at Ourway might have been that employees  
14 like Mr. Peterson who's not here today were  
15 afraid to complain to people higher up in the  
16 company?

17 MR. GROGAN: I think that's  
18 accurate.

19 MR. MACKEY: In fact, they were  
20 afraid for their jobs or their career  
21 advancement?

22 MR. GROGAN: That's correct.

23 MR. MACKEY: And I think you also  
24 said this in your direct testimony that policies

1 and procedures and internal controls, you can  
2 write them down on a piece of paper and they're  
3 great. But if employees are afraid to follow  
4 them or they don't follow them for whatever  
5 reason, they're really not worth much more than  
6 the paper they're written on. Fair statement?

7 MR. GROGAN: It is.

8 MR. MACKEY: So, how do the changes  
9 that you are working hard to put into place at  
10 the applicant's business, how do they  
11 specifically encourage individuals to speak up  
12 even if they need to speak up going over the  
13 heads of their bosses to do it?

14 MR. GROGAN: A good example is we  
15 have the one-week plan was to put limits on  
16 advances from the money room. So, we have a  
17 petty cash limitation of \$300, which would be  
18 done by director of operations and director of  
19 racing. So, in the normal course of events  
20 reasons why you would need it, to put gas in the  
21 truck or to do other things.

22 I'm going to say two weeks ago petty  
23 cash request came in for an appropriate purchase  
24 for something that somebody needed cash for.

1 They couldn't use a check or could not use a  
2 credit card for. And a request came in for a  
3 \$500 advance. The head of the money room  
4 bounced that up to me and said you can't do it,  
5 unless I sign off. Our policy is set at \$300.  
6 It didn't say there was an exception over the  
7 \$300 and said no, you can't do that.

8           And so it was a seemingly simple  
9 thing that that practice and the head of the  
10 money room feels strongly about to take that  
11 position. So, here was a perfect example of a  
12 self-enforcing body that people responsible will  
13 bounce that up. And I said I can't do that.  
14 And we had to do it in a different way.

15           MR. MACKEY: How do you communicate  
16 to your employees that it's okay in certain  
17 circumstances to go over the head of your boss  
18 if you see something that's inappropriate or  
19 dishonest?

20           MR. GROGAN: We have weekly  
21 management meetings. We have monthly group  
22 staff meetings suggesting that questions are  
23 appropriate. I've said that to the managers.

24           We had companywide meetings after I

1 took this job. And I want people to know that  
2 it is fair to question your boss. That people  
3 can question their supervisors and supervisors  
4 should be comfortable with the questions. If  
5 you can't answer them you should do that.  
6 People come in with questions for me all the  
7 time. That's a rewarded behavior not a  
8 criticized behavior.

9 MR. MACKEY: I want to ask you a  
10 series of questions about whether there's any  
11 ongoing relationship with Mr. Piontkowski. He  
12 left the company in early April this year,  
13 correct?

14 MR. GROGAN: Yes.

15 MR. MACKEY: Does he have any  
16 ongoing role in the company today?

17 MR. GROGAN: None.

18 MR. MACKEY: Does Mr. Piontkowski  
19 have access to the offices, for example?

20 MR. GROGAN: No. To my knowledge,  
21 we are in a public building per se. I don't  
22 believe he has stepped foot in the building  
23 since his departure.

24 MR. MACKEY: Would he be able to?

1 Does he still have a key or a pass code?

2 MR. GROGAN: The locks were changed,  
3 passwords were changed, signature cards were  
4 changed.

5 MR. MACKEY: Were those changes made  
6 specifically with regard to Mr. Piontkowski's  
7 departure?

8 MR. GROGAN: Yes, yes, yes.

9 MR. MACKEY: What about access to  
10 the computer system, passwords?

11 MR. GROGAN: All of that was ended.

12 MR. MACKEY: I take it he has no  
13 access to the money room at this point?

14 MR. GROGAN: No, he does not.

15 MR. MACKEY: Is Mr. Piontkowski's  
16 brother still employed?

17 MR. GROGAN: Yes, he is. His  
18 brother is a customer service manager.

19 MR. MACKEY: Tell me what that  
20 involves and who the position reports to.

21 MR. GROGAN: We have, sort of call  
22 it a general manager are persons responsible for  
23 the conduct in the buildings. So, we are open  
24 approximately 12 to 12 or 12:00 PM to 12:00 AM

1 every day. We have a general manager what we  
2 now call a customer service manager that is on  
3 duty all those times.

4 Chuck Piontkowski is that. So,  
5 resolving issues with the customers and any  
6 sorts of problems, he's the first line. And  
7 customer service managers report to the director  
8 of customer service which directly reports to  
9 me.

10 CHAIRMAN CROSBY: Excuse me, Mr.  
11 Mackey, how much more time do you think you  
12 need?

13 MR. MACKEY: Five minutes.

14 CHAIRMAN CROSBY: Go ahead and then  
15 we'll take a break.

16 MR. MACKEY: Do you want to break  
17 now?

18 CHAIRMAN CROSBY: No. If you've got  
19 five minutes that's okay.

20 MR. MACKEY: There was some  
21 discussion earlier when you did your direct  
22 testimony about the circumstances under which --  
23 I'm sorry, not the circumstances, but the  
24 conditions under which Mr. Piontkowski left the



1 company.

2 MR. GROGAN: Yes.

3 MR. MACKEY: I take it at no point  
4 did the company ask Mr. Piontkowski to pay back  
5 the distributions that he had taken.

6 MR. GROGAN: They did not.

7 MR. MACKEY: And why not?

8 MR. GROGAN: It was part of the  
9 separation. Our goal was to be able to effect  
10 the separation as quickly and as effectively as  
11 possible. There were a number of aspects to  
12 that but we wanted to end that and move on.

13 MR. MACKEY: I think Commission  
14 members were asking this question. I am going  
15 to ask it again, maybe in a slightly different  
16 way. By not terminating Mr. Piontkowski for  
17 cause, by not demanding the money back and by  
18 instead giving him a generous by some measure of  
19 a severance package, do you have concern on the  
20 part of the company that that sends a message to  
21 the Bureau, to the Commission and to this  
22 industry about your company's attitude towards  
23 this kind of misbehavior?

24 MR. GROGAN: Our company's attitude

1 towards this behavior and how we separated Mr.  
2 Piontkowski was done in a timely manner of hours  
3 and without the benefit of hindsight of how it  
4 would appear. It was a pragmatic business  
5 decision. It is not meant to convey acceptance  
6 of any of that. It's not condoned. It will not  
7 be condoned. And it's not meant to convey that.

8 MR. MACKEY: Just a couple of  
9 questions about Mr. Peterson, if you would.  
10 It's your testimony that his resignation was  
11 purely voluntary on his part?

12 MR. GROGAN: Absolutely.

13 MR. MACKEY: Was there a separation  
14 agreement executed between Mr. Peterson and the  
15 company at the time he left?

16 MR. GROGAN: Let me be perfectly  
17 clear how this happened. A call from his lawyer  
18 to our lawyer suggesting he was resigning. And  
19 in fact, I subsequently asked our counsel how do  
20 we know he's not working. We do not have a  
21 resignation letter. He walked out on Tuesday.

22 What happened was, counsel gets a  
23 call. Counsel calls back and accepts the  
24 resignation and said make sure he comes up,

1 someone's in your office and had a two-minute  
2 conversation with him. He dropped his keys off  
3 and walked out the door. There was no  
4 resignation letter. There is no separation  
5 agreement. He walked into my office and he  
6 dropped the keys and turned around and walked  
7 out.

8 MR. MACKEY: I take it the fact that  
9 he dropped the keys off means he doesn't have  
10 access to the facility anymore?

11 MR. GROGAN: We are in a public  
12 building.

13 MR. MACKEY: I'm sorry, into a  
14 private office space or other sensitive areas  
15 that's not public.

16 MR. GROGAN: Yes.

17 MR. MACKEY: Are you aware that Mr.  
18 Peterson had taken out a loan from the company?

19 MR. GROGAN: I am.

20 MR. MACKEY: What is the  
21 disposition of that loan, if any?

22 MR. GROGAN: One of the things that  
23 happened and this was a direct result of our  
24 first meeting with the auditors at the end of

1 the month to review our financial statements.  
2 There was a receivable account in that financial  
3 statement. At which point, we had a discussion  
4 about what was in that receivable.

5 In that receivable account was a  
6 loan, the largest aspect of that receivable  
7 account a loan to Mr. Peterson. There were some  
8 other employee loans. And there were some I'll  
9 say miscellaneous receivables. I think we  
10 stored sort of uncollected bets, possibly  
11 collected checks. So, it's a long list of  
12 things. That was the first time that I became  
13 aware of the loan to Mr. Peterson. At which  
14 point, I told him that he should repay the loan.

15 MR. MACKEY: Can you give me the  
16 timeframe for this discussion again?

17 MR. GROGAN: This was our meeting  
18 with the auditor in April. I told him to pay  
19 the loan. Had a conversation with our Chairman  
20 about this. He was unaware of that. He said  
21 this has to be repaid. I told Mr. Peterson we  
22 wanted the loan repaid.

23 He explained sort of what it would  
24 take to do that. Last Tuesday approximately, he

1 told me that he had the check and had repaid the  
2 loan. The loan is repaid to my understanding.

3 MR. MACKEY: With respect to the  
4 loan, do you have any information that any -- It  
5 sounds like you were not aware of it until quite  
6 recently?

7 MR. GROGAN: That's right.

8 MR. MACKEY: Pending this  
9 investigation, during the course of this  
10 investigation. Do you have any information that  
11 members were aware of the loan to Mr. Peterson?

12 MR. GROGAN: That wasn't pending  
13 from this investigation. That came out as a  
14 result of our normal audit conversation with  
15 auditors. I'm sorry, yes. There was a  
16 document, a loan document during the  
17 investigation process. But this repayment and  
18 all that was as a result of normal conversation.

19 MR. MACKEY: Do you have any  
20 information as you are sitting here today before  
21 it came to light in the fashion described that  
22 anyone at the company other than Mr. Piontkowski  
23 knew about the loan?

24 MR. GROGAN: I don't.

1 MR. MACKEY: If I might just confer  
2 with my colleague for one minute?

3 MR. RICHLIN: Mr. Chairman, we have  
4 the 2008 letter. I was under the impression  
5 that the Commission already had this. When we  
6 take a break here, I'd like to give it to Mr.  
7 Mackey so that he has a chance to read it so if  
8 he wants to ask additional questions. You  
9 certainly can have copies of it as well.

10 CHAIRMAN CROSBY: Fine. Anything  
11 else?

12 MR. MACKEY: One additional  
13 question. In terms of staffing going forward is  
14 the person who is the head of the money room  
15 going forward the same person who would've been  
16 the head of the money room in previous years?

17 MR. GROGAN: We have the head of the  
18 money right now is the head. You said going  
19 forward, you mean Category 2 is the question?

20 MR. MACKEY: Yes.

21 MR. GROGAN: I don't know the answer  
22 to that.

23 MR. MACKEY: No decision?

24 MR. GROGAN: Absolutely.

1 MR. MACKEY: I have nothing further.

2 CHAIRMAN CROSBY: I think we would  
3 like to continue this, but it's been a little  
4 while. Why don't we take a 10-minute break.

5  
6 (A recess was taken)

7  
8 CHAIRMAN CROSBY: We're going to  
9 convene again folks. We're waiting, I think, on  
10 the Bureau and counsel, are there other cross-  
11 examination that you wanted to conduct?

12 MR. MACKEY: We have concluded our  
13 questions of Mr. Grogan.

14 CHAIRMAN CROSBY: Commissioners,  
15 questions for Mr. Grogan.

16 COMMISSIONER MCHUGH: I had a couple  
17 and I'll be brief because I asked a series  
18 before. Mr. Grogan, when I was asking you  
19 questions before I conflated the date on Exhibit  
20 5 with the interview by a year, I think. So,  
21 it's fair to say, is it not, that none of the  
22 changes that you've talked about instituting  
23 were instituted between February 7, 2012 and  
24 April 3, 2013 --

1 MR. GROGAN: That's correct.

2 COMMISSIONER MCHUGH: -- about 14  
3 months? And do you know whether at the end of  
4 2012 the same kind of increase to the capital  
5 account that's reflected in Exhibit 5 occurred  
6 again?

7 MR. GROGAN: Yes.

8 COMMISSIONER MCHUGH: It did at the  
9 end of 2012?

10 MR. GROGAN: Yes.

11 COMMISSIONER MCHUGH: After the  
12 March 3 interview, March 3, March 4, the  
13 interview that you attended with Mr. Fulton,  
14 then there was a discussion about what to do  
15 about the revelations that had occurred during  
16 the course of that interview, if I understand  
17 your testimony correctly.

18 MR. GROGAN: Yes, Sir.

19 COMMISSIONER MCHUGH: And those  
20 revelations reached a resolution and the  
21 activities reached a revolution resolution on or  
22 about the second or third of April?

23 MR. GROGAN: Right.

24 COMMISSIONER MCHUGH: And at any



1 time during that one-month period, did Mr.  
2 Piontkowski tell you or to your knowledge any of  
3 the other principles that he wanted to retire  
4 because of illness?

5 MR. GROGAN: He had well-documented  
6 health issues. The health issues were not  
7 driving this resignation.

8 COMMISSIONER MCHUGH: So, the answer  
9 is, if I understand you, no, he never raised  
10 that. And none of you ever raised the illness  
11 as a reason for his retirement.

12 MR. GROGAN: That's right.

13 COMMISSIONER MCHUGH: Exhibit 2 is  
14 the plan that Mr. Ross and you signed installing  
15 you as the president of Ourway your Exhibit 2 or  
16 the Ourway Exhibit 2.

17 MR. GROGAN: Yes.

18 COMMISSIONER MCHUGH: Is there  
19 another agreement that has superseded that  
20 agreement?

21 COMMISSIONER MCHUGH: Yes, there is.  
22 The appointment of Mr. Fulton as CEO superseded  
23 this one and that's dated July 17 that was  
24 forwarded to the IEB.

1                   COMMISSIONER MCHUGH: Do we have a  
2 copy of that? I know we have a copy of that.  
3 Could we mark a copy of that with everybody's  
4 agreement as perhaps Commission's Exhibit 6?

5                   MR. RICHLIN: No objection.

6                   COMMISSIONER MCHUGH: The essence of  
7 that agreement insofar as it makes changes is to  
8 install Mr. Fulton as the CEO.

9                   MR. GROGAN: Correct.

10                  COMMISSIONER MCHUGH: And you remain  
11 as the president.

12                  MR. GROGAN: Yes.

13                  COMMISSIONER MCHUGH: And Mr. Ross  
14 is the manager.

15                  MR. GROGAN: Yes.

16                  COMMISSIONER MCHUGH: And it also  
17 makes a number -- contains a number of  
18 provisions in which the agreement of all three  
19 is necessary for certain action to be taken; is  
20 that right?

21                  MR. GROGAN: I would have to look at  
22 it.

23                  COMMISSIONER MCHUGH: The agreement  
24 really speaks for itself. Was Mr. Ross a

1 participant in the discussions between March 3  
2 and April 3, 2013 with respect to the removal of  
3 Mr. Piontkowski?

4 MR. GROGAN: Yes.

5 COMMISSIONER MCHUGH: I take it, he  
6 was heavily involved in those discussions as you  
7 were and as Mr. Fulton was. Is it fair to  
8 characterize it that way?

9 MR. GROGAN: It is.

10 COMMISSIONER MCHUGH: Thank you.  
11 That's it.

12 COMMISSIONER CAMERON: I had a  
13 couple questions as well. It's not clear to me,  
14 Mr. Grogan, how you feel as the new president of  
15 the company about these disbursements. You've  
16 characterized them in a few different ways. But  
17 the seriousness of it, I am just not sure what  
18 your personal opinion is about this.

19 MR. GROGAN: Let me make that  
20 perfectly clear, Commissioner Cameron. They  
21 were wrong. They never should have happened and  
22 never will happen again. In my testimony to the  
23 IEB, I was trying to make a legal distinction.  
24 But as a pattern or practice it should never

1 have happened.

2 COMMISSIONER CAMERON: The reason I  
3 was unsure is in reviewing your interview, you  
4 speak glowingly about Mr. Piontkowski as you do  
5 about Mr. Peterson.

6 MR. GROGAN: Gary was a personal  
7 friend. So, when I speak -- I would want to go  
8 back and look at what it was. There's a number  
9 of things that Mr. Piontkowski did, a number of  
10 strengths when he was around. None of that  
11 though changes how I feel about the money room  
12 practice in terms -- and there should be no  
13 misunderstanding about what my position on that  
14 is. It was wrong, never should have happened.  
15 It will never happen again.

16 COMMISSIONER CAMERON: Also, was the  
17 resignation a face-saving move as opposed to a  
18 termination? It was widely reported in the  
19 press and throughout that he had health issues.  
20 And that was not corrected by anyone. Is that  
21 just a way of saving face? Am I characterizing  
22 that properly?

23 MR. GROGAN: Correct. His removal  
24 from the company -- again, what we were doing

1 from a company perspective wanted to effectively  
2 deal with this. I think that his resignation  
3 did that. How it got characterized by the  
4 press, I don't think was meant to be necessarily  
5 face-saving for him, but it was meant to manage  
6 the process from our perspective.

7 Our goal at all points was making  
8 sure that we could proceed, continue to move on.  
9 And I think protracted litigation around this  
10 would have been to a greater detriment of  
11 Ourway. That was something that we wanted to  
12 avoid.

13 COMMISSIONER CAMERON: In reviewing  
14 your plans with internal controls compliance,  
15 I'm just wondering if you have any evidence in  
16 the last couple of months since you put your  
17 plan into action, do you have minutes from  
18 meetings or any kind of records of employees  
19 being trained with these new policies?

20 MR. GROGAN: Again, part of the  
21 written policies that were done the ones  
22 submitted were money room and teller policies.  
23 So, what we were doing was documenting sort of  
24 patterns of practice. So, it was not -- So,

1 when you say training that was not a change of  
2 patter or a change of behavior that was done.  
3 It was writing down what was done.

4 What we're doing in many aspects of  
5 the company -- The company runs well in a number  
6 of areas. What we're doing is we're writing  
7 down what we do. These have been communicated  
8 particularly as we're changing behaviors within  
9 our tellers. So, that they are being  
10 communicated to them.

11 COMMISSIONER CAMERON: Okay. Last  
12 question, Sir. To your knowledge, does Mr.  
13 Peterson or Mr. Piontkowski have information  
14 that could be -- could have an effect on your  
15 suitability if that information were to come to  
16 the attention of the Commission or the press?

17 MR. GROGAN: No, they do not. The  
18 thought that Mr. Peterson's resignation was  
19 something that we wanted to happen, trust me as  
20 the president having him leave creates problems  
21 for us.

22 So, aside from this forum, we have  
23 company to run. He ran that the financial  
24 controls and all of the financial accounting. I

1 would say it was appropriate for what we were  
2 doing. And we need to deal with that. I wish  
3 Mr. Peterson were here today. And I wish that  
4 Mr. Peterson were here at the company on Monday.

5 COMMISSIONER CAMERON: We wish he  
6 were here as well. Thank you.

7 CHAIRMAN CROSBY: Anything else?

8 COMMISSIONER ZUNIGA: Yes, I have a  
9 couple of questions. Could you remind us who  
10 the board of advisors is that you referred to  
11 earlier?

12 MR. GROGAN: The idea was three  
13 inside and two out. One of the outside we  
14 haven't identified yet. The three inside  
15 members are Mr. Ross, Mr. Fulton, Mr. Levine,  
16 the venture capitalist from Washington. And  
17 then the outside director is Mr. Berman past  
18 president of Memorial Drive Trust and a to be  
19 determined fifth director. We're looking for  
20 someone with a very unique set of skills and  
21 experience that will complement the skills and  
22 experience of that four.

23 COMMISSIONER ZUNIGA: You also spoke  
24 about the recent appointment of Mr. Fulton as

1 the CEO, Mr. Ross as the manager. But the  
2 report speaks about how Mr. Ross is not  
3 anticipated to be involved in the day-to-day  
4 operations. Is that still the case?

5 MR. GROGAN: Yes, it is. You think  
6 of him as chairman of the board. So, you cannot  
7 think of chairmans of the boards involved in the  
8 day-to-day. Those day-to-day duties,  
9 obligations, responsibilities are delegated to  
10 me.

11 COMMISSIONER ZUNIGA: So, is it fair  
12 to say that there will still be only one  
13 president in the day-to-day, one person, one  
14 individual running the day-to-day on-site?

15 MR. GROGAN: I am the president of  
16 the company. So, the day-to-day  
17 responsibilities are mine and through me the  
18 various department managers.

19 COMMISSIONER ZUNIGA: But is there a  
20 second individual that provides the separation  
21 of duty that will be running day-to-day or  
22 involved in day-to-day operations from these  
23 three individuals that you described? Or where  
24 are the other two individuals residing and



1 operating?

2 MR. GROGAN: Other key, you mean the  
3 board of advisors?

4 COMMISSIONER ZUNIGA: No, Mr. Fulton  
5 and Mr. Ross.

6 MR. GROGAN: Mr. Ross lives in  
7 Massachusetts. He, again, is the chairman. The  
8 contact that I have with our board of advisors  
9 is extensive. I would say that I talk with each  
10 member of the board weekly and in some cases  
11 daily.

12 Mr. Fulton lives in Nevada. But my  
13 conversations with him, that's of April 17 (SIC)  
14 in his role as CEO. He is the executive officer  
15 not the operating officer. I think as president  
16 I am closer to the COO in being responsible for  
17 sort of operations.

18 What these two gentlemen do is bring  
19 a level of -- I think theirs is oversight and is  
20 governance. And as we move forward, certainly  
21 Mr. Fulton's expertise in the gaming industry  
22 will be invaluable to us as we move forward.  
23 So, day-to-day operations that is my  
24 responsibility.

1                   COMMISSIONER ZUNIGA: One of the  
2 exhibits, Exhibit 1, I think you dated it as of  
3 July 17. Is that the latest version of the  
4 governance and internal control plan?

5                   MR. GROGAN: July 17 is the date of  
6 Mr. Fulton's appointment as CEO. We have a more  
7 current version of our internal controls. This  
8 reference is to Mr. Fulton as the CEO would have  
9 been after that date. This is a somewhat I will  
10 say a living document. For instance, it talks  
11 about signature levels and the likes of which  
12 requires signatures changes and has changed from  
13 when this was first drafted.

14                  COMMISSIONER ZUNIGA: Is there more  
15 detail behind this one pager?

16                  MR. GROGAN: As we talk about  
17 policies and procedures, there are things behind  
18 that. Again, this is meant to be a high-level  
19 document. So, there is detail behind that.  
20 Again, our plans for organizational chart lies  
21 in authority changes and then in those aspects  
22 of operations. There's detail behind that.  
23 This is meant as a framework for our board to  
24 understand what is being done.

1                   COMMISSIONER ZUNIGA: Is that detail  
2 what you characterize as written policies and  
3 procedures that you are nearing completion?

4                   MR. GROGAN: Some of them have been  
5 done. The written policies as it relates to  
6 money room and tellers and the mutuel business  
7 has been submitted. For instance, our racing  
8 policies and procedures and interestingly enough  
9 when we got this report early in July, there was  
10 I read in there an incident regarding fines at  
11 the track.

12                   And in fact we had a conversation in  
13 our staff meeting, the first staff meeting we  
14 had after we got that to make that we  
15 incorporated the fines into that policies and  
16 procedures. So, it's continuing to get close on  
17 racing. We have mutuels and money room  
18 submitted to the IEB.

19                   COMMISSIONER ZUNIGA: Who is writing  
20 generally these policies and procedures?

21                   MR. GROGAN: Well, what I've given  
22 them to is to the department heads, to the  
23 people who are responsible. So, we have the  
24 director of racing who is doing that. We have

1 the financial officer in the money room do the  
2 money room procedures. We are doing this in an  
3 inventory control is being done through the  
4 beverage manager is doing inventory control.  
5 Also, this is the department level offers, and  
6 then reviewed by the management before we adopt  
7 them.

8 COMMISSIONER ZUNIGA: You also  
9 talked about enforcing and monitoring as a key  
10 part of the policies. Can you expand a little  
11 bit more on who as an individual or committee  
12 may be tasked with that?

13 MR. GROGAN: It will be different  
14 for each department. So, what that specifically  
15 related to was we changed policies around  
16 employee betting at the facility. So, part of  
17 that is it's one thing to say it, the next  
18 question is how do you do that. So, we are  
19 putting in place this procedure where we close  
20 out a teller midshift to make sure that in  
21 looking for a short midshift as opposed to  
22 something happening at the end of the shift.  
23 So, in that particular case that would be  
24 something done by the money room.

1           In all instance of internal  
2 controls, there is checks and balances and  
3 making sure that that exists. So, the person  
4 checking -- the checker can't check themselves.  
5 So, in that particular case, we're having the  
6 money room do that as opposed to somebody in the  
7 teller function.

8           COMMISSIONER ZUNIGA: I wanted to  
9 ask you also about the loans. In order to cover  
10 the operating deficit, Mr. Fulton, I believe,  
11 has issued a number of loans to Ourway; is that  
12 a fair statement?

13           MR. GROGAN: Traditionally, what is  
14 done is that the operating losses -- the losses  
15 from our operating business are covered by  
16 capital, raising capital from the members. So,  
17 our losses are capital provided from them.

18           Mr. Fulton has provided loans as  
19 related to the construction of our garage. So,  
20 the loans, we're not funding operating losses to  
21 the loans. The operating losses are funded in  
22 capital cost to the membership.

23           COMMISSIONER ZUNIGA: So, those  
24 loans are expected to be repaid and they bear

1 interest?

2 MR. GROGAN: They bear interest and  
3 the interest accrues on the more recent what we  
4 call the garage loan. Yes. I'll back up.

5 The garage loan is part of the  
6 financial commitment that is being made for the  
7 Category 2 process. Again, that is a financing  
8 commitment -- It's an equity commitment. If you  
9 read the financing commitment, it is a preferred  
10 member interest. So, we'll get back to the very  
11 complicated nature of the structure of what we  
12 think we're going to have going forward. Much  
13 of that shareholder debt will be reclassified as  
14 a preferred member interest, something akin to  
15 preferred stock.

16 COMMISSIONER ZUNIGA: Help me  
17 understand please, I think somewhere in the  
18 report there's characterization about certain  
19 loans that were made by Anchor. I forget which  
20 one of the companies. But then certain Anchor  
21 entities were sold to IGT eventually. Does IGT  
22 have a claim back to Ourway because of the  
23 nature of those loans?

24 MR. GROGAN: There is a reference to

1 -- IGT has no financial interest in Ourway.  
2 There exists as it relates to Anchor Partners'  
3 original transaction with Ourway a certain  
4 business rights to IGT. Anchor Partners got  
5 certain business rights as it related to Ourway.

6 CHAIRMAN CROSBY: The rights were  
7 the exclusive right to deliver the games, fairly  
8 big deal.

9 COMMISSIONER MCHUGH: And to  
10 operate.

11 MR. GROGAN: Yes. They have those  
12 business rights. That was what Anchor was  
13 acquiring those for to IGT but there is no debt.

14 COMMISSIONER ZUNIGA: There's no  
15 receivable?

16 MR. GROGAN: There's no receivable.  
17 There's nothing that relates from a financial  
18 right. There's a business right agreement that  
19 IGT has.

20 CHAIRMAN CROSBY: But Commissioner,  
21 if I could expand on this. This was going to be  
22 one of my questions too. All of this issue  
23 about lack of controls and what Piontkowski did  
24 and so forth, obviously, the issue we are

1 dealing with is is this an organization that's  
2 ready to be in this business. And if it were  
3 just those issues that would be one thing  
4 significant.

5 But it strikes me that here is this  
6 deal, and maybe you can explain this.  
7 Basically, as I understand it, the initial  
8 financing essentially was a loan from Anchor to  
9 Ourway, in exchange for which they got exclusive  
10 rights, Anchor got exclusive rights I thought to  
11 just deliver the games apparently to deliver the  
12 games and operate.

13 Subsequently, there's been a sale of  
14 that right sort of to IGT. Maybe a purchase  
15 back of that right. And as I understand it,  
16 that right, which is a very big deal in the  
17 operation of a casino is unknown as to who has  
18 what right. IGT is claiming that will not  
19 release the claim. That it still has those  
20 rights. And somebody, I believe maybe Mr.  
21 Fulton said there's no way in the world that IGT  
22 has that right.

23 So, can somebody explain to me why  
24 nobody -- you, I think, referred to the document



1 behind this as "a horribly drafted document".  
2 Who is running this shop? And who is behind  
3 this transaction? And how does it stand at this  
4 stage of the game?

5 MR. GROGAN: Again, there is this  
6 business right that IGT has. And it's to  
7 provide all of the operations associated with  
8 now what we will call a Category 2 gaming  
9 license. And there are certain economics around  
10 that.

11 Those economics I would say are  
12 extraordinarily favorable towards Ourway. And  
13 this is something that we would be very happy  
14 for IGT to exercise. There are conversations  
15 ongoing toward resolving this. We are confident  
16 that we're going to get a positive resolution.

17 CHAIRMAN CROSBY: Do I remember  
18 correctly that your report said, was it Mr.  
19 Fulton who said that he doesn't agree that IGT  
20 has this right? Do I remember correctly?

21 COMMISSIONER MCHUGH: Yes.

22 MR. MACKEY: I think that's right.  
23 I believe that's correct.

24 CHAIRMAN CROSBY: In Mr. Fulton's

1 statement he says that he is clear that IGT does  
2 not have any such -- Maybe we will save this for  
3 Mr. Fulton.

4 MR. GROGAN: You can. But again the  
5 question is it is the intent of the parties.  
6 And it's very interesting, the intent of the  
7 parties, Mr. Fulton signed that agreement as  
8 Anchor Partners. The intent of the parties is  
9 for IGT to do this. And it's an obligation that  
10 they have. So, it's not a question that they  
11 don't have. It's an obligation that they do  
12 have. It's not a question that they don't have,  
13 it's an obligation that they too have.

14 COMMISSIONER MCHUGH: So, could I  
15 just jump in here for a second?

16 CHAIRMAN CROSBY: Sure.

17 COMMISSIONER MCHUGH: So, do I  
18 understand you correctly that if Ourway receives  
19 the Category 2 license, it is Ourway's intention  
20 to turn the operation of their licensed facility  
21 over to IGT, both for the supply of the machines  
22 and for the operation of the facility after the  
23 machines are delivered, installed and up and  
24 running? It's a turnkey agreement basically,

1 right?

2 MR. GROGAN: It is a turnkey  
3 agreement. I think we will have a resolution of  
4 that. That operating turnkey operations was a  
5 business model of Anchor Gaming. It is not a  
6 business practice of IGT is our understanding.  
7 And I suspect there may be resolution to that.

8 COMMISSIONER MCHUGH: But this not  
9 something -- But operation in some way, shape or  
10 form by IGT and supply of the machines by IGT is  
11 not something that Ourway opposes?

12 MR. GROGAN: No.

13 COMMISSIONER MCHUGH: There's not an  
14 adversary relationship in your view between --  
15 there's negotiations to be worked out, but not  
16 an adversary relationship.

17 MR. GROGAN: There's differing  
18 opinions I think is a fair statement.

19 COMMISSIONER MCHUGH: Okay. I know  
20 I'm beating a dead horse. But part of the  
21 business plan is in some way to come to a  
22 resolution with IGT so that IGT can have a major  
23 operating and supply role in the Category 2  
24 license if Ourway receives it.

1 MR. GROGAN: I don't think the  
2 resolution would necessarily be that. IGT is  
3 not going to be -- is not in the business of  
4 operating gaming facilities. They're not in  
5 that business. To my knowledge, they don't do  
6 that.

7 CHAIRMAN CROSBY: Why don't we come  
8 back to this when Mr. Fulton is speaking,  
9 because part of the issue was his  
10 characterization of this as well. Excuse me.

11 COMMISSIONER ZUNIGA: No, that was  
12 it.

13 CHAIRMAN CROSBY: Were you finished?

14 COMMISSIONER ZUNIGA: Yes.

15 CHAIRMAN CROSBY: Commissioner  
16 Stebbins, do you have anything?

17 COMMISSIONER STEBBINS: I do. Just  
18 to be clear, the manager's appointment, the  
19 president authority and duties is kind of  
20 superseded now by the appointment of the  
21 manager's action of the appointment of the CEO  
22 and the president.

23 MR. GROGAN: That's correct.

24 COMMISSIONER STEBBINS: So,

1 stipulation item number two under your  
2 appointment I think back in April that they were  
3 going to work in good faith to develop a  
4 mutually agreeable employment contract has kind  
5 of gone by the boards?

6 MR. GROGAN: That did not make it  
7 into the most recent version of that. That's  
8 correct.

9 CHAIRMAN CROSBY: You might want Mr.  
10 Richlin to represent you.

11 MR. GROGAN: It may still be a topic  
12 of conversation but it's not a written  
13 understanding.

14 COMMISSIONER STEBBINS: Just to draw  
15 some clarification. I guess I also had some  
16 concern, I think my colleague expressed it about  
17 Exhibit 1 that there is documentation kind of  
18 behind all of these items. Again, can you give  
19 me a rough timeframe as to when this document  
20 was pulled together, the Ourway applicant  
21 Exhibit Number 1?

22 MR. GROGAN: I would say the  
23 grandfather of that document was April 4. And  
24 it continues to move on. It was the governance

1 and internal control plan. So, this was my plan  
2 when I came in to sort of address the immediate  
3 issues that we saw.

4 So, you see the separation of the  
5 positions, the board of advisors, the internal  
6 controls, these were all actions that I would  
7 take to immediately address the issues that we  
8 faced at that time.

9 COMMISSIONER STEBBINS: Would you  
10 characterize the creation of the board of  
11 advisors as an immediate measure?

12 MR. GROGAN: I had a one-week and I  
13 had a one-month plan. The one-week plan was  
14 money withdrawals, employee conduct, matrix  
15 reporting of the CFO. The board of advisors was  
16 part of the one-month plan. So, I guess I would  
17 make a distinction between the two.

18 COMMISSIONER STEBBINS: You've  
19 talked about not only instituting a series of  
20 financial controls, etc. throughout the  
21 business, but it probably characterizes a change  
22 in attitude, a change in how the place operates.

23 I think from your background, there  
24 was no question about your experience

1 instituting financial controls. Can you discuss  
2 your background or any experience you've had,  
3 kind of where you've had an opportunity in the  
4 past to kind of create the operational changes?  
5 How people react, how you might have been  
6 involved in an experience where okay, we've got  
7 to change the culture? You should feel free to  
8 take a question to your boss and kind of create  
9 that environment. Can you share in maybe a  
10 little more detail where you've had that  
11 experience?

12 MR. GROGAN: A number of  
13 experiences. One is early in my career I ran  
14 the investment banking division of Shawmut Bank.  
15 As you go back into my background, I think  
16 everybody I've worked for no longer exists  
17 because of the changes in the financial services  
18 industry.

19 So, I have worked in a highly  
20 regulated industry. So, commercial banking is  
21 highly regulated. So, I've had that experience  
22 of running that organization. I wasn't changing  
23 culture so much there. In a number situations  
24 both on the investment banking side with the

1 clients sort of having seen a wide range of  
2 business executives in terms of how they  
3 implemented those. I've drawn on those  
4 experiences as we are doing this here.

5 We are a 140-person organization.  
6 And what I am endeavoring to do is to make a  
7 culture changes is really my views and  
8 communicated through the managers through  
9 directly to the employees.

10 CHAIRMAN CROSBY: I was going to  
11 have raise the same question, Commissioner, a  
12 very good point. Being you're a chief operating  
13 officer of an organization whose CEO is  
14 nonresident. It isn't a huge organization. But  
15 it's a pretty complicated organization with a  
16 lot of moving parts. And you are tasked with  
17 big, big issues, which is prepare for a massive  
18 possible future. Change radically the culture  
19 of accountability and responsibility. Institute  
20 a whole sweeping set of new controls and  
21 performance standards, performance metrics  
22 presumably. That's a very tall order. And it  
23 takes experienced managers to do that.

24 But it doesn't seem to me like you



1 really have that kind of chief operating  
2 experience in your background. You've seen it  
3 as a consultant. And can pick and choose from  
4 folks who have done it well and folks who need  
5 -- And you've had some management  
6 responsibilities at a financial institution.  
7 But to be a chief operating officer of a real  
8 operating entity, particularly with these kinds  
9 of challenges, is a horse, so to speak, of a  
10 different color.

11 MR. GROGAN: I'm not sure I'd quite  
12 characterize it that way Mr. Chairman. The most  
13 important thing that I'm doing as we think of  
14 changing culture is an attitude that gets  
15 conveyed out through this company. The people  
16 that report to me run that business. I've been  
17 described as an entrepreneurial manager.

18 So, each of the department managers  
19 are responsible for their business. So, in that  
20 regard I manage now five people. And they are  
21 responsible for managing people underneath them.  
22 So, in that regard while I am the operating  
23 officer, the actual implementation of the  
24 operation are the managers that have been there.

1 They've been here for 15 year. They know how to  
2 run it.

3           While we're putting in written  
4 policies and procedures, the change is a  
5 cultural change not a practice change. So, I  
6 think many of the things making sure that people  
7 feel comfortable questioning authority, making  
8 mistakes and moving on is something that I have  
9 done and can do as opposed to direct operations,  
10 I have five people who do a very good job and  
11 have a history of doing it well.

12           COMMISSIONER STEBBINS: Can you  
13 share a little more detail about your role as a  
14 consultant with Mr. Piontkowski, obviously as  
15 doing some financial modeling? But I think  
16 earlier in your testimony you talked about  
17 looking at the business aspects of casino gaming  
18 or a slots parlor coming into play with the  
19 operations in Plainridge.

20           MR. GROGAN: So, I started again  
21 trying to understand expanded gaming as it  
22 related to Plainridge and as I thought about the  
23 finance and the ramifications. I was also  
24 involved in starting at the passage of the Act

1 and developing the Phase 1 process. So, it was  
2 a challenge.

3 Our Phase 1 was perhaps a little  
4 different than say some of the other applicant's  
5 Phase 1 in they having been through that process  
6 before. I know the team of Michael and Carroll  
7 were very understanding as we went through in  
8 gathering that information.

9 Then also, starting to plan and help  
10 build the consulting team that we have for our  
11 Phase 2 process. So, we were doing many of the  
12 same things that you are as we are entering into  
13 something new and building a group of  
14 consultants to help advise us. So, I have been  
15 involved in doing that.

16 COMMISSIONER STEBBINS: I guess that  
17 I have question and it relates to the  
18 withdrawals. I apologize if I didn't see that.  
19 Was Mr. Piontkowski aware of the withdrawals  
20 being recorded in the cash room?

21 MR. GROGAN: Oh, yes. I think the  
22 withdrawals were signed or recorded. I don't  
23 know the specific nature of the recording. It  
24 was recorded and I believe he knew that.

1                   COMMISSIONER STEBBINS: And as I  
2 understand it, the purpose of the letter from  
3 the auditors to Mr. Fulton and Mr. Ross was  
4 somewhat of an effort to make them aware of this  
5 situation, aware of the withdrawals and ask for  
6 guidance on the treatment of the withdrawals  
7 financial or from an accounting standpoint.

8                   MR. GROGAN: Again, they were making  
9 this from an accounting perspective. So, when  
10 we talk about withdrawals specifically the  
11 letter talks about advances. So, the nature and  
12 the methodology I don't think that's what they  
13 were doing. They were saying how are we  
14 treating this thing that sits on your balance  
15 sheet.

16                   So, the question again purely from  
17 an audit function was how do we classify this  
18 due to, due from. Just by way of example, as we  
19 were constructing our garage, the loan, the  
20 advances that came from Mr. Fulton from that  
21 also were due to, due from.

22                   COMMISSIONER STEBBINS: The question  
23 or the letter we have in front of us, Exhibit 5,  
24 I'm curious, it's addressed to Mr. Fulton and

1 Mr. Ross and appears signed by them on the  
2 bottom. But it's also signed by Mr.  
3 Piontkowski? Any idea why he would sign off on  
4 the letter as well?

5 MR. GROGAN: He was the manager. He  
6 was the president and the manager. And Mr.  
7 Fulton and Mr. Ross signed off on it as  
8 investors but they had no formal oversight or  
9 function within the organization. The only  
10 person who had that was Mr. Piontkowski.

11 COMMISSIONER STEBBINS: But yet he's  
12 not addressed at the top of the letter?

13 MR. GROGAN: That's correct.

14 COMMISSIONER STEBBINS: Okay, thank  
15 you.

16 CHAIRMAN CROSBY: Anything else? I  
17 just have one more. An important part of what  
18 you are saying to us, I think, is the nature of  
19 the clean break between the systems under the  
20 prior president and the systems going forward.  
21 And who was accountable under the prior  
22 president and who is accountable going forward.

23 I want to read from page 38 of the  
24 redacted report. This is the bottom paragraph

1 at the bottom of page 38. During Ross's  
2 interview, this is the interview with member  
3 Ross, he stated that he realized that there was  
4 a need for better internal controls. And that  
5 he also realize there had been too much control  
6 invested in Piontkowski.

7 Ross also stated that Grogan had  
8 been engaged by Piontkowski in 2009 when the  
9 applicant began exploring proposed expansion of  
10 its operation into gaming. And that he was  
11 confident that Grogan would put immediate  
12 measures in place to improve the corporate  
13 governance and internal control environment of  
14 the applicant.

15 Were you able to do that?

16 MR. GROGAN: Yes.

17 CHAIRMAN CROSBY: He's talking about  
18 2009.

19 MR. GROGAN: During Mr. Ross's  
20 interview, which was on April 4.

21 CHAIRMAN CROSBY: Right.

22 MR. GROGAN: So, he said he was  
23 confident that now as president that he was  
24 confident that I could do that. He's expressing

1 confidence that I would be able to do that  
2 starting April 4 and moving forward.

3 CHAIRMAN CROSBY: I read that to  
4 mean that Mr. Ross was thinking when you first  
5 came in.

6 MR. GROGAN: No. He said during  
7 Ross's interview.

8 CHAIRMAN CROSBY: Yes, I know it's  
9 during Ross's interview.

10 MR. GROGAN: So, saying I started in  
11 2009 which is I had some familiarity with the  
12 business. So, that was how I met Mr. Ross. I  
13 did not know Mr. Ross before we met in 2009. I  
14 think that statement was simply saying that he  
15 was confident that the internal control plan  
16 which you see which was my April 4 document, he  
17 was comfortable that I would do that.

18 CHAIRMAN CROSBY: I understand that.  
19 I thought he was saying that earlier. Do we  
20 have your consulting contract? Your original  
21 contract that was in place when you first came  
22 on board in 2009?

23 MR. GROGAN: There was no written  
24 contract.

1                   CHAIRMAN CROSBY:  There was no  
2 written contract.

3                   MR. GROGAN:  I was paid by the hour.

4                   CHAIRMAN CROSBY:  Out of the money  
5 room?

6                   MR. GROGAN:  I would never have  
7 accepted it if it were coming from the money  
8 room.

9                   CHAIRMAN CROSBY:  Was there any  
10 documentation of what your tasks were, what your  
11 priorities were?

12                  MR. GROGAN:  No.  I was a consultant  
13 paid by the hour.

14                  CHAIRMAN CROSBY:  Okay.  No  
15 deliverables, no nothing?

16                  MR. GROGAN:  Correct.

17                  CHAIRMAN CROSBY:  Okay, I'm  
18 finished.

19                  COMMISSIONER ZUNIGA:  So, since the  
20 departure of Mr. Peterson I trust you're  
21 thinking about replacing him.  Are you thinking  
22 of a CFO position or a controller like he was  
23 characterized?

24                  MR. GROGAN:  Our immediate issue is



1 a controller function. As I said, we're looking  
2 for a CFO of what we call Plainridge Park. When  
3 we receive a Category 2 license, we will do that  
4 upon receipt of the Category 2. Now, we're  
5 looking for a controller position.

6 CHAIRMAN CROSBY: Okay. Anything  
7 else, Commissioners? There's an opportunity for  
8 the applicant for a redirect if you wish.

9 MR. RICHLIN: Just a few questions,  
10 members of the Commission. First of all, as to  
11 the IGT matter that was the subject of some  
12 questions, is there an assumption on the part of  
13 Ourway that there may be some dispute regarding  
14 that document as to the rights of IGT?

15 MR. GROGAN: I'm sorry.

16 MR. RICHLIN: Is there an assumption  
17 that there is in fact a dispute between Ourway  
18 and IGT as to the meaning of the agreement and  
19 the consequence of a potential set of rights of  
20 IGT?

21 MR. GROGAN: I think it's fair to  
22 say we have different views of what that  
23 document says.

24 MR. RICHLIN: In any event, in terms

1 of the financial terms that appear to be  
2 reflected in that document, are they favorable  
3 or unfavorable in your view to Ourway?

4 MR. GROGAN: We view them as very  
5 favorable to us.

6 MR. RICHLIN: And do you understand  
7 that if in fact it comes to pass that IGT is  
8 operating the casino that there would be some  
9 obligation to come back before the Commission  
10 relative to IGT's background?

11 MR. GROGAN: We understand that  
12 additional qualifiers, additional vendors,  
13 anybody influencing the operations of our  
14 business needs to be found suitable before the  
15 Commission before they can take on any of those  
16 functions, positions.

17 MR. RICHLIN: And has there begun to  
18 be some communications between Ourway and IGT  
19 regarding this document?

20 MR. GROGAN: There have been  
21 discussions, yes.

22 MR. RICHLIN: There were questions,  
23 I believe, from Commissioner Zuniga regarding  
24 your role as president and whether it differed

1 very much from the authority that was placed in  
2 the former president. And what I want to ask  
3 you is do you have full authority to do anything  
4 you wish to do regarding the operation of  
5 Ourway?

6 MR. GROGAN: No, I do not. In the  
7 most recent document, the July 17 one, it  
8 discusses limits that I have in terms of  
9 material contracts, in terms of material hires,  
10 and what needs to be reviewed by the CEO before  
11 I can do that. So, there are fairly well  
12 described limits to what I can and cannot do.

13 MR. RICHLIN: And have you had any  
14 conversations with Mr. Fulton as to how active a  
15 role he expects to play as CEO?

16 MR. GROGAN: Yes. He is going to be  
17 very active. In terms of moving forward, it's  
18 his experience. And again, I am excited to be  
19 working directly for Mr. Fulton. He has a  
20 spectacular background in the gaming business in  
21 the casino operations business. And that  
22 expertise and experience is going to be valuable  
23 as we move forward and lots and lots of -- he  
24 has lots experience and lots of opinions about

1 how we should move forward.

2 MR. RICHLIN: Finally, relative to  
3 the resignation and departure of the former  
4 president, was there a complete disclosure by  
5 Ourway regarding the terms and reason and  
6 rationale for that parting of the ways?

7 MR. GROGAN: Yes, to the IEB.

8 MR. RICHLIN: To the IEB.

9 MR. GROGAN: Absolutely. All of  
10 those the documents, the reasoning in what we  
11 did, how it was done, all of the documents were  
12 sent to them. We understand our reporting  
13 obligation to them, and fully disclosed all of  
14 it.

15 Going back to that particular day, I  
16 got that job at five. We get the documents into  
17 the IEB and I got a call at 8:00 that night.  
18 So, they understood. Again, the following day,  
19 just in terms of giving a sequence. I got the  
20 job at 5:00. At 11:00 AM the next day I was  
21 testifying to the investigators.

22 MR. RICHLIN: That's all I have.

23 COMMISSIONER MCHUGH: Could I just  
24 follow up on that last question? When you gave

1 that answer, Mr. Grogan, were you aware of  
2 whether or not any of the higher-level Ourway  
3 members who were interviewed by the IEB said  
4 that the reason for Mr. Piontkowski's departure  
5 was health reasons?

6 MR. GROGAN: No.

7 CHAIRMAN CROSBY: Opportunity for  
8 cross, recross.

9 MR. MACKEY: No further questions.  
10 We do have two additional exhibits to introduce.  
11 I think that the applicant is agreeable to the  
12 introduction both of these. One is the 2008  
13 document you referenced during the cross-  
14 examination of Mr. Grogan. And the other is the  
15 quite recent July 17, 2003 appointment of  
16 officers document reflecting the appointment of  
17 Mr. Fulton. And if the applicant has no  
18 objections, we're prepared to hand these to the  
19 Commission.

20 MR. RICHLIN: No objections.

21 CHAIRMAN CROSBY: Any other  
22 Commissioner questions? We are all set. Thank  
23 you very much, Mr. Grogan. We appreciate it.  
24 We have one more witness, Mr. Fulton. I would

1 like to suggest a very quick five minute break.

2

3 (A recess was taken)

4

5 CHAIRMAN CROSBY: We are ready to  
6 start again. We have one more witness, I  
7 believe that's right. Mr. Richlin, you have one  
8 more witness, right?

9 MR. RICHLIN: I do.

10 CHAIRMAN CROSBY: Before you go into  
11 that, the question is you have one, nor more  
12 than one?

13 MR. RICHLIN: No. I do want address  
14 that because it's been communicated to me that  
15 there has been a request for an additional  
16 witness. And Mr. Mackey I have discussed that.

17 As the Commission knows, I had  
18 originally identified potential witnesses. They  
19 included Mr. Ross. In preparing in the last  
20 week to 10 days, I made the determination that  
21 his testimony would be largely corroborative and  
22 cumulative. And in the interest of time and  
23 other interests, I thought we would offer just  
24 the witnesses that we have.

1           If the Commission has an interest in  
2 hearing from anybody that's in this room, we are  
3 going to make them available to you. I would  
4 say that it appears that we will have a second  
5 witness. So, we'll have Mr. Fulton and Mr. Ross  
6 if that is the wish of the Commission.

7           CHAIRMAN CROSBY: Okay. I was  
8 raising this mostly just to give the audience a  
9 heads-up about our schedule and plan. So,  
10 you've suggested that Mr. Ross testify.

11           MR. MACKEY: If the Commission feels  
12 that it would help round out the record based on  
13 some of the particular questions that have been  
14 asked by Commissioners, I assume that Mr.  
15 Richlin would want to ask him a few questions.  
16 We would ask very few questions on cross. But  
17 if it would be helpful to the Commission  
18 that's --

19           CHAIRMAN CROSBY: Okay. So, let's  
20 wait until the end of this, see where we are.  
21 So, there's at least one more, there may be  
22 another.

23           We will reconvene our suitability  
24 adjudicatory hearing on the application of

1 Ourway Realty, LLC and ask Counselor Richlin to  
2 begin the direct examination.

3 MR. RICHLIN: Thank you. Sir, would  
4 you please state your full name?

5 MR. FULTON: Stanley E. Fulton.

6 MR. RICHLIN: Mr. Fulton, where do  
7 you reside?

8 MR. FULTON: I reside in Las Vegas,  
9 Nevada.

10 MR. RICHLIN: And Sir, do you have  
11 affiliation with the company Ourway Realty, the  
12 applicant for the license at issue?

13 MR. FULTON: I have for  
14 approximately 12 years.

15 MR. RICHLIN: And what is your  
16 affiliation.

17 MR. FULTON: I was a passive  
18 investor.

19 MR. RICHLIN: Has that recently  
20 changed?

21 MR. FULTON: It has.

22 MR. RICHLIN: And what is your role  
23 today?

24 MR. FULTON: I am the CEO, the



1 active CEO.

2 MR. RICHLIN: Sir, could you briefly  
3 give a summary of your background in the gaming  
4 industry? I know it's a long history, but I  
5 would ask you to give us the highlights.

6 MR. FULTON: I will be brief. I got  
7 my first gaming license in 1976, yes. My  
8 company back then -- I say my company, I owned  
9 80 percent, my sister owned 10 percent, my  
10 accountant owned 10 percent. My company back  
11 then was Fortune Coin and we indicated that. We  
12 built the first video slot machines, multiline  
13 video slot machines. We built the first poker  
14 machines back in 1977, I guess.

15 A brief story concerning the poker  
16 machines, a very brief one. We programmed our  
17 multiline video slot machine next to the poker  
18 machine. And the Nevada Control Board had one  
19 employee back then. His name was Paul Berger.  
20 And my general manager wrote Paul a letter and  
21 said dear Paul, we've reprogrammed our multiline  
22 video slot machine for a poker machine. All in  
23 favor of this machine for use in Nevada raise  
24 your hand and say aye.

1                   We got back from Paul a handprint, a  
2 fax. And it said aye, Paul Berger. That was  
3 the approval process for poker in the State of  
4 Nevada in 1977.

5                   MR. RICHLIN: I take it you have  
6 been involved in gaming matters since then?

7                   MR. FULTON: Absolutely, through  
8 numerous companies.

9                   MR. RICHLIN: Let me ask you a  
10 question to bring it forward. We know you have  
11 a relationship to Sunland Park in New Mexico; is  
12 that right?

13                   MR. FULTON: That's correct.

14                   MR. RICHLIN: Could you describe the  
15 kinds of activities that occur at Sunland?

16                   MR. FULTON: Well, we've got roughly  
17 1700 stalls for racehorses. We have one race,  
18 it's a Derby prep. race for \$800,000. Purses  
19 between quarter horses and thoroughbreds usually  
20 run around \$250,000 a day. They would be closed  
21 but for one simple reason, we're allowed to have  
22 some slot machines or they would close.

23                   MR. RICHLIN: What role do you play  
24 in Sunland?

1 MR. FULTON: I am the owner.

2 MR. RICHLIN: Do you have some  
3 active engagement there?

4 MR. FULTON: I am talking with the  
5 managers all of the time concerning what is  
6 happening and why is it happening.

7 MR. RICHLIN: And you obviously  
8 heard Director Wells describe some of the  
9 conclusions she heard regarding the quality of  
10 the operations at Sunland. And you also heard  
11 her describe the regulatory interactions that  
12 New Mexico authorities have had with Sunland.

13 Can you describe the standards that  
14 you set for the operation?

15 MR. FULTON: Five violations in five  
16 years and three of them we blew the whistle on  
17 ourselves, and the other two were sting  
18 operations by the Alcohol Division down there.  
19 No one has a record equal to that or better than  
20 that clearly in my opinion. We have a record of  
21 compliance and cooperation.

22 I am very proud of our record. But  
23 here again, I've run casinos before through  
24 Anchor Gaming and (INAUDIBLE) and milk machines

1 and vending machines. I've been very, very  
2 active in the gaming industry since 1976,  
3 actually '75 when we started designing and  
4 trying to build the first multiline video slot  
5 machines.

6 MR. RICHLIN: Mr. Fulton, you heard  
7 the question that was asked by Chairman Crosby  
8 to Mr. Grogan about his level of experience and  
9 ability at an operating level to run Ourway and  
10 to have it achieve some of its objectives, both  
11 in terms of compliance and also in terms of  
12 growth in building the company out.

13 Do you have any doubts about Mr.  
14 Grogan's ability to accomplish the tasks going  
15 forward?

16 MR. FULTON: Absolutely none  
17 whatsoever.

18 MR. RICHLIN: And why not?

19 MR. FULTON: He's brilliant, it's  
20 real simple. Not only that, he's a nice guy.  
21 Let me tell you my thoughts concerning business.  
22 Business is two things in my opinion, numbers  
23 and people.

24 If the numbers are right, then the

1 next job is to get the right people to make the  
2 numbers work. Now we started probably -- Ourway  
3 is a new company effective the departure of the  
4 former president.

5 John will have a great slot manager.  
6 He will have his HR. He'll build a team and  
7 that's what we would do. It will be a team that  
8 will make Massachusetts proud of the fact that  
9 they awarded the license to Plainridge.

10 MR. RICHLIN: Sir, with respect to  
11 your business experience, particularly in  
12 gaming, have you built such teams in the past?

13 MR. FULTON: Absolutely, even in  
14 worse companies. It's numbers and people. You  
15 know the numbers are right for a slot license  
16 for Plainridge. I view Plainridge as the  
17 shortstop. We're going to shortstop in my  
18 opinion the Massachusetts team from making a  
19 mistake to go dumping the machine somewhere  
20 else.

21 MR. RICHLIN: Sir, you know from  
22 listening to the testimony of the questions  
23 today that the Commission has been interested in  
24 the events that involve the former president and

1 certain cash withdrawals that he made from the  
2 money room. There is a document, which has been  
3 admitted as an exhibit.

4 MR. FULTON: Number five.

5 MR. RICHLIN: Number five, see you  
6 remember better than I do. I want to show you  
7 that document. And the first thing I want to  
8 ask you is that it appears to have -- I guess  
9 first I want to ask you this. Do you recall  
10 that in the course of your initial interview  
11 that you were shown this document?

12 MR. FULTON: Yes, that's true.

13 MR. RICHLIN: And at that time, did  
14 you have any recollection of having seen this  
15 document before?

16 MR. FULTON: I think it's probably  
17 fair to say that the former president of Ourway  
18 was deceptive.

19 If he put this in front of me and  
20 said Al has already agreed to this, I would have  
21 signed it. Do I have any recollection of  
22 signing it, no, Sir, I do not. Do I have any  
23 recollection of ever seeing this before if it  
24 was shown to me, I do not.

1                   But I will tell you this, as a  
2 businessman had I known of these withdrawals  
3 from the money room, it would never have been  
4 allowed to happen, period. When I found out  
5 about them, I placed a call to the former  
6 president and made one simple statement, you  
7 took money that was not yours.

8                   Concerning his leaving, I believe  
9 one Commissioner, was it the Supreme Court  
10 Justice?

11                   CHAIRMAN CROSBY: Appellate Court.

12                   MR. FULTON: Appellate Court, Your  
13 Honor.

14                   CHAIRMAN CROSBY: It should've been  
15 the Supreme Court.

16                   COMMISSIONER MCHUGH: I agree with  
17 that.

18                   MR. FULTON: I also was not happy  
19 with the severance agreement with the former  
20 president. But here again, as a businessman, I  
21 had to make a decision to go through protracted  
22 litigation, which I think would happen if we had  
23 thrown him out the door, a whole bunch of  
24 factors. And the decision was we have to have a

1 clean -- pardon me, a clean slate going forward.

2           So, I agree with you. I'm not happy  
3 with it. But it's a business decision that had  
4 to be done. It just had to be done.

5           And concerning the statements that  
6 he resigned for ill health, I didn't make those  
7 statements. In fact, you can't believe press  
8 releases. I remember one press release in a  
9 company that I headed I just fired the guy, and  
10 the press release said we reluctantly accept his  
11 resignation. Don't believe press releases, I'm  
12 sorry.

13           And concerning the former CFO, I was  
14 a part of that decision to accept his  
15 resignation. The reason is real simple. Had we  
16 rewarded him with a one-year contract, the  
17 Massachusetts Gaming Commission would say you're  
18 not cleaning house for change to be done. We  
19 would have been subject to immense criticism and  
20 rightfully so if we rewarded him for his past --  
21 I'm sorry.

22           The former CEO had a 30-year  
23 association with Alan Ross.

24           CHAIRMAN CROSBY: The former CFO.



1           MR. FULTON: I'm sorry, the former  
2 CFO, thank you, had a 30-year association where  
3 Al was responsible for the jobs this guy got.  
4 And he wouldn't report these irregularities to  
5 Al, no. We did the right thing in accepting his  
6 resignation. And if we rewarded him, you would  
7 have every right to criticize us.

8           MR. RICHLIN: Now, Sir, just to  
9 complete a question. There is a signature line  
10 with your name and a signature that appears over  
11 that name. Is that your signature?

12          MR. FULTON: I think it is. It sure  
13 does look like my signature.

14          MR. RICHLIN: And as you sit here  
15 now and look at this document, is there anything  
16 in the document that did disclose to you that  
17 the advances were obtained through daily  
18 withdrawals of cash from the money room?

19          MR. FULTON: Absolutely, not. Like  
20 I said, had I known about these withdrawals, I  
21 would never ever have allowed it to happen. I  
22 have companies where I own basically 100 percent  
23 of it. We had money rules. I wasn't allowed to  
24 take a penny out of the money rooms. And when

1 you run businesses, you don't allow that to  
2 happen.

3 MR. RICHLIN: You know of course  
4 both from the report and from the questioning  
5 and testimony today that this Commission wants  
6 to know that the practices of the past are  
7 understood and won't happen again. What can you  
8 tell this Commission in that regard?

9 MR. FULTON: I have immense  
10 confidence in John Grogan putting in place  
11 internal controls necessary to clean up the mess  
12 that was there previously. Not only that, the  
13 report of the IEB mentioned something about  
14 honesty. I can honestly tell you that we are  
15 going to run the operation by the book.

16 Let me state about running the  
17 operation by the book. I think there's been  
18 some -- and I'd like address, if I can, the IGT  
19 thing. I think there's been some  
20 misunderstanding. The intent of that agreement  
21 is real simple. The intent of the agreement  
22 calls for Anchor Coin and then Anchor Gaming and  
23 then IGT to operate the machines there. Now as  
24 a matter of interest, the financial terms of

1 that agreement are very, very bad for IGT.

2 CHAIRMAN CROSBY: Which means they  
3 were very bad for your company Anchor Partners.

4 MR. FULTON: That is true -- no,  
5 wait a second, Anchor Coin.

6 CHAIRMAN CROSBY: Whichever.

7 MR. FULTON: So, it was very bad for  
8 Anchor Coin. The truth of the matter is my guy  
9 messed up, okay. And George Tramento drafted a  
10 great contract for Plainridge but he did it.  
11 And there it is. We can make this real clear.

12 CHAIRMAN CROSBY: Could I just  
13 interrupt, this strikes me as central. I  
14 appreciate the passion with which you speak.  
15 And I absolutely appreciate the conviction with  
16 which you speak.

17 But at the same time you're telling  
18 us that you can assure us that things are going  
19 to be buttoned up in your new operation, you're  
20 telling us that your guy who signed a  
21 significant deal, a big deal with Plainville got  
22 snookered by somebody else and did a terrible  
23 deal. And once again, you weren't paying  
24 attention to what was getting done.

1 MR. FULTON: There again, George  
2 drafted a great contract for Plainridge. It's  
3 very interesting that counsel we had that he  
4 signed off on it. So, he was snookered also.  
5 My record is there for all to see of compliance  
6 and cooperation and building successful  
7 businesses and seeing that they are run right.

8 But let me get back to the IGT  
9 thing, if I can. So, the intent is very clear.  
10 The terms were bad for IGT now and good for  
11 Plainridge. Now I've had meetings where Patty  
12 Hart says yes, we're going to operate the  
13 machines.

14 MR. RICHLIN: And who is Patty Hart?

15 MR. FULTON: Patty Hart is the  
16 chairman and CEO for IGT. Here again, I don't  
17 think they want to operate the machines. So, if  
18 they want to operate the machines and honor the  
19 agreement and the intent of the agreement that's  
20 okay with me, but give me a little something to  
21 make this thing go away, or give our company  
22 something to make it go away.

23 Unfortunately, for us we can do  
24 absolutely nothing until we're awarded the

1 license to operate the machines. And the reason  
2 we did nothing is because the agreement says we  
3 have to be awarded the license first before  
4 basically this agreement takes effect. There's  
5 an arbitration clause in the agreement. And the  
6 arbitration clause calls for the arbitration to  
7 take place in Massachusetts.

8 But I will also tell you this, as  
9 late as last week I was contacted by someone  
10 from IGT. In fact, we had a meeting scheduled  
11 for 11:00 Friday, but that conflicted with our  
12 advisory committee conference call. He's the  
13 one that canceled it. He said when I meet with  
14 you, I want to be sure that our CFO is with me  
15 also. So, we are trying to resolve this. And  
16 it will be resolved in my opinion.

17 MR. RICHLIN: I am not sure everyone  
18 heard what you said in response to the portion  
19 of the Chairman's question about your  
20 responsibility for that agreement when you were  
21 at IGT. Did you have counsel who negotiated  
22 that agreement.

23 MR. FULTON: No, we did not.

24 MR. RICHLIN: Who negotiated with

1 Mr. Tramento on behalf of Plainridge?

2 MR. FULTON: A gentleman by the name  
3 of Jim Murphy.

4 MR. RICHLIN: And what was his role  
5 in your organization in IGT?

6 MR. FULTON: He was in operations.

7 MR. RICHLIN: Was a lawyer involved  
8 on behalf of IGT?

9 MR. FULTON: IGT wasn't involved.

10 MR. RICHLIN: I'm sorry, Anchor  
11 Coin?

12 MR. FULTON: No, there was not.

13 MR. RICHLIN: But you relied on your  
14 director of operations.

15 MR. FULTON: Yes, that is true.

16 MR. RICHLIN: The Commission has  
17 information and there's been some testimony  
18 today that you have made a financial commitment  
19 to provide the funding necessary, 100 percent of  
20 the funding necessary to effectuate the new  
21 operation if the license is awarded; is that  
22 correct?

23 MR. FULTON: That's true.

24 MR. RICHLIN: How much is that

1 commitment that you've made?

2 MR. FULTON: I believe the total  
3 commitment is around \$160 million. There again,  
4 I'm not sure that we can keep it at that. It  
5 might go to 200. I've got some really  
6 constructive thoughts how we can make the slot  
7 machine operation even better that we'll talk  
8 about later. This is the suitability, this is  
9 not an operations meeting.

10 MR. RICHLIN: Sir, before you said  
11 that you made your decisions a business based on  
12 numbers and people. And you are putting \$160  
13 million up I presume because you've evaluated  
14 that the numbers are good; is that right?

15 MR. FULTON: That's correct.

16 MR. RICHLIN: What about the people  
17 that you are investing in?

18 MR. FULTON: There again, it's  
19 difficult for us today to go out and hire a CFO  
20 of the caliber that we are going to have to have  
21 at the award of the slot license because these  
22 people just don't want a six-month job is what  
23 it boils down to. Even hiring a slot manager  
24 today, regardless if he's got a six-month job

1 when he's not going to have a job if we're not  
2 awarded of the license. You've got to get the  
3 license before you can really truly build the  
4 team necessary to make the numbers work.

5 MR. RICHLIN: And what role does Mr.  
6 Grogan and the fact that he now agreed to serve  
7 as president and report to you as CEO, what role  
8 does his being available play in your  
9 willingness to make this investment?

10 MR. FULTON: There again, John is  
11 brilliant. He is instituting and many of the  
12 controls have already been instituted that were  
13 requested by me. I want to thank the IEB for  
14 bringing to my attention in my interview the  
15 fact that these withdrawals that I knew nothing  
16 about, absolutely knew nothing about.

17 MR. RICHLIN: That's all of the  
18 questions I have. Thank you.

19 MR. MACKEY: Good afternoon, Mr.  
20 Fulton, I just have very few questions for you.  
21 First of all, Mr. Richlin, could you hand Mr.  
22 Fulton what has now been marked as Exhibit  
23 Number 7, which is a 2008 letter from for the  
24 accounting firm. Do you have that handy?



1 MR. RICHLIN: Yes.

2 MR. MACKEY: Mr. Fulton, just to put  
3 it in context, this is the letter referenced in  
4 Mr. Grogan's testimony which references certain  
5 advances is the word used by Mr. Piontkowski  
6 from the company.

7 Specifically, let me ask you, have  
8 you ever seen this letter before today?

9 MR. FULTON: I don't think so, Sir.  
10 But among other things, I see my signature isn't  
11 on the paper.

12 MR. MACKEY: That's right. It  
13 appears to be signed by Mr. Tuch and Mr. Ross,  
14 but it does not appear to be signed by you. You  
15 don't have any present recollection here today  
16 of ever seeing this letter?

17 MR. FULTON: That's correct, Sir.

18 MR. MACKEY: I note on the third  
19 paragraph on the first page, there is a  
20 reference as I indicated to certain advances.

21 Let me just read into the record two  
22 sentences: Through June 2008, Gary has received  
23 advances from the company net totaling \$488,088.  
24 Gary is presently having payroll withholdings to

1 repay certain credit card charges. The amount  
2 which is approximately \$450,000 through December  
3 31, 2007 is made up of various transactions,  
4 some of which are certain note agreements  
5 between he and the ownership group originally  
6 totaling \$156,800.

7 As I read that, does that refresh  
8 your recollection at all about whether you've  
9 seen this?

10 MR. FULTON: Absolutely it does not,  
11 Sir. One thing did occur is that I believe Al  
12 and I sold Gary some stock at one time. And  
13 it's very possible that 156 that is to that, but  
14 I don't know that --

15 MR. MACKEY: That might be that loan  
16 that's referencing to.

17 MR. FULTON: That might be but I  
18 can't swear to it.

19 MR. MACKEY: I take it, Mr. Fulton  
20 from your earlier testimony that if this letter  
21 had said that part of this amount was made up of  
22 cash withdrawals from the money room that would  
23 have gotten your attention?

24 MR. FULTON: As a businessman, I

1 would never have allowed this to happen.

2 MR. MACKEY: If you had seen that in  
3 this letter, you would have put a stop to it?

4 MR. FULTON: Absolutely, Sir.

5 MR. MACKEY: Exhibit Number 5, which  
6 is the 2012 letter, similar letter from the  
7 accountants. Do you have a copy of that one  
8 handy, Sir?

9 MR. FULTON: I have it.

10 MR. MACKEY: I just want to make  
11 sure that your previous testimony for the record  
12 is clear. You said something, and please  
13 correct me if I don't have this right, that if  
14 you had understood at the time you saw this that  
15 Mr. Ross had approved it then you would have  
16 signed it, some words to that effect?

17 MR. FULTON: I think my words were  
18 the former president of the company was  
19 deceptive. Everyone has to agree to that. And  
20 I think he bought a pass on this one, maybe  
21 having told me Al approved this, sign here.

22 MR. MACKEY: But as you sit here  
23 today, you don't have a specific recollection of  
24 a conversation with Mr. Ross? That's really

1 what I'm asking.

2 MR. FULTON: Absolutely, Sir, I do  
3 not have any.

4 MR. MACKEY: You do not.

5 MR. FULTON: Thank you, Sir.

6 MR. MACKEY: I understand the first  
7 that you learned about these withdrawals from  
8 the money room was when you had your sworn  
9 interview with the investigative team here. And  
10 then it sounds like promptly after that you put  
11 in a call to Mr. Piontkowski.

12 MR. FULTON: Phone records would  
13 prove that to be true.

14 MR. MACKEY: And you said something  
15 that you're taking money that's not yours?

16 MR. FULTON: Those were my exact  
17 words, Sir.

18 MR. MACKEY: Can you tell us what  
19 Mr. Piontkowski said?

20 MR. FULTON: He disagreed with me.

21 MR. MACKEY: Can you recall anything  
22 more specific than that?

23 MR. FULTON: I don't know, but at  
24 that point in time I knew what had to transpire.

1           MR. MACKEY: I have no further  
2 questions. Pardon me. With respect to the  
3 gaming operations that will occur if Ourway is  
4 awarded the Category 2 license, is it your  
5 intention as the head of the company that Mr.  
6 Grogan will have direct operational  
7 responsibility for that gaming activity?

8           MR. FULTON: He will have a team of  
9 people reporting to him.

10          MR. MACKEY: Okay. Also, so the  
11 record is clear, IGT. There's been a lot of  
12 testimony of IGT and their potential role going  
13 forward. Are they in the business of operating  
14 casinos? Do they have experience?

15          MR. FULTON: No. At the time that  
16 agreement was signed, it was signed by Anchor  
17 Coin. And Anchor Coin operated casinos and  
18 machines throughout Nevada.

19                 Then Anchor Coin became Anchor  
20 Gaming and they merged into IGT. And the first  
21 thing IGT did was sell off the casinos, sell off  
22 the route, divest itself of all the parts of  
23 Powerhouse which we acquired for \$490 million,  
24 everything but Sunland Park. Because when I

1 left the company, I said I want something to do.  
2 I want to watch the ponies run and hand out some  
3 trophies.

4 Part of the deal was I am going to  
5 take Sunland Park with me, and also the  
6 investment in Plainridge. I think along the  
7 lines someone asked me if I was ever going to  
8 buy any racehorses and I said no, I'm too smart  
9 for that. But I proved that to be false because  
10 I ended up buying a bunch of racehorses,  
11 thoroughbreds. And that's God's way of telling  
12 you you've got too much money.

13 MR. MACKEY: On that note, I  
14 conclude my questions.

15 COMMISSIONER CAMERON: Question, Mr.  
16 Fulton.

17 MR. FULTON: Yes, Ma'am.

18 COMMISSIONER CAMERON: It was  
19 apparent you were angry when you found out that  
20 Mr. Piontkowski was taking these disbursements.  
21 Did you ever consider criminal prosecution? I  
22 mean we're talking a six-figure numbers here.

23 MR. FULTON: I think to say that I  
24 was angry is an understatement, Ma'am. I have

1 great confidence in John and his ability. John  
2 thought it was best and I agreed with him to  
3 rapidly put closure to the former president and  
4 our association.

5           There would have been in my opinion  
6 protracted and extensive litigation and it would  
7 have been extremely harmful to the company.  
8 From a business decision, we did what was right.

9           COMMISSIONER CAMERON: When you say  
10 litigation, I don't frankly see what litigation  
11 the former president could have brought knowing  
12 you had this information. And there was proof  
13 of this, these distributions that were not known  
14 to the managers, the investors.

15           MR. FULTON: I'm not a lawyer, but I  
16 do know this about the law, anybody can sue  
17 anybody about anything. And I only know,  
18 because I was sued -- My trial lawyers, I think  
19 they were out of Dallas, because of a loan that  
20 I was repaying. They were suing me for  
21 \$6,750,000 plus legal fees, etc., etc., etc.  
22 That particular lawsuit cost me \$1,200,000 in  
23 legal fees and that was before pretrial motions,  
24 the trial or the appeals.

1 I was told that that would cost  
2 another \$2 million. Finally, I said all right.  
3 Go to those lawyers and offer them \$300,000, but  
4 they have got to give me a letter that I did  
5 absolutely nothing wrong. Those trial lawyers  
6 said you want a letter like that no problem, no  
7 problem just give us the \$300,000. I'm sorry,  
8 it would have been expensive, Ma'am. It would  
9 have been protracted. It would have been  
10 horrible.

11 COMMISSIONER CAMERON: I think I  
12 misspoke. It was seven figures we're talking  
13 about. The other question I wanted to ask you  
14 about was the letter that has been brought into  
15 evidence that you claim that you were not aware,  
16 you don't recall signing it. Do you think this  
17 is something -- I'm talking about Exhibit --

18 COMMISSIONER MCHUGH: Exhibit 5.

19 COMMISSIONER CAMERON: -- yes.

20 MR. FULTON: Five.

21 COMMISSIONER CAMERON: Correct,  
22 Exhibit 5. What is your understanding? You  
23 believe Mr. Piontkowski got you to sign this  
24 letter without your knowledge of the content? I



1 was trying to understand from your statements.

2 MR. FULTON: Pardon me, I believe  
3 that is probably the case, Ma'am. Again, I  
4 think it is very evident that everyone is in  
5 agreement that the former president was  
6 deceptive, period.

7 CHAIRMAN CROSBY: Commissioners?

8 COMMISSIONER MCHUGH: Can I just  
9 pick up on that? Mr. Fulton, sticking with  
10 Exhibit 5, and I have very few questions.  
11 Exhibit 5 does talk, you would agree, about a  
12 large sum of money?

13 MR. FULTON: Yes, Sir, it does.

14 COMMISSIONER MCHUGH: And it talks  
15 about an advance to Mr. Piontkowski of a large  
16 sum of money?

17 MR. FULTON: As I sit here, I don't  
18 recall.

19 COMMISSIONER MCHUGH: I know, but as  
20 you read it now. Was it your practice to sign  
21 documents then without reading them?

22 MR. FULTON: Probably because of the  
23 trust factor, yes. And he said Al approved of  
24 this and I signed it.

1                   COMMISSIONER MCHUGH:  If you trust  
2 somebody, is that still your practice today?

3                   MR. FULTON:  My trust in the bones  
4 have not been broken.

5                   COMMISSIONER MCHUGH:  So, that if  
6 you have full trust in somebody today, you are  
7 likely to sign documents that they ask you to  
8 sign?

9                   MR. FULTON:  Here again --

10                  COMMISSIONER MCHUGH:  Pardon me?

11                  MR. FULTON:  I'm sorry, Sir.  Let's  
12 talk about my relationship with John Grogan.  I  
13 have every confidence in his doing what's right  
14 for the Massachusetts Gaming Commission.  I have  
15 confidence in John Grogan.

16                  COMMISSIONER MCHUGH:  And that's  
17 admirable, Sir.  But you once had that  
18 confidence in Mr. Piontkowski, did you not?

19                  MR. FULTON:  I was snowed, Sir.

20                  COMMISSIONER MCHUGH:  All right.  
21 Would you describe what you envision your role  
22 as the CEO of Ourway to be?

23                  MR. FULTON:  I think I'll be in  
24 constant contact with John in saying what is

1 happening and why it is happening. All right?  
2 Hopefully, providing some direction concerning  
3 some positive developments to make the slot  
4 parlor even better in the State of  
5 Massachusetts. And I let you be the judge, but  
6 I've got the ability to do it, Sir, and I will  
7 use that ability to benefit the people in the  
8 State of Massachusetts.

9 COMMISSIONER MCHUGH: All right,  
10 Sir. Let me ask you one final couple of  
11 questions. You have a substantial amount  
12 invested in the Ourway operations over the  
13 years.

14 MR. FULTON: Yes.

15 COMMISSIONER MCHUGH: And did you  
16 have any role in selecting an auditor for the  
17 Ourway operations?

18 MR. FULTON: No, Sir.

19 COMMISSIONER MCHUGH: Were you  
20 interested in the quality of the auditor?

21 MR. FULTON: I think the auditor let  
22 us down, Sir. I think the auditors should have  
23 contacted Al, at least.

24 COMMISSIONER MCHUGH: As an investor

1 who was putting up millions of dollars for this  
2 operation, did you have an interest in seeing to  
3 it that there was some oversight from an auditor  
4 of the way the monies were being expended?

5 MR. FULTON: I am not quite certain  
6 that I understand where we're going with this.

7 COMMISSIONER MCHUGH: I don't know  
8 where we're going either.

9 MR. FULTON: I have three children  
10 who have CPA's, one has an advanced degree in  
11 taxation code. You've got to trust people. And  
12 you trust your auditors to give you the straight  
13 poop. And evidently that didn't happen here.

14 COMMISSIONER MCHUGH: Did you read  
15 the annual audit reports? -- Were there annual  
16 audit reports?

17 MR. FULTON: Probably not, Sir.

18 COMMISSIONER MCHUGH: Pardon me?

19 MR. FULTON: I said probably not.

20 COMMISSIONER MCHUGH: You don't  
21 recall reading any annual audit reports of  
22 Ourway operations?

23 MR. FULTON: I do not recall it,  
24 Sir.

1                   COMMISSIONER MCHUGH: You had  
2 invested over the years, is it fair to say,  
3 around \$30 million or so in Ourway?

4                   MR. FULTON: I think it's a bit more  
5 than that, Sir.

6                   COMMISSIONER MCHUGH: And you didn't  
7 read annual audit reports?

8                   MR. FULTON: No, Sir.

9                   COMMISSIONER MCHUGH: Thank you.

10                  COMMISSIONER ZUNIGA: Just to pick  
11 up on something about the audits. I notice that  
12 Exhibit 7 is from one audit firm Husted and  
13 Husted, CPAs. That was in 2008. In 2012, the  
14 letters are from a another set of auditors,  
15 Gosule, Butkus and Jesson.

16                  MR. FULTON: Yes.

17                  COMMISSIONER ZUNIGA: Do you recall  
18 as to why maybe there was a change in these  
19 firms?

20                  MR. FULTON: No, Sir, I do not.

21                  COMMISSIONER ZUNIGA: Or when that  
22 happened?

23                  MR. FULTON: I do not have any  
24 knowledge whatsoever on that.

1                   COMMISSIONER ZUNIGA: Who decided to  
2 pick the auditor?

3                   MR. FULTON: Probably, Gary.

4                   COMMISSIONER ZUNIGA: Mr.  
5 Piontkowski?

6                   MR. FULTON: The former president.

7                   CHAIRMAN CROSBY: You can say his  
8 name.

9                   COMMISSIONER ZUNIGA: Thank you.

10                  CHAIRMAN CROSBY: Anything else,  
11 Commissioner Stebbins?

12                  COMMISSIONER STEBBINS: You've  
13 talked a little bit about the regulatory  
14 compliance success you've had with Sunland.

15                  MR. FULTON: Yes, Sir.

16                  COMMISSIONER STEBBINS: Other than  
17 the fact that you've bought some horses,  
18 describe for me if you can a little bit more  
19 about your role in kind of the day-to-day  
20 operations at Sunland or to the extent of your  
21 role at Sunland.

22                  MR. FULTON: Typical would be on a  
23 trip to Sunland Park I was talking with Harold  
24 Payne, the manager. And I had just been given a

1 cap. ex. budget. And I said, Harold, I noticed  
2 in the casino -- because you are allowed to  
3 smoke in casinos down there. We have our  
4 casinos in two different sections, one for non-  
5 smokers and one for smokers.

6 In the smoking area I call them  
7 smoke eaters. These are devices that are  
8 purifying the air. You've only got two new ones  
9 in the cap. ex. You might consider increasing  
10 that number to make the air cleaner. He says  
11 that's not a bad idea. I'll have to give it  
12 some thought.

13 And I returned maybe three or four  
14 weeks later and I said, Harold, I know you  
15 always wait until the end of the racing season  
16 before you start your cap. ex. But you might  
17 consider doing this early because it doesn't  
18 interfere with the racing. And he looked at me  
19 and said the duct work is in, the electrical  
20 work is in. They're being installed Monday.

21 You see, my type of man is a do it,  
22 do it right, do it right now type of person.  
23 And I think John Grogan is that type of man.  
24 And that's the type of people I want to be

1 associated with.

2 COMMISSIONER STEBBINS: That's a  
3 pretty hands-on anecdote you just shared. You  
4 referenced earlier that if Sunland did not have  
5 the slots parlor, I'm assuming revenues are on  
6 the downward trend just for the track  
7 operations --

8 MR. FULTON: It would have been  
9 closed years ago, Sir.

10 COMMISSIONER STEBBINS: Okay. Over  
11 the past just a five-year window, what has  
12 Sunland's revenues done in terms of growth?

13 MR. FULTON: Pardon me, but we had  
14 a little thing called a recession.

15 COMMISSIONER STEBBINS: We can go a  
16 little bit farther out than '07, '08 if you want  
17 to.

18 MR. FULTON: Well, it has affected  
19 (INAUDIBLE) machine. It has affected the  
20 (INAUDIBLE) machine. Sunland Park was a great  
21 profit center. It's not great anymore but it's  
22 pretty doggone good.

23 COMMISSIONER STEBBINS: So, I guess  
24 one thing that struck me is that in the material



1 there isn't any official relationship between  
2 Sunland and Ourway or the Plainridge course.  
3 But it would seem to me there seems to be some  
4 significant expertise that you could draw on to  
5 help support Mr. Grogan as he kind of comes up  
6 to speed on gaming operations.

7 MR. FULTON: That is true, Sir.  
8 Actually, the manager we have right now was a  
9 key member of the management team for Penn  
10 National in New Mexico. And we hired him when  
11 Harold decided he wanted to retire. His name is  
12 Rick Baugh, very, very good manager.

13 COMMISSIONER STEBBINS: But you  
14 don't see any kind of sharing of resources or  
15 expertise between the operations?

16 MR. FULTON: It's possible, Sir,  
17 especially things like marketing, advertising,  
18 things like that, so the operation of the slots  
19 parlor.

20 COMMISSIONER STEBBINS: In your new  
21 role as CEO of Ourway what level of involvement  
22 do you see yourself in the hiring and firing or  
23 will it be again kind of sharing it by some  
24 counsel?

1 MR. FULTON: Concerning the casino  
2 manager, which is a key person, I think we are  
3 going to have a lot to say about that meaning 99  
4 and 44/100 percent, because it is a key decision  
5 is going to be reporting to John. It will be  
6 part of his team, but it's got to be the right  
7 guy. I've got people standing in the wings  
8 begging to come and work.

9 COMMISSIONER STEBBINS: Thank you.

10 CHAIRMAN CROSBY: I just have one  
11 question something similar to what Commissioner  
12 McHugh asked. Your primary assurance to us that  
13 things will be different going forward, that  
14 things will be first-class going forward is your  
15 tremendous confidence and trust in John Grogan.

16 Prior to the IEB report, did you  
17 have similar confidence and trust in Gary  
18 Piontkowski?

19 MR. FULTON: During that interview  
20 by the IEB, I was asked a question concerning  
21 the former president and his business abilities.  
22 And I believe my transcript is very clear. I  
23 said he's not a businessman, he's a politician.  
24 I recognized that Gary was not a businessman. I

1 also recognized what he was and that was a  
2 politician. And there was no thought about him  
3 running the business going forward because he  
4 wasn't a businessman. He was a politician.

5 CHAIRMAN CROSBY: But even as a  
6 politician, you had tremendous confidence and  
7 trust in him for what he was doing up for you at  
8 that point?

9 MR. FULTON: One of the reasons that  
10 we have I will call it a racino, that's slot  
11 machine and race track but anyway - pardon me,  
12 slot parlor, we have a slot parlor is I believe  
13 because of Gary's efforts.

14 But there's one other thing I've got  
15 to say, I was described as a nonresident CEO.  
16 That's true. Most of your CEOs can be  
17 nonresident. But one thing I have done I put my  
18 money here in the State of Massachusetts to  
19 create jobs and keep the business open, just  
20 like Al Ross and our other investors. I might  
21 live in Nevada but I'm no carpetbagger, I'm no  
22 carpetbagger.

23 I didn't come here last month and  
24 say I'm going to put up a box and throw 150

1 machines in. We are keeping a business going  
2 that directly and indirectly provides the  
3 revenue, the income for hundreds of people.  
4 We're proud of it. We've done it for a lot of  
5 years at great personal cost.

6 CHAIRMAN CROSBY: Okay, thank you.  
7 Other?

8 MR. RICHLIN: Just a few questions.  
9 I just want to follow up on this idea that you  
10 had confidence in Mr. Piontkowski. And you've  
11 got confidence in Mr. Grogan. Is there anything  
12 different? I would ask you, is everything the  
13 same at Plainridge today as it was before April  
14 3, 2013?

15 MR. FULTON: I told you that Gary  
16 was no businessman. John Grogan is a  
17 businessman and understands finances. He does  
18 what's necessary. He's straightening out what  
19 was a mess. This is a new company going  
20 forward.

21 MR. RICHLIN: Mr. Fulton, you've  
22 heard that Mr. Piontkowski served as both  
23 manager and president at the same time. Does  
24 Mr. Grogan have both titles?

1 MR. FULTON: No.

2 MR. RICHLIN: You were in a meeting  
3 of the board of advisors, participated in a  
4 board of advisors meeting just recently on, I  
5 think, Friday, July 19. Did you receive any  
6 information or materials in advance of that  
7 meeting.

8 MR. FULTON: Of course, yes, it's a  
9 book like this.

10 MR. RICHLIN: Sir, at any time  
11 during Mr. Piontkowski's tenure --

12 MR. FULTON: Never.

13 MR. RICHLIN: -- had you received  
14 information of that nature?

15 MR. FULTON: I anticipated the  
16 question. Never.

17 MR. RICHLIN: That's all I have.

18 MR. FULTON: It's a different  
19 company.

20 MR. RICHLIN: And was there before  
21 April 3, 2013 a board of advisors?

22 MR. FULTON: There was no board of  
23 advisors. By the way, concerning this board of  
24 advisors, my description of it is a bunch

1 heavyweights. Mark Levine, he's more New  
2 England than he is DC. He lived in Connecticut.  
3 He funded businesses here and a lot of them. He  
4 went to Northeastern, anyway right here, an  
5 immensely talented individual.

6 Al Ross been in this business  
7 forever. I'm not chopped liver.

8 CHAIRMAN CROSBY: Neither chopped  
9 liver nor carpetbagger. We are on notice.

10 MR. RICHLIN: Message received.

11 MR. FULTON: The gentleman that John  
12 has gotten to assist us as an independent  
13 auditor, this guy is a heavyweight. I am really  
14 thrilled to be associated with this company.  
15 That's why how I feel about it.

16 MR. RICHLIN: That's all I have.

17 CHAIRMAN CROSBY: Counselor?

18 MR. MACKEY: No, thank you.

19 CHAIRMAN CROSBY: Anything else?  
20 Thank you very much, Mr. Fulton, appreciate your  
21 time, your enthusiasm.

22 MR. FULTON: It's a pleasure to be  
23 here with you. As a businessman, Mr. Chairman,  
24 you wouldn't have allowed it to happen either

1 those withdrawals.

2 CHAIRMAN CROSBY: You bet you're  
3 right. Thank you. Do we want Mr. Ross, I'm  
4 hearing nodding heads. Why don't we do the same  
5 thing. Let's take about a five-minute break.

6

7 (A recess was taken)

8

9 CHAIRMAN CROSBY: We will reconvene  
10 the adjudicatory hearing on the application of  
11 Ourway Realty, LLC. We have a further witness  
12 Mr. Al Ross. Mr. Ross, I don't think you were  
13 sworn in when we did the swearing-in earlier.  
14 If you please stand and raise your right hand.

15

16 ALFRED ROSS, SWORN

17

18 CHAIRMAN CROSBY: Thank you, he has  
19 responded in the affirmative. So, let's start  
20 with as much direct as you wish.

21

22 MR. RICHLIN: Thank you, Mr.  
23 Chairman. Would you please state your name,  
24 Sir?

24

MR. ROSS: Alfred Ross.

1 MR. ROSS: Mr. Ross, where do you  
2 reside?

3 MR. ROSS: Dartmouth, Massachusetts.

4 MR. RICHLIN: And how long have you  
5 resided in the Commonwealth of Massachusetts,  
6 Sir?

7 MR. ROSS: Since 1931.

8 MR. RICHLIN: Would that be the year  
9 of your birth?

10 MR. ROSS: Yes.

11 MR. RICHLIN: So, your entire life.  
12 Sir, have you ever served in the military?

13 MR. ROSS: Yes. I spent four years  
14 in the Navy in 1951 through 1955.

15 MR. RICHLIN: You have an  
16 affiliation with the applicant Ourway Realty?

17 MR. ROSS: Yes, I do.

18 MR. RICHLIN: What is that  
19 affiliation?

20 MR. ROSS: As a passive investor.

21 MR. RICHLIN: When did you become a  
22 passive investor in Ourway?

23 MR. ROSS: Right from the very  
24 outset, I made it known that I had divested



1 myself of the racetracks that I had in 1989. I  
2 chose not to be in that, a participant in  
3 management and told all that my role in my  
4 investment was passive.

5 MR. RICHLIN: And when you say a  
6 passive investment can you explain what you  
7 expected your role to be relative to the day-to-  
8 day operations of the racecourse?

9 MR. ROSS: I had no intentions of  
10 being involved in the day-to-day operations at  
11 all. I was available on occasion. And made it  
12 clear to the previous manager that because in  
13 fact I had owned racetracks for many years in  
14 many parts of the country that if you ever have  
15 any questions please feel free to call.

16 On many occasions in driving into  
17 the racetrack, if I felt something was in need  
18 of change, I would make the suggestion. And  
19 that was as far as my role was concerned.

20 MR. RICHLIN: Since April 3, 2013,  
21 you have assumed the role of manager of Ourway  
22 Realty; is that correct?

23 MR. ROSS: That is correct.

24 MR. RICHLIN: What do you understand

1 to be your responsibilities in that capacity?

2 MR. ROSS: Mostly as a  
3 representative of the investors in Ourway. And  
4 conferring when needed with the president of the  
5 racetrack whether by email or by phone or on the  
6 occasions when I am at the track to assist in  
7 any way I can. Be a part of the newly formed  
8 committee is to meet on a quarterly basis and  
9 review the operation and make suggestions as  
10 needed.

11 MR. RICHLIN: Before Mr. Fulton  
12 became the CEO, which was formalized sometime in  
13 July, was there a reporting relationship between  
14 you and Mr. Grogan?

15 MR. ROSS: Yes. With Mr. Fulton  
16 being a couple of thousand miles away and being  
17 the lead investor, I sort of was a conduit  
18 between the two if they had not talked for some  
19 time. And fielded questions and inquiries from  
20 John. And would confer with Stan on occasion as  
21 to what was going on and what was happening in  
22 the State.

23 Again, made it clear to John that if  
24 at any time he had any problems, not being

1 familiar with pari-mutuels or harness racing, to  
2 feel free to call on me.

3           There are two parts to that  
4 operation, one being pari-mutuels and the other  
5 being the racing that takes place on the track.  
6 And there's a big separation between the two.

7           John had no idea whatever of what  
8 was going on in the racetrack and probably to  
9 this day even being around it for three months  
10 still hasn't got much of an idea of what's going  
11 on with the horses going around the racetrack.  
12 That part of the operation has for 13 years been  
13 exemplary. It's run by professionals. We have  
14 had very few problems.

15           Under adverse conditions, those  
16 being minimal purses and a shortage of horses  
17 because of minimal purses, they have done an  
18 outstanding job in presenting full field  
19 betting cards for the public. And this sport is  
20 almost relatively free of scandal at the  
21 racetrack.

22           In fact, there has been very minor  
23 violations here and there, which is commonplace  
24 at racetracks. It's a part of the operation

1 that Mr. Grogan doesn't have to pay any  
2 attention to it all. It's well handled.

3 He's got the other side of the  
4 operation that being pari-mutuels where most of  
5 the authorities are. He's done an outstanding  
6 job in the brief period of time he's been  
7 aboard.

8 MR. RICHLIN: You know that  
9 throughout the proceedings today we spent a fair  
10 amount of time discussing the cash withdrawals  
11 that Mr. Piontkowski received while he served as  
12 president and manager. And there has been some  
13 discussion and testimony regarding a letter  
14 dated February 2012, Exhibit 5. I want to show  
15 that to you.

16 And the first question I have for  
17 you is this document appears to bear your  
18 signature. Is that your signature to the best  
19 of your knowledge and memory?

20 MR. ROSS: Those are my initials,  
21 yes. And I would have to say they are mine,  
22 written by me.

23 MR. RICHLIN: Do you have a  
24 recollection of having placed your initials on

1 this document?

2 MR. ROSS: Not really. I look at it  
3 now and I'm sure it was placed in front of me to  
4 get the signature.

5 Way in the back of my mind, the only  
6 thing I can think of was when I looked at the  
7 numbers it struck me that they were all  
8 inclusive of his salary. So, nothing jumped off  
9 the page to me. And I paid no more attention to  
10 it.

11 As far as the frequency of the cash  
12 withdrawals from the money room, I had no idea  
13 whatever that that occurred.

14 MR. RICHLIN: I want to ask a  
15 follow-up on a couple of things you just said.  
16 First of all, do you now understand that the  
17 number reported as either advances or  
18 withdrawals was not inclusive of Mr.  
19 Piontkowski's compensation?

20 MR. ROSS: Yes.

21 MR. RICHLIN: So, this was money  
22 over his regular compensation?

23 MR. ROSS: Yes.

24 MR. RICHLIN: As to the frequency of

1 cash withdrawals, when did you learn that those  
2 withdrawals were made on an almost daily basis?

3 MR. ROSS: That would probably be  
4 after the IEB investigation in Las Vegas with  
5 Mr. Fulton. That when John came back, he  
6 reported to me what took place out there. And  
7 that was part of the investigation, part of the  
8 queries of Mr. Fulton out there. So, I was made  
9 aware of it at that time.

10 MR. RICHLIN: At that time when you  
11 were made aware of it, were there some number of  
12 conversations between and among you, Mr. Grogan  
13 and Mr. Fulton?

14 MR. ROSS: Yes.

15 MR. RICHLIN: Did those discussions  
16 involve whether and if so what steps you wanted  
17 to take relative to Mr. Piontkowski's continued  
18 relationship with the company?

19 MR. ROSS: It was generally agreed  
20 by the three of us that with the information  
21 that had been imparted to Mr. Fulton out in Las  
22 Vegas that it would be best to terminate Mr.  
23 Piontkowski, because going forward it would  
24 jeopardize everything that we worked so hard for

1 for 13 years. And it was going to be a problem  
2 and we wanted to basically get rid of the  
3 problem ASAP.

4 MR. RICHLIN: Now you know that the  
5 company didn't terminate his employment. It  
6 didn't simply put him on the street. In fact, a  
7 separation agreement was entered into between  
8 Ourway Realty and Mr. Piontkowski. You know  
9 that.

10 MR. ROSS: Yes, I know that. It was  
11 pretty obvious in talking with Mr. Piontkowski  
12 at the time that he wasn't very interested in  
13 going forward any further and being interrogated  
14 by the IEB and opted to resign.

15 MR. RICHLIN: Did you have any  
16 direct communications with Mr. Piontkowski once  
17 you learned about the cash withdrawals?

18 MR. ROSS: No.

19 MR. RICHLIN: Do you recall that  
20 when his departure was announced, there were  
21 press reports to the effect that he left for  
22 health reasons? Do you recall that,

23 MR. ROSS: I recall that, yes.

24 MR. RICHLIN: Did he leave for

1 health reasons, Sir?

2 MR. ROSS: Not to my knowledge. I  
3 do now and down through the years he has had  
4 heart problems. Whether he had any problems  
5 with his heart at this particular time, I can't  
6 say. But that is the only thing I know about  
7 his health situation. He has had problems and  
8 gets EKGs frequently.

9 MR. RICHLIN: Mr. Ross, the  
10 Commission has asked for an attestation, a  
11 confirmation by Ourway officials and members  
12 that what happened in the past and specifically  
13 with regard to the cash withdrawals and the  
14 absence of the kind of controls and oversight  
15 that allowed those to happen, that those things  
16 won't happen in the future. What assurances can  
17 you offer to the Commission in that regard?

18 MR. ROSS: Well, I guess the best  
19 thing I can say is that there is a new team in  
20 place going forward. And the lack of integrity  
21 is not in any one of our resumes. I know it's  
22 not in mine. I know it's not in Mr. Fulton's.  
23 And having worked with Mr. Grogan for three  
24 months, I know it's not in his.



1 I know my record speaks for itself.  
2 I have never had a problem in the 45-odd years  
3 that I've been around the industry.

4 I ran more racetracks at one time  
5 than anybody in the world, not that that means  
6 anything. I have a sterling reputation. I was  
7 elected President of the American Greyhound  
8 Track Operators Association at a very tender  
9 age, put into the Greyhound Hall of Fame. I've  
10 got a sterling reputation. And lack of  
11 integrity cannot be attributed to me at all.  
12 And I feel the very same way about John Grogan  
13 and Stan Fulton.

14 MR. RICHLIN: That's all I have.

15 CHAIRMAN CROSBY: Just for the  
16 record, I would say that I don't think there's  
17 an issue here about the integrity of Al Ross or  
18 Stan Fulton. There may be questions about your  
19 oversight and the way you've executed some of  
20 your responsibilities. But there's nothing that  
21 we've seen or suggested that speaks to the issue  
22 of the integrity of these two men. Do you have  
23 cross?

24 MR. MACKEY: Yes, Mr. Chairman, very

1 briefly.

2 Mr. Ross you described yourself as a  
3 passive investor, correct?

4 MR. ROSS: Yes.

5 MR. MACKEY: Would you have been in  
6 the habit of reviewing the audited annual  
7 financial statements for Ourway as they were  
8 prepared by the outside auditors?

9 MR. ROSS: I briefed through them.  
10 I must say that reviewing a P&L statement, a  
11 balance sheet is not my long suit. I had very  
12 little college experience. I've been in the  
13 trenches all my life traveling the world, trying  
14 to get permits for greyhound racing and the  
15 states to legalize and what have you. I've  
16 always relied upon good accounting firms at the  
17 tracks I ran to do the books. And that's the  
18 best way I can answer your question.

19 MR. MACKEY: Would it be fair to say  
20 that just even a quick glance at the financial  
21 statements would show that the company was being  
22 held up by financial infusions from the members  
23 for the most part?

24 MR. ROSS: Yes.

1 MR. MACKEY: Do you recall if you'd  
2 perused through the financial statements any  
3 reference in those statements to distributions  
4 to members, money going the other way?

5 MR. ROSS: No.

6 MR. MACKEY: Let me briefly show you  
7 Exhibit Number 7. Mr. Richlin, do you have a  
8 copy of that? That's the 2008 letter. And if  
9 you could just turn to the second page of that,  
10 Mr. Ross?

11 MR. ROSS: Yes.

12 MR. MACKEY: Does that appear to be  
13 your signature on the document?

14 MR. ROSS: Yes.

15 MR. MACKEY: Do you, as you're  
16 reading this letter now, have a recollection of  
17 seeing that letter or signing that letter any  
18 time in the 2008?

19 MR. ROSS: Not really. Would you  
20 give me a chance just to read through it?

21 MR. MACKEY: Certainly.

22 MR. ROSS: I can't say honestly that  
23 I can remember very much about this.

24 MR. MACKEY: You say not very much.

1 Do you have any recollection of receiving or  
2 signing this letter?

3 MR. ROSS: No, I don't.

4 MR. MACKEY: Exhibit Number 5,  
5 that's the 2012 letter Mr. Richlin showed you  
6 briefly. On this one, Mr. Ross, you said that  
7 it appears to be your initials on the document?

8 MR. ROSS: That's correct.

9 MR. MACKEY: Do you recall having  
10 any discussions with Mr. Fulton about this  
11 particular document, Exhibit Number 5, around  
12 the time that you signed it?

13 MR. ROSS: No, I did not. Mr.  
14 Fulton said when the document was put in front  
15 of him, it had my signature. I am not so sure  
16 that this document wasn't put in front of me  
17 with Mr. Fulton's signature on it.

18 Again, when I look at it, the only  
19 recall I have is I thought that these numbers  
20 were inclusive of his salary. I was incorrect  
21 in assuming that.

22 MR. MACKEY: So, fair to say that  
23 you have no recollection of Exhibit 7. With  
24 respect to Exhibit 5, you have vague

1 recollection but no conversation with Mr. Fulton  
2 at the time?

3 MR. ROSS: Correct.

4 MR. MACKEY: What about a  
5 conversation with Mr. Piontkowski on either  
6 document?

7 MR. ROSS: No, none.

8 MR. MACKEY: Do you recall being  
9 interviewed by the Bureau staff in connection  
10 with this investigation back in the middle of  
11 2013?

12 MR. ROSS: Yes.

13 MR. MACKEY: Do you recall being  
14 asked at the time about Mr. Piontkowski's  
15 resignation?

16 MR. ROSS: Vaguely.

17 MR. MACKEY: Do you recall telling  
18 the investigators, representatives of the  
19 Commission at that point that you believed that  
20 Mr. Piontkowski had resigned because of health  
21 reasons?

22 MR. ROSS: Yes.

23 MR. MACKEY: And I think you  
24 testified earlier that that's not really why he

1 resigned?

2 MR. ROSS: At the time I said that,  
3 I might have been referring to press releases.  
4 I'm just not sure. But it was made clear that  
5 in a meeting in his office I think John Grogan  
6 was present, and I'm not sure whether Mr. Fulton  
7 was on the phone, I don't think he was. But  
8 that there was going to be a big problem had he  
9 appeared in front of the IEB.

10 I remember telling him, I hope you  
11 pass with flying colors. I could tell from his  
12 reaction that he wasn't particularly interested  
13 in going that route. And he said -- I believe  
14 he indicated that would resign at that time.

15 MR. MACKEY: This is a meeting  
16 between the time that Mr. Fulton learned through  
17 the investigation about the money room  
18 withdrawals and the time that you were  
19 interviewed by the Commission?

20 MR. ROSS: Could you repeat that?

21 MR. MACKEY: Sure. At some point  
22 Mr. Fulton and Mr. Grogan learned about the  
23 money room withdrawals and they were concerned  
24 about it.

1 MR. ROSS: Yes.

2 MR. MACKEY: It sounds like  
3 following that time there was a meeting  
4 involving yourself and Mr. Fulton -- I'm sorry,  
5 yourself and Mr. Grogan and Mr. Piontkowski.

6 MR. ROSS: Yes.

7 MR. MACKEY: And the discussion you  
8 just had about Mr. Piontkowski's reluctance  
9 about being in front of the Bureau, that's when  
10 that discussion took place?

11 MR. ROSS: Yes.

12 MR. MACKEY: Okay. Then following  
13 that meeting was your interview with the Bureau  
14 staff?

15 MR. ROSS: Yes.

16 MR. MACKEY: No further questions.

17 COMMISSIONER MCHUGH: May I just  
18 pick up on that thread a minute. You were  
19 involved as you described intimately in the  
20 discussions with Mr. Grogan, Mr. Fulton and Mr.  
21 Piontkowski about his resignation and his  
22 leaving the company, right?

23 MR. ROSS: Yes.

24 COMMISSIONER MCHUGH: You were

1 interviewed by -- And the reason that he left  
2 the company was that you three told him he had  
3 to leave basically, right?

4 MR. ROSS: Would you repeat that,  
5 Sir?

6 COMMISSIONER MCHUGH: The reason he  
7 left the company is that the three of you  
8 basically told him he had to leave?

9 MR. ROSS: Yes.

10 COMMISSIONER MCHUGH: And you were  
11 interviewed on the day -- by the IEB the day  
12 after he left?

13 MR. ROSS: Yes.

14 COMMISSIONER MCHUGH: You were asked  
15 by the IEB representatives who were there why --  
16 what was your understanding of why he left.

17 MR. ROSS: Well, as I recall at the  
18 time a combination of his heart problems and I  
19 can't say whether it was up to me at that time  
20 to say that he had been fired. He hadn't been  
21 fired. It was he could not go forward with us.  
22 So, he was not going to be a member of the team  
23 going forward and he opted to go.

24 COMMISSIONER MCHUGH: Did you tell



1 the IEB representative that he had left for  
2 health reasons?

3 MR. ROSS: Perhaps I did.

4 COMMISSIONER MCHUGH: When you look  
5 at Exhibit 5, did you understand that salary or  
6 not, the monies reflected on Exhibit 5 were  
7 coming from distributions from someplace?

8 MR. ROSS: No, I did not.

9 COMMISSIONER MCHUGH: Were you aware  
10 that the same kind of distribution and the same  
11 kind of treatment of distributions occurred at  
12 the end of 2012, about 11 months after the date  
13 of Exhibit 5?

14 MR. ROSS: No.

15 COMMISSIONER MCHUGH: You did not,  
16 if I understood your answers to earlier  
17 questions, read the annual audit reports either;  
18 is that right?

19 MR. ROSS: No. All of the annual  
20 audit reports accompanied our application to the  
21 Racing Commission. We always got a clean bill  
22 of health from the Racing Commission on license  
23 every year. And my assumption was everything  
24 was fine as far as the audits were concerned.

1                   COMMISSIONER MCHUGH: So, you didn't  
2 read them either?

3                   MR. ROSS: No.

4                   COMMISSIONER MCHUGH: Thank you,  
5 Sir.

6                   COMMISSIONER CAMERON: I have a  
7 question, Mr. Ross. What did you mean when you  
8 told Mr. Piontkowski that you hoped he would  
9 pass with flying colors with the IEB?

10                  MR. ROSS: He was concerned with  
11 what some of the questions might be. Something  
12 to do with adopting a baby two or three years  
13 prior to that and having some problems in the  
14 Western part of the state with the adoption.

15                  At the time, I was still hoping that  
16 -- At that time not knowing what I know now, I  
17 was still hoping that he would be a part of the  
18 team. So, I wished him well.

19                  COMMISSIONER CAMERON: Did you have  
20 that conversation with him after you knew about  
21 the disbursements?

22                  MR. ROSS: No.

23                  COMMISSIONER CAMERON: That was  
24 before. He was worried about the IEB interview

1 before that came to light that information?

2 MR. ROSS: He was worried before?

3 COMMISSIONER CAMERON: Before the  
4 information came to light in Mr. Fulton's  
5 interview, which was the disclosure of these  
6 disbursements, Mr. Piontkowski is worried about  
7 the IEB interview?

8 MR. ROSS: No, it was after.

9 COMMISSIONER CAMERON: So, after you  
10 knew about the disbursements, you told him you  
11 hoped he still could be part of the team and you  
12 wished him well?

13 MR. ROSS: I did not know the  
14 disbursements, the frequency of the  
15 disbursements. Had I known at that time, I  
16 would not have wished well. I still was hoping  
17 he was part of the team until a day or two after  
18 when I learned more and more. Then I knew he  
19 could not continue with us.

20 COMMISSIONER CAMERON: Thank you.

21 COMMISSIONER ZUNIGA: Mr. Ross,  
22 Exhibit 5, which has your initials and Exhibit  
23 7, which has your signature, when looking at  
24 them side-by-side, they appear to have verbatim

1 language.

2           The first paragraph is identical in  
3 both letters. The closing paragraph is also  
4 identical. Stylistically, I would argue it may  
5 come from the same writer, but it's two  
6 different letterheads. One from Husted and  
7 Husted and another one from Gosule, Butkus &  
8 Jesson.

9           Do you know whether somebody changed  
10 firms and continued to be your auditors in a  
11 different firm?

12           MR. ROSS: I did not check the  
13 letterhead and was not aware of the first  
14 paragraph being identical. No, I know nothing  
15 about that. I know there was a change of  
16 auditing firms, but I couldn't tell you the name  
17 of the new one. At that time, the name Husted  
18 and Husted was familiar to me.

19           CHAIRMAN CROSBY: Commissioner  
20 Stebbins?

21           COMMISSIONER STEBBINS: Thank you.  
22 Two quick questions, and I apologize if I am  
23 asking this again. Mr. Fulton was pretty  
24 passionate about his emotions when he heard

1 about the distributions being taken. Can you  
2 share with us what your reaction was?

3 MR. ROSS: Very disturbed, placed  
4 too much confidence in one person, gave too much  
5 control to one person. This is all in  
6 hindsight, of course. I did not keep my left  
7 hand high. I feel I was misled on many  
8 occasions. And feel much more comfortable going  
9 forward with this new team in place than the one  
10 that was in place for 12 years.

11 COMMISSIONER STEBBINS: I know you  
12 had a long relationship with Mr. Peterson going  
13 back a number of years. Did you ever get a  
14 sense that there was a workplace environment  
15 under the previous president that, I guess, you  
16 would have been surprised by the fact that this  
17 gentleman who you have known for so many years  
18 wouldn't have been able to approach you if he  
19 had a concern? Were you aware of that kind of  
20 workplace environment where he wouldn't have had  
21 that opportunity?

22 MR. ROSS: I can give you a brief  
23 history before I answer your question with  
24 Peterson. He started when he got married in

1 South Dakota at a racetrack I was running out  
2 there with my brother in-law. He was newly  
3 married and worked as a mutuel clerk as did his  
4 wife.

5 From there we went down to Colorado  
6 and had a few racing seasons down there. And he  
7 wanted to know if they came down and vacationed  
8 in Colorado, could they both work as mutuel  
9 clerks.

10 The same thing happened when I came  
11 back to Massachusetts in the fall to run the  
12 Taunton dog track, they were sort of on a mini  
13 honeymoon type of thing and followed me back  
14 there, working as a mutual clerk, both of them.

15 It seemed as though everywhere I  
16 went, Peterson wanted to know whether there was  
17 a job for him. Same thing happened when I got  
18 racing legalized in Rhode Island in 1977. They  
19 came over there working as mutual clerks.

20 He had an accounting background and  
21 moved into the accounting department and worked  
22 under Louis Reinhold, my CFO and CPA at the  
23 racetrack and continued in that position up  
24 until the time we sold the racetrack in 1989.

1                   When I made the investment with  
2 Piontkowski and Plainridge got off the ground in  
3 1997, he asked me were there any key employees  
4 that worked for me at Lincoln or Taunton that he  
5 could possibly use. I asked him in what  
6 category? One was money room. I gave him the  
7 name of a lady named Paula and her husband at  
8 the time who ran the money room for me at  
9 Lincoln, Tom Valdez. A girl who worked as a  
10 mutual clerk who was very sharp issuing tickets  
11 and Tim Peterson who worked in the accounting  
12 department.

13                   He interviewed them and as a result  
14 of that hired Tim Peterson to come over and work  
15 in the accounting department at the racetrack.

16                   In my last sitdown with Tim  
17 Peterson, he expressed regret that he did not  
18 come to me directly. I told him I felt very  
19 hurt over his actions, so many years going by  
20 and keeping me in the dark. He said he tried to  
21 relay information back to me through a friend, a  
22 very weak way of trying to get something to me.  
23 But that's the way he attempted to do it. It  
24 never did get back to me.

1           It came as kind of a surprise. In  
2 John and I meeting with him, we felt at the last  
3 meeting he was going to testify and make it  
4 known to the Commission that if he stood in the  
5 way of Ourway going forward, getting the permit,  
6 he would resign rather than see him being an  
7 obstacle. That changed in last 72 hours.

8           CHAIRMAN CROSBY: Did you learn  
9 anything from that? I understand this person  
10 was a friend for 30 or 40 years. You got him  
11 multitudes of jobs. And looking back on that,  
12 does that say anything to you about your own  
13 judgment or management ability or practice or  
14 anything?

15           MR. ROSS: Well, he never worked for  
16 me in a real key position where I would have to  
17 worry about that. His initial jobs were selling  
18 mutuel tickets and what have you.

19           My judgment, when you have thousands  
20 of people in your employ over the years, you  
21 make bad judgments here and there. I've always  
22 prided myself in being able to read people. I  
23 missed badly with the former manager. Surely  
24 didn't see some of this weakness in Tim Peterson



1 that I see now.

2 CHAIRMAN CROSBY: Anything else,  
3 Commissioner Stebbins?

4 COMMISSIONER STEBBINS: Just one  
5 last point. Have you had any communications  
6 with the former president since he left?

7 MR. ROSS: None whatever.

8 COMMISSIONER STEBBINS: Thank you.

9 CHAIRMAN CROSBY: I had read earlier  
10 on something from the report about a comment  
11 that you made that I thought was saying that  
12 back in '09 or 2010 when Piontkowski brought  
13 Grogan in that at that point you were pleased  
14 because you thought that Grogan would be able to  
15 improve the systems at that point. Did I read  
16 that wrong? So, when he came in back in  
17 2009/2010, you did not have expectations that he  
18 would help button up the administrative and  
19 financial operations?

20 MR. ROSS: No, that was not what he  
21 was hired for.

22 CHAIRMAN CROSBY: Okay. This is  
23 sort of beating a dead horse, but it's  
24 important, I think. When I said to Mr. Fulton

1 about his tremendous trust and confidence in Mr.  
2 Grogan and didn't he have the same trust and  
3 confidence in Mr. Piontkowski? He said in a  
4 sense yes, but Piontkowski was a politician not  
5 a businessman.

6 But this man, you entrusted him with  
7 him upwards of \$30 to \$40 million of investment.  
8 He ran an operation with 140 people, a cash  
9 business, a highly regulated business.

10 Why did you put a politician in  
11 charge of that operation and your \$30 or \$40  
12 million?

13 MR. ROSS: I really didn't classify  
14 him as a politician in my mind. His previous  
15 experience that I knew of was as of a Racing  
16 Commissioner and a manager of a harness track  
17 down the road that had to be closed of some  
18 actions that Mr. Kraft took.

19 So, I didn't view him at that time  
20 as a politician. He was somebody who was  
21 knowledgeable about the racing game. From what  
22 I had got, he had done a decent job at Foxboro  
23 in running that racetrack and felt that the game  
24 plan that he and the partner of his laid out to

1 the investor group at one time was a sound plan.  
2 And that going forward that there was a  
3 possibility of running this track with simulcast  
4 wagering on a breakeven basis, hoping that at  
5 some time we would get the aid of additional  
6 gaming.

7           During that period of time, two  
8 things happened. One the nature of the  
9 simulcasting business changed dramatically in  
10 that signals we may have paid two and three  
11 percent for suddenly became a four and five  
12 percent. And they were signals we couldn't do  
13 without, such as the Kentucky Derby, Triple  
14 Crown, Belmont. The tracks that had the good  
15 horses had all of the sudden had simulcast  
16 outfits at their mercy.

17           So, the nature of that game changed.  
18 It added to our losses. And a lot of the  
19 figures that we see in the loss column can be  
20 attributed to deferred interest. So that we did  
21 have a losing operation. We were intent on  
22 seeing the sport survive. We stuck with it for  
23 13 years.

24           With the aid of additional gaming,

1 we'll be able to turn that around as New York  
2 and Pennsylvania and New Jersey and Delaware and  
3 Ohio have done.

4           Something unique is happening, and  
5 please don't feel I'm tooting my own horn when I  
6 say this, but a Mass. bred harness horse, bred  
7 and raised in Massachusetts is the youth born  
8 favorite to win the Hambletonian August 3. And  
9 not that that is my horse or that I'm majority  
10 owner of the horse but I just want to say that  
11 given a chance, the industry can't take off and  
12 can be what was the old Foxboro days of the 50s  
13 and 60s.

14           We stuck with it. We kept a lot of  
15 people employed down through the years. We got  
16 the horsemen on our side 100 percent. They know  
17 what we have been through. We have got the town  
18 of Plainville on our side 110 percent. They  
19 know the agony we have suffered down through the  
20 years.

21           Thankful to the investor group Mr.  
22 Fulton, we're at the crossroads right now. We  
23 hope that it is not all in vain. We hope that  
24 we've improved going forward. There's a new

1 team in place, much unlike the team in the past.  
2 And I feel very confident going forward.

3 CHAIRMAN CROSBY: I just have one  
4 last question. When the decision was made,  
5 however it was made to eliminate the prior  
6 president, bring in a new president and a new  
7 leadership team, at least a president, you could  
8 have done a number of things including bring in  
9 the senior members of the Sunland team. You  
10 could have gone elsewhere. Instead you chose to  
11 go with Mr. Grogan.

12 How did you vet him? How did you  
13 come to the conclusion that he is the way, the  
14 truth and the light that is going to bring you  
15 to success?

16 MR. ROSS: Because of the fact that  
17 he had been on board for three years and was  
18 fully aware of the operation in the three years  
19 he was there. Even though he was hired  
20 primarily to get our application in order, he is  
21 solely responsible for us getting it to the  
22 point it is now. And that appears to far ahead  
23 of our competitors.

24 We've got almost all of our

1 permitting in place. It just amazed me the  
2 speed at which he picked up the nature of the  
3 operation, the pari-mutuel business. And the  
4 protocols that he has put in place is so  
5 obvious.

6 Walking on the racetrack now and  
7 talking to employees and seeing the fill-up  
8 managers in uniform, seeing the employees in  
9 uniform and they have said this to me, they know  
10 they can go to their department head now with a  
11 complaint or constructive idea and not be  
12 threatened with loss of job or what have you.  
13 And in turn, department heads know that they  
14 have the same freedom with Mr. Grogan.

15 His staff meeting on a weekly basis  
16 bear that out. Change in attitude on the  
17 racetrack bears that out. There hasn't been one  
18 hiccup in the operation since he's come aboard.  
19 I've got to say that outside of -- I can't say  
20 he doesn't know which end of a horse eats, but  
21 he's not aware of what's going on on the race  
22 track at all.

23 CHAIRMAN CROSBY: All right,  
24 understood. Any further direct?

1 MR. RICHLIN: No, Mr. Chairman.

2 CHAIRMAN CROSBY: Further cross?

3 MR. MACKEY: No.

4 CHAIRMAN CROSBY: Anybody else,  
5 Commissioners? Mr. Ross, thank you very much,  
6 appreciate your time for being here for such a  
7 long time. We will be talking to you further.  
8 Thank you.

9 MR. ROSS: Thank you.

10 CHAIRMAN CROSBY: We will offer the  
11 applicant an opportunity to make a closing  
12 statement if a representative wants to.

13 MR. RICHLIN: Mr. Grogan will do  
14 that. If I could just have a moment to confer  
15 with my colleagues?

16 CHAIRMAN CROSBY: Sure.

17 MR. RICHLIN: Mr. Grogan.

18 MR. GROGAN: Good afternoon, before  
19 I summarize, I would like to if I could digress  
20 a little bit and just talk briefly around some  
21 of the questions as it relates to my  
22 capabilities as president.

23 Mr. Ross just came up with a new  
24 one, which I didn't know which end of the horse

1 ate. I have been accused of not knowing which  
2 way around the course the horses run. Some of  
3 those questions were about what do I know about  
4 gaming.

5 The important thing that I think  
6 that I bring to this organization is a  
7 management skill. While I may not know which  
8 end of the horse eats or which way they go  
9 around the track, I am comfortable managing an  
10 organization that has people in place that do  
11 that.

12 So, can I manage a harness -- a live  
13 harness racing simulcast with the appropriate  
14 people in place, in fact I can. Do I think I  
15 can manage a gaming operation where we have  
16 first-class people in gaming ops., security and  
17 surveillance and human resources and the like, I  
18 do and I can.

19 And I want to come back just for a  
20 moment address this question of trust. And you  
21 asked that question if the former president was  
22 trusting. And you hear both the Chairman and  
23 the CEO that they trust me. While I'll say I  
24 work hard to engender that trust, I'll borrow a



1 line from our former president of the country is  
2 this is one of those trusts but I don't want  
3 this to be that they trust me. I want them to  
4 trust me. But the institution and the  
5 organization needs to verify that that is in  
6 fact there.

7 So, this is never going to be an  
8 organization built around one but built around a  
9 system of moving forward. And we'll touch on  
10 that. While I don't -- Well, I do know which  
11 end of the horse eats, I am comfortable running  
12 that business. I'll leave that as it is.

13 Now in summary, we understand that  
14 we need to establish by clear and convincing  
15 evidence that we are qualified for licensure.  
16 We have endeavored to do that today, and I  
17 understand under some very serious questions.

18 On April 3, I became the president  
19 and have begun to implement fundamental changes  
20 in our organization. We have as the report  
21 outlines the numerous instances of noncompliance  
22 in our past that were unacceptable. There was a  
23 pattern of withdrawals from the money room by  
24 the prior president. That was wrong. It should

1 not have happened. You have heard that repeated  
2 by me, by Ms. Ross, by Mr. Fulton. It shouldn't  
3 have happened. And it won't happen in the  
4 future.

5 Those occurred because of poor  
6 controls, poor governance. And we have  
7 implemented immediate changes, and are  
8 endeavoring to create culture of integrity,  
9 accountability and responsibility. The board of  
10 advisors, as we've talked in the past, are  
11 people who have put their considerable  
12 reputations on the line and sort of attesting to  
13 what will that involve. We understand that  
14 you're not questioning the integrity of the  
15 individuals. There is a question around the  
16 integrity of the organization. And in my role  
17 as president to make sure that that level of  
18 personal integrity is infused throughout that  
19 organization.

20 As it relates to what's going to  
21 move forward if we were to move forward, I  
22 understand this is suitability at the present as  
23 opposed to Phase 2. But for our organization  
24 going forward, we are going to hire first-class

1 people to fill all of those operational roles.  
2 They bring that gaming experience.

3 My job would be to manage that team.  
4 Can I tell you which slot machine should go  
5 where on the slot floor, absolutely not. That  
6 is not my job. We're going to have somebody  
7 whose job it is to do that. My job is to build  
8 that organization, make sure they understand,  
9 create a culture again of integrity,  
10 accountability and responsibility. And I  
11 believe I can do that.

12 And with that, we appreciate the  
13 time you've taken today, a fairly lengthy day.  
14 And I hope that you will consider favorably our  
15 application as suitable.

16 CHAIRMAN CROSBY: Thank you, Mr.  
17 Grogan. With that, we will conclude this  
18 portion of the suitability proceeding. The  
19 Commission will deliberate about the matter in  
20 private and issue a written decision.

21 The proceeding at the point,  
22 however, remains open. If at any point during  
23 deliberations, the Commission determines that  
24 further testimonial or documentary evidence is

1 desirable, it may send notice of such to the  
2 applicant and provide instructions as to how to  
3 proceed.

4 Further all applicants, of course,  
5 have a continuing duty to provide updated  
6 information to the Commission and to the Bureau.

7 It is now July 25, 2013 at 5:45 and  
8 we will adjourn. Thank you all very much.

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10 (Hearing suspended at 5:45 p.m.)

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C E R T I F I C A T E

I, Laurie J. Jordan, an Approved Court Reporter,  
do hereby certify that the foregoing is a true  
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WITNESS MY HAND this 30th day of July, 2013.



LAURIE J. JORDAN  
Notary Public

My Commission expires:  
May 11, 2018