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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
ADJUDICATORY HEARING
(DAY 1 of 2)

IN THE MATTER OF: APPLICATION OF PENN NATIONAL
GAMING, INC. FOR PHASE 1 SUITABILITY DETERMINATION
FOR CATEGORY 2 GAMING LICENSE

September 18, 2013, 9:30 a.m. - 3:47 p.m.
BOSTON CONVENTION AND EXHIBITION CENTER
415 Summer Street, Room 105
Boston, Massachusetts 02210

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APPEARANCES:
ON BEHALF OF THE MASSACHUSETTS GAMING COMMISSION:

MASSACHUSETTS GAMING COMMISSION
Investigations and Enforcement Bureau
84 State Street
Boston, Massachusetts
BY: Director Karen Wells

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(617) 621-6531

ON BEHALF OF THE APPLICANT:
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BY: Jonathan Albano, Esq.
John Snyder, Esq.
(617) 951-8118

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1
2 WITNESSES: STEVEN SNYDER
3 WESLEY EDENS
4 JORDAN SAVITCH
5

6 EXHIBITS (Massachusetts Gaming Commission):
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8 Exhibit 1.....Pre-Hearing Memorandum and MGC
9 Notice re: Adjudicatory Proceeding
10 Exhibit 2.....Suitability Investigation for
11 Springfield Gaming & Redevelopment, LLC
12 Exhibit 3.....MGC Investigative Report, Applicant
13 Springfield Gaming & Redevelopment, LLC
14 Exhibit 4.....SEC Release re: Order Instituting
15 Public Proceedings against Steven T. Snyder,
16 File No. 3-9583 (Apr. 23, 1998)
17 Exhibit 5.....Complaint SEC v. Snyder, CA No.
18 01-CV-1870 (E.D. Pa. April 17, 2001)
19 Exhibit 6.....Final Judgment and Order, SEC v.
20 Snyder CA 01-CV-1870 (E.D. Pa. April 17, 2001)
21 Exhibit 7.....Verified Complaint, Snyder v.
22 Meridian Bancorp, Inc. CA No. 01-5253 (Pa. Ct.
23 of Common Pleas 2001) (without Exhibits)
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1 Exhibit 8.....Initial Decision and Order, New
2 Jersey Casino Control Commission, Application
3 Steven Snyder (April 15, 2002)
4 Exhibit 9.....Media Articles regarding SEC
5 Investigation of Snyder and Meridian
6 Exhibit 10.....Grand Jury Report, In re: The
7 Thirty-First Statewide Investigating Grand Jury,
8 18 W.D. Mis. Dkt. 2009 (Penn. May 10, 2011)
9 Exhibit 11.....Narrative of Testimony, Frank T.
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15 Exhibit 14.....Media Articles re: Pennsylvania
16 Gaming Control Board Grand Jury Report
17 Exhibit 15.....Leon E.W. Wintermyer, Inc. v.
18 W.C.A.B., 571 Pa. 189 (2001)
19 Exhibit 16.....Complaint, SEC v. Mudd, CA No. 11-
20 CV-9202 (S.D.N.Y. Dec. 16, 2011)
21 Exhibit 17.....Separation Agreement and General
22 Release between Fortress and Mudd (Jan. 2012)
23 Exhibit 18.....Media Articles re: Mudd Resignation
24 from Fannie Mae

1 EXHIBITS (Springfield Gaming Applicant):
2 Exhibit 1.....Penn National Gaming, Inc. Form
3 10-K (2/22/13) and Form 10-K/A (8/8/13)
4 Exhibit 2.....Gaming Compliance Review and
5 Reporting Plan of Penn National Gaming, Inc.
6 Exhibit 3.....Penn National Gaming, Inc. Code of
7 Business Conduct
8 Exhibit 4.....Charter of the Audit Committee of the
9 Board of Directors of Penn National Gaming, Inc.
10 Exhibit 5.....Penn National Gaming, Inc. Board of
11 Directors Nominating and Corporate Governance
12 Committee Charter
13 Exhibit 6.....Penn National Gaming, Inc. Schedule
14 for Vetting New Executive Hires
15 Exhibit 7.....Biographical statements of Penn
16 National Gaming, Inc. executives
17 Exhibit 8.....Lists of gaming licenses held by
18 Steven T. Snyder, Francis T. Donaghue, Fortress
19 Investment Group, LLC, Peter M. Carlino, Tim
20 Wilmott, Jordan Savitch and Wesley Edens
21 Exhibit 9.....April 24, 2002 New Jersey Casino
22 Control Commission Order No. 02-9-5, with Hearing
23 Examiner's April 15, 2002 Initial Decision
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1 Exhibit 10.....Fortress Investment Group, LLC Forms
2 8-K: March 11, 2011; December 16, 2011
3 Exhibit 11...Schedule of SEC Yield Burning Actions
4 Exhibit 12.....Presentation regarding Penn National
5 Gaming, Inc. Background
6 Exhibit 13.....Biographical Statement of Francis T.
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8 Exhibit 14.....Biographical Statements of Steven T.
9 DuCharme and Thomas N. Auriemma
10 Exhibit 15.....2 Pa. Consol. Stat. § 704
11 Exhibit 16.....A.P. Weaver v. Sanitary Water Bd.,
12 284 A.2d 515, 517 (Pa. Cmwlth 1971)
13 Exhibit 17.....Gibson v. Workers' Compensation
14 Appeal Board, 861 A.2d 938, 947 (Pa 2004)
15 Exhibit 18.....Pocono Manor Investors, LP v. Penn.
16 Gaming Control Board, 927 A.2d 209)(2007)
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P R O C E E D I N G S :

CHAIRMAN CROSBY: We are ready to get started. Is everything working? Because this is an adjudicatory hearing, I handle this a little bit more formally than our normal hearings.

Good morning, today is Wednesday September 18, 2013. This is a Phase 1 suitability hearing before the Massachusetts Gaming Commission relative to the application of Springfield Gaming and Redevelopment, LLC.

My name is Steve Crosby and I'm the chairman of the Commission. I'm joined today by Commissioners Cameron, McHugh, Zuniga and Stebbins. The entire Commission will preside over the hearing and the decision of this matter.

This is an adjudicatory proceeding which is convened in accordance with 205 CMR 115.04, paragraph three and will be conducted pursuant to the formal rules outlined in 801 CMR 1.01, subject to the clarifications contained in 205 CMR 101.03 and chapter 30A of the General

1 Laws. I hope you got all that.

2 Before we begin, I'd like to explain
3 the procedural history that led us here as well
4 as the process that will govern this proceeding.
5 Springfield Gaming and Redevelopment, LLC
6 submitted a Phase 1 application to the
7 Commission. The Commission then instructed the
8 Investigations and Enforcement Bureau to
9 commence an investigation into the suitability
10 of the applicant to hold a 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 the report was provided to the
18 applicant by the Commission. Based on the
19 report, the Commission has scheduled this
20 proceeding on its own initiative.

21 I see that a number of lawyers are
22 present here today on behalf of the applicant
23 and the Bureau. I will ask that you each please
24 identify yourselves and advise the Commission as

1 to who you represent, beginning on my left.

2 MR. ALBANO: Good morning, Mr.
3 Chairman, Commissioners. My name is Jon Albano.
4 I am from the law firm Bingham McCutchen. We
5 are here on behalf of the applicant and
6 qualifiers. To my far right --

7 MR. SNYDER: John Snyder also with
8 Bingham McCutchen on behalf of the same parties.

9 MR. SOTTOSANTI: Good morning, Carl
10 Sottosanti, vice president of legal, Penn
11 National.

12 CHAIRMAN CROSBY: Say your last
13 name.

14 MR. SOTTOSANTI: Sottosanti.

15 CHAIRMAN CROSBY: Thank you. And?

16 MR. MACKEY: Good morning, Mr.
17 Chairman, Commissioners. My name is David
18 Mackey from the firm of Anderson and Kreiger.
19 To my left is Mina Makarious also from Anderson
20 Kreiger. We will be representing the
21 Investigations and Enforcement Bureau this
22 morning.

23 CHAIRMAN CROSBY: Thank you. Thank
24 you, Counsel. At the conclusion of my opening

1 comments, this proceeding will commence with a
2 recitation and explanation of the investigative
3 report by the Bureau.

4 We will as that the Bureau outline
5 the manner in which the investigation was
6 conducted and outline the findings relative to
7 each qualifier. The Bureau's presentation will
8 largely be made by Karen Wells who's the
9 director of the Bureau. Director Wells is
10 joined by the consultants from Spectrum Gaming
11 who assisted in the conduct of the
12 investigation.

13 We will allow the consultants to
14 offer any clarification or answer any questions
15 during Director Wells' presentation. Any
16 Commissioner may ask a question of Director
17 Wells or a consultant at any point during or
18 following her presentation.

19 At the conclusion of the Bureau's
20 presentation, the applicant through its counsel
21 will be afforded an opportunity to cross-examine
22 Director Wells or a consultant relative to any
23 information contained in the investigative
24 report or to which they testified. The

1 applicant may reserve its right to cross-
2 examination until the end of their own
3 presentation if they so choose.

4 Next, the applicant will be given
5 an opportunity to present its case. The burden
6 is on the applicant to demonstrate by clear and
7 convincing evidence both its affirmative
8 qualification for licensure and the absence of
9 any disqualification for licensure.

10 To that end, the applicant has
11 already subjected itself to a thorough
12 background investigation, the results of which
13 are set out in the investigative report. Those
14 findings will be considered in determining
15 whether the burden has been satisfied.

16 For purposes of this proceeding,
17 however, the applicant may call any witnesses
18 and present any other evidence it desires in an
19 effort to satisfy its burden. The Commission
20 has directed that at a minimum, Peter M.
21 Carlino, Frank T. Donaghue, Wesley R. Edens,
22 Jordan B. Savitch, Steven Snyder and Timothy
23 Wilmott present testimony as to the issues set
24 forth in the notice of this hearing that was

1 provided to the applicant.

2 I understand that counsel for the
3 applicant had an opportunity to meet with
4 counsel for the Bureau and the Commission to
5 discuss this proceeding. The purpose in part
6 was to clarify some of the issues that the
7 applicant should address in this presentation.
8 Those are primarily the issues that are set
9 forth in the written notice of this hearing. Is
10 that correct?

11 MR. ALBANO: That is correct, Mr.
12 Chairman, very helpful meeting.

13 CHAIRMAN CROSBY: Good. While those
14 areas should be included in the applicant's
15 presentation, it may certainly any other issues
16 it believes to be relevant to its suitability
17 determination.

18 Similarly, the Commissioners may
19 certainly inquire into any issues of interest to
20 us. At the conclusion of each witness's direct
21 testimony, counsel for the Bureau will be
22 provided an opportunity to conduct cross
23 examination of the witness. Then each
24 Commissioner will be afforded an opportunity to

1 ask questions of the witness. Any Commissioner
2 may however ask any question of any witness at
3 any time during an examination or at the
4 conclusion of the examinations.

5 We will allow very limited redirect
6 and recross of the witness if it's absolutely
7 necessary. Either party may raise any objection
8 they desire at any time, however the basis for
9 all objections must be clearly stated.

10 Finally, at the conclusion of all of
11 the evidence, the applicant will be provided an
12 opportunity to make a closing statement summing
13 up why it believes it is suitable to be issued a
14 gaming license and should be allowed to proceed
15 to the Phase 2 portion of the process.

16 Before we begin, I understand that
17 there are a number of premarked exhibits that
18 have been exchanged by the parties in advance of
19 this hearing. I'll now ask the Bureau's counsel
20 to introduce the Bureau's exhibits.

21 MR. MACKEY: Yes, Mr. Chairman. The
22 Bureau has premarked 18 different exhibits.
23 They have been provided in advance to the
24 applicant's counsel. I'm not aware that there's

1 any objections to the introduction of those 18
2 exhibits into evidence.

3 MR. ALBANO: Yes, Mr. Chairman
4 that's correct. I suppose there's one
5 clarification. There are editorials and the
6 like that are agreed-to exhibits. And of
7 course, our agreement there is they were in fact
8 published not so much vouching for the
9 statements in any editorial report.

10 CHAIRMAN CROSBY: I don't think we
11 expected that. So, there are no objections to
12 these exhibits being marked and entered into
13 evidence. Now if the applicant has any exhibits
14 it would like to introduce, I would ask they be
15 introduced.

16 MR. ALBANO: Mr. Chairman, we have
17 delivered to the Board's Counsel 18 exhibits of
18 our own. And I believe that there are no
19 objection to the admission of those exhibits.

20 MR. MACKEY: No objection.

21 CHAIRMAN CROSBY: If either party
22 would like to have any additional documents
23 entered into evidence during the course of the
24 hearing, I'd ask that they be properly

1 introduced and marked by the court reporter.

2 The Commission anticipates that its
3 inquiry at this proceeding will be limited to
4 the matters addressed in the investigative
5 report or an issue related to the option
6 agreement between the applicant and Ourway
7 Realty that was previously considered by the
8 Commission.

9 In the event that a line of
10 questioning conducted by the Commission or
11 Bureau moves into an area that has not been
12 included in the report, or is not related to the
13 option agreement, but that is included as part
14 of the investigative file and is material to the
15 suitability determination, the applicant may
16 request a recess in the proceeding so as to
17 review the issue.

18 This would be an unlikely
19 happenstance, however, as the Commission
20 anticipates addressing solely those issues
21 covered in the investigative report or related
22 to the option agreement.

23 This hearing will begin today and be
24 continued tomorrow. As I understand there are

1 certain witnesses that are unavailable to
2 testify today. In fact, we know that the
3 applicant has gone to great lengths to meet our
4 schedule and we appreciate that.

5 No final decision will be made at
6 the conclusion of the proceedings tomorrow.
7 Instead the matter will be taken under
8 advisement at the conclusion of the proceedings
9 and a written decision will be issued.

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

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

20
21 WITNESSES, SWORN

22
23 CHAIRMAN CROSBY: Thank you. all
24 have responded in the affirmative. Before we

1 begin, does Counsel have any preliminary issues
2 or objections?

3 MR. ALBANO: None from the
4 applicant.

5 MR. MACKEY: And none from the
6 Bureau.

7 COMMISSIONER ZUNIGA: Mr. Chairman?

8 CHAIRMAN CROSBY: Yes.

9 COMMISSIONER ZUNIGA: I have a
10 question on the exhibits. Mr. Albano said there
11 were 18 exhibits for the applicant. I have 17
12 in the packet that I received.

13 MR. ALBANO: We do have additional
14 copies in binder form actually. There should be
15 18 there. I'm being advised that the problem
16 may be that there was a slide presentation that
17 we didn't finish until late yesterday and
18 perhaps that did not make it into the binder,
19 but it should be part of the --

20 COMMISSIONER ZUNIGA: This is not
21 Exhibit 12?

22 MR. ALBANO: That should be Exhibit
23 12. Thank you.

24 COMMISSIONER ZUNIGA: Thank you.

1 CHAIRMAN CROSBY: With that I will
2 ask Attorney Mackey to begin the Bureau's
3 presentation.

4 MR. MACKEY: Good morning, again,
5 Mr. Chairman, Commissioners. The Bureau is
6 going to begin this morning by presenting the
7 testimony of Director Wells, which will be a
8 summary of some of the more important findings
9 arising out of the investigation.

10 MS. WELLS: Good morning,
11 Commissioners. Before proceeding with the
12 report and my summary, I would like to
13 acknowledge the efforts of Spectrum Gaming and
14 the Massachusetts State Police in this
15 investigation. I want to thank them for their
16 outstanding performance.

17 With me here today from Spectrum
18 Gaming is Bill DiGiuseppe, I think I'm
19 pronouncing that correctly, and John Swentkowski
20 if they could introduce themselves this morning,
21 who are investigators for this report. They are
22 available to answer any questions that the
23 Commission may have for them.

24 As the Commission has already been

1 briefed on the investigative process, I will not
2 review that this morning. But if any
3 Commissioner has any questions on the process
4 and the things we looked into and the extent of
5 the investigation, please do not hesitate to ask
6 me.

7 As Attorney Mackey indicated, my
8 testimony here today is a summary. And I will
9 defer to the details in the report, which has
10 been marked as an exhibit for your
11 consideration.

12 As a preliminary note, I would like
13 to comment that the IEB and the consultants
14 found that the applicant here before you today
15 was forthcoming and cooperative during this
16 entire process and like to thank them for their
17 cooperation during the investigation.

18 CHAIRMAN CROSBY: Excuse me. The
19 monitor in front of us is not working. I assume
20 that is not indicative of anything else not
21 working; is that right? Michael, do you hear
22 me? It's not on. If it's just us, it's fine.
23 I just want to make sure it's nothing else.
24 Excuse me. Go ahead.

1 MS. WELLS: The applicant before you
2 here today is Springfield Gaming and
3 Redevelopment, LLC. The applicant itself was
4 formed in Delaware on October 8, 2012 for the
5 purpose of applying for a Category 1 gaming
6 license. Initially, the applicant was a manager
7 managed joint venture between Western Mass
8 Gaming Ventures LLC, which is a wholly-owned
9 subsidiary of Penn National Gaming, and Peter
10 Picknelly Gaming, LLC who had a five percent
11 ownership interest with an option to increase to
12 50 percent.

13 On April 30, 2013 the city of
14 Springfield notified the applicant that it
15 selected Blue Tarp, a subsidiary of MGM as
16 proposed casino operator in Springfield. On May
17 15, 2013, Springfield Gaming terminated the
18 option agreement dated December 10, 2012 because
19 of that agreement and notified Mr. Picknelly
20 that the termination of the agreement
21 constituted an event of dissolution of
22 Springfield Gaming. And the joint venture
23 between Springfield Gaming and Picknelly was
24 ceased.

1 In late May 2013, Penn National and
2 the applicant advised they would like to keep
3 its application current and there would be no
4 plans to include Picknelly in any other
5 potential venture in Massachusetts. So, the
6 investigation on that piece of the original
7 application ceased.

8 In July 2013, Penn National
9 announced discussions with the town of Tewksbury
10 regarding a slots only facility on a 30-acre
11 site near the intersection of Route 495 and
12 Route 133. July 18, 2013 Western Mass entered
13 into a host community agreement with Tewksbury.
14 On August 20, 2013 a special town meeting vote
15 in Tewksbury defeated a proposed zoning change
16 which would have been necessary for the proposed
17 slots parlor.

18 The applicant is now seeking to buy
19 Plainridge Racetrack and locate in Plainville,
20 Massachusetts. The option agreement to purchase
21 the Plainridge Racetrack property and assets in
22 Plainville, Massachusetts has already been
23 provided to the Commission. And that option
24 agreement is between Ourway Realty, LLC doing

1 business as Plainridge Racecourse and
2 Springfield Gaming and Redevelopment. The
3 purchase price for the property is listed at \$42
4 million.

5 There is contingent consideration in
6 the agreement of either eight percent if the
7 earnings before interest taxes depreciation and
8 amortization is \$40 million or more or five
9 percent if that EBITDA is less than 40 million
10 per year from all of the facility revenue for 10
11 years after the opening of the project's
12 operation to the public.

13 Ourway, which as you know has been
14 subject to a suitability hearing prior to this,
15 agrees to have no role whatsoever in connection
16 with the operation or management of the project.

17 In the agreement in the event any
18 regulatory body makes a determination that the
19 contingent consideration payments will
20 jeopardize the buyers or an affiliate's gaming
21 or racing license, the seller may undertake
22 efforts to cure the issue. If the issue is not
23 resolved, the buyer may purchase the remaining
24 value contingent consideration.

1 The parties also signed a consent to
2 assignment to transfer the Plainville host
3 community agreement. In general terms, they
4 have made a deal with Plainridge to buy the
5 Plainridge Racetrack and the facility and the
6 property on there.

7 If the Commission has an issue with
8 Ourway being part of that operation given the
9 contingent consideration, there is a provision
10 in the agreement that they can buy them out and
11 then no longer be part of the operation.

12 So, I would leave that the
13 Commission's discretion as they have already had
14 the suitability hearing for Ourway, are familiar
15 with the issues. And if they are uncomfortable
16 at all with that contingent consideration, then
17 we would notify the applicant and they can
18 trigger that buyout provision.

19 Aside from investigating the
20 applicant itself, which is Springfield Gaming
21 and Redevelopment, which is really generally an
22 LLC that was developed to partake in this
23 application process, we also looked into Western
24 Mass Gaming ventures. That is an LLC formed in

1 Delaware on October 1, 2010 to serve as a
2 holding company.

3 It is a 100 percent owner of
4 Springfield Gaming and it is managed by its sole
5 member Delvest Corporation. Delvest was formed
6 on October 28 2008, is a wholly-owned subsidiary
7 of Penn National formed for the purpose of
8 pursuing property development opportunities.
9 The parent company and the company with the
10 regulatory and economic history here is really
11 Penn National Gaming.

12 It was incorporated in 1892(SIC) and
13 it adopted its current name in 1994. It owns
14 and operates gaming and pari-mutuel wagering
15 facilities in multiple gaming jurisdictions. As
16 of March 31, 2013, Penn National owns and
17 operates 29 gaming and horseracing facilities in
18 19 jurisdictions. It is a rather large
19 operation in the gaming industry.

20 Penn National is a publicly traded
21 corporation that trades on the NASDAQ stock
22 market. The aggregate number of shares the
23 corporation is authorized to issue is 20 million
24 shares of common stock with a par value of one

1 cent per share. The Carlino Family Trust owns
2 approximately 9.4 percent of the company's
3 common stock. The trust is controlled by Peter
4 Carlino, the chairman and CEO of Penn National.

5 Paris Associates owns 5.9 percent.
6 And Baron Capital owns 9.95 percent of the
7 stock. These two entities received waivers from
8 the qualification process as institutional
9 investors. In addition, Penn National
10 authorized one million shares of preferred
11 stock.

12 In 2008, Penn National authorized
13 the sale and issuance of 12,500 shares of series
14 B nonvoting preferred stock redeemable on June
15 30, 2015 for cash or common stock at the sole
16 option of Penn National. Those were sold to
17 different companies, 9750 shares to FIF which I
18 will describe later, an affiliate of Fortress,
19 2,300 shares to Centerbridge, another company,
20 225 shares to DB Investment Partners, Inc. an
21 affiliate of Deutsche Bank AG, and 225 shares by
22 Wachovia Investment Holdings, LLC. So, that
23 gives you the general makeup of the ownership
24 interest in Penn National.

1 FIF and Fortress were designated as
2 qualifiers based in part on the fact that their
3 principal, Wesley Edens, is a member of the
4 board of directors of Penn National.

5 The officers of Penn National Gaming
6 include the following individuals: Peter
7 Carlino, the chairman and CEO, Timothy Wilmott,
8 president and COO, William Clifford, senior VP
9 and CFO, John Finamore, senior VP regional
10 operations, Thomas P. Burke, senior VP regional
11 operations, Robert Ippolito, VP, secretary and
12 treasurer, Jordan Savitch, senior VP and General
13 Counsel, Jay Snowden, senior VP regional
14 operations, and Steven Snyder, senior VP of
15 corporate development.

16 The members of Penn National's Board
17 of Directors are Peter Carlino, Harold Cramer,
18 David Handler, John Jacquemin, Barber Shattuck-
19 Kohn and Wesley Edens and also Paul Reibstein
20 and Ronald Naples. Ronald Naples is newly
21 appointed to the board during the latter part of
22 this investigation. So, the investigation into
23 his individual qualifications is still pending.

24 All of the above listed officers and

1 directors have been designated as natural person
2 qualifiers. In addition, the list includes
3 Francis T. Donaghue, VP of regulatory affairs
4 and CCO. I will go into more detail about the
5 individual qualifiers shortly.

6 As to the gaming facilities, Penn
7 National has three senior vice presidents who
8 oversee various properties based primarily on
9 their geographic location. Each report directly
10 to Timothy Wilmott, president and COO. The
11 Midwest reportable segment consists of the
12 following properties: Hollywood Casino
13 Lawrenceburg, Hollywood Casino Aurora, Hollywood
14 Casino Joliet, Argosy Casino Alton, Hollywood
15 Casino Toledo and Hollywood Casino Columbus,
16 which opened on October 8, 2012.

17 It also includes the Casino Rama
18 Management service contract and the Mahoning
19 Valley and Dayton Raceway projects in Ohio,
20 which the company anticipates opening in 2014.

21 The East/West reportable segment
22 consists of the following properties: Hollywood
23 Casino at Charles Town Races, Hollywood Casino
24 Perryville, Hollywood Casino Bangor, Hollywood

1 Casino at Penn National Racecourse, Zia Park
2 Casino and the M resort.

3 The Southern Plains reportable
4 segment consists of the following properties:
5 Argosy Casino Riverside, Argosy Casino Sioux
6 City, Hollywood Casino Baton Rouge, Hollywood
7 Casino Tunica, Hollywood Casino Bay St. Louis,
8 Boomtown Biloxi, Hollywood Casino St. Louis.
9 That's formerly Harrah's St. Louis which was
10 acquired from Caesars Entertainment on November
11 2, 2012. And includes Penn National's 50
12 percent investment in Kansas Entertainment which
13 owns the Hollywood casino at Kansas Speedway.

14 Penn National also includes an other
15 operating segment, which consists of Penn
16 National's standalone racing operations namely
17 Beulah Park, Raceway Park, Rosecroft Raceway,
18 Sanford-Orlando Kennel Club and their joint
19 venture interest in Sam Houston Race Park,
20 Valley Race Park and Freehold Raceway. The
21 other operating segment also includes Penn
22 National's corporate overhead operations and the
23 Bullwhackers property.

24 During the course of the

1 investigation, investigators reviewed and
2 analyzed Penn National's compliance plan. The
3 board of Penn National adopted a gaming
4 compliance and review reporting plan in 2001,
5 which was designed to establish self-regulating
6 procedures to promote compliance with applicable
7 laws relating to the gaming business.

8 The committee is comprised of at
9 least three members, two of whom shall be
10 nonexecutive board members and a third member
11 shall be an independent outside consultant
12 processing -- possessing extensive experience in
13 gaming regulation.

14 David Handler and Robert Levy are
15 the board members on the committee right now.
16 The chairman of the committee is Stephen
17 DuCharme who served as a member of the Nevada
18 State Gaming Control Board from 1991 to 2001.

19 Certain areas of review include
20 material transactions, any transactions with
21 suppliers of goods and services involving annual
22 expenditures in excess of \$100,000, company
23 directors, executive officers, key gaming
24 employees, lobbyists, consultants, material

1 financing, material litigation, junket
2 representatives, disposition of electronic
3 gaming devices, and related party transactions.

4 One note in the matters involved
5 disciplinary action taken towards two employees
6 at Hollywood Casino Aurora. An internal
7 investigation revealed the VP of consumer
8 marketing was demanding tickets for sporting
9 events for his personal use from an outside
10 vendor in exchange for the property's continued
11 business with the vendor.

12 The second employee who was
13 supervised by this VP did not comply with the
14 internal controls pertaining to reporting gifts
15 from vendors and was not forthright when
16 questioned. Both employees were promptly
17 terminated following this internal
18 investigation.

19 Penn National also has an audit
20 committee comprised of four independent
21 directors. Saul Reibstein, John Jacquemin,
22 Harold Cramer and Barbara Shattuck Kohn. The
23 primary functions are to serve as an independent
24 and objective party to monitor the integrity of

1 the company's financial reporting process and
2 internal control system. They also have a code
3 of business conduct applicable to all employees
4 designed to deter wrongdoing and promote ethical
5 conduct. Each property has a compliance officer
6 who assists this chief compliance officer.

7 You'll note in the report there are
8 many pages devoted to the compliance history of
9 Penn National. The only licensing restriction
10 that has been placed upon the company was the
11 company's agreement with the Illinois Gaming
12 Board to sell the Empress Joliet property by
13 mid-2008. The reason was not suitability
14 related but involved operation of multiple
15 facilities in one jurisdiction.

16 However, in February 2008, the
17 Illinois Gaming Board removed the request that
18 Penn divest its interest in the property. The
19 investigation reviewed the compliance history
20 for affiliated facilities from 2010 through
21 2013. I won't go through and detail all of the
22 violations as they can be noted in the report.

23 I will note that the Hollywood
24 Casino in Lawrenceburg as you can see from the

1 report have the most reported violations. In
2 general, for the Commission's information, we
3 did inquire about this apparent level of
4 violations in Indiana. The applicant can
5 address this directly if the Commissioners have
6 any questions on this issue, but they did
7 indicate curative measures at the Hollywood
8 Casino Lawrenceburg to improve the regulatory
9 compliance performance.

10 CHAIRMAN CROSBY: Excuse me. Who
11 was the investigator that looked into the
12 Lawrenceville?

13 COMMISSIONER ZUNIGA: Lawrenceburg?

14 CHAIRMAN CROSBY: Lawrenceburg, yes.

15 MS. WELLS: I don't think it's one
16 that is here today.

17 CHAIRMAN CROSBY: Okay. Were you
18 familiar with it?

19 MR. DIGIUSEPPE: Only that's on the
20 report, Mr. Chairman.

21 CHAIRMAN CROSBY: Did it strike you
22 that was a level of noncompliance which was
23 problematic?

24 MR. DIGIUSEPPE: No, not based on

1 industry standards, Mr. Chairman. The type of
2 violations that are noted in the report are
3 pretty standard violations for the casino
4 industry.

5 CHAIRMAN CROSBY: But Lawrenceburg
6 was dramatically different from the other Penn
7 National properties.

8 MR. DIGIUSEPPE: Yes. There may
9 have been an issue with management at that
10 property, which I believe has been resolved at
11 this point by Penn National.

12 CHAIRMAN CROSBY: Did at streak you
13 as unusual or not?

14 MR. DIGIUSEPPE: No.

15 CHAIRMAN CROSBY: It didn't, but
16 there was a problem with management. It doesn't
17 quite make sense to me, but okay.

18 MS. WELLS: The applicant did
19 produce information that supported there was a
20 reduced number and value of fines against
21 Hollywood in 2012 and so far in 2013 to support
22 their assertion that they had taken adequate
23 curative measures on those issues.

24 I won't go through detail on the

1 complaints, but the investigation as you can see
2 to go through in detail and did note in the
3 report specific complaints. Based on the
4 analysis by the consulting firm and their
5 experience, as the investigators indicated, they
6 do involve routine enforcement proceedings
7 relative to gaming operations. They didn't see
8 anything in particular which had integrity
9 implications.

10 They did note that Penn National
11 acted promptly to impose appropriate punishment
12 and to insure the prohibited conduct would not
13 recur, in the instance involving the termination
14 of those two employees, which I referenced
15 earlier.

16 As you can see in the report, the
17 investigation did do an analysis of the
18 litigation history for Penn National. And as
19 outlined, the volume and substance is in fact
20 consistent with an operation of Penn's size.
21 And there was nothing in that history that would
22 rise to the level of questioning suitability for
23 the applicant.

24 So, it generally did not raise any

1 red flags for the investigators, but the details
2 of it, if the Commissioners have any questions
3 about those specific litigation instances,
4 please do not hesitate to ask.

5 The Springfield Gaming and I would
6 say it's one step up, the holding company,
7 Western Mass Gaming Ventures, LLC operating
8 financial results will ultimately be
9 consolidated into Penn National. The majority
10 of Penn National revenues are from gaming
11 derived primarily from gaming on slot machines,
12 and to a lesser extent table games which is
13 highly dependent upon the volume and spending
14 levels of customers and properties.

15 Other sources of revenue are from
16 management service fees from Casino Rama, hotel,
17 dining, retail, admissions program sales,
18 concessions and certain other ancillary
19 activities from racing operations.

20 One of the focuses of the
21 investigation was a proposed real estate --
22 spinoff of real estate assets for Penn National
23 through a real estate investment trust or R-E-I-
24 T, REIT.

1 Penn announced in November 2012 its
2 plans to separate the majority of its gaming
3 operating assets and real property assets into
4 two publicly traded companies through its
5 operating entity Penn National Gaming and
6 through a tax spinoff of real estate assets to
7 hold as Penn National's common stock where
8 publicly traded real estate investment trusts,
9 Gaming and Leisure Properties, Inc. or GLPI,
10 subject to required gaming regulatory approvals.

11 This of note is the first time a
12 REIT has been proposed for a gaming entity. The
13 IRS gave Penn National a roadmap on how to go
14 about this spinoff. Penn National has received
15 approval from Indiana, Pennsylvania, Nevada and
16 West Virginia thus far and approval from other
17 gaming jurisdictions is pending on their
18 proposed REIT.

19 Penn National expects GLPI to
20 facilitate strategic expansion opportunities for
21 the property business by providing the ability
22 to pursue transactions with other gaming
23 operators that would not pursue transactions
24 with Penn as a current competitor, fund

1 acquisitions with equity on sufficiently more
2 favorable terms than those that would be
3 available to Penn National. Diversify into
4 different businesses in which Penn National
5 could not diversify such as hotels,
6 entertainment facilities and office space. And
7 pursue certain transactions that Penn National
8 otherwise would be disadvantaged by or precluded
9 from pursuing due to regulatory constraints.

10 The spinoff also provides a way for
11 Penn National to retire its series B preferred
12 stock, which is redeemable in June of 2015 for
13 cash or common stock.

14 As a result of the spinoff, GLPI
15 will initially own all of the real property
16 assets and will lease back most of these assets
17 to Penn National for use by its subsidiaries
18 under a triple net 35-year master lease
19 agreement.

20 GLPI is expected to initially own
21 real estate of 17 casino facilities and will
22 also own and operate Hollywood Casino Perryville
23 and Hollywood Casino Baton Rouge. Information
24 contained in Penn National's form 10-K filing

1 with the SEC for the year ending December 31,
2 2012 indicates that cash generated from cash on
3 hand together with the amounts available under
4 their senior credit facility will be adequate to
5 meet debt service requirements, capital
6 expenditures and working capital needs for the
7 foreseeable future.

8 Prior to the spinoff, Penn has
9 indicated it will satisfy its existing debt
10 obligations. Penn and GLPI will be arranging
11 for new credit and loan facilities. Wells Fargo
12 Securities and Bank of America Merrill Lynch are
13 serving as financial advisors to Penn as they
14 seek to negotiate \$2.4 billion, the combined
15 funding from the two companies.

16 There will be some management
17 changes associated with the REIT. Mr. Carlino
18 will become CEO of GLPI. Mr. Wilmott will
19 replace him as CEO of Penn National. Mr.
20 Clifford will become the new CFO of GLPI and
21 will resign from the position of CFO of Penn
22 National. The company is currently searching
23 for his replacement. He will be a qualifier and
24 subject to file an application and undergone a

1 background investigation for Massachusetts.

2 After the completion of this
3 aforementioned proposed restructuring, Mr. Edens
4 will resign as a member of the board of
5 directors for Penn National and he will become a
6 member of the board of GLPI. That becomes
7 significant because of his association with
8 Fortress and that's why Fortress is a qualifier
9 for Massachusetts.

10 In the event the spinoff is altered
11 or fails to materialize, the investigation has
12 uncovered no information that would prevent Penn
13 National from developing the proposed slots
14 facility with its current financial resources.
15 Therefore, based on the entire investigation the
16 impact on this gaming application license is
17 negligible with respect to the REIT.

18 As to Penn National's financial
19 operating results --

20 COMMISSIONER ZUNIGA: Director, can I
21 ask a question on the REIT?

22 MS. WELLS: Yes, and I have the
23 consultants here who may have more detail on the
24 REIT.

1 COMMISSIONER ZUNIGA: It maybe just
2 for the record, the 10-K as submitted as part of
3 the exhibits refers to the REIT as Prop Co.

4 MS. WELLS: Prop Co.?

5 COMMISSIONER ZUNIGA: Yes. Prop
6 Co., is there a difference between the companies
7 or it's just doing business as --

8 MR. SOTTOSANTI: There's no
9 difference. The Prop Co. was a reference before
10 GLPI name was assigned to the RIET.

11 COMMISSIONER ZUNIGA: Thank you.

12 MS. WELLS: Thank you. As to the
13 financial operating results, Penn National has
14 had net revenues in the billions over its last
15 three years. Despite challenges in the economy,
16 Penn National has managed to maintain relatively
17 low leverage ratios compared to the regional
18 casino company competitors and generate a
19 positive cash flow.

20 The report itself details the
21 company's EBITDA, cash flow debt, covenants, tax
22 information and consolidates forecasted
23 operating results and the financial outlook.

24 Ultimately, Penn National

1 demonstrated the requisite financial suitability
2 for licensure based on the company's history of
3 successful financial results and the positive
4 outlook for the company.

5 I reviewed some of the entity
6 qualifiers, the Springfield Gaming
7 Redevelopment, Western Mass and Penn National.
8 The next entity qualifier is the Carlino Family
9 Trust, which is designated as a qualifier based
10 on they're a holder of 9.6 of Penn National's
11 common stock.

12 The trustees distributed their
13 assets of the trust into subtrusts. On December
14 31, 2013, the net worth of the Carlino Family
15 Trust was in excess of \$24 million. The common
16 stock shares of Penn are not included as an
17 asset of the trust. They are accounted for in
18 each subtrust for benefit of the primary
19 beneficiaries.

20 The Carlino Family Trust itself has
21 demonstrated the requisite financial suitability
22 in connection with this license application.

23 The next entity that was
24 investigated was Fortress Investment Group, LLC.

1 That is a publicly traded company that offers
2 investment management products in series to
3 institutional and private investors.
4 Approximately \$55.6 billion in assets under the
5 management, trades on the New York Stock
6 Exchange with the listing FIG.

7 The ownership of Penn National
8 preferred stock by FOF, which is related to
9 Fortress is only a very small part of Fortress's
10 overall business operations. And this stock may
11 be converted to common stock or redeemed for
12 cash in 2015.

13 Their seat on the board of directors
14 for Penn National, as I indicated, triggered
15 their qualification status. Fortress itself has
16 a board of directors consisting of eight
17 members.

18 As to issues with respect to
19 Fortress, I just want to highlight for the
20 Commission an issue with respect to an
21 individual named Daniel Mudd. Recently, the
22 company's CEO, Daniel Mudd, resigned effective
23 February 23, 2012 in the face of accusations of
24 multibillion-dollar fraud brought by the SEC in

1 a lawsuit filed against him in Federal Court
2 concerning his previous employer, Fannie Mae.

3 Mr. Mudd was hired as CEO to replace
4 Wesley Edens. He was well known to Edens and
5 the company as he was then serving as an
6 independent director for Fortress at the time.
7 Eden's said that he believed Mudd's background
8 in the financial sector made him well-suited for
9 the position, and advised investigators that
10 Mudd's forced departure from Fannie Mae should
11 not be considered as an impediment to hiring him
12 as this CEO of Fortress. I just comment on that
13 for the Commission's consideration.

14 In March of 2011, the SEC informed
15 Mudd through what's called a Wells letter that
16 it was considering the commencement of a civil
17 enforcement action against him in connection
18 with Fannie Mae. When the federal government
19 intervened to take over Fannie Mae in 2008, Mr.
20 Mudd was forced to leave Fannie Mae.

21 Mudd was included on the list of
22 people required to file applications in Ohio in
23 connection with Fortress's than status as a
24 holding company for Penn National. At that time

1 in Ohio, Fortress argued it should not have to
2 file an application. It believed it should not
3 be designated as a holding company. During
4 arguments, Fortress never specifically told Ohio
5 that Mudd had been the recipient of the Wells
6 letter.

7 In December 2011, the SEC filed a
8 suit against Mr. Mudd accusing him of lying
9 before Congress during its inquiry's into
10 affairs with Fannie Mae. And that lawsuit is
11 pending.

12 Mr. Mudd was placed on a temporary
13 leave of absence by Fortress. And Randall
14 Nardone was named to replace him on an interim
15 basis. Through our investigation of the board
16 of directors' minutes, it was apparent there was
17 no formal discussions among the board members
18 following the issuance of the Wells letter. The
19 first time the board took up the matter was when
20 the SEC filed suit against Mudd. When the
21 reaction from an important investor was highly
22 negative concerning Mudd's association with
23 Fortress, they then terminated his employment.

24 His resignation was announced on

1 January 24, 2013 but did not become effective
2 until approximately a month later on February 23
3 -- I'm sorry. I must have the wrong date. That
4 was January 2012 and then February 23, 2012.
5 And he was to continue being paid his salary for
6 that additional month. And he received a bonus
7 of \$1.25 million in a lump sum cash payment.

8 When asked by investigators, Edens
9 remarked he continued to support Mudd in his
10 defense against the charges brought by the SEC,
11 but that the company had determined he could no
12 longer be affiliated with the company during the
13 charges.

14 Upon announcement of his
15 resignation, Fortress notified the Ohio Casino
16 Control Commission and renewed their request to
17 have Mudd removed from the list of people
18 required to file a license application.
19 However, they did not advise the OCC that Mudd's
20 resignation was not to take effect for another
21 month or that he continued to receive his
22 salary.

23 Ultimately, the OCC granted
24 Fortress's request to remove Mudd from the list

1 of qualifiers. Notwithstanding these concerns
2 about Mudd and Fortress, the OCC ultimately
3 determined that Fortress was suitable.

4 Also note in the report we
5 investigated FIF --

6 COMMISSIONER MCHUGH: Before we
7 leave that Fortress, Fortress through its
8 subsidiary owns a substantial -- through its
9 ownership of the preferred shares owns a
10 substantial percentage of the shareholders'
11 equity in Penn National, does it not, about 88
12 percent? That's an approximation. It's more
13 than 80 percent, isn't it?

14 MR. SOTTOSANTI: If I may, I don't
15 have the exact percentage in front of me, but
16 it's closer to 10 percent. And their voting
17 rights are extremely circumscribed.

18 COMMISSIONER MCHUGH: I understand
19 the voting rights are circumscribed. But it
20 struck me that the value -- Well, all right.
21 We'll pursue that later. Thank you.

22 MS. WELLS: FIF PFD, LLC is a
23 holding company through which certain investment
24 funds managed by affiliates of Fortress are

1 intended to invest a preferred securities plan
2 of Penn National.

3 Maybe this is what you're referring
4 to, Judge McHugh, 78 percent shareholder of
5 certain nonvoting redeemable preferred stock of
6 Penn National affording them the right to
7 designate one person for nomination to the Penn
8 Board of Directors. As I've indicated that
9 designee has been Wesley Edens, the former CEO
10 of Fortress and current co-chairman of Fortress
11 Board of Directors.

12 COMMISSIONER MCHUGH: Just if I
13 could, amplify there, the 78 percent if valued
14 at \$67 a share is a substantial portion, as I
15 read it, and maybe we can correct that of the
16 total shareholder equity in the company.

17 MS. WELLS: That's of the preferred
18 stock.

19 COMMISSIONER MCHUGH: I understand
20 that.

21 CHAIRMAN CROSBY: What does it
22 translate into as a practical matter as a
23 percent of the equity value, what does it
24 translate into? I couldn't follow it in the

1 paperwork.

2 MR. SOTTOSANTI: The preferred stock
3 doesn't trade. So, there is not an ascribed
4 value associated with that. And in 2015 that
5 can be paid off then in common stock or in cash,
6 the loan.

7 COMMISSIONER MCHUGH: What I thought
8 the current value of it -- Maybe I'm misreading
9 this and that's why I'm asking, was \$67 a share.

10 COMMISSIONER ZUNIGA: That's of
11 common stock based on the proposed --

12 COMMISSIONER MCHUGH: But it's
13 convertible to common stock at the option of
14 Penn National, right?

15 MR. SOTTOSANTI: I'm sorry. I
16 missed the question. The equity value if
17 converted at \$67 a share would constitute
18 somewhere between 10 and 15 percent of the
19 equity value.

20 COMMISSIONER MCHUGH: Okay. I hear
21 you.

22 CHAIRMAN CROSBY: The common and
23 preferred taken together if equalized out as a
24 practical matter, the ownership interest is 10

1 to 15 percent of the total equity value of Penn
2 National. Do I hear that right?

3 MR. SOTTOSANTI: That is correct.

4 MS. WELLS: FIF, the PFD, LLC,
5 there's really no regulatory history for that
6 entity. It serves merely as the vehicle for
7 holding of preferred stock of Penn National as
8 part of the Fortress portfolio. So, they would
9 be folded into sort of the Fortress history.

10 As to financial suitability on
11 Fortress, Penn entered into a merger agreement
12 -- pardon me. Penn entered into a merger
13 agreement in 2007 with certain funds managed by
14 Fortress and Centerbridge Partners, LP.
15 However, due to the weakness in the economy and
16 financial markets, Fortress and Centerbridge
17 were not able to consummate the proposed merger
18 agreement.

19 In July 2008, affiliates of
20 Fortress, Centerbridge, Duetsche Bank and Wells
21 Fargo Bank entered into an agreement with Penn
22 to terminate the proposed merger agreement. In
23 October 2008, Penn closed the sale of the
24 investment and issued series B redeemable

1 preferred stock due June 15, 2015 for \$1.25
2 billion to the following entities of the equity
3 purchasers. I indicate there's 9750 shares to
4 FIF, 2300 shares to Centerbridge, 225 shares to
5 DB Investment Partners, an affiliate of Duetsche
6 Bank, and 225 shares to Wachovia Investment.
7 This investment is required to be redeemed by
8 Penn National for either cash or common shares
9 at Penn's election on June 30, 2015. Fortress
10 is entitled to its seat on the board of
11 directors as I've indicated do this agreement.

12 Fortress plans to grow its business
13 by increasing management fee paying assets under
14 management in existing businesses and creating
15 new investment products.

16 Generally, the result of the
17 investigation was that Fortress had demonstrated
18 the requisite financial stability based on the
19 company's history and successful financial
20 results and positive financial outlook.

21 As to the natural person qualifiers
22 who are identified through scope of licensing
23 for this investigation, all of them have been
24 either licensed or are presently licensed or

1 have a license history in numerous licensing
2 jurisdictions. All qualifiers were subject to a
3 rigorous background check that included a
4 financial analysis, open source information,
5 criminal record check, reference check, prior
6 licensing history, employment history and
7 analysis of any other potential issues of
8 concern.

9 The first individual who was
10 identified and investigated was Peter Carlino.
11 He's the chairman and CEO of Penn National
12 Gaming since June 1994. He will become the CEO
13 of GLPI if the spinoff occurs. From 1972 to
14 1994 he was the chairman and president of
15 Mountainview Thoroughbred Racing Association
16 USA, which is the predecessor of Penn National
17 Gaming.

18 He is also chairman of the Carlino
19 Development Group, a full-service land real
20 estate development company since 1983, and
21 president of Carlino Capital Management, a
22 holding company which owns and operates various
23 family businesses since 1978.

24 He's assigned as a trustee with

1 assorted family trusts. And he owns a five
2 percent of Shelter Island Capital, LLC and PDC
3 Partnership Businesses.

4 CHAIRMAN CROSBY: Excuse me,
5 Director. I'm just thinking in the interest of
6 time, do we need to go through each qualifier's
7 background unless there is an issue raised
8 either by you or by the Commission that you know
9 of?

10 MS. WELLS: I'll just name the ones
11 that had a general background -- I caveat my
12 comments with there is an ultimate
13 recommendation, which the Commission is aware of
14 based on my letter. All of these individuals,
15 generally, there was nothing found that would
16 disqualify them from licensure, with the caveat
17 that the Commission should consider the issues
18 as identified in the letter.

19 CHAIRMAN CROSBY: I think that's
20 worth mentioning. To run through everybody's
21 background history, I don't think is --

22 MS. WELLS: Yes. So, to indicate
23 the name, Cramer, Handler, Levy, Jacquemin,
24 Shattuck Kohn, Reibstein and Wilmott, Bridger

1 and Nardone, Clifford and Wesley Edens, those
2 were all identified and their personal
3 background was reviewed, Jordan Savitch, Jay
4 Snowden and Robert Ippolito and Michael
5 Novogratz.

6 I will just detail a couple of
7 issues on two of the qualifiers, if the
8 Commission would indulge me.

9 CHAIRMAN CROSBY: Sure

10 MS. WELLS: As to Francis Donaghue,
11 who I believe is present here today. I forgot
12 to meet him this morning -- is the VP of
13 regulatory affairs and chief compliance officer
14 for Penn National. He was previously employed
15 by with law firm Ballard Spahr in Pennsylvania
16 and is chief counsel, acting executive director
17 and interim deputy executive director of the
18 Pennsylvania Gaming Control Board.

19 He also held positions of Deputy
20 Attorney General, Director of the Office of
21 Legislative Affairs, and Chief Deputy Attorney
22 General Director of the Bureau of Consumer
23 Protection all with the Pennsylvania office of
24 the Attorney General. He's had an active

1 attorney license in Pennsylvania since 1994.

2 The Pennsylvania Gaming Control
3 Board was the subject of a Pennsylvania grand
4 jury investigation in late 2010 and early 2011.
5 The grand jury concluded that the Pennsylvania
6 Gaming Control Board through its administrative
7 and regulatory process neglected or wholly
8 ignored its stated public policy objectives.
9 So, there was concern and this was somewhat of a
10 big story in the area.

11 Mr. Donaghue is mentioned in the
12 grand jury report and testified as a witness
13 regarding the suitability of an applicant as he
14 was chief counsel and responsible for advising
15 the board on all licenses issued.

16 At issue was the applicant of Mount
17 Airy #1, LLC and an individual qualifier and
18 owner, Louis DeNaples. Mr. Donaghue testified
19 that one of the fundamental legal tenets of
20 Pennsylvania law that due process requires that
21 a decision made by an administrative board
22 through a written adjudication must be based on
23 the substantial evidence which the parties have
24 had an opportunity to review and refute.

1 After review of material, a decision
2 made and he was involved in this process to
3 remove certain information from the report which
4 could not be substantiated and additional
5 information was taken out of the summary, but
6 details of the information was attached to the
7 final suitability report as exhibits.

8 Donaghue expected there would be
9 sufficient information in the report to deny a
10 license. However, after the hearing process,
11 the license for DeNaples was in fact granted.

12 I just would comment as indicated in
13 the report of note that Mr. Wilmott was
14 interviewed regarding the hiring process for
15 Francis Donaghue. And he responded he was
16 totally unfamiliar with the grand jury report or
17 Donaghue's involvement.

18 Mr. Carlino was interviewed and
19 responded he was generally familiar with the
20 grand jury investigation and knew of a report,
21 but was not familiar with the details in the
22 report. The investigation was discussed
23 generally, but he said he did not place any
24 serious significance on the investigation in the

1 report because he did not have confidence that
2 proceedings would result in an accurate
3 reflection of the Pennsylvania Gaming Control
4 Board.

5 He added he did not place any weight
6 on the report, nor did it play any significant
7 role during Donaghue's hiring process. He did
8 not question Donaghue about it during the hiring
9 process.

10 Mr. Jordan Savitch also indicated he
11 was familiar with the report and had read it.
12 While he did discuss the matter with Donaghue,
13 he did not place any significance on the grand
14 jury report during the hiring process.

15 I will note, no criminal conduct was
16 alleged against Mr. Donaghue and his
17 involvement was not held against him when hired
18 at Penn. The other issue I just want to
19 highlight --

20 COMMISSIONER MCHUGH: Did the IEB
21 look at the report with respect to Mr. Desanctis
22 to determine whether -- what the nature of the
23 information in the exhibits was?

24 MS. WELLS: Yes.

1 COMMISSIONER MCHUGH: And what was
2 it? Was it a summary of the Crime Commission
3 material or was it the Crime Commission
4 material?

5 MS. WELLS: So, you're referring to
6 the hearsay issue?

7 COMMISSIONER MCHUGH: Yes.

8 MS. WELLS: Let me pull it directly
9 from the report. As to the information that was
10 not placed in the report --

11 CHAIRMAN CROSBY: But was placed as
12 an exhibit?

13 COMMISSIONER MCHUGH: No, that's the
14 issue.

15 MS. WELLS: That's different.

16 COMMISSIONER MCHUGH: The reason I
17 raise that is that it seemed to me from the
18 testimony and interviews of all of the people
19 that were interviewed that somebody had said,
20 and unfortunately I looked for it this one and I
21 couldn't find it, that they assumed that the
22 full Pennsylvania Crime Commission references
23 would be part of an exhibit to the report but
24 they weren't.

1 MS. WELLS: I don't recall that
2 specifically. Do you remember --

3 COMMISSIONER MCHUGH: I don't and I
4 may have misread. That's why I'm asking.

5 MS. WELLS: I can find the exact
6 location in the report if you just give me a
7 moment.

8 COMMISSIONER MCHUGH: That's all
9 right. I don't want to hold up the proceedings.
10 But that's the question I have.

11 MS. WELLS: I can look at that while
12 you're having discussions with the other members
13 and get back to you on that.

14 COMMISSIONER CAMERON: Director
15 Wells, Mr. Donaghue will be testifying later?

16 MR. ALBANO: Yes, he is here today.

17 COMMISSIONER CAMERON: I'll hold my
18 questions.

19 MS. WELLS: The other issue has to
20 do with Mr. Steven Snyder who is a qualifier for
21 Penn National. He's the senior VP of corporate
22 development at Penn National and has been there
23 since June 2003.

24 He was previously self-employed as a

1 stock trader from 2001 to 2003, and at Penn
2 National from January 2000 to March of 2001.
3 From January 1996 to October 1997, he was a
4 partner and part owner of Hamilton Partners, an
5 advisory and consulting firm. From February
6 1989 to January 1996 he was employed at Meridian
7 Capital Markets.

8 He was a licensed security broker
9 from 1987 to 2001. His fin. reports states he
10 has passed the exams for series 53 series 7 and
11 series 63.

12 Of note, a complaint was filed by
13 the SEC with a final filing date of April 7,
14 2001. This complaint resulted in fines levied
15 against him and his suspension from the
16 securities industry for three years.

17 The investigation was initiated in
18 September 1995 targeting Snyder through his
19 employment with Meridian Capital Markets
20 alleging potential securities fraud and
21 misconduct. This investigation involved the
22 practice of yield burning, which is described as
23 a practice of increasing the initial price of
24 U.S. Treasury securities so that a broker or

1 dealer may receive excessive markups.

2 The SEC investigation was to
3 determine whether the markup by Meridian was
4 excessive and should therefore be disclosed by
5 Meridian at the time of securities sales.

6 Mr. Snyder was suspected of being
7 involved in an alleged \$433,300 kickback scheme
8 with two Pennsylvania area consultants. The SEC
9 alleged that Snyder set up an undisclosed
10 arrangement in which two financial consultants
11 received that amount of money, \$433,300 for
12 steering bond business to Meridian.

13 Meridian then inflated prices of
14 securities in order to artificially reduce their
15 yield. Meridian allegedly earned \$800,000 in
16 profits from the sale of these Treasury
17 securities. The SEC claims that Snyder should
18 have disclosed the payments to the consultants.
19 Snyder earned approximately \$338,000 in
20 commissions as a result of these deals.

21 As a result of this investigation
22 which lasted several years, a complaint was
23 filed in April 2001 against Snyder by the SEC
24 where he was ordered to pay a civil penalty of

1 \$20,000 and a repayment of \$279,897. And that
2 he was to be banned from the securities industry
3 for three years. Mr. Snyder never admitted or
4 denied these allegations but agreed to a
5 settlement and the penalties described.

6 Subsequently, Mr. Snyder filed a
7 complaint against Meridian seeking damages
8 pursuant to the indemnity provision contained in
9 Meridian's corporate bylaws. He alleged that
10 Meridian failed to pay his legal fees and fines
11 estimated \$99,000 and to indemnify him as an
12 employee of Meridian in this matter.

13 Meridian's position is that the
14 indemnification provision does not apply if the
15 employee's actions are determined by a court to
16 have constituted willful misconduct or
17 recklessness. Snyder's position is that the SEC
18 is not a court and he never admitted any
19 wrongdoing. And the litigation in that matter
20 is still pending.

21 The SEC complaint and the litigation
22 were brought forth in New Jersey in 2001. And
23 in 2001 that same year during licensing
24 hearings, Mr. Snyder was in fact found suitable

1 for licensing and was issued a casino key
2 employee license. I believe you have the
3 details of that investigation.

4 One other matter I just wanted to
5 address before the Commission before concluding
6 is that the agreement with Penn National and
7 Ourway to merge and for them to go to Plainville
8 is a new thing. So, this has only occurred
9 recently. Because they will potentially be
10 involved in racing and Penn has more history in
11 that area, the IEB will continue to look at
12 their operations with respect to racing. Since
13 that's new, we're just sort of getting into that
14 process now.

15 If there are any concerns in that
16 area while the application is pending in the
17 Phase 2 process, I will bring that to the
18 attention of the Commission.

19 As indicated in the cover letter to
20 the Commission, the ultimate recommendation of
21 the IEB in this matter is that the Commission
22 find the applicant, Springfield Gaming and
23 Redevelopment, LLC suitable for licensing
24 subject to the following conditions, for the

1 record, I've listed that given the information
2 contained in the investigative report regarding
3 the complaint filed by the SEC against Steven
4 Snyder, Penn National's senior vice president of
5 corporate development, that the applicant should
6 present evidence at a hearing to satisfy the
7 Commission he meets the statutory criteria for
8 suitability. My understanding is they're here
9 and they're presenting the evidence here today.

10 Number two, the applicant should
11 also present evidence at a hearing regarding its
12 corporate due diligence practices as they
13 pertain to the hiring and retention of
14 executives including but not limited to those
15 involved in allegations of violations of
16 securities law.

17 That concludes my summary of the
18 report, which you have before you today. I'm
19 happy to answer any questions. Or I'm available
20 if anything comes up during the course of the
21 hearing.

22 COMMISSIONER MCHUGH: I had one
23 question about the option agreement. That is,
24 is the 10-year, the payments in that 10-year

1 tail payable to Ourway or to specific
2 individuals?

3 MS. WELLS: I think it's Ourway.
4 Let me just double-check, because I have it
5 right in front of me. I was just looking at it
6 this morning. The individuals are not listed in
7 the agreement. And the agreement is listed as
8 Ourway. Let me just double-check the signature
9 page.

10 MR. SOTTOSANTI: The option
11 agreement, in fact, does say Ourway. The intent
12 is that it goes to the principals who had no
13 adverse suitability findings against them. In
14 fact, if you look near the end of the agreement,
15 there's a fairly nontraditional third-party
16 beneficiary clause that states that Stan Fulton
17 and Mr. Ross are the intended beneficiaries of
18 that agreement.

19 CHAIRMAN CROSBY: Is there a
20 difference between intended beneficiaries and
21 beneficiaries?

22 MR. SOTTOSANTI: They are the
23 beneficiaries of the agreement. And to the
24 extent necessary, we can clarify the option

1 agreement to that end.

2 COMMISSIONER MCHUGH: So, the
3 ultimate objective of the option agreement is
4 that Mr. Ross and Mr. Fulton are the people who
5 will receive the payments, they and they alone?

6 CHAIRMAN CROSBY: They and they
7 alone.

8 MR. SOTTOSANTI: I think they make
9 up about 90 percent of Ourway together.

10 COMMISSIONER MCHUGH: I understand
11 the percentage they make up. But my question is
12 are they the only ones who are going to get the
13 money?

14 MR. SOTTOSANTI: That is my
15 understanding.

16 COMMISSIONER MCHUGH: But that
17 understanding could be made more explicit.

18 MS. WELLS: The option agreement is
19 between the company Ourway and Penn National.

20 COMMISSIONER MCHUGH: Okay, thank
21 you. We can come back to that.

22 CHAIRMAN CROSBY: It sounds like you
23 said you were prepared to clarify that. It does
24 raise an issue potentially if some of the

1 payment to Ourway goes to people we don't know
2 about. And you understand what the potential
3 issues are there. If what you mean is it goes
4 to Fulton and Ross and you can clarify that, I
5 think you should do that.

6 MR. SOTTOSANTI: We intend to
7 clarify that in writing and to amend the
8 agreement accordingly.

9 CHAIRMAN CROSBY: Okay. Any other
10 Commissioners? Counsel Albano?

11 MR. ALBANO: We have no questions.

12 CHAIRMAN CROSBY: Should we take a
13 quick break? We will take a quick break and
14 come back and give you a chance to take your
15 turn.

16
17 (A recess was taken)

18
19 CHAIRMAN CROSBY: Director Wells,
20 you are completed?

21 MS. WELLS: Yes, Sir. I did want to
22 just check for the record. I did talk to the
23 consultants. For the record, Mr. Levy is no
24 longer on the board. He's the one that's being

1 replaced, and informed me that Bullwhackers that
2 I referred to that operation was sold as of July
3 1.

4 CHAIRMAN CROSBY: Okay. Counselor
5 Albano?

6 MR. ALBANO: Thank you. May I, Mr.
7 Chairman, before the witness gets started just
8 briefly give you our plan of attack?

9 CHAIRMAN CROSBY: Sure.

10 MR. ALBANO: First of all, thank
11 you, all of you for granting the request for Mr.
12 Carlino and Mr. Wilmott to testify tomorrow.
13 That was greatly appreciated. They're obviously
14 important witnesses to us and would have led off
15 here had they been able to.

16 Also, if I may just thank the Board
17 and the Commission staff and internal and
18 outside counsel for all of the cooperation
19 really throughout the entire application
20 process, but particularly grateful over the last
21 week or so.

22 We have four witnesses here today.
23 The first is Mr. Snyder who is the senior vice
24 president of corporate development at Penn. Our

1 second witness will be Mr. Edens who is behind
2 me. He is a principal and cochairman of the
3 Board of Directors of Fortress. As I told the
4 Board's counsel yesterday, Mr. Edens is here
5 with David Brooks, who is the General Counsel to
6 Fortress.

7 Although neither the Board nor the
8 applicant listed Mr. Brooks as a witness, Mr.
9 Brooks did volunteer that if there are any
10 questions that the Commission feels are more
11 appropriate to his area of expertise, he's here.
12 And he would be glad to respond.

13 Our third witness is Mr. Jordan
14 Savitch who is a senior vice president and
15 General Counsel of Penn. And our fourth witness
16 today is Mr. Frank Donaghue, who's title is vice
17 president of regulatory affairs. And he is the
18 chief compliance officer of Penn.

19 We do understand that the applicant
20 bears the burden of proving by clear and
21 convincing evidence all of the suitability
22 factors. Our presentations are focused on the
23 three specific issues raised in the notice of
24 the adjudicatory hearing. But we do recognize

1 that there are other factors beyond those three
2 that the Commission has to consider.

3 And we also recognize that the
4 applicant is relatively new to this site, not to
5 the application process. And so, if we may, we
6 asked Mr. Snyder to do what probably Mr. Wilmott
7 or Mr. Carlino would have done had they been
8 here today, which is to very briefly address
9 some of the other suitability factors that may
10 be relevant to the decision. But frankly, to
11 make sure everyone has ample time to deal with
12 the three specific issues raised, our plan is to
13 be very brief on that and of course just respond
14 to questions that the Commission has.

15 Lastly, I don't expect that you'll
16 hear much more from or from my partner, Mr. John
17 Snyder, today. We understand it is both
18 permissible and preferred to allow the witnesses
19 to speak directly to the Commission. So, we
20 will only when necessary remind the witness of a
21 topic or if necessary clarify. So, we do
22 appreciate the opportunity to make this
23 presentation personally. With that, I am going
24 to leave you with two Mr. Snyders. Mr. Steven

1 Snyder and Mr. John Snyder, they are no relation
2 to one another. Thank you.

3 MR. J. SNYDER: That we've been able
4 to figure out yet, anyway. Mr. Snyder, if we
5 could just start by having you introduce
6 yourself to the Commissioners and to give us a
7 little bit of background on yourself.

8 MR. SNYDER: Good morning Mr.
9 Chairman, members of the Commission, staff. My
10 name is Steven Snyder. I'm the senior vice
11 president of corporate development in Penn
12 National Gaming.

13 I've been in that role with the
14 company since June of 2003, and welcome the
15 opportunity to appear before you today to
16 discuss both our company's background, our
17 suitability background, the licensing background
18 as a company as well as my own individual
19 circumstances as they were referenced in
20 Director Wells' letter.

21 MR. J. SNYDER: Could you tell us a
22 little bit about yourself, very quickly, because
23 there is apparently you'll see that we have an
24 Exhibit 7, Penn National's Exhibit 7 is brief

1 biographies of each of the executives except for
2 Mr. Edens, I believe, the people who are
3 testifying today. Mr. Snyder, maybe you can
4 just give us a quick background of yourself,
5 where you grew up, education, prior employment.

6 MR. SNYDER: Sure. I was born and
7 raised outside of Reading, close to our
8 corporate offices, believe it or not. I have an
9 undergraduate degree in economics from Dickinson
10 College in Carlisle, Pennsylvania. I have a
11 master's degree in industrial administration
12 from Carnegie Mellon University in Pittsburgh,
13 Pennsylvania.

14 I'm happily married for 25 years. I
15 have a son who just graduated from college and a
16 daughter who is a junior in college. So, we are
17 empty nesters now and I'm helping my wife
18 through that traumatic process.

19 MR. J. SNYDER: Okay. I believe Ms.
20 Wells mentioned that you are licensed by some
21 gaming authorities. Can you tell us how many?

22 MR. SNYDER: Yes. Starting in 2001,
23 I was found suitable to hold a key employee
24 license by the Casino Control Commission of the

1 state of New Jersey. Subsequent to that
2 finding, I've also been found suitable to hold
3 gaming licenses in eight additional
4 jurisdictions since that original finding in
5 2002.

6 MR. J. SNYDER: We'll come back to
7 the New Jersey process in a bit. Have you ever
8 been denied a license?

9 MR. SNYDER: I have not, no.

10 MR. J. SNYDER: Mr. Albano mentioned
11 that we're going to be doing a presentation on
12 some of the factors with respect to Penn
13 National. Do you want to do that now? Just for
14 the Commissioners benefit, Mr. Snyder is going
15 to be working off of the exhibit that
16 Commissioner Zuniga asked about earlier, which
17 Exhibit 12. I am not sure whether it made it
18 into your binders.

19 CHAIRMAN CROSBY: Yes, we have it.

20 MR. SNYDER: I intend to be real
21 brief as Director Wells has touched upon most of
22 our background. So, there are certain areas
23 that I just wanted to highlight that were not
24 touched upon quite as extensively in her report.

1 You have seen the list of witnesses.
2 In addition to the witnesses, we've got a whole
3 team of folks here this morning including
4 additional members of our internal legal staff,
5 our government affairs staff. And we are
6 prepared to answer any and all questions that
7 this process may present as these next two days
8 unfold.

9 Real quickly moving into a bit of
10 background as Penn National Gaming is the owner
11 of the applicant of Springfield Gaming and
12 Redevelopment, LLC. Just to give you a flavor
13 for our company, since we are new to the
14 Commonwealth of the Massachusetts as part of a
15 new industry here in the Commonwealth of
16 Massachusetts, we were for six out of seven
17 years listed as one of the top 100 growth
18 companies by Fortune Magazine.

19 So, we take great pride in how we
20 have taken what was historically one single
21 racetrack in Grantville, Pennsylvania outside
22 the capital of Pennsylvania, outside of
23 Harrisburg from its original initial public
24 offering in 1994 to become one of the largest

1 and most diversified gaming operators in the
2 United States and in fact, throughout the world.

3 You will see that we operate 28
4 facilities. It was clarified that subsequent to
5 the report, we have disposed of the Bullwhackers
6 facility in Central City, Colorado. We operate
7 in 18 jurisdictions. And we employ over 19,000
8 team members through that North American
9 footprint that we have in the gaming, racing and
10 entertainment industries.

11 Real quickly in the subsequent page,
12 you can see a map. It was already mentioned
13 that we operate from Maine to New Mexico and
14 Nevada. We manage the largest facility in
15 Ontario for the Ontario Lottery and Gaming
16 Corporation. More specifically here in
17 Massachusetts, and we'll get into this in a
18 subsequent slide, we did grow from that racing
19 heritage into gaming, and still have very strong
20 roots in the pari-mutuel industry.

21 You will see that footprint that map
22 has 11 pari-mutuel facilities throughout the
23 United States ranging from Bangor, Maine, to
24 Hobbs, New Mexico. And of those 11 racing

1 facilities that we are the owner or a joint
2 venture partner in, four of those facilities
3 have slot machine or casino style gaming
4 operations under their roof as part of the
5 overall entertainment experience that they
6 provide to patrons.

7 CHAIRMAN CROSBY: So, that means you
8 have seven that do not? You have seven that are
9 standalone tracks?

10 MR. SNYDER: That is correct.

11 CHAIRMAN CROSBY: Is that a business
12 model that you are pursuing or are they all in
13 anticipation of the possibility of being
14 supplemented with gaming?

15 MR. SNYDER: In the case of two of
16 those facilities, we are redeveloping now in
17 Ohio and we'll get into this. I'll touch upon
18 it now. We're developing facilities with slot
19 machines. We are relocating those racing
20 facilities to new locations, which will house
21 both pari-mutuel wagering as well as slot
22 machine gaming.

23 In the case of the other facilities,
24 so, instead of four we're going to be up to six,

1 so we'll be down to five that don't have gaming
2 operations. We also have an application pending
3 in Maryland for one of those facilities to also
4 house a casino facility.

5 So, for the most part those
6 facilities are either now, in the process of or
7 hope to in the future accommodate additional
8 forms of entertainment particularly in the form
9 of casino style gaming.

10 One of our largest pari-mutuel
11 facilities without gaming is in Houston, Texas,
12 Sam Houston Race Park, which we own in a 50-50
13 partnership with the former owners from Houston,
14 Texas. All of those are with the hopes of if
15 and when expanded gaming comes to the state of
16 Texas that the existing footprint for wagering
17 is the place that is looked to and thought of
18 first for the introduction of this form of
19 entertainment.

20 So, making these facilities operate
21 on a standalone basis without supplemental forms
22 of entertainment, we have not yet struck upon a
23 formula in this day and age with all of the
24 other forms of entertainment, Internet wagering

1 and everything else that has produced a long-
2 term viable industry.

3 CHAIRMAN CROSBY: Got it, thank you.

4 MR. SNYDER: Just moving forward, I
5 think one of the other critical things as you
6 evaluate suitability is really both the
7 financial capital and the human capital to get
8 these projects brought online here in the
9 Commonwealth, on time and on budget. We think
10 we have a track record that is second to none in
11 this industry in terms of the number of new
12 facilities that we have built, owned and operate
13 in the United States over the course of the last
14 three years.

15 You will see just in 2012 we opened
16 three new facilities. Starting in February at
17 our Kansas Speedway facility, which is on turn
18 two of the Kansas International Speedway, which
19 is a partnership with International Speedway
20 Corporation a NASDAQ listed, a publicly traded
21 company. Rolling through the balance of the
22 calendar in 2012, we opened a new casino
23 facility in Toledo, Ohio. And in October 2012
24 actually on Columbus Day, we opened a new casino

1 in Columbus, Ohio.

2 In addition to those facilities just
3 in the last year, you'll see there track records
4 of other facilities, the most closest being
5 Bangor, Maine. Where back in 2005 we opened a
6 brand-new facility, a temporary facility in an
7 existing building, and transitioned over in 2007
8 into \$130 million state-of-the-art slot facility
9 with hotel and structured parking in downtown
10 Bangor. We really have helped to lead and
11 catalyze a change in the community in downtown
12 Bangor. So, we thought that's important for
13 your consideration and your understanding of our
14 background.

15 Moving into the subject matter that
16 I think was touched upon but certainly not
17 highlighted is our racing heritage. We ended up
18 at Plainridge in Plainville as a result of
19 happenstance. We were an applicant without a
20 site. And that facility was a site without a
21 qualified applicant at a point in time where we
22 were looking for an opportunity in the
23 Commonwealth of Massachusetts.

24 I have been here for probably eight

1 years testifying in front of committees on
2 Beacon Hill as earlier versions of this enabling
3 legislation were being considered. So, we have
4 paid close attention to the Commonwealth of
5 Massachusetts and the opportunity of this new
6 industry means and have hoped from day one,
7 before day one, to have a role. And we now
8 ended up in a location that is absolutely spot-
9 on to our historical mission as a company. We
10 started over 30 years ago at Grantville,
11 Pennsylvania as was mentioned as Mountainview
12 Racing. We took the company public in 1994 at
13 which time we owned one racetrack and two
14 simulcast racing facilities.

15 I started working for the company as
16 a consultant in 1997 at which point in time we
17 owned two pari-mutuel facilities, and we had
18 just acquired our third in Charles Town, West
19 Virginia. And we're just about to open it with
20 400 video lottery terminal facilities -- video
21 lottery terminal games, slot machine equivalents
22 in Charles Town, West Virginia. We now, as was
23 mentioned, own 11 pari-mutuel facilities. We
24 operate over 1100 pari-mutuel wagering events,

1 live racing events at those facilities
2 throughout North America.

3 I'd already mentioned that we are
4 developing two facilities similar in both
5 Dayton, Ohio and Youngstown, Ohio, the Mahoney
6 Valley Racetrack and the Dayton Racetrack, which
7 will house relocated racetracks, one
8 standardbred and one thoroughbred as well as up
9 to 2500 gaming devices in those newly
10 constructed facilities, which will be open
11 sometime in the third quarter -- second or third
12 quarter of 2014.

13 As importantly as you consider our
14 qualifications as a company, in addition to our
15 track record as an operator, we think it's also
16 important for you to understand our commitment
17 to the communities in which we do business.

18 And we learned this in a very
19 difficult fashion, because we operated two
20 facilities on the Gulf Coast of Mississippi in
21 2005 when Hurricane Katrina came through and
22 wiped out our businesses.

23 We kept those employees on the
24 payroll for 90 days. We created, and you'll see

1 in our supporting community slide, we created a
2 Penn National foundation at that point in time
3 so that we could make charitable contributions
4 in support of the families and the communities
5 that were so adversely affected by the impact of
6 Hurricane Katrina in Mississippi. Because in
7 fact the eye of the storm hit just east of Bay
8 St. Louis which is now our Hollywood casino
9 property in Bay St. Louis.

10 In addition to that legacy, we have
11 continued and grown that legacy at the corporate
12 level from a foundation perspective in giving
13 annually over \$1 million and at the property
14 level in annual charitable contributions of both
15 time and more importantly -- and as importantly
16 cash of over \$11 million on an annualized basis.

17 We've given you a few testimonials.
18 I think you can read them at your leisure. They
19 basically tell you that what we've committed to
20 do in the communities that we've committed to do
21 it, when we moved in either as an acquirer or we
22 moved in as a developer of new facilities, we
23 have not only fulfilled but we'd like to think
24 in most cases exceeded both the promises and the

1 expectations that have been established in those
2 communities.

3 So, that's us. That's our track
4 record. We're going to move into Massachusetts
5 a little bit. Then I know Counselor Snyder is
6 going to want to talk more specifically about
7 the issues addressed in Director Wells' letter.

8 I think I just want to highlight,
9 you've seen the plans for Plainridge. We've
10 stepped in at the 11th and a half hour. So, we
11 have not and will not be making any significant
12 modifications as we mentioned in the hearings
13 related to the host community agreement. We
14 will not make any significant modifications to
15 the plan.

16 The facility that the voters in
17 Plainville voted upon is the facility that we
18 will be developing. We will be making all of
19 the necessary infrastructure improvements that
20 the previous owners had identified. I think
21 it's important there was some confusion. We are
22 buying the assets of Ourway. We're not merging
23 with, we're now acquiring the company. We are
24 buying the assets of Ourway.

1 Since we are buying the assets of
2 Ourway, the counter party to our option
3 agreement must by necessity be the corporate
4 entity that owns those assets, which we will be
5 purchasing. And we do look forward and hope we
6 are given the opportunity to develop a facility
7 that will help change that community and bring
8 to this Commonwealth a new industry consistent
9 with the way we've done it in other locations
10 around the United States.

11 So, that's really all in sort of the
12 mindset of trying to be efficient with your time
13 this morning that I really wanted to say about
14 Penn National at this point in time.

15 MR. J. SNYDER: Good. Director
16 Wells spoke briefly about an SEC matter that you
17 were a party to. Could you tell us when that
18 was and what that was about?

19 MR. SNYDER: Yes. I was employed at
20 Meridian Capital Markets from 1989 to January
21 1986. In the fall of --

22 CHAIRMAN CROSBY: '96?

23 MR. SNYDER: '96, yes, I'm sorry.
24 In the fall of 1995, the company had been

1 notified that the Securities and Exchange
2 Commission wanted to conduct an audit for cause.

3 They had received a letter and
4 wanted to conduct an audit of our practices at
5 Meridian Capital Markets as it related to the
6 markups on U.S. Treasury securities that were
7 sold to municipalities as part of advanced
8 refunding transactions.

9 That began with an audit for cause
10 in 1995. I made myself available and provided
11 them an interview relating to our practices at
12 Meridian. That subsequently developed into a
13 complete investigation.

14 MR. J. SNYDER: Let me just stop you
15 there for a minute. If you could just explain
16 to the Commissioners what the issue was. What
17 advance refundings are is probably the place to
18 start, and then walk us through what the issue
19 was in the SEC proceeding.

20 MR. SNYDER: Sure. In a municipal
21 setting when a municipality borrows money
22 through a tax-exempt financing to fund
23 infrastructure, to fund a sewage treatment
24 facility, a school building or a convention

1 center, that municipality issues tax-exempt
2 bonds.

3 When interest rates decline, the
4 municipality often tries to take advantage of
5 that declining interest rate to reduce its
6 borrowing costs. When you or I go out and
7 refinance our mortgage, we borrow the new
8 mortgage at the new rate. We pay off the old
9 mortgage. And what we're left with is just the
10 new mortgage on our home.

11 When a municipality goes out and
12 markets bonds in the public markets through an
13 investment syndicate, those bonds typically in
14 fact in all cases have what's known as call
15 protection. So, it may be a 30-year security
16 but the issuer can only redeem that after 10
17 years. So, that's the notion of an advance
18 refunding.

19 If rates decline, the municipality
20 borrows at the new interest rates that prevail.
21 They take the funds that they've borrowed at the
22 new interest rate, they reinvest them in an
23 escrow account of U.S. Treasury or agency
24 securities to provide for the timely payment of

1 principal and interest on that older, higher
2 interest bearing series of municipal bonds.

3 And it's the mechanics of that
4 escrow account that retire those bonds. And
5 they are left with the debt service and the
6 interest rate and repayment obligations on the
7 new transaction, the new series of lower
8 interest rate, lower borrowing cost municipal
9 bonds.

10 In the sale of those government
11 securities to the municipalities for purposes of
12 providing for those advance refunding
13 transactions, we at Meridian and as I knew to be
14 common practice in the industry, even though
15 that was a series of securities that may mature
16 one year, two year, three year up to the call
17 date, so, it was a portfolio of securities, we
18 at Meridian and everyone else to my knowledge in
19 the industry treated that portfolio of escrow
20 securities as a single transaction for purposes
21 of calculating the markup. So, even if there
22 was a six-month security and an eight-year
23 security, we looked at all of them in the
24 aggregate.

1 As a result of that some smaller
2 pieces ended up with much larger kinds of
3 markups than a longer security, but we always
4 treated the portfolio as a single markup. And
5 the SEC did not agree with that conclusion.
6 They came back and said that's not the
7 appropriate way to handle things.

8 More importantly, at Meridian our
9 practices were always in compliance with the
10 internal policies and procedures at Meridian.
11 They were always audited by the internal audit
12 function at Meridian and no issues were ever
13 raised. And they were always subject to the
14 annual audit of the bank holding company's
15 outside auditor and no issues were ever raised.

16 And I think one of the most telling
17 things is that in addition to Meridian, who
18 settled this matter in 1998, I didn't settle it.
19 I subsequently settled my individual matter in
20 2001, there were 30 firms ranging from Merrill
21 Lynch and Goldman Sachs and Smith Barney and
22 Lehman Brothers representing over 3000 issues of
23 municipal securities that entered into a global
24 settlement relating to this excess markup, this

1 yield burning concept, because that's what the
2 notion of yield burning was.

3 That these portfolios of escrow
4 securities were sold to the municipalities at
5 prices higher than market prices, reflecting in
6 lower yields. Higher prices in effect burning
7 the yield since the municipality was only
8 allowed to earn whatever their borrowing cost
9 was pursuant to IRS regulations in order to
10 maintain their tax-exempt status.

11 So, it was a process. It was a
12 matter that didn't take in just Steve Snyder.
13 It didn't take in just Meridian Capital Markets.
14 It took in almost an entire industry for
15 practices that I thought at the time were always
16 consistent with industry standard and industry
17 practice. And I knew at the time to be in
18 compliance with all internal regulatory and
19 policy matters.

20 CHAIRMAN CROSBY: Which Meridian
21 apparently disputes at this point.

22 MR. SNYDER: Meridian sold itself.
23 It was acquired by Corestates. I left in
24 January. The transaction consummated in April

1 of 1996. Corestates was subsequently acquired
2 by First Fidelity. First Fidelity was acquired
3 by Wachovia. Wachovia was acquired by Wells
4 Fargo, the nature of banking in the United
5 States. So, there was no institutional memory.

6 In fact, when I mentioned that there
7 were over 30 firms that settled yield burning
8 matters, there were only five individuals to my
9 knowledge that we ever identified as respondents
10 in any administrative proceeding relating to
11 yield burning. And in all cases, those five
12 individuals both left the employment of their
13 firm, which I had done in January 1996 and also
14 worked for firms that had subsequently been
15 acquired by other firms after they departed
16 their employment.

17 So, Meridian was one of the early
18 ones. Had no institutional memory, and in
19 completing a \$3.2 billion acquisition when they
20 sold themselves to Corestates, this was a
21 housecleaning matter that they wanted to
22 resolve.

23 MR. J. SNYDER: Can I just ask a few
24 clarifications?

1 CHAIRMAN CROSBY: Excuse me. I'm
2 sorry. Do I understand that they are still --
3 that the remaining entity, whatever it is,
4 Wachovia or whoever the final Wells Fargo, that
5 that entity you and it are still in dispute as
6 to whether or not the subsequent -- the prior
7 entity should have indemnified you in these
8 transactions?

9 MR. SNYDER: That is correct, Mr.
10 Chairman. This matter was settled with the SEC
11 through the federal court in the Eastern
12 district of the Commonwealth of Pennsylvania in
13 the spring of 2001. I subsequently filed a
14 claim against Meridian and all of its legacy of
15 successors under the indemnification policy of
16 Meridian from its days prior to the sale to
17 Corestates. And that matter is still pending.

18 CHAIRMAN CROSBY: If this was such
19 standard practice that everybody was doing it,
20 everybody thought it was on the up and up,
21 everybody thought it was acceptable, it's
22 relatively small money in the context, but this
23 new entity, Wells Fargo or whoever it is, why
24 would they single you out? Why not just

1 indemnify you and move on?

2 MR. SNYDER: Because they started it
3 back in 1996 when I left. My new company
4 competed with them in 1996. A new group of
5 management came into the Capital Markets
6 operation of what became Corestates and
7 subsequently evolved through those other things,
8 and they set their position in this matter back
9 then. And they have not wavered from it because
10 the matter has just dragged on. So, I can't
11 speak to the other side. I can just observe
12 what has occurred over the years.

13 CHAIRMAN CROSBY: Okay.

14 MR. J. SNYDER: Just a few points of
15 clarification. You mentioned the SEC settlement
16 with these various other great institutions. We
17 have an exhibit that the Commissioners have,
18 number 11, that is an SEC compilation of their
19 yield burning settlements through April of 2000.
20 Some subsequent but that's as of April 2000.
21 It's about a year before Mr. Snyder settled his
22 matter.

23 You mentioned that there was an IRS
24 rule that was driving this process. Could you

1 just expand on that a little bit? What was the
2 IRS rule and what was the consequence of not
3 complying with the IRS rule?

4 MR. SNYDER: Yes. Again, the
5 example I used an old series of municipal bonds
6 let's say eight percent, a new series of
7 municipal bonds, where the community borrowed at
8 five percent. They could only earn based on IRS
9 regulations a rate of five percent on the
10 investment of those securities from the
11 refunding series of municipal bonds.

12 If they earn 5.2 percent those were
13 arbitrage bonds. And if they were arbitrage
14 bonds, they were not exempt from federal tax.
15 Those were the IRS rules. If they earned any
16 more than they were permitted, they lost their
17 tax-exempt status. And that was one of the
18 critical things in the settlements that were
19 arrived at to protect against the loss of the
20 tax-exempt status on the interest income of all
21 of these series of refunding transactions.

22 MR. J. SNYDER: Okay. While we're
23 on the issue of industry practices, you were
24 with Butcher and Singer before you were with

1 Meridian I think you said.

2 MR. SNYDER: Yes.

3 MR. J. SNYDER: When you were at
4 Butcher and Singer, were you involved in
5 municipal finance?

6 MR. SNYDER: I was, yes.

7 MR. J. SNYDER: Can you tell us how
8 the practices and policies at Butcher and Singer
9 compared to those at Meridian on this particular
10 issue of advance refundings?

11 MR. SNYDER: They were similar.

12 MR. J. SNYDER: With respect to the
13 markup then, it was a markup as Director Wells
14 has pointed out resulted in revenue for
15 Meridian, resulted in thereby commissions for
16 you. What was it that Meridian was
17 contributing, the process if you will, in return
18 for that revenue?

19 MR. SNYDER: What Meridian was doing
20 was actually buying the portfolio, that's gross
21 securities, up to 30 or 40 days in advance of
22 the actual settlement date. We were holding
23 them while the approval process was finalized
24 for the issuance of the new series of municipal

1 bonds. And during that period, we were
2 obviously subject to any market changes that
3 would've taken place with respect to the value
4 of those securities.

5 So, Meridian, all of the other
6 underwriters that were involved, we needed to
7 know exactly how many in terms of dollar amount
8 were funding bonds needed to be issued. And the
9 only way you could know that was to know exactly
10 what needed to be deposited in the escrow
11 account on that settlement date 30 days in the
12 future.

13 MR. J. SNYDER: Okay. The 30 days
14 was a result of some particular aspect of doing
15 these municipal refinancings in Pennsylvania?

16 MR. SNYDER: In Pennsylvania at the
17 time, the department of community affairs had to
18 approve all of the issuance of municipal bonds
19 by municipalities in the Commonwealth of
20 Pennsylvania.

21 That approval could take as little
22 as 20 days and on the 21st day, the 21st
23 business day it was deemed to be approved if
24 they had not taken any adverse action.

1 MR. J. SNYDER: And that's what gave
2 rise to that timing?

3 MR. SNYDER: Correct, the forward
4 delivery.

5 MR. J. SNYDER: You mentioned
6 earlier that this all came to a head when the
7 SEC decided that the markup percentage ought to
8 be calculated on a security by security basis
9 rather than on a portfolio basis. I ask you
10 this, when anybody who was in this business was
11 calculating the yield to make sure that they
12 were in compliance with the IRS regulations that
13 we talked about, was that done on a portfolio
14 basis or on a security by security basis?

15 MR. SNYDER: Only on a portfolio
16 basis as verified by independent public
17 accountants.

18 MR. J. SNYDER: Okay. So, in that
19 sense there was a consistency between how the
20 yield was calculated and how the market was
21 calculated?

22 MR. SNYDER: Yes.

23 MR. J. SNYDER: One thing in terms
24 of the timing, just to go to the Chair's

1 question about Meridian, when Meridian did its
2 settlement with the SEC, where did that fit in
3 the timeline in terms of -- Maybe I better back
4 up. This merger process, Meridian first merged
5 with Corestates, right?

6 MR. SNYDER: Yes, in April of 1996.

7 MR. J. SNYDER: 1996 and the next
8 merger was with First Union.

9 MR. SNYDER: First Fidelity, First
10 Union, yes.

11 MR. J. SNYDER: I want to ask if you
12 can tell us in the timeline where did Meridian
13 settlement with the SEC fit with their merger
14 with First Union?

15 MR. SNYDER: Their settlement
16 occurred in 1998, in April of 1998, I believe.
17 And the merger transaction was consummated in
18 1996. But I think tellingly, the settlement by
19 Meridian -- by Corestates of Meridian's yield
20 burning matters was the first of what
21 subsequently became 30 additional firms arriving
22 at global settlements with respect to yield
23 burning.

24 MR. J. SNYDER: I think you may have

1 misspoke. The merger with Corestates was in
2 1996. The merger with Corestates entity with
3 First Union was when?

4 MR. SNYDER: Around 1998.

5 MR. J. SNYDER: Let's talk for a
6 minute, if we can, and I think you touched on
7 this but maybe we can get a little bit more
8 detail. Your SEC case was settled in 2001?

9 MR. SNYDER: Yes.

10 MR. J. SNYDER: Can you just tell us
11 in summary fashion what the terms of that
12 settlement were?

13 MR. SNYDER: Sure. As I mentioned,
14 I was working as a consultant to Penn from late
15 1997. I became an employee of Penn in 2000.
16 And left Penn in February of 2001 to focus on
17 arriving at the settlement with the SEC.

18 My settlement with the SEC involved
19 the remuneration that Director Wells mentioned.
20 It involved the bar from the industry. But
21 unlike Meridian's settlement and another
22 individual where they acknowledged that they
23 willfully violated or were reckless in not
24 knowing that they violated SEC guidelines, my

1 settlement didn't include any admission of any
2 liability and it did not include any
3 acknowledgment of any conduct that was willfully
4 in violation of or reckless.

5 My settlement was done through a
6 direct court order by the federal judge in the
7 Eastern district of the Commonwealth. All the
8 judge ruled upon, the only finding by the court
9 was they had standing to approve the settlement.
10 They made no findings of fact with respect to
11 the underlying conduct.

12 MR. J. SNYDER: That order, just for
13 the Commissioners' benefit, is Bureau's Exhibit
14 Number 6, the United States District Court's
15 final order settlement.

16 Okay. The last thing I wanted to
17 ask you was Director Wells mentioned that the
18 SEC matter also involved some allegations with
19 respect to payments to consultants. Can you
20 just tell us what that was about?

21 MR. SNYDER: Yes. There were, I
22 believe, two advance refunding transactions in
23 West Virginia where a consultant came to us who
24 was working on behalf of those municipalities in

1 West Virginia and asked us to procure the escrow
2 securities for those advance refunding
3 transactions.

4 He attended the meetings. He did
5 all of the legwork. He served as a finder on
6 behalf of Meridian in securing the opportunity
7 to provide those securities. We did compensate
8 him with finder's fees that were approved by my
9 superiors at Meridian Capital Markets.

10 CHAIRMAN CROSBY: Were they also
11 compensated by the municipalities?

12 MR. SNYDER: Not to my knowledge,
13 they were not.

14 CHAIRMAN CROSBY: So, when you say
15 they were working for the municipalities --
16 Originally, you said they came to you on behalf
17 of the municipalities?

18 MR. SNYDER: They did. They were
19 working with the municipalities in structuring
20 those municipal bond financings as I
21 understood --

22 CHAIRMAN CROSBY: But they weren't
23 getting paid for that?

24 MR. SNYDER: That's correct. They

1 disclosed to the municipalities that they were
2 going to be compensated by the securities
3 provider. So, they acknowledged that they were
4 getting compensation.

5 CHAIRMAN CROSBY: Okay. What was
6 the alleged misdeed in the SEC complaint? What
7 was the transgression allegedly?

8 MR. SNYDER: That those fees were
9 not disclosed. You can charge anything if you
10 disclose it is the position that the SEC took.

11 CHAIRMAN CROSBY: That they were not
12 disclosed to whom?

13 MR. SNYDER: To the issuer, the
14 municipality.

15 CHAIRMAN CROSBY: But I thought you
16 said that --

17 MR. SNYDER: We told the consultants
18 that they had to disclose to the municipalities.
19 They acknowledged to us in writing that they did
20 disclose. No one from Meridian had ever met
21 with or interacted directly with any
22 representative of a municipality other than the
23 consultant.

24 CHAIRMAN CROSBY: Apparently they

1 didn't eventually tell them. Is that --

2 MR. SNYDER: I believe they did. I
3 don't know if they told the amount.

4 CHAIRMAN CROSBY: Okay.

5 MR. J. SNYDER: Two points of
6 clarification on that. You mentioned that there
7 were meetings that these consultants attended.
8 Where were those meetings and with whom?

9 MR. SNYDER: They were evening
10 meetings with public bodies in West Virginia.

11 MR. J. SNYDER: While we're on the
12 subject of disclosure with respect to these
13 fees, you covered now the issue of disclosure to
14 the issuing municipalities or bodies. How about
15 disclosure on the Meridian side, was there
16 disclosure within the bank as to these fees
17 being paid?

18 MR. SNYDER: Yes. As I said, the
19 payment of these fees were approved by my
20 superiors. They were approved by internal
21 audit. They were approved by compliance. There
22 was never any suggestion that these were fees
23 paid without the knowledge of my employer.

24 CHAIRMAN CROSBY: The language in

1 the complaint, I think, if I have the right
2 word, suggests that you asked them to prepare
3 invoices to make it look as if something had
4 transpired which did not. What was that
5 reference to?

6 MR. SNYDER: No, that's certainly
7 the allegation. The facts of the matter are
8 that those invoices reflected the services that
9 they provided, and reflected their share of the
10 profits that were being secured as a finder for
11 the opportunity to provide the escrow
12 securities.

13 CHAIRMAN CROSBY: So, it was just a
14 flat negotiated fee?

15 MR. SNYDER: Yes.

16 CHAIRMAN CROSBY: Not an hourly
17 anything and the invoice represented that?

18 MR. SNYDER: Correct.

19 MR. J. SNYDER: Okay. You mentioned
20 a little while ago, Mr. Snyder, that there was a
21 proceeding in New Jersey before the Casino
22 Control Commission down there concerning this
23 SEC matter. Could you tell us about that?

24 MR. SNYDER: Yes. I took a

1 severance from Penn National in January or
2 February of 2001. I immediately began the
3 process to have a determination of suitability
4 to hold a key employee license, a key casino
5 license in New Jersey because at that time I
6 arrived at a settlement with the SEC.

7 The goal was to be found suitable in
8 New Jersey where they were willing to evaluate a
9 key employee license even if the company was not
10 a current casino license holder with the hope
11 then of going back to the other states in which
12 Penn at that time did business and rejoin Penn
13 National, which I was successful in doing in
14 June of 2003.

15 MR. J. SNYDER: Okay. Tell us about
16 the New Jersey proceeding. What was involved?
17 Was it testimony, hearings?

18 MR. SNYDER: There was. The
19 Division of Gaming Enforcement conducted a full-
20 blown investigation of my background. There was
21 a hearing that was scheduled in front of a
22 hearing officer. The hearing officer was one of
23 the members of the Commission.

24 The hearing officer based on that

1 hearing at which time testimony was taken,
2 evidence was introduced, the hearing officer
3 made a recommendation to the Casino Control --
4 the full Casino Control Commission that I be
5 found suitable to hold a key employee license.
6 And the Commission approved that unanimously.

7 MR. J. SNYDER: The initial decision
8 -- For the Commission's benefit, the initial
9 decision, the hearing examiner and the
10 Commission's final order on that are Penn
11 National Exhibit 9. I guess what we'd call a
12 reason to decision. There are maybe a dozen
13 pages of analysis by the hearing examiner.

14 Can you just tell us, Mr. Snyder, to
15 the best of your recollection, how long a
16 process was that? How long did it go on? How
17 long did they consider your key employee status?

18 MR. SNYDER: I think it was six to
19 nine months. It was about six months from
20 application through hearing through final
21 determination.

22 MR. J. SNYDER: And on how many
23 occasions did you give testimony?

24 MR. SNYDER: I gave testimony to the

1 Division of Gaming Enforcement as part of their
2 investigation. And then I also provided
3 testimony at the hearing under oath in front of
4 the hearing officer.

5 MR. J. SNYDER: Subsequent to the
6 order being issued by the Commission in New
7 Jersey, have other jurisdictions considered your
8 key employee or whatever their characterization
9 of it is for a gaming license?

10 MR. SNYDER: Yes.

11 MR. J. SNYDER: How many would you
12 say?

13 MR. SNYDER: As I mentioned earlier,
14 I've been found suitable in nine states, New
15 Jersey included. So, it would be eight others.

16 MR. J. SNYDER: Also, for the
17 Commissioners' benefit, we have prepared an
18 exhibit of jurisdictions in which the various
19 witnesses who are going to appear before you in
20 this hearing have been licensed, just to sort of
21 summary, and Mr. Snyder is one of those in more
22 detail.

23 Mr. Snyder, we've now gone through
24 the SEC proceeding, the New Jersey proceeding.

1 Could you just tell the Commissioners what
2 lesson you've learned from that whole process?

3 MR. SNYDER: The entire process took
4 a tremendous toll on me professionally. I
5 stepped away from Penn National. The company
6 stood by me. I rejoined the company after two
7 years. It took a tremendous toll on me
8 personally. And it took a tremendous toll on my
9 family.

10 So, I think the lesson learned is
11 that you can never be too cautious. Rely and
12 make sure that policies and procedures are
13 evaluated by the appropriate professionals,
14 lawyers, etc. And make sure those are in place
15 and adhered to. And quite candidly, because of
16 my experience that's one thing that we at Penn
17 really take a lot of responsibility.

18 The most value that we have as a
19 company is in the licenses that we hold in the
20 jurisdictions in which we operate. And we can
21 never do anything to compromise that.

22 So, that's why when the people in
23 Plainville ask us have you ever been found
24 unsuitable, it's important for us to be able to

1 say no. That suitability findings and the
2 processes that go into compliance and controls
3 are really the highest priority that we have to
4 take as a company and I must take as an
5 individual. So, it's a lesson that I've learned
6 and it's a lesson that we've all learned.

7 MR. J. SNYDER: One more point,
8 Director Wells mentioned this REIT transaction
9 that's ongoing, I guess. Can you just tell the
10 Commissioners if that transaction goes through,
11 what landing please is anticipated you'll have.

12 MR. SNYDER: I've already had some
13 interviews for successors at Penn National
14 Gaming. It's my expectation that I would move
15 over to the Gaming and Leisure Properties, Inc.,
16 GLPI. So, that I would no longer continue my
17 employment with Penn National but would move
18 over to the REIT.

19 MR. J. SNYDER: Mr. Snyder it was
20 pointed out to me there was one thing that we
21 wanted to make clear to the Commissioners is
22 that when I asked you about the licensing
23 decisions that have been made in various
24 jurisdictions, subsequent to the New Jersey

1 proceeding, in all of those proceedings has
2 there been disclosure of the SEC proceedings?

3 MR. SNYDER: Oh, yes. As there has
4 been in all of the applications that I have
5 filed before this Commission as well as the
6 interviews that have been conducted on behalf of
7 this Commission by their consultants.

8 MR. J. SNYDER: Okay, thank you.
9 Mr. Mackey will have some questions.

10 CHAIRMAN CROSBY: Does anybody here
11 want to jump in first? Okay, go ahead.

12 MR. MACKEY: Thank you. Good
13 morning. I just want to get the timeframe
14 straight so that there's no misunderstanding
15 about when you held what positions with what
16 companies. You're employed at Meridian, as I
17 understand it, from February '89 through January
18 '96?

19 MR. SNYDER: Correct, yes.

20 MR. MACKEY: During the last several
21 years you were at Meridian, you were in fact the
22 director of the whole public finance department.

23 MR. SNYDER: Yes, from about January
24 of 1993 on. We reorganized the municipal

1 finance field to local, regional and national.
2 And I headed the local -- the regional portion
3 of the public finance practice at Meridian
4 Capital Markets from '93 on.

5 MR. MACKEY: Okay. Then I think you
6 said in late '95 or thereabouts the SEC began
7 this investigation into what we've referred to
8 loosely as yield burning?

9 MR. SNYDER: Yes.

10 MR. MACKEY: You were, as I
11 understand from the verified complaint that you
12 filed against Meridian on the indemnification
13 issue, I understand that you were deposed twice
14 in connection with that investigation in 1996?

15 MR. SNYDER: Yes. I provided them
16 an interview to help them understand what we had
17 done in 1995. And then subsequently in middle
18 of 1996 and I think again in late 1996 was
19 deposed in the SEC's offices in Philadelphia.

20 MR. MACKEY: One interview in '95,
21 two depositions in 1996?

22 MR. SNYDER: Yes.

23 MR. MACKEY: Did your departure from
24 Meridian in early '96 have anything to do with

1 the SEC yield burning investigation?

2 MR. SNYDER: No, my departure had
3 nothing to do with the SEC investigation. My
4 departure had a lot to do with how Meridian
5 defended themselves in the matter.

6 MR. MACKEY: Was that departure
7 voluntary on your part?

8 MR. SNYDER: Yes.

9 MR. MACKEY: You weren't asked to
10 leave because of the investigation?

11 MR. SNYDER: No, I was not. I left
12 because the bank had agreed to the sale of the
13 bank. That sale was announced in October 1995.
14 It was completed in April 1996. And the
15 acquirer at time, Corestates, did not have as
16 much of a focus on our business practices as
17 Meridian had historically evidenced.

18 MR. MACKEY: I want to make sure the
19 Commission understands your job history from
20 January 1996 or when you left Meridian up until
21 January 2000, which is when I understand you
22 were first employed by Penn National. So, could
23 you just go through that?

24 MR. SNYDER: Sure. I left Meridian

1 with another gentleman, and in conjunction with
2 a third gentleman formed a consulting
3 partnership, Hamilton Partners. We provided
4 consulting services to municipalities as well as
5 private corporations on capital funding, bond
6 financings, etc.

7 With this investigation that weighed
8 heavily on our ability to provide those
9 services. We dissolved that firm I want to say
10 in early 1997. Later in 1997, I was doing
11 consulting work for a few companies. And
12 actually started in late 1997 to provide
13 consulting work to Penn National. From 1997
14 through early I guess it was January 2000 Penn
15 National became my sole and exclusive client and
16 my principal focus.

17 MR. MACKEY: If I could ask you to
18 look. Do you have the Bureau's exhibits in
19 front of you?

20 MR. SNYDER: Yes, I have them.

21 MR. MACKEY: If I could ask you to
22 look at Bureau Exhibit Number 4?

23 MR. SNYDER: Yes.

24 MR. MACKEY: Is that a document

1 you've ever seen before?

2 MR. SNYDER: Yes.

3 MR. MACKEY: I understand this is
4 for the Commission's benefit, this is a document
5 that's available on the SEC's website. It's an
6 announcement of the institution of an
7 administrative proceeding against you related to
8 this yield burning situation you described; is
9 that correct?

10 MR. SNYDER: It is.

11 MR. MACKEY: I want to read into the
12 record a couple of sections of it. Let me just
13 say right off the bat I know, Mr. Snyder, that
14 you deny these allegations. I just want to -- I
15 want the record clear that this accurately
16 reflects what the scope of the investigation
17 was.

18 So, in the second paragraph of this
19 document it says: in the order instituting the
20 division of enforcement, the division, alleges
21 that Snyder violated the antifraud provisions of
22 the Securities Act of 1933 and the Securities
23 Exchange Act of 1934 resulting from conducts
24 spanning the period from March '93 through

1 December 1995. The division alleges that during
2 the period Snyder engaged in a fraudulent scheme
3 to generate profits for Meridian by charging
4 various school districts and other
5 municipalities in Pennsylvania and West Virginia
6 unfair prices for U.S. Treasury securities.

7 Is that your understanding of what
8 the scope of the investigation was? Does this
9 accurately capture that?

10 MR. SNYDER: Together with you'll go
11 on to read the payments that were made, yes.

12 MR. MACKEY: Right. And that's
13 where I was going next. At the very bottom of
14 that page, it says the division alleges that by
15 charging excessive markups, Snyder improperly
16 burned the yield. He then pocketed excess
17 profits. None of these facts nor the fact that
18 the bonds could lose their tax exempt status was
19 ever disclosed to the municipalities.

20 Again, is that your understanding
21 that not only was it this issue about excessive
22 markups, but it was also about disclosure to the
23 municipalities. That was an issue as well?

24 MR. SNYDER: Yes, that's the

1 (INAUDIBLE).

2 MR. MACKEY: Then just to the last
3 sentence of that paragraph. The division also
4 alleges that in order to secure Meridian
5 selection in certain advance refunding, Snyder
6 made undisclosed payments to certain financial
7 consultants in West Virginia.

8 That's the issue that you were
9 referencing before in discussion with the
10 Commission about the two financial consultants
11 who were compensated.

12 MR. SNYDER: Yes.

13 MR. MACKEY: So, if you would, Mr.
14 Snyder, could I draw your attention to Bureau
15 Exhibit 9, which is off the Philly.com website.
16 I will represent to you it's an article that
17 appeared in the Philadelphia Inquirer on April
18 24, 1998. By the way, the SEC charges -- the
19 date on the announcement document we have April
20 23, 1998. This article appeared the day after.
21 Is it an article that you remember? Do you
22 recognize it?

23 MR. SNYDER: I recognize it, yes.

24 MR. MACKEY: On the second page, the

1 article says, and I'm just reading from the top:
2 The SEC began civil proceedings against
3 Stallone's former boss, ex-Meridian security
4 executive Steven T. Snyder.

5 Do you see where I'm reading there?

6 MR. SNYDER: Yes.

7 MR. MACKEY: The SEC accuses Snyder
8 of fraud for his role in the Pennsylvania bond
9 sales and for allegedly paying bribes to two
10 unidentified West Virginia bond consultants in
11 exchange for bringing local business to
12 Meridian.

13 Did I read that correctly?

14 MR. SNYDER: Yes.

15 MR. MACKEY: Then there's a
16 reference to Hamilton Partners, two paragraphs
17 after that. Since leaving Meridian in 1996,
18 Snyder and Stallone had worked for a Reading
19 consulting firm, Hamilton Partners.

20 Do you see that?

21 MR. SNYDER: Yes.

22 MR. MACKEY: Then in the next
23 paragraph it says the firm was recently
24 dissolved.

1 Do you see that?

2 MR. SNYDER: Yes.

3 MR. MACKEY: Why was Hamilton
4 Partners dissolved?

5 MR. SNYDER: As I said earlier,
6 working with municipalities while this kind of
7 an investigation was going on was not real
8 practical.

9 MR. MACKEY: Okay. Then in the
10 paragraph following that there is a reference to
11 the state tuition account program advisory board
12 on which you served?

13 MR. SNYDER: Yes.

14 MR. MACKEY: Were you able to stay
15 on the state tuition account program advisory
16 board following the filing of these
17 administrative charges?

18 MR. SNYDER: I resigned.

19 MR. MACKEY: You resigned?

20 MR. SNYDER: Yes.

21 MR. MACKEY: As a result of the
22 charges?

23 MR. SNYDER: Yes.

24 MR. MACKEY: Then I think you

1 indicated that between 19 -- Tell me, when did
2 your consulting work for Penn National begin?

3 MR. SNYDER: Late 1997.

4 MR. MACKEY: Late 1997, okay.

5 Between late 1997 and January 2000 you were
6 acting as an outside consultant to Penn
7 National?

8 MR. SNYDER: I was, but I had
9 offices at Penn National. They were the only
10 client I had.

11 MR. MACKEY: Okay. If I could ask
12 you to take a look at your own Exhibit 7, which
13 is the list of bios for various executives at
14 Penn National?

15 MR. SNYDER: Yes.

16 MR. MACKEY: The second page, I just
17 note that it says at the top of your bio, at the
18 beginning of your bio Steve Snyder joined Penn
19 National Gaming in 1998. And from 1998 to 2001
20 served as vice president of corporate
21 development.

22 So, I just note that's different
23 from what the suitability report in the record
24 says about the commencement of your employment

1 at Penn National.

2 MR. SNYDER: No. It just doesn't --
3 My role as vice president of corporate
4 development was as a consultant initially. And
5 subsequently, in early 2000 is when I became an
6 officer of Penn National.

7 MR. MACKEY: Okay.

8 MR. J. SNYDER: I think what
9 Attorney Mackey is referring to is that the
10 suitability report actually says you joined Penn
11 National in 2000.

12 MR. MACKEY: In January 2000, that's
13 correct.

14 MR. J. SNYDER: I think we've
15 established it's incorrect.

16 MR. SNYDER: It's not incorrect. I
17 became an officer of Penn National in 2000,
18 previous to which I served in the capacity as a
19 consultant in the role of vice president of
20 corporate development.

21 MR. MACKEY: Describe to me what
22 your responsibilities were. It sounds like
23 beginning as early as late '97, early '98 in
24 your role as vice president of corporate

1 development.

2 MR. SNYDER: Finding acquisitions,
3 helping the company in its growth initiatives,
4 helping the company finance those growth
5 initiatives. Those were the responsibilities.

6 We acquired our first casinos in
7 1999. And we've subsequently grown, as we said
8 in our earlier presentation, to be one of the
9 largest most diversified operator of casino
10 gaming facilities in the United States.

11 MR. MACKEY: Who did you report to
12 in that position?

13 MR. SNYDER: Mr. Carlino.

14 MR. MACKEY: Can you describe to me
15 what the hiring process was, first, going back
16 to when you began to consultant. Let me stop.

17 When you began in an outside
18 capacity to assume the role of vice president of
19 corporate development, what was the hiring
20 process for that position?

21 MR. SNYDER: Mr. Carlino and the
22 company had retained a search firm to search for
23 a new chief financial officer for the company.
24 I had met with that search firm. I had

1 disclosed to them what the underlying SEC
2 investigation was, what the status of that
3 investigation was. And the company made the
4 determination to sort of test drive and hire me
5 as a consultant to evaluate my skills and also
6 to see where the SEC investigation went.

7 MR. MACKEY: Do you recall when you
8 were interviewed by -- when you had
9 conversations with the executive search firm
10 what the status of the SEC proceeding was? Had
11 they already filed the administrative complaint?

12 MR. SNYDER: No.

13 MR. MACKEY: They had not yet. Can
14 you tell me what you said them about the status
15 of the SEC matter at that point in time?

16 MR. SNYDER: I gave them everything
17 I had, including the deposition transcripts.

18 MR. MACKEY: You did?

19 MR. SNYDER: Yes.

20 MR. MACKEY: What about interviews
21 internally at Penn National, you were vetted by
22 the executive search firm but then presumably
23 you met with some people at the company?

24 MR. SNYDER: Not in my role as a

1 consultant. As a consultant I met with Mr.
2 Carlino. And in being hired as a consultant,
3 that was in direct conversations with Mr.
4 Carlino after review by the search firm, the
5 executive search firm.

6 I subsequently in my role as a
7 consultant to the company in that capacity of
8 corporate development interacted with all of the
9 senior management in the company as well as the
10 board of directors to the point where they in
11 early 2000 made a decision to make me an officer
12 of the company.

13 MR. MACKEY: But it sounds like you
14 had a discussion, an interview of sorts with Mr.
15 Carlino before you became a consultant acting in
16 this development capacity?

17 MR. SNYDER: Yes.

18 MR. MACKEY: Did you discuss the SEC
19 matter with Mr. Carlino?

20 MR. SNYDER: Yes.

21 MR. MACKEY: What was that
22 discussion?

23 MR. SNYDER: The discussion was here
24 are the materials. He referred it over to the

1 outside law firm, Ballard Spahr. Ballard Spahr
2 reviewed the materials and made the
3 determination to go ahead, and as I said, test
4 drive as a consultant my relationship with Penn
5 National.

6 MR. MACKEY: At the time -- And I
7 take it the time that you interviewed with Mr.
8 Carlino, charges had not yet been brought?

9 MR. SNYDER: That's correct.

10 MR. MACKEY: Did you have
11 discussions with Mr. Carlino or the executive
12 search firm or anybody else at Penn National
13 when the SEC actually instituted these
14 administrative charges in April of 1998?

15 MR. SNYDER: Well, the executive
16 search firm was no longer involved, because at
17 that point I was already a consultant to Penn
18 National.

19 I certainly had conversations with
20 Mr. Carlino, conversations with the outside law
21 firm representing Penn National including their
22 SEC practice at Ballard Spahr Andrews Ingersol
23 in Philadelphia.

24 MR. MACKEY: And what came out of

1 those conversations?

2 MR. SNYDER: They understood why I
3 didn't settle, because the settlement required
4 that I acknowledge that I willfully violated or
5 was reckless in not knowing. So, they
6 understood the approach that I had taken and
7 understood why.

8 MR. MACKEY: The determination was
9 made presumably by Mr. Carlino that you would
10 stay on in your capacity, in your development
11 capacity even following the filing of the SEC
12 administrative charge?

13 MR. SNYDER: There was no
14 interruption in my service to Penn National
15 Gaming.

16 CHAIRMAN CROSBY: What was the date
17 of the filing?

18 MR. MACKEY: April 23, 1998.

19 CHAIRMAN CROSBY: '98, okay.

20 COMMISSIONER MCHUGH: That was the
21 administrative proceeding.

22 MR. MACKEY: That was the
23 administrative proceeding.

24 MR. SNYDER: But it was also the

1 order instituting proceedings against me.

2 COMMISSIONER MCHUGH: No, I
3 understand that. I'm just distinguishing
4 between the judicial proceeding and the
5 administrative.

6 MR. SNYDER: I'm sorry.

7 MR. MACKEY: When you were formally
8 hired as a vice president, as an employee not as
9 a consultant in 2000, do you recall if the Penn
10 National board's compliance committee was
11 involved in that hiring?

12 MR. SNYDER: I think, as you heard
13 earlier, the compliance committee was formed
14 later in 2001. So, the answer is it didn't
15 exist.

16 MR. MACKEY: Fair enough. In March
17 2001, you left Penn National?

18 MR. SNYDER: Yes, sometime in the
19 first quarter of 2001.

20 MR. MACKEY: Can you describe for
21 the Commission the circumstances that led to
22 your departure?

23 MR. SNYDER: Yes. Penn National had
24 entered into an acquisition agreement where Penn

1 was undertaking the acquisition of the gaming
2 operations of Carnival Resorts and Casinos, a
3 company affiliated with Carnival Cruise Lines.
4 Those operations included the operation of the
5 Casino Rouge in Baton Rouge and the management
6 contract for the Casino Rama in Orillia, Ontario
7 under the auspices of the Ontario Lottery and
8 Gaming Corporation.

9 As we were going through the
10 approval process and it provided all of the
11 materials, completed the personal disclosure
12 forms, the Ontario Lottery and Gaming
13 Corporation through their regulatory agency was
14 not comfortable with the pending SEC matter as
15 it related to my background at Meridian Capital
16 Markets.

17 So, I was offered and accepted a
18 severance from Penn National Gaming and left the
19 employment of Penn National Gaming, as I said,
20 sometime in the first quarter 2001.

21 MR. MACKEY: And then what did you
22 do?

23 MR. SNYDER: As was disclosed
24 earlier, I was involved in just creating

1 securities for my own account, and working
2 diligently on resolving the SEC matter, which
3 subsequently occurred April of 2001. And
4 working through the process of key employee
5 suitability findings in New Jersey.

6 MR. MACKEY: If you could, I'd ask
7 you to turn to Bureau Exhibit Number 5, which is
8 a copy of the SEC complaint. Do you have that?

9 MR. SNYDER: I do.

10 MR. MACKEY: Do you recognize this
11 document?

12 MR. SNYDER: Yes.

13 MR. MACKEY: This is the complaint
14 that was filed by the SEC against you April 17,
15 2001, correct?

16 MR. SNYDER: Yes.

17 MR. MACKEY: I'm not going to go
18 through -- Would it be fair to say that the
19 complaint tracks to a large degree the
20 administrative charges that the SEC had filed
21 against you in April of 1998?

22 MR. SNYDER: Yes.

23 MR. MACKEY: It includes allegations
24 about excessive markups of securities?

1 MR. SNYDER: Yes.

2 MR. MACKEY: And it includes
3 allegations about nondisclosure of the markup to
4 the municipalities?

5 MR. SNYDER: Yes.

6 MR. MACKEY: And the undisclosed
7 payments to financial consultants?

8 MR. SNYDER: Yes.

9 MR. MACKEY: And then Exhibit 6,
10 could you turn to that? Do you recognize that
11 document?

12 MR. SNYDER: Yes, this is the court
13 order.

14 MR. MACKEY: And what is that to
15 your understanding?

16 MR. SNYDER: It's the order by the
17 court accepting the settlement agreement.

18 MR. MACKEY: So, it'd be fair to say
19 the SEC filed suit and on the same day there was
20 a settlement in effect of the allegations raised
21 in the complaint that the court endorsed?

22 MR. SNYDER: That's correct. This
23 was resolved as a civil matter in the federal
24 court.

1 MR. MACKEY: The settlement
2 involved, as you testified before, an
3 approximately \$300,000 payment in civil
4 penalties and then restitution to the affected
5 municipalities and the IRS?

6 MR. SNYDER: As Director Wells
7 testified, yes.

8 MR. MACKEY: And then there was
9 also, as I understand it, a resolution of the
10 SEC's administrative charge. And that resulted
11 in a ban for three years from working in the
12 securities industry?

13 MR. SNYDER: Correct.

14 MR. MACKEY: So, then if you could
15 turn to Exhibit 8 right behind it. It's the New
16 Jersey proceeding. Do you recognize that
17 document?

18 MR. SNYDER: Yes.

19 MR. MACKEY: If you could turn to
20 page three of this?

21 MR. SNYDER: Yes.

22 MR. MACKEY: So, Exhibit 8 is in
23 fact the decision that was issued by the hearing
24 officer for the state of New Jersey Casino

1 Control Commission about your application for a
2 casino key employee license, correct?

3 MR. SNYDER: Yes.

4 MR. MACKEY: And then on page three
5 it just describes a little bit of the procedural
6 history behind that?

7 MR. SNYDER: Yes.

8 MR. MACKEY: So, it looks like in
9 June 2001, very shortly after the resolution of
10 the SEC matter, you applied for this casino key
11 employee license with the New Jersey officials?

12 MR. SNYDER: Yes.

13 MR. MACKEY: Did you have -- At that
14 point in time, did you have an understanding or
15 an agreement with Penn National that if you were
16 able to obtain that qualification you would then
17 be re-employed by Penn National?

18 MR. SNYDER: There was no agreement.
19 But Penn National had identified the legal
20 resources and reimbursed the legal resources
21 that I incurred in doing this. But there was no
22 written agreement, if you will, that I would
23 rejoin Penn National Gaming depending upon the
24 outcome.

1 MR. MACKEY: When you go through a
2 proceeding like this that you went through in
3 New Jersey, do you identify a sponsoring
4 employer in some way? Or you just get your own
5 qualification and then you could use that?

6 MR. SNYDER: No. In New Jersey they
7 were willing to evaluate individuals. That is
8 why I made the decision to go to New Jersey
9 because they reviewed qualifiers individually
10 rather than as part of a corporate sponsor.

11 MR. MACKEY: It would be fair to say
12 that Penn National was supportive. It sounds
13 like they paid your legal fees?

14 MR. SNYDER: Yes.

15 MR. MACKEY: And then Mr. Carlino
16 testified at that hearing; is that correct?

17 MR. SNYDER: He did.

18 MR. MACKEY: Did any other Penn
19 National officers testify at that hearing?

20 MR. SNYDER: Not that I recall, no.

21 MR. MACKEY: You, yourself testified
22 at length in the proceeding as you've described.

23 MR. SNYDER: In the hearing?

24 MR. MACKEY: Yes.

1 MR. SNYDER: Yes.

2 MR. MACKEY: Your testimony is
3 outlined -- strike that. It sounds like at the
4 end of your testimony this morning you said that
5 you had learned some lessons from this yield
6 burning situation with the SEC. And it sounds
7 like one of the lessons you learned was you can
8 never be too cautious. You can never be too
9 careful with these regulatory matters, correct?

10 MR. SNYDER: Yes.

11 MR. MACKEY: During the New Jersey
12 proceedings, for example, did you ever express
13 any sense of regret or remorse at the action
14 that led to the yield burning claim?

15 MR. SNYDER: I expressed a regret
16 for resigning from Meridian before the matter
17 was resolved because Meridian's or subsequently
18 Corestates' process and procedures in terms of
19 the way they handled this matter were handled
20 substantially differently between those that
21 continued employment and those that did not.

22 As I testified in New Jersey, as
23 I've testified elsewhere, I never violated any
24 policy of Meridian. I never violated any

1 procedures. I never violated anything that I
2 understood to be common practices in the
3 industry.

4 MR. MACKEY: Did you acknowledge at
5 any time during the New Jersey proceeding that
6 you had done anything wrong?

7 MR. SNYDER: I acknowledged that I
8 made the mistake of resigning before this
9 investigation was completed, yes.

10 MR. MACKEY: Other than that?

11 MR. SNYDER: Again, my conduct at
12 all times as an employee at Meridian Capital
13 Markets based upon my performance reviews was
14 exemplary.

15 MR. MACKEY: So, the answer to that
16 question did you acknowledge that you had done
17 anything wrong would be no?

18 MR. SNYDER: I'm not aware of
19 anything to date that violated any policy or
20 procedure at my employer at any time.

21 MR. MACKEY: But the allegation in
22 the administrative charge and the allegations in
23 the complaint were not whether you violated
24 internal policies. They're obviously whether

1 you violated federal securities laws.

2 Did you -- Let me just ask it again.
3 Did you acknowledge before the New Jersey gaming
4 officials that you had done anything wrong in
5 connection with the allegations brought by the
6 SEC?

7 MR. SNYDER: I acknowledged that I
8 complied with the policies and procedures of
9 Meridian. If they violated any of the
10 provisions of the Securities Act of 1933 or the
11 Securities Act of 1934, I had no way of knowing
12 it.

13 MR. MACKEY: As you sit here today,
14 do you feel like you've done anything wrong in
15 connection with the charges brought by the SEC?

16 MR. SNYDER: I'll repeat my previous
17 statement. I followed all of the policies and
18 procedures at Meridian and I had no way of
19 knowing at the time whether or not they violated
20 any of the provisions of the 1933 or 1934
21 Securities Act.

22 MR. MACKEY: Following the decision
23 by the New Jersey regulators granting you the
24 key employee license, you were hired back by

1 Penn National, correct?

2 MR. SNYDER: I was hired back by
3 Penn National in June 2003.

4 MR. MACKEY: There was some lag time
5 there. There was about a year between the time
6 the New Jersey regulators acted and by the time
7 you got hired back. How were you occupying your
8 time during that year?

9 MR. SNYDER: The lag related to the
10 other jurisdictions in which at that point in
11 time Penn National had been doing business,
12 Mississippi, Louisiana and Ontario. And went
13 through the process in Mississippi and in
14 Louisiana and in Ontario of filing personal
15 disclosure forms and having them evaluate the
16 merit or the merits of me becoming an officer
17 the company.

18 MR. MACKEY: In June 2003, Penn
19 National brought you back as the senior vice
20 president of corporate development, correct?

21 MR. SNYDER: Yes.

22 MR. MACKEY: Can you describe to me
23 what the hiring process was in connection with
24 them bringing you back on board?

1 MR. SNYDER: Relatively
2 straightforward. It was Mr. Carlino and as I
3 understood it, it was reviewed by the then
4 existing compliance committee.

5 MR. MACKEY: Did the compliance
6 committee make the decision to hire you or was
7 that Mr. Carlino's decision?

8 MR. SNYDER: To the best of my
9 knowledge, it was Mr. Carlino's decision.

10 MR. MACKEY: You reported directly
11 to Mr. Carlino, correct?

12 MR. SNYDER: I did, yes.

13 MR. MACKEY: Do you recall -- Did
14 you have an interview with Mr. Carlino?
15 Obviously at this point, you knew each other
16 well, so maybe not. Do you recall an interview,
17 a formal interview?

18 MR. SNYDER: I don't recall an
19 interview, no.

20 MR. MACKEY: And you didn't appear
21 before the compliance committee or the board?

22 MR. SNYDER: I interacted with the
23 legal counsel of the company. I don't recall an
24 interview before the compliance committee, no.

1 MR. MACKEY: In connection with your
2 hiring again in June 2003, did Mr. Carlino or
3 anyone else at Penn National associated with
4 your hiring ask you anything further about the
5 SEC matter?

6 MR. SNYDER: Not that I can recall.

7 MR. MACKEY: It had been pretty well
8 worked over by the New Jersey gaming officials
9 and you had a qualification from them, right?

10 MR. SNYDER: Yes. It was a carcass.
11 There was no need to stab it.

12 MR. MACKEY: You've got this ongoing
13 litigation with Meridian?

14 MR. SNYDER: Yes.

15 MR. MACKEY: It's been going on some
16 time. I think you indicated it had been filed
17 in -- When did it get filed?

18 MR. SNYDER: It was filed subsequent
19 to the settlement in 2001.

20 MR. MACKEY: Still going?

21 MR. SNYDER: Correct.

22 MR. MACKEY: Twelve years?

23 MR. SNYDER: Yes.

24 MR. MACKEY: Why is it taking so

1 long?

2 MR. SNYDER: I have an attorney
3 working on a contingency basis who has
4 subsequently retired. And his law practice has
5 since assigned a junior partner who has picked
6 it up and it has become more active in recent
7 months.

8 MR. MACKEY: At one point, it did
9 literally go quiet for years and years and years
10 and years?

11 MR. SNYDER: At one point in time,
12 the court held a hearing to sort of terminate
13 the case, yes.

14 MR. MACKEY: But it is still going?
15 It didn't get terminated?

16 MR. SNYDER: Yes, it was reinstated.

17 MR. MACKEY: I have no further
18 questions.

19 CHAIRMAN CROSBY: Commissioners?

20 COMMISSIONER ZUNIGA: I have a few
21 questions, if I may, Mr. Snyder. At your time
22 at Meridian, what was the role of you and the
23 bank in terms of this advance refunding, purely
24 to provide the debt service reserve fund or the

1 escrow fund?

2 MR. SNYDER: No, it was both. We
3 were in most cases, not in all but most, we were
4 also the underwriter of the series of refunding
5 bonds, the tax-exempt bonds that they were
6 issuing as well as the provider of the
7 securities for the escrow account.

8 COMMISSIONER ZUNIGA: So, you were
9 pricing the refunding bonds as well?

10 MR. SNYDER: Yes.

11 COMMISSIONER ZUNIGA: So, the bank
12 knew what the arbitrage yield would be in that
13 setting?

14 MR. SNYDER: Yes.

15 COMMISSIONER ZUNIGA: You testified
16 or you mentioned earlier you had a procedure of
17 pricing a markup of 2.5 percent or something to
18 that effect?

19 MR. SNYDER: No. We established
20 markups on a portfolio basis.

21 COMMISSIONER ZUNIGA: Yes.

22 MR. SNYDER: And those markups were
23 based on the facts and circumstances relating to
24 the sale of those securities as it related to

1 the federal securities that were being sold into
2 the escrow account.

3 COMMISSIONER ZUNIGA: Right. Then
4 the SEC came in and said you had to analyze the
5 arbitrage rule on each individual bond not the
6 series?

7 MR. SNYDER: No. The arbitrage rule
8 is one that was set by the Internal Revenue
9 Service. And in terms of compliance with those
10 arbitrage rules or yield restrictions, those
11 were in all cases done and they were verified by
12 certified public accountants.

13 What the SEC said was that the
14 markup on a six-month security had to be looked
15 at solely on that security, not on a portfolio
16 of multiple termed securities. And we at
17 Meridian and all in the industry that I was
18 aware of always treated the entire portfolio as
19 one for purposes of establishing a markup.

20 COMMISSIONER ZUNIGA: And the markup
21 was different for each bond, I guess?

22 MR. SNYDER: Yes.

23 COMMISSIONER ZUNIGA: Effectively.

24 MR. SNYDER: Effectively it was for

1 each maturity of security within that escrow
2 portfolio.

3 COMMISSIONER ZUNIGA: I also had a
4 question on something you alluded to with a
5 certified public accountants. There is usually
6 a bond counsel in these transactions --

7 MR. SNYDER: Always.

8 COMMISSIONER ZUNIGA: -- attesting to
9 the tax-exempt status of this series of bonds;
10 is that correct?

11 MR. SNYDER: The bond counsel will
12 issue an opinion that based on all of the
13 practices, all of the facts, all of the
14 disclosures that the interest on the bonds is
15 exempt from federal and state income taxes for a
16 resident, in these cases mostly Pennsylvania,
17 yes.

18 COMMISSIONER ZUNIGA: And did they
19 normally take a look at the yield or the
20 markups? They know what's underlying these debt
21 service reserves; is that correct?

22 MR. SNYDER: They certainly know
23 what the securities are. They know that there
24 is compliance with the IRS arbitrage

1 restrictions. At the time and part of the
2 allegations by the SEC were since we were the
3 principal in delivering the escrow securities,
4 we were charging a markup and those markups were
5 not disclosed as they were not disclosed to any
6 other purchaser, whether it was a municipality,
7 an institution or an individual at the time.

8 COMMISSIONER ZUNIGA: Do you know
9 when, I don't know if it's the IRS or the SEC, I
10 suspect it's the IRS now, when it started
11 requiring three bids for those debt service
12 reserve funds?

13 MR. SNYDER: I don't know because
14 I've lost interest in the municipal securities
15 market.

16 COMMISSIONER ZUNIGA: Was it a
17 requirement at the time when you were at
18 Meridian?

19 MR. SNYDER: I don't remember that
20 it was. It wouldn't surprise me that it's in
21 effect now, but I don't recall at the time that
22 it was in effect.

23 COMMISSIONER ZUNIGA: I need to
24 gather my notes, so I can come back to this in a

1 minute.

2 COMMISSIONER MCHUGH: I have a
3 couple of questions because this is a
4 complicated area and I've tried to understand
5 it. So, perhaps you can help me.

6 Paragraph seven of Exhibit 5, which
7 is the federal complaint, Commission Exhibit 5,
8 it's on page three. The first sentence says
9 Snyder or others in the public finance
10 department under his supervision charged
11 excessive markups ranging as high as 13.78
12 percent in connection with 22 advance refunding
13 transactions and as high as 46.29 percent in two
14 other cases involving another type of financing.

15 Did I read that correctly?

16 MR. SNYDER: Yes.

17 COMMISSIONER MCHUGH: So, that's the
18 allegation with respect to the excessive markup.
19 That's the heart of it. There's more, but
20 that's the heart of the SEC's allegations?

21 MR. SNYDER: That's correct because
22 those would have been small individual
23 securities as part of a much larger portfolio.

24 COMMISSIONER MCHUGH: Right. So,

1 that gets to this portfolio value and yield
2 discussion that you've had with Mr. Mackey and
3 that's been reported by Director Wells. And
4 that is how you went about pricing the
5 acceptable yield; is that right?

6 MR. SNYDER: Yes, that's correct.

7 COMMISSIONER MCHUGH: And the
8 acceptable yield was based on what the arbitrage
9 rules set by the IRS were? It was calculated to
10 meet those?

11 MR. SNYDER: No. That's the
12 allegation of yield burning. It was not. The
13 markup on the escrow securities was based on the
14 facts and circumstances of the sale of those
15 securities.

16 COMMISSIONER MCHUGH: I'm sorry. Go
17 ahead and finish.

18 MR. SNYDER: It was not based on the
19 available, for lack of a better term, arbitrage
20 profits. We oftentimes, if the escrow needed to
21 provide for the repayment of principal and
22 interest for eight years, we often bought an
23 escrow that had a final maturity of seven and a
24 half years. So, that that shorter maturity was

1 what complied with the IRS arbitrage
2 limitations.

3 And then the markup on the entire
4 portfolio was always assigned on the portfolio
5 consistent with Meridian policies based upon the
6 facts and circumstances of each individual
7 transaction.

8 COMMISSIONER MCHUGH: But surely the
9 markup was made in a way that complied with the
10 arbitrage limits, right?

11 MR. SNYDER: A combination of the
12 markup, but also the duration or the term of the
13 escrow account.

14 COMMISSIONER MCHUGH: Right. Both
15 of those were taken into account in determining
16 whether or not the ultimate yield would be
17 consistent with the arbitrage rules?

18 MR. SNYDER: Yes.

19 COMMISSIONER MCHUGH: So, that means
20 that within a portfolio, there could be a number
21 of stocks -- a number of bonds really that
22 Meridian had bought at a low price and marked up
23 substantially, so long as the overall markup did
24 not put the portfolio in excess of the arbitrage

1 limits, right?

2 MR. SNYDER: That's correct, yes.

3 COMMISSIONER MCHUGH: So, if we make
4 a really simple, just for purposes to make sure
5 that I understand this, case, if there were a
6 portfolio that was sold to a municipality for
7 \$100,000 that was designed to yield five percent
8 annually, and five percent annually was below
9 the arbitrage limit, that portfolio could
10 contain securities that had been purchased for
11 \$50,000 with a 10 percent yield over the same
12 period, right?

13 MR. SNYDER: Not an entire
14 portfolio.

15 COMMISSIONER MCHUGH: Explain to me
16 why not.

17 MR. SNYDER: At a 50 percent markup
18 on an entire portfolio that would have far
19 exceeded any policy or procedure that I was
20 aware of.

21 COMMISSIONER MCHUGH: I understand
22 that. I understand what you're saying. But in
23 terms simply of the arbitrage limits, the
24 portfolio I described would be consistent with

1 that; is that right?

2 MR. SNYDER: Using your example for
3 that purpose, yes.

4 COMMISSIONER MCHUGH: So, there was
5 a substantial amount of freedom within the
6 pricing that Meridian was able to undertake in
7 the sale of the securities to the municipality
8 to bring to bear the facts and circumstances
9 that were part of the Meridian policies, right?

10 MR. SNYDER: I wouldn't say there
11 was a substantial amount of freedom.

12 COMMISSIONER MCHUGH: In the
13 hypothetical I just gave you, for example, there
14 would have been a 50 percent area within which
15 the Meridian policies were free to operate. It
16 doesn't mean that they would have been marked up
17 by 50 percent, but there was a field let's say
18 of 50 percent where they could legitimately have
19 marked up?

20 MR. SNYDER: Yes, using your
21 example, looking at solely the IRS arbitrage
22 restraint, yes, there would have been \$50,000
23 worth of markups that would've been available.

24 COMMISSIONER MCHUGH: Were there

1 securities in the -- Was the allegation in
2 paragraph seven of the SEC complaint that I just
3 read to you that in two cases the markup was in
4 fact as high as 46.29 percent? Is that accurate
5 or do you dispute that?

6 MR. SNYDER: No. That is as stated
7 in the allegations, but that would've been one
8 security in a portfolio that might've included
9 25 or 30 or 40 securities that would have been
10 delivered as part of an overall escrow account.

11 COMMISSIONER MCHUGH: I understand
12 that. And the overall yield would have been --
13 the overall markup would have been lower. And
14 the overall yield would've been consistent with
15 the arbitrage rules?

16 MR. SNYDER: Yes. The markup on the
17 portfolio would have been significantly less
18 than those.

19 COMMISSIONER MCHUGH: And apart from
20 Meridian markup policies, was there any other
21 guidance or any other regulatory process that
22 you took into account in pricing the portfolios
23 that you sold to the municipalities in the
24 refinancing?

1 MR. SNYDER: My experience at a
2 prior employer, Butcher and Singer, who was a
3 broker dealer engaged in this same activity, and
4 what I understood from others in the industry to
5 be practices at other friends as evidenced by
6 their subsequent participation in the global
7 settlement of the yield burning matters.

8 COMMISSIONER MCHUGH: Was it a part
9 of your practice to disclose to the entities to
10 whom you sold these refinancing securities, the
11 escrow securities, the prices at which you had
12 purchased the securities?

13 MR. SNYDER: It was not. The policy
14 at Meridian was that markups were only disclosed
15 if requested by the purchaser.

16 COMMISSIONER MCHUGH: Did you ever
17 receive requests?

18 MR. SNYDER: No, not that I can
19 recall.

20 COMMISSIONER MCHUGH: So, if you go
21 down two sentences in paragraph seven on the
22 same page, also of the SEC complaint, the SEC
23 charges that in certain instances Snyder
24 provided certifications that in essence falsely

1 represented that the prices charged for the
2 treasury securities were determined at fair-
3 market value and established without an intent
4 to reduce yield.

5 Did I read that correctly?

6 MR. SNYDER: Yes.

7 COMMISSIONER MCHUGH: And did you do
8 that?

9 MR. SNYDER: Yes. The bond counsel
10 as was mentioned required certifications from
11 the underwriter or the provider of the escrow
12 securities that they did comply with the IRS
13 arbitrage regulations.

14 COMMISSIONER MCHUGH: And you signed
15 those certifications?

16 MR. SNYDER: Yes.

17 CHAIRMAN CROSBY: Excuse me. Go
18 ahead.

19 COMMISSIONER MCHUGH: And were those
20 certifications false?

21 MR. SNYDER: In light of the markups
22 on the securities, they were not false.

23 COMMISSIONER MCHUGH: No, that's not
24 -- All right. My question was imprecise. Did

1 those certifications falsely represent that the
2 prices charged for the securities were
3 determined at fair-market value?

4 MR. SNYDER: Again, the prices
5 included a markup, which was consistent with
6 Meridian Capital Markets policies and the
7 certifications reflected as such.

8 COMMISSIONER MCHUGH: Well, that's
9 not what the allegation was. So, let me ask it
10 this way. Were Meridian policies, to your
11 knowledge, consistent with markups that were
12 consistent with fair-market value?

13 MR. SNYDER: Yes.

14 COMMISSIONER MCHUGH: So, you deny
15 that the certifications falsely represented that
16 the markups have been determined in a manner
17 consistent with fair-market value?

18 COMMISSIONER ZUNIGA: There's two
19 negatives in that question.

20 MR. SNYDER: Yes.

21 COMMISSIONER MCHUGH: Then I
22 apologize for that. The complaint says you
23 falsely represented that the security markups
24 had been determined in accordance with fair-

1 market value. You falsely represented that that
2 had been done. You deny that?

3 MR. SNYDER: Yes.

4 COMMISSIONER MCHUGH: In your view,
5 all of the markups had been done in a manner
6 that was consistent with fair- market value?

7 MR. SNYDER: And consistent with
8 Meridian's policies which related to fair-market
9 value, yes.

10 COMMISSIONER MCHUGH: There are two
11 pieces to that. But I take your answer. So, a
12 46.29 percent markup albeit on a small piece of
13 a portfolio was in your view and on those
14 occasions consistent with the markup that was
15 consistent with fair-market value?

16 MR. SNYDER: I never was asked and
17 never provided a certification with respect to
18 an individual security or an individual markup.
19 The certifications related to portfolios of
20 securities, the markups on those securities and
21 more importantly the prices at which the
22 securities in totality were sold to the
23 municipalities.

24 COMMISSIONER MCHUGH: So, your

1 certifications, if I understand you correctly,
2 have nothing to do with individual prices of any
3 of the components of the portfolio?

4 MR. SNYDER: The certifications
5 dealt with the entirety of the portfolio, the
6 entirety of the purchase price and the entirety
7 of the markups as they related to the fair
8 markups and the fair-market value of those
9 securities in totality.

10 COMMISSIONER MCHUGH: So, if we go
11 back to my hypothetical with the \$100,000
12 portfolio that you put together with 50,000 --
13 that someone, a hypothetical person put together
14 with bonds that had been purchased for \$50,000,
15 one could sign a certificate saying that the
16 portfolio value of \$100,000 was determined at
17 fair-market value, so long as the market value
18 of that for I suppose a particular purpose was
19 \$100,000?

20 MR. SNYDER: Again, using the
21 example that you provided, considering it to be
22 a portfolio with a hypothetical market value of
23 \$50,000 --

24 COMMISSIONER MCHUGH: Right.

1 MR. SNYDER: And purchase price to
2 the municipality of \$100,000, that markup would
3 be excessive under any measure.

4 COMMISSIONER MCHUGH: But a 46.29
5 percent markup of a component of that portfolio
6 would not be excessive, so long as it was a
7 small component of the portfolio; is that what
8 you're saying?

9 MR. SNYDER: That's correct. Using
10 your example, if it's \$100,000 worth of
11 securities, if that was a \$500 piece of that
12 \$100,000 in securities that is addressing your
13 point, yes.

14 COMMISSIONER MCHUGH: When you were
15 acting as the underwriter for the sale of the
16 refinancing bonds, did you consider you had a
17 fiduciary duty to the municipality for which you
18 were working?

19 MR. SNYDER: In my individual
20 capacity, yes. And as an organization, Meridian
21 Capital Markets, absolutely.

22 COMMISSIONER MCHUGH: Therefore, you
23 had an obligation to deal solely in their best
24 interest, solely in the municipality's best

1 interest. This was not an arm's length
2 transaction in other words?

3 MR. SNYDER: Correct.

4 COMMISSIONER MCHUGH: Was that also
5 true in your procuring the securities for the
6 escrow account?

7 MR. SNYDER: It was a different
8 role.

9 COMMISSIONER MCHUGH: Did you view
10 yourself as having the same fiduciary
11 obligation?

12 MR. SNYDER: We had an obligation as
13 reflected in the certifications that we provided
14 those municipalities to deliver those at fair-
15 market prices, yes.

16 COMMISSIONER MCHUGH: My question is
17 a little bit different. The fiduciary
18 obligation requires you to act solely in your
19 client's best interest, right?

20 MR. SNYDER: As it related to the
21 underwriting and securities, yes.

22 COMMISSIONER MCHUGH: So, I guess
23 I'm asking you whether you viewed your role as
24 different in your role as providing the escrow

1 securities?

2 MR. SNYDER: Yes.

3 COMMISSIONER MCHUGH: What was that
4 role in providing the escrow securities?

5 MR. SNYDER: Making sure that all of
6 the necessary cash flows for the series of
7 refunded bonds were provided for.

8 COMMISSIONER MCHUGH: In conformity
9 with what you understood to be the Meridian
10 rules and regulations?

11 MR. SNYDER: And in compliance with
12 IRS regulations, yes.

13 COMMISSIONER MCHUGH: You also
14 concern yourself with IRS regulations?

15 MR. SNYDER: We didn't want the
16 municipality to be issuing bonds whose interests
17 was not tax-exempt.

18 COMMISSIONER MCHUGH: But a minute
19 ago I thought I understood you to say that your
20 sole focus was on Meridian policies. And if
21 Meridian policies were out of sync with IRS
22 regulations you had no way of knowing that.

23 MR. SNYDER: If Meridian policies
24 were out of sync with SEC regulations, I had no

1 way of knowing it. The IRS regulations were
2 very black and white in this particular area.

3 COMMISSIONER MCHUGH: Okay. Insofar
4 as the consultant transactions were concerned,
5 can you tell me a little bit more about how you
6 came to deal with those consultants?

7 MR. SNYDER: They were gentlemen
8 whom I had known historically. They were active
9 in the municipal finance field. And they asked
10 if I could help them, and Meridian would help
11 them in providing the securities for the fees
12 for the advance refunding of these prior series
13 of bonds they had issued by these communities in
14 West Virginia.

15 COMMISSIONER MCHUGH: And you
16 understood from them that they were not being
17 compensated by the two municipalities on whose
18 behalf they'd approached you?

19 MR. SNYDER: I was not aware. I was
20 aware that they were asking if we would
21 compensate them. And we suggested that we would
22 so long as they disclosed that they were being
23 compensated by us.

24 COMMISSIONER MCHUGH: And did you

1 ever have any direct contact with the
2 municipalities for whom they purported to be
3 working?

4 MR. SNYDER: No.

5 COMMISSIONER MCHUGH: And did you
6 agree -- What was your financial arrangement
7 with them?

8 MR. SNYDER: What was our financial
9 arrangement?

10 COMMISSIONER MCHUGH: Yes, with the
11 consultants.

12 MR. SNYDER: It was a finder's fee.
13 Basically, a share of whatever profits we would
14 generate through the transactions we would pay
15 them for their work.

16 COMMISSIONER MCHUGH: Were you the
17 underwriter in those transactions?

18 MR. SNYDER: No.

19 COMMISSIONER MCHUGH: You were just
20 the escrow?

21 MR. SNYDER: Yes.

22 COMMISSIONER MCHUGH: Thank you. I
23 have no further questions.

24 COMMISSIONER ZUNIGA: Who was the

1 underwriter in that transaction?

2 MR. SNYDER: I don't recall if they
3 were competitively bid or if they were
4 negotiated underwritings. I am not sure.

5 COMMISSIONER ZUNIGA: Did Meridian
6 usually operate with this type of arrangement of
7 consultants and brokers effectively?

8 MR. SNYDER: Yes, both in our
9 department and in other departments at Meridian,
10 yes.

11 COMMISSIONER ZUNIGA: So, there were
12 multiple transactions with these particular
13 individuals?

14 MR. SNYDER: I was participating in
15 multiple transactions. These two that were
16 included in the allegations by the SEC were
17 among many.

18 COMMISSIONER ZUNIGA: Okay. I had
19 another question. What Commissioner McHugh was
20 perhaps referring in terms of the markup on an
21 individual and aggregate basis, for every bond,
22 every individual security that is perhaps marked
23 comparatively excessively, if you pardon the
24 expression, there's many others that are not in

1 order to meet the arbitrage yield; is that
2 correct?

3 MR. SNYDER: That's correct. There
4 were securities that we lost money on the
5 transactions that in effect had cognitive
6 markups.

7 COMMISSIONER ZUNIGA: Thank you.

8 COMMISSIONER CAMERON: Mr. Snyder, I
9 had a question about, and I'm reading from the
10 New Jersey decision on whether or not to license
11 you as a key employee. This is page 18, and
12 this is Exhibit 8. I am looking at this
13 computer-generated program that they speak
14 about. Do you have that?

15 CHAIRMAN CROSBY: Which page?

16 COMMISSIONER CAMERON: It's page 18
17 and this is Exhibit 8. This is the New Jersey
18 initial decision.

19 MR. SNYDER: Yes, it's the second
20 sentence of the first full paragraph.

21 COMMISSIONER CAMERON: And that
22 seems to me seems to indicate -- is this
23 something the entire company used to price?
24 You see where I'm reading from, right?

1 MR. SNYDER: I do. Markups on bonds
2 purchased for each refunding portfolio were
3 generated by a computer program which used the
4 same factors as programs used by other brokers,
5 yes. Yes, it was used consistently throughout
6 Meridian.

7 COMMISSIONER CAMERON: So, this
8 computer program which I guess a number of
9 factors that were part of the internal policies
10 you talked about?

11 MR. SNYDER: Correct.

12 COMMISSIONER CAMERON: And that's
13 how the pricing was actually --

14 MR. SNYDER: This is 1993, 1994.
15 There weren't really packages. These are Excel
16 type spreadsheets.

17 COMMISSIONER CAMERON: Okay, thank
18 you.

19 CHAIRMAN CROSBY: Others? Back on
20 number five whatever this document is, the
21 complaint, in paragraph seven, the same
22 paragraph Commissioner McHugh talked about, the
23 sentence you've talked about a lot in certain
24 instances -- Do you see this on page three?

1 MR. SNYDER: Yes.

2 CHAIRMAN CROSBY: In certain
3 instances Snyder provided certifications that in
4 essence falsely represented prices charged for
5 securities to determine the fair-market value.

6 Because you looked at securities and
7 apparently the documents were written in such a
8 way that they could be read as it means the
9 package not individuals, because you take that
10 to mean the package of securities, it is not
11 falsely represented that the securities were
12 determined at fair-market value. But it also
13 says and established without an intent to reduce
14 yield.

15 MR. SNYDER: Yes.

16 CHAIRMAN CROSBY: Is that true that
17 that package, the prices were set without an
18 intent to reduce yield?

19 MR. SNYDER: Yes.

20 CHAIRMAN CROSBY: Even though you
21 knew within that package there was yield burning
22 going on in effect?

23 MR. SNYDER: As I testified earlier,
24 if the escrow needed to provide for a former

1 series of bonds that might have eight years of
2 payments left on it, in many cases using that
3 kind of an example, we would have bought
4 securities that only has seven and a half years
5 of investment income.

6 So, we maintained compliance with
7 the IRS arbitrage restrictions by buying shorter
8 maturity securities in the escrow account than
9 were necessary to provide for the retirement of
10 the prior series of higher interest-bearing
11 refunded bonds.

12 The markups were established based
13 on the facts and circumstances associated with
14 providing that portfolio of securities for a
15 certain price to the municipality up to 35 or 40
16 days in the future.

17 CHAIRMAN CROSBY: How do you
18 rationalize the 46.29 percent bond in that
19 context? In whose interest is it and why is
20 that an appropriate markup for that bond?

21 MR. SNYDER: Again, for an
22 individual security a 46 percent markup would be
23 excessive. In a portfolio of \$15 million of
24 securities, if there was a \$50,000 principal

1 amount bond that had a markup that reached 13
2 percent or 46 percent because it was a three-
3 month security or a six-months security but it
4 was part of, as I said, a \$15 million portfolio
5 of securities that had an aggregate markup of
6 one percent, it was not something that mattered.

7 CHAIRMAN CROSBY: Because you looked
8 at it as an aggregate, it didn't break the
9 aggregate level. But as an individual item, it
10 didn't need to be marked up by 46 percent. It
11 could be because you could keep the net
12 underneath the aggregate level.

13 MR. SNYDER: Yes.

14 CHAIRMAN CROSBY: Whose interests
15 were served by the markup of that individual
16 bond?

17 MR. SNYDER: I don't think anyone's
18 interests were served nor do I think anyone's
19 interests were harmed by a markup of that amount
20 on a small fraction of an overall portfolio.

21 CHAIRMAN CROSBY: Who made or paid
22 for, made money or and paid for that markup? It
23 could have been marked up -- If it were a
24 standalone, you were just doing that bond alone,

1 what would the markup have been?

2 MR. SNYDER: Certainly under one
3 percent.

4 CHAIRMAN CROSBY: The effect of
5 marking the extra 45 percent was to do what?

6 MR. SNYDER: It was basically most
7 of the computer programs, it was for ease of
8 calculating the markups. Because a one percent
9 portfolio markup --

10 CHAIRMAN CROSBY: So, you sort of
11 drive it backwards. You say we can get as high
12 as one. Let's get this to one and it ripples
13 backwards through all of the bonds and drives it
14 wherever it goes.

15 MR. SNYDER: In most cases, yes.

16 CHAIRMAN CROSBY: I understand. The
17 combination of this, of the background check,
18 what Commissioner Legreide went through in New
19 Jersey we heard there hearing you talk, I'm
20 fairly comfortable with the face value
21 explanation. And I certainly understand and I
22 think it seems to be the case that whether this
23 was a technicality or a loophole in effect the
24 public interest is served that it is now closed

1 but at the time it wasn't. So, I can sort of
2 take it for its face value.

3 And from a human being standpoint,
4 I'm sorry you have to keep going through this.
5 But from a Commissioner's standpoint I do think
6 it's appropriate.

7 What does concern me though a little
8 bit is the issue of the appearances of your
9 hiring. I wonder to the extent to which you
10 think, your company thinks about the appearances
11 to the outside world about senior executives
12 that are hired. Is that taken into
13 consideration as to how it might appear to the
14 rest of the world?

15 MR. SNYDER: I can tell you from my
16 own experience that before I was even hired as a
17 consultant, I sat down with representatives from
18 Ballard Spahr, who were outside counsel to Penn
19 National going back to 1997. They had their
20 securities practice involved in evaluating the
21 matter.

22 They went through it exhaustively.
23 I don't think if there's a suggestion that there
24 are any shortcuts that had been taken or

1 anything that was undisclosed or anything that
2 was disclosed that wasn't fully vetted, I think
3 that's not the case. Those are not the
4 practices of Penn National Gaming.

5 We did bring in a new CEO in 2001.
6 That CEO had investigative background
7 experience, having worked for the Division of
8 Gaming Enforcement in the state of New Jersey.
9 Any he put in place a very rigid and strong
10 compliance and regulatory oversight practice at
11 Penn National Gaming that continues to this day.

12 CHAIRMAN CROSBY: Who is this
13 you're talking about?

14 MR. SNYDER: Kevin DeSanctis.

15 MR. J. SNYDER: I think you said
16 CEO.

17 MR. SNYDER: COO, he was the COO,
18 I'm sorry. I apologize.

19 CHAIRMAN CROSBY: The question is
20 whether, assuming taking at face value your
21 explanation of what transpired and the
22 settlement that you agreed to no wrongdoing,
23 still the reason we're having this conversation
24 is because to the outside world anybody who's

1 been fined a substantial amount of money and
2 barred from brokerage practices for three years,
3 ipso facto as an assumption there's something
4 funny going on here. That reflects on the
5 organization. Perhaps to the substantial
6 personal detriment of the person in play, but
7 nevertheless it does.

8 You're in the gaming industry. Do
9 you feel a sense of attentiveness to issues like
10 that because you are in the gaming industry
11 where issues of appearance matter more than in
12 other industries?

13 MR. SNYDER: Critically. This is an
14 industry that is subject to the highest levels
15 of probity and is subject to the highest
16 standards of conduct, because as I said in my
17 earlier testimony, the licenses that you and
18 others like you around the company (SIC) have
19 granted us we cherish and we value and
20 recognize. That without them, we don't have a
21 company. We don't have a business.

22 So, there's no question the message
23 has come through loud and clear. And I am quite
24 comfortable and I think that you as you go

1 through the recommendations and the evaluations
2 by staff will be able to get comfortable that
3 there have never been any shortcuts taken at
4 Penn National. And there have never been any
5 oversights at Penn National that should've been
6 caught.

7 CHAIRMAN CROSBY: The distinction
8 I'm making, Mr. Snyder, is appearance. Not the
9 actual substance of wrongdoing, it's the
10 appearance of wrongdoing. And if you were
11 recommending to Mr. Carlino your replacement,
12 and your replacement had just had the
13 transactions with the SEC that you had just had
14 when he hired you, would you recommend to Mr.
15 Carlino that he hire that person?

16 MR. SNYDER: Understanding the facts
17 and circumstances of my case?

18 CHAIRMAN CROSBY: Yes.

19 MR. SNYDER: Absolutely, absolutely.

20 CHAIRMAN CROSBY: Okay.

21 MR. SNYDER: Because there are
22 investigations that go on at all times at all
23 levels, whether it's state, federal, local take
24 your pick.

1 CHAIRMAN CROSBY: Not that the
2 investigation was going on, after the
3 settlement.

4 MR. SNYDER: Even the settlement,
5 because again, there is no finding of fact by
6 anyone associated with this investigation.
7 There is no finding of fact by any court of law
8 as part of the settlement of this matter. It's
9 an interpretation. There's no question.

10 CHAIRMAN CROSBY: I understand that.
11 Any other questions? Thank you.

12 MR. SNYDER: Thank you for your
13 comments.

14 MR. J. SNYDER: Can I have a brief
15 redirect?

16 CHAIRMAN CROSBY: I'm sorry, yes, by
17 all means.

18 MR. J. SNYDER: Mr. Snyder, real
19 quick. The Chair was just asking you about the
20 terms of the resolution with the SEC. And you
21 mentioned a little while ago that you long since
22 have lost interest in municipal finance. And I
23 want to segue from that to the three-year
24 suspension. Was that something that was of any

1 concern to you at the time you did the deal with
2 the SEC in 2001?

3 MR. SNYDER: Not at all.

4 MR. J. SNYDER: What was it that you
5 cared about in terms of the terms of that
6 settlement?

7 MR. SNYDER: Again, the critical
8 thing to me was that I never did anything that
9 was not in compliance with policies and
10 procedures. I never knowingly, I never
11 willingly, I never recklessly violated anything
12 that I understood to be the standards of conduct
13 of my employer or the industry in which I was
14 employed.

15 And that is a distinguishing feature
16 between the settlement that Meridian and another
17 former employer signed in 1998 and the
18 settlement that I signed in 2001.

19 MR. J. SNYDER: You had a series of
20 questions about markups. And you had testified
21 a number of times that the one standard you were
22 using is what's reasonable given the facts and
23 circumstances of in each particular transaction,
24 right?

1 MR. SNYDER: In totality on a
2 portfolio basis, yes.

3 MR. J. SNYDER: One of those
4 circumstances is the risk that Meridian
5 undertook in that 30-day period or otherwise; is
6 that right?

7 MR. SNYDER: Correct. We were
8 agreeing to prices for forward delivery 30, 35,
9 40 days in the future.

10 MR. J. SNYDER: And you had some
11 questions about fair-market values. The fair-
12 market value in your understanding included a
13 component of markup.

14 MR. SNYDER: The markup is
15 predicated on fair-market value. And a
16 component of fair-market value is compensation
17 for risk.

18 MR. J. SNYDER: Two more quick
19 points. I think you were asked by, I believe,
20 Mr. Mackey about who had testified in New
21 Jersey. Do you know an individual Kevin
22 DeSanctis?

23 MR. SNYDER: Yes. I just mentioned
24 Kevin. He was the COO of Penn National from

1 2001 to 2007.

2 MR. J. SNYDER: To your
3 recollection, did he testify in the New Jersey
4 proceedings concerning your licensure?

5 MR. SNYDER: I don't remember if Mr.
6 Descanctis testified or provided a
7 certification. I believe he provided a
8 certification, I am not sure.

9 MR. SNYDER: Okay. And last, there
10 were some questions about the length of time
11 that this suit has been pending concerning
12 indemnity by Meridian, Corestates and
13 successors. That is pending in the Berks County
14 Court of Common Pleas?

15 MR. J. SNYDER: Do you have any
16 familiarity, with all due respect, to that
17 particular court? Do you have any familiarity
18 with the backlog of that court?

19 MR. SNYDER: They are in the process
20 of adding additional judges through state
21 approvals because the backlog is pretty
22 extensive.

23 MR. J. SNYDER: I guess the question
24 I'll ask is if somebody used a number of 11 or

1 12 years, to your understanding are you are the
2 only case in Berks County that's been pending
3 for 11 or 12 years.

4 MR. SNYDER: I don't know the answer
5 to that.

6 MR. SNYDER: Okay, thank you.

7 CHAIRMAN CROSBY: Anybody else?
8 Thank you, Mr. Snyder.

9 COMMISSIONER MCHUGH: Thank you.

10 CHAIRMAN CROSBY: We will take a
11 break.

12

13 (A recess was taken)

14

15 CHAIRMAN CROSBY: We are ready to
16 reconvene our adjudicatory hearing at 1:20. I
17 believe we open with -- no, sorry. It's your
18 turn. You have your next witness. Excuse me.

19 MR. ALBANO: Yes, Mr. Chairman. Mr.
20 Wesley Edens here as our next witness who is
21 prepared to address one of three topics in the
22 notice of adjudicatory hearing. This may be the
23 world's shortest direct exam. Mr. Edens, will
24 you please speak to the committee.

1 MR. EDENS: Mr. Chairman, thanks for
2 the opportunity to come in and talk to you. I'm
3 one of the founders of Fortress Investment
4 Group. We are a money management company based
5 in New York. We formed the company in 1998. We
6 started with 26 employees and managed a little
7 over \$400 million in capital. Today we have
8 just under 1000 employees around the world and
9 manage about \$55 billion as of the end of last
10 year.

11 We are not directly in the gaming
12 business. I'm in the investment business. And
13 I run the private equity portion of our company
14 in which the investment of Penn Gaming is in one
15 of those funds or a couple of those funds.

16 We have investments in a number of
17 different sectors. We are large investors in
18 transportation and infrastructure. Healthcare,
19 we are the largest owner, I think, of senior
20 housing in the country. Financial services,
21 media, we actually have a very significant media
22 presence in the state of Massachusetts. Our
23 company GateHouse has ownership of about 130
24 local newspapers in this part of the world and

1 actually has part of our business based here in
2 Boston.

3 Our business is subject to extensive
4 regulatory oversight both in the United States
5 as well as around the world. Our principle
6 offices are based in New York City, which is
7 where I live. We have offices in London,
8 Frankfurt, Rome, Singapore, Shanghai, Tokyo,
9 Sydney, a number of different parts of the
10 world, and have regulatory presence in all those
11 markets.

12 I serve as a director of Penn
13 Gaming. In 2007, in June 2007 we reached
14 agreement, ourselves and a couple of other folks
15 in the investment group reached an agreement to
16 buy Penn Gaming in its totality. In the period
17 of time when we agreed to buy the company and
18 when we were scheduled to close on it, there was
19 a financial crisis.

20 So, over the course of that 12
21 months or actually more than that 12-month
22 period, it became increasingly clear that there
23 was a challenge to closing the transaction. We
24 had made a commitment to Penn. We had banks

1 that had made commitments to us to provide
2 financing. And there was a lot of noise, as you
3 might expect, in the summer of 2008.

4 We reached an agreement with Penn to
5 alter the nature of our investment. And rather
6 than acquire the company, we made \$1.25 billion
7 investment into preferred stock that is
8 convertible under certain terms of the common
9 stock. To address the question directly that
10 Mr. McHugh asked earlier, on a fully diluted
11 basis at \$67 a share, that's all converted, we
12 would own 15.8 percent of the company.

13 That overstates to an extent the
14 amount of voting control we have because we
15 can't vote as a common shareholder. We're a
16 preferred shareholder. And I simply serve on
17 the Penn board as a director. We have no role
18 in the day-to-day operations of Penn Gaming.
19 So, it's just merely in my capacity as a
20 director of the company.

21 I have been asked in particular to
22 provide testimony about our hiring of Dan Mudd
23 and the subsequent departure of Dan from the
24 firm.

1 Dan was a director of our company at
2 the time we took the company public. He was
3 well known to one of my partners, Pete Briger
4 who is one of the partners who runs a big part
5 of our business, had done a lot of business with
6 Dan when he was in Asia. Pete was running the
7 principal investing group for Goldman Sachs.
8 Dan was in charge of GE credit's business in
9 Southeast Asia. So, they had had some business
10 dealings at that time. So, they knew each
11 other.

12 I knew Dan very casually. I didn't
13 know him well personally then. He was on the
14 board of directors for us. Of course, then in
15 2008, in the fall of 2008, about five years ago
16 the federal government put Fannie Mae and
17 Freddie Mac into receivership. Dan stepped down
18 at that time. That was an extraordinary period
19 of time.

20 We performed our own investigation
21 with respect to what we thought Dan's position
22 was then. And we were satisfied that he had
23 done nothing wrong in our opinion based on the
24 facts as we had been presented.

1 He stayed on the board. The
2 financial crisis intensified in the next year, I
3 guess it was in -- I just want to get my dates
4 correct here. In August 2009, we asked Dan to
5 step in and become the CEO of the company. I
6 was the CEO at that time.

7 What became very clear after we took
8 our company public is that being the CEO of the
9 company was a job additionally or incremental to
10 my day job of being an investor. So, we thought
11 it was good idea to basically focus on investing
12 the money, which is what our primary job was.
13 And brought Dan in really in as an
14 administrative CEO.

15 He played no role whatsoever in any
16 of the investment operations of the company. To
17 our knowledge, he never sat in a single
18 investment committee that I had or was involved
19 in the management of the investments whatsoever.
20 He was really an administrative CEO. And I
21 thought that he did a good job in the period
22 that he was the CEO.

23 In March 2001 (SIC), Dan received a
24 Wells notice, which he promptly notified us

1 about. A Wells notice is not a dispositive
2 notice that there's going to be action taken by
3 the SEC, nor is it something that we thought was
4 of sufficient cause to separate ourselves from
5 Dan.

6 He issued a public statement that
7 basically said what he believed to be the facts.
8 The facts as I understand them is that the Wells
9 notice that Dan -- at the end of that year,
10 which turned into a civil lawsuit filed by the
11 SEC, the primary focus of it was the degree and
12 the type of disclosure that he signed off on as
13 CEO regarding the mortgage holdings.

14 Again, it's not my position to know
15 how that hearing will end or not end. So, Dan
16 is in the process of dealing with this lawsuit.
17 What I would say is that the form of the
18 information, the disclosures that were used by
19 Dan while he was CEO, I believe, are exactly the
20 same as what Fannie Mae uses today.

21 CHAIRMAN CROSBY: Say that again.
22 I'm sorry, I didn't follow that.

23 MR. EDENS: The disclosures that
24 were used by Fannie Mae on their mortgage

1 portfolio that Dan used as CEO that they are
2 critical of that I believe is the subject of the
3 civil lawsuit pending with Dan, I believe is
4 exactly the same form of disclosure that they
5 used subsequent to that up to today. Without
6 knowing whether they'll find that that was
7 correct, or incorrect or sufficient or
8 insufficient is just a matter of note that it's
9 exactly the same as it is right now.

10 When Dan got the notice in December
11 2011 that there had been a securities action
12 filed against him, we sat down as a board, we
13 talked about it. We decided basically that Dan
14 needed to go and focus on the things that were
15 pertinent to his life with regards to defending
16 himself against a lawsuit and whatnot.

17 We asked him to step down. He did
18 so. And there's been really no contact since
19 then. Dan is a guy I personally think has
20 tremendous integrity. He's a very
21 straightforward character. What the results of
22 his civil lawsuit will be years later, I don't
23 really know. But that's basically what has been
24 the question.

1 COMMISSIONER CAMERON: That's
2 substantially different than the account that
3 we've read in the investigation report, which is
4 that the board decided not to let him go. They
5 discussed those options but then decided to
6 place him on leave, and wanted to discern the
7 reaction of its investors before taking any
8 action. Then there was negative reaction. So,
9 the board did not move on this until there was a
10 negative reaction; is that accurate?

11 MR. EDENS: The board met as soon as
12 we got notice of the notice. And we decided to
13 think about it and gauge what we thought were
14 the ability for Dan to discharge his duties as
15 CEO.

16 The timeframe involved is very
17 short. We're talking about a matter of days
18 from the time when we actually first got the
19 notice until Dan was put on leave and then
20 departed the company shortly thereafter.

21 So, there's not a lengthy period
22 between one and the other. I think the specific
23 dates, which I can find -- Dan resigned on
24 January 24, 2011 -- 12, excuse me. On December

1 16, 2011 is when he got the notice. So, the
2 timeframe involved in totality including the
3 holidays was about a month.

4 COMMISSIONER CAMERON: But did you
5 wait for a negative reaction from investors
6 before making that decision?

7 MR. EDENS: The negative reactions
8 from investors were one of the things that we
9 considered. But really as a board and
10 individually my view about it was we needed to
11 contemplate whether we thought Dan could be
12 effective in his role as CEO, being an
13 administrative CEO while he was actually dealing
14 with his own lawsuit. So, there were a number
15 of things that were involved.

16 Certainly, we had a handful of
17 investors that contacted us and said, look, what
18 do you expect to do about Dan? So, they had a
19 negative reaction to it. But there were others
20 that expressed support. It was not a unitary
21 action of one investor or any series of
22 investors. We have many thousands of investors
23 across the firm. So, it was really the
24 collective judgment, I think, of all of the

1 facts that were pertinent. And we said it's the
2 right thing.

3 Dan resigned voluntarily. So, we
4 didn't ask him to step down. But it was
5 certainly our judgment that he was going to have
6 a challenge in performing his duties adequately.

7 COMMISSIONER CAMERON: When you say
8 he resigned voluntarily, you didn't ask him step
9 down?

10 MR. EDENS: No, we didn't ask him
11 to. Ask to step down would be another way of
12 saying we fired him. We did not fire Dan.

13 COMMISSIONER CAMERON: You gave him
14 an opportunity to resign then?

15 MR. EDENS: Yes. We dealt with him
16 consistent in the manner that he had performed
17 his duties, which was in an open and transparent
18 manner. It was the best interest of the
19 shareholders which were very large shareholders
20 and our investors that we're most focused on.
21 And I think that the conclusion at the end was
22 an obvious one.

23 COMMISSIONER CAMERON: When you
24 speak about the allegations, one of them is that

1 he lied before Congress. That's an allegation
2 as well. It's not just what happened with his
3 sign-offs at Fannie Mae. It seems to me a very
4 serious matter. And I guess I was concerned
5 reading that the board said no, we don't want
6 him to step down. And let's see what the
7 reaction is from investors before we
8 basically --

9 MR. EDENS: I still believe in this
10 country it's innocent until proven guilty. So,
11 people can allege whatever they want to allege,
12 including the government.

13 We base our views about Dan based on
14 our own interactions with him and based on the
15 facts and circumstances that we deal with him
16 just as I would with anybody, as I would with
17 you or any other person I worked with or dealt
18 with in business.

19 Dan had always discharged
20 himself honorably in a manner consistent with
21 the professionalism we expect in our
22 organization. So, we took what we think was a
23 reasonable and prudent course of action to
24 consider it, not do anything in a hasty manner
and then deal with it subsequently.

1 I think the story is not completed
2 in terms of how that lawsuit will be resolved.
3 Those were extraordinary periods of time. There
4 was an allegation of lying. There's allegations
5 of lots of things. I can only speak to what my
6 own interactions with him were, which were
7 nothing but professional and with a lot of
8 integrity. That's what we did.

9 Even given that, our view was and
10 eventually Dan's view as well is that he needed
11 to go and focus on his own issues in dealing
12 with that lawsuit. It was inconsistent for him
13 to be the CEO of our public company.

14 CHAIRMAN CROSBY: Mr. Mackey? Are
15 you finished?

16 MR. ALBANO: If I may?

17 CHAIRMAN CROSBY: Sure, please.

18 MR. ALBANO: I think I may save Mr.
19 Mackey some time by clarifying one point before
20 I turn the witness over. I want to distinguish
21 between two sets of dates, Mr. Edens. And for
22 the Commission's benefit, in the applicant's
23 hearing exhibits, 10A is an SEC filing made by
24 Fortress in March -- forgive me. There are two

1 SEC filings 10A and 10B, both 8-K filings by
2 Fortress. Mr. Edens is here just to clarify, I
3 want to distinguish the time period of the Wells
4 notice on the one hand and the time period of
5 the SEC action on the other hand.

6 If one were to read from what's now
7 been admitted 10A, the Fortress filing says that
8 on March 11, 2011 the staff of the US Securities
9 and Exchange Commission, the SEC, notified, a
10 so-called Wells notice, counsel for the chief
11 executive officer, Mr. Daniel Mudd, that it is
12 recommending that the SEC commence a civil
13 enforcement action against him, etc. And then
14 in concludes by saying that under SEC rules, Mr.
15 Mudd is permitted to make a Wells submission in
16 which he seeks to persuade the SEC that no such
17 action should be commenced. Mr. Mudd has
18 informed the company that he intends to make
19 such a submission.

20 My simple question to you, Mr.
21 Edens, is does that refresh your memory that the
22 Wells notice that Mr. Mudd received was in or
23 about early March 2011?

24 MR. EDENS: That's correct.

1 MR. ALBANO: And the company,
2 Fortress, made a public disclosure of Mr. Mudd's
3 receipt of that Wells notice?

4 MR. EDENS: We did.

5 MR. ALBANO: If we could turn to
6 10B, which is a subsequent 8-K filing. And 10B
7 reads in part on December 16, 2011, the SEC
8 filed a civil complaint in the Southern District
9 of New York against Mr. Mudd. Then it proceeds.

10 Does that refresh your memory that
11 the civil complaint, the SEC action was in or
12 about December of 2011?

13 MR. EDENS: December 16. And then,
14 not to interject, Dan was placed on
15 administrative leave on the 21st of December.
16 So, the timeframe of actual causative action, as
17 it were, between when Dan received the lawsuit
18 and when he actually went on administrative
19 leave was a very short period time. He then
20 resigned on January 24.

21 MR. ALBANO: The last document I'd
22 like to refer to is IEB's Exhibit 17, which is a
23 copy of Mr. Mudd's severance agreement. I would
24 point to, if I may, two portions of Exhibit 17.

1 First, for the benefit of the
2 Commission on the first page of Exhibit 17,
3 section 1B states in part: you agree to sign the
4 resignation letter set forth in the form
5 attached hereto as Exhibit A. And then three
6 other points, which I believe there has been
7 some confusion on that the severance agreement I
8 think clarifies. You agree to execute any and
9 all documentation provided to you by the company
10 or any affiliate relating to (i) the
11 relinquishing effective as of December 21, 2011
12 of any and all signing authority you may have on
13 behalf of or with respect to the company or any
14 affiliate, including for the avoidance of doubt
15 any funds, etc.

16 Subsection (ii) your resignation
17 from the office of chief executive officer
18 effective as of January 24, 2012. And (iii)
19 your resignation as a board and management
20 committee member effective as of December 21,
21 2011.

22 Mr. Edens, can you confirm please
23 that the date of Mr. Mudd's resignation from
24 management was effective essentially immediately

1 upon the signing of his severance agreement; is
2 that fair?

3 MR. EDENS: That's correct.
4 Although he was suspended, essentially
5 administratively five days after we received the
6 SEC notice, which actually predates the actual
7 resignation by about a month.

8 MR. ALBANO: And for the
9 Commission's benefit, section one on that same
10 page of Exhibit 17 sets out a third status from
11 which Mr. Mudd resign as an employee. The date
12 of his resignation as an employee, do you recall
13 whether that was some 30 days after --

14 MR. EDENS: Yes, February 22.

15 MR. ALBANO: And do you know why the
16 effective date of his resignation as chairman --
17 strike that out please.

18 Do you know why the effective date
19 of his resignation from management was immediate
20 while his effective date of leaving as an
21 employee was 30 days out?

22 MR. EDENS: I think it was
23 administrative, maybe getting subsequent
24 healthcare for his family or something like

1 that. I don't recall actually.

2 From a practical standpoint, he was
3 put on administrative leave in five days after
4 we got the notice. That kind of ended his day-
5 to-day involvement with the company.

6 MR. ALBANO: And the last thing I'll
7 point to for the Commission's benefit is the
8 last page of Exhibit 17 of the Board exhibits is
9 a copy of Mr. Mudd's brief statement of
10 resignation, which if I may, it is very brief.
11 Effective January 23, 2012 I hereby resign from
12 any and all positions with Fortress Investment
13 Group, LLC with any of its affiliates and with
14 any other any of their respective funds. Last
15 sentence, in addition, effective February 22,
16 2012, I hereby resign from my employment with
17 FIG, LLC and any of its affiliates. And that's
18 the last page of Exhibit 17.

19 I have nothing else I'd like to ask
20 this witness.

21 CHAIRMAN CROSBY: Mr. Mackey?

22 MR. MACKEY: Mr. Edens, good
23 afternoon. I just want to set the timeframe
24 again so it's clear in the Commission's mind.

1 Prior to August 2009, you were both the chair of
2 Fortress and also the CEO of Fortress, holding
3 both roles?

4 MR. EDENS: Right.

5 MR. MACKEY: At that time, August
6 2009, Mr. Mudd was serving as a director for
7 Fortress?

8 MR. EDENS: From the time we took
9 the company public in February 2007.

10 MR. MACKEY: Right from the start
11 then.

12 MR. EDENS: Excuse me, not right
13 from the start. We formed the company in 1998.

14 MR. MACKEY: But from the time it
15 went public in 2007, Mr. Mudd was one of the
16 original directors?

17 MR. EDENS: That's correct.

18 MR. MACKEY: You testified that you
19 -- Did you know him at all before February 2007
20 when he came on the board?

21 MR. EDENS: I met him a handful of
22 times, but I was not a close personal friend
23 with him. I knew him in his capacity at Fannie
24 Mae a little bit. Maybe I met with him once or

1 twice there. One of my other partners had spent
2 a lot of time with him.

3 MR. MACKEY: This is Peter Briger?

4 MR. EDENS: Briger.

5 MR. MACKEY: Briger?

6 MR. EDENS: Yes.

7 MR. MACKEY: Would you characterize
8 him as a close friend of Mr. Briger's?

9 MR. EDENS: I don't know if he's a
10 close friend. He was certainly a business
11 acquaintance with him. So, he had some dealings
12 with him.

13 MR. MACKEY: As of the time that Mr.
14 Mudd became one of your original directors after
15 going public, you were aware that he was also
16 serving as the CEO of Fannie Mae at that time?

17 MR. EDENS: That's correct.

18 MR. MACKEY: Then fast forwarding up
19 to the fall of 2008, and you had a little bit
20 testimony about that, the financial crisis that
21 took place then, you're aware that in September
22 2008 the Federal Housing Finance Agency placed
23 Fannie Mae into receivership.

24 MR. EDENS: That's correct.

1 MR. MACKEY: Do you have the Bureau
2 exhibits in front of you, Exhibit 18 which is a
3 copy of two newspaper stories, one from the New
4 York Times, one from the Wall Street Journal. I
5 represent for the record that the first article
6 is a New York Times article from September 7,
7 2008 entitled Few Stand to Gain on This Bailout
8 and Many Lose. Could I ask you to turn to the
9 second page of the article?

10 MR. EDENS: Sure.

11 MR. MACKEY: First of all, I should
12 ask you do you recall reading this article when
13 it came out?

14 MR. EDENS: I don't. There were
15 probably literally thousands of articles written
16 about the bailout.

17 MR. MACKEY: Yes, I agree. With a
18 Google search, you could come up with a million.

19 Five paragraphs down on the second
20 page, this paragraph beginning with the
21 shareholders. Do you see that?

22 MR. EDENS: Yes.

23 MR. MACKEY: The shareholders of
24 Fannie Mae and Freddie Mac including many

1 employees will not be so lucky. The company's
2 share prices have plunged about 90 percent this
3 year, wiping out about \$70 billion of
4 shareholder value. The shares are likely to be
5 worth little or nothing under the government's
6 rescue plan.

7 Did I read that correctly?

8 MR. EDENS: Yes.

9 MR. MACKEY: As of September 7, 2008
10 were you generally aware of the extent of the
11 collapse of Fannie Mae and the loss of
12 shareholder value associated with that?

13 MR. EDENS: Absolutely.

14 MR. MACKEY: Then turn to the last
15 page of Exhibit 18, if you could, which is an
16 article from the Wall Street Journal. And the
17 headline on this particular piece by Michael
18 Crittenden is Cornyn Seeks Criminal Inquiry of
19 Fannie Freddie Executives. Do you recall this
20 article, seeing this article at the time?

21 MR. EDENS: I don't.

22 MR. MACKEY: Do you recall ever
23 seeing this article?

24 MR. EDENS: I don't.

1 MR. MACKEY: Were you aware in
2 approximately September 2008 that there were
3 political leaders in the United States asking
4 for criminal investigation of the senior
5 leadership at Fannie Mae?

6 MR. EDENS: There were political
7 leaders then, there are political leaders now
8 that believe there should be a lot of criminal
9 investigations both at Fannie Mae, Freddie Mac,
10 banking groups, all of those folks. So, I don't
11 remember anything particular about Fannie and
12 Freddie.

13 MR. MACKEY: So, the question was
14 were you generally aware in September 2008 that
15 there were people calling for criminal
16 prosecutions stemming out of Fannie Mae's
17 collapse?

18 MR. EDENS: I guess. I don't
19 recall.

20 MR. MACKEY: So, you were aware
21 presumably, again the September 2008 timeframe
22 that in the midst of this complete collapse of
23 Fannie Mae, the FHFA removed Mr. Mudd as CEO?

24 MR. EDENS: I believe what happens,

1 they put the company into receivership, just as
2 they did Freddie Mac and they asked for the
3 senior management of both of the companies to
4 resign.

5 MR. MACKEY: Correct.

6 MR. EDENS: That receivership, by
7 the way, is actually currently being
8 adjudicated. It's a pretty lively topic right
9 now, if you're aware of that.

10 The legality about the shares of
11 Fannie Mae and Freddie Mac have actually rallied
12 fairly substantially, the preferred shares.
13 There's a question as to whether or not the
14 receivership would be put in place at the end,
15 as I understand it. I'm not involved in it.
16 I'm just reporting what it is.

17 Even today, there's a fair bit of
18 dispute over exactly how that transpired and how
19 it's going to turn out. The preferred shares
20 have risen many, many, many multiples in value
21 over the last six months as this lawsuit was
22 had.

23 MR. MACKEY: Based on the events
24 that we've just discussed, which were the

1 complete financial collapse and receivership of
2 Fannie Mae, the calls for some for legal action
3 against senior executives in both, Mr. Mudd's
4 removal as CEO and president, did you have any
5 concerns as chair about Mr. Mudd's continued
6 service on the Fortress board?

7 MR. EDENS: Did not.

8 MR. MACKEY: And why was that?

9 MR. EDENS: Because I didn't have
10 any concerns about it. Dan was the CEO of a
11 company that busy and insures mortgages. The
12 residential housing market in the United States
13 of America went down about 30-odd percent. So,
14 in totality, it's something that is
15 unprecedented.

16 In my opinion, it wouldn't matter
17 who was running the company at the time, there
18 would have been a complete collapse of it just
19 given the financial structure and exposure they
20 had in the housing market. And furthermore, I
21 didn't think that Dan personally played a role
22 in causing Fannie Mae to collapse. That was not
23 my opinion. That's not my opinion today.

24 MR. MACKEY: What about, while we're

1 on the subject, his role in the loss of
2 shareholder value in the company by about \$70
3 billion?

4 MR. EDENS: Dan was the CEO of a
5 company that was essentially taken over by the
6 government. So, there was a complete loss. I
7 think his responsibility as the CEO is in part
8 responsible for that.

9 I do think though that the market
10 forces of the housing market collapsing had an
11 awful lot to do with the eventual collapse of
12 the company. With that said, I don't think
13 actually it would matter who ran the company at
14 that point in time. If the housing market went
15 down 30-odd percent and you insured or owned a
16 bunch of mortgages, I think there's going to be
17 enormous decline in value.

18 CHAIRMAN CROSBY: What if you owned
19 a whole lot of subprime mortgages, it wouldn't
20 have necessarily gone down if you owned healthy
21 mortgages.

22 MR. EDENS: Healthy mortgages went
23 straight down too. The declines on both sides
24 were historic. Going back to housing prices all

1 the way back to the Great Depression, there is
2 only very brief periods of time when you had
3 very, very isolated parts of the country that
4 had those kinds of declines. Places that had
5 real concentrations in single industries like
6 Texas in the mid-1980s when the oil prices
7 collapsed.

8 There is nobody to my knowledge, and
9 I've been around the mortgage business
10 professionally my whole life, professional life
11 that had any view whatsoever that you would have
12 this kind of collapse (INAUDIBLE). Because with
13 a 35 percent decline in housing prices which is
14 approximately the number I think that people use
15 in the industry, prime mortgage would perhaps
16 the less hurt, but a prime mortgage portfolio
17 suffered tremendous losses as well.

18 So, the subprime stuff was clearly
19 the most affected. And they had exposure to
20 that as it turns out. I think that's the
21 dispute as to what the nature the disclosure is.
22 Again, I didn't create the disclosure. The only
23 thing I would make as a point is the disclose
24 that Dan used, if you go back, there's actually

1 testimony in front of the House during those
2 periods of time when he became CEO commending
3 him on the type of disclosure he was using.

4 So, 20/20 hindsight could they have
5 disclosed it differently? I guess the answer is
6 sure. But with the financial leverage that
7 Fannie Mae and Freddie Mac operated at, I think
8 it is likely that they would have gone out of
9 business had they had an entirely prime
10 portfolio. That's how severe the downturn was.

11 The subprime stuff obviously was
12 most grievously impacted. But the prime stuff
13 would have gone down as well, they did go down
14 as well.

15 MR. MACKEY: September 2008, Fannie
16 Mae goes into receivership, completely
17 financially collapses and there are calls for
18 legal action against the senior executives of
19 Fannie Mae. Less than a later, Fortress hires
20 him as their CEO, correct?

21 MR. EDENS: Yes.

22 MR. MACKEY: And you were asked in
23 the course of the suitability investigation
24 about his hiring. Do you recall that?

1 MR. EDENS: I don't recall that
2 question.

3 MR. MACKEY: Page 103 of the report.
4 Do you see the paragraph on page 103, this is
5 page 103 of the investigative report, it says
6 Edens said he believed that Mudd's background in
7 the financial sector made him well suited for
8 the position. Did I read that sentence
9 correctly?

10 MR. EDENS: Yes.

11 MR. MACKEY: You testified a few
12 minutes ago that it was not so much financial
13 acumen that you needed Mr. Mudd, but
14 administrative skills as CEO running a big
15 company as administrative CEO?

16 MR. EDENS: Yes.

17 MR. MACKEY: So, what was it about
18 background in the financial sector that made him
19 attractive to you?

20 MR. EDENS: He had been an investor
21 on behalf of GE prior to his time at Fannie Mae.
22 And had been an investor running their
23 investment processes in Southeast Asia during
24 the Asian collapse in the late 1990s.

1 So, he had been around those markets
2 before as an investor. That's where Pete had
3 met him originally. GE is a fine company.
4 Their credit culture, their processes are
5 actually impeccable. Dan had become the
6 administrative officer of Fannie Mae, which is a
7 very large Fortune 500 company.

8 So, we thought that he had a lot of
9 skills with regards to the management of a large
10 public company and had a background in
11 investing. It was not his primary
12 responsibility to be an investor for us. So, he
13 did not participate in my investments or in
14 Pete's investments in any way, shape or form.

15 MR. MACKEY: Let me just read the
16 rest of the paragraph. He advised investigators
17 -- That's you talking to investigators.

18 MR. EDENS: Yes.

19 MR. MACKEY: -- that Mudd's forced
20 departure from Fannie Mae should not be
21 considered as an impediment to hiring him as the
22 CEO of Fortress.

23 Would that be a fair summary of your
24 statement to the investigators?

1 MR. EDESN: Yes.

2 MR. MACKEY: Why not? Why shouldn't
3 the collapse of the company at which he was at
4 the helm in the fairly spectacular fashion that
5 it did collapse not be held against him in
6 connection with hiring as CEO of a major
7 financial firm?

8 MR. EDENS: It was our judgment, it
9 was my judgment might as well that his skill set
10 and his background and acumen were all suited to
11 what we needed at the time. And I did not hold
12 him personally responsible for the collapse of
13 Fannie Mae.

14 It's worth noting that one of the
15 reasons why there's such a lively debate over
16 the nature of the receivership right now is that
17 Fannie Mae is now reaping spectacular profits.
18 I would argue that a big part of the reason why
19 they had spectacular losses were events outside
20 their control, the collapse of the housing
21 market.

22 A big part of the reason why they're
23 realizing spectacular profits right now is the
24 opposite. The housing prices have rebounded

1 substantially. So, the question as to whether
2 or not was Dan responsible solely for the
3 decline or primarily for the decline of Fannie
4 Mae, in my opinion, no. It's just my opinion.

5 COMMISSIONER ZUNIGA: I would also
6 probably note that a big reason of their success
7 is relative to now the explicit backing of the
8 US government; is that correct?

9 MR. EDENS: I don't believe so. If
10 you want my honest opinion as to the recent
11 success, I think a big part of their success
12 recently is that they have raised the price by
13 which they guarantee mortgages really
14 dramatically. There's a general lack of
15 competition because the financial crisis took
16 out so many of the people they competed with.

17 So, their guarantor fees that they
18 charge to support mortgages have gone up three
19 or four or five fold. They've gone up very
20 substantially. And housing prices have gone up.
21 Those two things together are very powerful
22 impacts on the increase in profitability of
23 Fannie Mae and Freddie Mac.

24 But there's still, I'm not the

1 expert as to what should happen with them and
2 how they should be structured and whatever. But
3 I just made the observation that if you're very,
4 very leveraged to changes in housing prices and
5 it goes down that's a bad thing. If it goes up
6 that's a very good thing. And I don't think
7 that any one individual is really solely
8 responsible for that. And I didn't think Dan
9 was in this case.

10 MR. MACKEY: Was it the board that
11 made the decision to hire Mr. Mudd?

12 MR. EDENS: It was a board decision.

13 MR. MACKEY: Describe to me the due
14 diligence process involved in that hiring.

15 MR. EDENS: Well, we have a
16 background checks and investigations that we run
17 as an ordinary course of all of the people that
18 we do business with as well as people that are
19 on the board. Again, we knew Dan as a board
20 member. We actually conducted a series of
21 investigations incremental to that as we would
22 with any person who was that either do business
23 or hire. And he passed those to our
24 satisfaction.

1 MR. MACKEY: Who does that
2 background check? Is that someone internal at
3 Fortress or do you have an outside investigatory
4 concern?

5 MR. EDENS: Both, we use
6 investigation groups at time. We have our own.
7 We have a very deep compliance culture. Again,
8 we're a heavily regulated institution, so we
9 have a lot of internal folks that do that as
10 well.

11 MR. MACKEY: With respect to Mr.
12 Mudd's hiring as CEO, it's your testimony that
13 there was both internal due diligence done and
14 due diligence performed by an outside
15 investigative service for you?

16 MR. EDENS: I don't remember exactly
17 what we did with the external firms. I would
18 need to find that out

19 MR. MACKEY: Is it possible there
20 was no external due diligence done?

21 MR. EDENS: It's possible, but it's
22 unlikely.

23 MR. MACKEY: And you say it's
24 unlikely just because it was your practice to do

1 it?

2 MR. EDENS: It's our practice to
3 investigate people's behavior and activities and
4 prior relationships.

5 MR. MACKEY: But you don't have a
6 specific recollection of having an outside firm
7 do it in connection with Mr. Mudd?

8 MR. EDENS: I don't have a
9 recollection of that.

10 MR. MACKEY: Did members of the
11 board interview Mr. Mudd before he was hired?

12 MR. EDENS: I don't recall him
13 specifically interviewing. He would have been
14 on the board since the beginning. So, they
15 would have known him well. There was a lot of
16 discussion about hiring Dan as the CEO both
17 individually and collectively. But I don't know
18 if there was a specific discrete interview
19 process incremental to that.

20 MR. MACKEY: Did anybody on the
21 board or did you, Mr. Edens, have a specific
22 discussion with Mr. Mudd about a potential legal
23 fallout from the collapse of Fannie Mae?

24 MR. EDENS: I don't recall. I

1 didn't have that discussion with him or I don't
2 recall having the discussion with him.

3 MR. MACKEY: You did say previously
4 that you were generally aware that there were
5 people who were calling for legal action to be
6 taken?

7 MR. EDENS: There are generally
8 people calling for legal action today if you
9 read the newspapers. I think any time you have
10 the kind of collapse in shareholder value and
11 hardships that people have suffered, there's a
12 lot of people that are still very unhappy about
13 what has happened and want to get to the bottom
14 of it. That's the nature of it.

15 MR. MACKEY: Let me ask you this,
16 did anybody on the Fortress board, anybody
17 involved in the hiring of Mr. Mudd at any point
18 say something like gee, he's a terrifically
19 capable guy and a smart guy, but it just didn't
20 go so well at Fannie Mae there at the end. And
21 I'm not sure he's the right guy to lead our
22 organization. Did anybody suggest that?

23 MR. EDENS: I don't think so. Not
24 to my knowledge. Again, I think when you look

1 at that period of time and what was going on in
2 the world, which is a remarkable period of time,
3 if you disqualify for consideration everybody
4 who had had any involvement with a financial
5 institution, you would narrow down the list of
6 candidates dramatically in terms of people who
7 would be qualified to do it.

8 CHAIRMAN CROSBY: You're creating a
9 straw man that nobody's talking about. We're
10 talking about the guy who was CEO of Fannie Mae.
11 That's not just anybody involved in the
12 financial world.

13 We're talking about the guy who was
14 CEO of Fannie Mae. And nobody raised a question
15 saying do you think maybe this doesn't make
16 sense for our company?

17 MR. EDENS: Fannie Mae until the
18 financial crisis in my opinion was a highly
19 thought of and respected institution. People
20 thought that they did their job well. Again,
21 for the benefit of 20/20 hindsight, when you
22 look at what has happened and the collapse of
23 the housing market, you can reach different
24 conclusions.

1 But I've done business with Fannie
2 Mae and Freddie Mac and Ginnie Mae for decades.
3 And I would say in general up until the
4 financial crisis, they were thought of as a very
5 well-respected, very well-run organization.
6 That really is my perspective.

7 CHAIRMAN CROSBY: So, was Lehman
8 Brothers, right? So, that doesn't get us very
9 far.

10 MR. EDENS: Yes, I worked at Lehman
11 Brothers too. So, there you have it. I thought
12 it was a pretty good place when I worked there
13 but I left there a long time ago.

14 I think that the degree of leverage
15 in hindsight in the financial markets was way
16 too high. I think that led to bad behavior on
17 lots of different levels.

18 I would say if you really peel back
19 the housing market, in my opinion, there were
20 certainly bad things that happened at banks.
21 There were bad things that happened with
22 brokers. There were bad things that happen with
23 borrowers. The list of people who did wrong
24 things is a very, very, very long list.

1 And of course, the people at the top
2 of the organizations are the ones who deserve
3 the most scrutiny because they've got the most
4 significant roles in there.

5 Again in my opinion, I don't think
6 that anybody in the position of being the CEO of
7 Fannie Mae or Freddie Mac going into the
8 financial crisis could have a meaningfully
9 different impact. I really don't. The
10 institutions are just too big and too leveraged
11 into a marketplace that was going down very
12 dramatically. And that's what we thought about
13 and talked about when we looked at Dan.

14 Then we evaluated the character of
15 Dan as an individual. Dan was a Marine Corps
16 lieutenant. He was a guy of great integrity.
17 He served with General Electric in what I think
18 is a very admirable way, a high-quality company.
19 My interactions with him were actually very,
20 very good.

21 He was not and is not a close
22 personal friend of mine. This was one thing
23 that was done completely at arm's length. And I
24 thought at the time it was a good decision.

1 Even when we got the Wells notice,
2 right, and Wells notices are very, very serious
3 matters. I would say that a Wells notice today
4 is different than a Wells notice was perhaps 10
5 years ago, just because there's so many Wells
6 notices that were issued at the time of the
7 financial crisis.

8 Typically, we would find that a
9 Wells notice would lead to either charges or not
10 charges and a lawsuit within six months. That
11 wasn't the case with Dan. We got a Wells notice
12 in March. He got his lawsuit delivered to him
13 in December. Once it became clear that it was
14 not just a Wells notice but it was actually a
15 civil lawsuit by the SEC, we took actions I
16 think very expeditiously.

17 MR. MACKEY: Let me ask you this
18 about the Wells notice now that we're on that.
19 March 2011 you learn he receives a Wells letter.
20 Did Mr. Mudd communicate that to the board?

21 MR. EDENS: He did.

22 MR. MACKEY: Your counsel has shown
23 the Commission Exhibit 10, which is the 8-K
24 filing that was done in connection with your

1 CEO's receipt of the Wells notice.

2 MR. EDENS: Yes.

3 MR. MACKEY: Did you ever see the
4 notice?

5 MR. EDENS: I did not.

6 MR. MACKEY: Did you ask Mr. Mudd
7 for it?

8 MR. EDENS: I did not.

9 MR. MACKEY: Do you know if anybody
10 in the company saw it?

11 MR. EDENS: Certainly, I'm sure
12 counsel did. I'm sure that people within the
13 company looked at it I'm assuming, but I did not
14 personally.

15 MR. MACKEY: So, you think somebody
16 did ask for it?

17 MR. EDENS: I'm quite sure somebody
18 did.

19 MR. MACKEY: Did you personally
20 discuss it with Mr. Mudd?

21 MR. EDENS: I don't recall actually
22 personally discussing it.

23 MR. MACKEY: Do you know if anybody
24 on the board discussed it with Mr. Mudd?

1 MR. EDENS: Again, I'd be
2 speculating. But I would assume that some
3 people talked to him about it. It was a topic
4 of discussion at the board, of course. So, we
5 had dialogue about it, but I don't recall
6 actually talking to Dan about it.

7 CHAIRMAN CROSBY: Actually, it says
8 in the report it says Spectrum reviewed the
9 minutes of board of directors regarding this
10 matter, the Wells letter, during our Ohio
11 investigation. It was readily apparent that no
12 formal discussions among the board members
13 occurred following the issuance of the Wells
14 letter. No formal discussions.

15 MR. EDENS: No formal discussions.
16 The one thing I will say is that the
17 shareholders of the company, the top five
18 shareholders of which I am one of them,
19 constitute about 60 percent of the
20 shareholdings. We have discussions about the
21 company all the time. Not outside of the board,
22 but we do have discussions all the time.

23 It could be accurate that we may not
24 have talked about it in a formal board meeting,

1 but we certainly talked about Dan's Wells notice
2 actively. And we care about it deeply. We're
3 the biggest shareholders.

4 MR. MACKEY: At the point where you
5 or the other members of the board learned that
6 Mr. Mudd received the Wells letter, did you or
7 any member of the board direct that a more
8 specific investigation be done of the potential
9 charges that were facing Mr. Mudd?

10 MR. EDENS: We didn't know what
11 potential charges there were facing Mr. Mudd.

12 MR. MACKEY: But he certainly did.

13 MR. EDENS: I don't know what he
14 knew or didn't know.

15 MR. MAKCEY: Did you ever ask Mr.
16 Mudd, gee, what is the SEC after here? What are
17 they going to charge you with?

18 MR. EDENS: It was very clear in my
19 discussions with Dan early on that it centered
20 around the adequacy of the disclosure at Fannie
21 Mae of their mortgage holdings.

22 It's ironic to me, for what it's
23 worth. Dan is one of the most conservative
24 people I have met in a public company with

1 regards to disclosure. And he was consistently
2 like that. His behavior with us as a public
3 company was extremely conservative.

4 So, it is ironic to me that that is
5 the basis, I think that's the foundation of what
6 they are alleging that he did incorrectly. My
7 own interactions with him were 180 degrees the
8 opposite. So, I can only base it on what my
9 interactions were.

10 MR. MACKEY: If you understood that
11 the SEC was reviewing the adequacy of the
12 disclosures he made, and in particular the
13 adequacy of the disclosures he made about Fannie
14 Mae's exposure to subprime mortgages, do you or
15 anyone at the company after the receipt of the
16 Wells letter direct that some investigation be
17 done regarding the adequacy of the disclosure?

18 MR. EDENS: I didn't direct anyone
19 to do it.

20 MR. MACKEY: And are you aware that
21 anyone else did?

22 MR. EDENS: I'm not aware.

23 MR. MACKEY: Did Mr. Mudd submit a
24 response to the Wells letter?

1 MR. EDENS: I believe he did.

2 MR. MACKEY: Did he show it to you?

3 MR. EDENS: He didn't show it to me.

4 MR. MACKEY: Did he show it to any
5 member of the board?

6 MR. EDENS: I don't know.

7 MR. MACKEY: Do you know if he
8 showed it to any member of the company?

9 MR. EDENS: I don't know. It's
10 possible he did.

11 MR. MACKEY: Did anybody ask him for
12 it?

13 MR. EDENS: I don't know of anyone.
14 I didn't ask him for it. I know that Dan made a
15 public statement that he thought that the
16 charges were baseless and lacked foundation. He
17 vigorously opposed them and disagreed with them.
18 And that's what I know.

19 MR. MACKEY: Weren't you and the
20 board curious about your CEO's formal response
21 to the SEC's fraud charges?

22 MR. EDENS: Were we curious about
23 it, we were very supportive of Dan as a member
24 of the board. We were very supportive of Dan

1 and did not believe that he was inadequate in
2 his representations. And so while it was a
3 Wells notice, it was not yet a lawsuit
4 proceeding by the SEC.

5 MR. MACKEY: You said you believed
6 that there was nothing inadequate about his
7 representations. You mean nothing inadequate
8 about the disclosures he'd made?

9 MR. EDENS: I'm not speaking to
10 disclosures. I'm not really in a position to
11 opine on that. I don't know. Whether or not he
12 disclosed properly or improperly with respect to
13 Fannie Mae is left to a court of law to judge.
14 It's not my place to judge it.

15 MR. MACKEY: From the time the Wells
16 letter was submitted, nothing really happens
17 vis-à-vis Mr. Mudd and his employment at
18 Fortress until December 2011?

19 MR. EDENS: That's correct.

20 MR. MACKEY: If you could, Mr.
21 Edens, look at Bureau Exhibit Number 16 that's
22 the complaint. Do you have it in front of you?

23 MR. EDENS: I do.

24 MR. MACKEY: Do you know what it is?

1 MR. EDENS: I can read that it's a
2 United States Securities and Exchange
3 Commission, plaintiff versus Daniel Mudd, Enrico
4 Dallavecchia and Thomas Lund complaint.

5 MR. MACKEY: Have you ever seen it
6 before?

7 MR. EDENS: I don't believe so.

8 MR. MACKEY: So, when Mr. Mudd
9 received the complaint in the middle of December
10 2011, did he tell you he had been served with
11 it?

12 MR. EDENS: Immediately.

13 MR. MACKEY: But you didn't ask him
14 for a copy?

15 MR. EDENS: I didn't ask him for a
16 copy.

17 MR. MACKEY: Did any member of the
18 board ask him for a copy?

19 MR. EDENS: I don't know if any
20 other member did.

21 MR. MACKEY: Did anybody in the
22 company ask him for it?

23 MR. EDENS: I don't know. I would
24 guess yes, but it's a guess. I don't know.

1 MR. MACKEY: Did you understand what
2 the charges in the complaint were?

3 MR. EDENS: I understand them as he
4 represented them to us and as our General
5 Counsel represented them to us, which were
6 charges largely based, as I've said a number of
7 times, stemming from the adequacy or inadequacy
8 of the disclosures as CEO.

9 MR. MACKEY: Specifically, the
10 complaint was that he made false and misleading
11 statement of material facts regarding Fannie
12 Mae's exposure to the subprime market. Do you
13 understand that?

14 MR. EDENS: That would be the
15 disclosure, yes.

16 MR. MACKEY: And that violated the
17 antifraud provisions of the securities acts?

18 MR. EDENS: Yes.

19 MR. MACKEY: And that he lied to
20 Congress about it?

21 MR. EDENS: That's the allegation.

22 MR. MACKEY: You understood at the
23 time that that was the allegation?

24 MR. EDENS: I did understand that

1 was the allegation.

2 MR. MACKEY: Commissioner Cameron
3 asked you a series of questions about the
4 board's ultimate decision to part ways with Mr.
5 Mudd. And if I could draw your attention to
6 page 104 of the suitability report. Do you have
7 that in front of you?

8 MR. EDENS: Yes.

9 MR. MACKEY: I just want the record
10 to be clear about this particular issue. Page
11 104, the second full paragraph the sentence
12 beginning at that time. Do you see that?

13 MR. EDENS: Yes.

14 MR. MACKEY: It says at that time,
15 the board considered different options including
16 his forced termination but decided to place him
17 on a leave of absence.

18 So, was it clear at the time Mr.
19 Mudd received the complaint that one way or
20 another he was going to leave? Or was actually
21 staying with company one of the options that was
22 considered?

23 MR. EDENS: Well, the fact is that
24 from the time he received the notice until he

1 was placed on administrative leave was a total
2 of five days, which that included the weekend.
3 So, you're talking about an extremely brief
4 period of time.

5 So, I'd say that in a very short
6 period of time, it was our determination that
7 regardless of the ultimate adjudication of facts
8 regarding the lawsuit, without speaking to the
9 merits or the lack of merits thereof that we
10 didn't think that it was possible for him to be
11 an effective CEO of our company, of a public
12 company under those terms.

13 MR. MACKEY: So, he was put on leave
14 on December 21?

15 MR. EDENS: Yes.

16 MR. MACKEY: And from that point
17 going forward, it's your testimony that staying
18 wasn't an option. It was either a forced
19 termination or a resignation or something but it
20 was something that didn't involve him staying
21 with the company?

22 MR. EDENS: When we put him on
23 leave. It was not dispositive that we were
24 going to part ways. It was the right thing to

1 do to basically put him on leave, take pause,
2 assess the facts and then deal with it
3 adequately.

4 MR. MACKEY: So, when you say take
5 pause and assess the facts, was there a chance
6 notwithstanding the SEC complaint that he would
7 stay? That he would be able to explain his
8 circumstances sufficiently to the board's
9 satisfaction that he would weather the storm and
10 stay on as CEO of Fortress?

11 MR. EDENS: Not a very probable
12 chance in my recollection of it.

13 MR. MACKEY: If you could turn to
14 Bureau Exhibit 17, which is the severance
15 agreement. Your counsel asked you about
16 earlier. Do you have that in front of you?

17 MR. EDENS: I do.

18 MR. MACKEY: Paragraph 1A, your
19 employment with the company will terminate due
20 to your voluntary resignation effective on
21 February 23. Do you see that?

22 MR. EDENS: Yes.

23 MR. MACKEY: Then beginning the
24 period of January 24, it appears that he

1 beginning on that date would not have any access
2 to company emails, not really have any
3 responsibilities and frankly not even be
4 expected to report to the company's offices?

5 MR. EDENS: Yes.

6 MR. MACKEY: So, for all intents and
7 purposes, he was gone as of January 24?

8 MR. EDENS: Yes.

9 MR. MACKEY: But the company did
10 make the determination to pay him through the
11 termination date which is February 23?

12 MR. EDENS: Yes.

13 MR. MACKEY: So, one more month of
14 pay?

15 MR. EDENS: Yes.

16 MR. MACKEY: Paragraph 2A, which is
17 on the top of the second page of the agreement.

18 MR. EDENS: Yes.

19 MR. MACKEY: As consideration for
20 entering into this agreement, the company will
21 make a cash lump sum payment to you, Mr. Mudd,
22 in the amount of \$1,250,000.

23 Do you see that?

24 MR. EDENS: I do.

1 MR. MACKEY: And then paragraph 2B
2 is reference to several million restricted share
3 units. Do you see that?

4 MR. EDENS: I do.

5 MR. MACKEY: And it references, if
6 I'm reading this correctly, that when he signed
7 on he received a grant of approximately \$7.2
8 million restricted share units, which would vest
9 contingent on his staying employed with the
10 company?

11 MR. EDENS: That's correct.

12 MR. MACKEY: But as it turned out,
13 he didn't stay on very long. So, it only vested
14 in 1.8 million of the restricted share units; is
15 that fair to say?

16 MR. EDENS: Yes, I believe so. I
17 don't know the exact numbers. But his initial
18 employment contract, I believe, had a vesting
19 schedule of 10 years. He was basically vesting
20 in them radically as he was being employed.

21 MR. MACKEY: But he still had a long
22 way to go to vest in the remaining share units?

23 MR. EDENS: That's correct.

24 MR. MACKEY: Then do you see six

1 lines down in the sentence beginning as further
2 consideration?

3 MR. EDENS: Yes.

4 MR. MACKEY: As further
5 consideration for entering into this agreement,
6 the company hereby agrees to waive the
7 continuing employment requirements associated
8 with the vesting of the unvested portion of the
9 sign-on RSU's. Do you see that?

10 MR. EDENS: Yes.

11 MR. MACKEY: So, the company in
12 effect, deemed him vested in the remainder of
13 the \$7.2 million restricted share units?

14 MR. EDENS: Yes.

15 MR. MACKEY: And that allowed him,
16 in effect, to be vested an the additional 5.4
17 million shares of Fortress stock?

18 MR. EDENS: Yes.

19 MR. MACKEY: The total option
20 package to Mr. Mudd at the time he was severed
21 and it sounds like at the time the board had
22 made a decision there pretty much wasn't any way
23 he was ever staying with the company anymore was
24 worth about \$14 million; is that correct?

1 MR. EDENS: That sounds correct.

2 MR. MACKEY: No further questions.

3 CHAIRMAN CROSBY: Commissioners?

4 COMMISSIONER MCHUGH: I have no
5 questions.

6 CHAIRMAN CROSBY: It puzzles me, I
7 have to say -- Nobody's saying that he's the guy
8 that's responsible. And lots of people are
9 responsible, but it was a catastrophe of which
10 Fannie Mae was one of the central elements.

11 People were losing everything all
12 across the country. And you, as you said, are
13 in a highly regulated bunch of businesses.
14 You're a highly regulated company nationally and
15 internationally. You're a significant player
16 and were almost a very significant player in the
17 gaming industry which is regulated as anything.

18 The fact that nobody would say to
19 you I don't really think we need this. I don't
20 know what he did or didn't do, but there's a lot
21 of people out here who could fulfill this
22 function. Nobody said to you, you said you're
23 very compliance centered culture. There's no
24 compliance officer that said to you this just

1 doesn't look right. I'm sorry we just cannot do
2 this. That nobody had a concern about that.
3 You clearly had no concern about it. That
4 nobody had a concern about is astonishing to me.

5 Then to give the guy a \$14 million
6 whatever it was bonus when he gets a charge for
7 defrauding the SEC, again, and nobody said to
8 you why would we give him an extra \$14 million.
9 He's being severed from our company because he's
10 being sued for defrauding the people of the
11 country.

12 It worries me about you, your
13 culture and the culture of the company on whose
14 board you sit about which we are now talking.
15 Is there anybody around there who is willing to
16 ask hard questions and say, wait a second, this
17 makes no sense?

18 MR. EDENS: Well, if the culture of
19 believing people are innocent until proven
20 guilty is our culture and that's a problem, then
21 I'm guilty. I don't believe based on my
22 interactions -- I believe that what I'm supposed
23 to do in the conduct of business and how I deal
24 with people is to base my opinions of them on

1 the basis of the interactions that I have with
2 them and the facts and circumstance I deal with
3 them.

4 I'm sorry, but with respect to the
5 second question about what we should do. Dan
6 was charged by the SEC. That will either come
7 to pass to be something that he was guilty of or
8 he was not guilty of. All I can say is that we
9 made the decision to part ways with Dan.

10 We didn't think that merely the act
11 of being charged with being guilty was
12 sufficient then to treat him dishonorably,
13 terminate him without cause and really trying to
14 cause him financial harm.

15 He's been financially harmed. He
16 doesn't have a job right now. It was very clear
17 that the process that was going to happen with
18 the SEC was going take a long period of time.

19 So, what we did, we and it included
20 me is we did what we thought was the honorable
21 thing actually of trying to do what was
22 appropriate economically. It's not a good
23 economic result for us to pay somebody a great
24 sum of money when they are no longer working for

1 us. So, it's not something we did because we
2 wanted to give him money or gift him something,
3 trying to advantage him in any way, shape or
4 form. We did it because we actually thought it
5 was the honorable thing and the correct way of
6 doing so. So, it was the opposite of doing
7 something dishonorable in my opinion.

8 With respect to the first question
9 as to whether or not we talked about whether Dan
10 would be an appropriate person to be the CEO of
11 our company, we weighed all of the facts. His
12 past was known to us. His past predating Fannie
13 Mae, his past in terms of interactions he had
14 with my other partner in particular.

15 We run a big and challenging and
16 complicated business that is a global business.
17 And we felt like he was the best person that we
18 could get at that point in time to help us to
19 manage our business administratively.

20 In hindsight, I understand that with
21 the benefit of hindsight, could we have done
22 things differently. or do I wish we had done
23 things differently, I guess. But the reality is
24 you can't change what you had for breakfast.

1 That's the decision that was made at
2 the time. All I can say is that we dealt with
3 the facts and circumstances expeditiously when
4 they were served to us. And I think that in
5 hindsight, we did the right thing with Dan when
6 we dealt with it.

7 And I think with respect to the
8 culture of the company, I think that we manage
9 many billions of dollars for institutions all
10 over the world. We are regulated by the SEC.
11 We're a public company. If you want to read
12 about our company, anybody can go on Yeager
13 filings and look at a lot of different stuff
14 about us. I think we have the most compliance
15 rich and reputation enriched culture that I can
16 imagine. And I don't think that actually having
17 Dan Mudd as our CEO in any way distinguishes us
18 as some person of bad character. I really
19 don't.

20 CHAIRMAN CROSBY: Well, you had to
21 get rid of him. You had to get rid of him.

22 MR. EDENS: We had to do what we
23 thought was the right interest for both our
24 shareholders and the institution.

1 CHAIRMAN CROSBY: Correct. In
2 retrospect, the decision that you made without
3 anybody questioning it to hire him was a
4 mistake, right? Nobody came to you and said who
5 knows, where there's smoke there's often fire.
6 Maybe he's clean, maybe he's not. This could
7 totally blow up in our face. Nobody came to you
8 and said that. Had they, they would have been
9 in retrospect been right.

10 MR. EDENS: It was our
11 responsibility, including mine to make the
12 decision.

13 CHAIRMAN CROSBY: I appreciate that.

14 MR. EDENS: We made that decision
15 and if I could do it over again and we knew that
16 he was going to be charged by the SEC, we
17 clearly would've made a different decision. We
18 really didn't believe that he would be. That's
19 the facts.

20 CHAIRMAN CROSBY: The question that
21 I'm getting at, and I made this distinction with
22 Mr. Snyder, and it's hard to separate between
23 the individual who you deal with as a human
24 being, which you were with Mr. Mudd and with the

1 institutional issues that are in play. There
2 are issues of appearance, which are beyond
3 substance which do matter, number one.

4 And number two, there is an issue of
5 having a culture where people aren't afraid to
6 be skunks at the garden party, who aren't afraid
7 to ask the hard questions that might get their
8 butts kicked by people like you.

9 And I'm not sure about Penn
10 National, whether Penn National has people
11 around there who are willing to be skunks at the
12 garden party and ask the kind of questions that
13 people don't like to ask. This is an
14 extrapolation I grant you, but I see this as
15 potentially a pattern.

16 MR. EDENS: I'll say this. I don't
17 run Penn National. I have nothing to do with
18 the day-to-day management of the company. I'm
19 an investor in it. It's the only board that I
20 serve on out of a many number of public boards
21 where I'm not actually a majority shareholder or
22 very large shareholder in the company. We're a
23 large shareholder. We're about 15 percent of
24 the company. But we're not a 60 or 70 or 80

1 percent shareholder as we are in many other
2 public companies. This is the best board that I
3 serve on.

4 The best board in the context of how
5 they manage the company. I think Peter Carlino
6 you're going to meet tomorrow, I guess, is an
7 extraordinary businessman and also a leader. It
8 is without a doubt the best board that I'm on.
9 And I say that at every level. I think that
10 they make very difficult decisions. They run a
11 great business. They conducted themselves very
12 well during a very difficult time during the
13 downturn. And I think they have been a great
14 partner to communities when you look at the fact
15 sheet how it has all transpired.

16 Again, I can only base it on my own
17 interactions, but if you're asking me for my
18 opinion, which maybe you are, maybe you're not
19 about what I think about the quality of the
20 company, I think it's a spectacular company. I
21 really do. It's very, very compliance rich.

22 The gaming business when you go to
23 sign to get licensed as a gamer, I sign
24 documents that are probably three or four times

1 the thickness of this. There is a tremendous
2 amount of background investigation that goes on,
3 and appropriately so given the nature of the
4 business.

5 In my experience, in every other
6 business we're involved with, these guys stand
7 above the crowd in terms of their compliance
8 culture and how seriously they take their job.
9 They really do.

10 CHAIRMAN CROSBY: Were you a part of
11 the decision to hire Mr. Donaghue as the chief
12 compliance officer?

13 MR. EDENS: I was not.

14 CHAIRMAN CROSBY: Were you aware of
15 that going on at the time? Were you aware of
16 the circumstances of it?

17 MR. EDENS: Yes, but I was not a
18 part of it.

19 CHAIRMAN CROSBY: You were aware of
20 who he was, what his background was, where he
21 came from?

22 MR. EDENS: Generally, I don't
23 remember being really specifically. I know this
24 is a hearing in part to talk about kind of both

1 the ethics and the integrity. And I understand
2 that appearances matter. And I understand that
3 substance matters and how they conduct
4 themselves has been in my experience exemplary.
5 And I'm very happy to be on the board of the
6 company. I really am.

7 CHAIRMAN CROSBY: Anybody else
8 either direction, Counselor, Counselor? Thank
9 you, Mr. Edens.

10 It's 2:20. Let's have a quick
11 exercise break. If it's possible, we would like
12 to convene at 3:30.

13 COMMISSIONER MCHUGH: Convene or
14 terminate?

15 CHAIRMAN CROSBY: Terminate and keep
16 open, because we are going to convene again
17 tomorrow, reconvene tomorrow. So, if it's all
18 right with you all, can we get through one more.
19 And then Mr. Donaghue I understand was going to
20 be here tomorrow anyway. If we add him onto the
21 agenda tomorrow?

22 MR. ALBANO: He was prepared to
23 stay, anticipating --

24 CHAIRMAN CROSBY: -- that this may

1 happen. So, if that's okay with you, I think we
2 will see if we can get done around 3:30. Let's
3 just take a very short break.

4

5 (A recess was taken)

6

7 CHAIRMAN CROSBY: We will reconvene
8 at 2:34. I believe we are back to Counselor
9 Albano.

10 MR. ALBANO: Thank you, Mr.
11 Chairman. I'd like to introduce Jordan Savitch
12 who is the senior vice president and General
13 Counsel for Penn National.

14 MR. SAVITCH: Good afternoon.

15 CHAIRMAN CROSBY: Welcome.

16 COMMISSIONER CAMERON: Good
17 afternoon.

18 MR. SAVITCH: Thank you for the
19 opportunity to speak today. I am Jordan
20 Savitch. I am the senior vice president and
21 General Counsel for Penn National Gaming.

22 I've worked at Penn National since
23 2002. I was born in Bimington, New York in
24 upstate New York. I went to school at the

1 University of Vermont and at Harvard Law School.
2 I started my practice at Willkie, Farr and
3 Gallagher in New York. And I practiced there
4 for four years right up until shortly before the
5 birth of my first child when my wife wisely
6 prevailed on me to get a job that gets me home a
7 little more routinely before midnight.

8 We moved to Philadelphia out to the
9 suburbs where we've had three children who are
10 now 17, 15 and 13. And I worked at a variety of
11 in-house jobs up until 2002 when I took this
12 position and have worked at Penn National for
13 the last 11 years.

14 I have the primary responsibility
15 for oversight of the legal function at Penn
16 National. We are a department of six lawyers,
17 one of whom is primarily focused on property
18 matters, one of whom is primarily focused on
19 litigation and risk management and then four of
20 them work on transactional and general
21 counseling advice.

22 I also assist our compliance
23 committee in respect to the compliance function.
24 They have, as you know --

1 CHAIRMAN CROSBY: The compliance
2 committee of the board.

3 MR. SAVITCH: The compliance
4 committee of the board. They have their own
5 chief compliance officer who is currently Frank
6 Donaghue, who you are going to hear from
7 tomorrow now at this point.

8 I attend the meetings and I sit in
9 on the various discussions. I was intimately
10 involved in the hiring of Frank Donaghue, which
11 I understand you'd like to talk about. Just
12 generally speaking a word about our compliance
13 group, Frank manages including himself five
14 corporate professionals. Then we have
15 approximately 28 compliance professionals each
16 are assigned to a different property.

17 We have kind of a federal system
18 with regard to compliance where there's
19 oversight and monitoring at the corporate level.
20 And there is an individual person at each
21 property who is responsible for overseeing
22 directly the compliance function at those
23 particular properties.

24 They provide weekly reports back to

1 corporate. All of that is monitored by our
2 compliance staff. The compliance committee
3 meets at least quarterly, more frequently if an
4 issue happens to come up.

5 Of note, we have two advisors who
6 are now both independent members, non-director
7 members of our compliance committee. Steve
8 DuCharme who we hired very close to when I first
9 started back in 2002. Steve was the former
10 chair of the Nevada Gaming Control Board. He
11 served for 10 years on the board. Before that
12 he served for 20 years in the Las Vegas Metro
13 Police Department. Since he retired from his
14 board service, he served on various compliance
15 committees at several other well respected
16 gaming companies.

17 We also have Tom Auriemma, who was
18 previously our chief compliance officer and is
19 now a member of our compliance committee. Tom
20 is a 30-year veteran, almost 30 years, I think
21 it's 28, of the Division of Gaming Enforcement
22 in New Jersey. He then left and joined Penn
23 National and served us for about five years as
24 our chief compliance officer.

1 I think if you don't know them both
2 Steve and Tom are individuals of exceptional
3 reputation and integrity and knowledge. And
4 they are the company and mine in particular two
5 principal advisors on compliance matters.

6 CHAIRMAN CROSBY: The report, I
7 think, said that there's a three-person
8 compliance committee of the board of which two
9 were nonexecutive board members. I thought it
10 said David Handler and Robert Levy, oh no --

11 MR. SAVITCH: Bob is currently
12 director emeritus and David is also on the
13 compliance committee.

14 CHAIRMAN CROSBY: And Auriemma has
15 taken Levy's place on the committee?

16 MR. SAVITCH: Well, we had four when
17 it was Bob, David. We have to have a least
18 three. So, when Bob retired, we went to four.
19 And now that Bob is director emeritus and we are
20 in the midst of this transition relative to the
21 REIT, my expectation is that we'll have one or
22 two more director members by the end of the
23 year.

24 We'll replace Bob. And David may or

1 may not stay. After many years of service on
2 the compliance committee, maybe he'll get
3 another assignment.

4 So, as you know, we currently
5 operate in 18 jurisdictions. That subjects us
6 to 27 different regulatory agencies' oversight.

7 As Steve mentioned, our compliance
8 function and the licenses that it protects are
9 really we consider one of our most valuable
10 assets if not our most valuable asset. Not only
11 because it's what allows us to continue to
12 operate, but it's also our reputation that
13 allows us the opportunity to develop gaming
14 properties in new jurisdictions.

15 You've alluded a couple of times to
16 is this a company that asks the hard questions.
17 We do. And it comes out of this compliance
18 function. We take the people that we hire very
19 seriously. And we take our process very
20 seriously. And I'll go through my hiring
21 process. And I'll walk you through the hiring
22 process around Frank in particular, because I
23 think that's what you had asked me to testify
24 on.

1 But this is an issue, having the
2 right people to run the company. The other most
3 valuable asset of any company is the people who
4 make the company. Many companies say people are
5 our most valuable resource but it's true. A
6 company is an aggregation of individuals who
7 take capital and do something good with it.

8 That's the way the game plan is
9 drawn out. And that's what we try to do. I can
10 tell you when it comes to my hiring, finding the
11 right person is critically important.

12 I learned a lesson. Before Penn
13 National, I was in a startup. And we didn't
14 have a lot of money. In fact, startup your
15 biggest financial metric is how much you're
16 spending. You've really got to worry about
17 that, because you're a little far away from
18 revenue.

19 And I learned a really valuable
20 lesson that every person you hire has got to be
21 an A plus player. When you're in a startup, you
22 don't have the luxury of having anything less
23 than that.

24 I hope and I try to bring that same

1 mentality to Penn National. I treat every hire
2 like it's going to be my only hire. I try to
3 get through a really careful, thorough process
4 of vetting that person to make sure that we get
5 the right person from a competence point of
6 view, from an integrity point of view, from a
7 fit point of view, because you're building a
8 team and fit's important, and an effectiveness
9 point of view. You need people who are going to
10 be able to accomplish the tasks that you give
11 them.

12 And I think your issue of appearance
13 does play into that. If you have an appearance
14 -- If there's an appearance that is so outwardly
15 negative that it prevents somebody from being
16 able to do their job effectively, then that is
17 definitely a negative. We certainly take that
18 into consideration.

19 By the same token in looking at
20 those criteria, you also want make sure -- you
21 want people who are of great substance. My mom
22 gave me a gift when I graduated from law school.
23 It was a quote from the Bible. Is said justice,
24 justice you shall pursue. And when looking at

1 people, I try to be fair and I try to be
2 sensible.

3 There's a lot of people that come
4 that will have a blemish on their record. And
5 the question I ask myself when they have a
6 blemish is not to immediately throw them out,
7 but to try to I drill down into the substance,
8 and say is this a person who is going to meet
9 our criteria of integrity and of competence and
10 of fit and of effectiveness.

11 And I can tell you generally how do
12 I determine that. When I hire, I first assemble
13 a short list of candidates. I assemble the list
14 through a whole variety of resources.

15 We start with an internal job -- we
16 come up with a job description. We post that
17 internally. Our industry is a pretty small
18 industry. There are a couple of dedicated
19 websites, which have gotten pretty effective in
20 recent years about getting the word out.
21 Everybody knows what the websites are. People
22 have alerts set for jobs that they like. So, we
23 post them on those websites.

24 I push these out through our

1 professional and personal networks. As you
2 know, you've seen, there's many gaming attorneys
3 out there. There's professional associations.
4 You can get the word out in our industry pretty
5 effectively. It's a small industry and word
6 travels quickly.

7 If though all of that fails, and of
8 course we'll hire a recruiting service, again,
9 oftentimes they're very effective. Sometimes
10 they're just expensive and not effective. So,
11 you want to be judicious in using them.

12 Through all of those different
13 sources, we assemble, we get a pool of resumes.
14 And based on the resumes, we'll whittle it down
15 to a short list of candidates. In my hiring
16 process, I then first go through the short list
17 of candidates. And I talk to them either by
18 phone or preferably over breakfast if it's
19 convenient. Sadly, it's not convenient for a
20 lot of people to get to Wyomissing,
21 Pennsylvania. In fact, it's hard to even get
22 them to Philadelphia sometimes.

23 But I meet them and I decide in the
24 first instance whether I think these people

1 merit some further vetting. If I think that
2 they meet our basic criteria, I'll bring them in
3 to meet with a small group, people on my staff
4 and select others depending on what the function
5 is. It'd be people that they might be working
6 with. And we'll do this with a number of
7 candidates to get down to a shortlist.

8 I have to be done by 3:30, right?
9 I'll keep my eye on the time there. I'll tailor
10 my comments.

11 CHAIRMAN CROSBY: Say what needs to
12 be said.

13 MR. SAVITCH: Once we identify --
14 once we make it through those two rounds, I
15 start a vetting process where I chat with both
16 the references that the candidates provide as
17 well as independently developed references. And
18 this is really a key source of information.

19 Typically, people give you
20 references of people who are going to say good
21 things about you. But independently developed
22 references, especially in the legal world with
23 all of the law firms out there in the gaming
24 world, sometimes you can get certainly the most

1 candid feedback from people.

2 We also have for candidates who make
3 it that far, we also have when we've whittled
4 down the list a little bit more, we then have an
5 official background checking process. And I
6 think we have an exhibit someplace that goes
7 through all of the different databases of HR
8 checks to make sure that we're not picking up
9 somebody that's got some kind of previous
10 criminal issue, terrorist issue, sexual predator
11 issue. And there are many databases out there
12 that we have access to.

13 Then I personally call the
14 references, especially the independently when
15 I'm hiring. I call those references myself to
16 check to get the real scoop on somebody to the
17 extent that I can.

18 And if all of this is checking out,
19 I'll then kick it to the other senior managers
20 in the company. Sometimes it's Peter.
21 Sometimes it's Tim, Bill. It depends on
22 schedules, trying to get people to come out and
23 who's available. Once they get through that
24 whole process, if I can get one or two or three

1 candidates down, then we make a choice, we go
2 through offer and acceptance. That's generally
3 how it works.

4 With regard to Frank in particular,
5 there's yet another layer on top of that.
6 Because he reports directly to the compliance
7 committee, the two opinions that were very
8 important to me were my two experts, Steve
9 DuCharme and Tom Auriemma.

10 So, in addition to that regular
11 process, Frank also met with Tom and he spoke to
12 Steve. And to I think the issue at hand, to
13 Frank's credit even though I've known about the
14 grand jury investigation and about the report,
15 Frank was very upfront about the fact that this
16 grand jury report existed. And he wanted to
17 make sure that I had a copy and I looked at it,
18 which I had. I was impressed that he brought it
19 up to me.

20 I did read it. I shared it with
21 Steve and Tom. And I discussed it. I wanted to
22 understand, have them give me context about what
23 it was like to set up -- generally what's it
24 like to set up a new gaming board. What's it

1 like, especially in the pressure cooker that was
2 Pennsylvania where there were timetables set
3 forth. It was a unique way to constitute the
4 board. There was a lot going on. Give me a
5 context.

6 Read this and tell me --
7 particularly with regard to Frank Donaghue, do
8 you think this is a guy who was doing bad
9 things? Or is there some hindsight going on
10 here in questioning judgments that were
11 reasonable judgments to make under the
12 circumstances? Maybe looking back in 20/20,
13 maybe they should've been different judgments.
14 Help to give me context.

15 These are two guys whose opinions I
16 respect quite a bit. They have seen and been
17 involved on both sides, on the regulatory side,
18 on the company side. And they really helped
19 give me context to it. I talked to Frank
20 directly about some of the issues that were
21 raised in that grand jury report. I discussed
22 his answers with Steve and Tom.

23 And at the end of the day, taking in
24 the full measure of the information that we had

1 on Frank, and the grand jury report was part of
2 it, the process that I laid out for you earlier
3 was part of it. We ran through those various
4 steps with Frank.

5 Additionally, I had an opportunity
6 actually with a number of my candidates, I had
7 first-hand experience with their performance.
8 Frank when he was on the board side, we were an
9 applicant. One of the things that attracted me
10 to Frank in the first place is I had watched him
11 as General Counsel, later executive director of
12 the Gaming Board. And I had a favorable
13 impression of how he handled himself. Under
14 very challenging circumstances, I thought he did
15 a very good job in his capacity there.

16 Additionally, one of the law firms
17 we work with hired him. Afterwards, he ended up
18 doing some work and I got to see his writing and
19 his legal thinking involved. So, I also had
20 some first-hand experience with how he performed
21 as a lawyer and as a problem solver.

22 So, when we took all of this into
23 consideration, one of the questions that we
24 asked ourselves is look, is the information in

1 here, does this make him unsuitable to have this
2 position? Does it reflect so severely on his
3 character, in light of everything else, in
4 putting all of the evidence out in front of us,
5 or affect his probity, his ability to do this
6 that we should not make this offer because
7 what's in that report?

8 And at the end of the day, we
9 decided that based on all of the factors in
10 front of us that we did not think that the
11 issues that were raised there were so severe as
12 to prevent us from making him an offer. And
13 more importantly we didn't think that they would
14 prevent future gaming boards.

15 We knew he was going to go up for
16 licensing in some of our gaming jurisdictions as
17 chief compliance officer. We didn't think that
18 there was going to be an adverse reaction to the
19 extent of denying suitability from those future
20 gaming boards.

21 On the plus side, you look at
22 Frank's resume, we thought that he was going to
23 do a very good job for us. He had a very unique
24 combination of having -- He served as a law

1 clerk to a Supreme Court Justice. He worked for
2 10 years in the AG's office under three
3 different attorneys general. That he managed a
4 very large bureaucracy when he was at the AG's
5 office.

6 So, that issue about effectiveness,
7 I need lawyers that are also good managers. I
8 have an in-house department. We can't just sit
9 and give legal advice. We actually have to make
10 things go, make things happen with that. And it
11 looked like he had some administrative
12 expertise. I also thought -- I had a favorable
13 impression even though the grand jury report is
14 critical, I had a favorable impression of how he
15 acted in his capacity, his various capacities at
16 the Gaming Board.

17 So, when we put all of that
18 together, we made a decision to make Frank an
19 offer, which he accepted and became our chief
20 compliance officer. Now that was about two
21 years ago. And I can tell you that in those two
22 years he has fulfilled our expectations. He's
23 done a very good job. He is very conscientious
24 chief compliance officer.

1 He gets here early, he leaves late.
2 He really is very focused on doing the right
3 thing. He gets what his function is at Penn
4 National. He gets that he has got to not just
5 serve Penn National but he's got to answer to
6 all of those different 27 regulatory agencies
7 that we are licensed under. And it's a very
8 important point of pride with him to make sure
9 that he can stand in front of every one of them
10 and explain and justify the things that we do,
11 the decisions that we make.

12 You're going to have a chance to
13 hear from him yourselves. And you'll judge for
14 yourselves tomorrow. But that's been my
15 impression of him. I hope after we're done with
16 this discussion, your discussion with Frank
17 you're going to going to reach the same
18 conclusion. Thank you.

19 CHAIRMAN CROSBY: Mr. Mackey?

20 MR. MACKEY: Good afternoon, Mr.
21 Savitch.

22 MR. SAVITCH: Good afternoon, Mr.
23 Mackey.

24 MR. MACKEY: I want to take just a

1 couple of minutes to ask about Steve Snyder's
2 hire.

3 MR. SAVITCH: Sure.

4 MR. MACKEY: You came on board in
5 September 2002 as General Counsel?

6 MR. SAVITCH: Yes.

7 MR. MACKEY: So, you weren't with
8 the company when Penn National brought him on
9 board originally?

10 MR. SAVITCH: Correct.

11 MR. MACKEY: Or when he left the
12 company temporarily in 2001, I think?

13 MR. SAVITCH: Correct.

14 MR. MACKEY: But then you were on
15 board as General Counsel when Mr. Snyder was
16 hired for the second time in June 2003.

17 MR. SAVITCH: Yes.

18 MR. MACKEY: Okay. Were you
19 involved in that hire?

20 MR. SAVITCH: In the rehire?

21 MR. MACKEY: In the rehire, right,
22 June 2003.

23 MR. SAVITCH: Look, the issue with
24 Steve is do you rehire a guy who just settled a

1 serious charge with the SEC? It was a
2 compliance question. Is he suitable to be an
3 executive in a gaming company? That was the
4 question that was really presented to the
5 compliance committee. I assisted them in that.

6 You heard from Steve earlier on what
7 the issue was. It was a complex issue. It came
8 down to different interpretations of a rule or a
9 regulation. We looked at all of this. Our view
10 of it is Penn National did not have as much
11 investigatory power as the gaming boards. We
12 looked at it. We looked at Steve's
13 explanations, which seemed reasonable. We
14 looked at the charges, which were serious.

15 And we looked at the process that
16 Steve was following to get himself back into the
17 gaming industry, which was he settled his issues
18 with the SEC. He then appeared before a very
19 tough, a very thorough gaming board in New
20 Jersey. And they picked over the issue I think
21 quite thoroughly.

22 He also had to pass muster with our
23 other regulators. It wasn't ultimately -- In
24 our view, we understood the issue. We

1 understood both sides of it. And we put in
2 place a process that if he got through it, if he
3 passed muster with our regulators then we were
4 prepared to accept him back.

5 Because he had previously worked for
6 the company. He was known to the company to be
7 a valuable resource. It was known to the
8 company that he was competent, he was effective.
9 That he could do a very important function,
10 which is to help the company find new gaming
11 opportunities. That's how we looked --

12 MR. MACKEY: Let me ask it, I guess,
13 in a little bit different way. That's very
14 helpful. The New Jersey Gaming Board issued its
15 decision in April 2002.

16 MR. SAVITCH: Yes.

17 MR. MACKEY: Then you came on board
18 a few months after that?

19 MR. SAVITCH: Yes.

20 MR. MACKEY: Then when Mr. Snyder
21 went through his employment and hiring process,
22 fair to say you already had on the table in New
23 Jersey decision --

24 MR. SAVITCH: Correct.

1 MR. MACKEY: -- deeming him suitable
2 to hold a key employee gaming license?

3 MR. SAVITCH: To my recollection.

4 MR. MACKEY: At that point, did Penn
5 National do its own independent assessment of
6 how serious a deal the SEC charges were? Or was
7 it sort of you know how the New Jersey
8 regulators looked at it. They're comfortable
9 with it. Let's move forward?

10 MR. SAVITCH: Look, we didn't have
11 the resources that New Jersey had. We don't
12 have the expertise that they're able to bring to
13 bear. So, we did not think that we could do a
14 better job assessing it than they did.

15 We looked at it well enough so that
16 we could understand it. And I think to a point
17 that Chairman Crosby raised, you do look at the
18 appearance of it. Is this something that's
19 going to create an appearance that is going to
20 so inhibit the ability of the company or the
21 employee that it's going to be a detriment?

22 So, we looked at it enough to
23 understand it. But I can't say that we had the
24 expertise or the resources to evaluate it as

1 well as New Jersey did. We did rely on those
2 investigations.

3 MR. MACKEY: Just to be clear, for
4 example, when you came on board and then Mr.
5 Snyder's hiring process began, nobody asked you
6 to do an independent assessment of how serious
7 the SEC charges were?

8 MR. SAVITCH: No.

9 MR. MACKEY: Or to go back and read
10 Mr. Snyder's depositions, for example?

11 MR. SAVITCH: We had our outside
12 counsel Ballard Spahr was looking at that.

13 MR. MACKEY: So, you did have
14 Ballard Spahr take an independent look at it the
15 second time around?

16 MR. SAVITCH: We did.

17 MR. MACKEY: As a general matter and
18 I suppose this relates to Mr. Snyder or any of
19 the others as well, if you have a state
20 regulatory like the New Jersey Commission assess
21 a key gaming employee as suitable, then from
22 your perspective as the employer would that
23 typically be a decision you would follow? Or
24 would you do your own independent review?

1 MR. SAVITCH: Typically, our review
2 is going to go more to competency. Is this
3 person going to be an effective employee?

4 On the issues of suitability, we
5 have some capabilities, obviously. We have our
6 own resources. We can hire investigators. But
7 if there is an opportunity for an agency with
8 police power to do an investigation, we consider
9 that a better indication of suitability than we
10 can muster.

11 MR. MACKEY: So, competency aside,
12 and I get that because as the employer you're
13 the expert there, but with respect to
14 suitability you would tend to follow the outcome
15 reached by the regulatory agency or jurisdiction
16 over that suitability determination?

17 MR. SAVITCH: Yes.

18 MR. MACKEY: By the time Mr. Snyder
19 came on board, the compliance committee was up
20 and running. Actually, it might be helpful if
21 you can refer to the compliance plan, which is
22 your applicant Exhibit 2 and in particular I
23 want to go to page 10 section 5.5.3.

24 MR. SAVITCH: Yes.

1 MR. MACKEY: I take it that Mr.
2 Snyder as the senior vice president in charge of
3 development, he would be an executive officer?

4 MR. SAVITCH: He was not, no.

5 MR. MACKEY: Oh, okay.

6 MR. SAVITCH: He wasn't at the time,
7 but he has since become one.

8 MR. MACKEY: But was not then.

9 MR. SAVITCH: The head of
10 development is not necessarily an executive
11 officer.

12 MR. MACKEY: It says here, the
13 second sentence says, company investigations
14 regarding the suitability of perspective
15 directors, executive officers and key gaming
16 employees shall be reviewed by the compliance
17 committee.

18 But he would not be in that category
19 of mandatory review at that time?

20 MR. SAVITCH: He wasn't at that
21 time.

22 CHAIRMAN CROSBY: Key gaming
23 employee, wouldn't he be a key gaming employee?

24 MR. SAVITCH: I don't believe he was

1 at the time. A lot of states did not require
2 that the head of development -- It's my
3 recollection now. You're asking me to go back
4 10 years, but I don't think -- He subjected
5 himself to licensing for his own particular
6 issue. But I don't recall that he had that
7 status at the beginning. It was something he
8 earned over time as the company's grown.

9 CHAIRMAN CROSBY: I'm not sure where
10 Mr. Mackey, excuse me, is going on this. But
11 key gaming employee in the policy is defined as
12 means any executive or employee of the company
13 having a material involvement in the gaming
14 business of the company and who has a base
15 salary exceeding 90,000 per year.

16 MR. SAVITCH: I'm not sure if that
17 was our touch stone back in 2001. I'd have to
18 go back and look. At any rate, given Steve's
19 issues, we did look at it.

20 MR. MACKEY: I guess that was my
21 next question, because the next sentence says
22 the suitability of any company employee -- So,
23 that could be literally somebody who is dealing
24 cards, I guess. -- may be reviewed by the

1 compliance committee.

2 And it's your testimony that Mr.
3 Snyder's hire in 2003 was in fact reviewed by
4 the compliance committee?

5 MR. SAVITCH: I recall discussing
6 with DuCharme, whether it was formerly reviewed
7 or not, I cannot recall in a formal committee
8 setting.

9 MR. MACKEY: Mr. DuCharme, again,
10 was the chair of that committee?

11 MR. SAVITCH: Yes.

12 MR. MACKEY: So, you don't recall
13 whether it was formally reviewed by the
14 compliance committee?

15 MR. SAVITCH: I don't.

16 MR. MACKEY: If you could turn, Mr.
17 Savitch, to page 282 of the suitability report.
18 At the top of page 282 there's a summary of the
19 discussion that you had with the investigators.

20 MR. SAVITCH: Yes.

21 MR. MACKEY: There's a couple of
22 sentences at the top of that paragraph about
23 your familiarity with the grand jury
24 investigation that you were referencing in your

1 direct presentation.

2 MR. SAVITCH: Right.

3 MR. MACKEY: It says, the second
4 sentence: Savitch stated that he was familiar
5 with the grand jury investigation in that he had
6 read the report. He does not recall details.
7 But he believes he probably discussed the report
8 with other Penn National officers but only in
9 general terms.

10 Did I read that correctly?

11 MR. SAVITCH: You did.

12 MR. MACKEY: Is that a fair summary
13 of what your discussion with the investigators
14 was?

15 MR. SAVITCH: Yes. When I looked at
16 the grand jury report, I discussed it with Tom
17 and with Steve. I considered it a compliance
18 issue. Those issues of competency and
19 effectiveness, those are the issues that I
20 discussed with the other officers with Peter and
21 Tim Hayes. Is this guy going to be good for us?
22 Is he going to do a good job? Does he have the
23 right characteristics?

24 This issue, which I considered a

1 potential compliance issue, I discussed with the
2 guys that had expertise in it to see if -- does
3 this rise to a level that's going to create a
4 concern. Ultimately, it was the compliance
5 committee's call.

6 MR. MACKEY: And you're talking
7 about with respect to Mr. Donaghue's hire?

8 MR. SAVITCH: Yes.

9 MR. MACKEY: The discussions that
10 you were referencing here in the report, I guess
11 what I'm trying to get at is was the issuance of
12 the grand jury report, was that a subject of
13 general interest and concern at Penn National or
14 really more an issue as regards to hiring Mr.
15 Donaghue and how it might relate to that issue?

16 MR. SAVITCH: It was an issue with
17 regard to Mr. Donaghue.

18 MR. MACKEY: If I could draw your
19 attention to Bureau Exhibit 10, which a copy of
20 the grand jury report. And you acknowledged in
21 the investigation that you had read the report?

22 MR. SAVITCH: I did.

23 MR. MACKEY: And that you might have
24 discussed with others at Penn National? It was

1 your general recollection, it sounds like, that
2 you had discussed it.

3 MR. SAVITCH: Yes, with Tom and
4 Steve.

5 MR. MACKEY: Would you acknowledge,
6 Mr. Savitch, that it would be fair to say the
7 report was harshly critical of the Pennsylvania
8 Gaming Control Board? Would that be a fair
9 statement?

10 MR. SAVITCH: I think that's a fair
11 statement.

12 MR. MACKEY: And that in fact it
13 reserved some of its harsher criticism for the
14 Board's prosecution of the suitability
15 investigations, would that be fair?

16 MR. SAVITCH: It seemed to, yes.

17 MR. MACKEY: And that among the
18 suitability investigations that got a fair
19 amount of play in the grand jury report was the
20 one related to Mount Airy #1?

21 MR. SAVITCH: Yes.

22 MR. MACKEY: Which was the entity
23 owned by Louis DeNaples?

24 MR. SAVITCH: I think it was Mount

1 Airy and the other was probably the Bargain
2 deal.

3 MR. MACKEY: I think that sounds
4 right. But one of the ones that they focused on
5 was Mount Airy. Is it Louis DeNaples or Louie
6 DeNaples?

7 MR. SAVITCH: I don't know.

8 MR. MACKEY: And it would be fair to
9 say that the grand jury report reflects that Mr.
10 Donaghue had a prominent role in the crafting of
11 the final suitability report related to Mount
12 Airy?

13 MR. ALBANO: May I object? My
14 grounds are I don't believe that is a fair
15 assessment.

16 MR. MACKEY: Okay. Let's look at
17 the report then. I'll go through it and we'll
18 read some of it into the record. Page 64 of the
19 report, just down at the bottom of the page.

20 MR. SAVITCH: Yes.

21 MR. MACKEY: Last paragraph
22 beginning on that page, Greenbank described --
23 Do you see that?

24 MR. SAVITCH: Yes.

1 MR. MACKEY: Do you know who Mr.
2 Greenbank is?

3 MR. SAVITHC: I do not.

4 MR. MACKEY: Greenback was an
5 investigator with the Bureau at the Pennsylvania
6 Gaming Control Board. And he describes a
7 meeting that occurred just weeks prior to the
8 award of the license. This is again in the
9 context of the Mount Airy piece. And it says,
10 the agents assigned to investigate Mount Airy,
11 Davenport, Troyer, Neeb, Donaghue, (INAUDIBLE)
12 and the Director of Diversity were all present.
13 Do you see that sentence?

14 MR. SAVITCH: I do.

15 MR. MACKEY: Did I read that
16 correctly.

17 MR. SAVITCH: I wasn't following.

18 MR. MACKEY: I did, take it from me.
19 I read it correctly. Accept it as true that the
20 Donaghue reference there is the Frank Donaghue
21 that will be testifying.

22 MR. SAVITCH: I do believe that.

23 MR. MACKEY: On the next page, there
24 is a sentence, the second full sentence

1 beginning with Greenbank described the outcome
2 of that meeting as follows: The sum and
3 substance of that meeting which was long, I
4 would say a couple of hours, with this and this
5 was a joint agreement by Ann Neeb and Frank
6 Donaghue that you have more than enough evidence
7 here to deny him, and that's Louis DeNaples, a
8 license based on Katrina and Ram alone. You
9 have proof, don't put anything else in the
10 report to water it down. Don't put anything in
11 the report that cannot be substantiated and
12 cannot be proven.

13 Do you see that?

14 MR. SAVITCH: I do.

15 MR. MACKEY: I read that correctly?

16 MR. SAVITCH: You did read that
17 correctly. I followed this time.

18 MR. MACKEY: The next full
19 paragraph, I'll skip a little bit here, at 11:00
20 a.m. on December 1, 2006 the date that Mount
21 Airy suitability report was due, Davenport met
22 with Neeb and Donaghue. By the way, do you know
23 who Neeb is?

24 MR. SAVITCH: I do know who Neeb is.

1 MR. MACKEY: She was the executive
2 director?

3 MR. SAVITCH: First executive
4 director.

5 MR. MACKEY: First executive
6 director of the board. Davenport met with Neeb
7 and Donaghue. During that meeting, Neeb and
8 Donaghue required Davenport to make changes to
9 what she believed was her final honesty,
10 character and integrity report on Louie
11 DeNaples.

12 Did I read that correctly?

13 MR. SAVITCH: Yes.

14 MR. MACKEY: Would you agree with me
15 that it would be fair to say that Mr. Donaghue
16 had a prominent role in the editing of the final
17 report at least as reflected in the grand jury
18 report?

19 MR. SAVITCH: I don't know about
20 prominent. I don't know -- A lot went into
21 preparing this report. As I understand these
22 reports, they were prepared at length through
23 BIE and then presented to Donaghue and Neeb at
24 the end. I have knowledge that this says what

1 it says.

2 MR. MACKEY: No sense in quibbling
3 about the language. The grand jury report,
4 you'd agree with me reflects that the executive
5 director and Mr. Donaghue either required or
6 ordered certain changes to be made?

7 MR. SAVITCH: Yes.

8 MR. MACKEY: Okay, thank you. You
9 testified in your direct presentation that your
10 review of the grand jury report itself, it
11 sounds like it got some fairly prominent
12 attention from you and the head of your
13 compliance committee and maybe others at Penn
14 National in connection with Mr. Donaghue's hire?

15 MR. SAVITCH: From me and from Tom
16 Auriemma who was our chief compliance officer at
17 the time. He was helping me vet the candidates
18 for his successor.

19 MR. MACKEY: Just back to the
20 suitability report for a second. Page 282, the
21 last sentence, first paragraph, while he -- Are
22 you there?

23 MR. SAVITCH: Not yet.

24 MR. MACKEY: Last sentence, first

1 paragraph, while he -- And the he is you here --
2 while he did discuss the grand jury
3 investigation with Donaghue, he did not place
4 any significance on the grand jury report during
5 Donaghue's hiring process.

6 Is that a fair summary of your
7 statement to the investigator?

8 MR. SAVITCH: I didn't think so.

9 MR. MACKEY: You don't think that
10 that sentence accurately reflects what you said
11 to the investigators?

12 MR. SAVITCH: No. I thought -- what
13 I think is accurate to say is at the end of the
14 day we didn't attach a lot of significance to
15 this in terms of the overall evaluation.
16 Obviously, we went and hired him.

17 So, this was one piece of a puzzle.
18 We thought we had a lot of good information
19 about Frank Donaghue of which this was a piece
20 of. That's not to say that we didn't do the
21 work in understanding what was in here and
22 coming to a conclusion about it.

23 MR. MACKEY: Did you ever discuss
24 the issue of the grand jury report as it

1 affected Mr. Donaghue's hiring with Mr. Carlino?

2 MR. SAVITCH: I mentioned it to him.

3 MR. MACKEY: What was that
4 discussion?

5 MR. SAVITCH: I mentioned that he
6 was in the grand jury report. That we had
7 looked at it. That Tom and I had looked at it
8 and discussed it with Steve. That we didn't
9 think it was going to adversely impact his
10 suitability. And that it had been vetted by the
11 right processes, by the right people in the
12 company.

13 MR. MACKEY: Did Mr. Carlino have a
14 reaction to that?

15 MR. SAVITCH: No. I think he relies
16 on us to make those determinations. It was
17 significant enough that I wanted to point it out
18 to him.

19 MR. MACKEY: In substance is that
20 what he said, I'm going to rely on you guys to
21 make the right call?

22 MR. SAVITCH: In substance.

23 CHAIRMAN CROSBY: Could I just
24 interrupt? On page 281 talking about the

1 interview with Mr. Carlino, it says he stated
2 that the investigation was discussed with other
3 -- this is Mr. Carlino. He stated that the
4 investigation was discussed with other officers
5 of Penn National in general terms, but that he
6 did not place any serious significance on the
7 investigation or the report because he did not
8 have confidence that the proceedings, the grand
9 jury proceedings would result in an accurate
10 reflection of the operations of PGCB.

11 MR. SAVITCH: You'll have a chance
12 to ask Peter, but I think there is a general
13 belief and my focus on Frank -- The grand jury
14 report is around 122 pages. There's a few
15 pieces on Frank. There is a much larger report
16 there. It was I think to Mr. Mackey's original
17 point, it was very harsh.

18 I did also believe, and I think I
19 mentioned this to the investigators at the time
20 of the interview, having been an applicant in
21 front of the Pennsylvania Gaming Control Board
22 and watch the process unfold, I did think there
23 was a bit of a disconnect between what I was
24 reading in that grand jury report, which paints

1 a very bleak picture of what was going on with
2 what I observed.

3 I had the chance to interact with a
4 lot of staff at the Pennsylvania Gaming Control
5 Board. We were called in front to do a
6 licensing hearing similar to this one. I
7 thought they did a very good job. And I think
8 it's generally believed that they did a very
9 good job in getting gaming off the ground in
10 Pennsylvania.

11 This report only focuses on three of
12 15 applicants. So, probably Peter's comment is
13 you look -- the grand jury looked at these
14 particular and certainly focused on the things
15 that they had a problem with. But when you look
16 at the body of work, I think all of our view at
17 the time is that the Pennsylvania Gaming Control
18 Board did a very good job under difficult
19 circumstances.

20 They were thorough. I have the
21 privilege or the pain of being investigated
22 personally and as a company by all of these 27
23 regulatory agencies. So, we do have kind of an
24 interesting perspective of comparing and

1 contrasting. And it did appear to us generally,
2 to me and I suspect Peter meant the same thing
3 that it didn't really reflect their full body of
4 work.

5 But you'd have to ask him directly
6 on what he was thinking. That's just my
7 speculation.

8 MR. MACKEY: How about Mr. Wilmott,
9 did you discuss the report with him?

10 MR. SAVITCH: I don't recall which
11 other officers I may have mentioned it to. I
12 report directly to Peter as does Tim. So,
13 before when I was clear that I was going to make
14 a recommendation to the compliance committee
15 that Frank was the guy, I gave them the good,
16 the bad and the ugly as I would with any
17 candidate. I don't do that with the other
18 officers.

19 MR. MACKEY: What about the
20 compliance committee then, would this have been
21 one of those hires that unlike Mr. Snyder would
22 have had to go through the compliance committee?

23 MR. SAVITCH: It would have,
24 absolutely.

1 MR. MACKEY: It would have. Okay.
2 Could you describe for me what that process was?
3 Is that something -- do you sponsor the
4 potential employee in front of the compliance
5 committee and make a presentation? Or how does
6 that work?

7 MR. SAVITCH: It's not formal. The
8 committee meets quarterly. And in a hire such
9 as this, especially with Tom who we had a chief
10 compliance officer. He interacts primarily with
11 the committee.

12 He and I were cooperating in hiring
13 a successor for him. I think each of us spoke
14 to Steve DuCharme who is the chairman of the
15 committee. Then Tom or Steve would talk to the
16 other members. The director members would
17 typically rely on Steve and Tom in making a
18 decision of this sort to come to a consensus.

19 MR. MACKEY: So, there wasn't a
20 specific meeting at which this was an agenda
21 item for deliberation amongst the committee?

22 MR. SAVITCH: I don't recall there
23 being one. It may have come up, but I don't
24 recall.

1 CHAIRMAN CROSBY: Excuse me. In our
2 report and in Mr. Donaghue's testimony, there's
3 no mention of Steve DuCharme as having been
4 involved. It refers to Auriemma.

5 MR. SAVITCH: I did speak to Steve.

6 CHAIRMAN CROSBY: You did not?

7 MR. SAVITCH: I did on Frank.

8 CHAIRMAN CROSBY: You didn't mention
9 that to the investigators, or if you did, it
10 didn't get picked up.

11 MR. SAVITCH: That may not have come
12 up.

13 CHAIRMAN CROSBY: And Donaghue
14 didn't know that you did because he thought it
15 was only you and Auriemma that had discussed it.

16 MR. MACKEY: Do you know, Mr.
17 Savitch, if -- Did you give to Mr. DuCharme or
18 any other member of the compliance committee a
19 copy of the grand jury report?

20 MR. SAVITCH: I did to Steve.

21 MR. MACKEY: To Steve, okay. And do
22 you know if he read it?

23 MR. SAVITCH: I believe he did.

24 MR. MACKEY: Did you ever have a

1 discussion with Mr. DuCharme about the contents
2 of the report?

3 MR. SAVITCH: I did.

4 MR. MACKEY: Can you describe for
5 the Commissioners what that discussion was?

6 MR. SAVITCH: As I mentioned in my
7 testimony, I wanted to bounce it off of Steve
8 and Tom to get their reaction to it. Here's a
9 guy we're hiring. He's mentioned in this grand
10 jury report. We were making our own suitability
11 evaluation. Are the issues that were raised
12 here, do they rise to the level where we would
13 find him not suitable to hold this position?

14 MR. MACKEY: Was there anybody on
15 the compliance committee, Mr. DuCharme or other
16 members of the committee, other members of the
17 board who raised a serious issue about the
18 hiring of Mr. Donaghue in light of the report?
19 In words or substance, great guy, very
20 qualified, but let's step back because this
21 looks like a serious issue that kind of thing?

22 MR. SAVITCH: Well, I think the fact
23 that we discussed it, in what was otherwise an
24 exemplary career, and a person who made a very

1 positive impression, we have this one data point
2 in the grand jury investigation.

3 The question is does this one data
4 point rise to the level, does this negate
5 everything else that we found out about him?
6 So, we had that discussion. I think that's the
7 hard question. You've got to look at this
8 report and say gee, do I not hire this guy as a
9 result of what's in here?

10 And I think one of the points in
11 particular on this page you had me look at that
12 I recall is the issue here was not whether there
13 was going to be a negative or positive
14 recommendation about Louie DeNaples -- I'm going
15 to go with Louie, Mr. Mackey. I'm not certain
16 if that's right. They were on board with a
17 negative recommendation.

18 The issue here seemed to me, anyway
19 to be one as how best do we present the evidence
20 in this case. They had two issues that they
21 felt very bullish on that were slam dunk,
22 couldn't be challenged type issues about these
23 retitling of Katrina trucks and the political
24 contributions from RAM. There are other issues

1 that they felt were unsubstantiated that they
2 didn't have the right evidence.

3 To me this is a kind discussion that
4 happens among lawyers before they present a
5 brief. I've got four arguments. I've got two
6 that are really strong. I've got two that are
7 so-so. Do I just go with the two that are
8 really strong? Do I put the two that are in
9 there that are the weaker ones? Is that going
10 to undermine my credibility? Is this going to
11 be challenged in the future? That's how I
12 interpreted this.

13 To me, this did not rise to the
14 level, and especially after getting context in
15 talking to Steve and Tom about how this decision
16 was made, it didn't rise to the level of being
17 an alarming suitability issue is my
18 interpretation.

19 CHAIRMAN CROSBY: And he was wrong
20 in that judgment that he had two slam dunk
21 points and the other ones would weaken -- in
22 fact, the board did find Mr. DeNaples suitable.

23 MR. SAVITCH: Indeed that is what
24 happened. I agree. But in looking at the

1 process, look, it would have been a different
2 picture if this grand jury came back and said he
3 was trying to influence this into a positive
4 recommendation. I think it's clear in another
5 place in the report that they were on board with
6 a negative recommendation. This is a judgment
7 that got made about how best to present
8 evidence. And I think every lawyer probably
9 looks back at some case or another in their life
10 and say, gee, I wish I had made that argument
11 differently.

12 CHAIRMAN CROSBY: It is more than
13 that. There is strong evidence that he demanded
14 contrary to the wish of the investigators that
15 this information be taken out and that under
16 duress -- There's a debate about this. -- but
17 the allegation and testimony is that under
18 duress, his subordinates took it out because
19 they had been told to take it out by him.

20 MR. SAVITCH: I understand, but I
21 think it was my estimation in talking to my
22 advisors that it was with a view towards trying
23 to get to the right result. It may have been
24 the wrong call, I grant you that, Mr. Chairman.

1 To me what was important was the intent, at
2 least as best as I could read it from the grand
3 jury report.

4 MR. MACKEY: Just a couple of more
5 questions. You described this as a decision
6 that lawyers get together and they make every
7 day in terms of how to present evidence, how to
8 present the case. And it would be fair to say
9 that the commission or the board I guess it's
10 called in Pennsylvania, the board was Mr.
11 Donaghue's client, correct -- the board members,
12 the board was his client.

13 MR. SAVITCH: That's a technical
14 question, I believe that's probably a fair
15 statement.

16 MR. MACKEY: You think looked at
17 through that lens, there is a strong case to be
18 made that this was not so much about presenting
19 evidence in a way that was likely to prevail but
20 disclosing important information to your client
21 so that they can make whatever responsible
22 decision they needed to make?

23 MR. SAVITCH: I don't think that's
24 the way they felt. I checked in the vetting

1 process, they generally had a very positive
2 impression of Mr. Donaghue.

3 MR. MACKEY: The board?

4 MR. SAVITCH: The board, yes.

5 MR. MACKEY: No further questions.

6 COMMISSIONER CAMERON: I have a
7 couple questions for you, Sir. My concern in
8 reading this is not necessarily the outcome of
9 the hire, but the process. You say you spoke to
10 Mr. Donaghue and you spoke to your compliance
11 people.

12 My question did you speak to anyone
13 else involved with that report, whether it be
14 investigators, whether it be attorneys, deputies
15 attorney general that were involved with the
16 process? Just reading the report and making a
17 decision after speaking to the individual
18 doesn't seem to me that that's a lot of due
19 diligence over a very serious issue.

20 MR. SAVITCH: I knew we had as part
21 of Frank's hiring process, he was going to be
22 submitting licensing applications. There's
23 going to be further review. There is a limit
24 to, like I said, our investigatory powers. I

1 don't really feel like I have the ability to
2 call up investigators who I don't know and start
3 taking testimony myself.

4 COMMISSIONER CAMERON: Not
5 testimony, but just trying to understand from
6 the perspective of those who were there
7 firsthand about what exactly happened here.
8 Something that's of concern to me is not as much
9 the unsubstantiated information, but the fact
10 that investigators were not allowed to try to
11 substantiate information that's very significant
12 in my mind in reading this.

13 So, when you say you place no --
14 Page 37 you say you place little credence and
15 later on you said you placed no credence. It
16 just strikes me that you did realize how
17 significant this was, and there is a body of
18 work beyond this, which you do recognize which
19 is appropriate to recognize. But the fact that
20 you place no significance at all and that the
21 only conversations you had were with your own
22 internal compliance people and with the
23 individual who you're potentially going to hire,
24 that strikes me in reading this.

1 MR. SAVITCH: There's another
2 element to it. When I check the references, I
3 didn't discuss the grand jury report
4 specifically. I did speak to people who were
5 very familiar with Frank's work. And I did ask
6 generally about the quality of his work and his
7 integrity and his commitment.

8 I didn't drill down on these
9 specific facts. I thought that that was a fair
10 diligence process in terms of making an
11 evaluation about his competency and his
12 integrity. Talking to people who were there who
13 were familiar with his work. Talking to people
14 who I know to be experts on regulatory matters.
15 I thought it was sufficient.

16 CHAIRMAN CROSBY: Others?

17 COMMISSIONER MCHUGH: Just a couple.
18 You a couple of times said -- you used the
19 phrase the issues that were there in the context
20 of your hiring process. You said on one
21 occasion that I didn't think that the issues
22 that were there would keep Mr. Donaghue from
23 doing a good job as chief compliance officer.

24 MR. SAVITCH: Yes.

1 COMMISSIONER MCHUGH: What were
2 those issues?

3 MR. SAVITCH: The issues raised in
4 the grand jury report.

5 COMMISSIONER MCHUGH: What were they
6 specifically as you think through them now? I
7 guess I am asking what issues did the grand jury
8 report raise for you?

9 MR. SAVITCH: In my mind, the issues
10 were about the judgments that were made about
11 how to fashion these reports to the board.
12 About what evidence to include and how
13 substantiated it needed to be.

14 COMMISSIONER MCHUGH: So, that's
15 really -- Is there more than one issue there? I
16 don't want to break it down. I'm just trying to
17 figure out what you took away from your reading.

18 MR. SAVITCH: That was primarily
19 what i took away. It's been a while since I've
20 looked at it.

21 COMMISSIONER MCHUGH: It's been a
22 while since you've looked at it?

23 MR. SAVITCH: Since I've looked at
24 this issue in his hiring. That was two years

1 ago.

2 COMMISSIONER MCHUGH: In getting
3 ready for today's hearing, did you look at it.

4 MR. SAVITCH: I did.

5 COMMISSIONER MCHUGH: So, you looked
6 at it within the last couple of days?

7 MR. SAVITCH: I did.

8 COMMISSIONER MCHUGH: So, did you
9 ask Mr. Donaghue about that issue as you've just
10 framed it?

11 MR. SAVITCH: Recently or
12 originally.

13 COMMISSIONER MCHUGH: Originally
14 during the course of the hiring?

15 MR. SAVITCH: Yes, I did.

16 COMMISSIONER MCHUGH: And what did
17 he tell you?

18 MR. SAVITCH: He told me that he was
19 worried about a principle in Pennsylvania
20 administrative law about having substantial
21 evidence to back up the claim. He was worried
22 about back up the issues that they presented in
23 the report. He was worried about this being
24 subject to a future litigation and wanted to

1 make sure that they put before the board
2 evidence that would withstand later scrutiny,
3 judicial scrutiny.

4 COMMISSIONER MCHUGH: You're
5 familiar with the substantial evidence
6 principle, are you, in administrative law?

7 MR. SAVITCH: I am not an
8 administrative law expert.

9 COMMISSIONER MCHUGH: Did he explain
10 to you anything more about the issue than that
11 he was worried about substantial evidence?

12 MR. SAVITCH: To my recollection,
13 that was generally the issue. And I don't know
14 if I'm missing a nuance that you're asking me
15 about.

16 COMMISSIONER MCHUGH: No, no. I
17 guess I'm asking the question I'm not really
18 interested in the answer to and I apologize for
19 that.

20 Because the real question is how
21 deeply did you think you had to probe his
22 rationale for doing what the grand jury
23 described he was doing?

24 MR. SAVITCH: I thought it was

1 sufficient for me to people who were more expert
2 on this matter than I am to get their response,
3 to get their evaluation of what's contained in
4 this report. I read it and I made my own
5 evaluation, but I'm not an expert. I'm smart
6 enough to know that when I'm not an expert, I
7 should seek the advice of those who are.

8 COMMISSIONER MCHUGH: And you said
9 at one point during your testimony here today
10 that appearances are important if and to the
11 extent they prevent somebody from being
12 effective in doing their job.

13 MR. SAVITCH: I did say that.

14 COMMISSIONER MCHUGH: I take it you
15 formed a judgment that the appearances emanating
16 from this grand jury report would not be
17 significant enough to prevent Mr. Donaghue from
18 doing his job?

19 MR. SAVITCH: I did at the time.

20 COMMISSIONER MCHUGH: And could you
21 give us your thought process there?

22 MR. SAVITCH: I thought that this
23 issue, when you look at when he came up for
24 later evaluation, and particularly in the

1 context of a suitability hearing where his
2 entire background will be evaluated from age 18
3 until the present, I really did come to the
4 conclusion that this would be just one small
5 issue in what is, as I think I mentioned before,
6 a very exemplary body of work.

7 I did not think that a gaming
8 commission would look at only this and nothing
9 else and not the rest of his record and say,
10 this by and of itself is going to make him
11 unsuitable. I could be wrong. You may come to
12 a different conclusion. But that was my
13 estimation at the time. And I discussed that
14 with Steve and Tom and they agreed. We just did
15 not think that what was in here was a fatal
16 flaw.

17 COMMISSIONER MCHUGH: There's
18 external effectiveness, i.e., the effectiveness
19 of his relationship to the outside world,
20 specifically gaming commissions and the like,
21 right?

22 MR. SAVITCH: Absolutely.

23 COMMISSIONER MCHUGH: But there's
24 also internal effectiveness. Did you think

1 about how this might affect his internal
2 effectiveness, his ability to be an effective
3 compliance officer internally?

4 MR. SAVITCH: I did not think that
5 this would impact his ability to be effective
6 internally.

7 COMMISSIONER MCHUGH: Why?

8 MR. SAVITCH: Because the other
9 traits that I had come -- In my interview
10 process, the other traits that I believed he had
11 are what were going to drive him to be
12 effective. He has I think very strong
13 interpersonal skills. I think he's even keeled.
14 He's experienced.

15 He has run administrative agencies
16 before. He understands -- he's had experience,
17 especially with an emerging gaming jurisdiction
18 which as we are here and that's a lot of where
19 our new business development comes from, he had
20 the right level of experience, the right level
21 of character and characteristics that led me to
22 believe that he would be a good fit for us
23 internally.

24 It's important for a compliance

1 officer to work effectively with the other
2 members of the team. He's got to be able to get
3 a free flow of information from everybody. He
4 needs to be trusted. And I thought Frank
5 possessed those attributes.

6 COMMISSIONER MCHUGH: Did you think
7 that appearances, we've talked a lot about
8 appearances today, and this is the tact that I'm
9 now, did you think that any appearances flowing
10 from the report might interfere with his ability
11 to get information, to lead, to act as an
12 example of the kind of compliance that you
13 wanted Penn National to have?

14 MR. SAVITCH: I did not at the time
15 and I have seen nothing over the last two years
16 to suggest to me that it has.

17 COMMISSIONER MCHUGH: Thank you.

18 CHAIRMAN CROSBY: Anybody else?
19 Commissioner?

20 COMMISSIONER ZUNIGA: I notice some
21 of the officers of Penn are licensed in
22 Pennsylvania.

23 MR. SAVITCH: Yes.

24 COMMISSIONER ZUNIGA: Do you know

1 when that may have been -- when maybe that took
2 place, approximately?

3 MR. SAVITCH: I would imagine that
4 that occurred in the 2007.

5 COMMISSIONER ZUNIGA: I also noticed
6 that Mr. Donaghue is not licensed in
7 Pennsylvania. Is there a particularly reason
8 for that context?

9 MR. SAVITCH: It's up to each
10 state's regulators. He is licensed, thank you.
11 We take our key from each of our regulatory
12 bodies as to who they want us to call forward
13 for licensing. Each state is a little bit
14 different.

15 COMMISSIONER ZUNIGA: Thank you.

16 CHAIRMAN CROSBY: Commissioner?

17 COMMISSIONER STEBBINS: Quick
18 question, as you were considering his
19 employment, any interaction with your senior VP
20 of human resources, somebody who's charged with
21 recruitment and training of employees or does
22 that individual not play a role with executive
23 recruitment or executive hires?

24 MR. SAVITCH: He does play a role

1 where requested. When I hire professionals, I'm
2 typically not using HR for that function
3 although they did meet with him. They do their
4 assessments. They to the background checks.
5 So, I don't know if he actually met with Gene.
6 I'm fairly certain he met with someone on Gene's
7 staff at the time.

8 COMMISSIONER STEBBINS: You talked
9 about raising this issue with Tom and Steve
10 DuCharme. Did you ever have a conversation with
11 your VP of HR about the issue?

12 MR. SAVITCH: I wouldn't typically
13 on a compliance issue, which I consider this to
14 be a compliance issue. I would go to my experts
15 on compliance.

16 CHAIRMAN CROSBY: Is that it?

17 COMMISSIONER STEBBINS: All set.

18 CHAIRMAN CROSBY: In Mr. Donaghue's
19 January 18, 2012, it's our Exhibit 11,
20 testimony, he says the following: The Deputy
21 Attorney General also asked me questions about
22 the performance of the BIE attorney who
23 represented the board at the DeNaples
24 suitability hearing. The Deputy Attorney

1 General asserted that a number of grand jury
2 witnesses who had testified prior to me were
3 critical of the manner in which this BIE
4 attorney had handled the matter. I testified
5 that as an attorney, I was not going to be
6 critical of another attorney's job performance.

7 How does that strike you?

8 MR. SAVITCH: I'm sorry. I didn't
9 follow. Which one is it?

10 CHAIRMAN CROSBY: It's the third
11 page of our Exhibit 11. The middle paragraph
12 that starts out the Deputy Attorney General.

13 MR. SAVITCH: Who is the Deputy
14 Attorney General in this case?

15 CHAIRMAN CROSBY: That the Deputy
16 Attorney General during the grand jury
17 testimony. So, the Deputy Attorney General is
18 asking Donaghue that question.

19 MR. SAVITCH: I'm not sure I
20 understand this comment.

21 CHAIRMAN CROSBY: That makes two of
22 us. The reason that I ask is it goes -- It
23 seems crazy to me. He was the boss. This
24 attorney worked for him. He was the General

1 Counsel. And he's telling the Deputy Attorney
2 General at a grand jury investigation that he
3 would not be critical of another attorney's job
4 description.

5 I'll ask this of him, obviously.
6 But it makes you wonder what kind of a
7 compliance officer you're going to have if he's
8 not willing to be critical of another attorney.
9 That goes to the question about -- you said
10 there was this sort of isolated incident in a
11 great body of work.

12 I'm looking for cues as to this
13 man's character in the compliance job. You
14 don't have any more sensitive job in your whole
15 organization than your chief compliance officer.
16 Not a happy place to be lots of times for
17 somebody with a real character of steel. That
18 doesn't sound to me like somebody with a
19 character of steel.

20 MR. SAVITCH: Look, I can't comment
21 on the context here. But I will add that in the
22 two years that I've watched him perform, as he
23 has assisted individuals with various issues
24 that have come up, I have watched him ask the

1 hard question, and give the hard answer even
2 when his recipient doesn't really want to hear
3 that answer. I can only go by my own
4 experiences.

5 CHAIRMAN CROSBY: I will say what I
6 had said in the two other instances. To me,
7 it's just astonishing that nobody would've said,
8 hey, maybe he's a really good guy, but we don't
9 need this. This just doesn't make sense.
10 There's just a disconnect. Nobody knows for
11 sure what's behind this. It smells.

12 Everybody was talking about it. We
13 were up here in Massachusetts knew all about it.
14 You guys were in Pennsylvania. It's just
15 amazing to me that nobody said this doesn't make
16 any sense. Why would we want to hire a guy
17 who's under a cloud like this to be our chief
18 compliance officer.

19 MR. SAVITCH: I think we did,
20 Chairman. We did consider this issue. In
21 trying to look past, we tried to get to what the
22 substance of the man. At least in my process
23 that's what I feel I do with each of our
24 candidates.

1 I think it's unfair and it's a loss
2 to the company if you take an appearance and you
3 don't drill down into -- you don't come to a
4 conclusion about the substance of the person.
5 You can miss out on somebody really good.

6 And I agree, appearances do matter
7 but the substance also matters. And I hope if
8 you draw from this, I see where you're obviously
9 making very clear what you're concerned with us
10 is that these appearances aren't taken into
11 account.

12 There's a flip side to it where we
13 also take the time, we think, to look in the
14 substance of the person and not to throw
15 somebody out just because there might be a
16 superficial question or even a significant
17 question if we have good reasons and good
18 substance behind that to make a decision to hire
19 somebody.

20 CHAIRMAN CROSBY: Anybody else,
21 anything anybody?

22 COMMISSIONER MCHUGH: No, nothing,
23 thank you. Thank you very much.

24 CHAIRMAN CROSBY: Thank you. We

1 will not adjourn. We will just temporarily
2 adjourn, I guess, whatever the word is.

3 COMMISSIONER MCHUGH: Recess.

4 CHAIRMAN CROSBY: Recess, thank you.
5 So, we won't do a closing statement until after
6 your other witnesses.

7 And our plan is, I believe, our hope
8 is to convene at one tomorrow. We will be here
9 in the morning having our regular meeting and
10 then we will reconvene this at one o'clock
11 tomorrow afternoon. Thank you.

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13 (Hearing suspended at 3:47 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
and accurate transcript from the record of the
proceedings.

I, Laurie J. Jordan, further certify that the
foregoing is in compliance with the
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I, Laurie J. Jordan, further certify I neither
am counsel for, related to, nor employed by any
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financially nor otherwise interested in the
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WITNESS MY HAND this 21st day of September,
2013.



LAURIE J. JORDAN

My Commission expires:

Notary Public

May 11, 2018