IN THE MATTER OF THE APPLICATIONS OF BOARDWALK REGENCY CORPORATION AND THE JEMM COMPANY FOR CASINO LICENSES.

Decided: November 13, 1980
Approved for Publication By the Casino Control Commission:
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SYNOPSIS

Boardwalk Regency Corporation and the Jemm Company (lessor of the casino hotel operated by Boardwalk Regency) applied to the Casino Control Commission for casino licenses. Following a hearing by the Commission, a conditional license was granted to Boardwalk Regency and a limited owner-lessor license was granted to Jemm.

The main obstacle to licensure for Boardwalk Regency was the good character qualifications of four individuals required to be qualified. All were executives of Caesars World, Inc., parent company of Boardwalk Regency. The Commission, after consideration of the evidence, found that two of those individuals—Clifford Perlman, Chairman of the Board of CWI, and Stuart Perlman, Vice-Chairman of the CWI board, and both major shareholders—did not establish their good character and were not qualified.

The Commission determined, however, that it had authority to issue a casino license despite the disqualifying individuals, provided the license was conditioned so as to eliminate the influence of the unacceptable qualifiers. *N.J.S.A.* 5:12-75 and -105. Such conditions must remove any unacceptable individuals from the categories of persons required to be qualified. In addition, there should be good reasons why the public interest would be better served through conditional licensure than through license denial and appointment of a conservator.

Accordingly, the Commission granted the license on the condition that Boardwalk Regency either separate the unqualified individuals from the corporation or withdraw from casino operations in New Jersey. The applicant was given a 30-day interim period in which to decide which of the two options it would elect.

William R. Glendon, Esq., for Boardwalk Regency Corporation (Rogers & Wells, attorneys)
Morris Brown, Esq., for Boardwalk Regency Corporation (Wilentz, Goldman & Spitzer, attorneys)
Richard H. Sheehan, Esq., for Boardwalk Regency Corporation (Vice President-Law, Caesars World, Inc.)
James L. Cooper, Esq., for the Jemm Company (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim, attorneys)
Michael R. Cole, Assistant Attorney General; **Joan Robinson Gross,** Deputy Attorney General, and **Anthony J. Parillo,** Deputy Attorney General, the Division of Gaming Enforcement
R. Benjamin Cohen, General Counsel, and **Joseph A. Fusco,** Special Counsel for Licensing, for the Casino Control Commission

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BY THE CASINO CONTROL COMMISSION:

I. *INTRODUCTION*

On September 1, 1978, Boardwalk Regency Corporation ("BRC") applied to the Casino Control Commission for a casino license. In accordance with the Casino Control Act ("the Act"), the Commission requested the Division of Gaming Enforcement ("Division") to conduct a comprehensive investigation into BRC's qualifications. While the investigation was in progress, BRC proceeded with its reconstruction and expansion of the former Howard Johnson's Regency Hotel. On April 30, 1979, with completion of its facility approaching, BRC formally requested issuance of a temporary casino permit which the Commission is authorized to grant upon the filing of certain corporate information, the institution of an appropriate voting trust agreement and the establishment of the suitability of the proposed casino hotel facilities. See *N.J.S.A.* 5:12-95.1. After conducting a hearing on this request, the Commission found that, subject to certain conditions, BRC met the requirements for a temporary casino permit. The Commission then issued such a permit which became effective on June 26, 1979. That permit expired at midnight on October 26, 1980. As noted, the statutory requirements for a temporary casino permit were limited to areas which did not concern the suitability of the applicant or other persons required to be qualified for a casino license.

As the landlord and lessor of the casino hotel facility, the Jemm Company ("Jemm") is required by Section 82 of the Act to apply for and obtain a casino license. *N.J.S.A.* 5:12-82(c)(2). Jemm did apply for such license on or about February 26, 1979. In the usual course, the matter was referred to the Division for investigation.

On January 23, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Boardwalk Regency Corporation" (the "BRC Report"). Along with the BRC Report, the Division filed a "Statement of Issues" emphasizing several matters which the Division deemed significant. On February 1, 1980, the Division filed its "Report to the Casino Control Commission with Reference to the Casino License Application of Jemm Company, a Partnership". These documents were submitted by the Division pursuant to its statutory responsibility to investigate the qualifications of each applicant and to provide all necessary information to the Commission. *N.J.S.A.* 5:12-76. Although they assist the Commission in focusing its inquiry into the qualifications of the applicants, these documents are not evidence of the matters stated therein. Nor did the Report and Statement of Issues initiate the present hearing. The Casino Control Act requires a hearing on every casino license application and each applicant must meet the statutory criteria regardless of the tenor of the Division's report. See *N.J.S.A.* 5:12-80(a) and -87(a).

In order to expedite the proceedings and to fairly permit the parties to prepare for the hearing, six pre-hearing conferences were conducted. Those conferences resulted in six pre-hearing conference orders delineating the factual matters which were to be the primary subjects of the hearing. Essentially, those subjects concern the areas described in the Division's reports. Further, the applicants and the Division have entered into extensive stipulations of fact relevant to those areas. These stipulations have been accepted by the Commission. As to any other factual matters not placed in issue nor actually litigated during the hearing, it must be assumed that such matters pose no cause for concern. In this regard, the Commission took notice of the fact that the applicants have to date filed numerous documents which pertain to uncontested matters and which were not introduced at the hearing.

Sections 84 and 89(b) of the Act set forth the criteria which a casino license applicant and other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. *N.J.S.A.* 5:12-84 and 89(b). The clear and

convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt". The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderance standard but somewhat less than the reasonable doubt requirement. Clear and convincing evidence should produce in the mind of the Commissioner a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, the applicant was obliged to present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. Further, the Act requires that four of the five Commission members must concur in any necessary finding for casino licensure. *N.J.S.A.* 5:12-73(d).

As noted, a casino license applicant must establish by clear and convincing evidence that it meets the criteria of Section 84 and that the persons who must be qualified meet the criteria of Section 89(b) for casino key employees. For BRC, a corporate applicant, the persons required to so qualify are described in Sections 85(c) and 85(d) of the Act. Under Section 85(c), the following persons connected with BRC must qualify:

(a) Each officer;
(b) Each director;
(c) Each person holding any beneficial interest, direct or indirect in the securities of the applicant corporation;
(d) Any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of the corporation, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business; and
(e) Any lender, underwriter, agent or employee of the applicant corporation or other person whom the Commission considers appropriate for qualification.

Under Section 85(d) the officers, directors, lenders, underwriters, agents, employees and securities holders of Caesars, New Jersey, Inc. (the intermediary company) and Caesar's World, Inc. (the holding

company) must qualify to the standards under Section 89, except residency. However, since both the intermediary company ("CNJ") and the holding company ("CWI") are publicly traded corporations, the Commission and the Director of the Division may agree to waive such qualification requirements as to any person who is not significantly involved in the activities or BRC and who does not have the ability to control the holding company or the intermediary company or to elect one or more directors thereof.

As to Jemm, the partnership which leases the casino hotel facility to BRC, Section 85(e) of the Act requires the following persons to be qualified to the standards for casino key employees, except for residency:

(a) Each person who directly or indirectly holds any beneficial interest or ownership in the partnership applicant;

(b) Any person who in the opinion of the Commission has the ability to control the partnership applicant; and

(c) Any person whom the Commission considers appropriate for qualification.

During the pre-hearing conferences, the Division submitted a list of persons whom the Division deemed required to be qualified for both BRC and Jemm. The Division also indicated those individuals to whom it interposed an objection and the grounds for such objection. These materials were provided to the Commissioners and the parties. The Commission found that there are 30 persons who must be qualified as part of the BRC application and eight persons who must be qualified as part of the Jemm application. At the conclusion of the hearing, the Division objected to four of the BRC "qualifiers", namely, Clifford S. Perlman, Stuart Z. Perlman, Jay E. Leshaw and William H. McElnea, Jr. No objection was interposed regarding any of the Jemm qualifiers.[1]

As to the licensure standards themselves, Sections 84 and 89(b)(2) establish essentially the same qualification criteria which must be established by clear and convincing evidence for the applicants and the persons to be qualified. The first affirmative qualification criterion is that of "financial stability, integrity and responsibility". *N.J.S.A.*

[1]Prior to the hearing, the Division stated its opposition to Mark A. Geller, who resigned his position as vice-president for BRC's casino operations and who took a leave of absence from his office in CWI. Mr. Geller's qualifications are the subject of a separate proceeding and will be determined by the Commission apart from the instant matter.

5:12-84(a); *N.J.S.A.* 5:12-89(b). The second criterion appears in Section 84(c) and Section 89(b)(2). Although the wording varies slightly between these sections, the thrust is the same. A casino licensee applicant or person required to qualify must demonstrate its "reputation for good character, honesty and integrity". *N.J.S.A.* 5:12-89(b)(2). The third criterion demands that the applicant or qualifying person possess "sufficient business ability and casino experience as to establish the likelihood" that the applicant will create and maintain "a succesful, efficient casino operation" or that the qualifying person will achieve "success and efficiency in the particular position involved". *N.J.S.A.* 5:12-84(d); *N.J.S.A.* 5:12-89(b)(3). A fourth affirmative criterion applies only to the casino license applicant which must establish the "integrity and reputation" of all financial investors or lenders whose investments or loans are related to the Atlantic City casino hotel project.[2]

As mentioned earlier, the Division filed investigative reports as to both the BRC application and the Jemm application. In addition, the Division submitted a "Statement of Issues" in which it enumerated 13 areas of concern covered by the BRC report. The Commission received evidence on these areas and considered that evidence in determining whether BRC had met the affirmative qualification criteria. However, certain "issues" as developed on this record simply were not of the same force and importance as others. The matters which truly concerned the Commission were those which are related in the opinions regarding the four challenged BRC qualifiers. With respect to the otherwise unmentioned issues, the Commission found on this record no reasons to seriously question the suitability of the applicants or persons to be qualified. Since the real difficulties with the BRC application concern the persons to be qualified, we now consider those individuals.

[2]At the hearing, the Chairman distributed to the Commissioners and to the parties a proposed written instruction on the licensing criteria and the decisional process. After considering the exceptions filed by the parties, the Chairman modified the proposal in two respects. The written instruction, as modified, was adopted by the Chairman for the guidance of the Commission and the edification of the parties. It is not necessary to restate the instruction here since it is part of the record. Moreover, the meaning of the pertinent standards and their application to the contested matters in this case are apparent from the opinions of the Commission members herein.

II. *PERSONS REQUIRED TO QUALIFY*

A. *CLIFFORD S. PERLMAN*

Clifford S. Perlman who presently resides in Miami, Florida, was born on March 30, 1926, in Philadelphia, Pennsylvania and was educated in the Philadelphia public schools. After attending Temple University for a short time, he completed his undergraduate education at the University of Miami and proceeded to obtain a law degree from the same institution in 1951. He has been a member of the Bar of the State of Florida since 1951.

Caesars World Inc. ("CWI") was formed in 1958 as "Lum's Bar, Inc." by Clifford Perlman and his brother, Stuart, to operate a small restaurant in Miami Beach, Florida which the brothers had purchased in 1956. By 1969, the Perlmans had built the corporation into a publicly-held (over-the-counter) company which operated or franchised approximately 380 fast-food restaurants. The company also acquired in the late 1960's a Florida-based producer and distributor of processed meats (Dirr's Gold Seal Meats) and a chain of more than 100 retail discount stores. (Dade Wholesale Products). On September 30, 1969, Lumm's acquired Caesars Palace in Las Vegas, Nevada. Within the next two years, Lum's disposed of Dirr's Gold Seal Meats and Dade Wholesale Products and its fast-food restaurants. In December 1971, the name of the corporation was changed from Lums to Caesars World. Clifford Perlman was the primary catalyst in changing the direction of the company from the fast-food business to the casino hotel business.

Caesars World Inc. is today a publicly traded corporation, the stock of which is listed on the New York and Pacific stock exchanges. The approximately 26,100,000 shares of the company are owned by about 70,000 shareholders. Through subsidiaries, CWI presently owns and operates Caesars Palace Hotel and Casino in Las Vegas, Nevada, Caesars Tahoe Hotel and Casino in Stateline, Nevada, and Boardwalk Regency Hotel and Casino in Atlantic City, New Jersey. Through other subsidiary companies, CWI owns real estate and operates a country club in southern Florida, operates three honeymoon resorts in the Pocono Mountain area of Pennsylvania, and owns a computer terminal manufacturing company based in New York. In fiscal 1980, the gross revenues of CWI exceeded $500,000,000.

Clifford Perlman is Chairman of the Board of Directors and chief

executive officer of both CWI and Caesars New Jersey, Inc. ("CNJ").[3] He is the largest single stockholder of CWI, owning approximate 2.4 million shares, or about 10 percent of the outstanding stock. In addition, he owns approximately 221,000 shares of CNJ, or about 1.4 percent of the outstanding stock of that company. Clifford Perlman clearly is today, and has been since the beginning, the acknowledged leader and prime mover of CWI.

By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Clifford Perlman is a person who must individually be qualified for approval as a casino key employee (except for New Jersey residence) in order for Boardwalk Regency Corporation ("BRC") to be eligible to hold a casino license. BRC therefore has the affirmative responsibility to establish by clear and convincing evidence Clifford Perlman's "financial stability, integrity and responsibility", his "good character, honesty and integrity", and his "business ability and casino experience".

With regard to Clifford Perlman, the bulk of the evidence presented to the Commission relates to the licensure criteria of "good character, honesty and integrity". To determine an individual's "good character, honesty and integrity", the Act requires the Commission to examine, among other factors, the individual's "family, habits, character, criminal and arrest record [if any], business activities, financial affairs, and business, professional and personal associates".

In an effort to meet its statutorily imposed burden, BRC produced a great deal of evidence in support of both the good reputation of Clifford Perlman and the good character, honesty and integrity of Clifford Perlman. Several witnesses testified as to Clifford Perlman's good reputation in the financial community, in the casino hotel industry and in the communities where he lives and works. Most of these witnesses also testified as to his good character, honesty and integrity. Suffice it to say that the Commission has very carefully examined, considered and weighed all of this evidence.

The Division of Gaming Enforcement has recommended that this

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[3]Mr. Perlman has been on unpaid leave of absence from his position with CWI and CNJ and has been prohibited from taking any management position with BRC since June 26, 1979, the effective date of the BRC temporary casino permit. Mr. Perlman agreed to this arrangement in response to concerns raised by the Division which was then continuing its investigation of Mr. Perlman's and CWI's dealings with Messrs. Malnik and Cohen.

Commission find Clifford Perlman unsuitable for qualification. In support of its recommendation the Division has adduced evidence which it contends reflects adversely on the good character, honesty and integrity of Clifford Perlman. This evidence may be most conveniently considered in the context of the four major areas which were closely examined at the hearing.

1. *ACQUISITION OF CAESARS PALACE*

CWI's (then Lum's, Inc.) entry into the casino gaming business was marked by the purchase of Caesars Palace in 1969 for approximately $58 million. The Caesars Palace venture was largely the initiative of Clifford Perlman. It was Clifford Perlman who discovered the deal for the company and who established the purchase price at a multiple of earnings not to exceed $60 million.

At the time of acquisition, CWI retained prior management to run the casino operation without conducting a background study or investigation of any of the individuals, relying instead on their general reputation in the gaming community. One of these individuals was Jerome Zarowitz, the Director of Casino Operations, responsible for the day to day operations of the casino. He was then not required by the Nevada authorities to be licensed as a casino key employee. Although not a record owner of the Palace, Mr. Zarowitz received $3.5 million in cash upon the consummation of the acquisition from the former owners and received further monies on a deferred compensation plan, which CWI was obligated to fund.

Mr. Zarowitz had a known criminal record and by the latter part of 1969, was considered by Clifford Perlman unsuitable to operate the casino at Caesars Palace. While Mr. Zarowitz was still in charge of the casino, Clifford Perlman was aware of reports concerning Mr. Zarowitz's attendance at a so-called "little Appalachia" meeting of reputed organized crime members in Palm Springs in 1965. And Clifford Perlman was also aware that the Nevada Gaming Control Board had expressed concerns about Mr. Zarowitz's suitability for licensure and that his employment at Caesars Palace might have to be terminated. Notwithstanding this knowledge, CWI retained Mr. Zarowitz in his same executive capacity after the purchase settlement on September 30, 1969, until his resignation in April, 1970. Moreover, he was allowed to occupy an apartment at Caesars Palace on a complimentary basis for a period of time after his termination of employment. And, CWI replaced him with Sanford Waterman, on Mr. Zarowitz's own recommendation.

Between May 1, 1969, shortly after CWI entered into the agreement to purchase Caesars Palace, and September 30, 1969, when that purchase was completed, Caesars Palace suffered a loss of $932,266 before taxes, while continuing to be operated by the previous owners including Mr. Zarowitz. During the same period in the prior year of 1968, Caesars Palace had a profit before taxes of $2,230,014. Although professing concern over this drop in casino win, CWI accepted, without any independent investigation, the explanation tendered by Mr. Zarowitz and other personnel of the former owners that losses during the settlement period were due to patron win at the baccarat tables and, generally, to the fortunes of gaming. Indeed, CWI did nothing to confirm Zarowitz's explanation. Neither its Board of Directors nor management raised, or even considered, the possibility of an independent, outside audit of the records for the operation of the Caesars Palace casino during the settlement period. To do any such investigation, according to Clifford Perlman, would have disturbed the delicate negotiations then in progress between CWI and the previous owners over restructuring the financing aspects of the deal, occasioned by CWI's inability to adhere to its original plan of financing. In Clifford Perlman's words, "If I had accused them [the prior owners] of stealing, we would not have bought the hotel".

On December 12, 1970, the Federal Bureau of Investigation, acting under the supervision of Harold E. Campbell, Jr., then Special Agent in Charge of the Bureau's Nevada Regional Division, and having cause to believe the existence of an illegal interstate gambling operation, executed search and arrest warrants at Caesars Palace. In the course of the search, the agents uncovered funds in lockboxes listed to Mr. Zarowitz ($1,100,000), Elliot Price ($325,000) and Sanford Waterman ($135,000). Mr. Waterman and Mr. Price, who were casino executives at Caesars Palace at the time, were arrested as a result. Apparently, neither Clifford Perlman, who took personal charge of the Palace after this occurrence, nor anyone else on behalf of CWI confronted Mr. Zarowitz, Mr. Price or Mr. Waterman regarding this event or made any independent attempt to ascertain the source of these monies.

On January 27, 1971, the Securities and Exchange Commission ("SEC") ordered an examination and investigation into the possibility that CWI did not receive a substantial portion of the results of the casino proceeds of Caesars Palace for the summer of 1969 because the prior operators had been "skimming" the casino revenues during that period. In the course of its hearings in this matter, the SEC

subpoenaed, among others, the former principal owners of Caesars Palace and its key casino employees, including: William Weinberger, Sr., who at the time was President of Caesars Palace; Harry Wald, then Secretary-Treasurer of Caesars Palace (now Executive Vice President, Secretary and Director of Desert Palace, Inc., a wholly-owned subsidiary of CWI), Albert Faccinto (now Senior Vice President with Desert Palace, Inc.), Jerry Gordon and Bert Grober. All these individuals refused to testify, most invoking their constitutional privilege against self-incrimination. This fact came to the attention of Clifford Perlman who, once again, made no attempt to interview any of his employees about their possible knowledge that others may have been sharing in Caesars Palace revenues through skimming.

One of these employees, Jerry Gordon, had been indicted on March 25, 1971, along with Samuel Cohen, Meyer Lansky, Morris Lansburgh and others for income tax evasion arising from an alleged skimming operation at the Flamingo Hotel, a neighboring casino. Although professing shock over the indictment, Clifford Perlman never inquired of Gordon whether he knew of possible skimming at Caesars Palace under its prior ownership. Quite to the contrary, when Nevada gaming authorities sought Gordon's dismissal from Desert Palace, Inc., by reason of his indictment, Clifford Perlman directed William Weinberger (then President of Desert Palace, Inc.) to intervene in the matter. After a series of correspondence between Weinberger and the Nevada Gaming Control Board, Mr. Gordon was allowed to take a temporary leave of absence.

Another employee of Caesars Palace who had pled the Fifth Amendment before the SEC was Joel Snow. Mr. Snow had been rehired at Caesars Palace one year after his termination for a $1,000 shortage in the baccarat pit. He also was never asked about the drastic drop in casino winnings during the 1969 acquisition settlement period.

From the foregoing, certain conclusions are self-evident. Despite an awareness of Mr. Zarowitz's criminal conviction and his general, unsuitability in the eyes of Nevada gaming officials, CWI, through Clifford Perlman, retained him in a position of responsibility and authority within the casino, allowed him to live on the premises rent free after his resignation, accepted without further inquiry his explanation for casino losses and followed his recommendation that he be replaced by Sanford Waterman. Unquestionably, Mr. Zarowitz's record as well as the sensitivities exhibited by Nevada gaming authorities should have disabused Clifford Perlman of any such trust and reliance. In the face of an official SEC investigation into the possibility of

skimming at Caesars Palace under its prior owners—a charge which strikes at the heart of the regulatory concerns—CWI's apparent lack of diligence in ascertaining the truth of this allegation is disturbing, especially since individuals with possible relevant knowledge remained in CWI's employ. Two of these employees, Joel Snow and Jerry Gordon, in particular, should have given CWI cause for concern—indeed, Jerry Gordon at this time had just been indicted for an alleged skimming operation at the nearby casino, the Flamingo.

Of course, the nature and relevance of these events must be considered in the context in which they occurred. Clifford Perlman and CWI were new to the casino gaming industry. Nevertheless, *at the very least,* the facts outlined above relating to the acquisition of Caesars Palace should have raised Clifford Perlman's consciousness concerning the sensitive nature of this industry and concerning the regulatory process under which it operates.

2. *SKY LAKE NORTH*

In the late spring of 1971, Alvin I Malnik, a principal along with Samuel E. Cohen of Comal Corp., approached CWI President Melvyn Chasen about the possibility of CWI purchasing property in Dade County, Florida known as Sky Lake North. A previous overture to this effect had been rejected by Clifford Perlman in 1970. The Sky Lake property consisted of about 623 acres including a country club, lakes and approximately 325 acres of developable land owned by Comal. In the 1971 offer, the price was set by Malnik at $23 million. More specifically, CWI was to assume an existing $10 million mortgage debt to the Central States, Southeast and Southwest Areas Pension Fund (Teamsters Pension Fund) and undertake a $13 million purchase money mortgage to Comal. These terms appeared attractive to Clifford Perlman.

At a July 1971 meeting at Sky Lake, Mr. Malnik along with Samuel Cohen presented their proposal to certain representatives of CWI including Clifford and Stuart Perlman, William McElnea, Jay Leshaw, Bertin Perez and CWI's outside counsel, David Bernstein of Rogers & Wells. Also by this time, Mr. Malnik was proposing to sell the stock of Comal to CWI, rather than having CWI purchase the property outright, and seeking as part of the transaction, to acquire rights to CWI stock.

Sometime later in July 1971, CWI's Board of Directors met and considered the proposed transaction. Certain aspects of the deal were discussed including the reputations of Mr. Malnik and Mr. Samuel

Cohen. The Board was told: that Mr. Malnik had been accused, in a book entitled *Lansky* by one Hank Messick, of being a close associate of Meyer Lansky; that Mr. Malnik denied such association; and that Federal law enforcement authorities apparently believed Mr. Malnik was involved in organized crime. They were told that Mr. Malnik had once been indicted for tax fraud, but that he had received a directed verdict of acquittal, and that he had never been convicted of a crime. Board members were also informed of Mr. Cohen's violation of the Commodity Exchange Act.

At this meeting, David Bernstein expressed his concern over entering this transaction, given Mr. Malnik's reputation. As outside counsel, Mr. Bernstein recommended seeking the Justice Department's approval before consummating the deal. The Board rejected this advice, however, as a bad precedent, and as a poor business move. CWI's directors felt that the reputations of Mr. Malnik and Mr. Cohen should not preclude the company from the undertaking at hand and consequently decided to proceed with the transaction. Mr. Bernstein's concerns remained unabated but, he was eventually dissuaded by Clifford Perlman from again addressing the issue before the Board.

All of CWI's outside directors were not made aware of every important aspect of Mr. Cohen's background at the time of the Board's July 1971 approval of the Sky Lake transaction. In fact, Mr. Cohen had been indicted together with Meyer Lansky and others in March 1971, for income tax evasion arising from an alleged casino skimming operation at the Flamingo Hotel in Las Vegas. Clifford Perlman was aware of Meyer Lansky's reputation. Clifford Perlman also knew of the Flamingo skimming indictment involving Messrs. Cohen, Lansky and others when it was returned in March 1971. Indeed, one of Mr. Perlman's employees, at Caesars Palace, Jerry Gordon, had been charged as a co-defendant in the same indictment. Stuart Perlman knew of the Flamingo skimming indictment at the time of its filing, as did Jay Leshaw, since it was extensively reported in the news media of Miami where both resided. However, Mr. Cohen's then pending indictment with Meyer Lansky and Caesars Palace employee Jerry Gordon was not discussed with William McElnea and the other outside directors of CWI. Clifford Perlman testified that he did not consider it a sensitive issue. Stuart Perlman testified that he "assumed" all directors knew, even though the subject of Mr. Cohen's indictment was never raised or discussed at the same Board meeting in which Mr. Cohen's conviction for a commodities violation was disclosed. Jay Leshaw testified that at the time of the

Board meeting he focused on the architectural and land development aspects of the deal rather than on the character and backgrounds of those with whom his company was entering into a business relationship.

Based on the foregoing, the following findings are inescapable. In 1971, CWI's Board of Directors was faced with the prospect of entering into a major business relationship with two men of admittedly controversial and questionable reputations. This presented sufficient concern to certain directors that the topic was raised and considered at a formal Board meeting. And it was of particular concern to CWI's counsel, David Bernstein. Apparently, however, the Board was satisfied with Mr. Malnik's denial of an association with Meyer Lansky and was unpersuaded by the nature of the allegations. On the basis of the information disclosed at that meeting, the Board approved the deal after weighing the various considerations before it.

The most pertinent piece of information, however—Mr. Cohen's then pending indictment with Meyer Lansky in a casino skimming scheme—was not brought to the attention of the outside directors by Clifford Perlman, Stuart Perlman or Jay Leshaw. Just four months earlier, Mr. Cohen had been indicted with Meyer Lansky and others for a crime rooted in an alleged casino skim. Its relevance to the discussion at hand was apparent. Had this fact been disclosed at the meeting it might well have brought the Lansky connection into sharper focus. The media allegations concerning Mr. Malnik and Mr. Cohen, then thought to be baseless, might not have been so readily dismissed. Mr. Bernstein's unheeded admonition might not have been so lightly regarded. Indeed, William McElnea testified that the fact of Mr. Cohen's indictment would have been dispositive of the issue for him if he had known about it. It was, according to his business ethic, a fact which should have been fully disclosed to the Board for its consideration. It was not; and Mr. Perlman has provided no good reason why.

As the chairman of a publicly held corporation engaged in the heavily regulated business of casino gaming, Clifford Perlman should have approached Sky Lake with caution and circumspection, impelled by a sense of duty to his shareholders and to the regulatory authorities. This sense of duty both demanded, at the very least, full disclosure to the Board of Directors. It should have compelled further inquiry, such as a confrontation with Mr. Cohen himself or communication with law enforcement or regulatory agencies. But apparently none of this was done.

3. *CRICKET CLUB*

In the early summer of 1972, Clifford Perlman became personally involved in a real estate investment with Alvin Malnik and Samuel Cohen's two sons, Joel and Alan Cohen. This project involved the purchase of the partially completed Cricket Club, a high-rise condominium complex consisting of approximately 220 units in Miami, Florida. Calvin Kovens was chosen to be the general contractor for the completion of the condominium project. Mr. Kovens, along with Teamsters Union President Jimmy Hoffa, had been convicted in 1964 for fraud and conspiracy in using $1 million in Teamsters Pension funds to finance a real estate venture. Although aware of this conviction, Clifford Perlman's only objection to using Mr. Kovens' construction company was based on the personal relationship between Mr. Malnik and Mr. Kovens. When the costs of the condominium project began to exceed the financing made available for it, Samuel Cohen lent the Cricket Club substantial sums in excess of $6 million with which to complete the undertaking. Close to $2 million was also borrowed from Comal Corporation. Clifford Perlman knew that Mr. Cohen was lending money to the Cricket Club.

Clifford Perlman's equity interest in the Cricket Club was $10,000. Although asserting he was to be a passive investor, and this in part due to Mr. Malnik's reputation, all decisions involving the business or property of the corporations formed to undertake the condominium project required the consent of Clifford Perlman. Moreover, the four partners in this venture were required to indemnify each other against liabilities in excess of the percentage interest of each in the stock of the corporation. Clifford Perlman's interest was one-third.

Clifford Perlman soon became the guarantor of some substantial institutional loans. As a condition to a $13 million loan from the Carner Bank of Miami Beach to the Cricket Club, Clifford Perlman and his partners were required to guarantee (1) completion of the project, (2) payment of all costs thereof and (3) repayment of the construction loan. In October 1972, Mr. Perlman, Mr. Malnik, the Cohen sons and Mr. Kovens executed a performance bond and a labor and material payment bond, each in the amount of $6,100,000. More guarantees would follow.

Sometime in November 1972, Philip Hannifin, then Chairman of the Nevada Gaming Control Board (NGCB), personally approached Clifford Perlman concerning his involvement with Alvin Malnik in the Cricket Club. At this meeting, Mr. Hannifin voiced

his concerns over Mr. Perlman's association with an individual of Mr. Malnik's reputation. As a consequence of what Mr. Hannifin had said, Mr. Perlman committed to extricate himself from the Cricket Club if Mr. Malnik would not institute a libel suit against Hank Messick, the author of *Lansky*.

However, Clifford Perlman remained in the Cricket Club even after Mr. Malnik informed him that he would not file a libel suit. Citing the fact that he was still committed as a co-guarantor on several substantial loans to the Cricket Club, Clifford Perlman chose to continue his involvement in the project, guaranteeing new loans throughout its construction period, and lending sums of money to the corporation.

The Cricket Club project represents yet another and more direct involvement by Clifford Perlman in the business world of Alvin Malnik. Mr. Perlman's partnership with Mr. Malnik and Mr. Cohen's sons in this venture developed into one of long duration, a fact which should have been evident from the outset. His series of guarantees on loans to the Cricket Club bound Mr. Perlman so firmly to the arrangement that even when he later wanted to extricate himself, he found it impossible to do so. To this day, Mr. Perlman remains obligated on $280,000 of these guarantees after paying $386,000 to be relieved of guarantees of $3 million, a telling indication of his once intricate and deep involvement in the matter.

Prior to his entry into the Cricket Club, Clifford Perlman neither consulted with Harold Campbell, CWI's then recently hired Director of Corporate Security, nor inquired as to Mr. Malnik's background nor sought confirmation of the allegations made against him. He was apparently content with Mr. Malnik's denials. Neither did Mr. Perlman notify the Nevada regulatory authorities as to his contemplated venture with Mr. Malnik.

When Mr. Hannifin first approached Mr. Perlman about this matter in November 1972, Mr. Perlman assumed the defense or Mr. Malnik. This was indeed a curious position given Mr. Perlman's earlier concern that Mr. Malnik was not licensible in Nevada, his awareness of Mr. Malnik's reputation and his desire to become only a passive investor in the Cricket Club partly due to this reputation. But not only did Mr. Perlman defend Mr. Malnik, he proposed an alternative to outright severance which permitted him a means to remain in the project as Mr. Malnik expressly desired. By the time this alternative was no longer viable, Clifford Perlman found himself inextricably tied to the financial health of the project.

Much has been argued as to whether Mr. Perlman's conduct in this regard was violative of an official directive to the contrary. The issue, however, is not so easily defined. The fact that such a violation may not have occurred does not preclude this Commission from viewing Mr. Perlman's conduct negatively. In November 1972, Philip Hannifin, the Chairman of the Nevada Gaming Control Board, communicated his concerns to Clifford Perlman. As a result of this meeting, Mr. Perlman understood that he had made a commitment to Mr. Hannifin. He subsequently, in his own words, "definitely" breached that commitment. These circumstances cause us deep concern about Clifford Perlman's attitude toward the regulatory process.

4. *COVE HAVEN*

According to Mr. Perlman's testimony, he chanced to meet Alvin Malnik on an airplane in December 1974. Mr. Malnik inquired whether Clifford Perlman or his company could provide an opportunity to invest a substantial sum of money. Clifford Perlman first suggested that Mr. Malnik pay for improvements to the Sky Lake Country Club and accordingly increase CWI's rent for the country club. Mr. Perlman's proposal would have resulted in an increased cash drain for CWI rather than in the cash relief his company was supposedly then seeking. When Mr. Malnik declined that offer, Mr. Perlman suggested a sale and leaseback of CWI's two honeymoon resorts located in the Poconos.

Mr. Malnik offered to purchase the properties for $15 million and to lease the properties back to CWI at an annual rental of 13 percent to 15 percent of the purchase price. Mr. Perlman, in turn, presented the matter to the CWI Board for resolution. There were no negotiations over the price set by Mr. Malnik. CWI's Board of Directors gave conceptual approval to the plan and, because of an apparent conflict of interest occasioned by Clifford Perlman's Cricket Club involvement, assigned CWI President William McElnea to conclude the transaction. His conflict of interest, however, did not bar Clifford Perlman from ultimately voting to approve the transaction.

On February 20, 1975, CWI entered into a sale and leaseback of its Cove Haven and Paradise Stream resorts with Cove Associates, a Florida partnership comprised of Alvin Malnik and Samuel Cohen's sons, Joel and Alan. The assets of these properties were sold for $15 million. Prior to the consummation of the deal, CWI learned that Cove Associates, through Mr. Malnik, was borrowing the $15 million at 9 percent interest from the Teamsters Pension Fund. As part of

the arrangement, CWI agreed to lease back the two Pocono properties for 20 years at an annual rent of $2,130,000 (14.25 percent of the purchase price). Each of the leases gave CWI certain options to renew and to purchase, and obligated CWI to make certain improvements.

Three related aspects of the Cove Haven sale and leaseback transaction are worthy of particular note as they reflect on the character of Clifford Perlman. The first aspect concerns his willingness in late 1974 to lead his company into yet another business entanglement with Alvin Malnik and the sons of Samuel Cohen. The second aspect concerns his willingness to do this despite his November 1972, meeting with Philip Hannifin and his commitment to Mr. Hannifin to disassociate from Mr. Malnik and the Cricket Club. The third aspect concerns his failure to disclose all relevant information to the full CWI Board during its consideration of the Cove Haven transaction. Specifically, Clifford Perlman did not advise the full CWI Board of his November 1972, conversation with Philip Hannifin prior to the Cove Haven approval. Clifford Perlman presumed that the independent directors knew of the Hannifin meeting even though the Perlmans and Mr. McElnea made no disclosure and the subject was neither raised nor considered at the Board meeting when the Cove Haven transaction was discussed.

Also noteworthy is the fact that CWI's Corporate Security Chief, Harold Campbell, was not asked to review the Cove Haven transaction as to suitability. At that time company policy was that all significant transactions were, in the discretion of the head of the subsidiary, to be submitted for security review.

In late 1972, Harold Campbell had been asked to investigate Mr. Malnik's background and had reported his results to Clifford Perlman. While Mr. Campbell refused to express an opinion in his testimony before us as to whether Alvin Malnik was associated with organized crime, both Clifford Perlman and William McElnea recalled that Mr. Campbell had previously been of the opinion that Mr. Malnik was so associated.

At about the same time as his investigation of Mr. Malnik (late 1972), Campbell also reported to Clifford Perlman on the subject of honorary memberships at the Skylake Country Club. In response to Mr. Perlman's inquiry, Mr. Campbell advised:

> Many of the other Teamsters officials possessing Honorary Memberships have been in frequent business and social contact with top organized crime figures throughout the

> country. Whether one agrees or not, the Central States Pension Fund has in recent years been described in the news media as the "bankroll of the Mafia". Rightly or wrongly, many Mafia figures have obtained loans from this fund and even more importantly, many top Mafia figures have been in a position to arrange for loans from the fund for others, sometimes on the basis of friendship and at other times for a substantial fee.

Interestingly enough, both the source of Mr. Malnik's funds for the $15 million purchase price of Cove Haven—namely the Teamsters Pension Fund—and the 9 percent interest rate at which the money was borrowed were known to CWI in advance of the sale-leaseback agreement.

Once again, in the absence of any credible explanation presented in this record, we are left with a serious question. Why did Clifford Perlman, in late 1974, lead his company into its second (and his third) business entanglement with Alvin Malnik, especially in light of his November 1972 discussion with the Chairman of the Nevada Gaming Control Board?

CONCLUSIONS AS TO CLIFFORD PERLMAN

The facts outlined above simply do not square with the positive testimony adduced as to the good character, honesty and integrity of Clifford Perlman. Stated bluntly, this Commission is unable to declare that Clifford Perlman may be trusted to control a company which seeks licensure to operate a casino in this jurisdiction. This determination flows primarily from three considerations:

(1) The assocations with Alvin I. Malnik and Samuel E. Cohen which Clifford Perlman led CWI to engage in or which he engaged in personally;

(2) The attitude of Clifford Perlman with regard to the regulatory process; and

(3) The candor with which Clifford Perlman dealt with his fellow Directors on the CWI Board.

Based on the substantial credible evidence in the record as a whole, this Commission finds Samuel E. Cohen to be a person of unsuitable character and unsuitable reputation. Following indictment by the Federal authorities together with Meyer Lansky and others, he was convicted and incarcerated for filing a false income tax return on facts relating to the skimming of proceeds from the Flamingo

casino in Las Vegas, Nevada. Previously he had been fined for violating the Commodity Exchange Act. Mr. Cohen's alleged involvement with Meyer Lansky and others in the Flamingo skimming indictment received widespread publicity in the Miami area in 1971.

Based on the substantial credible evidence in the record as a whole, this Commission finds Alvin I. Malnik to be a person of unsuitable character and unsuitable reputation. As to his character, the evidence establishes that Mr. Malnik associated with persons engaged in organized criminal activities, and that he himself participated in transactions that were clearly illegitimate and illegal. As to his reputation, he has been identified repeatedly in the news media as a close business associate of Meyer Lansky and other reputed organized crime figures. Moreover, Federal law enforcement authorities have long believed Mr. Malnik to be involved in organized crime.

Prior to the 1971 Sky Lake transaction, Clifford Perlman knew of Mr. Malnik's unsavory reputation and Mr. Cohen's pending indictment for casino skimming. Yet Mr. Perlman led his company into a direct, intense, long-lasting association with these men. He himself became personally involved in the 1972 Cricket Club transaction directly and intimately with Mr. Malnik and Mr. Cohen's two sons in a second ongoing association. And, in the late 1974 Cove Haven transaction he led his company into a direct, intensive, continuing association with Mr. Malnik and Mr. Cohen's sons.

Although Samuel Cohen was not a direct participant in either the Cricket Club project or the Cove Haven agreement, the evidence plainly indicates that he was indirectly interested in both. Mr. Cohen lent large sums of money to the Cricket Club and Mr. Perlman knew of those loans. Moreover, as part of the Cove Haven transaction, CWI requested and received a deferral of the payments due on the Sky Lake obligations. Since Mr. Malnik and Samuel Cohen were the principals in the Sky Lake deal, it is possible that some of the Cove Haven proceeds were being channelled to Mr. Cohen. Thus, Mr. Perlman exhibited no great reluctance to continuing involvement, direct or indirect, with the indicted and later convicted Mr. Cohen as well as the suspect Mr. Malnik.

Beyond Mr. Perlman's willingness to engage in repeated and enduring relationships with Messrs. Malnik and Cohen, no reasonable explanation has been provided for the failure of Mr. Perlman to provide the CWI directors with material information regarding those relationships. Specifically, Mr. Perlman chose not to disclose the fact

of Mr. Cohen's pending indictment when the board voted on the Sky Lake proposal. Second, Mr. Perlman made no mention of Mr. Hannifin's disapproval of Mr. Malnik before the board was presented with the Cove Haven offer. These omissions contradict the characterization of Mr. Perlman as a man of candor and forthrightness. Further, they raise disturbing questions as to whether Mr. Perlman was so anxious to consummate the transactions that he refused to jeopardize board approval by full disclosure. These questions have simply not been answered.

BRC contends that these transactions may have been public relations mistakes but that they did not actually jeopardize the integrity of gaming operations. While it may be true that Mr. Malnik and Mr. Cohen were not literally in control of the casino, their financial arrangements provided them with an obvious opportunity to exercise economic leverage against CWI. In point of fact, CWI experienced cash shortages which prompted it to obtain relaxation of its Sky Lake obligation from Mr. Malnik and Mr. Cohen. At the same time, CWI was increasing its debtedness to Mr. Malnik and the sons of Samuel Cohen. Thus, Mr. Perlman in a very real sense delivered his company into the hands of Mr. Malnik, Samuel Cohen and Mr. Cohen's sons.

From the foregoing and from the entire record, this Commission is not able to find by clear and convincing evidence that Clifford Perlman possesses the good character, honesty and integrity demanded by the Casino Control Act. Accordingly, Clifford Perlman is not qualified.[4]

B. *STUART Z. PERLMAN*

Stuart Z. Perlman, who presently resides in Miami Beach, Florida and maintains a residence in Longport, New Jersey, was born on September 20, 1927, in Philadelphia, Pennsylvania. He was educated in the Philadelphia public schools and attended LaSalle College for one year. In 1956, along with his older brother, Clifford, he purchased the first Lum's restaurant.

[4]The Division also asserted that Mr. Perlman had supplied false or misleading information as to when he first learned of Mr. Cohen's indictment. In his testimony, Mr. Perlman admitted that he acquired such knowledge before the Sky Lake transaction. It seems that Mr. Perlman's recollection was not as clear in an interview which he gave to the Division in April 1979. In any event, the Commission does not find Mr. Perlman to be disqualified on this basis. See *N.J.S.A.* 5:12-86(b).

Today, Stuart Perlman is Vice Chairman of the Board of Directors of both CWI and CNJ. He is also the second largest stockholder of CWI, owning approximately 1.7 million shares, or about eight percent of the outstanding stock. In addition, he owns approximately 153,000 shares of CNJ, or about one percent of the outstanding stock of that company. By virtue of his positions as an officer, director, major stockholder and principal employee of CWI and CNJ, Stuart Perlman is a person who must individually be qualified for approval. The applicant, BRC, and Stuart Perlman have produced evidence in support of the qualification of Stuart Perlman all of which has been carefully examined, considered and weighed. The Division has recommended that this Commission find Stuart Perlman unsuitable for qualification.

Most of the evidence relevant to the suitability of Stuart Perlman has already been stated with regard to Clifford Perlman and is incorporated here by reference. In July 1971, with full knowledge of the pending indictment against Samuel Cohen, Meyer Lansky and others, with full knowledge of the questionable reputations of Samuel Cohen and Alvin Malnik, without discussing the Cohen indictment with CWI's outside directors, and against the advice of CWI's outside counsel, Stuart Perlman voted in favor of entering the Sky Lake transaction. Moreover, during the period between December, 1974, and February 20, 1975, CWI was considering the Cove Haven sale and leaseback transaction. At that time, Stuart Perlman, who was aware of the substance of the November 1972 conversation between Philip Hannifin and Clifford Perlman, voted to enter into the Cove Haven transaction. Additionally, Stuart Perlman did not discuss or bring to the attention of CWI's outside directors the Hannifin conversation.

By virtue of his own involvement in these events, Stuart Perlman was obliged to answer serious questions about his character, honesty and integrity. More particularly, these questions flow from his associations with Alvin Malnik and Samuel Cohen, his attitude toward the regulatory process, and his apparent lack of candor in dealing with the other CWI directors.

Furthermore, it is clear from the record that Stuart and Clifford Perlman are more than just brothers. Since 1956, when they jointly purchased the first Lum's restaurant, they have been close business associates. They own, respectively, 8 percent and 10 percent of the outstanding stock of publicly traded CWI. They participate jointly in several other business ventures. Indeed, the testimony indicates that

for the past several years Stuart Perlman has handled all of Clifford's personal finances, even to the point of signing Clifford's checks and making investments for him. Thus, there is a substantial commonality of economic interests as well as a close blood relationship between the two men.

In light of all of the above considerations, and after carefully weighing these matters and viewing them in the context of the entire record, the Commission finds that BRC has failed to meet the affirmative responsibility of establishing the good character, honesty and integrity of Stuart Perlman. Accordingly, Stuart Perlman is not qualified.

C. *JAY E. LESHAW*

Jay Leshaw is clearly a qualifier as to the casino license applicant. He is now a senior vice president and a director of Caesars World, Inc., and president and a director of three of its subsidiaries: Sky Lake Development, Inc.; California Club, Inc.; and Corporate Real Estate Equities, Inc. He is also a shareholder in Caesars World, Inc. (owning 30,000 of its approximately 26.3 million shares or 0.001 percent).

The Division's objection to Mr. Leshaw's qualifications is based primarily upon his role, while a Caesars World, Inc. inside director and vice president, in the 1971 approval of the Sky Lake transaction. At the time of the transaction, Mr. Leshaw knew of Mr. Malnik's reputation and of Mr. Cohen's indictment with Meyer Lansky in Florida less than four months earlier in the Flamingo "skim" prosecution. No open discussion with the outside directors of these facts had occurred at that board meeting. However, when 31 months later Caesars World, Inc. voted to restructure the Sky Lake lease, Mr. Leshaw appears to have been unaware of the November 1972 discussions between Philip Hannifin and Clifford Perlman concerning Mr. Hannifin's reservations as to the propriety of Mr. Perlman's personal business dealings with Mr. Malnik in the Cricket Club.

Jay Leshaw was born in 1927, educated at the University of Miami and presently resides in Coral Gables, Florida. About 1963, while in the construction business, he met Clifford Perlman and began doing work for Lum's, Inc. which was designing, locating, financing, constructing and eventually franchising its fast food restaurants. In 1967 he joined Lum's, Inc. as an executive vice president and became one of its directors. By that date he had assumed a primary responsibility for the company's restaurant business and thereafter maintained it until July 1971 when its restaurant operations were sold. In later

1968, Melvin Chasen joined the company as an executive vice president and, in mid-1970, became its president.

Less than three months after divesting itself of the restaurant operations, Lum's, Inc. closed on its long-term lease of the Sky Lake development property. Mr. Leshaw then became, and has to the present remained as, president of the Caesars World, Inc., subsidiary responsible for this asset. Since then, Mr. Leshaw has maintained his offices at the property. Initially, before the south Florida condominium economy slowed, he actively refined the development program as to the property. In 1977, however, CWI retained California land developer Jerry Snyder to design a more effective sales program for the project. Currently, more than 95 percent of the units have been sold. It was in 1978 that the name of the country club there was changed to the California Club.

On balance, Mr. Leshaw's activities are not such as to prevent his qualification. His role in Caesars World, Inc., has never been one of setting policy or deciding as to acquisitions. It rather has been confined to the design and development of South Florida real estate operations, at first the restaurant business and more recently the condominium property. He has always been located in South Florida. Although that locale is admittedly the base for Messrs. Lansky, Malnik and Cohen, Mr. Leshaw's responsibilities to CWI are quite remote from the concerns and sensitivities of Nevada and its casino gaming industry. Mr. Leshaw was not the source of the Malnik or Cohen associations nor were the associations ever personal to him. Plainly, as an employee of Caesars World, Inc., he was subject to the policies set by the Perlmans. It is true that in 1971, he did not discuss with CWI's outside directors the fact of the Samuel Cohen "skim" indictment. Although this failure is hardly praiseworthy, it is understandable in light of the relative positions of the Perlmans and Mr. Leshaw. Were such an omission to occur today under the New Jersey regulatory system, a different result might follow. On this record, though, the Commission is satisfied that Mr. Leshaw has established his "good character, honesty and integrity" by clear and convincing evidence. Acordingly, Jay E. Leshaw is found to qualify as a director, officer and shareholder as to this applicant for a New Jersey casino license.

D. *WILLIAM H. McELNEA, JR.*[5]

1. Investment Banker and Outside Director William H. McElnea, Jr., is the president and chief operating officer of the holding company, Caesars World, Inc., and the intermediary company, Caesars New Jersey. He is separately a member of each of the eight-member boards of directors of Caesars World, Inc., Caesars New Jersey, and the Boardwalk Regency Corporation. He is a shareholder of Caesars World, Inc. in which he holds 420,000 shares, or 1.6 percent of the stock, and a shareholder of Caesars New Jersey, in which he has 58,970 shares, or 0.4 percent of the 15.98 million outstanding shares. He has been associated with CWI and its predecessor, Lum's Inc., since 1966, first as a financial advisor, later as an outside director, and since late 1972 as the president of CWI, a position that has produced his current, thorough involvement in the corporation and its subsidiaries. Undoubtedly, Mr. McElnea is a person required to meet the standards, except residency, for a casino key employee license. See *N.J.S.A.* 5:12-85(c) and (d).

Significant points about Mr. McElnea reside in the evidence concerning two of CWI's associations. The first is with the Central States Southeast and Southwest Teamsters Pension Fund of Chicago, Illinois, a relationship that began in 1969 with the acquisition of Caesars Palace Hotel and Casino. The second is the association between CWI and Alvin Malnik and Samuel Cohen, who are reputed associates of in 1969 with the acquisition of Caesars Palace Hotel and Casino. The second is the association between CWI and Alvin Malnik and Samuel Cohen, who are reputed associates of Meyer Lansky, of Miami, Florida, the same city where Mr. Malnik and Mr. Cohen reside and do business. This association remained in place until recent days through the corporation's involvement in the Sky Lake development, and with Cove Associates in the Pocono Mountain properties, and began at least as early as June 1971.[6]

[5]Only Commissioners Thomas, Zeitz and McWhinney join in this opinion regarding Mr. McElnea. Chairman Lordi separately concurs in the determination to find Mr. McElnea qualified. Vice-Chairman Danziger dissents from this determination.

[6]At the conclusion of the hearing, BRC presented a plan to create and fund two trusts which would pay when due the continuing obligations of CWI as to the Cove Haven transaction and the Sky Lake acquisition. This plan was accepted by the Commission as adequately insulating the companies from Mr. Malnik and Mr. Cohen.

The associations with the Teamsters Pension Fund, and with Malnik and Cohen were active and growing until December 10, 1975. The first, with the Pension Fund, deepened because of the second, that is the association with Mr. Malnik and Mr. Cohen, but particularly with Mr. Malnik. The Nevada Gaming Commission and the Nevada Gaming Control Board made their joint position on the Malnik association clear to Caesars World, Inc. on December 10, 1975, and again on April 13, 1976, when the corporation was ordered not to associate with persons of unsavory notorious reputations.

From that point, the expansion of the two associations halted and a corporate effort was begun to sever them. Only a beginning has been made until now, but it is doubtful that beginning could or would have been initiated without the effort of Mr. McElnea. The qualification of Mr. McElnea depends upon his role in these CWI associations, which the Attorney General, through the Division of Gaming Enforcement, finds is such as to prevent his qualification.

The evidence does not raise questions as to the reputation of Mr. McElnea. It does put before the Commission matters concerning Mr. McElnea's treatment of the associations with Mr. Malnik and Mr. Cohen, and the Pension Fund. Of course, it is the applicant who has the burden to establish by clear and convincing evidence the traits of good character, honesty and integrity. The evidence must enable the Commission to believe that the requisite character, honesty and integrity have been demonstrated.

William H. McElnea, Jr., was born in New Jersey in 1922, reared in Connecticut, and educated at Dartmouth College from which he received his bachelor's and master's degrees. In 1955 after having worked for seven years in Wall Street banks, he joined the small New York investment banking firm of Van Alstyne, Noel and Co., where he specialized in corporate financing.

In 1966, shortly after he met Clifford Perlman, Mr. McElnea and the Van Alstyne firm accepted the Florida-based Lum's Inc., as a client. When, in 1967, Lum's became a publicly traded company, Mr. McElnea was made an outside director. He remained as a partner in Van Alstyne, Noel and Co. His status as an outside director and investment banker continued for six years. Effective August 31, 1972, Melvin Chasen resigned as president of Caesars World, Inc. Two months later, on November 1, 1972, William McElnea succeeded Mr. Chasen as president of the corporation. Mr. McElnea continued as a director, and relocated to the corporation's headquarters in Los

Angeles. He is and since that day has been the chief operating officer of CWI.

In 1966 when Mr. McElnea began his association with Lum's as its investment banker, it was a growing fast food restaurant and franchising firm, based in South Florida. In 1967 through the offices and talents of Mr. McElnea the company undertook and completed its first major financing. This public offering may seem a pittance today when measured against the magnitude of CWI's current financings, but in 1967 it represented a milestone in its corporate development. At the time, Stuart Perlman was president of the corporation and his brother, Clifford Perlman, was its principal executive officer. They had then owned the company for 10 years.

In early 1969 Clifford Perlman began discussions which led to the September 30, 1969, acquisition by Lum's of the then three-year-old, 680-room Caesars Palace Hotel and Casino in Las Vegas, Nevada. As part of the transaction, Lum's assumed an $18.1 million mortgage obligation to the Teamsters Pension Fund.

In December, 1969, Lum's acquired the Pennsylvania honeymoon resort called Cove Haven, and 14 months later acquired the nearby honeymoon resort called Paradise Stream. In July, 1971, Lum's divested itself of the restaurant and franchising operations, and by then had also divested itself of the Dirr's Meat Processing and Distribution Company, and the chain of Eagle Army-Navy retail outlet stores. In June, 1971, discussions between Mr. Malnik and Lum's President Melvin Chasen led to negotiations in July 1971, which resulted on October 14, 1971 in Lum's closing with the Comal Corporation on the 623-acre condominium development property in North Miami, Florida, known as Sky Lake North. Comal Corporation, which had acquired the property 10 months earlier, was owned equally by Mr. Malnik and Mr. Cohen. The property was then subject to a $10 million Teamsters Pension Fund loan. On December 16, 1971, Lum's Inc. changed its name to Caesars World, Inc.

Mr. McElnea was not the cause of the association of CWI with the Teamsters Pension Fund, a relationship which originated in the 1969 acquisition of Caesars Palace, described on the record as being initiated by Clifford Perlman. Nor did Mr. McElnea bring the corporation into contact with Mr. Malnik and Mr. Cohen, a development attributed to Melvin Chasen and Clifford Perlman in the 1971 acquisition of Sky Lake. As its investment banker, Mr. McElnea was the servant of the policy and business decisions made by his client, and by its chief executive, Clifford Perlman. Becoming an outside director

required Mr. McElnea to take positions and record his votes on matters of corporate policy formulated by the company's executives, most notably the Perlmans.

In the corporate world in the period of 1969 to 1971 the role and obligation of outside directors of publicly traded corporations were not perceived as strictly or as solemnly as in 1980. More deference was given at that time to policy determinations made by corporate executives, such as Clifford and Stuart Perlman.

CWI's associations with Mr. Malnik, Mr. Cohen and the Pension Fund before late 1972 do not reflect on William McElnea's "good character, honesty and integrity," or his fitness to participate now in the New Jersey gaming industry. The associations were not personal as to McElnea. They were business relationships arranged by the corporate lenders who were members of the Miami community. During this time, McElnea worked and resided in New York and Connecticut.

2. President of Caesars World, Inc.

The role of William McElnea changed on November 1, 1972, when he became president of CWI. As president he became, after Clifford Perlman, the corporation's leading executive, but guided heavily by the policies developed by Clifford Perlman, and transmitted by the corporation chairman to the board of directors.

In his first three years as president, Mr. McElnea led CWI in restructuring the Sky Lake financial arrangement with Comal Corporation from a lease into a purchase. This finally made it possible for CWI to begin undertaking development of the property, which had been delayed three years by the transaction over which Mr. Perlman and Mr. Chasen had presided in 1971. In February, 1975, through a sale and leaseback of the Cove Haven and Paradise Stream resorts with Cove Associates, CWI fell headlong into a new association with Mr. Malnik and the Teamsters Pension Fund. This time, Mr. Cohen's two sons, rather than Mr. Cohen himself, were part of the deal. Again the transaction was brought to CWI by Clifford Perlman. There is also some evidence that CWI considered, at about the time it made the sale and leaseback, a refinancing of its overall corporate debt.

Following the transaction with Cove Associates, the Securities and Exchange Commission ordered a private investigation of CWI's corporate dealings with Mr. Malnik. The SEC examined both the Sky Lake and Cove Associates transactions, and also Clifford Perlman's private dealings with Mr. Malnik in the Cricket Club venture. On November 10, 1975, the Los Angeles Times published a front page

story under the headline, "Caesars Palace Firm Under Investigation". As noted, the Nevada gaming authorities followed swiftly on December 10, 1975, and April 13, 1976, first with an admonition and subsequently with an order directing CWI not to expand its associations with Mr. Malnik, and to refrain from associating again with persons of unsavory or notorious reputation.

It appears from the record that such compliance efforts as CWI began to make then and has made until now flow from William McElnea. After a prolonged—and the Division claims too long—time the corporation was able to sever its insurance ties with the notorious Allen Dorfman, and through him, with United Founders Insurance Corporation. These ties were forged not by Mr. McElnea but by his predecessor as CWI president, Melvin Chasen. Mr. McElnea, clearly, was the driving force in the severance. If he tempered his drive because of considerations stemming from the ongoing relationships with the Pension Fund, this tempering must be seen against the backdrop of his concerted effort to arrange new, conventional, sound, institutional financing for the corporation. He has succeeded. Where the Perlmans brought Mr. Malnik and the Teamsters Pension Fund to Caesars World, Mr. McElnea has brought the Chemical Bank, the services of E.F. Hutton, and now the Aetna Insurance Company, among others. No evidence suggests new or expanded associations with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975 by CWI, a bright comparison to the dalliance of Clifford Perlman in his effort to sever himself from the Cricket Club and in his flirtation with that investment even after Nevada had made its message eminently clear.

The sources of the $138 million committed to date by CWI to the Boardwalk Regency project in Atlantic City demonstrate amply the new kind of financing that Mr. McElnea has sought and found. Those sources include $47 million from major financial institutions, $28 million from obligations undertaken to former owners of realty, and $63 million from such internal financial wellsprings as bank lines, public offerings, and operating revenues.

The November 1975 Los Angeles Times news story alerted two members of CWI's Board of Directors to Mr. Malnik's reputation, and to the fact that Philip Hannifin of the Nevada Gaming Control Board had talked to Clifford Perlman in November 1972 and left him with an understanding that Mr. Perlman was to end his Cricket Club involvement.

It is undisputed that Mr. McElnea knew about Mr. Malnik by

the end of 1974 and the beginning of 1975, when the Cove Associates deal was presented and consummated. He also knew by then the substance of the Hannifin-Perlman discussion. He did not share his knowledge with the two uninformed directors, Manuel Yellen and John Polite. That he should have, he knows now, and this Commission knows. But seen against the background of Clifford Perlman's disproportionate influence in the corporation, and the division of labor and interest between Mr. Perlman, the man who decided what would happen, and Mr. McElnea, the man Perlman charged with making it happen, it is clear that Mr. McElnea could rightfully infer that such disclosure was always Mr. Perlman's responsibility.

There is no doubt that sometime in 1975, after the Cove Associates deal, but before the November 10 Los Angeles Times story, both Mr. Perlman and Mr. McElnea discussed with Mr. Malnik a sale and leaseback of Caesars Palace Hotel. The weight of the record is clear and convincing that when Alvin Malnik had deals to propose to Caesars World, Inc., he went to Clifford Perlman. Whatever the extent of those discussions with Mr. Malnik, and in the testimony there was only one, Mr. Perlman would have been the source.

Caesars World, Inc. in this hearing has brought before this Commission a group of young, able, honest management professionals, and new outside directors of measurable business experience and probity, who have been attracted to the company under the presidency of Mr. McElnea, and who serve on his management team. Their presence is further testimony to his business ability. It also underscores the increasing tenacity of his commitment to put not only time but distance between his corporation and the questionable beginnings of Nevada gaming.

3. Finding as to William H. McElnea, Jr.

In judging the good character, honesty and integrity of William McElnea, as in making such judgment upon any applicant, the Commission must examine the whole man, and the entire circumstances in which he performed. As in all areas of human endeavor, there is in the regulatory process never a situation absent some scintilla, some particle of doubt. But on the basis of the whole record, on his accomplishments at Caesars World, the performance of the corporation in New Jersey under his leadership since May 30, 1979, and the sureness of his understanding of the regulatory process for five years, the Commission can and does find clearly and convincingly that Mr. McElnea is a man of good character, honesty, and integrity and one suitable to hold a license, and to conduct gaming affairs in the State

of New Jersey. He is thus found to qualify as an officer, director, and shareholder as to this casino applicant.

The finding that Mr. McElnea is qualified and suitable for licensure puts a heavy responsibility upon him. Placed in the perspective of the Commission's other findings as to the unsuitability of the chairman and vice chairman, the leadership of Caesars World, Inc., right now, and as a practical matter, appears to fall squarely upon Mr. McElnea. It will be for him to decipher the meaning of that leadership, and to demonstrate it. In making this decision as to Mr. McElnea the Commission reposes a trust in him. It is fully mindful of the circumstances and expects he will be too.

E. *OTHER PERSONS REQUIRED TO QUALIFY*

In accordance with Sections 85(c) and 85(d) of the Act (*N.J.S.A.* 5:12-85(c) and (d)), the Commission and the Division agreed that there were 30 persons required to qualify as part of the BRC application. The 26 individuals who were not the subject of a Division challenge and about whom no grounds for rejection appear are the following:

1. HOWARD B. BACHARACH, a resident of Ventnor, New Jersey is 39 years of age and employed by BRC as Vice-President of Administration.

2. HAROLD B. BERKOWITZ, a resident of Los Angeles, California, 61 years of age, is an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

3. LARRY L. BERTSCH, a resident of Somers Point, New Jersey, is 41 years of age and employed by BRC as Treasurer and Vice President of Finance.

4. PETER G. BOYNTON, a resident of Linwood, New Jersey, is 36 years of age, a Director of BRC and, a Senior Vice President of BRC.

5. ALFRED J. CADE, a resident of Linwood, New Jersey, is 49 years of age, a Director of BRC and a Senior Vice President of BRC.

6. HOWARD E. CAMPBELL, JR., a resident of Las Vegas, Nevada, is 59 years of age and employed by Caesars World, Inc., as Vice President of Security.

7. JOHN H. CONNORS, a resident of Glen Ridge, New Jersey, is 56 years of age and employed by Caesars World, Inc., as Assistant Vice-President of Security.

8. DUANE M. EBERLEIN, a resident of Tarzana, California, is 40 years of age and is employed by Caesars World, Inc., as Con-

troller and Chief Accounting Officer and by Caesars New Jersey, Inc., as Controller and Vice President.

9. MAXWELL J. GOLDBERG, a resident of Margate, New Jersey, is 55 years of age, an employee of BRC in the Office of the President and a Director of BRC.

10. WILLIAM E. HAINES, a California resident, is 58 years of age and is employed by both Caesars World, Inc., and Caesars New Jersey, Inc., as Vice President of Finance.

11. DAVID P. HANLON, a resident of San Juan Capistrano, California, is 34 years of age and is employed by Caesars World, Inc., and by Caesars New Jersey, Inc., as Vice President of Operations.

12. STEPHEN F. HYDE, a resident of Linwood, New Jersey, is 34 years of age, is an Executive Vice President and Chief Operating Officer of BRC and a Director of BRC.

13. J. TERRANCE LANNI, a resident of Margate, New Jersey and California, is 37 years of age. Although he recently resigned as Director and Chief Executive Office of BRC, Mr. Lanni still is employed as Executive Vice President of both Caesars World, Inc. and Caesars New Jersey, Inc.

14. JAMES A. LENZ, a resident of Longport, New Jersey, is 45 years of age and is employed by BRC as the Casino Manager.

15. CYRIL PATRICK McCOY, a resident of Parsippany and Absecon Highlands, New Jersey, is employed by BRC as Corporate Controller.

16. JAMES J. NEEDHAM, a resident of Bronxville, New York, serves as an outside director of both Caesars World, Inc. and Caesars New Jersey, Inc.

17. MILTON NEUSTADTER, a resident of Margate, New Jersey, 55 years of age, is an employee of BRC in the Office of the President and is a Director of BRC.

18. BERTIN J. PEREZ, a resident of Encino, California, although recently resigned as Group Vice President of Caesars World, Inc., continues to serve as a consultant to Caesars World, Inc.

19. CARL A. PROPES, a resident of Beverly Hills, California, is 52 years of age and is employed as Vice President of Administration by both Caesars World, Inc., and Caesars New Jersey, Inc.

20. BERNARD W. RESNICK, a resident of New Jersey, is 55 years of age and is employed by BRC as the Assistant Casino Manager. It should be noted that the Commission previously licensed Mr. Resnick as a casino key employee.

21. DONALD D. ROBERTSON, a resident of Burbank, Cali-

fornia, is 43 years of age and is employed as Treasurer of both Caesars World, Inc. and Caesars New Jersey, Inc., in addition to being employed as Assistant Treasurer of BRC.

22. MEYER P. SCHWEITZER, a resident of New York, New York, is 69 years of age and serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc.

23. RICHARD H. SHEEHAN, JR., a resident of Encino, California, is 35 years of age and is employed by both Caesars World, Inc. and Caesars New Jersey, Inc., as Secretary and Vice President of Law, in addition to being employed by BRC as Corporate Secretary.

24. WILLIAM P. WEIDNER, a resident of Atlantic City, New Jersey, is 35 years of age and is employed by BRC as Vice President of Marketing.

25. LARRY J. WOOLF, a resident of Brigantine, New Jersey, is 35 years of age and is employed by BRC as Assistant Vice President of Casino Operations. It should be noted that the Commission previously licensed Mr. Woolf as a casino key employee.

26. MANUEL YELLEN, a resident of Pacific Palisades, California, serves as an outside director of both Caesars World, Inc., and Caesars New Jersey, Inc., in addition to being employed as a consultant to Caesars World, Inc.

In addition to considering the qualifiers for the Boardwalk Regency Corporation application for a casino license, the Commission has also considered the qualifiers for the Jemm Company based upon its application for a casino license to be the owner and lessor of the casino hotel facility. See *N.J.S.A.* 5:12-82(b). The Jemm Company is a New Jersey general partnership consisting of five partners all of whom are the legal owners of a partnership interest and thereby required to be considered as qualifiers pursuant to *N.J.S.A.* 5:12-85(e). Additionally, three of the five partners hold their respective partnership interest in trust for their wives. Accordingly, the wives of these three partners hold a beneficial interest in the Jemm Company and thereby are also required to be considered as qualifiers pursuant to *N.J.S.A.* 5:12-85(e).

It should be noted that the Division did not interpose an objection to the suitability of any of the eight qualifiers of the Jemm Company. Those eight qualifiers are the following:

1. ALBERT A. TOLL, a resident of Pennsylvania and Florida, holds as trustee for his wife, Sylvia S. Toll, a 29.16 percent partnership interest in the Jemm Company.

2. SYLVIA S. TOLL, the wife of Albert A. Toll, is the beneficiary of the 29.16 percent partnership interest indicated immediately above.

3. JOSEPH TOLL, a resident of Margate, New Jersey, holds, as trustee for his wife, Evelyn Toll, an 18.75 percent partnership interest in the Jemm Company.

4. EVELYN TOLL, the wife of Joseph Toll, is the beneficiary of the 18.75 percent partnership interest indicated immediately above.

5. EDWARD BERON, a resident of Margate, New Jersey, holds, as trustee for his wife, Edna Beron, an 18.75 percent partnership interest in the Jemm Company.

6. EDNA BERON, the wife of Edward Beron, is the beneficiary of the 18.75 percent partnership interest indicated immediately above.

7. MILTON NEUSTATDER, a resident of Margate, New Jersey, holds a 16.67 percent partnership interest in the Jemm Company. As previously indicated, Mr. Neustatder is also a qualifier of Boardwalk Regency Corporation in that he is employed by that applicant in the Office of the President in addition to serving as a director of that corporation.

8. MAXWELL GOLDBERG, a resident of Margate, New Jersey, holds a 16.67 percent partnership interest in the Jemm Company. As previously indicated, Mr. Goldberg is also a qualifier of Boardwalk Regency Corporation in that he is employed by that applicant in the Office of the President in addition to serving as a director of that corporation.

Having considered all of the information supplied by each of the qualifiers and by the Division of Gaming Enforcement, the Commission is satisfied that each of the named individuals meets the statutory standards required of a person who must qualify as part of a casino license application.

III. *FINDINGS AS TO COMPLIANCE WITH OTHER LICENSING REQUIREMENTS*

In addition to those areas discussed above, the Commission was required to make other findings in order to issue a casino license, even though these areas were not the subject of a dispute between the parties. The Commission accordingly made the following findings with reference to these remaining areas:

1. That the applicants have established to the satisfaction of the Commission that the facility and its location are suitable and that

neither the Atlantic City patron market nor the overall environment nor its economic, social, demographic, competitive or natural resource conditions will be adversely affected by the facility, as required by *N.J.S.A.* 5:12-84(e); provided, however, that the conditions attached to the temporary casino permit relating to the facilities (nos. 2 through 13) remain in effect until further order of the Commission.

2. That Boardwalk Regency Corporation and the Jemm Company together own in fee all the land on which the approved hotel is situated; that the Jemm Company as landlord leases the entire approved hotel facility and land thereunder directly to Boardwalk Regency Corporation as tenant; that both Boardwalk Regency Corporation and the Jemm Company are eligible and required to hold separate casino licenses in accordance with *N.J.S.A.* 5:12-82(a), (b) and (c).

3. That the lease agreement entered into by Boardwalk Regency Corporation and the Jemm Company is in writing and has been filed with the Commission; that the term thereof exceeds 30 years; that it concerns the entire approved hotel building and the land thereunder; that it contains a fixed-sum buy-out provision conferring upon Boardwalk Regency Corporation as lessee the right to acquire the entire interest of the lessor in the event said lessor is found to be unsuitable; that it contains a provision for the payment to the Jemm Company of a percentage of casino revenues; and that said lease is approved as conforming to the requirements of *N.J.S.A.* 5:12-82(c)(5) and (6).

4. That Boardwalk Regency Corporation and the Jemm Company shall be jointly and severally liable for all acts, omissions or violations of the Casino Control Act by either Boardwalk Regency Corporation or the Jemm Company as required by *N.J.S.A.* 5:12-82(c)(9).

5. That the approved hotel contains a total of 130,714 square feet of qualifying public space including 77,781 square feet of dining, entertainment and sports space and 27,052 square feet of kitchen support facilities and thereby exceeds the minimum qualified public space requirements set forth in *N.J.S.A.* 5:12-83.

6. That the approved hotel contains 503 qualifying sleeping units of an average size of 400 square feet and thereby exceeds the minimum qualifying sleeping units requirements set forth in *N.J.S.A.* 5:12-27 and 83(a).

7. That the approved hotel contains a single casino room of

48,630 square feet which conforms to the limiation set forth in *N.J.S.A.* 5:12-6 and 83(d).

8. That Boardwalk Regency Corporation has agreed to afford an equal employment opportunity to all prospective employees in accordance with an affirmative action program approved by the Commission and consonant with the provisions of the "Law Against Discrimination" as required by *N.J.S.A.* 5:12-134(b); it is to be noted, however, that the applicant did not in a timely and diligent fashion insure that its construction contractors would offer equal employment opportunity to all persons employed in the construction of the Boardwalk Regency Hotel and Casino.

9. That the applicants, except as otherwise previously found herein with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence the integrity and reputation of, as well as the adequacy of, all financial sources which bear any relation to the casino proposal, as required by *N.J.S.A.* 5:12-84(b).

10. That both applicants have established by clear and convincing evidence their financial stability, integrity and responsibility as required by the provisions of *N.J.S.A.* 5:12-84(a).

11. That the applicants, except as otherwise previously found with regard to Stuart Perlman and Clifford Perlman, have established by clear and convincing evidence their good reputation for honesty and integrity as required by the provisions of *N.J.S.A.* 5:12-84(c).

12. That Boardwalk Regency Corporation has established by clear and convincing evidence that it has sufficient business ability and casino experience as to establish the likelihood of creation and maintenance of a successful, efficient casino operation as required by the provisions of *N.J.S.A.* 5:12-84(d).

13. That Boardwalk Regency Corporation is a wholly-owned subsidiary both of the intermediary publicly-traded holding company, Caesars New Jersey, Inc., which is, in turn, approximately 86 percent owned by the parent publicly-traded holding company, Caesars World, Inc., and that both said companies have registered with the Commission as required by *N.J.S.A.* 5:12-85(b)(2).

14. That Boardwalk Regency Corporation has complied with the corporate filing and securities ownership transfer requirements set forth in *N.J.S.A.* 5:12-82 and 85.

IV. *CONCLUSION*

The Commission has reviewed the entire record in light of the policies, standards and requirements of the Casino Control Act. As to the Jemm Company, the Commission is satisfied that the entity and the eight individual qualifiers have met the statutory criteria for Jemm to receive a casino license as the owner-lessor of the Boardwalk Regency Hotel and Casino. Accordingly, an appropriately limited casino license will issue to the Jemm Company.

As to the Boardwalk Regency Corporation, the Commission finds that, subject to any conditions expressed herein, the entity itself meets the applicable statutory requirements. With regard to the persons who must each qualify as part of the BRC application, all but two of the 30 named individuals have demonstrated their suitability and are qualified. For the reasons stated above, however, Stuart Perlman and Clifford Perlman have failed to establish by clear and convincing evidence that they each possess the good character, honesty and integrity demanded by the Act. *See N.J.S.A.* 5:12-85(d) and -89(b)(2).

Section 85(d) of the Act clearly states that "no corporation which is a subsidiary shall be eligible to *receive or hold* a casino license unless each holding or intermediary company" separately would meet certain requirements applicable to the applicant corporation. (*N.J.S.A.* 5:12-85(d) (emphasis added). Under the referenced requirements, each officer, each director, each holder of beneficial interest in corporate securities, each person able to control the corporation or elect a majority of the board of directors, and every "other person whom the commission may consider appropriate for approval or qualification" must meet the standards, except residency, for a casino key employee license. *N.J.S.A.* 5:12-85(c). Since Stuart Perlman and Clifford Perlman do not meet those standards, the Act mandates denial of the license if the Perlmans continue to be persons required to qualify. Moreover, since BRC has been operating a casino under a temporary casino permit, the Act unequivocally directs that upon denial of the license "and notwithstanding the pendency of any appeal therefrom, the commission shall appoint and constitute a conservator to, among other things, take over and into his possession and control all the property and business of the temporary casino permittee relating to the casino and the approved hotel". *N.J.S.A.* 5:12-130.1(b).

While the Commission recognizes its obligation to fulfill these statutory dictates, the question arises whether any alternative to denial

of the license and imposition of the conservatorship would be lawful and appropriate. Quite obviously, no alternative is viable if either of the Perlmans continues to be a person required to qualify. Thus, the question becomes whether the Commission can fashion conditions precedent and subsequent to remove the licensing impediment.

Anticipating this question, the Commission requested both the applicant and the Division to address the legal issues involved. This request was made following summations on October 15, 1980. Subsequently, both parties submitted legal memoranda. Although their positions differ as to the type and extent of the conditions which the Commission could impose, both sides agree that the Commission possesses the authority to issue a casino license appropriately conditioned so as to eliminate the obstacle otherwise created by the existence of unacceptable qualifiers. This Commission concludes that such authority does exist. See *N.J.S.A.* 5:12-75 and -105.

Use of this authority to condition casino licenses with respect to unsuitable persons must be sparing and exceedingly cautious. It must be certain that such conditions will truly avoid the evils perceived by the Legislature and will provide a fully adequate substitute for the statutorily preferred procedure of denying the license and, in cases such as the present one, appointing a conservator. Of course, the conditions must remove the unacceptable individual from any of the categories of persons required to be qualified. *N.J.S.A.* 5:12-85(c). In particular, the conditions must warrant the conclusion that the individual is no longer a person "whom the commission may consider appropriate for approval or qualification". *Id.* Even then, there should appear good reasons why the public interest would be better served through conditional licensure than through license denial and appointment of a conservator.

In the instant matter, acceptable conditions have been formulated which both satisfy the policies of the Act and advance the public interest. By its choice of the conditional licensure alternative, the applicant agrees to the Commission's findings and further agrees either: (1) to irrevocably and completely separate the Perlmans from the corporate family or (2) to withdraw from casino operations in New Jersey. However, this Commission realizes that these results could not have been achieved between October 23, 1980, when the Commission announced its findings and offered the conditional licensure alternative, and midnight October 26, 1980, when the BRC temporary casino permit was to expire. This realization prompts us to consider a short, definite interim period during which the applicant and the Perlmans

may decide which of the two alternatives will be chosen and how the chosen alternative will be implemented. Of course, the Perlmans' control over CWI, CNJ and BRC must be minimized during the interim. Thus, as a component of the conditional license, the applicant must agree that the Perlmans take an unpaid leave of absence from any positions with the three companies, refrain from exerting any influence over the corporations' activities and neither vote their stock nor receive any dividends therefrom. These preliminary requirements were also announced to the applicant on October 23, 1980.

Since we now find these preliminary measures have been timely taken and since the applicant has now committed itself to choose one of the two permanent alternatives during the 30 day interim period, the Perlmans will not be deemed qualifiers during such period.

It is on the commitment of the applicant to comply with the stated conditions that our extraordinary decision is founded. Through this pledge, the State of New Jersey and its casino industry are spared the uncertainty of protracted challenges to the Commission's decision. Of course, the applicant gains the advantage of retaining control of the casino and of making the determination as to what course of action it will pursue in response to the Commission's findings. Derivatively, the State is spared the trouble and expense of directing a conservatorship. Moreover, by virtue of the applicant's decision to accept the Commission's findings and to elect between two clearly defined options, the applicant is far less likely to be influenced by the interests of its unqualified founders. Once the decision is made, the Perlmans will either be segregated from the corporate group in a permanent fashion or the corporate group will begin to disengage from New Jersey. If necessary, the Commission will then demand further safeguards as part of the implementation plan. Thus, the proposal is an acceptable alternative to the denial of the license with the attendant conservatorship and an order granting to Boardwalk Regency Corporation an appropriately conditioned license will be entered.

Chairman Lordi, concurring:

I join in all aspects of the Commission's decision in this matter. I take this opportunity only to discuss certain facts bearing upon the qualification of William H. McElnea, Jr. (See Part II D of the Commission's opinion). Rather than repeat the biographical and background information contained in the Commission's opinion, I will

focus on those areas which I believe are important to a consideration of Mr. McElnea's suitability.

In order to understand the role played by William McElnea in the development of Caesars World, Inc. over the years, it is important to emphasize the fact that, from late 1968 to 1972, Melvin Chasen served as a principal corporate executive. In 1967, in addition to adding Mr. McElnea to its Board of Directors, Lum's, Inc., also added Melvin Chasen as an outside director. In October 1968, Mr. Chasen became its executive vice president and, on April 23, 1970, its president. On August 31, 1972, Mr. Chasen resigned as president and left Caesars World, Inc.

After eight years in the cigarette vending business in New York, Mr. Chasen in 1963 relocated to Miami and began operating a similar business there. At about that time he came to know Alvin Malnik. In late 1970, Mr. Malnik asked Mr. Chasen if he was interested in the Sky Lake North property, which was owned by Comal Corporation whose principals were Mr. Malnik and Samuel E. Cohen. After discussing the matter with Clifford Perlman, they both decided that Lum's, Inc., was not interested. Seven or eight months later, however, when Mr. Malnik renewed Comal's offer, Mr. Chasen and Clifford Perlman had changed their minds. It was during this period that, after golfing with Teamsters Pension Fund officials, Frank Fitzsimmons, Allen Dorfman and Alvin Baron at Sky Lake, Mr. Chasen learned that the Fund which held a $10 million mortgage on the property would not object to Lum's, Inc., as "tenants" of Comal Corporation.

On October 14, 1971, Lum's, Inc., "closed" on the property. Following the closing, Mr. Chasen requested that Lum's, Inc., financial officer Bertin Perez review its group health insurance plan and give Mr. Dorfman's Chicago based insurance brokerage firm an opportunity to make a proposal for the insurance business. Seven months later, on June 1, 1972, Caesars World, Inc.'s group insurance was placed through Mr. Dorfman's Amalgamated Insurance Agency Services with the United Founders Insurance Company, replacing Massachusetts General as its carrier. Almost six years later, February 1, 1978, United Founders was replaced as CWI's carrier by the Equitable Life Insurance Company.

On December 10, 1971, also shortly after the Sky Lake closing, Mr. Dorfman wrote to Mr. Chasen requesting that Fund officials be given honorary memberships by Caesars World, Inc. at the Sky Lake Country Club. This request also was accommodated by Mr. Chasen.

Several months later an application dated June 1, 1972, was

prepared on behalf of Caesars World, Inc., for an $18.7 million loan from the Teamsters Pension Fund. The application recited the purpose of the loan as development of the Sky Lake property and the construction of a "fantasy tower" at Caesars Palace. The loan application, however, apparently was never actually submitted to the Fund.

During the first six years (1966 to 1972) of his 14 year association with the company, while Mr. Chasen was in charge of administration, Mr. McElnea was its investment banker and an outside director. During Mr. Chasen's tenure, Caesars World, Inc. underwent a dramatic change in its corporate "personality". Prior to 1969, it was a publicly traded over-the-counter Florida based fast-food restaurant and franchising company with a meat packing subsidiary and a discount chain store subsidiary. Between 1969 and 1972, however, it completely divested itself of these Florida holdings and acquired two Nevada casino hotels, two Pennsylvania honeymoon resorts and a large Florida condominium development property. It also, in 1969, shortly after the acquisition of Caesars Palace, became listed on the New York Stock Exchange.

The role of William McElnea also significantly changed from this initial 1966-1972 period as its investment banker and "outside" director to the more recent 1972-1980 period of his presidency. Judgments as to his suitability as a qualifier must give consideration to this fact. As the Commission's opinion observes, Mr. McElnea was not the source of the company's associations with either the Teamsters Pension Fund (which Clifford Perlman initiated through the 1969 acquisition of Caesars Palace) or with Messrs. Malnik and Cohen (which Melvin Chasen originated through the 1971 acquisition of Sky Lake). It is also important to recognize that as its investment banker, he was subject to the policy and business decisions made by his corporate client and its chief executive Clifford Perlman. In sum, at the time that the associations between the corporation and Mr. Malnik, Mr. Cohen and the Fund were made firm, Mr. McElnea was not an executive of the company.

It is noteworthy that the transactions with Messrs. Malnik, Cohen and the Fund between 1969 and the present, do not, when separately examined, appear to have been illegal in either a civil or criminal sense. Nor, standing alone, do they seem to have been unethical. Neither the associations nor the transactions seem to have technically or expressly violated any Nevada Gaming Commission or Gaming Control Board regulation or directive, although express suggestions of concern by Nevada regulators did appear as early as

October 1972. Similarly, neither the associations nor the transactions appear to have been disapproved by the Securities and Exchange Commission prior to its private order of investigation into the association with Mr. Malnik filed in September 1975. Consequently, it must be concluded that prior to his assuming its presidency, the associations previously commenced by CWI cannot be fairly said to suggest in William McElnea a lack of "good character, honesty and integrity" or his unfitness to participate in the New Jersey gaming industry.

Eight years ago, in November 1972, Mr. McElnea became president of Caesars World, Inc., and assumed major executive authority and responsibility. During his first three years as president, Mr. McElnea and CWI engaged in three transactions which demand our attention. The nature and degree of Mr. McElnea's participation in these events must be examined to determine whether they indicate any lack of character or integrity. Then, Mr. McElnea's entire tenure as CWI president should be reviewed to ascertain whether we can say with confidence that he is fit to participate in New Jersey's casino industry.

1. *Sky Lake Transaction Restructuring*

Twenty-eight months after CWI entered into its initial long-term lease of Sky Lake from Comal Corporation and following an almost 18 month negotiation period, CWI on February 11, 1974, purchased the Sky Lake property from Comal Corporation outright in a financial restructuring of the transaction. As part of the agreement, CWI, as owner, assumed the then $10.7 million mortgage obligation to the Teamsters Pension Fund. Comal Corporation continued to be owned equally by Mr. Malnik and Mr. Cohen; and, only one year before the transaction, Mr. Cohen had pled guilty to charges related to the Flamingo "skim" prosecution. Nevertheless, in light of the lease between the parties which had existed since 1971, this 1974 purchase cannot be fairly said to represent a new association or transaction with Mr. Malnik, Mr. Cohen or the Fund and thus cannot be said to adversely reflect upon the suitability of Mr. McElnea.

2. *Corporate Debt Refinancing*

Documents in evidence produced from the files of CWI's insurance consultant and corporate attorney suggest that, at least as of January 1975, and prior to the Cove Associates transaction with Mr. Malnik, Mr. McElnea was considering the development of a comprehensive program to refinance CWI's overall corporate debt. In

February, the Cove Associates deal was closed. On July 16, 1975, in its offices in Los Angeles and at Mr. McElnea's request, CWI's corporate security officer interrogated Mr. Malnik for a full day as to his reputed association with Meyer Lansky. Mr. Malnik flatly denied any such link.

On a date apparently following this session and also apparently prior to the September 18, 1975 Securities and Exchange Commission investigation of the Cove Associates transaction, Mr. Malnik approached Mr. McElnea and Clifford Perlman in Las Vegas and inquired whether CWI would consider a $75 million sale and leaseback of its Caesars Palace property. Both executives rejected this proposal. Whatever may have been in the mind of Mr. Malnik, the serious question presented is whether Mr. McElnea's thoughts on refinancing the overall corporate debt in 1975 included or would have included any consideration whatsoever of any participation therein by either Mr. Malnik or the Teamsters Pension Fund. No evidence establishes that he did consider Mr. Malnik or the Fund as a potential source for any such financing. As a matter of fact, CWI obtained no further financing from either.

3. *Cove Associates Sale-Leaseback*

On February 20, 1975, following initial discussions three months earlier between Mr. Malnik and Clifford Perlman and following Board approval on February 5, CWI sold the Cove Haven and Paradise Stream Pennsylvania honeymoon resort properties, which it had owned for four or five years, to a Florida partnership named Cove Associates. The partners in Cove Associates are Mr. Malnik (69 percent) and Samuel Cohen's two sons (31 percent). As part of the transaction, Cove Associates leased the properties back to CWI under terms requiring CWI, as tenant, to operate and improve the two resort complexes. On the date of the transaction, the Teamsters Pension Fund granted Comal Corporation a $15.0 million loan which was secured by a mortgage from Cove Associates on the two Pennsylvania properties and which was guaranteed by Comal Corporation. The loan further required that CWI guarantee payment of the lease rental obligations to Cove Associates.

By this sale and leaseback, the Teamsters Pension Fund, Mr. Malnik and Samuel Cohen's sons were for the first time able to establish an association with CWI's Pennsylvania honeymoon resort properties and thus were able to increase and expand their financial relationship with CWI and its assets. Samuel Cohen by this time had

pled guilty to criminal charges related to the Flamingo "skim" two years earlier. Thus, nearly six years after having entered the gaming industry, CWI in early 1975 was still, in part, relying upon the Teamsters Pension Fund for its financial needs.

It is this corporate transaction and Mr. McElnea's relationship to it which causes the greatest difficulty in determining his present fitness to participate in the New Jersey gaming industry. Although not the source of the proposal, Mr. McElnea did vote his approval as a director and, as CWI's president, assisted in structuring the agreement. The transaction, by its terms, does not appear to have been illegal. The arrangement expanded already along existing associations with Mr. Malnik, Mr. Cohen (through his sons) and the Teamsters Pension Fund. It did not create those associations. Nevada gaming authorities had been aware of and did not disapprove similar associations originating in the 1971 Sky Lake acquisition. Obviously, no personal association with Mr. McElnea was involved here. Most significantly, Clifford Perlman, the corporate chief executive officer and chairman of the board, supported and voted for approval of the Cove Associates agreements.

Mr. McElnea's conduct on behalf of his employer with respect to these agreements occurred almost six years ago. It would appear that in failing to oppose the Cove Associates proposal, Mr. McElnea made a significant misjudgment. Indeed, prior to the end of 1975 that fact was made clear by the reactions of the Securities and Exchange Commission and the Nevada gaming authorities. However, in judging Mr. McElnea's "good character, honesty and integrity", we must consider the entire man and the circumstances in which he acted.

As noted, the Securities and Exchange Commission on September 18, 1975, ordered a private investigation into CWI's corporate dealings with Mr. Malnik in both the Comal Corporation and Cove Associates transactions and into Clifford Perlman's personal dealings with him in the Cricket Club. Shortly thereafter, the Los Angeles Times (on November 10, 1975) published a negative front page article under the headline "Caesars Palace Firm Under Investigation". Finally, the Nevada Gaming Commission and Gaming Control Board, on December 10, 1975, and April 13, 1976, directed that Caesars World, Inc. not expand its association with Mr. Malnik and not associate with persons of unsavory or notorious repute.

No evidence suggests any expanded or new associations with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund since 1975, almost six years ago. More specifically, no such associations seem to have

attended the corporate acquisitions of the Ontel Corporation in New York in January 1976; the Pocono Palace in Pennsylvania in November 1976; the Traymore site in Atlantic City in August 1977; the Regency project in Atlantic City in June 1978; or, the Caesars Tahoe complex in Nevada in November 1979. Notably, of the $138 million so far committed by CWI to the Boardwalk Regency project, $47 million was derived from large institutional sources, $28 million from obligations undertaken to former owners of the realty and $63 million from internal corporate funds (bank lines, public offerings and operating revenues).

In February 1978, CWI freed itself of its association with Teamsters Pension Fund official Allen Dorfman. CWI changed the broker for its employee health insurance from Mr. Dorfman's agency and transferred the coverage from United Founders Insurance Company to Equitable Life Insurance Company. The decision, admittedly, took the corporation more than three years to reach. It must be recognized, however, that it was Melvin Chasen who initiated the corporation's relationship with Mr. Dorfman and that it was Mr. McElnea who, in June 1974, brought in John Ames Associates to reexamine the company's insurance portfolio. It was McElnea who finally caused Dorfman's agency and its carrier to be replaced.

Mr. McElnea's contribution in obtaining conventional financing for Caesars World, Inc. has been significant. In October 1978, principally through his efforts, CWI was able to obtain financing in an amount of $60 million from the Aetna Life Insurance Company. Until that point, the gaming industry company had been unable to obtain significant funding from such a major national institutional lender. In addition, through Mr. McElnea, CWI has been able to repeatedly obtain substantial lines of credit from major national banks such as Chemical, Security Pacific, First Chicago and others. It has been successful in its public offerings of both stocks and debentures. Its annual financial conferences, which Mr. McElnea initiated, have substantially enhanced its own as well as the industry's credibility with the financial community. Again, it was Mr. McElnea who was instrumental in 1969 in CWI's being listed on the prestigious New York Stock Exchange and who, during his presidency, did much to attract such substantial outside directors as: James Needham, the former chairman of the New York Stock Exchange (1972-1976); M. Peter Schweitzer, who for 17 years had been vice-chairman of the board of the Kimberly Clark Corporation; and, Manuel Yellen, who at the time of his retirement from P. Lorillard and Company occupied the

position of its chairman and chief executive officer.

Credit, it is true, must be given to Clifford Perlman as the chief executive officer who set the corporate policy with such vision. It was William McElnea, however, who so effectively implemented those policies and made them live. He gradually over the years gained CWI access to respected conventional institutional lenders. He has served as a major catalyst in attracting its impressive and very professional management group. He has, as chief operating officer, efficiently managed its constantly expanding operations. Without William McElnea, CWI would not have attained its present status as one of the leading companies within the gaming industry.

It would appear that in 1969 obtaining conventional financing from respected institutional sources for a gaming industry was a tougher problem than CWI and Mr. McElnea originally anticipated. In fact, it was not until more than three years after the Cove Associates agreements that CWI, through the efforts of Mr. McElnea, obtained the precedent setting loan from the Aetna Insurance Company. The danger in the Cove Associates transaction of six years ago was that, even though Nevada authorities had not prohibited such corporate dealings with Mr. Malnik, Mr. Cohen or the Teamsters Pension Fund, the sale-leaseback agreement could have provided them with extensive enough loan obligations from CWI to potentially exercise some degree of control over CWI or its casino operations. This is the danger against which New Jersey, with its toughest possible regulatory scheme, has committed strong and unyielding vigilance.

In the licensing process, there can never be a total absence of doubt. Plainly, Mr. McElnea made a serious misjudgment in not trying to prevent CWI from engaging in the Cove Associates transaction. But, in the entirety of the evidence before this Commission, it cannot be said that the applicant has failed in its burden to produce a firm belief and conviction as to William McElnea's suitability and fitness for New Jersey's casino gaming industry and to demonstrate clearly and convincingly his good character, honesty and integrity. He accordingly ought to be found to qualify as an officer, director and shareholder as to this casino license applicant.

Although I find Mr. McElnea qualified, I stress that my decision has not been an easy one. If BRC chooses to remain in New Jersey and to sever all relations to the Perlmans, Mr. McElnea's stature and importance will increase proportionately. He must understand that his performance will be closely scrutinized in the hope that we have decided correctly. I trust that he will be aware of this fact and will

discharge his responsibilities in an exemplary manner.

Vice-Chairman Danziger, concurring and dissenting:

In reaching my decision in this serious and important matter, I have carefully evaluated the testimony of the witnesses who appeared before us and the reliability of the documentary materials which were introduced into evidence. Moreover, I have conscientiously endeavored to assess the suitability of the applicants and the persons to be qualified in accordance with the pertinent licensing criteria. As a result of this process, I find that Clifford S. Perlman, the Chairman of the Board of Caesars World, Inc. ("CWI") and its largest stockholder with approximately 10 percent of the outstanding shares, has failed to meet his heavy burden of establishing his good character, honesty and integrity by clear and convincing evidence. I further find that Stuart Z. Perlman, Vice-Chairman of the CWI board and second largest stockholder with approximately 8 percent of its stock, has likewise failed. In contrast, I find that Jay E. Leshaw, a CWI director and officer in charge of the Florida properties, does qualify. My reasons for these three determinations are essentially contained in the Commission's Decision and I will not lengthen this opinion by elaborating upon them. However, I must address myself to the suitability of William H. McElnea, Jr., the President and Chief Operating Officer and a director of CWI.

Preliminarily, there is no question that Mr. McElnea is a person required to qualify as a condition of Boardwalk Regency's Corporation casino license application. In addition to his positions with the parent company, CWI, Mr. McElnea serves as president and a director of the intermediary company, Caesars New Jersey ("CNJ"). Further, Mr. McElnea owns the third largest block of shares in both CWI, approximately 1.6 percent, and CNJ, approximately 0.4%. Thus, Section 85(d) of the Casino Control Act (*N.J.S.A.* 5:12-85(d)) classifies Mr. McElnea as a so-called "qualifier".

Yet, Mr. McElnea's importance to these companies runs deeper even than his high posts and large holdings would indicate. He has been associated with CWI or its predecessor, Lum's Inc., since 1966. In the ensuing years, it was Mr. McElnea who directed the Company's financing and who made it possible for the Company to move from a closely held fast-food restaurant firm to a publicly owned gaming giant. According to the applicant, it is Mr. McElnea who deserves much of the credit for the success of CWI in leading the way for publicly owned corporations into gaming and in breaking down the

traditional resistance of respected institutional lenders against extending loans to casino operators. In fact, Mr. McElnea's contribution and value to the company are considered by CWI itself to be, in many ways, on par with those of Clifford Perlman. If Mr. Perlman's creative insights set the goals for the company, Mr. McElnea's financial arrangements powered the company toward those goals. Of course, with the rejection of Clifford Perlman by this Commission, Mr. McElnea's importance to the company increases even more.

In assessing Mr. McElnea's suitability under the licensing standards, his value, even indispensability, to CWI and CNJ must be considered. However, it would be a grievous error to conclude that such consideration warrants a lowering of the statutory criteria in order to protect the economic well-being of the company. Quite the contrary is mandated. The greater an individual qualifer's authority and responsibility, the greater the harm which that individual can bring to both legalized gaming operations in this State and public confidence in the regulatory process. Hence, this Commission is bound to exercise an extra measure of care and scrutiny in such instances. While financial stability and business competence are criteria for casino licensure, those criteria must not be allowed to subsume the separate requirement of good character. Economic strength cannot substitute for integrity.

As to the licensing criteria themselves, the operative requirement is that Mr. McElnea must demonstrate by clear and convincing evidence his good character, honesty and integrity. This requirement is purposely stringent. It is Mr. McElnea's obligation to respond to any questions raised by this record and to induce in the mind of this Commission a firm belief that he indeed possesses the positive attributes necessary for qualification. In deciding whether such a belief is engendered, each Commissioner must consider all the relevant events and Mr. McElnea's conduct in each circumstance. Business and professional associations must be examined to ascertain whether such associations bear adversely on Mr. McElnea. Of cousre, I am mindful that such events, conduct and associations must be viewed in the context of then existing circumstances. Subsequent revelations and developments which were neither foreseen nor reasonably foreseeable are of little value in this process. With these concepts, I now turn to the record.

As noted, Mr. McElnea's forte is his competence and expertise in financial matters. Born in 1922, Mr. McElnea attended Dartmouth College where he obtained both a bachelors degree and a masters

degree in business administration. Following graduation, he spent seven years working for New York City commercial banking houses before joining the investment banking firm of Van Alstyne, Noel and Co. in 1955. As a specialist in corporate financing, Mr. McElnea met Clifford Perlman in 1966 when Lum's, Inc., became a client of Van Alstyne. The following year, Lum's became an over-the-counter, publicly traded company and Mr. McElnea accepted a position as an "outside" director for Lum's. Naturally, Mr. McElnea continued to serve as the financial adviser and architect for the company.

It is clear that, when Mr. McElnea first joined Lum's, he was a sophisticated, experienced and mature businessman and banker. Although technically an "outside" director until November 1972, Mr. McElnea's deep involvement with the financial arrangements of the company brought him into a much closer relationship with the company and its management. In fact, the post-hearing memorandum submitted by the applicants states on page 99 that Mr. McElnea enjoyed a "close, intimate, professional relationship with [Clifford] Perlman" from the time he first became a Lum's director. It is in this framework, rather than the more typical outside director context, that Mr. McElnea's participation in the events before November 1972 must be considered.

In the late 1960's, Clifford Perlman sought to move the company into new fields. In 1969, Mr. Perlman was introduced, through a person acting as a broker, to the owners of Caesars Palace who were then seeking a buyer for the casino hotel. Mr. Perlman contacted Mr. McElnea and asked him to study the proposal for the purpose of arranging the financing. Prior to the acquisition, Mr. McElnea was well aware that gaming companies were generally thought to be connected with underworld figures and that this tawdry image was a primary reason for the unavailability of major institutional financing to such companies. Mr. McElnea was also aware that, to obtain Caesars Palace, Lum's would have to assume a preexisting $18.1 million mortgage to the Teamsters Pension Fund.

On April 24, 1969, Lum's entered into an agreement for the sale of the Palace but the actual closing did not occur until September 30, 1969. In the interim period, the casino experienced a loss of $932,266 before taxes while it was still being operated by the sellers. In the comparable period for 1968, the casino had a pre-tax profit of $2,230,014. Under the terms of the acquisition agreement, Lum's was entitled to any profits realized during the settlement period. Thus, if this precipitous drop in profits was the result of embezzlement or

skimming, Lum's, Inc., was deprived of a substantial sum of money at a time when the company was in a cash poor position. Although Mr. McElnea may not have been knowledgeable about reasonable fluctuations in gaming win, his failure to suggest even a consultation with independent experts or auditors cannot be ignored. This failure is underscored by the fact that Lum's, Inc., was first listed on the New York Stock Exchange on October 14, 1969, and that Mr. McElnea was both the acknowledged financial expert and an outside director. Failure to investigate such circumstances in this State under our law, I submit, would cause this Commission serious concern. However, there is much more.

The applicant and Mr. McElnea argue that, in the years following acquisition of the Palace, they were in a new industry and they were not far progressed on the so-called "learning curve". This argument cannot withstand scrutiny. Mr. McElnea's sophistication and accomplishment in business and finance has already been demonstrated. Even assuming that he was relatively naive about the gaming industry, the events which occurred in rapid fashion during and after the acquisition of the Palace must have accelerated his education. Beyond the casino's loss during the settlement period, a search of the casino by the Federal Bureau of Investigation in December 1970, must have been a further awakening. The F.B.I.'s discovery of large sums of money in certain lockboxes led to an investigation by the Securities and Exchange Commission in early 1971. In the course of the investigation, many employees whom Lum's had retained from the prior owners invoked their Fifth Amendment right to avoid self-incrimination when questioned about the casino loss during the settlement period. Such occurrences should have alarmed Mr. McElnea if he truly hoped to upgrade the image of casino gaming and to attract major lenders. New Jersey requires, at a minimum, more caution and concern than exhibited by Mr. McElnea in this case.

It was against this background that the Sky Lake transactions commenced. Mr. McElnea testified that the proposal was first brought to the attention of Clifford Perlman in 1970 by Mel Chasen, then president of Lum's, Inc. Mr. McElnea knew that the owner of the property was the Comal Corporation which was owned by Alvin I. Malnik and Samuel Cohen. Although Mr. Perlman initially rejected the proposal, Mr. Chasen again offered it on behalf of Comal in 1971. This time Mr. Perlman agreed to consider it. A meeting was held in early July, 1971. According to Mr. McElnea, the meeting was attended

by Mr. McElnea, other corporate officers and Messrs. Malnik and Cohen.

A few weeks prior to the meeting, Mr. McElnea received a telephone call from Mr. Chasen who advised that Messrs. Malnik and Cohen had "controversial" reputations. At the meeting, Mr. Malnik presented the Sky Lake proposal. However, Mr. McElnea has no recollection of questioning Mr. Malnik or Mr. Cohen about their reputations at that time. In any event, Mr. McElnea was told by Mr. Chasen that Mr. Cohen had been convicted of a Commodity Exchange Act violation and that Mr. Malnik was the subject of disturbing allegations in Hank Messick's book, *Lansky*. Mr. McElnea denies knowing or being told of Mr. Cohen's pending indictment with Meyer Lansky for skimming from the Flamingo hotel casino in Las Vegas. That indictment was returned in March 1971 by a Federal grand jury sitting in Florida.

The Comal proposal was presented to the Lum's board of directors later in July 1971. By that time, the offer had been changed from a simple sale of the land to a lease with an option to purchase the stock of Comal after three years and an option to purchase portions of the land for development. These modifications were the result of Lum's efforts to accommodate Comal's tax problems. The board decided to proceed with the transaction subject to a feasibility study and an appraisal.

Of more significance is the fact that the board was apprised of Mr. Cohen's commodity violation and Mr. Malnik's notoriety. Specifically, the book *Lansky* was discussed. In that book, Mr. Malnik was accused of organized crime activities and association with Meyer Lansky. Moreover, the book recited the fact that electronic surveillance had been conducted on Mr. Malnik in 1963 and damaging conversations were recorded. Further, the board knew that Mr. Malnik was suspected by several government agencies of being involved in criminal activities. Indeed, the corporation's own counsel, David Bernstein of Rogers and Wells, implored the board not to take any action until the Malnik allegations were discussed with the Justice Department. To be sure, the board was told by Mr. Chasen that Mr. Malnik denied the allegations, that he was indicted but never convicted, and that he was a member of the Florida bar.

In the face of the serious questions raised regarding both Mr. Malnik and Mr. Cohen, Mr. McElnea joined with other board members in voting for the Sky Lake proposal and in ignoring the entreaties of the company's own counsel. Mr. McElnea argues that it would have

been futile to ask a government agency for its opinion in this matter and that such an inquiry would have set a bad precedent. These lame excuses are not acceptable now and were not acceptable then. If Mr. McElnea really intended to raise his company above the suspicions surrounding the gaming industry, then he would not acquiesce in Sky Lake without so much as an inquiry into the truth or falsity of the allegations. If that inquiry brought no response, then nothing was lost. As to setting a bad precedent, Mr. McElnea would have this Commission believe that he then expected Lum's, Inc., the parent corporation of a licensed Nevada gaming company, to routinely enter into multimillion dollar real estate transactions with persons of Mr. Malnik's reputation. Unfortunately, subsequent events give reason to believe that the company may have anticipated just such repeated transactions. Mr. McElnea's support for this transaction, considering his importance to the corporation, his sophistication and expertise call into issue his ability to adequately perform under the strict regulatory controls of this State.

The nature of the Sky Lake transaction is of great importance. Mr. McElnea would characterize it as hardly more than an ordinary, arm's-length real estate transfer. The record does not support that characterization. As noted, the proposal had already undergone substantial revisions before it was presented to the board in July 1971. These changes were readily accepted by Lum's management in order to protect Comal from adverse tax consequences. While some adjustments to accommodate the other party in a transaction may not be unusual, the drastic alterations involved here actually prevented Lum's from developing the property for a substantial period of time, a period during which the Florida land market collapsed.

In October 1971, the Sky Lake agreement called for Lum's to include, as part of the sale price, warrants to purchase up to 600,000 shares of Lum's stock at various prices. Upon hearing of this, Nevada gaming authorities indicated that such stock warrants might require approval of Messrs. Malnik and Cohen. Although the warrant provision was deleted in 1972, Lum's knew that Malnik and Cohen might not be approved by the Nevada authorities. Nevertheless, the interminable negotiations and revisions of the Sky Lake transaction dragged on. In my view the warrants were ultimately not part of the transaction because of regulatory agency pressure, not any reaction by Mr. McElnea to the nature of his business associates. This lack of concern in my view is unacceptable under the Casino Control Act and the public policy of this State.

At no point did Mr. McElnea voice any opposition. Even after he assumed the presidency of the company in November, 1972, he did not press to take advantage of opportunities to disengage from Sky Lake. More disturbing still, he uttered no objection when he finally learned of Samuel Cohen's indictment with Meyer Lansky for skimming from the Flamingo. His failure to recall when and how he learned of this devastating information casts serious doubt about his candor before this Commission. In fact, Mr. McElnea testified here that he would have probably changed his opinion about entering the transaction if he had known of Mr. Cohen's indictment.

Upon discovery that not only Mr. Malnik but Mr. Cohen was alleged to be associated illegally with the notorious Lansky, Mr. McElnea should have taken immediate steps to reexamine the company's involvement with Comal. Moreover, Mr. McElnea could have readily ascertained that the Cohen indictment pre-dated the initial Sky Lake proposal by nearly three months. Given Mr. McElnea's assertion that the CWI board of directors were a closely knit group, he would have had cause to wonder why he was not told of the indictment by Clifford Perlman and the other directors who were aware of it prior to Sky Lake. Furthermore, Mr. McElnea knew from the outset that the Sky Lake proposal required the company to assume a $10 million Teamsters Pension Fund mortgage. This too did not prompt a reaction.

Two additional matters involving the Sky Lake transaction deserve mention. First, on the issue of the $164,000 sewer bond that was prepaid by Comal, I find that Caesar's World was not required to make the repayment to Alvin Malnik. The reason they were not required to repay these monies was that they purchased the assets of Comal (a corporation) and since one of the assets was the prepaid sewer bond, that asset should have been transferred for the benefit of the stockholders of Caesars World, Inc. However, William McElnea, the financial expert, disregarded the concerns and needs of his own company and stockholders to benefit Alvin Malnik and Comal. Secondly, the eagerness displayed by the corporate executives, including Mr. McElnea, in permitting Alvin Malnik to secure a $375,000 yacht to the detriment of the corporation and its stockholders and their willingness to maintain the pleasure vessel, on behalf of Alvin Malnik, refute any assertion that Sky Lake was an arms-length real estate transaction. These dealings are the type which can be employed to skim money from the corporate till. Unfortunately, Mr. McElnea, the person with the most sophisticated financial

acumen of those who have appeared before this Commission, consented to these transactions at substantial cost and detriment to the stockholders he represented.

In short, the Sky Lake transaction belies Mr. McElnea's contention that he was concerned about the reputation and business associates of CWI. The mere fact that the Nevada authorities did not issue any instruction to terminate the Sky Lake transaction will not absolve Mr. McElnea. An apparent eagerness to associate with disreputable individuals and a reluctance to sever the relationship even if one of the individuals is convicted of casino-related crimes argue powerfully against his character and integrity. New Jersey need not allow persons to hold positions of authority in casino companies unless such persons can be trusted to act properly without being constantly threatened or coerced by the regulatory authorities.

As previously mentioned, Mr. McElnea succeeded Mel Chasen as president and chief operating officer of CWI in November 1972. (Lum's, Inc., changed its name to Caesars World, Inc., in December 1971). At about the same time, Mr. McElnea was informed by Clifford Perlman that Philip Hannifin, the Chairman of the Nevada Gaming Control Board, had expressed concern about Mr. Perlman's involvement in the Cricket Club, a condominium project in Florida. Mr. Hannifin's concern was caused by the fact that Mr. Perlman's chief partner in the Cricket Club was Alvin Malnik. Mr. McElnea assumed that Mr. Hannifin was only distressed because Mr. Perlman's interest was a personal one and that Mr. Hannifin would not react similarly to future dealings between CWI and Mr. Malnik. It does not appear that Mr. McElnea made any effort to verify the accuracy of his assumption prior to the Cove Haven sale and lease back with Mr. Malnik in early 1975. The arrogance of Mr. McElnea in relying on this faulty assumption evinces a callousness to the Nevada regulatory system which, if it occurred in New Jersey, would be clearly unacceptable.

Before addressing the Cove Haven transaction, it is appropriate to consider Mr. McElnea's conduct as CWI's president in the two intervening years. More particularly, his interactions with the Teamsters Pension Fund, Allen M. Dorfman, the Amalgamated Insurance Agency ("Amalgamated") and United Founders Life Insurance Company ("United Founders") must be examined.

In 1972, CWI had a number of financial relationships to the Teamsters Pension Fund, principally the mortgages on Sky Lake and Caesars Palace. At the direction of then President, Mel Chasen, CWI

transferred its employee group health insurance from Massachusetts General to United Founders on June 1, 1972. At the same time, CWI retained Amalgamated, Dorfman's agency, as its broker for this coverage. From the documents produced by John Ames and from the transcript of Mel Chasen's testimony before the Securities and Exchange Commission, it is quite evident: (1) that Allen Dorfman was a principal in Amalgamated; (2) that Mr. Dorfman was apparently able to manipulate Teamsters Pension Fund loans and mortgages; and (3) that the CWI group insurance was placed with United Founders through Mr. Dorfman's agency for the purpose of obtaining favorable treatment for CWI by the fund.

The applicant responds to these facts by arguing that the costs and benefits of the United Founders policy were fair and competitive and that Amalgamated's fees were not unreasonable. Further, as to Mr. McElnea, the applicant emphasizes that these arrangements were made before he became president and chief operating officer. Even if these contentions were accepted, later events place responsibility squarely on Mr. McElnea. As early as 1974, CWI management was advised by its independent consultants to replace United Founders as underwriter and Amalgamated as broker for the group health plans. These suggestions became more frequent and urgent until the insurance was finally transferred in February 1978.

Evidence is uncontroverted that United Founders Life Insurance of Oklahoma and Illinois were unrated by Bests Insurance, the prestigious rating service for the insurance industry. John Ames, CWI's consultant, knew of this and testified that he would never place a client's insurance coverage with such companies because of their financial instability.

According to a memorandum of John Ames, he talked with Mr. McElnea as chief operating officer and Bertin Perez, the former financial head and now a consultant of CWI, on January 23, 24 and 25, 1975. At that time, it was indicated that CWI could prepay a Teamsters Pension Fund mortgage for $11 million and "until that is done, the climate for moving the United Founders group case is still not great". The memorandum continues in the next and concluding sentence: "On the other hand, Bill has done a lot of study on a possible sale and lease back of the Palace and if it should take place, this would change the whole picture". The "Bill" is obviously Mr. McElnea.

Standing alone, the excerpts from this memorandum do not indicate whether Mr. McElnea had any specific party in mind for a sale and lease back of the Palace nor whether the changed picture

would mean retention or quicker severance of Amalgamated and United Founders. However, it is evident that Mr. McElnea was fully cognizant of the connection between the insurance placement and any negotiations with the Teamsters Pension Fund. Neither the applicant nor Mr. McElnea have contested this relationship and their awareness of it. Even more distressing is the fact that, during this period, Allen Dorfman was convicted of a federal offense for taking kickbacks to arrange loans from the pension fund. He served a prison sentence from March to December 1973. This must be combined with Mr. McElnea admission that he knew in 1975 of the Teamsters Pension Fund's widespread reputation for "having done such things as paid illegal finders fees and paid kickbacks and a lot of very nasty business transactions".

The applicant and Mr. McElnea contend that CWI could not extricate itself from Amalgamated and United Founders any sooner than they ultimately did. This was allegedly due to the problems created by United Founders' precarious financial status, so precarious, in fact, that withdrawal of the CWI account would probably have broken the carrier. Again, even if this contention were accepted, the Ames consultants advised that CWI had sufficiently aided United Founders' recovery by the end of 1976 to allow the transfer. Despite the fact that he agreed with the position of the Ames group, Mr. McElnea told Bertin Perez on November 23, 1976, to do nothing for one month.

Mr. Ames spoke to Mr. McElnea the same day. In his memorandum of this conversation, Mr. Ames states Mr. McElnea's reason for the delay as being that "they are still finalizing negotiations with the teamsters pension fund on extending maturities on some of those Florida properties and Bill [McElnea] didn't want to do anything which would rock any boats or make any waves". This statement unequivocally refutes the applicant's assertion that any delay was the result of the carrier's solvency problems and not an effort to appease and accommodate Dorfman. Moreover, the argument that the delay was inconsequential utterly misses the point. Mr. McElnea did not want the transaction completed at that time. Obviously, he was not willing to assume that it would be delayed in the ordinary course.

In any event, the delay was hardly one month. A June 15, 1977, memorandum from V. Paul Ricken to John Ames reveals that seven months later Ricken was still waiting for the "green light" from Mr. McElnea. The only conclusion which can be drawn is that Mr. McElnea was thoroughly versed in the rules of the Teamsters Pension

Fund and that he was quite willing to follow those rules. It is not important whether he did so purposely to aid the nefarious schemes of others or whether he aided those schemes to achieve his and CWI's own economic ends. The Casino Control Act does not require or permit this Commission to draw such distinctions. These practices establish Mr. McElnea's unsuitability to participate in New Jersey's gaming industry. Negative implications also must be drawn from the applicant's failure to produce Bertin Perez an obviously important witness to the transaction with Alan Dorfman. This failure, I infer, was because his testimony would support the negative inferences about Mr. McElnea drawn from the Ames' record and testimony.

Added to all the foregoing, the Cove Haven transaction and its aftermath demand that the Commission exclude Mr. McElnea. As mentioned above, Mr. McElnea knew of the Hannifin conversation with Clifford Perlman in November 1972. Of course, he knew of Mr. Malnik's reputation and he also knew before the deal was closed on February 20, 1975, that the $15 million was obtained by Mr. Malnik from the Teamsters Pension Fund at 9 percent interest. The offer from Mr. Malnik was to charge roughly 15 percent of the purchase price to CWI as rent. It has already been demonstrated that Mr. McElnea was then aware of the reputation of the fund and, from personal experience, the manner in which it did business.

Despite all of these factors, Mr. McElnea tendered no objection when the offer was presented to the board by Clifford Perlman. Nor did Mr. McElnea share with his fellow board members the fact of the Hannifin conversations with Mr. Perlman. Further, Mr. McElnea chose not to call in the CWI Director of Security, former FBI agent Harold Campbell, to determine prior to the transaction whether any new information was available on Mr. Malnik. Instead, Mr. McElnea requested Mr. Campbell to conduct such an investigation, including an interview of Mr. Malnik, in July 1975 well after the transaction was completed. And even then, Mr. McElnea acted only upon learning that the Nevada authorities were investigating Mr. Malnik and Cove Haven. Although steadfastly maintaining that no hard evidence was ever produced against Mr. Malnik, Mr. McElnea acknowledges that Harold Campbell believed Mr. Malnik to be an organized crime figure.

There are yet other serious questions regarding the Cove Haven transaction. The sale and lease back was conducted between a CWI subsidiary and a Florida partnership called Cove Associates. The partners were Mr. Malnik and his wife, and the two sons of Samuel

Cohen. Mr. McElnea concedes that no business should have been conducted by CWI with the convicted Samuel Cohen. Yet, Mr. McElnea becomes oddly myopic in this respect.

Before final approval of the transaction, Harold Berkowitz, one of CWI's outside directors, suggested a condition be imposed to the effect that CWI would be granted a deferment of payments on its Sky Lake obligations. This condition was accepted and, in July 1975, a substantial deferment was obtained. Of course, as Mr. McElnea well knew, the Sky Lake obligations ran to Comal Corporation not to Cove Associates. Comal was Mr. Malnik and Samuel Cohen. Despite his admission that Samuel Cohen was unacceptable as a business associate and despite his admission that he then knew of Mr. Cohen's conviction for skimming from a Las Vegas casino, Mr. McElnea agreed to do business with Mr. Cohen through Alvin Malnik. In addition, the deferred Sky Lake payments were, in large part, a Teamsters Pension Fund obligation. Mr. McElnea, with his redoubtable business acumen, chose not to dwell on the obvious implication that Samuel Cohen would receive a direct benefit from the Cove Haven proceeds and that the disreputable Mr. Malnik would have to intercede with the Teamsters Pension Fund on behalf of CWI. Naturally, too, any hope of separating CWI from the Teamsters Pension Fund in the near future was snuffed by the Cove Haven commitment. In this act, Mr. McElnea was no idle observer. He was instrumental. Again, actions that would be more than enough to deny qualifier status in this State.

The closing of the Cove Haven deal, in February 1975, and the grant of a deferment from Comal in July 1975, did not mark the end of Mr. McElnea's association with Mr. Malnik. Although the exact date is in dispute, in early 1975, Mr. Malnik approached Mr. Clifford Perlman and Mr. McElnea with one more proposition. This time he proposed no less than a $75 million sale and lease back of the Palace itself. As usual, the source of Mr. Malnik's funds was to be the Teamsters Pension Fund. Notwithstanding all that had gone before, Mr. McElnea admits that "we listened".

As to the seriousness of Mr. Malnik's last proposition, Mr. Fritsch of Rogers and Wells observed in a January 17, 1975, memorandum that the proposed Cove Haven transaction appeared "atypical" and "very costly" but it should proceed because it was only the "first step" in the refinancing of CWI's debt. The clear implication is that the benefits accruing to the other party, Cove Associates, would be inducement to further, perhaps more favorable financing. It should

be recalled that Mr. Ames' memorandum of January 1975 recites that Mr. McElnea was then thinking seriously of a sale and lease back of the Palace. Although this proposal never came to fruition, it is quite clear that Mr. McElnea did not say: "No, we'll not do business with Mr. Malnik again". To the contrary, only the publication of a damaging article in the Los Angeles Times and subsequent inquiries by regulatory authorities finally terminated consideration of Mr. Malnik's proposition. These events provide a chilling insight into the financial activities being conducted by Mr. McElnea in 1975. Although the applicant argues that this adverse inference should not be drawn, it is appropriate to note that Mr. McElnea himself did not resume the stand at this hearing to address these matters after Mr. Ames' testimony.

CONCLUSION

The Casino Control Act intended, among other things, to insure that organized crime does not infiltrate the resort casino industry in Atlantic City or the service industries interacting with those resort casinos. This Commission has an awesome responsibility in controlling the infiltration of organized crime into legitimate business as well as assisting in stopping the corrupting influence of criminal cartels and their acquisition and expansion of political and social influence.

The potential of infiltration and domination of legitimate business by organized crime has been incontrovertably revealed by a series of investigations and congressional probes over the last 25 years. The attempts to conceal criminal activities in a mantle of respectability is dramatically presented by the evidence in this case. It appears Mr. McElnea contributed to the efforts of persons with reputations as high-ranking racketeers to invest large sums of money in legitimate enterprises. Moreover, through these arrangements, Mr. McElnea granted those persons the economic leverage to exercise very real control over a licensed gaming company. We should not license such an individual.

It is clear from the present record that William McElnea traveled two different roads. Were he to have remained solely on the path composed of Paul Bagley from E. F. Hutton and Robert VanBuren and Robert R. Ferguson from the Midlantic Bank and the First National State Bank Corporation respectively, the world of which he was a part as an investment banker, I would probably have found he had met the standards of honesty and integrity of the Casino

Control Act by clear and convincing evidence. However, he chose another course. Whatever his motivation, he traveled another road simultaneously. This alternative road was composed of Allen Dorfman, Alvin Malnik, Samuel Cohen, the Central and Southwestern States Teamster Pension Funds, the Amalgamated Insurance Agency and the United Founders Life Insurance Companies of Oklahoma and Illinois. He traveled the road with mendacity and with disregard for the regulatory process. Fortunately, the legislative wisdom of New Jersey does not permit this dual personality. I find I have no choice but to vote to deny Mr. McElnea's status as a qualifier. I find him unsuitable. New Jersey public policy demands that he be made of sterner stuff than he exhibited in this case. This state need not allow persons to do business within this state who choose to operate on several occasions with persons of such obvious bad reputations.

Section 84(c) requires "each applicant" to produce such "information, documentation and assurances of good character as may be required to establish by clear and convincing evidence the applicant's good reputation for honesty and integrity". Such information shall include business activities and professional associates.

Mr. McElnea's business associations reflect upon his present character and fitness. The duration of these associations, their purpose and intensity, and the reputation and character of the associates preclude his being found qualified under *N.J.S.A.* 5:12-89(b)(2). In furtherance of this finding, Mr. McElnea's knowledge of the "bad" reputation and character of the associates is compelling. He did not exercise efforts to determine the suitability of these associates prior to engaging in business relations with them, nor did he terminate or attempt to terminate the relationships in a timely fashion once aware of their reputations and character. Even a brief association with a person, pension fund, or business known to be of such questionable character as the persons and business referred to herein, would be a powerful negative proof of honesty and integrity. It is clear that the greater notoriety the more negative the reflection on the applicant. The persons and businesses Mr. McElnea chose to associate with are notorious and clearly unacceptable today as they were for the last decade.

A business and its leadership must be alert to persons or other related businesses who compromise their concern for integrity. CWI and Mr. McElnea, as the Chief Operating Officer and Director, should have been concerned with those with whom the company did business

and with whom it entered into professional relationships. The fact that he permitted his company, without objection, to knowingly deal with persons known or reputed to be linked with organized crime, corruption, kickbacks and the like, permits adverse and fatal inferences pertaining to his honesty and integrity to ensue. Here, where the course of conduct reveals a series of transactions over a course of more than a decade, such inferences are unavoidable. Moreover, the sources of Mr. McElnea's knowledge regarding these unsavory associates are significant. He had been placed on notice by his own outside counsel, Dave Bernstein, by the Securities and Exchange Commission, by numerous newspaper and other media material, by the Nevada Gaming Board and Commission, and by his own shareholders and corporate security officer. These notices from government and the private sector coupled with his willful disregard for this advice indicate a wreckless indifference to the opinion of the public, government, his shareholders and advisors to the detriment of his own character, his company's reputation, the requirements and needs of his stockholders and the regulatory process. The adverse reflection on Mr. McElnea's character is severe and conclusive. Deliberate initiation, cultivation and maintenance of the relationships with Alvin Malnik, Sam Cohen, the Teamster Pension Fund, Allen Dorfman and his insurance agency, in the face of this widespread official disapproval is evidence of a lack of good character.

As the Chief Operating Officer and Director, and one of the most important if not the most important person in the parent corporation, to maintain these associations with disreputable individuals is an indication of not only past behavior but an important predictor of future conduct. I find that hs conduct is such that I have grave reservations that cannot be overcome about his willingness and ability to operate within the strict regulatory guidelines of the State of New Jersey.

For all the foregoing reasons, William H. McElnea, Jr., is not qualified.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.