

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the Indiana Horse Racing Commission ("Commission"), by Mike Smith, Executive Director of the Indiana Horse Racing Commission Staff ("Commission Staff") and Joseph M. Davis ("Davis"), a licensee subject to regulation by the Commission. Collectively, the Commission Staff and Davis shall be referred to herein as "the Parties." This Agreement is subject to the review and approval of the Commission.

### RECITALS

1. The Commission is the administrative agency in the State of Indiana that regulates horse racing pursuant to provisions of the Indiana Code, Title 4, Article 31.
2. On or about April 11, 2017, and at all times relevant to this Agreement, Davis was licensed as an owner/trainer with the Commission.
3. As a Commission licensee, Davis was subject to Commission rules and regulations.
4. On July 13, 2017, the Commission Stewards summarily suspended Davis. Stewards Ruling No. IG 2017-1145, as amended, attached as Exhibit A and incorporated by reference.
5. On July 26, 2017, the Commission Stewards upheld the summary suspension. Stewards Ruling No. IG 2017-1165, attached as Exhibit B and incorporated by reference.
6. On August 10, 2017, Administrative Law Judge Bernard Pylitt issued a Recommended Order recommending that Davis' appeal of the summary suspension be dismissed, and that Stewards Ruling No. IG 2017-1165 be affirmed in all respects. Recommended Order attached as Exhibit C and incorporated by reference.
7. The Parties now have reached a resolution relating to the summary suspension of Davis under Stewards Ruling No. IG 2017-1145, as amended, and/or Stewards Ruling No. IG 2017-1165 (the "Summary Suspension").
8. Now, in full and complete resolution of any and all further administrative proceedings involving Davis relative to the Summary Suspension, the Parties agree to the terms and conditions set forth in this Agreement.
9. Nothing in this Agreement shall preclude Commission Staff from filing an administrative complaint relating to the charges that led to the Summary Suspension.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, the Parties agree as follows:

10. This Agreement does not cover any violations that may be alleged in an administrative complaint expected to be filed against Davis relating to an ongoing Commission investigation.
11. Davis agrees to dismiss with prejudice and/or withdraw all related pending legal and administrative proceedings, and release all claims and potential claims against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees relating to the Summary Suspension. Davis specifically agrees to release and forever discharge any claims and/or complaints against the Commission and the Commission Staff and/or their current or former representatives, agents and/or employers and/or the Commission stewards arising from, relating to, or in any way connected with or in any way related to the Summary Suspension.
12. The Commission Staff will lift the Summary Suspension and will not institute any summary suspension of Davis for any violation relating to the Commission and/or Commission Staff's ongoing investigation of Davis.
13. Davis agrees to not participate in pari-mutuel racing in Indiana for the remainder of 2017.
14. Davis agrees that he will not seek licensure from the Commission in 2018, unless Davis prevails at a hearing on the merits of any subsequently filed administrative complaint or a subsequent agreement is reached.
15. The Parties agree that the following horses will be removed from the Commission stewards' list but Davis agrees they will be ineligible to participate in pari-mutuel racing in Indiana: Heisasgoodasheis, Parti Favor, Godzila, Fast N Famous Eagle, Rags Ta Cash, The Louisiana Jewel, Might and Right, Mighty B Grateful, Mighty B. Zoom, Pieper, Bodler, Heisasheis, Jes A Spitfire, Jess an Oak Tree Lbh, and Onefamoussonofagun. Notwithstanding the foregoing, an identified horse may participate in pari-mutuel racing in Indiana, if one or more of the following occurs:
  - (a) Davis prevails at a hearing on the merits regarding any administrative complaint;
  - (b) a subsequent agreement is reached; or
  - (c) such horse is transferred as a result of a claiming race provided that the person or entity claiming said horse is not affiliated with Davis. The Parties acknowledge the Commission may require proof of the claiming person's or entity's non-affiliation with Davis.

16. Davis acknowledges that this Agreement is not a guarantee of future licensure.
17. The Parties acknowledge that this Agreement is subject to the approval of the Commission.
18. The Commission will enter a ruling consistent with this Agreement which will make clear that the sanctions set forth in Paragraphs 13, 14, and 15 are the total sanctions relating to the Summary Suspension.
19. This Agreement is not to be interpreted as an admission by any Party of any liability, including the Summary Suspension. Rather, the Parties enter into this Agreement for the sole purpose of avoiding the inconvenience and expense of litigation and other disputes between and among them.
20. Any waiver of any provision of this Agreement must be in writing and must be approved by Davis and either the Commission or the Commission Staff. No waiver of any provision of this Agreement shall constitute either a waiver of any other provision hereof (whether or not similar) or a continuing waiver.
21. The Parties agree that this Agreement shall be interpreted, enforced, and governed by the laws of the State of Indiana.
22. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart of all purposes, but all of which constitute one and the same instrument.
23. Davis represents that he has carefully read and reviewed the foregoing Agreement, acknowledges its contents, has had the right to consult with his own counsel, and agrees to be bound by its terms. Davis acknowledges that he has voluntarily entered into this Agreement as of the date and year herein set forth.

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates listed below.

I swear, under penalties for perjury, that the foregoing representations that have been made by me are true and correct.

9-15-17  
Date

  
Joseph M. Davis

ON BEHALF OF THE INDIANA HORSE RACING COMMISSION STAFF:

9/17/17  
Date

  
Mike Smith, Executive Director

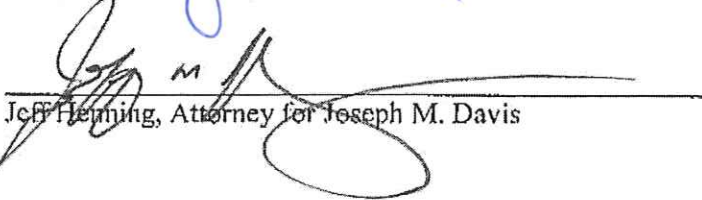
APPROVED BY INDIANA HORSE RACING COMMISSION:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Philip Borst, DVM, Chairman

Approved as to form:

  
Holly Newell, Deputy General Counsel for Commission Staff

  
Jeff Henning, Attorney for Joseph M. Davis

SEP 05 2017

SETTLEMENT AGREEMENT

Received

This Settlement Agreement ("Agreement") is entered into between the Indiana Horse Racing Commission ("Commission"), by Mike Smith, Executive Director of the Indiana Horse Racing Commission Staff ("Commission Staff") and Roy Moore ("Moore"), a licensee subject to regulation by the Commission. Collectively, the Commission Staff and Moore shall be referred to herein as "the Parties." This Agreement is subject to the review and approval of the Commission.

RECITALS

1. The Indiana Horse Racing Commission ("IHRC") is the administrative agency in the State of Indiana that regulates horse racing pursuant to provisions of the Indiana Code, Title 4, Article 31.
2. Moore was licensed as an owner and trainer by the IHRC during 2016, and at all times relevant to this Agreement.
3. Title 71 of the Indiana Administrative Code regulates trainers participating in pari-mutuel racing in Indiana.
4. 71 IAC 8.5-4 *et seq.* regulates veterinarians practicing on IHRC regulated grounds.
5. The quarter horse Mr Fool Me Twice was at all relevant times trained and owned by Moore.
6. Moore entered the aforementioned horse in the 10<sup>th</sup> Race on August 27, 2016, at Indiana Grand Racing and Casino ("Indiana Grand").
7. Mr Fool Me Twice participated in and finished 3<sup>rd</sup> in the 10<sup>th</sup> Race on August 27, 2016, at Indiana Grand.
8. Industrial Laboratories ("Industrial") was at all times relevant the Primary Testing Laboratory for the Indiana Horse Racing Commission.
9. Industrial analyzed blood taken from Mr Fool Me Twice and established the presence of bupivacaine, ketamine, and norketamine in violation of IHRC rules in place on the race date identified in Paragraphs 6 and 7.
10. Split sample testing performed by the University of California-Davis confirmed the presence of bupivacaine, ketamine, and norketamine in the sample collected from Mr Fool Me Twice after the August 27, 2016, race.
11. 71 IAC 8.5-1-2 provides: No horse participating in a race shall carry in its body any foreign substance except as provided by these rules.

12. The Commission's Executive Director, given Moore's willingness to enter into this Agreement, is executing this Agreement in lieu of further litigation of the administrative complaint filed against Moore on January 18, 2017.

13. Now, in full and complete resolution of any and all further administrative proceedings, sanctions, penalties and discipline involving Moore relative to the positive findings of bupivacaine, ketamine, and norketamine in the horse Mr Fool Me Twice after the 10<sup>th</sup> Race on August 27, 2016, at Indiana Grand, the Parties agree to the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, the Parties agree as follows:

14. Moore hereby admits that Mr Fool Me Twice did, at the time of the 10<sup>th</sup> Race on August 27, 2016, at Indiana Grand, carry in its body bupivacaine, ketamine, and norketamine, which is a violation of 71 IAC 8.5-1-2.

15. Moore has acknowledged participation in and/or knowledge of violations of Article 8.5 of Title 71 of the Indiana Administrative Code, and the following races are affected:

- a. Mr Fool Me Twice is disqualified from 3<sup>rd</sup> place and is unplaced for the purposes of receiving purse money from the 10<sup>th</sup> race on August 27, 2016, at Indiana Grand Racing and Casino.

16. As a penalty for the referenced violation, Moore agrees to a ninety (90)-day suspension from participating in pari-mutuel racing, with thirty (30) days stayed pending no positive medication findings that are in violation of 71 IAC 8.5 or any other racing jurisdiction's rules throughout 2018.

17. Moore's 60-day suspension during the Indiana Grand race meet shall be effective from September 1, 2017, to and including October 31, 2017.

18. Moore agrees that in the event of any positive medication findings that are in violation of 71 IAC 8.5 or any other racing jurisdiction's rules, at any point in 2018, he will immediately serve the thirty (30) days of suspension that has been stayed. The thirty (30)-day suspension is separate from any penalty that would arise from a new medication violation.

19. Moore agrees to pay a fine of \$5,000.00 for the presence of bupivacaine, ketamine, and norketamine in the quarter horse Mr Fool Me Twice.

20. Moore shall be assessed ten (10) Multiple Medication Violation Point pursuant to 71 IAC 8.5-1-7.1, which will expire three (3) years after the execution of this agreement.

21. All transfers of Moore-trained horses to a new trainer are subject to approval, which approval shall not be unreasonably withheld, by the Commission Staff and shall be made in accordance with 71 IAC 7.5-5-2 and 71 IAC 5.5-1-30.

22. All sales of Moore-owned (or partially owned) horses are subject to approval, which approval shall not be unreasonably withheld, by the Commission Staff and shall be made in accordance with 71 IAC 5.5-1-30.

23. The Commission will enter a ruling consistent with this Agreement which will make clear that the sanctions set forth in Paragraphs 15, 16, 17, 18, 19, and 20 are the total sanctions for the violations referenced in this Agreement and no other sanctions, penalties, or discipline shall be assessed for said violations.

24. The Parties agree that this Agreement shall be interpreted, enforced, and governed by the laws of the State of Indiana.

25. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart of all purposes, but all of which constitute one and the same instrument.

26. Moore represents that he has carefully read and reviewed the foregoing Agreement, acknowledges its contents, has had the right to consult with his own counsel, and agrees to be bound by its terms. Moore acknowledges that he has voluntarily entered into this Agreement as of the date and year herein set forth.

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates listed below.

I swear, under penalties for perjury, that the foregoing representations that have been made by me are true and correct.

Date

Roy Moore  
Roy Moore

ON BEHALF OF THE INDIANA HORSE RACING COMMISSION:

9-5-17  
Date

  
\_\_\_\_\_  
Mike Smith, Executive Director

Approved as to form:

  
\_\_\_\_\_  
Holly Newell, Deputy General Counsel