



July 7, 2020

VIA HAND DELIVERY

Indiana Horse Racing Commission
1302 North Meridian Street
Indianapolis, Indiana 46202

Re: Petition of Eldorado Resorts, Inc. for All Necessary Approvals Including Approval to Transfer Permits and Licenses ("Petition")

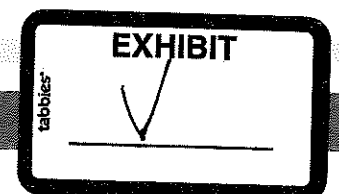
Dear Chairperson Borst and Commissioners:

The Indiana Horsemen's Benevolent & Protective Association ("HBPA") submits this letter for consideration by the Commission and inclusion in the record of the hearing on the Petition of Eldorado Resorts, Inc. ("Eldorado")¹ noticed for July 13, 2020, in the Commission's pre-hearing order dated June 25, 2020.

Introduction

HBPA depends on the funds it receives from the permit holder at Indiana Grand under Indiana Code Section 4-25-7-12 to accomplish its three statutory missions: to protect the hundreds of workers on the backside of the track; to promote Thoroughbred racing in Indiana; and to safeguard the welfare of the Thoroughbred athletes that race in this state. HBPA cannot accomplish these missions without a first-rate partner operating racing at Indiana

¹ In the proposed transaction that gives rise to the Petition, Eldorado seeks to acquire a controlling interest in Caesars Entertainment Corporation ("Caesars"), the direct or indirect holder of the relevant permits and licenses at the Indiana Grand and Hoosier Park racinos. As used in this letter, the term "Eldorado" includes all entities in which Eldorado would acquire a controlling interest as a result of the proposed transaction.



holder's race-management team to promote the sport and conduct racing in a safe environment

Eldorado's Petition seeks transfer of the racing permits and associated gaming licenses at Indiana Grand and Hoosier Park for the second time in three years. Before 2018, HBPA enjoyed a strong relationship with Centaur Racing, an Indiana company which set a high standard for promoting the best interests of Thoroughbred racing in this state. In 2018, the permit and license were transferred to Caesars Entertainment Corporation ("Caesars"), which committed to uphold the standards set by Centaur. For a variety of reasons—some of them attributable to Caesars (e.g., its size, diversity of holdings, and distant corporate offices), some unavoidable (most obviously, the COVID-19 pandemic)—Caesars has not fully met its commitment. For example, as the Commission is aware, in November 2019, Caesars failed to consult with HBPA and the other horsemen's associations before submitting its 2020 operational plan, though required by Commission order to do so.

Now, Eldorado, a publicly traded gaming company that owns a couple of racing properties, seeks to acquire majority control of Caesars. This would, in effect, result in another transfer of the racing permits and gaming licenses and, possibly, another step down in standards of operation. According to a January 9, 2020 report prepared for the Commission by F. Douglas Reed of Racing, Gaming & Entertainment, LLC ("Reed Report"), Eldorado has very limited experience in racing, less than ideal relationships with horsemen at the tracks it has operated, and fiduciary obligations to its shareholders that create tension between racing expenditures and maximization of profit. (Reed Report at 17–18.)

In light of these findings, and the crucial nature of its relationship with the permit holder at Indiana Grand, HBPA supports Eldorado's Petition, **but only if** the Commission imposes a set of conditions on Eldorado that will protect HBPA and the best interests of horse racing in Indiana.

**Subject to certain conditions,
HBPA supports Eldorado's Petition**

HBPA believes the Commission's Final Order should grant the Petition, **subject to** the conditions outlined below and any others the Commission deems appropriate. Additional details for the conditions outlined below can be found in Eldorado's March 3, 2020 letter to Executive Director Deena Pittman ("Eldorado Letter") and the Reed Report. HBPA also endorses the conditions included in the July 6, 2020 Staff Report of the Executive Director ("Staff Report"). HBPA will not repeat all of the conditions mentioned above but will add emphasis and comment where appropriate. HBPA will also propose an additional condition, the need for which arises from a contract reportedly entered between Eldorado and a real estate investment trust, VICI Properties, Inc. ("VICI").

1. The Final Order should require Eldorado to continue to pay the horsemen's associations 12% of adjusted gross receipts through 2033 for the purposes provided in Indiana Code Section 4-35-7-12. (See Eldorado Letter at 1.)

Eldorado has agreed to pay the horsemen's associations 12% of adjusted gross receipts from slots and table games through 2033, with an automatic renewal for an additional ten-year period, subject to Commission approval. Eldorado has also agreed to pay 12% of adjusted gross receipts on any newly authorized forms of gaming or wagering (in addition to slots and table games) that is regulated by the Indiana Gaming Commission that take place at a racino or off-track-betting facility. In the event new forms of pari-mutuel wagering regulated by the Indiana Horse Racing Commission become authorized, Eldorado has agreed to distribute revenues from those wagers in the same manner it currently distributes revenue from pari-mutuel wagering. (Eldorado Letter at 1-2.) The Final Order should require Eldorado to perform these agreements.

2. The Final Order should require Eldorado to create a \$25

million capital escrow fund to pay for major projects and enhancements to race track facilities over the next ten years, and should require Eldorado to replenish the fund every ten years thereafter. (See Eldorado Letter at 2; Staff Report at 13, Item 11.)

Eldorado proposes that this “Racing Capital Escrow Fund” will be administered by an Advisory Committee of six, comprising three representatives from Eldorado and one representative from each of HBPA, ISA, and QHRAI. The Staff Report recommends a Committee of seven, including two representatives of ISA. Presumably, the decision to expend money from the Escrow Fund would be made by majority vote of the Committee members, but with six members, a deadlock is possible. Therefore, **the Final Order should adopt the recommendation of the Staff Report and require that an additional representative from the ISA sit on the Advisory Committee.**

In addition, to ensure that the Escrow Fund will be used to make Indiana Grand and Hoosier Park first-class racing facilities and not to benefit Eldorado’s bottom line, **the Final Order should also provide that any money remaining in Escrow Fund at the end of the ten-year period will not revert to Eldorado.**

3. The Final Order should require Eldorado to add \$1 million to purses each year from 2020 through 2022. (See Eldorado Letter at 3.)

As Eldorado acknowledges, its proposed purse increases “are in recognition of the necessary timeframe of future expansion projects needed for full implementation of table games and the impact they have on Indiana horsemen once fully implemented.” (Eldorado Letter at 3.) In other words, the annual purse increases are intended to make up the amounts that would have been available for purses if table games at Indiana Grand were operating at the full capacity authorized by Indiana law. Because these purse enhancements are intended to replace lost table-game revenues, **the Final Order**

should also require Eldorado to distribute the \$1 million in annual purse increases to Thoroughbred purses, standardbred purses, and quarter horse purses in the same percentages (46%, 46%, and 8%, respectively) that table-game revenues are distributed under Indiana Code Section 4-35-7-12(f).

4. The Final Order should require Eldorado to hire and keep experienced, qualified racing managers with appropriate decision-making authority. (See Reed Report at 21.)

The Reed Report accurately identified the importance of having knowledgeable and qualified managers in charge of racing at Indiana Grand and of ensuring that those managers' authority to take timely action to benefit racing is not impaired by corporate micro-managing. (Reed Report at 21.) Eldorado has taken a positive step in this direction by creating the position of Senior Vice President of Racing and employing Joe Morris in that position. HBPA has developed a good working relationship with Mr. Morris and has found him to be knowledgeable, experienced, and communicative. HBPA believes that the ongoing, direct involvement of Mr. Morris—or someone equally capable—in racing at Indiana Grand will be critical to Eldorado's success, and thus to HBPA's success, should the Petition be granted. Therefore, **the Final Order should also require Eldorado to create and maintain the position of Senior Vice President of Racing with direct responsibility for racing operations in Indiana, and to obtain the Commission's approval of any person Eldorado may employ in that position.**

5. The Final Order should require Eldorado to make the track at Indiana Grand available for off-season training and to provide dormitories and stalls to eligible participants without charge. (See Eldorado Letter at 4.)
6. The Final Order should require Eldorado to consent to the appointment of an independent track manager, at Eldorado's expense, in the event Eldorado defaults in the performance of any of its obligations. (See Eldorado Letter at 4.)

Obviously, this remedy should be in addition to, and not as a substitute for, any other remedies provided by law or contract to the Commission or any person harmed by Eldorado's default.

7. The Final Order should require Eldorado to obtain annual Commission approval of a detailed operational plan—including specific, measurable, and achievable financial and performance goals—prepared in consultation with the horsemen's associations on the timeline recommended in the Reed Report. (See Reed Report at 19-23.)
8. The Final Order should require Eldorado to maintain accreditation by the NTRA Safety & Integrity Alliance (see Reed Report at 24) and to employ recognized track maintenance and safety experts (such as Coon Brothers, Butch Lehr, Mick Peterson, etc.) to address issues as they arise (see Eldorado Letter at 3).
9. The Final Order should require Eldorado to conduct monthly meetings of its racing/track personnel with representatives of HBPA and other Associations and to include Association representatives in any meetings with representatives of the Commission. (See Eldorado Letter at 3.)

Finally, although not addressed in the Reed Report or the Eldorado Letter, the Final Order should also address issues raised by a contract reportedly made by Eldorado with VICI, a publicly traded real estate investment trust. According to a report in Business Wire, dated June 24, 2019: "VICI Properties and Eldorado will enter into a put-call agreement, whereby the [VICI] has a call right to acquire, and Eldorado has a put right to require that [VICI] acquire, the land and real estate assets associated with Harrah's Hoosier Park and Indiana Grand. ... The put-call agreement may be exercised by either party between January 1, 2022 and December 31, 2024."²

² <https://www.businesswire.com/news/home/20190624005280/en/VICI-Properties-Enters-Transformative-Partnership-Eldorado-Resort>.

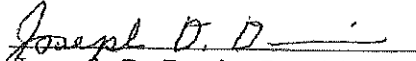
This put-call agreement raises concerns, because it could add a second layer of shareholder interests—those of VICI’s shareholders, in addition to those of Eldorado’s shareholders—that may not be consistent with the best interests of horse racing in Indiana. If the land and real estate assets of Indiana Grand and Hoosier Park (“Properties”) are transferred to VICI, it would also raise concerns about which entity—Eldorado or VICI—would be responsible for making capital improvements to the Properties. This could impair Eldorado’s commitments to funding those improvements, via the Racing Capital Escrow Fund or otherwise. Accordingly:

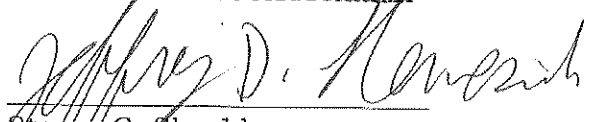
- 10. The Final Order should require Eldorado to (a) refrain from exercising its right to put the Properties to VICI; (b) refrain from requesting, encouraging, or inducing VICI to exercise its right to call the Properties; and (c) obtain the Commission’s approval before transferring the Properties, or either of them, to VICI.**

Conclusion

HBPA’s ability to accomplish its statutory missions of backside benevolence and equine promotion and welfare depends on Eldorado’s ability to perform at the high level the Commission has always expected of racing-permit holders. HBPA supports the Petition, subject to the ten conditions set out above, and others the Commission deems appropriate.

Respectfully submitted,


Joseph D. Davis, President
Indiana Horsemen's Benevo-
lent & Protective Association


Steven C. Shockley
Jeffrey D. Stemerick
Taft Stettinius & Hollister LLP
Counsel for IHBPA

27477711.5