

Memorandum of the Executive Session of the  
Indiana Horse Racing Commission

**July 13, 2020**

Indiana Grand Racing & Casino  
Founder's Room  
4300 N. Michigan Rd.  
Shelbyville, IN 46176

Pursuant to public notice issued in compliance with IC 5-14-1.5-1 et seq., the Indiana Horse Racing Commission (the "Commission") met in executive session at 10:00 a.m. on Monday, July 13, 2020, at Indiana Grand Racing & Casino. Commission members present were Philip C. Borst, Chairman; Greg Schenkel, Vice Chairman; George Pillow, member; Bill McCarty, member (by telephone); and Deena Pitman, Executive Director. The Commissioners met pursuant to IC 5-14-1.5-6.1(b)(7).

No subject other than that authorized by IC 5-14-1.5-6.1 and identified in the public notice was discussed during the executive session.

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Memorandum of the Regular Meeting of the  
Indiana Horse Racing Commission

**July 13, 2020**

Indiana Grand Racing & Casino  
2<sup>nd</sup> Floor Clubhouse  
4300 N. Michigan Rd.  
Shelbyville, IN 46176

Commission members present: Philip C. Borst, Chairman; Greg Schenkel, Vice Chairman; George Pillow, member; and William McCarty (by telephone), member.  
Commission Staff members present: Deena Pitman, IHRC Executive Director; Tom Linkmeyer, IHRC Deputy Director; Noah Jackson, IHRC General Counsel; Robin Babbitt, Counsel to the IHRC; Jessica Barnes, IHRC Breed Development Director; Wendi Samuelson-Dull, IHRC Controller; Megan Arszman, Communications Coordinator.  
Speakers from the audience: Tom Reeg, Chief Executive Officer of ERI; Joe Morris, Sr. Vice President of Racing for ERI; Anthony Carano, President and COO of ERI; Brian Elmore, Executive Director for the IHBPA; Dwayne Rhule, Chairman of the Standardbred Advisory Committee; Nat Hill, IV., Horseman; Ernie Gaskin, Horseman; Paul Martin, President of the Quarter Horse Racing Association of Indiana; Joe Putnam, President of the Indiana Standardbred Association; The Honorable Bob Cherry, State Representative, District 53; Bruce Murphy, President of the Board of Directors of the Indiana Thoroughbred Owner's and Breeder's Association; The Honorable Terri Austin, State Representative, District 36.

**I. Call to Order**

Chairman Borst called the meeting to order at approximately 11:00 a.m. A quorum was present.

**II. Approval of memorandum and executive session memorandum from the May 28, 2020, meeting.**

Chairman Borst asked for a motion for approval of the memorandum and executive session memorandum from the May 28, 2020, Commission Meeting. Motion for approval by Commissioner Pillow. Vice Chairman Schenkel seconded the motion. The vote, by roll call, was unanimous 4-0 for approval.

**III. Agenda**

*Note: All items on the agenda were transcribed by a court reporter from Stewart Richardson. Transcripts are available at [www.in.gov/hrc](http://www.in.gov/hrc).*

1. Consideration of Settlement Agreement between IHRC Staff and Gabriel Saez.

Indiana Horse Racing Commission ("IHRC") General Counsel Noah Jackson ("Mr. Jackson") presented the Settlement Agreement between the Indiana Horse Racing Commission Staff ("Commission Staff") and Mr. Gabriel Saez ("Mr. Saez").

Mr. Jackson stated the Settlement Agreement was signed in July 2020 and stemmed from an incident on or about June 17, 2020, where three jockeys were unseated from their mounts. Mr. Saez was suspended for thirty days by the Stewards. Mr. Saez timely appealed.

After settlement discussions with Commission Staff, Mr. Saez agreed to dismiss his appeal and serve the entirety of the thirty day suspension. In return, the ruling was amended to state that Mr. Saez was considered eligible to ride stakes races during the suspension period, provided he agree to add one day to his suspension for every day that he rode in stakes race.

Mr. Jackson, on behalf of Commission Staff, respectfully requested approval of the Settlement Agreement. Chairman Borst asked if there were any questions. Seeing none, the Chairman asked for a motion and a second. Vice Chairman Schenkel moved for approval of the Settlement Agreement as presented. Commissioner McCarty seconded the motion. The vote, by roll call, was unanimous 4-0 for approval.

2. Consideration of the following proposed emergency rule change: 71 IAC 9-4-7 Pick (n) pool

Mr. Jackson presented the Emergency Rule. Mr. Jackson referred to the Commission's earlier unanimous vote on the promotional takeout reduction on pick five wagering at the May 28 meeting. However, there were some issues with wagering system function with the rule as passed. The language before the Commission was been tested and appears to resolve the wagering system issues. Mr. Jackson on behalf of the Commission Staff respectfully requested approval of the rule change.

Chairman Borst asked for a motion to approve the emergency rule. Commissioner Pillow moved to approve the emergency rule. Vice Chairman Schenkel seconded. The vote, by roll call, was unanimous 4-0 for approval of the IHRC Emergency Rule.

3. Review of commission rulings – May 11, 2020 through July 9, 2020.

Chairman Borst explained the rulings were presented for the Commission's information and no vote was required. There were no questions.

4. Hearing, Deliberation and Issuance of Decision relating to Petition of Eldorado Resorts, Inc., Notice of Hearing and Pre-Hearing Order on Petition of Eldorado Resorts Inc. for Approval to Transfer Permits and Licenses.

Chairman Borst stated the purpose of the hearing was to afford Eldorado Resorts, Inc. ("ERI"), the petitioner, an opportunity to make their presentation relating to their transfer petition, an opportunity for Executive Director Deena Pitman ("Director Pitman") to offer any testimony to supplement the record, the to allow the Commission to ask questions of any party, representative, and witnesses who testify, and to allow opportunity for non-

party organizations and persons to provide testimony in support of or adverse to the petition. Further, Chairman Borst stated the record would be closed at the conclusion of the hearing and the Commission would deliberate and decide whether the petition would be approved, disapproved, or approved with conditions.

Robin Babbitt, Esq. ("Mr. Babbitt"), Counsel to the IHRC, went over several items before the hearing. Mr. Babbitt stated the Commission [Staff] submitted an exhibit list which was captioned Exhibits A through W with particular subsections, the exhibits came in without objection, and requested that the chair make the Commission Exhibits A through W inclusive, part of the record. Chairman Borst granted the request.

Next, Mr. Babbitt pointed out the Commission Staff filed a request for official notice pursuant to Indiana Code § 4-21.5-3-26(f) for the following orders previously issued by the Commission: In re: Centaur's acquisition of Indiana Grand dated January 7, 2013, In re: approval of the initial distribution agreement dated December 10, 2013, and In re: Caesars acquisition of Hoosier Park and Indiana Grand with related permits and licenses dated July 10, 2018. Mr. Babbitt requested the Commission take official notice of all items in the referenced request. Chairman Borst granted counsel's request to take official notice of all the documents and laws referenced in the request for official notice filed on July 8 and directed that those be made a part of the record.

Mr. Babbitt stated there would be opportunity for public comment, limited to those in attendance due to technology restrictions, and anyone wishing to provide comment was required to record their name on the sign-in sheet. Further, anyone testifying would be sworn in before giving testimony. Additionally, with the permission of the Chairman, the Commissioners or the Commission's counsel may ask questions of any witness at any time.

Chairman Borst explained that there would be an opening statement, a presentation by ERI, the opening statement by ERI, testimony of the Commission Staff and public testimony, any rebuttal or final statements, then the record would be closed, and finally deliberation and a decision. Chairman Borst then administered the oath to witnesses.

Chairman Borst made an opening statement about the history of horse racing in Indiana and how the Commission and the industry arrived at the present hearing. Tom Reeg ("Mr. Reeg"), CEO of ERI, thanked everyone for their hard work to get to the hearing, mentioned he had read the Reed report and Joe Morris ("Mr. Morris") was brought in as Director of Racing as a result of the information provided by the report. He then acknowledged the list of conditions in Director Pitman's report, and made ERI's presentation.

Mr. Reeg stated ERI has appointed a new corporate leadership team dedicated to racing with Mr. Morris. ERI had made commitments to reinvest in racing, improve the racing product, focus on equine safety, commitments to local communities, and to implement marketing improvements. Mr. Reeg stated that Mr. Morris, who had over forty years in the business in many different roles, will report directly to COO Anthony Carano (“Mr. Carano”) who reports to him (Mr. Reeg). Further, neither of the racinos would be sold to meet the Gaming Commission’s requirement that three assets be sold post-transaction. ERI was committed to extend the twelve percent share to horsemen for a significant period of time. Also, ERI would come out of the transaction with \$4 billion of liquidity as a combined company and had committed to put \$25 million to be disbursed by a newly created capital expenditure committee including representatives from ERI and the horsemen’s associations.

Mr. Reeg stated ERI, under present circumstances, has no intention of exercising the call arrangement for the real estate underlying the tracks, but cannot speak to what ERI’s partner will ultimately choose to do with its option. Mr. Reeg stated ERI understood nothing will happen until ERI comes forward and convinces the Commission that the REIT arrangement is in the best interests of the State of Indiana and particularly the racing industry in Indiana.

Next, Mr. Morris discussed the report by Doug Reed. Mr. Morris stated that some of the issues Eldorado had at other racetracks were due to employee attrition and some managers not having proper authority. Mr. Morris stated the organizational structure set up by ERI streamlines business decisions on racing matters, and affords him the authority to make decisions as necessary. Mr. Morris discussed the importance of working with the horsemen, preparing yearly operational plans, changing wagering formats to attract more bettors, managing post times, working with horsemen on qualifiers, proper track surface and maintenance, continued advertisement and promotions, Mr. Carano’s commitment to another ten percent in advertising and promotional spend for 2020, Caesars Rewards program, equine and human safety as high priorities, using experts to analyze the track condition(s), continuing to run the same number of race days, maintain first class OTB facilities, the ten-year, \$25 million capital fund, additional stalls at Indiana Grand, an owner’s area at Hoosier Park, the desire for more Indiana bred and owners, and the addition of \$1 million a year to purse accounts from 2020 through 2023.

Mr. Carano, President and COO of ERI, addressed the Commission. Mr. Carano discussed plans to expand both properties, working with the horsemen, fulfilling the remaining years of the financial commitment to the Centaur Equine Specialty Hospital in Shelbyville (rebranded as Caesars Hospital), working with industry partners and help

fund the Horse Racing Economic Impact Study, continuing to support the Indiana Horse Racing Hall of Fame and the Empire of Hope race horse aftercare initiatives, commitment to the local communities, having property management serve on local non-profit and civic boards, continuing the HERO volunteer service program, committing an additional \$250,000 to the communities, and providing Indiana with continued support of the Caesars Foundation.

Mr. Reeg made ERI's closing remarks. Mr. Reeg stated the shareholders of both companies have approved the transaction, as well as the Federal Trade Commission, and every other regulatory body required except for the Commission and the New Jersey Commission (scheduled for the following week). Further, he stated the cash to close the merger was in escrow.

Chairman Borst asked for testimony from Commission Staff and any members of the public. Director Pitman stated that she did not have additional information that was not covered in her report. Brian Elmore ("Mr. Elmore"), Executive Director of the Indiana Horsemen's Benevolent & Protective Association (the "IHBPA"), discussed the IHBPA's journey with ERI based on several meetings over many months, and closed by urging the Commission to adopt and approve ERI's petition for transfer with conditions agreed upon between the horsemen's associations and ERI and any other condition deemed appropriate by Director Pitman or the Commission.

Next Dwayne Rhule ("Mr. Rhule"), Chairman of the Standardbred Advisory Committee, asked for a new Reed Report in two years and was not in favor of the real estate put/call arrangement. Nat Hill, IV., a horseman, raised several issues that greatly concerned him about the merger and ERI's commitment to horse racing in Indiana. Ernie Gaskin, owner, trainer, and breeder, was in favor of the merger. Paul Martin, President of the Quarter Horse Racing Association of Indiana, was in favor of the merger based on ERI's promises to the horsemen. Joe Putnam, President of the Indiana Standardbred Association, was in favor of the merger based on ERI's promises to the horsemen and the appointment of Joe Morris. The Honorable Bob Cherry, State Representative, District 53, was in favor of the merger. Bruce Murphy, President of the Board of Directors of the Indiana Thoroughbred Owner's and Breeder's Association, was in favor of the merger and pleased with the appointment of Joe Morris, but wanted to ensure three riverboats were divested and the racinos stayed. The Honorable Terri Austin, State Representative, District 36, was in favor of the merger with the appropriate conditions in place.

Vice Chairman Schenkel asked ERI why the Commission and the State of Indiana, which serves the public interests, should embrace ERI's business model that tended to decrease revenues and headcount while increasing profits paid to shareholders. Mr. Reeg stated

many casinos use subsidies to gain customers and removing those subsidies causes the total revenue to decrease, although it is not really revenue since it being given back. Mr. Reeg stated the real way to drive revenue is to invest in the facilities, and stated ERI plans to invest \$60 million into table game expansions.

Vice Chairman Schenkel asked if the \$60 million was in addition to the \$25 million escrow account. Mr. Reeg stated it was. The \$25 million was racing specific and the \$60 million was for both Indiana Grand and Hoosier Park.

Chairman Borst asked Mr. Reeg to discuss the approximately \$500 million savings that ERI stated would occur from the merger. Mr. Reeg stated that it was really a function of the differences in operating philosophy. Caesars had a very large centralized organization based in Las Vegas and ERI empowers local leaders to make many day-to-day. \$100 million of the total is actually revenue synergy by incorporating Caesars Rewards.

Chairman Borst asked if there were no other orders due to the pandemic if the rest of the racing season for both tracks should go on as normal. Mr. Reeg stated that casino revenue was above expectations at all five casino properties.

Vice Chairman Schenkel thanked ERI for stating their commitment to the Commission and the horsemen that the tracks are not on the table for divestiture. Vice Chairman Schenkel further stated he was not interested in ERI's offer to go to the legislature to have the 12% AGR put into statute, but rather would favor allowing the process to continue as it has with a commitment from ERI.

Mr. Babbitt asked if the appointment of Joe Morris is an ongoing commitment and a permanent position. Mr. Reeg stated that it was. Mr. Babbitt asked if there will be a direct report between the senior vice president of racing and the CEO. Mr. Reeg responded in the affirmative. Mr. Babbitt asked for someone from ERI to make clear that the situation in Pompano is unique and that ERI would never perceive taking any actions to decouple racing and gaming in the State of Indiana. Mr. Reeg stated there was absolutely no intention of pursuing that in Indiana.

Mr. Babbitt asked about ERI's commitment to diversity. Mr. Reeg stated Caesars had existing programs around gender and minority diversity. Caesars placed Jan Jones, former mayor of Las Vegas, and head of corporate social responsibility, onto Caesars board so she will become a member of the combined board. Mr. Babbitt asked if ERI would make a commitment to racing not to cut employment levels at the Indiana racinos. Mr. Reeg stated ERI was happy to make a similar commitment relative to racing that was

made to the Indiana Gaming Commission.

Commissioner McCarty stated his wish to emphasize how seriously the Commission takes the commitments and obligations and will be very assertive about making sure they are fulfilled. Commissioner Pillow agreed with Commissioner McCarty's statement and reiterated the Commission will be looking at the merger thoroughly. Commissioner Pillow asked ERI how far along they were on the divestiture process. Mr. Reeg stated that while divestiture of properties had been considered in planning the merger, they had not done significant work on the divestitures at present. Vice Chairman Schenkel stated he was encouraged as time has gone on with ERI's promise to maintain first-class facilities and to promote and do all the things they are charged with to make sure horse racing in Indiana operates in the interest of the public. Chairman Borst thanked everyone involved and asked for the horsemen's help in keeping ERI on track after the merger.

Chairman Borst asked for a motion to approve the transfer petition. Vice Chairman Schenkel moved to approve the ERI transfer petition subject to the following conditions and/or covenants:

1. Any proposed conditions contained in the staff report submitted by the Commission's executive director;
2. Any conditions that reflect any commitments made by Eldorado since the transfer petition was filed;
3. Any other necessary and appropriate conditions, additions, and/or revisions made by our counsel that are supported by the comments of the Commission during this hearing and our deliberations; and;
4. Any technical or legal additions that counsel deems appropriate.

As a part of the motion, I request that our counsel promptly provide a proposed final order for the Commission's review, revision, and execution that would subsequently be provided to Eldorado and would become effective upon Eldorado's acceptance of any conditions or covenants set forth in this final order or as otherwise provided for by applicable Indiana law. Commissioner Pillow seconded. The vote, by roll call, was unanimous 4-0 for approval of ERI's transfer petition.

### **III. Old Business**

There was no old business.

### **IV. New Business**

There was no new business.



**V. Adjournment**

The meeting was adjourned at approximately 1:10 p.m.

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