

In The Matter Of:
Indiana Horse Racing Commission Meeting

IHRC Meeting
September 17, 2013

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INDIANA HORSE RACING COMMISSION
MEETING

HELD ON
SEPTEMBER 17, 2013
9:00 A.M.

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APPEARANCES

William Diener, Chairman
Steve Schaefer, Vice-Chairman
Jason Barclay
Greg Schenkel

Joe Gorajec, Executive Director

Lea Ellingwood, Esq.
Holly, Newell, Esq.
INDIANA HORSE RACING COMMISSION
1302 North Meridian Street, Suite 175
Indianapolis, IN 46202

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1 CHAIRMAN DIENER: Call the meeting to order of
2 the Horse Racing Commission here on September 17.
3 Commissioner Grimes could not be with us, but we do
4 have a quorum. Please turn off any sound making
5 things, whatever they might be.

6 First item today is to swear in our reporter,
7 Robin Martz.

8 (At this time the oath was administered to
9 the court reporter by Chairman Diener.)

10 CHAIRMAN DIENER: First item of business is
11 consideration by the Commission of the minutes of
12 its June 11th meeting. Any of the Commissioners
13 have any comments, amendments?

14 COMMISSIONER SCHAEFER: Move to accept.

15 CHAIRMAN DIENER: Second?

16 COMMISSIONER SCHENKEL: Second.

17 CHAIRMAN DIENER: All opposed?

18 (No response.)

19 CHAIRMAN DIENER: Minutes are approved.

20 We've had a change in the agenda. And the
21 first item today is a report by the Commission's
22 general counsel with respect to litigation update.
23 And I'm going to turn that over to Miss Ellingwood
24 at this time.

25 MISS ELLINGWOOD: Thank you, Chairman. There

1 are two cases involving the Indiana Horse Racing
2 Commission that are ripe for update today. The
3 first is the Court of Appeals decision in the
4 Indiana Horse Racing Commission versus Edmund
5 Martin, Junior. This case is noteworthy for a
6 number of reasons, but primarily because the Court
7 of Appeals has affirmed the Commission's broad
8 authority in determining who must be licensed
9 consistent with its statutory mandate to ensure
10 pari-mutuel horse racing is conducted under the
11 highest of standards and greatest level of
12 integrity.

13 From January 1 of 2010 to November 2010,
14 Mr. Martin served as the Executive Director and
15 paid employee of ITOBA, a registered horsemen's
16 association which is approved by the Commission to
17 receive funds generated at Indiana's horse tracks,
18 in accordance with Indiana Code 4-35-7-12. In that
19 capacity, Mr. Martin attended ITOBA meetings,
20 lobbied the General Assembly, and executed ITOBA
21 board decisions. His salary was paid, at least in
22 part, by gaming funds.

23 In April of 2010, Martin was reminded by
24 Commission staff he needed to obtain a license if
25 he intended to participate in horse racing

1 activities. Martin refused on the basis that he
2 would have not have access to gaming funds and
3 would not be handling ITOBA business at the track.
4 Subsequently, Martin had meetings at Hoosier Park
5 racetrack to discuss ITOBA business and was present
6 at the 2010 ITOBA horse sale at Hoosier Park.
7 Additionally, he agreed to cover ITOBA booth space
8 at the Hoosier Horse Fair.

9 71 IAC 5.5-1-1(a)(3) requires licensure, in
10 pertinent part, for "persons employed by the
11 association, or employed by a concern approved by
12 the Commission to provide a pari-mutuel related
13 service or commodity, with job duties which require
14 their presence in a restricted area or which
15 require their presence anywhere on association
16 grounds."

17 On November 4, 2010, the IHRC excluded Martin
18 due to his failure to seek a license in 2010. The
19 IHRC determined Martin was required to be licensed
20 under 71 IAC 5.5-1-1(a)(3) because he was the
21 Executive Director of ITOBA, which is a concern
22 approved by the Commission to provide pari-mutuel
23 related services, and Martin's job duties required
24 his presence "in a restricted area" and/or "on
25 association grounds."

1 Martin objected to the exclusion, and an ALJ
2 was appointed to review the matter. The ALJ's
3 order, which was unanimously adopted by the
4 Commission, found that the exclusion was supported
5 by substantial evidence, was consistent with
6 Indiana law and the public interest, and protected
7 the IHRC's interest to ensure the honesty and
8 integrity of racing.

9 Martin filed a petition for review in the
10 Marion Superior Court. After a hearing on motions
11 for summary judgment, the trial court set aside the
12 IHRC's order and vacated the exclusion notice,
13 holding that the activities that Martin engaged in
14 as Executive Director of ITOBA did not constitute
15 participation in racing, participation in
16 pari-mutuel racing, or provide pari-mutuel related
17 services as defined by the Indiana Administrative
18 Code. The Commission appealed.

19 The Court of Appeals stated in its order that
20 "the IHRC reasonably takes a broad view of the
21 phrase "participating in racing" to include those
22 individuals who are directly or indirectly
23 participating in pari-mutuel racing. We conclude
24 that the IHRC reasonably interpreted IC 4-31-6-1
25 and particularly the phrase "participate in racing"

1 when it promulgated 71 IAC 5.5-1-1(a) which defines
2 which persons must be licensed to participate in
3 pari-mutuel racing." Furthermore, the Court held
4 that Martin was required to be licensed because he
5 was ITOBA'S executive director in 2010 and an
6 active participant in ITOBA's activities at
7 Indiana's horseracing tracks. The Court of Appeals
8 ordered the trial court order reversed with
9 instructions to the trial court to reinstate the
10 Commission's order and exclusion notice. The Court
11 of Appeals opinion was certified on August 8th.
12 The trial court subsequently entered its order
13 complying with the Court of Appeals decision on
14 August 29, 2013. Copies of the documents have been
15 provided to you. Mr. Martin is and continues to be
16 excluded to October 16th of this year.

17 The second case was filed in the United States
18 District Court, Southern Division by Mr. Martin and
19 originally named as defendants Joe Davis, Randy
20 Klopp, Doctor Liana Puccia (a veterinarian in
21 Florida), as well as the Indiana Horse Racing
22 Commission, and Executive Director Joe Gorajec,
23 Director of Security Terry Richwine, Former
24 Chairperson Sarah McNaught in their official and
25 individual capacities.

1 Martin's claims arose from an investigation
2 conducted by the HRC of Martin Stables South
3 located in Florida. Martin's claims against
4 defendants Klopp and Davis were dismissed early in
5 the proceedings. Martin's claims against the
6 Indiana Horse Racing Commission and certain
7 commission staff members and its former chairperson
8 included allegations that the defendants conspired
9 to interfere with his civil rights asserting a
10 racial or class-based animus; deprived him of his
11 civil rights; trespass; tortiously interfered with
12 employment; tortiously interfered with contractual
13 relationship; conducted an unreasonable search and
14 seizure; and defamed him.

15 Martin demanded \$700,000 plus punitive
16 damages. After a second computation of damages in
17 October of 2012, that claim rose to \$13 million.
18 Earlier this year, the court, upon motion by the
19 parties, dismissed Martin's claims against Gorajec,
20 McNaught, Richwine, and Doctor Puccia. Those
21 claims against the Commission itself were withdrawn
22 from the federal complaint and are currently being
23 litigated in state court. An update will be
24 provided on the state court matter as appropriate.

25 CHAIRMAN DIENER: Thank you very much. Any

1 questions from any Commissioners? Hearing none,
2 thank you so much.

3 Commission agenda item number two are a series
4 of emergency rules enacted to conform with certain
5 legislative amendments that were enacted in the
6 most recent session of our General Assembly.
7 Again, Miss Ellingwood.

8 MISS ELLINGWOOD: As you all know, earlier
9 this year the Legislature made a number of
10 substantive changes to the Indiana Code with
11 respect to horse racing and pari-mutuel wagering.
12 Subsequently, staff took a look at the
13 administrative rules that we believed would require
14 some kind of adjustment, amendment, or creation.
15 We submitted a draft of those rules to the
16 Commissioners, to the industry, and gave a short
17 comment period for suggested changes.

18 Commission staff did receive two comments; one
19 from John Keeler, the other from Roger Young. And
20 after talking to the Chairman about those changes
21 made some additional changes. Those amendments
22 have been made solely to 71 IAC 11-1-12.1 regarding
23 distribution agreements.

24 CHAIRMAN DIENER: Any comments, questions from
25 the Commissioners?

1 MISS ELLINGWOOD: I would like to add,
2 Chairman, in terms of making sure we are complying
3 with our policy concerning the adoption of
4 emergency rules that it would be my recommendation
5 that the Commission move forward with this set of
6 rules as an emergency set of rules because of
7 timeliness issues with respect to this legislation
8 becoming effective by the end of the year.

9 CHAIRMAN DIENER: Both timeliness and to
10 conform with legislation?

11 MISS ELLINGWOOD: Yes, sir.

12 CHAIRMAN DIENER: Are there any comments from
13 the public with respect to these emergency rules?
14 Let the record show there were no comments on those
15 emergency rules.

16 I will entertain a motion to adopt these
17 rules.

18 COMMISSIONER BARCLAY: Can I ask a question,
19 Mr. Chair?

20 CHAIRMAN DIENER: Certainly.

21 COMMISSIONER BARCLAY: In those provisions
22 that add the sanction to trainers, spouse member if
23 there be a family or household person to the
24 suspension to the restrictions on getting a new
25 license, I sort of understand what prompted that

1 and why we felt the need to extend sort of a
2 blanket rule as opposed to dealing with that on a
3 case-by-case basis as they apply for a license.

4 MISS ELLINGWOOD: Which rule are you referring
5 to?

6 COMMISSIONER BARCLAY: In a couple of places,
7 71 IAC 5.5-3-1 discusses eligibility, subsection G
8 has been added.

9 COMMISSIONER SCHENKEL: 5-3-1 too.

10 MISS ELLINGWOOD: 5-3-1. And what was the
11 first one you mentioned, Commissioner Barclay?

12 COMMISSIONER BARCLAY: I think the same one,
13 which is 71 IAC 5-3-1, 5-3 and 5.5-3. So
14 subsection H says that the Commission or its
15 designee has the ability to deny license if there
16 is information that raises a reasonable suspicion
17 that any other person may be serving as a
18 substitute for a person ineligible to be licensed
19 as trainer. We add the subsection G that refers to
20 the spouse, member of immediate family, or
21 household person ineligible to be licensed as a
22 trainer.

23 MISS ELLINGWOOD: I'm looking now specifically
24 at 5-3-1(e). The language that we added there is a
25 mirror of what had appeared above, what had already

1 existed in the rule with respect to spouses of
2 trainers. That's not an extension. Our intention
3 was not to extend that anymore than it already
4 existed in the rule.

5 COMMISSIONER BARCLAY: I guess I'm not
6 following you. Subsection E is an addition or is
7 not an addition?

8 MISS ELLINGWOOD: We are making a distinction
9 between a refusal and denial. If you look at
10 paragraph D above, it says the Commission, and we
11 remove "or its designee," may refuse, deny,
12 suspend, or revoke a trainer's license for the
13 spouse, member of immediate family, or household
14 person, so on and so forth. So we are adding E,
15 but the spouse language that has already existed in
16 the rule. So we are just copying that which was
17 above.

18 COMMISSIONER BARCLAY: I guess my question is
19 what prompted the change?

20 MISS ELLINGWOOD: Under the new legislation,
21 the Executive Director is able to refuse a license
22 but is no longer able to deny a license. And so in
23 addressing that issue, we needed to make mirrors of
24 that language, such as in E. And in doing so, we
25 adopted a language that already existed in D.

1 COMMISSIONER BARCLAY: Okay. So I understand
2 then it maintains the language that says the
3 Commission can deny and replaces it with the
4 Commission designee may refuse in subsection E.

5 MISS ELLINGWOOD: Yes.

6 COMMISSIONER BARCLAY: Okay. I understand.

7 CHAIRMAN DIENER: Further questions? The
8 motion has been seconded. All in favor?

9 THE COMMISSION: "Aye."

10 CHAIRMAN DIENER: Opposed, same sign.

11 (No response.)

12 CHAIRMAN DIENER: Emergency rules have passed.
13 Item three is a review of the Commission
14 rulings for May, June, July, and August. Miss
15 Newell.

16 MISS NEWELL: You have a fair number of
17 rulings since it's been a while since we gathered.
18 To the extent you have any questions about them, we
19 are happy to entertain them.

20 CHAIRMAN DIENER: We have the ruling log for
21 that period in front of us. Any questions?

22 COMMISSIONER SCHAEFER: The only one I was
23 toying with is that a trainer or trainer's
24 assistant.

25 MISS NEWELL: That would be a situation where

1 you have a trainer who has somebody on the backside
2 that isn't licensed. They can be doing a variety
3 of things.

4 COMMISSIONER SCHAEFER: Do they apply for a
5 license?

6 MISS NEWELL: Typically, it comes down to a
7 timing situation where they didn't get them to the
8 office when they should have.

9 CHAIRMAN DIENER: Any other questions or
10 comments for Miss Newell on the rulings? Thank
11 you.

12 Number four is a petition by the Indiana
13 Standardbred Association to amend their 2013
14 budget. Mr. Young is here to present that
15 petition. Mr. Young.

16 MR. YOUNG: Thank you, sir. Good morning. We
17 did not include in our 2013 registration
18 application, which was approved early this year by
19 the Commission, a line item for funding or
20 assistance with funding an organization known as
21 Racing Medication and Testing Consortium. During
22 this year, the ISA received information from that
23 organization. And I have attached it to my
24 petition. After discussing the matter and thinking
25 about it a while, the ISA board determined this

1 would be a worthy use of slot funds to provide some
2 funding for this organization. So the ISA board
3 voted in favor of providing these funds.

4 However, there is nothing in our 2013 approved
5 benevolence budget that amounts to a line item that
6 would permit expenditure of these funds for these
7 purposes. And that is what lead to the filing of
8 our motion to amend our 2013 registration
9 application, and specifically to amend our backside
10 benevolence budget, which is found on page 81 of
11 our submission.

12 RMTC is an accreditation facility.

13 Mr. Gorajec, I'm sure, can give you much better
14 detail on what they actually do than I can. My
15 familiarity with that organization is confined
16 primarily to the information that was supplied to
17 us and submitted as an exhibit. It does appear
18 that what they do is analyze drug testing
19 laboratories or review them and review the
20 procedures to make sure they are doing the things
21 they are supposed to do and grant accreditation to
22 those laboratories.

23 The result of RMTC's work leads, according to
24 them, to greater integrity of racing and health and
25 welfare of race horses and participants. And I can

1 see the connection there. It's good not to have
2 participants in this sport under the influence of
3 drugs, both equine and human.

4 So we believe this is a worthy expenditure.
5 And we also believe it's an appropriate expenditure
6 from our benevolence budget. And we would ask
7 Commission approval of our request to amend our
8 2013 registration application so that we can make
9 this payment.

10 CHAIRMAN DIENER: One question for you: In
11 accordance with our new rules, has the ISA Board of
12 Directors determined that this expenditure is in
13 the best interest of horse racing in Indiana?

14 MR. YOUNG: Yes, sir, that was discussed. At,
15 not the last meeting but the meeting before, there
16 was discussion. And Mr. Hill, I believe, is the
17 one who ultimately commented that it is a good
18 thing for the sport not to have participants
19 participating under the influence of drugs.

20 CHAIRMAN DIENER: I want to make sure the
21 budget as amended as you proposed, that the Board
22 of Directors of ISA has so determined it is in the
23 best interest of horse racing in Indiana.

24 MR. YOUNG: Yes. And that is based upon the
25 materials received from RMTTC. And it was also the

1 institutional knowledge of the association that the
2 directors are familiar with the inner workings of
3 how this goes on.

4 CHAIRMAN DIENER: Thank you. Questions from
5 Commissioners?

6 COMMISSIONER SCHAEFER: Joe, if I could to
7 hear from you. Hate to put you on the spot. I
8 read what RMTTC is all about. Why hasn't this
9 arisen before?

10 JOE GORAJEC: Why hasn't the specific question
11 been issued?

12 COMMISSIONER SCHAEFER: Why now are we having
13 to take a request for this?

14 JOE GORAJEC: The RMTTC is always looking for
15 monies to fund different projects. And I know that
16 they have gone to the industry in the past. When I
17 say "the industry," to the tracks and to horsemen
18 requesting funds. And I know in the past that both
19 the HBPA and the tracks have provided the RMTTC with
20 funding for various projects.

21 This is coming to us mainly because the RMTTC
22 went directly to the horsemen asking for funding.
23 And there's no question in my mind that this is an
24 appropriate expenditure of funds, and it is for a
25 worthwhile cause. It's up to the Commission to

1 determine whether this can be shoehorned into the
2 actual benevolence pocket of their funding.

3 But if the question is why is it coming up
4 now, it's coming up now because the RMTTC went
5 directly to the trade association of the
6 Standardbreds and asked for money.

7 CHAIRMAN DIENER: Further questions from the
8 Commissioners? I'd make a motion that we approve
9 the petition to amend the benevolence budget as
10 proposed by the Indiana Standardbred Association.

11 COMMISSIONER SCHENKEL: Second.

12 CHAIRMAN DIENER: All in favor?

13 THE COMMISSION: "Aye."

14 CHAIRMAN DIENER: Opposed, same sign.

15 (No response.)

16 CHAIRMAN DIENER: Thank you, Roger. Number
17 five is an item I put on the agenda for discussion
18 purposes. It relates to the ISA petition that we
19 just considered and earlier there was another
20 request to amend the benevolence budget by another
21 horsemen's association. The reason I put this on
22 the agenda is that when we approve, the Commission
23 approves the horsemen's registration application
24 each year, there are three funds from which slot
25 revenues go into; the association's administrative

1 expenses, a second one for equine promotion and
2 welfare, and a third for backside benevolence. And
3 the Commission approves line items in those
4 specific budgets.

5 While the Commission doesn't meet that often,
6 been about three months since our last meeting, and
7 there will be times during which one or more of the
8 horsemen's associations may want to amend that
9 budget. And there may be some time sensitivity to
10 that.

11 What I'm suggesting for the Commission's
12 consideration is that the Executive Director, after
13 consultation with the Chair, be delegated the
14 authority to approve an amendment to a specific
15 line item in the budget of one of those three funds
16 up to \$50,000, as long as the budget for the total
17 budget for each of those three funds that we have
18 already approved does not change. This just simply
19 gives a little flexibility.

20 The \$50,000, I'm not particularly wedded to.
21 It's an amount that's not overly large. I wouldn't
22 want to ask for that kind of authority for Joe and
23 I. And it tracks with the contract amount we have
24 with our own regulations in terms of approving
25 contracts.

1 So this is what I'm proposing. It's one that
2 would probably be exercised very rarely because in
3 most instances the horsemen's association will be
4 able to timely ask for an amendment to that budget.

5 I would like comments or questions or maybe I
6 didn't make myself clear from the individual
7 commissioners about what we are asking for here.

8 COMMISSIONER SCHENKEL: Makes sense.

9 CHAIRMAN DIENER: I'm not trying to usurp the
10 Commission's authority. Don't get me wrong. I
11 just want to make sure we have enough flexibility
12 to deal with instances. We have had two come up
13 recently. And we had about three months between
14 meetings and couldn't act until the Commission got
15 itself all together. Sound reasonable?

16 COMMISSIONER BARCLAY: Sounds reasonable.

17 COMMISSIONER SCHENKEL: Makes sense.

18 CHAIRMAN DIENER: I would propose that the
19 Commission consider a motion that would delegate
20 the authority to its Executive Director with
21 consultation from the Commission Chair to approve a
22 horsemen's application to amend a line item in one
23 of the three funds that have been approved for
24 receipt of slot revenues, as long as the specific
25 request for amendment is \$50,000 or less, and as

1 long as the total approved budget for one of those
2 three funds remains as the Commission approved it.

3 COMMISSIONER SCHAEFER: Second.

4 CHAIRMAN DIENER: All in favor?

5 THE COMMISSION: "Aye."

6 CHAIRMAN DIENER: Opposed?

7 (No response.)

8 CHAIRMAN DIENER: Thank you. Did you get all
9 that?

10 Item six, this is from Thoroughbred Breed
11 Development and Jessica, and we have Wendy Brown
12 from breed development.

13 WENDY BROWN: Commissioners.

14 CHAIRMAN DIENER: Good morning.

15 WENDY BROWN: We came to you today to ask for
16 approval of a change in the rules defining Indiana
17 bred. There's a very popular breeding slot sale in
18 Keeneland in November. And we have a requirement
19 for an Indiana bred to be registered Indiana bred,
20 the mare had to be in the state by November 1st.
21 This excluded any purchases made at that sale.

22 We would like to propose that a mare purchased
23 at an advertised public sale prior to
24 December 31st in the year prior to foaling would
25 be allowed to have a foal registered as an Indiana

1 bred, but that mare must be in the state within 14
2 days of purchase. That's the first part of our
3 request.

4 The second part is that the mare must be
5 registered within ten days of foaling to make it
6 easier for the man that checks the mares to do his
7 job properly. These mares that were purchased at
8 the sale under the auspices of the sale would not
9 be required to be bred back to Indiana stallions to
10 be eligible for the foal to be Indiana bred.

11 The problem with our request is that
12 November 1st is not far away. So we would need
13 approval of this change as soon as possible so we
14 can make it known.

15 CHAIRMAN DIENER: Is this a recommendation
16 from the Thoroughbred Breed Development Committee?

17 WENDY BROWN: Yes, it is. The committee met.
18 In fact, the suggestion was made by ITOBA quite a
19 while ago. And at our last meeting we took it up
20 and discussed it. And we all thought it was a good
21 idea because sometimes people can improve their
22 stock that way by buying the mares at that sale in
23 foal. It's a good thing.

24 CHAIRMAN DIENER: Jessica Barnes.

25 JESSICA BARNES: I would just reiterate this

1 is being considered as an emergency rule because of
2 the November deadline for breeding. And if it's
3 not considered this year, then those people that
4 are wishing to buy those horses and bring them into
5 the state and not breed back will have to wait a
6 whole other year. They will miss out on the
7 opportunity to improve the stock.

8 CHAIRMAN DIENER: Do you support this rule?

9 JESSICA BARNES: Yes, I do.

10 CHAIRMAN DIENER: Questions from the
11 Commission, Commissioners?

12 COMMISSIONER BARCLAY: Yes. Ms. Brown,
13 explain to me again the purpose of the exclusion
14 for not requiring the mare to be bred back to a
15 registered Indiana stallion.

16 JESSICA BARNES: Many times when these horses
17 are being purchased, they are in foal. So one of
18 the main reasons they are purchasing -- actually,
19 the reason for purchasing the mare is twofold. It
20 is that the mare is of a better quality than what
21 they have. And, two, that it is in foal to a
22 desirable stallion. So normally if the mare is
23 registered by November 1st and in the state, then
24 they don't have to breed back to an Indiana
25 stallion.

1 WENDY BROWN: It's not changing. It's giving
2 an exception to a mare that's purchased at the
3 sale. Otherwise, she would have to fit all the
4 other requirements.

5 COMMISSIONER BARCLAY: The way I read the rule
6 says the mare must be bred back to a registered
7 Indiana stallion in the year of foaling.

8 WENDY BROWN: If she's not here by
9 November 1st, correct?

10 JESSICA BARNES: Yes.

11 WENDY BROWN: What we are doing is making an
12 exception for a mare that's purchased at a
13 recognized advertised sale prior to
14 December 31st.

15 COMMISSIONER BARCLAY: You don't read that
16 rule the same way that I do? Seems to me that even
17 if they are brought in by November 1st, they have
18 to be bred back to an Indiana stallion, the way I
19 read the rule.

20 WENDY BROWN: No, the mare that's here prior
21 to November 1st -- I'm sorry. Read the part that
22 you have a question with.

23 COMMISSIONER BARCLAY: So if they entered the
24 state under the current rule prior to
25 November 1st, the existing subsection F says that

1 that mare must be bred back to a registered Indiana
2 stallion in the year of foaling for the foal to
3 qualify as an Indiana bred.

4 WENDY BROWN: If they are here after
5 November 1st.

6 COMMISSIONER BARCLAY: The way I read that is
7 if they arrive prior to November 1st. Am I
8 misreading the rule or am I confused? It's
9 entirely possible I could be.

10 JESSICA BARNES: Under section B, this is how
11 I read the rule, maybe I'm reading it incorrectly.
12 Under subsection B under number one, if the mares
13 have entered Indiana by November 1 prior to foal,
14 in the year prior to foaling and remain, three,
15 remain in Indiana continuously until foaling, the
16 resulting foal will be eligible to register as an
17 Indiana bred.

18 Then when we get to E, we are dealing with
19 another set of horses. In the event that a mare
20 entered Indiana and was registered with the
21 Commission after November 1 in the year prior to
22 foaling, the foal which must be foaled in Indiana
23 may be registered as an Indiana bred. The mare
24 must be registered within ten days of foaling,
25 which applies to those mares entering the state

1 after November 1. And the mare must be bred back
2 to a Indiana registered stallion in the year of
3 foaling to qualify as an Indiana bred. Mares under
4 Section 1B are not required to breed back to an
5 Indiana stallion.

6 COMMISSIONER BARCLAY: It may just be a
7 drafting issue. I think that then needs to read or
8 needs to be a colon after subsection E.

9 JESSICA BARNES: Okay.

10 COMMISSIONER BARCLAY: There should be a
11 subsection 1, F should be subsection 1. G should
12 be subsection 2 so that it applies only to
13 subsection E. If F and G as proposed are only to
14 apply to situations where a mare enters the state
15 after November 1st, then I think F and G should
16 be reclassified as subsections 1 and 2 to make sure
17 they only apply to that particular provision.

18 JESSICA BARNES: Okay. I would also say that
19 you would have to number subsection H as number
20 three if you're doing that.

21 COMMISSIONER BARCLAY: Does that make sense to
22 everybody here?

23 CHAIRMAN DIENER: Miss Newell, Miss
24 Ellingwood, do you understand?

25 MISS ELLINGWOOD: I do. So what I have just

1 to make sure we have this correctly: E stays as it
2 is except for a semicolon after bred; what is in
3 the draft rules as F becomes 1; G becomes 2; and H
4 becomes 3.

5 COMMISSIONER BARCLAY: Except there would be a
6 colon.

7 CHAIRMAN DIENER: The remaining thereafter
8 there are renumbered thereafter.

9 COMMISSIONER BARCLAY: Exactly. Thank you.

10 WENDY BROWN: Thank you.

11 CHAIRMAN DIENER: Are those amendments
12 acceptable to you, Wendy and Jessica?

13 WENDY BROWN: Yes, they are fine. Thank you.

14 JESSICA BARNES: Yes.

15 CHAIRMAN DIENER: Commissioners, as amended?

16 COMMISSIONER SCHAEFER: So moved.

17 COMMISSIONER SCHENKEL: Second.

18 CHAIRMAN DIENER: All in favor?

19 THE COMMISSION: "Aye."

20 CHAIRMAN DIENER: As amended, the Thoroughbred
21 rule has been amended.

22 Number seven, Standardbred Breed Development.

23 JESSICA BARNES: In front of you you have a
24 proposed emergency rule dealing with the
25 registration of Indiana stallions. Under our

1 current rule if a stallion comes in late to the
2 state, so after our October 1st deadline, the
3 stallion can be registered for the current season
4 but may be registered up until July 15th so up
5 until the close of the breeding season.

6 One of the things that we are finding is
7 happening is mare owners are breeding to a new
8 stallion that's in the state. And for some reason
9 that stallion owner is forgetting to register the
10 stallion so they are missing that July 15th
11 deadline. And then after the July 15th deadline,
12 there is no recourse for that stallion to be able
13 to be registered. So somebody has bred their mare
14 to a stallion in Indiana thinking it was registered
15 with the Commission, and, in fact, it's not.

16 So this rule makes the clarification that the
17 stallion has to be registered prior to covering any
18 mares. So if a mare owner is breeding to a new
19 stallion in Indiana, they have the opportunity to
20 look on our website for our list, make a phone call
21 to our office and say is that stallion registered
22 and verify that that stallion was registered at
23 that point in time to make sure that that stallion
24 is Indiana eligible.

25 And in the old case if they call us, we can

1 tell them, no, it's not registered, but they have
2 up until July 15th. So the mare owner would
3 breed to that stallion. And the stallion owner
4 wouldn't fulfill their duty by July 15. And they
5 would be out of luck.

6 This makes it cleaner for everyone. It
7 protects the mare owner breeding to a stallion, as
8 long as they have taken the proper steps to verify
9 that the stallion is registered with the
10 Commission.

11 And once again, it's an emergency rule because
12 the registration deadline is October 1st. Any
13 stallion registered after this deadline will fall
14 under this new requirement. So what we will do
15 once this rule is approved, is we will send a
16 letter out to all of our stallion owners so they
17 know that the stallion has to be registered prior
18 to covering any mares that comes in late to the
19 state.

20 CHAIRMAN DIENER: Questions of Jessica on the
21 proposed change of stallions must be registered for
22 the current breeding season? Is "current breeding
23 season" a defined term that everyone knows what it
24 is? In other words, I don't want to leave some
25 ambiguity here.

1 JESSICA BARNES: I think it's defined --
2 there's actually two places it's defined. It's
3 defined in B of this rule.

4 CHAIRMAN DIENER: February 15.

5 JESSICA BARNES: To July 15th.

6 CHAIRMAN DIENER: That's the same as the
7 breeding season?

8 JESSICA BARNES: Yes.

9 CHAIRMAN DIENER: Okay. Questions from
10 Commissioners about this proposed change to the
11 Standardbred rules?

12 COMMISSIONER BARCLAY: What's the impact? So,
13 say, the stallion is not registered. It's then
14 bred. What happens to the mare?

15 JESSICA BARNES: The mare would actually have
16 a foal that would not be eligible for Indiana
17 programs. It would be eligible only to open races.
18 It wouldn't be eligible to any of the breed
19 development programs at all.

20 Under the rule change, this actually gives
21 that mare owner a method to verify that that
22 stallion is registered. So if they are going to
23 breed their mare, that stallion has to be
24 registered with us. Where in the past if somebody,
25 if stallion owner A brought in a new stallion, and

1 a mare owner called us up and said this stallion is
2 new to the state, is it registered with the
3 Commission, my answer would be, I would look it up
4 and say, no, it's not registered, but technically
5 they have until July 15th. So a lot of times
6 that mare owner would breed their horse to the
7 stallion with good faith that the stallion owner
8 was going to fulfill what he needed to do.

9 Under this scenario, the mare owner when they
10 call up and they say that, when I tell them, no,
11 the stallion is not registered, then they know that
12 it has to be registered before the mare is bred.
13 Provides some protection to the mare owner.

14 COMMISSIONER BARCLAY: We're comfortable that
15 the foal owner -- the stallion was in Indiana at
16 that time that the breeding happened. We are
17 comfortable that that foal is now ineligible for
18 any Indiana bred purses in the future, even though
19 they are able to establish the stallion was in the
20 state of Indiana.

21 JESSICA BARNES: Yes. And there has actually
22 been a couple of instances where stallions have not
23 been registered on time, and we have denied them.
24 They have actually appealed to the Breed
25 Development Advisory Committee and the Standardbred

1 Advisory Board because my approach has been if
2 they're going to ask for an exception to a rule or
3 a waiver of a rule, I would like to have the
4 support of the breed development committee and the
5 advisory board in bringing it forward to the
6 Commission.

7 So there has been instances where a stallion
8 was not properly registered. Somebody appealed to
9 me. I actually took this in front of the advisory
10 board and the breed development committee. And
11 they have said, you know, this stallion owner
12 didn't do their due diligence. They should have
13 taken care of their paperwork. So they didn't
14 think it was fair for somebody that did their due
15 diligence and completed everything and got the
16 registration in on time to allow a foal to be
17 Indiana eligible that didn't fall under that
18 scenario.

19 COMMISSIONER BARCLAY: I'm asking what if I'm
20 the innocent purchaser of that foal, and I'm lead
21 to believe that the stallion was in the state of
22 Indiana, and I'm under the belief that I can race
23 that horse in the state of Indiana for Indiana bred
24 purses, what happens to me as the innocent
25 purchaser of that foal who then learns it wasn't

1 properly registered, and that the owner of the mare
2 didn't confirm the registration?

3 JESSICA BARNES: The horse would be
4 ineligible. I think that purchaser would have some
5 recourse with the stallion owner or the mare owner
6 that they purchased the foal from is who they would
7 have to go back to.

8 CHAIRMAN DIENER: Go ahead, Joe.

9 JOE GORAJEC: I just want to piggyback on
10 Jason's inquiry. The hypothetical that you just
11 gave, is it based upon what's gone on in the past
12 or what will go on in the future if this rule is
13 approved?

14 COMMISSIONER BARCLAY: Either way. I want an
15 explanation of what we've done in the past and
16 understanding with this rule that was the
17 implication.

18 JOE GORAJEC: Jessica, correct me if I'm
19 wrong, what we've done in the past, as I think
20 Jessica just mentioned, is that the innocent
21 bystander who was lead to believe is out of luck.
22 That's what's happened in the past. If this rule
23 is passed, okay, that innocent bystander can't be
24 as innocent as before because at the time she bred
25 that horse, the stallion would have to have been

1 registered. Okay. And she has, he or she would
2 have had the opportunity to call, to look on the
3 website and to verify that that stallion is indeed
4 registered. So there won't be in the future, if
5 the Commission approves this rule, quote the
6 innocent bystander because that person would have
7 had all the information available to them at the
8 time of breeding.

9 JESSICA BARNES: The mare owner would still
10 have a responsibility to check and verify that the
11 stallion is registered.

12 CHAIRMAN DIENER: Further questions from the
13 Commissioners? Can you represent the Standardbred
14 Breed Development Committee supports this change?

15 JESSICA BARNES: Actually, the Standardbred
16 Breed Development and Standardbred Advisory Board
17 supports this.

18 CHAIRMAN DIENER: Thank you. I am ready for a
19 vote. This is an emergency rule because of.

20 JESSICA BARNES: Because the deadline is
21 October 1st. So any stallion registered after that
22 deadline will fall under this. And just trying to
23 provide, trying to close that gap for people if
24 it's not approved now, it will be a whole other
25 year.

1 COMMISSIONER SCHAEFER: So moved.

2 COMMISSIONER BARCLAY: Second.

3 CHAIRMAN DIENER: All in favor?

4 THE COMMISSION: "Aye."

5 CHAIRMAN DIENER: Amended rule passes as an
6 emergency rule. We are not through yet.

7 Early approval of the Indiana Sires Stakes and
8 Indiana Sired Fair Circuit program for next year.

9 JESSICA BARNES: Each year the Standardbred
10 Breed Development Advisory Committee and Advisory
11 Board sits down with the tracks and the horsemen's
12 organizations to plan their programs. This
13 typically happens in August, September, October,
14 well into December as a sire program. One of the
15 complaints or criticisms we have received over the
16 years is the timing of this.

17 The traditional Standardbred sales in Indiana
18 are in October. So people that are purchasing
19 yearlings that are going to race the following
20 year, are mainly making those purchases in October.
21 A lot of times the program has had changes to it.
22 And then after October, we have received criticisms
23 from people that have bought yearlings and said I
24 thought the program was going to be the same and
25 now you guys changed something up on me.

1 So last year when we approved the program, one
2 of the things we said is that we would do our best
3 to try to set down with all of the groups earlier
4 this year to have an announcement on as much of the
5 program as we could before the sale started. So we
6 started meeting back in June with the tracks and
7 horsemen's organization to look at the two primary
8 elements of our program, the Indiana Sires Stakes
9 and the fair circuit.

10 The Indiana Sires Stakes is the primary
11 element of our program. It takes up about
12 58 percent of the breed development budget. It's
13 the premier part of the program, what everybody
14 buys horses to try to shoot for to be in to compete
15 in. It's what you want to get to if you're buying
16 an Indiana sired horse.

17 So we looked at the program in the context of
18 having a one-track scenario and how the program was
19 working and took suggestions, input from horsemen.
20 Actually sent out a couple of press releases asking
21 input from general horsemen. We received input
22 from the ISA pari-mutuel committee. We talked with
23 the tracks. And we've actually modified the
24 Indiana Sires Stakes program to something that we
25 believe will work better with a one-track scenario.

1 It actually provides some additional racing
2 opportunities for two-year olds and three-year
3 olds, and actually provides a little bit more
4 funding for the Indiana Sires Stakes.

5 It sets it up to an elimination and final that
6 happens five times throughout the year and then a
7 super final. We think this will be the best method
8 to showcase the best Indiana horses in Indiana.
9 And the tracks are in agreement with this. The ISA
10 pari-mutuel committee is in agreement with this.
11 And we work closely with them, as well as the
12 Standardbred Advisory Board and breed development.

13 At this same time we looked at the Indiana
14 Sired Fair Circuit Program. We decided there
15 wouldn't need to be any changes made to that
16 program for 2014. And so we would actually like to
17 approve the Indiana Sires Stakes and the Indiana
18 Sired Fair Circuit program for 2014. We have left
19 enough elements in our program that based on the
20 contract negotiations that are coming up in
21 October, there's enough wiggle room that we can
22 modify other elements if we have to if the
23 percentage comes in different than what we think it
24 would be.

25 We ask for your early approval so we can make

1 the announcements to the sales in October of the
2 Indiana Sires Stakes program and Indiana Sired Fair
3 Circuit program. I know that Jack is here and Rick
4 is here. I don't know if they want to speak to
5 their support of this program.

6 CHAIRMAN DIENER: Jack.

7 JACK KIENINGER: Jack Kieninger, I'm president
8 of the Indiana Standardbred Association. We have
9 had several meetings throughout the year with the
10 pari-mutuel committee. We've hammered this thing
11 to death. And I think this is a very workable plan
12 that everybody is going to be happy with. I know
13 the breeders are happy with it. The racehorse
14 people are happy with it. And I'm sure that the
15 track will be happy with it too. So we are in full
16 support of this.

17 CHAIRMAN DIENER: Thank you. Mr. Moore.

18 RICK MOORE: Mr. Chairman, Members of the
19 Commission, Joe, Counsel. I'm pleased to represent
20 Hoosier Park, as vice-president and general manager
21 of racing, and all facets of the Standardbred
22 industry are on board for 2014. I think Jessica
23 summed it up very well. The fact this program will
24 be laid out early will be a benefit to all horsemen
25 as they prepare for 2014. We're very enthusiastic

1 about the 2014 program as put forth.

2 CHAIRMAN DIENER: Thank you. Any questions
3 from any representatives by any Commission members?
4 Ready to consider this?

5 JESSICA BARNES: I would like to add that
6 Hoosier Park has been extremely supportive of the
7 Sires Stakes, and they actually came in this year
8 with some increased funding for the Sires Stakes to
9 help showcase these premier horses that have really
10 become the best horses at the racetrack.

11 CHAIRMAN DIENER: Joe.

12 JOE GORAJEC: Mr. Chairman, I would like to
13 commend Jessica, the breed development committee,
14 and the industry as a whole to not only take care
15 of the business, which they always do, but do it in
16 such a timetable that they can improve on the
17 communication to their members and, therefore,
18 basically to promote their product in a way that
19 they hadn't been able to do so in the past. I
20 think a lot of that has to do with Jessica's
21 leadership and the willingness of the industry to
22 get together and to kind of plan long term.

23 CHAIRMAN DIENER: Thank you. I will make a
24 motion that we approve the Sires Stakes and Sired
25 Fair Circuit program for next year as presented to

1 us this morning.

2 COMMISSIONER SCHAEFER: Second.

3 CHAIRMAN DIENER: All in favor?

4 THE COMMISSION: "Aye."

5 CHAIRMAN DIENER: All approved. So be it.

6 JESSICA BARNES: Thank you.

7 CHAIRMAN DIENER: Thank you, Jessica.

8 Next item is called Centaur presentation on
9 matters of interest. I don't know what that is. I
10 know we have a new barn. Anything else that
11 Centaur wants to tell us about?

12 RICK MOORE: We would like to make a short
13 presentation on the TRAKUS system that we unveiled
14 at Hoosier Park September 3rd. I hope this would
15 be an appropriate time to do that if you so desire,
16 Mr. Chairman.

17 CHAIRMAN DIENER: What is short?

18 RICK MOORE: Two or three minutes.

19 CHAIRMAN DIENER: Okay.

20 RICK MOORE: With me is Gene Ciscell, our
21 vice-president of IT at Hoosier Park. Just while
22 Gene is cueing up the DVD, we did introduce the
23 TRAKUS system in partnership with the Indiana
24 Standardbred Association. I can't thank them
25 enough for their willingness to partner with us.

1 The forward thinking on behalf of the ISA, I
2 applaud.

3 This system is currently being used at the
4 premier tracks in the United States; Churchill,
5 Keeneland, Gulfstream, Santa Anita, Delmar,
6 Woodbine in Canada; internationally, Hong Kong,
7 Singapore, and Turkey. Hoosier Park is the only
8 track in the world, only Standardbred track in the
9 world that offers the TRAKUS system.

10 The installation was the fastest in TRAKUS
11 history. As I said, we unveiled this on
12 September 3rd. We think it's going to be a great
13 marketing for Hoosier Park and for the Standardbred
14 industry. And we will distinguish ourselves from
15 other Standardbred tracks in the United States. So
16 with that, I hope that Gene has the DVD cued up.
17 We can go through it quickly.

18 CHAIRMAN DIENER: You say this has been used
19 in a lot of these premier Thoroughbred tracks?

20 RICK MOORE: The best of the best.

21 CHAIRMAN DIENER: What's wrong with your
22 Thoroughbred track in Shelbyville?

23 RICK MOORE: I think they hopefully will be
24 joining us next year in showcasing tracks.

25 CHAIRMAN DIENER: You call it what?

1 RICK MOORE: T-R-A-K-U-S is the name of the
2 company. It's a video, electronic video imaging
3 system that the color numbers you would see show up
4 are referred to as chicklets. They track the
5 horses. There is a electronic tag in each saddle
6 pad. There are 23 antennas around the racetrack
7 track that do the tracking. There was a monumental
8 hardware installation.

9 The TRAKUS office is back in Boston,
10 Massachusetts. They have a communication center
11 and operation center that we work with every
12 evening. We have three people dedicated to the
13 TRAKUS operation.

14 As you can see, the Chicklets move as the
15 horses move. You also see at the top, that's the
16 track as the horses are going around it, the amount
17 of feet that have been covered, shades as they go
18 around.

19 CHAIRMAN DIENER: What's the difference
20 between the tracking system and the normal placing
21 that's done throughout the race of the horses?

22 RICK MOORE: The traditional is the top four,
23 as you see. But below that is the chicklets. As
24 you see, they are moving. They are following that
25 individual horse. It makes it much easier for the

1 patron to follow those horses, find out where their
2 horse is throughout any point in the race.

3 COMMISSIONER SCHAEFER: Rick, I assume that is
4 automatic as opposed to the old style by the field
5 glasses and punching it in. To TRAKUS system is
6 automatic once the antenna picks it up.

7 RICK MOORE: Yes, it is. It's electronic.

8 CHAIRMAN DIENER: It tracks the whole field?

9 RICK MOORE: Tracks the entire field. There
10 are some other enhancements that come with it.
11 There are animated views from the driver's point of
12 view. There's an aerial view. Gene, if you could
13 run through those real quickly, if we can catch
14 those real quickly.

15 Here's the data run board. This comes up
16 right after the end of each race with win, place,
17 and show. Shows the length the horses that have
18 been beaten, the feet traveled in relation to the
19 winner, did they travel more distance or less
20 distance. Here's the animated version, which is
21 available on our website approximately ten minutes
22 after each race. This is the driver's view as you
23 can see.

24 CHAIRMAN DIENER: This is separate and apart
25 from and not connected in any way with the tote

1 system.

2 RICK MOORE: That is correct, other than the
3 tote system is feeding the odds to TRAKUS. If you
4 saw the movie Turbo, the animated version of the
5 Indianapolis Motor Speedway, you would see the same
6 thing that was done here. Thanks Gene. Then there
7 is an aerial view. That's another view without the
8 horses, just the chicklets themselves.

9 CHAIRMAN DIENER: The chicklets are embedded
10 in the hoof?

11 RICK MOORE: In the saddle pad. Here is the
12 aerial view. They have to be inserted before each
13 race in the saddle pad. I hope you can appreciate
14 the forward thinking of Centaur and the ISA in
15 being the first track to offer this system. Again,
16 we think we will distinguish ourselves from our
17 competitors. In a very competitive simulcast
18 market, you are always trying to draw eyes to your
19 product.

20 CHAIRMAN DIENER: This will be for the
21 Standardbred racing next year?

22 RICK MOORE: That's correct.

23 COMMISSIONER BARCLAY: Will it be used to
24 resolve photo finishes? Can it or will it be used
25 to resolve photo finishes?

1 RICK MOORE: It will not be used for photo
2 finishes. We have a separate system and company
3 for photo finishes.

4 GENE CISCELL: There's a reason why this is
5 not used for photo finishing. It's on the saddle
6 pad, not on the nose of the horse. So, you know,
7 the finish line.

8 RICK MOORE: Ideally, if you used it for
9 photofinishing you'd want it, as Gene said, right
10 on the nose of the horse, which is not feasible.

11 CHAIRMAN DIENER: Thank you, Rick and Gene
12 appreciate it. Do you have anything else for us,
13 Mr. Keeler?

14 MR. KEELER: No, sir.

15 CHAIRMAN DIENER: Thank you. Any old
16 business? New business?

17 Just things to be thinking about,
18 October 29th at 9 a.m. here is our next scheduled
19 meeting. It will be more than likely a meeting
20 that is longer in time than this one.

21 Secondly, within the next couple of weeks, I
22 expect that the Commission will be issuing a number
23 of prehearing orders in preparation for that
24 October 29th meeting. Specifically, there will
25 be prehearing orders for each of the horsemen's

1 registration applications, and there will be a time
2 certain there within which any amendments to those
3 applications have to be filed before the hearing.

4 I say that because the horsemen's applications
5 for registration were filed on September 1 without
6 the benefit of knowing what a final definitive
7 distribution agreement was. I asked the staff to
8 just tell the horsemen's applications, the
9 horsemen's association to assume a certain
10 percentage and see what they can do with that. But
11 there will be an opportunity for amendments. I
12 expect those to be prefiled well in advance of the
13 hearing and not come in after hearing itself.

14 And the other matter will be the prehearing
15 conference order for setting up the procedures for
16 the Commission's consideration of the initial
17 distribution agreement. And, again, there will be
18 a date set in advance of the hearing. And I really
19 would encourage people to look at that date and
20 consider prefiling testimony so we can move that
21 along, both the track and the signatory parties to
22 this distribution agreement. So that the
23 Commission will be in a position to consider
24 evidence at the October 29th meeting and have all
25 the stuff, the documents, the testimony of

1 officials well in advance so we can determine, and
2 you all can meet your burden of showing that
3 distribution agreement is in the best interest of
4 pari-mutuel racing, is fair, you are all
5 financially feasible, and it's in the best interest
6 of Indiana.

7 So we want to move forward on that. And I
8 have not discussed it with the staff yet, but we
9 are thinking somewhere around maybe October 15th,
10 two weeks prior to that hearing would be the time
11 for submission of both the amendments to the
12 horsemen's applications and prefiling of testimony
13 because that distribution agreement is due
14 October 1. And you should be well enough along in
15 your negotiations to know what you're going to be
16 submitting. And those are just personal comments
17 for your consideration.

18 I'll take a motion to adjourn.

19 COMMISSIONER BARCLAY: So moved.

20 COMMISSIONER SCHAEFER: Second.

21 CHAIRMAN DIENER: Thank you all for your time.
22 We are adjourned.

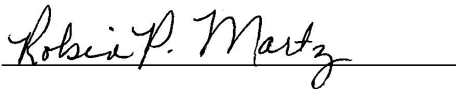
23 (The Indiana Horse Racing Commission meeting
24 was adjourned at 10:03 a.m.)
25

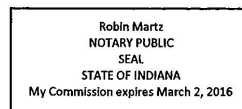
1 STATE OF INDIANA
2 COUNTY OF JOHNSON
3

4 I, Robin P. Martz, a Notary Public in and for
5 said county and state, do hereby certify that the
6 foregoing matter was taken down in stenograph notes
7 and afterwards reduced to typewriting under my
8 direction; and that the typewritten transcript is a
9 true record of the Indiana Horse Racing Commission
10 meeting;

11 I do further certify that I am a disinterested
12 person in this; that I am not a relative of the
13 attorneys for any of the parties.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my notarial seal this 26th day of
16 September 2013.

17
18 



23 My Commission expires:
24 March 2, 2016

25 Job No. 77540

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