

In The Matter Of:
Indiana Horse Racing Commission Meeting

IHRC Meeting
December 10, 2013

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INDIANA HORSE RACING COMMISSION
MEETING

HELD ON

DECEMBER 10, 2013, 9 A.M.

AT

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APPEARANCES

William Diener, Chairman
Steve Schaefer, Vice-Chairman
Greg Schenkel
Thomas Weatherwax
George Pillow

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: We'll call the meeting to
2 order of the Indiana Horse Racing Commission.
3 First item is to swear in the reporter.

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

6 CHAIRMAN DIENER: Commissioner Jason Barclay
7 tendered his resignation. He had a conflict
8 insofar as he had to earn a living. And it was
9 getting too much of his public service obligations.
10 And he will be having a new member in the family
11 either this week or next week so he's had to tender
12 his resignation.

13 I would like you all to welcome Commissioner
14 George Pillow. George is the founder and Chief
15 Executive Officer of Pillow Logistics, which among
16 other things specializes in transportation
17 services. He's a graduate of Indiana State. He's
18 a member of the Indiana High School Basketball Hall
19 of Fame.

20 COMMISSIONER PILLOW: That's good.

21 CHAIRMAN DIENER: And he's received the
22 Sagamore of the Wabash for previous public service.
23 So we welcome George to the Commission.

24 COMMISSIONER PILLOW: Thank you.

25 CHAIRMAN DIENER: The first item on today's

1 agenda is to consider the minutes of the
2 October 29, 2013 meeting of the Commission.
3 Commissioners have received copies of the proposed
4 minutes. Any corrections, additions?

5 COMMISSIONER SCHENKEL: Move approval.

6 COMMISSIONER WEATHERWAX: Second.

7 CHAIRMAN DIENER: The minutes are approved.

8 The first item on today's agenda is a
9 continuation of the October 29th hearing that we
10 held with respect to Centaur's petition for
11 approval of the Initial Distribution Agreement.
12 I'll turn this over to the applicant. Mr. Babbitt.

13 I'll caution you, and I've cautioned myself.
14 I talk too far away from this mic, and it can't be
15 heard. I would ask that counsel and any other
16 people that are presenting things get close to the
17 mic today.

18 MR. BABBITT: Thank you, Mr. Chair. Robin
19 Babbitt on behalf of Centaur and representing the
20 petitioners today with my colleague Phil Bayt.
21 Phil and I will, with your permission, Mr. Chair,
22 will split our time. And just by way of a little
23 bit of a road map, we are prepared to address the
24 Commission today by comments. We would like to put
25 in both this PowerPoint presentation that we are

1 going to be making to the Commission. We would
2 like to make that a part of the administrative
3 record, Mr. Chair, as you made the first one that
4 we submitted on October 29th a part of the
5 administrative record. We would also like to make
6 the brief supplemental prehearing brief that we
7 filed that was hopefully submitted to the
8 Commission -- I believe it was part of the
9 packet -- we would like to make that part of the
10 record as well today.

11 CHAIRMAN DIENER: Mr. Babbitt, you also had a
12 request for official notice that was filed timely.

13 MR. BABBITT: Yes.

14 CHAIRMAN DIENER: The official notice is
15 granted. The supplemental prehearing brief was
16 timely filed. That is part of the record. What
17 you're about to present today was not timely filed.

18 MR. BABBITT: I would say this, Mr. Chair.
19 Certainly --

20 CHAIRMAN DIENER: You know the prehearing
21 order here better than I do.

22 MR. BABBITT: I know that. And I also know
23 that on October 29th we had a PowerPoint
24 presentation that was presented at the hearing that
25 the Chair himself asked to be made a part of the

1 record. So we took that as precedent that to the
2 extent we had a PowerPoint presentation due to your
3 invitation, we thought it would be important to
4 bring that to the hearing and not pre-submit it.

5 CHAIRMAN DIENER: But the prehearing order was
6 specific that the hard copy of the PowerPoint
7 presentation should have been filed in advance no
8 later than noon on Friday so the Commissioners
9 would have had a chance to see that before.

10 MR. BABBITT: Again, Mr. Chair, I'm only
11 looking back to October 29th. That was not
12 prefiled. It was brought to the Commission
13 meeting. The Chair, as is clear from the record,
14 invited us to make that a part of the record. We
15 did that at the Chair's invitation. We assumed
16 that the Commission and the Chair would be acting
17 consistently with the way the October 29th
18 hearing was addressed so we did not pre-submit it.
19 We are here to do precisely what we did on the
20 29th.

21 I understand that it's your ruling. We would
22 submit it and simply ask that it be made a part of
23 the administrative record.

24 CHAIRMAN DIENER: Please continue with your
25 presentation.

1 MR. BABBITT: Thank you. Good morning. And
2 the one thing that I didn't get a chance to do last
3 time because of those of you who were here remember
4 that Mr. Bayt opened and closed. And I was the one
5 who was talking to people in-between during the
6 substance of the hearing. I didn't get a chance to
7 tell all of you, Mr. Chair, Vice Chair Schaefer,
8 Members of the Commission, Counsel, Executive
9 Director what a great privilege it is for me to be
10 here today to address the Commission. And it
11 really has been not only a great opportunity to
12 address you on this very, very important matter and
13 to represent Centaur -- and we are going to
14 reference the record, which we've asked to take
15 official notice of as we go through the
16 presentation -- but we are also very pleased, if I
17 can make this work, that again this is a joint
18 petition. It's not only on behalf of our client
19 New Centaur, the tracks, but it's also joined by
20 the Indiana HBPA, the Indiana Standardbred
21 Association, the Quarter Horse Association of
22 Indiana. And even though they are not a signatory
23 to the agreement, ITOBA, who has testified in the
24 earlier proceeding, has indicated that they are in
25 accord with the request for approval of the Initial

1 Distribution Agreement.

2 Mr. Chair, just by way of a procedural matter,
3 we do not intend to put on witnesses today, but we
4 do intend to combine our opening statement time and
5 our oral presentation time, if that meets with your
6 approval.

7 CHAIRMAN DIENER: That's fine.

8 MR. BABBITT: One of the things that we will
9 be doing, if I can make the technology work, is as
10 we go through the PowerPoint, I think you are going
11 to see that most of this was included in the
12 earlier PowerPoint that we made to the Commission
13 on October 29th. And what we'll also take the
14 liberty of doing is adding some reference to the
15 specific testimony that was given at the
16 October 29th hearing. And so whether the
17 PowerPoint goes into the administrative record or
18 not, certainly the transcript is part of the
19 administrative record.

20 And Tom Mosley talked about the importance of
21 this. While I know you can all read it, I will
22 read it anyway. "Do you believe that the unanimous
23 support for the Initial Distribution Agreement
24 marks an important milestone in the history of
25 Indiana horse racing?" His answer was "I really,

1 really, truly do. I think our horsemen do. And I
2 don't just think this is going to be a milestone
3 just in Indiana, but I think down the road, this
4 will be looked at nationally as an alignment
5 between not one horse association but three horse
6 associations representing three different groups of
7 horsemen, three different breeds, and ownership of
8 the track with all the same common goal. I mean,
9 there's tracks around that only want you to use a
10 40-watt light bulb, and here we are going to put a
11 \$35 million capital improvement on the front side.
12 I mean, it's just mind boggling."

13 Mike Brown then talked about the partnership
14 that had been forged and was unprecedented when you
15 looked at other states and how their tracks and
16 horsemen's associations interacted. And his last
17 sentence there says "I tell them," referring to
18 horsemen in other states, "that we didn't do this.
19 The legislature did it; but we cooperated in a way
20 that other states simply do not. This agreement
21 carries that on."

22 Now, this slide similarly recounts sort of how
23 we got to where we are here today. And before we
24 sort of go back through that -- again, all
25 reference in the record all that took part on

1 October 29th, I think it's important to say that
2 our client fully appreciates the very important
3 task that you as a Commission have in balancing the
4 public interest. We are very mindful of that and
5 very appreciative of this Commission's efforts.
6 It's an important responsibility. And in our view
7 what the opportunities that present today present
8 one of the most important opportunities for the
9 Commission.

10 So to reset the table as the Commission, as
11 those of you who were here well know, there were
12 three affirmative votes that are required for the
13 Commission to take action. Following
14 deliberations, a motion was made and seconded to
15 approve the Initial Distribution Agreement subject
16 to the elimination of paragraph 5C, the
17 subordination condition. That motion failed to
18 carry two to two. Thereafter, a motion was made
19 and seconded to approve the IDA as submitted. And
20 that motion also failed to carry two to two.

21 So where are we now? Well, the Commission has
22 issued a prehearing order dated November 13th
23 that allows us to make an additional oral
24 presentation to the Commission. We are
25 appreciative of the opportunity to do so. That's

1 particularly important given the presence of a new
2 member who could break the existing deadlock. I
3 won't tell you which way we want it broken, but I
4 suspect you can guess.

5 Given the significance of the issue, the
6 unanimous alignment of the industry expressed by
7 the testimony at the October 29th meeting, and
8 with apologies to the four commissioners who were
9 here on October 29th, we would like to review and
10 revisit the Initial Distribution Agreement that was
11 submitted and some of the relevant testimony.

12 Our apologies for duplication. We know you
13 were all patient. You sat through a lot of
14 testimony. And for Commissioner Pillow, we are
15 going to try to hit the highlights. What we are
16 not going to be able to do is as I recount the
17 testimony and I talk about where we are today, I'm
18 not going to be able to present the testimony in
19 the same articulate way that these members of the
20 industry presented it to you. They are better
21 looking and more articulate. I recognize that. I
22 publicly acknowledge it. But they're going to
23 leave it for me today to go ahead and recount that
24 testimony.

25 But I will tell you this: The horsemen

1 testified passionately. And I believe that those
2 of you who were here will recognize that we weren't
3 simply asking them short questions. We were having
4 them speak from the heart, and they did that. They
5 talked about a lot of important things that the IDA
6 would bring to them. And we'll go through those,
7 hopefully, item by item.

8 One of the things that we did the last time
9 around was we reviewed the history of the changes
10 in supporting the horsemen. While we start in 2007
11 on this slide, the legislature's support of the
12 industry, which was critically important to where
13 we are today, started long before 2007. When horse
14 racing was first authorized in the state of
15 Indiana, the legislature in its wisdom set aside
16 money from the admission taxes at the riverboats
17 because they recognized it was critically important
18 to support the agribusiness community. We can talk
19 about how the legislation has changed and the risk
20 it presented to the horsemen and it did. But I
21 don't want anyone to lose site for a moment that
22 our legislature did incredible things that have
23 supported this industry all the way along and most
24 recently in Senate Bill 609, which we will talk
25 about.

1 But no one takes for granted that from 1994
2 when racing started in the state of Indiana, and
3 Joe and I and others were around then, when that
4 racing started, the legislature made clear there
5 were monies that were going to be available to
6 support the industry that came then from outside
7 the industry.

8 So in 2007 we move forward. What happened
9 then? Well, that's gambling games at the track.
10 That's the racino legislation. Now the tracks
11 needed support. The legislature recognized they
12 needed that support. And they set up the gambling
13 games at the track legislation. What they did with
14 that is they said at some point we're going to cap
15 those monies so that to the extent there are monies
16 over a certain amount, we're going to send those
17 back first to the property tax relief fund, and
18 then they decided later to amend that so it would
19 go into the General Fund.

20 So you have now a funding mechanism in 2007.
21 In 2008, the cap money goes to the General Fund,
22 not the Property Tax Reduction Trust. In 2009,
23 there's a change that sends the gaming integrity
24 money to the IHRC. It was going there before but
25 made clear the Commission is the horse racing

1 commission, not the gaming commission. And then in
2 2011 the statute is again amended. And the first
3 \$1.5 million paid out of the 15 percent of AGR was
4 paid to the state treasurer and the Tobacco Master
5 Settlement Agreement.

6 So that lays a foundation for a lot of the
7 concerns that were addressed at the last meeting by
8 the horsemen. And that was, okay, now we have a
9 situation where we are not taking money from Rising
10 Sun. We are not taking money from Lawrenceburg or
11 up in the Chicago area on admissions taxes and
12 shipping those to the horse racing industry. We
13 now have an operator. And we've got operators who
14 have slots at the track. And it's now we are going
15 to recognize in 2013 -- if I can get this to
16 work -- that it's not a subsidy. It's their money.
17 And we're going to reconfigure the statute to
18 reflect that fact.

19 So with 609, they changed the introductory
20 language to IC 4-35-7-12(b). And the language that
21 was added was "A licensee shall before the
22 15th day of each month distribute the following
23 amounts for the support of the Indiana horse racing
24 industry."

25 So now there weren't tobacco funds. There

1 wasn't property tax relief. There wasn't General
2 Fund relief. We are going to allow them to take
3 that money, plow it back into the industry. It's
4 their money. And we're going to let the parties
5 figure out how they're going to do that.

6 How did they ultimately decide how that would
7 be instituted? Well, not only were they removing
8 the cap, which makes us true partners with the
9 horsemen, but they provided for support to flow
10 through a distribution agreement that was
11 negotiated by the licensees and associations
12 through negotiating committees of appointed
13 representatives to be approved by the Indiana Horse
14 Racing Commission. And that's why we are here
15 today.

16 Now, one of the things that this provided was
17 an opportunity for predictability and stability.
18 What I wanted to do was revisit the testimony on
19 predictability and stability because it's
20 critically important to the horsemen. Were they to
21 stand up and say the same things they said before,
22 they would be telling you that because it was clear
23 that it was important to each of them.

24 Tom Mosley, the Director of Industry Relations
25 for the Quarter Horse Association said "And the

1 thought of going into a future with stability, a
2 seven-year contract, it's just unbelievable. I
3 wish there was a way that I could better share our
4 horsemen's enthusiasm about moving forward."

5 And before I forget, I would also note that in
6 the Executive Director's Staff Report, which was
7 put in as Exhibit 4, page three, his first bullet
8 point talked about the importance of stability to
9 the industry and how it helped breeders breed their
10 horses and move forward with certainty and to be
11 able to act in a thoughtful, long-term manner.

12 It wasn't just Tom Mosley who spoke about
13 this. Jack Kieninger, president of the ISA also
14 here today, said "I've had a hundred horsemen ask
15 me how long is this contract going to be for. When
16 you say, well, it's a possibility it could be seven
17 years, they just love that. I didn't have any of
18 them ask me, well, how much money are we going to
19 get or how much are we going to race for. They are
20 more concerned about the stability to be able to
21 make plans to buy a farm, breed mares, and the
22 whole nine yards in Indiana. And this contract
23 gives us that opportunity."

24 Joe Davis, the president of the Indiana HBPA
25 also here today, said "Our group just believes that

1 the stability this agreement brings is just great
2 for our industry."

3 And then Herb Likens from the Indiana
4 Thoroughbred Owners and Breeders Association, "We
5 just feel like the stability is really important to
6 us as breeders. A lot of resources we've been
7 using to help educate legislators and the racing
8 industry, why maybe we can spend more time
9 promoting the industry to new owners and increasing
10 the visibility of racing here in Indiana with that
11 energy."

12 Now, that gets us to the Commission meeting
13 and the Commission's deliberations. We've cited
14 Commissioner Weatherwax's at least partial
15 statements in our PowerPoint presentation, again,
16 part of the transcript. I know that the comments
17 of the horsemen were not lost on the Commission.
18 And Commissioner Weatherwax's statement is clear
19 evidence of that.

20 And as Commissioner Weatherwax indicated, he
21 does have a unique and different perspective. And,
22 quite frankly, in this particular issue we believe
23 that is extremely, extremely helpful to understand
24 how we got to where we are today.

25 As he said there in the first paragraph "I

1 think the first seven witnesses pretty well told me
2 that we were the greatest threat to the horse
3 racing industry in the General Assembly. If you
4 don't get that, you don't understand why part of
5 the legislation is here." He went on to say "It
6 was very unique that the General Assembly would
7 ever put something together like this that would
8 allow these people to kind of craft their own
9 future with their own incentives to do the best job
10 they can." We believe that's precisely what the
11 legislature did.

12 These are sort of the nuts and bolts
13 requirements for an Initial Distribution Agreement.
14 One, it must be in writing. We got that job done.
15 Two, it must be submitted to the Indiana Horse
16 Racing Commission by October 1, 2013. We got that
17 job done. Three, it must be approved by the IHRC
18 before January 1, 2014. Didn't get that job on
19 October 29th. Hoping that job gets done today.
20 Four, may contain any terms determined to be
21 necessary and appropriate by the negotiations
22 committee.

23 So it not only gives the committees in our
24 view, and my colleague, Mr. Bayt will speak more
25 about that in detail, not only gives them the

1 ability to talk about the percentage that will
2 ultimately be distributed under the waterfall, but
3 allows the committees to enter into an agreement
4 that includes necessary and appropriate provisions
5 that they deem necessary and appropriate. And it
6 must provide that at least 10 percent and not more
7 than 12 percent of AGR being distributed.

8 I will try to move through this quickly
9 because the members of the Commission, with the
10 exception of Commissioner Pillow have all seen
11 these slides because they are identical to the ones
12 we presented before.

13 What were the goals of the parties in the
14 negotiations? To meet statutory requirements, to
15 treat all parties fairly, to enhance opportunities
16 for mutual success, and to create stability and
17 predictability for all the parties.

18 The key terms of the Initial Distribution
19 Agreement. One, it sets a distribution percentage
20 the maximum 12 percent of AGR; the term initially
21 one term, then year to year but extends to seven
22 more years if certain extension conditions are
23 satisfied; capital expenditures provided there are
24 immediate racing side investments of \$5 million
25 with potential investments to the extent that the

1 extension conditions are met; with the distribution
2 waterfall that follows the statute in the
3 administrative rules.

4 And enforcement, and this is an important
5 point that I don't want to be lost on the
6 Commission. The IHRC retains all enforcement
7 rights and tools there. There is nothing in the
8 IDA that changes the powers of the Commission under
9 4-35-7-12.

10 There's a very important seven-year extension
11 trigger. If licensees refinance current debt and
12 obtain regulatory approvals -- we understand we are
13 not here to do that today. But if this IDA is
14 approved and then a refinance occurs and all of
15 these safeguards are, these protections are met,
16 and then it comes back to this Commission for
17 approval, this Commission would get to look at the
18 specific refinance terms, make sure they're
19 comfortable with that and any other provisions that
20 are appropriate, they would have to pass on that.
21 So that we would be back to do that, and then it
22 would go to the Indiana Gaming Commission with full
23 analysis there as well.

24 The extension conditions that would need to be
25 satisfied before we got back to the Indiana Horse

1 Racing Commission, the licensees would need to
2 provide projections showing 27.5 million of cash on
3 hand (net of cage cash, and operating cash) for
4 each year of the refinance. Those would have to be
5 acceptable to the associations. A majority of the
6 associations' committees would need to find those
7 reasonably satisfactory, and then the associations
8 would enter into a subordination agreement.

9 The key terms of the IDA. The obligations of
10 the parties during the extension term. The
11 associations would agree to abide by the
12 subordination agreement. The licensees would agree
13 to make up to \$36.5 million of capital expenditures
14 to improve the tracks. The licensees and
15 associations would agree to implement a number of
16 operational changes for the benefit of racing,
17 which are part of the IDA. And then the licensees
18 as part of that agreement would agree to catch up
19 payments with interest if any distribution payments
20 were not made during an event of default.

21 Why subordination? Well, it positions the
22 licensees for a favorable refinancing and capital
23 restructure. That provides an opportunity for
24 significant racing side capital improvements. It
25 creates the potential for a long term agreement

1 beneficial to all of the parties. We've talked
2 about that already. And it aligns the interest of
3 the licensees and associations to achieve success
4 together.

5 Now, this slide was a slide that we showed you
6 and spoke to in our presentation on October 29th.
7 And then after this we'll go through and review
8 some of the testimony that came in through the
9 record that, in fact, talks about some of these
10 particular items.

11 What are the benefits to the associations of
12 the long term deal? Well, they get the maximum
13 distribution percentage, 12 percent over the next
14 seven years. It gives them predictability and
15 stability. The tracks receive important racing
16 side capital improvements of up to \$36.5 million.
17 We'll talk about that in a minute. Beneficial
18 operational matters are implemented. And the
19 management team continues the positive relationship
20 with the associations.

21 I'm going to review some of that testimony.
22 But one of the great joys of being a lawyer who was
23 involved with the industry for an awful long time
24 was to hear the testimony of the horsemen about the
25 relationship that they have with the tracks and the

1 track management. And in a world where racing is
2 often shoved to the back because the gaming dollar
3 is so important and racing is squeezed, that
4 testimony -- and there was lots of it, Commissioner
5 Pillow. I wish you could have been here to hear
6 it. That testimony shows the real partnership that
7 exists in Indiana in the horse racing community.
8 And that doesn't happen without representatives of
9 the horsemen, like those that sit here, and their
10 ability and desire to work cooperatively and
11 collegially.

12 And then on the other side to have Rod
13 Ratcliff and his management team corresponding,
14 interacting, and being available to answer
15 questions that these folks have. Not to go through
16 somebody on this level down here, but the testimony
17 was, you know, if we've got an issue, we go right
18 to the top, and we get answers about that.

19 Predictability and stability, we've talked
20 about it, but I'm going to read you Brian Elmore's.
21 He's the vice-president of racing who testified.
22 I'm going to read this to you because I think it's
23 a very important recognition. And it highlights
24 why it's so important that the IDA be approved.

25 "Why is certainty and stability important?"

1 You'll remember, the start of this year in the
2 legislature, there was a proposal to take the
3 amount submitted to horse racing to zero. Take all
4 the money away from the horsemen. For years
5 participants in the horse racing industry have sat
6 around the dinner table with their family and had
7 to dissuade their children from a career
8 opportunity in horse racing just because of the
9 lack of certainty and stability. It just wasn't
10 there. They persuaded them to pursue opportunities
11 like nurses and doctors, lawyers, dentists, things
12 of that nature. Now participants in the industry
13 will be able to encourage their children of
14 opportunity in the Indiana horse racing industry as
15 we move forward with this IDA. Training horses is
16 a skill, a trade, an art. And it's often passed
17 from parents to children, male and female. And to
18 these horsemen participating in Indiana horse
19 racing, it's not a job. It's a way of life."

20 Tracks receive important racing side capital
21 improvements of up to \$36.5 million. What does Tom
22 Mosley say? "We all need to get people on the
23 apron on the racetrack. We need to create horse
24 racing fans. It's probably the biggest downfall of
25 the entire racing industry in the United States.

1 And the fact that Centaur is going to make \$25
2 million or \$30 million worth of capital
3 improvements, that's our workplace. But imagine
4 for no particular reason the company you work for
5 was just going to double the improvements, make it
6 a state-of-the-art facility that we can be proud of
7 everywhere in the United States. It's just
8 unbelievable. It's real exciting. It's a great
9 thing."

10 Now, I've touched on the management team and
11 its continuation of a positive relationship with
12 the associations. Nat Hill is here today. Nat
13 testified when the racetracks were originally
14 permitted in 1993, I enjoyed listening to him then.
15 I enjoy listening to him now. We are not going to
16 listen to him today. You will have to listen to me
17 instead.

18 What did he say? "Well, you just have to go
19 to other states to see how horsemen's groups
20 operate with tracks. It's unbelievable. They
21 never talk to each other. They're isolated. The
22 guy that runs the place has got some office way in
23 the back and some guy that stands outside and won't
24 let you in. It's totally unbelievable. You go to
25 Hoosier Park and the big guy is in his box. You

1 can go talk to him. He's as open as a book. It's
2 a whole different deal. When we go in and want to
3 talk, hey, what do you want to talk about, what do
4 you need. Just I can't stress that enough. It's a
5 unique relationship."

6 Mosley again talks about it. I won't read all
7 of this to you, but if you skip to the end, he's
8 talking about the environment of having the ability
9 to go ask questions so that he can get information
10 and take it back to his people as a part of the IDA
11 so that it's not just these representatives that
12 are sitting at this table that understand what's
13 going on but the testimony in the record is that
14 they went back, and Rod, in fact, went to meetings
15 and answered industry questions. And then whenever
16 other questions would come up, he was open and
17 available. His team was open and available to
18 answer questions to address concerns. So this
19 wasn't a situation where there were a few people in
20 a room, and they weren't communicating at the grass
21 roots level. They were communicating in the grass
22 roots level and this sort of ability to communicate
23 made that happen in a complete and effective way.

24 And Mike Brown, perhaps, summarized it best.
25 I think I will read this one. "From our

1 perspective though, the very best reason for us to
2 urge the approval of this agreement is the fact
3 that it's a true reflection of the unique
4 arrangement and the unique relationship between
5 Indiana horsemen and our track partner Centaur.
6 The trend in the industry is completely the
7 opposite direction. In most places there's a
8 dynamic tension between the operators of the track
9 and horsemen. It's almost a labor-management
10 tension. By contrast, this agreement recognizes
11 one inescapable fact. We are partners in this
12 particular venture. We're partners in trying to
13 grow Indiana racing and breeding. We are partners
14 in generating economic and employment growth in the
15 state of Indiana."

16 And there are benefits to licensees of a long
17 term deal, and this is a slide that we also showed
18 on October 29th. This IDA provides the potential
19 financing options that could reduce the cost of
20 capital. It gives additional capacity for future
21 capital projects and a simplified debt structure.
22 It increases the financial stability of licensees.
23 That's one of the statutory criteria so that's
24 important. It provides for continuity of the
25 relationship between the licensees and the

1 association that we've discussed.

2 Before I hand the podium over to my friend,
3 partner, and colleague Phil Bayt, I want to talk a
4 little about the scope of the potential
5 subordination agreement. These things are all in
6 the record already, but I have simply highlighted
7 them and summarized them for purposes of our
8 discussion today.

9 We submitted at the request of the Commission
10 staff a memo that talked about subordination and
11 the mechanics of subordination. We had diagrams
12 and showed waterfalls and all of those sorts of
13 things. That has already been made a part of the
14 record. And it was circulated to the Commission
15 earlier before we came in on October 29th.

16 And a bullet point on the last page of that
17 memo says "Upon an event of default at the senior
18 lender's discretion, some or all of the payments
19 may be temporarily redirected to pay the
20 obligations of the debtors. Payment is a defined
21 term that includes 100 percent of the 12 percent
22 distributions contemplated by the IDA."

23 The definition is at page one. The bullet
24 point is at page three.

25 When we came to you on October 29th, we had

1 made clear before we ever walked in here that the
2 potential extent of the subordination was not just
3 the three percent that went directly to the
4 horsemen's associations, but the monies that went
5 under the waterfall, and that would be the hundred
6 percent of the 12 percent. And comments by the
7 Commission during the presentation on the 29th,
8 we believe indicated that the Commission recognized
9 that's what we were talking about.

10 Paragraph 5C of the IDA contemplates that the
11 horsemen's associations have agreed to subordinate
12 the right to receive distributions of the
13 horsemen's association or the horsemen of the breed
14 they represent for purses, breed development,
15 and/or payments made directly to the horsemen's
16 association. We would also submit that the
17 Executive Director's report recognized the same
18 thing. And that is also into evidence. And it
19 talked about the fact that, of course, we are not
20 just talking about the three percent that directly
21 go to the associations but all of the monies
22 including the purses that go in there.

23 And then the three negotiating committee
24 members representing the associations indicated
25 that they understood the potential scope and extent

1 of subordination as they evaluated the benefits and
2 risks present by the IDA. Jack Kieninger testified
3 to that in some detail. And so that was part of
4 the presentation that we made to the 29th.

5 Now, Mr. Bayt, my colleague, is going to talk
6 about a few very important things. One is the
7 lawfulness of subordination under the statute, what
8 can potentially happen with subordination, and what
9 the risks are and how reasonable and realistic are
10 they. So I will turn the podium over to him now.

11 CHAIRMAN DIENER: Mr. Babbitt, as a
12 housekeeping item, the document Centaur Gaming
13 Initial Distribution Agreement Update will be
14 admitted into the record as a late filed exhibit.

15 MR. BABBITT: Thank you, Mr. Chair. Greatly
16 appreciate that.

17 CHAIRMAN DIENER: Go ahead, Mr. Bayt.

18 MR. BAYT: Thank you, Mr. Chair. Good
19 morning, members of the Commission, members of the
20 staff. Thank you.

21 Robin has asked me to talk to the hard issue
22 today. He's finished talking to the easy part of
23 the issue today, which is to review what happened
24 before. So I will talk about why in part we are
25 here today. So thank you for your indulgence so

1 far.

2 Really the question is: Is the subordination
3 concept that is in the Initial Distribution
4 Agreement lawful? The first question that you've
5 got to ask when you ask a question about whether
6 something is lawful in relationship to a statute is
7 to ask the question, well, what was the intent of
8 the legislature in creating that statute, adopting
9 it into law in the very first place.

10 We would submit to you the intent of the
11 legislature with respect to Senate Bill 609 in
12 particular was to replace a statutory framework
13 that was in the nature of a tax or a fee with a
14 framework that related to a contractual agreement
15 between parties; one that was clearly subject to
16 regulatory oversight but would provide fairness,
17 integrity, sustainability, predictability, and
18 would be in the best interest of racing. We think
19 if you understand that legislative intent and focus
20 on those ideas as the guiding principle, we can
21 walk through why we believe that the subordination
22 concept is, in fact, lawful.

23 The next question that you have to ask is: Is
24 it prohibited by the statute because if it's
25 prohibited, if it's clearly prohibited, then we

1 don't have any more things to talk about. We're
2 done. We've reviewed the statute. It's very clear
3 that there is nothing in the statute that prohibits
4 subordination. Nothing.

5 The next question is -- let me go off slide
6 for just a minute. The next question really is:
7 Who can then negotiate the contract that's
8 contemplated in the statute? Can't just stop with
9 is it prohibited. The answer is no. There are
10 more questions to be asked to get all the way to
11 the bottom line.

12 So the next question really is: Who is it
13 that can negotiate this contract that's
14 contemplated in the statute? Well, it's fairly
15 clear on the part of the licensees, two track
16 owners, they have corporate documents that govern
17 them. They have identified who their constituent
18 leaders are. The statute makes it clear how
19 negotiating representatives are to be appointed.

20 On the horsemen's side it's equally clear,
21 although it's not quite as direct. First, the
22 horsemen's associations themselves have governing
23 documents, organizational rules that identify how
24 they are able to speak for their constituent
25 members. The statute identifies a representative

1 government form of process through a negotiating
2 committee where, again, the horsemen's associations
3 as representatives and the licensees as
4 representatives meet in a negotiating committee to
5 hammer out the issues associated with Initial
6 Distribution Agreement.

7 This is consistent with the legal framework in
8 many other contexts, including collective
9 bargaining where unions are able to speak for their
10 members. So nothing new here, but, again, we have
11 to ask that question: How do we get from the
12 beginning of the exercise to the end?

13 The next question we have to ask is: What
14 does the statute allow as to the breadth, the
15 terms, if you will, of an Initial Distribution
16 Agreement. Is it narrow? Is it limited to just
17 some range of AGR? The answer is no. The statute
18 is very clear. It sets out very clearly what can
19 and can't be included.

20 It, in fact, says that it can contain any
21 terms determined to be necessary and appropriate by
22 the negotiating committees. It's not narrow. It
23 is, in fact, broad. That language is subject to
24 two caveats. Number one, that it's subject to the
25 AGR being between 10 percent and 12 percent, which

1 is consistent with the document that was executed
2 and submitted for approval. It's also subject to
3 the terms of Section 12 of the statute.

4 We have to ask the next question: What does
5 Section 12 say? Section 12 sets out the payment
6 waterfall clearly, but it also sets out some new
7 language. Senate Bill 609 has new language which
8 says these payments and this process is for the
9 support of the horse racing industry. Again, let's
10 go right back to that guiding principle that we
11 talked about at the very beginning. The guiding
12 principle being in the best interest of racing,
13 sustainability, predictability. This all dovetails
14 back and forth right into each other.

15 There's a provision in Section 12 which talks
16 about payments being made on the 15th. Based
17 upon our case law analysis, we believe that
18 language is directory, not mandatory.

19 So based on all that analysis, we think it's
20 our reasoned opinion, and was in October, that the
21 form and content, including the subordination
22 clause, in the Initial Distribution Agreement is,
23 in fact, lawful and within the ambit of the
24 statute.

25 Now, in October we heard from the Chair with

1 respect to a different conclusion. We felt very
2 firmly that our conclusion was, in fact, correct
3 and supported by law, but we didn't stop there.
4 Between then and today, we entered a different
5 exercise, an additional exercise at our law firm.
6 I called in the troops. Mr. Diener understands who
7 those troops are. I called in Buddy Downs, who's
8 the chair of our municipal finance section. He was
9 the legal architect of multiple complicated
10 financial and statutory structures in the state of
11 Indiana, including most recently the Indiana Toll
12 Road privatization. He took that all the way to
13 the Indiana Supreme Court. And that structure was
14 upheld. I asked him to take a look at this process
15 and this analysis.

16 I called out of retirement Fred Biesecker, who
17 was counsel to at least a governor and served in
18 the role of looking at statutes on an analytical
19 basis for his entire career. Just because I didn't
20 want to be just familiar and comfortable with those
21 of us who understood Indiana law on a daily basis
22 and maybe we're too close to it, I called in one of
23 my partners from Columbus, Ohio, a commercial
24 litigator who spends his time looking at statutes
25 to put a fresh set of eyes on this.

1 I asked each of them to give me an independent
2 analysis. They all came back with the same answer
3 we all participated in the post-hearing brief. It
4 is our reasoned opinion as a law firm, consistent
5 with what we said in October, that the IDA, as
6 submitted including the subordination clauses, are
7 within the ambit of and lawful under Indiana law in
8 the statute that is in place today.

9 What does that mean? We think that the IDA
10 that's been submitted is appropriate, meets all the
11 requirements for approval, and is ready for your
12 analysis and consideration and vote today.

13 The important issue, the last bullet point on
14 the slide here on the page that's up on the screen,
15 is that the associations today are not agreeing to
16 relieve the licensees of any payment obligation.
17 The subordination isn't an, okay, you don't have to
18 pay it anymore kind of concept. It's that if
19 certain circumstances are triggered, there is a
20 deferral or a delay of certain payments and then
21 subsequently a catch-up mechanism. So there is no
22 relief from the obligation. That's not at all what
23 we mean by subordination.

24 Likewise, we don't believe there is any
25 property right in either the distribution of a

1 purse or the issuance of a license. So we don't
2 believe that any challenge along those lines that
3 some third party, some horsemen would come and say
4 I have a legal right to challenge this because I
5 have a property right in a purse. We don't believe
6 that is the appropriate interpretation of law.
7 While anybody can bring a challenge, we believe
8 those fundamental principles have gone through and
9 been understood in racing and gaming law for a
10 number of years. As a result, we don't think those
11 kinds of challenges would be successful.

12 Finally, we understand that the Commission
13 under Indiana law is afforded great deference in
14 interpreting its own statute. We submit to you
15 today that our analysis is consistent with the law.
16 And we urge you to adopt that analysis.

17 It's important to understand what won't
18 happen, what isn't going to happen with respect to
19 subordination. First, there's no change in that
20 statutory waterfall. Payments will flow just as
21 they otherwise would have. There is no return of
22 clawback of payments once the licensees have made
23 those payments. So once a payment has been made,
24 there is no way to pull it back. The lenders can't
25 grab it back.

1 The associations are not being asked to grant
2 any kind of security interest in any monies. There
3 is no liability to return payments that have been
4 received. There's no administrative change for the
5 State. We are not asking the State to do anything
6 differently. There's no assumption of any
7 liability to the State. And mostly important,
8 there's no change in the enforcement rights that
9 this Commission has. This Commission continues to
10 have all the rights that it wants.

11 What we are talking about is an agreement
12 between private parties that's authorized under the
13 statute. We are not taking away the regulatory
14 framework. We're not taking away the enforcement
15 powers. We are not taking away any of the actions
16 that the Commission can undertake with respect to
17 its statutes and its rules.

18 We talked a lot about the risks of
19 subordination, including an interchange between
20 Commissioner Schaefer, and Mr. Mosley. It's clear
21 that the subordination concept is not risk free.
22 But what was also clear in the testimony is that
23 this risk has been evaluated and considered by the
24 committees, and they are prepared to move forward
25 with this risk.

1 The ultimate risk, we would submit to you, is
2 that this not happen, what is the implication
3 should it not happen. There are doomsday
4 scenarios. That was talked about in the
5 interchange between Commissioner Schaefer and
6 Mr. Mosley, but is that the likely scenario. That
7 is a very unlikely, very, very, unlikely scenario.

8 What is a more realistic scenario? The more
9 realistic scenario is that monthly purses and
10 redevelopment payments are posted regularly and
11 made. The legislature made it clear that if the
12 licensees failed to maintain a valid pari-mutuel
13 permit, the slot machines cannot operate. That is
14 the risk associated with this. That is the power
15 that the Commission continues to have.

16 The staff has a longstanding history of
17 diligent and effective regulation. It's
18 unrealistic to believe that the licensees, and the
19 horsemen frankly, could go forward for any
20 considerable length of time in a full subordination
21 mode without the Commission intervening. Frankly,
22 even the senior lenders are incented to continue to
23 make payments and continue with the processes that
24 are normal because that's how the industry
25 survives. That's how horses are able to race.

1 That's how purses are able to be made. That's how
2 spectators are drawn to the facility. Everybody
3 would have it in their best interest to get back to
4 the status quo as quickly as possible.

5 Let's go through a brief example. Under the
6 current financing, we don't know what the new
7 financing is going to look like, but under the
8 current financing, there's debt service of about
9 \$40 million a year. Let's take it quarterly
10 because payments are made generally quarterly, so
11 \$10 million a quarter for debt service.

12 Approximately \$55 million worth of support
13 payments, or 13.75 million a quarter for the
14 12 percent payments.

15 Let's assume a catastrophe, some flood or some
16 fire. Right off the bat, that's largely going to
17 be covered by business interruption insurance that
18 the company already carries. Let's assume a
19 different kind of problem; a significant business
20 downturn that results in a lower cash flow,
21 insufficient cash flow to make the payment. The
22 first level of response is to use that cash on
23 hand, that cash cushion that we already talked
24 about that will be built into the process to make
25 up the shortfall.

1 The second level of response is to make up
2 revenue during ensuing months of a quarter. Again,
3 if a problem occurs in the first monthly quarter,
4 there's two more months to make up the problem
5 before the next loan payment is due. So there's a
6 cushion based upon the frequency of payments. The
7 third level is, in fact, subordination. We get
8 through two other levels before we get to that
9 point.

10 Let's go through a numerical example. Let's
11 say there's only \$8 million to make a \$10 million
12 payment. We have cash flow that's weak in a
13 particular quarter, and we end up with only
14 \$8 million to make the payment. That first level
15 of response is to use the cash cushion to make up
16 that two million bucks. If the cash cushion is all
17 used up at some point, again, it's possible to make
18 up the difference depending upon the timing of when
19 a payment is due versus when the shortfall is due
20 because it's quarterly not monthly.

21 If all else is not possible, then that next
22 phase would be subordination. We've got a
23 \$2 million shortfall in a partial subordination
24 example, two million would go one way, and 11.75
25 the other way for the 13.75.

1 The next slide you can kind of see it
2 graphically. Number one, the normal flow of funds
3 is from the licensees, the full 12 percent goes to
4 all the parties in the boxes that receive the
5 money. The lenders get their quarterly payment.

6 Number two over on the right-hand side, if
7 we've got a \$2 million shortfall and it can't be
8 made up any other way, two million goes to the
9 lenders, and the 11.75 heads towards the boxes on
10 the right.

11 And number three, once that flow of funds get
12 back to normal at the end of subordination, the
13 12 percent begins flowing again. And we have
14 additional payments with interest that catch up
15 what was deferred before.

16 MR. BABBITT: I'm back. Phil was the best
17 person to talk about the legality of the analysis.
18 And I didn't think he would notice that I was
19 putting him up for the toughest part of the
20 presentation, but apparently he did.

21 Back to the easier but maybe not so easy for
22 you as a commission because not only do you have to
23 get over the hurdle of the legality, which we
24 believe you can, but as a matter of policy, is
25 subordination a good idea. We believe that the

1 answer to that is a resounding yes, and that the
2 industry is fully supportive of that decision by
3 this Commission and is urging that decision by this
4 Commission.

5 I would note in referencing some of the
6 testimony, again, I'll talk a little bit about Nat
7 Hill's testimony that the IDA is an integrated
8 agreement. The parts are interdependent. They are
9 not independent. You can't pull one out and put
10 one back in. It was a comprehensive, thoughtful
11 agreement that the parties put together that didn't
12 just say we will agree to subordinate.

13 What they said and the testimony made clear,
14 and Nat Hill in his first paragraph says "Look,
15 we're not going to subordinate this money unless
16 and until we can be assured that Rod Ratcliff and
17 Centaur are running this boat. It would make no
18 sense." So he didn't agree to subordinate under 5C
19 without 5B, which was the increase in the fully
20 diluted ownership.

21 And then Tom Mosley said the same thing, but
22 it took him a little longer to say it. "You know,
23 truly our board, which is made up of horsemen, and
24 the horsemen that we've talked to feel like we
25 understand there's risk that something could go

1 terribly wrong for Centaur, something unforeseen
2 and there could be disruption. But we also feel as
3 though that there are safeguards in place. The way
4 that we explained it to our horsemen -- and I
5 believe I would be corrected if this wasn't
6 correct -- is that any refinancing's going to be
7 brought back before this Commission to be approved.
8 The details of subordination are going to be
9 brought back before this Commission.

10 "And something that came up at one of the very
11 last meetings that we had was this, and it really,
12 I think, helps understand the perspective of the
13 horsemen. The people that we're entering the
14 contract with, this isn't an investment group from
15 Las Vegas. This is a group of people that have
16 been involved in horse racing since we first raced
17 a horse in Indiana. And I think no matter what
18 kind of business agreement you're going into, to be
19 able to do business, to kind of feel each other out
20 for 20 years before you step into a big contract,
21 to me, it's really a perfect scenario."

22 And that gets us close to the end, and that's
23 the statutory evaluation criteria. Those are in
24 the statute. The Commission evaluates the ID
25 measured against those criteria, IC4-35-7-18. Is

1 it in the best interest of pari-mutuel wagering?

2 Does it maintain the highest standards of

3 integrity? Is it fair to all parties? Does it

4 help the financial stability of the licensees? And

5 then any other relevant factors that the Commission

6 deems are appropriate.

7 Some of this will be review for those of you

8 who were here before as well. Is it in the best

9 interest of racing? Yes; continuation of the

10 excellent relationship between the associations and

11 licensees; immediate racing side capital

12 improvements of five million; realistic path

13 towards up to 36.5 million in additional racing

14 side capital improvements; greater stability and

15 predictability for racing; improved environment for

16 participants, equine athletes, and spectators.

17 One of the things that wasn't in the last one,

18 but it's in the record is that the Executive

19 Director made a recommendation to the Commission.

20 He issued a staff report pursuant to the initial

21 pre-hearing order. His executive summary states

22 the following: "The Executive Director recommends

23 to the Commission that it approve the Initial

24 Distribution Agreement. The Executive Director

25 believes the IDA to be in the best interest of

1 pari-mutuel horse racing in the state of Indiana,
2 and the IDA satisfies the criteria set forth in
3 IC4-35-7-18. Furthermore, the Executive Director
4 believes the IDA provides the best opportunity for
5 Indiana's horse racing industry to improve its
6 stability and optimize revenue."

7 Integrity. It's important that the IDA work
8 in a way that helps maintain the highest standards
9 and greatest level of integrity of racing in
10 Indiana. One of the things I think it's important
11 to keep in mind is the representatives of the
12 industry and the track who are actually entering
13 into and negotiating this agreement. In our view
14 they represent the sort of character and integrity
15 that makes Indiana a racing industry that should be
16 proud.

17 The negotiations were conducted at arms'
18 length with civility, with benefit of counsel by
19 keeping members informed, and by utilizing the open
20 door public meeting process. For Commissioner
21 Pillow's benefit there was an opinion that
22 Mr. Keeler testified that he obtained from the
23 Access Counselor about whether the negotiation came
24 under the open door law. And the answer he
25 received was, yes, they did. So all of the

1 negotiating committee meetings were then in a
2 public forum under those protections of
3 transparency. So that process was entered into and
4 completed with the utmost of integrity.

5 I'll quote Brian Elmore. I try not to do that
6 any more than I have to, but Brian is the Centaur
7 Vice-president of Racing. I thought that his
8 testimony was very, very important on this area.

9 "The positive and stable economic situation created
10 by Senate Bill 609 and the IDA should allow
11 horsemen to earn a reasonable living and have
12 confidence it will continue in the future. My
13 experience, most people, not just horsemen, are
14 less inclined to cut corners or bend rules in a
15 stable economy because they have too much to lose.
16 What this does is, as in horse racing, it will lead
17 to the detection of unethical behavior and peer
18 pressure of others for the participants to
19 conform."

20 Fairness to all parties. The associations and
21 licensees unanimously agreed to the terms of the
22 IDA. They believe it is fair. All parties get the
23 benefit of a potentially long term deal. The
24 licensees have an opportunity to obtain favorable
25 refinancing. This was recognized by the Commission

1 on the 29th. And then we've got the five levels
2 of safeguards built into the agreement; the 27.5
3 million of annual cash projections; associations'
4 agreements on the projections; the IGC approval,
5 the IHRC approval, and the IHRC retention of its
6 enforcement powers.

7 Financial stability. Long term agreement
8 provides predictability of expenses; the best path
9 for stable long term financing with significant
10 capital expenditures to promote racing; the
11 elimination of capped payments to the State will
12 result in a \$13 million annual cost savings of
13 licensees starting in 2014.

14 It's important to keep in mind what the
15 Commission is not doing by approving the IDA.
16 First, other than approving the maximum 12 percent
17 statutory payment, which would be effective
18 January 1, 2014, the Commission would not be taking
19 any action which would impact the rights of
20 licensees and horsemen under the current financing
21 agreement.

22 So we're not bringing you a refinance. We're
23 not asking you to speculate on what those
24 provisions might be. We have to go to the market
25 with the tools that you give us to bring something

1 back for you to review. We understand your power
2 and your authority. If you go into deliberations
3 and you don't have that message, then I haven't
4 done a very effective job of communicating it to
5 you.

6 We're not asking you to consider or approve a
7 refinance. We're not asking you to consider or
8 approve specific terms of a refinance or
9 subordination agreement. We are not diminishing or
10 releasing any enforcement powers under IC4-35-7-12.

11 I'm going to go off script a little bit and
12 just tell you. As Phil has indicated, there
13 certainly is potential risk. But first of all, Rod
14 Ratcliff -- and I've had a chance to watch him for
15 the past several years -- has proven over time to
16 be the kind of person that you would want to
17 regulate. It's not been a hide the ball sort of
18 situation with Centaur. They've been very open and
19 transparent.

20 So the first part of that is if there is an
21 issue that is going to be a potential default or
22 call into effect a potential subordination payment,
23 then you would expect to first hear that from the
24 tracks that there is an issue, and here's how we
25 expect to address that issue. Even if that weren't

1 the case, as Phil has recognized, we have great
2 respect for the regulatory powers of the
3 Commission, how those have been exercised over
4 many, many, many years. And we would not only
5 reach out to the Commission staff because it's the
6 right thing to do, but we knew if we didn't do
7 that, that Joe Gorajec and the Commission staff
8 wouldn't be waiting around for months or years and
9 hoping that nobody noticed. It's something that
10 everyone is going to be proactive about if we get
11 to that point.

12 And none of your enforcement powers are
13 diminished. Those are -- you know, we talked a
14 little bit earlier about some of the very effective
15 and important things the legislature has done. One
16 of the things it did was it tied the operation of
17 the slots at the tracks to having, to maintaining a
18 pari-mutuel permit. That is a very important tool
19 because it forces -- again, I think you've got a
20 licensee that does the right thing. But if they
21 didn't, the legislature says you all better pay
22 very close attention to racing because if you don't
23 have a valid racing permit, we are pulling the plug
24 on your slots.

25 And that is not only a huge club that this

1 Commission has over the industry, it's a club, as
2 Phil indicated, that you have over people in New
3 York because they want a revenue stream. They want
4 money to come in. And they know that the slots at
5 the tracks generate the lion's share of those
6 funds.

7 So the legislature in its wisdom have tied
8 those things together and given you incredible
9 power. And we do not minimize the power that you
10 have.

11 I'm going to end where I started. We believe
12 this is a historic opportunity. As Commissioner
13 Weatherwax so thoughtfully recognized, the
14 legislature has really empowered this industry to
15 craft their own future. We think that was a very
16 important thing. And we think Senate Bill 609
17 gives you the authority to help us do that.

18 The associations, through their designated
19 negotiation committee representatives, have the
20 legal authority to enter into an IDA with any terms
21 they deem to be necessary and appropriate,
22 including the power to subordinate any and all
23 distributions made pursuant to IC4-35-7-12. And
24 Mr. Bayt has spoken to that.

25 There are substantial real and potential

1 benefits provided by the IDA coupled with what we
2 believe to be a reasonable degree of risk given the
3 many protections available. And in our humble
4 opinion it would be both unfortunate and ironic for
5 this Commission to decide for the industry and
6 contrary to the wishes of the industry that racing
7 constituents are not eligible for the substantial
8 and important benefits that the IDA can provide
9 because they're potentially subject to a reasonable
10 degree of risk that they are willing to accept.

11 You regulate pari-mutuel wagering. People are
12 in the business of taking risk in lots of different
13 ways. Both by the way of the testimony, you
14 recognize when you start, when you go into the
15 breeding process saying I hope that this horse is
16 going to make me money three years down the road.
17 And I participate. The times I participate in
18 pari-mutuel wagering I take unreasonable risk
19 because I bet all the long shots that never ever
20 get you any money on the hope that some day I'm
21 going to be able to retire. So we're in a risk
22 industry. And wouldn't it be ironic if you didn't
23 give this industry the tools because there was too
24 much risk.

25 I'm going to talk a little bit off script here

1 about where the industry is right now. And it's
2 really in a good place right now, and it can be in
3 a better place. And I remember from 1993 that
4 there were two permits granted. One was granted at
5 Hoosier Park, and it was not given to Churchill
6 Downs initially. It was given to a lawyer of all
7 things from Michigan and two brothers who had a
8 construction company that did a lot of asphalt
9 paving.

10 I can tell you that when the original plans
11 came in for Hoosier Park, the best part of the
12 facility was the parking lots because they were
13 going to get you the best asphalt at the cheapest
14 price they could possibly get you. And at the same
15 time, a permit was given to the Estridges to go in
16 Shelbyville, not the permit that's being operated
17 under now. That permit was given but there was no
18 financing for that permit.

19 MR. DIENER: I can't help but interrupt.
20 Going back in history to that same group initially
21 was going to come to Anderson, Indiana and
22 construct everything with nonunion labor.

23 MR. BABBITT: There you go. It was an
24 interesting situation. And I remember we moved
25 from there. And I say this publicly whenever I get

1 the chance. There were lots of little things that
2 happened along the way that were incredibly
3 important. The genius of Mike Schaefer you had to
4 be around to recognize. I know it wasn't always
5 genius when you were his son, but the way that he
6 took the OTBs and the desire to have OTBs, nobody
7 knew how much the riverboat money was really going
8 to bring in. There was an incredible desire to
9 have OTBs. It was a Standardbred track owned by
10 paving operators with nonunion labor.

11 Mike Schaefer took that and turned it into a
12 facility that would have all breed racing. The
13 OTBs were not going to be issued unless and, in
14 fact, there was flat racing. So the genius of Mike
15 Schaefer moved us in a major way down the road.

16 And then you look, as we've talked about, what
17 the legislature did. I would be remiss if I didn't
18 talk about regulation and the way the tracks have
19 been regulated by the Executive Director, the
20 national reputations that were received, etc. And
21 our client is extremely, extremely appreciative of
22 the important action. And Commissioner Schenkel,
23 it was your first meeting, and my memory was you
24 didn't participate, but the Chair and the
25 Vice-chair last year in allowing Centaur to pick up

1 the second permit has allowed one breed-one track
2 racing.

3 You're not going to see those figures just
4 yet, but my understanding is those are going to be
5 coming out in February. And you have done some
6 incredibly important things that have moved the
7 industry forward another step with the quality of
8 racing, the OTB signal, who wants to pick it up,
9 all those sorts of things. So there are lots of
10 folks along the way who have done a lot of
11 important things to get the industry in a very
12 enviable position.

13 Here's the tough part I think for you,
14 Commission. It's nice to say look what we've done
15 and look where we are. And Mr. Gorajec in his
16 staff report said it's clear by the content of the
17 IDA that Indiana's horse racing industry
18 stakeholders aspire to something more. Absent the
19 addition of favorable legislation, the IDA appears
20 to be the only vehicle to take horse racing
21 programs to the next level.

22 There are all sorts of analogies out there.
23 You look at what the Pacers have done. They went
24 out and got a -- they got a number ten pick in Paul
25 George from a small college. And they put in Roy

1 Hibbert, and they got a lot of pieces in place to
2 have a really good team. And then they lost in
3 seven games to Miami. They were in a really good
4 place.

5 They could have stayed right there and said,
6 hey, let's not take any risk, let's not go out and
7 get new contracts, let's not spend money for a
8 strong bench. Last time I checked, things are
9 looking pretty good for them. They wanted to take
10 risk to go to the next level.

11 For this industry to continue to move forward,
12 they need this IDA. And I liken it in a way, maybe
13 in a better way to I have three children, grown
14 children. They all drove. And I agonized over
15 them getting their driver's license because I
16 thought about all of the things that could possibly
17 happen from you can wreck the car and make my life
18 miserable to you get the call you never want to get
19 at 2:00 in the morning. But do you sit there and
20 say, okay, I'm not going to let this happen because
21 I've got some fear that something's possible down
22 the road? Or do you say, you know, if you don't
23 have that tool, you can't go get a job. You can't
24 further your education. You can't do a very lot of
25 very positive things.

1 Each time that question came up, I agonized.
2 And each time kids got their driver's license. And
3 each time it gave them the tools and equipped them
4 to be a more productive better adult. Yeah, we
5 looked. We watched. We supervised just like the
6 Commission has the authority to do all those
7 things.

8 In my view, Commission, this is a historic
9 opportunity but it's not open-ended -- I'll finish
10 up, Mr. Chair. It's not an open-ended issue.
11 There are economic forces at work that could close
12 this window if the Commission does not act to
13 approve the IDA now.

14 On behalf of our client and a unified
15 industry, we respectfully request that the
16 Commission make a motion and vote to approve the
17 IDA submitted by the petition dated September 27,
18 2013. And to the extent that the Commission takes
19 action to approve the IDA, we would respectfully
20 offer to submit a proposed final order to the
21 Commission's counsel by the close of business on
22 Tuesday, December 17, 2013.

23 I will leave you with this plea, and I know
24 that when I sit down, I will not have an
25 opportunity to address you unless you ask us a

1 question. That is, please give this industry the
2 keys to the car. They really need it. They will
3 use it effectively. They will be excellent
4 stewards of the power that you will give them. And
5 they will remain extremely mindful of your
6 oversight authority.

7 Thank you. I'm sorry I've gone so long, but
8 to the extent you have any easy questions for me or
9 any tough questions for Mr. Bayt, we would be more
10 than happy to address those.

11 CHAIRMAN DIENER: Thank you Mr. Babbitt,
12 Mr. Bayt. That concludes the presentation on
13 behalf of Centaur for their petition to be granted.

14 Questions? Any questions, Commissioner
15 Schaefer?

16 COMMISSIONER SCHAEFER: No.

17 CHAIRMAN DIENER: Commissioner Schenkel?

18 COMMISSIONER SCHENKEL: No.

19 CHAIRMAN DIENER: Commissioner Weatherwax?

20 COMMISSIONER WEATHERWAX: No.

21 CHAIRMAN DIENER: George, sorry to put you in
22 this. Do you have any questions you would like to
23 ask?

24 COMMISSIONER PILLOW: No.

25 CHAIRMAN DIENER: I just have a couple quick

1 comments. I was just personally disappointed in
2 all your references and PowerPoints, everybody got
3 mentioned but me. I think I know why.

4 And secondly, I've always found -- and don't
5 take affront of this because I think it's a true
6 statement -- when it comes to legislative intent in
7 Indiana, it's always very, very problematic because
8 we have no recorded legislative history. People
9 can come up with whatever the legislative intent is
10 and be 180 degrees apart. I'm not saying your
11 description is wrong. I'm just saying legislative
12 intent is a tough thing to rely upon.

13 We will now address whether or not anybody who
14 is a nonparty has signed up to say anything with
15 respect to the Initial Distribution Agreement.
16 Okay. Please identify yourself for the reporter.

17 DWAYNE RHULE: Thank you, Chairman. My name
18 is Dwayne Rhule. I'm a breeder, owner, trainer.
19 And I have a Standardbred farm in Indiana.
20 Presently, I'm chairman of the breed advisory
21 committee for the Standardbreds. And I promise
22 I'll be brief.

23 I've been involved on the legislative front
24 since about 2004. And since 2007 when the slots
25 bill was passed, I've been there every year, and we

1 have fought for our life every year. I know
2 everybody says, well, don't worry about it, it will
3 be okay, but sooner or later you'll take a bullet
4 if somebody shoots at you long enough and strong
5 enough. This is what I'm really worried about
6 because last year, if you look, we had a budget
7 bill that would have defunded the whole program.
8 And luckily this piece of legislation has come
9 along, and I think this allows us an opportunity to
10 not get in that same bailiwick again.

11 The biggest thing I think that bothers me
12 about the legislation happening every year is the
13 fact that the horsemen are always out there
14 thinking and calling me, hey, Rhule, what's going
15 to happen this year? You know, should I breed the
16 horse? Should I buy the horse, do all this? It
17 just keeps people in the constant state of flux. I
18 think this legislation here will definitely get us
19 out of that game.

20 You all know it's a three-year deal when you
21 breed a horse. I know from a business point of
22 view or those in the business world, you know,
23 three years is long time down the road hoping that
24 your investment is going to pay off. And like I
25 said, the constant reiterations of going through

1 the legislators all the time, I know some of them
2 have good intent, but there are a few that
3 obviously don't have our best interest, I feel, at
4 heart.

5 I can say that in dealing with Centaur, my
6 time in dealing with Rod Ratcliff, their chairman,
7 I found him to be honorable, and they have stood by
8 their word. These people really enjoy racing. And
9 I think that's something very important to this
10 Commission that you know how important it is. All
11 you have to do is go there and see they actually
12 participate on a regular basis at the meets.

13 So I can basically say if I have to hang my
14 hat financially with somebody, I would rather hang
15 my hat with Centaur as a long run game rather than
16 with the legislature. That's just my personal
17 feeling. I've been over there as many times as
18 I've been there and listened to the people talk.
19 Like I say, something sooner or later bad will
20 happen if we stay over there. That would be my
21 prediction.

22 My board, the breed advisory board, this is
23 the board of Standardbreds that deals with sires
24 stakes issues and county fair racing. They all
25 concur that this would be the best way to go.

1 Thank you very much for your time and attention.

2 CHAIRMAN DIENER: Thank you, Mr. Rhule. Joe,
3 you had an opportunity to file whatever changes you
4 wanted to your staff report on November 29th. Do
5 you have any changes, recommendation to that
6 initial staff report?

7 JOE GORAJEC: No, my recommendation stands as
8 is.

9 CHAIRMAN DIENER: Thank you. One commissioner
10 requested an independent legal opinion addressing
11 really the issue of controversy or concern that the
12 Commission had being the subordination clause. And
13 our general counsel, Ms. Lea Ellingwood, drafted
14 such an opinion, a seven-page opinion with
15 attachments thereto. That legal memorandum and
16 opinion is an attorney-client privileged document.
17 It will be admitted into the record en camera. And
18 each Commissioner has had time to review that.

19 Does anyone up here at the Commission table
20 have questions, clarifications they would like from
21 Miss Ellingwood at this time?

22 COMMISSIONER WEATHERWAX: Mr. Chairman, just
23 as a matter of appreciation, I would like to thank
24 our legal counsel because as a non-attorney and
25 wanting to make certain that we are doing the right

1 thing and having read 609 very thoroughly and heard
2 all the testimony at the first hearing, I felt it
3 was important for our Commission to have a true
4 legal understanding and opinion of what this, not
5 only legislation but the Initial Distribution
6 Agreement was trying to accomplish.

7 After receiving this back from Miss Lea
8 Ellingwood, I was very impressed with the
9 thoroughness, the clarity of trying to explain to
10 possibly myself as a non-attorney how we got here,
11 what the real intent was. And it gave me a lot
12 more confidence to know that what we're doing
13 represents, I think, the best interest of not only
14 the state of Indiana but those men and women that
15 represent the horse industry. You know, like we're
16 judges in this process. And so for me,
17 Mr. Chairman, it was a very big helpful tool.
18 Because you represent so much history on how we got
19 here, some of us that are more new, more recent, it
20 was a help.

21 CHAIRMAN DIENER: Thank you. Any questions?

22 COMMISSIONER SCHAEFER: I would like to second
23 what Tom said. I couldn't talk that long, but I
24 second.

25 CHAIRMAN DIENER: For those of you in the

1 audience who might be suspicious, I literally had
2 to tie my hands behind my back to make sure that I
3 had nothing to do with Lea's drafting the opinion
4 because I was chomping at the bit to draft it, but
5 I did not.

6 This evidentiary record hearing today is now
7 closed. And in accordance with our prehearing
8 order, the Commission will enter into its
9 deliberations on this matter without the
10 participation or interruption by anyone else. And
11 the only participants will be the five
12 Commissioners and Miss Ellingwood.

13 And if any Commissioner has further questions,
14 discussions, comments, wants to make a motion, the
15 floor is open.

16 COMMISSIONER WEATHERWAX: Well, Mr. Chairman,
17 I don't want to cut off our debate or discussion
18 amongst ourselves, but if this is the proper time,
19 if this is the proper time for me to make my
20 motion, I would like to do so. I would like to
21 move that this Commission approve the Initial
22 Distribution Agreement as submitted for our
23 approval.

24 COMMISSIONER SCHENKEL: Second.

25 CHAIRMAN DIENER: It's been moved and seconded

1 that the Initial Distribution Agreement as
2 presented be approved.

3 Before voting on this while it's a matter of
4 discussion, I want to make sure I understand from
5 our general counsel if we approve this Initial
6 Distribution Agreement what we are approving and
7 what are we not approving. And I have about six
8 short little questions that I hope will elicit
9 nothing more than a yes or a no.

10 If we approve the agreement, the mandatory
11 distribution and allocation of funds from slot
12 revenues for purses and breed development as
13 prescribed by statute is unchanged and will still
14 be followed?

15 MS. ELLINGWOOD: Yes.

16 CHAIRMAN DIENER: Two. The Commission is not
17 addressing a possible refinancing by Centaur?

18 MS. ELLINGWOOD: Correct.

19 CHAIRMAN DIENER: We are confirming that the
20 evidence and testimony in this proceeding is that a
21 horsemen's association does not receive monies for
22 either purses or breed development?

23 MS. ELLINGWOOD: Correct, they do not receive
24 it directly pursuant to the testimony that Tammy
25 Schaeffer, I believe, gave at the last meeting,

1 which has been made a part of the record.

2 CHAIRMAN DIENER: We are not considering today
3 where there's a part of any refinancing, Centaur or
4 its track licensees could subordinate to lenders
5 the funds for pari-mutuel wagering or slot revenues
6 for either purses or breed development?

7 MS. ELLINGWOOD: Correct.

8 CHAIRMAN DIENER: Consistent with the
9 Commission's regulations, the track licensees will
10 still be required to maintain separate trust purse
11 accounts for each breed, and these funds are to be
12 kept separate from and cannot being commingled with
13 other funds of the track licensees?

14 MS. ELLINGWOOD: Yes, sir.

15 CHAIRMAN DIENER: And, lastly, Exhibits A and
16 B to the Initial Distribution Agreement contain
17 certain items which will require separate
18 Commission consideration at a later date?

19 MS. ELLINGWOOD: Yes.

20 CHAIRMAN DIENER: With your responses to those
21 questions, I can say as the Chair my vote. And I
22 know this is going to sound wishy-washy. I'm going
23 to abstain. My vote is to abstain for two reasons.
24 One, I still have quasi-legal policy issues about
25 horsemen's associations representing they have some

1 kind of control or authority over purse monies and
2 breed development. I cannot get over that hurdle,
3 with all due respect to Ice Miller's opinion. I
4 cannot get over that hurdle.

5 But two, I want whatever decision this
6 Commission makes today to be unanimous. I want the
7 public and I want the industry to know we are
8 behind this Initial Distribution Agreement. We are
9 supportive of Centaur. We are supportive of the
10 horsemen. That's the reason for my wishy-washy
11 abstention on this matter.

12 Commission Schaefer, I'll let you have a
13 chance to speak.

14 COMMISSIONER SCHAEFER: I'm not going to speak
15 very long because I can't. I didn't know the
16 Chairman was going to pass on this. I still have
17 some of my same concerns. That's not saying how
18 I'm going to vote. I just want to clear up one
19 thing. Maybe it was a misunderstanding last time.

20 I knew that the pari-mutuel licensing was
21 incumbent on the slot machines. What I was
22 questioning was the three percent that the
23 associations have. And having learned a lot more
24 about banking in the last four years than I ever
25 thought I wanted to or did want to, I know how they

1 come and pick things out in a subordination
2 agreement if something were to happen.

3 Nobody wants nothing to happen more than I do,
4 but I know that those three percents, that
5 three percent will be one of the things they will
6 come in and pick out. So that was my main concern.
7 It wasn't the pari-mutuel part of this. In some of
8 the testimony I think maybe that was misunderstood.
9 So that was my main concern.

10 Going forward and being able to view the final
11 documentation on the subordination, I'm intending
12 to go with the motion and vote at this time.

13 CHAIRMAN DIENER: Thank you, Commissioner
14 Schaefer. Commissioner Pillow, you are free to
15 participate or not participate in this. It's your
16 pleasure.

17 COMMISSIONER PILLOW: I'll participate.

18 CHAIRMAN DIENER: We have a motion right now
19 that's been moved and seconded, and then me
20 stepping back. We need another vote to approve
21 this. We need three votes. Right now it's two to
22 zero. Commissioner Schaefer, are you prepared?

23 COMMISSIONER SCHAEFER: Yes.

24 CHAIRMAN DIENER: Do you vote in the
25 affirmative?

1 COMMISSIONER SCHAEFER: I vote in the
2 affirmative.

3 CHAIRMAN DIENER: Commissioner Pillow?

4 COMMISSIONER PILLOW: I vote in the
5 affirmative.

6 CHAIRMAN DIENER: So the vote is unanimous
7 with one abstention. It's time for a break. Thank
8 you very much for the presentation. We will take a
9 10 minute, 15 max break right now.

10 (A brief recess was taken.)

11 CHAIRMAN DIENER: The Commission meeting and
12 hearing is resumed. Item number two are the
13 results of a survey amongst the three horsemen's
14 associations. Yours truly wanted some input done
15 from the individual horsemen who are members of the
16 Quarter Horse Association, ISA, HBPA, to make sure
17 they knew that part of their purse money is being
18 used by these associations for lobbying
19 expenditures.

20 The results of that survey of all three
21 horsemen's associations are in. They have been
22 received. The members reporting overwhelmingly,
23 not unanimously, overwhelmingly understood what
24 some of these purse monies were being used for and
25 had no objection. So there is no further action

1 required by the Commission, but I felt that it was
2 good to get this issue out and make sure the
3 members of each association were aware of it.

4 Item number three is a review of the
5 Commission rulings we've had for the past two
6 months. Each Commissioner has a copy of those
7 rulings. Miss Newell, anything you want to comment
8 on there?

9 MS. NEWELL: No, I don't think there's
10 anything of particular note on there unless any of
11 the Commissioners have any questions.

12 CHAIRMAN DIENER: No questions? Hearing none,
13 item number four is a proposed draft of a complaint
14 policy of this Commission. That complaint policy
15 is to be developed as part of the amendments done
16 in the 2013 General Assembly. Joe Gorajec, do you
17 have a draft policy?

18 JOE GORAJEC: Yes, Mr. Chairman, as you said,
19 this draft policy for today's review and approval
20 is an outgrowth of Senate Bill 609 that asked us to
21 develop such a policy. What was interesting was
22 that we went to other commissions or inquired with
23 other commissions and other state agencies about
24 their complaint policies only to find out that a
25 written complaint policy is a very rare bird

1 indeed.

2 I think the policy that you have in front of
3 you will get the job done. To the extent it is
4 approved, we are developing in-house a complaint
5 form that will correspond with this policy. And we
6 would hope to have that up on our website probably
7 sometime in January. So there will be a form for a
8 complaint to be filed and will also have that form
9 available on the Commission's website. So I would
10 ask the Commission to approve the policy as
11 submitted.

12 CHAIRMAN DIENER: I just have a quick comment,
13 maybe a suggestion. On the first line of number
14 three, I believe it should say Complaints within
15 the scope of racing or pari-mutuel wagering rather
16 than racing.

17 JOE GORAJEC: Yes, good catch.

18 CHAIRMAN DIENER: Shall be sent, those two
19 little minor changes. Do you see what I'm talking
20 about, Joe?

21 JOE GORAJEC: Yes.

22 CHAIRMAN DIENER: I suggest those just for
23 clarification. They are not changing the substance
24 of your recommendation. Questions from the
25 Commissioners?

1 COMMISSIONER SCHENKEL: And I don't know if
2 it's anything we need to worry about, but is there
3 any, I don't know if risk is the right word or any
4 provision or liability to the complainant? In
5 other words, is the person who complains exposing
6 themselves to liability for lawsuits?

7 JOE GORAJEC: I would punt the response to
8 that question to legal counsel. Having said that,
9 in a general way, first of all, I would anticipate
10 that the information that we would get in a
11 complaint would be accurate.

12 COMMISSIONER SCHENKEL: I'm not suggesting we
13 give them immunity by any means. I just want to
14 know what we're in for.

15 JOE GORAJEC: Quite frankly, most likely,
16 we're not in for much. And the reason I say that
17 is that in just going back historically, we very
18 seldom receive written complaints. Most of the
19 complaints that are out there are kind of handled
20 on a more informal person-to-person basis.
21 Oftentimes, it's a horseman conversing with the
22 stewards or the judges in the stewards' office with
23 regard to pari-mutuel wagering. Most are done
24 outside the view of Commission staff in that if
25 there's a complaint about a wager, that's typically

1 handled between the patron and the actual facility,
2 the pari-mutuel manager. But I think with regard
3 to respect to legal action, I would defer to Lea on
4 that.

5 MS. ELLINGWOOD: Commissioner, I think that
6 the concerns that you are getting at are basically
7 issues regarding slander and libel. Is that?

8 COMMISSIONER SCHENKEL: Yeah, and does the
9 Commission get drawn into that?

10 MS. ELLINGWOOD: First, I'd say that slander
11 and libel is outside the Commission's bailiwick, so
12 I don't profess to be an expert on that.

13 COMMISSIONER SCHENKEL: That's good enough.

14 MS. ELLINGWOOD: I would say though that the
15 complainant is required to be truthful in their
16 complaint to us. And very generally that would
17 handle the slander and libel.

18 JOE GORAJEC: I think the fact that we require
19 as part of a formal complaint that the party sign
20 the complaint, that there would be less likely for
21 complaints that we receive --

22 COMMISSIONER SCHENKEL: That would be
23 frivolous.

24 JOE GORAJEC: -- that would be frivolous or
25 done for unpure motives.

1 COMMISSIONER SCHENKEL: That's fine. I'm good
2 with that. Thanks.

3 CHAIRMAN DIENER: With those clarifications
4 and the minor word change to the draft policy, I
5 would move that this policy be approved.

6 COMMISSIONER SCHENKEL: Second.

7 CHAIRMAN DIENER: All in favor.

8 THE COMMISSION: "Aye."

9 CHAIRMAN DIENER: Opposed, same sign.

10 (No response.)

11 CHAIRMAN DIENER: Adopted as amended.

12 Number five are some emergency rules which are
13 really the outgrowth of what we just approved and
14 what the legislature did with respect to
15 complaints, what a complaint is, what have you.

16 JOE GORAJEC: I think that the definition of
17 complaint, I think just redefines, or excuse me, it
18 just clarifies the complaint definition consistent
19 with the Commission's action that they just took.
20 With regard to the complaint against officials, I'm
21 recommending that that be deleted because that's
22 not picked up in the complaint policy.

23 MS. ELLINGWOOD: The only thing I would add,
24 Chairman, is that I recommend the Commission adopt
25 this rule under previously adopted emergency rule

1 policy.

2 CHAIRMAN DIENER: This is one that would be
3 appropriate under the policy the Commission's
4 adopted for promulgating emergency rules. I would
5 move that these four rule amendments be approved
6 today.

7 COMMISSIONER SCHENKEL: Second.

8 CHAIRMAN DIENER: All those in favor.

9 THE COMMISSION: "Aye."

10 CHAIRMAN DIENER: Opposed, same sign.

11 (No response.)

12 CHAIRMAN DIENER: Motion is carried. Rules
13 are promulgated.

14 Number six, request for approval of the
15 Standardbred Breed Development program budget for
16 2014. Jessica Barnes is here. As far as I can
17 understand, we're approving a few of the remaining
18 components for next year's program, which we
19 already approved, as well as a budget for next
20 year. Miss Barnes.

21 JESSICA BARNES: Good morning. You are
22 correct. The Standardbred Breed Development
23 Advisory Committee along with the Standardbred
24 Advisory Board came to the Commission in September
25 and requested that the Commission approve the two

1 major components of the Standardbred Breed
2 Development program, which was our Indiana Sired
3 Fair Circuit and the Sires Stakes. Those two
4 components make up approximately 60 percent of the
5 budget in the races that we have.

6 Since that time, we have worked with the
7 racetracks and the horsemen's association to fill
8 in the remaining holes of the program. So you see
9 the rest of the program here. It's very similar to
10 the program we've had in the past for the remaining
11 elements. The only thing that we have done is
12 along with the fair circuit, we have guaranteed
13 that the second series final will take place, which
14 it was contingent this past year on budget. We
15 have determined there was enough money for that to
16 take place. And we've reformatted the late closers
17 to deal with the one-track scenario. So we think
18 the late closer program will actually work out and
19 benefit the horsemen much better than it has in the
20 past.

21 On the final page, you see the overall budget
22 we are requesting to be approved for 2014.

23 CHAIRMAN DIENER: Questions for Jessica?
24 Anybody? I move we approve the request for
25 approval of the Standardbred Breed Development

1 program budget, program and budget for 2014.

2 COMMISSIONER WEATHERWAX: Second.

3 CHAIRMAN DIENER: All in favor.

4 THE COMMISSION: "Aye."

5 CHAIRMAN DIENER: Opposed, same sign.

6 (No response.)

7 CHAIRMAN DIENER: Thank you, Jessica.

8 Next, item number eight is a petition of
9 Hoosier Park amending the order relocating really
10 the OTB in Fort Wayne.

11 MS. ELLINGWOOD: Chairman, I believe it's
12 number seven.

13 CHAIRMAN DIENER: I'm sorry. I'm getting
14 ahead of myself. Number seven, consideration of
15 the emergency rule, physical inspection of horses.
16 Joe.

17 JOE GORAJEC: Let's punt that to Doctor
18 Demaree.

19 ANGELA DEMAREE, DVM: Thank you, Chairman. As
20 you know, in 2013 we implemented the pre-race
21 examinations, which was a requirement and is a
22 requirement for NTRA accreditation for the
23 racetrack. Since the pre-race examinations and
24 NTRA accreditation are requirements of the
25 Commission, it would make sense that we would adopt

1 the ARCI model rule for the physical inspection of
2 horses. This rule does not change current policies
3 and procedures that were in place during the 2013
4 race meet. It merely strengthens them to provide
5 additional safeguards for the safety of both the
6 equine athlete and the human participants. We are
7 bringing this before the Commission as an emergency
8 rule because it is an ARCI model rule and improves
9 the safety of the participants.

10 CHAIRMAN DIENER: Questions of Doctor Demaree?
11 Anybody? I have just one question. This rule is
12 only for flat racing, just for Quarter Horses and
13 Thoroughbreds.

14 ANGELA DEMAREE, DVM: Yes.

15 CHAIRMAN DIENER: Do we have a companion rule
16 or should we have a companion rule for the
17 Standardbreds?

18 ANGELA DEMAREE, DVM: We do not have a
19 companion rule for Standardbreds. The ARCI also
20 does not have a model companion rule for the
21 Standardbreds. Standardbreds typically race with
22 two feet on the ground at all times. They are far
23 less likely to be prone to breakdowns. We still
24 have a racetrack requirement and a rule that all
25 horses in all three breeds are visually inspected

1 during post parade, leading up to the race, and
2 after the race until they have exited the
3 racetrack. We inspect all horses that are in our
4 test barn. I've not seen any data that would make
5 me feel that we needed to do anything additional at
6 this time.

7 CHAIRMAN DIENER: So the rule we would be
8 adopting today really is to have a compliant ARCI
9 rule so we can continue on with getting NTRA
10 certification for flat racing.

11 ANGELA DEMAREE, DVM: It definitely
12 strengthens that.

13 CHAIRMAN DIENER: I make a motion we approve
14 the proposed emergency rule on physical inspection
15 of horses.

16 COMMISSIONER PILLOW: Second.

17 CHAIRMAN DIENER: Second by Commissioner
18 Pillow. All in favor.

19 THE COMMISSION: "Aye."

20 CHAIRMAN DIENER: Opposed, same sign.

21 (No response.)

22 CHAIRMAN DIENER: Rule is adopted.
23 Mr. Keeler, please.

24 MR. KEELER: Thank you, Mr. Chairman, members
25 of the committee. My name is John Keeler. I'm the

1 vice-president and general counsel of the
2 petitioners; Centaur Holdings, New Centaur, and
3 Hoosier Park LLC.

4 The petition before you today requests five
5 basic items. Number one is to amend the license
6 for the Fort Wayne satellite facility to change its
7 location from where it currently exists to a
8 location in New Haven that has been provided in
9 your materials; second, to authorize Hoosier Park
10 to enter into a real estate lease for the New Haven
11 site; third, to authorize the sale of the existing
12 location which is owned by Hoosier Park; fourth, to
13 delegate to the Executive Director the authority to
14 approve contracts over \$50,000 in connection with
15 the construction of the facility; and finally to
16 allow Hoosier Park to offer FastBet Mobile at this
17 new facility.

18 The presentation you will receive today
19 consists of really two parts. The folks speaking
20 on behalf of Hoosier Park, they will be Jim Brown,
21 who will give you the more interesting portions of
22 the presentation which deal with the business
23 model, the economics of the OTB business, the plans
24 for the facility, not only physically but how it
25 intends to be operated; and then the less

1 interesting part of the presentation will be
2 delivered by Yours Truly with regard to the lease
3 of the new facility, the sale of the old facility,
4 and any questions you might have concerning the
5 actual transfer of the location of the permit.

6 But, Mr. Chairman, before we begin if I might
7 try and address a few preliminary matters with you.

8 CHAIRMAN DIENER: Go ahead.

9 MR. KEELER: The first one, Mr. Chairman, is I
10 would like to move to amend the petition by
11 interlineation. And let me explain. At the time
12 the petition was filed, the precise order where the
13 Fort Wayne OTB had initially been authorized could
14 not be located. Based on records, we knew there
15 was a meeting on July 30th. We anticipated that
16 was the date the order was signed. It has
17 subsequently been located. The correct date is
18 July 14, 1994. So I would move to interlineate the
19 petition, that date appears in two places, to
20 change that to July 14, 1994.

21 CHAIRMAN DIENER: So granted. I happened to
22 be in the Commission office that day. I can recall
23 that order. It granted Fort Wayne but denied the
24 one in Merrillville.

25 MR. KEELER: Second of all, I would ask the

1 Commission waive to the extent necessary the
2 provisions of 71 IAC 12-1-16 and such other rules
3 that may be considered to interfere with or
4 restrict the change of location of this existing
5 permit.

6 MS. ELLINGWOOD: This issue with respect to
7 the language is where the rule says that the
8 license is applicable to a particular location.
9 And petitioner is asking that we waive that portion
10 of the rule insofar as this license would be naming
11 a different location than was initially granted in
12 the 1994 order.

13 CHAIRMAN DIENER: I just assumed we would do
14 that if we approved this.

15 MR. KEELER: Right, certainly contingent upon
16 that. It's technical.

17 CHAIRMAN DIENER: I understand.

18 MR. KEELER: And then, Mr. Chairman, I would
19 move to introduce into evidence and make part of
20 the record exhibits that have been marked for
21 identification as No. 1 and No. 1A through E
22 inclusive, which I would identify as Exhibit No. 1
23 being the petition; Exhibit A being the New Haven
24 booklet; Exhibit 1B being the nonbinding Letter of
25 Intent for the lease; item 1C being the proposed

1 draft lease; item 1D being the e-mail from the
2 Director of Planning in New Haven; and item 1E
3 being the real estate purchase agreement.

4 And I have not been sworn, but I would swear
5 under penalties of perjury that these items are
6 true, correct, and to the best of my knowledge they
7 represent the plans that Centaur intends to put
8 into action at these locations.

9 CHAIRMAN DIENER: I've never seen lawyers
10 swear to anything. Before I forget it though...

11 (At this time the oath was administered to the
12 witnesses.)

13 CHAIRMAN DIENER: The exhibits are admitted.

14 MR. KEELER: Thank you, Mr. Chairman. And
15 then the last preliminary item, Mr. Chairman, is I
16 believe in compliance with the pretrial order, we
17 timely filed a request for the Commission to take
18 official notice of certain matters. And I would
19 ask that you do so.

20 CHAIRMAN DIENER: Official notice has been
21 taken.

22 MR. KEELER: Thank you very much. As I said,
23 I have the boring part. So I will be extremely
24 brief and just answer any questions that you might
25 have.

1 First, Centaur owns the existing site which is
2 approximately three acres. We have received a
3 signed offer to purchase, which is in your
4 materials. We have not accepted that offer in
5 compliance with Commission rules and are asking
6 your permission to do so.

7 The purchaser has proceeded at its own risk
8 and is in the zoning process right now in Fort
9 Wayne, and, in fact, I believe has a hearing
10 tomorrow. I think the most important part of the
11 real estate offer, which I would describe as very
12 normal and routine with the normal provisions for
13 the proration of expenses -- it's a cash offer --
14 is that the purchaser cannot take possession any
15 earlier than June 16, 2014. And we have to close
16 no later than July 16, 2014. As I describe the
17 lease or at least the nonbinding Letter of Intent,
18 I think those dates will become more and more
19 important.

20 After the Commission approves the execution of
21 the offer to purchase, assuming that you do, then
22 it will go hard. The purchaser will be required to
23 put down \$50,000 of earnest money and will have a
24 90-day period within which to see their conditions
25 to proceed are satisfied.

1 If there are any questions to the offer to
2 purchase, I will be happy to answer them now.
3 Otherwise, I will move onto the lease.

4 CHAIRMAN DIENER: Just move on.

5 MR. KEELER: Thank you, Mr. Chair. The lease
6 is with Brixmor, which is a nationally recognized
7 landlord, publicly traded company. The nonbinding
8 Letter of Intent calls for a ten-year lease with
9 three, five-year renewal periods. And it contains
10 the standard, very onerous triple net provisions
11 you'll find in a shopping center type of lease.

12 We have signed the nonbinding Letter of
13 Intent. We have been presented with a real estate
14 lease, which is in your packets, and which has been
15 admitted into the record as Exhibit 1C. Those
16 precise terms have not yet been negotiated with
17 Brixmor. And we would ask not only authority to
18 execute a lease in substantially similar form, but
19 for the Executive Director to be able to approve
20 the final form of that lease once it is negotiated.

21 I would be happy to answer any questions
22 concerning the lease that you might have.

23 CHAIRMAN DIENER: Hearing no questions,
24 proceed.

25 MR. KEELER: Thank you. Finally, I think

1 through the preliminary matters and the petition,
2 we have established the legal basis to transfer the
3 location of this license from the existing facility
4 to the proposed facility. If there are any
5 questions on that, I would be happy to address
6 them.

7 CHAIRMAN DIENER: Hearing none, proceed.

8 MR. KEELER: There being no questions, the
9 boring part of the presentation is over. And I
10 would like to, with permission of the Chair, defer
11 to Mr. Brown. Thank you.

12 CHAIRMAN DIENER: Thank you.

13 JIM BROWN: Good morning, Chairman Diener,
14 Commissioners, Staff, Executive Director Gorajec.
15 My name is Jim Brown, and I'm the president and COO
16 of Centaur Gaming. And I would like to put these
17 up before I get started. I'm not very good at
18 this.

19 As I thought about my comments this morning,
20 and these are more general comments and a sneak
21 preview of what you'll hear more about in February,
22 I was going to say that this has been a banner year
23 for Indiana racing. But it hasn't been a banner
24 year, it's been a monumental year for Indiana
25 racing. And from the start of the year with the

1 acquisition of Indiana Grand and Downs, and the
2 switching to one breed per track racing, set the
3 stage for a lot of exciting accomplishments this
4 year and in years to come. A New York Times
5 article series came out earlier this year, and it
6 wasn't exactly complimentary to racing on a
7 national basis. But when Indiana was mentioned
8 from a safety and integrity standpoint, every
9 remark, every comment was extremely positive about
10 that aspect of racing in Indiana.

11 Right now at both tracks, we are in the midst
12 of track renovations; at Indiana Downs a complete
13 track renovation; at Hoosier Park a partial track
14 renovation. We've got two barns built that
15 occupied horses during the end of the meet at
16 Indiana Downs with two more on the way to be
17 delivered prior to the opening of the 2014 meet.
18 At Indiana Downs we are on our way to NTRA
19 accreditation, and we have a new tote board that's
20 being built right now with a nice jumbotron screen
21 that I know our bettors love at Hoosier Park and
22 will love at Indiana Downs.

23 At Hoosier Park, we just completed
24 construction on, other than a \$100 million project
25 at the Meadowlands, I would call the finest

1 clubhouse and grandstands for harness racing in the
2 country. If you haven't had a chance to see it in
3 its completion, it really is a wow. We were under
4 construction all this year, and it got completed in
5 November.

6 We are also in construction on a new driver's
7 lounge and recreation building at Hoosier Park. We
8 installed Trakus at the end of the meet. If you
9 look at the weekly tracking for handle, you can see
10 as the meet wore on through the last month or two
11 where typically handle declines, handle increased
12 during that period of the meet.

13 Without getting into too much color, at
14 Hoosier Park our handle was up over 25 percent this
15 year which, we're a 160 day meet, is unheard of.
16 And commissions which are shared with the horsemen
17 essentially equally with the operator, commissions
18 were up almost 36 percent. At Indiana Downs handle
19 was up a little under 10 percent, and commission
20 was up over 15 percent this year. And we feel like
21 we are just getting started.

22 But in years past I've said Indiana tracks are
23 and the racing industry is emerging. I think we
24 have emerged. And we're getting noticed on a
25 national scale. We're seeing horses in the Indiana

1 Derby that are preparing for Breeder's Cup races.
2 We got to witness a victory and a loss by Captain
3 Treacherous, probably the best pacer in the country
4 this year, at Hoosier Park. And it's an exciting
5 time for Indiana racing.

6 And I say this because it's germane to the
7 Fort Wayne OTB. And we have a portfolio of racing,
8 in some cases gaming and entertainment facilities
9 in the state of Indiana. And the OTBs, other than
10 the Winner's Circle in downtown Indianapolis, are
11 not of the quality that we want in our portfolio of
12 products to offer our customers. Also, the OTB
13 model of the past where it's simply a better parlor
14 that serves hamburgers isn't enough in this day and
15 age. It needs to be more of a multifaceted
16 facility. That's where you might see the name
17 Winner's Circle Brewpub and OTB. A combination of
18 dining, drinking, betting, having fun, leisure
19 entertainment for adults is what we hope to do with
20 all of our OTBs in the future and brand them as
21 Winner's Circles.

22 And this is some information concerning the
23 move from Fort Wayne to the community of New Haven.
24 As background, in your books I've gone through most
25 of it, but you can see OTB handle over the years.

1 And it continues to decline. I see a lot of OTBs
2 in Kentucky and New York closing. We don't feel
3 that way about them. We feel they can be
4 competitive entertainment destinations if they're
5 done right, in the right location, if they're
6 invested in, and they provide great service to
7 customers and simply don't have mutuel windows that
8 accept bets.

9 At the Winner's Circle, we have turned around
10 a trend of being down 14 percent in handle three
11 years ago to being down 17 percent our first year
12 of operation that we were under construction for
13 part of the year, we were down 6 percent. But in
14 2013 we reversed that, and we are going to be up a
15 couple of percent in handle. We feel like the best
16 times are coming for us in downtown Indianapolis.

17 That's what we want to bring to Fort Wayne and
18 New Haven. As you can see from the first map, the
19 location is about eight miles from where the
20 current Fort Wayne OTB is. And the site plan
21 includes over 200 seats. The Indianapolis OTB is
22 12 and a half thousand square feet. This is
23 slightly under 10,000 square feet. We believe it
24 is the right size for the population base and for
25 our business levels. If you've been to the old OTB

1 that was over 15,000 square feet, it was like a
2 cavern even when it had people in it.

3 This has a beautiful pub at the entry, as we
4 do in Indianapolis. An OTB area, exclusive OTB
5 area will be betting throughout the front house
6 facilities with carrels, big screen TVs, sitting
7 areas, and a special event space that we will be
8 able to use for overflow crowds on weekends,
9 private parties, groups. And this becomes an
10 extension of what we started in Indianapolis that
11 we want to bring to our facilities.

12 It's location is in a strip center. Our
13 current location does not get much vehicular
14 traffic. It gets almost no foot traffic. And this
15 is a highly traveled state road. We have two nice
16 anchors on each side, the BMV and Kroger. So you
17 can come in, make a few bets, renew your driver's
18 license, and pick up groceries. We think that will
19 help us.

20 In looking at our key goals and objectives,
21 which I have really gone through, but we think it's
22 time to create an exciting new facility in
23 Indiana's second largest population center. It's
24 an improved site at an improved location. There's
25 close, proximate, convenient parking.

1 There is smoking permitted in New Haven. And
2 we lost a lot of business when Fort Wayne went to
3 nonsmoking. And we do have a smoking area in the
4 Indianapolis Winner's Circle and at both of our
5 facilities in Shelbyville and in Anderson.

6 COMMISSIONER SCHENKEL: Could I ask a
7 question? On that, so when I look at that
8 rendering then, just if you would clarify where the
9 smoking area would be because in this one, in the
10 drawing it looks like there's no --

11 JIM BROWN: Right now --

12 COMMISSIONER SCHENKEL: It's all open.

13 JIM BROWN: We did a bar tour of New Haven.
14 It's generally smoking is permitted. We weren't
15 going to set up a room with glass and a separate
16 area. We were going to start with open smoking in
17 sections of -- we haven't made the final
18 determination -- in an area of the pub and an area
19 of the OTB. If we have problems, we have a backup
20 plan of the use of the special event room.

21 And we learned a lot from Indianapolis, but we
22 haven't learned everything. Now we're coming to
23 New Haven. From what we've seen, it's relatively
24 open smoking since it's the only area. We're
25 prepared to adapt as the situation brings itself to

1 light.

2 CHAIRMAN DIENER: One more question.

3 COMMISSIONER WEATHERWAX: Jim, I think from
4 what I witnessed because I have only been to the
5 Winner's Circle downtown once, it's got to be --
6 because I was in the Embassy Suites more than
7 once -- a huge improvement in quality, level of
8 clientele, as well as the entertainment factor and
9 the meals. I don't know if that was your goal, but
10 now people want to go there for something other
11 than betting.

12 JIM BROWN: Absolutely. That's a key goal as
13 you look at a business model now. Gaming
14 opportunities, betting opportunities, they're on
15 the Internet. People are looking for a bigger,
16 broader entertainment experience. And that's where
17 bringing in a good menu with good food to
18 compliment the betting. A brewpub that will
19 feature a dozen Indiana craft beers and creating
20 fun for our customers, and somebody that can
21 actually bring their wife to an OTB facility, and
22 she'll have a good time. All of those goals are
23 our intention in creating a new business model for
24 an OTB that's sustainable.

25 And you have the other information in here in

1 terms of location that are redundancies of this
2 information.

3 We look forward to getting started. We're
4 hoping that we can be completed and ready to open
5 in June. We don't see the transition taking more
6 than two weeks, which is about the time it took to
7 relocate the old Indianapolis OTB to the Winner's
8 Circle on Pennsylvania Street. And we're prepared
9 to invest \$2 million in this new facility. And
10 we're hoping that at the end of our discussion that
11 you'll be able to approve us going forward with
12 this project and starting the path of taking the
13 remainder of our OTBs and turning them into
14 something that's befitting of a 21st century OTB.

15 CHAIRMAN DIENER: Just curious, maybe you
16 don't know yet, Jim, are you contemplating a new
17 OTB manager?

18 JIM BROWN: We're discussing that --

19 CHAIRMAN DIENER: That's fine.

20 JIM BROWN: -- now.

21 CHAIRMAN DIENER: Questions from
22 Commissioners?

23 COMMISSIONER WEATHERWAX: The thing, Jim, that
24 I've learned as a new commissioner is that this is
25 a very big part of your success or the horsemen's

1 association. These OTBs are a big factor to the
2 bottom line of whatever we do as commissioners. I
3 don't know what percentage it is. I've studied the
4 financials, but I just know it was big.

5 JIM BROWN: Commission is another term for
6 revenue. And, basically, in our racing operations,
7 we are literally partners with the racing industry,
8 the horsemen. And the commissions are essentially
9 a 50/50 split at our OTBs and our racing and casino
10 facilities.

11 COMMISSIONER PILLOW: Jim, one question.
12 You're going to go ahead with this project whether
13 the buyer is able to secure financing for the old
14 facility, right?

15 JIM BROWN: That is our plan. And we don't
16 anticipate an issue there. There's nothing to make
17 us believe that is not going to happen. They are
18 already operating at least one successful hotel in
19 Fort Wayne too.

20 CHAIRMAN DIENER: Questions for Mr. Brown?
21 Joe.

22 JOE GORAJEC: Jim, you had mentioned a
23 two-week transition. Is that another way of saying
24 that's your estimated downtime between closing your
25 existing and opening your new?

1 JIM BROWN: Yes. We're hoping it's less.
2 Every day counts, but we wanted to give an outside
3 period of time. And we think it's two weeks at the
4 most.

5 JOE GORAJEC: Fair enough.

6 CHAIRMAN DIENER: During that two-week period,
7 there won't be any pari-mutuel wagering.

8 JIM BROWN: No.

9 CHAIRMAN DIENER: Other questions? Thank you.
10 Any other for your presentation, Mr. Keeler,
11 Mr. Brown?

12 MR. KEELER: That's it, Mr. Chairman.

13 CHAIRMAN DIENER: Mr. Gorajec, has staff
14 completed its review of the application for
15 relocating the Fort Wayne OTB of Hoosier Park?

16 JOE GORAJEC: Yes, it has. I'd like to point
17 to a comment that was made in the filing, which is
18 in the New Haven booklet, that I thought was very
19 pertinent to my review and how I believe the
20 Commission should view this application. And I'm
21 quoting from page two entitled Background.
22 Referring to the Fort Wayne OTB, it says "It is an
23 unprofitable, tired, worn facility in a poor
24 location. At over 15,000 square feet, it is
25 oversized and appears empty even when occasionally

1 busy." That is the applicant's description of
2 their Fort Wayne OTB. But, quite frankly, it's an
3 applicable description of most off track betting
4 facilities in the country.

5 The off track betting facility business, it
6 ain't what it used to be. A lot of these
7 facilities, this one was built in the '90s. A lot
8 of them in the country were built in the '80s and
9 '90s. Things have changed significantly in the
10 pari-mutuel wagering business. And most facilities
11 have or most managers of these facilities have
12 really done little or nothing.

13 So what we have today is, I think, an
14 exceptional application because it is an exception
15 to the rule. And the rule is in the status quo.
16 The rule is the status quo, just keep their
17 facilities as they are.

18 I think Jim Brown and his staff should be
19 commended. I think this application is a win for
20 everybody. It's a win for the horsemen. It's a
21 win for management. It's a win for the patrons in
22 New Haven or in Fort Wayne to have an upgraded
23 facility.

24 I've reviewed the information in there.
25 There's nothing in there that causes me any

1 concern, other than, I think, the projections that
2 they are making on page seven seem to be a little
3 bit overly aggressive. That's their business. I
4 wish them luck in increasing their business by
5 50 percent in two years. But my reluctance to
6 embrace their projections doesn't damper my
7 enthusiasm for the application.

8 And I feel comfortable recommending to the
9 Commission that they approve it.

10 CHAIRMAN DIENER: Any supplemental comments?
11 From legal, all the zoning issues are in place?

12 MS. ELLINGWOOD: They have all been resolved.

13 CHAIRMAN DIENER: Questions?

14 COMMISSIONER SCHENKEL: One other question,
15 Jim or John, how is the employment level or is it
16 affected and will you have about the same number of
17 employees at the new location as you have at the
18 old one or increase, decrease?

19 JIM BROWN: Currently, we have 30. We expect
20 to open with that approximate number and move
21 toward business levels with the hope that it
22 increases over time.

23 CHAIRMAN DIENER: Any other questions of the
24 applicant?

25 We will move to consider the petition to amend

1 an earlier order relocating the Fort Wayne OTB and
2 a number of ancillary other approvals as requested
3 in the petition including: The execution of the
4 lease, authorization of the sale of the current
5 property, delegation of authority to the Executive
6 Director to review certain items, and the use of
7 the FastBet Mobile system in the new Fort Wayne
8 location. Does that cover it, Mr. Keeler, pretty
9 much?

10 MR. KEELER: Yes, sir.

11 CHAIRMAN DIENER: Is there a second to that?

12 COMMISSIONER SCHENKEL: Second.

13 CHAIRMAN DIENER: All in favor.

14 THE COMMISSION: "Aye."

15 CHAIRMAN DIENER: Opposed, same sign.

16 (No response.)

17 CHAIRMAN DIENER: Motion carries.

18 I think we will get to it when we get to item
19 ten, but I think as a result of what we've done
20 now, you now have a license, an OTB license for
21 this new location. Would that be correct?

22 MS. ELLINGWOOD: Yes.

23 CHAIRMAN DIENER: Okay. It just happens to be
24 in your hand and not used yet because you're still
25 operating the other one.

1 All right. Item number nine, I don't know
2 who's handling the permit, race dates, and what
3 have you for Hoosier Park next year. Mr. Moore.

4 RICK MOORE: Rick Moore, Vice-president,
5 General Manager of Racing at Hoosier Park.

6 Mr. Chairman, Members of the Commission,
7 Mr. Gorajec, Staff, Hoosier Park is asking for 160
8 race days, Standardbred race days next year.
9 Pretty much mirrors this year's, the preceding
10 year's race days with a couple nuances. We will
11 open up a couple days earlier with your permission.
12 We will open up on a Friday and Saturday instead of
13 Tuesday. We will race Friday and Saturday the
14 first week and three days the following week,
15 Thursday, Friday, Saturday. That will help us with
16 the horse population. This year we ran into a
17 little problem trying to gear up for the five-day
18 week right away. This will help us get started on
19 the right foot. And then continue a five day a
20 week schedule, Tuesday through Saturday, with a
21 5:15 post time.

22 We will take a little break towards the end of
23 the summer, the week of August 11, to allow our
24 horsemen to compete at the State Fair so there is
25 no overlap between State Fair and Hoosier Park.

1 And everyone we've spoken to really appreciates
2 that break. Then we'll finish up on Saturday,
3 November 15th.

4 CHAIRMAN DIENER: Questions of the Commission
5 for Mr. Moore?

6 All in favor of granting the renewal of
7 Hoosier Park's permit application for next year, as
8 well as the proposed race dates signify by saying
9 "aye."

10 THE COMMISSION: "Aye."

11 CHAIRMAN DIENER: Opposed, same sign.

12 (No response.)

13 CHAIRMAN DIENER: Thank you, Mr. Moore.

14 Number ten is the approval of the renewal of
15 Hoosier Park's satellite facility licenses in
16 Merrillville, Fort Wayne, and Indianapolis for next
17 year. And I guess since we granted you the
18 license, the renewal would also be kind of the same
19 way. You're renewing the license for Fort Wayne in
20 the present location, but you already have the
21 license for the new location, so your renewal
22 application will also include for next year the new
23 location. Is that too awkward?

24 MR. KEELER: I get it. Thank you.

25 CHAIRMAN DIENER: Does that make sense?

1 MS. ELLINGWOOD: Yes.

2 CHAIRMAN DIENER: Any questions about
3 approving their licenses for next year? Move to
4 approve the --

5 COMMISSIONER WEATHERWAX: Second.

6 CHAIRMAN DIENER: -- satellite facility
7 licenses for Merrillville, Fort Wayne, Indianapolis
8 for next year. All in favor.

9 THE COMMISSION: "Aye."

10 CHAIRMAN DIENER: Opposed, same sign.

11 (No response.)

12 CHAIRMAN DIENER: Indiana Downs' permit
13 application for next year, Mr. Schuster.

14 JON SCHUSTER: Morning Members of the
15 Commission, Executive Director Gorajec. Welcome
16 Commissioner Pillow.

17 Indiana Downs' race dates for next year
18 largely mirror what we did this year. The number
19 of dates will be the same, 120 racing days; 114
20 Thoroughbred dates and six Quarter Horse dates.

21 The only difference really is that we are
22 backing up the meet approximately two weeks. This
23 is due to all the track renovations to allow proper
24 timing to make sure we get everything done with the
25 consideration of potential weather, which this

1 Commission has already approved and is on board
2 with.

3 Outside of that, it largely mirrors that. We
4 will have some four-day race weeks early in the
5 meet, as we did this year, which were very popular.
6 And we'll finish up with five-day meets. The race
7 meet will begin on the Tuesday following the
8 Kentucky Derby, May 6, and we'll end on Saturday,
9 November 1st, which is Breeder's Cup day.

10 CHAIRMAN DIENER: Mr. Schuster, post times,
11 are you still kind of experimenting with that? You
12 have some afternoon, some evening, on the weekends.

13 JON SCHUSTER: We are always experimenting.
14 We are always looking for the best.

15 CHAIRMAN DIENER: But you tried a new one for
16 flat racing this fall.

17 JON SCHUSTER: We did. This fall we used
18 daytime post times, 1:55. And we gathered a lot of
19 data. And a lot of the data was different than
20 what we thought it would be. Some was right on,
21 and some skewed differently. The way we landing
22 with it was to have our weekday, Tuesdays through
23 Thursdays, go at 2:05; and our Fridays and
24 Saturdays go at 5:05. That seems to be the best
25 mix for the overall property, for the racing

1 industry. We got a lot of input from the horsemen
2 to make sure we're doing the things they want to do
3 and what works with our business model and so
4 forth, which does bring me to one other point.

5 I should mention that we do shift from our
6 Monday, Tuesday, Wednesday and then Friday,
7 Saturday format. We switched out Mondays with
8 Thursdays when we picked those up. So we'll be a
9 Tuesday through Saturday venue this year starting
10 on July 17th when the Thursdays kick in for our
11 five-day weeks.

12 CHAIRMAN DIENER: Just in summary, I'm not
13 asking for specifics, what was the impact of the
14 Standardbred signal sales in the fall when you
15 changed the post times?

16 JON SCHUSTER: Well, you know, I don't know
17 that we got a super clear answer. The impact was
18 not negative. And we were concerned that it could
19 be. In fact, when we went to our day signals, we
20 had a million dollar Friday handle, which we had
21 not had in the evening. So we had some good
22 positive results. We were largely flat compared to
23 the all evening.

24 With a lot of consideration for the horsemen
25 and quality of life, the operational expenses and

1 so forth, it made sense to stay on the weekdays to
2 stay during those daylight hours. And there were
3 some business and customer shifts for the weekend.
4 This seems to accommodate everything the best.

5 We will continue to gather data. If we find
6 out something different as we roll forward through
7 this year, we may request something different from
8 the Commission. We'd like to leave that option
9 open, of course. This seems to be what works for
10 us.

11 CHAIRMAN DIENER: One other question I have
12 been meaning to ask and I keep forgetting. Are you
13 doing all the signal sales for Shelbyville and
14 Anderson in-house now?

15 JON SCHUSTER: We are working with the
16 Churchill Downs Simulcasting Network.

17 CHAIRMAN DIENER: CDSN?

18 JON SCHUSTER: Yes, and that's been very
19 helpful to us, very helpful.

20 CHAIRMAN DIENER: Other questions of
21 Mr. Schuster? Move to approve the renewal
22 application and proposed race dates for Indiana
23 Downs for 2014.

24 COMMISSIONER SCHENKEL: Second.

25 CHAIRMAN DIENER: All in favor.

1 THE COMMISSION: "Aye."

2 CHAIRMAN DIENER: Opposed, same sign.

3 (No response.)

4 CHAIRMAN DIENER: Approved. Thank you,
5 Mr. Schuster.

6 Lastly, approval of the renewal of Indiana
7 Downs' satellite facility license in Clarksville
8 for next year. Is there anything to note, just the
9 renewal license? Thank you, Mr. Keeler.

10 Any questions from anyone? Hearing none, move
11 to approve the renewal of the license --

12 COMMISSIONER PILLOW: Second.

13 CHAIRMAN DIENER: -- for Indiana Downs at
14 Clarksville. Second by Commissioner Pillow. All
15 in favor.

16 THE COMMISSION: Aye.

17 CHAIRMAN DIENER: Opposed, same sign.

18 (No response.)

19 CHAIRMAN DIENER: Unanimous.

20 Old business? None. New business. We are
21 looking at probably our next Commission meeting the
22 middle, latter part of February. Not sure what we
23 will have on the agenda yet, but part of it is
24 likely to include some discussion and consideration
25 of medication rulings in the industry.

1 From the Commission, Staff, and everybody in
2 the room, happy holidays.

3 And on a personal note, I just think a thanks
4 and giving, it's a compound word. This is a good
5 time during the holiday season to reflect upon the
6 invisible foundation of this industry. I'm talking
7 about the people on the backside; the horses that
8 are back there, the people that don't get any
9 recognition whatsoever that travel around the
10 country, sometimes staying in some rather spartan
11 dorms. And that good old horse who never gets,
12 very rarely gets any thanks who goes out there and
13 runs like crazy, loyal to its owner and trainer.

14 So just live racing is over now, but let's
15 just kind of remember those people. They are
16 important. They are the backbone of the industry.
17 And most of us in this room, with the exception of
18 a few of the horsemen, we never see them or if we
19 do, we never give them any credit or pay them any
20 attention. So let's remember those people that
21 work on the backside and remember that good old
22 horse, particularly what happens to them after he's
23 done bleeding for us and who'll take care of him
24 when he's done.

25 Meeting is adjourned.

1 COMMISSIONER SCHENKEL: Well said.

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(The IHRC meeting adjourned at 11:36 a.m.)

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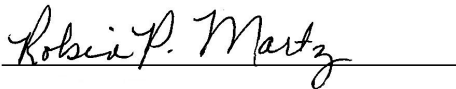
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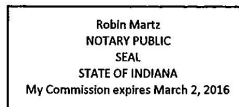
1 STATE OF INDIANA
2 COUNTY OF JOHNSON
3

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 12th day of
16 December 2013.

17
18 
19



23 My Commission expires:
24 March 2, 2016

25 Job No. 79843

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