

In the Matter Of:

INDIANA HORSE RACING COMMISSION MEETING

IHRC Meeting

April 16, 2015

Page 1

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6 INDIANA HORSE RACING COMMISSION
MEETING
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12 Held on
April 16, 2015
9:05 a.m.
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16 Indiana State Library
315 West Ohio Street
17 Room 203
Indianapolis, Indiana
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20 Taken by
21 Michele K. Gustafson, CRR-RPR
22 Notary Public
23
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Page 2

1 APPEARANCES
2
3 Tom Weatherwax, Chairman
4 Greg Schenkel
Susie Lightle
5 George Pillow
6 Joseph Gorajec, Executive Director
7 Lea Ellingwood, Esq.
Holly Newell, Esq.
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Page 3

1 AGENDA
2 I. Call to Order
3 II. Approval of minutes of March 10, 2015 meeting.
4 III. Agenda
5 1. Consideration of the Administrative Law
Judge's Recommended Findings of Fact, Conclusions of
6 Law, Ultimate Findings of Fact and Order on the
Captain Jack Racing Stable, LLC's Motion to Intervene
7 in The Matter of Richard Estvanko and Anthony Granitz
(IHRC Ruling Nos. 14694 and 14695.)
8
9 2. Indiana's licensing program and the case of
Roman Chapa.
10 3. Review of commission rulings -- January 1,
2015 - March 31, 2015.
11
12 4. Approval of additional cobalt split sample
laboratory for 2015 and beyond pursuant to
71 IAC 8-4-3 and 8.5-3-3.
13
14 5. Approval of emergency rule regarding human
drug testing:
71 IAC 8-10-2 71 IAC 8.5-10-2
15 71 IAC 8-10-3 71 IAC 8.5-10-3
71 IAC 8-10-4 71 IAC 8.5-10-4
16 71 IAC 8-10-5 71 IAC 8.5-10-5
71 IAC 8-10-6 71 IAC 8.5-10-6
17
18 6. Approval of emergency rules regarding
administrative procedures prior to split sample
testing:
19 71 IAC 8-4-3 71 IAC 8.5-3-3
20
21 7. Approval of emergency rules regarding the
approval of contracts:
71 IAC 11-1-12 71 IAC 11-1-16
71 IAC 12-1-15 71 IAC 12-1-19
22
23 8. Consideration of the Petition of
Centaur Holdings, LLC, New Centaur, LLC and
Hoosier Park, LLC In re: The Petition of Centaur
24 Holdings, LLC, New Centaur, LLC and Hoosier Park, LLC
to enter into a lease with Food Service Max, d/b/a
TJ's Pizza Cafe/Track Side (Tommy J's), LLC.
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Page 4

1 9. Consideration of the Petition of
Centaur Holdings, LLC, New Centaur, LLC and
2 Hoosier Park, LLC In re: The Petition of Centaur
Holdings, LLC, New Centaur, LLC and Hoosier Park, LLC
3 to enter into a lease with Food Service with
Saucy Dog, LLC, d/b/a Dog N Suds of Anderson.
4
5 10. Consideration of the Petition of
Centaur Holdings, LLC, New Centaur, LLC and
Hoosier Park, LLC In re: The Petition of Centaur
6 Holdings, LLC, New Centaur, LLC and Hoosier Park, LLC
to enter into a Franchise Agreement with VooDoo BBQ
7 Franchising, LLC (VooDoo).
8
9 11. Consideration of the Petition of
Centaur Holdings, LLC, New Centaur, LLC, (New Centaur)
and Centaur Acquisition, LLC (Indiana Grand), for
10 Approval of Quarter Horse barn construction plans
contract.
11
12 12. Request of Centaur Acquisition, LLC to Enter
into Construction Contract to Improve the Ventilation
in Barns 10, 11, 12 and 14 at Indiana Grand Racecourse
(Construction Contract).
13
14 13. Consideration of the 2015 Agreement Between
Hoosier Park, LLC ad the Indiana Standardbred
Association (ISA).
15
16 14. Consideration of the 2015 Agreement Between
Centaur Acquisition, LLC d/b/a Indiana Grand Racing
and Casino and the Indiana Horsemen's Benevolent and
17 Protective Association, Inc. (IHBPA).
18
19 15. Consideration of the 2015 Agreement Between
Indiana Grand Racing and Casino and the Quarter Horse
Racing Association of Indiana (QHRAI) Contract.
20
21 16. Consideration of the 2015 Contract Between
Centaur Acquisition, LLC d/b/a Indiana Grand Racing
and Casino and the Jockeys' Guild, Inc.
22
23 17. Consideration of Request by Centaur Holdings,
LLC, New Centaur, LLC and Hoosier Park, LLC to
Temporarily Relocate Self Service Wagering Machines.
24
25 18. Approval of Indiana Grand's racing official
list pursuant to 71 IAC 3.5-1-3.

Page 5

1 IV. Old Business
 2 V. New Business
 3 VI. Adjournment
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Page 7

1 Just to give you a brief procedural
 2 background. Trainers Estvanko and Granitz trained
 3 a horse named Tam Tuff, who finished second in a
 4 race at Indiana Grand on September 19, 2014.
 5 Captain Jack Stables owns the horse Tam Tuff.
 6 After holding a hearing, the stewards determined
 7 that the trainers had violated the Commission's
 8 administrative rules and pursuant to 71 IAC 7.5-7-4
 9 ordered the purse that had been distributed to
 10 Captain Jack's purse account be redistributed to
 11 the appropriate winners.
 12 The trainers have appealed the stewards
 13 ruling, and that appeal of the ruling is currently
 14 before Administrative Law Judge Buddy Pylitt.
 15 Captain Jack has filed a motion with Judge Pylitt
 16 asking to intervene in the trainers' appeal, saying
 17 that essentially Captain Jack has been aggrieved or
 18 adversely affected by the stewards rulings.
 19 ALJ Pylitt issued an order denying Captain Jack's
 20 motion to intervene.
 21 Captain Jack filed objections to
 22 Judge Pylitt's order. The ALJ's order,
 23 Captain Jack's objections, and briefs subsequently
 24 filed by both Captain Jack and Commission Staff
 25 have been forwarded to you, along with a copy of an

Page 6

1 CHAIRMAN WEATHERWAX: If I could have your
 2 attention, please. We now have our Commissioners
 3 here, and I'd like to welcome everybody. Thank you
 4 for being here, my fellow Commissioners. If I
 5 could at this point, Michele, please raise your
 6 hand.
 7 (Court reporter was sworn in at this time)
 8 CHAIRMAN WEATHERWAX: Thank you for being
 9 here.
 10 First order on the agenda is approval of the
 11 minutes. I'm sure each of you had a chance to
 12 review those under your Tab 1. Are there any
 13 changes, corrections?
 14 MR. SCHENKEL: I'll move approval.
 15 CHAIRMAN WEATHERWAX: Move to approve.
 16 MR. PILLOW: Second.
 17 MS. LIGHTLE: Second.
 18 CHAIRMAN WEATHERWAX: All those in favor, say
 19 aye.
 20 THE COMMISSION: "Aye".
 21 CHAIRMAN WEATHERWAX: Thank you.
 22 First item, Lea, you're going to explain this
 23 to our Commission, but it deals with the basically
 24 legal issue and the ruling. So please proceed.
 25 MS. ELLINGWOOD: Sure. Thank you, Chairman.

Page 8

1 informal legal opinion I issued on the matter at
 2 the request of the Chairman.
 3 The Commission now must decide whether to
 4 adopt, amend, or dissolve the ALJ's order denying
 5 Captain Jack's motion to intervene. We're going to
 6 begin with oral arguments. Captain Jack will go
 7 first. Each party has ten minutes to present their
 8 case. I'm going to do a countdown so you know how
 9 close you're getting. Then each party will be
 10 given three minutes for rebuttal. Captain Jack
 11 will start, Commission Staff will go next,
 12 Captain Jack will have three minutes for rebuttal,
 13 and then Commission Staff will finish up.
 14 After that's over, the hearing will conclude,
 15 and you'll be able to deliberate and ask me
 16 questions if you'd like to. Unless you ask a
 17 question, nobody else will be able to testify.
 18 CHAIRMAN WEATHERWAX: So is this more of a
 19 proceeding legally than charges against the
 20 trainers, which we're not looking at today?
 21 MS. ELLINGWOOD: At this point you're not
 22 looking at the underlying substantive matter.
 23 You're only deciding whether or not you want to
 24 adopt, amend, or dissolve the administrative law
 25 judge's order saying that Captain Jack cannot

Page 9

1 intervene. The appeal is currently before the
 2 administrative law judge and is currently scheduled
 3 for July -- and Counsel, please feel free to
 4 correct me if I'm wrong about that -- so that
 5 underlying matter will come before the Commission
 6 at a later date. Right now you're just deciding
 7 whether or not Captain Jack can intervene.
 8 I'm going to start giving you a countdown at
 9 three so you know where you are.
 10 MR. TERPSTRA: Thank you for hosting us this
 11 morning. I really appreciate it. My name is
 12 John Terpstra. I'm with a law firm known as
 13 Hinshaw & Culbertson. We're based out of Chicago,
 14 but we have an office in Schererville, Indiana.
 15 Lea, it's very nice to meet you in person.
 16 We've exchanged e-mails. Nice to see you.
 17 The summary was adequate. What is before the
 18 Commission this morning is not anything substantive
 19 with respect to the accusations against the trainer
 20 and assistant trainer. It's rather an issue of
 21 whether or not Captain Jack Stables, LLC, will be
 22 allowed to participate in the appeal that has been
 23 filed by the trainers.
 24 As was stated, on October 1 of 2014, the
 25 Indiana Grand Racecourse conducted a hearing

Page 10

1 regarding allegations that Tam Tuff, who is owned
 2 by Captain Jack Stables, received an illegal
 3 injection prior to the September 19 race in which
 4 he placed second.
 5 Dr. Russell was Tam Tuff's veterinarian. He
 6 was notified of, was present for, and testified at
 7 that hearing. Anthony Granitz, Tam Tuff's trainer,
 8 was notified of, was present for, and testified at
 9 that hearing. Assistant trainer Richard Estvanko
 10 likewise was notified, was present for, and
 11 testified at that hearing. Captain Jack Stables,
 12 however, was never notified, could not have
 13 participated in, and was not present to defend its
 14 interests in that hearing.
 15 From that hearing the stewards issued
 16 Rulings 14694 and 14695. Ruling 14695 ordered
 17 Captain Jack to return the purse money received by
 18 Tam Tuff's second-place finish in the September 19
 19 race. Rather than requesting a return of the purse
 20 money, the Indiana Grand Racecourse horsemen's
 21 bookkeeper unilaterally reversed Captain Jack's
 22 September 19 winnings in their entirety, inclusive
 23 of winnings earned from unrelated business.
 24 The stewards never notified Captain Jack of
 25 the allegations, nor of the proceedings, the

Page 11

1 hearing, the rulings, or the recaptured purse
 2 money. Captain Jack was left 100 percent in the
 3 dark. Granitz and Estvanko appealed the rulings,
 4 and Captain Jack now seeks to intervene. Intervene
 5 is just a legal term for a request to participate
 6 in the proceedings going forward.
 7 The staff agrees that the legal standard to
 8 intervene in this case is IC 4-21.5-3-21(a)(2)(B).
 9 Which states that an ALJ shall -- and that's
 10 mandatory language -- grant a petition to intervene
 11 if a petition is filed, which Captain Jack has
 12 done, and states facts demonstrating that the
 13 petitioner here, Captain Jack, is aggrieved or
 14 adversely affected by the actions of another or by
 15 a court ruling.
 16 Captain Jack has done that in this case. To
 17 be aggrieved, Captain Jack may only show that its
 18 personal, pecuniary, or property rights have been
 19 adversely affected by another person's actions or
 20 by a court's decree or judgment. It is not a high
 21 standard.
 22 First, Captain Jack's personal and pecuniary
 23 rights were certainly affected by other person's
 24 actions. Jamie Knowles, the Indiana Grand employee
 25 who accused the trainer and assistant trainer of

Page 12

1 Tam Tuff of cheating by means of doping Tam Tuff
 2 through its trainers and veterinarian, was present
 3 for and testified during the proceedings before the
 4 stewards.
 5 Richard Estvanko, the assistant trainer, is
 6 accused of participating in the doping;
 7 Anthony Granitz, Tam Tuff's trainer, is also
 8 accused of participating in the doping; and
 9 Dr. Ross Russell is also accused of participating
 10 in this act. It is clear, then, that the actions
 11 of other persons adversely affected Captain Jack by
 12 means of the assistant trainer, the trainer, and
 13 the veterinarian, being construed potentially as
 14 agents of Captain Jack, the owner of Tam Tuff.
 15 Jamie Knowles brought to light allegations
 16 that the actions of three individuals violated the
 17 rules of horse racing in Indiana, which activities
 18 amount to cheating, if true, and deprived
 19 Captain Jack of its opportunity to retain the purse
 20 money.
 21 Cheating is a very serious allegation, one
 22 that is potentially crippling to an owner
 23 organization. For the ALJ to recommend a ruling
 24 that the alleged actions of Dr. Russell, Granitz,
 25 and Estvanko here have no potential to adversely

1 affect Captain Jack's personal or pecuniary legal
2 interests cuts against logic and is beyond my level
3 of understanding. To say that it makes no
4 difference here because Captain Jack is not
5 specifically accused by the stewards or named in
6 the proceedings directly is disingenuous. This has
7 a direct impact on Captain Jack Stables.

8 Moreover, the ALJ action and the
9 administrative proceedings adversely affect
10 Captain Jack. The legal standard of aggrieved
11 includes examination of the actions of other
12 parties and the rulings of a court. Here the
13 stewards entered a ruling in direct conflict with
14 the legal interests of Captain Jack. Namely, that
15 Captain Jack by its agents, who are the trainer and
16 the assistant trainer, cheated and is deprived of
17 its claim or expectancy of purse money. How
18 rulings of such magnitude have no personal,
19 pecuniary, or property effect on Captain Jack is,
20 again, beyond by level of understanding.

21 By the ruling the stewards convicted
22 Captain Jack of cheating without Captain Jack's
23 participation and labeled it as a cheating entity.
24 How is this not a significant adverse personal
25 detriment to Captain Jack's goodwill and

1 reputation?

2 By its rulings the stewards deprived
3 Captain Jack of its expectancy interest in purse
4 money from Tam Tuff's second-place finish without
5 Captain Jack's opportunity to appear and defend
6 itself in the matter. How is that not a
7 significant interest detriment to its reasonable
8 legal interests, property rights, and a violation
9 of due process?

10 By its rulings the stewards destroyed
11 Captain Jack's ability to protect its name and
12 unilaterally created a risk to race organizers in
13 allowing Tam Tuff to enter races in the future,
14 thereby depriving Captain Jack of potential future
15 earnings. How is this not an adverse effect on
16 Captain Jack's pecuniary rights to free trade in
17 the industry?

18 All of this points directly to a right of
19 Captain Jack to intervene and participate in the
20 proceedings going forward. Captain Jack has
21 presented facts that it is aggrieved or personally
22 affected by actions of other persons and by the
23 stewards' rulings, also by the ALJ's recommended
24 ruling. It has been deprived of its expectancy of
25 purse money for Tam Tuff's victory.

1 It has been denied the opportunity to appear
2 and carry its burden of proving Tam Tuff was not
3 doping. It suffered and will continue to suffer
4 damage to its reputation in the industry. It is a
5 detriment to enter future races with the label
6 unilaterally surrounded by the stewards and the
7 ALJ's rulings.

8 These denials, detriments, and deprivations of
9 personal, pecuniary, and property interests are
10 exactly that type of legal interest adversely
11 affected to which Indiana courts have held
12 intervention is appropriate, and, in fact, under
13 the language of the Administrative Code, mandatory.

14 You're going to hear a lot of arguments from
15 opposing counsel regarding property interest and
16 how because Captain Jack allegedly does not have
17 the right to retain the purse money that it does
18 not have a property interest here that is adversely
19 affected. Let's be clear that this case is not
20 only about purse money or reputation or future
21 earnings. This case is one of due process.

22 Under the administrative rules governing horse
23 racing, the owners are held ultimately responsible
24 for violations. Yet by these rulings and the ALJ's
25 recommendation, we have created a system whereby

1 the ultimately responsible party is deprived of any
2 right to appear and defend itself. The real party
3 to a trial is locked out of the courtroom.

4 This is the American judicial system, one
5 built on the vision of openness, access to courts,
6 notice, the right to be heard and the right to
7 confront your accusers. Not one of unilateral
8 decisions, sneak attacks, surprise, or deprivation
9 of opportunity. That is exactly what the ALJ's
10 recommended ruling creates.

11 You have the opportunity here to preserve
12 integrity. You have the opportunity here not to
13 subscribe to a system that could potentially be
14 broken. The laws applied to the facts of this
15 matter create an undeniable right to intervene.
16 For that reason the ALJ's recommended ruling should
17 be rejected by the Commission and the Commission
18 should allow Captain Jack to intervene and
19 participate in the matter going forward.

20 Thanks for your time, and I'll see you again
21 in a couple minutes.

22 MR. BABBITT: My name is Robin Babbitt. I'm
23 acting with Holly on behalf of the Commission Staff
24 in this matter. We are the attorneys who are
25 scheduled to try the disciplinary matter. I think

Page 17

1 that Lea said that it was in mid-July, and I
 2 believe it's in mid-June. So we're moving forward
 3 to that end.

4 I beg to differ with Counsel. I've spoke to
 5 you before, and I typically have a different
 6 opinion. In this case it's no different.

7 This is a very important case for this
 8 Commission, and I would submit to you that the
 9 system will be broken if and only if you reverse
 10 the administrative law judge's order and allow
 11 intervention in this case by an owner. Let me try
 12 to explain that to you, and I'll be happy to answer
 13 any questions.

14 The case that we're working on is a
 15 disciplinary case. As you know, there is a full
 16 set of disciplinary rules in Article 10 of the
 17 horse racing rules that applies to disciplinary
 18 cases. In this particular case there is a claim
 19 that the trainer, who's responsible for the horse,
 20 and the assistant trainer, who we believe was
 21 actually involved in this incident, should be
 22 disciplined, etc. As a result, the rules say if
 23 there's an underlying action, then the stewards
 24 have the right to redistribute the purse. That's
 25 exactly what happened here.

Page 18

1 Now, if you listen to Mr. Terpstra, he said
 2 many things that I disagree with. That the owner
 3 was accused of cheating, that the owner has
 4 effectively been convicted of cheating. We flatly
 5 dispute that. There has been no charge against the
 6 owner at all. If the owner was charged with a
 7 disciplinary violation, then the owner would have
 8 all of the due process rights in Article 10. But
 9 the owner was not charged with a disciplinary
 10 action.

11 We've cited the Seventh Circuit case that was
 12 decided under different state laws in Illinois in
 13 the 1970s that says when the owner isn't
 14 specifically charged, the owner doesn't have an
 15 interest in protecting reputation. Because, trust
 16 me, there are 3,600 owners licenses, at least in
 17 2013, out of over 10,000 licenses that the
 18 Commission gave, and the reason that the rules are
 19 directed towards the trainers are because the
 20 trainers have ultimate responsibility for the
 21 horse, not the owners.

22 So if the owner's horse is subject to an
 23 illegal medication, unless the owner was actually
 24 involved and has knowledge, in which case there
 25 will be a disciplinary action, but if they're not,

Page 19

1 they're still subject to having the purse
 2 redistributed because there's been a violation of
 3 the racing rules and they're, therefore, not
 4 entitled to the purse.

5 Nobody's saying they did anything wrong. The
 6 things that were done wrong were done at a
 7 different level. In this case it's no different.
 8 So what we've got is we have an owner who is not
 9 charged with anything, who has a purse distribution
 10 which is entirely appropriate under the Indiana
 11 rules, and the owner comes in and says, you know,
 12 I'd really like to be involved in this disciplinary
 13 case even though I'm not named in the disciplinary
 14 case. And that would be a huge problem for the
 15 day-to-day operations of the Indiana Horse Racing
 16 Commission.

17 When is a purse earned? You have to kind of
 18 look at that. When is a purse earned? Well, is it
 19 earned when the horse crosses the finish line?
 20 That's what we like to think. However, there are
 21 all sorts of things that can happen, not only
 22 during the race, but medication violations. There
 23 are all sorts of other rules that can be violated.
 24 So the rules provide that the right to claim the
 25 purse isn't final until all of the underlying

Page 20

1 conditions of the race have been met. And if there
 2 is a violation, then the owner's not got a property
 3 interest in that purse.

4 Mr. Terpstra was right. We are interested in
 5 the whether there's a property interest or not.
 6 The aggrieved and adversely affected standard is a
 7 standard which is in the rules, which, quite
 8 frankly, Holly raised on behalf of the
 9 Commission Staff in response to the motion to
 10 intervene. It says you have to have a legal
 11 interest in property or you have to have a personal
 12 right before you're aggrieved and adversely
 13 affected.

14 Mr. Terpstra suggested that it's a low bar. I
 15 don't know in the regulations where it says it's a
 16 low bar. It says the person who is asking to
 17 intervene under the Administrative Orders and
 18 Procedures Act has the obligation to carry the
 19 burden that they're aggrieved and adversely
 20 affected. The administrative law judge didn't
 21 think they met that burden, and I agree that they
 22 had not met that burden.

23 If they had met the burden -- and they haven't
 24 under all of the cases that they've cited -- there
 25 is a condition there's a claimed underlying

Page 21

1 violation. We're still in the process of working
 2 that out. It's been vigorously contested.
 3 Nobody's sitting around saying . . . In fact,
 4 Mr. Terpstra's explanation didn't cover all of the
 5 witnesses that testified in the underlying suit
 6 here. Very hotly contested.
 7 Having said that, that doesn't give the owner
 8 a legal interest in the purse. There's no present
 9 deprivation of the legal interest until that purse
 10 is earned, and that purse is not earned until all
 11 the conditions have been met. That won't be known
 12 until the underlying case is over. Wasn't a legal
 13 interest at the time that the stewards acted, it's
 14 not a legal interest now.
 15 There's no reputational interest to protect.
 16 That's clear in the Edelberg case. There's no
 17 property interest.
 18 If you want to find a property interest, you
 19 have to go somewhere to state statute. We've been
 20 before the Seventh Circuit on another owner's case
 21 where they claimed a right to file an appeal after
 22 a placement decision was made. Seventh Circuit
 23 said you don't have a right to an appeal. That's
 24 the closest case we've ever had in Indiana to this
 25 particular case, but it didn't give the owner the

Page 22

1 right to file an action when his horse was sat down
 2 and he claimed a loss of money.
 3 The Seventh Circuit in Illinois case said you
 4 have no reputational interest. In fact, until all
 5 the conditions of the race are met, you don't have
 6 a property interest in the purse.
 7 The purse is what they're talking about.
 8 There's no fine that's been suggested. There is no
 9 suggestion that they should be tarnished by a
 10 suspension or any of those things. They can't make
 11 those arguments. So you have to look as to whether
 12 there is a current property interest, and there
 13 wasn't. The ALJ is absolutely right.
 14 Now, let me tell you what the risk is. If you
 15 say -- and it's easy the say -- well, it's just one
 16 case, no big deal, we'll let this guy intervene,
 17 what you do is you start opening a door where
 18 there's no legal right to participate in this
 19 proceeding. You've set a precedent now that will
 20 be pointed to for owners who want to come in.
 21 Let's say there's a driving crash, somebody's
 22 bumped during a race, the horse is disqualified,
 23 and now the stewards do what stewards do. They've
 24 already done the final placement. Horse crossed
 25 the finish line first.

Page 23

1 They bring a disciplinary action against the
 2 driver, the jockey, because the jockey violated the
 3 rules. What you've done is given now rise to the
 4 argument of every owner to come in and say, oh,
 5 well, you know, they could say my jockey cheated.
 6 I'll be tarnished. I have a property right in the
 7 purse which wasn't earned because my horse crossed
 8 the finish line first. We say, well, no, all the
 9 conditions weren't met. They turn to us and say,
 10 yeah, but the Commission let that happen in the
 11 Estvanko and Granitz case where the owner hadn't
 12 met all of the conditions of the purse.
 13 So it raises a procedural problem for the
 14 stewards if you don't affirm the ALJ, and now all
 15 of the sudden you've got twelve-hour notice, you
 16 got the jockey there but the steward's in New York
 17 or California, but the steward has due process
 18 rights. Which they don't have, by the way, under
 19 any statute or regulation in the state of Indiana.
 20 They would have pointed you to one if there was
 21 one. They're just saying kind of generally under
 22 due process rights. You have to have that property
 23 interest. They don't have it. They're not
 24 entitled to intervene. It's not a disciplinary
 25 action, and you will be setting a very dangerous

Page 24

1 precedents.
 2 So I would respectfully request that you
 3 affirm Judge Pylitt's decision and confirm the
 4 denial of the motion to intervene. I'll take any
 5 questions at any time. Thank you.
 6 MS. ELLINGWOOD: Mr. Terpstra, you've got
 7 three minutes. You can take it, not take it,
 8 whatever you'd like.
 9 MR. TERPSTRA: I'll take it.
 10 MS. ELLINGWOOD: All right. You're up.
 11 MR. TERPSTRA: It's not surprising that we
 12 disagree.
 13 There's a suggestion made by my opposing
 14 counsel that if you do not accept the recommended
 15 ruling by the ALJ, you're going to open the flood
 16 gates to all this litigation. That is simply
 17 inaccurate. In fact, I would argue the inverse is
 18 true. If you reject the ALJ's recommendation and
 19 allow Captain Jack to intervene in this case, it
 20 will close the gate to further and much more
 21 protractive litigation than what you're seeing now.
 22 Opposing counsel has cited the Edelberg case,
 23 which is a State of Illinois case. That case
 24 determined whether or not due process rights were
 25 violated when purse money was recaptured from an

Page 25

1 owner of a horse that was accused of doping. In
 2 that case the pivotal issue for the Court to rule
 3 to show that due process had been complied with and
 4 that it wasn't an unlawful taking of property was
 5 that the owner was involved and actively
 6 participated in all the underlying proceedings.
 7 Captain Jack is not standing here today asking
 8 you to return purse money. We're not doing that.
 9 We're asking to be allowed to participate in
 10 proving that the conditions to earn the purse money
 11 have been met.
 12 What is being suggested by opposing counsel
 13 and has been recommended by the ALJ in this case is
 14 likened to a participator in the Indiana Lottery
 15 who has a winning lottery ticket, he has the
 16 numbers on his card, but the Indiana Lottery does
 17 not allow him to show up to the door and show his
 18 card to prove that he's earned it. Much the same.
 19 The purse of the lottery player is not held and not
 20 earned until he can show the conditions of having
 21 the actual numbers are met.
 22 Same case here. Captain Jack has a right to
 23 purse money as long as the conditions are proven.
 24 What the ALJ is recommending here is that the owner
 25 sit aside while disciplinary action, which is not

Page 26

1 separate, it is not removed, it is not foreign to
 2 the earning of Captain Jack. In fact, it's
 3 directly related to whether or not Captain Jack
 4 gets the money. So why would they not? It goes
 5 against logic of why they would not be allowed to
 6 participate in proving conditions that is in their
 7 best interest to prove.
 8 My point in saying that is if they are not
 9 allowed to intervene, if they are not allowed to
 10 participate, the purse money's taken away and
 11 there's evidence that shows to the contrary that
 12 they were not allowed to contradict, they're going
 13 to file next in Circuit Court. That's the next
 14 level. Exhaust your administrative rulings, then
 15 the owner goes to the Circuit Court. That is much
 16 more laborious, much more protracted than what you
 17 see here today. In fact, the flood gates will open
 18 in that regard if the ALJ's recommendation is
 19 accepted.
 20 Therefore, I respectfully ask that this
 21 Commission reject the ALJ's recommendation and
 22 allow Captain Jack to participate in the appeals
 23 process going forward. I also will take questions.
 24 I know it's been raised. If I have any answers,
 25 I'll give them.

Page 27

1 MS. ELLINGWOOD: You may want to wait until
 2 Commission Staff's had the opportunity. They get
 3 three minutes for rebuttal.
 4 CHAIRMAN WEATHERWAX: Thank you.
 5 MR. TERPSTRA: Thank you for your generous
 6 time this morning. I appreciate it.
 7 MS. ELLINGWOOD: You don't have to take it
 8 either.
 9 MR. BABBITT: I won't take the full
 10 three minutes, but I'll take a little bit of time.
 11 The threat of protractive litigation is
 12 something I would submit to the Commission that
 13 I've probably got more experience of than anyone in
 14 the room. I've been involved in disciplinary cases
 15 since 1994 when the tracks opened, and there is
 16 almost always a claim that there's a violation of
 17 due process. It's an easy allegation to make. I
 18 can tell you up to this point, even though we've
 19 been up to the Seventh Circuit and I've argued
 20 there, those claims have never stuck.
 21 You can't sit there and you can't make policy
 22 on the fact that someone might file a claim because
 23 anybody can file a claim about anything. I would
 24 submit to you that it would create bad policy
 25 because you wouldn't have one lawsuit but you'd

Page 28

1 have now many challenges and potential lawsuits
 2 because you've opened the door to owners
 3 participating in disciplinary cases they're not a
 4 party to. They're not being disciplined. It's
 5 just the rules. Those are the rules of Indiana.
 6 So in any event, I think you have to be very
 7 careful about this. The issue goes to the legal
 8 interest, and you can couch it and say it's not
 9 about the purse, it's about our right to be heard
 10 on the purse. That's, I think, what I heard. The
 11 fact of the matter is you have to have a
 12 protectable legal interest to be aggrieved and
 13 adversely affected. That's what I said. You don't
 14 have that till all the conditions are met.
 15 Accordingly, you don't have standing.
 16 Judge Pylitt got it right, and I would submit
 17 to you that you should affirm his decision. Or
 18 we're going to have a situation where the stewards
 19 are going to be burdened by giving notice to owners
 20 in cases that they don't have otherwise any legal
 21 standing on any of the regulations and any of the
 22 statutes of the State of Indiana. They haven't
 23 pointed out to them, didn't in rebuttal. The
 24 legislature makes those rules, and they don't have
 25 it. So if you grant it to them otherwise, you are

1 creating a morass for the stewards in terms of
 2 giving notice to people who have no real interest
 3 in a disciplinary proceeding.
 4 Thank you so much. I'll take any questions as
 5 well.
 6 MR. TERPSTRA: Are there any questions?
 7 CHAIRMAN WEATHERWAX: Let me ask my
 8 Commissioners if they have a specific question.
 9 Commissioner Schenkkel?
 10 MR. SCHENKEL: I'm not a lawyer, but I heard
 11 the term reason and logic thrown around a couple
 12 times by both of you. The statutes and the rulings
 13 and everything confuse me when it comes to reason
 14 and logic. So excuse my questions. I have respect
 15 for you lawyers.
 16 I guess Mr. Terpstra. Were the trainers who
 17 were allegedly in violation and subject to
 18 disciplinary action employees of Captain Jack's?
 19 MR. TERPSTRA: It is my understanding that
 20 they were employees of Captain Jack, or at least
 21 agents of. They may have been employees or
 22 contractors.
 23 MR. SCHENKEL: They weren't free agents out
 24 there acting on their own? Captain Jack was the
 25 owner of the horse, but these folks were

1 responsible for it?
 2 MR. TERPSTRA: They had the authority and
 3 their treatment of Tam Tuff was consented to by
 4 Captain Jack.
 5 MR. SCHENKEL: Now my reason and logic kicks
 6 in then. I guess I wonder -- and this probably
 7 doesn't have an answer, it's more of a rhetorical
 8 question -- when they were subject to disciplinary
 9 hearings and possible action why they were not in
 10 touch with their boss.
 11 MR. TERPSTRA: That is a great question.
 12 MR. SCHENKEL: That baffles me, and why you
 13 said Captain Jack were unaware of this just escapes
 14 reason and logic in my mind.
 15 The other thing is that I think it's clear
 16 that your example of a lottery winner doesn't quite
 17 sit with me because the lottery ticketholder, we're
 18 talking here about a possible violation that's
 19 under investigation. If I buy a lottery ticket and
 20 it's in question, it's usually not because I wrote
 21 down the numbers. Those come out of a machine. So
 22 it's a much different situation.
 23 It just strikes me that if there was an error
 24 in this, it was internally in the Captain Jack
 25 operation personally. That's my personal feeling.

1 Not based on anything legal but just in the way
 2 that this process has moved forward. I'm not sure
 3 that there's any reason to doubt what the staff has
 4 done.
 5 MR. TERPSTRA: If you may be generous and
 6 allow me to reply?
 7 MR. SCHENKEL: Sure.
 8 MR. TERPSTRA: Your point is well taken. Why
 9 wasn't the trainer and the assistant trainer in
 10 touch with Captain Jack during the proceeding. I
 11 don't have an answer for you on that. However,
 12 based on what's been argued today, wouldn't have
 13 made a bit of difference. Even if they were
 14 notified, wouldn't have mattered because the
 15 stewards, the staff, the ALJ would have disallowed
 16 their participation anyway. So they could have
 17 been notified by their trainers and pleaded to come
 18 into court and pleaded to come in and participate
 19 and be a party to it, but it wouldn't have been
 20 allowed.
 21 MR. SCHENKEL: But your contention is that
 22 they had that right even though the purse was never
 23 officially awarded to them?
 24 MR. TERPSTRA: My contention is that there is
 25 a personal interest here, there's a pecuniary

1 interest here, and there is an expectancy interest
 2 in purse money by which that is a legal interest
 3 that is provided for protection.
 4 MR. SCHENKEL: As you said earlier, reasonable
 5 people disagree.
 6 MR. TERPSTRA: That's right.
 7 Anything else?
 8 CHAIRMAN WEATHERWAX: Any other questions?
 9 Commissioner Pillow?
 10 MR. PILLOW: Robin, this is a question for
 11 you. If the owner, Captain Jack, had been at that
 12 race and was standing at the finish line when the
 13 stewards came up and said, hey, there's a problem
 14 here, would he have been allowed to at that
 15 point --
 16 MR. BABBITT: (Shaking head)
 17 MR. PILLOW: So it was strictly his agents.
 18 MR. BABBITT: And, again, I'm not positive
 19 about this, but I think that the trainer was an
 20 independent contractor. I don't think it was an
 21 employee of Captain Jack.
 22 The fact of the matter is, unless the owner
 23 was involved in some way in a rule violation -- and
 24 the owner would then be subject to suspension and
 25 fine, which this owner wasn't -- that owner could

1 be at the race and say, hey, I disagree. There was
 2 a foul. I disagree. I want to participate. Let's
 3 say they're available at the track. They still
 4 would not be allowed to participate because there's
 5 no basis that they have to participate in the
 6 disciplinary matter. Their matter's
 7 non-disciplinary.

8 You can say it's not the interest in the
 9 purse, it's the interest in the expectancy of the
 10 purse. It's the interest in the purse. I mean,
 11 that's what they're really looking at.

12 Again, there is no reputational. Seventh
 13 Circuit took that out. We've not said the owners
 14 were bad guys, owners had anything to do with this.
 15 They've kind of offered that to you. That's
 16 nothing that the Commission Staff has done in any
 17 way or said or charged.

18 MR. SCHENKEL: Sorry. That raises another
 19 question. Then since there's no disciplinary
 20 action leveled against the owner, being aggrieved,
 21 I guess, Mr. Terpstra, is the term you used, is
 22 more by the perception rather than actual action by
 23 the Commission. Is that a fair statement?

24 MR. TERPSTRA: There's a reputational interest
 25 here, which is disputed by opposing counsel.

1 However, it does exist. There's a personal
 2 interest here as far as how they are treated going
 3 forward in entering races. They may be more highly
 4 scrutinized going forward, so there's a future
 5 earnings interest here.

6 Let's not forget this does come down to a
 7 right to purse money. And when it comes to a right
 8 to something, shouldn't the person whose right that
 9 is to claim be afforded the opportunity to defend
 10 itself or show the conditions have been met to earn
 11 that?

12 MR. SCHENKEL: But Captain Jack was not
 13 penalized or charged or in any way adversely
 14 affected officially in terms of any kind of ruling
 15 or adjudication?

16 MR. TERPSTRA: Under the rules it flows
 17 upward, so any violation in the conditions below
 18 the purse money takes away from the owner. So in
 19 that regard they have been adversely affected by
 20 the actions of other persons. That's the language
 21 of the administrative rule allowing intervention,
 22 if you are adversely affected by the actions of
 23 other persons. Other people here allegedly acted
 24 badly. Thereby, Captain Jack has been adversely
 25 affected and is aggrieved by the actions of other

1 persons.
 2 MR. SCHENKEL: I guess that's where, again, my
 3 reason and logic comes into bearing. As a
 4 businessperson, which Captain Jack is, they're
 5 responsible for their people. If their people did
 6 something incorrect, then they potentially suffer
 7 consequences. So, okay, thank you.

8 CHAIRMAN WEATHERWAX: Other questions?
 9 Lea, do you have any closing comments?

10 MS. ELLINGWOOD: No. Unless the Commissioners
 11 have any questions about the opinion I gave to you
 12 or any other questions that I can answer. I don't
 13 have any specific comments.

14 Just a reminder that at this point the next
 15 thing the Commission will need to do is to decide
 16 whether you want to adopt the ALJ's order denying
 17 Captain Jack's motion to intervene, if you want to
 18 amend that order, or if you want to dissolve it and
 19 essentially defer it back to the ALJ.

20 CHAIRMAN WEATHERWAX: Thank you, and thank you
 21 both for your testimony. We've learned a lot
 22 today. A lot of it deals with legal proceedings.
 23 A lot of it deals with the steps you go through
 24 where there is a grievance or a violation and a due
 25 process.

1 We can't really talk, I guess, about the real
 2 proof of the pudding, so to speak, about the
 3 violation. That'll come before us at a later date.
 4 And probably these trainers will be here at a later
 5 date?

6 MS. ELLINGWOOD: Yes.

7 CHAIRMAN WEATHERWAX: So we're not talking
 8 about that. We're talking about letting this due
 9 process work.

10 So what is the wish of the Commission?

11 MS. LIGHTLE: Make a motion to affirm.

12 CHAIRMAN WEATHERWAX: Make a motion to affirm
 13 the decision.

14 MR. SCHENKEL: Second.

15 CHAIRMAN WEATHERWAX: All those in favor, say
 16 aye.

17 THE COMMISSION: "Aye".

18 CHAIRMAN WEATHERWAX: We thank you.

19 Very good. Now, the second item deals with
 20 the licensing program and the case of Roman Chapa.

21 MR. GORAJEC: Yes.

22 CHAIRMAN WEATHERWAX: I have to admit that
 23 this was very revealing and very sad to think that
 24 this is going on. Tell us what this really
 25 describes.

Page 37

1 MR. GORAJEC: There's a very interesting
 2 current event in the racing industry with
 3 heightened interest and discussion about the use of
 4 a machine or a battery by jockeys on a horse, and
 5 the interest was heightened by this particular case
 6 and these photographs that I've put in the
 7 Commissioners' packet. I thought it would be a
 8 good time to talk about the practice, and I think
 9 this is a good time to take this particular case
 10 and discuss our licensing program and how our
 11 licensing program functions.
 12 It's a great photograph, don't you think?
 13 MS. LIGHTLE: Yeah.
 14 CHAIRMAN WEATHERWAX: Sad.
 15 MR. GORAJEC: This has been picked up not only
 16 by all of the racing press nationally, but it's
 17 been picked up by the general press, including, you
 18 can read in the ESPN article, by the New York Times
 19 writing a piece on this. As you can see in the two
 20 photographs, you can see the jockey with something
 21 in his hand, and you can see it magnified. This is
 22 something that happens a lot more frequently than
 23 people think.
 24 Included in your packet, I provided an article
 25 from a publication called Turf & Sport Digest.

Page 38

1 This is a magazine that I had sitting on my shelf
 2 at home. The magazine article's dated April 1970,
 3 45 years ago, where they were talking about riders
 4 riding with machines, and they have photographs of
 5 the machine, they have photographs of finding one
 6 in the dirt.
 7 I brought along some show and tell because I
 8 have a machine here (indicating). This machine was
 9 found in the dirt on the racetrack at
 10 Indiana Grand. Just so you know -- and this is
 11 important -- the batteries are dead.
 12 (Laughing)
 13 MR. GORAJEC: So if you press it, you will not
 14 be shocked.
 15 MR. SCHENKEL: Thank you.
 16 MR. GORAJEC: That's what it is. It is
 17 extremely difficult to detect when a jockey is
 18 using a machine. The shock value of that is
 19 abhorrent. We had a case several years ago, a
 20 machine case, in front of Judge Pylitt, who after
 21 hearing testimony of the shock value from an expert
 22 during a break touched a machine, but it wasn't a
 23 dead machine, it was a live machine. It was a
 24 great experience to watch.
 25 (Laughing)

Page 39

1 We've had a couple battery issues, the racing
 2 Commission has. Our first one was about
 3 fifteen years ago. We had a jockey that we
 4 suspected riding with a machine. Security
 5 approached him after the races to do a search. He
 6 ran. He ran into the jock's room, and by the time
 7 security caught up with him, he was pulling his
 8 hand out of the trash can in the jock's quarters.
 9 They emptied the trash can, and lo and behold they
 10 found the machine.
 11 That person was suspended for ten years.
 12 After five years we made a deal with him,
 13 settlement agreement. We lifted the suspension in
 14 exchange for him never to apply for a license in
 15 Indiana. So here's an instance where first-time
 16 use of a machine in Indiana ended up resulting in a
 17 permanent lifetime ban. We've had another one
 18 that, I believe, resulted in a five-year suspension
 19 by a jockey. So it's something that we take
 20 seriously.
 21 What I think is the most interesting thing
 22 about this particular instant as it relates to
 23 Indiana is the article that was written by Bill
 24 Finley that was published on the espn.com website.
 25 If you'll allow me, I'd just like to read a few

Page 40

1 excerpts from that.
 2 "There's something to be said for second or
 3 even third chances, but not when someone commits an
 4 act that is cruel to the horse, fleeces the bettors
 5 and damages the sport's reputation. Jockey Roman
 6 Chapa did just that not once but twice, yet a sport
 7 that is notoriously lenient on cheats and
 8 miscreants kept letting him come back. And
 9 apparently he never learned any lessons nor did he
 10 reform as he is being charged with carrying a
 11 battery. This time it happened January 17 in a
 12 race at Sam Houston.
 13 Shocking a horse with an electrical device is
 14 revolting and easily falls within the definition of
 15 animal cruelty. It's sick."
 16 Going on further, it says, "According to the
 17 Daily Racing Form, Chapa was first caught in 1994
 18 when he was suspended nine months in Texas for
 19 allegedly using a nail to stab a horse to try to
 20 make it run faster. The Form is also reporting
 21 that in 2007 he was banned for five years by the
 22 New Mexico Racing Commission for using an
 23 electrical device on a Quarter Horse at
 24 Sunland Park.
 25 There's more. Though unrelated to horse

Page 41

1 racing, in 2002 Chapa once again showed just what
 2 kind of person he is. According to the
 3 Paulick Report, he served 10 days in jail after a
 4 plea agreement that reduced felony charges of
 5 cruelty to animals to a misdemeanor. He was
 6 arrested after a December 14, 2001, incident in
 7 which police say 'he knowingly tortures an animal,
 8 namely a dog, by beating it with a strap.'

9 Yet none of this was enough for the sport to
 10 keep him out. Apparently, regulators were so
 11 feckless that they even let him back early. Chapa
 12 was supposed to begin a five-year suspension in
 13 2007 yet returned to riding in 2011, only
 14 four years later. So you have someone who used a
 15 nail on a horse, was caught using a battery on
 16 another and knowingly tortured his dogs. Through a
 17 combination of weakness, incompetence and apathy, a
 18 person who has absolutely no business participating
 19 in this sport was welcomed back to the saddle in
 20 2011. And it's just not racing commissions that
 21 should be coming under fire. Racetracks had the
 22 right to ban Chapa, yet Sam Houston and parent
 23 company Penn National welcomed him back to their
 24 riding colony despite his record."
 25 "Maybe this time racing will get it right and

Page 42

1 get rid of him for good."
 2 "Roman Chapa should have been thrown out a
 3 long time ago, but wasn't. That he was given
 4 chance after chance is inexcusable. Sadly, it's
 5 also typical."
 6 I agree with the assessment in Finley's
 7 column, especially the last part that giving a
 8 person chance after chance is inexcusable but sadly
 9 it's also typical. Roman Chapa, after all of his
 10 violations, except the last one this past year, he
 11 was licensed in Louisiana, Oklahoma, Iowa, New
 12 Mexico, and Texas.
 13 The reason I bring this up and bring it up in
 14 discussion with regard to our licensing program is
 15 because in 2012 Roman Chapa came to Indiana to
 16 race, okay. We reviewed his license application,
 17 like we review all license applications, and we
 18 refused him a license. There's a copy of the
 19 refusal here in the packet. You'll often hear me
 20 say or others that Indiana does things differently,
 21 and this is one of the things that we do
 22 differently.
 23 A lot of jurisdictions -- not all, but a lot
 24 of racing commissions -- have the unofficial policy
 25 that if someone applies for a license and they're

Page 43

1 currently not suspended, they get a license. In
 2 Indiana if you apply for a license, we review your
 3 record prior to issuing a license. We look to see
 4 what we've put on with regard to arrests.
 5 More importantly, if you're a standardbred, we
 6 go to the USTA, United States Trotting Association,
 7 we print out your history of fines and suspensions.
 8 If you're a thoroughbred and quarter horse, we go
 9 to the RCI, Association of Racing Commissioners
 10 International database, print out your history of
 11 fines and suspensions, and we review them.
 12 There are a handful of people whose history
 13 are egregious enough for us to refuse them a
 14 license. We don't refuse a lot of licenses. In a
 15 given year on an average, we refuse maybe 20, 25
 16 licenses. We issue 10,000. So the number of
 17 people who get refused are relatively small, but
 18 those are the people that are more likely going to
 19 cause a question on the integrity of your racing
 20 program.
 21 Just the fact that a person with this
 22 background, Roman Chapa, even if he didn't violate
 23 any of our regulations if he raced in Indiana,
 24 would be a cloud on our racing program to allow
 25 someone with that background to race. Even more

Page 44

1 important than that, we have found time after time
 2 that a person who has integrity violation on their
 3 record is much more likely than the Average Joe to
 4 get another integrity-related violation on his
 5 record. So that's why we scrutinize those so
 6 closely. Of the 20 to 25 refusals that we issue
 7 annually, I would say that half or more are people
 8 like Roman Chapa who are racing in other
 9 jurisdictions.
 10 So we've had a lot of conversation over the
 11 last year about drug testing and how important drug
 12 testing is, and drug testing is extremely
 13 important. I would maintain that of all of our
 14 programs that we have, I say our licensing program
 15 is really the backbone of our regulatory efforts.
 16 It's when people apply for a license that we get
 17 the opportunity to weed out the worst ones whose
 18 just presence on the track would call the integrity
 19 of our product into question, and more importantly,
 20 just the fact that they've had violations that are
 21 serious or so many violations that they're more
 22 likely to cause continued problems for us had we
 23 given them a license.
 24 So like I said, this was a good way of taking
 25 a current event and turning it into a presentation

Page 45

1 on licensing. I hope that this particular case and
 2 this particular article and several like it will
 3 cause racing commissions across the country to look
 4 closer and scrutinize individuals that come on
 5 their doorstep before they issue a license.
 6 CHAIRMAN WEATHERWAX: Very good, Joe.
 7 Commissioners?
 8 MS. LIGHTLE: I would like to give a
 9 fifteen-minute oratory on this mess. I couldn't
 10 believe what I was reading here, that this person
 11 was allowed to race anyplace. As far as I'm
 12 concerned, I mean, doping is horrible and I'm
 13 against doping horses, but this guy's a mess and
 14 what he is capable of doing on a racetrack is
 15 absolutely horrible. Why in the world would
 16 anybody, would any commission, let this guy over
 17 and over and over again be on a racetrack?
 18 As I was reading through this and I got to the
 19 last page where it says we didn't give him a chance
 20 to race here, I was thrilled with that. So I'm
 21 appalled by this, and hopefully maybe some of the
 22 other commissions will take a good look at stuff
 23 like this. This guy not only can ruin his own
 24 horse and hurt himself, he can hurt a lot of other
 25 people and a lot of other horses. That's just

Page 46

1 ridiculous that he's ever allowed on a racetrack.
 2 Should never be allowed to touch another horse.
 3 It's disgusting.
 4 MR. GORAJEC: The nail was enough. Didn't
 5 expect that.
 6 MS. LIGHTLE: This man is cruel to animals.
 7 He shouldn't be on a track. He shouldn't be
 8 allowed to have a horse, in my opinion.
 9 Thank you. I'm delighted to find out that
 10 we're this tough on licensing, that we take a
 11 moment to go back and look at who we're putting on
 12 our racetracks. I think it's important, and I
 13 would think that any horseman, anybody that has
 14 anything to do with horses or the tracks would feel
 15 the same way.
 16 MR. PILLOW: Lea or Joe, was this a
 17 informational piece that was just added?
 18 MR. GORAJEC: Yes.
 19 CHAIRMAN WEATHERWAX: Follow-up. You said the
 20 last time you ever knew of a case in Indiana was
 21 fifteen years ago?
 22 MR. GORAJEC: No. We've had one more recent.
 23 Our first case was about fifteen years ago.
 24 MS. ELLINGWOOD: 2012.
 25 MR. GORAJEC: The last one, 2012.

Page 47

1 MS. ELLINGWOOD: He was suspended for
 2 ten years.
 3 CHAIRMAN WEATHERWAX: So the real penalty is
 4 immediate suspension for ten years? Or does that
 5 vary upon what the charge is?
 6 MS. ELLINGWOOD: He went through the
 7 disciplinary process. He was suspended. We had a
 8 hearing, and then the decision was brought to the
 9 Commission for approval just like you normally have
 10 happen.
 11 MS. LIGHTLE: One more question. You say as
 12 you went through this talk about it's very, very
 13 difficult to find this, to know the guy's got this.
 14 Is there anything going on, any kind of work going
 15 towards trying to make it easier for these guys to
 16 be detected before?
 17 MR. GORAJEC: Oh, absolutely. In fact, we
 18 just met on that particular topic just this week.
 19 Two things.
 20 One way is to search the jock's quarters, and
 21 we picked a day just last year -- in fact,
 22 Terry Richwine, our security director, under his
 23 watch -- he and his security team of investigators
 24 picked a quarter horse day, an all quarter horse
 25 day. I don't want to pick on the quarter horses.

Page 48

1 You can see Roman Chapa used a machine both on both
 2 thoroughbreds and quarter horses. I think most
 3 people in the business would tell you that if a
 4 machine's going to be used, it would be more likely
 5 to be used in a quarter horse race than a
 6 thoroughbred race. I'm sure I'll get people
 7 telling me otherwise after the meeting.
 8 So we picked a quarter horse day, kept it on
 9 the QT, and they did a very, very thorough search
 10 of the jock's quarters. Turned the jock's lockers
 11 upside down. Did it in a very professional, very
 12 respectful way. I was there. It was done very
 13 professionally. We didn't find any machines.
 14 One thing that we have done, we've searched
 15 jockeys before. We've searched them coming out of
 16 the jock's quarters. We've searched them by
 17 actually dismounting at the gate prior to a race.
 18 One of the things that we did do is we purchased a
 19 wand, a metal detector, and we talked about upping
 20 our game by, because we have the wand, to do it
 21 more often and do it at different locales at
 22 different times and you could wand the jock down.
 23 If it's metal, then, you know, it'll beep.
 24 So we do our best, but it ain't easy to catch.
 25 CHAIRMAN WEATHERWAX: All right. Any other

Page 49

1 comments? Well, thank you, Joe, for putting this
 2 before us.
 3 Next, Holly.
 4 MS. NEWELL: Yes. The Commission has before
 5 it a ruling log which spans January, February, and
 6 March. Again, not to the heart of the season yet,
 7 so there aren't a whole lot of rulings. To the
 8 extent you have any questions on any of them, we're
 9 happy to address those.
 10 CHAIRMAN WEATHERWAX: So these were mainly
 11 from last year?
 12 MS. NEWELL: Yes. A lot of this is carrying
 13 over from last year or finishing up some rulings
 14 that were outstanding or late in the meet. Then I
 15 think the only one that's live from this race meet
 16 is the very last one.
 17 CHAIRMAN WEATHERWAX: Okay.
 18 MR. SCHENKEL: Chairman, ask one question
 19 here.
 20 CHAIRMAN WEATHERWAX: Yes, Mr. Schenkel.
 21 MR. SCHENKEL: Probably easy explanation for
 22 this. I see on here three cobalt violations, just
 23 as an example, and each one has a different
 24 penalty. Well, two of them have different
 25 penalties, the third one doesn't have a penalty.

Page 50

1 MS. NEWELL: That would have to do with the
 2 level of cobalt that was detected.
 3 MR. SCHENKEL: I assumed that that was the
 4 case. Okay.
 5 MS. NEWELL: I believe one of these was a
 6 second violation, so . . .
 7 MR. SCHENKEL: One is, yes. Thank you.
 8 MS. NEWELL: Anything else?
 9 CHAIRMAN WEATHERWAX: No. Do we have to vote
 10 on this or is this just informational?
 11 MS. NEWELL: Just informational.
 12 CHAIRMAN WEATHERWAX: Thank you, Holly.
 13 Next I see, Joe, you're going to be talking
 14 about the cobalt split sample labs for this year.
 15 MR. GORAJEC: Yes. At the last Commission
 16 meeting, the Commission approved all the split
 17 sample labs for 2015 and beyond. When we made our
 18 presentation to you, we were assuming that the
 19 cobalt that were going to be going to the
 20 University of Kentucky were going to be flowing
 21 through LGC, the laboratory in Kentucky. That's
 22 not going to be the case. They're going to be
 23 going to the University of Kentucky directly.
 24 So I would just like to have the Commission
 25 approve and acknowledge that change; that instead

Page 51

1 of listing LGC as a split sample lab for cobalt
 2 testing, we are listing University of Kentucky.
 3 CHAIRMAN WEATHERWAX: Okay. Maybe I didn't
 4 read the final script here.
 5 MR. GORAJEC: There's no handout. It's just
 6 that one simple change.
 7 CHAIRMAN WEATHERWAX: Well, do we need to vote
 8 on that?
 9 MS. ELLINGWOOD: Yes.
 10 CHAIRMAN WEATHERWAX: Repeat your suggestion
 11 one more time so we can vote on it.
 12 MR. GORAJEC: The Commission has already
 13 approved the University of Kentucky to receive and
 14 do split sample testing on cobalt, but the way the
 15 presentation was made before you, those samples
 16 were going to be running through LGC to the
 17 University of Kentucky. We've discovered a change
 18 in the process since the last meeting. Those
 19 samples are not going to be going to LGC for
 20 cobalt, they're going to be going right to
 21 University of Kentucky.
 22 We'd just like to acknowledge that and have
 23 that on the record.
 24 CHAIRMAN WEATHERWAX: So the samples are going
 25 to go to the University of Kentucky?

Page 52

1 MS. ELLINGWOOD: Correct.
 2 CHAIRMAN WEATHERWAX: So do I hear a motion on
 3 that?
 4 MR. SCHENKEL: Move approval.
 5 CHAIRMAN WEATHERWAX: Second?
 6 MS. LIGHTLE: Second.
 7 CHAIRMAN WEATHERWAX: All those in favor can
 8 say aye.
 9 THE COMMISSION: "Aye".
 10 CHAIRMAN WEATHERWAX: Okay, Joe. The record
 11 will reflect that change in the new process of
 12 cobalt.
 13 No. 5 on the agenda is emergency rules
 14 regarding human drug testing.
 15 MR. GORAJEC: This is the type of rule that I
 16 really like bringing to the Commission because it's
 17 one of those rule amendments that I think is a
 18 win/win for everybody. Everybody benefits by this
 19 proposed change.
 20 In the past all of the testing done on
 21 licensees or prospective licensees for drugs has
 22 been through the medium of urine. Now there's
 23 technology that we're comfortable with -- and more
 24 importantly, our laboratory is comfortable with --
 25 using an oral swab. The accuracy of those are

Page 53

1 consistent with the accuracy of the urine.
 2 So we're proposing adding the saliva to a
 3 medium to be tested, and that way, if approved,
 4 we'll be utilizing possibly urine but predominantly
 5 using the oral swabs, which I think everybody in
 6 the room would agree is a much less invasive-type
 7 collection procedure.
 8 Nobody, none of the licensees, prospective
 9 licensees, and probably the jockeys -- and I'll say
 10 the jockeys because as a category they probably get
 11 tested more than any other category, for a number
 12 of reasons -- we don't like to ask them to give
 13 urine. They don't like to give it. I can tell you
 14 without any hesitation that our investigators don't
 15 like it.
 16 So I think going to the oral swab is a
 17 win/win/win. Everybody benefits. The integrity is
 18 protected. I would ask the Commission to approve
 19 these rule changes that puts the oral swabs in our
 20 arsenal for human drug testing and do everybody in
 21 the industry a favor.
 22 CHAIRMAN WEATHERWAX: Okay. Understand
 23 clearly.
 24 Any questions from the Commission?
 25 MR. SCHENKEL: I notice it's an emergency

Page 54

1 rule. So by doing this, this will get it into
 2 effect as soon as possible for this racing season?
 3 MS. ELLINGWOOD: Right. It falls under our
 4 policy for emergency approval because this is a
 5 timeliness issue. Yes, definitely. As soon as the
 6 rule is filed with the Legislative Services Agency,
 7 it will become that.
 8 CHAIRMAN WEATHERWAX: Then you do notification
 9 to everybody involved somehow?
 10 MS. ELLINGWOOD: I don't know that there's --
 11 CHAIRMAN WEATHERWAX: Is there a need to
 12 notify the people?
 13 MR. GORAJEC: I mean, they'll be notified when
 14 we ask them. The group that we ask most often
 15 would be the jockeys, and this is perfect timing
 16 because our stewards have a meeting with the
 17 jockeys, okay, basically an hour before post time
 18 on opening day. If the Commission approves this,
 19 they'll let everyone in on what the new program is.
 20 CHAIRMAN WEATHERWAX: Well, that's due
 21 process, enough notice.
 22 Yes, Commissioner Pillow?
 23 MR. PILLOW: In some of our past meetings, we
 24 have addressed some emergency rules. In talking to
 25 some of the owners, they have somewhat of a problem

Page 55

1 with the emergency rules that are just dropped on
 2 them. So are we talking to our stakeholders before
 3 we come up with all these new emergency rules that
 4 have to go into effect the next day?
 5 MR. GORAJEC: I think we'll both discuss this.
 6 This particular rule, for example --
 7 MR. PILLOW: This goes past this rule. Let's
 8 stick with the whole emergency rules. This one is
 9 what we're talking about right now, but it's still
 10 an emergency rule. I'm just getting feedback from
 11 people saying, well, these emergency rules are just
 12 dropped on us out of the clear blue sky. All I'm
 13 saying is: Do we talk to our stakeholders before
 14 we do this?
 15 MR. GORAJEC: We do talk to our stakeholders.
 16 I'll use this rule as an example, this one in front
 17 of us.
 18 About a month ago I met with the
 19 representatives of each horsemen's association. We
 20 talked about the rule, had a draft in front of
 21 them. In fact, this was before the last meeting,
 22 and I held off on it to collect more information.
 23 First of all, if someone doesn't know about it
 24 and they think it affects them and they think they
 25 should know about it, then in all likelihood

Page 56

1 they're not communicating with their horsemen's
 2 association or the horsemen's association's not
 3 communicating with them, okay.
 4 When we look at promulgating a rule that
 5 affects the horsemen, we don't put out a notice to
 6 4,000 owners and trainers. No, we work through the
 7 elected officials of the association. So for the
 8 standardbreds it's the ISA. For the thoroughbreds
 9 it's the HBPA. For the quarter horses they have
 10 their own association. That's who we deal with.
 11 Depending on what the rule is, this particular rule
 12 we spent a lot of time with the guild,
 13 Terry Richwine. I talked to the jockey guild
 14 representative, he was informed. So they know
 15 what's going on. If they don't know what's going
 16 on, they should. It's not because we haven't told
 17 them. It's just that it's communication with their
 18 association.
 19 On the alternative, the regular rule-making
 20 process is a lengthy process. If the Commission
 21 wanted to pass this by the regular rule-making
 22 process, I wouldn't object. Then again, you know,
 23 we would be probably instituting it, implementing
 24 it next year. So 200 licensees this year would
 25 give urine instead of getting the oral swab. So

Page 57

1 it's not the Commission's benefit. The Commission
 2 doesn't benefit by this.
 3 What I've found generally, though, is
 4 this: If it's a rule people support, they want it
 5 passed the next day. If it's a rule that they
 6 object to, if it's a rule that puts kind of limits
 7 on them, oh, you know, we want more time, let's
 8 look at this, you're moving too fast. They can't
 9 have it both ways. If it's a rule that we can
 10 implement at the beginning of the race meet, then
 11 we should do it on all the rules, unless there is a
 12 compelling reason not to do it. It's not for my
 13 benefit. It's for the benefit of the horsemen or
 14 sometimes the track.
 15 MR. PILLOW: I understand. I just sometimes
 16 have a problem with emergency rules that haven't
 17 been vetted.
 18 MS. ELLINGWOOD: A lot of times, too,
 19 Commissioner Pillow, just to kind of piggyback a
 20 little bit on what the Executive Director said, the
 21 vast majority of the time when a rule is adopted
 22 via the emergency rule process and it's something
 23 that's material or substantive, like medication
 24 rules and some other things that we have done, the
 25 draft rules are sent to the association and other

Page 58

1 stakeholders, who have the opportunity to comment
 2 and suggest changes. That doesn't happen
 3 100 percent of the time, but it definitely is the
 4 norm, I would say.
 5 MR. PILLOW: Okay.
 6 CHAIRMAN WEATHERWAX: Very good. Good point,
 7 Commissioner Pillow.
 8 All right. So we have this proposed
 9 additional language for drug testing. We need to
 10 adopt this telling that they can use a swab or
 11 saliva as well or the urine. So do I have a
 12 motion?
 13 MR. SCHENKEL: Move approval.
 14 CHAIRMAN WEATHERWAX: A motion to approve.
 15 MS. LIGHTLE: Second.
 16 CHAIRMAN WEATHERWAX: All those in favor, say
 17 aye.
 18 THE COMMISSION: "Aye".
 19 CHAIRMAN WEATHERWAX: So it passes.
 20 Now, emergency rule regarding administrative
 21 procedures prior to split sample testing.
 22 MR. GORAJEC: Commissioners, this rule is a
 23 clarification. If anything, this rule is really
 24 consistent with current practice. We want to make
 25 it clear that once a ruling is issued that there is

Page 59

1 no confidentiality to the substance that was found
 2 by the laboratory and the person's being
 3 disciplined by. I think everyone in the room would
 4 say that's common sense because every ruling that
 5 we've issued and every ruling that every racing
 6 jurisdiction that I know of lists the drug that was
 7 found in a horse's system.
 8 We just want to make it clear. When you read
 9 it without that new verbiage in there, you could
 10 make a case, well, the rule says you have to keep
 11 it confidential. The fact of the matter is that we
 12 always have and racing commissions all across the
 13 country always have included in the ruling the drug
 14 that was the subject of the violation.
 15 CHAIRMAN WEATHERWAX: So this is more or less
 16 self-explanatory, but you're thinking this makes it
 17 clear of what we are now doing in practice?
 18 MR. GORAJEC: It's clarification.
 19 CHAIRMAN WEATHERWAX: All right. This, again,
 20 is an emergency rule. Do I have a motion to accept
 21 this language addition?
 22 MS. LIGHTLE: Motion.
 23 MR. SCHENKEL: Second.
 24 CHAIRMAN WEATHERWAX: All those in favor,
 25 please say aye.

Page 60

1 THE COMMISSION: "Aye".
 2 CHAIRMAN WEATHERWAX: Okay. Lea?
 3 MS. ELLINGWOOD: Actually I'd kind of like to
 4 step back a little bit. With respect to the
 5 emergency rule, I think it's important to make sure
 6 we have on the record why the last rule is the
 7 Commission's policy for emergency adoption. Which
 8 would be? This was you.
 9 MR. GORAJEC: I think there's a timeliness.
 10 We're beginning our race meet. We'll be beginning
 11 to receive lab reports on positive tests. We just
 12 want to make sure that our rule is consistent with
 13 our practice, that we're going to be putting the
 14 drug that's subject to violation in our rule.
 15 MS. ELLINGWOOD: You don't need to go about it
 16 again. I just wanted to make sure we have on the
 17 record.
 18 CHAIRMAN WEATHERWAX: I understand timing is
 19 everything and we're trying to do things before the
 20 season starts.
 21 To your point, Commissioner Pillow, the one
 22 thing that we heard that was unusual -- of course,
 23 every time we have a meeting here, something's
 24 unusual, especially last year -- we had some pretty
 25 serious changes during the course of the year and

1 those were serious rule changes or implementation
2 of something new. That's a big difference between
3 this kind of stuff. So your point is well taken.

4 Okay, Lea. This is important because this
5 deals with allowing people to do what they do for a
6 living.

7 MS. ELLINGWOOD: It is important. Thank you,
8 Chairman. This, like the two previous emergency
9 rules before it, I think it's appropriate for an
10 emergency rule because of timeliness.

11 Our current administrative rules require
12 Centaur to file with the Commission contracts for
13 approval in advance of being able to execute that
14 contract. As businesspeople, you know that when
15 time is of the essence that meeting that
16 requirement can be burdensome and actually in some
17 instances impossible to do.

18 This change that's before you is consistent
19 with the way the Gaming Commission regulates the
20 approval of contracts. Follow what they do. There
21 are a couple of material changes I'd like to make
22 sure that I point out. That is that all of the
23 contracts over \$50,000, regardless of whether or
24 not they're approved by the Commission, have to be
25 in writing.

1 There still will be four kinds of contracts
2 that will be required to come to the Commission and
3 the Executive Director for approval. Those are
4 contracts for management of the OTB or the track
5 itself, a contract with a horseman's association, a
6 contract for tote services, and a contract between
7 Centaur and related party that's valued at more
8 than \$50,000 except employment contracts. So you
9 would not have to approve Mr. Ratcliff's employment
10 contract or Brian's or Mr. Keeler's. I suppose you
11 could ask if you'd like to.

12 (Laughing)

13 MS. ELLINGWOOD: The rule also provides that
14 contracts have to be submitted to the Commission
15 not more than seven days after they've been
16 executed, so those four kinds of contracts will
17 come in seven days.

18 The most important part of the rule in my mind
19 is that the Commission still has the authority to
20 terminate a contract if the contract violates our
21 administrative rules or our statute. It also
22 increases the dollar amount of expansions to the
23 satellite facilities and the tracks to \$500,000,
24 which I think is consistent with business practices
25 now.

1 To me it's a pro business change to our rules,
2 and I hope I won't regret saying this but Centaur
3 has been very responsible licensee and has done a
4 good job. I think they make good, sound business
5 decisions, and so this rule is reflective of that.

6 Happy to answer any questions now.

7 CHAIRMAN WEATHERWAX: Commissioner Schenkel?

8 MR. SCHENKEL: Let me look ahead in items 8
9 through whatever on the agenda coming up. Make
10 sure I understand this. To me this is the
11 management procedure and gets us out of trying to
12 manage day-to-day operations for these folks but
13 rather we wouldn't have to approve who they buy the
14 pizzas from or where they get their hot dogs on a
15 day-to-day basis; right? To me this is a business
16 issue that puts this back in their hands. If
17 there's a problem, we can rescind it or cancel it
18 at a later day date. I'm not worried about which
19 pizza you serve. To me that's not a Commission
20 function.

21 MS. ELLINGWOOD: That's exactly right,
22 Commissioner. As a matter of fact, with the
23 adoption of this rule, you would not have had to
24 have looked at 8, 9, 10, 11 possibly. So this
25 would clear off a lot of the contracts the

1 Commission currently reviews.

2 Frankly, Mr. Keeler or anybody else from
3 Centaur is welcome to comment, but I suspect that
4 it is very burdensome for them to have to come to
5 the Commission in advance of being able to execute
6 a contract. What you're getting now is a draft and
7 then they have to go back and sign it. When you're
8 trying to get something done by the beginning of
9 the meet or the middle of the meet or the end of
10 the meet . . .

11 MR. SCHENKEL: This lets the license holder be
12 the manager of their own venture.

13 MS. ELLINGWOOD: Yes.

14 CHAIRMAN WEATHERWAX: Point well taken,
15 Commissioner Schenkel. When I first looked at this
16 and I talked with Counsel, I was a little concerned
17 until I realized pretty quickly that this is their
18 money. It doesn't affect, I think, the horsemen.
19 It doesn't affect the taxpayers. It's not money
20 that is taken from one particular pot to try to put
21 in another pot. It's their money to manage and do
22 the business as they wish.

23 MS. ELLINGWOOD: Again, to reiterate, to the
24 extent that we have a contract that is in conflict
25 with our rules, you absolutely have the authority

Page 65

1 to terminate the contract.

2 CHAIRMAN WEATHERWAX: That's important too.

3 MR. SCHENKEL: We still have to deal with

4 these other items today on the agenda. Even though

5 it is an emergency rule, it's not such an emergency

6 that it takes effect instantaneous; right?

7 MS. ELLINGWOOD: I'm fast, but not that fast.

8 MR. SCHENKEL: Just want to make sure I was

9 clear on the proceeding.

10 MS. ELLINGWOOD: This will be the last time

11 hopefully you'll have to approve some of these

12 kinds of contracts.

13 MR. GORAJEC: Maybe we can add a category.

14 Regular rule-making process, emergency rules, and

15 instantaneous.

16 MR. SCHENKEL: Simultaneous.

17 MR. PILLOW: Lea, I am concerned about what

18 kind of pizza they serve. I want to look at that

19 contract.

20 (Laughing)

21 CHAIRMAN WEATHERWAX: Lea, you've done a good

22 job of explaining why this makes sense for business

23 to manage. We need to approve this motion to

24 accept this change from the \$50,000 threshold to

25 \$500,000, knowing full well that there's still

Page 66

1 ample time for us to review those four parts of the

2 contract that still are subject. So do I have a

3 motion?

4 MR. PILLOW: I'll make a motion.

5 CHAIRMAN WEATHERWAX: George makes a motion.

6 MS. LIGHTLE: Second.

7 CHAIRMAN WEATHERWAX: All those in favor,

8 please say aye.

9 THE COMMISSION: "Aye".

10 CHAIRMAN WEATHERWAX: Okay. This is what

11 really happens when you don't have No. 7 passed.

12 John Keeler, would you like to explain why you're

13 here today?

14 MR. KEELER: Thank you, Mr. Chairman, members

15 of the Commission. John Keeler, representing

16 Centaur.

17 First of all, if I might, with regard to the

18 emergency rule you just passed, I'd like to

19 congratulate the staff for recognizing how

20 burdensome that rule was, how out of date and out

21 of touch it was, and having foresight to go ahead

22 and revise it in a manner that I think will be

23 practical and involving Centaur collaboratively to

24 work on the language of the rule. So thank you

25 very much for passing that.

Page 67

1 Mr. Chairman, if I might, with regard to

2 agenda item 8, if I could consolidate that with

3 items 9 and 10 and address them together? It's the

4 franchise agreement and two leases.

5 CHAIRMAN WEATHERWAX: Go ahead, John.

6 MR. KEELER: Thank you, Mr. Chairman.

7 I think for any business to keep ahead of the

8 curve and to be innovative and attract and maintain

9 customers, they have to refresh their product.

10 That in essence is what we're attempting to do at

11 Hoosier Park with regard to our food offerings. As

12 you can see, there are two leases where we've

13 involved local operators. They would be on the

14 first floor of the grand stand. These are

15 relatively short-term percentage leases, one for a

16 local Italian restaurant, one for a Dog n'

17 Suds-type franchise. Then on the upper level where

18 Johnny Rockets currently has been, we intend to

19 replace that with a franchise from New Orleans,

20 Louisiana, under the name VooDoo BBQ.

21 We'll have another surprise offering, which

22 you'll just find out about where the sushi

23 restaurant was up on the second level. You won't

24 have to approve now.

25 MR. PILLOW: I want to see that contract.

Page 68

1 (Laughing)

2 MR. KEELER: So I'd be happy to answer any

3 questions you might have about those three

4 contracts, the two leases and the one franchise

5 agreement, but otherwise I would respectfully

6 request your approval.

7 CHAIRMAN WEATHERWAX: Do we have any questions

8 from the Commissioners in regards to those three

9 different contracts, the food distributors?

10 Remember now we're voting on 8, 9, and 10 at one

11 time because they all fit the exact same permission

12 request.

13 MR. SCHENKEL: Move acceptance.

14 CHAIRMAN WEATHERWAX: I have a motion to

15 accept.

16 MR. PILLOW: Second.

17 CHAIRMAN WEATHERWAX: All those in favor, say

18 aye.

19 THE COMMISSION: "Aye".

20 CHAIRMAN WEATHERWAX: Thank you, John.

21 MR. KEELER: Thank you.

22 CHAIRMAN WEATHERWAX: No. 11, is that you too,

23 John?

24 MR. KEELER: It is. Thank you, Mr. Chairman,

25 members of the Commission. John Keeler,

Page 69

1 representing Centaur.

2 This petition requests permission for

3 Indiana Grand to erect a quarter horse barn, the

4 plans of which you've been provided with and which

5 have been approved by the Indiana Quarter Horse

6 Association. The cost is approximately \$1 million,

7 and we're also asking you to approve that

8 construction contract.

9 The erection of this barn was part of our

10 commitment as part of the 609 distribution

11 agreement to the quarter horsemen. We have the

12 capital. We've started on some of the preliminary

13 work. Like for you to approve this so that we can

14 go ahead and erect it and hopefully have it in use

15 by the end of this particular race season.

16 MR. SCHENKEL: That's the timeline?

17 MR. KEELER: Yes.

18 CHAIRMAN WEATHERWAX: I think we saw a diagram

19 of that once before. Didn't you present that?

20 MR. KEELER: Should be.

21 CHAIRMAN WEATHERWAX: We've seen that, yes.

22 Of course, even if we've just passed the emergency

23 ruling, this would be before us no matter what if

24 it happened again.

25 MR. KEELER: That's right, because of the

Page 70

1 cost.

2 CHAIRMAN WEATHERWAX: Well, I know those

3 people are very excited about this, John, and they

4 appreciate your commitment and Rod's to improving

5 substantially their barn.

6 So is there any other questions? Do I have a

7 motion to accept this proposal to build the new

8 quarter horse barn as spelled out under item

9 No. 11?

10 MS. LIGHTLE: I make a motion.

11 MR. SCHENKEL: Second.

12 CHAIRMAN WEATHERWAX: All those in favor, say

13 aye.

14 THE COMMISSION: "Aye".

15 CHAIRMAN WEATHERWAX: It passes. Thank you,

16 John.

17 MR. KEELER: Thank you, Mr. Chairman.

18 CHAIRMAN WEATHERWAX: Now for some reason I

19 put down Centaur for 13, 14, and 15.

20 MS. ELLINGWOOD: We weren't sure who.

21 CHAIRMAN WEATHERWAX: We don't know who's

22 going to participate in that.

23 MS. ELLINGWOOD: Suspect there are probably

24 people from each of the associations who'd like to

25 speak.

Page 71

1 CHAIRMAN WEATHERWAX: Let's just talk about

2 No. 13 right now, standardbred. Jack, is that you?

3 MR. MOORE: Rick Moore, vice president and

4 general manager of racing for Hoosier Park. The

5 contract before you between Hoosier Park and the

6 Indiana Standardbred Association pretty much

7 mirrors the ones you approved the last several

8 years. There's no substantive changes to it. I

9 think Jack would agree.

10 MR. KIENINGER: Yes.

11 MR. MOORE: So we ask your approval.

12 CHAIRMAN WEATHERWAX: Thank you very much.

13 Now, this is just about, you said, or is the same

14 as last year's.

15 MR. MOORE: We cleaned up some language, but

16 there's no substantive changes.

17 CHAIRMAN WEATHERWAX: So this is something

18 that we approve each year? Is that part of the due

19 process?

20 MR. MOORE: Yes, Chairman, it is.

21 CHAIRMAN WEATHERWAX: Very good. Thank you.

22 MS. ELLINGWOOD: Chairman, just as a side

23 note. This is the kind of contract you continue to

24 approve.

25 CHAIRMAN WEATHERWAX: Every year?

Page 72

1 MS. ELLINGWOOD: Yes.

2 CHAIRMAN WEATHERWAX: Thank you. We have new

3 members. It's kind of nice to know that this is

4 what's going to happen. This is something that you

5 hammer out between the associations and yourselves

6 before you get to this?

7 MR. MOORE: We certainly do. We do it every

8 year. Try to get together towards the first part

9 of the year so that we've got the agreement in

10 place even before the meet starts and ready to

11 present to you for approval.

12 CHAIRMAN WEATHERWAX: Very good.

13 Any questions from the Commissioners?

14 All right. Then let's take this by motion

15 also to accept this contract between Centaur and

16 the Standardbred Association. Do I have a motion?

17 MR. SCHENKEL: So moved.

18 MR. PILLOW: Second.

19 CHAIRMAN WEATHERWAX: All those in favor, say

20 aye.

21 THE COMMISSION: "Aye".

22 CHAIRMAN WEATHERWAX: Thank you. No. 14 is

23 between Centaur and the Indiana Horsemen's

24 Benevolent and Protective Association. Jon?

25 MR. SHUSTER: Good morning, Commissioners.

1 Thank you. I think I speak for all of us. Thanks
 2 for bringing up more pizza and hot dog concessions.
 3 For the record, I left Penn National in 2002 before
 4 the whole Roman Chapa thing. I was here.
 5 (Laughing)
 6 MR. SHUSTER: The first item for us is our
 7 contract with the HBPA, the thoroughbred horsemen.
 8 Only two substantive changes this year. One is the
 9 addition of the ability for trainers fees to come
 10 out with the purse money through the horsemen's
 11 bookkeeper, which they requested and we're glad to
 12 accommodate. The other is our partnership with
 13 them, which we appreciate, on the purchase and the
 14 installation of the operation of our track
 15 assistant, which we'll have this year. Other than
 16 that, the contract is largely the same as previous
 17 years.
 18 MR. SCHENKEL: So the trainers fees is new?
 19 MR. SHUSTER: Yes, it's new. I'll kind of
 20 paraphrase it. It allows some automated payments
 21 to trainers instead of owners having to get checks
 22 and take it to trainers. They also have the
 23 ability to opt out, so you don't have to do it that
 24 way.
 25 MR. SCHENKEL: Okay. Thank you.

1 CHAIRMAN WEATHERWAX: Commissioner Pillow?
 2 MR. PILLOW: We had some issue with this
 3 benevolent process last year.
 4 MS. ELLINGWOOD: With the HBPA?
 5 MR. PILLOW: Yes.
 6 MS. ELLINGWOOD: The application they
 7 submitted in 2013 for 2014, there was a conditional
 8 approval. They met all those conditions, and we
 9 didn't have any issues with them last year. This
 10 is outside the scope of that. The approval of the
 11 horsemen's association application will come later
 12 this year, probably September or October. This is
 13 just the track's contract with the association to
 14 work out how some of the specifics, like the money,
 15 is going to occur.
 16 MR. PILLOW: So this is kind of separate from
 17 what we dealt with last year?
 18 MS. ELLINGWOOD: Yes.
 19 MR. SHUSTER: Can I clarify something? I
 20 misspoke. The trainers fees were last year. The
 21 addition this year was dues for the HBPA, which
 22 came up. So my apologies.
 23 CHAIRMAN WEATHERWAX: So this should make it
 24 more clear, simpler to administer?
 25 MR. SHUSTER: I believe so, yes.

1 CHAIRMAN WEATHERWAX: Well, that's good.
 2 All right. Any other questions from the
 3 Commissioners?
 4 Do we have a motion to accept this agreement
 5 as revised and specified?
 6 MS. LIGHTLE: I make a motion.
 7 MR. SCHENKEL: Second.
 8 CHAIRMAN WEATHERWAX: All those in favor, say
 9 aye.
 10 THE COMMISSION: "Aye".
 11 CHAIRMAN WEATHERWAX: Thank you, Jon. The
 12 Quarter Horse Association, are you going to do that
 13 too?
 14 MR. SHUSTER: Yes. The only substantive
 15 change here is, once again, a partnership with
 16 Trakus, which they're going to help us, once again,
 17 with the installation and operation of. Probably
 18 worth noting, the only quarter horse racing in the
 19 country with Trakus. We're it. So that's
 20 exciting.
 21 CHAIRMAN WEATHERWAX: That's good. I know
 22 they appreciate all that you're doing. So anything
 23 substantial or is this the same?
 24 MR. SHUSTER: Largely the same, very much the
 25 same.

1 CHAIRMAN WEATHERWAX: Very good.
 2 Can I hear a motion for accepting the
 3 Quarter Horse Association agreement with Centaur?
 4 MR. PILLOW: I'll make a motion.
 5 MS. LIGHTLE: Second.
 6 CHAIRMAN WEATHERWAX: All those in favor, say
 7 aye.
 8 THE COMMISSION: "Aye".
 9 CHAIRMAN WEATHERWAX: Thank you, Jon. Now
 10 you're still standing there. This is a contract
 11 between you and the Jockeys' Guild.
 12 MR. SHUSTER: Yes. This is almost identical
 13 to last year, no substantive changes.
 14 CHAIRMAN WEATHERWAX: So explain what this
 15 does, the Jockeys' Guild.
 16 MR. SHUSTER: The Jockeys' Guild is the group
 17 that supports the riders with healthcare
 18 initiatives and representation for all the
 19 different things that they do on the grounds with
 20 and between us. It's very much a partnership. It
 21 is a partnership that has flourished greatly since
 22 the acquisition, and we're very grateful for that.
 23 We're doing more with the riders and with the
 24 guild. The association represents, I think, the
 25 majority of the riders. Not all riders are guild

<p style="text-align: right;">Page 77</p> <p>1 members.</p> <p>2 We're very excited about it. We think it's</p> <p>3 beneficial to all of us. Sort of in keeping with</p> <p>4 the whole theme of all those rising with the tide.</p> <p>5 CHAIRMAN WEATHERWAX: What was that big event</p> <p>6 that you held last year that was going to be maybe</p> <p>7 a yearly event?</p> <p>8 MR. SHUSTER: It's this year. We got it</p> <p>9 started last year. We're excited about it. It's</p> <p>10 on May 30. It's called Jockeys and Jeans. It's on</p> <p>11 Saturday, May 30. We're going to have all three of</p> <p>12 the living Triple Crown riders are going to be</p> <p>13 there, just a plethora of Hall of Fame riders, all</p> <p>14 the names anybody that's been around the game at</p> <p>15 all would know.</p> <p>16 We're very excited about it. We think it will</p> <p>17 absolutely elevate us as Indiana racing up to the</p> <p>18 national stage. It's going to be a pretty big</p> <p>19 deal, get a lot of notoriety. More important than</p> <p>20 that, it's just the right thing to do.</p> <p>21 The commitment from our company for these</p> <p>22 permanently disabled riders, which is what this</p> <p>23 benefits, I believe there are 61 riders currently</p> <p>24 that are permanently disabled, all the way from</p> <p>25 paraplegics in wheelchairs to just folks that can</p>	<p style="text-align: right;">Page 79</p> <p>1 CHAIRMAN WEATHERWAX: That's a good point.</p> <p>2 Any other comments?</p> <p>3 Thank you, Jon, for bringing this to us.</p> <p>4 Can I have a motion to accept this?</p> <p>5 MR. PILLOW: I make a motion.</p> <p>6 CHAIRMAN WEATHERWAX: We have a motion,</p> <p>7 Commissioner Pillow.</p> <p>8 MS. LIGHTLE: Second.</p> <p>9 CHAIRMAN WEATHERWAX: All those in favor, say</p> <p>10 aye.</p> <p>11 THE COMMISSION: "Aye".</p> <p>12 CHAIRMAN WEATHERWAX: Thank you, Jon.</p> <p>13 MR. SHUSTER: Thank you.</p> <p>14 CHAIRMAN WEATHERWAX: Now, is this you, the</p> <p>15 wagering temporary relocation in Indianapolis only?</p> <p>16 MR. KEELER: Yes, sir. Thank you,</p> <p>17 Mr. Chairman, members of the Commission. My name's</p> <p>18 John Keeler, and represent Centaur.</p> <p>19 So we want to have a party, a Kentucky Derby</p> <p>20 party at the Winners Circle in Downtown</p> <p>21 Indianapolis.</p> <p>22 We've got a little bit of experience with this</p> <p>23 in the Final Four. Made arrangements for the</p> <p>24 City of Indianapolis to block off the entire</p> <p>25 sidewalk in front of the Winners Circle and then</p>
<p style="text-align: right;">Page 78</p> <p>1 no longer ride. We tend to raise a good deal of</p> <p>2 money to benefit that cause. I know that the</p> <p>3 commitments that are out there are already more</p> <p>4 than triple what they did last year at their</p> <p>5 inaugural event down in Tampa, which we all went</p> <p>6 down. We're very excited about that.</p> <p>7 CHAIRMAN WEATHERWAX: Very good. That's part</p> <p>8 of the Jockeys' Guild association business?</p> <p>9 MR. SHUSTER: Yes. They're related, yes. The</p> <p>10 permanently disabled jockeys fund is a portion.</p> <p>11 CHAIRMAN WEATHERWAX: Very good. I think</p> <p>12 that's a beautiful tribute to these people that</p> <p>13 risk their lives, literally.</p> <p>14 Commissioner Pillow?</p> <p>15 MR. PILLOW: Jon, this is really not a big</p> <p>16 issue. Really not a big issue at all. Why are</p> <p>17 some of these agreements between Centaur and some</p> <p>18 of them are between Indiana Grand?</p> <p>19 MR. SHUSTER: I guess that's probably more of</p> <p>20 a legal. Indiana Grand is the racehorses. The</p> <p>21 guild would recognize us as Indiana Grand Racing</p> <p>22 and Casino. Am I representing that fairly?</p> <p>23 MR. KEELER: Yes.</p> <p>24 MR. PILLOW: No big deal. Thank you.</p> <p>25 MR. SHUSTER: Sure.</p>	<p style="text-align: right;">Page 80</p> <p>1 rent a parking lane, if you will, put concrete</p> <p>2 barriers and reroute pedestrian traffic around the</p> <p>3 sidewalk. We built a fence around from the</p> <p>4 building out to the curb, and then that is the</p> <p>5 enlarged footprint of the Winners Circle. For the</p> <p>6 Final Four we had, like, barbecue grills, you know,</p> <p>7 beer, music, tent, just sort of a festival-type</p> <p>8 atmosphere.</p> <p>9 We'd like to do the same thing for the</p> <p>10 Kentucky Derby that's coming up, with one exception</p> <p>11 to that from what we did for the Final Four. That</p> <p>12 is to take two stationary betting machines and put</p> <p>13 them on the sidewalk against the building within a</p> <p>14 tent so they wouldn't be seen from the street,</p> <p>15 they'd be within a tent. Everyone that comes</p> <p>16 within that fenced perimeter area that I mentioned</p> <p>17 has to be 18 or over, and we have a security</p> <p>18 officer checking to make sure that they actually</p> <p>19 are.</p> <p>20 So for one day that sidewalk area I described</p> <p>21 would be part of the footprint for the</p> <p>22 Winners Circle, and with the leave of the</p> <p>23 Commission we'd be able to take two of the betting</p> <p>24 machines outside.</p> <p>25 CHAIRMAN WEATHERWAX: So you've already</p>

Page 81

1 cleared this with the City?

2 MR. KEELER: Yes, sir.

3 CHAIRMAN WEATHERWAX: And you need us to give

4 you permission because this is dealing with OTB?

5 MR. KEELER: Really to take those two machines

6 outside of our traditional approved footprint.

7 CHAIRMAN WEATHERWAX: Well, I think you have

8 to be careful. You sound like you're being

9 careful. The public can't get there unless they

10 walk inside the fence. You got to be 18 or older.

11 You got an enclosed tent. I guess the whole

12 purpose is to help promote horse racing for Indiana

13 and the Kentucky Derby.

14 MR. KEELER: That's right. Historically,

15 Mr. Chairman, that's a huge day for the OTB. Have

16 a lot of customers. This is a way to encourage

17 more business and more wagering.

18 CHAIRMAN WEATHERWAX: Any questions for John?

19 MR. SCHENKEL: It's a question. I think I

20 know the answer to it, but I just want to make sure

21 we have it on the record. The betting machines

22 would be out there, but you won't have a security

23 issue of cash and money out there on the outside?

24 All the payouts are still inside?

25 MR. KEELER: Right. All the live tellers

Page 82

1 would still be at their traditional location.

2 MR. SCHENKEL: I assumed that was the answer,

3 but I wanted to make sure that was clear.

4 MR. KEELER: Mr. Chairman, excuse me. If I

5 might add. Hopefully this isn't the last time you

6 hear me here talking about a program like this.

7 We're looking at options in the future maybe to do

8 something in the Circle Theatre, which is our

9 neighbor to the rear, or some other large downtown

10 venue in terms of a charitable event, centered

11 around the Kentucky Derby.

12 CHAIRMAN WEATHERWAX: Very good, John. I

13 think you'll be very careful to make sure that it's

14 done proper on the smaller scale so we don't abuse

15 the privilege. It sounds like it's got pretty good

16 potential.

17 MR. KEELER: Hope so.

18 CHAIRMAN WEATHERWAX: So we are supposed so

19 vote on this to allow it as described to us?

20 MS. ELLINGWOOD: Technically speaking, it's a

21 modification. So yes.

22 MR. SCHENKEL: For one day?

23 MS. ELLINGWOOD: For one day. John and I

24 talked about this. I see this as kind of a beta

25 test. We'll see how it goes. Yes, you will need

Page 83

1 to approve it.

2 CHAIRMAN WEATHERWAX: Very good. Thank you.

3 MR. PILLOW: John, will the VooDoo BBQ be

4 there?

5 (Laughing)

6 MS. ELLINGWOOD: We don't have a contract for

7 that.

8 MR. PILLOW: Okay.

9 CHAIRMAN WEATHERWAX: All right. Do I hear a

10 motion from our Commissioners to accept this

11 modification to the language?

12 MR. SCHENKEL: Move approval.

13 MS. LIGHTLE: Second.

14 CHAIRMAN WEATHERWAX: We have a motion and a

15 second. All those in favor, say aye.

16 THE COMMISSION: "Aye".

17 CHAIRMAN WEATHERWAX: We thank you.

18 MR. GORAJEC: I believe there's one more item.

19 CHAIRMAN WEATHERWAX: Well, there's one more

20 that's kind of important. Is that your input or

21 Lea's?

22 MR. GORAJEC: I'll take care of it.

23 CHAIRMAN WEATHERWAX: Joe, go ahead. New

24 business?

25 MR. GORAJEC: No. It's the racing officials

Page 84

1 approval.

2 CHAIRMAN WEATHERWAX: Yes, I see that.

3 MR. GORAJEC: This is something that we have

4 to do each year. We do it twice, once for

5 Hoosier Park, once for Indiana Grand. The racing

6 official list that's been proposed to us, there are

7 some new officials, but the new officials aren't

8 new to us because they've been licensed in other

9 capacities. I'm comfortable that Jon and his folks

10 are promoting the right people from within.

11 So I would ask the Commission to approve the

12 racing official list.

13 CHAIRMAN WEATHERWAX: Very good. These are

14 the names of all those people under approval that

15 you want us to give?

16 MR. GORAJEC: Yes.

17 CHAIRMAN WEATHERWAX: Are these all new

18 people?

19 MR. GORAJEC: No. Most of them are returnees,

20 but there are a few that are new on the list but

21 they're not new to us because they've worked for

22 the track before in a different capacity that

23 wasn't a racing official.

24 CHAIRMAN WEATHERWAX: Very good.

25 Jon, did you have a comment?

1 MR. SHUSTER: I'm just here if you have any
 2 questions.
 3 CHAIRMAN WEATHERWAX: Very good. So we have
 4 this proposed list of people that we're going to
 5 approve to allow them to be contracted, hired to do
 6 as they're spelled out there. Do I have a motion?
 7 MR. SCHENKEL: So moved.
 8 MS. LIGHTLE: Second.
 9 CHAIRMAN WEATHERWAX: We have the motion,
 10 second. All those in favor, say aye.
 11 THE COMMISSION: "Aye".
 12 CHAIRMAN WEATHERWAX: Thank you, Joe.
 13 MR. GORAJEC: Thank you.
 14 CHAIRMAN WEATHERWAX: Now maybe new business,
 15 Lea. Legislative update.
 16 MS. ELLINGWOOD: Yes. I want to make clear
 17 that I'm not going to get into a lot of specifics
 18 because we're not at the end of the session yet
 19 and, as you guys know, anything can happen. Wanted
 20 to make you aware that there are three bills out
 21 there that either directly or indirectly relate to
 22 horse racing or pari-mutuel wagering.
 23 Those are Senate Bill 252, which I think it's
 24 probably safe to say at this point it deals with
 25 promotion. There's House Bill 1270, which

1 currently includes a provision for advance deposit
 2 wagering. Then there's House Bill 1540, which is a
 3 gaming bill. That, of course, primarily impacts
 4 the racinos, but to the extent that Centaur might
 5 be impacted, pari-mutuel wagering may be impacted
 6 as well.
 7 That's probably as much as I want to tell you
 8 because it could change, but the legislative
 9 session's scheduled to end at the end of April. So
 10 at the next Commission meeting I'll be happy to
 11 give a legislative update for everybody and, of
 12 course, after the session is over I'll be
 13 contacting you directly to give you a synopsis.
 14 CHAIRMAN WEATHERWAX: Well, it seems like,
 15 from what I have read, we are aware of these pieces
 16 of legislation. Hopefully they're all designed to
 17 help the horse racing industry or do something to
 18 help business. I realize that there's trade-offs
 19 and nobody ever gets everything they want. So
 20 hopefully these things can come to fruition. We'll
 21 just have to wait and see. Thank you, Lea.
 22 All right. Do we need to set a time for our
 23 next meeting or are we under the gun for something?
 24 MS. ELLINGWOOD: I don't think we do.
 25 MR. GORAJEC: We don't have a time or a time

1 frame for the next meeting. We thought we would
 2 just schedule it on as-needed basis. When we feel
 3 that there's a need, we'll be contacting you and
 4 working with everyone's schedule, like we have in
 5 the past.
 6 CHAIRMAN WEATHERWAX: Good. Well, then I'll
 7 just have to set the meeting once we have an agenda
 8 or something that's important for us to meet. If
 9 we don't need to have meetings, we don't need to
 10 have meetings. Trust me. That's not my approach.
 11 (Laughing)
 12 CHAIRMAN WEATHERWAX: So with no further
 13 business, we are adjourned.
 14 (The meeting was adjourned at 10:45 a.m. on
 15 April 16, 2015.)
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1 STATE OF INDIANA
 2 COUNTY OF MARION
 3 I, Michele K. Gustafson, CRR-RPR, a
 4 Notary Public in and for said county and state, do
 5 hereby certify that the witnesses herein were by the
 6 Chairman duly sworn to tell the truth, the whole
 7 truth, and nothing but the truth in the aforementioned
 8 matter;
 9 That said meeting/hearing was taken down in
 10 stenograph notes and afterwards reduced to typewriting
 11 under my direction; and that the typewritten
 12 transcript is a true record of the testimony given by
 13 said deponents;
 14 That said meeting/hearing complies with all
 15 applicable rules;
 16 I do further certify that I am a disinterested
 17 person in this cause of action; that I am not a
 18 relative of the attorneys for any of the parties.
 19 IN WITNESS WHEREOF, I have hereunto set my
 20 hand and affixed my notarial seal this 24th day of
 21 April, 2015.
 22
 23
 24 My Commission expires:
 25 August 20, 2017
 Job No. 96841

Michele K. Gustafson

 Michele K. Gustafson
 Notary Public
 IN
 State of Indiana
 My Commission Expires Aug. 20, 2017

\$

\$1 69:6**\$50,000** 61:23 62:8 65:24**\$500,000** 62:23 65:25

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1 9:24**10** 17:16 18:8 41:3 63:24 67:3 68:10**10,000** 18:17 43:16**100** 11:2 58:3**10:45** 87:14**11** 63:24 68:22 70:9**1270** 85:25**13** 70:19 71:2**14** 41:6 70:19 72:22**14694** 10:16**14695** 10:16**15** 70:19**1540** 86:2**16** 87:15**17** 40:11**18** 80:17 81:10**19** 10:3,18,22**1970** 38:2**1970s** 18:13**1994** 27:15 40:17

2

20 43:15 44:6**200** 56:24**2001** 41:6**2002** 41:1 73:3**2007** 40:21 41:13**2011** 41:13,20**2012** 42:15 46:24,25**2013** 18:17 74:7**2014** 9:24 74:7**2015** 50:17 87:15**25** 43:15 44:6**252** 85:23

3

3,600 18:16**30** 77:10,11

4

4,000 56:6**4-21.5-3-21(a)(2)(b)** 11:8**45** 38:3

5

5 52:13

6

609 69:10**61** 77:23

7

7 66:11

8

8 63:8,24 67:2 68:10

9

9 63:24 67:3 68:10

A

a.m. 87:14**abhorrent** 38:19**ability** 14:11 73:9,23**absolutely** 22:13 41:18 45:15 47:17

64:25 77:17

abuse 82:14**accept** 24:14 59:20 65:24 68:15 70:7
72:15 79:4 83:10**acceptance** 68:13**accepted** 26:19**accepting** 76:2**access** 16:5**accommodate** 73:12**accuracy** 52:25 53:1**accusations** 9:19**accused** 11:25 12:6,8,9 13:5 18:3
25:1**accusers** 16:7**acknowledge** 50:25 51:22**acquisition** 76:22**act** 12:10 20:18 40:4**acted** 21:13 34:23**acting** 16:23 29:24**action** 13:8 17:23 18:10,25 23:1,
25:25 29:18 30:9 33:20,22**actions** 11:14,19,24 12:10,16,24
13:11 14:22 34:20,22,25**actively** 25:5**activities** 12:17**actual** 25:21 33:22**add** 65:13 82:5**added** 46:17**adding** 53:2**addition** 59:21 73:9 74:21**additional** 58:9**address** 49:9 67:3**addressed** 54:24**adequate** 9:17**adjourned** 87:13,14**adjudication** 34:15**administer** 74:24**administrative** 9:2 13:9 15:13,22
17:10 20:17,20 26:14 34:21 58:20

61:11 62:21
admit 36:22
adopt 35:16 58:10
adopted 57:21
adoption 60:7 63:23
advance 61:13 64:5 86:1
adverse 13:24 14:15
adversely 11:14,19 12:11,25 13:9
 15:10,18 20:6,12,19 34:13,19,22,24
affect 13:1,9 64:18,19
affected 11:14,19,23 12:11 14:22
 15:11,19 20:6,13,20 28:13 34:14,19,
 22,25
affects 55:24 56:5
affirm 23:14 24:3 28:17 36:11,12
afforded 34:9
Agency 54:6
agenda 52:13 63:9 65:4 67:2 87:7
agents 12:14 13:15 29:21,23 32:17
aggrieved 11:13,17 13:10 14:21
 20:6,12,19 28:12 33:20 34:25
agree 20:21 53:6 71:9
agreement 39:13 67:4 68:5 69:11
 72:9 75:4 76:3
agreements 78:17
agrees 11:7
ahead 63:8 66:21 67:5,7 69:14 83:23
ALJ 11:9 12:23 13:8 22:13 23:14
 24:15 25:13,24 31:15 35:19
ALJ'S 14:23 15:7,24 16:9,16 26:18,
 21 35:16
allegation 12:21 27:17
allegations 10:1,25 12:15
alleged 12:24
allegedly 15:16 29:17 34:23 40:19
allowed 9:22 25:9 26:5,9,12 31:20
 32:14 33:4 45:11 46:1,2,8
allowing 14:13 34:21 61:5
alternative 56:19

amend 35:18
amendments 52:17
American 16:4
amount 12:18 62:22
ample 66:1
animal 40:15 41:7
animals 41:5 46:6
annually 44:7
answers 26:24
Anthony 12:7
anyplace 45:11
apathy 41:17
apologies 74:22
appalled 45:21
apparently 40:9 41:10
appeal 9:1,22 21:21,23
appealed 11:3
appeals 26:22
application 42:16 74:6,11
applications 42:17
applied 16:14
applies 17:17 42:25
apply 39:14 43:2 44:16
approach 87:10
approached 39:5
approval 47:9 54:4 61:13,20 62:3
 68:6 72:11 74:8,10 83:12 84:1,14
approve 50:25 53:18 58:14 62:9
 63:13 65:11,23 67:24 69:7,13 71:18,
 24 83:1 84:11 85:5
approved 50:16 51:13 53:3 61:24
 69:5 71:7 81:6
approves 54:18
approximately 69:6
April 38:2 86:9 87:15
area 80:16,20
argue 24:17
argued 27:19 31:12

argument 23:4
arguments 15:14 22:11
arrangements 79:23
arrested 41:6
arrests 43:4
arsenal 53:20
article 17:16 18:8 37:18,24 39:23
 45:2
article's 38:2
as-needed 87:2
assessment 42:6
assistant 9:20 10:9 11:25 12:5,12
 13:16 17:20 31:9 73:15
association 43:6,9 55:19 56:2,7,10,
 18 57:25 62:5 71:6 72:16,24 74:11,
 13 75:12 76:3,24 78:8
association's 56:2
associations 70:24 72:5
assumed 50:3 82:2
assuming 50:18
atmosphere 80:8
attacks 16:8
attempting 67:10
attorneys 16:24
attract 67:8
authority 30:2 62:19 64:25
automated 73:20
average 43:15 44:3
awarded 31:23
aware 85:20 86:15
aye 36:16,17 52:8,9 58:17,18 59:25
 60:1 66:8,9 68:18,19 70:13,14 72:20,
 21 75:9,10 76:7,8 79:10,11 83:15,16
 85:10,11

B

Babbitt 16:22 27:9 32:16,18
back 35:19 40:8 41:11,19,23 46:11
 60:4 63:16 64:7

backbone 44:15
background 43:22,25
bad 27:24 33:14
badly 34:24
baffles 30:12
ban 39:17 41:22
banned 40:21
bar 20:14,16
barbecue 80:6
barn 69:3,9 70:5,8
barriers 80:2
based 9:13 31:1,12
basically 54:17
basis 33:5 63:15 87:2
batteries 38:11
battery 37:4 39:1 40:11 41:15
BBQ 67:20 83:3
bearing 35:3
beating 41:8
beautiful 78:12
beep 48:23
beer 80:7
beg 17:4
begin 41:12
beginning 60:10 64:8
behalf 16:23 20:8
behold 39:9
beneficial 77:3
benefit 57:1,2,13 78:2
benefits 52:18 53:17 77:23
benevolent 72:24 74:3
beta 82:24
betting 80:12,23 81:21
bettors 40:4
big 22:16 61:2 77:5,18 78:15,16,24
bill 85:23,25 86:2,3
bills 85:20

bit 27:10 31:13 57:20 60:4 79:22
block 79:24
blue 55:12
bookkeeper 10:21 73:11
boss 30:10
break 38:22
Brian's 62:10
bring 23:1 42:13
bringing 52:16 73:2 79:3
broken 16:14 17:9
brought 12:15 38:7 47:8
build 70:7
building 80:4,13
built 16:5 80:3
bumped 22:22
burden 15:2 20:19,21,22,23
burdened 28:19
burdensome 61:16 64:4 66:20
business 10:23 41:18 48:3 62:24
 63:1,4,15 65:22 67:7 78:8 81:17
 83:24 85:14 86:18 87:13
businesspeople 61:14
businessperson 35:4
buy 30:19 63:13

C

California 23:17
call 44:18
called 37:25 77:10
cancel 63:17
capable 45:14
capacities 84:9
capacity 84:22
capital 69:12
Captain 9:7,21 10:2,11,17,21,24
 11:2,4,11,13,16,17,22 12:11,14,19
 13:1,4,7,10,14,15,19,22,25 14:3,5,
 11,14,16,19,20 15:16 16:18 24:19
 25:7,22 26:2,3,22 29:18,20,24 30:4,

13,24 31:10 32:11,21 34:12,24 35:4,
 17
card 25:16,18
care 83:22
careful 28:7 81:8,9 82:13
carry 15:2 20:18
carrying 40:10 49:12
case 11:8,16 15:19,21 17:6,7,11,14,
 15,18 18:11,24 19:7,13,14 21:12,16,
 20,24,25 22:3,16 23:11 24:19,22,23
 25:2,13,22 36:20 37:5,9 38:19,20
 45:1 46:20,23 50:4,22 59:10
cases 17:18 20:24 27:14 28:3,20
cash 81:23
Casino 78:22
catch 48:24
category 53:10,11 65:13
caught 39:7 40:17 41:15
Centaur 61:12 62:7 63:2 64:3 66:16,
 23 69:1 70:19 72:15,23 76:3 78:17
 79:18 86:4
centered 82:10
Chairman 27:4 29:7 35:8,20 36:7,
 12,15,18,22 37:14 45:6 46:19 47:3
 48:25 49:10,17,18,20 50:9,12 51:3,7,
 10,24 52:2,5,7,10 53:22 54:8,11,20
 58:6,14,16,19 59:15,19,24 60:2,18
 61:8 63:7 64:14 65:2,21 66:5,7,10,14
 67:1,5,6 68:7,14,17,20,22,24 69:18,
 21 70:2,12,15,17,18,21 71:1,12,17,
 20,21,22,25 72:2,12,19,22 74:1,23
 75:1,8,11,21 76:1,6,9,14 77:5 78:7,
 11 79:1,6,9,12,14,17 80:25 81:3,7,
 15,18 82:4,12,18 83:2,9,14,17,19,23
 84:2,13,17,24 85:3,9,12, 86:14 87:6,
 12
challenges 28:1
chance 42:4,8 45:19
chances 40:3
change 50:25 51:6,17 52:11,19
 61:18 63:1 65:24 75:15 86:8
Chapa 36:20 40:6,17 41:1,11,22
 42:2,9,15 43:22 44:8 48:1 73:4
charge 47:5

charged 18:6,9,14 19:9 33:17 34:13 40:10
charges 41:4
charitable 82:10
cheated 13:16 23:5
cheating 12:1,18,21 13:22,23 18:3,4
cheats 40:7
checking 80:18
checks 73:21
Chicago 9:13
Circle 79:20,25 80:5,22 82:8
Circuit 18:11 21:20,22 22:3 26:13,15 27:19 33:13
cited 18:11 20:24 24:22
City 79:24 81:1
claim 13:17 17:18 19:24 27:16,22,23 34:9
claimed 20:25 21:21 22:2
claims 27:20
clarification 58:23 59:18
clarify 74:19
cleaned 71:15
clear 12:10 15:19 21:16 30:15 55:12 58:25 59:8,17 63:25 65:9 74:24 82:3 85:16
cleared 81:1
close 24:20
closely 44:6
closer 45:4
closest 21:24
closing 35:9
cloud 43:24
cobalt 49:22 50:2,14,19 51:1,14,20 52:12
Code 15:13
collaboratively 66:23
collect 55:22
collection 53:7
colony 41:24
column 42:7
combination 41:17
comfortable 52:23,24 84:9
comment 58:1 64:3 84:25
comments 35:9,13 49:1 79:2
commission 9:5,18 16:17,23 17:8 18:18 19:16 20:9 23:10 26:21 27:2, 12 29:9 33:16,23 35:15 36:10,17 39:2 40:22 45:16 47:9 49:4 50:15,16, 24 51:12 52:9,16 53:18,24 54:18 56:20 57:1 58:18 60:1 61:12,19,24 62:2,14, 63:19 64:1,5 66:9,15 68:19, 25 70:14 72:21 75:10 76:8 79:11,17 80:23 83:16 85:11 86:10
Commission's 57:1 60:7
Commissioner 32:9 54:22 57:19 58:7 60:21 63:7,22 64:15 74:1 78:14 79:7
Commissioners 29:8 35:10 43:9 45:7 58:22 68:8 72:13,25 75:3 83:10
Commissioners' 37:7
commissions 41:20 42:24 45:3,22 59:12
commitment 69:10 70:4 77:21
commitments 78:3
commits 40:3
common 59:4
communicating 56:1,3
communication 56:17
company 41:23 77:21
compelling 57:12
complied 25:3
concerned 45:12 64:16 65:17
concessions 73:2
concrete 80:1
condition 20:25
conditional 74:7
conditions 20:1 21:11 22:5 23:9,12 25:10,20,23 26:6 28:14 34:10,17 74:8
conducted 9:25
confidential 59:11
confidentiality 59:1
confirm 24:3
conflict 13:13 64:24
confront 16:7
confuse 29:13
congratulate 66:19
consented 30:3
consequences 35:7
consistent 53:1 58:24 60:12 61:18 62:24
consolidate 67:2
construction 69:8
construed 12:13
contacting 86:13 87:3
contention 31:21,24
contested 21:2,6
continue 15:3 71:23
continued 44:22
contract 61:14 62:5,6,10,20 64:6,24 65:1,19 66:2 67:25 69:8 71:5,23 72:15 73:7,16 74:13 76:10 83:6
contracted 85:5
contractor 32:20
contractors 29:22
contracts 61:12,20,23 62:1,4,8,14, 16 63:25 65:12 68:4,9
contradict 26:12
contrary 26:11
conversation 44:10
convicted 13:21 18:4
copy 42:18
correct 9:4 52:1
cost 69:6 70:1
couch 28:8
counsel 9:3 15:15 17:4 24:14,22 25:12 33:25 64:16
countdown 9:8

country 45:3 59:13 75:19
couple 16:21 29:11 39:1 61:21
court 11:15 13:12 25:2 26:13,15
 31:18
court's 11:20
courtroom 16:3
courts 15:11 16:5
cover 21:4
crash 22:21
create 16:15 27:24
created 14:12 15:25
creates 16:10
creating 29:1
crippling 12:22
crossed 22:24 23:7
crosses 19:19
Crown 77:12
cruel 40:4 46:6
cruelty 40:15 41:5
Culbertson 9:13
curb 80:4
current 22:12 37:2 44:25 58:24
 61:11
curve 67:8
customers 67:9 81:16
cuts 13:2

D

Daily 40:17
damage 15:4
damages 40:5
dangerous 23:25
dark 11:3
database 43:10
date 9:6 36:3,5 63:18 66:20
dated 38:2
day 47:21,24,25 48:8 54:18 55:4
 57:5 63:18 80:20 81:15 82:22,23

day-to-day 19:15 63:12,15
days 41:3 62:15,17
dead 38:11,23
deal 22:16 39:12 56:10 65:3 77:19
 78:1,24
dealing 81:4
deals 35:22,23 36:19 61:5 85:24
dealt 74:17
December 41:6
decide 35:15
decided 18:12
deciding 9:6
decision 21:22 24:3 28:17 36:13
 47:8
decisions 16:8 63:5
decree 11:20
defend 10:13 14:5 16:2 34:9
defer 35:19
definition 40:14
delighted 46:9
demonstrating 11:12
denial 24:4
denials 15:8
denied 15:1
denying 35:16
Depending 56:11
deposit 86:1
deprivation 16:8 21:9
deprivations 15:8
deprived 12:18 13:16 14:2,24 16:1
depriving 14:14
Derby 79:19 80:10 81:13 82:11
describes 36:25
designed 86:16
destroyed 14:10
detect 38:17
detected 47:16 50:2

detector 48:19
determined 24:24
detriment 13:25 14:7 15:5
detriments 15:8
device 40:13,23
diagram 69:18
differ 17:4
difference 13:4 31:13 61:2
differently 42:20,22
difficult 38:17 47:13
Digest 37:25
direct 13:7,13
directed 18:19
directly 13:6 14:18 26:3 50:23 85:21
 86:13
director 47:22 57:20 62:3
dirt 38:6,9
disabled 77:22,24 78:10
disagree 18:2 24:12 32:5 33:1,2
disallowed 31:15
disciplinary 16:25 17:15,16,17
 18:7,9,25 19:12,13 23:1,24 25:25
 27:14 29:3,18 30:8 33:6,19 47:7
disciplined 17:22 28:4 59:3
discovered 51:17
discuss 37:10 55:5
discussion 37:3 42:14
disgusting 46:3
disingenuous 13:6
dismounting 48:17
dispute 18:5
disputed 33:25
disqualified 22:22
dissolve 35:18
distribution 19:9 69:10
distributors 68:9
dog 41:8 67:16 73:2
dogs 41:16 63:14

dollar 62:22
door 25:17 28:2
doorstep 45:5
doping 12:1,6,8 15:3 25:1 45:12,13
doubt 31:3
downtown 79:20 82:9
draft 55:20 57:25 64:6
driver 23:2
driving 22:21
dropped 55:1,12
drug 44:11,12 52:14 53:20 58:9
 59:6,13 60:14
drugs 52:21
due 14:9 15:21 18:8 23:17,22 24:24
 25:3 27:17 35:24 36:8 54:20 71:18
dues 74:21

E

e-mails 9:16
earlier 32:4
early 41:11
earn 34:10
earned 10:23 19:17,18,19 21:10
 23:7 25:18,20
earning 26:2
earnings 14:15 15:21 34:5
easier 47:15
easily 40:14
easy 22:15 27:17 48:24 49:21
Edelberg 21:16 24:22
effect 13:19 14:15 54:2 55:4 65:6
effectively 18:4
efforts 44:15
egregious 43:13
elected 56:7
electrical 40:13,23
elevate 77:17
ELLINGWOOD 24:6,10 27:1,7

35:10 36:6 46:24 47:1,6 51:9 52:1
 54:3,10 57:18 60:3,15 61:7 62:13
 63:21 64:13,23 65:7,10 70:20,23
 71:22 72:1 74:4,6,18 82:20,23 83:6
 85:16 86:24
emergency 52:13 53:25 54:4,24
 55:1,3,8,10,11 57:16,22 59:20 60:5,7
 61:8,10 65:5,14 66:18 69:22
employee 11:24 32:21
employees 29:18,20,21
employment 62:8,9
emptied 39:9
enclosed 81:11
encourage 81:16
end 17:3 64:9 69:15 85:18 86:9
ended 39:16
enlarged 80:5
enter 14:13 15:5
entered 13:13
entering 34:3
entire 79:24
entirety 10:22
entitled 19:4 23:24
entity 13:23
erect 69:3,14
erection 69:9
error 30:23
escapes 30:13
ESPN 37:18
espn.com 39:24
essence 61:15 67:10
essentially 35:19
Estvanko 10:9 11:3 12:5,25 23:11
event 28:6 37:2 44:25 77:5,7 78:5
 82:10
everyone's 87:4
evidence 26:11
exact 68:11
examination 13:11

exception 80:10
excerpts 40:1
exchange 39:14
exchanged 9:16
excited 70:3 77:2,9,16 78:6
exciting 75:20
excuse 29:14 82:4
execute 61:13 64:5
executed 62:16
Executive 57:20 62:3
Exhaust 26:14
exist 34:1
expansions 62:22
expect 46:5
expectancy 13:17 14:3,24 32:1
 33:9
experience 27:13 38:24 79:22
expert 38:21
explain 66:12 76:14
explaining 65:22
explanation 21:4 49:21
extent 49:8 64:24 86:4
extremely 38:17 44:12

F

facilities 62:23
fact 15:12 21:3 22:4 24:17 26:2,17
 27:22 28:11 32:22 43:21 44:20
 47:17, 55:21 59:11 63:22
facts 11:12 14:21 16:14
fair 33:23
fairly 78:22
falls 40:14 54:3
Fame 77:13
fast 57:8 65:7
faster 40:20
favor 36:15 52:7 53:21 58:16 59:24
 66:7 68:17 70:12 72:19 75:8 76:6
 79:9 83:15 85:10

February 49:5
feckless 41:11
feedback 55:10
feel 9:3 46:14 87:2
feeling 30:25
fees 73:9,18 74:20
felony 41:4
fence 80:3 81:10
fenced 80:16
festival-type 80:7
fifteen 39:3 46:21,23
fifteen-minute 45:9
file 21:21 22:1 26:13 27:22,23 61:12
filed 9:23 11:11 54:6
final 19:25 22:24 51:4 79:23 80:6,11
find 21:18 46:9 48:13 67:22
finding 38:5
fine 22:8 32:25
fines 43:7,11
finish 10:18 14:4 19:19 22:25 23:8 32:12
finishing 49:13
Finley 39:24
Finley's 42:6
fire 41:21
firm 9:12
first-time 39:15
fit 68:11
five-year 39:18 41:12
flatly 18:4
fleeces 40:4
flood 24:15 26:17
floor 67:14
flourished 76:21
flowing 50:20
flows 34:16
folks 29:25 63:12 77:25 84:9

Follow 61:20
Follow-up 46:19
food 67:11 68:9
footprint 80:5,21 81:6
foreign 26:1
foresight 66:21
forget 34:6
Form 40:17,20
forward 11:6 14:20 16:19 17:2 26:23 31:2 34:3,4
foul 33:2
found 38:9 39:10 44:1 57:3 59:1,7
frame 87:1
franchise 67:4,17,19 68:4
frankly 20:8 64:2
free 9:3 14:16 29:23
frequently 37:22
front 38:20 55:16,20 79:25
fruition 86:20
full 17:15 27:9 65:25
function 63:20
functions 37:11
fund 78:10
future 14:13,14 15:5,20 34:4 82:7

G

game 48:20 77:14
gaming 61:19 86:3
gate 24:20 48:17
gates 24:16 26:17
gave 18:18 35:11
general 37:17 71:4
generally 23:21 57:3
generous 31:5
George 66:5
give 21:7, 26:25 45:8,19 53:12,13 56:25 81:3 84:15 86:11,13

giving 9:8 28:19 29:2 42:7
glad 73:11
good 36:19 37:8,9 42:1 44:24 45:6, 22 58:6 63:4 71:21 72:12,25 75:1,21 78:1,7,11 79:1 82:12,15 83:2 84:13, 24 85:3 87:6
goodwill 13:25
GORAJEC 36:21 37:1,15 38:13,16 46:4,18,22,25 47:17 50:15 51:5,12 52:15 54:13 55:5,15 58:22 59:18 60:9 65:13 83:18,22,25 84:3,16,19 85:13 86:25
governing 15:22
grand 9:25 10:20 11:24 38:10 67:14 69:3 78:18,20,21 84:5
Granitz 10:7 11:3 12:7,24 23:11
grant 11:10 28:25
grateful 76:22
great 30:11 37:12 38:24
greatly 76:21
grievance 35:24
grills 80:6
grounds 76:19
group 54:14 76:16
guess 29:16 30:6 33:21 35:2 36:1 78:19 81:11
guild 56:12,13 76:11,15,16,24,25 78:8,21
gun 86:23
guy 45:16,23
guy's 47:13
guys 33:14 47:15 85:19

H

half 44:7
Hall 77:13
hammer 72:5
hand 37:21 39:8
handful 43:12
handout 51:5

hands 63:16
happen 19:21 47:10 58:2 72:4 85:19
happened 17:25 40:11 69:24
happy 17:12 49:9 63:6 68:2 86:10
HBPA 56:9 73:7 74:4,21
head 32:16
healthcare 76:17
hear 15:14 42:19 76:2 82:6 83:9
heard 16:6 28:9, 29:10 60:22
hearing 9:25 10:7,9,11,14,15 11:1 38:21 47:8
hearings 30:9
heart 49:6
heightened 37:3,5
held 15:11,23 25:19 55:22 77:6
hesitation 53:14
hey 32:13 33:1
high 11:20
highly 34:3
Hinshaw 9:13
hired 85:5
Historically 81:14
history 43:7,10,12
holder 64:11
Holly 16:23 20:8 49:3 50:12
home 38:2
Hoosier 67:11 71:4, 84:5
hope 45:1 63:2 82:17
horrible 45:12,15
horse 12:17 15:22 17:17,19 18:21, 22 19:15,19 22:1,22,24 23:7 25:1 29:25 40:4,13,19,23,25 41:15 43:8 45:24 46:2,8 47:24 48:5,8 69:3,5 70:8 75:12,18 76:3 81:12 85:22 86:17
horse's 59:7
horseman 46:13
horseman's 62:5
horsemen 56:5 57:13 64:18 69:11

73:7
horsemen's 10:20 55:19 56:1,2 72:23 73:10 74:11
horses 45:13,25 46:14 47:25 48:2 56:9
hosting 9:10
hot 63:14 73:2
hotly 21:6
hour 54:17
House 85:25 86:2
Houston 40:12 41:22
huge 19:14 81:15
human 52:14 53:20
hurt 45:24

 I

IC 11:8
identical 76:12
illegal 10:2 18:23
Illinois 18:12 22:3 24:23
impact 13:7
impacted 86:5
impacts 86:3
implement 57:10
implementation 61:1
implementing 56:23
important 17:7 38:11 44:1,11,13 46:12 60:5 61:4,7 62:18 65:2 77:19 83:20 87:8
importantly 43:5 44:19 52:24
impossible 61:17
improving 70:4
inaccurate 24:17
inaugural 78:5
incident 17:21 41:6
included 37:24 59:13
includes 13:11 86:1
including 37:17

inclusive 10:22
incompetence 41:17
incorrect 35:6
increases 62:22
independent 32:20
Indiana 9:14,25 10:20 11:24 12:17 15:11 19:10,15 21:24 23:19 25:14,16 28:5,22 38:10 39:15,16,23 42:15,20 43:2,23 46:20 69:3,5 71:6 72:23 77:17 78:18,20,21 81:12 84:5
Indianapolis 79:15,21,24
indicating 38:8
indirectly 85:21
individuals 12:16 45:4
industry 14:17 15:4 37:2 53:21 86:17
inexcusable 42:4,8
information 55:22
informational 46:17 50:10,11
informed 56:14
initiatives 76:18
injection 10:3
innovative 67:8
input 83:20
inside 81:10,24
installation 73:14 75:17
instance 39:15
instances 61:17
instant 39:22
instantaneous 65:6,15
instituting 56:23
integrity 16:12 43:19 44:2,18 53:17
integrity-related 44:4
intend 67:18
interest 14:3,7 15:10,15,18 18:15 20:3,5,11 21:8,9,13,14,15,17,18 22:4,6,12 23:23 26:7 28:8,12 29:2 31:25 32:1,2 33:8,9,10,24 34:2,5 37:3,5
interested 20:4

interesting 37:1 39:21
interests 10:14 13:2,14 14:8 15:9
internally 30:24
International 43:10
intervene 9:1,7 11:4,8,10 14:19
 16:15,18 20:10,17 22:16 23:24 24:4,
 19 26:9 35:17
intervention 15:12 17:11 34:21
invasive-type 53:6
inverse 24:17
investigation 30:19
investigators 47:23 53:14
involved 17:21 18:24 19:12 25:5
 27:14 32:23 54:9 67:13
involving 66:23
Iowa 42:11
ISA 56:8
issue 9:20 25:2 28:7 43:16 44:6 54:5
 63:16 74:2 78:16 81:23
issued 10:15 58:25 59:5
issues 39:1 74:9
issuing 43:3
Italian 67:16
item 36:19 67:2 70:8 73:6 83:18
items 63:8 65:4 67:3

J

Jack 9:7,21 10:2,11,17,24 11:2,4,11,
 13,16,17 12:11,14,19 13:4,7,10,14,
 15,19,22 14:3,14,19,20 15:16 16:18
 24:19 25:7,22 26:2,3,22 29:20,24
 30:4,13,24 31:10 32:11,21 34:12,24
 35:4 71:2,9
Jack's 10:21 11:22 13:1,22,25 14:5,
 11,16 29:18 35:17
jail 41:3
Jamie 11:24 12:15
January 40:11 49:5
Jeans 77:10
job 63:4 65:22

jock 48:22
jock's 39:6,8 47:20 48:10,16
jockey 23:2,5,16 37:20 38:17 39:3,
 19 40:5 56:13
jockeys 37:4 48:15 53:9,10 54:15,17
 78:10
Jockeys' 76:11,15,16 78:8
Joe 44:3 45:6 46:16 49:1 50:13
 52:10 83:23 85:12
John 66:12,15 67:5 68:20,23,25
 70:3,16 81:18 82:12,23 83:3
Johnny 67:18
Jon 72:24 75:11 76:9 78:15 79:3,12
 84:9,25
judge 9:2 20:20 24:3 28:16 38:20
judge's 17:10
judgment 11:20
judicial 16:4
July 9:3
jurisdiction 59:6
jurisdictions 42:23 44:9

K

Keeler 64:2 66:12,14,15 67:6 68:2,
 21,24,25 69:17,20,25 70:17 78:23
 79:16,18 81:2,5,14,25 82:4,17
Keeler's 62:10
keeping 77:3
Kentucky 50:20,21,23 51:2,13,17,
 21,25 79:19 80:10 81:13 82:11
kicks 30:5
KIENINGER 71:10
kind 19:17 23:21 33:15 34:14 41:2
 47:14 57:6,19 61:3 65:18 71:23 72:3
 73:19 74:16 82:24 83:20
kinds 62:1,16 65:12
knew 46:20
knowing 65:25
knowingly 41:7,16
knowledge 18:24

Knowles 11:24 12:15

L

lab 51:1 60:11
label 15:5
labeled 13:23
laboratory 50:21 52:24 59:2
laborious 26:16
labs 50:14,17
lane 80:1
language 11:10 15:13 34:20 58:9
 59:21 66:24 71:15 83:11
large 82:9
largely 73:16 75:24
late 49:14
Laughing 38:12,25 62:12 65:20
 68:1 83:5 87:11
law 9:2,12 17:10 20:20
laws 16:14 18:12
lawsuit 27:25
lawsuits 28:1
lawyer 29:10
lawyers 29:15
Lea 9:15 17:1 35:9 46:16 60:2 61:4
 65:17,21 85:15 86:21
Lea's 83:21
learned 35:21 40:9
leases 67:4,12,15 68:4
leave 80:22
left 11:2 73:3
legal 11:5,7 13:1,10,14 14:8 20:10
 21:8,9,12,14 22:18 28:7,12,20 31:1
 32:2 35:22 78:20
legislation 86:16
legislative 54:6 85:15 86:8,11
legislature 28:24
lengthy 56:20
lenient 40:7

lessons 40:9
lets 64:11
letting 40:8
level 13:2,20 19:7 26:14 50:2 67:17, 23
leveled 33:20
LGC 50:21 51:1,16,19
license 39:14 42:16,17,18,25 43:1,2, 3,14 44:16,23 45:5 64:11
licensed 42:11 84:8
licensee 63:3
licensees 52:21 53:8,9 56:24
licenses 18:16,17 43:14,16
licensing 36:20 37:10,11 44:14 45:1 46:10
lifetime 39:17
lifted 39:13
light 12:15
LIGHTLE 36:11 37:13 45:8 46:6 47:11 52:6 58:15 59:22 66:6 70:10 75:6 76:5 79:8 83:13 85:8
likelihood 55:25
likened 25:14
likewise 10:10
limits 57:6
list 84:6,12,20 85:4
listen 18:1
listing 51:1,2
lists 59:6
literally 78:13
litigation 24:16,21 27:11
live 38:23 49:15 81:25
lives 78:13
living 61:6 77:12
LLC 9:21
lo 39:9
local 67:13,16
locales 48:21

location 82:1
locked 16:3
lockers 48:10
log 49:5
logic 13:2 26:5 29:11,14 30:5,14 35:3
long 25:23 42:3
longer 78:1
looked 63:24 64:15
loss 22:2
lot 15:14 35:21,22,23 37:22 42:23 43:14 44:10 45:24,25 49:7, 56:12 57:18 63:25 77:19 81:16 85:17
lottery 25:14,15,16,19 30:16,17,19
Louisiana 42:11 67:20
low 20:14,16

M

machine 30:21 37:4 38:5,8,18,20, 22,23 39:4,10,16 48:1
machine's 48:4
machines 38:4 48:13 80:12,24 81:5, 21
made 21:22 31:13 39:12 50:17 51:15 79:23
magazine 38:1,2
magnified 37:21
magnitude 13:18
maintain 44:13 67:8
majority 57:21 76:25
make 22:10 27:17,21 36:11,12 40:20 47:15 58:24 59:8,10 60:5,12,16 61:21 63:4,9 65:8 66:4 70:10 74:23 75:6 76:4 79:5 80:18 81:20 82:3,13 85:16,20
makes 13:3 28:24 59:16 65:22 66:5
man 46:6
manage 63:12 64:21 65:23
management 62:4 63:11
manager 64:12 71:4

mandatory 11:10 15:13
manner 66:22
March 49:6
material 57:23 61:21
matter 9:5 14:6 16:15,19,24,25 28:11 32:22 33:6 59:11 63:22 69:23
matter's 33:6
mattered 31:14
means 12:1,12
medication 18:23 19:22 57:23
medium 52:22 53:3
meet 9:15 49:14,15 60:10 64:9, 72:10 87:8
meeting 48:7 50:16 51:18 54:16 55:21 60:23 61:15 86:10,23 87:1,7, 14
meetings 54:23 87:9,10
members 66:14 68:25 72:3 77:1 79:17
mentioned 80:16
mess 45:9,13
met 20:1,21,22,23 21:11 22:5 23:9 25:11,21 28:14 34:10 55:18
met all 23:12 74:8
metal 48:19,23
Mexico 40:22 42:12
mid-july 17:1
mid-june 17:2
middle 64:9
million 69:6
mind 30:14 62:18
minutes 16:21 24:7 27:3,10
mirrors 71:7
miscreants 40:8
misdemeanor 41:5
misspoke 74:20
modification 82:21 83:11
moment 46:11
money 10:17,20 11:2 12:20 13:17

14:4,25 15:17,20 22:2 24:25 25:8,10,
23 26:4 32:2 34:7, 64:18,19,21 73:10
74:14 78:2 81:23

money's 26:10

month 55:18

months 40:18

Moore 71:3,11,15,20 72:7

morass 29:1

morning 9:11,18 27:6 72:25

motion 20:9 24:4 35:17 36:11,12
52:2 58:12,14 59:20,22 65:23 66:3,4,
5 68:14 70:7,10 72:14,16 75:4,6
76:2, 79:4,5,6 83:10,14 85:6,9

Move 52:4 68:13 83:12

moved 31:2 72:17 85:7

moving 17:2 57:8

music 80:7

N

n' 67:16

nail 40:19 41:15 46:4

name's 79:17

named 13:5 19:13

names 84:14

national 41:23 73:3 77:18

nationally 37:16

neighbor 82:9

NEWELL 49:4,12 50:1,5,8,11

nice 9:15,16 72:3

Nobody's 19:5 21:3

non-disciplinary 33:7

norm 58:4

note 71:23

notice 16:6 23:15 28:19 29:2 53:25
54:21 56:5

notification 54:8

notified 10:6,8,10,12,24 31:14,17
54:13

notify 54:12

noting 75:18

notoriety 77:19

notoriously 40:7

number 43:16 53:11

numbers 25:16, 30:21

O

object 56:22 57:6

obligation 20:18

occur 74:15

October 9:24 74:12

offered 33:15

offering 67:21

offerings 67:11

office 9:14

officer 80:18

official 84:6,12,23

officially 31:23 34:14

officials 56:7 83:25 84:7

Oklahoma 42:11

older 81:10

open 24:15 26:17

opened 27:15 28:2

opening 22:17 54:18

openness 16:5

operation 30:25 73:14 75:17

operations 19:15 63:12

operators 67:13

opinion 17:6 35:11 46:8

opportunity 12:19 14:5 15:1 16:9,
11,12 27:2 34:9 44:17 58:1

opposing 15:15 24:13,22 25:12
33:25

opt 73:23

options 82:7

oral 52:25 53:5,16,19 56:25

oratory 45:9

order 17:10 35:16,18

ordered 10:16

Orders 20:17

organization 12:23

organizers 14:12

Orleans 67:19

OTB 81:4,15

outstanding 49:14

owned 10:1

owner 12:14,22 17:11 18:2,3,6,7,9,
13,14,23 19:8,11 21:7,25 23:4,11
25:1,5,24 26:15 29:25 32:11,22,24,
25 33:20 34:18

owner's 18:22 20:2 21:20

owners 15:23 18:16,21 22:20 28:2,
19 33:13,14 54:25 56:6 73:21

P

packet 37:7,24 42:19

paraphrase 73:20

paraplegics 77:25

parent 41:22

pari-mutuel 85:22 86:5

Park 40:24 67:11 71:4, 84:5

parking 80:1

part 42:7 62:18 69:9,10 71:18 72:8
78:7 80:21

participate 9:22 11:5 16:19 22:18
25:9 26:6,10,22 31:18 33:2,4,5 70:22

participated 10:13 25:6

participating 12:6,8,9 28:3 41:18

participation 13:23 31:16

participator 25:14

parties 13:12

partnership 73:12 75:15 76:20,21

parts 66:1

party 16:1,2 28:4 31:19 62:7 79:19,
20

pass 56:21

passed 57:5 66:11,18 69:22
passes 58:19 70:15
passing 66:25
past 42:10 52:20 54:23 55:7 87:5
Paulick 41:3
payments 73:20
payouts 81:24
pecuniary 11:18,22 13:1,19 14:16
 15:9 31:25
pedestrian 80:2
penalized 34:13
penalties 49:25
penalty 47:3 49:24,25
Penn 41:23 73:3
people 29:2 32:5 34:23 35:5 37:23
 43:12,17,18 44:7,16 45:25 48:3,6
 54:12 55:11 57:4 61:5 70:3,24 78:12
 84:10,14,18 85:4
percent 11:2 58:3
percentage 67:15
perception 33:22
perfect 54:15
perimeter 80:16
permanent 39:17
permanently 77:22,24 78:10
permission 68:11 69:2 81:4
person 9:15 20:16 34:8 39:11 41:2,
 18 42:8 43:21 44:2 45:10
person's 11:19,23 59:2
personal 11:18,22 13:1,18,24 15:9
 20:11 31:25 34:1
personally 14:21 30:25
persons 12:11 14:22 34:20,23 35:1
petition 11:10,11 69:2
petitioner 11:13
photograph 37:12
photographs 37:6,20 38:4,5
pick 47:25
picked 37:15,17 47:21,24 48:8
piece 37:19 46:17
pieces 86:15
piggyback 57:19
Pillow 32:9,10,17 46:16 54:22,23
 55:7 57:15,19 58:5,7 60:21 65:17
 66:4 67:25 68:16 72:18 74:1,2,5,16
 76:4 78:14,15,24 79:5,7 83:3,8
pivotal 25:2
pizza 63:19 65:18 73:2
pizzas 63:14
place 72:10
placement 21:22 22:24
plans 69:4
player 25:19
plea 41:4
pleaded 31:17,18
plethora 77:13
point 26:8 27:18 31:8 32:15 35:14
 58:6 60:21 61:3,22 64:14 79:1 85:24
pointed 23:20 28:23
points 14:18
police 41:7
policy 27:21, 42:24 54:4 60:7
portion 78:10
positive 32:18 60:11
possibly 53:4 63:24
post 54:17
pot 64:20,21
potential 12:25 14:14 28:1 82:16
potentially 12:13,22 16:13 35:6
practical 66:23
practice 37:8 58:24 59:17 60:13
practices 62:24
precedent 22:19
precedents 24:1
predominantly 53:4
preliminary 69:12
presence 44:18
present 10:6,8,10,13 12:2 21:8
 69:19 72:11
presentation 44:25 50:18 51:15
presented 14:21
preserve 16:11
president 71:3
press 37:16,17 38:13
pretty 60:24 64:17 71:6 77:18 82:15
previous 61:8 73:16
primarily 86:3
print 43:7,10
prior 43:3 48:17 58:21
privilege 82:15
pro 63:1
problem 19:14 32:13 54:25 57:16
 63:17
problems 44:22
procedural 23:13
procedure 53:7 63:11
procedures 20:18 58:21
proceeding 22:19 29:3 31:10 65:9
proceedings 10:25 11:6 12:3 13:6,
 9 14:20 25:6 35:22
process 14:9 15:21 18:8 21:1 23:17,
 22 24:24 25:3 26:23 27:17 31:2
 35:25 36:9 47:7 51:18 52:11 54:21
 56:20, 57:22 65:14 71:19 74:3
product 44:19 67:9
professional 48:11
professionally 48:13
program 36:20 37:10,11 42:14
 43:20,24 44:14 54:19 82:6
programs 44:14
promote 81:12
promoting 84:10
promotion 85:25
promulgating 56:4
proof 36:2
proper 82:14

property 11:18 13:19 14:8 15:9,15,
18 20:2,5,11 21:17,18 22:6,12 23:6,
22 25:4

proposal 70:7

proposed 52:19 58:8 84:6 85:4

proposing 53:2

prospective 52:21 53:8

protect 14:11 21:15

protectable 28:12

protected 53:18

protecting 18:15

protection 32:3

Protective 72:24

protracted 26:16

protractive 24:21 27:11

prove 25:18 26:7

proven 25:23

provide 19:24

provided 32:3 37:24 69:4

proving 15:2 25:10 26:6

provision 86:1

public 81:9

publication 37:25

published 39:24

pudding 36:2

pulling 39:7

purchase 73:13

purchased 48:18

purpose 81:12

purse 10:17,19 11:1 12:19 13:17
14:3,25 15:17,20 17:24 19:1,4,9,17,
18,25 20:3 21:8,9,10 22:6, 23:7,12
24:25 25:8,10,19,23 26:10 28:9,10
31:22 32:2 33:9,10 34:7,18 73:10

put 37:6 43:4 56:5 64:20 70:19 80:1,
12

puts 53:19 57:6 63:16

putting 46:11 49:1 60:13

Pylitt 28:16 38:20

Pylitt's 24:3

Q

QT 48:9

quarter 40:23 43:8 47:24,25 48:2,5,
8 56:9 69:3,5,11 70:8 75:12,18 76:3

quarters 39:8 47:20 48:10,16

question 30:8,11,20 32:10 44:19
47:11 49:18 81:19

questions 17:13 24:5 26:23 29:4,6,
14 35:8,11,12 49:8 53:24 63:6 68:3,7
70:6 72:13 75:2 81:18 85:2

quickly 64:17

R

race 10:3,19 14:12 19:22 20:1 22:5,
22 32:12 33:1 40:12 42:16 43:25
45:11,20 48:5,6,17 49:15 60:10
69:15

Racecourse 9:25 10:20

raced 43:23

racehorses 78:20

races 14:13 15:5 34:3 39:5

racetrack 38:9 45:14,17 46:1

racetracks 41:21 46:12

racings 12:17 15:23 17:17 19:3,15
37:2,16 39:1 40:17,22 41:1,20,25
42:24 43:9,19,24 44:8 45:3 54:2
59:5,12 71:4 75:18 77:17 78:21
81:12 83:25 84:5,12,23 85:22 86:17

racinos 86:4

raise 78:1

raised 20:8 26:24

raises 23:13 33:18

ran 39:6

Ratcliff's 62:9

RCI 43:9

read 37:18 39:25 51:4 59:8 86:15

reading 45:10,18

ready 72:10

real 29:2 36:1 47:3

realize 86:18

realized 64:17

rear 82:9

reason 16:16 18:18 29:11,13 30:5,
14 35:3 42:13 57:12 70:18

reasonable 14:7 32:4

reasons 53:12

rebuttal 27:3 28:23

recaptured 11:1 24:25

receive 51:13 60:11

received 10:2,17

recent 46:22

recognize 78:21

recognizing 66:19

recommend 12:23

recommendation 15:25 26:18,21

recommended 14:23 16:10,16
24:14 25:13

recommending 25:24

record 41:24 44:3,5 51:23 52:10
60:6,17 73:3 81:21

redistribute 17:24

redistributed 19:2

reduced 41:4

reflect 52:11

reflective 63:5

reform 40:10

refresh 67:9

refusal 42:19

refusals 44:6

refuse 43:13,14,15

refused 42:18 43:17

regard 26:18 34:19 42:14 43:4 66:17
67:1,11

regret 63:2

regular 56:19,21 65:14

regulates 61:19

- regulation** 23:19
regulations 20:15 28:21 43:23
regulators 41:10
regulatory 44:15
reiterate 64:23
reject 24:18 26:21
rejected 16:17
relate 85:21
related 26:3 62:7 78:9
relates 39:22
relocation 79:15
Remember 68:10
reminder 35:14
removed 26:1
rent 80:1
Repeat 51:10
replace 67:19
reply 31:6
Report 41:3
reporting 40:20
reports 60:11
represent 79:18
representation 76:18
representative 56:14
representatives 55:19
representing 66:15 69:1 78:22
represents 76:24
reputation 14:1 15:4,20 18:15 40:5
reputational 21:15 22:4 33:12,24
request 11:5 24:2 68:6,12
requested 73:11
requesting 10:19
requests 69:2
require 61:11
required 62:2
requirement 61:16
reroute 80:2
rescind 63:17
respect 9:19 29:14 60:4
respectful 48:12
respectfully 24:2 26:20 68:5
response 20:9
responsibility 18:20
responsible 15:23 16:1 17:19 30:1 35:5 63:3
restaurant 67:16,23
result 17:22
resulted 39:18
resulting 39:16
retain 12:19 15:17
return 10:17,19 25:8
returned 41:13
returnees 84:19
revealing 36:23
reverse 17:9
reversed 10:21
review 42:17 43:2,11 66:1
reviewed 42:16
reviews 64:1
revise 66:22
revised 75:5
revolting 40:14
rhetorical 30:7
Richard 10:9 12:5
Richwine 47:22 56:13
Rick 71:3
rid 42:1
ride 78:1
riders 38:3 76:17,23,25 77:12,13,22, 23
ridiculous 46:1
riding 39:4 41:13,24
rights 11:18,23 14:8,16 18:8 23:18, 22 24:24
rise 23:3
rising 77:4
risk 14:12 22:14 78:13
Robin 16:22 32:10
Rockets 67:18
Rod's 70:4
Roman 36:20 40:5 42:2,9,15 43:22 44:8 48:1 73:4
room 27:14 53:6 59:3
Ross 12:9
ruin 45:23
rule 25:2 32:23 34:21 52:15,17 53:19 54:1, 55:6,7,10,16,20 56:4,11 57:4,5, 6,9,21,22 58:20,22,23 59:10,20 60:5, 6,12,14 61:1,10 62:13,18 63:5,23 65:5 66:18,20,24
rule-making 56:19,21 65:14
rules 12:17 15:22 17:16,17,22 18:18 19:3,11,23,24 20:7 23:3 28:5,24 34:16 52:13 54:24 55:1,3,8, 57:11, 16,24,25 61:9,11 62:21 63:1 64:25 65:14
ruling 10:16 11:15 12:23 13:13,21 14:24 16:10,16 24:15 34:14 49:5 58:25 59:4,5,13 69:23
rulings 10:16 11:1,3 13:12,18 14:2, 10,23 15:7,24 26:14 29:12 49:7,13
run 40:20
running 51:16
Russell 10:5 12:9,24
-
- S**
-
- sad** 36:23 37:14
saddle 41:19
sadly 42:4,8
safe 85:24
saliva 53:2 58:11
Sam 40:12 41:22
sample 50:14,17 51:1,14 58:21
samples 51:15,19,24
sat 22:1
satellite 62:23

Saturday 77:11
scale 82:14
schedule 87:2,4
scheduled 9:2 16:25 86:9
Schenkel 29:9,10,23 30:5,12 31:7, 21 32:4 33:18 34:12 35:2 36:14 38:15 49:18,20,21 50:3,7 52:4 53:25 58:13 59:23 63:7,8 64:11,15 65:3,8, 16 68:13 69:16 70:11 72:17 73:18,25 75:7 81:19 82:2,22 83:12 85:7
Schererville 9:14
scope 74:10
script 51:4
scrutinize 44:5 45:4
scrutinized 34:4
search 39:5 47:20 48:9
searched 48:14,15,16
season 49:6 54:2 60:20 69:15
second-place 10:18 14:4
security 39:4,7 47:22,23 80:17 81:22
seeks 11:4
self-explanatory 59:16
Senate 85:23
sense 59:4 65:22
separate 26:1 74:16
September 10:3,18,22 74:12
serve 63:19 65:18
served 41:3
services 62:6
session 85:18 86:12
session's 86:9
set 17:16 22:19 86:22 87:7
setting 23:25
settlement 39:13
Seventh 18:11 21:20,22 22:3 27:19 33:12
shaking 32:16
shelf 38:1
shock 38:18,21
shocked 38:14
Shocking 40:13
short-term 67:15
show 11:17 25:3,17,20 34:10 38:7
showed 41:1
shows 26:11
SHUSTER 72:25 73:6, 74:19,25 75:14,24 76:12,16 77:8 78:9,19,25 79:13 85:1
sick 40:15
side 71:22
sidewalk 79:25 80:3,13,20
sign 64:7
significant 13:24 14:7
simple 51:6
simpler 74:24
simply 24:16
Simultaneous 65:16
sir 79:16 81:2
sit 25:25 27:21 30:17
sitting 21:3 38:1
situation 28:18 30:22
sky 55:12
small 43:17
smaller 82:14
sneak 16:8
somebody's 22:21
something's 60:23
sort 77:3 80:7
sorts 19:21,23
sound 63:4 81:8
sounds 82:15
spans 49:5
speak 36:2 70:25 73:1
speaking 82:20
specific 29:8 35:13
specifically 13:5 18:14
specifics 74:14 85:17
spelled 70:8 85:6
spent 56:12
split 50:14,16 51:1,14 58:21
spoke 17:4
sport 37:25 40:6 41:9,19
sport's 40:5
stab 40:19
Stables 9:21 10:2,11 13:7
staff 11:7 16:23 20:9 31:3,15 33:16 66:19
Staff's 27:2
stage 77:18
stakeholders 55:2,13,15 58:1
stand 67:14
standard 11:7,21 13:10 20:6,7
standardbred 43:5 71:2,6 72:16
standardbreds 56:8
standing 25:7 28:15,21 32:12 76:10
start 9:8 22:17
started 69:12 77:9
starts 60:20 72:10
state 18:12 23:19 24:23 28:22
stated 9:24
statement 33:23
states 11:9,12 43:6
stationary 80:12
statute 23:19 62:21
statutes 28:22 29:12
step 60:4
steps 35:23
steward 23:17
steward's 23:16
stewards 10:15,24 12:4 13:5,13,21 14:2,10 15:6 17:23 21:13 22:23 23:14 28:18 29:1 31:15 32:13 54:16
stewards' 14:23

stick 55:8
strap.' 41:8
street 80:14
strictly 32:17
strikes 30:23
stuck 27:20
stuff 45:22 61:3
subject 18:22 19:1 29:17 30:8 32:24
 60:14 66:2
submit 17:8 27:12,24 28:16
submitted 62:14 74:7
subscribe 16:13
substance 59:1
substantial 75:23
substantially 70:5
substantive 9:18 57:23 71:8,16
 73:8 75:14 76:13
sudden 23:15
Suds-type 67:17
suffer 15:3 35:6
suffered 15:3
suggest 58:2
suggested 20:14 22:8 25:12
suggestion 22:9 24:13 51:10
suit 21:5
summary 9:17
Sunland 40:24
support 57:4
supports 76:17
suppose 62:10
supposed 41:12 82:18
surprise 16:8 67:21
surprising 24:11
surrounded 15:6
sushi 67:22
suspect 64:3 70:23
suspected 39:4

suspended 39:11 40:18 47:1,7
suspension 22:10 32:24 39:13,18
 41:12 47:4
suspensions 43:7,11
swab 52:25 53:16 56:25 58:10
swabs 53:5,19
synopsis 86:13
system 15:25 16:4,13 17:9 59:7

T

takes 34:18 65:6
taking 25:4 44:24
talk 36:1 37:8 47:12 55:13,15 71:1
talked 48:19 55:20 56:13 64:16
 82:24
talking 22:7 30:18 36:7,8 38:3 50:13
 54:24 55:2,9 82:6
Tam 10:1,5,7,18 12:1,7,14 14:4,13,
 25 15:2 30:3
Tampa 78:5
tarnished 22:9 23:6
taxpayers 64:19
team 47:23
Technically 82:20
technology 52:23
tellers 81:25
telling 48:7 58:10
temporary 79:15
ten 39:11 47:2,4
tend 78:1
tent 80:7,14,15 81:11
term 11:5 29:11 33:21
terminate 62:20 65:1
terms 29:1 34:14 82:10
Terpstra 9:10,12 18:1 20:4,14 24:6,
 9,11 27:5 29:6,16,19 30:2,11 31:5,8,
 24 32:6 33:21,24 34:16
Terpstra's 21:4
Terry 47:22 56:13

test 82:25
tested 53:3,11
testified 10:6,8,11 12:3 21:5
testimony 38:21
testing 44:11,12 51:2, 52:14, 53:20
 58:9,21
tests 60:11
Texas 40:18 42:12
That'll 36:3
Theatre 82:8
theme 77:4
thing 35:15 39:21 48:14 60:22 73:4
 77:20 80:9
things 18:2 19:6,21 22:10 42:20,21
 47:19 48:18 57:24 76:19 86:20
thinking 59:16
thoroughbred 43:8 48:6 73:7
thoroughbreds 48:2 56:8
thought 37:7 87:1
threat 27:11
threshold 65:24
thrilled 45:20
thrown 29:11 42:2
ticket 25:15 30:19
ticketholder 30:17
tide 77:4
till 28:14
time 16:20 21:13 24:5 27:6,10 37:8,9
 39:6 40:11 41:25 42:3 44:1 46:20
 51:11 54:17 56:12 57:7,21 58:3
 60:23 61:15 65:10 66:1 68:11 82:5
 86:22,25
timeline 69:16
timeliness 54:5 60:9 61:10
times 29:12 37:18 48:22 57:18
timing 54:15 60:18
today 25:7 26:17 31:12 35:22 65:4
 66:13
told 56:16

topic 47:18
tortured 41:16
tortures 41:7
tote 62:6
touch 31:10 46:2 66:21
touched 38:22
tough 46:10
track 33:3 44:18 46:7 57:14 62:4
 73:14 84:22
track's 74:13
tracks 27:15 46:14 62:23
trade 14:16
trade-offs 86:18
traditional 81:6 82:1
traffic 80:2
trainer 9:19,20 10:7,9 11:25 12:5,7,
 12 13:15,16 17:19,20 31:9 32:19
trainers 9:23 12:2 18:19,20 29:16
 31:17 36:4 56:6 73:9,18,21,22 74:20
Trakus 75:16,19
trash 39:8,9
treated 34:2
treatment 30:3
trial 16:3
tribute 78:12
triple 77:12 78:4
Trotting 43:6
true 24:18
trust 18:15 87:10
Tuff 12:1,14 14:13 15:2 30:3
Tuff's 10:5,7,18 12:7 14:4,25
Turf 37:25
turn 23:9
Turned 48:10
turning 44:25
twelve-hour 23:15
type 15:10 52:15
typical 42:5,9

typically 17:5

U

ultimate 18:20
ultimately 15:23 16:1
unaware 30:13
undeniable 16:15
underlying 9:5 17:23 20:25 21:5,12
 25:6
understand 53:22 57:15 60:18
 63:10
understanding 13:3,20 29:19
unilateral 16:7
unilaterally 10:21 14:12 15:6
United 43:6
University 50:20,23 51:2,13,17,21,
 25
unlawful 25:4
unofficial 42:24
unrelated 10:23 40:25
unusual 60:22,24
update 85:15 86:11
upper 67:17
upping 48:19
upside 48:11
upward 34:17
urine 52:22 53:1,4,13 56:25 58:11
USTA 43:6
utilizing 53:4

V

valued 62:7
vary 47:5
vast 57:21
venture 64:12
venue 82:10
verbiage 59:9

veterinarian 10:5 12:2,13
vetted 57:17
vice 71:3
victory 14:25
vigorously 21:2
violate 43:22
violated 12:16 19:23 23:2 24:25
violates 62:20
violation 14:8 18:7 20:2 21:1 27:16
 29:17 30:18 32:23 34:17 35:24 36:3
 44:2,4 50:6 60:14
violations 15:24 19:22 42:10 44:20,
 21 49:22
vision 16:5
Voodoo 67:20 83:3
vote 50:9 51:7,11 82:19
voting 68:10

W

wagering 79:15 81:17 85:22 86:2,5
wait 27:1 86:21
walk 81:10
wand 48:19,20,22
wanted 56:21 60:16 82:3 85:19
watch 38:24 47:23
ways 57:9
weakness 41:17
WEATHERWAX 27:4 29:7 35:8,20
 36:7,12,15,18,22 37:14 45:6 46:19
 47:3 48:25 49:10,17,20 50:9,12 51:3,
 7,10,24 52:2,5,7,10 53:22 54:8,11,20
 58:6,14,16,19 59:15,19,24 60:2,18
 63:7 64:14 65:2,21 66:5,7,10 67:5
 68:7,14,17,20,22 69:18,21 70:2,12,
 15,18,21 71:1,12,17,21,25 72:2,12,
 19,22 74:1,23 75:1,8,11,21 76:1,6,9,
 14 77:5 78:7,11 79:1,6,9,12,14 80:25
 81:3,7,18 82:12,18 83:2,9,14,17,19,
 23 84:2,13,17,24 85:3,9,12, 86:14
 87:6,12
website 39:24
weed 44:17

week 47:18
welcomed 41:19,23
wheelchairs 77:25
who'd 70:24
win/win 52:18
win/win/win 53:17
winner 30:16
Winners 79:20,25 80:5,22
winning 25:15
winnings 10:22,23
witnesses 21:5
work 36:9 47:14 56:6 66:24 69:13
 74:14
worked 84:21
working 17:14 21:1 87:4
world 45:15
worried 63:18
worst 44:17
worth 75:18
writing 37:19 61:25
written 39:23
wrong 9:4 19:5,6
wrote 30:20

Y

year 42:10 43:15 44:11 47:21 49:11,
 13 50:14 60:24,25 71:18,25 72:8,9
 73:8,15 74:3,9,12,17,20,21 76:13
 77:6,8,9 84:4
year's 71:14
yearly 77:7
years 38:3,19 39:3,11,12 40:21
 41:14 46:21,23 47:2,4 71:8 73:17
York 23:16 37:18