

In the Matter Of:

INDIANA HORSE RACING COMMISSION

IHRC Hearing

June 26, 2014

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INDIANA HORSE RACING COMMISSION
MEETING & HEARINGS

HELD ON

JUNE 26, 2014

9:00 A.M.

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APPEARANCES

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

Joe Gorajec, Executive Director

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

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1 CHAIRMAN DIENER: We will call the horse
2 racing commission meeting and hearings this morning
3 to order. Please turn off anything that's going to
4 make noise.

5 The first item on the agenda is to swear in
6 our court reporter.

7 (At this time the court reporter was sworn in
8 by Chairman Diener).

9 CHAIRMAN DIENER: Thank you for being here,
10 Robin.

11 First item on the Commission's agenda is for
12 the Commissioners to consider the minutes of the
13 April 3, 2014 meeting. It was previously
14 distributed. Any corrections, additions to those
15 minutes? I will consider a motion to approve.

16 COMMISSIONER SCHENKEL: So moved.

17 COMMISSIONER WEATHERWAX: Second.

18 CHAIRMAN DIENER: All in favor?

19 THE COMMISSION: "Aye."

20 CHAIRMAN DIENER: Thank you. First item on
21 the Commission's agenda today is a petition of
22 Centaur Holdings, LLC, New Centaur, LLC, Hoosier
23 Park, and Centaur Acquisition, LLC for the approval
24 of the replacement first lien facility.

25 Mr. Babbitt.

1 MR. BABBITT: Thank you, Chair Diener. For
2 purposes of the record, my name is Robin Babbitt.
3 I am from Ice Miller. I am pleased to be before
4 you Commission today to address the first item on
5 the agenda.

6 I will send along Mr. Bayt's regards to you.
7 Mr. Bayt did not attend today. He believes it's a
8 simple and straightforward request that we are
9 making, hopefully not too controversial. My guess
10 is to the extent that he thought it was more
11 controversial, he would be here to greet you
12 himself, but he sent me in his stead. Good morning
13 to you.

14 CHAIRMAN DIENER: Good morning. Lawyers'
15 assumptions are often misplaced.

16 MR. BABBITT: We will find out shortly I guess
17 in response to that.

18 First, let me say how appreciative that my
19 clients are of your counsel's working with us on
20 this. Lea has been responsive, prompt. She has, I
21 think, asked us for all of the information that the
22 Commission might want in considering this. And we
23 are very, very appreciative of those efforts.

24 Preliminarily, we ask the Commission to take
25 official notice of several matters. We would renew

1 that request.

2 One thing I would point out, Chair Diener, is
3 that on that request, I asked the Commission to
4 take official notice of three month LIBOR rate. As
5 of today and when I checked the Internet before I
6 came over, they had not yet posted today's rate.
7 Yesterday's rate, June 25th's rate was
8 0.23 percent for a three month LIBOR. It has been
9 that same rate for a month, but I don't have
10 today's rate.

11 So we would ask the Commission to take
12 official notice of the matters that are on our
13 request for official notice and take official
14 notice of the fact that as of June 25th, the
15 three month LIBOR rates was 0.23 percent.

16 CHAIRMAN DIENER: Miss Ellingwood, any
17 problems?

18 MS. ELLINGWOOD: No problems.

19 CHAIRMAN DIENER: So done. We've taken
20 official notice.

21 MR. BABBITT: Thank you, Mr. Chair. In order
22 to move this as quickly as I can, I would ask that
23 the Commission make a part of the administrative
24 record all of the exhibits that were noted in our
25 exhibit list, which was timely filed on June 18th

1 with the exception of John Keeler's testimony. I
2 will ask Mr. Keeler qualifying questions so we can
3 get that testimony before the Commission. Other
4 than that, we would ask that you admit into
5 evidence and make a part of the administrative
6 record all the exhibits on our exhibit list.

7 CHAIRMAN DIENER: Miss Ellingwood, any
8 questions?

9 MS. ELLINGWOOD: No questions.

10 CHAIRMAN DIENER: So done. They are admitted.

11 MR. BABBITT: Thank you. With your
12 permission, we will move forward with our
13 presentation.

14 CHAIRMAN DIENER: Please proceed.

15 MR. BABBITT: I would point out to the
16 Commission members that we had a PowerPoint
17 prepared. We have everything but the monitor so I
18 can't point to anything.

19 In your materials should be our PowerPoint
20 presentation. It was timely submitted with the
21 exhibits that were filed. We would refer you to
22 that. I have extra copies if someone would like a
23 copy before we get started. Hearing no request for
24 a copy, I will move forward.

25 As the Chair has indicated, we are here to ask

1 for Commission's approval of the replacement first
2 lien credit facilities. By way of background, in
3 February of 2013 and in conjunction with Centaur's
4 purchase of Indiana Downs, the Commission approved
5 Centaur's financing package. And that was
6 comprised of three separate distinct parts.

7 The first credit lien facility was in an
8 aggregate amount \$480 million. That was
9 460 million with a \$20 million revolver. The
10 second lien credit facility was in the amount of
11 \$175 million. And then there were unsecured PIK
12 notes with nondetachable warrants in the amount of
13 \$85 million.

14 Today Centaur seeks Commission approval to
15 replace only the existing first lien facility. We
16 are not here to talk about the second lien or the
17 PIK notes. They stay in the same place that they
18 were before. And they will continue moving
19 forward. But we are asking to replace the first
20 lien credit facility.

21 The current first lien financing is
22 characterized as a syndicated investor loan. And
23 this is also known sometimes as hedge fund
24 financing. Goldman Sachs and Deutsche Bank
25 Securities were involved in that financing. These

1 loans have historically higher rates than bank-held
2 debt but are not as leverage sensitive.

3 The interest rate in effect currently is LIBOR
4 with a base of 125 points plus 400 basis points.
5 So the amount that Centaur is paying on the first
6 lien credit facilities is 5.25 percent.

7 Now, since February of 2013, Centaur has
8 reduced the aggregate principal amount of the first
9 lien loan. This has been accomplished with pay
10 downs from cash flows. As a result, Centaur now
11 qualifies for bank-held debt. That's why Centaur
12 is seeking approval of replacement first lien
13 credit facilities of \$425 million. Four hundred is
14 the principal amount. Twenty-five is the revolver.

15 CHAIRMAN DIENER: Can I interrupt?

16 MR. BABBITT: Absolutely.

17 CHAIRMAN DIENER: Give us a quick explanation
18 of what that meant to Centaur that you now qualify
19 for traditional bank debt.

20 MR. BABBITT: I think the fact is that Centaur
21 has been a wise steward of the funds that have come
22 in and that have resulted from the Commission's
23 actions since 2013. And because they have been
24 able to pay down the principal amount of the debt,
25 the leverage ratios have been reduced. And the

1 leverage ratios by way of this new financing are
2 defined as debt minus unrestricted cash over a one
3 year EBITDA, which is calculated on a rolling
4 basis. So that now that those leverage ratios have
5 been reduced because of Centaur's stewardship of
6 the funds, they qualify for a better rate
7 financing. In essence, one might say in the
8 homeowner's context that they have a better credit
9 rating so you're going to get a better rate. And
10 that's precisely what's going to happen.

11 Does that answer your question?

12 CHAIRMAN DIENER: Yes.

13 MR. BABBITT: So now because of the fact that
14 they now qualify for the bank-held debt, the new
15 rate would be LIBOR. Currently the three month
16 rate, at least as of yesterday, was 0.23 percent
17 plus 275 basis points. So now we are looking at a
18 three percent level. Under the new term loan,
19 interest would be tied to leverage levels and
20 reduce as leverage decreases.

21 Now, there is an upside chance that to the
22 extent that leverage would increase, that that rate
23 could float up a quarter point. It actually slides
24 somewhere between at the bottom 200 basis points
25 plus LIBOR and 300 basis points.

1 COMMISSIONER SCHENKEL: So it could go down as
2 well.

3 MR. BABBITT: It could go down. It has much
4 more of an opportunity to go down, based on Doctor
5 Sullivan's analysis.

6 COMMISSIONER SCHENKEL: This is not the floor.

7 MR. BABBITT: This is not the floor. It can
8 only go up a quarter point to LIBOR plus 300 basis
9 points, but it can go all the way down to LIBOR
10 plus 200 basis points. So it has the ability to
11 slide down another three quarters of a point to the
12 extent that Centaur would be able to reduce its
13 debt and the total leverage ratio would decrease
14 pursuant to the levels.

15 Now, Centaur has calculated the initial rate
16 reduction of 2.25 percent to result in annual
17 savings of approximately \$9 million. Doctor
18 Sullivan, in her report, confirmed that the savings
19 she projected would be in the range of eight to
20 \$9 million per year. That's at page five of her
21 report.

22 The new first lien credit facilities will be
23 collateralized by essentially all of the assets of
24 Petitioners, which is currently the case with the
25 current financing, but not the funds owed to the

1 horsemen's associations or allocated to purses or
2 breed developments on account of the initial
3 distribution agreement at IC 4-35-7-12.

4 And I would make a couple points in this
5 regard. First, the collateral for the replacement
6 financing is the same collateral existing for the
7 existing first lien credit facilities. Two, only
8 Centaur and its subsidiaries are guarantors, not
9 any of the horsemen's associations. The extension
10 conditions and the IDA approved by the Commission
11 have not been satisfied at this time. And the
12 association's representatives have not executed nor
13 have they been asked to execute any agreement
14 contemplated by the December 10, 2013 order.

15 So, again, the Commission is not being asked
16 to approve any subordination agreement by an
17 association as a part of this petition of
18 refinance.

19 The events of default. The default conditions
20 for the replacement first lien credit facilities
21 are substantially similar to the provisions now in
22 effect to the existing first lien credit facilities
23 that were approved by the Commission as part of
24 Centaur's acquisition of Indiana Downs in 2013.

25 I would make a couple points about Doctor

1 Sullivan's report. She said a number of things
2 which we think are accurate and certainly support
3 your approval of this petition. One, she said that
4 Centaur has been "wisely conservative in its
5 operating forecast." She said at page two of her
6 report "The data also indicated that Centaur
7 Holdings generated a very good operating cash flow
8 margins" -- talking about 2013 and up to this point
9 -- "which was more than adequate to cover interest
10 expense on its debt." And at page seven, she
11 indicated that improvement in operating results is
12 fairly certain to occur.

13 CHAIRMAN DIENER: Let me interrupt, if I
14 could. For those of you in the room, when
15 Mr. Babbitt refers to Doctor Sullivan, Charlene
16 Sullivan, Ph.D. is on the faculty of the Krannert
17 School of Business at Purdue. She has been a
18 witness, expert witness for the Commission staff on
19 financial matters, as well as the same expert
20 financial witness for the Indiana Gaming
21 Commission. And that's just for clarification for
22 those of you who might not be aware of Doctor
23 Sullivan. Sorry to interrupt.

24 MR. BABBITT: Thank you, Mr. Chair. At this
25 time with your permission, I will quickly call John

1 Keeler to testify.

2 CHAIRMAN DIENER: Thank you. Yes. For those
3 of you in the room, if you're going to make
4 presentations to the Commission today or testify,
5 I'd appreciate it if you would spell your name for
6 the court reporter so that she's aware of it. That
7 won't be necessary for Mr. Babbitt or Mr. Keeler,
8 but there may be others.

9 Good morning, Mr. Keeler.

10 MR. KEELER: Good morning, Chairman.

11 MR. BABBITT: Just a few questions to you.
12 Would you swear the witness? I don't know if
13 Mr. Keeler is sworn in or not.

14 CHAIRMAN DIENER: He's not sworn in. It's not
15 my job.

16 (The witness was administered the oath by
17 Mr. Babbitt.)

18 BY MR. BABBITT

19 Q I will hand you prefiled testimony by John Keeler
20 dated June 10, 2014 and ask whether it contains
21 your signature.

22 A It does.

23 Q Is it your statement?

24 A It is.

25 Q Did you make this written statement under oath?

1 A I did.

2 Q Did you submit this statement freely and
3 voluntarily?

4 A Yes, sir.

5 Q Do you affirm that all the statements that appear
6 in this affidavit are true and correct as if you
7 had made them under oath today?

8 A I do.

9 MR. BABBITT: I request the prefiled testimony
10 of John Keeler dated June 10, 2014 be admitted into
11 and be made a part of the administrative record.

12 CHAIRMAN DIENER: So admitted.

13 MR. BABBITT: We have no further questions of
14 Mr. Keeler unless any member of the Commission
15 would like to question him.

16 CHAIRMAN DIENER: Any questions for Mr. Keeler
17 for Centaur from any Commissioner? Hearing none,
18 you are excused, Mr. Keeler.

19 MR. BABBITT: Thank you, Mr. Chair. We would
20 make a few points and then conclude. First, we
21 understand that this Commission acts independently.
22 It's done a thorough analysis. It's asked for a
23 substantial amount of information, including
24 substantially final loan documents, which we
25 provided on June 16th to your counsel. We have

1 provided a significant amount of materials.

2 Just so you know, the Indiana Gaming
3 Commission has issued an interim approval pursuant
4 to 68 IAC5-3-2 in a waiver. And we have had that
5 admitted into evidence as Exhibit 9.

6 And I would point out that not only was Doctor
7 Sullivan quite effusive in her praise of Centaur's
8 actions with respect to this replacement financing,
9 but she also recommended in summary to the
10 Commission that it approve the request that we are
11 making to substitute this bank-held debt for the
12 syndicated investor loan that we have.

13 I will conclude, take any questions, and then
14 sit down and let you move onto your other business.

15 Our conclusion is that Indiana Code 4-31-5-1
16 provides the racing permit must be in the public
17 interest. The relevant provisions of 71 IAC 11-1-6
18 require that a permit holder be qualified and
19 financially able to operate a racetrack. Centaur
20 submits that the approval of the replacement first
21 lien credit facilities is in the public interest in
22 the best interest of the Indiana horse racing
23 industry, respectfully requests the Commission
24 grant its petition and execute an order dated today
25 that grants its request so that the closing can be

1 completed and the financing obtained before the end
2 of this month.

3 We would very much appreciate it if to the
4 extent that you approve, and we hope upon hope that
5 you will, that you would please issue an order
6 today so we can complete our closing by as early as
7 tomorrow. I will field any questions that you may
8 have. Otherwise, I'm concluded.

9 CHAIRMAN DIENER: Questions for Mr. Babbitt?

10 COMMISSIONER WEATHERWAX: Not a question but
11 just an observation because I've seen a lot of
12 financial packages. I'm telling you this is very,
13 very professional. It speaks to our staff, to you,
14 Charlene. Very well done and sort of makes me feel
15 better knowing what we did a couple months ago.

16 MR. BABBITT: Thank you.

17 COMMISSIONER WEATHERWAX: This is a good
18 question for the future. What will be future steps
19 for Centaur? I know this is a first lien. Is
20 there anything else that has to happen later?

21 MR. BABBITT: There are things that we
22 continue to keep open for possibilities. Right
23 now, the great opportunity is to continue to take
24 that eight or nine million dollars that otherwise
25 would have been going to financing and pay down

1 more debt and have it be available for other
2 operating expenses. That's the first thing.

3 Centaur continues to look for opportunities.
4 Don't know that any are on the horizon. We haven't
5 filed a petition or asked the Commission to deal
6 with that yet. We are very mindful of the
7 provisions of the IDA to the extent there's an
8 opportunity, to act on that and to satisfy the
9 extension conditions and bring those to the
10 Commission, we will be back. We are not at that
11 point yet.

12 CHAIRMAN DIENER: Further questions? I just
13 want to clarify one thing. I want to make sure the
14 12 percent of adjusted gross receipts dedicated to
15 the horsemen's association and to purses, breed
16 development, that is not encumbered in any way by
17 this Commission's actions today on this first lien
18 debt replacement.

19 MR. BABBITT: That is absolutely true. And
20 that was a question that counsel passed along to
21 us. And that is, I think, directly answered in
22 those materials.

23 CHAIRMAN DIENER: Secondly, I just want to
24 compliment Centaur and its counsel on getting
25 everything filed timely and responding completely

1 to the staff questions. And I may need bifocals
2 after looking at the appendices of documents.

3 Thank you, Mr. Babbitt.

4 MR. BABBITT: Even a simple refinance takes
5 about a thousand pages.

6 CHAIRMAN DIENER: Any further discussion or
7 questions? You ready to make a decision?

8 Consider a motion to approve as filed the
9 first lien debt replacement facility for Centaur.

10 COMMISSIONER SCHENKEL: Second.

11 CHAIRMAN DIENER: All in favor.

12 THE COMMISSION: "Aye."

13 CHAIRMAN DIENER: It is unanimous. Thank you,
14 Mr. Babbitt, Mr. Keeler.

15 Second item on the agenda is petition of
16 Centaur for construction of a new dorm facility at
17 Indiana Grand. Good morning, Mr. Elmore.

18 BRIAN ELMORE: Good morning, Mr. Chairman.
19 Brian Elmore, Vice-president of Racing for Centaur.

20 Mr. Chairman, Commissioners, Commission staff,
21 Robin just saved us eight or nine million. I would
22 like to spend 1.8 million of it now. I would like
23 to thank you for approving the finance package. It
24 makes what I want to do much easier.

25 The construction of additional new dorms at

1 Indiana Grand was agreed upon as a part of the 609
2 distribution agreement. There are presently 58
3 dorm rooms there that are ten by ten in size that
4 house two guests for each room. So right now we
5 have an occupancy level of 116.

6 When we added the additional 304 stalls, it
7 was absolutely necessary that we increase the dorm
8 space to house workers that live and work on the
9 backside. The condition of the existing dorm rooms
10 were needed some upgrades and repairs upon
11 acquisition. We began last fall the renovation of
12 the old dorms that were completed prior to the
13 beginning of the 2014 race meet that's included all
14 new heating cooling units, fresh coat of paint in
15 all the rooms, cable TV to all the rooms, new LED
16 light fixtures in all the rooms, WiFi access to all
17 the rooms, new epoxy floors in restrooms and
18 showers. And we created a kitchen area with
19 washers.

20 The proposed new dorm, rooms would be adjacent
21 to the existing dorm. I'm going to ask my
22 colleagues Jon Schuster and Kevin Greely to assist
23 me for just a moment with these renderings that you
24 might be able to see them. If you would, Jon and
25 Kevin. Jon, if you don't mind, would you lay out

1 where the new dorm is going to be on the existing
2 site plan for the Commissioners.

3 JON SCHUSTER: Can everyone see this? This
4 would be, for directional purposes, this is north.
5 This is the racetrack. The grandstand would be
6 over here. When you come in the back, our existing
7 dorms are here just inside the stable gate. The
8 new dorms will be both a small piece perpendicular
9 and another piece parallel to them with in addition
10 to expanded parking. This currently is the parking
11 lot for those folks. Now we have more parking in
12 here so there will be more convenient access for
13 all.

14 BRIAN ELMORE: Thank you, Jon. Kevin, if you
15 would, that's a closeup of the plans more or less
16 of the proposed dorm. If you would kind of show
17 that. As I explained, there will be 45 additional
18 dorm rooms. The new dorm rooms will be larger.
19 They will be 12 by 12, which increases the size of
20 each dorm room by 44 percent. I think our guests
21 will enjoy that. There will be an additional men
22 and women's restrooms built along with six
23 independent shower facilities. Total capacity of
24 both dorms once completed will accommodate 206
25 guests. Thank you, Kevin.

1 Presently we stable about 900 horses. Rule of
2 thumb, there is one groom to every five horses. So
3 we actually need housing for at least 180, but if
4 we built this large enough, and we make it where we
5 can house 206, that would easily accommodate the
6 demand for more space in the event another hundred
7 stall barn would be built in the future. All
8 necessary permits to construct the new dorm have
9 been applied for and approved. We can begin
10 construction immediately upon Commission's
11 approval.

12 Cost for the new dorm is estimated to be \$1.8
13 million with a completion date of late September
14 weather permitting. The new dormitory construction
15 request is testament to Centaur's continual
16 commitment to improve the quality of life for those
17 that live and work on the back stretches of our
18 racetrack.

19 Couple other programs we have instituted this
20 year at Indiana Grand are a free shuttle bus twice
21 a week that goes to Wal-Mart, takes our backside
22 folks there. Picks them up later and returns them
23 to the track. We did a renovation to the receiving
24 barn lounge and installation of high quality food
25 vending products. We have a new improved backside

1 cafe with a mini-mart convenience center located in
2 the race office. We have established a soccer
3 field, which we'll be finishing this year for
4 recreation for the backside folks.

5 Prior to submitting this request and during
6 the design phase of the project, we at Indiana
7 Grand worked closely with the Indiana HBPA and the
8 QHRAI. Both organizations have submitted letters
9 of support for the project.

10 Today we are asking the Commission, as stated
11 in the petition, for approval of the dormitory
12 plans and approval of the attached Hagerman
13 Construction contract. Your consideration and
14 approval of the Indiana Grand dorm project is
15 greatly appreciated. I would be glad to answer any
16 questions the Commissioners or staff might have.

17 COMMISSIONER PILLOW: Brian, who is going to
18 do the construction on this?

19 BRIAN ELMORE: It would be Hagerman
20 Construction.

21 COMMISSIONER PILLOW: I was going to ask
22 another question. Do you guys look at any kind of
23 diversity when you're building things like this?

24 BRIAN ELMORE: I can assure you --

25 COMMISSIONER PILLOW: You probably can't

1 answer that.

2 BRIAN ELMORE: I can. It would be considered
3 a very high minority occupancy. It's kind of
4 interesting, I think the workers of the backside
5 would kind of mirror our jockey colony somewhat.
6 We actually have jockeys riding at Indiana Grand
7 from 20 different countries. I don't know if that
8 answer your question, sir.

9 COMMISSIONER PILLOW: I would like as we
10 continue to spend eight million, that we do
11 consider to make sure we have some diversity.

12 BRIAN ELMORE: I like how you are thinking.
13 I've got seven million to go.

14 CHAIRMAN DIENER: Other questions for
15 Mr. Elmore? Mr. Elmore, just a quick question
16 because I couldn't see on the schematics, the
17 recreational facilities that you have for backside
18 employees, they are still out there somewhere,
19 aren't they?

20 BRIAN ELMORE: At Indiana Grand?

21 CHAIRMAN DIENER: Yes.

22 BRIAN ELMORE: There wasn't any in the past.
23 Now, at Hoosier Park there was.

24 CHAIRMAN DIENER: At Hoosier Park. There are
25 not any at Indiana Grand?

1 BRIAN ELMORE: That's correct. We are
2 building them. We are going to establish those,
3 yes, sir.

4 CHAIRMAN DIENER: Okay. Any other questions?
5 Ready for vote on this matter.

6 Make a motion we approval the request of
7 Centaur for the construction of the new dorm
8 facility at Indiana Grand subject to the
9 traditional condition that the executive director
10 review the various contracts of construction, etc.

11 COMMISSIONER SCHAEFER: Second.

12 CHAIRMAN DIENER: All in favor.

13 THE COMMISSION: "Aye."

14 CHAIRMAN DIENER: Opposed?

15 (No response.)

16 CHAIRMAN DIENER: Carries unanimously.

17 BRIAN ELMORE: Thank you, sir. Appreciate it.

18 CHAIRMAN DIENER: Back to agenda item one, I'm
19 not asking for reopening. I simply blew it because
20 I was moving too fast, Mr. Babbitt. I never got
21 the position of the Commission staff on the request
22 of Centaur for the first lien facility. I know
23 what it is, but it should be in the record. And I
24 apologize to all here.

25 Miss Ellingwood, do you have any comments or

1 the position of the Commission staff?

2 MS. ELLINGWOOD: Well, Doctor Sullivan, as you
3 mentioned before, has been engaged by the
4 Commission to conduct an analysis of the proposed
5 refinance. And that report is part of the
6 material. And Centaur's counsel actually
7 stipulated to the admission of her report without
8 cross-examination and have included that in their
9 list of exhibits that was filed with the Commission
10 on June 18th. That was, as Mr. Babbitt
11 mentioned, favorably impressed with the refinance.
12 Staff supports her opinion.

13 In addition to admitting her report, I would
14 like to also move to admit an e-mail correspondence
15 from Mr. Babbitt to me dated June 20th in response
16 to my request for information that was dated
17 June 18th. Centaur and Commission stipulated to
18 the admissibility of that e-mail correspondence as
19 well.

20 MR. BABBITT: Mr. Chair, accurately stated.
21 No objection.

22 CHAIRMAN DIENER: Commissioners, I apologize
23 for your chairman coming up short there. Sorry
24 about that. Thank you, Miss Ellingwood.

25 We will move onto agenda item three, which is

1 Centaur's petition to issue some Class M units to
2 Mr. Early. Mr. Keeler.

3 MR. KEELER: Thank you, Mr. Chairman, Members
4 of the Commission. My name is John Keeler. I'm
5 general counsel of Centaur. K-E-E-L-E-R. I'm here
6 today representing Centaur Holdings, LLC, the
7 parent company.

8 In December of 2013, the Centaur Board of
9 Managers made a resolution to award to Barton
10 Early, a young employee of Centaur, 37,500 Class
11 M1, M2, and M3 shares. And our petition today, as
12 required by the Commission's rules, seeks the
13 permission of the Commission to award those shares.

14 Centaur's capital structure is complicated and
15 confusing and is really the product of emerging
16 from bankruptcy and trying to weave a path, if you
17 will, through a number of different regulatory
18 requirements. So I thought maybe a good way to
19 explain this, hopefully in a way that's not too
20 boring, is to pose a series of questions regarding
21 the M1 shares and the award to Mr. Early.

22 So my first question is, what's the purpose of
23 the M units? The M units were a creation of the
24 Chapter 11 plan, which Centaur emerged from
25 bankruptcy. The purpose of the Class M units is to

1 retain and incent management to stay with the
2 company with the thought that if they stayed for a
3 certain period of time, that there might be an
4 economic incentive for their service and the
5 duration of it.

6 The second question I asked myself is, who are
7 the current holders of the M1, 2, and 3 units? And
8 I can tell you those are Rod Ratcliff, Jim Brown,
9 Kurt Wilson, and myself. I handed the reporter
10 earlier a confidential page that describes
11 Centaur's capital structure and who the holders
12 are. It came directly from our application to
13 acquire Indiana Downs, which I think might be
14 helpful as a review for the Commission.

15 Mr. Chairman, with your permission, I will
16 pass this out.

17 CHAIRMAN DIENER: That's fine. Let's make
18 sure this confidential capital structure of Centaur
19 as of September 30, 2012 is part of the record.
20 I've seen this before. I hope that it may be more
21 helpful to other Commission members than it was to
22 me.

23 Go ahead, Mr. Keeler. It's not your fault.

24 MR. KEELER: So the next question to me, what
25 are M units? M units are interest in the company,

1 that's Centaur Holdings, LLC, that they are not
2 like a common unit like a common stock. They are a
3 right to receive a certain percentage of
4 distributions from the company under certain
5 circumstances. There are no voting rights that go
6 with these units. And something that I neglected
7 to point out earlier is that Mr. Early is a
8 licensee of the Commission currently and has
9 submitted the required paperwork to be investigated
10 by the Commission. And I'm advised that he passed
11 that test.

12 One thing that's very important when we talk
13 about the M units are the vesting requirements.
14 And, again, you have to think back to the original
15 purpose of the M units. And that's to incent and
16 retain quality employees with the company. So
17 there are vesting requirements.

18 The first requirement is that you have to be
19 with the company for at least two years for half
20 the M units to vest. In other words, if you're
21 awarded the M units and you quit after one year or
22 even right before two years, you receive nothing.
23 After two years of employment and awarded the M
24 units, fifty percent of the units are vested. And
25 thereafter for the next two years, the remaining

1 portion is allocated or vested on a monthly basis.

2 The next question is how many units is
3 Mr. Early being awarded. He is being awarded
4 37,500 units of each type of M units, so 37,500 M1
5 units, 37,500 M2 units, etc.

6 And my next question is, what is the
7 difference between the class M1, 2, and 3 units?
8 And the very short answer to that is the more, the
9 greater the distribution to Centaur's note holders,
10 the greater the amount of money the M unit holder
11 receives. In particular, the first distribution
12 level is \$120 million. If the Class A note holders
13 of Centaur receive \$120 million and for every
14 dollar over that between 120 and 300 million, then
15 the Class M1 unit holders receive five percent of
16 that. When you get over 300 million --

17 COMMISSIONER PILLOW: Five percent of?

18 MR. KEELER: Of the distributions once you hit
19 \$120 million. So the first dollar after \$120
20 million, the Class M unit holders as a group would
21 receive a nickel on that first dollar.

22 COMMISSIONER PILLOW: Five percent?

23 MR. KEELER: Yes, sir.

24 COMMISSIONER PILLOW: Is that total for
25 everybody or is that five percent each?

1 MR. KEELER: No, that's five percent for the
2 total. And then that's divvied up pro rata.

3 Once you get over 300 million, there's an
4 additional five percent. And in the event you get
5 over \$480 million, there's another five percent. I
6 should point out that distribution is based on what
7 goes to the Class A note holders. And they consist
8 of approximately 46 percent of the Class A, Class B
9 note holders.

10 COMMISSIONER PILLOW: So you can take either a
11 distribution or reinvest your part of the five
12 percent?

13 MR. KEELER: Commissioner Pillow, I think it
14 would depend on the circumstance where the
15 distribution is being made. Quite frankly, I think
16 when these documents were put together, the idea is
17 that there would be a liquidity event. Either
18 there's a new loan and the company is being
19 refinanced and these note holders are getting money
20 back or alternatively the company is being sold
21 period.

22 CHAIRMAN DIENER: Is the five percent or that
23 tier of distribution, is that cash or is that
24 equity ownership in Centaur?

25 MR. KEELER: It's five percent of any

1 distribution, whatever that would be. Most likely
2 it would be cash.

3 CHAIRMAN DIENER: That's what I thought.

4 COMMISSIONER SCHENKEL: John, in the meantime
5 these units as you described them, they are not
6 like a marketable security. The holders of these
7 cannot sell, trade, anything. They are fixed.

8 MR. KEELER: That's exactly right. In fact,
9 the company holds the certificates. And they are
10 not subject to being pledged or sold or transferred
11 in any way.

12 The next question that came to my mind is,
13 what is the value of this particular award to Bart
14 Early? You know, what I have to tell you is
15 whatever the value of the award is speculative at
16 best. I mean, first of all, he has to make it with
17 the company for two years to even get half. Then
18 there has to be a distribution over these levels
19 that we've discussed.

20 So I can't tell you today what this award is
21 worth. What I can tell you is what I did
22 personally when I received the award. There is a
23 section of the Internal Revenue Code called A3B.
24 And it allows someone who has received units like
25 this to declare a value for them and then pay tax

1 on that. The idea is that then you have a basis in
2 these units. If they're ever sold and there's a
3 profit, it's capital gains. Working with Centaur's
4 accountants in looking at the entire situation, at
5 least with regard to my treatment of this, I
6 declared a value of 28 cents per share on the Class
7 M1 units, and less than a penny a share on the
8 Class M2 and Class M3 shares. My practice has
9 always been whenever I put down a financial
10 statement to show these being worthless because I
11 don't think they have really any value until, one,
12 they're vested, and, two, there's a distribution.

13 I hope I'm wrong about that, but that's the
14 speculative nature and just trying to be very frank
15 about what they're worth and the inability to put a
16 value on them today.

17 Why Bart Early? As you'll see from the resume
18 that's attached to the petition, he's an
19 accomplished young man. Centaur's Board of
20 Managers in its discretion felt that he was the one
21 person in the company rather than is meritorious of
22 receiving these shares at this time. And that they
23 would like to make sure that they retain.

24 Another question I had is, will there be other
25 awards? Certainly that's possible. No other

1 people have been identified at this point in time,
2 but the board did put together a young leaders
3 policy, which is part of your petition. And when
4 it amended the company's operating agreement, it
5 did provide for M4 units, none of which have been
6 issued in the event that there would be further
7 awards.

8 So in summary, I guess I would just ask that
9 you please give deference to Centaur Board of
10 Managers in its discretion and good judgment in
11 managing the company and authorize the award of
12 these shares to Bart Early. Be happy to answer any
13 questions, Mr. Chairman.

14 CHAIRMAN DIENER: Questions from any
15 Commission members?

16 COMMISSIONER SCHENKEL: I don't have any
17 question. I guess just a comment, Mr. Keeler, and
18 that would be the fact that you have put together
19 that, and I can't flip to it right now, but the
20 outline of how to identify potentially other
21 grantees, if you will, in this process because I
22 think that speaks to your commitment, Centaur's
23 commitment to ensuring management succession, if
24 you will, management development.

25 MR. KEELER: Right. Thank you.

1 COMMISSIONER SCHENKEL: Well done.

2 CHAIRMAN DIENER: Any further questions?

3 Entertain a motion to approval the petition of
4 Centaur.

5 COMMISSIONER SCHENKEL: So moved.

6 COMMISSIONER WEATHERWAX: Second.

7 CHAIRMAN DIENER: All in favor.

8 THE COMMISSION: "Aye."

9 CHAIRMAN DIENER: Approved.

10 Item four is a petition of Centaur to amend
11 the Thoroughbred and Standardbred rule with respect
12 to uncoupled entries with the same trainer. And,
13 Mr. Keeler, you are back up again.

14 MR. KEELER: Thank you, Mr. Chairman, Members
15 of the Commission. My name is John Keeler, general
16 counsel of Centaur.

17 Appreciate your consideration of this
18 petition. And let me start out by saying I will
19 just try to address the legal part of it. To the
20 extent there are really any technical horse racing
21 questions, Kevin Greely is here today and would
22 probably be the most competent person to answer
23 those.

24 Our petition seeks the leave of the Commission
25 for you to amend two rules with regard to the

1 coupling of entries. One rule pertains to
2 Thoroughbred racing, and one rule pertains to
3 harness racing. The gist of the rule amendments is
4 to amend the rule in a way where entries no longer
5 will need to be coupled in the event that there is
6 a common trainer. The rules with regard to common
7 ownership remain.

8 I might say that this has been a very
9 bitterroot process, and one in which involved all
10 stakeholders from the horsemen to the tracks to the
11 track officials to the Commission staff. And I
12 believe that the text of the amended rule proposed
13 amendments in the petition accurately reflects the
14 work product of all those groups, and that they are
15 all in support of it.

16 With that, Mr. Chairman, I would be happy to
17 answer any questions or refer to Mr. Greely.

18 CHAIRMAN DIENER: I just want to ask one
19 question. The rules, the proposed amendments to
20 these two rules before the Commission today have
21 been reviewed by and approved by our senior state
22 steward and the presiding judge?

23 MR. KEELER: Yes, sir.

24 CHAIRMAN DIENER: I just wanted to make sure.

25 MR. KEELER: And their input has been received

1 and their suggestions taken or compromise as part
2 of this process.

3 CHAIRMAN DIENER: Mr. Weatherwax.

4 COMMISSIONER WEATHERWAX: John, I asked staff
5 because I wasn't familiar with why you were doing
6 this. I guess when people go to bet, currently, if
7 you're the trainer, the owner or a combination, you
8 couple those to be on the race ticket. And this
9 would allow if it's the same trainer, that you can
10 have separate betting opportunity.

11 MR. KEELER: That's right. That's correct.

12 COMMISSIONER WEATHERWAX: Is that the whole
13 purpose of this?

14 MR. KEELER: It is the purpose. But let me
15 tell you the background, the genesis that led to
16 this. Kevin can speak to this and Brian,
17 Mr. Gorajec much better than I can. There's a
18 problem, especially in the Thoroughbred side of
19 business, where we are having difficulty filling
20 fields. And, you know, that comes as a result of
21 the number of factors coupled with you're probably
22 very familiar with. One is the number of the foal
23 crop, the number of young foals that make up. The
24 upcoming horse population has significantly
25 decreased since the recession started. And so the

1 number of Thoroughbred horses that are available
2 are not what is needed.

3 Second of all, we face increasing competition
4 from the state of Ohio. Now that its four
5 land-based casinos are generating revenues as well
6 as its seven racinos that are now coming on line,
7 in particular Cincinnati, the purses will increase
8 in the state of Ohio. And that state is competing
9 now in a way that it never did for our Thoroughbred
10 horses.

11 Finally, the state of Ohio has chosen not to
12 adopt the progressive medication rules that Indiana
13 has and Kentucky has. And to some horsemen that's
14 an attractive opportunity. So those are three
15 factors from a novice's point of view that are
16 making it more and more difficult for Indiana Grand
17 to fill fields. And it was felt that the
18 uncoupling rule, the amending the rule as proposed,
19 would, in fact, ameliorate that situation somewhat.

20 CHAIRMAN DIENER: Any questions for
21 Mr. Keeler? Thank you.

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

23 CHAIRMAN DIENER: Any further questions from
24 HBPA, anybody else from the horsemen,
25 Thoroughbreds?

1 MIKE BROWN: I'm Mike Brown, Executive
2 Director of Indiana HBPA. I don't have a question,
3 but I want to say we are very much in favor of this
4 change.

5 CHAIRMAN DIENER: Thank you, Mr. Brown.
6 Mr. Gorajec, what's the staff's view on this
7 particular request to amend these rules?

8 JOE GORAJEC: I'm comfortable with the
9 petition. And I would recommend that the
10 Commission approve the petition as written.

11 CHAIRMAN DIENER: Is there -- I'm sorry,
12 Michelle.

13 MICHELLE COLLINS: Hi. I'm Michelle Collins,
14 Executive Director for the Quarter Horse Racing
15 Association. And I just wanted to share a little
16 background about some experience that we've had
17 with this same ruling. The QHRAI came to the
18 Commission several years ago, maybe eight to ten
19 years, I can't remember the exact time framing.
20 But we made this same request which was approved.

21 It has been a very valuable tool for us
22 growing our program over the past several years.
23 Sometimes it gets kind of lost in the shuffle that
24 all of the bills at the track are paid by the
25 owners of horses that are there. They pay the

1 trainers, the jockeys, the grooms, the hay, the
2 feed. Anybody who works on the backside, most of
3 money, if not all of it, comes from the owners of
4 that horse. So by approving this rule to uncouple
5 the trainer entries, it's not necessarily just
6 benefiting the trainers, it's really benefiting the
7 owners of horses.

8 In Indiana we strive for quality in our
9 racehorses. That's one of the things that we've
10 been very proud of that we've been able to do. In
11 a draw, which is what occurs three days prior to
12 when races are set, it's a random draw. The horses
13 are chosen, you know. And if a single trainer has
14 more than two horses or more than one horse, the
15 way the rule is written, that trainer could
16 actually be penalized by having multiple horses.
17 By uncoupling these trainers, it makes it a more
18 fair draw for all the horses that are in Indiana.

19 It also by changing this rule could increase
20 the handle because you're going to be increasing
21 the number of betting interests in each of those
22 interests, but there are a lot of people that are
23 more qualified to talk about that than I am.

24 Also, this is an issue that we took on several
25 years ago. The success of the Thoroughbred racing

1 program is very important to the Quarter Horse
2 racing program in Indiana as well. So we would
3 support this proposed rule change. If you have any
4 questions, I will be happy to answer them.

5 CHAIRMAN DIENER: Mr. Gorajec.

6 JOE GORAJEC: Just one more comment with
7 regard to the nature of the process. This is being
8 put before you as an emergency rule. If the
9 Commission remembers, the Commission approved a
10 policy on rulemaking maybe a year or so ago. And
11 it enumerates a number of criteria that the
12 Commission can consider for making a rule, an
13 emergency rule rather than the rulemaking process.
14 I think two of the criteria apply to this
15 particular amendment that you have in front of you.

16 One of them is whether the Association of
17 Racing Commissioners International has previously
18 adopted model rules. The rule being proposed is
19 consistent with the RCI model rule.

20 The other criteria would be the time
21 sensitivity. I think you heard Mr. Keeler say with
22 regard to the difficulty in filling races. They
23 are in the middle or beginning stages of their race
24 meet. Passing the rule at this time would be
25 helpful to them rather than going through the

1 regular rulemaking process where the uncoupling
2 wouldn't be available to them until sometime next
3 year.

4 CHAIRMAN DIENER: Any other comments on the
5 proposed rule amendment? Any questions?

6 I would move we approve the proposed two
7 amendments as emergency rules provided for
8 uncoupling entries for the same trainers.

9 COMMISSIONER SCHAEFER: Second.

10 CHAIRMAN DIENER: All in favor?

11 THE COMMISSION: "Aye."

12 CHAIRMAN DIENER: Motion carries. The rules
13 are adopted.

14 The next item is a consideration of hearing on
15 renewal application of the Indiana Horsemen's
16 Benevolent & Protective Association for approval as
17 a registered horsemen's association. This is the
18 renewal application. This will be a hearing.

19 I wanted to mention at the outset, this was
20 precipitated by an e-mail that I personally
21 received from Kim Hobson. And I quickly looked at
22 it and could see this was something that might be
23 the subject of a hearing. Before proceeding to
24 actually read it in detail, I turned it over to our
25 staff to pursue this matter and to see what the

1 substance of it was and what investigation might be
2 needed, if any. So I'm not going to recuse myself
3 from this particular matter because I have not
4 ruled on it. And I did not study this matter.

5 I'm going to turn this over first to Miss
6 Ellingwood or Miss Newell to kind of give us the
7 parameters of the hearing, the prehearing order,
8 and a little bit a history where we are on this
9 matter.

10 MS. NEWELL: Yes, Chairman, as you'll recall,
11 this matter first came before you in October. At
12 that time it was tabled due to the e-mail that you
13 received that I believe staff was also copied on.
14 After that, we began our investigation. We since
15 concluded the investigation, and Mr. Gorajec has
16 issued a report, which you all have.

17 We have resubmitted our notice of hearing, and
18 it is not substantially different. We have
19 opportunity for witnesses to be heard. We have
20 opportunity for interested parties to speak. I
21 believe the times are all outlined in your notice
22 of hearing. I think we are ready to proceed.

23 CHAIRMAN DIENER: Turn it over to the HBPA.
24 And just a reminder, please identify yourself, if
25 you would, for the court reporter.

1 Go ahead. Who are you?

2 MR. SLAUGHTER: I'm Geoffrey Slaughter,
3 outside counsel for IHBPA with Taft, Stettinius,
4 and Hollister here in Indianapolis.

5 CHAIRMAN DIENER: I'm sorry. I didn't know
6 you're a lawyer. Go ahead.

7 MR. SLAUGHTER: Thank you, Mr. Chairman. Good
8 morning Members of the Commission and Commission
9 staff. I'm Geoff Slaughter with Taft, Stettinius
10 and Hollister, outside counsel to the Indiana HBPA.

11 As you alluded to, we're here this morning on
12 the association's 2014 application seeking approval
13 as a registered horsemen's association. We first
14 filed the 2014 application last September. And as
15 has been mentioned, just three days before the
16 scheduled hearing on that application, you,
17 Mr. Chairman, and others I understand were copied
18 on an e-mail from one of our board members who
19 raised some issues concerning the use of
20 benevolence funds. At that point the hearing was
21 tabled so that an investigation of that complaint
22 could begin.

23 Over the next six months, we, by "we," I mean
24 both the association and benefit trust, produced
25 thousands of pages of documents of financial

1 records to the Commission staff. Our members, our
2 employees, our directors gave interviews and
3 statements to staff, and from our perspective
4 cooperated fully with the investigation.

5 As Ms. Newell has alluded to at the end of
6 April of this year, Mr. Gorajec issued a staff
7 report in which he concluded, among other things,
8 first that several of the allegations that were
9 mentioned in the complaint were "unfounded, untrue,
10 or lacked sufficient information." But also for
11 purposes of today's hearing, he also found that the
12 benevolence program needed some material revisions.

13 He recommended eight corrective action steps,
14 which we have documented now in the supplement to
15 our application, which we filed with the Commission
16 on June 16. Throughout this process we have worked
17 very hard to try to be cooperative, to be
18 compliant, and to do what was asked of us
19 throughout the process.

20 Upon June 30 pursuant to the hearing order, we
21 filed a witness list identifying two members, two
22 individuals that would be giving substantive
23 testimony today. The first of those is Mike Brown,
24 the Executive Director of Indiana HBPA, and Dennis
25 Hash, an outside CPA who can address any tax,

1 finance, accounting issues that you may have. We
2 also filed an exhibit list containing two items;
3 certification of trust directors as well as a
4 conflict of interest policy for Ms. Stevens, who is
5 our benevolence administrator. I'd like to move
6 the admission of those two exhibits, if I may,
7 please.

8 CHAIRMAN DIENER: Any objection?

9 MS. ELLINGWOOD: No objection.

10 CHAIRMAN DIENER: Those two exhibits are
11 admitted.

12 MR. SLAUGHTER: At this stage I have nothing
13 further. With your permission, I'd like to ask
14 Mr. Brown to speak in support of the application.

15 CHAIRMAN DIENER: Yes. Mr. brown.

16 MR. SLAUGHTER: Do I understand I, as the
17 lawyer, need to swear the witness?

18 CHAIRMAN DIENER: No, I was being facetious.
19 I'll let our court reporter swear in Mike Brown.

20 (At this time the oath was administered to the
21 witness by the court reporter.)

22 MIKE BROWN: Good morning. As I mentioned
23 before, my name is Mike Brown. I'm the Executive
24 Director of the Indiana HBPA. And the last name,
25 which I forgot to spell before, is B-R-O-W-N.

1 I have been looking forward to this day for
2 quite some time. I'm proud to be associated with
3 the Indiana HBPA. I'm proud of the work we do, the
4 people we help, and the role we play in
5 Thoroughbred racing. I would like to talk with you
6 for a few minutes about this organization.

7 First, I would like to talk about what we do,
8 all of which was contained in our original
9 application for 2014 funds. I won't go over all of
10 it. You've had some time to review that.

11 Our motto is horsemen helping horsemen. We
12 represent all Thoroughbred owners and trainers who
13 have entered races in Indiana and the horsemen and
14 women who work for them. We interact on their
15 behalf with our track partners. Let me add here
16 that we consider ourselves lucky to have Centaur as
17 our track partner. Our interactions with them are
18 open and productive. We are glad they are our
19 partners, and we work well together.

20 In addition, we represent our members before
21 this Commission. And I guess if I'm prudent, I
22 better say something nice about our interactions
23 with the Commission too. We appreciate the
24 guidance, the direction, and structure provided by
25 this commission and staff.

1 Also, we work to educate the members of the
2 Indiana General Assembly and the executive branch
3 of state government about this important industry,
4 its needs, and its contributions to the state of
5 Indiana. By statute, the industry receives funds
6 dedicated to specific areas of concern in addition
7 to the monies directed to support awards. We hope
8 to be an organization vested with the
9 responsibility to administer Thoroughbred funds for
10 2014.

11 I would like to talk about what we do with a
12 couple of the dedicated revenue streams and what we
13 would like to continue to do, I might add. First
14 in the area of equine welfare and promotion. When
15 we filed our 2014 application, it included a round
16 of equine welfare grants awarded in the late
17 spring. The recipient organizations were Friends
18 of Ferdinand; Indiana Thoroughbred Retirement
19 Foundation, that's the project out at the Indiana
20 State Farm; New Vocations, which operates in three
21 states with bases in Ohio; and the Indiana Eventing
22 Association. They put on horse shows, many of
23 which use off-the-track Thoroughbreds.

24 In the same round of grants we gave \$25,000.
25 to the Glock Institute at the University of

1 Kentucky to support equine health and research.
2 Since then we have made four additional grants,
3 which we would like to share with the Commission.
4 The organizations awarded grants by the HBPA in
5 October of 2013 were again Friends of Ferdinand, an
6 additional grant; New Vocations; and Kentucky
7 Equine Humane Center, which is located in
8 Lexington, Kentucky. In addition, in December we
9 gave \$7,500 to Horse Angels of Spencer, Indiana to
10 help them get feed and hay to make it through what
11 turned out to be a very harsh winter.

12 All total since 2013, we've awarded \$108,500
13 in equine welfare grants to a variety of
14 organizations, to second careers, adoptions,
15 retirement, and equine research. If we are awarded
16 2014 funds, we will certainly continue and try to
17 expand those people we have reached out to.

18 In the area of benevolence, we have a trailer
19 on the backside of Indiana Grand through which we
20 do most of our benevolence activities. We deliver
21 health care to people who need it in the form of
22 on-site dentistry, on-site clinic, podiatric
23 services. And if we're approved, we would add
24 chiropractic services this year.

25 We hope to bring down the trailer from Hoosier

1 Park. We didn't act on that pending the approval
2 of these funds. But bringing that trailer down
3 will enhance what we can do back there and
4 certainly will enhance our ability to provide
5 recreational activities to the people on the
6 backside. Our chaplain will be able to operate out
7 of the trailer. With the education programs and
8 recreational programs, we think it will really
9 enhance what we do.

10 When our members are away from the track, they
11 can also access needed health services where they
12 are and are covered by our benevolence program. As
13 I mentioned, we provide chaplaincy services,
14 recreational activities, educational programs,
15 translational services, and stage events throughout
16 the racing meet all through benevolence.

17 In addition as needed we provide daycare
18 through a working arrangement with several
19 facilities in the Shelbyville and surrounding area.
20 We provide access to substance abuse counseling and
21 treatment, mental health counseling when
22 appropriate. In the event of death, hardship, or
23 emergency, we provide appropriate assistance to our
24 members and families.

25 Our Indiana HBPA benevolence program came from

1 nothing and has grown exponentially over the years.
2 The creation process and much growth predates my
3 involvement with the HBPA, but I have had occasion
4 to learn quite a bit about our benevolence
5 activities over the past year and a half since I
6 took additional responsibilities that now include
7 benevolence.

8 Our program continues to evolve. And I'm
9 proud of it and with good reason. We have a very
10 good benevolence program. With the guidance and
11 direction provided to us as a result of the
12 Commission staff's examination, our benevolence
13 program will be even better.

14 I would like to talk with you about that
15 direction, about our administration, and the
16 structure of our benevolence program. The
17 eight-month examination of the Indiana HBPA
18 benevolence program was in many ways a crisis for
19 the HBPA, but it was also an opportunity.

20 As I mentioned before, this is a program that
21 we created from no model. It's evolving. The
22 staff report identified some general areas of
23 concern. And I would like to tell you how we
24 propose to address those concerns.

25 One area was in the area of our rules and

1 guidelines. We had already begun to address the
2 guidelines with respect to what it is that we do,
3 how we do what we do, and how we define it. This
4 report identifies much more that we need to do in
5 this area. Accordingly, in response we have
6 rewritten our guidelines and rules using as an
7 example the long established Kentucky benevolence
8 program. Their rules and guidelines occupy 83
9 pages. Our rules and guidelines even in the 2013
10 version, which had already been accepted and
11 approved beyond the 2011 version featured in the
12 report, were no more than three or four pages. Our
13 revised version as prepared for part of our
14 supplement to the application has 14 pages.

15 We defined eligibility. We explained our
16 criteria for evaluating eligibility. We expanded
17 the universe of eligible horsemen and women to
18 include more of the Thoroughbred community. We
19 clarified the documentation necessary to establish
20 eligibility, which includes income limitations. We
21 delineated the appeals process, the complaint
22 process, the lines and responsibility throughout
23 the treatment of a benevolence application and
24 penalties for submitting false information.

25 There may be further details we need to

1 discuss, but we believe we paid close attention to
2 the deficiencies outlined in the report and some of
3 the areas we had already begun to reform. And we
4 responded appropriately.

5 This revision is supported by the existing
6 benefit trust board and the HBPA board. It will be
7 approved in final form once the IHRC approves the
8 final version. We will live by these guidelines,
9 and we will be better for the process.

10 After the guideline and rules revision, we
11 changed the application to correspond to the rules.
12 As mentioned before, we defined complaint policy,
13 as well as a complaint form. We redefined the
14 appeals and review process where you believe the
15 eligibility decision was in error. And we laid
16 that out for all to see.

17 We believe these revisions make this program
18 more effective, more transparent, and more
19 accountable. The report identified transparency as
20 a deficiency. We addressed this challenge on
21 multiple fronts. First, we recognize the
22 bifurcated nature of our benefit trust board and
23 the HBPA, Inc. create problems in this area. We
24 will dissolve the benefit trust board and benefit
25 trust and put the entire responsibility for

1 administering benevolence completely under HBPA,
2 Inc. and its Board of Directors. We will transfer
3 the assets in trust to the Indiana HBPA, the funds
4 dedicated to benevolence to the Indiana HBPA.

5 The Indiana HBPA board will have full access
6 to all information necessary to administer the
7 program including who's receiving benevolence, how
8 much they're receiving, corresponding unit of
9 balance, who has applied for it, who has been
10 denied and for what reason. That report will be
11 made available to the Commission. And it would be
12 available upon request to membership. Written
13 request that is.

14 We recognize that we have the responsibility
15 to make sure that we are transparent and we do
16 communicate what we do. And it pains me to say we
17 have done a poor job of communication because
18 that's about the only area of competency that I
19 called upon when I came to this job in the first
20 place. But we haven't done a good job of
21 communicating. And that applies both to what we
22 do, why we do it, and what people need to do to
23 access the services of benevolence. In our
24 response to the corrective action steps, we
25 proposed to change that, and we outlined steps to

1 do exactly that.

2 In addition to communication, we also laid out
3 a marketing plan for how we are going to get the
4 information to the people who need to hear it, who
5 need to be able to access our program. I won't
6 reiterate that, but we are committed to it. And we
7 will make sure that anyone who needs this program
8 knows how to access it, knows what they need to do
9 to access it, and knows what goes on when they have
10 applied.

11 Our other responses within the corrective
12 action steps are outlined. We addressed the
13 question of whether or not we provide consulting
14 for attorneys. We do not and have not since the
15 beginning of January 2013 given anything for that.
16 We have no intention of including that in the
17 future. And I hope that answers that question.

18 We recognize moving forward that this will be
19 a process that takes a little time. We are going
20 to have to satisfy the requirements of the Indiana
21 trust law. We are going to have to satisfy the
22 requirements of the IRS in our filings for the
23 trust and dissolution of trust. But it is our
24 intention, and we will do this. We recognize it is
25 something that is needed, and we will do this.

1 This is an organization that has worked hard
2 and has been proud of what we do for people on the
3 backside of the track. There have been a lot of
4 questions raised about it, but the fact of the
5 matter is since 2009, we've had more than 1200
6 recipients of our benevolence on the backside of
7 the track, probably more since this only included a
8 cutoff point of 2014. We have made more than
9 12,000 payments in the course of what we have done.
10 That's 12,000 individual transactions. We've had
11 total payouts of more than \$3.6 million.

12 We recognize that we have paid more attention
13 to providing services than we have to accounting
14 for how we provide services. And we stand in front
15 of you armed with a report and our response to it
16 pledging to make sure we are fully accountable for
17 this.

18 We think we do a good job. We know we can do
19 a better job. And we are here to say that we will.
20 I can't say I'm happy to answer any questions you
21 might have, but I will attempt to answer any
22 questions you may have at this point. I appreciate
23 your consideration.

24 CHAIRMAN DIENER: Any questions of
25 Commissioners? Mr. Weatherwax.

1 COMMISSIONER WEATHERWAX: Mike, I think you're
2 portraying the seriousness of this matter. So I
3 would hope that we can make these corrective steps
4 happen because people on the outside look at this
5 and could be quite a different interpretation.

6 When I went through the notes, I asked staff to
7 give us a budget and accounting of what these funds
8 are. I guess there are three separate funds.

9 MIKE BROWN: Yes.

10 COMMISSIONER WEATHERWAX: Because I don't know
11 the breakdown, when you use the word "benevolence,"
12 that's a big item. You can say a lot of different
13 things, and it can be a lot of different things to
14 people on the outside. Is this mainly for people
15 that are injured or insurance or doctors or? Is
16 there a simple thing you can say as far as
17 benevolence? Is it 50 percent medical or is it all
18 medical or not?

19 MIKE BROWN: There's no real short answer to
20 that because it includes the capability of
21 providing hardship assistance. Say, if somebody
22 has a barn fire and loses everything, they can
23 apply to us for hardship or emergency assistance.
24 It includes making programs available to people
25 every day. That's an act that we do. It includes

1 coffee, snacks at the trailer. People know during
2 breaks, during workouts they can come in and get
3 it. The bulk of it is medical services.

4 We also, through our benevolence program, have
5 jockey insurance program set aside funds for. We
6 have an insurance program for trainers, accident
7 insurance program. So it's a pretty wide ranging
8 number of services.

9 COMMISSIONER WEATHERWAX: But there's a cap,
10 isn't there? Is it 5,000 or 6,000?

11 MIKE BROWN: It's 5,000 currently.

12 COMMISSIONER WEATHERWAX: In a given
13 situation, the limit you guys are putting on that
14 is 5,000?

15 MIKE BROWN: That's correct.

16 COMMISSIONER WEATHERWAX: So when you take
17 12,000 payouts, that's a lot of different
18 situations.

19 MIKE BROWN: It covers a lot of ground.

20 JOE GORAJEC: Just a point of clarification,
21 and this came up during the course of our
22 investigation. There's what the HBPA refers to as
23 their benevolence program that's subject to the
24 cap. And then there's a benevolence fund, which
25 pays all of the expenditures from the benevolence

1 program plus other things. That's the way of
2 saying that there are some things that the HBPA
3 provides to their members that aren't subject to
4 the cap. For example, they no longer do
5 scholarships, but it's my understanding that
6 scholarships, burials, and daycare, there are some
7 expenses that the cap does not apply to. So I
8 think that was some confusion with regard to the
9 perception of someone getting benefits in excess of
10 what they thought was deemed appropriate. So I
11 think that the HBPA has made it clearer on what
12 benefits are subject to the cap and what benefits
13 are not subject to the cap.

14 COMMISSIONER PILLOW: Mr. Brown, quick
15 question. Apparently, this was going on for quite
16 some time, some of the, I guess, inaccurate
17 reporting. Is Ms. Hobson, I think that's her name,
18 did her e-mail to the Commission, did this trigger
19 all of this? And had she not sent this, do you
20 think this behavior would still continue or be
21 going on right now if no one had a chance to really
22 look deep into it?

23 MIKE BROWN: I guess I would have to say we
24 had already begun the process of reevaluating how
25 we do business. We were changing our guidelines,

1 trying to define what it is we do because an
2 organization sometimes evolves in a way that its
3 practices don't keep up with its rules. And we
4 recognized that if we do it, we have to define
5 them. So we were in that process.

6 Many of the items and multiple charges and
7 innuendos, and accusations that came from
8 Ms. Hobson have not been proven out by the course
9 of the investigation. So I would have to say that
10 those nonexistent practices were still nonexistent
11 even if she didn't complain about them. The
12 process of reforming what we do and how we do it
13 took giant leaps forward as a result of the
14 Commission's response to the investigation. That's
15 a long answer to a short question.

16 COMMISSIONER PILLOW: That's fine.

17 COMMISSIONER WEATHERWAX: You mentioned that
18 you're resolving the current situation. Is that
19 the trust area or you say you're going to put all
20 this under your board?

21 MIKE BROWN: Yes.

22 COMMISSIONER WEATHERWAX: What was it before?

23 MIKE BROWN: We had two separate
24 organizations. I'm not a lawyer or an accountant.
25 I believe one was a not for profit. And one was a

1 C3 and the other one was a C6. We had set it up
2 that way originally because we scrambled to make
3 sure that the benefits we gave people, which
4 certainly increased after the slot law was passed,
5 were not taxable to us and were not taxable to the
6 people that received them.

7 The other organizations do benevolence also,
8 and they didn't a require a separate organization.
9 We recognize that as we go forward, we need to go
10 back to the IRS and try to seek if we can bring all
11 of this under one organization. It enhances our
12 accountability. The lines are clearer and
13 brighter.

14 COMMISSIONER SCHENKEL: Let me compliment you
15 first before I ask this because I had a question on
16 the same line. You've used the term communication
17 and transparency a number of different ways. Let
18 me compliment you today that your commitment to
19 improve on communication and things will ensure
20 that transparency. I think you realize that.

21 I had a grave concern originally when I saw
22 this that you were going to dissolve the C3, 501 C3
23 trust because I think you raised a number of
24 questions. When you're talking about benevolence,
25 philanthropy of that sort, you do run into

1 potential questions. I'm not a lawyer. I would
2 leave that to Mr. Slaughter and your colleagues,
3 but I hope you make sure that the dissolution of
4 that doesn't -- I have two concerns. One is how it
5 might affect the recipients from a tax standpoint,
6 but more importantly too, I wanted to make sure it
7 was always assured that these funds were kept
8 separate accounting wise so forth since it was
9 coming into the overall association. And I
10 understand that will be so I'm comfortable with
11 that now. You've alleviated that in my mind.

12 But the other question I had, you mentioned in
13 your comments that there will be reports given, a
14 report or reports given to the Commission, but I
15 didn't hear in terms of any timing of that. One of
16 the reasons I ask that is because some of the
17 things that were brought to the Commission that we
18 had investigated were months and months and months
19 old. That doesn't do the Commission much good to
20 get information if we get things in a
21 less-than-timely fashion.

22 Have you given any thought to how you are
23 going to approach that or how often we might see
24 reports or how your board, what frequency your
25 board is going to deal with these issues?

1 MIKE BROWN: A multi-part answer to that.
2 Many of these allegations had never been supported
3 by complaints in the past. So they would not have
4 come even through a regular complaint process. We
5 were as surprised as anyone else to see some of
6 these. We intend to, and certainly we will conform
7 to whatever the Commission wants us to do in that
8 regard, but it's our intention right now to have
9 the board meet monthly to deal with benevolence
10 issues and share that report after each board
11 meeting. When I say monthly, I mean during the
12 meet.

13 In the off season everybody goes every which
14 way. They race in Florida and Nebraska and all
15 over the place. So we meet less frequently. But
16 we will pledge during the meet, we'll meet every
17 month. We will deal with these issues in addition
18 to our other business every month. And we will
19 share the report every month. In the off season,
20 we will share the report after each meeting.

21 COMMISSIONER SCHENKEL: That's fair. Thank
22 you. Appreciate that.

23 CHAIRMAN DIENER: Mike, I have a few questions
24 here. One is unrelated, but I still want an update
25 on it. Your bylaws do or used to have a provision

1 for dues. Do they still?

2 MIKE BROWN: We came before you before in our
3 application and said that we were going to
4 institute a bylaw change to make sure we collect
5 dues because that's a topic that came up in a
6 previous hearing. It's our intention to do that.
7 Practical matter is that it costs a lot of money to
8 redo your bylaws. We essentially have to get all
9 of our members approval.

10 CHAIRMAN DIENER: I thought your current
11 bylaws provide for dues.

12 MIKE BROWN: They have a provision in there
13 for, I believe, one and a half percent of --

14 CHAIRMAN DIENER: That's what I'm talking
15 about.

16 MIKE BROWN: -- an owner's winnings.

17 CHAIRMAN DIENER: You've never collected that.

18 MIKE BROWN: We have never collected that.

19 And we were criticized for that at our last
20 application hearing.

21 CHAIRMAN DIENER: You are criticized today
22 too.

23 MIKE BROWN: I have no doubt of that. If we
24 are fortunate enough to be approved for the funds,
25 we intend to go through the bylaw revision, which

1 will probably involve, I would guess, eight to
2 \$12,000 to do that, but we will do that if we have
3 the funds. That's part of that revision.

4 CHAIRMAN DIENER: Now, does the IHBPA dispute
5 any of the factual findings in staff's
6 investigation or do you accept them?

7 MIKE BROWN: We fully support the
8 investigation. We believe it was a thorough
9 investigation. And we appreciate the guidance and
10 the direction we got from the corrective action
11 steps.

12 CHAIRMAN DIENER: I can just say personally,
13 and I think you know, I know Jack knows that when I
14 came on here as chair, one of my priorities was to
15 look at how best we are going to handle people on
16 the backside, particularly employees, recreational
17 facilities, anything having to do with backside
18 benevolence, as well as retirement for the horses.
19 As well as tightening up so there is not even the
20 appearance, much less the reality, of any, I can't
21 think of a better word, cronyism with respect to
22 the allocation or distribution of these
23 state-directed funds.

24 I think we've made a lot of progress. I think
25 your proposed corrective program brings the HBPA a

1 long ways. I have one problem, clarification,
2 let's say, with your corrective action, item number
3 seven, which is the complaint, and the HBPA
4 proposal at item Roman numeral VD in tab three. My
5 concern about the complaint is the Commission has a
6 standard, a complaint form on its website. If
7 people are concerned about something, they can fill
8 that out.

9 My concern about your complaint procedure is I
10 don't want the Commission to be considering
11 complaint matters that are beyond its jurisdiction
12 or have nothing to do with the expenditure of
13 state-directed funds from benevolences or equine
14 promotion. I don't want to hear general complaints
15 about whatever, voting practices or didn't get
16 notice of a meeting. I don't want to hear any of
17 that stuff. So I would like to get this corrective
18 action program number seven tightened up so that we
19 are not hearing or you are not going to be telling
20 us about things like that. Those are matters the
21 HBPA Board of Directors need to deal with. I don't
22 want this Commission getting involved with micro
23 managing, but we will continue to look at anything
24 within our jurisdiction or having to do with
25 state-directed funds. But I would like you to

1 consider tightening up that fence, if you would
2 around that.

3 MIKE BROWN: We would most assuredly. We
4 don't want you bothered with those details either.

5 CHAIRMAN DIENER: Let me ask a hypothetical
6 question. If a member of the Board of Directors of
7 the HBPA has a question or concern about the
8 expenditure of benevolence funds, who would he or
9 she go to to have that question answered?

10 MIKE BROWN: Right now --

11 CHAIRMAN DIENER: Would he or she go to the
12 Board of Directors. Can he or she go to the
13 executive director of the HBPA? Could he or she go
14 to your independent financial auditing firm or is
15 nobody going to help this person?

16 MIKE BROWN: All those are potential sources.
17 First stop ought to be me. If I can't supply the
18 information the person needs, they should go to the
19 full board, their fellow board members.
20 Ultimately, financial details of this would come
21 from our accounting professionals.

22 CHAIRMAN DIENER: Any questions?

23 COMMISSIONER SCHENKEL: Do you have annual
24 audits?

25 MIKE BROWN: Yes. This year was also a State

1 Board of Accounts responsibility added.

2 CHAIRMAN DIENER: So you are going to be
3 submitting a revised bylaw provision on dues.

4 MIKE BROWN: Yes, we are.

5 COMMISSIONER SCHAEFER: Will you collect dues?

6 CHAIRMAN DIENER: Will or will not have dues
7 in there?

8 MIKE BROWN: We will have a dues structure of
9 what exists right now.

10 CHAIRMAN DIENER: You will actually collect
11 dues?

12 MIKE BROWN: Yes, we will.

13 CHAIRMAN DIENER: Staff, any questions for
14 Mr. Brown? Thank you. You are excused.

15 MIKE BROWN: Thank you. I appreciate your
16 consideration.

17 CHAIRMAN DIENER: Mr. Slaughter, next witness.

18 MR. SLAUGHTER: Thank you, Mr. Chairman. We
19 really will rest our case in chief at this point
20 but would like to make Dennis Hash, our CPA,
21 available to the extent the Commission has any
22 questions related to tax, trust, finance-type
23 issues. We have nothing further to address but
24 want to make him available in case you folks do.

25 CHAIRMAN DIENER: I think I have a couple of

1 questions. If you could be sworn, I will ask you a
2 couple questions.

3 (At this time the oath was administered to the
4 witness by the court reporter.)

5 DENNIS HASH: Good morning. I'm Dennis Hash,
6 a CPA, principal at Hash CPA Group. I've been
7 HBPA's accountant since the mid 1990s and provided
8 tax and bookkeeping, at one point auditing services
9 for the HBPA. I'd be glad to answer any questions.

10 CHAIRMAN DIENER: And you do prepare the
11 annual audited financial statements of HBPA?

12 DENNIS HASH: No, I do not. We provide
13 bookkeeping, consulting services. We do all the
14 bookkeeping and check writing for the HBPA. And
15 our role in doing that, plus the other consulting
16 services I provide as part of these proceedings,
17 prepares our independence as CPAs. So we are not
18 allowed to do the audit under the ICPA rules.
19 RBSK, a firm in Greensburg, actually does the
20 financial audit annually, which is submitted with
21 the application.

22 CHAIRMAN DIENER: You are familiar with, are
23 you not, the three separate accounts --

24 DENNIS HASH: Yes.

25 CHAIRMAN DIENER: -- for the state-directed

1 funds, one of which is benevolence.

2 DENNIS HASH: Yes, I'm very well versed in
3 that area.

4 CHAIRMAN DIENER: Did you ever have occasion
5 last year, let's say, to report any concerns that
6 you might have with respect to benevolence
7 expenditures from or into that account to either
8 Mr. Brown or the Board of Directors?

9 DENNIS HASH: No, I didn't.

10 COMMISSIONER WEATHERWAX: One question. We
11 don't want to get down to the micro details, but
12 you make distributions out of this account?

13 DENNIS HASH: Yes.

14 COMMISSIONER WEATHERWAX: Do you actually
15 write the checks or does somebody give you a
16 voucher or something to pay?

17 DENNIS HASH: As far as benevolence is
18 concerned, we do on-site check writing. So I have
19 a staff member that I send over to the track two
20 days a week. And we have a laptop with the
21 accounting software in it. His function is to cut
22 the check. He's actually an approved check signer.
23 He is licensed with the Commission.

24 Our function is not being part of the approval
25 process. It's somewhat like a treasurer's type

1 role. The approvals have to be initialed,
2 documented, and in place before he would sign the
3 check. But we do not have the role of any approval
4 or verification process. That's not to say if he
5 sees something that is missing or doesn't look
6 right, he may not mention it to the trust
7 administrator. Our function is primarily
8 bookkeeping.

9 CHAIRMAN DIENER: Will your role or duties
10 change at all if the Commission approves these
11 various changes that are before it today?

12 DENNIS HASH: Mike maybe ought to help me on
13 that. I don't know what details the board has
14 discussed. We haven't discussed any detail, but I
15 would imagine we do have the capability, as
16 Commission staff should realize with all the
17 documentation we provided, we do have the
18 capability upon request to provide monthly detailed
19 general ledgers and financial statements to the
20 board. So I can see our role expanding there. In
21 the past, it's mainly been providing general
22 ledgers on an as-needed basis.

23 As far as the processing with the new
24 procedures in place, that's something we will have
25 to sit down and look at and possibly revise our

1 accounting processes and control document, which is
2 a very detailed procedures document that we have
3 always submitted with the Commission or to the
4 Commission with application.

5 CHAIRMAN DIENER: Mr. Brown.

6 MIKE BROWN: If I may, I would like to add one
7 detail to that. No one on our staff is an
8 accountant nor has any training in that area. So
9 when it comes time to evaluate financial
10 disclosures necessary to demonstrate eligibility
11 because of our income caps, we will have to call
12 about the expertise of Hash and Company to help us
13 with that.

14 COMMISSIONER SCHENKEL: Mr. Hash, the concern,
15 question that I raised, I guess, about dissolution
16 of the trust, do you have any comments on that if
17 there's any taxable implications or the recipients
18 or anything like that?

19 DENNIS HASH: Just for clarification, the
20 trust is not a 501C3. It's a 501C4, which is as
21 close to a C3 as you can get, except you can't
22 accept donations. 501C4 is designed for social
23 welfare programs. And there are many types of
24 entities that fall under that. A 501C6, which the
25 HBPA falls under, is for trade organizations to

1 promote business and industries.

2 Prior to these being state-directed funds --
3 just a little bit of history for some of our new
4 commission members -- the HBPA had a benevolence
5 program. It was self-funded. The rules are pretty
6 tight under 501 C6 as far as providing benefits
7 directly to members or employees. So we could not
8 include that benevolence program as part of the 501
9 C6 approval. So that's why the trust was set up
10 separately.

11 Once these became state-directed funds, I say
12 we, meaning the HBPA trust and HBPA and the
13 attorneys and myself, applied for and got 501C4
14 status for the trust. And we've always transferred
15 the funds to that trust so it falls under that
16 protection from taxability.

17 That is how, it's my understanding that's how
18 many of the other state HBPA's are structured,
19 including Kentucky and Ohio. We received guidance
20 from the national HBPA on how to structure that.
21 But the big change is we went from being totally
22 self-funded to totally state-directed funding. So
23 and we realize the problem with the, the concerns
24 the Commission has about the separate organization
25 not being under the full control of all the

1 directors of HBPA. And that's understandable.

2 So I'm very confident based on this being
3 state-directed monies, we are acting more as
4 administrator of the state-directed funds, not so
5 much as a social welfare organization. And as a
6 position we are going to take to the IRS to allow
7 those funds to start being processed under the
8 501C6 umbrella.

9 COMMISSIONER SCHENKEL: So you don't really
10 have an answer yet then. Okay.

11 DENNIS HASH: We would have to -- there are
12 two avenues to take. And that would be to go ahead
13 and start processing under the HBPA and disclosing
14 that to IRS and stating our case with them, which
15 is probably the action we are going to take. Our
16 other option is to request a private letter ruling
17 from IRS for this specific situation, which is
18 quite extensive. And we may still be talking about
19 it next year at this time.

20 COMMISSIONER SCHENKEL: The other question I
21 raised with staff that all the proper folks are
22 bonded and insured properly.

23 DENNIS HASH: Yes.

24 COMMISSIONER SCHENKEL: To make sure there is
25 no question about that should there ever be any

1 losses or things like that.

2 DENNIS HASH: Yes.

3 CHAIRMAN DIENER: Other questions of the
4 Indiana HBPA?

5 COMMISSIONER SCHAEFER: You say RBSK.

6 DENNIS HASH: RBSK in Greensburg, Indiana is
7 the CPA firm.

8 COMMISSIONER SCHAEFER: Do you provide
9 information to them?

10 DENNIS HASH: They actually come and do the
11 field work at our office. We store all the
12 records. I have -- we store all the records and
13 have all the financial data on site other than some
14 active benevolence records at the track.
15 Historical information is all with us.

16 CHAIRMAN DIENER: Thank you very much.

17 DENNIS HASH: You're welcome.

18 MR. SLAUGHTER: Mr. Chairman, we have nothing
19 further.

20 CHAIRMAN DIENER: Thank you. Let's hear from
21 Commission staff, Miss Ellingwood, Mr. Gorajec.

22 MS. ELLINGWOOD: As you know, staff prepared a
23 reevaluation. Staff prepared an original
24 evaluation when the HBPA's application for
25 registration was submitted. At the time we didn't

1 find any issues with the application.

2 After receiving the complaint, we initiated
3 and completed the investigation. Mr. Gorajec has
4 issued a reevaluation of their application, which
5 has been provided to you and made a part of the
6 record.

7 If you have anything that you wanted to add
8 with respect to your report, Joe.

9 JOE GORAJEC: Yes, I would like to make --

10 CHAIRMAN DIENER: Would you swear, Mr.
11 Gorajec, please.

12 (At this time the oath was administered to the
13 witness by the court reporter.)

14 JOE GORAJEC: First off, I would like to
15 piggyback on the question that Commissioner Pillow
16 asked of Mike Brown with regard to the impact of
17 the complaint on the process of improving the
18 organization. And I have maybe a little bit
19 different take. I think the complaint in and of
20 itself was a very positive development in that had
21 the Commission not received the complaint, then,
22 quite frankly, we would probably have a
23 continuation of practices that, quite frankly,
24 shouldn't have been continued. So from that
25 standpoint I think the complaint was very positive.

1 And I think Miss Hobson, even though when you read
2 the report, it is not, it's written in such a way
3 that does not confirm some of the allegations or
4 some of the things that she tried to lead us to,
5 quite frankly, didn't pan out. I think overall
6 these improvements wouldn't have been made absent
7 the complaint.

8 Having said that, in a perfect world the
9 complaints would be unnecessary because the HBPA
10 would have been more open and transparent in the
11 past. Some of the things that we looked at, the
12 time frame for the investigation was from 2009 to
13 2013. So we were looking at things three and four
14 years old. And, quite frankly, that shouldn't be.

15 If things are going on that shouldn't be going
16 on three, four years ago, they should have been
17 brought up, handled and addressed three or four
18 years ago. More importantly, they should have been
19 brought up, handled and addressed not by the
20 Commission but by the HBPA and the Board of
21 Directors.

22 And I think when you look at the reevaluation,
23 I think the most important thing to look at is what
24 the reevaluation caused, which is all of the
25 improvements and corrective action steps.

1 This Commission, Commission staff should not
2 be involved in many of the things that were brought
3 up in the complaint that should be addressed in a
4 timely fashion by the HBPA and their Board of
5 Directors. And I think that the corrective action
6 steps addressed that.

7 First off, there were concerns that were well
8 founded about eligibility requirements. HBPA had
9 eligibility requirements. They were not enforcing
10 all of their requirements. One thing to be said is
11 that they were not enforcing all their requirements
12 apparently uniformly. And that's very important to
13 know that with respect to the requirement that they
14 had that's been changed about full-time employment,
15 they never asked on the application about hours
16 worked. I mean, they didn't know. Okay. They
17 didn't know for everybody.

18 The other thing, there was a eligibility
19 requirement that has since been changed about
20 having been licensed, okay, working for the year
21 prior to making a claim. That's been changed. I'm
22 glad it has changed, but that was not being
23 enforced. But it was being unenforced uniformly.

24 They have redefined their eligibility
25 requirements. They've made a commitment with

1 regard to the corrective action steps on processing
2 those applications more completely. The access to
3 records, general records, excluding the personal
4 confidential medical records is going to happen,
5 and it's going to happen now based upon the
6 corrective action steps. So to the extent that a
7 board member or HBPA member hears a rumor, and
8 there's a bunch of rumors out there, they can have
9 this curiosity satisfied by going to the board or
10 going to HBPA staff and getting the appropriate
11 records or the appropriate information that would
12 satisfy their curiosity.

13 If they believe something is going on that
14 shouldn't be going on, they can take it to the
15 board. That's where it belongs. If the board
16 doesn't handle it appropriately or they're not
17 satisfied, they can lodge a complaint. We are
18 going to review the complaints.

19 One of the things that I'd like to see done is
20 that the corrective action steps say that the
21 complaints are going to be filed with the
22 Commission or the summary on an annual basis. What
23 I'd like to see is I'd like to see the complaints
24 when they're filed as long as what Chairman Diener
25 says is true, that they involve the state-directed

1 funds. And I want a copy of the resolution when
2 those complaints are resolved.

3 So between the eligibility requirement being
4 improved, between the processing of those
5 applications being improved, the fact that they are
6 going to be more transparent and open, the fact
7 that the Board of Directors is now driving the bus,
8 there is no going back and forth on who has the
9 knowledge, who has the information between the
10 trust and board, it's the board. They are the
11 elected representatives. In the future we
12 shouldn't be seeing these kind of complaints just
13 because if Indiana HBPA follows through with these
14 corrective action steps, which will be a condition
15 of your approval if you so approve, then the only
16 thing we will see if something is going on that
17 shouldn't be going on is once someone goes through
18 the entire process, including the complaints
19 through the HBPA and not get satisfied, okay, then
20 we'll see it. We'll review it. And we'll take
21 appropriate action if action is necessary.

22 CHAIRMAN DIENER: Questions for Joe? I have a
23 hypothetical question. Your recommendation is, was
24 that this application of HBPA be denied unless a
25 revised application was submitted that addressed

1 many of your concerns. You did not propose whether
2 or not there should be any sanctions. Do you
3 consider sanctions warranted in this case or not?

4 JOE GORAJEC: No. Based on our findings, no.

5 CHAIRMAN DIENER: Thank you. Yes.

6 MR. KEELER: Mr. Chairman, John Keeler on
7 behalf of both Indiana Grand and Hoosier Park. I
8 remind the Commission we are holding over
9 \$4 million in trust funds that have been withheld
10 from the HBPA as you deliberate. We would
11 respectfully request that you include in your
12 order, whatever it may be, some direction with
13 regard to those funds.

14 MS. NEWELL: Mr. Chairman, that number should
15 be 450,000, I think.

16 MR. KEELER: Excuse me. Over 400,000.

17 COMMISSIONER SCHENKEL: Just an extra zero.

18 CHAIRMAN DIENER: We are going to get done
19 before noon, but I want to take a ten-minute break
20 for the court reporter right now. We will continue
21 with the hearing in ten minutes.

22 (A brief recess was taken.)

23 CHAIRMAN DIENER: I think where we are on the
24 continuation of this hearing on the HBPA is we have
25 completed the direct presentation of the HBPA and

1 Commission staff. I would like to hear from Miss
2 Hobson, if she's here, or her representative
3 however you want to. This is the complainant.
4 Please introduce yourself.

5 MR. SHANKS: Good morning, Mr. Chairman,
6 Members of the Commission or Judges, as you are
7 today. My name is John Shanks. I'm an attorney
8 from Anderson, Indiana. It's an honor to represent
9 Kim Hobson, who is the lady that stimulated this
10 entire investigation.

11 As the other lawyers in the room would tell
12 you, one of the things you do as a lawyer when you
13 are looking at a situation is you evaluate the
14 fundamentals. All right. Looking at the
15 fundamentals of this situation, I could find no
16 legal authority for what the Commission is doing
17 today. Your rules are very specific about when
18 these applications are submitted and when they are
19 approved or denied. We are now past December 31st.
20 I can find nothing in the rules or statutory that
21 provide for this supplemental filing and all these
22 corrections that are being proposed.

23 I think before you proceed is you need an
24 opinion of counsel on the record that the process
25 that you're following is, in fact, substantiated by

1 law and rule because I can't find it. So I think
2 that's fundamental to this entire process.

3 A big part of my practice is representing
4 not-for-profit organizations. When I established
5 one, particularly 501C3s, one of the things I give
6 to the board is this little flashlight. Because
7 what I tell them, the importance of what you do is
8 to keep the lights on. If the lights start going
9 dim, you turn on the flashlight. And beyond that,
10 you're very specific, this has a little laser light
11 on it, you point it out. What's going on?

12 Well, Kim tried that. The board ignored her.
13 She's had threats, all sorts of retaliation.
14 She'll tell you about that, but, again,
15 fundamentally before the Commission makes any
16 decision, you need to explore the issue of the
17 legal basis for this reconsideration.

18 Mike Brown sent out a summary of the
19 Commission's benevolence investigation. And in the
20 beginning it says the report recommends denial of
21 the existing HBPA application pending our
22 addressing structural revisions of our benevolence
23 program listed in a series of correction action
24 steps. That's all good, but, again, it's too late.

25 Then he reports that the Commission virtually

1 dismisses the complaint filed by Kim Hobson. She
2 brought a box of stuff. Now, I think what the
3 Commission is using is probably this little
4 flashlight. I don't think that was intentional. I
5 think it has to do with the tools that are
6 available to them.

7 I have made public record requests to the
8 Commission, which have been acknowledged, but I
9 have received no records. I have filed a public
10 records request with the State Board of Accounts
11 because the HBPA is a public agency under the
12 statute. They are subject to audit by the State
13 Board of Accounts. I have not received anything
14 from the State Board of Accounts, but I did receive
15 an acknowledgment from Paul Lotz, who is their
16 general counsel, that the State Examiner referred
17 my request to him.

18 Also, on June 16th I sent a public records
19 request to the HBPA and to benefit trust because in
20 my opinion they are both public entities under the
21 statute and are subject to audit by the State Board
22 of Accounts. I haven't gotten the green card back
23 yet indicating they received it yet.

24 But, again, we need to shine a lot of light on
25 this, not only going forward but going backward.

1 That's why I brought this flashlight. Talking
2 about this flashlight, this is the kind of light
3 that needs to be shined on something like this
4 because implications are so broad and have so many
5 negative implications for the horse racing
6 industry, that you can't just do a reevaluation and
7 say, well, let's let bygones be bygones, and there
8 are no sanctions. Seems to me there are a lot of
9 opportunities for sanctions here. And that may be
10 left up to the State Board of Accounts, the
11 attorney general, or eventually the prosecutor.

12 I think it's important that you meet this
13 great lady who stepped up because she saw
14 deficiencies in what was going on in the way public
15 funds were being used. She will not be bullied
16 easily. I think the board has discovered that
17 because she regularly attends the board meetings
18 and receives pretty much the cold shoulder because
19 she shined some light on what was going on.

20 She's very concerned about the integrity and
21 the best interest of the horse racing industry and
22 truly horsemen helping horsemen. So I would like
23 to introduce to you Kim Hobson.

24 (At this time the oath was administered to the
25 witness by the court reporter.)

1 KIM HOBSON: I want to thank you for your time
2 today. My name is Kim Hobson, H-O-B-S-O-N. I'm
3 the president of Hawthorn Products. It's a horse
4 care manufacturing company located in Dunkirk,
5 Indiana. I'm also an owner and breeder of
6 Thoroughbred racehorses.

7 I'm here today because on August 28, 2013 I
8 was asked to sign an affidavit that all
9 expenditures of slot revenues were made in the best
10 interest of Thoroughbred horse racing in Indiana.
11 Consequently, I filed a complaint with the IHRC
12 explaining why I could not sign that affidavit. I
13 would also like to point out that the HBPA staff
14 was not required to sign that affidavit.

15 The HBPA staff includes Mike Brown, Steve
16 Stults, and Lisa Stephens. Steve Stults was the
17 director of benevolence until he resigned
18 December 31, 2012. Lisa Stephens was the HBPA
19 office manager until Steve Stults resigned, and
20 then she was promoted to director of benevolence.
21 Mike Brown is the executive director.

22 In the summer of 2012, several of the horsemen
23 and trainers asked me to get involved in the HBPA.
24 They asked me to run for a seat on the board in the
25 2012 election. They knew me to be an honest person

1 and hoped I could help clean up the mess and get
2 rid of the cronyism. Consequently in the fall of
3 2012, I was elected to the HBPA board.

4 Almost immediately, horsemen were contacting
5 me telling me about the stories of when they were
6 denied benevolence while others were getting
7 benevolence. I began asking the HBPA board members
8 and staff questions and investigating these
9 stories. I fully expressed my concerns to the
10 board. And I reminded them of the fiduciary duties
11 but nothing has changed. And I do have documents
12 supporting these statements.

13 It became immediately obvious to me that the
14 HBPA was not run properly. If the HBPA board had
15 followed its own bylaws and guidelines, I believe
16 the program would work, but the majority of the
17 HBPA board and staff refuses to follow the bylaws
18 and guidelines unless they can use them for their
19 own benefits. The HBPA bylaws state the financial
20 records of the association, including the audit
21 thereof, shall be open for inspection by any
22 director and for any proper purpose by any member.

23 Several of the board members, including
24 myself, have asked to see the books. We have been
25 denied on more than one occasion. In fact, we've

1 never been allowed access to the records.

2 Our bylaws also read before payment, the
3 finance committee shall approve all bills of the
4 association. It shall supervise the financial
5 affairs of the association, the issuance of checks,
6 the collection of receipts, and the keeping of
7 proper records. This is not the practice of the
8 Indiana HBPA.

9 I am on the finance committee. And to the
10 best of my knowledge, the finance committee has
11 never convened. The excuses that have been
12 provided by both Steve Stults and Mike Brown is
13 that it would violate HIPAA, although this is
14 contrary to the opinions provided by the attorneys
15 representing HBPA who say HIPAA does not apply in
16 this case. So we can make all of the revisions
17 that we want to make, but if nobody follows them,
18 it's pointless.

19 I would like to address the staff report which
20 found my complaint to be unfounded, untrue, and
21 based on second-hand information. The footnotes on
22 page four of the staff report states "The
23 Commission found no eligible student was denied a
24 scholarship." However, I know of two eligible vet
25 tech students that applied in 2010, 2011, and 2012

1 and never received any financial assistance. They
2 didn't even receive a letter saying why they were
3 denied.

4 This isn't hearsay. This is firsthand
5 knowledge. One of them was my daughter. She
6 graduated in 2010. And she was accepted to a vet
7 tech program which began that fall. She applied
8 for the HBPA scholarship that year. She applied
9 again in 2011 and again the spring of 2012. It was
10 an 18-month vet tech program with a three-month
11 internship. And she never received any scholarship
12 funding.

13 So this is one reason that I knew firsthand
14 people were not being treated equally. However,
15 the HBPA had no problem issuing checks on
16 September 6th, 2011 directly to Lisa Stephens's
17 sister and her daughter who attended the Alabama
18 Sleep Institute, even though our own HBPA
19 scholarship program required that the HBPA checks
20 are to be written directly to the institution of
21 higher learning. There was never to my knowledge
22 any board meeting authorizing these checks.

23 In August of 2013, Chastity Harmon approached
24 me for help because she was denied benevolence to
25 see a doctor for a cold. She was also denied

1 dental assistance.

2 I asked Mike Brown and Joe Davis, our current
3 HBPA president, about this. They claim she was
4 denied because she cleaned stalls in the receiving
5 barn. Therefore, she was a track employee and not
6 eligible. It's worth noting that Chastity also
7 held a groom's license at that time. Not long
8 after that, Joe Reidy, who's a full-time gate crew
9 person, and by full time, I mean he is there in the
10 morning when the horses work, and he's there during
11 the races working on the gates.

12 He was sitting at my dinner table one
13 afternoon when he started to tell me about a story
14 about how his tooth had shattered. And one of the
15 co-gate crew members told him go to the HBPA.
16 They'll take care of it. Buddy Rickley was the
17 other gate crew member. He says they've always
18 taken care of him.

19 So Joe Reidy went to the HBPA, and he asked if
20 they could help. Lisa told Joe that she certainly
21 could help him, but he would need to obtain a
22 groom's license first so he did that. After
23 telling Lisa that he wanted to use his own dentist,
24 she advised him that he would have to pay up front
25 and then bring the receipts in in order to be

1 reimbursed. He also asked if the HBPA would cover
2 some repairs to his lumineers just as a cosmetic
3 procedure, a whitening of his teeth, if you're not
4 familiar with it.

5 And Lisa said yes. So he had his dental work
6 done. He turned in the receipts, and he was fully
7 reimbursed. Everyone knew he was a gate crew
8 member. Everyone knew he was a track employee.
9 And everyone knew he was not eligible, but, yet, he
10 received benevolence. And, yet, Chastity Harmon
11 was turned down. This is the proof to me that the
12 past practices were continuing and nothing had
13 changed with the new president or the new board.

14 Both of these stories were told directly to
15 me. Both of these stories were reported to the
16 IHRC with my complaint, and neither person was
17 interviewed during the IHRC staff investigation to
18 the best of my knowledge. These examples are just
19 a tip of the iceberg so to speak.

20 Another outrageous example was Roger Speiss.
21 I'm sure you have read about it in the staff
22 report. He owned and co-owned horses that were
23 trained by the past HBPA president Randy Klopp. He
24 is a licensed veterinarian. And it seems rather
25 obvious to me that he would not meet our income

1 eligibility requirement. But, yet, he is receiving
2 benevolence. He received benevolence in the past.
3 He is still receiving benevolence, and he has even
4 had attorney fees paid by the HBPA.

5 These are examples, these examples are just a
6 small sample of the misappropriations that have
7 occurred. I have box full of them in my office.
8 Perjury is a criminal offense. These are the
9 reasons I cannot sign that affidavit, and I would
10 not sign that affidavit today. The people
11 responsible for the staff report should be required
12 to sign that affidavit if you have confidence in
13 the way the HBPA board has been and is being ran.

14 My task today has not been very easy. I have
15 endured threats. I've had flat tires. I've had
16 personal expenses. And my goal from the beginning
17 is to simply make sure the HBPA funds are being
18 spent properly. There are many people on the
19 backside in great need of benevolence. And I'm
20 truly sorry for these people. I'm sympathetic to
21 their needs. These are the people that I want to
22 see benefit from the program.

23 I believe the program is very much in need,
24 but the people who control the funds are corrupt
25 and acting in their own self-interest. In my

1 opinion any member of the HBPA board and staff who
2 sits by idly and watches or chooses to actively
3 ignore the corruption are just as guilty as the
4 people directly misappropriating the HBPA funds.
5 These are the people directly involved in -- there
6 are people directly involved in wrongdoing. And
7 there are others who choose to do nothing about it
8 or cover it up. In my opinion they are all guilty.

9 I want to thank you for your time and, I hope,
10 your assistance in helping make sure the HBPA funds
11 are properly spent and taking appropriate measures
12 to hold those accountable who have purposely
13 violated the law for their own personal benefit.
14 No action is not in the best interest of horse
15 racing. So it's time to bring integrity back to
16 the Indiana HBPA and to Indiana horse racing. Do
17 you have any questions?

18 CHAIRMAN DIENER: Miss Hobson, I personally
19 wanted to thank you for filing the complaint
20 because I concur with our executive director but
21 for your filing this complaint, there would have
22 been no change to the HBPA.

23 KIM HOBSON: I believe that.

24 CHAIRMAN DIENER: I do too. That's why I say
25 I appreciate that. Now, let me ask you this, the

1 changes that are being proposed by the HBPA, do
2 those address some, all of your concerns? Is it
3 going to be better moving forward now or is it
4 going to be just the same?

5 KIM HOBSON: Honestly, the first time I seen
6 any of those changes was last Friday at our HBPA
7 meeting. And since I have been preparing for this,
8 I didn't have a lot of time to read them over. But
9 I guess my concern is, you know, when I sat on the
10 board in the beginning and I started asking
11 questions, and the board and everybody said quit
12 dwelling in the past, look forward, you know, let's
13 change this, let's don't let things happen on our
14 watch. And, you know, I sit and I wasn't happy
15 with that, but we couldn't change the things that
16 had happened by the previous boards.

17 But then when Chastity Harmon told me her
18 story and then Joe Reidy sits at my table, and this
19 was near the point of the application going
20 through, I believe, in August of last year, the
21 first part of August or the late part of September,
22 it became clear to me nothing had changed. The
23 same people were in charge of it. The same people
24 were doing whatever they wanted to do. The only
25 difference was they were being a lot more

1 secretive. And it was a lot harder for me to find
2 out anything.

3 So do I think that things are going to change
4 if people aren't reprimanded for inappropriate
5 behavior? No.

6 CHAIRMAN DIENER: We have made, I hope, the
7 HBPA with the assistance of Commission staff will
8 have made things, one, much more transparent so
9 people on the board, as well as the staff or the
10 backside people know what's going on, what's
11 available, and that there is tighter oversight over
12 the expenditures of the benevolence funds. That's
13 our hope going forward. If these plans are
14 approved by us today, rest assured the Commission
15 and Commission staff will enforce those plans.

16 I want to ask Miss Ellingwood or Miss Newell
17 about the specific three or four items that Miss
18 Hobson mentioned this morning, and particularly the
19 comments that staff never contacted these people or
20 did anything with this investigation as it relates
21 to those claims, assuming you were aware of them.

22 MS. ELLINGWOOD: Well, one of the names she
23 listed is not included in the complaint that we
24 received. The second one was. And our director of
25 security is here. He can help answer some

1 specifics of the investigation. But we looked
2 at -- when we received the complaint initially, we
3 sat down with Ms. Hobson and Mr. Shanks. One of
4 our primary concerns was that we wanted to get a
5 complete list of all the allegations instead of
6 having to look for a needle in a haystack.

7 And after meeting with them, we had a number
8 of correspondence with Mr. Shanks because some of
9 the information that we had, and it was voluminous,
10 wasn't very specific and wasn't very clear. We
11 couldn't figure out what exactly the allegation
12 was.

13 We got to the point where we moved forward
14 with the information that we had. So we did not
15 question Joe, Joe Reidy, but we moved forward with
16 the HBPA in collecting information on all the other
17 specific allegations that were in there.

18 CHAIRMAN DIENER: Go ahead, Joe.

19 JOE GORAJEC: I'm not sure if this is a
20 question or a comment. When you look at the
21 application, excuse me, when you look at the
22 complaint, the bulk of it seemed to revolve around
23 the fact that the eligibility requirements were not
24 being enforced. And based upon what we received,
25 we found that, generally speaking, they were not

1 being enforced uniformly.

2 We found, we requested all of the applicants
3 for benevolence that had been denied. We didn't
4 find anyone who was denied because they were part
5 time, that they didn't work full time. We didn't
6 find anyone who was denied based upon the fact that
7 their employment was not started a year prior.

8 Quite frankly, those are pretty arduous eligibility
9 lines that have since changed. Having said that,
10 they were objective eligibility requirements.

11 So once you find that they're not being
12 enforced, that's pretty much to a large degree what
13 the investigation was about and what the corrective
14 action steps tried to solve. Then you ask
15 yourself, well, what do you do about it? Well,
16 okay, so someone who is working maybe 20 hours
17 instead of full time -- this is last year, the year
18 before, year before that -- what do you do? They
19 submitted their application in good faith. They
20 were never asked. The application doesn't ask
21 what's your pay, doesn't ask how many hours you
22 work. Okay.

23 So there's no action to take with regard to
24 the fact that these people received funds. They
25 applied. If they didn't work full time, they

1 didn't necessarily provide false information. They
2 were never asked.

3 As far as the length of time, well, so someone
4 works three months instead of a year. Well, what
5 do you do? I mean, you don't go back and say,
6 well, you know, you only worked -- do you go back
7 and say all the people who've only worked three
8 months who started that year that didn't work the
9 prior year, you're not eligible, give the money
10 back? Okay. Someone goes in, is not eligible,
11 they try to make themselves eligible. And they
12 might try to make themselves eligible within the
13 way the program is being operated.

14 So someone is on the gate crew, and quite
15 frankly, I think gate crew people are horsemen.
16 And I've made that clear in my report, they try to
17 make themselves eligible by working as a groom for
18 someone else. Well, were they technically eligible
19 from the eligibility requirements? No. But that's
20 the way the program was being administered at the
21 time.

22 So when you look at what's happened, I think
23 we brought to light what was happening. And what
24 was happening is that they weren't enforcing some
25 of their eligibility requirements. They were

1 enforcing others to the letter, but there were a
2 few that they weren't really enforcing at all.

3 What do you do? It's one, two, three, four
4 years later. You do what we proposed. They
5 revised their eligibility requirements. They
6 talked about the transparency. We talked about the
7 complaints. Now the board's in charge. You sit on
8 the board. Ask for the information. You didn't
9 get it before. You should get it now.

10 With regard to complaints that were vague or
11 unsubstantiated, there are things, quite frankly,
12 that the Commission staff should not get involved
13 in. I mean, we should not get involved in what it
14 cost to picnic. That's not a Commission staff
15 function. That's a board function. Okay. You're
16 not happy with the picnic, get the records for the
17 picnic and talk to the board. If you didn't get
18 them in the past, you should get them now.

19 Lisa driving the van. I don't care if Lisa
20 drives the van. The board might care if Lisa
21 drives the van. The board should address it. So
22 most of the, a lot of the things that were in the
23 complaint are things that the Commission shouldn't
24 be involved in period. And I hope with the
25 corrective action steps, that they're approved, and

1 they're enforced.

2 The access to the information that Kim and
3 others may be looking for will be available. She
4 may find out in some cases that it's not available
5 because it doesn't exist, but the board should be
6 taking care of their own business. We shouldn't be
7 micromanaging the board.

8 It's unfortunate that it got to where it has
9 right now, but the fact of the matter is, I think
10 the corrective action steps, if approved and if
11 adhered to, will solve the problems and correct
12 insufficiencies from the last four years.

13 CHAIRMAN DIENER: Commissioner Schenkel.

14 COMMISSIONER SCHENKEL: Can I ask a question,
15 and maybe you're not the appropriate person, maybe
16 Mike Brown, but somebody has to address this. You
17 used the example of the scholarship situation.

18 KIM HOBSON: Yes.

19 COMMISSIONER SCHENKEL: I guess I'm not clear
20 if there's still a scholarship program. I see in
21 the line item budgets that we were given there's a
22 line for education, but then when I look at the
23 benevolence, the outline that we were provided
24 about education, it says funding spiritual,
25 education, and recreational needs of backside

1 employees and families. Is there, in fact, a
2 scholarship program per se?

3 KIM HOBSON: Not any longer.

4 COMMISSIONER SCHENKEL: Education is a pretty
5 broad word. I'm interested in that specific
6 concern you had.

7 KIM HOBSON: No, the scholarship program, I
8 believe, was ended in the beginning of 2013 or
9 maybe somewhere along there. It's no longer in
10 existence at this point though.

11 COMMISSIONER SCHENKEL: That takes that off
12 the table though.

13 CHAIRMAN DIENER: Thank you, Miss Hobson.
14 Mr. Shanks.

15 MR. SHANKS: Just a couple of comments,
16 Mr. Chairman. First of all, I would like to thank
17 Mr. Gorajec and the legal staff. They have been
18 very cooperative.

19 This is just a very deep and contentious set
20 of issues. I'm not sure that they had the time nor
21 the tools to investigate this completely. Perhaps,
22 this is what the State Board of Accounts should do.
23 They have authority to do it. I've already
24 contacted them, like I said, because I think there
25 has been a lot of misuse of public funds.

1 You're going to be considering your conflict
2 of interest policy next. That's so very important
3 because conflict of interest is very important not
4 just in its application, but the appearance of
5 impropriety in its application.

6 And I appreciate you giving us time to address
7 you. And I'm hopeful that the law will continue to
8 be followed. Thank you.

9 CHAIRMAN DIENER: You were aware about today's
10 hearing for some time, were you not?

11 MR. SHANKS: Actually, no.

12 CHAIRMAN DIENER: I'm sorry?

13 MR. SHANKS: I didn't know about it until a
14 week or two ago.

15 CHAIRMAN DIENER: Nobody told you, your client
16 didn't tell you or anything?

17 MR. SHANKS: We got notice. I don't have the
18 actual notice.

19 CHAIRMAN DIENER: You've never seen the staff
20 report?

21 MR. SHANKS: I have. I've got it right here.

22 CHAIRMAN DIENER: I mean before just a week
23 ago.

24 MR. SHANKS: No, I saw the staff report
25 shortly after. When we got the summary from HBPA

1 through Kim, then I asked Miss Ellingwood to send
2 me a copy, and she did. She has been very
3 responsive to me.

4 CHAIRMAN DIENER: I was just concerned if you
5 had a problem with the subject matter jurisdiction
6 of this commission today, I would rather you have
7 addressed it sometime prior than just verbally this
8 morning.

9 MR. SHANKS: Well, I just really discovered it
10 a couple of days ago. My wife has been in surgery.
11 I've been caring for her.

12 CHAIRMAN DIENER: I'm sorry about that. I
13 don't like surprises.

14 MR. SHANKS: Whether you bring it up now or
15 you bring it up two weeks ago, it's still an issue.

16 CHAIRMAN DIENER: It's an issue that could
17 have been addressed before.

18 MR. SHANKS: I thought this is the appropriate
19 time because this is a hearing. But thank you very
20 much.

21 CHAIRMAN DIENER: Thank you. Do we have any
22 comments from the public, any nonparties that would
23 like to make any comments before the Commission
24 begins deliberations?

25 Let the record note there was none.

1 Are you prepared to consider action today,
2 Commissioners? Let me try a test and see if this
3 makes some sense. The Commission will approve the
4 revised renewal application of the IHBPA for
5 approval as a registered horsemen's association
6 subject to the following four conditions that I
7 hope Miss Ellingwood can remember. Would you try
8 those four conditions, please.

9 MS. ELLINGWOOD: I will try. I have that the
10 HBPA board will meet monthly during the race season
11 to review benevolence expenditures. That a
12 condition of their approval is compliance with an
13 amended benevolence guidelines and procedures that
14 you will need to update based on the hearing today
15 and resubmit it. The resubmission should include a
16 description of how the benevolence committee will
17 be appointed. That the board will amend its bylaws
18 to include a provision that requires the collection
19 of dues. And that the corrective action plan will
20 be amended to tweak the complaint policy so that
21 any complaints that's submitted to the Commission
22 staff for review is one regarding benevolence
23 expenditures or other slot expenditures or any
24 other issue under the jurisdiction or bailiwick of
25 the Commission. One thing that I did not quite

1 catch was how frequently the Commission wants that
2 submitted. Right now, it's annually but I don't
3 think we decided that.

4 CHAIRMAN DIENER: Does staff have a
5 recommendation as to timeliness?

6 JOE GORAJEC: Yes. I'd like to have the
7 Commission staff receive the complaint within seven
8 days of filing and receive the disposition of the
9 complaint within seven days of disposition.

10 CHAIRMAN DIENER: Would you do it again so
11 each member up here understands the conditional
12 approval being considered in a motion.

13 MS. ELLINGWOOD: That the association requires
14 that the HBPA comply with the amended benevolence
15 guidelines and procedures that it's submitted and
16 which are part of the record today. That the HBPA
17 board commits to monthly meetings during the race
18 meet, at which point it will review the
19 expenditures, the benevolence expenditures that
20 have been made. That the board will amend its
21 complaint policy such that the Commission will
22 receive complaints regarding slot expenditures,
23 expenditures of slot funds or any other topic under
24 the Commission's bailiwick or jurisdiction. And
25 that those complaints will be received by the

1 Commission within seven days of filing and within
2 seven days of the disposition of the complaint.
3 And that the bylaws will be amended to include a
4 provision that requires dues be collected.

5 CHAIRMAN DIENER: Questions from members of
6 the Commission?

7 COMMISSIONER SCHENKEL: The only one I have a
8 question of, Mr. Chairman, is on the second one, I
9 believe, where you said board meets monthly during
10 the racing season. Is there anything inherent in
11 that that there is a report filed then monthly or
12 some sort of notification or report given to this
13 body?

14 MS. ELLINGWOOD: Pursuant to the corrective
15 action plan that the HBPA submitted, they have
16 committed to forward to us quarterly essentially a
17 line item analysis of the expenditures that
18 benevolence expenditures that were made. That
19 should be covered in what they have already
20 committed to do.

21 CHAIRMAN DIENER: Mr. Vice-chair.

22 COMMISSIONER SCHAEFER: You reversed it on me.
23 What was the first one you gave?

24 MS. ELLINGWOOD: The first one was the
25 requirement of the order that the HBPA has to

1 comply with the provisions in the corrective action
2 plan they have submitted. They also are going to
3 be amending that plan to include, to tweak the
4 complaint policy so that we are getting it seven
5 days after they've received it and after it's been
6 resolved. And those complaints that we receive are
7 only about expenditures of slot funds or about
8 another issue that's under the Commission's
9 jurisdiction.

10 COMMISSIONER WEATHERWAX: If they do all this,
11 if they implement all this, do we have to make a
12 part of that motion the disposition of the money
13 that's withheld?

14 MS. ELLINGWOOD: The money is currently being
15 held in escrow, as Mr. Keeler mentioned. I think
16 there is approximately \$85,000 from the 2013 slot
17 revenues and \$450,000 from the 2014. So once the
18 Commission approves this, the benevolence committee
19 will begin administering that money under its new
20 guidelines.

21 CHAIRMAN DIENER: I will make a motion. I
22 will make that in the form of a motion.

23 COMMISSIONER SCHENKEL: Second.

24 CHAIRMAN DIENER: All those in favor.

25 THE COMMISSION: "Aye."

1 CHAIRMAN DIENER: Opposed?

2 (No response.)

3 CHAIRMAN DIENER: Motion carries. Just as a
4 side note, we have got our state agency. We have
5 got other state agencies involved here. By statute
6 in Indiana, the State Board of Accounts is charged
7 with the responsibility of annually auditing the
8 accounts, books, and records of the HBPA and any
9 other horsemen's association receiving benevolence
10 money. By statute, they have that responsibility
11 and duty.

12 Secondly, by our own Commission rule, each
13 horsemen's association, including the HBPA, has to
14 submit annual audited independent financials of the
15 benevolence expenditures. We, as a commission, are
16 not going to be doing audits. We have got several
17 other entities doing audits, but we have the
18 responsibility and the authority to make sure these
19 funds are being expended in the appropriate manner,
20 and we will continue to monitor that.

21 Conflict of interest policy for horsemen's
22 associations. Item six. Lea.

23 MS. ELLINGWOOD: As mentioned before, the
24 conflict of interest policy is an issue that came
25 up when the Commission was conducting its

1 investigation of the previous agenda item. We
2 found in looking at the conflict of interest
3 policy -- and to give you a little bit of
4 background, this is the Commission's conflict of
5 interest policy.

6 CHAIRMAN DIENER: This is not for HBPA. This
7 is for each and every horsemen's association.

8 MS. ELLINGWOOD: Correct. So this information
9 is submitted to the Commission after it's executed.
10 Specifically, what we are looking at is Article III
11 on page two of the policy. You'll see in section
12 one that it provides that the direct or the
13 indirect use of horsemen's association funds by an
14 officer, a director, or an employee is prohibited,
15 except in pertinent part where those benefits are
16 available to the general membership.

17 The section that we have changed is in section
18 two. Section two essentially includes the same
19 prohibition for family members of officers,
20 directors, or employees. The problem was that this
21 prohibition doesn't include the same exception. So
22 specifically family members of officers, directors,
23 or employees are not, under this policy, allowed to
24 access benefits available to the general membership
25 even though the officer, director, or employee

1 would be. It was not the intention of the
2 Commission at the time that the policy was written
3 to exclude family members of officers, directors,
4 or employees from having access to the same
5 benefits as the general membership. So that change
6 just makes section two consistent with section one.

7 CHAIRMAN DIENER: Questions of the Commission?
8 Hearing none, move to consider this amendment to
9 the Commission's conflict of interest policy of the
10 horsemen's association.

11 COMMISSIONER SCHAEFER: Second.

12 CHAIRMAN DIENER: All in favor?

13 THE COMMISSION: "Aye."

14 CHAIRMAN DIENER: Opposed, same sign.

15 (No response.)

16 CHAIRMAN DIENER: Motion carries.

17 Item seven, Commission rulings. Holly.

18 MS. NEWELL: Yes, you have the April and May
19 rulings. We are into the race meet. So it's a
20 little more voluminous than usual. I'm happy to
21 take any questions you guys would have.

22 CHAIRMAN DIENER: Questions from any
23 Commissioner? Hearing none, thank you for
24 submitting the review.

25 Item eight, consideration of emergency rule

1 amendments regarding medication and multiple
2 medication violations to conform with the recently
3 adopted ARCI model rules.

4 JOE GORAJEC: Chairman, Commissioners, these
5 few additions to our rules were actually discussed
6 in a limited way at the last Commission meeting.
7 At the last Commission meeting, the Commission made
8 numerous changes to our medication rules regarding
9 threshold levels. And that meeting was held at the
10 end of April.

11 Earlier that month, the Association of Racing
12 Commissioners International had their annual
13 convention. And they did some tweaking, some
14 additions to the model rule. We felt that those
15 additions shouldn't have been taken up at the April
16 meeting because it was insufficient time for the
17 industry groups to comment on those.

18 So those few changes were circulated to the
19 industry. The few comments that we received, have
20 been provided in your packet. This rule before you
21 is formatted a little bit differently than we have
22 in the past in that what I wanted to do is I wanted
23 to show the Commission in bold everything that you
24 took up at the last Commission meeting. Only the
25 areas that are highlighted are actual changes that

1 the Commission staff is recommending at this time.

2 The changes to the medication rule fall
3 broadly into two categories. One of them is to add
4 two additional drugs; Albuterol, which is a
5 bronchodilator, and isoflupredone, which is a
6 corticosteroid, anti-inflammatory agent. In
7 addition to the adding of those two drugs with
8 regard to threshold levels, there have been a
9 number of drugs that have been added that the
10 industry considers contaminants, environmental
11 contaminants or substances that are endogenous to
12 the horse that we have developed threshold levels
13 on whereby should those substances be found in the
14 horse below the threshold levels, it would not be
15 called a positive.

16 So those are the modifications that are being
17 made, the amendments that are being made to the
18 medication rule. There's also been a number of
19 changes. And you have two medication rules in
20 front of you. And as we are accustomed to doing,
21 we are provided both the Thoroughbred/Quarter Horse
22 regulations and separately the Standardbred
23 regulations.

24 With regard to the multiple medication
25 violations, there's been a number of changes as you

1 see highlighted that were made at the convention.
2 And we are also asking for approval of those. With
3 regard to the rationale for having these presented
4 to the Commission as emergency rules, they again,
5 like the uncoupling rule, fit two of our criteria.

6 One of them is that ARCI previously adopted
7 model rules, and the fact that they're time
8 sensitive, especially regarding the two additional
9 drugs and contaminants. I think all the horsemen
10 would second my comment that to the extent that
11 there is an additional therapeutic medication where
12 there's a threshold level that is defined and
13 promulgated as a regulation, it affords them
14 additional protection because without threshold
15 levels to the extent that a drug is found below
16 that level, there is a possibility of being called
17 positive when by industry standards it wouldn't be
18 called a positive. I think the horsemen, and I'll
19 let them speak for themselves, but I think the
20 horsemen are very much in favor of the addition of
21 the two medication threshold levels and
22 contamination.

23 COMMISSIONER WEATHERWAX: Well , it may be my
24 lack of being a veterinarian in science and all
25 that, but it looks like we are going full circle

1 here. Aren't some of these the same drugs we
2 didn't want to have two months ago or is it just
3 the level of acceptance? This is going to be
4 following the national model rule.

5 JOE GORAJEC: Right.

6 COMMISSIONER WEATHERWAX: We want it to stay
7 that way to be uniform.

8 JOE GORAJEC: In other words, all we are
9 adding are two drugs with regard to the threshold
10 levels. The contaminants are another issue. But
11 with regard to the rule entitled threshold levels,
12 we are adding to the list that the Commission
13 approved at the last meeting. And the reason that
14 we are adding to them is that since the Commission
15 met last time, the industry has had an opportunity
16 to vet and comment upon two more drugs that
17 threshold levels are being provided for.

18 CHAIRMAN DIENER: We didn't want to add those
19 two in the form of a rule until our industry had
20 had a chance to weigh in on it. Further questions
21 for Joe? Any comments in opposition from horsemen?
22 Hearing none, move we approve the proposed rule
23 amendments as submitted.

24 COMMISSIONER WEATHERWAX: So moved.

25 CHAIRMAN DIENER: All in favor?

1 THE COMMISSION: "Aye."

2 CHAIRMAN DIENER: Opposed, same sign.

3 (No response.)

4 CHAIRMAN DIENER: Motion carries.

5 Mr. Schuster, you have a horsemen's contract with
6 the HBPA?

7 JON SCHUSTER: Good morning, Mr. Chairman,
8 Commissioners, Jon Schuster, S-C-H-U-S-T-E-R, with
9 Indiana Grand Racing and Casino. We are here today
10 to request your approval for the contract with the
11 HBPA. There is little change from the past,
12 nothing substantive or significant to report. We
13 request your approval.

14 CHAIRMAN DIENER: Questions from the
15 Commission, if any? Hearing none, move to approve
16 the submitted horsemen's contract with Indiana
17 Grand and Indiana HBPA.

18 COMMISSIONER SCHAEFER: Second.

19 CHAIRMAN DIENER: All in favor?

20 THE COMMISSION: "Aye."

21 CHAIRMAN DIENER: Opposed, same sign.

22 (No response.)

23 CHAIRMAN DIENER: Motion carries.

24 Approved official's list for Indiana Grand
25 supplemental filing.

1 JOE GORAJEC: Mr. Chairman, the highlighted
2 categories were inadvertently left off the last
3 list. They are being added now for your approval.
4 I would recommend that the Commission approve these
5 additional officials.

6 CHAIRMAN DIENER: Questions for Mr. Gorajec?
7 Here none, move we approve the supplemental
8 approved officials list for Indiana Grand.

9 COMMISSIONER SCHAEFER: Second.

10 CHAIRMAN DIENER: All in favor?

11 THE COMMISSION: Aye.

12 CHAIRMAN DIENER: Opposed, same sign.

13 (No response.)

14 CHAIRMAN DIENER: Motion carries.

15 COMMISSIONER SCHENKEL: I have one quick
16 question. Who is the integrity officer?

17 JON SCHUSTER: The integrity officer is our
18 security officer on the backside that ensures that
19 we have all the proper vet escorts, boots on the
20 ground for horse identification for the stalls for
21 the in-today horses and so forth. He is
22 essentially the coordinator to make sure that all
23 that's coordinated with the Commission. Security
24 on the backside, and it goes to some on the front
25 side as well. He's the focal point for all those

1 tentacles.

2 COMMISSIONER PILLOW: Thank you.

3 CHAIRMAN DIENER: Old business, none. New
4 business, none.

5 Couple of things, one, many of you know that
6 Bill Summers passed away. He was a long-time
7 Indiana trainer. Let's remember Wendy when we see
8 Wendy Brown. Bill was a grand old guy. Always
9 loved to see him at the meetings, and he will be
10 missed.

11 Secondly, and this was brought up earlier by
12 Mr. Keeler. It's his fault. First of all, I need
13 to unwind a little bit personally, not on behalf of
14 the Commission. I'm not speaking for the staff
15 either.

16 The rationale for the rule amendments on
17 uncoupling. National foal crops for Thoroughbreds
18 have been decreasing for years. There were a few
19 blips. Also, race days for Thoroughbreds have been
20 decreasing. The problem has been that the foal
21 crops have been decreasing at a much faster rate,
22 which means that they're are not enough horses to
23 fill these races. It's starting to crop up now in
24 Indiana. It's been going on other places.

25 Last Tuesday at Indiana Grand, the first race

1 on the program had three starters. In a few weeks
2 Indiana Grand is going to five race days a week.
3 Most of our tracks, neighboring Thoroughbred tracks
4 in adjacent states, if not all of them, have cut
5 back to three or four days a week.

6 So my concerns, and as an old lawyer my glass
7 is always half empty so I have to apologize to you.
8 Are we going to see a bunch of short fields even
9 some cancelled race dates this summer? If we will,
10 that doesn't do much for patron interest in racing
11 or even simulcast patrons going to wager on Indiana
12 races.

13 A secondary concern, are we going to see more
14 horse breakdowns this year as trainers send out
15 horses more often than they usually would? They
16 won't have enough time off. They will be going out
17 quicker. Have to have full fields, got to have
18 full fields.

19 And then my nagging second question is quality
20 of the Thoroughbreds racing. We know that Indiana
21 breds represented only about seven percent of
22 horses starting in open races last year. Contrast
23 this with our Standardbred program where about half
24 of the Standardbred starters are Indiana breds.
25 Indiana bred Thoroughbreds are improving quality

1 wise but only slightly, only slightly. Well behind
2 bloodstock for Standardbreds.

3 I still personally feel we need to start
4 directing more and more breed development funds to
5 purse supplements and less to breeder awards, if
6 that's in the best long-term interest of Indiana's
7 Thoroughbred industry. Couple years ago the
8 average purses per race for Thoroughbreds in
9 Indiana was about 12,000. It's doubled, running
10 about a little over 24 and \$25,000 a race each
11 time. What's happened to the quality of races?

12 Not much.

13 Now, I have to say a caveat. Indiana horsemen
14 are making money. And they're making good money,
15 particularly racing in restricted races, but there
16 has been little improvement in bloodstock. And I
17 personally, Centaur and Indiana Grand, I hope you
18 are going to consider, if you can, cutting back on
19 race dates yet this year. Otherwise, I suspect the
20 patrons at the track or even the patrons at a
21 simulcast facility are going to be seeing a
22 mediocre racing product as this summer goes along
23 with short fields or cancelled races.

24 I hope that next year Centaur and Indiana
25 Grand, maybe start thinking about maybe racing four

1 days a week, maybe starting a couple weeks early,
2 mid April maybe running to mid November so you can
3 get your 120 or so race dates in but let's stretch
4 it out a little bit. Let's give some time for
5 these horses to rest.

6 And I hope you will both work with
7 Thoroughbred breed development to think of longer
8 term ways to increase the quality of our bloodstock
9 and to come up with disincentives for the short
10 term focus that we currently have.

11 I apologize if I'm being overly concerned and
12 pessimistic, but what I'm actually wanting help for
13 this Commission and Commission staff is ideas as we
14 get going along.

15 We stand adjourned. Thank you.

16 (The meeting of the Indiana Horse Racing
17 Commission adjourned at 11:55 a.m.)

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1 STATE OF INDIANA
2 COUNTY OF JOHNSON
3

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

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

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my notarial seal this 10th day of
16 July 2014.

17 *Robin P. Martz*
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