

**In The Matter Of:**  
*Indiana Horse Racing Commission Meeting*

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*IHRC Meeting*  
*October 29, 2013*

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INDIANA HORSE RACING COMMISSION  
MEETING

Held on  
October 29, 2013  
9:00 a.m.

Indiana State Library  
315 West Ohio Street  
Room 211  
Indianapolis, Indiana

Taken by  
Michele K. Dew, CRR-RPR  
Notary Public

APPEARANCES

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William Diener, Chairman  
Steve Schaefer  
Greg Schenkel  
Tom Weatherwax  
  
Joseph Gorajec, Executive Director  
  
Lea Ellingwood, Esq.  
Holly Newell, Esq.

## 1 AGENDA

## 2 I. Call to Order

3 II. Approval of minutes of the September 17, 2013  
4 meeting.

## 5 III. Agenda

6 1. Hearing on proposed distribution  
7 agreement pursuant to I.C. 4-35-7-18. (Notice of  
8 Hearing and Pre-Hearing Order issued on or about  
9 October 3, 2013).10 2. Hearing on Renewal Application of  
11 Quarter Horse Racing Association of Indiana for  
12 Approval as a Registered Horsemen's Association  
13 pursuant to 71 IAC 13-1-1 et seq. (Notice of Hearing  
14 and Pre-Hearing Order issued on or about October 2,  
15 2013).16 3. Hearing on Renewal Application of  
17 Indiana Thoroughbred Owners and Breeders Association  
18 for Approval as a Registered Horsemen's Association  
19 pursuant to 71 IAC 13-1-1 et seq. (Notice of Hearing  
20 and Pre-Hearing Order issued on or about October 2,  
21 2013).22 4. Hearing on Renewal Application of  
23 Indiana Horsemen's Benevolent & Protective Association  
24 for Approval as a Registered Horsemen's Association  
25 pursuant to 71 IAC 13-1-1 et seq. (Notice of Hearing  
and Pre-Hearing Order issued on or about October 2,  
2013).5. Hearing on Renewal Application of  
Indiana Standardbred Association for Approval as a  
Registered Horsemen's Association Pursuant to 71 IAC  
13-1-1 et seq. (pursuant to Notice of Hearing and  
Pre-Hearing Order issued on or about October 2, 2013).6. Consideration of settlement agreement  
between IHRC Staff and Ruben Serna.7. Review of Commission Rulings --  
September 1, 2013 through September 30, 2013.

8. Re-adoption of expiring rules.

1           9. Presentation on Indiana Breed  
2 Development programs.

3           10. Consideration of request by Indiana  
4 Downs to modify formula utilized in distributing  
5 pari-mutuel and slot generated purse monies between  
6 open and Indiana bred races.

7           11. Consideration of request by  
8 Indiana Downs for approval of a contract for  
9 totalizator services pursuant to 71 IAC 12-1-15(a)(3).

10           12. Consideration of request by Centaur to  
11 renovate the Indiana Downs track surface (estimated  
12 cost \$1,000,000) and enter into contracts related  
13 thereto with Executive Director approval.

14           13. Consideration of request by Centaur to  
15 build a new tote board at Indiana Downs (estimated  
16 costs \$1,000,000) with a contract to be approved by  
17 the Executive Director.

18           14. Consideration of request by Centaur to  
19 construct a new driver's lounge at Hoosier Park,  
20 subject to contract approval by the Executive  
21 Director.

22           IV. Old Business

23           V. New Business

24           VI. Adjournment  
25

1           CHAIRMAN DIENER: Let's call the meetings and  
2 hearings of the Indiana Horse Racing Commission for  
3 October 29 to order, please. First item is to  
4 swear in the reporter today.

5           (Court reporter was sworn in at this time)

6           CHAIRMAN DIENER: Thank you. You're hereby  
7 appointed as the official reporter to prepare a  
8 true and correct copy of the Commission's meeting  
9 and a transcript of today's hearings before the  
10 Commission.

11           We have five hearings today. And at this time  
12 I would ask that all those who know that they're  
13 going to be witnesses please stand, raise your  
14 right hand, and you will be sworn.

15           (Various witnesses were sworn in at this time)

16           CHAIRMAN DIENER: Thank you. You're sworn.

17           And for further individuals who may be  
18 witnesses who have not been sworn and when they do  
19 come in today, it is their counsel's responsibility  
20 to make sure that they are sworn before they submit  
21 testimony.

22           I want to express the Commission's  
23 appreciation for Doug Grimes. Commissioner Grimes  
24 served two terms here on the Commission, and he is  
25 now back in Lake County living life and continuing

1 to do public service.

2 We would like to welcome a new Commissioner to  
3 us, Commissioner Tom Weatherwax. Tom had a  
4 distinguished career in our General Assembly, both  
5 in the House of Representatives and the  
6 State Senate. And just as importantly, or maybe  
7 more importantly to us here on the Commission,  
8 Tom's professional business life has been in the  
9 agribusiness sector of the state of Indiana. This  
10 is a viewpoint that's important for horse racing,  
11 and we like to have his input. It's going to be  
12 very valuable. So welcome, Tom.

13 COMMISSIONER WEATHERWAX: Thank you,  
14 Mr. Chairman.

15 CHAIRMAN DIENER: The first item on the agenda  
16 today is the approval of the minutes of the  
17 September 17 meeting. Commissioners, have you had  
18 an opportunity to review those minutes?

19 COMMISSIONER SCHAEFER: Yes. Move to accept.

20 COMMISSIONER SCHENKEL: Second.

21 CHAIRMAN DIENER: I would ask that there be a  
22 minor correction to item No. 5 in the minutes.  
23 Item No. 5 was the approval of the delegation of  
24 authority to make amendments to line items in the  
25 approved horsemen's budget.

1           And the transcript and my motion should have  
2 reflected that, after consultation with the Chair,  
3 be delegated the authority to approve an amendment  
4 to a specific line item of a budget of up to  
5 \$50,000 -- this is the amendment -- "as long as the  
6 total of the particular budget for that account was  
7 not changed." The motion as made and accepted and  
8 as reflected in the transcript should reflect that  
9 there can be a change of up to \$50,000 within a  
10 particular budget, but in that particular budget  
11 the component cannot change.

12           Will you accept that amendment?

13           COMMISSIONER SCHAEFER: So moved.

14           CHAIRMAN DIENER: All in favor.

15           THE COMMISSION: "Aye".

16           CHAIRMAN DIENER: So approved as amended.

17           The first item today is a hearing on the  
18 proposed distribution agreement pursuant to  
19 I.C. 4-35-7-18. And as a matter of information for  
20 those of you in the audience, one of the individual  
21 lawyers representing Centaur today is publicly  
22 known to some of you, Mr. Robin Babbitt.

23           Mr. Babbitt and his previous law firm represented  
24 the Commission and/or the Commission Staff for  
25 approximately two decades. During that period



1 Mr. Babbitt and that firm represented the  
2 Commission and/or its staff in a number of matters.

3 Mr. Babbitt has since changed law firms, and  
4 he will be appearing this morning, and the law firm  
5 that he's now with has never represented the  
6 Commission or the Commission Staff, nor did  
7 Robin Babbitt at any time during his representation  
8 with the Commission or the Commission Staff was he  
9 engaged to discuss, advise on, communicate with the  
10 legislature about what's called this distribution  
11 agreement that we'll be considering this morning.

12 Is there any reason, Miss Ellingwood? You  
13 looked through the contents of the prehearing  
14 order.

15 MS. ELLINGWOOD: I don't think it's necessary.  
16 The only thing that I want to point out, Chairman,  
17 is that, as outlined in the prehearing order, I'm  
18 going to ask that you offer into evidence all of  
19 the applications and everything that was timely  
20 submitted as well as the staff report.

21 As a housekeeping item, just like to reiterate  
22 your comments that if you do intend to speak,  
23 please make sure that you are sworn in before you  
24 do so. There's a sign-in sheet at the back of the  
25 room, if you'd like to add your name. Please speak

1 slowly and clearly so that the court reporter can  
2 get your name.

3 CHAIRMAN DIENER: I'm going to turn this now  
4 over to Centaur. However you want to do it,  
5 Mr. Bayt, Mr. Huler, Mr. Babbitt, the floor is  
6 yours.

7 MR. BAYT: Thank you, Chairman. I appreciate  
8 that. Good morning. Good morning to the entire  
9 Commission and to the staff.

10 On behalf of myself, Phil Bayt, and my  
11 partner, Robin Babbitt, we're here today to present  
12 to you information concerning the initial  
13 distribution agreement. Very pleased to be  
14 partnering today with the Indiana Horsemen's  
15 Benevolent & Protection Association, the Indiana  
16 Standardbred Association, and the Quarter Horse  
17 Association of Indiana to present to you in a joint  
18 petition the request for approval of the initial  
19 distribution agreement.

20 CHAIRMAN DIENER: I apologize for interrupting  
21 you, Mr. Bayt. Would you like the document here  
22 that you're referring to visually to be a part of  
23 the record in this hearing?

24 MR. BAYT: Yes, Mr. Chairman. Thank you for  
25 pointing that out. We'll submit that as part of

1           our record with respect to these proceedings.

2           CHAIRMAN DIENER: Any objections?

3           So done. Thank you. Apologize.

4           MR. BAYT: Thank you. Appreciate that.

5           The law allowing for gambling games at  
6 racetracks was enacted in 2007. Since that time,  
7 in every year, the law has either been amended or  
8 attempted to be amended with respect to how the  
9 licensees and the tracks support horsemen. And, in  
10 fact, in '08, in '09, in '11, and again in '13, the  
11 law was, in fact, amended to make changes to that  
12 support mechanism.

13           The issue as to whether or not horsemen and  
14 horsemen's associations can be supported has been  
15 in flux and in doubt each and every year since '07.  
16 Indeed, even in the Governor's initial budget for  
17 this past year, there was some doubt as to the  
18 contemplation of the continuing support for  
19 horsemen and horsemen's associations. However, as  
20 a result of the 2013 amendments in Senate Bill 609,  
21 we do have a path. We have a path to  
22 predictability and we have a path to stability with  
23 respect to the relationship between the tracks and  
24 the horsemen.

25           Close reading of Senate Bill 609 and the law

1 that was enacted actually is very interesting and  
2 insightful, in that it focuses on the fact that the  
3 support runs from the licensees and the tracks to  
4 the horsemen. This is a relationship between those  
5 two sets of organizations, not a State subsidy.  
6 What we have today is an opportunity to embody an  
7 agreement, which we ask for approval today, that  
8 would establish a path of predictability and  
9 stability for the organizations.

10 Think about a Colts game where the rules  
11 change every quarter. That's what we're facing in  
12 the past. We have this opportunity for stability,  
13 for predictability, and we're asking that you focus  
14 on the important issues today that results in  
15 mutual success for the parties and for the  
16 industry.

17 Two key issues with respect to that amendment  
18 were: Number one, it removed the provisions  
19 redirecting funds in excess of the cap to the  
20 general fund, which added to the financial  
21 stability of the licensees. Second, most  
22 importantly, it provided a support mechanism to  
23 flow from the tracks to the associations through a  
24 distribution agreement.

25 That distribution agreement is to be

1 negotiated by the licensees and the associations,  
2 which we've done. That mechanism was through a  
3 negotiating committee, which was dually appointed  
4 and met. We'll talk more about that. And that  
5 agreement, once finalized, is to be approved by  
6 this body, and we're here today in submission of  
7 that.

8 An interesting fact about Senate Bill 609 and  
9 the law that was enacted was Section 16(e) of that  
10 law, which provided for what would be required to  
11 be in what's called an initial distribution  
12 agreement. There is an important distinction, we  
13 believe, in the statute focusing on initial  
14 distribution agreement. We think there is an  
15 opportunity today to make some good progress with  
16 respect to how we bring the parties together in a  
17 way that makes sense long term.

18 The statute says that the initial distribution  
19 agreement must be in writing; it must be submitted  
20 to this body by October 1, which both things were  
21 true; it must be approved by this body before  
22 January 1 of '13; and most importantly, it may  
23 contain any terms determined to be necessary and  
24 appropriate by the negotiating committees. You'll  
25 see from the recitation of the key terms in a few

1 minutes that there are some meaningful terms that  
2 we think are very important and that as a whole are  
3 critical to the future success of the industry here  
4 in Indiana.

5 In a separate section, 16(f), the provisions  
6 are that at least 10 percent but not more than  
7 12 percent of adjusted gross receipts must be  
8 distributed through the support mechanism.

9 What were the goals of the parties as we got  
10 together? There were four important goals. The  
11 first, of course, was to meet the statutory  
12 requirements. The second was to treat all parties  
13 fairly in this process. Third was to enhance the  
14 opportunities for mutual success. And fourth was  
15 to create the stability and predictability for all  
16 the parties that we've talked about.

17 What are the key terms of the distribution  
18 agreement? First, the distribution percentage.  
19 That was set at a maximum of 12 percent. What is  
20 the length of the term? The initial term is for  
21 one year, but the document and the agreement can  
22 extend in two different ways beyond that one-year  
23 period. First, year to year with the agreement of  
24 the parties, but then most importantly, the  
25 agreement can extend for seven more years if

1 certain conditions are satisfied. And I'll go into  
2 those in just a minute.

3 Upon the approval of the agreement, the  
4 licensees are prepared to put \$5 million of capital  
5 improvements into the racing side of their  
6 operations. The testimony will indicate what some  
7 of the details are of that. The distribution  
8 waterfall that's in the statute and the regulations  
9 will be followed under the terms of the  
10 distribution agreement, and this Commission retains  
11 all enforcement rights and all the tools that are  
12 built into the statute.

13 So what is it that takes place that gets this  
14 to a seven-year deal? If the licensees are able to  
15 refinance their current debt and obtain regulatory  
16 approvals for that refinancing, then certain  
17 conditions, if they're satisfied, will trigger a  
18 seven-year deal.

19 The first is that the licensees have got to  
20 provide projections showing \$27.5 million of cash  
21 on hand at the end of each year of financing.  
22 That's about half of the annual support amount that  
23 has historically been flowing. A majority of the  
24 associations committee has to find those  
25 projections to be reasonably satisfactory. That's

1       safeguard number one.

2               Next, the associations would, if they found  
3       that to be reasonably satisfactory, enter into a  
4       subordination agreement with respect to the  
5       lenders. If that takes place, and if this  
6       Commission and the Gaming Commission approve the  
7       financing at that time, then we go into a  
8       seven-year deal.

9               In the course of that seven-year deal, the  
10       associations would agree to abide by the terms of  
11       the subordination agreement. The licensees would  
12       agree to make up to an additional \$31.5 million,  
13       for a total of \$36.5 million for the racing side  
14       capital expenditures. The licensees and the  
15       associations would agree to implement a number of  
16       beneficial operational changes. And in the  
17       unlikely event that there would be a default, the  
18       licensees would agree to catch up any payments that  
19       were deferred, with interest, once the default was  
20       cured.

21               You might ask the question why a  
22       subordination. First is that this is the  
23       opportunity, because of the initial distribution  
24       agreement, where any terms that are determined to  
25       be necessary and appropriate would be put into a



1 distribution agreement. This is the time when it's  
2 appropriate to talk about that.

3 This distribution agreement with subordination  
4 would position the licensees for a favorable  
5 refinancing and capital restructuring. It would  
6 provide an opportunity for significant racing side  
7 capital improvements. It creates the potential for  
8 a long-term agreement that's beneficial to all of  
9 the parties. And it aligns the interest of the  
10 licensees and the associations to achieve success  
11 together.

12 You might ask the question why subordination  
13 now. The key is that there are very few lenders  
14 that play now in the gaming space, but there are  
15 very, very many borrowers seeking opportunities in  
16 the same space. Just like you have a situation in  
17 a home mortgage where if you want a home mortgage,  
18 yeah, a lender might talk to you, but a lender  
19 isn't going to get serious with you unless you own  
20 your own home or you at least have that home under  
21 contract.

22 We're in the same position. Lenders will talk  
23 with us, but they will certainly not get serious  
24 with us unless and until we have in a contract an  
25 understanding and an agreement and a framework for

1       underwriting that works for these lenders. This  
2       gives us an opportunity to put our ducks in a row,  
3       to have our contracts in place, in order to have  
4       lenders take us seriously with respect to a  
5       financing that would be extremely beneficial to the  
6       licensees and extremely beneficial to the industry.

7               Concept of subordination is new to the  
8       Commission. It's new to the horsemen. There's a  
9       lot of focus on that in the course of the  
10      negotiations, and we'll hear testimony about that.  
11      But we wanted to make sure that the Commission  
12      members and the staff understood what will not  
13      happen in a subordination.

14             First, there's no change in the statutory  
15      distribution waterfall. Second, there's no return  
16      or clawback of any payments once the licensees have  
17      actually made those payments. The associations are  
18      not -- not -- granting any security interest in any  
19      of the payments that they receive or are about to  
20      receive. There's no liability to return any  
21      payment that has already been received. There's no  
22      administrative changes requested of the State.  
23      There's no assumption of any liability by the  
24      State. There's no change in the State's  
25      enforcement rights; this body will continue to have

1 all the enforcement rights and all the tools that  
2 it has today.

3 We'd like to at this point admit into evidence  
4 and present witnesses that will amplify the  
5 discussions that have occurred and provide some  
6 factual background for how we got to this point.

7 Mr. Babbitt.

8 MR. BABBITT: Thank you, Chair Diener, Members  
9 of the Commission, Counsel, and Executive Director.  
10 We will be presenting witnesses today. We'll start  
11 with witnesses on behalf of Centaur. John Keeler  
12 will testify.

13 Sort of by way of housekeeping, I'm going to  
14 be a little bit to the side and behind the  
15 witnesses. Obviously I'm hopeful that to the  
16 extent that they think about it, they can answer  
17 the questions and direct those comments to the  
18 Commission. We'll go through. I have been  
19 designated and deputized on behalf of all  
20 petitioners, both Centaur and horsemen's  
21 associations, to ask the questions. Then I'll pass  
22 those witnesses to the Commission, Counsel, the  
23 Executive Director for any follow-up that they  
24 might have.

25 And I'll apologize in advance. I don't think

1 I've ever examined anyone with a hand-held  
2 microphone, so as I do that, to the extent I fumble  
3 for documents, I apologize in advance.

4 CHAIRMAN DIENER: For the benefit of the court  
5 reporter, if each witness would please state and  
6 spell their names for the court reporter, please.

7 MR. KEELER: My name is John Keeler, J-o-h-n,  
8 K-e-e-l-e-r, and I'm the general counsel of  
9 Centaur.

10 JOHN KEELER, having been previously duly sworn  
11 by the Chairman, took the stand and testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. BABBITT:

15 Q Mr. Keeler, for purposes of this hearing, as we  
16 talk about Centaur, that's going to be  
17 Centaur Holdings and then Centaur Acquisitions,  
18 etc., all of the parent and subsidiary  
19 corporations; correct?

20 A That's correct.

21 Q All right. I understand that you've issued a sworn  
22 affidavit with respect to this matter. Is that  
23 correct?

24 A I have.

25 Q Let me hand you what has been marked Petitioner's

1 Exhibit 12, if you'd be kind enough to take a look  
2 at that. Does it contain your signature?

3 A It does.

4 Q Is this your statement?

5 A It is.

6 Q Did you make the statement under oath?

7 A I did.

8 Q Did you submit this statement freely and  
9 voluntarily?

10 A Yes, sir.

11 Q Do you affirm that all of the statements that  
12 appear in this affidavit are true and correct as if  
13 you had made them under oath today?

14 A I do.

15 MR. BABBITT: I request at this time that the  
16 October 14 affidavit under oath of John Keeler be  
17 admitted into and made a part of the record as  
18 Petitioner's Exhibit 12.

19 CHAIRMAN DIENER: So admitted.

20 MR. BABBITT: Thank you.

21 For purposes of the proceeding, I'll collect  
22 these and make sure that they're all delivered to  
23 the court reporter at the appropriate time, if  
24 that's okay with the Chair.

25 CHAIRMAN DIENER: Thank you, Mr. Babbitt.

1 Q Now, Mr. Keeler, did you draft the September 27  
2 petition with the attached and executed initial  
3 distribution agreement?

4 A I did.

5 Q Let me hand you what's been marked Petitioner's  
6 Exhibit 1 and ask if you can identify that  
7 document.

8 A I can. It is the Initial Distribution Agreement.

9 Q And does it contain your signature?

10 A It does.

11 Q Is it a true and correct copy of the fully-executed  
12 Initial Distribution Agreement with attachments?

13 A It is.

14 Q And it's your understanding that this Agreement was  
15 entered into by the negotiating committees both of  
16 the licensees, the tracks, and the associations;  
17 correct?

18 A That's correct.

19 MR. BABBITT: At this time, Chair Diener, we  
20 would offer this into evidence, subject to  
21 affirming the signatures of the other participants  
22 to the Initial Distribution Agreement.

23 CHAIRMAN DIENER: So admitted with the caveats  
24 you mentioned.

25 MR. BABBITT: Thank you.

1 Q You were a member of the negotiations committee,  
2 were you not, Mr. Keeler?

3 A Yes, sir.

4 Q And you were the designated representative of  
5 Centaur Acquisition; correct?

6 A That's correct.

7 Q Were you elected chairman and secretary of the  
8 negotiating committee?

9 A Yes, sir.

10 Q Tell the Commission a little bit about how the  
11 Commission was constituted, what happened, and what  
12 happened prior to the actual official meetings that  
13 started August 5 and then ran through October 10.

14 A I think it really goes back to during the  
15 legislative process. The tracks and the horsemen's  
16 associations were collaborators in terms of  
17 supporting the provisions of Senate Bill 609.  
18 After that passed, there continued to be dialogue  
19 and conversations before any prior meetings, and it  
20 was sort of a feeling out process to find out what  
21 the interests were of each party. And that  
22 continued along until the bill became effective on  
23 July 1, at which time the committee began  
24 officially meeting.

25 The horsemen's associations, as required by

1 statute, and the tracks appointed their respective  
2 committee members. And I solicited an opinion from  
3 the Public Access Counselor to find out whether or  
4 not the meetings were thought to be subject to the  
5 open door law, and he determined that they were and  
6 we followed the open door law in those meetings.

7 Q So there were some meetings while that request for  
8 a decision was pending that were just sort of  
9 preliminary; is that correct?

10 A Very informal, yes, sir.

11 Q All right. And then the formal meetings started  
12 after the decision, and the first was on August 15.  
13 Do I understand that properly?

14 A August 5.

15 Q Or August 5. And there were, then, four meetings  
16 through October 10?

17 A Yes, sir.

18 Q Was each meeting orderly?

19 A Yes, sir.

20 Q Was each meeting civil?

21 A Yes, sir.

22 Q Did each of these first three meetings involve open  
23 and frank discussions?

24 A Yes, sir.

25 Q The statement is made in your affidavit, "The



1       Distribution Agreement was the product of intense  
2       negotiation, give and take, and collaboration which  
3       took place over a period of approximately  
4       eight weeks."

5       A   That's true.

6       Q   Why do you say that?  Please describe the process  
7       of negotiations through the formal meetings for the  
8       Commission.

9       A   The initial meeting of the 609 committee went  
10      through the preliminary formalities of establishing  
11      the committee, electing its officers.  Again, we  
12      weren't starting from scratch because there had  
13      been discussions.  And at that point in time, the  
14      parties formally indicated what was of interest to  
15      them, what they wanted to see in the agreement.  
16      And I believe that we left that meeting with the  
17      task that someone should come up with a draft of an  
18      initial distribution agreement, which was done and  
19      then presented at the second meeting.

20      Q   Now, at the first meeting on August 5, was  
21      subordination discussed at that meeting?

22      A   Yes, sir, it was.

23      Q   I understand that it's more fully described in the  
24      minutes that are attached to your affidavit, but  
25      just tell the Commission what your memory is of

1       what was discussed at that first meeting on  
2       August 5.

3       A   Well, it was discussed that an opportunity to fund  
4       a number of the capital improvements that the  
5       horsemen were interested in and for the company to  
6       be able to agree to a longer-term agreement might  
7       be possible if the company could refinance, and a  
8       key element of that refinance would be the  
9       subordination of the payments that were to be made  
10      to the horsemen's associations.

11     Q   I understand that you talked about some of the  
12      benefits that would result by refinancing and  
13      subordination.  Were potential risks of  
14      subordination discussed as well?

15     A   Yes, sir, they were.

16     Q   All right.  You then moved forward into a meeting  
17      on September 12; is that correct?

18     A   That's correct.

19     Q   And was there a draft of an agreement that had been  
20      circulated for consideration of the various members  
21      of the negotiating committee at that time?

22     A   There was.

23     Q   And was the agreement discussed at the meeting on  
24      September 12, and what generally was discussed at  
25      the meeting?

1 A Well, the agreement and the exhibits to the  
2 agreement, and the exhibits were very important to  
3 all parties because they described the improvements  
4 to be made and the general operating principles.  
5 But at that meeting I think the highlight of it was  
6 the Indiana Standardbred Association, through its  
7 counsel there, indicated that he had some issues  
8 with the language in the agreement and they thought  
9 it would be productive to meet privately after the  
10 meeting. So the meeting was adjourned, and  
11 subsequently representatives of Centaur and the  
12 Indiana Standardbred Association met privately.

13 Q And you were one of those representatives; is that  
14 correct?

15 A I was.

16 Q And you met with both their counsel, Roger Young,  
17 Nat Hill, and Jack Kieninger on the 13th of  
18 September; is that correct?

19 A That is correct.

20 Q And were there extensive discussions about their  
21 concerns and desires with respect to a change and a  
22 negotiation of various terms of that agreement?

23 A There were.

24 Q And were accommodations made to address those  
25 concerns?

1 A There were.

2 Q Was one of those concerns to amend the agreement to  
3 make clear that the only group that could  
4 potentially be a beneficiary of the subordination  
5 to the horsemen's association would be the senior  
6 lenders?

7 A That's correct.

8 Q So they would be the sole entity that could benefit  
9 from any subordination?

10 A Yes, sir.

11 Q And was there discussion about the potential  
12 interest rate that would be assessed to the extent  
13 that a subordination right was exercised and a  
14 payment was not timely made?

15 A My recollection is the initial draft of the  
16 agreement had a base rate -- I can't remember  
17 whether it was LIBOR or some other rate -- plus  
18 .5 percent in the event of default, and that the  
19 ISA insisted on the base rate plus 2.5 percent.

20 Q And there were other changes that were made as a  
21 result of those discussions; is that correct?

22 A There were. The primary other one that I recall is  
23 that the agreement was firmed up to reflect that if  
24 there was going to be not only a subordination but  
25 other activities that required approval of the

1 committee that it was narrowed down that that had  
2 to be a majority of the associations committee or  
3 the licensees committee, depending on what the  
4 action was. That had been somewhat unclear before.

5 Q All right. Were accommodations made with respect  
6 to the concerns of the ISA and were those  
7 incorporated in the next draft of the agreement?

8 A Yes, sir, they were.

9 Q And were those changes, then, presented to the full  
10 negotiating committee prior to the next meeting of  
11 the negotiation committee on September 19?

12 A They were. They were distributed by e-mail.

13 Q And when you arrived at that meeting, was there  
14 further discussion and negotiation between any of  
15 the horsemen's representatives at that meeting?

16 A There was. The Standardbred Association indicated  
17 that the changes to the draft that had been made in  
18 response to their comments were acceptable. And  
19 immediately prior to that meeting, the IHBPA  
20 indicated that they'd taken a draft by their  
21 attorney and had a number of comments to the draft  
22 that were in red-line form presented to me just  
23 several minutes before the meeting. The decision  
24 was made to go ahead and hold the meeting, discuss  
25 what was on the table, but then try and accommodate

1 the concerns of the IHBPA.

2 Q Let me back you up a minute, because I neglected to  
3 ask you about the insertion of extension condition  
4 5(b) in the Initial Distribution Agreement. 5(b)  
5 is a provision that was requested by the ISA, and  
6 can you explain your understanding of that part of  
7 the discussion and why those provisions were  
8 inserted?

9 A Just to save time, since I don't have it open. Is  
10 that the year-over-year rollover?

11 Q That is the increase in fully diluted membership  
12 interest of the management.

13 A Right. At the meeting that was previously  
14 described with the Indiana Standardbred  
15 Association, the conversation revolved around that  
16 the other breeds that race at Indiana Downs were  
17 receiving a lot of the capital that was going to be  
18 committed and that because of the condition of  
19 Hoosier Park, in essence, the ISA was not getting a  
20 lot. And they indicated through its  
21 representatives that they were prepared to go ahead  
22 with the subordination, with the changes they'd  
23 insisted upon, but only if they were assured who  
24 the management would be and that there would come a  
25 time during this seven-year period if the existing

1 people that controlled Centaur would sell out that  
2 the existing management would have an opportunity  
3 to perhaps acquire that.

4 I would characterize it this way. That if  
5 they were going to subordinate, they wanted to know  
6 who they were getting married to and wanted to be  
7 assured that the bride would be the same within  
8 that seven-year period.

9 Q Now, after the Indiana HBPA came back with  
10 suggested revisions and modifications, were certain  
11 of those concerns and thoughts incorporated into  
12 the next draft of the agreement?

13 A Yes, sir, they were.

14 Q And at some point, then, all of the parties agreed  
15 that they believed that the Initial Distribution  
16 Agreement, which is represented in Petitioner's  
17 Exhibit 1, was appropriate and should be presented  
18 to the Commission?

19 A That's correct.

20 Q All right. Do you believe it is appropriate for  
21 one to conclude that track ownership pressured or  
22 coerced any of the associations into entering any  
23 agreement to subordinate?

24 A I don't. I believe such an assertion would be  
25 totally unfounded.

1 Q Is Centaur asking the Commission to approve a  
2 potential refinance at this time?

3 A No, sir.

4 Q And are there safeguards in place in the agreement  
5 that would come into play as an additional  
6 protection to the associations prior to the time  
7 that any refinance would be presented to the  
8 Commission?

9 A There are.

10 Q Do you as counsel for Centaur have any concerns  
11 about not including the concept of subordination  
12 into the Initial Distribution Agreement?

13 A I do.

14 Q And what are those concerns?

15 A Well, my primary concern goes to the language  
16 that's in I.C. 4-35-7-16(e). And that particular  
17 provision talks about what has to be in an initial  
18 distribution agreement, and I would underline the  
19 word initial and put emphasis on that. Because  
20 that's the only place, I believe, in the statute,  
21 maybe one other place, where that term is used.  
22 And my reading of that is the legislature must have  
23 wanted that to have some meaning; otherwise, it  
24 wouldn't have used the word initial.

25 Q Is there anything else you would like to address to



1 the Commission at this time, Mr. Keeler?

2 A Well, the only thing I would say is that both the  
3 tracks and the associations worked together to  
4 develop this legislation and worked together  
5 throughout this process. What became very obvious  
6 early on is that this bill cast all our lot  
7 together, and if any of us were going to succeed,  
8 we'd all succeed, and vice versa. So, you know,  
9 with that thought in mind, the negotiations were  
10 conducted in a fair, open manner, and I think that  
11 process led to an agreement which everyone can  
12 support.

13 MR. BABBITT: The petitioners would pass the  
14 witness at this time, Mr. Chair.

15 CHAIRMAN DIENER: Thank you, Mr. Babbitt,  
16 Mr. Keeler.

17 Questions from Commission counsel?

18 MR. BABBITT: None.

19 CHAIRMAN DIENER: Questions from a  
20 Commissioner or Commissioners?

21 Thank you, Mr. Keeler.

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

23 CHAIRMAN DIENER: Next witness?

24 MR. BABBITT: Our next witness would be  
25 Brian Elmore. And with your permission, I'll

1 continue to question as I sit, Mr. Chair.

2 MR. ELMORE: Brian Elmore, B-r-i-a-n,  
3 E-l-m-o-r-e. I serve as vice president of racing  
4 for Centaur.

5 BRIAN ELMORE, having been previously duly  
6 sworn by the Chairman, took the stand and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. BABBITT:

10 Q Mr. Elmore, I'm going to hand you the Affidavit of  
11 Brian Elmore dated October 14, 2013. This is  
12 Petitioner's Exhibit 5. I will ask you to review  
13 that document. Does it contain your signature?

14 A Yes, sir, it does.

15 Q Is this your statement?

16 A It is.

17 Q Did you make this written statement under oath?

18 A I did.

19 Q Did you submit it freely and voluntarily?

20 A Yes, sir.

21 Q Do you affirm that all of the statements that  
22 appear in this affidavit are true and correct as if  
23 you had made them under oath today?

24 A I do.

25 MR. BABBITT: I request that the October 14

1 affidavit, Exhibit 5, of Brian Elmore be admitted  
2 into and made part of the administrative record.

3 CHAIRMAN DIENER: Exhibit 5 is so admitted.

4 MR. BABBITT: Thank you.

5 Q Now, my understanding, Mr. Elmore, is that you've  
6 been involved in the horse racing industry for over  
7 thirty-six years. Is there anything of note that  
8 you would like to emphasize for the Commission  
9 relative to your background or involvement in  
10 racing?

11 A Yes. I've had the pleasure to serve in many  
12 management situations, in many jurisdictions. As  
13 Robin says, I've been in the industry for over  
14 thirty-six years.

15 But besides my management experience, I've  
16 also owned about 40 head of horses, thoroughbreds  
17 and quarter horses, of which at times I've trained  
18 myself. I think that's been very helpful in my  
19 management career. It helps me understand the  
20 needs and the concerns of the horsemen, and at  
21 times it can help me separate fact from fiction,  
22 whether it be from the horsemen standpoint or from  
23 the licensee standpoint.

24 So with thirty-six years of history behind me,  
25 of all the different categories and varieties that

1 I've served this industry, I feel I'm as suited as  
2 anyone to review this document and to make a  
3 recommendation.

4 Q And do you believe that the Initial Distribution  
5 Agreement, after review, should be approved by the  
6 Commission?

7 A Yes, sir, I do.

8 Q And do you believe that it's in the best interest  
9 of pari-mutuel racing?

10 A I do.

11 Q And why do you say that?

12 A What it does is it provides the maximum statutory  
13 distribution of 12 percent. The higher the amount,  
14 the more money that goes to purse and breed  
15 development. It also encourages investment of  
16 owners to improve the quality of the race stock.  
17 It also fosters new and first-time investors the  
18 opportunity to get into racing.

19 The higher the breed development dollars, the  
20 more chances that owners, breeders, and trainers  
21 will even relocate their operations from other  
22 jurisdictions to Indiana. The statutory  
23 elimination of the cap payable to the State general  
24 fund means that the horsemen will be true partners  
25 with the tracks and will participate if there's any

1 issues that exist with gross revenues.

2 The proposed IDA provides certainty and  
3 stability. The IDA automatically renews year to  
4 year, unless terminated by the tracks or the  
5 horsemen. In the event of future refinance and the  
6 satisfaction of the extension conditions, the  
7 agreement extends for a seven-year period. Harmony  
8 and unity between tracks and horsemen will be  
9 promoted because an annual renegotiation will be  
10 avoided.

11 I do appreciate the time that many of these  
12 folks took to participate in this, because it is  
13 quite time-consuming and expensive and it takes  
14 time away from their regular duties.

15 Why is certainty and stability important?  
16 You'll remember, the start of this year in the  
17 legislature, there was a proposal to take the  
18 amount committed to horse racing to zero, take all  
19 the money away from the horsemen. For years  
20 participants in the horse racing industry have sat  
21 around the dinner table with their family and had  
22 to dissuade their children from a career  
23 opportunity in horse racing, just because the  
24 certainty and stability, it just wasn't there.  
25 They persuaded them to pursue opportunities like

1 nurses and doctors, lawyers, dentists, things of  
2 that nature that there's more stable economic way  
3 of living.

4 Hindsight that it is to now, participants in  
5 the industry to be able to encourage their children  
6 of opportunity in the Indiana horse racing industry  
7 as we move forward with this IDA. Training horses  
8 is a skill, a trade, an art, and it's often passed  
9 from parents to children, male and female. And to  
10 these horsemen participating in the Indiana horse  
11 racing, it's not a job; it's a way of life.

12 The IDA provides a clear and orderly path for  
13 improvements at Hoosier Park and Indiana Downs.  
14 There are four items I'd like to mention today that  
15 we're asking the Commission, of which they are all  
16 on the agenda later in today's meeting, to move  
17 forward with.

18 They are: At Indiana Downs, the complete dirt  
19 track renovation. This past season we had a good  
20 dirt track. We want to make it better. At  
21 Indiana Downs we'd like to construct an in-field  
22 video board, similar to what is at Hoosier Park,  
23 with an approximate 18x32-foot video portion of  
24 that board, which enhances the viewing experience  
25 for the patrons and the fans that came out. At

1 Hoosier Park we would like to do a track renovation  
2 as well. Like to get started on that as soon as  
3 the meet's over. At Hoosier Park also, we would  
4 ask permission to move forward with a new driver's  
5 lounge and recreation building for drivers and our  
6 backside grooms that participate.

7 Exhibit B of this document points out  
8 23 points of agreement to enhance racing. Several  
9 of those have no monetary value, but I think it  
10 speaks to the cooperation between the licensees and  
11 associations. The investment of new capital in  
12 this type and this amount is unprecedented across  
13 the nation today.

14 The IDA encourages the maintenance of the  
15 highest of standards and the greatest level of  
16 integrity in pari-mutuel racing. Integrity in the  
17 sport will be enhanced.

18 The positive and stable economic situation  
19 created by SB 609 and the IDA should allow horsemen  
20 to earn a reasonable living and have confidence it  
21 will continue in the future. My experience, most  
22 people, not just horsemen, are less inclined to cut  
23 corners or bend rules in a stable economy because  
24 they have too much to lose.

25 I'll give you a quick analogy. I'll give you

1 a golf analogy. There might be a group of fellows  
2 go out and tee it up and play a round, and during  
3 the playing of the round, they'll play winner  
4 rules. Got the ability to take the club, move that  
5 ball around little bit left or right, get a little  
6 bit better line, and that's acceptable. But once  
7 the money is down and you're playing for the game  
8 and people are watching, there's no more winner  
9 rules. You play the ball down.

10 If the club head of that sand wedge touches  
11 the trap before you swing at the ball, it's going  
12 to cost you. If your putter, upon addressing the  
13 ball on the green, inadvertently touches that ball,  
14 it's going to cost you. So what this does is, as  
15 in horse racing, it will lead to the detection of  
16 unethical behavior and peer pressure of others for  
17 the participants to conform.

18 The IDA is fair to all parties. I cannot  
19 stress enough the certainty and stability the IDA  
20 provides to the Indiana horse racing industry.

21 In 1969 a brash quarterback by the name of  
22 Joe Namath made the guarantee -- and I know that  
23 subordination is not in front of this Commission  
24 today, but it has been mentioned by Mr. Bayt and  
25 Mr. Keeler -- and I have my own guarantee, which



1 I'm more confident in than Joe Namath was. And  
2 that is this: When comparing the risk relevant to  
3 subordination, SB 609, the IDA, and subordination  
4 compared to an annual review of the industry at the  
5 legislature, the worst-case scenario regarding the  
6 subordination is temporary disruption with minimal  
7 financial risk with recourse for catch-up. The  
8 most likely scenario with an annual review of the  
9 industry by the legislature eventually would be  
10 permanent with catastrophic financial implications.

11 I respectfully urge this Commission to approve  
12 the Initial Distribution Agreement before you  
13 today. Thank you very much.

14 Q Thank you.

15 MR. BABBITT: I would pass the witness at this  
16 time, Mr. Chair.

17 MS. ELLINGWOOD: No questions.

18 CHAIRMAN DIENER: Questions from the  
19 Commission?

20 Thank you, Mr. Elmore.

21 MR. ELMORE: Thank you.

22 MR. BABBITT: The petitioners would call  
23 Tammy Schaeffer.

24 MS. SCHAEFFER: Good morning.

25 MR. BABBITT: You need to state your name and

1 position with Centaur for the administrative  
2 record, please.

3 MS. SCHAEFFER: My name is Tammy, T-a-m-m-y,  
4 Schaeffer, S-c-h-a-e-f-f-e-r. I'm the CFO of  
5 Centaur.

6 TAMMY SCHAEFFER, having been previously duly  
7 sworn by the Chairman, took the stand and testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. BABBITT:

11 Q I have handed you your pre-filed testimony dated  
12 October 14, 2013. It's identified as Petitioner's  
13 Exhibit 13. And does this contain your signature?

14 A Yes, it does.

15 Q Is this your statement?

16 A Yes, it is.

17 Q Did you make this written statement under oath and  
18 under penalties of perjury?

19 A Yes, I did.

20 Q Did you submit this statement freely and  
21 voluntarily?

22 A Yes.

23 Q Do you affirm that all of the statements that  
24 appear in this sworn testimony are true and correct  
25 as if you'd made them under oath today?

1 A Yes, I do.

2 MR. BABBITT: I request that the pre-filed  
3 testimony of Tammy Schaeffer identified as  
4 Petitioner's Exhibit 13 be admitted into and made  
5 part of the administrative record.

6 CHAIRMAN DIENER: So admitted.

7 MR. BABBITT: Thank you.

8 Q I would appreciate it, Miss Schaeffer, if you could  
9 give the Commission a summary of your background  
10 and credentials.

11 A I'm a certified public accountant and a certified  
12 fraud examiner. I have over twenty-five years'  
13 experience in accounting and tax and finance.  
14 Fourteen of those years were with national and  
15 regional public accounting firms.

16 Q You prepared the financial projections relating to  
17 Centaur's proposed acquisition of Indiana Downs and  
18 Grand's asset in 2012, did you not?

19 A I did.

20 Q Was one of the primary assumptions for those  
21 financial projections that the location of  
22 Hoosier Park and Indiana Downs were advantageous  
23 within the state of Indiana?

24 A Yes. The locations were an important factor in the  
25 development of our revenue assumptions. We thought

1       that their locations within Central Indiana and not  
2       on the borders gave us more resilience to  
3       out-of-state competition.

4   Q   Has Centaur's actual experience in 2013 proven that  
5       to be true?

6   A   It has. The 2013 gaming market in Indiana has been  
7       choppy. In year to date, the state's down about  
8       8 percent. We have not seen the economic recovery  
9       be as pervasive as what was predicted in the market  
10      for 2013. However, when you look at our  
11      properties, Indiana Grand through September is  
12      actually the only property in the state which has  
13      positive growth. Hoosier Park is very respectable  
14      at number four and is down only 2.9 percent. We do  
15      have properties in the southeastern corner which  
16      are down 20 to 30 percent.

17   Q   Is Centaur in a strong cash position for 2013?

18   A   Yes. We're currently expecting in excess of  
19      \$40 million excess cash to finish up this current  
20      year, and that's over and above our operating  
21      capital levels.

22   Q   Do expense reductions that are now available to  
23      Centaur that were not available when the 2012  
24      projections were made benefit Centaur?

25   A   Oh, absolutely.

1 Q And what are they?

2 A Senate Bill 609 that we're discussing today gave us  
3 a reduction in the horsemen allocation from 15 to  
4 12 percent at a maximum level. That reduction  
5 based on our horse gaming revenues, net of some  
6 expenses that we picked up in the bill, put about  
7 \$13 million additional down on the bottom line  
8 2014.

9 Q And how about any other benefits that came through  
10 by way of legislation? How about Senate Bill 529?

11 A That bill allowed for a deduction in promotional  
12 coin against our gross gaming revenue state tax  
13 base. So for the 2013 fiscal year, we had  
14 \$2.5 million per property; for the 2014 year we had  
15 \$5 million; and then we had \$5 million for each  
16 property for the next two years. To put that more  
17 on a calendar-year basis for you, in 2014 we would  
18 anticipate a \$10 million reduction against our  
19 gross gaming revenues. That's about a  
20 \$2 million-plus savings in state tax. And that  
21 would also be available in 2015.

22 Q Now, the Initial Distribution Agreement provides at  
23 Paragraph 5 that prior to any refinance, Centaur  
24 must demonstrate to a majority of the associations'  
25 negotiating committee that the tracks will have

1 aggregate cash on hand in excess of \$27.5 million  
2 in addition to operating and cage cash of at least  
3 \$30 million.

4 Based upon your knowledge and experience, are  
5 these conservative and achievable projections?

6 A Absolutely. As I said, we're at this point  
7 expecting in excess of \$40 million this year-end.

8 Q What is the significance of this provision to the  
9 horsemen?

10 A Well, in my opinion, the \$27.5 million represents  
11 50 percent of a single year's annual allocation.  
12 So what that does is actually put a cash cushion  
13 between any issue that might arise from a shortfall  
14 of the payment and the horsemen dollars.

15 Q And currently, how would you assess the ability of  
16 Centaur to service its debt?

17 A Well, strong cash flows put you in a strong  
18 position to pay down debt, and that's certainly  
19 where we are.

20 Q Do you have an opinion as to whether the  
21 Commission's approval of the Initial Distribution  
22 Agreement would adversely impact Centaur's  
23 financial stability?

24 A Oh, no. I think it does not adversely affect. In  
25 fact, the approval would be positive for Centaur;

1       it would be positive for the horsemen; and it would  
2       be positive for racing in Indiana, in my opinion.

3       Q   So you have an opinion, and that opinion is that it  
4       would not adversely affect Centaur's financial  
5       stability?

6       A   That is true.

7       Q   In your opinion, would Commission approval of the  
8       IDA provide an opportunity for Centaur to  
9       investigate and qualify for favorable financing  
10      options that would otherwise not be available to  
11      it?

12      A   Yes. I think market consideration of the  
13      subordination of cash flow would improve our  
14      leverage, and those lower leverages afford you  
15      better pricing.

16      Q   Understanding that a refinance is not before the  
17      Commission at this time. But if the details of a  
18      refinance could be worked out, approved by the  
19      horsemen's associations, and presented to the  
20      Commission, would a prospective refinance be in the  
21      best interest of the tracks and the horsemen?

22      A   I would say that we would only proceed down the  
23      path of a refinancing if it were in the best  
24      interest of our company and the horsemen. We need  
25      to know if the subordination is available as a tool

1 as we go to market. We have much more work to do  
2 to put details around this package.

3 If after we looked at the details of this  
4 package and we felt it was a prudent step for our  
5 company and for the horsemen, then we would be back  
6 in front of the horsemen association committees,  
7 we'd be back in front of this Commission, we'd be  
8 back in front of the Gaming Commission to ask for  
9 approval of that refinancing.

10 Q Let me ask you one more question. Is the current  
11 interest rate environment a favorable one for  
12 potential finance/refinance options?

13 A Every indication that we have is that certainly it  
14 is. You know, there was some bump in the rates  
15 over the summer, but that has been negated.

16 MR. BABBITT: No further questions at this  
17 time, Mr. Chair.

18 CHAIRMAN DIENER: Thank you. Thank you,  
19 Miss Schaeffer.

20 Commission counsel?

21 MS. ELLINGWOOD: No questions.

22 CHAIRMAN DIENER: Before I ask the individual  
23 Commissioners . . . As the chief financial officer  
24 of Centaur, Miss Schaeffer, I'm going to assume  
25 you're generally familiar with the percentage of



1       AGR that comes from slot revenues and how that gets  
2       parceled out among the various components of the  
3       horse racing industry. Is that a fair assumption?

4           MS. SCHAEFFER: That's a fair assumption.

5           CHAIRMAN DIENER: Now, both the pre-hearing  
6       brief, Mr. Elmore's testimony, Commission Staff  
7       report, which has not been entered into evidence  
8       yet, use a figure of about -- these are ballpark  
9       figures -- \$56 million for last year's percentage  
10      of AGR from slots that went to the horse racing  
11      components. Does that sound about right to you?

12          MS. SCHAEFFER: That's in the ballpark.

13          CHAIRMAN DIENER: Now, I'm going to ask you,  
14      and I'm not trying to surprise you. If you don't  
15      like my figures, that's okay. I just ask you to  
16      assume them, if you would, please. Of that  
17      \$56 million, my calculations are that about  
18      \$30 million would go to purses, about \$24 million  
19      would go for breed development, and about  
20      \$2 million for backside benevolence, equine  
21      promotion, and operations of the horsemen's  
22      association.

23           Would you be willing to accept those figures  
24      for further hypothetical questions?

25          MS. SCHAEFFER: Sure. The benevolence being

1       3 percent and my understanding is about 52 percent  
2       of the remaining go to purses, I think that's  
3       proper.

4               CHAIRMAN DIENER: Now purses. Of this  
5       12 percent that the two track licensees would get  
6       for purse money, am I correct that those funds are  
7       put into three separate horse trust purse accounts,  
8       depending upon which breed there is?

9               MS. SCHAEFFER: Yes. On the 15th of the  
10       month following.

11              CHAIRMAN DIENER: You do that every month?

12              MS. SCHAEFFER: Yes.

13              CHAIRMAN DIENER: And by Commission  
14       regulation, those three accounts are kept separate  
15       from the general operations of the two track  
16       licensees?

17              MS. SCHAEFFER: That is true. And they also  
18       have no control agreements on them as far as our  
19       loan documents.

20              CHAIRMAN DIENER: And there's no commingling  
21       of those funds?

22              MS. SCHAEFFER: There's no commingling after  
23       the 15th of the month.

24              CHAIRMAN DIENER: And these purse monies from  
25       slot revenues, along with the purse monies from

1 pari-mutuel wagering, these are distributed to the  
2 individual owners and trainers depending on the  
3 outcome of the various races at the two tracks?

4 MS. SCHAEFFER: Yes.

5 CHAIRMAN DIENER: Moving on to breed  
6 development. Is it true that each month the two  
7 track licensees send the portion of slot revenues  
8 for breed development to the State Treasurer?

9 MS. SCHAEFFER: We do.

10 CHAIRMAN DIENER: And that's done each month?

11 MS. SCHAEFFER: Yes.

12 CHAIRMAN DIENER: And then these funds are  
13 allocated, again, amongst the three breeds or three  
14 separate funds?

15 MS. SCHAEFFER: Yes.

16 CHAIRMAN DIENER: And do you know whether or  
17 not the State Treasurer invests those monies, just  
18 as they do other "public funds" as required by  
19 statute?

20 MS. SCHAEFFER: You know, I don't know that.  
21 That would be my assumption.

22 CHAIRMAN DIENER: That's fine.

23 When the Commission administers these funds  
24 and they come back, do you, depending upon your  
25 records to the Commission, on how they came out and

1 who won and who lost and what have you?

2 MS. SCHAEFFER: As we bill, we develop the  
3 purses, yes.

4 CHAIRMAN DIENER: And then you pay out as far  
5 as purse supplements, awards to Indiana breeders,  
6 stallions, whatever, depending upon the --

7 MS. SCHAEFFER: Yeah. We do that at the time  
8 of the race and then are reimbursed.

9 CHAIRMAN DIENER: Okay. And then the third  
10 component, you do send the specified percentages to  
11 the three horsemen's associations that are  
12 registered here?

13 MS. SCHAEFFER: Yes.

14 CHAIRMAN DIENER: The remaining percentage for  
15 their equine promotion and welfare, backside  
16 benevolence, and also their own operating expenses.

17 MS. SCHAEFFER: Yes, I believe that's  
18 3 percent.

19 CHAIRMAN DIENER: And each horsemen's  
20 association, if you know, has to maintain three  
21 separate accounts, depending upon how those monies  
22 are allocated?

23 MS. SCHAEFFER: I don't know that.

24 CHAIRMAN DIENER: So to the best of your  
25 knowledge, I want to ask you: Are any purse monies

1 from slot revenues paid to a horsemen's  
2 association?

3 MS. SCHAEFFER: Oh, no.

4 CHAIRMAN DIENER: To the best of your  
5 knowledge, are any breed development funds from  
6 slot revenues paid to a horsemen's association?

7 MS. SCHAEFFER: Not to my knowledge.

8 CHAIRMAN DIENER: Would it, in fact, be true  
9 that the only funds from slot revenues that are  
10 payable to horsemen's associations are those that  
11 are distributed for equine promotion and welfare,  
12 backside benevolence, and their own operating  
13 expenses.

14 MS. SCHAEFFER: To my knowledge. Our purse  
15 dollars all undergo the agreed-upon procedures  
16 presented by the Racing Commission.

17 CHAIRMAN DIENER: Going back to this  
18 \$56 million, which is a ballpark estimate of what  
19 the percentage of AGR from slot revenues would go  
20 to the horse racing industry. The 12 percent would  
21 be about the same amount based upon your estimate?

22 MS. SCHAEFFER: It is very close.

23 CHAIRMAN DIENER: Close enough for our  
24 discussion this morning. The purses represent  
25 about \$30 million, breed development about

1       \$24 million. So I think those two figures together  
2       account for \$54 million of the \$56 million, and  
3       that would represent about 96 percent of all the  
4       slot revenues going to the horse industry. The  
5       only remaining 3 or 4 percent would be that that  
6       goes to the associations. Is that correct?

7           MS. SCHAEFFER: That's my understanding of the  
8       distribution.

9           CHAIRMAN DIENER: Now, you talked, and  
10       Mr. Keeler did also, about the necessity -- I  
11       believe it's in Section 5(c) of the Initial  
12       Distribution Agreement -- about the subordination  
13       that the horsemen's associations have agreed to.

14          MS. SCHAEFFER: Right.

15          CHAIRMAN DIENER: What rights does a horsemen  
16       association have to subordinate purse monies or  
17       breed development monies?

18          MS. SCHAEFFER: I would tell you,  
19       Commissioner, that I'm probably not the one to  
20       speak to legal rights.

21          CHAIRMAN DIENER: Well, if you're not, who is?

22          MR. BABBITT: Counsel would be. Mr. Keeler  
23       would.

24          CHAIRMAN DIENER: Okay. Well, Mr. Keeler, is  
25       that who? I'll ask a question when I'm done with

1 the witness.

2 You don't know?

3 MS. SCHAEFFER: Not legally, sir.

4 CHAIRMAN DIENER: Well, of the 12 percent of  
5 AGR that the horsemen's associations are going to  
6 subordinate, how much money did you put in your  
7 projections there for that subordination for those  
8 horsemen's associations? \$56 million?

9 MS. SCHAEFFER: I mean, at this point, as  
10 we've said, we've come to understand that  
11 subordination is possible, and then we would put  
12 the details to the plan. I mean, we really have  
13 not vetted those details to the degree that you're  
14 asking me right now.

15 CHAIRMAN DIENER: But are you assuming that  
16 all of --

17 MS. SCHAEFFER: Yes.

18 CHAIRMAN DIENER: You're assuming all of that  
19 would be subordinated?

20 MS. SCHAEFFER: Yes.

21 CHAIRMAN DIENER: When I say all of that --  
22 I'm sorry -- the entire \$56 million.

23 MS. SCHAEFFER: Right, exactly.

24 CHAIRMAN DIENER: You also testified in your  
25 testimony your familiarity with SB 609, or

1 generally you're familiar with that.

2 MS. SCHAEFFER: Yes, sir.

3 CHAIRMAN DIENER: To the best of your  
4 knowledge, was there or has there been any change  
5 to the mandatory distribution and allocation of  
6 slot revenues received for horse racing?

7 MS. SCHAEFFER: Not to my knowledge.

8 CHAIRMAN DIENER: Thank you. No further  
9 questions.

10 MS. SCHAEFFER: But I would tell you,  
11 Commissioner, I'm certainly not the expert on the  
12 language.

13 CHAIRMAN DIENER: I understand.

14 Questions from other Commissioners? I'm sorry  
15 I preempted people.

16 COMMISSIONER SCHAEFER: Miss Schaeffer, ask  
17 you this: If the \$56 million were taken out, what  
18 are your projections what is the impact on your  
19 borrowing capacity if you do not subordinate the  
20 \$56 million?

21 MS. SCHAEFFER: If we did not subordinate?

22 COMMISSIONER SCHAEFER: Did not subordinate.

23 MS. SCHAEFFER: Well, I mean, really through  
24 the 2nd right now, I would tell you the market is  
25 about 5 to 5 1/2 times of EBITDA. So that would be



1 the same on our existing EBITDA would be 5 to 5 1/2  
2 times on the initial subordination. Not completely  
3 all of that 5 to 5 1/2 times because it's really  
4 just a cash flow subordination.

5 COMMISSIONER SCHAEFER: But the \$56 million  
6 would not be in your EBITDA unless they  
7 subordinate?

8 MS. SCHAEFFER: Exactly, yes, uh-huh.

9 COMMISSIONER SCHAEFER: So without the  
10 \$56 million in there, you think that's going to  
11 reduce your borrowing capacity by \$250 million?

12 MS. SCHAEFFER: Well, I don't think it'll be a  
13 full 5 times turn on that subordination, no. I do  
14 think that you'll get some credit in the market on  
15 subordination of cash flow.

16 COMMISSIONER SCHAEFER: One question I was  
17 going to ask earlier, and it didn't come up on your  
18 resume. How long have you been with Centaur?

19 MS. SCHAEFFER: I worked with Huth Thompson in  
20 Lafayette. I've been doing Centaur's work for over  
21 ten years.

22 COMMISSIONER SCHAEFER: Thank you.

23 CHAIRMAN DIENER: Any other further questions  
24 from the Commissioners?

25 Thank you, Miss Schaeffer. You're excused.

1           And I hate to go out of order, Mr. Babbitt.  
2           Would it be appropriate for me to address my  
3           question?

4           MR. BABBITT: Chair Diener, it's appropriate  
5           for you to take anyone in any order you want to  
6           take them. So we would be more than happy. Would  
7           you like to call Mr. Keeler back?

8           CHAIRMAN DIENER: Is he the one you  
9           designated?

10          MR. BABBITT: Yes.

11          CHAIRMAN DIENER: Okay. That's fine.

12          Have to remind you, Mr. Keeler, you're still  
13          under oath.

14          MR. KEELER: Okay.

15          CHAIRMAN DIENER: Now I've forgotten my  
16          question. The \$56 million we were talking about,  
17          which was an approximation, I asked the question, I  
18          believe, something to the effect that in the  
19          subordination agreement -- I believe in  
20          Section 5(c) -- the horsemen's associations have  
21          agreed to subordinate their rights to receive the  
22          full required distribution in the event of default.  
23          My question to Miss Schaeffer is: What are the  
24          rights to receive that the horsemen's associations  
25          have agreed to subordinate? And that question is

1 based upon Miss Schaeffer's testimony, and my own  
2 understanding, that the horsemen's associations  
3 receive no monies for purses or breed development.

4 That's the gist of it. Is that clear or do I  
5 need to try to --

6 MR. KEELER: No. I think I understand where  
7 you're going. And let me tell you where I come  
8 from in terms of not so much their right to receive  
9 but my interpretation of statute. That is that the  
10 new code sections that previously have been  
11 referred to that were enacted by Senate Bill 609  
12 give the horsemen and the licensees in the initial  
13 distribution agreement the right to agree upon  
14 anything else that they believe to be important in  
15 addition to the 10 to 12 percent of AGR. The  
16 product of that negotiation, I believe, then flows  
17 into Section 12, which was also in the Senate bill  
18 enacted, which is the section of the code that  
19 makes the distributions you referred to.

20 So it's my judgment, Mr. Chairman, that  
21 Senate Rule 609 gives the licensees and  
22 associations the right to make any decision they  
23 want to, subject to Commission approval, and the  
24 product of that negotiation then flows over to  
25 Section 12 and is distributed in accordance with

1 its provisions, which are all percentages, not  
2 fixed dollar amounts.

3 And I can tell you that as the bill made its  
4 way through the General Assembly, one thing that  
5 both the associations and licensees were very  
6 careful of was not to adjust or interfere with that  
7 existing distribution formula which had been  
8 negotiated years ago and everybody had a vested  
9 interest in.

10 CHAIRMAN DIENER: This may be less of a  
11 question and more of just so you understand where  
12 I'm coming from on this, Mr. Keeler. When I look  
13 at purse monies or breed development monies, those  
14 are for individual owners and trainers racing their  
15 horses on the track. Horsemen's associations, as  
16 such, have no authority, no control over those  
17 funds. They never have had.

18 And this is what's causing me heartburn about  
19 this, is having an association agree in the event  
20 of default to subordinate monies which heretofore  
21 they've had no authority, no rights to receive  
22 whatsoever. Those are for the benefit of the  
23 individual participants in horse racing. If you  
24 just want to say you disagree with me, that's fine.  
25 I just want to make sure you understand my problem

1 as a matter of law where I'm coming from on this.

2 MR. KEELER: I do, Mr. Chairman. And I do  
3 disagree with you. But if I might just layer a  
4 little bit more on. And that is, it seems to me in  
5 609 the General Assembly in essence appointed those  
6 associations with contracts to be representatives  
7 of those individual horsemen and gave those  
8 individuals and that committee created by 609 great  
9 powers and great authority. You know, it subjected  
10 everything they did to the audit by the State Board  
11 of Accounts. While the legislature, I don't think,  
12 contemplated it, the Public Access Counselor  
13 decided these meetings were much like the city  
14 council and this body, needed to be open to the  
15 public because was monies were being spent.

16 And I would go on. I think the point that it  
17 didn't go directly to subordination, but I think  
18 proves the point that the legislature intended to  
19 give these committees that power, to represent the  
20 individual horsemen, goes to the fact that they  
21 could negotiate that range between 10 and  
22 12 percent. So in essence this committee was  
23 empowered to take away in essence 2 percent from  
24 every individual horseman without him or her having  
25 their individual voice heard but through their

1 representation.

2 So I firmly believe that the legislature  
3 empowered this committee and its members to make  
4 these decisions.

5 CHAIRMAN DIENER: But you said earlier -- and  
6 I think it still shows -- that the mandatory  
7 distribution and allocation section, -12, was never  
8 modified one iota by the 2013 amendments. It  
9 stands as is.

10 MR. KEELER: I mean, just for clarity,  
11 Section 12 was amended, but the provisions we're  
12 talking about were not. It does stand as is. But  
13 I think it's really important if you read the two  
14 sections together, what 609 did was take new  
15 sections, the product of the negotiating committee,  
16 the IDA, and fund Section 12 distributions.

17 CHAIRMAN DIENER: Thank you.

18 MR. KEELER: You're welcome.

19 CHAIRMAN DIENER: We'll agree to disagree, but  
20 that's all right. Appreciate it. Thank you.

21 MR. KEELER: You're the wrong guy to be  
22 disagreeing with.

23 CHAIRMAN DIENER: Mr. Babbitt, next witness?

24 MR. BABBITT: Thank you. We'll call Tom  
25 Mosley.

1           TOM MOSLEY, having been previously duly sworn  
2 by the Chairman, took the stand and testified as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. BABBITT:

6 Q Would you state your name for the Commission,  
7 please.

8 A My name's Tom Mosley, and I'm the director of  
9 industry relations for the Quarter Horse Racing  
10 Association of Indiana.

11 Q And for the benefit of some of the newer Commission  
12 members, please give them a brief -- and I  
13 highlight the word brief -- history of your  
14 participation in the horse racing industry.

15 A I'm a horsemen and the horsemen like to talk, and  
16 that's the joke he's making, I'm assuming. I've  
17 spent my entire life around racing, specifically  
18 quarter horse racing. And believe it or not, I can  
19 actually show you a picture when I was seven or  
20 eight years old that I was a jockey on one of my  
21 dad's horses at a little county fair.

22           I made my living for a very long time shoeing  
23 horses, primarily racehorses, and had some  
24 significant health issues a few years ago and  
25 started training full-time. And for the last two

1 or three years, I've had a very successful training  
2 career racing quarter horses.

3 I've been involved with the QHRAI for the past  
4 several years in just about every aspect. If  
5 somebody didn't want a job, I would get the job.  
6 But more specifically, I was a representative of  
7 the coalition for the Quarter Horse Racing  
8 Association that negotiated the horsemen's split  
9 from 4 percent to 8 percent, and from there all the  
10 way to the initial application process.

11 One of my proudest things that I'm hopeful  
12 that my kids are going to care someday, but the  
13 very first application that was presented, there  
14 was no revenue and we were asked to put together  
15 budgets and revenue projections -- and we do things  
16 in-house, which means there's two or three of us  
17 that do most of it -- and after everything was said  
18 and done, the revenue projections that we made were  
19 very, very, very accurate. In fact, more accurate  
20 than the Commission or anybody else, just for the  
21 record. And I don't know if that's sad or not that  
22 that's one of the highlights of my involvement with  
23 the association or not.

24 Q Let me move you a couple areas I hadn't thought  
25 about. As a member of the quarter horse group,



1 does the Indiana Quarter Horse Association  
2 negotiate with the tracks? Aside from the IDA, do  
3 they negotiate an agreement that's for the benefit  
4 of the horsemen?

5 A Yes.

6 Q And what sort of things are they negotiating as  
7 they negotiate on the horsemen's behalf?

8 A Yes. What I would tell you is very specifically  
9 keep in mind I'm a horseman, and my role with our  
10 board is to communicate issues to our horsemen and  
11 bring their input and feedback to our board and  
12 interact with the Commission. And we have more  
13 horsemen's meetings than any group, maybe all the  
14 groups all put together.

15 And we have two significant horsemen's  
16 meetings in the fall that are planning meetings for  
17 the following year. And the exact thing that we  
18 put on a big white board -- we're not to the  
19 PowerPoint yet, we use white board -- there's not  
20 one single aspect of our program, from the breed  
21 development to the percentages paid out in owner's  
22 awards, to the purse levels, to the amount of races  
23 that are run, to the amount of total purse money  
24 distributed the following year that you can't have  
25 input on.

1           So basically what that would mean is if for  
2           some reason our purse account was getting too  
3           diluted, our horsemen could voice that concern to  
4           us. And then when we go to the tracks and breed  
5           development advisory committee and start  
6           negotiating for the next year, we bring that  
7           concern to whoever it would be we're meeting with  
8           that we don't want to use the purse money that way  
9           this year.

10        Q    So in essence, when you're negotiating those  
11           agreements with the tracks, you're taking into  
12           account not only what the horsemen are telling you  
13           on the backside but purse monies that they would be  
14           entitled to, some breed development, race dates,  
15           those sort of things?

16        A    Absolutely. I mean, our board of directors -- and  
17           I'm not real familiar with the other boards -- we  
18           are owners. That's who we are; we're owners and  
19           trainers. We're not a corporate board of people.  
20           In fact, most of our directors don't have time to  
21           be directors. We make our living in the racehorse  
22           business, and this is what we do.

23        Q    And I hesitate to get into this, but because of the  
24           questions, I think it's important to do that. Let  
25           me ask you: I know this is a way-down-the-road

1 sort of question. But if there was approval by the  
2 Commissions of the IDA and if there was approval of  
3 the refinance and if there was subordination and  
4 all those sort of things, if you got to a point  
5 where a senior lender would subordinate, do you  
6 have a concern that purses wouldn't be able to be  
7 paid immediately? Are you following me? Is there  
8 a reserve in the purse funds that are available  
9 now?

10 A Yes. Our directors and the committee that  
11 represented our horsemen at these meetings, we've  
12 actually went through the specific history posted  
13 on the Commission website of the account balance on  
14 our purses.

15 And barring what we would consider -- we've  
16 heard this phrase thrown around -- a worst-case  
17 scenario, we don't believe that one missed payment  
18 would affect our purse levels at all. And again,  
19 this is worst-case scenario. In fact, the scenario  
20 we used in a horsemen's meeting was it's kind of  
21 like did the tornado go through our house or  
22 through the next door neighbor's house as far as  
23 worst-case scenarios.

24 Two payments missed, depending on the time of  
25 the year, would start to affect the actual purse

1 levels.

2 Q Now, you were not a designated member of the  
3 negotiations committee; correct?

4 A Each association had one person to vote, and I  
5 wasn't that. President, Chris Duke, was.

6 Q So you didn't sign the IDA; correct?

7 A No.

8 Q But Mr. Duke did?

9 A Yes.

10 Q And my understanding is that you participated in  
11 all the public meetings of the negotiations  
12 committee. Is that correct?

13 A Yes.

14 Q And then other than those public meetings where the  
15 IDA was negotiated, did you have backside meetings  
16 with the horsemen to talk about what the  
17 discussions were and the negotiations were?

18 A Yes. And primarily it was coincidence. We meet  
19 almost weekly, at least every two weeks, with our  
20 horsemen at the racetrack. And this would be  
21 similar to a legislator coming out on the steps and  
22 not asking for members of his party to come. Just  
23 anybody that wants to come. They're announced on  
24 the backside, and literally dozens, if not close to  
25 100 people, will show up and we discuss these

1 things openly.

2 We kept our horsemen in the loop with what we  
3 knew at a given time. And the way that the  
4 meetings were conducted, we didn't speak out of  
5 turn; but as information became available to us, we  
6 shared that with our horsemen.

7 Q The minutes of the October 10 public meeting  
8 reflect that you made a statement to the effect  
9 that the tracks and horsemen's ability to  
10 unanimously agree to support the initial  
11 distribution agreement proved that they were truly  
12 unified as one industry. Did you say that?

13 A I'm guessing I did.

14 Q Do you believe that the unanimous support for the  
15 initial distribution agreement marks an important  
16 milestone in the history of Indiana horse racing?

17 A I really, really, truly do. And I think our  
18 horsemen do. And I don't just think that this is  
19 going to be a milestone just in Indiana, but I  
20 think down the road that this will be looked at  
21 nationally as an alignment between not one horse  
22 association but three horse associations  
23 representing three different groups of horsemen,  
24 three different breeds, and ownership of a track  
25 with all the same common goal. I mean, there's

1 tracks around that only want you to use 40-watt  
2 lightbulbs, and here we're going to put a  
3 \$35 million capital improvement on the front side.  
4 I mean, it's just mind boggling.

5 Q Describe, if you would, to the Commission from a  
6 rubber meets the road standpoint, what's the  
7 relationship of the Quarter Horse Association with  
8 Centaur and its management team.

9 A We're the smallest group, and we self-represent,  
10 which means Chris and I go to a lot of meetings.  
11 And if it wasn't for the way that the meetings were  
12 conducted and the way that everyone -- Rod,  
13 Jim Brown, Brian Elmore, John Schuster, everybody  
14 involved. Tammy Schaeffer, I mean, the stupid  
15 questions that I would ask Tammy Schaeffer. And,  
16 you know, there's a saying that there's no question  
17 stupid, but it was important to me to really  
18 understand some of this. Not that I understand to  
19 the details I want to be questioned like  
20 Miss Schaeffer did.

21 But I knew it was going to be important for me  
22 to try to explain this to our horsemen so we could  
23 get honest feedback from them, did they feel like  
24 this was the right thing to do. And if it wouldn't  
25 have been for the environment of the meetings and

1 the environment, it certainly appeared to me the  
2 earnest intent to get true feedback from the  
3 horsemen just couldn't have happened.

4 Q All right. Based upon your observations was the  
5 IDA entered into freely and voluntarily by the  
6 parties after extended good-faith, give-and-take  
7 negotiations?

8 A Very much so.

9 Q And have you reviewed the proposed IDA? I  
10 understand you didn't sign it. The one that's now  
11 before the Commission, are you familiar with its  
12 terms?

13 A Yes, I am.

14 Q Did the Quarter Horse Racing Association of  
15 Indiana's board of directors discuss and consider  
16 the provisions of the IDA?

17 A Yes. We kept our directors in the loop on, it  
18 seemed like it was, a weekly meeting ongoing. And  
19 then when the final draft came out, the board -- it  
20 was actually part of a lengthy meeting -- voted on  
21 it unanimously to support this.

22 Q And do you believe that the Quarter Horse Racing  
23 Association board of directors understood the risks  
24 involved as they were explained?

25 A Yes. I know I might not be brief here. But that

1 was the thing that we probably talked about as much  
2 with our horsemen and our horsemen talked to us  
3 about. For me to go in front of our horsemen as a  
4 group, I take that role real seriously, as does  
5 Chris, and to talk about this subordination.

6 And we started talking about the risks and the  
7 possible benefits of this, and I think the  
8 horsemen's feedback to us is something I wish there  
9 was a way for you to hear. But risk is a man  
10 taking a second mortgage on his farm to breed  
11 horses that won't race for three years. That's  
12 risk.

13 And, you know, we've been racing here for  
14 close to twenty years, and when we first started  
15 racing, we only had one or two races here. There  
16 was no quarter horse racing industry. And we grew.  
17 And it became apparent early on that we needed  
18 racinos, and I got involved and other members on  
19 our board, that's when we started getting involved  
20 and getting involved legislatively.

21 And when Indiana Downs came online, purses got  
22 cut in half, and we had to get racinos. We had to.  
23 And then we got racinos. And there was maybe about  
24 twenty-two seconds of total relief to all the  
25 horsemen. We had the money. This was what we all



1        wanted forever. And then we started hearing about  
2        what was going to happen at the State House.

3                And risk is the State House, especially to us,  
4        who we don't have lawyers representing us at the  
5        State House, risk is a man that has a pasture full  
6        of horses and has absolutely no control of what  
7        happens at the State House and going to take all of  
8        our money. To have some of the most respected  
9        legislators, apparently for just political reasons,  
10       tell the newspaper or tell a TV camera that we're  
11       just going to eliminate that. We don't need that.  
12       That's risk.

13               And so when I and Chris was trying to explain  
14       to our horsemen about the worst-case scenario or  
15       the risk involved, it was out of context. It  
16       almost was hard to explain. There was no oversight  
17       with what was happening at the State House. You  
18       know, we kept hearing about this haircut. I heard  
19       the term haircut more than my little boy hears  
20       about haircuts. There wasn't going to be oversight  
21       in what was going to happen with the money that the  
22       State took from us.

23               And the thought of going into a future with  
24       stability, a seven-year contract, it's just  
25       unbelievable. I wish there was a way that I could

1 better share our horsemen's enthusiasm about moving  
2 forward.

3 Q Thank you.

4 A And I know that wasn't brief.

5 Q I appreciate that. You, I think, touched well on  
6 the certainty and stability, the importance of  
7 that. Let's talk a little bit about benefits of  
8 potential improvements at Indiana Downs to the  
9 extent there's a refinance particularly. How does  
10 that impact the horsemen that you represent?

11 A Well, first of all, the stability, I just don't  
12 know how to emphasize that enough. The amount of  
13 money that horsemen are spending what we would call  
14 in the dark. Imagine going to a bank and telling  
15 the loan officer, "Well, I'm going to have some  
16 semen shipped here to breed some horses for some  
17 races we're going to have in three years." I mean,  
18 it's a rough deal.

19 But the benefits beyond that, you know, my  
20 kids when they're not in school and not in sports,  
21 this is where I work. It's where I spend every  
22 day. And for them to come to the racetrack and see  
23 what's going on and new barns and all of the  
24 things, you know. The grandstand improvement, I  
25 mean, it's just unbelievable.

1           In fact, one of the things, you know, I really  
2 struggle sometimes to figure out different things  
3 I'm going to share with my kids why I miss so many  
4 things. And I shared the story -- and I think it  
5 was last year -- that Chairman Diener said about  
6 our quarter horse day. It was a very proud moment,  
7 whether you knew it or not. We still brag about  
8 that. Especially if other people are listening, we  
9 talk about how Chairman Diener liked that.

10           But the point that I'm trying to make is we  
11 all need to get people on the apron of the  
12 racetrack. We need to create horse racing fans.  
13 It's probably the biggest downfall of entire racing  
14 industry in the United States. And the fact that  
15 Centaur is going to make \$25 million or \$30 million  
16 worth of capital improvements, that's our  
17 workplace. Imagine -- not you so much, because I  
18 bet you have pretty a nice office --

19 Q You might be surprised.

20 A -- but imagine for no particular reason that the  
21 company you worked for was just going to double the  
22 improvements, make it a state-of-the-art facility  
23 that we could be proud of everywhere in the  
24 United States. It's just unbelievable. It's  
25 really exciting. It's great thing.

1 Q Based upon both the benefits and the risks  
2 presented by the initial distribution agreement, do  
3 you believe that the initial distribution agreement  
4 should be approved by the Commission?

5 A Very much so.

6 Q And for the reasons that you've stated?

7 A Yes. Yes, very much so.

8 Q Anything else you'd like to add?

9 A Does this fall under the brief?

10 The one thing that I do want to mention. You  
11 know, I don't this professionally. I speak in  
12 front of one group once a year, and it's this  
13 group. In fact, I'm going to do a lot of speaking  
14 today, I guess, with our application.

15 You know, truly, our board, which is made up  
16 of horsemen, and the horsemen that we've talked to  
17 feel like that we understand there is risk that  
18 something could go terribly wrong for Centaur  
19 unforeseen and there could be disruption, but we  
20 also feel as though that there's safeguards in  
21 place. The way that we explained it to our  
22 horsemen -- and I believe I would be corrected if  
23 this wasn't correct -- is that any refinancing's  
24 going to be brought back before this Commission to  
25 be approved. The details of subordination are

1 going to be brought back before this Commission.

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

14 MR. BABBITT: I have no further questions.

15 CHAIRMAN DIENER: Do you have any further  
16 testimony yourself, Mr. Babbitt?

17 MR. BABBITT: Not with this witness.

18 CHAIRMAN DIENER: Mr. Mosley, does the  
19 Quarter Horse Racing Association receive purse  
20 money?

21 MR. MOSLEY: No.

22 CHAIRMAN DIENER: Does the Quarter Horse  
23 Racing Association receive breed development money?

24 MR. MOSLEY: No.

25 CHAIRMAN DIENER: Now, I do want to reaffirm

1        what Tom said, without any criticism of harness  
2        racing or thoroughbred racing.  If you haven't had  
3        a chance, go see an all quarter horse day because,  
4        one, it's a lot of fun, and two, the quarter horse  
5        people are really good people.

6                COMMISSIONER SCHAEFER:  I'd second that, Tom.  
7        I also second what you said about the local  
8        ownership.

9                My question to you is:  You testified that if  
10       you miss one payment, it's not going to hurt; if  
11       you miss two payments, it's going to sting a little  
12       bit.  What happens if you missed a year or two?

13               MR. MOSLEY:  A year or two?

14               COMMISSIONER SCHAEFER:  Year or two.

15               MR. MOSLEY:  Well, it'd be catastrophic.  We  
16       couldn't afford to miss a year or two of deposits.

17               COMMISSIONER SCHAEFER:  You understand that's  
18       a possibility?

19               MR. MOSLEY:  Absolutely.

20               COMMISSIONER SCHAEFER:  And the guys you told  
21       us that are going out and buying the semen and all  
22       that type of thing, two years down the road they're  
23       going to be ready to race and they're not going to  
24       be able to do that.

25               MR. MOSLEY:  Yes.  I mean, from a layman's

1 point of view, what you're saying would be this is  
2 the way we would look at it. Maybe this is  
3 incorrect. So we look at it if a man has a good  
4 job and he might lose his job if he gets shot. I  
5 mean, the scenario that would have to happen to  
6 stop purse deposits for two years, at least the way  
7 that the people we've talked to and asked  
8 questions, something very catastrophic would have  
9 happened.

10 But it's possible. Anything's possible.

11 COMMISSIONER SCHAEFER: Anything's possible.

12 MR. MOSLEY: Yes.

13 COMMISSIONER SCHAEFER: Never say never.

14 MR. MOSLEY: Never say never, that's correct.

15 COMMISSIONER SCHAEFER: Thank you.

16 MR. MOSLEY: Thank you.

17 CHAIRMAN DIENER: Any questions from the  
18 Commission Staff?

19 MS. ELLINGWOOD: I have no questions.

20 CHAIRMAN DIENER: Thank you.

21 MR. MOSLEY: Okay. See you in a little while.

22 MR. BABBITT: Our next witness would be  
23 Nat Hill.

24 CHAIRMAN DIENER: Good morning, Mr. Hill.

25 MR. HILL: Morning.

1           NAT HILL, having been previously duly sworn by  
2 the Chairman, took the stand and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BABBITT:

5 Q Good morning, Nat.

6 A Morning, Robin.

7 Q I have handed you what has been marked Petitioner's  
8 Exhibit 7. It's your affidavit dated October 15,  
9 2013. Is that your signature?

10 A Sure is.

11 Q Is that your statement?

12 A Yes.

13 Q Did you make this affidavit under oath?

14 A Yes.

15 Q Did you submit this affidavit freely and  
16 voluntarily?

17 A Yeah.

18 Q Do you affirm that all of the statements that  
19 appear in this affidavit are true and correct as if  
20 you'd made them under oath today?

21 A Yes.

22           MR. BABBITT: I request that Exhibit 7, the  
23 October 15 Affidavit of Nat Hill, be admitted into  
24 and made part of the administrative record,  
25 Mr. Chair.



1 Q You were not a designated member of the  
2 negotiations committee; is that correct?

3 A That's correct. My good friend, Jack Kieninger,  
4 put me on there.

5 Q And you will be eternally in his debt for that one.

6 A (The witness laughed.)

7 Q You did, however, participate in all but one of the  
8 public meetings of the negotiations committee;  
9 isn't that true?

10 A Yeah. Keeler didn't e-mail me a message about the  
11 last one. I think he heard enough probably.

12 Q So you made all of them but the last?

13 A All but the last.

14 Q In addition, you did attend the September 13  
15 meeting with Jack Kieninger, Roger Young, myself,  
16 and John Keeler, did you not?

17 A Yes, I did.

18 Q At that meeting did those present engage in a  
19 detailed discussion involving the concept of  
20 subordination in the event of default under the  
21 current financing Centaur has in place and the  
22 ISA's willingness to take on the risk of  
23 subordination as long as the current management  
24 team remains involved?

25 A Yeah, current management team.

1 Q And explain to the Commission why that's important.

2 A Well, we developed tremendous trust and respect of  
3 Centaur. If Centaur's not going to run this show,  
4 then subordination's out the window and any number  
5 of things are out the window. We brought it up.  
6 It was our main concern. Look, we're not going to  
7 subordinate this money unless and until we can be  
8 assured that Rod Ratcliff and Centaur are running  
9 this boat. It would make no sense. And I'll let  
10 my friend, Jack, elaborate on that in a bit because  
11 he's going to testify.

12 Q Well, I might forget to ask him. Just in case I  
13 do, why don't you elaborate.

14 A Well, you just have to go to other states and see  
15 how horsemen's groups operate with tracks. It's  
16 unbelievable. They never talk to each other.  
17 They're isolated. The guy that runs the place has  
18 got some office way in the back and some guy that  
19 stands outside and won't let you in. It's totally  
20 unbelievable.

21 You go to Hoosier Park, and the big guy is  
22 making book in the back where if you get four races  
23 right and he doesn't then you get a hot dog or  
24 something. I don't know. He's in his box. You  
25 can go talk to him. He's as open as a book. It's

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

5   Q   Now, as a result of this meeting on September 13,  
6       there were concerns that you and your counsel,  
7       Mr. Young, and Jack addressed that were actually  
8       incorporated into the next draft of the agreement,  
9       were there not?

10  A   Yeah.  We didn't negotiate very well.  We should  
11       have asked for more.  I think we would have  
12       probably gotten it.  It was a great meeting.

13  Q   There was a concern you had about making certain  
14       that the subordination would only apply to lenders  
15       and no one else; correct?

16  A   The example I used was are we going to get paid  
17       ahead of the Beach Boys.

18  Q   And you are?

19  A   And I was assured that we're first on the pecking  
20       order behind the big money that's going to  
21       refinance this deal.

22  Q   And there was some discussion as well about you  
23       wanting an increase in a rate?  To the extent a  
24       payment was missed, understanding it has to be made  
25       up, you wanted it to be made up not only at prime

1 but at prime plus and you had a bigger figure;  
2 correct?

3 A Yeah. We went from a half to 2 1/2, and we should  
4 have asked 5.

5 Q But you're still commending the agreement in front  
6 of this Commission?

7 A Oh, yeah.

8 Q Just checking. Based upon your observations was  
9 the initial distribution agreement entered into  
10 freely and voluntarily by the parties after  
11 extensive good-faith, give-and-take negotiations?

12 A Yes. And I know you told me not to filibuster.  
13 But I have to say, Mr. Diener, if you'd been at  
14 these meetings . . . I about threw myself at the  
15 first meeting, and I said, "We have no authority to  
16 sign this. Who are you kidding? We're here to go  
17 10, 11, and 12 and that's it." I said, "That's all  
18 there is. I don't want to have 18 meetings talking  
19 about some great idea to do something different."

20 Okay. As time marched on, I became convinced  
21 of one thing. The biggest fear we have is  
22 bankruptcy, and the best way to avoid bankruptcy is  
23 let the guy that runs the place renegotiate at a  
24 more favorable rate and save money. Now, just  
25 between you, me, and the fence post, the capital

1 expenditures, I see that list and I go, man, I just  
2 would rather they put it in the bank and made sure  
3 we didn't go bankrupt. You guys don't need a  
4 million dollar Commission meeting place. There's  
5 just stuff in there is okay and I'm glad it's gonna  
6 happen.

7 The main reason the standardbred people want  
8 this to happen is to keep Centaur solvent, up and  
9 running, and in a position to continue managing the  
10 track. Because all we need is for this place to be  
11 sold to Penn National or Harrah's or something, and  
12 then look out, Jack. The next meeting will be  
13 10 percent in front of you. That will be the  
14 negotiation. That's how it'll work. I mean,  
15 that's how it'll work.

16 Q Was the certainty and stability of a long-term  
17 agreement important to the ISA?

18 A With all due respect to the United States  
19 legislature, started out this year at zero. Zero?  
20 How's that working for you? I got mares and a  
21 pasture full of babies gonna race in two years.

22 Well, then the next thing I see, \$10 million.  
23 Well, much better. Yeah, that's very good. Out of  
24 56, we're gonna get 10.

25 I think it was the magic of Centaur and the

1 magic of our people at the State House and the fact  
2 that we finally reached some folk that it's an  
3 agricultural industry.

4 Now it's off the table, as I understand it.  
5 It's a contract between the two of us, and I  
6 believe it's much more stable. I feel a lot better  
7 about it. I don't know that we're going to get any  
8 more money. My figures show that we got  
9 12.08 percent last year and we're going to get  
10 12 percent this year. Well, I can live with that  
11 because that's a lot better than zero or  
12 \$10 million.

13 Q Have you reviewed the proposed IDA that's now  
14 before the Commission?

15 A Yes.

16 Q And you're familiar with its terms; correct?

17 A Correct.

18 Q Did the ISA board of directors discuss and consider  
19 the provisions?

20 A Yeah. It took about five minutes, because they've  
21 all fallen in love with Centaur and they don't want  
22 anything to happen to Centaur. And if this helps  
23 Centaur, they're good with it. And in their mind,  
24 bankruptcy's the last thing we want to have happen,  
25 and we think that a better term in terms of this

1 negotiations will help prevent that.

2 Q Based upon your lengthy and extensive  
3 involvement -- And I know that to be true.

4 A I remember when he sat there and you sat there.  
5 Right there's where you sat (indicating).

6 Q Based upon your lengthy and extensive involvement  
7 with pari-mutuel racing in the state of Indiana, do  
8 you believe that the proposed IDA is in the best  
9 interest of pari-mutuel racing?

10 A Well, I certainly believe this one is. And I would  
11 quote Phil Borchek (sp.) and call him King Solomon,  
12 but he told me never to do that.

13 Q And do you want to expound on that any more?

14 A His recommendation quite clearly states -- and I  
15 wish I'd brought it up here -- what you're  
16 approving today is one year rolled into seven if  
17 subordination can be reached. But you're not  
18 really approving subordination, as I understand it  
19 here. You're approving the contract that allows us  
20 to get into it.

21 And I gotta tell you, of the 12 people, I'll  
22 probably be the hardest one when the money comes  
23 back from Wall Street to look at it the hardest.  
24 But if it's a substantial reduction in interest  
25 rates on a loan of that size, man, that's pretty

1 hard to turn down for us as an industry. And we're  
2 in this thing together, unlike any other state in  
3 the Union.

4 Q I appreciate that. Based upon both the benefits  
5 and the risks presented by the initial distribution  
6 agreement, do you believe that it should be  
7 approved by the Commission?

8 A Yeah.

9 Q Is there anything else you'd like to add?

10 A No.

11 MR. BABBITT: I pass the witness, Mr. Chair,  
12 at this time.

13 CHAIRMAN DIENER: Commission counsel?

14 MS. ELLINGWOOD: No questions.

15 CHAIRMAN DIENER: Members of the Commission,  
16 questions for Mr. Hill?

17 COMMISSIONER SCHAEFER: Mr. Hill, I see that  
18 you are treasurer. I'll ask you the same question  
19 I asked Tom Mosley. What happens if over a year  
20 you lose your \$4.5 million contribution? What  
21 happens to the association and your purses?

22 MR. HILL: Well, due to continued uncertainty  
23 about funding, the Indiana Standardbred Association  
24 has saved quite a bit of money over the years,  
25 because we never knew where that check was coming



1 from or if it was coming. The purse account is a  
2 signed wave. It's kind of an unusual thing. At  
3 the start of the meet, there's a huge amount of  
4 purse account. Towards the end it's close to zero.  
5 It would depend when things blew up.

6 Yeah, it could be bad. But I guess my initial  
7 response would be if the track goes bankrupt and  
8 the doors are closed, what difference does it make  
9 whether we subordinated or not.

10 COMMISSIONER SCHAEFER: Understood. Thank  
11 you.

12 MR. HILL: Thank you.

13 CHAIRMAN DIENER: I have to thank Mr. Hill,  
14 because probably twenty years ago when I was just  
15 getting my feet wet, he was one of my teachers to  
16 help learn about horse racing and I've always had  
17 the utmost respect for Mr. Hill and his integrity.  
18 Thank you.

19 MR. HILL: Thank you.

20 MR. BABBITT: Well said.

21 CHAIRMAN DIENER: We're taking a break. The  
22 reporter needs a little break and maybe people's  
23 kidneys need a break. So 11:00 we start again.

24 MR. BABBITT: Okay. Thank you.

25 CHAIRMAN DIENER: I would remind everybody the

1 Commissioners are sitting as administrative law  
2 judges, so keep any comments to yourselves.

3 (A brief recess was taken.)

4 CHAIRMAN DIENER: We'll reconvene the hearing.  
5 Mr. Babbitt.

6 MR. BABBITT: Thank you. The petitioners  
7 would call Jack Kieninger.

8 MR. KIENINGER: My name's Jack Kieninger. I'm  
9 president of the Indiana Standardbred Association.  
10 It's K-i-e-n-i-n-g-e-r.

11 JACK KIENINGER, having been previously duly  
12 sworn by the Chairman, took the stand and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. BABBITT:

16 Q I handed you prior to the time you walked to the  
17 podium the affidavit that you executed on  
18 October 10, 2013. It's identified as Exhibit 6.

19 Is that your signature?

20 A Yes, it is.

21 Q Is that your statement?

22 A Yes, it is.

23 Q Did you make this written statement under oath?

24 A Yes.

25 Q Did you submit it freely and voluntarily?

1 A Yes, I did.

2 Q Do you affirm that all of the statements that  
3 appear in this affidavit are true and correct as if  
4 you had made them under oath today?

5 A I do.

6 MR. BABBITT: I request that Exhibit 6, which  
7 is the October 10 Affidavit of Jack Kieninger, be  
8 admitted into and made part of the administrative  
9 record.

10 CHAIRMAN DIENER: So admitted.

11 Q Now, my understanding, Jack, is that you were a  
12 member of the negotiation committees and a  
13 signatory to the proposed IDA. Is that correct?

14 A I was.

15 Q Let me hand you Petitioner's Exhibit 1, and I'll  
16 see if I can find the right page. I will ask you  
17 if that appears to be a true and correct copy of  
18 the document that you signed.

19 A It is.

20 Q You were invited to and did participate as  
21 president of the ISA in the public meetings of the  
22 negotiation committee; is that correct?

23 A I did.

24 Q And did the ISA board of directors discuss and  
25 consider the provisions of the IDA?

1 A Yes, we did.

2 Q Did the board direct you to sign the IDA?

3 A Yes, they did.

4 Q As a member of the negotiations committee and a  
5 signatory to the IDA, on behalf of the ISA, are you  
6 requesting that the Commission approve the IDA?

7 A Wholeheartedly.

8 Q And you heard Nat testify this morning; correct?

9 A I did.

10 Q And you heard him testify about the meeting that  
11 took place at Hoosier Park on September 13;  
12 correct?

13 A I did.

14 Q And do you have any different recollection of that  
15 meeting?

16 A No. We just had a few questions, and you guys were  
17 very forthcoming with the answers. You satisfied  
18 any of the questions that we had. So, yeah, we  
19 thought it was a really good meeting and we were  
20 satisfied with it.

21 Q Good. Is there anything else you would like to add  
22 to your testimony to the Commission at this time?

23 A You know, we -- "we" as the signators, Joe and  
24 Chris and myself -- we took this very seriously.  
25 We're playing with \$58 million. This wasn't

1 something, you know, that you just, oh, yeah, we're  
2 going to sign. We did a lot of investigations. We  
3 had a all-breed meeting at the ISA office. We had  
4 Mr. Ratcliff come to our board meeting and  
5 Miss Schaeffer and explain exactly to the board  
6 what subordination was and what the risks and the  
7 benefits would be.

8 I just wanted the board to understand that in  
9 no other state do we have the ability to go to the  
10 owners of the racetrack, talk to the Commission,  
11 like we do in Indiana. So we take everything that  
12 we do as a board really serious, and I'm sure the  
13 other two breeds will say the same thing. We're  
14 not going in this agreement with our eyes closed.  
15 We think it's the best thing for the State of  
16 Indiana and horse racing.

17 You know, my people are more concerned with  
18 stability than the \$58 million. I've had 100  
19 horsemen ask me how long is this contract going to  
20 be for. When you say, well, it's a possibility it  
21 could be seven years, they just love that. I  
22 didn't have any of them ask me, well, how much  
23 money we going to get or how much we going to race  
24 for. They're more concerned about the stability to  
25 be able to make plans to buy a farm, breed mares,

1 and the whole nine yards in Indiana, and this  
2 contract gives us that opportunity.

3 We are really grateful for the management of  
4 Centaur to bring this proposal. We was happy to  
5 work with them in the legislature to get this done,  
6 and we're very pleased with how it all turned out.  
7 And we, as the Indiana Standardbred Association,  
8 all the board members are wholeheartedly in favor  
9 of this contract.

10 MR. BABBITT: We would pass the witness at  
11 this time.

12 CHAIRMAN DIENER: Commission counsel?

13 MS. ELLINGWOOD: No questions, Chairman.

14 CHAIRMAN DIENER: Members of the Commission?  
15 Thank you, Mr. Kieninger.

16 MR. KIENINGER: Thank you.

17 CHAIRMAN DIENER: Next witness, please.

18 MR. BABBITT: Next witness would be Joe Davis.

19 JOSEPH DAVIS, having been previously duly  
20 sworn by the Chairman, took the stand and testified as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. BABBITT:

24 Q State your full name for the Commission and your  
25 position with the HBPA.

1 A Joseph Davis, J-o-s-e-p-h, D-a-v-i-s. President of  
2 the Indiana HBPA.

3 Q Sir, I have handed you the undated verified written  
4 statement that is identified as Exhibit 8. Do you  
5 see that?

6 A Yes.

7 Q Is that your signature?

8 A Yes.

9 Q Is that your statement?

10 A Yes.

11 Q Does it contain an attachment indicating your  
12 experience in the horse racing industry?

13 A Yes.

14 Q Did you make this written statement under penalties  
15 of perjury?

16 A Yes.

17 Q Did you submit this statement freely and  
18 voluntarily?

19 A Yes.

20 Q Do you affirm that all of the statements that  
21 appear in this verified statement are true and  
22 correct as if you had made them under oath today?

23 A Yes.

24 MR. BABBITT: I request that the  
25 Verified Statement of Joe Davis identified as

1 Exhibit 8 be admitted into and made part of the  
2 administrative record.

3 CHAIRMAN DIENER: Exhibit 8 is so admitted.

4 Q You were a member of the negotiations committee and  
5 a signatory to the proposed IDA, weren't you, sir?

6 A Yes, that's correct.

7 Q And you were invited to and did participate as  
8 president of the Indiana HBPA in the public  
9 meetings of the negotiations committees?

10 A Yes.

11 Q Did the Indiana HBPA board of directors discuss and  
12 consider the provisions of the IDA?

13 A Yes.

14 Q Did the Indiana HBPA board of directors direct you  
15 to sign the IDA?

16 A Yes, they did.

17 Q All right. Well, now I'll hand you what's been  
18 marked Petitioner's Exhibit No. 1, which has been  
19 identified as a true and complete copy of the IDA.  
20 Ask you if your signature appears on that document.

21 A Yes, it does.

22 Q As a member of the negotiations committee and a  
23 signatory to the IDA, on behalf of the Indiana  
24 HBPA, are you requesting that the Commission  
25 approve the Initial Distribution Agreement?



1 A Yes, I am.

2 Q Is there anything else you would like to add, sir,  
3 to the Commission at this time?

4 A The only thing I've got to add is that our group  
5 just believes that the stability this agreement  
6 brings is just great for our industry. That's it.

7 Q Thank you.

8 MR. BABBITT: I would pass the witness.

9 CHAIRMAN DIENER: Commission counsel, any  
10 questions?

11 MS. ELLINGWOOD: No questions.

12 CHAIRMAN DIENER: Commission members?

13 Thank you, Mr. Davis.

14 MR. DAVIS: Thank you.

15 MR. BABBITT: The next witness would be  
16 Mike Brown.

17 MIKE BROWN, having been previously duly sworn  
18 by the Chairman, took the stand and testified as  
19 follows:

20 MR. BROWN: I'm Mike Brown, B-r-o-w-n, the  
21 executive director of the Indiana HBPA.

22 Most of what I have to say has been covered,  
23 so I'll be relatively brief. I was the executive  
24 director of coalition that worked with the tracks  
25 and all four associations to help gaming slots

1 support racing in the first place. I sat through  
2 all of our meetings, took great notes in all the  
3 meetings, participated in the conversations within  
4 the industry. I also participated in the education  
5 process of the General Assembly.

6 This agreement honors the spirit of what we  
7 talked about. It honors it to the letter and  
8 beyond. We've always worked in Indiana in a  
9 partnership that is unprecedented in other states.  
10 When I talk to my peers in other states, they ask  
11 me how we put this together. I tell them that we  
12 didn't do this; the legislature did it; but we  
13 cooperated in a way that other states simply do not  
14 do. This agreement carries that on.

15 I attended all the public meetings of the 609  
16 negotiating committee. We, the Indiana HBPA, urge  
17 the Commission to approve this. It was negotiated  
18 in good faith. It was a product of a lot of give  
19 and take within the committee. Was reviewed by our  
20 counsel, our accountants prior to execution.

21 It provides outstanding benefits to  
22 thoroughbred horsemen in the way of track  
23 improvements, both irrespective of and in the event  
24 of refinance, and I think that's important.  
25 Regardless of whether they go on with the

1       refinance, Centaur has committed to making  
2       important improvements to the track at  
3       Indiana Downs, important improvements to the  
4       condition of racing at Indiana Downs. That shows  
5       their level of commitment to this partnership. We  
6       note it, and we appreciate it.

7               We entered into this agreement exercising our  
8       own free will. They didn't pressure us to enter  
9       this agreement. As I mentioned, we did have our  
10      professionals review it. Our legal team, our  
11      accounting team reviewed this, and are both  
12      comfortable with our participation in the  
13      agreement.

14             From our perspective, though, the very best  
15      reason for us to urge the approval of this  
16      agreement is the fact that it's a true reflection  
17      of the unique arrangement and the unique  
18      relationship between Indiana horsemen and our track  
19      partner, Centaur. The trend in the industry is  
20      completely the opposite direction. In most places  
21      there's a dynamic tension between the operators of  
22      the track and horsemen. It's almost a labor  
23      management tension. By contrast, this agreement  
24      recognizes one inescapable fact. We are partners  
25      in this particular venture. We're partners in

1       trying to grow Indiana racing and breeding. We're  
2       partners in generating economic and employment  
3       growth in the state of Indiana.

4               The legislature recognized this when they  
5       fundamentally changed the way slot revenues are  
6       distributed. This is between the track and  
7       horsemen. Our success is linked to this  
8       partnership. For that reason we urge the Indiana  
9       Horse Racing Commission to approve this  
10      distribution agreement so that we can get started  
11      on the next step in bringing home a winner for  
12      Indiana.

13             MR. BABBITT: Thank you. No questions.

14             CHAIRMAN DIENER: Commission counsel?

15             MS. ELLINGWOOD: No questions.

16             CHAIRMAN DIENER: Commissioners?

17             Thank you, Mr. Brown.

18             MR. BABBITT: Our next witness would be  
19      Chris Duke, the current president of the  
20      Quarter Horse Racing Association of Indiana.

21             MR. DUKE: Hi. I'm Chris Duke, D-u-k-e,  
22      president of the Quarter Horse Racing Association.

23             CHRIS DUKE, having been previously duly sworn  
24      by the Chairman, took the stand and testified as  
25      follows:

1 DIRECT EXAMINATION

2 BY MR. BABBITT:

3 Q Let me hand you what's been marked Petitioner's  
4 Exhibit 9 and ask you if that's a verified written  
5 statement that was signed by you on October 14,  
6 2013.

7 A Yes, it is.

8 Q Contains your signature?

9 A Yes.

10 Q It's your statement? Did you make this written  
11 statement under penalties of perjury?

12 A Yes.

13 Q Did you submit it freely and voluntarily?

14 A Yes.

15 Q Do you affirm that all of the statements that  
16 appear in this verified statement are true and  
17 correct as if you'd made them under oath today?

18 A Yes.

19 MR. BABBITT: I'd request that the October 14  
20 Verified Statement of Chris Duke identified as  
21 Petitioner's Exhibit 9 be admitted into and made  
22 part of the administrative record.

23 CHAIRMAN DIENER: Exhibit 9 is so admitted.

24 Q Mr. Duke, you were a member of the negotiations  
25 committee and a signatory to the proposed IDA,

1 weren't you?

2 A Yes, I was.

3 Q You were invited to and did participate as  
4 president of the Indiana Quarter Horse Racing  
5 Association in the public meetings of the  
6 negotiations committee?

7 A Yes.

8 Q Did your board of directors discuss and consider  
9 the provisions of the IDA?

10 A Yes, they did.

11 Q Did they direct you unanimously to sign the IDA?

12 A Yes, they did.

13 Q Let me hand you what's been marked Petitioner's  
14 Exhibit 1 and ask you if that's your signature on  
15 that document.

16 A Yes, it is.

17 Q As a member of the negotiations committee and a  
18 signatory to the IDA, on behalf of the  
19 Quarter Horse Racing Association of Indiana, are  
20 you requesting that the Commission approve the IDA?

21 A Yes, we are.

22 Q Is there anything else you would like to add in  
23 your testimony at this time, sir?

24 A Just that we think that the reward is much greater  
25 than the risk and that we think that it'll enhance

1 racing in the future and definitely improve it.

2 MR. BABBITT: We would pass the witness at  
3 this time.

4 CHAIRMAN DIENER: Commission counsel?

5 MS. ELLINGWOOD: No questions.

6 CHAIRMAN DIENER: Commissioners?

7 Thank you, Mr. Duke.

8 MR. BABBITT: We would next call Herb Likens,  
9 the president of ITOBA.

10 MR. LIKENS: Herb Likens, L-i-k-e-n-s.

11 HERB LIKENS, having been previously duly sworn  
12 by the Chairman, took the stand and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. BABBITT:

16 Q All right. I'll hand you the document that is  
17 identified as a verified written statement by you  
18 dated October 14, 2013. Is that your signature?

19 A Yes, sir.

20 Q Is that your statement?

21 A Yes, sir.

22 Q Did you make this written statement under penalties  
23 of perjury?

24 A Yes, sir.

25 Q Did you submit the statement freely and

1 voluntarily?

2 A Yes, sir.

3 Q Do you affirm that all of the statements that  
4 appear in this verified statement are true and  
5 correct as if you'd made them under oath today?

6 A I do.

7 MR. BABBITT: I request that Exhibit 10, the  
8 October 14 Verified Statement of Herb Likens, be  
9 admitted into and made part of the administrative  
10 record.

11 CHAIRMAN DIENER: Exhibit 10 is so admitted.

12 MR. BABBITT: Thank you.

13 Q You were not a member of the negotiations  
14 committee, in that ITOBA does not have a contract  
15 with a pari-mutuel track licensed by the  
16 Commission; is that correct?

17 A That's true.

18 Q In 2013 ITOBA was, however, approved as a  
19 registered horsemen's association pursuant to  
20 Indiana regulation and has been receiving the  
21 distributions specified by IAC 4-35-7-12; is that  
22 correct?

23 A Correct.

24 Q And you were invited to and did participate as  
25 president of ITOBA in the public meetings conducted



1 by the negotiations committee, even though you  
2 weren't a member of the negotiations committee; is  
3 that correct?

4 A That's true.

5 Q Did the ITOBA board of directors discuss and  
6 consider the provisions of the proposed IDA?

7 A Very much so.

8 Q Did the ITOBA board of directors consider both the  
9 benefits conferred by the IDA to thoroughbred  
10 owners and breeders as well as the potential risk  
11 of default?

12 A Yes, sir.

13 Q Based upon its consideration of the benefits and  
14 risks, does ITOBA request that the Commission  
15 approve the IDA?

16 A Very much so.

17 Q Is there anything else you would like to add to  
18 your testimony at this time?

19 A Well, we just feel like the stability is really  
20 important to us as breeders. It takes four or  
21 five years to get a horse, provide a stallion, get  
22 a mare, and get a baby, so stability is really  
23 important to us. And also, at the same time, a lot  
24 of resources we've been using to help educate  
25 legislators and the racing industry, why, maybe we

1 can spend more time maybe promoting the industry to  
2 new owners and increasing the visibility of racing  
3 here in Indiana with that energy.

4 So I appreciate very much your time.

5 CHAIRMAN DIENER: Questions from Commission  
6 counsel?

7 MS. ELLINGWOOD: No questions.

8 CHAIRMAN DIENER: Commissioners?

9 Thank you, Mr. Likens.

10 CHAIRMAN DIENER: Next witness, Mr. Babbitt.

11 MR. BABBITT: We would call Mr. Ratcliff at  
12 this time.

13 MR. RATCLIFF: Rod Ratcliff, R-o-d,  
14 R-a-t-c-l-i-f-f, the CEO and chairman of Centaur.  
15 Good morning, Mr. Chairman, Commission, Staff.

16 ROD RATCLIFF, having been previously duly  
17 sworn by the Chairman, took the stand and testified as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. BABBITT:

21 Q Before we get started in earnest, I'm going to hand  
22 you your pre-filed testimony and ask you a few  
23 questions, if I may. This has been identified as  
24 Exhibit 11. I'll hand you Exhibit 11 and ask you  
25 whether that contains your signature.

1 A Yes.

2 Q Is it your statement?

3 A Yes.

4 Q Did you make this written statement under oath and  
5 under penalties of perjury?

6 A Yes.

7 Q Did you submit the statement freely and  
8 voluntarily?

9 A Yes.

10 Q Do you affirm that all of the statements that  
11 appear in this sworn testimony are true and correct  
12 as if you'd made them today under oath?

13 A Yes.

14 MR. BABBITT: I request that Exhibit 11, which  
15 is the Pre-Filed Testimony of Rod Ratcliff, be  
16 admitted into and made part of the administrative  
17 record.

18 CHAIRMAN DIENER: Exhibit 11 is so admitted.

19 Q Now, sir, my understanding is you were a member of  
20 the negotiations committee. Is that correct?

21 A Yes.

22 Q And you were an at-large member representing the  
23 licensees or the tracks; correct?

24 A Yes.

25 Q I want to make sure that we've got your

1 acknowledgment that your signature appears on  
2 Petitioner's Exhibit 1, so I will find the proper  
3 page and ask you whether your signature appears on  
4 that document.

5 A Yes.

6 Q And did you understand that the document was also  
7 signed by John Keeler and Jim Brown?

8 A Yes.

9 Q All right. Now, you were here to hear the  
10 testimony of Mr. Keeler in this proceeding, weren't  
11 you?

12 A Yes.

13 Q Do you generally agree with the testimony that he  
14 provided to the Commission?

15 A Yes, I do.

16 Q Do you feel that the Initial Distribution Agreement  
17 was the product of intense give-and-take  
18 negotiations between the tracks and the horsemen?

19 A Yes, I do.

20 Q Do you feel that the Initial Distribution Agreement  
21 is in the best interest of racing?

22 A Yes, I do.

23 Q Explain to the Commission why you believe that to  
24 be true, Rod.

25 A Can I be long or brief?

1 Q That was a question that you can answer in as short  
2 or long a way as you deem appropriate.

3 A Well, it all goes back twenty years for me. We've  
4 just spent millions of dollars defending this what  
5 they call subsidy. With the help of the horsemen,  
6 our partners, and throughout the years, it's always  
7 been a constant battle from day one, with Conseco,  
8 Churchill as our partners throughout life, I mean,  
9 it was always a battle to try to keep this subsidy  
10 and to keep the legislature from taking it away.

11 Because it went under review every year  
12 through the budget committee, and they'd take a  
13 look at it and then there would be people that  
14 after the deal got made and the original deals that  
15 there would be new people on those budget  
16 committees that looked at those things and say,  
17 hey, they wanted it for education or their  
18 firetrucks back home or whatever. They really  
19 forgot the spirit of the agreement of how all this  
20 got put together from day one. That happened in  
21 two or three cases, and it seemed like it was a  
22 fight every year to try to keep this money. The  
23 reason the money was so important to us was to keep  
24 a good product out there on the track, we had to  
25 keep the money because that's what kept the good

1 horses coming.

2 So eventually what happened this year, which  
3 shocked us all, is when the budget come out, it had  
4 all the money gone. And we decided at that point  
5 in time, hey, let's go to the leaders that  
6 understood the spirit of this thing, understood it  
7 was for agriculture, understood that it wanted the  
8 industry to grow, and say, hey, let's try to get  
9 this off the books and keep it from being called a  
10 subsidy.

11 And, as you know, with the help of our  
12 partners and the horsemen, as we've done many, many  
13 times, went to battle, is they elected to do that  
14 and to give us a chance to grow an industry and to  
15 keep, you know, basically going uphill, as we have  
16 been over the last three or four years.

17 And from that standpoint is with all the  
18 negotiations that went on, I'm the one that come up  
19 with the idea. And when I come up with the idea, I  
20 took that to Ice Miller first, our law firm, and  
21 said, hey, can we do this? Because if we can do  
22 this, we can lower the cost of our money and we can  
23 lower the cost of our money. We can do what the  
24 Pacers have done and what the Colts have done. We  
25 can have new facilities, nice facilities, create

1       lots of dynamics for our fans, and create a better  
2       product in a first-class way. They said yeah.  
3       They did a lot of studying, you know, and a week to  
4       two weeks. They said, yeah, you now have the  
5       ability to do this.

6               So we said, hey, at least let's go ask the  
7       horsemen all the things that they need and what we  
8       think we need as being the custodian of this thing  
9       and then putting this thing together. They come up  
10      with their list. We looked at those lists. We  
11      thought they were really reasonable. We looked at  
12      we could lower the cost of our money, could we do  
13      all these things?

14             And so to us it's kind of like building a  
15      Lucas Oil Stadium. This is what this money does  
16      for us, is building a new Conseco Fieldhouse. You  
17      already have the fieldhouse at market square. I  
18      mean, Jon's got a great facility down there; he's  
19      done great with what he's had. I think he'd be the  
20      first to say, Jon Schuster, that he's been starved  
21      for capital down there over the last five,  
22      six years. That facility, he's done the best he  
23      can do with it.

24             At Hoosier we kind of took a different  
25      approach, because of our integration with the

1 gaming was so much is we just now completed the  
2 grandstand, so our facility up there for the  
3 standardbreds is basically brand new. I don't know  
4 if any of you've seen it the last thirty days, but  
5 I tell you it's gorgeous. I mean, we're really  
6 proud of that. And our goal is to get  
7 Indiana Downs looking just like that, you know,  
8 over the next two, three, four years.

9 Well, this enables us to do that. This is  
10 like the tax thing that they did for Lucas Oil. I  
11 mean, it gives us the resources and the ability to  
12 be able to go out and do things like that. Without  
13 it, I mean, you know, we're going to do the best we  
14 can. I mean, because we are all partners. We've  
15 showed without things like this or a subordination  
16 that we're going to do the right thing. But the  
17 timing in how we might do it could be totally  
18 different.

19 This just gives us another tool in the toolbox  
20 to go to the street. You know, markets are  
21 favorable right now. They are very good. I don't  
22 know how long. You tell me what's going to happen  
23 in February with the sequestration and the budget  
24 shutdown and all those things. Like, they tell you  
25 how long these markets might stay good and how long



1 they might not. But right now it is a favorable  
2 market out there when people are pricing with no  
3 covenants. Unlike when we come to you guys a year  
4 ago, year and a half ago, they're a lot more  
5 favorable.

6 So we think there could be opportunity out  
7 there. We're not looking to go to the street until  
8 sometime the first quarter, the second quarter next  
9 year. Because of our first package and the way it  
10 works, it'd be detrimental for us to do that. But  
11 it is something that we'd like to have at least in  
12 our toolbox, and it's not something that we can do  
13 without coming back to you and going to the  
14 Gaming Commission and seeing.

15 Before we invested all this time and took all  
16 these guys -- and I spent a lot of time visiting  
17 with people at the tracks, some on their farms,  
18 went to all their board meetings that they asked me  
19 to and explained the whole situation and what this  
20 can do and where we end up with this thing -- just  
21 it worked. It made sense. The legislature give us  
22 the ability to do this when they give us the  
23 ability to go from the 10 to 12 percent.

24 And it's something that we think, and when you  
25 look at the other states and the peers, it puts us

1 at least arm's length above them in the ability to  
2 be flexible to create what we think's one of the  
3 best industries, you know, in this arena. Gives us  
4 every tool we need. And we're really excited about  
5 it, as we think the horsemen. I think, as you  
6 heard, the horsemen are really excited about it.

7 Q You indicated that subordination would be a tool in  
8 your toolbox. Would it be an important tool in  
9 your ability to go back to the market to check  
10 refinancing?

11 A It's something we'd have to go back to the market.  
12 I already alluded to this earlier. Today we have a  
13 good financing package. We got no issues today.  
14 We're quite satisfied with it under our current  
15 scheme. And when I say scheme, I mean our  
16 financial scheme that we're under today that you  
17 guys approved a year, year and a half ago.

18 There's nothing that we have in that toolbox  
19 that would help us to improve on that, okay. If we  
20 had this, that would improve our situation  
21 dramatically for us to go back to the street and  
22 say, hey, where can we price this thing at now, how  
23 much flexibility do we have, and what can you do.

24 We have done some what you call kind of  
25 feather-in-the-wind questions with Wall Street

1 about this, and they're saying, hey, you know,  
2 yeah, if you get it, come back because we're  
3 willing to listen to you. And it's important. If  
4 you don't have it, you know . . .

5 We all think from talking to them that we're  
6 in pretty good shape right where we're at, we're  
7 pretty happy where we're at, we're going to keep  
8 rowing the boat. But it's a tool that we have to  
9 have before we go to the street if we're going to  
10 try to reprice and refinance this thing and do  
11 these capital improvements in what we call the  
12 expedient way, with good economic soundness.

13 Q Rod, if you have anything to add to the Commission  
14 at this time, feel free to do it. Otherwise, I  
15 don't have anymore questions.

16 A I would just like to ask you to approve this. I  
17 mean, it's been worked on hard. You know, from my  
18 opinion, and I'm sure some of these guys that's  
19 been with us for twenty years working with thing,  
20 is this is a culmination of effort that looks like  
21 it's probably finally come to an end. We don't  
22 have to worry and fight every day with the  
23 legislature and this body or that body over there  
24 of justifying why we have to have this money, why  
25 it's so important to the industry.

1           So, you know, I would ask you to approve it.  
2           Obviously any final approval that we do, we got to  
3           bring back to you. Counsel with at least two of  
4           the big law firms in town that, yes, we do have the  
5           right to do this, and so that's the premises that  
6           it was built on and it was taken to the table with.

7           I would appreciate your consideration. Thank  
8           you very much. I'll take any questions.

9           MR. BABBITT: Pass the witness.

10          CHAIRMAN DIENER: Commission counsel?

11          MS. ELLINGWOOD: No questions.

12          CHAIRMAN DIENER: Commissioners?

13          COMMISSIONER SCHAEFER: Rod, ask you a  
14          question. Is there any funds from the gaming side  
15          that's going to be subordinated?

16          MR. RATCLIFF: Is there any funds from the  
17          gaming side?

18          COMMISSIONER SCHAEFER: From the slots.

19          MR. RATCLIFF: It is the slots.

20          COMMISSIONER SCHAEFER: I know.

21          MR. RATCLIFF: It is the slots. Everything  
22          would be subordinated.

23          COMMISSIONER SCHAEFER: Okay.

24          MR. RATCLIFF: From our standpoint.

25          COMMISSIONER SCHAEFER: What I'm saying is

1 similar to the horsemen's funds that you're going  
2 to subordinate on the gaming side. I can't think  
3 of anything. Just curiosity.

4 MR. RATCLIFF: Not that I'm aware of.

5 But one of the questions I'd like to address  
6 that I heard you ask a previous gentleman that  
7 stood up here is, I mean, this is just the slots  
8 money, the \$56 million that we're trying to  
9 subordinate. You understand they have purses that  
10 are created other ways every day that's not being  
11 subordinated. I mean, there's still people coming  
12 to the track, there's still people simulcasting.  
13 They're still going to have purses. This would be  
14 the same effect as if the Governor's budget bill,  
15 101, would have taken away all the money. It's the  
16 very same effect.

17 COMMISSIONER SCHAEFER: Let me ask you: If we  
18 do not approve this \$56 million, are you saying  
19 you're not going to go back into the market?

20 MR. RATCLIFF: No. There would be no reason  
21 for us to go to the market to try to refinance.  
22 Our financing package is pretty good under the  
23 shape that we're in today. It's solid. It's  
24 sound. It's a lot better than we even brought to  
25 the Commission a year, year and a half ago.

1           COMMISSIONER SCHAEFER: Miss Schaeffer said  
2 your cash flows were much improved.

3           MR. RATCLIFF: They are.

4           COMMISSIONER SCHAEFER: You're saying a year  
5 from now we're not going to be sitting here.

6           MR. RATCLIFF: We don't anticipate going back  
7 to market. However, if we can get 3 percent,  
8 4 percent interest, you know, without the  
9 subordination, well, yeah. I mean, any good  
10 businessman's going to go, like any of you guys  
11 would with your businesses. But we don't know that  
12 we can do that today. We would not be able to do  
13 that until February, so that's still three to  
14 four months off for us to even take a look at it,  
15 because some of our prepayment penalties on the  
16 package that we brought to the Commission a year  
17 ago.

18           COMMISSIONER SCHAEFER: So you're also saying  
19 without this agreement, a seven-year plan is not  
20 going to occur?

21           MR. RATCLIFF: No. It can't. And the reason  
22 is, as we're doing these things, economics provide,  
23 we might want to change, you know, where we shift  
24 and where we put money. They're getting 12 percent  
25 today, which we're absolutely ecstatic about and

1 they're ecstatic about. But what if sequestration  
2 and the budget stops and we go into a deep  
3 depression next year? Okay. Why would we want to  
4 be stuck with a 12 percent? The track owners got  
5 nothing is and we're putting the \$56 million out,  
6 we're losing money because we're into a economic  
7 depression.

8 This is something we thought when everybody  
9 sat around the table, and it was very conciliatory.  
10 I mean, there was no bad blood anywhere. I think I  
11 love these guys as much as I think they love me.  
12 From the extent the way it was done is that how can  
13 we all win, how can they win, how can the  
14 facilities win, how can the owners win, how can  
15 everybody win.

16 COMMISSIONER SCHAEFER: All right. Thank you.

17 CHAIRMAN DIENER: Yes?

18 COMMISSIONER WEATHERWAX: Mr. Chairman, it's  
19 been my experience in business that sometimes the  
20 best time to ask for money's when you don't need  
21 it. That's kind of what I think I hear you saying.

22 MR. RATCLIFF: That's what we're trying to do  
23 here.

24 COMMISSIONER WEATHERWAX: If you needed money,  
25 if you were in a desperate situation --

1 MR. RATCLIFF: Not going to approve it.

2 COMMISSIONER WEATHERWAX: So I think it's  
3 obvious to me that with the financial stability  
4 that I see after reading all these reports that you  
5 do have a sound basis to go forward and try to do  
6 better.

7 MR. RATCLIFF: And that's what we're trying to  
8 do, and we see this as one great opportunity to do  
9 that.

10 CHAIRMAN DIENER: Any other questions from the  
11 Commission? There are none.

12 MR. RATCLIFF: Thank you.

13 CHAIRMAN DIENER: Mr. Babbitt?

14 MR. BABBITT: No further questions.

15 CHAIRMAN DIENER: Do you want to wrap up your  
16 presentation? Is there anything else?

17 MR. BABBITT: Just sort of housekeeping, and  
18 then Phil would be certainly pleased to do that. I  
19 want to make sure that the documents on our exhibit  
20 list are admitted into evidence. We have No. 1,  
21 the Initial Distribution Agreement, so we're asking  
22 that that be admitted.

23 CHAIRMAN DIENER: It was.

24 MR. BABBITT: And the testimony supporting it  
25 by the signatories.



1           The joint petition is part of the Commission's  
2 file, so we're asking that that be put into  
3 evidence. We've asked that the Commission take  
4 official notice of its final order of January 7,  
5 2013, so that would be a document. The report of  
6 the Commission Staff obviously that has been  
7 prepared to be made a part of the record. That any  
8 of the pre-filed testimony.

9           We supplemented with three things. There were  
10 some questions that were posed to us that we  
11 responded to in a letter that was issued by our  
12 office on October 17. We're asking that be made  
13 part of the record. My October 22 letter of  
14 correction because I had the wrong date for the  
15 meeting at Hoosier Park. And then we were asked by  
16 Counsel to put together on the subordination issue  
17 an October 22 memo, which we submitted through  
18 Mr. Keeler.

19           So we would ask that all those documents be  
20 made part of the administrative record.

21           CHAIRMAN DIENER: To the extent they're not,  
22 they are part of the record. As well as the  
23 document outlining your presentation this morning  
24 is part of the evidentiary record.

25           MR. BABBITT: Thank you so much.

1           CHAIRMAN DIENER: Mr. Bayt.

2           MR. BAYT: Thank you, Mr. Chairman. I will be  
3 as brief as I can.

4           You've heard the testimony today, you've heard  
5 our presentation, you've seen the materials. We  
6 truly believe that there are significant benefits  
7 to both parties.

8           Benefits to the associations include a maximum  
9 distribution percentage of 12 percent, possibly  
10 over as long as seven years. Predictability and  
11 stability. The tracks receiving additional  
12 important racing side capital improvements of up to  
13 \$36.5 million. Beneficial operational changes that  
14 could be put in place that will help everybody.  
15 And a management team that continues a positive  
16 relationship with the associations. Just some of  
17 the benefits of a long-term arrangement.

18           From the licensees' point of view, a long-term  
19 arrangement provides potential financing options,  
20 as we've heard today, that could reduce the cost of  
21 capital, provide additional capacity to do capital  
22 projects, and could simplify its debt structure.  
23 We also understand that a long-term deal could  
24 increase the financial stability of the licensees  
25 and provide continuity of that important

1 relationship between the licensees and the  
2 associations.

3 We're mindful that there are a variety of  
4 statutory requirements that must be evaluated by  
5 the Commission. In particular, that the agreement  
6 be in the best interest of racing, have the highest  
7 standards of integrity, have fairness to all  
8 parties, have financial stability to the licensees,  
9 and pass any other relevant factors that the  
10 Commission would consider appropriate.

11 As to the best interest of racing, you've  
12 heard today that the IDA will create a continuation  
13 of the excellent relationship between the  
14 associations and the licensees. There'll be  
15 immediate racing side capital improvements of  
16 \$5 million; and if there's a long-term deal that  
17 can be put in place, an additional \$31.5 million  
18 for a total of \$36.5 million.

19 A long-term deal will provide greater  
20 stability and predictability for all the parties.  
21 A long-term deal will, most importantly, provide an  
22 improved environment for the participants, equine  
23 athletes, and the spectators.

24 As to integrity, we believe we've met that  
25 standard as well. All negotiations were conducted

1 at arm's length, with stability, with the benefit  
2 of counsel, by keeping members informed, and by  
3 utilizing the open door and public meeting process.

4 As you've heard from testimony, the  
5 transaction in the agreement is fair to all the  
6 parties. The associations and the licensees have  
7 unanimously agreed to the terms of the IDA and  
8 believe it to be fair. All parties get the benefit  
9 of a potentially long-term deal. The licensees  
10 have an opportunity to obtain favorable refinancing  
11 if this is put in place.

12 And most importantly, there are five different  
13 levels of safeguards to protect the associations in  
14 the event that we get to refinancing and there is  
15 an opportunity to consider subordination and its  
16 terms at that time. Not asking for subordination  
17 today; we're asking for contractual capacity to  
18 have that.

19 Those safeguards include: Demonstrating  
20 \$27.5 million of annual cash projections, the  
21 association's agreement with those projections,  
22 Gaming Commission approval, this body's approval,  
23 and your body's, of course, retention of your  
24 enforcement powers no matter what.

25 We believe that financial stability has also

1       been demonstrated today. A long-term agreement  
2       provides predictability of expenses. It's the best  
3       path for stable, long-term financing with  
4       significant capital expenditures to promote racing.  
5       And 609 has eliminated the cap payments to the  
6       State, to result in a \$13 million annual cost  
7       savings to the licensees starting in 2014.

8               In summary, we're respectfully asking for the  
9       approval of the IDA. We believe, as you've heard  
10      today from some of the witnesses, that this matter  
11      is important. You've heard today -- and I'm here  
12      to reiterate -- that we believe that there is  
13      authority for this body to approve the agreement as  
14      written. Notwithstanding some complexity in the  
15      statute, 609, as codified, says in part that the  
16      amount of slot machine revenue that must be  
17      distributed under 12(b)(2) must be determined in a  
18      distribution agreement entered into by a  
19      negotiating committee representing all licensees  
20      and the horsemen's associations, having contracts  
21      with licensees that have been approved by the  
22      Indiana Horse Racing Commission. Subsection (e)  
23      says that that agreement may contain any terms  
24      determined to be necessary and appropriate by the  
25      negotiating committees.

1           We believe that this changes the landscape  
2           legally to create a representative form of  
3           government and that the associations are the  
4           appropriate parties to carry the weight with  
5           respect to the agreement that needs to be made by  
6           law.

7           In looking above your heads at the mural,  
8           quite so well done, I note that Indiana has  
9           tremendous history of agriculture and agribusiness,  
10          and horse breeding, horse training, and horse  
11          racing is a significant part of that. The horse  
12          racing industry, the breeding industry, and the  
13          training industry face an enormous challenge in  
14          this country. You've heard about the disparity  
15          between Indiana and other states in terms of how  
16          this Commission and how the licensees work with the  
17          horsemen's associations and the members.

18          Notwithstanding that great reputation and that  
19          great relationship, we are at risk. There is a  
20          battle. The battle is for the next generation of  
21          patrons who will come to the racetracks. It's the  
22          battle for the next generation of people who live  
23          on farms who are attracted to the horse industry to  
24          find a career path that makes sense for them  
25          financially and for one that's rewarding.

1           We're on the cusp. We have an opportunity to  
2           create a very, very stable platform, a beneficial  
3           platform, for horse racing and horse breeding and  
4           horse training in Indiana. This is an opportunity  
5           today that we shouldn't pass. We should seize the  
6           opportunity, approve the IDA, and allow the  
7           licensees and the associations, and those that they  
8           represent to find a mutually beneficial path  
9           towards winning the challenge that they face today.

10           Thank you for your time. We appreciate it,  
11           and we're open to any questions.

12           CHAIRMAN DIENER: Thank you, Mr. Bayt.

13           We'll hold questions until we get the rest of  
14           the direct evidence presented. You or Mr. Babbitt  
15           may be called back, and either one of you will be  
16           given an opportunity for any rebuttal or questions  
17           of the staff.

18           MR. BAYT: Thank you.

19           CHAIRMAN DIENER: Thank you. Just want to  
20           make sure. The direct case of Centaur has been  
21           presented?

22           MR. BABBITT: It has been presented,  
23           Mr. Chair.

24           CHAIRMAN DIENER: Commission Staff report,  
25           Miss Ellingwood.

1 MS. ELLINGWOOD: Mr. Babbitt actually has  
2 already asked that that exhibit be entered into  
3 evidence under his motion as Exhibit No. 4. So to  
4 the extent the Commissioners have any questions  
5 about that report, it's included in your binder  
6 under Tab 1.

7 CHAIRMAN DIENER: It's admitted. And can the  
8 author of the report describe who he is and how he  
9 presented it and what have you, so we understand  
10 what it is and be prepared?

11 JOE GORAJEC, having been previously duly sworn  
12 by the Chairman, took the stand and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MS. ELLINGWOOD:

16 Q Mr. Gorajec, can you state your name and spell it  
17 for the court reporter, please.

18 A Name is Joe Gorajec. It's J-o-e, G-o-r-a-j-e-c.

19 Q And what is your position with the Commission?

20 A I'm the executive director.

21 Q And what's your experience in the industry?

22 A I've worked in the horse racing industry since  
23 1979. I am a 1981 graduate of the University of  
24 Arizona's racetrack industry program. Prior to  
25 coming to Indiana twenty-three years ago to serve



1 as the Commission's executive director, I held a  
2 handful of jobs within the industry in different  
3 capacities, working as a racing official, working  
4 as a general manager, and also working with breed  
5 association.

6 Q You've been provided in Tab 1 of your book with a  
7 copy of a document entitled Indiana Horse Racing  
8 Commission, Staff Report, Analysis of Initial  
9 Distribution Agreement. Do you recognize that  
10 report?

11 A Yes, I do.

12 Q Is it a true and accurate copy of your report?

13 A Yes, it is.

14 Q Did you submit your report freely and voluntarily?

15 A Yes, I did.

16 MS. ELLINGWOOD: Chairman, I believe that  
17 concludes all my foundational questions for  
18 Mr. Gorajec for Exhibit No. 4, which has been  
19 offered into evidence.

20 CHAIRMAN DIENER: Any further questions,  
21 Miss Ellingwood?

22 MS. ELLINGWOOD: I do not.

23 CHAIRMAN DIENER: Questions from the  
24 Commission for Mr. Gorajec?

25 Mr. Babbitt, questions for Mr. Gorajec?

1 MR. BABBITT: Mr. Chair, we don't have any  
2 questions of Mr. Gorajec. We are thankful, not  
3 only for the report, but his ability to generate  
4 this. I know he reviewed a lot of information and  
5 had to issue his report in a compressed period of  
6 time, and we're very thankful for that.

7 CHAIRMAN DIENER: Thank you.

8 That concludes the direct cases of the  
9 Commission Staff and Centaur.

10 Did any non-party sign up to present their  
11 views on the distribution agreement at the back of  
12 the room?

13 MS. BARNES: No.

14 CHAIRMAN DIENER: Nobody signed up. That's  
15 fine.

16 Mr. Babbitt or Mr. Bayt, a short time, if  
17 there's any more you want to say in rebuttal,  
18 direct, whatever. I don't want to open up the  
19 whole thing.

20 It's done, okay. The evidentiary record in  
21 the hearing of the Initial Distribution Agreement  
22 is closed.

23 At this time the Commissioners, the four of us  
24 which constitute a forum, will enter into its  
25 deliberations to see if there's a decision on this

1 matter. These deliberations will be without any  
2 benefit, comments from anybody else in the room,  
3 except if a Commission member might have a question  
4 for Commission counsel. Other than that, the  
5 record of evidence is closed, and we enter into, as  
6 we are required, our deliberations.

7 Again, exercise my prerogative, if you don't  
8 mind, to share some of my thoughts, and then we'll  
9 see if we can get a decision today, if we can or  
10 can't.

11 The 2013 amendments provided very clearly that  
12 the amount of slot machine revenue to be  
13 distributed would be determined in a distribution  
14 agreement between the tracks and the horsemen's  
15 associations. That amount in the matter before us  
16 today was determined to be 12 percent. There was  
17 no change to the statute with respect to the  
18 mandatory distribution and allocation of the amount  
19 of those slot machine revenues, which would be  
20 agreed upon.

21 I think there's substantial -- and I emphasize  
22 substantial -- benefits from this distribution  
23 agreement, both from the multi-year aspects of it,  
24 to the stability of the horsemen's associations, to  
25 the horse industry, and to the tracks. There are

1 many commitments in Exhibits A and B which  
2 individually some of them will require future  
3 individual Commission approval, but the outlines in  
4 the agreements, I think, are very, very positive.

5 My problem is only with one provision in the  
6 agreement, and that's the subordination provision,  
7 Section 5(c). And I think the law, the statute,  
8 our enabling statute, that the three horsemen's  
9 associations have no right to receive or any  
10 authority to subordinate monies coming from slot  
11 machines for purses and breed development. I think  
12 it's been confirmed by the testimony we've heard  
13 this morning that these horsemen's associations  
14 have not and do not receive such monies now.

15 The slot revenues that are for the purses and  
16 breed development are to benefit individual owners  
17 and trainers who participate in racing at the  
18 track. I think it would be bad precedent and bad  
19 policy to bless a horsemen's association's rights  
20 to have some authority over purses and breed  
21 development funds. Those are based upon the  
22 outcome of races at one of the two tracks, and no  
23 consideration should be given to what an  
24 association thinks about distributing purses or  
25 breed development funds to individuals. That's

1 determined from pari-mutuel wagering.

2 I don't want to prolong this. I just have  
3 that one problem I can't get over. I can't get  
4 over it as a matter of law. I can't get over it as  
5 a matter of policy.

6 We have a lot of options today. We could  
7 approve the Initial Distribution Agreement as  
8 submitted, and as recommended by Centaur, all three  
9 horsemen's associations, as well as ITOBA, and as  
10 recommended by our own Commission Staff.

11 We could approve the Initial Distribution  
12 Agreement subject to the elimination of Section  
13 5(c), which covers the subject of subordination, or  
14 at least clarify Section 5(c) so that, at most, a  
15 horsemen's association can only subordinate the  
16 monies it currently receives directly for its own  
17 benevolences, equine promotion and development, or  
18 its own administrative operating expenses.

19 A third option would be just to reject the  
20 entire Initial Distribution Agreement, and then it  
21 becomes the Commission's responsibility to set a  
22 percentage as the amount. We don't get involved  
23 with other terms and conditions of the agreement;  
24 we just set the percentage. Everybody's agreed to  
25 12 percent.

1           And I apologize to my fellow Commissioners for  
2 taking so long. And my concerns and my inability  
3 to approve this agreement, I do not like, because  
4 this is a good thing for the industry, but I'm  
5 constrained by what I think are the authorities  
6 delegated to me by the General Assembly under  
7 enabling statute.

8           So I would defer to people expressing their  
9 concerns, telling me I'm nuts, whatever.

10           COMMISSIONER SCHAEFER: Can I do that?

11           CHAIRMAN DIENER: You can do anything you  
12 want. Nobody can comment. They'll just sit there  
13 and laugh.

14           COMMISSIONER SCHAEFER: I will second what the  
15 esteemed Chair said from a legal standpoint. But I  
16 also, from being a businessman and being party to  
17 some of these same agreements that you're going  
18 into, not nearly the dollar amounts -- and God help  
19 me if I ever got to that point -- but I know what  
20 is in these agreements and especially subordination  
21 agreements.

22           Let me first start by saying  
23 Centaur Management, I have the highest regard for  
24 you, just like many of you do. What they've been  
25 through the last four or five years has been

1 nothing short of remarkable to come out where we  
2 are today.

3 But enabling them to borrow more money from  
4 some New York bankers, Wall Street bankers, is  
5 something that I cannot go along with. I go back  
6 to the covenants that are going to be in these  
7 agreements. New York bankers don't care about the  
8 horse racing industry in Indiana. They want those  
9 slot revenues. And Rod Ratcliff one day gets up  
10 and seizes or forgets to take his vitamins or, God  
11 help us, he doesn't get out of bed, they're going  
12 to enforce the covenant. I'm positive that's going  
13 to happen.

14 I can't in good conscience sit here and let  
15 that happen. Because it could be, as Mr. Bayt very  
16 nicely put it, a two-month end here, but it could  
17 be a year, could be two years, could be five years.  
18 What does that do to the horse racing industry of  
19 this state? I don't want to be part of that. I  
20 don't want to answer those questions why did you do  
21 this.

22 So strictly from a business standpoint, I  
23 cannot go along with this. As the esteemed Chair  
24 said, I will be more than happy to okay the  
25 agreement if we took the subordination out of it.

1 That is just my part. It's too risky to the  
2 overall industry from a business standpoint. Thank  
3 you.

4 CHAIRMAN DIENER: Commissioner Schenkel, any  
5 observations? Thoughts?

6 COMMISSIONER SCHENKEL: Question probably more  
7 than anything. I'm a non-lawyer, so the questions  
8 will be probably pretty insufficient in some  
9 regard. Without the subordination -- and I  
10 understand your concerns, Steve -- doesn't that  
11 kind of dilute and make ineffective that long-term  
12 stability and that certainty that everybody's  
13 looking for?

14 I mean, I understand, you know, and I spent  
15 some time in the banking business, but I never made  
16 a bad loan because they wouldn't let me make loans.  
17 So I've got limited knowledge of that, but on  
18 subordinations there's always risk. And I keep  
19 going back to the question in my own mind about if  
20 we could eliminate risk altogether, we wouldn't be  
21 here. There's always going to be some risk as we  
22 look at issues like this.

23 I'm also questioning, I guess, Mr. Chairman,  
24 from the standpoint -- and this is just an ignorant  
25 question, not being a lawyer -- but I understand



1 your concern about the inconsistency in the  
2 statute. But I guess one of the options that you  
3 outlined that I didn't hear is what happens if we  
4 approve this, is somebody likely to challenge the  
5 action? If we were to approve it, would somebody  
6 likely challenge the action based on the legal  
7 interpretation that you have and then where are we?

8 CHAIRMAN DIENER: I would have no idea.

9 Whether individual owner or trainer might go to the  
10 Court, I don't know. That was immaterial to my  
11 concerns, Greg --

12 COMMISSIONER SCHENKEL: Okay.

13 CHAIRMAN DIENER: -- because I felt my  
14 authority was limited by our statute. I wasn't  
15 looking for who might, but I have no idea.

16 COMMISSIONER SCHAEFER: I will tell you that  
17 if that subordination agreement is enforced, at  
18 some point a year from now, there will be lawsuits  
19 that are filed.

20 COMMISSIONER SCHENKEL: That's what I thought.

21 CHAIRMAN DIENER: Tom? Being this is the  
22 first meeting for you, which you've probably got  
23 more experience and clearly a lot better eyesight  
24 than some of us who've been too close to it.

25 COMMISSIONER WEATHERWAX: Well, I come from a

1 different perspective, Mr. Chairman. Having been  
2 in business in manufacturing but also across the  
3 street over here, I think first seven witnesses  
4 pretty well told me that we were the greatest  
5 threat to the horse racing industry in the  
6 General Assembly. If you don't get that, you don't  
7 understand why part of this legislation's here.

8 The uncertainty, the inability for these guys  
9 to plan or to create the breed, it takes about a  
10 seven-year cycle, I think, if you're lucky. And  
11 there's no guarantees in any business that I've  
12 ever been in. There certainly is a risk, even in  
13 farming. I guess the word risk totally describes  
14 the horse racing industry, because obviously when  
15 these men invest, they go through all the breeding  
16 stock and they do all the things they do to spend  
17 thousands of dollars, there's no guarantee they're  
18 going to get what they want.

19 So I look at it differently. I've been  
20 through business that has suffered through great  
21 interest rate increases and inflation. And if  
22 you're anywhere close to knowing what's going on in  
23 this world, you have to realize that you can't have  
24 zero percent interest cost without paying the piper  
25 someday down the road. And I believe that day is

1 very quickly coming on us.

2 So my point is: If you have the ability to  
3 refinance, 2 or 3 percent on interest of millions  
4 of dollars is a lot of money. I used to borrow not  
5 quite this much money but close to it, and it will  
6 wipe you out if you don't have the ability to lower  
7 your interest rates by every bit you can when you  
8 can.

9 And I think all of these parties have agreed  
10 to this. I don't agree with you on the  
11 Senate Bill 609, because I know how we got here.  
12 In the beginning I was there with Sarah Borst when  
13 we created this entire pari-mutuel opportunity, and  
14 I know what the intent was, and I know that this is  
15 a very big business, a very big industry. It's  
16 probably over a billion dollars now. I don't know  
17 what it is.

18 But I think we want to do what we can to  
19 instill the stability of these people to go  
20 forward, and it's very unique that the  
21 General Assembly would ever put something together  
22 like this to give this economy to these people to  
23 kind of craft their own future with their own  
24 incentives to do the best job that they can and use  
25 the money they can. You know, they made cuts in

1 the process, but they let you grow the business  
2 yourselves.

3 So I think that's where the horsemen are  
4 coming from, if I can give you my interpretation on  
5 how we got here. I know how we got here, but I've  
6 not been a part of this group. I'm quite aware of  
7 the fact that my background . . . I'm not too sure  
8 that this was a honor the Governor gave me or just  
9 a penitence for my twenty-five years in the  
10 General Assembly. But I understand what they tell  
11 you, and when they have these legislative, my  
12 friends come to them and threaten every year to  
13 mess with the formula, to change the formula or to  
14 eliminate their funding, that's pretty much a death  
15 nail into what you call growing the business.

16 So I have little different approach to this.  
17 I hear what you're saying about subordination.  
18 That is a bold statement, bold step. But I don't  
19 have any reservations, Mr. Chairman.

20 CHAIRMAN DIENER: Thank you, Tom.

21 We need three votes to take affirmative action  
22 today. I'll make a motion, see if we get a second;  
23 and if that fails, we'll find a different motion.

24 My motion would be to approve the  
25 Initial Distribution Agreement, subject to the

1 elimination of Section 5(c) therein.

2 COMMISSIONER SCHAEFER: Second.

3 CHAIRMAN DIENER: Further discussion? Try to  
4 build on it?

5 COMMISSIONER SCHENKEL: I want to make sure I  
6 understand. That leaves everything intact but  
7 eliminates the subordination entirely?

8 CHAIRMAN DIENER: Just the subordination.

9 COMMISSIONER SCHENKEL: Well, but that changes  
10 the whole gist.

11 CHAIRMAN DIENER: May or not. I don't know.

12 COMMISSIONER SCHENKEL: I'm trying to figure  
13 out what the practical impact of that is.

14 MR. BABBITT: Can we be heard?

15 MR. BAYT: Mr. Chair, is it possible to hear  
16 Counsel?

17 CHAIRMAN DIENER: No. We don't need any. You  
18 can come back to us, if we happen to pass this,  
19 tell us what it was. If we get vice versa  
20 testimony, we're not going to discuss it.

21 MR. BABBITT: The statutory authority of the  
22 Commission to approve an agreement and revise it  
23 has not been yet discussed. So we would respect --

24 CHAIRMAN DIENER: We're making a motion to  
25 approve the agreement subject to the elimination of

1 Section 5(c), which has been made and seconded.  
2 It's not for discussion except amongst and between  
3 the Commission as we're in deliberation.

4 MR. BABBITT: Could you note our objection  
5 under IAC 4-35-7-17, as that being not an available  
6 option to the Commission with respect to action  
7 that it takes on an Initial Distribution Agreement?  
8 We would like to make a record that we object on  
9 the basis of the statute because we believe the  
10 statute clearly says that if there's a deficiency  
11 that the Commission gives the negotiation committee  
12 an opportunity to address those. It doesn't  
13 provide that the Commission can parse bits and  
14 pieces of an agreement that the parties entered  
15 into.

16 CHAIRMAN DIENER: I'm not going to speak to  
17 you, Robin. But I would advise the Commission that  
18 that does apply. We've found no deficiency. The  
19 12 percent is fine. We approve the entire  
20 agreement, except for the elimination of one  
21 section. The parties, Centaur and the joint  
22 petition, they can come back to us at any time, if  
23 they want to request some re-hearing, some  
24 amendments and change to that.

25 Right now no decision has been made, so I

1 think it's premature.

2 COMMISSIONER SCHAEFER: Greg, your question, I  
3 don't see anything that would happen, other than  
4 they would not be able to borrow more money, is  
5 what I'm looking at. The rest of the agreement,  
6 the seven years, if they don't want to go through  
7 with the improvements, then they'd have to come  
8 back to us and tell us that. The seven-year  
9 agreement, everything would stand in the agreement  
10 as it is today.

11 COMMISSIONER SCHENKEL: Okay. But then I  
12 guess the other question I have is: If  
13 subordination is in there, if it remains in this  
14 agreement, they still have to come back to this  
15 Commission before any financing is approved going  
16 forward; correct?

17 CHAIRMAN DIENER: Oh, yes. We're not  
18 addressing whatsoever.

19 COMMISSIONER SCHENKEL: So all we're doing is  
20 putting a tool there. Okay, thank you.

21 CHAIRMAN DIENER: Further questions?

22 COMMISSIONER WEATHERWAX: Well, but I think  
23 that speaks to the real reason why we're here. And  
24 that is, that with the language in this agreement,  
25 the way I read it, you heard them talk about

1 refinancing as a key part of the toolbox. They're  
2 going to have to come back to us after we do  
3 whatever we do; but if they don't have that  
4 toolbox, they can't get a better deal.

5 CHAIRMAN DIENER: That could be the case.

6 Ready to vote? All in favor of the motion to  
7 approve the Initial Distribution Agreement subject  
8 to the elimination of Section 5(c), say aye.

9 COMMISSIONER SCHAEFER: Aye.

10 CHAIRMAN DIENER: Aye.

11 Opposed, same sign.

12 COMMISSIONER SCHENKEL: Nay.

13 COMMISSIONER WEATHERWAX: No.

14 CHAIRMAN DIENER: Motion did not carry.

15 Anybody have another motion?

16 COMMISSIONER WEATHERWAX: Mr. Chairman, I'm  
17 not the right person probably to do this because  
18 I'm the newest member of this Commission. But I  
19 would like to propose that we approve this IRD as  
20 submitted, subject to their coming back, of course,  
21 to give us the final review after we pass it.

22 CHAIRMAN DIENER: Final review of what?

23 COMMISSIONER WEATHERWAX: Well, once they have  
24 the agreement in place, I think it still has to  
25 come back. They have to come back.



1 COMMISSIONER SCHENKEL: Before the financing.

2 CHAIRMAN DIENER: Oh, financing? Yes.

3 COMMISSIONER WEATHERWAX: I mean, I think  
4 maybe I don't have to say that if it's already  
5 understood.

6 CHAIRMAN DIENER: There's no financing until  
7 all --

8 COMMISSIONER WEATHERWAX: So I would just make  
9 the motion that we approve this agreement as  
10 submitted.

11 CHAIRMAN DIENER: Second to that motion?

12 COMMISSIONER SCHENKEL: Second.

13 CHAIRMAN DIENER: All in favor.

14 COMMISSIONER SCHENKEL: Aye.

15 COMMISSIONER WEATHERWAX: Aye.

16 CHAIRMAN DIENER: Opposed.

17 COMMISSIONER SCHAEFER: Nay.

18 CHAIRMAN DIENER: Nay.

19 Anybody smart enough to have an alternative?

20 MS. ELLINGWOOD: Chairman, to the extent the  
21 Commission considers the inclusion of a  
22 subordination clause to be a deficiency of the  
23 proposed agreement, as Mr. Babbitt pointed out,  
24 again, Indiana Code 4-35-7-17(b) requires the  
25 Commission to allow the parties opportunity to

1 correct that deficiency and then resubmit it to the  
2 Commission for consideration. The deadline is  
3 January 1 of 2014. The Commission does still have  
4 some time to allow the parties to brief the issue,  
5 come back to the table for consideration at the  
6 December meeting.

7 CHAIRMAN DIENER: The reason I didn't answer  
8 Mr. Babbitt's question on merits is no such  
9 decision was made to eliminate 5(c), so there is no  
10 deficiency as such. At the present time we've got  
11 a distribution agreement which there are not three  
12 votes to approve.

13 Obviously the petitioners have the opportunity  
14 to present a different agreement, if they want to,  
15 at our December meeting, or not. We're not  
16 scheduled to have our fifth commissioner on that  
17 day, so won't be able to break the 2-2 split.

18 Barring that, the Commission's fallback  
19 position, I believe, under the statute is to set  
20 12 percent as the agreed-on percentage for 2014,  
21 period, without any consideration of the agreement.  
22 So I think the deliberations are closed. We have  
23 been unable to take action. December 10 is our  
24 next Commission meeting.

25 We will recess until 1:00, lunch. We still

1 have a full afternoon agenda. Thank you for  
2 everybody's attentiveness.

3 (The meeting recessed from 12:15 to 1:00 for  
4 lunch.)

5 CHAIRMAN DIENER: We're reconvening the  
6 meeting and hearings of the Horse Racing  
7 Commission.

8 We are taking out of order on the agenda.  
9 Agenda item 4 is the hearing on the renewal  
10 application of the Indiana Horsemen's Benevolent &  
11 Protective Association for approval as a registered  
12 horsemen's association. This matter has been  
13 tabled. It will be considered by the Commission in  
14 its December 10 meeting.

15 Yours truly received an electronic e-mail  
16 which had some factual allegations which needed to  
17 be investigated by the Commission Staff because  
18 they go to the heart of our oversight  
19 responsibilities over a horsemen's association's  
20 expenditure of funds. That needs to be  
21 investigated, and we've told the HBPA and its  
22 counsel that this matter's not ready for decision  
23 and will be tabled till December 10.

24 So item No. 4 of the agenda is deleted. Which  
25 means we're ready for item No. 2, which is the

1 hearing on the renewal application of the  
2 Quarter Horse Racing Association of Indiana for  
3 approval as a registered horsemen's association.  
4 Tom Mosley is going to speak to this.

5 MR. MOSLEY: Is it time?

6 CHAIRMAN DIENER: It's time.

7 MR. MOSLEY: All right.

8 CHAIRMAN DIENER: The Commission issued  
9 pre-hearing orders and this is a hearing. This is  
10 a renewal application of the Quarter Horse Racing  
11 Association of Indiana to be registered as a  
12 horsemen's association for 2014. Mr. Mosley.

13 MR. MOSLEY: Good afternoon, Chairman Diener  
14 and Commissioners and Staff. It seems like a very  
15 long time since we've got together.

16 I think I'm going to stick very closely to the  
17 minutes laid out. There's a chance that the one  
18 section might run a little bit into the  
19 ten minutes, may run into the fifteen minutes a  
20 little bit, but the total allotted time, in fact,  
21 will be less than twenty-five minutes.

22 CHAIRMAN DIENER: The clock has already begun.

23 MR. MOSLEY: Yes.

24 I guess I'll just go through the application  
25 with you real briefly, and we'll stop and talk

1 about it. If you want to go through it with me,  
2 that's fine. I'm sure you've all read it from  
3 cover to cover more than once and probably have  
4 most of it memorized. I'm Tom Mosley with the  
5 Quarter Horse Racing Association, M-o-s-l-e-y.

6 We're not going to say anything about  
7 Section 1, according to my notes.

8 So Section 2 is just the identity of the  
9 person that handles the fund, and just to briefly  
10 explain how we have our association set up. We  
11 have elected from the very beginning of this  
12 application process a gaming revenue trustee, and  
13 she's the only one authorized to handle gaming  
14 funds. And she's an outstanding individual,  
15 outstanding pedigree and race record, to put this  
16 in racing terms. Mara Thompson is this lady's  
17 name, and she gives reports to our board of  
18 directors. Any time there's been a need for  
19 documentation or information for the audits, our  
20 association has passed those with flying colors.  
21 We're very lucky to have Mara, and the process of  
22 having the gaming revenue trustee works very well  
23 for us.

24 I'm going to skip now to Section 5. And the  
25 only thing I want to mention here is I noticed the

1 other day by accident on the Commission website --  
2 and I'm not sure that I had seen it before -- that  
3 the Commission has a mission statement, and we've  
4 had a mission statement for a very long time. And  
5 we both want the same things, and I think we've  
6 done a really good job keeping our eye on the ball.

7 Every single thing that we do as far as QHRAI,  
8 whether it was this morning or last week or last  
9 year, is to promote quarter horse racing in  
10 Indiana. And I just want to read this to you real  
11 quickly, Section 5, and this is our exact mission  
12 statement. To promote the growth and enhancement  
13 of quarter horse racing, breeding, and ownership in  
14 Indiana. And without going through and reading  
15 everything to you, a big part of this is part of  
16 what's asked by us in statute and asked by us by  
17 the Commission, is to promote the horse racing.

18 And we believe that over the past ten years  
19 we've done a really, really good job of promoting  
20 quarter horse racing in Indiana. And I've got a  
21 few bullet points there. You know, our program  
22 grew from 3 races roughly seventeen years ago to  
23 what ended up being about 225 races this year. And  
24 we have one of the strongest programs for dollar  
25 received of any program in the country, any breed,

1 any type of racing.

2 And I want to make sure when I say things like  
3 that that it doesn't come across that it's a  
4 negative against anybody else. I'm not comparing  
5 us to any other breed in the state of Indiana. I'm  
6 comparing us to any program anywhere in the  
7 country. We only receive roughly \$4.2 million in  
8 total, and \$4 million of that is purse money. And  
9 to look at what we've done with our money and our  
10 program, it really shows a partnership with Jon and  
11 Brian and Kevin and the racetracks -- I guess it's  
12 racetrack now -- and this Commission that's allowed  
13 us to bring input from our horsemen to this  
14 Commission and to move our industry forward.

15 Real quickly, I just want to touch on a couple  
16 bullet points. 3 races to 220. Our program has  
17 attracted the leading horses and horsemen from  
18 around the country. Although attendance at the  
19 track is not tracked, it has been estimated by  
20 multiple industry officials that quarter horse day  
21 at the track gets some of the largest live crowds  
22 here in Indiana. We continue to attract new  
23 owners, breeders, stallion owners, and trainers.

24 And compared with similar quarter horse  
25 programs around the country, our numbers are at

1 near the top. I won't waste your time with it  
2 right now, but I am going to follow through on  
3 sending you e-mail and it's got a literal  
4 comparison of about 15 different categories of  
5 quarter horse races from all across the country.  
6 And I think you would really, really be surprised  
7 our handle is one of the highest in the country for  
8 any quarter horse program. And we're talking about  
9 programs that have \$20 million in purses. I mean,  
10 it really is something we can all be proud of.

11 And I'll move on to the next section now. I  
12 know the clock is ticking and we've had a long  
13 meeting already. I'm going to move to Section 9,  
14 and it is the section about the organizational  
15 experience. And I won't go into each one of our  
16 directors, but to give you a little bit of an idea.  
17 We have 15 directors that serve our board. They're  
18 elected by the horsemen of Indiana and they serve  
19 three-year terms.

20 We have a president who has the  
21 responsibilities to keep growing and meetings to  
22 keep going. It's getting harder and harder to  
23 trick somebody into fulfilling that role. We have  
24 a president, vice president, treasurer, secretary,  
25 and then I mentioned before the gaming revenue



1 trustee, and then I have a title of industry  
2 relations.

3 But the biggest thing I want to point out  
4 about our directors is the vast levels of  
5 experience in different parts of the industry they  
6 cover. We have breeders and stallion owners,  
7 jockeys, trainers all serve on our board of  
8 directors. And our board of directors isn't a  
9 joke. We have a lot of meetings. We demand a lot  
10 of things from our directors. And every once in a  
11 while, kind of we'll have one that'll hit the road  
12 because they thought it wasn't quite as much  
13 responsibility.

14 Have a great group of people. And the  
15 philosophy that our directors have, Chris and the  
16 officers have tried to instill into them, to give  
17 you an idea of the seriousness we take this, is  
18 that the directors are representatives of the  
19 horsemen. And so if they want to think of it as we  
20 don't ask them not to bring their personal opinions  
21 to our board meetings, but we ask them, you know,  
22 if they want to bring a viewpoint from a breeder,  
23 talk to other breeders. Or if you live in the  
24 south part of the state, represent the people in  
25 the south part of the state. And we really have a

1 lot of good conversation, very, very long meetings.

2 I'll go to No. 12. That is the section with  
3 the numbers, and I will start with the revenue.  
4 The first page that I'm looking at is the expected  
5 revenue for 2014, and this is actually the first  
6 application that we put together that weren't  
7 actual revenue projections that we created  
8 internally. Because of some changes that were on  
9 the horizon for us, we used some forecasted numbers  
10 from Centaur, from some meetings we'd been to. And  
11 we think, you know, gaming revenue is a very  
12 fluctuating thing.

13 But we think that these numbers are pretty  
14 accurate and they'd be slightly increased over what  
15 we've had in the past. And there's kind of a  
16 trade-off there from the 15 percent to 12 because  
17 the cap doesn't affect us anymore.

18 I'm going to go to the first budget. And to  
19 be honest, I've never look at other breed's  
20 applications, so I hope this isn't too hard for you  
21 to look at. But that's our revenue, and then we  
22 have one separate line-item budget for each  
23 account. And there's a few changes, and I'll try  
24 to highlight them.

25 The first one, the page actually says response

1 to 12A. And what this is is the equine promotion  
2 and welfare account, and there's two things I'll  
3 point out. The definition for these line items is  
4 on the next page. A's changed. The Harley Greene  
5 Program, for those of you that aren't familiar with  
6 Harley Greene, he's been a staple in Indiana horse  
7 racing since before I was born. We named the  
8 program after him.

9 This originally was created, it was basically  
10 a horse rescue program. There was some things in  
11 the press about ex-racehorses being at sales for  
12 slaughter, and we created a program to prevent  
13 this, basically a buy-back program. We'll buy any  
14 racing quarter horse anywhere for X amount of  
15 dollars. For five years it never was used.

16 So we basically took an existing program that  
17 didn't have a name and named it the Harley Greene,  
18 which is we make significant contributions to a  
19 horse rescue called Horse Angels, and so that's  
20 what letter A is. If you were to compare the  
21 Harley Greene Program from this year to last year,  
22 that would be the difference.

23 The other thing I want to point out is on B,  
24 the research. We do a lot of business on our board  
25 for no bigger than we are, a lot of business. We

1        have 100 pages of pictures of our business. It's  
2        hard to keep up with everything. And we're going  
3        to make research programs to fund a very high  
4        priority. We've kind of let that lax. It's not  
5        that we don't think it's something that's real  
6        important. It takes time and it takes people to  
7        get on the Internet and find programs that fit  
8        quarter horse racing. So we're going to really get  
9        after that in 2014.

10               The one thing I do want to point out before I  
11        move on to the next section -- and I'm worried that  
12        we're getting through this too fast -- is we  
13        actually put a team of vets together and searched  
14        the entire state of Indiana, every single rescue  
15        program, and wanted to know if they had one racing  
16        quarter horse on their property that was a rescue  
17        horse, and were unable to find one. And we really  
18        think it speaks to the versatility of second-career  
19        programs that we have for quarter horses.

20               And moving on to the last budget, I think.  
21        Maybe the second-to-last budget. This is the  
22        backside benevolence program budgets. This  
23        program's going to be changing for us. And to put  
24        it in perspective, how our program is complicated  
25        and always has been. We roughly had two people

1 living on the backside this year at the racetrack,  
2 two. So when we look at HBPA and ISA or other  
3 bigger organizations having a benevolence program,  
4 it's really harder for us to figure out, and some  
5 of our programs were tailored to people that  
6 trained and did their programs off track. And we  
7 think with the expansion of some different things  
8 at the track and more stalls, we'll have more of a  
9 backside community.

10 The biggest philosophy we have here, first of  
11 all, it's going to be much easier now that we're at  
12 one place all year. We think it's really important  
13 to get the people that live and this is their life  
14 on the backside to be part of the local community.  
15 And we do things like turkey giveaways and  
16 different things in the local community and get  
17 some of the horsemen to go with us.

18 We did tailor our scholarship program to  
19 better fit some changes that we made last year.

20 And I feel like I skipped something here.  
21 Let's see. There we go. This is the last account  
22 is the association account. And I do not believe  
23 that there are any new expenditures. There are  
24 some changes. And the one thing that I would point  
25 out is letter E, that's what we do. We're spending

1       \$50,000 budgeted and could probably spend double  
2       that on marketing horse racing.

3               And the one thing about all of these budgets  
4       that we're really proud of -- and it's harder than  
5       you might imagine -- is to not let these programs  
6       create a bureaucracy that requires all of the  
7       money. We feel like as far as what we're paying  
8       people to do these things is a very, very small  
9       amount of money for what we're doing. We're really  
10      proud of that.

11              And to finish this up. If you will look in  
12      the back, just thumb through those back pages and  
13      all those pictures. We do that. There's not a  
14      marketing company. There's not a national  
15      association. We do that. We lay those ads out.  
16      We get the photographer there. We tell them what  
17      to take a picture of and we tell a magazine what to  
18      do, when to put it in.

19              And that's just what you're looking at. The  
20      programs and the things that the pictures are being  
21      taken out of, those are ours. We've really in the  
22      last few years partnered really good with the track  
23      to keep going on some of these programs to make  
24      them bigger and expand them and the Commission.

25              This year we had Ty Murray Day, which was a

1 really big deal. We tried to set it up where a  
2 retired bull rider who's on our board and Ty Murray  
3 were going to have a contest on this electric bull.  
4 And I missed it. But Ty Murray bowed out, and  
5 somehow Chris might have paid the bull rider  
6 machine off and made him rode it till the bull got  
7 tired, which is long on electronic bull.

8 I would have no problem at all speaking about  
9 another forty-five minutes about the work we do,  
10 but I won't do that.

11 CHAIRMAN DIENER: Mr. Mosley, one quick  
12 question. You mentioned a number of changes as you  
13 went through certain sections of the application.

14 MR. MOSLEY: Yes, sir.

15 CHAIRMAN DIENER: Are those changes from 2013  
16 or changes that you're making today to the current  
17 application?

18 MR. MOSLEY: No. Changes from our last  
19 application.

20 CHAIRMAN DIENER: That's fine.

21 MR. MOSLEY: So if you were to look at the old  
22 application, compare it to this one, that would be  
23 differences you'd see.

24 CHAIRMAN DIENER: That's my understanding.

25 Questions for Mr. Mosley?

1 Thank you very much, Tom.

2 MR. MOSLEY: I've got another five minutes  
3 though, don't I?

4 CHAIRMAN DIENER: No.

5 (Laughing)

6 CHAIRMAN DIENER: Do we have a staff report?

7 MS. ELLINGWOOD: There's a staff report.

8 MR. GORAJEC: I'm deferring my time to Tom.

9 CHAIRMAN DIENER: Denied.

10 (Laughing)

11 MR. GORAJEC: I have no comments.

12 CHAIRMAN DIENER: I need to ask a question.

13 The staff report says fine with the application of  
14 the Quarter Horse Racing Association, with the  
15 caveat the certification required by our rules for  
16 scholarships and adoption of that policy has not  
17 been submitted. Has that been submitted now?

18 MS. ELLINGWOOD: It has been submitted.

19 CHAIRMAN DIENER: So the application is  
20 completed now?

21 MS. ELLINGWOOD: Yes, sir.

22 CHAIRMAN DIENER: Thank you.

23 All those in favor of approving the renewal  
24 application of the Quarter Horse Racing Association  
25 of Indiana to be registered for 2014, signify by



1 saying aye.

2 THE COMMISSION: "Aye".

3 CHAIRMAN DIENER: Same sign, opposed.

4 (No response)

5 CHAIRMAN DIENER: There are none.

6 You are registered for next year.

7 MR. MOSLEY: Thank you.

8 CHAIRMAN DIENER: I need to make one comment I  
9 should have made for all the horsemen's association  
10 applications for registration. This year it was a  
11 little in a state of flux. We weren't quite sure  
12 maybe how much the revenues were going to be based  
13 upon your participation with Centaur and the  
14 negotiation of the distribution agreement, and we  
15 understand that. But we have certain requirements  
16 for registration, and certainly next year they will  
17 be enforced.

18 Each application for registration is due on  
19 September 1. That's more than adequate time,  
20 because these are basically renewal applications,  
21 for each association to get a complete application  
22 together. This year none of the applications were  
23 complete. In the future incomplete applications  
24 will not be processed by the Commission. It's up  
25 to you to meet your responsibilities under our

1 rules. They're well stated and enough.

2 Moving on to the hearing for ITOBA is next on  
3 the agenda. This is the hearing on renewal  
4 application of the Indiana Thoroughbred Owners and  
5 Breeders Association for approval as a registered  
6 horsemen's association.

7 Inasmuch as it's a hearing, I don't think  
8 you've been previously sworn as a witness. Please  
9 raise your right hand.

10 (Ms. Lawton was sworn at this time)

11 CHAIRMAN DIENER: Thank you. Please state  
12 your name and spell it for the reporter, please.

13 MS. LAWTON: My name is Christina Lawton,  
14 C-h-r-i-s-t-i-n-a, L-a-w-t-o-n. I'm the executive  
15 director for ITOBA.

16 I'm here today to present our application for  
17 2014, and I'm going to make this kind of short and  
18 sweet after our whole day so far.

19 But if we go through the application page by  
20 page, it's the opening statement and letters in  
21 there.

22 Then if you go to Question 1, all of our  
23 directors this year stay the same as the previous  
24 year, as well as all of our officers, so there's  
25 nothing really to discuss there.

1           The same with question 2. It's all the same.  
2           Our members this year was 174 when the application  
3           was made. It's up to 182. That is down from, you  
4           know, our previous years, but we're implementing  
5           new things to kind of get member activity and  
6           involvement into our organization.

7           Question 4 states that our dues are \$50 per  
8           year. We do do, you know, a three-year and a  
9           lifetime program and those are different, so it's  
10          three years \$80 and so on and so forth.

11          Question 5, the ways ITOBA promotes, develops,  
12          and improves horse racing in Indiana. And the  
13          third paragraph in that kind of just states  
14          everything we do. The rest of it's just a little,  
15          you know, you all can read through it.

16          But everything's the same from last year,  
17          except for a few. We're doing a donation this year  
18          for the Purdue equine facility, and we promised  
19          them \$10,000 in a three-year period. So, you know,  
20          that'll be for this year, that's new.

21          And then we redid our website this year. We  
22          had a very user-unfriendly website, and we  
23          completely got rid of it, started a new one, very  
24          user friendly. There's not a whole lot on it yet.  
25          We're still, you know, adding things as we go

1 because takes time in the process.

2 But everything else on there is the same we've  
3 done in the past year. I added back in the  
4 two-year-old and training sale. We deleted that  
5 from our program for this year, for 2013, as well  
6 as we didn't do it in 2012. And we've been talking  
7 about doing that again but it's still not concrete,  
8 but I added it so you all knew that we were  
9 thinking of it. And I'll go in more detail here in  
10 a second.

11 Question 6 kind of is detail to everything in  
12 Question 5. Our live horse auctions, there's no  
13 Indiana-bred auction in the United States besides  
14 what we put on here. Indiana breds sell at other  
15 auctions, but we try to promote the breed by having  
16 an Indiana-bred sale.

17 This year we did a all ages sale. So we had  
18 breed mares, stallion prospects -- I don't think  
19 there are any in there, but they were open to it --  
20 weanlings, yearlings, horses in training,  
21 everything. Our average this year was down, but it  
22 was also a different type of sale. And obviously  
23 breed mares in this day don't sell as much as a  
24 yearling does, unless different quality and things.  
25 So our average was roughly \$3,300.

1 Educational newsletters, there's a magazine  
2 that we hire out to do a little newsletter for us  
3 each month, and it goes out to all of our members.

4 Then our stallion season auction, last year  
5 was the first year we did this differently. We  
6 always did a live auction at our banquet, and it  
7 just wasn't very successful. We make money. But  
8 we've been watching other associations, like the  
9 Iowa Thoroughbred Owners and Breeders Association,  
10 and I think there's a couple others that do it  
11 online, and they seem to be very successful and get  
12 just like us from other states and it brings in  
13 quite a bit of revenue that way.

14 I already told you about our website. This is  
15 the next page. Assistance with thoroughbred  
16 retirement and second careers, this is something I  
17 think our board wants to get a little bit more  
18 involved with, but currently, you know,  
19 individually we all do some things. I've taken on  
20 some second-career horses just to help out the  
21 industry, but that's something we need to get more  
22 involved with in the future.

23 And then active marketing in the racing  
24 industry in Indiana, we got a half of a suite for  
25 Indiana Derby Day, invited our members there, our

1 board members and some of our members, and we got  
2 new members from that as well.

3 Then Question 7 was N/A for us. Moving on to  
4 8. I mean, you all can read through this. Like,  
5 our accountant double-checks everything. There is  
6 one part in here. We had talked to Robin about it  
7 years ago, and he kind of helped us and our  
8 accountant work together to set it all up, and I  
9 don't believe there's anything changed in that  
10 regard.

11 Financial obligations, we have no outstanding  
12 debts or anything like that.

13 Now, there was a typo in C of this. That  
14 first paragraph, it was supposed to be taken out,  
15 and I do apologize for this. This was my oversight  
16 completely and my lack of computer skills. But in  
17 No. 3 it's supposed to be the Purdue Equine Clinic  
18 donation instead of the Hoosier Horse. I do  
19 apologize for that. That's not in there.

20 I based our budget on the same numbers as last  
21 year because we didn't know what was going on. I  
22 figured it had to be some of the same. We didn't  
23 end up using all of our funds last year, so I just  
24 kind of based it . . . And our budget is it's a  
25 little ballparked. I'll get into detail when we

1 look at it.

2 CHAIRMAN DIENER: Did you say that you did  
3 eliminate or you're making the contribution to the  
4 Purdue veterinary clinic?

5 MS. LAWTON: We are making it. This will be  
6 our first year, 2013, and then 2014 and 2015. We  
7 did a three-year contract of \$10,000, so we'll pay  
8 a third of that every year, starting this year.

9 CHAIRMAN DIENER: Thank you.

10 MS. LAWTON: We cut out the Hoosier Horse Fair  
11 because we didn't get much activity there. There's  
12 just not a lot of the race fans, and it's a  
13 different scene for us and we just thought we were  
14 kind of wasting our time and our money a little  
15 bit. So we thought that would be better utilized.

16 And everything else is pretty much the same  
17 from last year going down. The management over the  
18 organization, it's all the same. As well as 10.  
19 And I did take out some things from our application  
20 the year before based on some poor practices and  
21 management in ITOBA's history, because that was  
22 neither here nor there any longer.

23 Then if we just skip ahead. 11 is pretty  
24 self-explanatory too. We can get to 12, and  
25 everything there's the same. We can go through the

1 budgets now. And we have two different budgets.  
2 One's just for basic housekeeping, general  
3 marketing and promotion. Then one for the outside  
4 activities we do to promote thoroughbred racing in  
5 Indiana.

6 The general marketing, all of this stays the  
7 same from our previous application for 2013. Our  
8 Internet and computer costs are a little high  
9 because we are revamping that website, so that's  
10 going to be high for 2014 as well.

11 The operating expenses, you know, legal,  
12 accounting, we have litigation going on with a  
13 horse that was denied by the purchaser at a sale.  
14 So we are paying litigation fees for that and  
15 that's ongoing, and I'm sure you all understand  
16 it's taken two years and there's nothing we can do  
17 to push it forward.

18 The Purdue donation's in there on the next  
19 page, and that's for 2013.

20 We do a year-end awards dinner and banquet,  
21 and we're having that at Indiana Downs this year.  
22 We used to have it at a hotel, but we really want  
23 to promote racing in Indiana, and what's a better  
24 place than at Indiana Downs. We can have the  
25 banquet, we have a speaker coming in, and then we



1 can all go to the casino or, you know, be there. I  
2 know there's no live racing, but it's still kind of  
3 just the facility that works.

4 And our horse auction, like I said, these two  
5 things can be united. Last year we separated them  
6 and did the auction online. It worked out  
7 extremely well. The stallions sold for more money  
8 than they ever had in our history with ITOBA with  
9 our auction, so we're going to keep that as well.  
10 And we do have to pay a company to do the online  
11 services and everything, so that's what that  
12 expense is for.

13 I went ahead and put the two-year-old and  
14 training sale into our budget. Like I said, that's  
15 not concrete that we should do it or that we're  
16 going to do it, but roughly that's there. If we  
17 decide not to or do something bigger with our sale,  
18 like we did this year.

19 We hired a outside agent to come in and manage  
20 the sale professionally, put it on for us. You  
21 know, I managed it the previous year, and it was  
22 hard for me because I'm selling horses, I might be  
23 buying horses, and people are my clients that are  
24 selling horses. So it was a little bit of bad  
25 business in that part, but we did it before because

1 we weren't funded. And so we shifted that on to a  
2 hired employee, who has years of experience with  
3 that.

4 And then the horse auction expenditure, that's  
5 what that is. I'm sorry. I mixed. Stallion  
6 season auction is the last thing on the budget at  
7 the bottom. And the horses of all ages sale, that  
8 \$5,200, we paid to rent the facility and the guy  
9 who we hired, the agents, he got paid out of the  
10 entry fees. So we had it at the Indiana State  
11 Fairgrounds. It was a beautiful facility. It was  
12 a perfect place to have it. It will be where we  
13 continue to have it.

14 And then one thing ITOBA does as well is we  
15 have our Indiana stallion stakes series race that  
16 it'll be the first one coming up in 2014. We've  
17 talked with Joe about it. We've talked with breed  
18 development about it. And so we've got everything  
19 in line, and we'll be coming back here shortly kind  
20 of finalizing the 2014 races.

21 But people who buy seasons in our auction,  
22 those stallions that are purchased, any foal by  
23 them is able to go into this racing. You nominate  
24 for it, you pay. It ends up being a total of \$500.  
25 If you don't pay till the race comes about, it's

1 more expensive. But it's become very popular.

2 And it's a good thing for horsemen because it  
3 promotes the stallions in Indiana, promotes Indiana  
4 breds, and it's a nice race for them. Probably  
5 going to be a little less competitive because it's  
6 more exclusive, but it's a good thing for the  
7 horsemen as well. We have about just under 40 that  
8 are eligible for the 2014 race, and I get a couple  
9 more in every day. And I already have 26 foals  
10 registered for 2016, which is the largest number of  
11 foals that I've ever had. So that's pretty good at  
12 this point.

13 After the staff comments, we were missing a  
14 slight -- I don't know if I kind of took it out or  
15 what happened -- but we were missing a little part  
16 of our application, in fact. So I wrote the  
17 Commission a letter. Well, Herb Likens did, our  
18 president. It just states that, Indiana  
19 Thoroughbred Owners and Breeders (inaudible) in the  
20 best interest of thoroughbred horse racing in  
21 Indiana in actively (inaudible) and ensuring  
22 welfare. No monies distributed pursuant to  
23 I.C. 4-35-7-12 have been or will ever be used as a  
24 contribution to a candidate or committee, nor for  
25 auditing (inaudible). And I'd like to present.

1           CHAIRMAN DIENER:  Would you please mind  
2           putting copies of each of those in the mail to the  
3           Commission so they can file with the Commission.

4           MS. LAWTON:  I'll put them in the mail as  
5           well.

6           CHAIRMAN DIENER:  Does this satisfy the  
7           certifications required by these two rules or not  
8           or do you just want to hold up on that?

9           MS. ELLINGWOOD:  Chairman, this is the first  
10          I've seen of it.  I'd have to take a look at it to  
11          make sure that it complies with the rule  
12          requirements.

13          CHAIRMAN DIENER:  If we approve this, it'll be  
14          subject to those two conditions of the  
15          certification.

16          MS. ELLINGWOOD:  I agree.

17          CHAIRMAN DIENER:  Should have been filed long  
18          time ago.

19          Questions?

20          Thank you.

21          MS. LAWTON:  Thank you.

22          CHAIRMAN DIENER:  Anything else,  
23          Ms. Ellingwood, in the staff report other than the  
24          two certifications that were now provided?  Other  
25          than that, is it okay?

1 MS. ELLINGWOOD: Yes, Chairman. Other than  
2 that, believe it meets all the reporting  
3 requirements.

4 CHAIRMAN DIENER: I would move that we approve  
5 for registration for 2014 the renewal application  
6 of the Indiana Thoroughbred Owners and Breeders  
7 Association, Inc., on condition that the  
8 certifications required by 71 IAC 13-1-3(3) and (5)  
9 are filed with the Horse Racing Commission.

10 COMMISSIONER SCHENKEL: Second.

11 CHAIRMAN DIENER: All in favor.

12 THE COMMISSION: "Aye".

13 CHAIRMAN DIENER: Opposed, same sign.

14 (No response)

15 CHAIRMAN DIENER: Thank you.

16 We're now ready for the hearing on the renewal  
17 application of the Indiana Standardbred Association  
18 for approval as a registered horsemen's  
19 association. Jack has been previously sworn.  
20 Mr. Young.

21 MR. YOUNG: Thank you, Mr. Chairman. Good  
22 afternoon.

23 I'm going to make a few brief remarks. I'd  
24 like to touch on some issues that were raised. But  
25 first, we would ask that all documents described in

1       our request for official notice be made a part of  
2       this proceedings record.

3               CHAIRMAN DIENER:    So moved.

4               MR. YOUNG:    Yes.   Thank you.

5               A couple of issues were raised, I think, by  
6       inquiry from the staff.   I'll speak to those.

7       There was a question concerning scholarships.   I  
8       wanted to give the Commission the total amount  
9       allowed this year for scholarships was \$50,750.  
10      That's probably all that's going to be done this  
11      year.   We approve scholarships the year prior.   So  
12      the money that we're looking at here was approved  
13      last year.

14              There's not, I don't believe, going to be any  
15      scholarships made.   I know in the past Commission's  
16      had an issue with the amount of scholarships.   I  
17      would point out that we're about \$25,000 below  
18      budget.   And I would expect that through  
19      institution of the Commission's policies on  
20      scholarships and the ISA's scholarship criteria,  
21      it's not likely that that amount's going to  
22      increase in the future.   So I think we'll see that  
23      number kept at a fairly low level.

24              I think we disagree on whether that's a good  
25      thing or a bad thing.   I'd like to see more

1       scholarships given to worthy Hoosier kids. But in  
2       any event, I wanted to address that.

3               We also had a question about some of our  
4       budgets showed expenditures in excess of our  
5       anticipated 2014 revenues, and the question was,  
6       well, how are you going to do that. Well, we need  
7       to look at a little history to understand what  
8       happened here. As Mr. Schaefer knows, we had a  
9       little difficulty with our initial registration  
10      applications being approved, and it delayed us by  
11      about more than a year.

12              So by the time we finally did get approval --  
13      and that was in the fall of 2009 -- we got approved  
14      retroactively for years prior. So our records show  
15      that from September 9, 2009, until the end of the  
16      year, until the end of 2009, we received in  
17      \$1,907,000 and change. It is not possible to spend  
18      that money, or shouldn't be. To expend all that  
19      money in such a short period of time would have  
20      been nearly reckless. So we carried over into 2010  
21      with a pretty healthy surplus. And then, of  
22      course, we were approved year in and year out from  
23      then on, and we continued to get our annual  
24      distribution.

25              So that is an explanation. I believe I

1 explained it in a supplemental filing. That is, I  
2 said, well, we didn't get approved and we got a lot  
3 of money towards the end of the year. I don't  
4 think I gave you the number, the amount of dollars  
5 that we got in. So I wanted to address that.

6 I want to thank the Commission Staff for  
7 reminding us that we were tardy on our  
8 certifications. We got those in. I will, when we  
9 get to the testimony, ask Mr. Kieninger to affirm  
10 or confirm the certification of the scholarship  
11 certification because that was signed by me, not an  
12 officer or a director of the corporation.

13 So couple other comments. We can get to  
14 benevolence. I'm not sure it's in there. We've  
15 taken on some new initiatives that year that we're  
16 really happy about. We're taking the stallion  
17 directory over. We're going to be publishing that.  
18 That's going to be a good thing, we think.

19 And, you know, sometimes what we do is kind of  
20 like what Homeland Security does, in that when  
21 they're doing their job, you really don't hear  
22 about it, you don't know it. And ISA does a lot of  
23 things that never make it to the Commission because  
24 for whatever reason they don't come through. And  
25 I'll give you one example.



1           We pursued and explored with Johnson County --  
2           that's Franklin, Indiana -- very diligently, the  
3           notion of getting fair racing down there, and we  
4           had the fair board on board. The directors made a  
5           number of trips to Johnson County. We made  
6           presentations to the county fair board. The board  
7           of commissioners were in approval. We thought,  
8           great, we're going to bring harness racing back to  
9           Johnson County, which, by the way, is the home of  
10          Harold McGinnis. Probably you don't all remember  
11          Mr. McGinnis, but he was quite a harness racer. We  
12          were really excited, boy, this is great.

13                 So sometime back in, I think it was, August,  
14          about 15 people from the ISA, some engineers, some  
15          consultants met down in Johnson County at the  
16          fairgrounds. We're going to lay out that track.  
17          And, boy, you know what? There wasn't enough room.  
18          It looked like there was. It really did. But they  
19          had that wheel out there, and we could not put the  
20          track in there.

21                 And that was a great disappointment to all  
22          parties involved. You'll never hear about that,  
23          except from me today. But those are the kinds of  
24          things that the ISA is constantly pursuing to try  
25          and improve harness racing in the state of Indiana.

1 Sometimes they work -- and when they do, we're  
2 going to be the first to tell you about it -- but  
3 sometimes they don't. So that was just an example  
4 I'd like to give.

5 With that, I'd like to ask Mr. Kieninger some  
6 questions.

7 JACK KIENINGER, having been previously duly  
8 sworn by the Chairman, took the stand and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. YOUNG:

12 Q First, Jack, state your name and spell it for the  
13 record.

14 A Jack Kieninger, president of the ISA. That's  
15 K-i-e-n-i-n-g-e-r.

16 Q Jack, have you had an opportunity to examine the  
17 certification that was submitted over my signature  
18 for the scholarships?

19 A Yes.

20 Q And the information in that certification, is that  
21 true and correct?

22 A Yes.

23 Q And if you had had the opportunity, would you have  
24 signed the certification?

25 A Yes, I would have.

1 Q Okay. Do you believe that the proposed budget  
2 submitted by the ISA and the proposed programs are  
3 in the best interest of standardbred horse racing?

4 A Yes, I do.

5 Q And could you explain briefly why you feel that to  
6 be true?

7 A Well, we've always tried to improve the  
8 standardbred racing in Indiana. I think the  
9 results speak for themselves. We continually grow,  
10 and we can compete in any racetrack, any state in  
11 the country. Our horses are fabulous. Our  
12 racetracks are good.

13 The job that the ISA has done as far as  
14 benevolence and taking care of our people, working  
15 with the racetrack and management, just helping the  
16 breeders. We were hoping this contract would go  
17 through because that would have really helped the  
18 breeders.

19 We have a board meeting every month just  
20 about. I think we had one month we didn't have a  
21 board meeting this year. We've always had a  
22 quorum. There's a lot of interest amongst the  
23 board on how to better the horse racing in Indiana.

24 And speaking as the president, I think we're  
25 doing a fairly good job of that. There's always

1 room for improvement. We've got some new  
2 initiatives in the works, and we're looking really  
3 forward to 2014. I think our budget is right on  
4 line. We've taken on the stallion registry this  
5 year. We had a lot of complaints about how it was  
6 done in the past, and hopefully we can step up to  
7 the plate and get it out again as good as it was in  
8 the beginning.

9 Thank you.

10 MR. YOUNG: That's all the questions I have.  
11 If the Commission has some questions.

12 CHAIRMAN DIENER: One clarifying question for  
13 either Jack or Roger. I don't know who can address  
14 it. The 2014 budget does include \$75,000 for  
15 scholarships.

16 MR. YOUNG: Yes, it does.

17 CHAIRMAN DIENER: And your certification is  
18 that those scholarships, when awarded, will comply  
19 with the policy adopted by this Commission?

20 MR. YOUNG: Absolutely, yes, sir.

21 MR. KIENINGER: Yes, sir.

22 CHAIRMAN DIENER: All I wanted to do was  
23 confirm that.

24 MR. YOUNG: I believe I confirmed this to the  
25 Commission on June 19. As soon as the Commission's

1 policy was adopted, we went in and amended our  
2 scholarship application and college assistance  
3 application form to include those policies, and we  
4 sent copies of those to the Commission. That was  
5 back in June.

6 CHAIRMAN DIENER: Questions from the  
7 Commissioners of the ISA application?

8 COMMISSIONER SCHAEFER: I'm having one of  
9 those senior moments. The care, who qualifies for  
10 that?

11 MR. KIENINGER: On the healthcare?

12 COMMISSIONER SCHAEFER: The healthcare.

13 MR. KIENINGER: Okay. We have a medical  
14 trailer at the racetrack. Anybody that goes to the  
15 racetrack or is licensed by the IHRC can go to that  
16 trailer and receive medical treatment.

17 MR. YOUNG: He's talking dental.

18 MR. KIENINGER: The dental and the optical is  
19 just the members of the ISA. That's why we have  
20 over 1,000 members now. They join the ISA, and  
21 they get a certain amount of money for dental,  
22 certain amount of money for optical.

23 Anybody can go to the health clinic, but this  
24 is just kind of a way that we not only help our  
25 members but it also encourages people to join the

1 association, have more input into the actual horse  
2 business, rather than just, you know, set in the  
3 barn area on a trunk and complain.

4 For the optical and dental, you have to be a  
5 member of the ISA. You have to have either a IHRC  
6 license or a USDA license.

7 MR. YOUNG: Jack can correct me if I'm wrong.  
8 But unless it is a medical-type issue involving the  
9 eye or tooth, or a dental issue, we don't offer  
10 optical or dental at the racetrack.

11 MR. KIENINGER: No.

12 MR. YOUNG: So that's another reason. I think  
13 what we found is there's just not enough demand to  
14 spend the money to contract with someone to come on  
15 site. So we provide like a health spending  
16 account-type deal. Unless it's a medical issue  
17 that involves the eye or teeth, there's nothing  
18 available.

19 MR. KIENINGER: That's right.

20 This year we did have a scanning bus, a  
21 medical bus, come to the racetrack. Anybody can  
22 sign up for it. They had 33 spots a day. They  
23 scanned your heart, your arteries, and all that  
24 stuff. We had two horsemen, one had to immediately  
25 have bypass surgery and we had another one that he

1 didn't even walk out. They carried him out. He  
2 had an aneurysm the size of a baseball in his  
3 artery and didn't even know it. So he went  
4 immediately.

5 So we actually saved two people's lives this  
6 year with that bus. We had it there twice. The  
7 first time was for one day, the second time was for  
8 two days. I went through it myself. I got  
9 hypertension, believe it or not.

10 COMMISSIONER SCHENKEL: Don't we all.

11 (Laughing)

12 MR. KIENINGER: We're looking to increase that  
13 again this year. In 2014 we're looking how we can  
14 increase the medical and the dental benefits in the  
15 future.

16 MR. YOUNG: I didn't go through it page by  
17 page, but when you read our application, you can  
18 see that we are expanding our programs. Year over  
19 year we continue to expand. It's in our  
20 application. Thought it'd be redundant.

21 COMMISSIONER SCHAEFER: I've seen a few races  
22 where you almost made it mandatory for a couple  
23 drivers to go get an eye exam.

24 MR. KIENINGER: Well, that's true.

25 CHAIRMAN DIENER: Any other questions from the

1 Commissioners?

2 Ms. Ellingwood, the adequacy, the completion  
3 of the application?

4 MS. ELLINGWOOD: As of today, all the required  
5 certifications have been received.

6 CHAIRMAN DIENER: Any substantive reasons why  
7 you would recommend denial?

8 MS. ELLINGWOOD: No.

9 CHAIRMAN DIENER: I would move that we renew  
10 the Indiana Standardbred Association application  
11 for 2014.

12 COMMISSIONER SCHAEFER: Second.

13 CHAIRMAN DIENER: All in favor.

14 THE COMMISSION: "Aye".

15 CHAIRMAN DIENER: Opposed, same sign.

16 (No response)

17 CHAIRMAN DIENER: You're registered. Thank  
18 you, gentlemen.

19 MR. KIENINGER: Thank you.

20 MR. YOUNG: Thank you.

21 CHAIRMAN DIENER: Settlement agreement with  
22 Rubin Serna.

23 MS. ELLINGWOOD: Thank you, Mr. Chairman.

24 Rubin Serna was licensed by the Commission in  
25 2012 as an exercise rider and a jockey. On



1       September 14 an electrical device, which is a  
2       device designed to affect the speed or actions of a  
3       horse, was found at the track at Hoosier Park in  
4       the gate that was used by Mr. Serna in the  
5       preceding race. On September 20 a second  
6       electrical device was found in Mr. Serna's  
7       belongings in his dorm room. On September 21 the  
8       stewards summarily suspended Mr. Serna's license.

9               Commission Staff issued an administrative  
10       complaint, alleging Mr. Serna violated Commission  
11       rules, and Buddy Pylitt was appointed as chief  
12       administrative law judge. The disciplinary process  
13       proceeded to hearing, and the Commission Staff  
14       received favorable findings of fact and conclusions  
15       of law.

16              Thereafter, Mr. Serna entered into settlement  
17       negotiations with Commission Staff, the terms of  
18       which are outlined in the Settlement Agreement  
19       that's been presented to you. As part of the  
20       Settlement Agreement, Mr. Serna has admitted to the  
21       violations and the parties have agreed to a  
22       five-year suspension and a \$7,500 fine, which is  
23       consistent with penalties previously assessed by  
24       this Commission for this particular violation.

25              Staff asks that the Commission ratify the

1 Settlement Agreement. I'm happy to answer any  
2 questions you may have.

3 CHAIRMAN DIENER: Questions from any of the  
4 Commissioners?

5 COMMISSIONER SCHENKEL: This does go back to  
6 the original date of the infraction?

7 MS. ELLINGWOOD: It does.

8 COMMISSIONER SCHENKEL: The five years started  
9 in September '12.

10 MS. ELLINGWOOD: Yes, sir, exactly.

11 CHAIRMAN DIENER: Any other questions? I  
12 can't remember. You're asking us to approve or  
13 ratify the approval?

14 MS. ELLINGWOOD: Ratify.

15 CHAIRMAN DIENER: So the motion is to ratify  
16 the Settlement Agreement executed between  
17 Commission Staff and Mr. Serna.

18 MS. ELLINGWOOD: Exactly.

19 COMMISSIONER SCHAEFER: Second.

20 CHAIRMAN DIENER: All in favor.

21 THE COMMISSION: "Aye".

22 CHAIRMAN DIENER: Opposed.

23 (No response)

24 CHAIRMAN DIENER: Motion carries.

25 MS. ELLINGWOOD: Thank you.

1           CHAIRMAN DIENER: No. 7, review of Commission  
2           rulings, series of rulings here in September.  
3           Ms. Newell's here to answer questions. Anything  
4           significant we should see?

5           MS. NEWELL: I do not believe there is  
6           anything on there that is significant, but to the  
7           extent you have any questions, we're happy to  
8           entertain them.

9           CHAIRMAN DIENER: Anybody had a chance to --

10          COMMISSIONER SCHENKEL: This is just an  
11          ignorant question probably. I've never seen this  
12          before. On the violation, change of occupation,  
13          I'm just curious. What is that?

14          MR. GORAJEC: I'm sorry. Where are you?

15          COMMISSIONER SCHENKEL: It's on the last page,  
16          Page 3 of 3, very bottom one, Jeffrey Whitmer.  
17          Says violation, change of occupation. Just curious  
18          what that was?

19          MR. GORAJEC: It's a ruling, but it's not a  
20          violation. That's just a heading that we have  
21          because that's where we put a description of what  
22          the ruling's about. I don't know what it was for  
23          this particular case. But when you're licensed by  
24          the Commission, you're licensed to perform a  
25          specific duty, whether it be a jockey or a driver.

1 If you decide at some point in time to change, then  
2 you need to be re-licensed. You give up your old  
3 license, get a new license.

4 COMMISSIONER SCHENKEL: That's fine. Thanks.

5 MR. GORAJEC: It is misleading when you see  
6 that and then you see the heading violation. There  
7 was no violation, but there was a ruling.

8 COMMISSIONER SCHENKEL: Okay.

9 CHAIRMAN DIENER: Questions, anyone?

10 COMMISSIONER WEATHERWAX: Maybe just for my  
11 edification. This stops on September the 28th.  
12 Was that since the last hearing? These cases have  
13 come up since the last hearing?

14 MS. NEWELL: Right. The last Commission  
15 meeting was September 12, so the Commission  
16 reviewed couple months' worth of rulings at that  
17 point. So for this meeting you're seeing just the  
18 rulings that were issued in September.

19 CHAIRMAN DIENER: And for the December  
20 meeting, we'll see October and November probably.

21 COMMISSIONER WEATHERWAX: So is this about  
22 normal for volume or just because the season?

23 MS. NEWELL: It's going to vary, just sort of  
24 depends. Certainly during the meet you're going to  
25 see significantly more rulings. In the January

1 meet you would expect to see quite smaller number.

2 CHAIRMAN DIENER: No. 8. Ms. Ellingwood, we  
3 have a book of expiring rules, many of which will  
4 require hearings, I guess?

5 MS. ELLINGWOOD: Well, yes and no.

6 CHAIRMAN DIENER: Okay. Explain, please.

7 MS. ELLINGWOOD: As many of you know,  
8 administrative rules automatically expire on  
9 January 1 of the seventh year after which it's  
10 adopted by the agency. This year nearly 900 of the  
11 1,040 or so rules that the Commission has are  
12 scheduled to expire. The State statute provides  
13 for a special shortened process to adopt rules  
14 without changes to the text of the rule, and we  
15 began that process and conducted all the necessary  
16 reviews. Those rules are included on that list  
17 that's included in your packet.

18 To get to your point, Mr. Chairman. There is  
19 a process by which some of those rules can be  
20 treated separately, which will require them to be  
21 vetted through the regular rule adoption process.  
22 Those rules are not included on the list that you  
23 have before you. We're actually going to begin the  
24 regular process and will update the Commission as  
25 to that process as we go along.

1           So at this point Staff is just asking the  
2 Commission to authorize us to move toward to  
3 re-adopt the rules in your booklet without making  
4 any change to the text in those rules.

5           CHAIRMAN DIENER: Questions for  
6 Ms. Ellingwood?

7           COMMISSIONER WEATHERWAX: How many are not  
8 listed? Is there a lot?

9           MS. ELLINGWOOD: Well, we didn't tally. We've  
10 got approximately 1,040 administrative rules.  
11 Approximately 900 of them are scheduled to expire  
12 unless we re-adopt them today, and then about 80 or  
13 so of them we received a request to treat them  
14 separately and those 80 will go through the regular  
15 rule adoption process. The ones that are not  
16 counted in those numbers are not scheduled to  
17 expire.

18          COMMISSIONER WEATHERWAX: So how long do we  
19 have to do those 80?

20          MS. ELLINGWOOD: Well, the rule technically  
21 expires at the end of the year. So what the  
22 Commission Staff needs to do, and is doing, is  
23 working with the Governor's office to ask that  
24 those rules that will expire, but that we need to  
25 vet more carefully, that the expiration date is

1 postponed. So we don't yet know, because we  
2 haven't got any answer from the Governor's office  
3 about how long they're willing to extend it, but my  
4 best guess is that they're going to be willing to  
5 extend it as long as we need to move through the  
6 regular rule adoption process.

7 COMMISSIONER SCHENKEL: They can give you  
8 that?

9 MS. ELLINGWOOD: They can, yes. The statute  
10 states the Governor having the authority to do  
11 that.

12 CHAIRMAN DIENER: Any other questions from the  
13 Commission?

14 COMMISSIONER SCHAEFER: These are in here?

15 MS. ELLINGWOOD: Yes. That's asking that you  
16 authorize moving forward with these. If you don't,  
17 all 900 will expire by the end of the year.

18 COMMISSIONER SCHAEFER: I make a motion that  
19 we accept these rules.

20 COMMISSIONER WEATHERWAX: Second.

21 CHAIRMAN DIENER: All in favor.

22 THE COMMISSION: "Aye".

23 CHAIRMAN DIENER: Opposed, same sign.

24 (No response)

25 CHAIRMAN DIENER: Motion carries.

1 MS. ELLINGWOOD: Thank you.

2 CHAIRMAN DIENER: No. 9, this is an agenda  
3 item near and dear to my heart. Miss Jessica  
4 Barnes will be presenting Indiana breed development  
5 programs, telling us up here and in the audience  
6 little bit what they are, how they're doing, the  
7 various breeds. Thank you, Jessica. Good  
8 afternoon.

9 MS. BARNES: Thank you. Good afternoon.

10 I'd like to start off by first just kind of  
11 doing an overview of the breed development  
12 programs. We have some new Commissioners on board,  
13 and I thought this might give you a little insight  
14 into how the breed development programs work, what  
15 the elements are, and how they are administered.

16 So what is breed development? The breed  
17 development fund or the programs have been  
18 established to promote the breeding of horses while  
19 stimulating the agribusiness sector of the state's  
20 economy. There are currently three breed  
21 development programs established by the Commission.  
22 Each one has an advisory committee and a  
23 corresponding breed development fund that is  
24 administered through the offices of the Indiana  
25 Horse Racing commission. The standardbred breed



1 development program was established in 1994 by the  
2 Commission, the thoroughbred breed development  
3 program established in 1995, and the quarter horse  
4 program established in 2000.

5 Historically, the breed development funds have  
6 consisted of breakages, which is the difference in  
7 rounding off of pari-mutuel payoffs; outs, all the  
8 uncashed tickets that expire each year; and  
9 traditionally the riverboat admission tax. And  
10 this was the funding mechanism until 2008 when the  
11 racinos came on board. The revenue from the slot  
12 machines replaced the revenue that was allocated  
13 from the riverboat admission tax. So there was a  
14 slide there. The breed development funds still  
15 receive breakages and outs in addition to the slots  
16 revenue that's generated.

17 The amount allocated to each breed development  
18 fund is specified by the statute. For example, of  
19 the amount of the AGR allocated to purses, which is  
20 traditionally 97 percent, when you take off the  
21 benevolence portion and the equine promotion, for  
22 standardbreds it's 50 percent of the money that's  
23 allocated to the racing industry goes to breed  
24 development, 50 percent goes to purses.

25 Thoroughbred it's 40 percent, and quarter horse is

1       30 percent to the breed development program.

2             And you're able to find a breakdown of this  
3 revenue for each fund on a page in your meeting  
4 packets. I've actually included the page from the  
5 annual report that, if you look at the chart at the  
6 center of the page, for 2012 it breaks down the  
7 funding that consisted for each of those funds,  
8 breakage, outs, and slot revenues for 2012.

9             In addition, through cooperation with the  
10 racetracks, there's some monies allocated from the  
11 purse accounts that are utilized to help fund breed  
12 development at races at the racetrack. So when you  
13 are looking at a race program at the racetrack and  
14 you see Race No. 4, this is an Indiana-bred race  
15 for quarter horses, and you see a \$20,000 purse,  
16 traditionally that is not all breed development  
17 money. There is some money coming from the tracks  
18 into that purse. And that happens each year when  
19 we create the program.

20             The foundation of the program has been set  
21 when the funds were created. So the foundation,  
22 such as how horses are registered, the rules for  
23 registration, the breeding of those horses, what  
24 the committee does each year is they review the  
25 breed development programs and work with the track

1 to set the racing program for the upcoming calendar  
2 year.

3 So each breed development program has a breed  
4 development advisory committee with three  
5 Governor-appointed members. And the committee  
6 holds breed development meetings as needed  
7 throughout the year and typically begins their  
8 meetings for planning in the fall of each year.  
9 They review and make recommendations to the  
10 Commission for the following year's program.

11 The meetings are open to the public, and the  
12 committees work closely with the racetrack and the  
13 horsemen's associations, with the goal of bringing  
14 forth to the Commission a unified, agreed-upon  
15 proposal for the Commission to approve each year.  
16 And that's one of the things that the committees  
17 that I've worked with in the past couple years have  
18 really strived to do, is to bring forth a unified  
19 proposal that the horsemen are in favor of, the  
20 tracks are in favor of, and the breed development  
21 committees are in favor of in front of the  
22 Commission.

23 One of the hardest challenges each of these  
24 committees face each year is balancing one's needs  
25 of everybody that's involved in the horse racing

1 industry. As you can imagine, if you are sitting  
2 in a position of a breeder, what you would like to  
3 see happen with the breed development program is  
4 much different than somebody who is just owning  
5 racehorses and racing them. The same would go if  
6 you're a stallion owner. So the committee has a  
7 huge task of trying to balance all those needs and  
8 actually trying to look at the overall bigger  
9 picture to put together a program that is going to  
10 benefit the entire industry.

11 Once approved, the breed development programs  
12 are administered by the Staff of the Indiana Horse  
13 Racing Commission. The IHRC Staff collect,  
14 process, and verify registration of mares, foals,  
15 and stallions. We also have an inspector that  
16 visits farms in Indiana to verify the location of  
17 registered mares and stallions. So if somebody  
18 tells us they have a mare here in Indiana that is,  
19 according to our regulations, supposed to be here  
20 for a specific period of time, we actually oversee  
21 inspections and an inspector going out and making  
22 sure that that mare or stallion or foal is there  
23 where they are supposed to be and complying with  
24 the Commission rules.

25 We process award payments directly to the

1 breeders and stallion owners, as well as processing  
2 payments to the racetracks for races contested in  
3 the breed development program.

4 In addition, the racing secretaries at each of  
5 the racetracks has a role in the administration of  
6 the breed development program. Once that program  
7 is approved by the Commission, the racing secretary  
8 works with scheduling those races, making sure that  
9 the overall number of races comply with the  
10 programs that are approved, that the correct purse  
11 amounts are applied per the program that was  
12 approved by the Commission.

13 While each of the breed development programs  
14 are different, and have their own unique set of  
15 guidelines, I'd like to take a moment to overview  
16 some of the components of each program.

17 I briefly talked about registrations of  
18 horses. All three of the programs have mares,  
19 foals, and stallions that are registered in their  
20 programs. The timing of each of those is  
21 different.

22 The racing program, each one of our racing  
23 programs has overnight races, stake races, and some  
24 type of supplement for open racing. And that's if  
25 an Indiana-bred races in an open race, there is

1       some type of added benefit for that horse if he  
2       finishes well. There are breeder's awards and  
3       stallion owner's award that we pay. And the  
4       quarter horse breed development program actually  
5       still has owner's awards as an element in their  
6       program.

7               I've also included in your packet an overview  
8       of the population and participation of the three  
9       programs. So if you want to look at this, it's the  
10      chart that's the Breed Development Population  
11      Statistics. It'll show you the year, the total  
12      mares registered; from that you have the total  
13      foals registered and the total stallions registered  
14      for each breed, quarter horse, thoroughbred, and  
15      standardbred.

16              Standardbreds did not have a residency  
17      component for their mares until 2009, so that's why  
18      you see an additional column there, because they  
19      were breeding mares to Indiana stallions but there  
20      was no requirement for those mares to stay in the  
21      state of Indiana until 2009. And now there's an  
22      added benefits for a mare to stay in the state of  
23      Indiana for the standardbred program.

24              Then I would just briefly like to take a few  
25      minutes to highlight some achievements of Indiana

1 horses and how they've been doing. One of the  
2 things that I look at and study a lot is how  
3 Indiana breders are doing in open races and how are  
4 we fairing up against open company. So you will  
5 see a chart, and I've actually updated, e-mailed to  
6 all the Commissioners an update to this on Friday.  
7 Looking at the program, how Indiana breders or  
8 Indiana sireders are doing in open company, and  
9 looking at, you know, what percentage of Indiana  
10 breders are in open races and then also how much of  
11 the money are they earning.

12 And I think the important thing to note here  
13 is when we started looking at this in 2010, all  
14 three of the breed development programs have seen  
15 an increase in not only their participation but  
16 also the amount of money that they're earning,  
17 which I think that tells us that Indiana-bred  
18 horses are improving in quality and they are  
19 getting better and doing well.

20 I think that is evident when you look at some  
21 of the accomplishments that I've highlighted here,  
22 and I'd just like to go through and highlight  
23 these. If you look at the quarter horse breed  
24 development program, in October of 2013 an Indiana  
25 bred won the open QHRAI stallion service auction

1 derby finals, an open stake race. And up until  
2 2013 quarter horse breed development actually had  
3 an element in their program that provided a bonus  
4 to Indiana-bred quarter horses that qualified for  
5 open stakes finals, and we actually had to  
6 discontinue that because it became too cost  
7 prohibitive because it was too effective. There  
8 was so many Indiana-bred horses qualifying for open  
9 races that we could no longer sustain that bonus.  
10 It was too successful, so it served the exact  
11 purpose it was created for.

12 Over the year 19 Indiana-bred horses qualified  
13 and competed in open stake races at Indiana Downs,  
14 earning purse money. We've had some actual program  
15 participants do well, and you can see those  
16 achievements there.

17 I'll move down to the thoroughbred, for the  
18 sake of time. During the fall of 2012, an  
19 Indiana-bred (inaudible) and went on to be the  
20 first Indiana bred to compete in the breeders cup  
21 on turf. This horse actually earned \$226,000  
22 competing solely outside the state of Indiana. So  
23 it never ventured to Indiana to compete in a  
24 restricted race. It solely competed against open  
25 company outside of the state.



1           We've had some other notable horses compete in  
2 open stake races outside the state of Indiana,  
3 A.G. Saint, Dreaming Big, an Indiana-bred horse,  
4 competed in a open stake at Indiana Downs this  
5 year.

6           And then if you look at the standardbred  
7 program, a few of their accomplishments is an  
8 Indiana-sired horse, Ansalonna (sp.), won the open  
9 Kentucky and stallion owners and stakes at  
10 Hoosier Park, setting a new track record for  
11 two-year-old filly pacers.

12           And then I think one of the most telling  
13 things about the standardbred program is if you  
14 look at the categories of records that Hoosier Park  
15 keeps, they keep a track record for each age, gait,  
16 and sex of the horse. There's record for  
17 two-year-old filly pacers, two-year-old colt  
18 pacers, two-year-old colt trotters, three-year-old  
19 filly pacers. And of those 19 track categories for  
20 track records on a mile track, currently 12 of them  
21 are held by Indiana-sired horses. So it has really  
22 moved to a point where the Indiana-sired horses are  
23 now the best horses competing at the racetrack  
24 versus horses of a lower quality.

25           That basically concludes my presentation.

1 Just a really quick overview of the breed  
2 development program. I'd be happy to answer any  
3 questions you may have.

4 CHAIRMAN DIENER: Thank you. This was  
5 excellent. I very much appreciate it. I'm sure  
6 the new Commissioners do also. I have a question  
7 though. I want to make sure I'm looking at this  
8 right. It's the chart.

9 MS. BARNES: Yes.

10 CHAIRMAN DIENER: Indiana-bred sired horses  
11 competing in open races by breed. And if I look at  
12 the chart, is it an incorrect overgeneralization to  
13 say that generally standardbreds from Indiana have  
14 done better in open races than thoroughbreds that  
15 are Indiana bred in open races? Am I drawing  
16 incorrect conclusions?

17 MS. BARNES: I think you're drawing a correct  
18 conclusion, but you have to understand the  
19 foundation of how the programs have been set up.  
20 The standardbred program at Hoosier Park, very  
21 early on was set up so that the race secretary did  
22 not write overnight races for Indiana-sired horses.  
23 There wasn't an option. If an Indiana-sired horse  
24 was going to compete solely against an  
25 Indiana-sired horse, they were going to do it in

1 late closers or stake races. In fact, all the  
2 overnights were written Indiana sired preferred.  
3 So Indiana-sired horses got in first, but if there  
4 was not a fulfill of Indiana-sired horses, then the  
5 race was filled with open horses of that same  
6 category.

7 So from very early on, Indiana-sired horses  
8 had to, they were forced to compete against open  
9 horses.

10 CHAIRMAN DIENER: Indiana-sired standardbreds?

11 MS. BARNES: Standardbreds were forced to  
12 compete against open horses. Except for the stake  
13 races, which is your best horses, and the late  
14 closers, which is your best horses.

15 So you might have an Indiana-sired maiden that  
16 you have in your stable and you enter into a maiden  
17 race and there's eight Indiana-sired horses that  
18 enter that race; there are going to be two open  
19 horses that come in to make that full field of 10.  
20 So a lot of times if your quality wasn't up to par,  
21 you were competing for third and fourth before you  
22 even left the gate, if you looked at it just on  
23 paper. So they were forced to make quicker  
24 improvements to that.

25 And at the time that we looked at the programs

1 in 2012, there was really not an incentive for  
2 thoroughbreds to compete in the open program. The  
3 Indiana-bred races were conducted at a higher purse  
4 than the open program. So if a Indiana-bred  
5 thoroughbred went from a Indiana-bred race to an  
6 open race, many times they were going to be  
7 competing for a lesser amount than they would when  
8 they were competing against restricted company.

9 So the programs have been set up very  
10 differently for a long time, and I think that  
11 affected the numbers that you see here today.

12 CHAIRMAN DIENER: Do the numbers also reflect  
13 a conclusion that the Indiana-bred thoroughbreds  
14 have not been as successful in the open races as  
15 Indiana-bred standardbreds?

16 MS. BARNES: No. I think we're seeing  
17 Indiana-bred thoroughbreds go into open races now  
18 and actually compete and do better. I mean, you're  
19 seeing the participation increase. You're seeing  
20 the horses go there. In the past there was really  
21 no reason for them to make that move to those  
22 races. One, there was a purse differential that  
23 was negative, so they just didn't do that. So I  
24 can't tell you that if they had competed, they  
25 wouldn't have done well, but . . .

1           CHAIRMAN DIENER: Okay. I know this is very  
2 kindergarten level for you, but it's important to  
3 the Commission and for me.

4           MS. BARNES: That's fine.

5           CHAIRMAN DIENER: It's not just a one-time  
6 deal. I'd like to do this every year because it's  
7 important, it shows the impacts that are going on,  
8 particularly the owners and trainers and how  
9 they're doing. I'm very appreciative.

10          I've taken enough time. I'll hand it over.

11          COMMISSIONER SCHAEFER: My only question, and  
12 maybe you already answered this. The standardbred,  
13 the stallion registry dropped off considerably in  
14 2012. Is there an explanation for that?

15          MS. BARNES: I think people are realizing that  
16 you need a very high-quality stallion to produce  
17 results. So I think as competition is getting  
18 greater, some people have been re-evaluating their  
19 stallion stock and upgrading to better stallions  
20 and getting rid of some of those lesser stallions  
21 that weren't producing as well.

22          And I also think that the number of mares  
23 being bred directly relates to that. If you look  
24 at standardbred numbers, you know, we've kind of  
25 reached our peak in 2011. There's 3,312

1       standardbred mares bred to Indiana stallions that  
2       year, and that's, quite honestly, too many for the  
3       market and for the races that are available for  
4       them.

5               So I think that stallion owners and farms have  
6       really looked at their stock and tried to make  
7       improvements and have actually geared away from the  
8       more is better and looked more at better quality,  
9       maybe less stallions is a little bit better.

10              COMMISSIONER SCHAEFER: Thank you.

11              CHAIRMAN DIENER: Go ahead, Tom.

12              COMMISSIONER WEATHERWAX: Maybe I don't  
13       understand, but I know the incentive has always  
14       been to have to encourage Indiana-bred horses. But  
15       if they're bred in Indiana and they go to another  
16       state, but they don't stay here, but then they come  
17       back to race, they're still an Indiana-bred horse,  
18       aren't they?

19              MS. BARNES: Yes.

20              COMMISSIONER WEATHERWAX: They don't have to  
21       be residents here?

22              MS. BARNES: No. Depending on each program,  
23       there's a certain period of time that they have to  
24       meet residency requirements. But they can leave to  
25       go race elsewhere. So once they have that Indiana

1 bred or Indiana sired, depending on which program  
2 you're looking at, status, they don't lose that.

3 COMMISSIONER WEATHERWAX: But is it not true  
4 that the reason you see these numbers is they want  
5 to be registered and certified here for the purses  
6 and they can go play somewhere else but they come  
7 back here and they're still eligible for the  
8 purses?

9 MS. BARNES: Yes.

10 COMMISSIONER WEATHERWAX: So is that true  
11 goal? I mean, I know that's the goal, but you see  
12 that happening or not?

13 MS. BARNES: Yeah. I mean, I think we want to  
14 breed horses that can go anywhere and race.  
15 Because if that happens, then it adds value to that  
16 Indiana horse.

17 So if I'm an owner and I'm looking to buy an  
18 Indiana horse and I look at the racing calendar in  
19 Indiana and I know that I can race from this period  
20 to this period of time and my horse is only going  
21 to fit races within the state of Indiana, then I'm  
22 somewhat limited on what I can do. But if I'm  
23 looking at the caliber of a horse that can not only  
24 race in Indiana and make money but during the off  
25 season can go outside of the state and make money,

1           then I'm willing to pay that breeder a lot more  
2           money for that horse.

3           I mean, so I think we want to continue to  
4           reach to improve and breed those type of horses  
5           that can do well not only here but outside the  
6           state. I think it benefits everyone.

7           CHAIRMAN DIENER: Any other questions?

8           Thanks very much. Appreciate it.

9           MS. BARNES: Thank you.

10          CHAIRMAN DIENER: Item No. 10, Jon Schuster.  
11          And I believe Item 10 kind of ducktails in a little  
12          bit with what we talked about with Jessica, gave us  
13          a presentation on breed and quality of racing and  
14          what have you, if I'm not mistaken.

15          MR. KEELER: It does. They do coincide with  
16          each other. Jon Schuster, J-o-n, S-c-h-u-s-t-e-r.  
17          Good afternoon.

18          Our request to the Commission is to address  
19          the thoroughbred only or Indiana bred and sired  
20          program. To put it in a nutshell, what we're  
21          really asking for is a change in the letter of the  
22          rule without changing the spirit of the rule.

23          Over the years there's been a lot of  
24          misconception about the amount of total monies that  
25          go to Indiana bred in our racing program. You



1 know, I've heard numbers as high as 80, 90 percent  
2 go to Kentucky horses and so forth. When you're  
3 looking at all the purse money, awards, and  
4 supplements, the fact is that at Indiana Downs, at  
5 least for the entire time that I've been here, the  
6 percentage that Indiana bred and sired horses have  
7 earned has always been in excess of 50 percent.  
8 It's typically right around 50 percent, usually  
9 between 52 and 54. This year is the lowest year  
10 I've seen it; it was 50.74 percent, so just a tick  
11 under 51.

12 What we are asking the Commission to consider  
13 is a change in the written guidelines that, I guess  
14 to best describe it, sort of compartmentalize where  
15 the monies go to for the Indiana-bred program,  
16 x number from slots and so much from pari-mutuel  
17 monies. When we sit down and look at the totality  
18 of the programs -- the awards, the supplements, the  
19 purses, and all the things that go into what  
20 happens and we get back to that 51 to 54 percent  
21 number -- it would be a lot simpler for the racing  
22 secretaries and for the tracks to set up a racing  
23 program if we had a guideline that allows us a  
24 certain amount of leeway, because some things are  
25 out of our control, depending what races fill in a

1 given year, horse populations, and so forth.

2 If we can change the guideline ever so  
3 slightly to read 50 percent plus or minus  
4 5 percent, that will keep us in the range where  
5 we've been, but it will take off that  
6 responsibility, if you will, to make sure that we  
7 ratchet down the pari-mutuel monies only for this  
8 pocket and we can only have the slot money for this  
9 pocket.

10 We'll keep the same amount of monies going to  
11 the Indiana-bred connections that we have in the  
12 past, but that change would help us a lot in making  
13 the program a lot easier for everybody to  
14 understand.

15 I do think a side benefit for the Commission  
16 in this particular case is everyone will know that  
17 Indiana breders are absolutely getting a fair shake  
18 on purse money. We don't have to endure those  
19 conversations any longer about 80 percent of the  
20 money going down the road when that's not the case.

21 COMMISSIONER SCHAEFER: Jon, what's the  
22 written rule say now? I'm sorry.

23 MR. SCHUSTER: I'll let Joe.

24 MR. GORAJEC: Commissioner Schaefer, if you  
25 look at the last page in this particular tab, it

1        says Current Policy. That was something that the  
2        Commission passed in 2010.

3                And what Jon is suggesting, and what I would  
4        recommend to the Commission -- I would recommend to  
5        the Commission that they approve Jon's request --  
6        is it makes the current formula simpler, makes it  
7        easier to understand, it gives Jon and his racing  
8        secretary the flexibility that they need, and to a  
9        relatively limited extent it might be able to make  
10       a lucrative Indiana-bred program even a little bit  
11       more lucrative.

12               So for all those reasons, I think it's a good  
13       proposal. But the current policy is laid out in  
14       that tab, the last page.

15               CHAIRMAN DIENER: Jon, I think we understand  
16       the proposal, and it appears as if the HBPA has  
17       written a letter in support of that proposal and it  
18       appears the Indiana Thoroughbred Breed Advisory  
19       Committee has written a letter in support of your  
20       proposal.

21               Questions or further discussion from the  
22       Commissioners?

23               MR. SCHUSTER: One other thing I would like to  
24       mention. The second piece of that proposal talks  
25       about eliminating the mandate that Indiana purses

1 and open purses be the same. That is another tool  
2 for us in our toolbox, as we've talked about  
3 earlier today, I guess -- bad metaphor maybe -- to  
4 help us make sure that we massage the races and get  
5 the purse levels right away. With the decreasing  
6 horse populations and the different pieces that go  
7 into that puzzle, that would help us as well. And  
8 that's in the proposal.

9 CHAIRMAN DIENER: You have two guideline  
10 proposals that you're presenting to us?

11 MR. SCHUSTER: That is correct, yes.

12 CHAIRMAN DIENER: Both of which have been  
13 supported by the thoroughbred industry and  
14 Commission Staff.

15 I'd move that we adopt the guidelines as  
16 proposed.

17 COMMISSIONER WEATHERWAX: Second.

18 CHAIRMAN DIENER: All in favor.

19 THE COMMISSION: "Aye".

20 CHAIRMAN DIENER: Thank you, Jon.

21 MR. SCHUSTER: Thank you. Appreciate it.

22 MR. GORAJEC: To the extent that the  
23 Commission approves this, what I would do is I  
24 would go ahead and write out a new Commission  
25 policy, on our stationery, date it, and circulate

1       it amongst the industry, so that we have something  
2       on our letterhead stating what our policy is. But  
3       it'll be consistent with what you just approved.

4               CHAIRMAN DIENER: I was going to ask that the  
5       two approved guidelines here be written in a new  
6       Commission policy.

7               MR. SCHUSTER: We would appreciate that. That  
8       would be good for all parties.

9               CHAIRMAN DIENER: Thank you very much.

10              Okay. Item No. 11, Mr. Elmore, I think.

11              MR. ELMORE: Brian Elmore, B-r-i-a-n,  
12       E-l-m-o-r-e, vice president of racing for Centaur.

13              Mr. Chairman, Commissioners, Commission Staff,  
14       Item No. 11 is regarding the tote services  
15       contract, which must be approved by the Commission,  
16       per rule. At the end of last year, Indiana Downs  
17       (inaudible) did a one-year extension to cover us  
18       through this transition period. At the end of this  
19       year, Hoosier Park's contract expires with  
20       United Tote.

21              So what we did, we went out and met with three  
22       different tote companies to solicit bids to service  
23       both facilities, now that Centaur owns them both.  
24       Hoosier Park is holder of a permit to conduct horse  
25       racing and has three OTBs, one in Fort Wayne,

1 Indianapolis, and Merrillville. Indiana Downs  
2 holds a permit to conduct horse racing and has two  
3 licenses, one in Clarksville, one in Evansville.  
4 Evansville is currently inactive.

5 The tote agreement permits United Tote to  
6 provide totalisator services to Hoosier Park and  
7 Indiana Downs and their respective satellite  
8 facilities during the period commencing  
9 December 20, 2013, through December 31, 2020. It  
10 provides for an automatic three-year renewal unless  
11 either party timely opts out.

12 Hoosier Park is currently employing the  
13 services of United Tote and found them to be more  
14 than satisfactory. Indiana Downs has been under a  
15 contract with another tote vendor. Their contract  
16 expires on December the 19th, 2013.

17 Appointing a common tote vendor will allow  
18 licensee to cost savings on economics of scale and  
19 provide optimal for future upgrades, new products,  
20 and opportunities since all facilities will be  
21 using the same system, platform, and vendor. The  
22 most advantageous about this is the fact that if a  
23 patron purchases a ticket in Merrillville, drives  
24 233 miles down I-65, and cash that ticket in  
25 Clarksville. So all six sites will cross cash

1 within the state.

2 Therefore, we respectfully request the  
3 Commission approve this tote agreement and  
4 authorize the executive director to make any other  
5 approvals that might be necessary if there's any  
6 other enhancements and cost.

7 CHAIRMAN DIENER: Brian, are there any  
8 substantive changes in the new agreement with  
9 United Tote to cover both tracks compared to the  
10 previous United Tote contract with only  
11 Hoosier Park?

12 MR. ELMORE: The major thing is when you're  
13 talking about six venues, got much more competitive  
14 on pricing, and actually the licensees received  
15 benefit of that.

16 CHAIRMAN DIENER: So the price is a little bit  
17 more advantageous?

18 MR. ELMORE: Yes, sir.

19 CHAIRMAN DIENER: In terms of the tote  
20 services provided, are they essentially going to be  
21 the same as they were?

22 MR. ELMORE: Yes, at the Hoosier Park  
23 facilities.

24 And, Mr. Chairman, where we think we'll really  
25 benefit from this is, of course, Clarksville's

1 close proximity to Churchill Downs. We'll now have  
2 the same terminals as Churchill. So the patrons  
3 that go to both places, have more familiarity with  
4 Clarksville, and we hope that'll be very helpful to  
5 Clarksville.

6 CHAIRMAN DIENER: Questions for Mr. Elmore?

7 COMMISSIONER SCHAEFER: Brian, I know the  
8 Evansville facility's not open now. But does this  
9 include them --

10 MR. ELMORE: It would in the event that the  
11 Commission would ever allow that to be reopened,  
12 yes, sir.

13 CHAIRMAN DIENER: Is this a request just by  
14 Indiana Downs?

15 MR. ELMORE: No, sir. It is by both parties.

16 CHAIRMAN DIENER: That's what I thought.

17 MR. ELMORE: Yes, sir.

18 CHAIRMAN DIENER: I move approval of the  
19 request by the two track licensees for a single  
20 contract with United Tote for totalisator services  
21 as submitted.

22 COMMISSIONER SCHAEFER: Second.

23 CHAIRMAN DIENER: All in favor.

24 THE COMMISSION: "Aye".

25 CHAIRMAN DIENER: Opposed, same sign.



1 (No response)

2 CHAIRMAN DIENER: The single United Tote  
3 contract for both tracks and the OTBs are approved.

4 MR. ELMORE: Thank you, sir. Appreciate that.

5 CHAIRMAN DIENER: I think you're still up.

6 MR. ELMORE: I am still on deck.

7 CHAIRMAN DIENER: Now you want to spend some  
8 more money at Indiana Downs for track services.

9 MR. ELMORE: Yes. At Indiana Downs we would  
10 like to do a total dirt track renovation. We  
11 talked about this last December 14 and assured this  
12 Commission that we would take a close look at the  
13 racetracks that we would have ownership of and  
14 responsible for. We did find some deficiencies at  
15 Indiana Downs prior to the start of the race meet,  
16 but it takes about six or eight weeks to resolve  
17 those issues.

18 I could not personally be any more pleased in  
19 the results we had at Indiana Downs this year. I  
20 think our track superintendent, Johnny Jamison, did  
21 a magnificent job. We reduced catastrophic race  
22 breakdowns by one-third over last year. For the  
23 first time in the history of nineteen years of  
24 running thoroughbreds, there was not one race day,  
25 nor was there one race canceled, for a track

1 condition that the riders did not feel safe on.

2 I'm very proud of that. And the stakeholders  
3 all benefit from that, the Commission pari-mutuel  
4 tax, the horsemen and racing opportunities, and, of  
5 course, the licensees.

6 In over 50,000 trips to the track for  
7 training, I have a total of four catastrophic  
8 breakdowns. I think Dr. Angela may have two more  
9 that were put down later I'm not aware of. So,  
10 again, out of 50,000, I'm very pleased with those  
11 results.

12 We have a very good racetrack. We want to  
13 make it better.

14 CHAIRMAN DIENER: Am I right that Butch Lehr  
15 is going to help you?

16 MR. ELMORE: Yes, sir. Just so you know,  
17 Butch was here today, along with Johnny Jamison.  
18 We are doing the track cut due to the storm water  
19 going across the pond, so they returned to their  
20 duties and I said I would do my best to cover for  
21 them. Yes, Mr. Lehr will be in assistance.

22 So we ask that you approve that, and we  
23 request that the executive director be given  
24 authority to approve contracts in excess of  
25 \$50,000, which could be for materials.

1           CHAIRMAN DIENER: Joe, do you recommend  
2 approval of this request?

3           MR. GORAJEC: Oh, absolutely.

4           CHAIRMAN DIENER: Questions from the  
5 Commission?

6           I would motion that we approve the request by  
7 Centaur to renovate the Indiana Downs track  
8 surface, estimated cost \$1 million, and then enter  
9 into contracts related thereto, subject to review  
10 and approval by our executive director.

11          COMMISSIONER WEATHERWAX: Second.

12          CHAIRMAN DIENER: All in favor.

13          THE COMMISSION: "Aye".

14          CHAIRMAN DIENER: Opposed, same sign.

15          (No response)

16          MR. ELMORE: Thank you, sir.

17          CHAIRMAN DIENER: You're still up for spending  
18 another million dollars.

19          MR. ELMORE: I'm going to go three for three  
20 today maybe here. Or maybe I should say three for  
21 four. Depends how you're looking at it.

22          MR. GORAJEC: You're certainly not batting  
23 1,000.

24          MR. ELMORE: No, I'm not. But you bat 750,  
25 it'll get you in the Hall of Fame.

1 (Laughing)

2 MR. ELMORE: At Indiana Downs we are  
3 requesting Commission approval to build and erect a  
4 new video tote board to go on the infield. It  
5 would somewhat mirror Hoosier Park's. The center  
6 would be approximately 18x32-foot video screen. We  
7 believe it would be a great enhancement for our  
8 patrons, for the horsemen that race there.  
9 Presently, we have four companies bidding on this.

10 Because time is of the essence, and we need to  
11 get the foundations in and the structures prior to  
12 the next meeting, quite possibly, we would like to  
13 request the Commission approve this project and  
14 request that the Commission delegate the executive  
15 director authority to approve the design of the  
16 tote board and approve contracts in excess of  
17 \$50,000 associated with the tote board project.

18 CHAIRMAN DIENER: Joe, do you have any  
19 comments on what you know about this tote board?

20 MR. GORAJEC: If they want to build a tote  
21 board, let them build a tote board.

22 CHAIRMAN DIENER: If you build it, they will  
23 come.

24 MR. GORAJEC: I'm not a big fan of the  
25 jumbo-trons. But if they feel it's money well

1 spent, go ahead.

2 MR. ELMORE: It really has helped draw crowds  
3 out on the apron at Hoosier Park.

4 COMMISSIONER SCHENKEL: Let me tell you from  
5 experience fans expect it.

6 MR. ELMORE: I'm telling you what. People  
7 will like them. The horse will be running right in  
8 front of them, they'll stand and look at that board  
9 instead of looking at the horses.

10 Anyway, thank you very much. Appreciate it.

11 CHAIRMAN DIENER: I'll go ahead and make the  
12 motion that we authorize Centaur to build a new  
13 tote board at Indiana Downs, again, with the  
14 contracts subject to the review and approval by the  
15 executive director.

16 COMMISSIONER SCHENKEL: Second.

17 CHAIRMAN DIENER: All in favor.

18 THE COMMISSION: "Aye".

19 CHAIRMAN DIENER: Opposed, same sign.

20 (No response)

21 CHAIRMAN DIENER: Motion carries.

22 MR. ELMORE: Thank you.

23 CHAIRMAN DIENER: Thank you. And now your  
24 associate, Mr. Moore, wants to spend some more  
25 money.

1           MR. MOORE: Mr. Chairman, members of the  
2 Commission, Joe, Staff.

3           Here today to talk to you about the proposed  
4 new driver's lounge, which is kind of a misnomer.  
5 It's much more than a driver's lounge. First of  
6 all, it'll be a 3,600-square-foot building on the  
7 same footprint, if you go back to Hoosier Park's  
8 beginnings, the barn 15, which was the original  
9 detention barn. That will be the footprint where  
10 the new driver's lounge will be erected, and then  
11 barn 15 will be razed after this meet.

12           I mentioned it'll be more than a driver's  
13 lounge, in that just about half of the building  
14 will be designated or used by all of the backside  
15 barn area workers, employees, crews, trainers,  
16 owners. Be a nice recreation room, lounge,  
17 multiple TVs, pool table, ping-pong table. So  
18 it'll be a nice place for the folks to in between  
19 races in the early day spend their time.

20           On the driver's side there will be a very nice  
21 driver's lounge, which will have separate locker  
22 room facilities, 31 full-size lockers for the  
23 drivers. Again, a really nice lounge with multiple  
24 TVs, pool table, ping-pong table. And, in  
25 addition, there will be a smaller, but equally

1 nice, women's driver's lounge and locker room.

2 So we think we pretty much have taken care of  
3 everybody that takes part in harness racing at  
4 Hoosier Park in the barn area, and hope that you  
5 will see fit to approve it.

6 CHAIRMAN DIENER: Joe?

7 MR. GORAJEC: I'm comfortable with the  
8 request.

9 I would just like to ask Greg that once you  
10 have the plans that I'd like to see them and have  
11 my staff, and especially my track security, review  
12 those plans. But I think it's a good thing you're  
13 doing.

14 MR. MOORE: Absolutely, Joe. We welcome your  
15 input in those plans.

16 CHAIRMAN DIENER: Replacing barn 15, does that  
17 reduce the number of stalls you're going to have  
18 available for horses?

19 MR. MOORE: It does. But, Chairman, we don't  
20 need the number of stalls that we originally did,  
21 you know, having the thoroughbreds and  
22 standardbreds. We don't need as many stalls as we  
23 do for the thoroughbred meet. And we'll still be  
24 able to incorporate one of our other barns as part  
25 of the detention area; barn 9 and barn 16 will be

1       our detention area. But we still have plenty of  
2       barn space.

3               CHAIRMAN DIENER: Questions from the  
4       Commission?

5               I'll go ahead and make a motion that we  
6       authorize Centaur to construct a new driver's  
7       lounge and related facilities at Hoosier Park  
8       subject to, one, approval of all contracts by the  
9       executive director, and two, subject to review of  
10      final plans and drawings by the executive director  
11      for purposes of security.

12              COMMISSIONER SCHAEFER: Second.

13              CHAIRMAN DIENER: All in favor.

14              THE COMMISSION: "Aye".

15              MR. MOORE: Thank you.

16              CHAIRMAN DIENER: I think you're still up.

17              MR. MOORE: I think I am.

18              CHAIRMAN DIENER: Yes. We have a new business  
19      item that because of time sensitivity, that is,  
20      weather. Hoosier Park wants to do some track  
21      resurfacing or track rejuvenation, whatever you  
22      want to call it.

23              MR. MOORE: That's actually a good term,  
24      Mr. Chairman. I will call it a superb racing  
25      surface this meet, both in the speed of the horses



1 but even more so in the safety of the racing  
2 surface. And I want to commend Jim Shelton, who  
3 was here this morning, and his team for just an  
4 outstanding job and all the hard work that has gone  
5 into providing a great racing surface.

6 But my analogy is much like a road. You have  
7 a nice new road, but you have traffic over it  
8 constant, constant, in this case tens of thousands  
9 of horses, particularly in one area and that's the  
10 rail, going over it literally thousands of times a  
11 day.

12 So it's time that the track needs a little, as  
13 you said, renovation, upkeep. And we have engaged  
14 the services of Greg and Dan Coon from Coon & Sons,  
15 who are renowned experts in the standardbred  
16 industry as far as harness racing services are  
17 concerned. And we would like to get going on this  
18 project. Again, majority of it being down by the  
19 rail, but we also want to make sure we have uniform  
20 grades around the entire racing surface.

21 We'd like to get started literally the day  
22 after we close. And we've promised the Commission,  
23 we promised the horsemen that we will provide the  
24 best racing surfaces, and to that end, this is what  
25 we are proposing to do.

1           CHAIRMAN DIENER: Joe, questions, comments?

2           MR. GORAJEC: I think it's a good idea. I  
3 think they're one of the few companies spending  
4 money on anything, and for them to do this for a  
5 surface that is already a good surface, I think  
6 they should be commended.

7           COMMISSIONER SCHAEFER: From what I read, are  
8 you just going to compact the rail surface?

9           MR. MOORE: We're probably going to look to do  
10 either of two things, either where you rip up the  
11 rail or actually undercut it and put in a new rail  
12 surface. Greg and Dan and Jim Shelton, our track  
13 superintendent, are putting their heads together to  
14 get a game plan together. They actually were here  
15 today, the Coons were here this morning. They've  
16 been meeting with Jim yesterday and today, and they  
17 will have a plan and either one of those two  
18 scenarios will occur. Whatever they decide upon,  
19 we'll see pretty much what I'll call a new surface  
20 by the rail.

21           COMMISSIONER SCHAEFER: More compact?

22           MR. MOORE: More compact. You know, you throw  
23 terms around loosely. Some refer to it as a cow  
24 path because you have so many horses going over  
25 that same few feet, thousands literally every day

1 when you consider training and racing and warmups.  
2 Just, you know, the guys have done a great job  
3 working it. It's just a matter of, you know,  
4 you've seen roads, they need to be refurbished, and  
5 that's what the rail needs to be right now.

6 CHAIRMAN DIENER: I'll go ahead and make the  
7 motion that Centaur be authorized to renovate the  
8 track surface at Hoosier Park, subject to review of  
9 final plans and various contracts by the executive  
10 director.

11 COMMISSIONER SCHAEFER: Second.

12 CHAIRMAN DIENER: All in favor.

13 THE COMMISSION: "Aye".

14 CHAIRMAN DIENER: Motion passes.

15 MR. MOORE: Thank you.

16 CHAIRMAN DIENER: No more old business. No  
17 more new business. Our next meeting is right now  
18 scheduled for December 10 at 9:00 a.m. in this  
19 office.

20 And apology's not the right word. I know  
21 that. Every one of the four of us -- Jason would  
22 join in this -- we really commend the horsemen and  
23 the track trying to put together this distribution  
24 agreement. There's a lot of pluses in that. I can  
25 only speak for myself personally. I just felt

1           constrained that I couldn't. I wanted to. And  
2           this Commission wants to do what's best for this  
3           industry, and don't think by our inaction today  
4           that there's any hesitancy in trying to support  
5           what you're all doing.

6                     With that, we stand adjourned.

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1 STATE OF INDIANA

2 COUNTY OF MARION

3 I, Michele K. Dew, CRR-RPR, a Notary Public in  
4 and for said county and state, do hereby certify that  
5 the witnesses herein were by the Chairman duly sworn  
6 to tell the truth, the whole truth, and nothing but  
7 the truth in the aforementioned matter;

8 That said meeting/hearing was taken down in  
9 stenograph notes and afterwards reduced to typewriting  
10 under my direction; and that the typewritten  
11 transcript is a true record of the testimony given by  
12 said deponents;

13 That said meeting/hearing complies with all  
14 applicable rules;

15 I do further certify that I am a disinterested  
16 person in this cause of action; that I am not a  
17 relative of the attorneys for any of the parties.

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand and affixed my notarial seal this 8th day of  
20 November, 2013.

21 



My Commission expires: August 20, 2017  
Job No. 79350

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