

# State of Indiana Indiana Horse Racing Commission

Mitchell E. Daniels, Governor

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## Final Report Indiana Downs track closure

### Executive Summary

On June 12, 2012, the Indiana Horsemen's Benevolent & Protective Association, Inc. ("HBPA") submitted to the Indiana Horse Racing Commission ("Commission") a petition for relief ("Petition") which alleged that the Indiana Downs track was "dangerous to the health and well-being of the equine athletes attempting to compete at Indiana Downs." Upon receipt of the Petition, Executive Director Joe Gorajec conferred with Commission Chairperson, Sarah McNaught and General Counsel, Lea Ellingwood. On June 14, 2012, Executive Director Gorajec issued a directive closing the Indiana Downs track surface on June 15, 2012 and June 16, 2012 to allow Commission staff to conduct an investigation of the HBPA's Petition.

On June 15, 2012, Commission staff, including Senior Steward Stan Bowker, initiated its investigation into the validity of the HBPA complaint. After interviewing numerous industry stakeholders, Commission staff determined that the HBPA complaint was unsubstantiated and uncorroborated. Accordingly, on Friday, June 15<sup>th</sup>, Executive Director Gorajec issued a directive opening the track surface to resume training on June 16<sup>th</sup> and live racing on June 18, 2012.

### Background

On June 12, 2012, Michael Brown, HBPA Executive Director, submitted to Executive Director Gorajec via email the Petition which consisted of two pages—the Petition and a sheet of paper with approximately fifty (50) signatures. The Petition, written by Mr. Brown, stated "the thoroughbred trainers and/or owners signing this petition hereby formally state that the condition of the main track at Indiana Downs is currently dangerous to the health and well-being of the equine athletes attempting to compete at Indiana Downs." Furthermore, the Petition read "this situation has become much worse this week" . . . "this is our formal complaint" . . . "we request both a productive response and relief." In addition to Executive Director Gorajec, the Petition was addressed to Jim White (Indiana Downs Track Superintendent), Scott Peine (Indiana Downs Director of Thoroughbred/Quarter Horse Racing), and Jon Schuster (Indiana Downs General Manager). Mr. Schuster issued a response, a copy of which is attached.

In light of liability issues raised by recent Indiana State Fair litigation and equine and jockey health issues highlighted in the recent series of New York Times articles, as well as the fact that the Petition was addressed to the Commission's Executive Director, the allegations that the track surface at Indiana Downs was dangerous and the request for response and relief were taken very seriously. After conferring with

Commission Chairperson Sarah McNaught, Executive Director Gorajec initiated an investigation to determine the validity of the HBPA's Petition. Commission staff, including Senior Steward Stan Bowker, interviewed nearly twenty (20) individuals, including HBPA leadership, Thoroughbred horsemen (some of whom signed the Petition) and jockeys, Quarter Horse horsemen and jockeys, a practicing veterinarian, and Indiana Downs representatives.

During the interviews, HBPA leadership advised Commission staff of three facts. First, that it was never the HBPA's intention to file a formal complaint with the Commission. Rather, the HBPA intended only to copy Commission staff on its correspondence to Indiana Downs representatives. Second, that Mr. Brown had failed to submit all relevant pages of the HBPA complaint. The missing page made clear that the fifty signatures were affixed to an HBPA Questions-Complaints form rather than the Petition Mr. Brown submitted. Finally, although the HBPA believed the Indiana Downs track surface was too hard, the track surface was unequivocally not dangerous or unsafe.

Upon the conclusion of the interviews conducted, it was apparent to Commission staff that the allegation that the track surface was "dangerous" was unsubstantiated and that the Petition was a misguided attempt to resolve the HBPA's complaint that the track surface was too hard. Conversely, the Quarter horse horsemen and jockeys stated that the track, during the week in question, was "as good as they've seen the track."

Finally, without exception, the interviews with stakeholders made clear that there is a distinct lack of communication between horsemen, jockeys, and Indiana Downs' Track Superintendent. Indiana Downs and the HBPA have an existing contractual vehicle to address issues such as maintenance of the track surface, and they should have used it rather than having a petition with individual signatures submitted to the Commission.

## Interviews

### *a. Thoroughbred Horsemen, including HBPA leadership*

Interviewed: Richard Kohnhorst, Kim Hammond, Joe Davis, and David Paulus. Also interviewed were members of HBPA leadership-- Randy Klopp, President; Michael Brown, Executive Director; and Steve Stults, Director of Benevolence. Although the HBPA members and Thoroughbred horsemen agreed that the track surface was too hard during most of the week of June 12, they universally agreed that the track surface was not dangerous. Furthermore, Thoroughbred horsemen were upset that the complaint form they signed was not the document forwarded to the Commission. Kim Hammond stated that the track surface was "absolutely *not* dangerous" and that "they only meant to complain that the track surface needed to be reworked."

HBPA president Randy Klopp stated that the increase in speed is indicator that the track was too hard, but that the HBPA does not consider the track dangerous. "This was not meant to be a complaint to the Commission." Rather, the HBPA were intended to be copied on a complaint to the track itself. Trainers: "racing is an inherently dangerous sport. We want the times to slow down. The track isn't dangerous but *is* too hard and fast."

b. *Thoroughbred Jockeys*

Interviewed: Tommy Turner, Jeff Johnson (Jockey's Guild), and Fernando De La Cruz. The jockeys noticed that the track was noticeably harder over the week of June 12, but maintained that the track was not dangerous. They believe the track can be dangerous during inclement weather, but are concerned because they "have no person to talk to regarding issues with the track maintenance. There are no lines of communication."

c. *Quarter Horse Horsemen*

Interviewed: Tom Mosely and Michelle Collins. Tom states the track is "perfect from a quarter horse perspective," but does believe there is a communication issue with the track superintendent. Since the track closure has been announced, Tom and Michelle have received communication from 10-15 quarter horse trainers who have said the track is safe. Tom stated that during the past week, he has been successfully running two year old horses, who are particularly susceptible to track related injuries, without issue.

d. *Quarter Horse Jockeys*

Interviewed: Oscar Delgado, Tommy Johns, Aron Hunt, Harold Collins, and Gerardo Garrido. The Quarter Horse jockeys agree with the Thoroughbred jockeys that the "biggest concern is that the track guy doesn't talk to the riders." Tommy Johns believes "the track guy has tried to remedy issues with the track, but his approach isn't consistent." The jockeys also agree that while inclement weather poses problems, the track is not dangerous.

e. *Practicing veterinarian*

Interviewed: Dr. Jerre Rorick. Dr. Rorick indicated that the presence of numerous shin injuries is indicative of a hard track. Sore shins normally happen; while there has been an increase generally over the course of the past month, there has been no noticeable change in the week alleged to be dangerous by the HBPA. Dr. Rorick agrees that the track has been too hard because the horses seem stiffer than normal, but that indicated that he would not characterize the condition of the track dangerous. The injuries related to stiffness are normally worked out in a day or so.

f. *Indiana Downs Representatives*

Interviewed: Jon Schuster (General Manager) and Jim White (Track Superintendent). Jim indicated that he had received no complaints regarding the track all season. He realized the track "got fast" and he changed his equipment to accommodate for it. To communicate with jockeys and horsemen, he "drives through the barn about three times a week" and is in the race office. Jon acknowledged that the HBPA/Indiana Downs contract provides for a race committee purposed with, among other things, discussing issues related to track maintenance. So far, the parties have not availed themselves of this opportunity.

## Findings

Based on the foregoing, it is the opinion of Commission staff that the Petition addressed to the Commission was not intended to be a Petition to the Commission for relief. Furthermore, it is the opinion of Commission staff that the HBPA's allegation that the Indiana Downs track surface is "dangerous"<sup>1</sup> is unsubstantiated and uncorroborated<sup>2</sup>.

Commission staff has found that there is a material lack of communication between Indiana Downs' Track Superintendent and Indiana horsemen and jockeys. Furthermore, Commission staff finds that the HBPA and Indiana Downs have failed to utilize the race committee outlined in the HPBA/Indiana Downs contract, which exists, in pertinent part, to resolve such issues.

## Recommendations

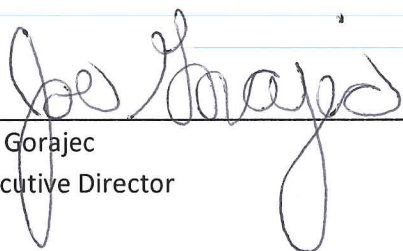
As a result of the investigation of the June 12, 2012 Petition, Commission staff recommend the following three courses of action.

- First- The Commission should establish a clear line of decision-making authority for similar such issues which may arise in the future.
- Second- Indiana Downs should work with stakeholders to develop a framework through which the Track Superintendent can receive continual feedback regarding the track conditions from the horsemen's associations, Thoroughbred and Quarter Horse horsemen, and jockeys.
- Third- The Commission should identify an individual or entity, available upon short notice, to evaluate and make recommendations to Commission staff regarding the track surface.

Date: June 19, 2012



Lea Ellingwood  
General Counsel



Joe Gorajec  
Executive Director

<sup>1</sup> Commission staff finds the use of the word "dangerous" to be highly charged, inflammatory, and most importantly, a misrepresentation of the nature of the HBPA/Thoroughbred horsemen's complaint.

<sup>2</sup> Pursuant to 71 IAC 13-1-2(b)(10)(K), in reviewing the registration of a horsemen's association to receive monies pursuant to IC 4-35-7-12, the Commission may consider "whether the horsemen's associations officers, directors, or representatives have been . . . accurate in matters relating to or in dealings with the commission, the commission staff, permit holders, or other horse racing industry constituents."