

**ORDER 2009-109
IN RE SETTLEMENT AGREEMENT**

**INDIANAPOLIS DOWNS, LLC
09-IL-01**

After having reviewed the attached Settlement Agreement, the Indiana Gaming Commission hereby:

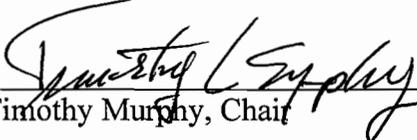
Approves

APPROVES OR DISAPPROVES

the proposed terms of the Settlement Agreement.

IT IS SO ORDERED THIS THE 11th DAY OF JUNE, 2009.

THE INDIANA GAMING COMMISSION:



Timothy Murphy, Chair

ATTEST:



Thomas Swihart, Secretary

**STATE OF INDIANA
INDIANA GAMING COMMISSION**

IN RE THE MATTER OF:)	
)	SETTLEMENT
INDIANAPOLIS DOWNS, LLC)	09-IL-01
)	

SETTLEMENT AGREEMENT

The Indiana Gaming Commission (“Commission”) by and through its Executive Director Ernest E. Yelton and Indianapolis Downs, LLC (“Indiana Live”), (collectively, the “Parties”) desire to settle this matter prior to the initiation of a disciplinary proceeding pursuant to 68 IAC 13-1-18(a). The Parties stipulate and agree that the following facts are true:

FINDINGS OF FACT

COUNT I

1. 68 IAC 1-5-1 (10) requires the casinos to report any apparent criminal activity taking place on the casino property. This information must be submitted to an enforcement agent. For Gaming Enforcement to properly handle criminal cases they should be informed immediately of all apparent criminal activity.
2. On January 10, 2009, a Gaming Agent was reviewing daily surveillance incident reports when he noticed an entry regarding an altercation that took place on the casino floor earlier in the day. The Agent reviewed the surveillance footage and noted that the altercation included actions that, as defined by IC 35-42-2-1, constituted the crime of battery. The security personnel responding to the altercation failed to notify a Gaming Agent.

COUNT II

3. 68 IAC 17-1-2(a) states at least ten (10) days before transporting electronic gaming devices, the person causing the movement of the electronic gaming device shall notify the executive director in writing.
4. On February 10, 2009, a Gaming Agent contacted Gaming Laboratories International to verify that software, sent by Bally Gaming, and received on February 6, 2009 was approved for use in Indiana. The order form, from Indiana Live to Bally Gaming, which listed the software, was sent on January 21, 2009. The software was not approved for use in Indiana and therefore was never entered into the Electronic Gaming Device system which is used by the casinos and the Commission to order, ship, convert or move electronic gaming devices.

COUNT III

5. 68 IAC 1-16-3(2) states all casino licensees must produce the original or a copy, or both, of any records requested by the commission, enforcement agents or persons authorized by the commission.
6. 68 IAC 15-1-2(2) states the purpose of the accounting records and procedures is to ensure the financial records of the casino are accurate and reliable.
7. 68 IAC 15-7-3(a)(1) states the casino shall require, on a daily basis, that the revenue auditor or its equivalent trace the total of the "bill in" meter readings as recorded by the bill acceptor flash report or equivalent to the actual count performed by the soft count team to verify agreement.
8. On March 16, 2009, Indiana Live filed an RG-1 for gaming day March 12, 2009. Upon examination of the form, the IGC Audit Staff realized it was incorrect as the bill validator count, which includes currency and TITO ticket amounts, was approximately five hundred dollars (\$500) more than the currency counted in the count room. This indicated that the total amount of TITO tickets was approximately five hundred dollars (\$500). The RG-1 also reported approximately two hundred seventy five thousand dollars (\$275,000) of income as calculated by the Central Computer System. Since the casino was conducting a one hundred percent drop (100%) no amount should have been reported for the central computer system. Based on the data an audit of the March 12, 2009 RG-1 was initiated.
9. The IGC Audit Staff found that a Soft Count Report which reported a ticket drop of over three hundred thousand dollars (\$300,000) was received by the finance department on March 13, 2009. This report was not included when the RG-1 was filed on March 12th but was included as an adjustment on the report filed on March 18. Prior to the adjustment filed on March 18th the IGC Audit Staff had received three versions of the report from the finance department; none included the TITO ticket drop. Only after several attempts did the IGC Audit Staff receive the correct supporting documents for the RG-1 filed March 12, 2009. The IGC Audit Staff had asked the Indiana Live Internal Audit Staff to also look into this issue. The Internal Audit Staff informed the IGC Audit Staff that the Finance Department was uncooperative when asked for information.
10. The Finance Department admitted to knowing that the RG-1 filed for gaming day March 12, 2009 was incorrect, but they filed the form to meet the filing deadline. It should be noted that the gaming day was a Thursday and the RG-1 did not have to be filed until the following Monday.

11. The first five tax returns filed by Indiana Live were filed incorrectly and the income for those five days was underreported by over four hundred sixty thousand dollars (\$460,000).

COUNT IV

12. 68 IAC 2-6-30.1 (b) states that the casino licensee must notify the enforcement agent, in writing, of each electronic gaming device that has been removed from play.
13. On February 27, 2009, a Gaming Agent noticed that two electronic gaming devices, each of which had given jackpots of more than one hundred thousand dollars (\$100,000), had been put out of service. Both electronic gaming devices were determined to have been functioning correctly, and appear to have been removed from service due to the large amount of jackpots given. As of April 22, 2009, the Agents have not received any written notification regarding the machines placed out of service.

COUNT V

14. IC 4-35-3-4 declares that it was the legislature's intent to "maintain the public's confidence and trust through ...the strict regulation of the facilities, persons, associations and gambling games at racetracks.
15. IC 4-35-4-2(a)(1)(A) states the commission shall adopt rules that the commission determines are necessary to protect or enhance the credibility and integrity of gambling at racetracks.
16. 68 IAC 1-4-2(a) requires the commission to maintain the integrity of the commission and casino gambling. Casino licensees must encourage confidence in the commission and the casino gambling industry by maintaining high standards of honesty, integrity and impartiality. Casino licensees shall promote this policy by entering into contracts and transactions in accordance with the Act and this title, and shall be held accountable for all contracts or transactions entered into under this rule.
17. 68 IAC 2-1-11 states that the commission may initiate a disciplinary proceeding against a casino licensee if the commission believes discipline is "in the best interest of Indiana and will protect and enhance the credibility and integrity" of gambling.

18. 68 IAC 13-1-1(b) states the commission may initiate an investigation or a disciplinary action, or both, against a licensee about whom the commission has reason to believe at least one of the following:
- 1) The licensee is not maintaining suitability for licensure.
 - 2) The licensee is not complying with the licensure conditions.
 - 3) The licensee is not complying with the Act or this title.
19. On Thursday March 12, 2009 and Friday, March 13, 2009 prior to the Indiana Live permanent facility grand opening, several media outlets announced that Justin Timberlake ("Timberlake") and Jessica Biel ("Biel") would be at the ceremonial ribbon cutting. This was based on a "Media Advisory" sent to multiple Indianapolis publications, late in the afternoon on March 12, 2009, by the public relations firm hired by Indiana Live. By the end of the grand opening it was apparent that Timberlake and Biel would not be appearing at the casino.
20. An investigation was conducted by commission staff to find out the facts regarding the invitation, RSVP and absence of Timberlake and Biel. The investigation revealed that an invitation was sent to Timberlake and on March 6, 2009 an e-mail was sent from Tricia LaVore, VP of Marketing, to the Executive Secretary, inquiring if Timberlake was on the RSVP list. The Executive Assistant responded by stating he was. On March 12, 2009 at an early morning meeting the question is asked if Timberlake would need anything and who had RSVP'd for him. Tricia LaVore went to the Executive Assistant to inquire who had RSVP'd for Timberlake and the Executive Assistant responded that Timberlake was on the invitation list but not the RSVP list, confirming that Indiana Live had not received an RSVP for Timberlake. Tricia LaVore and the Executive Assistant did not tell anyone of this mistake until the morning of March 16, 2009. While the investigation revealed no evidence of fraud or intentional or premeditated wrongdoing on the part of Indiana Live, the casino's failure to take prompt remedial action foreclosed the possibility of preventing or minimizing any potential breach of the public's trust and/or injury to the credibility of the gaming industry in Indiana.

TERMS AND CONDITIONS

Commission staff alleges that the acts or omissions of Indiana Live by and through its agents as described herein constitute a breach of IC 4-35, 68 IAC or Indiana Live's approved internal control procedures. The Commission and Indiana Live hereby agree to a monetary settlement of the alleged violations described herein in lieu of the Commission pursuing formal disciplinary action against Indiana Live. This agreement is being entered into to avoid the potential expense and inconvenience of disciplinary action.

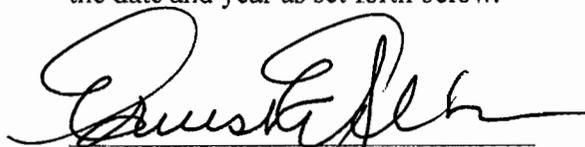
Indiana Live shall pay to the Commission a total of \$124,000 (\$5,000 for Count I; \$1,500 for Count II; \$75,000 for Count III; \$2,500 for Count IV and \$40,000 for Count V) in consideration for the Commission foregoing disciplinary action based on the facts specifically described in each count of this agreement. Neither this agreement nor any action performed pursuant to it will constitute an admission of any violation by Indiana Live. This agreement extends only to known incidents specifically alleged in this agreement and wholly based on the facts described herein. If the Commission subsequently discovers additional facts, which are not described in this agreement, that may support an independent determination that a violation has occurred, the Commission may pursue disciplinary action for such violations even if the facts are related to an incident described herein.

Upon execution and approval of this Settlement Agreement, Commission staff shall submit this Agreement to the Commission for review and final action. Upon approval of the Settlement Agreement by the Commission, Indiana Live agrees to promptly remit payment in the amount of \$124,000 and shall waive all rights to further administrative or judicial review.

This Settlement Agreement constitutes the entire agreement between the parties. No prior or subsequent understandings, agreements, or representations, oral or written, not specified or referenced within this document will be valid provisions of this Settlement Agreement. This Settlement Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all Parties.

This Settlement Agreement shall be binding upon the Commission and Indiana Live.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date and year as set forth below.



Ernest E. Yelton, Executive Director
Indiana Gaming Commission

6-11-09
Date



Mark Hemmerle, General Manager
Indiana Live

6/8/09
Date