



April 29, 2021

Blake L. Harrop
Chief, Antitrust Bureau
Office of the Attorney General of Illinois
100 W. Randolph Street, 11th Floor
Chicago, IL 60601

Dear Mr. Harrop:

We write to urge the Illinois attorney general's office, directly or through an appointed special assistant, to investigate whether Churchill Downs Inc. violated the Illinois Antitrust Act (740 ILCS 10/1) or federal antitrust laws in the course of its efforts to neutralize the threat of major gaming competition facing Rivers Casino in Des Plaines by quashing the potential for casino gaming, or even continued pari-mutuel wagering, at nearby Arlington Park in Arlington Heights.

Continued racing and pari-mutuel wagering at Arlington and, indeed, the addition of casino gaming at that location, clearly was the intent of Public Act 101-31, the state's 2019 gaming expansion law. The development of a so-called racino at Arlington would serve the best interests of Illinois by enhancing gaming competition, supporting the preservation and creation of jobs at the track and throughout Illinois agribusiness by dramatically boosting purses, promoting tourism, and growing the tax revenue base for the state and local governments. Had Churchill simply confessed that it had no continuing interest in operating Arlington as a racetrack, and then made a good faith effort to sell the property, there is reason to believe that another ownership team would have purchased the track, at a fair market price, and then moved to fulfill the intent of Public Act 101-31 by building and operating a casino entertainment complex on the site. As described later in this letter, our association reported to Illinois racing regulators what we understood to be at least one bona fide effort to purchase Arlington from Churchill in 2019 – an offer that Churchill has never publicly acknowledged.

Churchill surely recognized that continued racing or a casino gaming operation at Arlington, just a 12-mile drive from Rivers, would present the closest major gaming competition to Rivers. Neil Bluhm, founder and chair of Rush Street Gaming, has publicly opposed the expansion of gaming at Arlington since well before Churchill purchased the majority stake in Rivers and then partnered with Rush Street in the management of Rivers. After announcing in 2018 its intent to purchase its ownership interest in Rivers, Churchill devoted itself to eliminating that threat of competition from Arlington even as its executives were careful to confuse public understanding of the corporation's true motive. Churchill moved to end gaming operations at Arlington Park and also, it appears from the publicly available evidence, prevent a future owner of that Arlington Heights property from operating casino gaming – or even continuing horse racing and pari-mutuel wagering – at that site.

It wasn't enough for Churchill to renounce its longstanding plan to develop a racino at Arlington Park, while abandoning any pretense of commitment to advancing the best interests of Illinois as expressed by Public Act 101-31. Churchill, through its actions and comments, also made clear its aim to prevent any other party from operating racing and pari-mutuel wagering, or developing a racino, at Arlington. Churchill executives evidently engaged in a campaign to block current and future gaming scenarios at Arlington while telegraphing messages to deflect public attention from its actual intent: shielding Rivers from a major gaming competitor in close proximity. Whether Churchill's steps rose to the level of illegal anticompetitive behavior, we respectfully submit, is worthy of your review.

Review of Public Act 101-31

Public Act 101-31, the 2019 gaming expansion law, dramatically expanded gaming competition in Illinois by authorizing licenses for additional casinos, legalizing sports wagering, and allowing the expansion of video gaming operations. The law also provided Arlington Park and each of the state's other horse racing tracks with the opportunity to build and operate a casino.

Illinois taxpayers have a direct interest in the success of Public Act 101-31. Lawmakers tied that law to the Rebuild Illinois capital construction program; revenues generated for the state through gaming are earmarked to help finance the infrastructure projects. Racing and casino gaming at Arlington would benefit local residents pursuing more diverse entertainment options, myriad local businesses linked to the commerce opportunities at the track, and the state and local governments by boosting and diversifying the tax revenue base. The purpose of a racino is to help generate funds to supplement the purses awarded at the track. Higher purses make a racing program more competitive with those in neighboring states and that, in turn, supports the preservation and creation of jobs at the track, in surrounding communities, and throughout Illinois agribusiness.

Prior to approval of Public Act 101-31, representatives of Churchill spent nearly two decades lobbying lawmakers for the authority to operate a casino at Arlington. When that casino license was approved as part of Public Act 101-31, there was every expectation among elected officials and racing participants alike that Churchill would apply for and utilize that casino license, at Arlington Park, to the extent possible under the new law. Observers had not anticipated at that time – though it now appears clear – that Churchill, having acquired the majority stake in Rivers, would drop its racino aspirations at Arlington and also maneuver to prevent another owner from hosting horse racing or casino gaming at that site. Arlington Heights Mayor Thomas Hayes recently said publicly what other close observers have privately concluded. He told ABC7-TV in Chicago on Wednesday, Feb. 24: "I think it's clear why they did not choose to open a casino at the racetrack property – because it would directly compete with their majority interest in the Rivers Casino."

Churchill's Peculiar Public Behavior

During and shortly after the General Assembly's consideration of the gaming legislation that would become Public Act 101-31, Tony Petrillo, president of Arlington Park and senior vice president of Churchill, made a series of bizarre and contradictory remarks. Before the House Executive Committee, he argued lawmakers should separate the considerations of sports betting and other gaming because, in Arlington's view, there was a clear "pathway" to passage of sports betting but

that the “pathway” to approval of a larger gaming expansion deal “seems very obfuscated.” This was at a time when other racing participants – together with numerous other gaming stakeholders – were quickly coalescing around sweeping gaming expansion legislation that finally, following years of advocacy, appeared destined for passage. His remarks were in clear contrast to those of the heads of the state’s other two tracks – Tim Carey of Hawthorne Race Course and Brian Zander of Fairmount Park Racetrack – who expressed their unequivocal support for gaming expansion that would provide their respective tracks with the opportunity to apply for casino licenses.

Petrillo stopped short of describing Arlington as an opponent of gaming expansion but repeatedly cited the “opposition” to gaming expansion as a reason to divide from the gaming equation the legislature’s push to approve any gaming expansion beyond sports betting. Arlington, he told the committee, “would like ... to see those separated so that, if a big gaming bill does not pass, we [do not] walk away with nothing.” It was as if Petrillo was arguing that he knew better than Illinois lawmakers how to pass a bill – an absurd proposition, obviously. It appears now in hindsight that Churchill at that time was already angling to undercut expanded gaming opportunities at Arlington even as it planned to take full advantage of the additional gaming privileges that would be afforded, under Public Act 101-31, to Rivers Casino.

Later that session, with Arlington tacitly opposed to the legislature’s advancement of the gaming bill, Rep. Bob Rita, the House point-person on the measure, directed other racing stakeholders to proceed with negotiations over the final language of the bill, as it pertained to horse racing, in Arlington’s absence. The other two tracks, in the interest of inclusion, nonetheless extended to Arlington an invitation to join those talks. Arlington declined to participate. Representatives of the tracks and horsemen proceeded to reach agreement on the horse racing terms of the bill.

After lawmakers approved the gaming expansion bill and adjourned the spring 2019 session, the *Daily Herald* published an article noting that Arlington had “lobbied state lawmakers for two decades for more gambling to boost a struggling state horse racing industry” and reporting that Arlington officials were “pleased with legislation passed over the weekend permitting slots, table games and sports betting at the Arlington Heights-based track.” The newspaper quoted Petrillo as saying: “We're thankful to the legislative leaders in the House and Senate and governor for getting this done.”

Equally disingenuous were remarks from Churchill CEO Bill Carstanjen. After Gov. J.B. Pritzker signed the gaming bill into law, Carstanjen issued a statement announcing Churchill would not apply for the license to operate a casino at Arlington. He deceptively described the necessary disbursement of some casino gaming revenue to the horsemen’s purse account (a requirement that, under Public Act 101-31, would come with operation of a casino at Arlington) as a component of the track’s “effective tax rate” that would create a competitive disadvantage relative to the rates paid by casino gaming operations. This was an egregious distortion of the racino model that has been successfully adopted by tracks across North America; racetrack operators are granted the privilege of operating a casino on the unambiguous condition that a portion of the casino’s revenue will flow directly into the track’s purse account. By boosting the size of purses awarded at the track, the individual races (the racing product) become more competitive and the track itself also becomes more competitive. More competitive purses support jobs, economic opportunity and diversification of tax revenue for the state and local governments.

The Illinois Horse Racing Act (230 ILCS 5) seeks to balance the profit interest of a racetrack owner with the state's interest in promoting the growth of jobs at the track and beyond. A racetrack's contribution of a portion of its casino revenue to the horsemen's purse account is integral to that balance; it is solely through purse funds that racing professionals – from trainers and backstretch workers to blacksmiths and veterinarians – have an opportunity to earn a living. Our industry exists because it provides economic benefits to Illinois, both at the tracks and throughout agribusiness, that no other form of gaming can provide.

The notion that a track's required contributions to the horsemen's purse account constitute an unwelcome and unnecessary burden is fundamentally at odds with the mission of the state's horse racing industry as described by statute. The state's other two tracks – Hawthorne and Fairmount – have moved forward in earnest with plans to develop casino operations under the same law that Carstanjen described as untenable.

Reported Offer to Purchase Arlington

The Illinois Thoroughbred Horsemen's Association, which represents thoroughbred owners and trainers racing at Arlington and Hawthorne, has brought to the attention of Illinois racing regulators a reported offer by a group of prospective owners – an offer that Churchill was said to refuse but never publicly reported. During a meeting of the Illinois Racing Board in January 2020, then-Chair Jeffrey Brincat took upon himself the task of interrogating me about comments that I had made to the media concerning possible interest by third parties to purchase Arlington from Churchill in order to continue racing, and perhaps also engage in casino gaming, at that track. Brincat, who frequently sided with Arlington and often disparaged the pursuits of thoroughbred owners and trainers, appeared determined during that meeting to thoroughly disabuse the public of any notion that any other party might have the means and desire to continue gaming at Arlington.

Daniel P. Albers, an attorney for the ITHA, wrote after that meeting in a Jan. 29, 2020 letter to John Gay, general counsel of the Illinois Racing Board:

[Campbell] had been told at the time of the *Thoroughbred Daily News* article by individuals on the backstretch whom he presumed to be well informed that prominent horse trainer Louie Roussel spoke with William Mudd of Churchill Downs in August 2019, on Arlington Million Day, and, on behalf of an "owner's group," verbally offered up to \$200 million to purchase Arlington Park together with the track's casino license (assuming that it would be awarded) and that Churchill rejected that offer.

If that is true, it contradicts the conclusion proffered by Chairman Brincat at the January 21, 2020 board meeting that no offer has been made and also Mr. Mudd's denial of any offer in his telephone conversation with Chairman Brincat that Chairman Brincat reported at the January 21, 2020 meeting of the board. We respectfully suggest further investigation on this matter be directed to Churchill Downs, as it would have personal knowledge of any offer or related discussions and it is the ongoing Arlington license that is in question here. Indeed, it is our understanding that when Mr. Roussel was told of Chairman Brincat's conclusion at the board meeting on January 21, 2020 that no offer for Arlington had been made, Mr. Roussel called Chairman Brincat directly and told him that he himself had conveyed a \$200 million offer and that it had been rejected. We respectfully request Chairman Brincat publicly disclose the specifics of that call and

also disclose any other discussions or efforts he has undertaken in his capacity as Chairman of the IRB on the matter of whether there has been an offer to buy Arlington.

Mr. Roussel, it should be noted, is a nationally recognized horse racing professional who previously was majority owner of Fair Grounds Race Course in New Orleans. It is highly unlikely he would have approached a Churchill executive and tendered a verbal offer had he been without the means to execute that offer. Churchill has never publicly disclosed or commented on this offer. In fact, Carstanjen has publicly dismissed any suggestion that racing might continue – even under another owner – at Arlington. He told investors during a quarterly earnings call: “That land will have a higher and better purpose for something else at some point.”

Illinois law does not exist to promote the interests of a single out-of-state corporation – particularly when those interests broadly diverge from those of the state's taxpayers. We have described evidence supporting the conclusion that Churchill has, since purchasing the majority stake in Rivers, acted to thwart the threat of major gaming competition from Arlington. We believe this evidence also raises the question of whether Churchill took steps prohibited by state and federal antitrust laws.

We respectfully submit that questions worthy of investigation by the state's top legal officer include:

1. Whether any agreement occurred between Churchill and Midwest Gaming Holdings, or any other party with an interest in Churchill's purchase of the majority stake in Rivers, concerning a plan to end gaming and/or prevent the expansion of gaming at Arlington.
2. Whether Churchill's actions concerning the termination of gaming operations at Arlington were intended to neutralize the threat of gaming competition in close proximity to Rivers.
3. Whether Churchill dismissed any offer for the purchase of Arlington, formal or otherwise, from any party intending to continue and possibly expand gaming operations at Arlington.

We appreciate your time and consideration.

Sincerely,

[REDACTED]

Mike Campbell
President, Illinois Thoroughbred Horsemen's Association

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cc: Illinois Racing Board Chair Daniel Beiser
Illinois Gaming Board Chair Charles Schmadeke