

ORDER 2020-87

**AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING GRANTING TRANSFER OF OWNERSHIP
INTEREST IN OWNER'S LICENSES**

I. BACKGROUND

On July 9, 2019, the Indiana Gaming Commission (“Commission”) received an application from Eldorado Resorts, Inc. (“Eldorado”) seeking the Commission’s approval to acquire Caesars Entertainment Corporation (“Caesars”) through a public merger. Eldorado is presently the parent company of Indiana casino owner’s licensee Aztar Indiana Gaming Company, LLC, operating as Tropicana Evansville Casino (“Tropicana Evansville”) located in Evansville, Indiana.

Caesars is presently the owner of two (2) Indiana riverboat owner’s licenses and two (2) gambling games licenses (collectively, the “Indiana Caesars Licenses”) through its wholly-owned subsidiaries Caesars Resort Collection, LLC (“CRC”) and Caesars Entertainment Operating Company, LLC (“CEOC”). Those Indiana Caesars Licenses are: Hoosier Park, LLC, operating as Harrah’s Hoosier Park Racing & Casino located in Anderson, Indiana; Horseshoe Hammond, LLC operating as Horseshoe Hammond Casino located in Hammond, Indiana; Caesars Riverboat Casino, LLC, operating as Caesars Southern Indiana Casino located in Elizabeth, Indiana; and Centaur Acquisition, LLC, operating as Indiana Grand Racing & Casino located in Shelbyville, Indiana.

Eldorado announced the merger with Caesars on June 24, 2019. Eldorado will acquire all of Caesars’ outstanding shares. The total cost of the merger is nearly \$17 billion dollars. Upon completion of the merger, Eldorado will undergo a corporate name change to become Caesars Entertainment, Inc. As appropriate, references to and requirements of “Eldorado” in this Order includes and extends to the post-merger and closure entity Caesars Entertainment, Inc. If the merger is approved, the new company would own and operate approximately sixty (60) domestic gaming facilities across sixteen (16) states, including the Indiana Caesars Licenses and Tropicana Evansville (collectively referred to as “Indiana Licenses”). After the merger, the Indiana Licenses would remain unchanged. Eldorado, soon to become Caesars Entertainment, Inc., would become the parent company of those Indiana Caesars Licenses through its purchase of Caesars and its subsidiaries.

VICI Properties, Inc. (“VICI”), a publicly held company, currently holds a supplier’s license issued by the Commission pursuant to 68 IAC § 2-2-1(c)(5) and Order 2017-112. VICI owns the real estate at Horseshoe Hammond Casino and Caesars Southern Indiana Casino through a Real Estate Investment Trust. Eldorado will acquire Caesars’ previously approved lease with VICI for, among other assets, these Indiana properties. Horseshoe Hammond Casino and Caesars Southern Indiana Casino will continue to be responsible for casino gambling operations.

As part of this transaction, Eldorado will also undertake debt activity which must be approved by the Commission pursuant to Ind. Code § 4-33-4-21, Ind. Code § 4-35-5-7, and 68 IAC 5-3-2. Debt

transactions are analyzed to ensure the financial health of casino licensees and to ensure that a casino owner's license is not leased or hypothecated and that money is not borrowed or loaned against a casino owner's license.

The impact of this unprecedented transaction is greater upon Indiana than any other state. Commission staff conducted a thorough investigation which identified the following key concerns: undue economic concentration; corporate control; Eldorado's rapid corporate growth; Eldorado key management experience levels and lack of diversity; casino performance and employment levels following previous acquisitions; and the likelihood of stated synergies and the potential impact of failing to achieve such synergies.

During the course of the investigation, Eldorado has been responsive and maintained a continued dialogue with Commission staff. In response to the key concerns noted above, Eldorado has made the following assurances: the full commitment and attention of the largest domestic gaming operator; hands on executive management; flagship assets will be supported by a strong balance sheet and a geographically diverse business able to operate in any economic environment; increased autonomy and empowerment of local operating teams; streamlined regulatory oversight; and consistent personnel including a single Regional President, Dan Nita, dedicated to Indiana and a collaborative compliance team.

Ind. Code § 4-33-4-21 and Ind. Code § 4-35-5-7 provide that a licensed owner must apply for and receive Commission approval before a casino license is transferred, sold, or purchased. In consideration of Eldorado's request, the Commission has considered the following factors:

1. Eldorado has submitted a complete transfer of ownership interest application and caused to be submitted complete personal disclosure forms and other appropriate applications for Eldorado and all key persons, as deemed necessary by Commission staff.
2. The approvals required by the parties' shareholders has occurred.
3. The Federal Trade Commission concluded its review of the merger on June 26, 2020 and issued conditional approval for the transaction.
4. The U.S Securities and Exchange Commission ("SEC") has served subpoenas upon certain key persons of Eldorado, specifically Executive Chairman Gary Carano, Chief Executive Officer Thomas Reeg, President and Chief Operating Officer Anthony Carano, and Board of Directors Member James Hawkins. Eldorado has appropriately notified the Commission regarding this matter and submitted letters of assurance for each aforementioned individual and the company.
5. The Commission's Background and Financial Investigations Divisions have completed a comprehensive investigation of Eldorado, including key persons. Commission staff has presented the final confidential investigative report to the Commission for review.
6. The Commission's Financial Investigations Division has completed a comprehensive investigation of Eldorado's proposed debt activity related to this

transaction and provided its confidential analysis of the debt activity to the Commission for review.

7. The Commission has received and reviewed a confidential analysis of the proposed transaction from the Commission's outside financial analyst, Dan Roberts, of DR Financial Consulting, LLC.
8. Representatives of Eldorado have addressed the Commission at a public meeting to present information relevant to the proposed transfer of the casino owner's licenses and financing.
9. Eldorado has presented evidence that it meets or possesses the standards, criteria, and qualifications necessary to be issued a casino owner's license pursuant to Ind. Code § 4-33-6, Ind. Code § 4-35-5, and 68 IAC 2-1-5(c).

II. COMMISSION ACTION

A. Transfer Fee Under Ind. Code § 4-33-4-21(d).

The transfer of ownership before the Commission results in Eldorado acquiring controlling interest in a second casino owner's license in Indiana, either Horseshoe Hammond Casino or Caesars Southern Indiana Casino. The Commission hereby finds that Eldorado remains in compliance with the Indiana statutory limitations set forth in Ind. Code § 4-33-6-3.5 and remains subject to the provisions of Ind. Code § 4-33-4-21. The Commission further finds that Ind. Code § 4-33-4-21(d) requires Eldorado to pay a two million dollar (\$2,000,000) transfer fee for acquiring controlling interest in the second casino owner's license.

B. Undue Economic Concentration and Divestiture

Originally, the holder of a riverboat owner's license could not have more than a 10% ownership interest in another riverboat. In 2003, the limit was increased to two (2) riverboat casino owner's licenses (known as "the two-boat rule"). The two-boat rule limitation did not extend to gambling game licenses issued pursuant to Ind. Code § 4-35. Pursuant to House Enrolled Act 1050, passed during the 2019 legislative session, the Indiana General Assembly increased the limit to six (6) licenses irrespective of whether the license is issued pursuant to Ind. Code § 4-33 or Ind. Code § 4-35.

Ind. Code § 4-33-6-4 and Ind. Code § 4-35-5-2.4, set forth the factors the Commission is to consider when granting a gaming license. In 2019, in the same legislation noted above, the Indiana General Assembly added an additional factor the Commission was to consider: the "impact of any undue economic concentration of the ownership or control of a gaming license." Ind. Code § 4-33-6-4(a)(7). Undue economic concentration "means a person's actual or potential domination of casino gambling in Indiana sufficient to: (1) substantially impede or suppress competition among licensed owners and an operating agent; (2) adversely impact the economic stability of the casino industry in Indiana; or (3) negatively impact tourism, economic development, benefits to local communities, and state and local revenues." Ind. Code § 4-33-2-20. As originally proposed, the

merger transaction would result in Eldorado owning five (5) gaming licenses and controlling between 50% to 60% of gaming revenues in Indiana. The Commission's confidential financial analysis has concluded that Eldorado's ownership and operation of the five (5) Indiana Licenses would adversely impact the economic stability of the casino industry in Indiana and has the potential to negatively impact state and local revenues. In order to alleviate concerns regarding undue economic concentration, Eldorado voluntarily proposed to divest of two (2) of the Indiana licenses.

Given Eldorado's limited operational history in Indiana and based upon certain findings and concerns expressed above, the Commission finds that a third divestiture of an Indiana License is in the best interest of the State. As such, Eldorado, post-merger operating as Caesars Entertainment, Inc., shall divest, absolutely and in good faith, three (3) of the Indiana Licenses. Eldorado shall enter into a definitive agreement with respect to the three (3) divestitures on or before December 31, 2020.

C. Process Governing Divestiture

Pending divestiture, Eldorado shall do the following:

1. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Indiana Licenses, to minimize any risk of loss of competitive potential of the Indiana Licenses, to operate the Indiana Licenses in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Indiana Licenses, except for ordinary wear and tear. Eldorado shall not sell, transfer, encumber, or otherwise impair the Indiana Licenses (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Indiana Licenses; and
2. Eldorado shall not terminate the operation of any of the Indiana Licenses, and shall conduct or cause to be conducted the business and operations of the Indiana Licenses in the regular and ordinary course of business and in accordance with past practice (including regular repair, maintenance, and capital expenditure) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Indiana Licenses, and shall use best efforts to preserve the existing relationships with suppliers, patrons, employees, governmental authorities, vendors, and others having business relationships with the Indiana Licenses.
3. Provided, however, that Eldorado shall not be in violation of this Order if it takes actions to facilitate an acquirer's acquisition of the Indiana Licenses, consistent with the purposes of the Order, and with notice to and approval of the Executive Director, which authority is hereby delegated.

If Eldorado has not fully complied with the obligations to divest of the Indiana Licenses pursuant to this Order, the Commission may appoint a divestiture trustee (the "Trustee") to execute the divestitures, enter into any other agreements to facilitate such divestitures, and perform Eldorado's

other obligations in a manner that satisfies the requirements of this Order, statutes enforced by the Commission, and Commission rules. Eldorado shall be responsible for all Trustee expenses, including, but not limited to the Trustee's compensation. Neither the appointment of a Trustee nor a decision not to appoint a Trustee under this Order shall preclude the Commission from taking any other action, including enforcing Eldorado's compliance with this Order.

D. Conditional Approval of the Transfer.

The Commission hereby:

1. **APPROVES** the transfer of ownership interest in the Indiana Licenses from Caesars to Eldorado, which will result in Eldorado holding casino owner's licenses for Horseshoe Hammond Casino and Caesars Southern Indiana Casino, and gambling game licenses for Harrah's Hoosier Park Racing & Casino and Indiana Grand Racing & Casino; and
2. **APPROVES** the debt financing package proposed by Eldorado related to the merger transaction. The Commission also **WAIVES** the so-called "two meeting requirement" of 68 IAC 5-3-2(b)(2) and (3).
3. **REQUIRES** entry into definitive agreements to divest of three (3) Indiana Licenses by December 31, 2020.
4. Eldorado made certain assurances to the Commission during public testimony regarding employment levels at its Indiana licensed operations. The Commission **DELEGATES** to the Executive Director the authority to establish appropriate employment metrics in consultation with Eldorado.

The Commission's approval is subject to and contingent upon satisfaction of the following continuing conditions:

1. No adverse rulings or decisions by the Internal Revenue Service, Federal Trade Commission or Indiana Attorney General's Office that would materially impact the transaction;
2. The terms articulated in the final financing documentation do not materially differ from the terms Eldorado has presented to date, the terms of the final financing documentation do not violate Ind. Code § 4-33-4-21 and Ind. Code § 4-35-5-7, and upon execution of the final financing documents Eldorado shall provide the Commission with a legal opinion demonstrating compliance with Ind. Code § 4-33-4-21 and Ind. Code § 4-35-5-7, as required by 68 IAC 5-3-2(c)(11);
3. Eldorado shall obtain from the Indiana Horse Racing Commission ("IHRC") a transfer of the permits for Hoosier Park and Indiana Grand to conduct horse racing operations under Ind. Code § 4-31;
4. Further, Eldorado shall meet any and all conditions contained in a Final Order issued by the IHRC relating to conditional approval permitting Eldorado to conduct horse racing operations under Ind. Code § 4-31. Failure by Eldorado to meet any such condition may be the basis for action taken by the Commission pursuant to its powers and authority under Ind. Code § 4-33 or 4-35;

5. Successful closing of the financing package approved herein;
6. Eldorado, key persons of Eldorado, and relevant affiliates, persons and/or entities holding an economic, beneficial, or other interest in Eldorado remaining in compliance with laws, regulations, and/or other directives that are applicable to a casino owner's licensee;
7. Upon the transaction's closing, Eldorado shall submit to the Commission a written power of attorney identifying a trustee-in-waiting for each Indiana Licensee;
8. Eldorado shall submit payment of the two million dollar (\$2,000,000) transfer fee assessed upon Eldorado under Ind. Code § 4-33-4-21(d) for the acquisition of a second casino owner's license; and
9. Adherence to the divesture plan approved herein.

In addition, the Commission hereby requires Eldorado and VICI (sometimes collectively referred to as the "the parties") to provide notice to Commission staff regarding the following:

1. Eldorado shall annually report capital expenditures at Horseshoe Hammond Casino and Caesars Southern Indiana Casino as a percentage of net revenue;
2. The parties shall report all Eldorado capital expenditure requests on a monthly basis submitted to VICI for its consent and VICI's responses;
3. The parties shall report the annual rental amount required by the Master Lease on or before January 31st of each year;
4. The parties shall promptly report any lease dispute that remains unresolved for more than fifteen (15) days of the dispute occurring;
5. The parties shall report any uncured lease event of default immediately;
6. The parties shall report any bankruptcy filing or any default on the terms of any financing agreements immediately;
7. The parties shall report any lease amendment that materially impacts Indiana properties thirty (30) days before such an amendment would become effective, unless such amendment is necessary to comply with any material law, rule, or regulation, in which case such amendment may be effective immediately and thereafter reported promptly;
8. The parties shall report any lease renewal thirty (30) days before the renewal date;
9. The parties shall promptly report any change in their respective bond rating from Fitch and Ratings, Inc., Standard & Poor's Rating Services, Inc., Moody's Investors Service, Inc., or any other rating agency designated by the Commission;
10. VICI shall report any other transactions it pursues that are approved by the VICI Board of Directors, regardless if such transactions involve property in Indiana;
11. VICI shall report any new financing or refinancing of any of its debt obligations; and
12. VICI shall report any changes in corporate structure; including but not limited to, any changes in key personnel.

III.EFFECTIVE DATE

Typically, Commission orders are effective once an order becomes a final order upon the occurrence of the passage of fifteen (15) days following the receipt of the order from the Indiana Gaming Commission as set forth in Ind. Code § 4-21.5-3-5. Further, the Commission requires that an order become a final order before the underlying transaction may close. This Order shall be effective on the date set forth below at the request of Eldorado and Caesars to facilitate the transaction closing date. Failure to remit the two million (\$2,000,000) dollar transfer fee to the Commission before or at the time of closing will render this Order **VOID**. Eldorado and Caesars have been informed that this request means that their respective appeal rights related to the Order as set forth in Ind. Code § 4-21.5-3-5 will be waived.

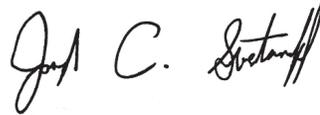
IT IS SO ORDERED THE 10th DAY OF JULY, 2020

THE INDIANA GAMING COMMISSION:

ATTEST:



Michael B. McMains, Chair



Joseph Svetanoff, Secretary