

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TOM HENSIEK, *et al.*,
Plaintiffs,

vs.

BD. OF DIRECTORS OF CASINO QUEEN
HOLDING CO., INC., *et al.*,
Defendants.

BD. OF DIRECTORS OF CASINO QUEEN
HOLDING CO., INC., *et al.*,
Crossclaim/Third-Party Plaintiffs,

vs.

CHARLES BIDWILL, III, *et al.*,
Crossclaim/Third-Party Defendants.

CHARLES BIDWILL, III,
TIMOTHY J. RAND,
Defendants/Counterclaimants,
Crossclaim/Third-Party Plaintiffs,

vs.

TOM HENSIEK, *et al.*,
Counterclaim/Crossclaim/Third-Party
Defendants.

JAMES G. KOMAN,
Crossclaim Plaintiff,

vs.

BD. OF DIRECTORS OF CASINO QUEEN
HOLDING CO., INC., *et al.*
Crossclaim Defendants.

Case No. 3:20-cv-00377-DWD

PLAINTIFFS' UNOPPOSED REQUEST TO CORRECT RECORD NUNC PRO TUNC

Plaintiffs Tom Hensiek, Jason Gill, and Lillian Wrobel, individually and as Class Representatives (“Plaintiffs” or “Class Representatives”) request the Court correct the record nunc pro tunc for the reasons explained below. On January 28, 2025, Plaintiffs submitted a Motion for Final Approval of Settlement (“Final Approval Motion”) set forth in the Class Action Settlement Agreement dated November 7, 2024 (the “Settlement Agreement”). The Final Approval Motion sought final approval of, among other things, the proposed Plan of Allocation (“POA”). (ECF 539-4) The POA contains a scrivener’s error. Specifically, Paragraph 8 defines the “Phase 1 Distribution Date” as 30 days “after the Settlement becomes Final, as that term is defined in the Parties’ Settlement Agreement.” Paragraph 8 should define the “Phase 1 Distribution Date” as 30 days “after the final deposit of the settlement funds in the Settlement Fund Account pursuant to Section 6.7 of the Settlement Agreement.” See Ex. A (Corrected POA). This correction makes the Plan of Allocation consistent with the Settlement Agreement.

Plaintiffs submit that this minor correction has no material impact on the fairness of the settlement or due notice to the class. The motion is unopposed.

Dated: January 31, 2025

Respectfully submitted,

/s/Ryan Wheeler

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**CORRECTED PLAN OF ALLOCATION AND DISTRIBUTION OF
SETTLEMENT PROCEEDS**

Summary

The purpose of this Plan of Allocation¹ is to describe how the proceeds of the settlement between the Plaintiffs and the Defendants shall be divided and distributed among Class Members. The goal of this Plan of Allocation is to ensure that settlement funds are divided and distributed among the Settlement Class so that all Class Members are compensated fairly for their vested shares without receiving a windfall. The Plan of Allocation achieves this result by providing a flat payout of \$500 to each Class Member who cashed out the shares in their ESOP account prior to December 31, 2019 (“Cashed Out Participants”); a flat payout of \$50 to each Class Member who had never had vested shares in their ESOP account (“Zero-Share Participants”) up to an aggregate of \$100,000; and a per-share, pro rata payout of the remaining settlement funds to each Class Member who held vested shares in their ESOP account after December 31, 2019 (“Vested Participants”)

1. Gross Settlement Fund. The Settlement Amount (\$7,100,000.00), and the interest and earnings thereon, shall be the “Gross Settlement Fund.”

2. Phase I Net Proceeds. The Gross Settlement Fund, less certain amounts described in the Settlement Agreement, including (i) the amount required for payment of any taxes owed on the Settlement Fund Account, (ii) the fees and costs of the Independent Fiduciary up to \$20,000, (iii) Court-approved settlement administration fees, costs, and expenses, (iv) Court-approved attorneys’ fees or expenses, and (v) any Court-approved Service Awards to the class representatives, shall constitute the “Phase I Net Proceeds.” The Phase I Net Proceeds shall be

¹ Unless otherwise defined in this Plan of Allocation, capitalized terms have the meanings ascribed to them in the Settlement Agreement.

distributed to the Authorized Claimants as defined below and in accordance with the terms of the Settlement Agreement and this Plan of Allocation.

3. Authorized Claimants. An Authorized Claimant shall be any participant in the ESOP at any time since its inception (or, alternatively, a beneficiary of that participant) who was identified as such in data produced by the Defendants and who is not excluded from the definition of the Settlement Class per the terms of the Settlement Agreement.

4. Cashed Out Participants. “Cashed Out Participants” are those Class Members with vested shares who redeemed their shares prior to December 31, 2019 and received a cash distribution.

5. Zero-Share Participants. “Zero-Share Participants” are those Class Members who never had vested shares in their ESOP account.

6. Vested Participants. “Vested Participants” are those Class Members who held vested shares in their ESOP account after December 31, 2019.

7. Calculation of Vested Participants’ Phase I Distributions. The pro rata share of the Phase I Net Proceeds to be distributed to each Vested Participant will be calculated as follows:

Each Vested Participant shall have a “Weighting Factor” applied to them. The Weighting Factor shall be calculated as follows:

$$\frac{\text{Vested Participant's Total Vested Shares}}{\text{Total Aggregate Vested Shares}}$$

The following definitions shall apply:

- a. “Vested Participant’s Total Vested Shares” shall mean the total number of vested shares held by a Vested Participant after December 31, 2019.

- b. “Total Aggregate Vested Shares” shall mean the aggregate total sum of all Vested Participants’ vested shares held after December 31, 2019.

8. Phase I Distribution Date. The Phase I Distribution Date is the date that falls thirty (30) days after the final deposit of the settlement funds in the Settlement Fund Account pursuant to Section 6.7 of the Settlement Agreement.

9. Phase I Distribution Calculations. Phase I Distributions shall be calculated as follows:

- a. Cashed Out Participants shall receive \$500 each, regardless of the number of shares they redeemed or the amount of the cash distribution they received.
- b. Zero-Share Participants shall receive \$50 each, up to an aggregate of \$100,000. If the number of Zero-Share Participants is so large that a \$50 per person payment would exceed \$100,000, the Settlement Administrator shall distribute \$100,000 per capita among the Zero-Share Participants.
- c. The “Phase I Pro Rata Proceeds” are equal to the Phase I Net Proceeds, minus the amounts to be distributed to Cashed Out Participants in the Phase I Distribution as well as minus the amount to be distributed to Zero-Share Participants in the Phase I Distribution.
- d. Vested Participants shall receive an amount equal to their Weighting Factor, multiplied by the Phase I Pro Rata Proceeds.²

10. Form of Phase I Distribution. Phase I Distributions shall be distributed to the Authorized Claimants by the Settlement Administrator as follows:

- a. Phase I Distributions shall be mailed to Authorized Claimants or sent or

² To the extent that a class member qualifies as both a Cashed Out Participant and a Vested Participant, they shall receive the greater of \$500 or the product of their Weighting Factor multiplied by the Phase I Pro Rata Proceeds.

deposited pursuant to their Election Forms on or before the Phase I Distribution Date.

- b. Authorized Claimants will receive their Phase I Distribution in the form of a check, unless they submit a completed Election Form at least twenty-one (21) days before the Fairness Hearing wherein they request that their distribution be deposited directly into or mailed via check to an individual retirement account or other eligible retirement plan.
- c. For Authorized Claimants who did not complete an Election Form at least twenty-one (21) days before the Fairness Hearing, on or before the Phase I Distribution Date, the Settlement Administrator will issue a single check from the Settlement Fund Account and mail the check to the address on file for each Authorized Claimant or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means. Upon issuing such a check to an Authorized Claimant, in a letter accompanying such check, the Settlement Administrator shall advise the Authorized Claimant that they alone bear responsibility for complying with any qualified domestic relations order that may apply to the settlement payment.
- d. For Authorized Claimants who completed an Election Form at least twenty-one (21) days before the Fairness Hearing indicating that their Individual Distribution should be deposited directly into or mailed via check for deposit into another eligible retirement plan, on or before the Phase I Distribution Date, the Settlement Administrator will initiate a transfer of funds or issue a single

check from the Settlement Fund Account and mail the check to the address provided by the Authorized Claimant for purposes of depositing the funds into another eligible retirement plan.

- e. For each check issued, the Settlement Administrator shall: (i) calculate and withhold any applicable taxes associated with the payments allocable to the Authorized Claimant to the extent taxes are required or advised to be withheld; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Authorized Claimants.
- f. All checks issued in accordance with the Phase I Distribution shall be valid for up to one-hundred-fifty (150) calendar days after their issue date, which is the “Phase I Check Expiration Date.”
- g. On or around thirty (30) days before the Phase I Check Expiration Date, the Settlement Administrator will send a letter to any Authorized Claimants who have not yet cashed their checks, reminding them of the Phase I Check Expiration Date.
- h. If an Authorized Claimant requests that their check be reissued, the Settlement Administrator may, at the Settlement Administrator’s sole discretion, reissue the check to the Authorized Claimant so long as the Phase II Distribution Date has not yet passed; once the Phase II Distribution Date has passed, no checks from the first phase of distribution may be reissued. All funds from checks that are undelivered or that are not cashed on or before the Phase I Check Expiration Date shall be distributed in the second phase of distribution outlined in

Paragraph 11.

11. Phase II Distribution. Vested Participants are “Phase II Vested Participants” only if they are: 1) Vested Participants who cashed their checks from the first phase of distribution; 2) Vested Participants who filled out a timely and complete Election Form; or 3) Vested Participants who had their checks reissued under Paragraph 11.h. To receive a Phase II Distribution, this eligibility criteria must be met as of the date that falls thirty (30) days before the Phase II Distribution Date. Each Phase II Vested Participant’s “Phase II Weighting Factor” shall be calculated as follows:

Phase II Vested Participants’ Total Vested Shares

Phase II Total Aggregate Vested Shares

For purposes of this calculation, “Phase II Total Aggregate Vested Shares” shall mean the total number of all Phase II Vested Participants’ vested shares in the aggregate. Each Phase II Vested Participant’s “Phase II Individual Distribution” shall be calculated by multiplying their Phase II Weighting Factor by the total amount of any funds remaining in the Settlement Fund Account as of the Phase II Distribution Date, including any funds from uncashed checks.

12. Phase II Distribution Date. The Phase II Distribution Date is the date that falls thirty (30) days after the Phase I Check Expiration Date.

13. Form of Phase II Distribution. Phase II Distributions shall be distributed to eligible Phase II Vested Participants by the Settlement Administrator as follows:

- a. On or before the Phase II Distribution Date, Phase II Distributions shall be mailed to Phase II Vested Participants either in the form of a check to the address of such person as determined by the Settlement Administrator using commercially reasonable means, or, if the Phase II Vested Participant filled out

an Election Form, by deposit or check pursuant to the Phase II Vested Participant's Election Form.

- b. Checks for this third phase of distribution shall expire one-hundred- fifty (150) days after their issue date, which is the "Phase II Check Expiration Date." Phase II checks may not be reissued.
- c. Within fourteen (14) days of the Phase II Check Expiration Date, the Settlement Administrator shall send any residual funds remaining in the Settlement Fund Account to the *cy pres* recipient, the Pension Rights Center. Class Counsel shall provide mailing or wire-transfer instructions for the *cy pres* distribution.

14. Tax-Related Issues and General Responsibilities

- a. Once the Settlement becomes Final, in no event shall any part of the Gross Settlement Fund be used to reimburse any Defendants, to offset expenses of a retirement plan, or to offset settlement-related costs separately incurred by Defendants.
- b. The Settlement Administrator shall be responsible for making provisions for the payments and distributions discussed above, as well as responsible for all tax reporting, remittance, and/or withholding obligations, if any, for any amounts distributed.
- c. The payments made from the Settlement Fund Account to Authorized Claimants are intended to constitute restorative payments in accordance with Revenue Ruling 2002-45.
- d. The Defendants, Defendants' Counsel, Class Counsel, and the class representatives will provide no tax advice to the Class Members and make no

representation regarding the tax consequences of any of the settlement payments described in the Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law for all payments made under the Settlement Agreement. Each Authorized Claimant who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Authorized Claimant shall hold the Settling Parties, Defendants' Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold the Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

- e. Neither the Settling Parties, Class Counsel, the class representatives, nor Defendants' Counsel shall have any responsibility or liability whatsoever with respect to: (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Amount or otherwise; (ii) the management, investment, or distribution of the Gross Settlement Fund; (iii) the administration

or allocation of the Gross Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Gross Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Gross Settlement Fund; or (vi) the payment or withholding of any taxes and/or expenses incurred in connection with the taxation of assets in the Settlement Fund Account or tax reporting, or the filing of any tax filings.

15. Modifications. The Court may approve this Plan of Allocation, or modify it, without additional notice to the Class. Any order modifying the Plan of Allocation will be posted on the Settlement Website within ten (10) business days of the modification.