

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re	)	Chapter 11
	)	
HAWTHORNE RACE COURSE, INC., et al.,¹	)	Case No. 26-03505
	)	
	)	Hon. Timothy A. Barnes
Debtors.	)	
	)	Jointly Administered

NOTICE OF MOTION

PLEASE TAKE NOTICE that on Tuesday, March 10, 2026 at 10:00 a.m. CDT we will appear before the Honorable Timothy A. Barnes, or any judge sitting in that judge's place, either in courtroom 744 of the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL 60604 or electronically as described below, and present the Motion of Debtors in Possession to Pay Certain Necessary Prepetition Debts, copy of which is attached.

Important: Only parties and their counsel may appear for presentment of the motion electronically using Zoom for Government. All others must appear in person.

To appear by Zoom, please go to this link: <https://www.zoomgov.com>. Then enter the meeting ID and passcode.

To appear by Zoom using a telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

Meeting ID and Passcode. The meeting ID for this hearing is 161 329 5276, and the Passcode is 433658. The meeting ID and passcode can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days, before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without calling it.

SAUL EWING LLP

By: /s/David A. Golin

Barry A. Chatz (ARDC# 6196639)
David A. Golin (ARDC# 6180517)
161 North Clark Street, Suite 4200
Chicago, Illinois 60601
Telephone: (312) 876-7100
Email: barry.chatz@saul.com
david.golin@saul.com

Counsel for Debtors and Debtors in Possession

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Hawthorne Race Course, Inc. (2284); Carey Heirs Properties, LLC, (2654); Suburban Downs, Inc., (2457); and Post Time Catering, Inc, (3590). The Debtors' mailing address is 3501 S. Laramie Ave., Stickney, IL 60804.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. CHP owns the underlying real estate and certain improvements located at the Hawthorne Race Course, 3501 S. Laramie Ave., Cicero, Illinois. CHP leases the racetrack to Hawthorne to conduct thoroughbred horse racing meetings and Suburban Downs to conduct Standardbred (harness) horse racing meetings.

6. Hawthorne conducts its business under the auspices of governing bodies of the State of Illinois, the Illinois Racing Board (“IRB”) and the Illinois Gaming Board (“IGB”), and operates (a) live pari-mutuel wagering on thoroughbred horse racing, (b) simulcasting wagering of horse racing programs from in-state and out-of-state locations, (c) food and beverage operations under its wholly-owned subsidiary, Post Time, (d) sportsbook wagering, (e) advance deposit wagering from funded accounts, usually online, and (e) off-track betting facilities that accept pari-mutuel wagering on its thoroughbred horse racing as well as simulcast racing from other locations through its operating division, Hawthorne OTB (“OTB”). Hawthorne currently operates 10 OTBs throughout Illinois (Joliet, Crestwood, Villa Park, Rockford, Oakbrook Terrace, Hoffman Estates, North Aurora, Evergreen Park, Lansing and McHenry) with Prospect Heights temporarily closed due to fire.

7. In July 2020, the IGB unanimously found Hawthorne to be preliminarily suitable for an organizational gaming license. In July 2021, the IGB voted unanimously to Tim Carey (as Owner, Board Member, President and CEO) and Kevin Kline (as CEO of Gaming), as well as the eleven other Hawthorne owners and board members suitable as key persons of Hawthorne. The other Hawthorne shareholders (both individuals and Trusts) have also been found suitable to hold an ownership interest in Hawthorne.

8. Hawthorne was also awarded retail, mobile, and online sportsbook wagering licenses. Such wagering was operated by PointsBet USA under a licensing agreement with Hawthorne. During 2023, the shareholders of PointsBet USA agreed to the sale of its US operations to Fanatics, a subsidiary of Fanatics Holding Inc. and in May of 2023, Hawthorne and Fanatics signed a letter of intent framework to enter into a definitive agreement based substantially on Hawthorne's agreement with PointsBet. On January 26, 2026, Fanatics terminated the mobile and internet portion of the agreement with Hawthorne but continued to provide retail services at the racetrack and the OTBs eligible to offer sports wagering.

9. Suburban Downs conducts Standardbred (harness horse) race meetings, pari-mutuel betting and simulcast wagering at the racetrack and Hawthorne's OTBs when Hawthorne is not holding a thoroughbred meet. Suburban Downs has been granted a license to operate by the IRB since before 1998, from 2002 to 2008 and continuously from 2016 until January 26, 2026 when the IRB suspended Suburban Down's license.

10. Post Time is a wholly owned subsidiary of Hawthorne and provides food and beverage services at the racetrack.

11. The Debtors' 2025–2026 harness racing season began on November 11, 2025 and was scheduled to run through February 15, 2026. On December 28, 2025, the Debtors cancelled the remaining fifteen (15) race dates due to liquidity constraints. The primary unpaid obligation related to horsemen's purses. Although purse checks had been issued prior to Signature Bank's freezing of the Debtors' accounts, they could not be deposited once the accounts were frozen. The Debtors' horsemen declined to continue racing until they were made whole. Signature Bank refused the Debtors' requests to advance funds to honor the outstanding checks.

12. The Debtors' thoroughbred racing season is scheduled to begin on March 29, 2026. To conduct the meet, horsemen must be made whole, including payment of accrued purse balances and replacement of returned checks issued for unpaid purses.

13. Thoroughbred racing is critical to cash flow because it drives on-track wagering, OTB wagering, and intertrack and out-of-state wagering. The Debtors earn a share of wagering revenue when hosting races. OTB and intertrack earnings are reflected in the DIP budget under the line item "Out of State Earnings."

14. According to the IRB, failure to conduct the thoroughbred meet jeopardizes the Debtors' racing license. The Debtors' casino license is contingent upon maintaining that racing license. Based on discussions with potential buyers and recapitalization partners, the casino license is essential to maximizing enterprise value and achieving a successful reorganization.

15. The Debtors generate wagering receipts from live pari-mutuel wagering at Hawthorne and at its off-track betting facilities. The Debtors fell behind on settlement payments to host tracks, resulting in the following disruptions: (i) simulcast partners terminated signal transmissions to the Debtors; (ii) the Debtors were unable to receive simulcast signals; (iii) the Debtors were unable to export their own signals; and (iv) Fanatics terminated the mobile and internet portions of its agreement with Hawthorne (collectively, the "Disruptions").

16. Prior to the Disruptions, the Debtors received approximately \$5 million per month in wagering deposits. As a result of the Disruptions, monthly wagering deposits have declined to well under \$1 million. The DIP budget assumes that simulcast partnerships will be reactivated over the first four weeks of these chapter 11 cases. Management has identified the highest-margin simulcast partners for priority reactivation. Certain simulcast partners may require partial payment of prepetition balances as a condition to reinstatement.

17. Reactivating simulcast signals could increase collections by approximately \$4.0 million per month. These payments are expected to generate a significant return by restoring liquidity and wagering revenue streams.

18. The Debtors filed for chapter 11 to complete a sale of substantially all of their assets free and clear of liabilities under section 363. The Debtors remain hopeful that they may find a suitable buyer interested in a going concern sale. A reorganization is a possible avenue to restart operations if the Debtors are able to come to an agreement with a party to recapitalize the Debtors as part of a plan process for resolving the Debtors' other liabilities. Nevertheless, the Debtors are focused on using the process afforded by section 363 of the Bankruptcy Code to maximize recovery to their creditors.

Prepetition Debts Debtors Request Authority to Pay

19. The Debtors seek authority to pay the following prepetition debts (the "Necessary Prepetition Debts"):

- a. Purses due to the thoroughbred horsemen in the amount of \$1,390,577.
- b. Purses due to the harness horsemen in the amount of \$2,520,588.
- c. Monies due to simulcast partners up to \$750,000.
- d. A portion of the money due to FGMK for the Debtors' 2024 audit in the amount of \$48,967.

Kmart Test

20. Section 363(b)(1) of the Bankruptcy Code, provides that, after notice and a hearing, a debtor in possession may "use . . . other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The Seventh Circuit Court of Appeals held that section 363(b)(1) of the Bankruptcy Code may authorize the payment of a prepetition debt if:

- a. The creditor will not provide goods or services to the debtor if it is not paid for the pre-petition amounts due.
- b. The other creditors will be at least as well off as they would be if the payment is not made.

In re Kmart Corp., 359 F.3d 868, 874 (7th Cir. 2004). The United States Supreme Court favorably cited *Kmart* for its analysis in justifying the payment of prepetition claims of critical vendors early in a chapter 11 case. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468, 137 S.Ct. 973, 985 (2017) (noting that courts have approved critical vendor payments where “the distributions at issue would ‘enable a successful reorganization and make even the disfavored creditors better off’”). A debtor’s business judgment as to the use, sale, or lease of estate property is appropriate if supported by “sound business reasons.” *Fulton State Bank v. Schipper* (*In re Schipper*), 933 F.2d 513, 515 (7th Cir. 1991).

The Horsemen

21. The horsemen, both thoroughbred and harness, consist of the trainers and owners of the horses. Most of the thoroughbred horsemen are represented by the Illinois Thoroughbred Horsemen’s Association (“ITHA”). Most of the harness horsemen are represented by the Illinois Harness Horsemen’s Association (“IHHA”).

22. Pursuant to Illinois statute (230 ILCS 5/29), Hawthorne and Suburban Downs are required to pay purses to the horsemen. The amounts to be funded are set by Hawthorne’s agreement with the ITHA and Suburban Downs’ agreement with the IHHA. These agreements are conditions for licensing under the Illinois Racing Act.

The Thoroughbred Horsemen

23. Prior to the Petition Date, thirty-eight (38) thoroughbred horsemen received checks drawn on the ITHA purse account which were returned NSF. The aggregate amount of these checks is \$281,844. Additionally, there is an accrued unpaid purse amount due to six hundred eighty-nine (689) thoroughbred horsemen in the aggregate amount of \$1,108,733

24. The thoroughbred season is scheduled to start on March 29, 2026. The thoroughbred horsemen will not run (i.e., race or bring their horses to Hawthorne) if the purse account is not fully funded.

25. Hawthorne requires approximately 700 thoroughbred horses on the grounds to conduct a full race schedule of two race day per week (there are currently around 200 thoroughbred horses at Hawthorne). Approximately 1,000 horsemen are required to care for and prepare the horses for racing.

26. In addition to the owners and trainers, monies from the purse account are used by the horsemen to pay the 300 backstretch workers who live with their families at Hawthorne (including 150 children), veterinarians, grooms, fast walkers, blacksmiths, and others who rely on these payments from the horsemen for their livelihood.

27. The thoroughbred horses take at least four (4) weeks to train on the prepared thoroughbred track in order to race for the meet to begin on March 29, 2026. They cannot start the season on time if the funds are not paid.

28. The thoroughbred horsemen have the opportunity (and will) go to other tracks across the country if the purse account will not be funded. The thoroughbred horsemen must make the decision imminently (this week) where to race their horses this thoroughbred season.

29. Hawthorne's thoroughbred racing license is dependent on Hawthorne having a thoroughbred season and on Hawthorne restoring the purse accounts.

30. Further, the Debtors' gaming license is dependent on Hawthorne having a racing license (i.e., conducting a thoroughbred season).

31. The going-concern value of the Debtors is decimated if the thoroughbred season is not conducted.

32. Accordingly, the purse payments to the thoroughbred horsemen will benefit all creditors.

Harness Horsemen

33. Prior to the Petition Date, one hundred thirty-one (131) harness horseman received checks drawn on the IHHA purse account which were returned NSF. The aggregate amount of these checks is \$1,182,620. Additionally, there is an accrued unpaid purse amount due to seven hundred one (701) harness horsemen in the aggregate amount of \$1,337,968.

34. The harness horsemen generally are smaller, family-owned operations. Thus, they desperately need these funds. They own their own horses, they are the trainers for those horses, they are the grooms that take care of these horses. They do not have people doing this for them. Even though they will not be racing immediately, they still have expenses. These are animals that need to be fed, housed, vet shots, and trained. Like any athlete, they still need to care for these animals and train them, until the next time they run. They may run them at an out-of-state track and, therefore, need the money to take them out of state. They may need the money for entry fees to enter a race at an out-of-state track.

35. Suburban Downs, to keep harness racing going in the state and provide racing opportunities for the harness horsemen, leases the Springfield Fair Grounds for racing starting in June.

36. Thus, even though the harness season at the Hawthorne Race Track is not set to commence until September 2026, these funds are needed immediately for the survival of the harness horsemen.

37. The purse payments also need to be made to reinstate Suburban Downs' harness racing license. The license must be in place in order for the Debtors to obtain new financing or to maximize value through a sale.

38. The preservation of harness horsemen's ability to survive and the reinstatement of the license will benefit all creditors.

Simulcast Partners

39. The Debtors generally have 50-80 simulcast partners in a given year. Prior to the Petition Date, all but six (6) simulcast partners deactivated their signal.

40. The Debtors believe that for some or all of its simulcast partners, the only way for the simulcast signals to be reactivated is to provide for payment of some or all prepetition amounts owed.

41. The Debtors seek authority to pay up to \$750,000 to the simulcast partners.

42. The payments will benefit all creditors. The Debtors' network of simulcast partners drives a substantial portion of wagering handle and revenue. Maintaining these agreements and the confidence of those partners is critical in any reorganization or sale, as continuity of simulcast distribution directly impacts wagering volume, market reach, and the overall value and viability of the racing operation.

FGMK

43. The Debtors are required to submit an audit to the IRB on an annual basis in order to maintain their licenses.

44. The firm of FGMK has performed an audit for the Debtors for the past eight (8) years. The 2024 audit was completed in 2025. However, \$146,900 remains due to FGMK.

45. The 2025 audit is due March 31, 2026. FGMK has advised the Debtors that it requires payment of the past-due amount in order to work on the 2025 audit.

46. The Debtors seek authority to pay \$48,867 (1/3 of the amount due) to FGMK. The Debtors hope that this will be sufficient.

47. All creditors will benefit because without an audit, the Debtors will lose their racing licenses.

Waiver of Bankruptcy Rule 6004(a) and (h)

48. Due to the urgent need for the relief sought in this motion, the Debtors request that the notice provisions of Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h) be excused, to the extent they are applicable to the relief sought herein.

First Day Motion Hearing

49. At the first day motion hearing, the Debtors' principal, Timothy Carey, and the Debtors' financial advisor, Billy Condon, testified at length about the necessity of paying the thoroughbred horsemen, the harness horsemen, the simulcast partners, and FGMK. They both testified that none of those creditors will provide going-forward goods or services in the absence of the payment of the pre-petition debts owed. In addition, they also testified that the payment of those pre-petition debts is critical to the Debtors' continued operations as a racetrack, which means that the creditors will be at least as well off, if not better off, than if these payments are

not made. Counsel for certain creditors cross-examined Mr. Carey and Mr. Condon, and none of them elicited testimony either through cross-examination or by calling their own witnesses either that any of these creditors would provide going-forward services in the absence of the payment of the pre-petition debts owed or that the other creditors would not be at least as well off if the pre-petition debts were paid.

Notice

50. A copy of this Motion and the Notice of its scheduled presentation was provided to all parties who receive notice via the Court's CM/ECF system immediately upon filing and by email to the Debtors' twenty (20) largest unsecured creditors, shortly thereafter.

51. The Debtors request that, under the circumstances of these cases, and the immediate need to make payments requested, that the shortened notice of this Motion be approved.

WHEREFORE, the Debtors request that this Court authorize the Debtors to pay the Necessary Prepetition Debts.

HAWTHORNE RACE COURSE, INC.
POST TIME CATERING, INC.
SUBURBAN DOWNS, INC.
CAREY HEIRS PROPERTIES, LLC,

Barry A. Chatz (6196639)
David A. Golin (6180517)
Saul Ewing LLP
161 North Clark St., Suite 4200
Chicago, IL 60601
Barry.chatz@saul.com
David.golin@saul.com
(312) 876-7100

By: /s/ David A. Golin
One of their attorneys

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:	)	Case Number: 26-03505
HAWTHORNE RACE COURSE, INC., et	)	(Jointly Administered)
al.,	)	Chapter: 11
	)	Honorable Timothy A. Barnes
	)	
Debtor(s)	)	

**ORDER GRANTING MOTION OF DEBTORS IN POSSESSION TO PAY CERTAIN
NECESSARY PREPETITION DEBTS**

This matter coming on to be heard on the Motion of Debtors in Possession to Pay Certain Necessary Prepetition Debts; the Court finding that good and sufficient notice of the motion has been given; the Court finding that for each of the payments requested to be made: (a) the creditor will not provide goods or services to the Debtors if it is not paid for prepetition amounts due; and (b) the other creditors will be at least as well off as they would be if the payment is not made; and the Court concluding that good cause exists for the entry of this Order;

IT IS HEREBY ORDERED THAT the Debtors are authorized to pay the Necessary Prepetition Debts (as defined in the Motion).

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

Barry A. Chatz
David A. Golin
Saul Ewing LLP
161 North Clark St., Suite 4200
Chicago, IL 60601
Barry.chatz@saul.com
David.golin@saul.com
(312) 876-7100