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Draft Remarks to the State Bar Association Entertainment, Arts and Sports
Law Section on wagering on horse racing in New York

THIS BRINGS US TO THE RELATED TOPIC OF HORSE RACING IN NEW YORK AND ITS RELATIONSHIP WITH THE REST OF NATION AND THE WORLD ON GAMBLING.

NEW YORK HAS ALWAYS BEEN A MAJOR STATE FOR HORSE RACING. IT'S WHERE HORSE RACING ORIGINATED IN AMERICA BACK IN 1665 IN WHAT IS NOW GARDEN CITY ON LONG ISLAND. SINCE THE CIVIL WAR – WITH A LITTLE TIME OFF DUE TO ENFORCEMENT OF STRICT GAMBLING LAWS – NEW YORK HAS BEEN THE NATIONAL LEADER IN HORSE RACING. EVEN NOW, NEW YORK LEADS THE WAY IN ACTUAL DOLLARS WAGERED ON HORSE RACING.

IT WASN'T TOO LONG AGO IN AN ERA MADE FAMOUS BY GUYS AND DOLLS THAT THE AREA WE'RE COMFORTABLY ENSCONCED IN TODAY WAS THE HUB OF REGULAR ILLEGAL GAMBLING ACTIVITY CENTERING ON HORSE RACING. YET THAT ERA OF TIMES SQUARE AS GUYS AND DOLLS AND THE AGE OF HORSE RACING SUCCESS SEEM TO HAVE FADED INTO ANCIENT HISTORY.

FOR YEARS, HORSE RACING WAS THE NATION'S MOST ATTENDED SPORT. IF YOU LOOKED AT AMERICAN SPORTS

RIGHT AFTER WORLD WAR II, THE BIG SPORTS WERE PROBABLY BASEBALL, COLLEGE FOOTBALL, BOXING, AND HORSE RACING. YOU MAY REMEMBER HARNESS RACING. IN THE 1950'S, HARNESS RACING WAS THE NASCAR OF ITS DAY AND WIDELY CONSIDERED TO BE THE FASTEST GROWING SPORT IN AMERICA.

BY 1964, AQUEDUCT RACE TRACK WHICH TO MANY OF YOU IS JUST AN EXIT OFF THE BELT PARKWAY IN QUEENS RACED 210 DAYS AND HAD AVERAGE ATTENDANCE IN EXCESS OF 30,000 FANS. YONKERS RACEWAY WHICH TO MANY OF YOU IS THE FIRST EXIT OF THE NEW YORK STATE THRUWAY AVERAGED 25,400 FANS OVER 131 PROGRAMS. BY CONTRAST, THE NEW YORK YANKEES WHO WON THE AMERICAN LEAGUE PENNANT IN 1964 FOR THE FOURTH CONSECUTIVE YEAR AVERAGED LESS THAN 16,000 PEOPLE FOR THEIR HOME DATES. NOW, YONKERS AVERAGES 550 FANS A NIGHT, AND THE YANKEES AVERAGE 50,500. WHILE NEW YORK STILL LEADS THE NATION IN HANDLE ON RACING, IN REAL INFLATION ADJUSTED TERMS IT ACTUALLY HANDLES ONE THIRD OF WHAT IT HANDLED 30 YEARS AGO.

WHAT ACCOUNTS FOR THIS FALL FROM GRACE OF RACING? THERE ARE NUMEROUS CULPRITS IN THE MIX. WE'VE SEEN A GENERAL DECLINE IN THE POPULARITY OF INDIVIDUAL SPORTS. INDIVIDUAL SPORTS – WITH THE EXCEPTION OF GOLF - SUCH AS BOXING, BOWLING, TRACK AND FIELD, TENNIS –

DON'T ATTRACT THE SAME INTEREST THAT THEY ONCE DID. FOR YEARS, OUTSIDE OF NEVADA, THE RACETRACK WAS THE ONLY PLACE YOU COULD PLACE A LEGAL BET. NOW YOU'RE NEVER MORE THAN A FEW BLOCKS AWAY FROM A LOTTERY VENDOR OR A SHORT DRIVE AWAY FROM A CASINO. THE SPORT HAS HAD A HOST OF FIXING AND DRUG SCANDALS. OTB'S HAVE SIPHONED CUSTOMERS AWAY FROM THE ACTUAL RACETRACKS, AND THE ATMOSPHERE OR LACK THEREOF AT MANY OTB'S HAS STRIPPED WHATEVER LUSTER REMAINED OF THE SPORT OF KINGS. MANY PEOPLE BELIEVE THAT RACING LACKS A YOUNG FAN BASE. IT'S NOT THE X GAMES – ALTHOUGH THE FACT IS THAT RACING'S FANS HAVE ALWAYS BEEN OLD. IT'S ALWAYS BEEN THE GERITOL GAME. IF YOU GET A CHNCE, YOU MIGHT DO WELL IF YOU'RE A BABY BOOMER TO GO OUT TO AQUEDUCT ONE DAY. YOU'LL THINK YOU'VE DISCOVERED THE FOUNTAIN OF YOUTH. PERHAPS MOST IMPORTANTLY, HORSE RACING HAS BEEN A LOCAL SPORT, AND THERE HAS UNTIL RECENTLY NEVER BEEN A NATIONAL FOCUS OR ORGANIZATION OF THE SPORT'S MARKETING AND TV RIGHTS.

IT'S ALSO A SPORT THAT IS UNIQUELY REGULATED. IT'S THE ONLY SPORT – SAVE JAI ALAI- THAT HAS LEGAL GAMBLING. IT'S ALSO THE ONE SPORT – SAVE BOXING - THAT IS REGULATED BY STATE GOVERNMENT. WE DON'T TRY TO REGULATE BASEBALL, FOOTBALL, AND HOCKEY, BUT ALL PARTICIPANTS IN RACING ARE LICENSED BY STATE RACING

COMMISSIONS, AND THESE COMMISSIONS SET THE ACTUAL RULES UNDER WHICH THE RACES ARE CONDUCTED. RACING COMMISSIONS TEND TO BE COMPOSED OF POLITICAL APPOINTEES WHICH BASICALLY EXPLAINS WHY SOMEONE LIKE MYSELF COULD SERVE ON A RACING COMMISSION FOR 11 YEARS.

UNDER THIS SETUP, NEW YORK STATE NOW HAS 6 HARNESS TRACKS AND FOUR THOROUGHBRED TRACKS. AS YOU CAN SEE FROM THE YONKERS' NUMBERS, HARNESS RACING HAS DIMINISHED TO A POINT WHERE ONLY ABOUT 15% OF THE TOTAL STATE HANDLE. WHATEVER ACTION IN NEW YORK OCCURS AT THE THOROUGHBRED TRACKS - THREE OF WHICH, BELMONT, SARATOGA, AND AQUEDUCT ARE OWNED BY THE NEW YORK RACING ASSOCIATION A PRIVATE NON-PROFIT RACING ASSOCIATION WHICH OVER THE PAST FEW YEARS HAS ENCOUNTERED MORE LEGAL AND FINANCIAL PROBLEMS THAN ANYONE COULD EVER HAVE DREAMT UP. NATIONWIDE NEARLY 90% OF THE WAGERING ON NEW YORK TRACKS HAS BEEN ON NYRA RACING.

THERE ARE ALSO SIX OTB CORPORATIONS WHICH ARE REGIONAL PUBLIC BENEFIT CORPORATIONS WHOSE MEMBERS ARE SELECTED BY LOCAL GOVERNMENTS. THE LARGEST AND OLDEST IS NEW YORK CITY OTB WHICH IS LOCATED DOWN THE BLOCK AT 1501 BROADWAY. WE'RE AT 1535 BROADWAY. SO MAYBE THERE'S STILL AN ELEMENT OF GUYS AND DOLLS IN

TIMES SQUARE. WE'VE JUST SUBSTITUTED THE COLOR OF SKY MASTERSON AND NATHAN DETROIT FOR THE CHEERLESSNESS OF THE OTB'S. BY NOW, THE EMPHASIS ON RACING HAS CHANGED. WHILE ALL THE ACTION HAD BEEN ON-TRACK, IT'S NOW AWAY FROM THE TRACK. THE MOST RECENT STATISTICS FROM THE JOCKEY CLUB SHOW THAT 87.6% OF HANDLE IS BET AWAY FROM THE TRACK WHERE THE RACE IS CONDUCTED. FOR RACING TO SURVIVE, IT HAS TO BE ABLE TO EXPAND AND EXPLOIT ITS ABILITY TO BE THE ONLY SPORT THAT OFFERS AMERICANS LEGAL WAGERING.

THAT MORE AND MORE DEPENDS ON ACCOUNT WAGERING. WHERE CAN YOU BET? WHO CAN YOU BET ON, AND WHO CAN YOU BET WITH? CAN YOU PLACE HORSE RACING BETS FROM HOME ON TELEPHONES OR THE INTERNET? CAN YOU BET ON RACETRACKS OPERATING OUTSIDE THE STATE WHERE YOU ARE PHYSICALLY LOCATED? CAN YOU BET WITH AN ACCOUNT WAGERING PROVIDER LOCATED OUTSIDE NEW YORK? AGAIN, MUCH OF THE HISTORY OF THIS RUNS THROUGH THE OTB DOWN THE BLOCK AT 1501 BROADWAY.

THE ORIGINAL OTB LAW PASSED IN 1970 CONTAINS NOT ONE WORD ABOUT ACCOUNT BETTING. HOWEVER, THERE WAS – REMEMBER THIS IS NEW YORK RACING THE LAW'S ANSWER TO THE TWILIGHT ZONE - A SIDE AGREEMENT BETWEEN GOVERNOR ROCKEFELLER'S OFFICE AND MAYOR LINDSAY'S OFFICE UNDER WHICH TELEPHONE WAGERING WAS

AUTHORIZED. SO NEW YORK AUTHORIZED PHONE WAGERING WITHOUT ANY STATUTORY AUTHORIZATION TO THAT EFFECT. THE ONLY RULE ON THIS SUBJECT THAT APPROACHED BEING SUBSTANTIVE WAS ONE SIMPLY SAYING THAT A BET PLACED BY TELEPHONE WOULD BE SUBJECT TO THE SAME RULES AS OTHER BETS. EVENTUALLY, IN THE MID 1980'S THE STATE BY STATUTE FORMALLY AUTHORIZED TELEPHONE WAGERS. BUT WHAT COULD THEY PHONE BETTORS BET ON?

THE PROBLEM WAS WHAT HAPPENED IN ALBANY DIDN'T STAY IN ALBANY. IT HAD TO GO THROUGH WASHINGTON. THE FIRST PROBLEM WAS WHAT TRACKS COULD YOU BET ON. NEW YORK CITY OTB STARTED TAKING BETS ON THE KENTUCKY DERBY WITHOUT THE CONSENT OF CHURCHILL DOWNS WHICH RUNS THE DERBY. MANY RACING GROUPS RAN TO CONGRESS TO PREVENT INTERSTATE WAGERING ON HORSE RACING. EVENTUALLY, CONGRESS SETTLED ON A COMPROMISE KNOWN AS THE INTERSTATE HORSE RACING ACT. PASSED IN 1978, AND CODIFIED AT 15 USC § 3001 ET. SEQ., THE LAW ALLOWS AN OTB TO TAKE A BET ON AN OUT-OF-STATE TRACK WITH THE PERMISSION OF THE OUT-OF-STATE TRACK, THE PERMISSION OF THE HORSEMEN WHO RACE AT THE OUT-OF-STATE TRACK, THE RACING COMMISSION IN THE STATE WHERE THE RACE TOOK PLACE, AND THE RACING COMMISSION WHERE THE OFF-TRACK BET WAS PLACED. OTB OPERATED UNDER THIS SOMEWHAT CONVOLUTED LAW UNTIL THE 1990'S WHERE RACING

ECONOMICS AND TECHNOLOGY CONVERGED TO EXASPERATE THE PROBLEMS OF OFF-TRACK WAGERING.

STARTING IN THE EARLY 1990'S, RACETRACKS STARTED ACCEPTING WAGERS DIRECTLY INTO THEIR POOLS ELECTRONICALLY FROM TRACKS AND OTB'S OUTSIDE THEIR STATE. IN SHORT, TRACKS STARTED COMMINGLING ALL THE WAGERS RECEIVED ON RACES RUN AT THEIR TRACKS. ADDITIONALLY, MANY STATES WERE AUTHORIZING ACCOUNT WAGERING AND TAKING BETS FROM INDIVIDUAL WHO RESIDED OUTSIDE THEIR STATES. MANY STATE LEGAL AUTHORITIES TOOK THE OVERLY SIMPLISTIC VIEW THAT AS LONG AS THE STATE OF THE BETTOR AUTHORIZED ACCOUNT WAGERING, THIS PROCEDURE WOULD NOT VIOLATE THE FEDERAL WIRE ACT. THIS ALL WOUND UP IN 1997 WHEN SENATOR JON KYL OF ARIZONA INTRODUCED HIS ORIGINAL BILL THE INTERNET GAMBLING PROHIBITION ACT OF 1997, WHICH WOULD HAVE PREVENTED HORSE RACING BETS BEING PLACED OVER THE INTERNET. IN REVIEWING THE BILL, AND OBJECTING TO IT, THE FEDERAL DEPARTMENT OF JUSTICE TOOK THE POSITION THAT: A) INTERNET GAMBLING WAS COVERED BY THE WIRE ACT, B) BETTING ON HORSES RACES BY PEOPLE IN ONE STATE BETTING INTO AN OTB SYSTEM IN ANOTHER STATE VIOLATED THE WIRE ACT, AND C) EVEN COMMINGLING OF POOLS BY TRANSFERRING MONEY FROM ONE STATE TO ANOTHER VIOLATED THE WIRE ACT. IN SHORT, THE VERY BASIS UNDER WHICH HORSE RACING WAS

CONDUCTED IN THIS COUNTRY WAS TOTALLY ILLEGAL UNDER THE JUSTICE DEPARTMENT VIEW OF EXISTING LAW.

LAWYERS IN HORSE RACING WERE LEFT TO ADVISING THEIR CLIENTS THAT WHILE THE JUSTICE DEPARTMENT THOUGHT THEY WERE COMMITTING FELONIES, THEY WERE UNLIKELY TO PROSECUTE AND IF THEY DID PROSECUTE, THEY THOUGHT THEY COULD BEAT THE CHARGES.

ADVOCATES FOR THE HORSE RACING INDUSTRY UNDERSTOOD THAT THEY NEEDED TO TAKE SOME ACTION TO RELIEVE THE POSSIBILITY OF PROSECUTION. SO IN 2000, THEY WERE SUCCESSFUL IN AMENDING NOT THE WIRE ACT BUT THE INTERSTATE HORSE RACING ACT TO STATE THAT AN INTERSTATE BET “INCLUDES PARI-MUTUEL WAGERS, WHERE LAWFUL IN EACH STATE INVOLVED, PLACED OR TRANSMITTED BY AN INDIVIDUAL IN ONE STATE VIA TELEPHONE OR OTHER ELECTRONIC MEDIA AND ACCEPTED BY AN OFF-TRACK BETTING SYSTEM IN THE SAME OR ANOTHER STATE, AS WELL AS THE COMBINATION OF ANY PARI-MUTUEL WAGERING POOLS.” THUS, THE BILL WOULD SEEM TO AUTHORIZE INTERNET GAMBLING ON HORSE RACING AND CERTAINLY AUTHORIZE COMMON POOLING. NONETHELESS, THE JUSTICE DEPARTMENT HAS NEVER ACCEDDED TO THE RACING INDUSTRY’S VIEWS OF THE INTERSTATE HORSE RACING ACT’S AMENDMENTS. IN 2000, IT STATED THAT IT DID NOT BELIEVE THAT THE AMENDMENT CODIFIED THE LEGALITY OF COMMON

POOL WAGERING AND INTERSTATE ACCOUNT WAGERING EVEN WHERE SUCH ACCOUNT WAGERING WAS LEGAL IN THE VARIOUS STATES INVOLVED IN HORSERACING, NOR DID IT VIEW THE PROVISION AS REPEALING OR AMENDING EXISTING CRIMINAL STATUTES THAT MAY BE APPLICABLE TO SUCH ACTIVITY, IN PARTICULAR, THE WIRE ACT, THE TRAVEL ACT, AND THE ILLEGAL GAMBLING BUSINESS ACT. THIS VIEW OF THE LAW BY THE CLINTON DEPARTMENT OF JUSTICE IS ALSO SHARED BY THE BUSH DEPARTMENT OF JUSTICE. THUS, UNDER THIS SLIM THREAD OF LAW, HORSE RACING CONDUCTS ITS DAILY BUSINESS.

AND THE BUSINESS OF ACCOUNT WAGERING ON HORSE RACING HAS BOOMED. IN FACT, IT'S PROBABLY THE LONE GROWTH PART OF THE RACING BUSINESS. MOST OF THE MULTI-JURISDICTIONAL ACCOUNT WAGERING SERVICES ARE LOCATED IN OREGON [WHICH IS TO WHAT ACCOUNT WAGERING SERVICES WHAT DELAWARE IS TO CORPORATIONS]. IN 2,000 THESE SERVICES COMBINED FOR HANDLE OF \$20 MILLION. NOW, THE OREGON ACCOUNT WAGERING HANDLE EXCEEDS \$600 MILLION.

THAT, OF COURSE, LEADS US BACK TO THE FOLKS AT 1501 BROADWAY. CAN THEY TAKE INTERNET BETS? I CAN TELL YOU OF MY PERSONAL INVOLVEMENT IN THIS ISSUE. ON CHRISTMAS DAY IN 1996, I UNFORTUNATELY WAS IN MY HOUSE WITH MY

FAMILY. I GET A CALL FROM THE NEW YORK TIMES ASKING ABOUT INTERNET HORSE RACE WAGERING IN NEW YORK. I TOLD THEM IT WAS INEVITABLE. I SOON GET A CALL FROM THE PEOPLE IN THE GOVERNOR'S OFFICE TELLING ME THAT THEY'RE UNCOMFORTABLE ABOUT THE NOTION OF INTERNET GAMBLING. IF THERE'S GOING TO BE INTERNET GAMBLING, IT OUGHT TO BE APPROVED BY THE LEGISLATURE AND NOT BY THE RACING AND WAGERING BOARD. AND THAT'S THE WAY THAT IT'S BEEN LEFT. THE STATE HAS TAKEN THE POSITION THAT ACCOUNT WAGERING CAN ONLY BE TELEPHONE WAGERING. AND WE'RE STILL AWAITING LEGISLATIVE ACTION AUTHORIZING INTERNET WAGERING ON HORSE RACING.

CAN THE OTB'S TAKE ACCOUNT WAGERS FROM OTHER STATES? THEY TRADITIONALLY HAVE. BUT IT'S CLEARLY ILLEGAL WHERE STATES HAVE NO PARI-MUTUEL WAGERING OR WHERE GAMBLING IS ILLEGAL. ADDITIONALLY A NUMBER OF ATTORNEY GENERALS – FOLLOWING THE GOLDEN RULE - THAT NO ATTORNEY GENERAL EVER LOST AN ELECTION BY BEING TOO TOUGH ON GAMBLING – HAVE OPINED THAT THE 2000 AMENDMENT TO THE INTERSTATE HORSE RACING ACT DOES NOT LEGALIZE ACCOUNT WAGERING IN THEIR STATES – SO IT'S UNWISE FOR OTB TO TAKE BETS FROM OKLAHOMA OR TEXAS OR ILLINOIS.

FINALLY, CAN SOMEONE FROM NEW YORK PLACE A BET ON HORSE RACING WITH AN ACCOUNT WAGERING PROVIDER

OUTSIDE NEW YORK? THE REALITY IS THAT THIS IS DONE EVERY MINUTE OF THE DAY, BUT UNDER NEW YORK LAW YOU CAN'T LEGALLY DO IT. THE ONLY AUTHORIZED ACCOUNT WAGERING PROVIDERS ARE THE STATE'S TRACKS AND OTB'S. I WOULD SUGGEST THAT THIS IS A CLEAR FEDERAL VIOLATION OF THE DORMANT COMMERCE CLAUSE OF THE CONSTITUTION WHICH PREVENTS A STATE FROM BARRING OUTSIDE FIRMS ACCESS TO THAT STATE'S MARKETS, BUT SO FAR NOBODY HAS CHALLENGED THE LAW.

THE FACT IS THAT THE BASIC ECONOMICS OF HORSE RACING IN NEW YORK STINK. MORE PEOPLE ARE BETTING AT THE OTB'S THAN AT THE TRACKS, BUT IT'S CLEAR THAT THE OTB'S ARE HAVING DIFFICULTIES COMPETING WITH OTHER ACCOUNT WAGERING PROVIDERS OUTSIDE THE STATE AND THE GENERAL MATURITY OF THE NEW YORK MARKET. NEW YORK CITY OTB ACCORDING TO THE STATE COMPTROLLER NOW PROJECTS NEGATIVE RESIDUAL REVENUES OF \$14.5 MILLION IN THE CURRENT FISCAL YEAR. WESTERN OTB SEEMS TO BE FACING SIMILAR DIFFICULTIES.

WE HAVE AN INDUSTRY THAT EMPLOYS ABOUT 32,500 PEOPLE IN THE STATE. WHAT HAPPENS NEXT? HOW DOES NEW YORK STATE INSURE MOST OF THESE JOBS IN AN INDUSTRY THAT'S GOING DOWNHILL? WELL, THE STRATEGY THAT HAS BEEN EMPLOYED HAS BEEN TO GIVE THE TRACKS VIDEO LOTTERY TERMINALS. THESE VLT'S WERE AUTHORIZED

SHORTLY AFTER 9/11 AS AN EFFORT BY THE STATE TO PROVIDE REVENUE TO THE STATE WHILE BAILING OUT THE STATE'S RACETRACKS.

WHAT ARE VLT'S? YOU MIGHT ASK. AS A PRACTICAL MATTER, THEY WORK TO THE PATRONS IN THE SAME WAY AS SLOT MACHINES. THEY LOOK LIKE, SMELL LIKE, AND PLAY LIKE SLOT MACHINES. LEGALLY, HOWEVER, THEY ARE THE FUNCTIONAL EQUIVALENT OF ELECTRONIC VERSIONS OF SCRATCH OFF LOTTERY TICKETS. YOU START THE GAME AND YOU GET AN ELECTRONIC VERSION OF A LOTTERY TICKET WHERE THE WINNERS HAVE ALREADY BEEN PRE-SELECTED ON THE TICKETS. LAST MAY, THE COURT OF APPEALS UPHELD THE STATUTORY SCHEME.

BY NOW, THERE ARE FIVE RACETRACKS - ALL UPSTATE - THAT HAVE VLT'S. HOW HAVE THEY FARED? COMPARED TO THE REST OF THE NATION, VERY POORLY. NEW YORK'S VLT'S ARE AVERAGING ABOUT \$150 PER MACHINE PER DAY - WHICH IS FAR LOWER THAN COMPARABLE JURISDICTIONS WHICH SEEM TO AVERAGE CLOSER TO \$225 PER MACHINE. ON TOP OF THAT, THE STATE SHARE OF THE REVENUE FROM THE MACHINES IS HIGHER THAN THAT OF ANY OTHER STATE. NONETHELESS, IT'S PROBABLY MADE ECONOMIC WINNERS OF ALMOST ALL OF THE TRACKS WITH VLT'S. I'VE SAID THIS PREVIOUSLY, BUT IF YOU GAVE VLT'S TO DRIVE-IN MOVIE THEATERS, YOU COULD BRING BACK DRIVE IN'S.

ADDITIONALLY, THE VLT'S IN NEW YORK AND ELSEWHERE HAVE DONE ALMOST NOTHING TO REVIVE INTEREST IN HORSE RACING.

THE TWO DOWNSTATE TRACKS WITH AUTHORIZATION TO HAVE VLT'S ARE YONKERS AND AQUEDUCT. YONKERS HAS AUTHORIZATION FOR 7,500 MACHINES. THAT'S 13 TIMES THEIR AVERAGE ATTENDANCE IN 2004. MOHEGAN SUN WHICH IS ENORMOUS HAS 6,000 MACHINES. FOXWOODS HAS 7,400. THIS IS ENORMOUS. AGAIN, I'VE SAID IT PREVIOUSLY, BUT NEW YORK'S VLT'S HAVE PERFORMED POORLY. YET IN THE CHICAGO AREA, THE ONLY COMPARABLE METROPOLITAN AREA WITH SLOT MACHINES, THE AVERAGE VLT REVENUE PER MACHINE OFTEN EXCEEDS \$700 PER DAY PER MACHINE YONKERS COULD BE ON THE VERGE OF AN ENORMOUS PAYDAY.

THAT LEAVES US WITH AQUEDUCT AND THE NEW YORK RACING ASSOCIATION. THIS HAS BEEN THE LONGEST RUNNING SOAP OPERA IN NEW YORK. IF THERE WAS ANY INTEREST IN HORSE RACING IN THIS COUNTRY THE FOLKS ON OUR PRIOR PANEL WOULD HAVE TURNED NYRA INTO A VIDEO GAME. NYRA – WHICH IS A NON-PROFIT RACING ASSOCIATION WHOSE PROFITS LARGELY GO TO THE STATE - HAS RUN THE STATE'S MAIN RACETRACKS SARATOGA, BELMONT AND AQUEDUCT FOR THE PAST 50 YEARS. OVER THAT PERIOD, THERE IS LITTLE QUESTION THAT NYRA RACING HAS BEEN BETTER THAN ANYWHERE ELSE – WHETHER THAT'S DUE TO SKILL OR TO

SERENDIPITY I DON'T KNOW. BUT IN THE LAST FEW YEARS, FOUR DIFFERENT TYPES OF ISSUES HAVE EMERGED.

1. THE NYRA FRANCHISE IS COMING TO AN END. IT EXPIRES AT THE END OF 2007, AND A PANEL HAS ALREADY BEEN FORMED AT THE STATE LEVEL TO REVIEW WHO SHOULD OBTAIN THE FRANCHISE. NYRA'S MAIN NATIONAL COMPETITORS ARE SUPPOSEDLY LIKELY TO BID AGAINST THEM.

2. AFFECTING THIS ISSUE IS THE QUESTION OF WHO OWNS THE TRACKS. THE STATE LEGISLATURE WHEN NYRA'S FRANCHISE WAS RENEWED IN 1983 PUT IN A PROVISION THAT NYRA'S LIFE WAS CONTERMINOUS WITH THE FRANCHISE. THUS, IF NYRA LOST THE FRANCHISE, IT WENT OUT OF EXISTENCE, AND ITS PROPERTY WENT TO THE STATE. BUT HOW CAN THE STATE TAKE NYRA'S PROPERTY WITHOUT ANY COMPENSATION, AND HOW IS THIS ISSUE AFFECTED BY NYRA'S UNIQUE RELATIONSHIP WITH THE STATE?

3. NYRA'S FINANCES – NYRA IS BASICALLY BROKE. IT'S DELAYED PAYING SOME OF ITS PARI-MUTUEL TAXES AND REAL PROPERTY TAXES. IT OWES MILLIONS IN PENSION PAYMENTS AND MILLIONS TO THE STATE AUTHORITY THAT USED TO LOAN IT MONEY. NYRA TRIED TO SELL OFF SOME EXCESS PROPERTY AND SOME ARTWORK TO KEEP IT OPERATING. BUT THESE EFFORTS TO SELL PROPERTY WERE BLOCKED BY THE STATE. YET WHEN PUSH CAME TO SHOVE AT THE END OF 2005, THE STATE AGREED TO LOAN \$30 MILLION TO NYRA AS STATE

LEADERS WERE CLEARLY CONCERNED THAT A NYRA BANKRUPTCY MIGHT COST SOME OF THE STATE'S 32,500 JOBS AND MIGHT ALSO ADVERSELY AFFECT THE ABILITY OF THE STATE TO REGULATE NYRA.

4. NYRA'S GOVERNANCE – THIS HAS BEEN A DISASTER AREA. STARTING IN 2001. WE'VE SEEN CONVICTIONS FOR MONEY LAUNDERING, VIOLATIONS OF THE BIDDING REQUIREMENTS IMPOSED ON NYRA, TAX EVASION BY PARI-MUTUEL EMPLOYEES, NYRA'S CORPORATE USE OF THE FUNDS TO BE USED FOR PAYING PURSES, AND A PLEA ARRANGEMENT PREMISED ON NYRA FURNISHING FRAUDULENT TAX INFORMATION TO ITS PARI-MUTUEL CLERKS. NYRA PAID A FINE AND WAS PLACED UNDER THE JURISDICTION OF A FEDERAL MONITOR WHO IN SEPTEMBER FOUND THAT NEW MANAGEMENT AT NYRA HAD WEEDED OUT CORRUPTION AND THE FEDERAL INDICTMENT WAS DISMISSED. FROM MY STANDPOINT, EVERYTHING THAT HAS HAPPENED AT NYRA HAS BEEN A TRAVESTY. NOBODY REMOTELY SIGNIFICANT IN THE NYRA HIERARCHY WAS TOUCHED, BUT LOTS OF PEONS GOT FELONY CONVICTIONS. NYRA PAID A FINE THAT IS BASICALLY TO BE PAID BY THE STATE'S TAXPAYERS. THE STATE'S REJECTION OF NYRA'S REQUEST TO SELL ITS PERSONAL AND REAL PROPERTY MADE LITTLE SENSE. WE HAVE ONLY REINFORCED THE NOTION THAT HORSE RACING IS THE TWILIGHT ZONE OF NEW YORK LAW.

FINALLY, ON A MACRO NOTE, BACK TO THE GROWTH AREA OF HORSE RACING, WE DO HAVE AN INTERNATIONAL SUCCESS STORY IN BETFAIR WHICH MATCHES BETS BETWEEN PEOPLE WHO WISH TO BET ON OR AGAINST CERTAIN HORSES. IT IS BASICALLY THE E-BAY OF HORSE RACING AND SPORTS GAMBLING. IT HAS BEEN ENORMOUSLY SUCCESSFUL, BUT IT IS LIKELY TO BE ILLEGAL IN THE UNITED STATES UNDER THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT WHICH ONLY AUTHORIZES PARI-MUTUEL BETTING HORSE RACING IN THE US. THIS MAN-TO-MAN BETTING MIGHT NOT BE CONSIDERED PARI-MUTUEL.

FINALLY, THERE IS THE WORLD TRADE ORGANIZATION DECISION FINDING THAT THE US POLICY AGAINST INTERNET BETTING IS A VIOLATION OF GATS. THIS IS PREDICATED ON THE FINDING THAT INTERNET HORSE RACE BETTING IS ALLOWED IN THE US - DESPITE WHAT THE JUSTICE DEPARTMENT MIGHT THINK. IT HAS ALSO FORCED THE LEADERS OF RACING TO TRY TO BLOCK ANY LEGISLATION THAT WOULD PREVENT ANY EXPANSION OF ACCOUNT WAGERING AS A WAY OF US COMPLYING WITH THE WTO RULING.

BUT FOR AN IN-DEPTH LOOK AT THAT DECISION, I WILL GLADLY DEFER TO MY FELLOW PARTICIPANTS.

