92-20052/CE 147851

Manfuso

VS.

Defrancis, et al

Memorandum of Law in Support of
Motion #74

(14) A.S.

FILED

AUG 7 1992

CIRCUIT COURT FOR BALTIMORE CITY

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
v.	*	BALTIMORE CITY
JOSEPH A. DE FRANCIS, et al.	*	CASE NO.: 92120052
Defendants		

* * * * * * * * * * * * * *

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT AS TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants, Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by and through their attorneys, James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, submit the following Memorandum of Law in Support of their Motion to Dismiss and/or for Summary Judgment as to the Second Amended Complaint filed by Robert T. Manfuso and John A. ("Tommy") Manfuso, Jr. (collectively the "Manfusos").[1]

I. PROCEDURAL BACKGROUND

On April 29, 1992, the Manfusos filed a Complaint for Declaratory and Injunctive Relief ("original Complaint") against De Francis, Jacobs, the Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico"), and Laurel Racing Association, Inc. ("Laurel"). The original Complaint alleged that De Francis and Jacobs acted in various ways to the detriment of Laurel and Pimlico and contained a three-part count for declaratory relief and a six-

[1] On August 7, 1992, the Defendant corporations also filed a Memorandum of Law in Support of Motion to Dismiss Plaintiffs' Second Amended Complaint. De Francis and Jacobs incorporate by reference and assert as additional grounds for their Motion to Dismiss the arguments raised in the corporations' memorandum.

part count for injunctive relief. De Francis and Jacobs responded to the spurious and unfounded allegations contained in the original Complaint by: (1) answering subparagraph (A) of the Manfusos' claim for declaratory relief ; (2) moving to dismiss certain claims for declaratory relief and all claims for injunctive relief; and (3) filing a three-count Counterclaim asserting fraudulent inducement, material breach of the Stockholders Agreement and tortious interference.

On June 11, 1992, the Manfusos filed a Motion for Ex Parte, Interlocutory, and Permanent Injunctive Relief with respect to benefits to which they claim they are entitled under the Stockholders Agreement and a so-called "letter agreement" dated April 27, 1990. Additionally, the Manfusos moved to dismiss Count II of De Francis' and Jacobs' Counterclaim concerning the Manfusos' material breach of the Stockholders Agreement.

On June 18, 1992, Judge H. Kemp MacDaniel held a hearing as to De Francis' and Jacobs' Motion to Dismiss as it related to Texas. On June 19, 1992, Judge MacDaniel issued his ruling which granted Defendants' Motion to Dismiss.

On June 26, 1992, De Francis and Jacobs filed a Memorandum in Opposition to Plaintiffs' Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief with respect to benefits. A hearing on this issue was started on July 2, 1992 was continued on July 23-24, 1992 and, as of this date, has not been completed. At that hearing, the Plaintiffs filed an Amended Complaint which deleted their injunctive relief claim

as it pertained to Texas. The Amended Complaint added a third count seeking an interlocutory and permanent injunction in the nature of an Order requiring specific performance of alleged contractual obligations of De Francis, Jacobs, MJC, Laurel and Pimlico. These same alleged contractual obligations are the subject of their June 11, 1992 motion for injunctive relief.

On July 15, 1992, De Francis and Jacobs filed their Opposition to the Manfusos' Motion to Dismiss Count II of the Counterclaim. On that same date the Manfusos filed a Second Amended Complaint ("Complaint"), a Memorandum in Opposition to De Francis' and Jacobs' Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief, a Motion to Dismiss Count III of De Francis' and Jacobs' Counterclaim and an Answer to Count I of the Counterclaim.

On July 21, 1992, this Court heard argument on the Manfusos' Motion to Dismiss Count II of De Francis' and Jacobs' Counterclaim. The Court has yet to issue its ruling on this Motion.

As the procedural history indicates, this Court has been inundated with a plethora of pleadings, many of which concern the same issue, i.e., whether or not the Manfusos have the right to seek redress in regard to the claims made in their three Complaints. In an effort to place the Complaint's numerous legal and factual deficiencies before this Court, De Francis and Jacobs have submitted this pleading which moves, (1) to dismiss the Second Amended Complaint in its entirety,

including subparagraph (A) of Count I - Declaratory Relief, and/or (2) for Summary Judgment as to specific claims of alleged abuse.[2]

II. INTRODUCTION

Under subparagraph A of Count I of the Complaint, the Manfusos have sought a declaration as to whether the Stockholders Agreement prevents them from seeking the Court's assistance in remedying the alleged breaches of fiduciary duty. De Francis and Jacobs have alleged in Count II of their Counterclaim and can prove as a matter of law, that the filing of this lawsuit constitutes a material breach of the Standstill Provision. However, De Francis and Jacobs have not moved to dismiss this Complaint on the basis of the Standstill Provision for two reasons.

First, the damage has been done. The Manfusos' filing of each Complaint is a separate and distinct material breach of the Stockholders Agreement which has inflicted injury which can not be remedied by the postponement of this dispute through the dismissal of these claims. The Standstill Provision was intended to prevent harm to the corporations by preventing the filing of claims and was not intended as a vehicle to secure the dismissal of claims once they were filed.

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[2] De Francis and Jacobs have not, until this pleading, moved to dismiss subparagraph (A). Now that the Manfusos' alleged standing to bring their claims has been clarified, De Francis and Jacobs can state as a matter of law that the Manfusos have no standing to seek the Court's assistance.

By instituting this litigation, the Manfusos have disparaged De Francis' and Jacobs' reputations to both the racing community and the public in general and have interfered with De Francis and Jacobs effectively running the racetracks. De Francis' and Jacobs' only effective response to the damage done by these claims is to prove in this Court that the Manfusos' charges of alleged abuse are meritless. De Francis and Jacobs will ultimately establish that the plain and unambiguous terms of the Standstill Provision apply to the Manfusos' claims and that the filing of this lawsuit constitutes a material breach of the Stockholders Agreement. They will do so, however, in the context of their Counterclaim which seeks the only meaningful relief from the Manfusos' material breach of the Stockholders Agreement.

Second, the Manfusos lack the standing necessary as either shareholders, directors, or signatories to the Stockholders Agreement to ask this Court for assistance. Thus, whether the Standstill Provision of the Stockholders Agreement specifically precludes the Manfusos from filing this Complaint is not an issue that the Court need address at this time. For without standing, the Manfusos have no legal right to address this Court, and their Complaint must be dismissed.

In addition to alleging standing as shareholders, directors and signatories to the Stockholders Agreement, the Second Amended Complaint differs from the Original and the Amended Complaint in only two ways: (1) the Manfusos allege

that as shareholders they need not comply with the requirement imposed by Maryland law of making a demand on the corporations before instituting suit because such a demand would be futile[3]; and (2) the Manfusos seek specific performance with respect to benefits which allegedly inured to them under the Stockholders Agreement and a so-called "letter agreement" dated April 27, 1990.

Given the similarities between the original Complaint and the Second Amended Complaint, this Motion to Dismiss and/or for Summary Judgment will incorporate many of the legal and factual arguments contained in the Memorandum in Support of the Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief ("D&J Original Motion to Dismiss"), filed on June 5, 1992.

De Francis and Jacobs request this Court to dismiss the Plaintiffs' Complaint in its entirety for the following reasons:

A. The Manfusos Do Not Have Standing As Shareholders, Directors or Signatories To The Stockholders Agreement To Seek Declaratory or Injunctive Relief to Remedy the Alleged Abuses in Counts One and Two.

1. The Manfusos do not have standing to maintain a shareholders derivative suit.

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[3] As discussed in Section III.A.1.a. of this Motion, Judge H. Kemp MacDaniel in his Memorandum Opinion and Order with respect to Texas racing held that the Manfusos had no standing as shareholders to seek relief because they had failed to make a demand on the corporations whose Boards had "some disinterested directors". See Memorandum Opinion and Order, at p.3.

a. Judge MacDaniel's June 19 ruling precludes the Manfusos from claiming futility.

b. The Manfusos' failure to sufficiently plead either a proper demand or futility prevents them from maintaining this action under Maryland law.

2. The Manfusos as individual directors do not have standing to institute legal proceedings to remedy alleged corporate waste.

3. The Complaint does not contain a single allegation which permits the Manfusos to seek relief as signatories to the Stockholders Agreement.

B. The Manfusos Have Failed To Sufficiently Plead Any Claims For Injunctive Relief.

1. No abuse involving corporate credit cards exists and no remedy is necessary.

2. The Manfusos have received the computerized billing data and their claim for access to legal fees is moot.

3. The Corporations have not misallocated assets between Laurel and Pimlico and as a matter of law such allegations are not sufficient to justify injunctive relief.

a. Severance payments were properly allocated to Pimlico.

b. 1990 revenue was properly allocated between the tracks.

c. Charitable contributions were properly allocated.

d. Proceeds from the sale of gravel were properly allocated.

e. Contribution to Republican National Party.

f. Contribution to Florida Derby Gala.

g. Jacobs' $800 airplane ticket.

C. The Manfusos Have Failed To State A Claim For Specific Performance.

1. The so-called "letter agreement" is not a legally enforceable contract.

2. The Manfusos have failed to sufficiently plead a claim for injunctive relief.

III. LEGAL ARGUMENT

In support of their original Motion to Dismiss, De Francis and Jacobs submitted the affidavit of Martin Jacobs. In opposition to that Motion, the Manfusos submitted the affidavit of John A. Manfuso, Jr. (hereinafter "Mr. Manfuso"). To the extent that these affidavits bear on the issues presented by this Motion to Dismiss, the Court under Maryland Rule 2-322 may treat this Motion as one for summary judgment.[4] However, the Court must apply a motion to dismiss standard to the issues of whether the Manfusos have standing to seek relief for corporate waste as directors and/or shareholders and whether the Manfusos may seek specific performance.

As stated in previous pleadings, in ruling on a motion to dismiss, the court must accept as true all well pleaded facts and any reasonable inferences which may be drawn therefrom. Schwartz v. Merchants Mortgage Co., 272 Md. 305, 307-08, 322 A.2d 544 (1974); Unger v. State, 63 Md. App. 472, 479 A.2d 1336 (1984), cert. denied, 105 S. Ct. 1379 (1986).

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[4] Under Md. Rule 2-322, this Court has complete discretion to exclude the affidavits, and therefore refuse to treat this Motion to Dismiss as one for summary judgment. Antigua Condominium Ass'n v. Melba Investors Atlantic, Inc., 307 Md. 700, 719, 517 A.2d 75 (1986).

See Plaintiffs' Opposition to Defendants' Motion to Dismiss the Complaint insofar as it concerns the Texas racing matter, p. 1 and cases cited therein; De Francis' and Jacobs' Opposition to the Manfusos' Motion to Dismiss Count II of the Counterclaim at pp. 8-9. Even under this generous standard, the Court must find that the Manfusos have no standing either as directors or shareholders to remedy alleged corporate waste and that the Manfusos have not stated a claim for specific performance which would justify injunctive relief.

A. The Manfusos Do Not Have Standing As Shareholders, Directors, Or Signatories To The Stockholders Agreement To Seek Declaratory or Injunctive Relief to Remedy the Alleged Abuses in Counts One and Two.

1. The Manfusos do not have standing to maintain a shareholders derivative suit.

In clear contradiction to both the original and Amended Complaint, the Manfusos now affirmatively assert that they have standing as shareholders of the corporations to bring this action as a shareholders derivative suit.[5] Second Amended Complaint, ¶ 44. The Manfusos concede that they have not made a formal demand upon the boards of directors of either

[5] In the Original and Amended Complaint, the Manfusos only referred to their capacity as directors in seeking relief. At oral argument before Judge MacDaniel, counsel for the Manfusos stated that his clients had standing as shareholders, directors and signatories to the Stockholders Agreement. While the Second Amended Complaint alleviates any misconception as to the Manfusos' claims of standing, the Complaint still fails to indicate which claims are being brought in what capacity. For purposes of this Motion, Defendants have assumed that all claims have been brought as both directors and shareholders since the Manfusos lack standing to bring any of their claims in either capacity.

corporation regarding their allegations of corporate waste and access to information, but claim that they can proceed with this lawsuit because any such demand would be futile. The Manfusos base their claim of futility on the allegations that De Francis and Jacobs cannot be expected to answer to a suit against themselves and that Joseph Sellinger, S.J. ("Father Sellinger"), and Alec Courtelis ("Courtelis"), are interested directors. Id., ¶ 45.

Even these new allegations fail to establish standing sufficient to permit the Manfusos' last-minute decision to convert their claim into a shareholders derivative suit. Specifically, their claim as shareholders must be dismissed because: (1) Judge MacDaniel ruled on June 19th that a demand would not be futile; and (2) the Manfusos have not sufficiently either demanded or pled either demand or futility under Maryland law even if that claim is not precluded.

a. Judge MacDaniel's June 19 ruling precludes the Manfusos from claiming futility.

On June 18, 1992, a hearing was held before Judge H. Kemp MacDaniel on Defendants' Motion to Dismiss as it pertained to Texas racing. Counsel for the Manfusos argued that his clients had rights in three separate capacities: as directors, *shareholders and beneficiaries of the Stockholders Agreement*. See Exhibit A, Transcript from Hearing on Motion to Dismiss the Manfusos' claim regarding Texas Racing, at pp. 62, 119; Memorandum Opinion and Order from Judge MacDaniel, at p.2. Counsel for both sides then presented argument as to whether

the Manfusos, as shareholders, ever made a demand on the corporations concerning Texas and as to whether the remaining directors of the corporations, Father Sellinger and Courtelis, were disinterested. See Exhibit A, at pp. 47-50, 113, 116-124, 126-27.

On June 19, 1992, Judge MacDaniel issued his decision in which he granted Defendants' Motion to Dismiss. Judge MacDaniel based his ruling on the fact that the Manfusos' action was a shareholders derivative suit and that as such the Manfusos failed to comply with the procedures for bringing such an action:

> "Prior to filing a shareholders derivative suit, a shareholder must make a demand upon the corporation to sue in its own name. This prerequisite can be excused where such a demand will be futile. However, in this case, where there were at least some disinterested directors, demand is not excused."

See Memorandum Opinion and Order, p. 2. (emphasis added)

Given the fact that Judge MacDaniel specifically found that there were "some disinterested directors", this Court should not now permit the Manfusos to avoid that decision and pursue claims as shareholders based on an allegation that demand would be futile due to the absence of disinterested directors. Since the issue of futility applies equally to all of the claims brought by the Manfusos as shareholders, the Court must find that the Manfusos have no standing to maintain any of these claims.

b. The Manfusos' failure to sufficiently plead either a proper demand or futility prevents them from maintaining this action under Maryland law.

Even if this Court chooses to totally disregard Judge MacDaniel's holding, the Manfusos' Complaint cannot survive a motion to dismiss because it fails to meet the legal standard required for allegations of futility. The Manfusos set forth five alleged justifications for futility; however, as detailed below, each justification fails to comport with Maryland's pleading requirements.[6]

First, the Manfusos attempt to justify their futility claim by arguing that De Francis and Jacobs could "neither be expected nor permitted to maintain a suit against themselves." Second Amended Complaint, ¶ 45. Even assuming this statement to be true, demand will not be excused so long as there are some disinterested directors. See Grill v. Hoblitzell, 771 F. Supp. 709 (D. Md. 1991). In fact, as long as two disinterested directors occupy the board, Maryland law requires that the shareholders make a formal demand upon the corporations prior to instituting a derivative suit. See Hanks, Maryland Corporation Law, § 7.21[c] 269 (1991)(citing Md. Corp. Assoc. Code Ann. § 2-411 (Repl. Vol. 1985) which states that two is the minimal number of directors necessary to constitute a committee to which the board may delegate its

[6]For a more detailed discussion explaining why the Manfusos' have failed to sufficiently plead futility, see Defendant corporations' Memorandum in Support of Motion to Dismiss, at § III.B.3.b.

functions). The boards of both corporations have two totally disinterested directors, Father Sellinger and Courtelis, and as Judge MacDaniel has already concluded, demand is not excused.

Recognizing that demand is required where disinterested directors are available, the Manfusos focus their four remaining justifications for futility on Father Sellinger and Courtelis in an unsuccessful effort to portray them as interested directors. According to the Second Amended Complaint, Sellinger and Courtelis are

> under the domination and control of De Francis and Jacobs, because De Francis and Jacobs elected to nominate them for office and because they owe their continued tenure and the continued enjoyment of the benefits and prestige appurtenant to their offices to their alliance with De Francis and Jacobs.

Second Amended Complaint, ¶ 45.

The Plaintiffs' factual allegations of domination and control, i.e., source of selection, are insufficient as a matter of law to establish futility. In Kamen v. Kemper Financial Services, Inc., 939 F.2d 458, 460 (7th Cir. 1991) the court, in applying Maryland law, held that allegations of domination and control based on selection may never suffice to establish futility because independent directors always come to a board after being nominated by corporate insiders.[7] Similarly, in Aronson v. Lewis, 473 A.2d 805, 816 (Del. 1984), the Delaware Supreme Court held that a director's selection by

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[7] In fact, under Plaintiffs' theory, De Francis and Jacobs dominate and control all directors, including the Manfusos, and the corporations could never have a disinterested director.

the controlling stockholder does not establish that a director lacks independence nor does it overcome the presumption of board independence unless the plaintiff advances particularized allegations of circumstances of control and domination. Thus, the Manfusos' failure to allege particular circumstances of control and domination precludes a finding of interest and requires the dismissal of their claims.

With respect to Sellinger, the Manfusos allege that he is beholden to De Francis based upon past gifts which the De Francis family provided to Loyola College. Similarly, the Manfusos claim that Courtelis is interested because he and Joseph De Francis are co-executors of Frank De Francis's estate. While these claims may establish that the De Francis family has a history with both Courtelis and Sellinger, they are legally insufficient as a matter of law to establish futility.

> Vague assertions, without particulars of personal relationships between directors who were charged with liability and directors who are not charged with liability or have a complete defense are not sufficient to disqualify the latter directors from determining whether to pursue the litigation.

Hanks, at 268-69 (citing Grill, 771 F. Supp. at 713).[8]

Finally, the Manfusos claim that when Father Sellinger and Courtelis were told of the alleged abuses set

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[8] Father Sellinger and Courtelis are not and can not be charged with liability for the alleged corporate waste or past failure to provide information since they did not become directors until April 13, 1992.

forth in the Complaint, they approved of and/or acquiesced in the abuses without conducting any investigation or analysis of the merits of the Manfusos' Complaints. First, the Manfusos have not demanded, nor can they allege that they have demanded, redress from the boards of directors for each of the abuses alleged in the Second Amended Complaint. Second, assuming that the Manfusos had properly demanded redress, the Manfusos' refusal to provide the factual or legal basis for their claims for the board's consideration more than justifies the boards' position. The Manfusos' claim that Courtelis and Father Sellinger approved of and/or acquiesced in the alleged abuses is nothing more than a smokescreen designed to hide the fact that the Manfusos have refused to provide the boards with either the factual or legal basis upon which they claim any act of De Francis or Jacobs constituted corporate waste.[9]

If the Manfusos had offered any factual or legal basis for their claims, perhaps the boards would have considered a further investigation or analysis to be necessary.[10] As the court in Kamen stated: "A demand is futile only if the directors' minds are closed to argument."

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[9] Interestingly, the Manfusos do not explain how Courtelis could have approved of and/or acquiesced in the alleged abuses when in fact Courtelis was not present at the April 13, 1992 board meeting.

[10] As stated in De Francis' Affidavit, the boards offered the Manfusos the opportunity to present factual or legal reasons underlying their claims of abuse at the April 13, 1992 board meeting; however, the Manfusos declined the invitation. See Exhibit B, De Francis Affidavit ¶¶ 37, 38. (hereinafter De Francis Aff.)

Kamen 939 F.2d at 462. The Manfusos have not alleged nor can they allege that Courtelis' and/or Sellinger's minds were closed to argument because the Manfusos never established that a sufficient factual basis existed for any of their allegations.

Given the fact that the Manfusos have not set forth a single allegation which Maryland law recognizes as legally sufficient to establish futility, the Manfusos lack standing to bring a shareholders derivative suit seeking redress for any of their alleged claims of abuse.[11]

2. The Manfusos as individual directors do not have standing to institute legal proceedings to remedy alleged corporate waste.

Directors acting individually have no right to bring an action for corporate waste. Such an action must be undertaken by the board of directors. See D&J Original Motion to Dismiss, pp. 8-14. Recognizing the correctness of this authority, the Manfusos have abandoned all claims for corporate waste brought as individual directors and instead have limited their claims as directors to those seeking (1) access to information regarding legal fees and (2) a meeting with the

[11] The Manfusos have also requested this Court to permit them and/or their agents to meet with the corporations' independent accountant; however, Maryland's corporate law specifically prevents the Manfusos as shareholders from having such a meeting. Maryland Corporations and Associations Code Annotated §§2-512 and 2-513 clearly states the few rights which shareholders may exercise. Absent from this list is any reference to a right to meet with a corporation's accountants. Thus, the Manfusos have no standing as shareholders to request such a meeting.

independent accountants for the corporations. See Plaintiffs' Opposition to Motion to Dismiss at p. 9. Even with respect to these claims, the Manfusos have no standing to pursue them.

With respect to legal fees, De Francis and Jacobs have not refused to provide the requested information. In fact, on July 24, 1992, in the presence of this Court, counsel for the corporations presented the requested information to the Manfusos. Thus, this issue is moot.

As for accounting information, De Francis and Jacobs have permitted the Manfusos and their accountant, Mark Reynolds, unfettered access to review the financial statements and records of the corporations. In fact, their accountant had several meetings with Ernst & Young to review and raise questions about both workpapers and the statements. De Francis Affidavit at ¶ 35. Additionally, De Francis and Jacobs have given Ernst and Young copies of all letters received from the Manfusos in which they have raised the questions contained in their Opposition Memorandum. Id. at ¶ 36. Ernst & Young assessed these questions and verified the corporations' treatment.

In a letter dated March 12, 1992, counsel for the Manfusos requested a face-to-face meeting between his clients' accountant and the independent auditors, Ernst and Young, to discuss the Manfusos' complaints. De Francis Aff. ¶ 37, Exh. 35. Although the Manfusos maintain that this request has been refused, the corporations have merely placed reasonable

conditions on its being fulfilled. Specifically, in a letter dated March 18, 1992, the Manfusos were asked to provide their accountant's report for review by the Board and to have their counsel make a presentation at the forthcoming Board meeting. Id. at ¶37, Exh. 36. The Manfusos' declined this offer in a letter dated March 19, 1992. Id. at ¶ 38, Exh. 37. In a letter dated March 25, 1992, De Francis explained why both the accountant's report and such a presentation were necessary:

> In a like vein, I have previously asked that you provide me with a complete copy of your accountant's report or reports, the engagement letter spelling out his responsibilities, and all correspondence between you or your attorneys and the accountant. Once again, the issue of whether something has been appropriately treated in the financial statements audited by a major firm of independent certified public accountants is not an issue to be examined by independent counsel unless a factual basis has been advanced by an unbiased, independent expert to support such an examination. Concerns claimed to be "terribly serious," that are unsupported by facts or law, do not justify an expenditure of track time, money and personnel.
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> Your suggestion that Ernst & Young be requested to express in writing to you why they disagree with your correspondence relating to the 1990 statement is absurd and unacceptable. We are not going to spend time and effort having Ernst & Young defend their professional independent judgment from your alleged "concerns." If and when you are in a position to provide any specific, meaningful and unbiased criticism or questions from an expert accountant, we will consider the appropriate manner in which those items should be addressed by Ernst & Young.
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> Since I have no idea which of the detailed issues raised in your March 20 letter are to be abandoned and which are to be presented at the time of the Board meeting, I will not provide any further written response at this time. To

the extent that any substantive factual or legal basis in support of these items is presented at the time of the Board meeting, I will provide an appropriate and accurate response and any further information that the Board feels may be necessary.

Finally, your withholding of factual information, the legal contentions of your counsel and your accountant's report from the Board of Directors so that they may be used in an "appropriate forum" or used at the time you are "forced to consider other appropriate recourse" is inappropriate and unacceptable. Your fiduciary duty to Laurel and Pimlico requires you to come forward with all facts known to you which suggest that Marty or I violated fiduciary duties to these two entities. Either you don't have any such factual information and are therefore unable to present it to the Board of Directors, or you have improperly determined that withholding such information advances your own personal interests. While I assume that your use of the words an "appropriate forum" is a not very well-veiled threat of litigation, I strongly suggest that you reexamine the Stockholders Agreement and fully consider your fiduciary duties to both entities, and that prior to making any libelous or slanderous allegation of any kind against me or Marty Jacobs, you present the factual basis for those allegations to the Board of Directors.

See, Exh. C.

While directors may have a right to inspect all the corporate books and records, it is clearly within the Boards' prerogative to impose reasonable limitations or restrictions on the Manfusos' access to information which is not part of the corporate books and records. See D&J Original Motion to Dismiss, pp. 18-19. The Manfusos have no right to demand a meeting of any kind with Ernst and Young and therefore have no standing to pursue this claim.

3. The Complaint does not contain a single allegation which permits the Manfusos to seek relief as signatories to the Stockholders Agreement.

The Manfusos now claim that they can seek redress for alleged corporate abuse as signatories to the Stockholders Agreement. This argument is fatally flawed for one simple reason.[12] The Complaint does not contain a single allegation which claims that De Francis or Jacobs have breached the Stockholders Agreement. While counsel for the Plaintiffs has stated both in Court and in other pleadings that the Defendants' alleged breaches of fiduciary duties regarding Texas constitute a breach of the Stockholders Agreement, these claims remain absent from the Complaint. Thus, the pleading to which the Court must look to assess the legal sufficiency of the Manfusos' allegations provides the Manfusos with no standing to seek relief.[13]

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[12] Although not before this Court on this motion, the Standstill Provision prevents the filing of any litigation prior to October 1, 1993, which concerns the business or operations of Laurel or Pimlico. All of the claims alleged in the Complaint involve the business or operations of the corporations and do not come within the provision's two explicit exceptions. Thus, the Manfusos, as signatories to the Agreement have breached the Stockholders Agreement by the filing of this action.

[13] The Manfusos have attempted to argue that alleged breaches of fiduciary duty are breaches of the Stockholders Agreement by virtue of the fact that the Stockholders Agreement names De Francis and Jacobs as offices and directors. However, the Manfusos' argument is flawed in two respects: (1) the Agreement is not the source of their rights as directors and officers because in the absence of this Agreement, De Francis and Jacobs could have voted themselves into those positions and (2) whatever legal duties De Francis and Jacobs owe to the corporations derive from Maryland statutory and common law, not the Stockholders Agreement. See Md. Corp. & Ass'n Code Ann. §2-

B. The Manfusos Have Failed To Sufficiently Plead Any Claims For Injunctive Relief.

In both their original and Second Amended Complaint, the Manfusos request this Court to issue a permanent injunction against De Francis and Jacobs on the same six grounds. Moreover, both Complaints contain the same factual allegations and the same conclusory allegations of irreparable harm and no adequate remedy at law. See Complaint, ¶¶ 50, 51; Second Amended Complaint, ¶¶ 52, 53. As set forth in De Francis' and Jacobs' original Motion to Dismiss, a party seeking an injunction cannot simply allege irreparable injury and no adequate remedy at law. Instead, sufficient facts must be plead to satisfy the Court that irreparable injury will in fact occur. See D&J Original Motion to Dismiss, at pp. 14-29. The Manfusos' failure to provide detailed factual allegations which establish that irreparable harm will occur and that no adequate remedy at law exists requires this Court to dismiss each claim for injunctive relief.

To the extent this Court accepts the affidavit of John A. Manfuso, Jr. ("Mr. Manfuso"), certain of the claims for injunctive relief may be considered under a motion for summary judgment standard. Yet, even if the Court treats the substantive claims for injunctive relief under a summary judgment standard, the Manfusos have not stated, nor can they show, an immediate threat of irreparable harm or the absence of

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405(1) (Repl. Vol. 1985 and Supp. 1991); Booth v. Robinson, 55 Md. 419, 436-37 (1881).

an adequate remedy at law. Mr. Manfuso's affidavit makes plain that the alleged claims of abuse occurred in years past. The only future consequence alleged by Mr. Manfuso is that he can not trust the word of Joseph A. De Francis. This request for injunctive relief based only on past actions, when coupled with the attack on De Francis' integrity, establishes that the Manfusos' motive is not to protect the health or survival of the racetracks, but to disparage De Francis and Jacobs in furtherance of their scheme to take control of the racetracks.

Mr. Manfuso's affidavit not only fails to establish a factual basis for a claim for irreparable harm; but, in fact, contains factual inaccuracies and omissions which the Defendants can not leave unaddressed. To this end, and to explain the valid business purposes justifying each of the actions addressed by Mr. Manfuso's affidavit, the Defendants have attached the affidavit of Joseph A. De Francis. See Exhibit B.

1. No abuse involving corporate credit cards exists and no remedy is necessary.

As evidenced by the Plaintiffs' Opposition to the Original Motion to Dismiss, the Manfusos' claim for injunctive relief regarding corporate credit cards has nothing to do with impending irreparable injury to the corporations. See Plaintiffs' Opposition, at p.16. The Manfusos concede that the credit card accounts have been repaid and that all credit cards have been canceled except for the one issued to De Francis. They can not allege that there is any present abuse or any

actual threat of future abuse. They try to avoid the consequences of their failure to provide such specific allegations by suggesting that there might be future abuse because De Francis failed to timely fulfill past promises and failed to establish a system to prevent future abuse.

De Francis has provided a detailed explanation regarding the use of corporate credit cards and has sworn under oath that he has not used his corporate credit card for personal expenses except in a few situations where he has attended out of state business functions and traveled with a guest, i.e., such as taking his mother to the Belmont Stakes in New York. De Francis Aff. at ¶ 11. For convenience, he has placed all such expenses on the corporate credit card, but has immediately reimbursed the corporations for those expenses of a personal nature. Id. at ¶ 11.

While the Manfusos allegedly distrust De Francis, that distrust as to future performance hardly meets the legal standard necessary for the issuance of an injunction. The absence of any evidence of immediate abuse prevents this Court from issuing an injunction with respect to corporate credit cards. As discussed in the Original Motion to Dismiss:

> [I]t is a well settled principle in the practice of injunction, that where a defendant asserts positively that it is not his intention to do a certain act, or to violate any particular right asserted by the plaintiff, and there be no evidence to show to the contrary, the Court will not interfere by injunction. It will neither grant nor continue an injunction in the face of such disclaimer.

Campbell v. Mayor of Annapolis, 44 Md. App. 525, 536-37, 409 A. 2d 1111 (1979), rev'd in part on other grounds, 289 Md. 300, 424 A.2d 738 (1981). See also Hirsch v. Green, 382 F. Supp. 187, 192 (D. Md. 1974) (" When the parties discontinue the acts of which complaint is made, the questions become moot and injunctive relief should not then be granted"). Thus, this claim for injunctive relief must be dismissed.[14]

2. The Manfusos have received the computerized billing data, and their claim for access to legal fees is moot.

The Manfusos have requested an injunction to require the corporations to provide information concerning legal fees paid to outside counsel. The Defendants have never denied this information to the Manfusos but instead have required time to collect this data from the law firms in question. On July 24, 1992, counsel for the corporations presented the computerized billing data at issue to the Manfusos. Thus, this claim for injunctive relief is moot.

3. The Corporations have not misallocated assets between Laurel and Pimlico and as a matter of law such allegations are not sufficient to justify injunctive relief.

In the final ten pages of their Opposition Memorandum, the Manfusos describe several actions taken by the corporations which, in their view, resulted either in mistakes

[14] In any event, an adequate remedy at law exists to recover damages sustained by the corporations for interest expense related to the failure to timely reimburse the corporations for personal expenditures. The total possible damage to the corporations is no more than $1,500.00. De Francis Aff., ¶ 9.

in Laurel's financial statements or improper allocations of assets between the racetracks. As a result of these alleged past acts of misconduct, the Manfusos request this Court to enjoin De Francis and Jacobs from future wasting of the assets of the corporations. Additionally, the Manfusos seek injunctive relief to permit them and their agents to meet with Ernst & Young, the independent accountants for the corporations.

These requests for injunctive relief cannot be granted as a matter of law for two reasons. First, the acts which the Manfusos question occurred no later than 1991. Thus, as a matter of law, these acts do not pose a risk of the type of immediate harm which is necessary for injunctive relief. Second, many if not all of these allegedly inappropriate acts can be remedied at law. See D&J Original Motion to Dismiss at pp. 14-29.

In addition to these legal bars to recovery, the Manfusos have intentionally mischaracterized De Francis' and Jacobs' conduct. As discussed below, De Francis, Jacobs and the corporations had sound business reasons for each of the actions which the Manfusos question at this late date and are entitled to summary judgment as to the claims for injunctive relief.

a. Severance payments were properly allocated to Pimlico

Under the Stockholders Agreement, the Manfusos, upon retirement, were each entitled to collect $125,000 per year.

The Manfusos take issue with the fact that these payments have not been allocated equally between the racetracks, but instead have been assessed only against Pimlico.[15] The Manfusos contend that the only purpose for this allocation is to prevent Laurel from violating the cash flow to debt service ratio required by its loan agreement with First National Bank of Maryland.

Initially, the corporations were concerned that the 1990 financial statement might reflect that Laurel was in violation of its loan agreement and De Francis so advised the Manfusos. For this reason, the corporations had their independent accountants, Ernst & Young, thoroughly review all issues pertaining to the financial statements, including the severance payments. De Francis initially intended to allocate the cost of these payments equally between the racetracks; however, as explained by De Francis in a March 12, 1992, letter to the Manfusos, Maryland law, and not Laurel's financial position, required a different decision:

> As has been explained before, we initially felt that it would be appropriate to charge the severance payments (which are essentially payments for your not working) equally to Laurel and Pimlico. Upon further consideration, we determined that to do so could have violated the fiduciary responsibility owned (sic) by Laurel Racing Assoc., Inc., as general partner of Laurel, to Laurel Guida Group, as limited partner. The initial letters to Ernst & Young and to Lou Guida set forth the initial view.

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[15] The Manfusos have not taken issue with the fact that the entire termination payment of $2,500,000 paid to them on retirement was charged entirely to Pimlico.

> Fortunately, detailed examination resulted in proper treatment.

De Francis Aff. ¶ 28, Exh. 34. Thus, allocation of the severance payments as the Manfusos now suggest would arguably have resulted in the breach of a fiduciary duty owed to the Guida Group. In fact, in correspondence dated September 13, 1990 Mr. Guida requested an audit regarding a number of issues, including severance payments. De Francis Aff. ¶ 28, Exh. 11.

b. 1990 Revenue was properly allocated between the tracks.

The Manfusos have alleged that the corporations incorrectly transferred to Laurel revenue earned at Pimlico during thirteen racing dates in February 1990. De Francis answered this exact charge in his March 12, 1992 letter to the Manfusos:

> Management cannot be unfair in its approach to racing dates and intertrack wagering and claim it had to do so because "racing dates were assigned by the Maryland Racing Commission," as your letter suggests. The tracks were awarded in each year those dates that were applied for by Pimlico and Laurel. The Commission did not magically decide what those dates would be. In reviewing this subject in August, 1990, it became obvious that Laurel had not been treated fairly for 1990. During the period February 1 through 16, 1990, days that had been run traditionally at Laurel by Laurel, were in fact run at Laurel but were treated as Pimlico days. Relying on the 1984 Racing Schedule Agreement, Pimlico initially paid Laurel for those days (which were traditionally Laurel's and run at Laurel Race Course) in an amount equal to one-third of the Revenue from Racing plus the facility use fee. Upon further analysis, however, this was determined to be unfair and an adjustment was made to give Laurel an additional $114,448, equal to the remaining balance of the net income from those days after crediting

> Pimlico for the intertrack fee of $149,500. This adjustment was fully appropriate.

De Francis Aff. ¶29, Exh. 34.

c. Charitable contributions were properly allocated

Similar to the severance payments and revenue allocation, De Francis, in the same March 12, 1992 letter, provided the Manfusos with the legitimate business reasons for allocating charitable contributions more heavily to Pimlico:

> Pimlico is located in the City of Baltimore and is also the home of the Preakness. As you know, it is much more dependent on the goodwill and support of the business community and public entities that is Laurel. Since it had these greater needs, there are more charities that it has supported. Contributions have been fairly allocated.

De Francis Aff. ¶ 30, Exh. 36.

d. Proceeds from the sale of clay were properly allocated.

In paragraph 27 of his Affidavit, Mr. Manfuso implies that in 1990 he and his brother alerted the corporations to a mistake in allocating revenue from the sale of gravel. The sale, in fact, involved a sale of clay (not gravel) in 1990 (not 1990). While an innocent mistake in the initial allocation did occur, the corporations independently discovered the error prior to hearing from the Manfusos and properly distributed the revenue. De Francis Aff. ¶ 31.

e. Contribution to Republican National Party

The Manfusos also question the payment of $25,000 in 1990 to what they term a "Republican Senatorial group". This

group is actually known as Team 100, a national fundraising organization for the Republican Party, which places special emphasis on the election of their presidential nominee. In 1988, Frank J. De Francis became a member of this organization by contributing $100,000. To maintain this membership, Joseph De Francis contributed the minimum required payment using corporate funds.

In a letter dated March 12, 1991, De Francis explained to the Manfusos how this payment would benefit the racetracks and why he decided to personally bear the cost of the contribution:

> The contribution to the Republican Party was perfectly proper from both a business and a legal standpoint. As you are aware, the Republican Administration, has been, and is likely to continue to be, in power for years. I have been advised that corporations may lawfully contribute to the Party, and I view that contribution as relevant to our business. As I am sure you will recall, our importation of the Soviet horses would have been impossible without assistance from the Administration -- with respect to the horses as well as the Soviet pilots who flew them here. In addition, the Commerce Department has indicated a willingness to assist us with the 1991 International. Despite the propriety of the contribution, in order to avoid needless debate. I decided to bear it myself and have reimbursed Pimlico and Laurel for it.

Id. at ¶ 32, Exh. 38.

f. Contribution to Florida Derby Gala

With respect to the December 1990 $25,000 payment made by the corporations to the Florida Derby Gala, the Manfusos refuse to accept the clear business reasons for this

payment set forth by Mr. Jacobs in his affidavit. Unfortunately for the Manfusos, they agreed in writing that they would not seek to substitute their judgment for that of De Francis in regard to decisions involving the managerial or operational control of the racetracks.

g. Jacobs' $800 Airplane Ticket

Finally, the Manfusos question an $800 airline ticket for Jacobs which was originally charged to the corporations. The Manfusos treat this as a deliberate violation of De Francis' and Jacobs' agreement to refrain from spending corporate funds on Texas racing. However, this is not the case. The original charge to the corporation was clearly unintentional.[16] As De Francis states in his affidavit, officers of the corporations ask their secretaries to arrange for travel without always indicating whether the trip should be charged to the officer personally, or to the corporation. In this case, Mr. Jacobs' secretary mistakenly billed the corporation for the flight. However, this bill was reimbursed to the corporation upon return. De Francis Aff. ¶ 35.

As De Francis' Affidavit makes clear, no genuine dispute of fact exists as to whether (1) a valid business reason existed for each of the questioned decisions, (2) any of these past decisions presently represent a risk of irreparable harm to the corporations, or (3) the Manfusos have an adequate

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[16] John A. Manfuso, Jr. stated in his September 19, 1990 letter "I am sure this oversight was unintentional".

remedy at law. De Francis and Jacobs Motion for Summary Judgment as to all of the Manfusos requests for injunctive relief must be granted.

C. The Manfusos Have Failed to State A Claim For Specific Performance.

In Count III, the Manfusos ask that this Court order De Francis and Jacobs to reinstate benefits to which the Manfusos claim they are entitled under either the Stockholders Agreement or a so called "letter agreement" of April 27, 1990. With respect to the benefits requested under the letter agreement, the Manfusos' proposed remedy, an injunction in the nature of an Order for specific performance, is singularly inappropriate under the circumstances of this case.[17] First, the letter agreement is no more than a memorandum setting forth gratuitous undertakings by De Francis and is either unenforceable or terminable at will. Second, although

[17] While De Francis and Jacobs have not moved to dismiss on the basis of the Standstill Provision, they can, and do, challenge the sufficiency of the Complaint's allegations in regard to the request for injunctive relief. Termination of the severance payments will not result in irreparable harm nor leave the Manfusos without an adequate remedy at law. When this Court denies the Manfusos' Motion to Dismiss Count II of the Counterclaim, De Francis and Jacobs may move for summary judgment as to the issue of whether the Manfusos' material breach excuses all future performance under the agreement, including the obligation to make severance payments. Under Maryland law, a party in breach cannot seek specific performance of obligations owed to him under a contract. See Farm Homes Corp. v. Adams, 171 Md. 212, 218, 188 A. 808, (1937) (citing Obrien v. Pentz, 48 Md. 562 (1872) (party seeking execution of contract must "show he has fully, not partially, performed everything to be done on his part"); Raith v. Cohen, 142 Md. 38, 50, 119 A. 700 (1922); De Crette v. Bonaparte, 139 Md. 252, 262, 114 A. 880 (1921); Bamberger v. Johnson, 86 Md. 38, 41, 37 A. 900 (1897).

the Manfusos include the now familiar buzz words for injunctive relief, i.e., "irreparable injury" and "no adequate remedy at law", Count III is devoid of any factual allegations that would allow a reasonable inference that the failure to make payments under the Stockholders Agreement, or to continue benefits claimed under the letter agreement, could cause irreparable injury. Finally, it is clear that each claimed injury could be easily redressed at law. For these reasons, Count III of the Manfusos' Amended Complaint must be dismissed.

1. The so-called "letter agreement" is not a legally enforceable contract.

In paragraph fifty-nine of the Second Amended Complaint, the Manfusos allege that they are entitled to specific performance of De Francis's alleged agreement to continue certain benefits after they stepped down as officers. The Manfusos concede that their claim to these benefits is based solely on the letter agreement dated April 27, 1990.

Preliminarily, the procedural posture of the Manfusos' claims based on the letter agreement is unusual. The Manfusos originally moved for an interlocutory injunction precluding De Francis, Jacobs and the corporations from terminating the benefits described in the letter agreement. That Motion has been fully briefed and was the subject of a hearing before this Court that commenced on July 2, 1992. This hearing was continued on July 23-24, 1992, and has yet to be completed. To the extent that the Manfusos have repeated their claims based on the April 27, 1990 letter agreement in Count

III of the Complaint, and have sought essentially the same relief, the resolution of the Manfusos' Motion for Injunction and this Motion to Dismiss are inextricably intertwined.

De Francis and Jacobs incorporate the factual and legal arguments concerning the so-called letter agreement of April 27, 1990 set forth in their Memorandum in Opposition to Plaintiffs' Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief, § C. Rather than repeat those arguments here, De Francis and Jacobs simply summarize that the April 27, 1990 letter agreement (1) contains nothing but a series of gratuitous undertakings by De Francis which are not supported by any considerations or promise of performance of any kind by the Manfusos; (2) is unsupported by any consideration, and (3) lacks an essential term, i.e., a durational limit. The letter agreement is not a binding contract and is either unenforceable or terminable at will. Since the letter agreement does not embody any enforceable right enjoyed by the Manfusos, it cannot be enforced by way of injunction.

2. The Manfusos have failed to sufficiently plead a claim for injunctive relief.

The Manfusos' allegations concerning their right to injunctive relief in Count III can most kindly be described as sparse. They allege:

> 62. The Defendants' breach of the Stockholders Agreement and the Letter Agreement poses a substantial threat of irreparable injury to the Manfusos.
>
> 63. The Manfusos have no adequate remedy at law to redress the injury that they

> will suffer unless the Court enters an interlocutory and permanent injunction in the nature of an order requiring specific performance of the defendants undertakings as alleged in this Count of the Complaint.

Second Amended Complaint, ¶ 62-63.

As set forth in De Francis' and Jacobs' Original Motion to Dismiss, a party seeking an injunction cannot simply allege irreparable injury and no adequate remedy at law. Instead, the plaintiff must plead sufficient facts to satisfy the Court that irreparable injury will in fact occur. Rather than burden the Court and this already voluminous file with additional paper, De Francis and Jacobs incorporate the well-established legal principles set forth in their Original Motion to Dismiss, § 2.B.2. The decisions of Maryland courts cited therein establish that (1) a party seeking an injunction must plead sufficient facts to satisfy the court that irreparable injury will in fact occur; and (2) where the allegations demonstrate that the plaintiff has an adequate remedy at law, the action for injunction will be dismissed.

The Manfusos have not pled any facts that suggest that the failure to continue their severance payments or to afford them the benefits set forth in the letter agreement will cause any irreparable injury. Given this dearth of factual allegations, it would be an abuse of this Court's discretion to infer that individuals having the Manfusos' financial standing would be irreparably damaged by the Defendants' termination of

their severance payments.[18] Moreover, there is no basis upon which this Court could infer that the Manfusos would be irreparably damaged by the termination of the fringe benefits described in the April 27, 1990 letter.

The discontinuation of the severance payments and fringe benefits is a foreseeable consequence of the Manfusos' decision to violate the Standstill Provision. While they may not like the consequences that have flowed from that decision, they cannot substantiate their claim that those consequences threaten any irreparable damage to them that cannot adequately be addressed at law. Assuming for the purpose of this Motion to Dismiss that the Manfusos can convince this Court that they have not materially breached the Stockholders Agreement, any severance payment due to them thereunder is easily calculated. Likewise, it would be possible to calculate the value represented by the use of the two Chrysler automobiles as well as the boxes at Laurel and Pimlico.[19] Similarly, the Manfusos are free to continue to dine in the dining room at Laurel and Pimlico. They simply must pay for their meals like other patrons rather than signing for them. If the Manfusos truly

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[18] De Francis and Jacobs have offered to put the severance payments in a separate account pending the outcome of this litigation.

[19] As the Manfusos are well aware, they could continue to use their boxes at Laurel and Pimlico in exchange for the payment of the fees that are normally charged for those boxes. Those fees are relatively insignificant in the scope of this litigation; approximately several hundred dollars per season. In fact, the Manfusos have already sent in a deposit for these seats.

believe that they will prevail on the merits with respect to the letter agreement, they need only preserve their meal receipts for future reimbursement. Similarly, any fees that the Manfusos incur for the use of cellular telephones in their personal automobiles can be reimbursed at a later date, should the Manfusos prevail on the merits. There is, therefore, no threat of any injury, much less irreparable injury, that cannot be readily redressed at law.

IV. CONCLUSION

The Manfusos and their counsel have had since April 29, 1992 to allege sufficient facts to support a legal theory under which they are entitled to the relief that they still insist on seeking. Despite three months of effort resulting in three separate Complaints, they have still not alleged facts legally sufficient to support any cause of action which would entitle them to relief. Enough is enough. The damage to the corporations caused by the Manfusos far exceeds the total value of all of the alleged abuses. The Motion to Dismiss and/or for Summary Judgment should be granted so that De Francis and Jacobs can devote their full time, attention and energy to the management of Laurel and Pimlico.

For all the reasons stated herein, De Francis and Jacobs respectfully request this Court to dismiss the Second

Amended Complaint and/or grant summary judgment in favor of De Francis and Jacobs.

Respectfully submitted,

James E. Gray

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of August, 1992, a copy of the foregoing Memorandum of Law in Support of Motion to Dismiss and/or for Summary Judgment as to Plaintiffs' Second Amended Complaint was hand-delivered to: James Ulwick, Esq. Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201, Attorneys for Plaintiffs; and mailed to Irwin Goldblum, Esq., McGee Grigsby, Esq., and Jennifer Archie, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, Attorneys for Defendants, The Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.

James E. Gray

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IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT T. MANFUSO
JOHN A. MANFUSO, JR.

Vs.

Case No: 921200521/
CE 147851

JOSEPH A DEFRANCIS
THE MARYLAND JOCKEY CLUB
OF BALTIMORE CITY, Et al

_____/

COURT REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

Baltimore Maryland
June 18, 1992
9:48 a,m,

BEFORE:

THE HONORABLE KEMP MCDANIEL
(Hearing on a Motion to Dismiss)

APPEARANCES:

For The Plaintiffs:

JAMES ULWICK, Esq.
KEVIN ARTHER, Esq.
HERBERT GARTEN, Esq.

For The Defendants Defrancis and Jacobs:

JAMES GRAY, Esq.
MITCHELL NEUHAUSER, Esq.

For The Defendants Pimlico and Laurel:

MCGEE GRISBY, Esq.
J. ARCHIE, Esq.

H. CLAY BRASWELL, II
Official Court Reporter
507 Mitchell Courthouse
Baltimore, Maryland 21202

My second point is that Maryland law, Maryland law does not recognize and does not grant to the Manfusos, as Directors, the right to cause these corporations to follow any specific course of action. Maryland law simply, that right simply does not exist with respect to a Director.

Now, my third point is that Maryland law does provide a way in which a shareholder can seek to have a corporation take action in a specific direction, but the distinction between a Director and a shareholder is important. And what Maryland law has created and the law of most states in the United States have created is what's known as a Shareholders' Derivative Action. And that is well recognized under Maryland law. We have prepared for The Court and would like to submit, just to assist The Court since we've determined, we heard that you didn't have a Clerk, we have provided a summary of Maryland law concerning Derivative suits and we would like to submit that to The Court just so that you can have it as a handy, handy bit of reference, because that was not something that had otherwise been addressed this week.

THE COURT: I do, now do have one.

MR. GRIGSBY: Maryland law does recognize and does grant to shareholders a method, pursuant to which a shareholder can seek to have a corporation take a particular course of action, that's known as a Shareholder

Derivative Action. Maryland law is very clear that before a Shareholder Derivative Action can be instituted, that the shareholder must make a demand of the corporation that certain action be taken. When that demand is made, the corporation, and Maryland law is also clear on this, that corporation has the ability to take that under consideration, and if there are any independent Directors on the Board of Directors, Maryland law is clear that the fact that there is a majority of Directors that are under the control, or who happen to be the majority shareholders, Maryland law is very clear that if there are any independent Directors, that having independent Directors is enough to require the shareholders to make that demand.

The shareholders cannot say there is a five person Board of Directors, three of them are management, two of them are independent, clearly management could outvote me, three to two, therefore I don't have to make the demands. That's not what Maryland law says. The Maryland law says, shareholder, make the demand and, corporation, then you consider it and if you want to, corporation, you give it to these two independent Directors and let them decide. And independents, in that regard, is simply persons who are not, who don't have financial interests in this proceeding.

And this Board of Directors, for Laurel, Pimlico, the Maryland Jockey Club, has two such independent

Directors. So what the Maryland law says very clearly is that the shareholder must make a demand and the corporation, it has the right to consider it, the right to consider that demand. And they can, and they can assign it to the independent Directors who can then make a judgement. And, if that is the case, then the only issue that comes before The Court, in a subsequent proceeding, if the Directors decide not to pursue the course of action suggested by the shareholders, the issue before The Court is, did the corporation make the decision properly. Did it exercise sound business judgement in deciding to pursue or not pursue a particular course of action.

But it's very important to the corporation and to the administration of legal proceedings that the corporation have the right to consider the demand by the shareholders and take action on it. What we don't have in this case is, we don't have any demand by the shareholders. The shareholders have never made a demand of the sort requested by this injunction. There has never been a demand to the Board of Directors that the money in question, which was prior to April of 1990, spent by the corporations prior to April, 1990, spent while the inquiry into Texas was still a corporate inquiry, there has never been a demand on the Board of Directors that that money be returned.

There has been discussion of whether, there was discussion of whether, if the Texas venture proved eventually successful, should the money then be reimbursed, but there has never been a demand, there has never been a demand that the Board of Directors tell Mr. Mango to do or not do something. And there has never been a demand that the Board of Directors tell Mr. DeFrancis or Mr. Jacobs to do or not do something. So that demand has not been made.

The point that all this leads us to, Your Honor, is that this case cannot be maintained in its present posture because it's not a Shareholders' Derivative Action. It is a suit, the complaint was filed by the Manfusos, as Directors. And the Manfusos acknowledge that they didn't, the complaint will make it clear that the suit was not brought as shareholders. It cannot be converted into a Shareholder Derivative suit at this point because the demand has not been made.

The point of all that leads to the inevitable conclusion that there is simply no standing on behalf of the Manfusos to maintain this lawsuit. That's all. Thank you.

THE COURT: Thank you, sir. Anyone else? Mr., on Mr. Gray's side?

MR. GRAY: No, Your Honor.

THE COURT: Is that it? All right. Proceed, sir.

does not prevent you from coming in under the Stockholders' Agreement.

MR. ULWICK: That's exactly right.

THE COURT: All right. Now, I heard some argument on the other side about the, the status of your clients. Are they in this case as Directors, are they in this case as shareholders? What are they?

MR. ULWICK: My clients are, are shareholders and Directors and they are the beneficiaries of this contract, most importantly. They are, they have rights under all three of those, under the status that they enjoy under all three of those positions. And, frankly, I think for the purpose of today, the simplest way of resolving this matter as opposed to dealing with some of the complexities that come with the other matters, is the fact that they are the beneficiaries of the contractual relationship that they have with all of the defendants in the Stockholders' Agreement. The Stockholders' Agreement gives them contractual rights, which they gave very valuable consideration for, and received some rights in return.

THE COURT: Well, the only issue in front of me is whether or not they should be enjoined from this endeavor in Texas. Is that right?

MR. ULWICK: No, I would beg to differ, Your Honor. I think the only issue that's in front of you is

increases your handle. And it increases the quality of your operations, and that is a very real possibility for, for, with respect to Maryland and Texas. So, as I just was wanting to point out as illustrations, why a Board, the Board of Laurel or the Board of Pimlico, might really want to have the opportunity to consider this is that there are numerous potential advantages to, to Texas that could enure to the benefit of Maryland racing.

The other thing that's important, Your Honor, again, in the context of why this belongs in the Board Room and not in the Courtroom, is that Laurel and Pimlico both have independent Directors. They have two independent Directors. They have Father Joseph Sellinger, who is the President of Loyola here in Baltimore, and they have Mr. Alex Cortalis. Mr. Cortalis is a real estate developer in, and a major businessman in Florida. And both of those gentlemen have been put on the Board of Laurel and Pimlico. And they are there to exercise independent judgement as the derivative shareholder lawsuit procedures require. But we haven't had that opportunity. It's been denied us because the, because the shareholders in this case did not make a demand on the corporations for consideration of the issue which they are seeking, with respect to which they are seeking an injunction here today.

Also worth pointing out that after Father

This case was not filed by shareholders suing as shareholders. In his opposition to our motion to dismiss, the Counsel for the Manfusos has attempted to transform his case into a case filed by shareholders.

THE COURT: Well even if he does, you said they can't.

MR. GRIGSBY: Your Honor, those were the next words out of my mouth. Even if his case is recast as a suit by shareholders, it fails the procedural requirements for a lawsuit under Maryland law. But it's important because the complaint, itself, admits that there was no demand on pages ten and eleven of the opposition papers, it admits that there was no demand made on the shareholders. I'm sorry, on the Directors. But it is also possible, Your Honor, in the context of this case, in this complaint with respect to this injunction, that The Court can fashion a ruling that complies with the Maryland law as it exists, but has no impact on the rest of this case because the way, the way that The Court could do that is to say that with respect to the, to the injunction in Texas, the shareholders here have failed to make a demand on the corporation and, therefore, they cannot proceed.

They cannot proceed in seeking the injunction because they have failed the requirements. But that will have no impact on the other, I believe it's six

allegations, six items with respect to which they seek an injunction and Mr. Ulwick can, can remedy that situation because all he has to do is go make the demand. And, if he makes the demand, then the corporation assigns the issue to the independent Directors and they review it, which is what Maryland law requires. And so a ruling on this Texas injunction, fashioned in that manner, will have no impact on the other, on the other, I believe it's six allegations in the complaint. So I just wanted to point out to Your Honor that it is possible, with respect to this issue, to rule very narrowly and give the relief that, that the corporations and Messrs. DeFrancis and Manfuso have sought. Thank you.

THE COURT: Mr. Ulwick, would you address your first part of your argument to what Counsel has just said to me?

MR. ULWICK: Yes.

THE COURT: Can you, without making demand, come into Court in the manner that you have?

MR. ULWICK: The answer to that is yes. --

THE COURT: They say no and you say yes. So give me some authority somewhere, somebody.

MR. ULWICK: Yes, sir. Let me first say that that is not the case in any event, that my clients attended a Board meeting in April at which they demanded substantially

the same things that we have, since we're going way beyond the record that's in the, in the pleadings. I will tell you what the facts are.

THE COURT: Well, Counsel, somebody has -- you're really confusing me. He said on certain pages you've admitted that you made no demand.

MR. ULWICK: No, that's not true. What I said --

THE COURT: But if you had not, hold it there. If you had not made a demand, should you have?

MR. ULWICK: My answer to, to that question, Your Honor, is it is not necessary under Maryland law and we cited a case at the pages that he cited to you, not saying that we admit that we never did, saying that it would not be necessary if it's futile anyway. And we cited the case. I believe it's the Parrish Milk Producer's case, it's on page 10 of my memorandum, it's at 250 MD 24. And there are legions of cases that say that where it would be futile in the context of a stockholders' derivative suit or a stockholder to make the demand --

THE COURT: Where it would be futile, but don't you have to say something in yours and show where it would be futile?

MR. ULWICK: In the, in the present case they did make demand and it was turned down. So I mean it's not even, it's not even applicable.

THE COURT: Well, what I'm trying to get, I'm trying to get, see if we can come to agreement with what the law says. At this moment I'm getting a little bit confused again because you seem to be saying to me that, yes, it is true what Counsel has said, that you must bring the suit to the Board of Directors first, and make a demand, unless it's futile.

MR. ULWICK: If I may, I would like to --

THE COURT: Are you saying that?

MR. ULWICK: Not exactly. I would like to put a more precise point on it if I can.

THE COURT: All right.

MR. ULWICK: What I don't want to do is confuse that, with respect to rights that are derivative of shareholders, confuse the rights that my clients have in the three separate capacities that they are in with respect to these defendants. They are shareholders. They are Directors. And they are the beneficiaries of a contract. Now, in each one of those separate circumstances, there are different standards that apply.

THE COURT: Let's take them as shareholders.

MR. ULWICK: Okay. As shareholders, a shareholder has a right to proceed in a derivative action if he either makes demand upon the Board of Directors to take certain actions and they refuse, or if to do so would be futile

because, because it would be futile because in the instance that we're typically talking about and, in fact, here where you are telling the corporation that they are to forbid the people, the people who are on the Board from doing the things that they are doing. And --

THE COURT: Well, as, as silly as it may sound to all of you, rather than, than to come in and say, well, it was futile, wouldn't it have taken just a day to go and make the demand and have them say no?

MR. ULWICK: It's already been done.

THE COURT: Well, they say it wasn't. You say it was.

MR. ULWICK: Well, I'm sorry, but that's --

THE COURT: Okay. So I mean we could get beyond the futile issue merely in the fact you're saying was done, that they made demand and were refused.

MR. ULWICK: Yes, sir. Yes.

THE COURT: So if I find that, that, that you did not make the demand and that it was not refused, then you should have to go back and make it, shouldn't you? Or --

MR. ULWICK: If you determine that it would not have been futile to do --

THE COURT: Well I don't have to determine that, you've never alleged that.

MR. ULWICK: Well, it doesn't, the, the --

THE COURT: I'm just trying to clear up the technical sides of these things. I don't want to, in my ruling I have to know that I have a right to rule.

MR. ULWICK: Of course.

THE COURT: And, as I said before, the, if I can glean from the two of you exactly what you want me to rule as far as the law is concerned. If I were to rule, as far as the law is concerned, I think we all agree now that the derivative action, there must be either a demand or a showing that it was futile to make a demand. You just can't come in on the day of trial and say, well, we think it was futile, can you? Can't you, don't you have to put something down that, to show it was futile?

MR. ULWICK: Your Honor, I don't believe so because The Court can find, and what The Courts frequently say is that as a matter of law, when you are asking the Board of Directors, for example, to sue themselves, as a matter of law it would, the law recognizes that that would be a futile exercise and therefore we will not require a shareholder to prove or allege that.

THE COURT: Well, why would there be such a law that, that they're supposed to make demand first if that's the --

MR. ULWICK: Because if --

THE COURT: They're all the same. What would be the difference?

MR. ULWICK: No, because not every shareholders' derivative action is asking the Board of Directors to do something against itself. There can be many --

THE COURT: But the derivative action doesn't say that it has to be this, that or the other thing, it just says that they have to make demand and it has to be for a derivative action. It doesn't say that, but if it's, for the purposes of this case, if it's against the Directors.

MR. ULWICK: Well, a derivative action, Your Honor, is historically a creature of equity and, and it derived from the equitable principal that minority shareholders of a corporation have to have some right to come in if they can show that the majority is abusing their rights. And, from that, has evolved the notion of a shareholders' derivative suit.

THE COURT: Well isn't that what you're claiming in this case?

MR. ULWICK: Sure. Well, well, what I'm saying, I'm not limiting myself to that as I've said before.

THE COURT: I understand, I understand.

MR. ULWICK: But the point I'm trying to make is that there are divergent circumstances when demand is necessary and when it's not. And what the law has done is

it has recognized in equity, and the equitable principles that go along with this are perfectly consistent, is that where there are circumstances where demand would be futile, equity doesn't require people to take futile acts. And, nor make futile allegations. It is, it is, it is only in those circumstances where there is some, where there is some circumstances that would be available to show that the Board may have taken this action.

Where you are saying, Board, sue yourself, for example. You are breaching your fiduciary duties to me, sue yourself. Equity says, you don't have to go through that useless exercise. There is no sense in that. Obviously they are not going to do that. If you are going to say, Board, sell the company to the XYZ Corporation because it would be a breach of your fiduciary duties not to do that, that's a different circumstance. That isn't inherently a futile act. And the distinction that's recognized in the cases is that where it's in the former circumstance, where you're talking about asking yourself to sue yourself, the stockholder doesn't need to go through that useless exercise. And that's the kind of circumstance that we followed in here.

So, --

THE COURT: Well, okay. Well, what about the --

MR. ULWICK: And it's factually an opposite in

any.

THE COURT: Right. Now they have stated, and let's say I don't know who is right and wrong, they have stated that you have admitted that you did not, and you're saying that that's not true. Nowhere in there. Okay. I want you to comment on that and tell me where you say it is, because I'm going to have to take a look at it. All right. Continue you then. Thank you.

MR. ULWICK: Thank you. With respect, going, working backwards through what Mr. Grigsby argued, with respect to the Waller case, Mr. Grigsby points out the fact that even though, I take it that he's not disputing that I've correctly quoted The Court when The Court said that unquestionably, a stockholder who had a separate contractual right, in addition to be a stockholder, had a separate right that he could sue under and have standing even if the, the stockholders' derivative suit was not appropriate, which was the point that the case was cited for, to show you that there are more than one circumstances that can give standing to my clients here.

He goes further to tell you about the holding of the case, which was that in that particular case, The Court found that there were, that there was an impediment to going forward. And, frankly, the reason is, when you read it you will see, that the corporation in that case was in

And the fact of the matter is that the, there is no reason, logically, why a Director should be prohibited from seeking injunctive relief in an appropriate case. And, and there is no Maryland case that says that it is impermissabile. We are at a motion to dismiss stage and, and there is no reason at this stage for a finding which would be, in my belief, no case has been cited by any of the defendants to the contrary, if you were to hold that you would be the first Court that I know of holding that in Maryland.

The, going back to, and I'm sort of bouncing and I apologize, to the points as Mr. Grigsby made them. He raises the issue of "Independent Directors" and that issue, first of all I don't think it necessarily has anything to do with the issues before you, but I do want you at least to know that of the so-called independent Directors that they have spoken about, one is the co-executor of the Frank DeFrancis estate, Mr. Cortalis, which certainly, to me, lines him up with the DeFrancis side of this particular matter. And with regard to Father Sellinger, the facts are to the extent we again get way beyond the pleadings and start going into the facts, that Father Sellinger comes to a Board meeting for the first time in April, never having met either of my clients or, as far as can be determined from what was said at the Board meeting, knowing anything about the dispute and immediately lines up with the

DeFrancis/Jacobs side to vote in their favor without even hearing most of what's in dispute.

So, obviously, those are factual disputes. They will be resolved as we go forward to trial. My point is, I don't believe they have anything to do with the decision that you're going to have to make, which is whether or not the complaint is legally sufficient. And the rules that apply to determining whether a complaint is legally sufficient are well settled and we all know what they are and, and whether or not there is an independent Board has nothing to do with it.

The, prior to that Mr. Grigsby addressed the issue of, a laundry list of reasons why a Board of Directors could have decided that it would be in the best interests of Pimlico and Laurel to do these things. One of which was, I feel I have to comment on, which is the fact that giving Mr. Mango an equity interest in a Texas race track somehow enhances his performance in Pimlico and Laurel. And, I mean if that isn't standing the facts in the complaint on their head, I can't imagine what is. If, if Mr. DeFrancis and Mr. Jacobs truly were interested in incentivizing Mr. Mango and bringing him more tightly into the Pimlico and Laurel loop, they could have given him a portion of their interest in Pimlico and Laurel. And I would think that would make him more interested in

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	**IN THE**
	*	**CIRCUIT COURT**
Plaintiffs	*	**FOR**
v.	*	**BALTIMORE CITY**
JOSEPH A. DE FRANCIS, ET AL.	*	**CASE NO.: 92120052**
Defendants		

* * * * * * * * * * * * *

AFFIDAVIT

1. My name is Joseph A. De Francis. I am over eighteen years of age and competent to testify. The following facts are true and within my personal knowledge.

2. I am President and Chief Executive Officer of Laurel Racing Assoc., Inc. ("Laurel"), Pimlico Racing Association, Inc. ("Pimlico"), and The Maryland Jockey Club of Baltimore City, Inc. ("MJC").

3. I make this Affidavit to address issues raised in the Affidavit of John A. Manfuso, Jr. ("Manfuso Affidavit") and to support the Motion to Dismiss and/or for Summary Judgment filed herewith. I have read the Manfuso Affidavit, and it is replete with misleading statements, mischaracterizations and bald misstatements of the truth.

4. Prior to my becoming President of Pimlico and Laurel, my father, Frank J. De Francis, managed both race tracks and determined all managerial and operational policies and procedures. The most common circumstance under which an individual would incur expenses on behalf of the racetracks was when that individual had to travel for business purposes. This was true during both my father's tenure and my own. During my

father's presidency, the vast majority of business travel was undertaken by him. Often, Lynda O'Dea would accompany him on these business trips, but it was very rare for Ms. O'Dea to travel on business alone. My father did not have corporate credit cards issued to management. Instead, since the vast majority of business travel was undertaken by him, my father used his personal American Express credit card to pay for business expenses incurred on behalf of the corporations, and had the corporations pay directly to American Express that portion of his personal credit card bill that represented business expenses for Laurel and Pimlico. I have questioned Mrs. Donna Kennedy, who is my personal secretary and who was my father's personal secretary, about this procedure, and to the best of both her and my knowledge, neither of the Manfuso brothers ever raised any question, concern, complaint or challenge about my father's practices in this regard.

5. When I became President of Laurel and Pimlico in August 1989, I realized that, unlike my father, I would not be undertaking the vast majority of business travel for the corporations, but that other members of senior management, including Ms. O'Dea, Martin Jacobs, James Mango and the Manfuso brothers, also would be travelling and, hence, incurring expenditures on behalf of the corporations more often than they did in the past. Consequently, I felt that the use of personal credit cards for corporate expenses, and the payment by the corporations of personal American Express bills would be less

efficient than having corporate American Express cards issued to these members of senior management.

6. Mr. Manfuso's statement in Paragraph 5 of his Affidavit that he opposed the distribution of these cards and made an alternative suggestion at the time of their issuance is incorrect. No one opposed the issuance of the corporate credit cards to the aforementioned members of senior management, and all of these executives, including both Manfuso brothers, accepted and used their cards. It was understood by all recipients that, at the time of their issuance, corporate credit cards could be used to charge personal expenses, so long as any personal charges were identified as such and reimbursed to the corporations. The first time that Mr. Manfuso raised with me concerns about corporate credit cards was more than one year after these cards were issued, in correspondence dated December 3, 1990 in which he claimed that Lynda O'Dea had accumulated charges in excess of $19,000 which included personal expenses during the months of July, August, September and October 1990. This correspondence is attached as Exhibit 1.

7. Our Chief Financial Officer, at my request, has prepared a summary of all corporate credit card expenses incurred by Lynda O'Dea and myself so that he might calculate the interest cost to the corporations for not having been reimbursed for personal expenses charged to our corporate credit cards as quickly as Mr. Manfuso would have liked. This

summary is attached as Exhibit 2.

8. In the period commencing with December 1990 and continuing up through the filing of this lawsuit, the Manfuso brothers, especially Tom Manfuso, have continually carped and complained that Ms. O'Dea was not reimbursing the corporations quickly enough for personal expenses that had been charged to her corporate credit card. Initially, Mr. Manfuso stated that he was only concerned about Ms. O'Dea, and that he felt that I, as President of Laurel and Pimlico, could pursue whatever policy I felt appropriate in regard to myself. More recently, however, Mr.Manfuso also began to complain about my personal use of my corporate credit card. There was never any accusation or concern expressed by Messrs. Manfuso that either Ms. O'Dea or I, at any time, attempted to have the corporations bear expenses that were personal in nature. The sole complaint of the Manfuso brothers has been that Ms. O'Dea and I did not reimburse the corporations quickly enough for personal expenses that were charged to our corporate credit cards.

9. As shown on Exhibit 2, the cost to the corporations in lost interest for any delay by Ms. O'Dea or me in reimbursing the corporations for personal expenses charged to our corporate credit cards totals $1,436. Laurel and Pimlico are significant business entities that employ hundreds of people and generate around $400,000,000 annually in wagering. Laurel and Pimlico typically generate over $50,000,000 in operating revenues each year, and incur over

$50,000,000 in expenses each year. Given the deep economic recession, and the crisis facing the horse industry because of the precipitous declines in the number of horse owners and the size of the horse population, we have faced over the last 18 months, and continue to face, a number of multi-million dollar business issues. The successful resolution of these issues is critical to the continued viability of Laurel and Pimlico, and in fact, thoroughbred racing in Maryland. Commencing in the fall of 1990, and continuing to the present, the Manfuso brothers have offered no help or assistance, and virtually no suggestions, regarding the resolution of these critical business issues. Instead, they, especially Tom Manfuso, have continually attempted to raise as a major business issue the alleged failure of Ms. O'Dea and myself to reimburse the corporations more quickly -- an issue that involves less than $1,500 of potential expense to the corporations.

10. Mr. Manfuso's assertions in Paragraph 10 of his Affidavit that, regarding the size of the personal expenditures charged to corporate credit cards that were not promptly reimbursed by either Ms. O'Dea or me, "the amounts in question are sizeable", and that he "recollects" the "amounts in question charged to corporate credit cards were between $75,000 and $100,000, and had accumulated for over a year", are patently incorrect. As shown on Exhibit 2, in the period from July 1990 to February 1991, Ms. O'Dea accumulated approximately $17,000 of personal charges on her corporate credit card, which

were reimbursed in February and March of 1991. In the period from July 1991 to April 1992, Ms. O'Dea again accumulated approximately $17,000 of personal charges, which were reimbursed in April of 1992. As shown on Exhibit 2, in the period from August 1991 to February 1992, I accumulated slightly over $21,000 of personal charges on my corporate American Express card, which were reimbursed in full in February and March of 1992.

11. Since Tom Manfuso's criticism concerning the use of corporate credit cards, I have, in an effort to end the extended dialogue over this issue, canceled all corporate credit cards except for mine. While this card is intended to be used for business purposes only, in a very limited number of circumstances it will be efficient to put certain personal expenses on my corporate credit card. As explained above, the primary use of corporate American Express cards is for business travel. On occasion, when I travel on business, I bring along a family member or personal guest at my own expense. For example, this past June, it was necessary for me to travel to New York to attend the 1992 running of the Belmont Stakes, the third jewel in racing's Triple Crown, and to participate in a meeting of the board of directors of the American Championship Racing Series. I brought my mother with me as my personal guest. My airfare, hotel, and other incidental expenses were charged to my corporate American Express card as ordinary and necessary business expenses. For convenience, my mother's

airfare and hotel were also charged to this credit card, although I promptly reimbursed the corporation for the charges attributable to her. Although as a general practice I will not charge any personal expenses on the corporate card, I will promptly reimburse the corporation for any similar incidental charges made to my corporate American Express card in the future.

12. Mr. Manfuso's statements in Paragraphs 12, 13 and 14 of his Affidavit are false and misleading in a number of important respects. Martin Jacobs is not paid "$400,000 annually to serve as general counsel." Mr. Jacobs is Executive Vice President, Treasurer and General Counsel of Laurel and Pimlico and all of their related companies. As Executive Vice President and Treasurer, he performs a significant number of executive and management duties for the corporations that are outside the scope of and in addition to his duties as General Counsel. Both during my father's and my tenure, it has regularly been the practice of the corporations to use outside legal counsel to assist in a wide range of issues. In recent years, these have included matters such as negotiation and documentation of collective bargaining arguments, extensive Internal Revenue Service audits of Laurel, Pimlico and Bowie, legislative and political matters, arbitrations of grievances related to Union employees and other labor law matters, trademark and copyright protection, and tort and contract claims.

13. The statements that Mr. Manfuso makes in Paragraph 12 of his Affidavit, including Footnote 1 on pages 5 and 6, to the effect that the existence of claims by certain of the limited partners in the former Freestate Racing Association Limited Partnership against Mr. Jacobs and my father's Estate "heightens [his] concerns" are outrageous and knowingly false. That lawsuit was brought by a minority of the limited partners in Freestate following the death of Frank De Francis. The suit is a "strike" suit in which the Plaintiffs hope to obtain some sort of settlement and have no prospect of prevailing.[1] Mr. Manfuso knows or should know this.

14. Mr. Manfuso was one of the limited partners in Freestate and had the opportunity to participate in the litigation, which he did not do. As a limited partner, Mr. Manfuso was aware of the management fees, legal fees, salaries and other expenses of the Freestate partnership and, as a result, he knew that the document to which he refers, and which he attached to his Affidavit -- Plaintiffs' Memorandum in Opposition to the Defendants' Motion for Summary Judgment --

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[1] All of the limited partners collectively invested $850,000 in Freestate. Primarily as a result of the extensive efforts of my father and Mr. Jacobs during the period from 1980 through 1989, the limited partners received almost $8,500,000 back in cash payments -- a return of approximately 1000% of their investment. In addition to my father's Estate and Mr. Jacobs, the Freestate plaintiffs named three accounting firms as defendants in their lawsuit, and sought in excess of $10,000,000 in damages. The Freestate plaintiffs have already settled with one of the accounting defendants for payment of only a nominal amount, and settled with a second accounting defendant, to the best of my belief, without any payment.

was inaccurate and contained false and misleading statements. For example, the statement from the Freestate plaintiffs' Opposition and referended in the Manfuso Affidavit that Messrs. Frank De Francis and Jacobs "privately obtained $3,000,000 in a 'non-competition agreement' from the buyer of the property", is absolutely false and Mr. Manfuso knew it. Attached hereto as Exhibit 3 is a copy of the Memorandum in Support of the Motion for Summary Judgment and the Reply Brief of the Defendants in the Freestate litigation which clarify why that statement is untrue. (See particularly pages 12-13 of the Reply Brief.) The management fees, the legal fees paid to Ginsburg, Feldman and Bress and the compensation paid to Frank De Francis and Martin Jacobs were fully authorized by the Partnership Agreement and any implication to the contrary in the footnote in the Manfuso Affidavit is untrue.

15. Moreover, the costs of counsel for the defendants in the Freestate litigation are being borne entirely by those defendants, and no portion of those fees is being charged, either directly or indirectly, to Laurel or Pimlico. Mr. Manfuso knows that this is the case since legal fees paid by the Estate of Frank De Francis for the defense of the Freestate lawsuit and for the general handling of the Estate are set forth in public filings made with the Probate Court in Howard County and are a matter of public record. I have been advised by Mr. Manfuso previously that he or his counsel have been obtaining copies of these court filings from the public

files.

16. Mr. Manfuso states in the footnote on page 6 of his Affidavit that the "Freestate plaintiffs claim that Jacobs made false statements to Freestate's independent auditors. . . This information obviously heightens the concerns my brother and I have with respect to the accuracy of the financial statements of Laurel and Pimlico." The foregoing assertion in the Freestate plaintiffs' Opposition is based on an intentional deletion of material words from a quotation. In making this assertion, the Freestate plaintiffs relied on a letter from Mr. Jacobs to an accounting firm. That letter was attached as an exhibit to the Freestate plaintiffs' Opposition and a copy is attached hereto as Exhibit 4. The following is the actual quotation from the letter from Mr. Jacobs provided to the accountants. The Freestate plaintiffs' lawyers intentionally omitted from their quotation from that letter the underscored words:

> "Management fees due to the general partner for the period January 1, 1988 through July 17, 1988 are $150,000. Any and all additional cumulative fees for this period and prior years for which the partnership may be held liable, pursuant to Article 7.07 of the Agreement of Limited Partnership, have been waived by the General Partner or otherwise provided for and have no effect on the aforesaid period."

The underscored words were written by Mr. Jacobs in his handwriting before signing the letter. They were intentionally omitted by the Freestate plaintiffs' counsel from his brief.

The omission of the underscored words totally changes Mr. Jacobs' representation to the accountants. Since the entire letter was included as an exhibit to the Freestate plaintiffs' Opposition, Mr. Manfuso or his attorneys knew, or should have known, that the quoted material was defective and their accusation that Mr. Jacobs made a misrepresentation to the Freestate accountants is false.

17. All of the statements in Paragraph 13 of the Manfuso Affidavit are false. The Manfuso Affidavit does not make clear which year Laurel and Pimlico allegedly spent over $250,000 in outside legal fees about which Mr. Manfuso allegedly questioned me. In 1990, Pimlico spent approximately $205,000 on outside legal fees. Of this total, over $75,000 was paid to Fedder & Garten for their services to the Manfuso brothers in connection with the negotiation and drafting of the Stockholders Agreement. In 1990, Laurel spent approximately $72,000 on outside legal fees. Of that total, approximately $31,000 was paid to Latham & Watkins for various services, including their assistance regarding an ongoing dispute described below with the Guida Group, the owner of the Limited Partner interest in Laurel Racing Association Limited Partnership.

18. In 1991, Pimlico incurred outside legal expenses of approximately $158,000, including $44,000 paid to Latham & Watkins for a variety of legal services, including their assistance regarding ongoing disputes with the Manfuso

brothers. In 1991, Laurel incurred outside legal expenses of approximately $118,000, including $51,000 paid to Latham & Watkins for a variety of legal services, including assistance regarding ongoing disputes with the Manfuso brothers, as well as the dispute with the Guida Group described below. Other than Latham & Watkins and Fedder & Garten, outside legal fees incurred by Laurel and Pimlico for both 1990 and 1991 were paid to the firms of Rifkin, Evans, Silver & Lamone (approximately $39,000 in 1990 and $53,000 in 1991) or Ginsburg, Feldman & Bress (approximately $50,000 in 1990 and $108,000 in 1991). The former is our expert legislative counsel, and provides lobbying services and advice on legislative and political matters. The latter provides general corporate support to the general counsel, including assistance in major tax audits of Laurel, Pimlico and Bowie, negotiation, drafting and revisions of our recent multi-year collective bargaining agreement with out primary union, the United Food and Commercial Workers, and the handling of arbitrations under that collective bargaining agreement. Mr. Manfuso has at all times had complete access to those bills and to all accounting records of Laurel and Pimlico relating to this subject. He knows or could readily discern from these corporate records (a) what monies were paid; (b) which firm these amounts were paid to; and (c) the nature of the services provided.

19. The dispute with the Guida Group was not "a purely private matter between Mr. Guida's Group and Joseph De

Francis," and Mr. Manfuso's assertions in Paragraph 14 of his Affidavit that it was purely a private matter and that the Guida dispute "was a personal or Estate matter and not a legitimate corporate expense for the legal fees required" are knowing and intentional lies by Mr. Manfuso.

20. Shortly after my father's death, Lou Guida came to Laurel to meet with me, as well as Mr. Jacobs and the Manfuso brothers, to discuss the status of his Group's investment in Laurel.[2] He raised a number of business issues regarding his investment, and expressed a desire to convert his investment to a much more liquid form, or, in the alternative, to have it bought out by the general partner, Laurel Racing Assoc., Inc. When Laurel did not immediately accede to Mr. Guida's demands, be began a letter writing campaign whereby he threatened to commence an audit of Laurel's books and records, and to institute litigation against the general partner, Laurel Racing Assoc., Inc., and its principals. All of Mr. Guida's letters were immediately provided to the Manfuso brothers upon receipt. Moreover, up until the time that it became evident that the Manfuso brothers were communicating directly with Guida, behind my back and without my knowledge (a) I provided the Manfuso brothers with drafts of all of my responses to

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[2] Laurel Race Course is owned by the Laurel Racing Association Limited Partnership, which in turn is owned by the Guida Group, as limited partner, and by a corporation, Laurel Racing Assoc., Inc., as general partner. The corporation is owned one-half by the Manfuso brothers, and one-half by my father's Estate and Martin Jacobs collectively.

Guida's correspondence, (b) I discussed with them the issue of how the corporation should respond to each communication from Guida, both verbally and in writing, and (c) I solicited and incorporated in such responses their comments prior to finalizing and sending any written response, or returning any of Guida's phone calls.

21. Attached as Exhibits 5 through 33 are copies of correspondence between Guida, myself, and the Manfuso brothers, as well as minutes of meetings between myself, Mr. Jacobs and the Manfuso brothers where the Guida Group was discussed. Because the correspondence is so voluminous, I have highlighted and underlined particularly relevant portions. These Exhibits contain thirteen (13) letters or memoranda from the Manfuso brothers spanning a period of almost one year that address the dispute with the Guida Group, as well as minutes of two meetings where the Guida Group dispute was extensively discussed. The Manfusos' own letters illustrate that the Manfusos were well aware that this dispute was not "a personal or Estate matter," and that expert legal assistance was needed to address the complex tax, restructuring and partnership issues being raised by Guida.

22. As described above, one of Guida's stated objectives in his ongoing dispute with Laurel was to coerce Laurel and/or Pimlico to buy out or otherwise liquidate the Guida Group's interest in the Laurel Partnership. Contrary to my recommendations and advice, the Manfuso brothers repeatedly

insisted -- over a more than six-month period -- that I negotiate the purchase of the Guida Group's interest in Laurel by Laurel and/or Pimlico. See, e.g., Exhibit 8, August 14, 1990 letter from John Manfuso to De Francis: "Bob and I do feel strongly that we should attempt to negotiate the purchase of the Guida interest through Laurel Racing Assoc., Inc."; Exhibit 14, October 8, 1990 memo from Robert T. Manfuso to De Francis and Jacobs: "both Tom and I have stated on several occasions that Laurel Racing Association should attempt to negotiate the purchase of the Guida interest"; Exhibit 16, October 23, 1990 letter from Bob Manfuso to Lou Guida: "we have suggested on several occasions that a reasonable solution to any problem, real or perceived, might be for the Laurel Racing Association to negotiate the purchase of the Guida Group's interest"; Exhibit 17, October 23, 1990 memo from Robert T. Manfuso to De Francis and Jacobs: "Once again, I must reiterate that in my opinion, it is in the track's very best interest to . . . pursue the option of Laurel Racing Association purchasing the Guida Group's interest"; Exhibit 20, November 19, 1990 letter to De Francis from both Manfuso brothers: "We have, on numerous occasions, stressed the importance of discussing with the Guida Group possible purchase of their interest"; Exhibit 22, Minutes of Joint Meeting of Board of Directors of Laurel and Pimlico on November 21, 1990, at pages 13-17, where both Manfuso brothers again encourage purchase of Guida Group interest, and suggest use of Pimlico

funds if necessary to accomplish purchase; Exhibit 23, Memo of meeting of De Francis, Jacobs and Manfuso brothers, where various business issues regarding Guida Group were discussed. As stated in his October 11, 1990 letter to me, attached as Exhibit 15, Guida intended to attempt to purchase my and the Estate's "interest in Laurel and possibly Pimlico" if he could not convince us to have Laurel and/or Pimlico purchase his interest and resolve the outstanding business issues between his group and Laurel.

23. After months of pressure from the Manfuso brothers, during which time I became aware that the Manfuso brothers were communicating closely with Guida, I met on January 13, 1991 I met with Joe Grano, Mr. Guida's partner and also a representative of the Guida Group. We negotiated a possible resolution of the Guida Group dispute that did not involve an immediate buy-out of the Guida Group's interest by Laurel or Pimlico. Exhibit 24, a memo from the Manfuso brothers to me dated the following day (Jan. 14, 1991), confirms that the Manfuso brothers immediately opposed Mr. Grano's and my proposed resolution of the dispute. I then attempted, as the Manfuso brothers had repeatedly demanded, to negotiate the acquisition of the Guida Group's interest by Laurel and Pimlico. When a tentative agreement was reached in early February, 1991, the Manfuso brothers did a 180 degree about face and refused to permit Laurel or Pimlico funds to be used to purchase the Guida Group's interest. In a letter to me

dated February 15, 1991 and attached as Exhibit 25, Tom Manfuso stated:

> Bob and I oppose the purchase of the Guida interest with Laurel or Pimlico Funds. We consider this a "major matter" as outlined in our stockholders agreement dated October 1, 1989. In your November 6 letters you wrote, "regarding the proposed acquisition by Laurel Racing Association, Inc., of the Guida Group's interest in Laurel not-withstanding Bob and Tommy Manfuso's suggestion, that such purchase might be a solution, it does not appear to be in Laurel's best interest to make such a purchase", and "as for Laurel purchasing the Guida Group's interest as we discussed on October 9, and as you well know unless the shareholders are willing to incur personal liability for indebtedness, Laurel Racing Association, Inc., would be unable to purchase that interest." Bob and I now agree with you. We oppose the purchase of the Guida interest with Laurel or Pimlico funds. (emphasis added)

24. After I was forced by the Manfuso brothers to back out of the purchase of Guida's interest that we had negotiated in February of 1991, Guida, as he had indicated he would, in as far back as October 1990, made two offers to purchase my and the Estate's interest in Laurel. At the same time, Guida announced that he had retained an accounting firm, that he wanted to commence an audit of Laurel's books and records, and that litigation with Laurel might be imminent. See Exhibits 26, 27, 29 and 33.

25. The Manfusos recognized that Guida's offer to purchase my and the Estate's interest in Laurel was only one gambit in a larger scheme by Guida that certainly involved the business of Laurel. I provided the Manfusos with a copy of my February 20, 1991 response to Guida's February 19, 1991 offer

(Exhibit 27), but redacted portions that related solely to Guida's offer to purchase the Estate's interest in Laurel. Bob Manfuso's memo to Marty Jacobs dated February 27, 1991 (Exhibit 28) makes clear that the Manfusos' true understanding of the Guida situation was very different from that expressed in the Manfuso Affidavit:

> As you know, the February 20, 1991 letter that you faxed to me from Joe to Guida is incomplete. Guida read the letter to me and there were references that were important to me and Tom, which we wish to review. Tom and I insist that we see the entire letter without censorship. Since it is on Maryland Jockey Club stationery, if there are any personal comments, it makes no difference. We must see the entire letter so that we understand where Guida is coming from. Please let me have the complete letter by return fax. (emphasis added)

26. Mr. Manfuso's assertion in paragraph 15 of his Affidavit that he was never provided with documentation and backup relating to outside legal fees is false. As discussed in Paragraph 18 above, Mr. Manfuso was provided with copies of all legal bills received by the corporations from all outside counsel promptly following his request to see such bills. Mr. Manfuso, through his attorney, James M. Kramon, then insisted that the corporations compel their outside law firms to provide the corporations with copies of the attorneys' time records in connection with the work that they had performed for Laurel and Pimlico. These time records were not records of the corporations nor records that the corporations would maintain or have access to in the ordinary course of their business, but rather were the private records of the respective law firms.

The assertion in paragraph 16 of the Manfuso Affidavit that Mr. Manfuso believes that access to the time records of the individual law firms that performed work for Pimlico and Laurel is necessary to allow him and his brother to perform their fiduciary duties as directors is patently absurd and ridiculous. Nonetheless, at Mr. Manfuso's request, we have secured such information from the law firms and provided these time records to the Manfuso brothers.

27. In connection with the 1990 financial statements for Laurel and Pimlico, there was initial concern that Laurel might not meet the cash flow to debt service ratio required under its loan from First National Bank of Maryland. During a review of the financial records, the corporations made some corrections regarding the allocation of certain expenses between Laurel and Pimlico. However, every allocation which the Manfusos have questioned in their Opposition to Defendants' Motion to Dismiss was made for a justifiable business reason in accordance with generally accepted accounting principles, and was reviewed and accepted by the corporations' independent auditors, Ernst & Young.

28. Under the Stockholders Agreement, the Manfusos were each entitled to severance payments in excess of $10,000 per month. Originally, the corporations envisioned allocating the expense of these payments equally between Laurel and Pimlico. However, this position was reevaluated in light of the fact that the Guida Group, as the limited partner in the

Laurel Partnership, was not a party to the Stockholders Agreement. Thus it would be unfair, if not illegal, to cause it to bear a portion of these expenses -- which constitute payments to the Manfusos for not working. Since the Manfuso brothers were each handsomely compensated during the period of their services to Laurel and Pimlico, the corporations did not believe it appropriate to charge any portion of these severance payments to Laurel without the express consent of the Guida Group. In fact, on several occasions Guida threatened to audit the books and records of Laurel, an audit that, in Guida's words, was "to be an examination of not only the books and records, but also all employment agreements, all severance agreements and any and all buy/sell agreements of any kind or nature." See Exhibit 11, letter from Guida to De Francis dated 9/13/90. Given Guida's barely veiled threats of litigation against Laurel and/or Pimlico (see e.g., Exhibit 5, describing "conflict of interest" between Laurel and Pimlico, and Exhibit 33), it makes no sense -- either from a legal or economic perspective -- to allocate any portion of the severance payments to Laurel without the Guida Group's consent. I informed Tom Manfuso of this position orally on many occasions and in a letter dated March 12, 1992. See Exhibit 34 at p. 5. Although an effect of this action was helping Laurel's debt service to cash flow ratio, that was not the reason for the decision not to charge a portion of the severance expense to the Laurel partnership, contrary to the assertion in paragraphs

19 and 20 of the Manfuso Affidavit.

29. As for the transfer of revenue from Pimlico to Laurel concerning thirteen racing days occurring in February, 1990, I explained the corporations' position in the same March 12, 1992 correspondence to the Manfusos. See Exhibit 34 at p.4.

30. The Manfusos also claim that Pimlico pays a disproportionate amount of the aggregate charitable contributions made by Pimlico and Laurel. As I have advised the Manfusos, Pimlico makes greater contributions than Laurel because of its location in Baltimore City and the fact that it hosts the Preakness. It is, therefore, more dependent than Laurel on the good will and support of public entities and the business community in general. See Exhibit 34 at p. 6.

31. The sale of "gravel" from Bowie Race Course for approximately $40,000 referred to by Mr. Manfuso in paragraph 27 of his Affidavit in fact was a sale of clay (not gravel) in 1991 (not 1990). The revenue from the sale was deposited in a bank account of Southern Maryland Agricultural Association (referred to as "SMAA"), the joint venture between Laurel and Pimlico that owns the Bowie Race Course Training Center. The joint venture known as "SMAA II" between Laurel and an entity owned by the Cohen family, the former owners of Pimlico, owns land adjacent to the training center. SMAA II does not have a separate bank account from SMAA since it only has minimal

transactions in each year. Upon review of the draft 1991 financial statements, management made a correction to reflect that one-half the revenue from the sale of clay, or $20,000, properly belonged to the Cohens rather than to Pimlico, since the clay came from land owned by SMAA II, not by SMAA. The correction to the draft financial statement was authorized prior to the time the Manfusos also pointed out the error.

32. The Manfusos also questioned a $25,000 payment which was made in 1990 to what Mr. Manfuso refers to in paragraph 29 of his Affidavit as a "Republic Senatorial group". The entity to which the contribution was made is known as Team 100, a national fund raising group for the Republican Party. Team 100 promotes the national goals of the Party, with special emphasis on the election of the Party's Presidential nominee, and not, as Mr. Manfuso states, "to support Republican candidates for Senators around the United States." Thus, Mr. Manfuso's comments in Paragraph 29 of his Affidavit regarding the Party affiliation of Maryland's two U. S. Senators are totally irrelevant.

33. In 1988, my father became a member of Team 100 by personally contributing $100,000. I caused Laurel and Pimlico to contribute the required $25,000 for continued membership in this group in 1990. As I stated in the letter dated March 12, 1991 to the Manfusos, I felt the contribution was appropriate and an advantageous move with respect to the business of the racetracks; however, to avoid a dispute and

confrontation with the Manfusos, I paid for the membership myself and reimbursed the corporation. See Exhibit 38 at pp. 2-3.

34. The "personal round-trip airline expenses to Texas" referred to in paragraph 32 of the Manfuso Affidavit involve one round-trip airfare of approximately $800 which originally was paid by Pimlico for a flight by Martin Jacobs to Texas. I have personal knowledge that the cost of this ticket was subsequently reimbursed to the corporation. Moreover, the initial payment by the corporation was clearly unintentional. As is the practice in business, secretaries at the corporations often make travel arrangements. In this case, Mr. Jacobs' secretary arranged the trip and had it billed to the travel agency's corporate account without first verifying with him whether it was a corporate charge. When the error was discovered, the reimbursement was made. In his letter of September 19, 1990, attached as Exhibit 12, Mr. Manfuso himself acknowledged that this was unintentional, stating "I am sure this is merely an oversight . . . ."

35. I believe and have explained to the Manfusos the legitimate business purposes behind all the allocation decisions that they have complained about in their correspondence, in the original, First and Second Amended Complaints in this lawsuit and in the Manfuso Affidavit. The corporations, at my direction, have allowed the Manfusos, along with their personal accountant, Mark Reynolds, to review in

detail all of the corporations' financial records that they wished to review. In addition, the corporations, also at my direction, made the necessary arrangements for Mark Reynolds to meet with Ernst & Young, which he did on several occasions.

36. The corporations, at my direction, approximately contemporaneously with receipt, provided Ernst & Young with copies of all correspondence received from the Manfusos raising questions or concerns about the financial statements. Ernst & Young assessed each of their questions and concerns and has advised the corporations of their continued view that the financial statements are in compliance with generally accepted accounting principles.

37. In a letter dated March 12, 1992, counsel for the Manfusos requested to meet with Ernst & Young personally to discuss the Manfusos' assertions. See Exhibit 35. I responded to that request in a letter dated March 18, 1992, in which I informed the Manfusos that such action would not be considered unless they, along with their counsel, made a presentation to the Boards of Directors of the corporations setting for the legal basis for a face-to-face meeting with the auditors. See Exhibit 36.

38. On March 19, 1992, the Manfusos by letter advised that they refused to make a presentation to the Boards. See Exhibit 37. The Manfusos have also steadfastly refused to comply with our request that they provide a copy of their own accountant's report and related correspondence to the

corporations. For these reasons, neither the Boards of Directors nor I have agreed to arrange for a meeting between the Manfusos and Ernst & Young. Contrary to Mr. Manfuso's assertion in paragraph 33 of his Affidavit, the fiduciary responsibilities of the Manfuso brothers, as directors of Laurel and Pimlico, do not include a responsibility "to present and review our questions regarding our concerns about the audited annual statements directly with the auditors in an effort to reconcile our differences." Mr. Manfuso is a sophisticated businessman who has sat on other boards of directors in addition to Laurel's and Pimlico's. It is inconceivable to me that Mr. Manfuso could have a good faith belief that his fiduciary duty requires him to personally audit a company's independent auditors and to meet with such independent auditors to reconcile differences.

39. I have not attempted in this Affidavit to refute each of the allegations of the Manfuso Affidavit that are erroneous or misstated. The various paragraphs of the Manfuso Affidavit that have not been discussed above have been responded to in the Answers or other pleadings filed by the defendants. I have reviewed the Answer and other pleadings and state that the allegations contained therein are true and correct to the best of my knowledge.

I solemnly affirm under the penalty of perjury and upon personal knowledge that the contents of the aforegoing Affidavit are true.

Joseph A. De Francis

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

December 3, 1990

Mr. Joe DeFrancis
Laurel Racing Association
P. O. Box 130
Laurel, MD. 20725

Dear Joe:

As I have discussed with Marty and Bob on several occasions, it is poor business practice to allow corporate credit cards to be used for personal charges, except in an emergency. Both agreed. For starters, such practice is an invitation for the IRS to engage in extensive and expensive audits and may result in Laurel Racing Association assuming liability for charges that may be difficult, if not impossible, to collect.

Last Friday, I reviewed the American Express charges on the Laurel Racing Association account. In addition to other extensive personal charges, I noted in particular that Lynda had accumulated charges in excess of $19,000. on this account for the months of July, August, September and October. Since there was no record or breakdown for these charges, I assume they are both personal and corporate.

I would urge you to immediately establish a policy that would discontinue the use of these cards for personal expenses and at the same time require a timely itemized breakdown on all corporate charges. Of course, personal accounts should immediately be paid. In my opinion no credit cards, other than gasoline, should be issued. Personal cards should be used for business charges and appropriate expense vouchers submitted for repayment. I look forward to receiving your comments.

Your help in obtaining as soon as possible the minutes of our November Directors' meeting would be greatly appreciated. Since we are already into December, may I suggest that we schedule our December Owners meeting, December 17, 18, or 19. Please have Donna contact Marge Rumrill at our office to finalize the date for this meeting.

Sincerely,

JOHN A. MANFUSO, JR.

cc: Martin Jacobs
Robert T. Manfuso

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

OFFICER'S AMERICAN EXPRESS
INTEREST INCURRED
FYE DECEMBER 31, 1991

INTEREST 0.04

SUMMARY OF CHARGES LYNDA O'DEA	TOTAL CHARGES	PIMLICO	LAUREL	PERSONAL	TOTAL	<---------- PERSONAL CHARGES ONLY ----------> BEGINNING	CHARGES	PAYMENTS	ENDING	BALANCE DAYS O/S	INTEREST INCURRED
01/27/91	1,088.87	0.00	0.00	1,088.87	1,088.87	16,245.84	1,088.87		17,334.71	31	55.19
02/25/91	7,197.29	2,983.39	2,983.40	1,230.50	7,197.29	17,334.71	1,230.50	11,744.30	6,820.91	29	55.09
03/28/91	0.00	0.00	0.00	0.00	0.00	6,820.91	0.00	4,602.34	2,218.57	31	23.17
04/27/91	1,735.06	224.70	0.00	1,510.36	1,735.06	2,218.57	1,510.36		3,728.93	30	7.29
05/28/91	1,215.26	1,177.46	0.00	37.80	1,215.26	3,728.93	37.80	1,088.87	2,677.86	31	12.67
06/27/91	4,288.60			4,288.60	4,288.60	2,677.86	4,288.60	1,230.50	5,735.96	30	8.80
07/28/91	1,850.37			1,850.37	1,850.37	5,735.96	1,850.37	1,510.36	6,075.97	31	19.49
08/28/91	6,688.05		282.77	6,405.28	6,688.05	6,075.97	6,405.28	37.80	12,443.45	29	19.31
09/27/91	467.34	225.96	241.38	0.00	467.34	12,443.45	0.00		12,443.45	29	39.55
10/28/91	9,990.47		9,990.47	0.00	9,990.47	12,443.45	0.00		12,443.45	31	42.27
11/26/91	860.85			860.85	860.85	12,443.45	860.85		13,304.30	29	39.55
12/27/91	4,254.08			4,254.08	4,254.08	13,304.30	4,254.08		17,558.38	31	45.20
	39,636.24	4,611.51	13,498.02	21,526.71	39,636.24	16,245.84	21,526.71	20,214.17	17,558.38	362	214.16

OFFICER'S AMERICAN EXPRESS
INTEREST INCURRED
FYE DECEMBER 31, 1990

INTEREST 0.04

SUMMARY OF CHARGES LYNDA O'DEA	TOTAL CHARGES	PIMLICO	LAUREL	PERSONAL	TOTAL	<---------- PERSONAL CHARGES ONLY ----------> BEGINNING	CHARGES	PAYMENTS	ENDING	BALANCE DAYS O/S	INTEREST INCURRED
12/28/89	45.00	22.50	22.50	0.00	45.00	0.00	0.00		0.00		
01/26/90	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00		
02/25/90	1,099.17	461.70	284.00	353.47	1,099.17	0.00	353.47	353.47	0.00		
03/27/90	2,154.63	704.47	781.17	668.99	2,154.63	0.00	668.99	668.99	0.00		
04/26/90	1,154.25	698.00	0.00	456.25	1,154.25	0.00	456.25		456.25		
05/26/90	1,272.87	967.67	0.00	305.20	1,272.87	456.25	305.20		761.45	30	1.50
06/25/90	6,489.04	5,575.20	60.35	853.49	6,489.04	761.45	853.49		1,614.94	30	2.50
07/26/90	6,190.03	0.00	2,049.81	4,140.22	6,190.03	1,614.94	4,140.22	761.45	4,993.71	31	5.49
08/28/90	5,194.14	0.00	0.00	5,194.14	5,194.14	4,993.71	5,194.14		10,187.85	33	18.06
09/26/90	3,840.38	1,481.22	328.13	2,031.03	3,840.38	10,187.85	2,031.03		12,218.88	28	31.26
10/27/90	3,140.68	0.00	1,928.18	1,212.50	3,140.68	12,218.88	1,212.50	853.54	12,577.84	31	41.51
11/26/90	1,804.86	254.72	254.73	1,295.41	1,804.86	12,577.84	1,295.41		13,873.25	30	41.35
12/27/90	4,475.21	1,075.74	1,026.88	2,372.59	4,475.21	13,873.25	2,372.59		16,245.84	31	47.13
	36,860.26	11,241.22	6,735.75	18,883.29	36,860.26	0.00	18,883.29	2,637.45	16,245.84	244	188.80

OFFICER'S AMERICAN EXPRESS
INTEREST INCURRED
YTD APRIL 30. 1992

INTEREST 0.04

SUMMARY OF CHARGES	TOTAL					<-----------	PERSONAL CHARGES ONLY	------------>		BALANCE	INTEREST
JOSEPH DE FRANCIS	CHARGES	PIMLICO	LAUREL	PERSONAL	TOTAL	BEGINNING	CHARGES	PAYMENTS	ENDING	DAYS O/S	INCURRED
01/27/92	1,241.40	620.40	621.00	0.00	1,241.40	21,150.20	0.00	0.00	21,150.20	31	71.85
02/26/92	2,575.80	1,287.90	1,287.90		2,575.80	21,150.20	0.00	17,195.34	3,954.86	30	69.53
03/26/92	90.50	45.25	45.25		90.50	3,954.86	0.00	3,840.99	113.87	29	12.57
04/26/92	372.88	186.44	186.44		372.88	113.87	0.00		113.87	30	0.37
	0.00				0.00	113.87	0.00		113.87		
	0.00				0.00	113.87	0.00		113.87		
	0.00				0.00	113.87	0.00		113.87		
	0.00				0.00	113.87	0.00		113.87		
	0.00				0.00	113.87	0.00		113.87		
	0.00				0.00	113.87	0.00		113.87		
	0.00				0.00	113.87	0.00		113.87		
	0.00				0.00	113.87	0.00		113.87		
TOTALS	4,280.58	2,139.99	2,140.59	0.00	4,280.58	21,150.20	0.00	21,036.33	113.87 ‡	120	154.33

‡ IN QUESTION

OFFICER'S AMERICAN EXPRESS
INTEREST INCURRED
FYE DECEMBER 31, 1991

INTEREST 0.04

SUMMARY OF CHARGES JOSEPH DE FRANCIS	TOTAL CHARGES	PIMLICO	LAUREL	PERSONAL	TOTAL	<---------- PERSONAL CHARGES ONLY ----------> BEGINNING	CHARGES	PAYMENTS	ENDING	BALANCE DAYS O/S	INTEREST INCURRED
01/27/91	1,492.37	265.37	265.37	961.63	1,492.37	20,522.74	961.63	10,953.96	10,530.41	31	69.72
02/25/91	348.58	149.00	149.00	50.58	348.58	10,530.41	50.58	1,809.60	8,771.39	29	33.47
03/28/91	3,893.20	691.50	0.00	3,201.70	3,893.20	8,771.39	3,201.70	401.48	11,571.61	31	29.80
04/27/91	4,033.09	486.68	0.00	3,546.41	4,033.09	11,571.61	3,546.41	7,457.70	7,660.32	30	38.04
05/28/91	2,296.85	2,097.59	0.00	199.26	2,296.85	7,660.32	199.26	898.26	6,961.32	31	26.02
06/27/91	4,287.16	1,105.29	1,638.00	1,543.87	4,287.16	6,961.32	1,543.87		8,505.19	30	22.89
07/28/91	22,050.90	0.00	4,855.56	17,195.34	22,050.90	8,505.19	17,195.34		25,700.53	31	28.89
08/28/91	6,791.32	3,225.05	1,895.11	1,671.16	6,791.32	25,700.53	1,671.16	3,201.70	24,169.99	29	81.68
09/27/91	2,477.43	428.60	0.00	2,048.83	2,477.43	24,169.99	2,048.83	3,745.67	22,473.15	29	76.81
10/28/91	296.00	87.50	87.50	121.00	296.00	22,473.15	121.00		22,594.15	31	76.35
11/26/91	197.02	98.51	98.51	0.00	197.02	22,594.15	0.00	1,543.87	21,050.28	29	71.81
12/27/91	4,373.14	2,186.56	2,186.58	0.00	4,373.14	21,050.28	0.00		21,050.28	31	71.51
TOTALS	52,537.06	10,821.65	11,175.63	30,539.78	52,537.06	20,522.74	30,539.78	30,012.24	21,050.28	362	429.94

OFFICER'S AMERICAN EXPRESS
INTEREST INCURRED
FYE DECEMBER 31. 1990

INTEREST 0.04

SUMMARY OF CHARGES JOSEPH DE FRANCIS	TOTAL CHARGES	PIMLICO	LAUREL	PERSONAL	TOTAL	<---------- PERSONAL CHARGES ONLY ---------- BEGINNING	CHARGES	PAYMENTS	ENDING	BALANCE DAYS O/S	INTEREST INCURRED
12/28/89	55.00	27.50	27.50	0.00	55.00	0.00	0.00		0.00		
01/26/90	2,219.92	1,934.61	285.31	0.00	2,219.92	0.00	0.00		0.00		
02/25/90	4,900.98	4,850.98	50.00	0.00	4,900.98	0.00	0.00		0.00		
03/27/90	2,427.32	2,010.08	244.33	172.91	2,427.32	0.00	172.91	172.91	0.00		
04/26/90	9,603.65	2,349.66	311.03	6,942.96	9,603.65	0.00	6,942.96		6,942.96		
05/26/90	312.97	154.25	0.00	158.72	312.97	6,942.96	158.72		7,101.68	30	22.83
06/25/90	1,589.49	917.39	0.00	672.10	1,589.49	7,101.68	672.10		7,773.78	30	23.35
07/26/90	1,428.87	806.55	368.23	254.09	1,428.87	7,773.78	254.09	7,101.68	926.19	31	26.41
08/28/90	4,848.00	591.00	353.00	3,904.00	4,848.00	926.19	3,904.00		4,830.19	33	3.35
09/26/90	7,343.16	146.59	146.61	7,049.96	7,343.16	4,830.19	7,049.96	672.10	11,208.05	28	14.82
10/27/90	1,809.60	0.00	0.00	1,809.60	1,809.60	11,208.05	1,809.60	354.09	12,663.56	31	38.08
11/26/90	658.48	128.50	128.50	401.48	658.48	12,663.56	401.48		13,065.04	30	41.63
12/27/90	10,136.53	1,339.41	1,339.42	7,457.70	10,136.53	13,065.04	7,457.70		20,522.74	31	44.39
TOTALS	47,333.97	15,256.52	3,253.93	28,823.52	47,333.97	0.00	28,823.52	8,300.78	20,522.74	244	214.85

OFFICER'S AMERICAN EXPRESS
INTEREST INCURRED
YTD APRIL 30, 1992

INTEREST 0.04

SUMMARY OF CHARGES LYNDA O'DEA	TOTAL CHARGES	PIMLICO	LAUREL	PERSONAL	TOTAL	<---------- PERSONAL CHARGES ONLY ----------> BEGINNING	CHARGES	PAYMENTS	ENDING	BALANCE DAYS O/S	INTEREST INCURRED
01/27/92	338.00	0.00	0.00	338.00	338.00	17,558.38	338.00	0.00	17,896.38	31	59.65
02/26/92	0.00	0.00	0.00	0.00	0.00	17,896.38	0.00	0.00	17,896.38	30	58.84
03/26/92	0.00	0.00	0.00	0.00	0.00	17,896.38	0.00	0.00	17,896.38	29	56.88
04/26/92	0.00	0.00	0.00	0.00	0.00	17,896.38	0.00	17,896.38	0.00	30	58.84
					0.00	0.00	0.00		**0.00**		
					0.00	0.00	0.00		**0.00**		
					0.00	0.00	0.00		**0.00**		
					0.00	0.00	0.00		**0.00**		
					0.00	0.00	0.00		**0.00**		
					0.00	0.00	0.00		**0.00**		
					0.00	0.00	0.00		**0.00**		
					0.00	0.00	0.00		0.00		
	338.00	0.00	0.00	338.00	338.00	17,558.38	338.00	17,896.38	0.00	120	234.20

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

JOSEPH L. ELY, et al., Plaintiffs, v. FREESTATE RACING ASSOCIATION, INC., et al., Defendants.	)	Case No. 91CA-17037

MEMORANDUM IN SUPPORT OF
THE FREESTATE DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

REESE & CARNEY
David Carney
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Columbia, MD 21044
(301) 740-4600

LATHAM & WATKINS
Irwin Goldbloom
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(202) 637-2200

(Counsel for Defendants Freestate Racing Association, Inc., Southfield Realty Corp., Inc., Joseph A. DeFrancis and Alec P. Courtelis as the personal representatives of the Estate of Frank J. DeFrancis, and Martin Jacobs)

TABLE OF CONTENTS

INTRODUCTION

This action was brought by a minority of the former limited partners who invested in a limited partnership that operated Freestate Raceway from 1980 through early 1988. The plaintiffs have sued the former general partner corporations and their former primary officers, among others.[1] The Freestate Defendants, who are the former general partner corporations and their primary officers, now move for summary judgment on the grounds that the plaintiffs have not established, and indeed, as explained below, cannot establish, any valid claim against these defendants.

Although the complaint appears, at first glance, to be long and complex, this is not a difficult case. The plaintiffs have already received an amount equal to almost ten times their initial investment in the limited partnership, and their complaint, which contains vague allegations of fraud and breach of duty, fails to state any valid basis for recovery in the circumstances of this case. Moreover, the plaintiffs' responses to discovery thus far have failed to disclose any evidence of wrongdoing to support their otherwise unsubstantiated claims. Because there is no genuine dispute as to any material fact, the Freestate Defendants are entitled to judgment as a matter of law,

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[1] The Freestate Defendants are Freestate Racing Association, Inc., the former original general partner of the partnership; Southfield Realty Corp., Inc., the former successor general partner of the partnership; Joseph A. DeFrancis and Alec P. Courtelis, as the personal representatives of the Estate of Frank J. DeFrancis; and Martin Jacobs. Messrs. Frank DeFrancis and Jacobs were officers and directors of the corporate Freestate Defendants.

and summary judgment should be entered in favor of the Freestate Defendants on all of the counts of the complaint against them.

In support of this motion, the Court is respectfully referred to the Affidavit of Martin Jacobs, to which are attached all of the essential documents regarding the limited partnership and its activities, as they relate to this controversy, and to the plaintiffs' interrogatory responses. Those documents show the following facts:

(1) In 1980, Defendant Freestate, Inc. circulated a Private Placement Memorandum to the plaintiffs, which carefully disclosed the terms of the investment and the conditions under which the partnership would be operated;

(2) Each of the limited partners, at the time of the purchase of a partnership interest, certified that he or she qualified as a "sophisticated investor" and had read and understood the Private Placement Memorandum;

(3) In 1986, long before a subsequent transaction with Mark Vogel to sell the racing assets was even considered, each of the limited partners was given the opportunity to attempt to sell his or her partnership interest, and only plaintiff Solomon decided to do so;

(4) In 1988, when the opportunity to sell the race-way's racing assets to Mark Vogel arose, the proposed transaction and its financial ramifications were described in detail to each of the limited partners, who consented to the proposed transaction;

(5) In 1989, when the opportunity to sell the race-way's real estate to the Cafritz Group arose, each of the limited partners consented to the proposed transaction, which had been described in detail to them;

(6) Although the plaintiffs complain of transactions relating to certain management fees, those transactions were completed in full accordance with the terms of the Private Placement Memorandum, which the plaintiffs read prior to their investment;

(7) Although the plaintiffs complain of the compensa-tion paid to various individuals, that compensation was paid in accordance with the terms of the Private

Placement Memorandum and the 1988 and 1989 letters describing the proposed Vogel and Cafritz transactions; and

(8) In connection with the 1988 sale to Vogel of the racing assets, the plaintiffs (other than Solomon), and all the other limited partners, specifically waived and released the Freestate Defendants from any claims that they might otherwise have had against them.

Because the documents being submitted with this motion show that the plaintiffs were fully apprised of the nature of the investment and its financial ramifications, and because the plaintiffs assented in advance to the transactions of which they now complain, and since there is no evidence of any sort of wrongdoing or breach of duty, summary judgment should be entered in favor of the Freestate Defendants.

FACTUAL BACKGROUND

I. The Plaintiffs Profited Handsomely From Their Investment in the Freestate Raceway.

The plaintiffs' complaint presents a distorted view of the basic, uncontrovertible facts underlying the plaintiffs' allegations. As the following description shows, the plaintiffs represent a minority of the former limited partners in an innovative -- and highly successful -- investment venture to which the late Frank J. DeFrancis and Martin Jacobs contributed great personal efforts, talent and resources. The plaintiffs, all of whom were passive investors who made no personal contribution of time or effort to the partnership, received almost a ten-fold return on their investment.

A. The Creation of the Limited Partnership

Freestate Raceway, which was known prior to 1980 as "Laurel Raceway," had been owned by unrelated parties who

operated the raceway through 1979, sustaining a net operating loss of $1 million in that year and defaulting on their financing. The National Bank of Washington had foreclosed on the raceway property. Private Placement Memorandum ("PPM"), attached as Exhibit 1, at 16, 19.

In 1980, Frank DeFrancis was approached by The National Bank of Washington about possibly purchasing the raceway. Affidavit of Martin Jacobs ("Jacobs Aff.") ¶ 4. Contrary to the allegations of the complaint, Mr. DeFrancis was not, at that time, known as the "Czar of the Maryland industry." See, e.g., Complaint ¶ 409. In fact, his career up to that point had involved primarily the private practice of international law and investment in real estate and charter transportation concerns. He also enjoyed thoroughbred racing and owned some thoroughbred race horses. Mr. Jacobs' career up to that time had been as a lawyer for seventeen years, in private practice with the Washington, D.C. firm of Ginsburg, Feldman and Bress and with the U.S. Department of Justice prior to that time. Mr. DeFrancis was one of his clients, and Mr. DeFrancis invited him to joint in the raceway endeavor. PPM at 20-21; Jacobs Aff. ¶¶ 1, 4.

Messrs. DeFrancis and Jacobs arranged for the creation of the Freestate limited partnership.[2/] Jacobs Aff. ¶ 4. They

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2/ A third individual, Joel Davis, was originally an officer and minority shareholder of Freestate Inc. In 1982, he moved to Israel. He transferred ownership of his shares to his wife, Evelyn Davis (who was also a limited partner of the Partnership and is a plaintiff in this litigation), and his shares were repurchased by Freestate, Inc. Davis, who practiced as a certified public accountant, was extradited to the United States and was convicted of various felonies unrelated to the Freestate enterprises. He is currently

caused the incorporation of Freestate Racing Association, Inc. ("Freestate Inc."), which later became the general partner ("General Partner") of the Freestate limited partnership. Id. In 1980, Mr. DeFrancis contracted with The National Bank of Washington for the raceway property to be sold to an entity managed by him. During the spring of 1980, Freestate Inc. also acquired a license to operate Freestate Raceway from the Maryland Racing Commission. Freestate Raceway was opened to the public on June 23, 1980. PPM at 12-15.

In the Private Placement Memorandum dated June 30, 1980, limited partnership interests in the Freestate Racing Association limited partnership (whose name was later changed in accordance with Maryland law to "Freestate Racing Assoc. Limited Partnership") (the "Partnership") were offered for sale only to qualified investors. Because the interests were to be privately placed, sales were limited to "qualified investors," i.e., those with adequate financial sophistication and financial resources to make the investment. PPM at 4.

The Private Placement Memorandum carefully disclosed to prospective investors the conditions under which the Partnership would operate. Each limited partner was required to certify, in a Subscription Agreement, that he or she had "carefully read" the PPM and the Partnership Agreement. Subscription Agreement, attached as Exhibit 6, at 4; see also PPM at 1. Even a cursory review of the Private Placement Memorandum reveals that the

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incarcerated in a federal correctional institution. Jacobs Aff. ¶ 19. He is a third-party defendant in the instant litigation.

document provided detailed disclosure of the then-known risks and potential conflicts that prospective limited partners might face. For example, the Private Placement Memorandum, in a section entitled "Potential Conflicts of Interest," carefully disclosed, among other things, that "[t]he arrangements as to compensation of the General Partner were not negotiated at arms-length," that "the General Partner [would] receive substantial compensation," and that Messrs. Martin Jacobs and Joel Davis, who would serve as officers of the General Partner, were partners of professional firms that would render services to the Partnership. PPM at 8-9.

The Private Placement Memorandum showed that Freestate Inc., which was controlled by Frank J. DeFrancis, would act as the Partnership's general partner and would operate the raceway. Id. at 5. It also stated that a cumulative annual management fee equal to 7% of "Operating Revenue" would be payable to the General Partner. Id. at 21. The Partnership would also reimburse the General Partner for the expenses, including salaries, it incurred in operating the raceway. Messrs. DeFrancis and Jacobs would be officers of the General Partner, with reimbursement to the General Partner for "salaries and directors fees paid" to them limited to 3.5% of Operating Revenue. Id. at 22.

After reading the PPM, twenty-one individuals, each of whom was a colleague, acquaintance, or client of Messrs. DeFrancis, Jacobs or Davis, purchased limited partnership interests. Most of the limited partners invested either $25,000

or $50,000 in the Partnership, although four individuals acted together in a partnership to invest $100,000, and the late husband of plaintiff Hilda Zeldon invested $125,000. The plaintiffs base their claims on a total of $375,000 invested in the Partnership by seven individuals. However, the vast majority of the purchasers of limited partnership interests -- fourteen individuals who originally invested a total of $475,000 -- chose not to participate with the plaintiffs in the instant lawsuit. Jacobs Aff. ¶ 4.

B. The History of Freestate Raceway Operations

1. 1980-85

Messrs. DeFrancis and Jacobs worked diligently to make a success of the raceway. During the racing season of Freestate Raceway, races were presented at night, and Mr. DeFrancis was literally at the track from dawn to midnight, living primarily out of a hotel nearby. Mr. Jacobs also worked diligently and was regularly at the track for long hours. Deposition of Andrew Eastwick ("Eastwick Dep."), attached as Exhibit 27, at 19-20; Jacobs Aff. ¶ 5. Given the lack of Partnership funds in excess of its needs for working capital and cash reserves, the General Partner was unable to take the full management fee to which it was entitled in each year and, instead, was paid only $150,000 per year in management fees. Id. ¶ 12.

Given the efforts of Messrs. DeFrancis and Jacobs, the raceway finally became profitable in 1984. See Audited Financial Statements and Other Financial Information of Freestate Racing Association (a Maryland Limited Partnership) (1980-84), attached

as Exhibits 17-21, and Audited Financial Statements and Other Financial Information of Freestate Racing Assoc. Limited Partnership (1985-1988), attached as Exhibits 22-26 (collectively, "Financial Statements").

2. 1986-87

On August 8, 1986, the General Partner, in a letter signed by Messrs. DeFrancis and Jacobs, informed the limited partners of certain problems that appeared to face Freestate Raceway. The limited partners were advised of a national decline in the harness racing industry and of the need for certain capital improvements at the raceway. They were also told that certain limited partners had expressed concern about "phantom income," or taxable income exceeding cash received, which may have had an impact on their personal tax liability. Jacobs Aff. ¶ 9; see also Letter of August 8, 1986, attached as Exhibit 9.

Given investors' concerns about phantom income, the General Partner, in the August 1986, letter, stated that it was conducting a survey of the limited partners to determine if the Partnership should offer to repurchase the interest of any limited partners who wished to dispose of their interests. See Letter of August 8, 1986, at 4. In December 1986, the General Partner reported to the limited partners that certain limited partners wished to dispose of their interests in response to the new 1986 tax legislation, and offered to attempt to match limited partners who wished to buy with those who wished to sell limited partnership interests, at one and one-half times the original

investment. See Letter of December 24, 1986, attached as Exhibit 10, at 1.

Only plaintiff Dr. Burton Solomon determined to sell his interest. Because no limited partner wished to buy his interest, the General Partner assisted in arranging the sale of Solomon's interest -- for an amount equal to 150% of his original investment -- to a third party, qualified investor, on January 17, 1987. Jacobs Aff. ¶ 11. All of the other limited partners decided to retain their investments. Id. ¶ 10.

3. 1988: The Vogel Transaction

In the spring of 1988, more than a year after Solomon sold his interest in the Partnership, negotiations regarding the sale of Freestate Raceway were begun with Mark Vogel. Deposition of Mark Vogel ("Vogel Dep."), attached as Exhibit 28, at 5. Mr. Vogel was a real estate investor and developer who had purchased the other harness tracks in Maryland, Rosecroft Raceway and its subsidiary Oceana Downs Raceway (now known as Delmarva Downs Raceway), in approximately late December, 1987. Id. at 26. The first discussions between representatives of Freestate and Mr. Vogel occurred in the spring of 1988. Id. at 5. Within a short period of time, negotiations were finalized for the sale to Vogel of the racing assets of Freestate Raceway and a lease of the Partnership's real estate. On May 20, 1988, each of the limited partners was sent a detailed letter describing the transaction (see Letter of May 20, 1988, attached as Exhibit 11), and each specifically approved the Vogel transaction. Jacobs Aff. ¶ 3.

In connection with the sale of the racing operations to Vogel in 1988, each of the limited partners specifically acknowledged that the General Partner was released from any possible claims against it.[3/] Specifically, the release executed by each limited partner in response to the May 20, 1988 letter provided that each limited partner consented to "[t]he waiver by the Limited Partners of any and all claims against the Original General Partner [Freestate, Inc.] arising from any actions taken or failures to act by the Original General Partner while serving as general partner of the Partnership." Consent of Limited Partners of Freestate Racing Assoc. Limited Partnership ¶ 4, attached to Letter of May 20, 1988.

The Vogel transaction involved total consideration of $7,750,000. Letter of May 20, 1988, at 3. Messrs. DeFrancis and Jacobs sold to Vogel for $4,750,000 the capital stock of the General Partner corporation, Freestate Inc., which then held the racing license and the other racing assets of the Partnership. Id. at 2-3. A new corporation, Southfield Realty Corporation, Inc., was admitted to the Partnership as the General Partner in place of Freestate Inc. Id. at 5. Messrs. DeFrancis and Jacobs, having established a reputation for the successful operation of the racing enterprise, personally granted a covenant not to compete with Mr. Vogel in the harness racing business for consideration of $3,000,000. Jacobs Aff. ¶ 7; Letter of May 20,

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3/ In addition, as pleaded in the Counterclaims, Ms. Davis also separately represented that she has no claims against Freestate, Inc., or Messrs. DeFrancis and Jacobs when that corporation repurchased from her shares of capital originally issued to her husband.

1988, at 3. Although the covenant not to compete was personal to Messrs. DeFrancis and Jacobs, they put the value of this covenant into the "pot" of funds to be accounted for and divided with the limited partners. Jacobs Aff. ¶ 7. Also, in order to retain approximately the same relative position in the Partnership's real estate, its remaining asset, that they had held through Freestate, Inc., Messrs. DeFrancis and Jacobs purchased from each limited partner a portion of his or her limited partnership interest. Id. ¶ 7.

Each limited partner received from the "pot" payments totalling $173,565 per $50,000 originally invested, including a return of his or her original investment. Jacobs Aff. ¶ 7; Letter of May 20, 1988, at 1. After the partners were allocated the funds to which they were entitled, including an allocation to Messrs. DeFrancis and Jacobs of an amount equal to the accumulated but unpaid management fees, the remaining proceeds in the "pot" were divided, in accordance with the terms of the Partnership Agreement, with 42.5% going to the limited partners and 57.5% going to Messrs. DeFrancis and Jacobs. See Exhibit A to Letter of May 20, 1988.[4/]

4. 1989: The Cafritz Transaction

After the Vogel transaction, the Partnership continued to hold the Freestate Raceway real estate. In 1989, Messrs. DeFrancis and Jacobs, as officers of the then general partner,

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[4/] As part of the Vogel transaction, the Partnership also leased the raceway's real estate to Mark Vogel for approximately $1 million per year for the period of time through October 31, 1990, subject to earlier termination by Vogel. Letter of May 20, 1988, at 5.

Southfield Realty Corporation, Inc., were able to arrange the sale of the real estate to The Cafritz Group ("Cafritz") for $16,765,000. Detailed disclosure regarding the proposed transaction was made to the limited partners in a letter dated August 1, 1989. To accomplish this sale, all of the limited partners sold their partnership interests. See Letter of August 1, 1989, attached as Exhibit 14; Letter of November 1, 1989, attached as Exhibit 15. As a result of this transaction each limited partner received, in the fall of 1989, payments of $230,588 and $3,765 for each $50,000 originally invested. Jacobs Aff. ¶ 8. Other proceeds of the sale were used to pay off a large bank loan. Letter of August 1, 1989, at 1. A cash reserve of approximately $2 million was established to be held by Mr. Jacobs, on behalf of the former partners, to deal with possible contingencies. Letter of August 1, 1989, at 5; Letter of November 1, 1989; Letter of December 28, 1989, attached as Exhibit 16.

C. The Profits Made by the Raceway Investors

Each of the investors profited handsomely on his or her investment:

In each of the years 1981 through 1988, each investor received an annual cash distribution equal to 10% of his or her initial investment. Thus, for each $50,000 originally invested, each limited partner received the sum of $40,000 in eight annual payments of $5,000. Jacobs Aff. ¶ 6.

In addition, in 1988, in connection with the sale to Vogel, proceeds from the $4,750,000 sale, and from Messrs.

DeFrancis' and Jacobs' $3 million covenant not to compete, were accounted for in the distributions to the limited partners, and each limited partner sold a portion of his interest to Messrs. DeFrancis and Jacobs. As a result of these transactions, each limited partner received for each $50,000 originally invested, a payment of $173,565, or almost three and one-half times his or her original investment in the Partnership. See Letter of July 29, 1988, attached as Exhibit 12; Jacobs Aff. ¶ 7.

In addition, in 1989, all of the interests in the Partnership, which had the Freestate real estate as its remaining asset, were sold to Cafritz. As a result of that sale, the limited partners received for each $50,000 originally invested, an additional payment of $230,588, or more than four times his or her original investment. See Letter of November 1, 1989; Jacobs Aff. ¶ 8.

In addition, further distributions have been made from the reserve fund, as to the limited partners for each $50,000 invested, of $3,765 (December 28, 1989), of $588 (September 6, 1990), of $11,765 (December 7, 1990), and of $36,471 (March 27, 1991). The escrow fund continues to hold approximately $145,000 for possible contingencies.[5/] See Jacobs Aff. ¶ 17.

Thus, taking the annual 10% payments and the various payments made in 1988 through 1991 resulting from the Vogel and Cafritz transactions, the limited partners have already received

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5/ In addition, certain of the funds otherwise payable to the plaintiffs other than Solomon have been escrowed and are being held pending determination of defendants' claim for indemnification. Jacobs Aff. ¶ 18.

$496,742 for each $50,000 of original investment, approximately a 1000% return. Id. Such profits are extraordinary and not generally available on investments -- particularly not on passive investments where no work of any sort was performed by the investors. The plaintiffs, however, would have this Court believe that through some malfeasance, the plaintiffs were denied an even greater return.

II. The Status of This Litigation

For the convenience of the Court, the current posture of this litigation may be summarized as follows.

A. Pleadings and Pending Motions

On January 9, 1991, plaintiffs filed their 230-page complaint in Prince George's County. On May 3, 1991, the Freestate Defendants filed a motion to dismiss or for transfer of venue. The accounting firm defendants Ernst & Young ("E&Y") and Watkins, Meegan, Drury & Co. ("WMD") later joined in that motion.

The plaintiffs originally also sued a third accounting firm, which plaintiffs voluntarily dismissed on June 18, 1991. The gross negligence counts against E&Y and WMD were voluntarily dismissed in June and July of 1991. Both accounting firms have filed motions to dismiss other counts against them: WMD filed a motion to dismiss all counts against it on June 3, 1991, and E&Y filed a motion to dismiss the breach of contract counts against it on July 15, 1991. Because their motions to dismiss are pending, those firms have not answered.

On August 2, 1991, Judge Larnzell Martin, Jr. of the Circuit Court for Prince George's County heard argument on the

venue motion and ordered the case transferred to Howard County. On August 19, 1991, the Freestate Defendants timely answered the complaint. On September 18, 1991, the Freestate Defendants filed counterclaims and filed a third-party complaint against Joel Davis. Davis was served with the third-party complaint on September 26, 1991. He has filed motions for an extension of time in which to answer, for the appointment of counsel, and to quash service of process.

The plaintiffs answered the counterclaims against them on November 29, 1991, although plaintiff Solomon has moved to dismiss certain of the counts of the counterclaim against him.

Also pending is the plaintiffs' motion, filed May 7, 1991, for interlocutory relief regarding an escrow fund.[6/]

B. Discovery

The only significant discovery made in this case has been that provided by the Freestate Defendants to the plaintiffs. On October 4, 1991, Freestate Inc. timely responded to plaintiff Ely's extensive request for documents. The Freestate Defendants expended substantial effort preparing the documents for production, and approximately seventy-five boxes of records were made available to the plaintiffs for review. The plaintiffs, however, have to this date not reviewed a single document.

The plaintiffs have deposed Mark Vogel and Andrew Eastwick, a former controller of Freestate Raceway. Neither of

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6/ The plaintiffs' request for ex parte relief on this same topic was denied on April 25, 1991.

those deponents provided any evidence to support any of the allegations in the complaint.

Although the Freestate Defendants served interrogatories and document requests on the plaintiffs on October 21, 1991, the plaintiffs have not provided any useful response to the discovery requests. The plaintiffs did not respond to the interrogatories until March, 1992, two months after a motion to compel was filed. The interrogatory responses of the seven plaintiffs are virtually identical to each other and contain clear inaccuracies.[1] Moreover, the interrogatory responses provide further indication that the plaintiffs have no real basis for recovery. The plaintiffs' standard response to inquiries is to object, comment that "discovery is ongoing," and state that a response will be made in the future. Thus, for example, most of the plaintiffs failed to identify their own communications with the Freestate Defendants on this basis. E.g., Interrogatory Response of Wilma Roumel, No. 11, attached as Exhibit 29.

ARGUMENT

Although the complaint in this action is voluminous, it does not state any real claim for relief. Instead, after a vague factual allegation section, the complaint recites the same basic allegations in 126 counts, in which each of the plaintiffs separately makes various claims against the Freestate Defendants

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[1] For example, Ms. Roumel does not appear to know that her claim is based on the limited partnership interest that had been purchased by her deceased husband, Aristotle Roumel, and that he, rather than she, decided not to sell the interest in 1986. See Interrogatory Responses of Wilma Roumel, Nos. 2 and 3, attached as Exhibit 29.

and the accounting firm defendants. Nine "sets" of seven counts (one per plaintiff) apply to the Freestate Defendants.

The counts against the Freestate Defendants purport to allege fraud, breach of fiduciary duty, negligence, bad faith, conversion, breach of contract, breach of warranty, and Maryland Securities Act violations. Each of those counts contains the same basic factual allegations. The factual allegations may be grouped into four basic categories: claims by plaintiff Solomon relating to the sale of his interest; claims relating to the accrual of the General Partner's management fee; claims relating to compensation, including a pension plan; and, finally, miscellaneous, and completely unexplained, claims relating to tax consequences, full disclosure of information and misrepresentations. As a matter of law, none of the claims for recovery is valid.

Rule 2-501 provides that "[t]he court shall enter judgment in favor of or against the moving party if the motion and the response show that there is no genuine issue as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." A "material fact" is a fact whose resolution "will somehow affect the outcome of the case," King v. Bankerd, 303 Md. 98, 492 A.2d 608, 614 (quoting Lynx, Inc. v. Ordnance Prods., Inc., 273 Md. 1, 8, 327 A.2d 502, 509 (1974)); the existence of a dispute over a non-material fact cannot preclude summary judgment. Id. "The opposing party must show with some precision that there is a genuine dispute as to a material fact." King, 492 A.2d at 615.

As shown below, there can be no genuine issue as to any fact that is material to the allegations of the complaint in this action. Therefore, the Freestate Defendants are entitled to judgment on the allegations against them.

I. Plaintiff Solomon's Claim Relating to the Sale of His Partnership Interest is Unfounded

In the individual counts of the complaint relating to him, plaintiff Solomon makes the same allegations as the other six plaintiffs, even though most of those allegations relate to events that occurred after Solomon sold his interest in January 1987.[8/] Solomon's claim, in essence, seems to be based on the allegations made in paragraphs 9-11 of the complaint.

Those paragraphs allege that, in reliance upon what his counsel characterizes as "gloom and doom" letters from the General Partner written in August and December, 1986, Solomon sold his interest in the Partnership "for a significant amount less than he would have made had he held onto his share until the subsequent sales of partnership assets to Mark Vogel and The Cafritz Group" and that Solomon's interest "[was] in fact not purchased by a 'limited partner who intended to buy,' but rather by the Defendants, [Messrs. DeFrancis and Jacobs], themselves and/or an individual acting on their behalf." Complaint ¶ 10. Solomon alleges that "[u]nbeknownst to the Plaintiffs," the defendants Freestate Inc., DeFrancis and Jacobs "were negotiating

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[8/] In fact, Solomon has moved to dismiss several of the counterclaims against him, based on the fact that he sold his interest in 1987.

for the sale of the raceway to Mark Vogel long before the actual transaction occurred." Complaint ¶ 11.

Solomon's claims -- that he was induced to sell his interest, that the sale was made to someone acting on behalf of Messrs. DeFrancis and Jacobs, and that the defendants failed to disclose in a timely fashion the negotiations with Mark Vogel -- are completely unfounded, as shown by the uncontroverted evidence.

First, the allegations relating to the timing of the Vogel negotiations are unfounded.[9/] Plaintiff Solomon sold his shares in January, 1987. Jacobs Aff. ¶ 11. Vogel did not even become a potential purchaser of Freestate until he bought Rosecroft Raceway, in late December, 1987 -- almost a year after Solomon sold his interest. Prior to that time he was exclusively in the real estate business and had no interest in racing. Vogel Dep. at 26, 39. Moreover, Vogel's uncontroverted testimony at the deposition taken by the plaintiffs shows that the negotiations regarding his purchase of Freestate began in the spring of 1988, more than a year after Solomon sold his shares. Id. at 5.

In addition, Solomon does not appear to have been induced to sell by the General Partner's letters.[10/] In a letter

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9/ Solomon's response to an interrogatory regarding this contention was to object on the basis of the work-product privilege and to state that he would answer "at a reasonable time prior to trial." Interrogatory Response of Burton Solomon, No. 4.

10/ Solomon's claims are focussed on the statements that were made in the 1986 letters, although he alleges that those statements were repeated to him verbally by Mr. Jacobs. See

dated August 13, 1986, Solomon confirmed that in April, 1986, he had informed the General Partner that he wished to sell his interest in the Partnership. See Letter of August 13, 1986, attached as Exhibit 31. Later, in the fall of 1987, Mr. William Mertz of Watkins, Meegan, Drury & Company Chartered, at the request of the General Partner, polled the limited partners. Alone among the partners, only Solomon wished to sell. Jacobs Aff. ¶ 10. Thus, although Solomon appears to allege that he was induced to sell his shares, the inducement could not have been very powerful, since he had initially raised with the General Partner his desire to sell and every other limited partner decided not to sell.[11/]

Interrogatory Responses of Burton Solomon, Nos. 2, 3.

Parenthetically, it is unlikely that the General Partner's letters could have induced Mr. Solomon to sell. The August 8, 1986 letter from the General Partner simply reported on the current status of the harness racing industry, noted that several partners had expressed concern about the tax consequences resulting from phantom income and stated that a survey would be conducted to determine whether the Partnership should borrow funds to purchase the interests of limited partners who wished to dispose of their interests. Letter of August 8, 1986.

The December 24, 1986, letter stated that although only a few partners originally expressed a desire to sell their interests in this fashion, the passage of the Tax Reform Act of 1986 had spurred other partners to express an interest in selling their interests at one and one-half times the original amount of investment. Letter of December 24, 1986, at 1, 5. In the December letter, the General Partner offered to try to coordinate sales and purchases between limited partners, without recommending any course of action. Id. at 1, 5. The letter noted that the possibility of sale of Freestate Raceway "can always exist." Id. at 4.

11/ Solomon's claim that based upon the statements made to him, he "thought that [he] would lose [his] investment if [he] did not sell immediately," therefore, is ridiculous. See Interrogatory Responses of Burton Solomon, No. 3.

Finally, plaintiff Solomon's shares were not sold to Messrs. DeFrancis and Jacobs, or to anyone acting on their behalf. During his poll of the partners, Mr. Mertz determined that none of the existing limited partners wished to buy additional shares. To accommodate Mr. Solomon, a sale was arranged by the General Partner to John A. Manfuso, Jr.[12/] Jacobs Aff. ¶ 11. Messrs. DeFrancis and Jacobs could have acted straightforwardly to purchase Solomon's shares, if they had wished to do so.

Thus, Solomon's claims are, as a matter of law, without merit.

II. The Claims of the Other Plaintiffs are Barred by the Releases Given by Them

As mentioned above, the six plaintiffs who were limited partners at the time of the sale to Vogel -- i.e., all of the plaintiffs other than Solomon -- specifically released any claims that they might have had against the Freestate Defendants. Thus, even if these claims had some merit -- although, as shown below, plaintiffs' claims are totally unfounded -- those six plaintiffs waived and released any claims they might have had against the Freestate Defendants when they authorized and agreed to the Vogel transaction.

The release executed by each limited partner is contained in the "Consent of Limited Partners of Freestate Racing Assoc. Limited Partnership" attached to the Letter of May 20, 1988. It provides that each limited partner consents to "[t]he

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12/ Mr. Manfuso was then active in other businesses with Messrs. DeFrancis and Jacobs.

waiver by the Limited Partners of any and all claims against the Original General Partner arising from any actions taken or failures to act by the Original General Partner while serving as general partner of the Partnership." Consent of Limited Partners ¶ 4, attached to Letter of May 20, 1988.

Each of the facts as to which the plaintiffs now complain (such as the treatment of unpaid management fees, the defined benefit pension plan and compensation), was known to the plaintiffs at the time they executed this release. Having reaped the extensive financial rewards of the transaction in connection with which they released claims, as well as the additional rewards that came from the Cafritz transaction, plaintiffs should not now be permitted to assert their supposed claims, which are based on underlying facts that they knew or should have known at the time the releases were executed.

III. Even If the Claims Were Not Barred by the Releases, They Are Completely Unfounded As a Matter of Law

Even if the plaintiffs' claims were not precluded by the releases, summary judgment in favor of the Freestate Defendants would be required as a matter of law because the claims lack any merit.

A. The Claims Relating to Management Fees Are Unfounded

The plaintiffs base many of their alleged claims on management fees paid by the Partnership to its General Partner, Freestate Inc. Paragraph 15 of the Complaint alleges that, from 1980 until 1988, the General Partner and its shareholders "were continuously paid enormous 'management fees' well in excess of the amount anticipated by the Private Placement Memorandum and

allowable under the June 20, 1980 Freestate Racing Association Agreement of Limited Partnership." Paragraph 16 of the Complaint alleges that during the period 1980-88, "the accrual of the aforementioned 'management fees' were never reported on either the Limited Partnership Annual Reports [or the] Federal Income Tax returns."

In fact, plaintiffs can have no claim relating to the management fees. The management fees payable by the Partnership to the General Partner were fully and clearly disclosed in the Private Placement Memorandum and in the Partnership Agreement included in the PPM.[13/] The PPM stated:

> As compensation for its services as General Partner, the Partnership will pay the General Partner a cumulative Annual Management Fee equal to seven percent (7%) of the Partnership's Operating Revenue as calculated under accounting standards applicable to racetracks in Maryland. . . . The Annual Management Fee, which is cumulative, will be subordinated in each year to the payment to the Limited Partners of distributions equal to 10% of their Capital Contributions.

PPM at 21-22 (emphasis added). The Private Placement Memorandum further stated that "[t]he arrangements as to compensation of the General Partner were not negotiated at arms-length" and that "the General Partner will receive substantial compensation." Id. at 8.

The Partnership Agreement, which was included in the PPM and which was entered into by every partner, stated:

> The Partnership shall pay the General Partner a cumulative Annual Management Fee each Fiscal Year equal

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13/ Thus, the plaintiffs' statements that they first learned of the management fees in 1986 are erroneous. See, e.g., Interrogatory Responses of Burton Solomon and Wilma Roumel, Nos. 6, 7.

> to seven percent (7%) of Operating Revenue for its services in managing the Partnership. This fee shall be paid from time to time from available revenues . . .

Agreement of Limited Partnership, ¶ 7.08 (emphasis added).

During the years 1980 through 1987, because of the Partnership's needs for funds and the lack of available cash for larger payments, the General Partner took payment of only $150,000 per year on account of the annual management fee of 7% of Operating Revenues to which it was entitled. Jacobs Aff. ¶ 12. Although Operating Revenues varied from approximately $3 million in 1980 to approximately $8.5 million in 1985, and thus the annual fee owed varied from approximately $210,000 to $595,000, the Partnership experienced a net loss in each year until 1984. See Financial Statements. Because of the Partnership's needs for working capital and reserves, the General Partner did not in any year take payment of the full management fee to which it was entitled. Jacobs Aff. ¶ 12. The accumulated unpaid management fees amounted to $1.6 million by August 1986, and grew to $2,310,045 by 1988, which amounts were disclosed to the limited partners. Letter of August 8, 1986, at 3; Exhibit A to Letter of May 20, 1988. However, because of the Partnership's need for funds, only $150,000 per year of the management fee was paid from commencement of operations in 1980 through 1987, and no fee was ever paid for the period in 1988 prior to the sale to Vogel, during which Freestate Inc. continued to operate the Partnership as the General Partner. Jacobs Aff. ¶ 12.[14/]

[14/] One can only speculate as to the legal action plaintiffs and the other limited partners would have taken had the General Partner in each year used whatever cash the Partnership had

The first of the plaintiffs' claims -- that "enormous" fees were "continuously" paid -- is, thus, clearly wrong. For each of the years 1980 through 1987, the fees were calculated in the exact manner stated by the PPM and the Partnership Agreement -- at 7% of Operating Revenues.[15/] Jacobs Aff. ¶ 12. However, only $150,000 of that amount was paid in each year. In addition, although the General Partner was entitled to the management fee based on Operating Revenues for the portion of 1988 during which the Partnership still owned the racing operation, the General Partner never took that fee -- which amounted to an additional $227,051.[16/] Id. Moreover, the timing of the actual payments was deferred until the Vogel transaction was consummated to permit the Partnership to retain the cash it needed for operations and contingencies. Id.

The plaintiffs' second claim -- that the unpaid management fees should have been accrued and reported on the Partnership's financial reports or tax returns -- is erroneous and does not entitle the plaintiffs to any recovery. The PPM and the Partnership Agreement clearly contemplated that the fees

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for payment on account of the management fee, thereby interfering with the ability of the Partnership to remain in business.

15/ Thus, the plaintiffs' interrogatory responses explaining their contentions regarding the management fees, which appear to be focussed on the amount of the fees, are unpersuasive. See, e.g., Interrogatory Responses of Burton Solomon and Wilma Roumel, No. 6.

16/ The audited financial statements dated July 17, 1988, showed that Operating Revenues for January 1, through July 17, 1988 amounted to $3,243,580. See Financial Statements. Seven percent of that amount is $227,051.

would be cumulative, and would be paid only if and when funds were available, as is shown by the references to "cumulative" fees and to payment "from time to time from available revenues," as quoted above. The plaintiffs' apparent complaint is that they would have preferred the portion of the management fees not paid nevertheless somehow to have been accrued and deducted as expenses in each year of operations, presumably to permit increase of the tax deductible loss or reduction of taxable income during the years the raceway was operated.

To deduct fees accumulated but unpaid, however, was impermissible under both generally accepted accounting principles and Federal income tax laws. For financial statement purposes, the Partnership and its auditors considered the unpaid portion of the management fee as an allocation of the Partnership's undistributed cash or cash to be received (i.e., a priority distribution of income to the General Partner). Consequently, no accrual was necessary in the financial statements since the unpaid portion of the fee was considered a priority distribution and not an expense. For Federal income tax purposes, a liability can not be accrued and claimed as a deduction if it is contingent on some future event. The availability of funds with which to pay an accumulated liability is a contingency that precludes the allowance of a deduction under Federal income tax law. Putoma Corp. v. Commissioner, 66 T.C. 652 (1976), aff'd 601 F.2d 734 (5th Cir. 1979) (because a corporate obligation to pay accumulated compensation was contingent on a finding by the board of directors at some future time that the finances of the

corporation permitted payment, a deduction for compensation was disallowed). Moreover, accrued expenses are not deductible for Federal income tax purposes if, in light of the taxpayer's financial condition, the expenses in all likelihood would not be paid. Brainard v. Commissioner, 7 T.C. 1180 (1946). Because payment of the unpaid portion of the management fee was speculative due to the Partnership's needs for cash for working capital and improvements, no deduction for an accrual of the unpaid portion of the fee was permissible under Federal income tax laws.[17/] Thus, it would have been improper for the Partnership to provide the plaintiffs with the tax treatment they now suggest long after the fact, and the accounting treatment they suggest was improper as well.

Furthermore, the treatment plaintiffs apparently now desire was never promised to them. The PPM stated that "[n]o representation or warranty of any kind is being made with respect to the deductibility of any fees and expenses to be paid by the Partnership." PPM at 7, ¶ 13. It further stated:

> The Partnership intends to seek the maximum Federal income tax deductions available including, without limitation, deductions for management fees paid to the General Partner . . . . There are many legal and factual questions regarding the availability, amount and timing of specific deductions and no representation or warranty can be made with respect to such deductions.

17/ The Partnership tax returns for 1980-83 were audited by the Internal Revenue Service ("IRS") and the deduction of the paid portion of the management fee was allowed. The IRS examining agent advised that the IRS would not have allowed the deduction of the balance because, in the IRS's view, it was akin to a non-deductible special allocation of income rather than a deductible expense. Jacobs Affidavit, ¶ 13.

Id. at 28 (emphasis added). Thus, no representation was made that management fees not paid would be deductible by the Partnership.

Any claim by plaintiffs that they were insufficiently informed of the management fees is also meritless. Although, as noted above, the accumulated but unpaid management fees were not required to be included in the Partnership's annual financial statements, the fees owed for any year, at 7% of the Operating Revenue, could have been easily calculated by anyone, including the limited partners.[18/] The terms of that calculation were clearly set forth in the PPM, which each limited partner certified that he or she had read, and each limited partner received annually the Partnership's audited financial statements, which showed the Operating Revenues and the portion of the fee actually paid to Freestate, Inc. Moreover, the amount of the then accumulated, unpaid fees owed was reported to the limited partners in the August, 1986, letter from the General Partner and also in the May 20, 1988, letter relating to the Vogel transaction. Finally, each limited partner, including the plaintiffs other than Solomon, specifically consented to the Vogel transactions, including the payment of an amount equal to the accumulated but unpaid management fees to Messrs. DeFrancis and Jacobs from the "pot" of available funds. None subsequently

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18/ It was readily determinable from the Partnership's audited financial statements distributed to the limited partners each year that only $150,000 in management fees had been paid and that there had been no accrual of the balance of 7% of Operating Revenue. See Financial Statements.

complained about the management fees until this suit was brought in 1991. Jacobs Aff. ¶ 13.

In short, the plaintiffs' complaint concerning management fees is, as a matter of law, without merit. First, the amount of the fee -- 7% of Operating Revenue -- was clearly stated in the PPM distributed to the limited partners prior to their purchase of interests in the Partnership. This important term could not have been overlooked by any investor. Second, the PPM made no representation that any particular tax treatment would be used. Finally, the Partnership utilized proper tax and accounting treatments for the management fees.

B. The Claims Relating to Compensation Are Unfounded

Many of the allegations of the complaint relate to the compensation of individuals employed by the Partnership and its General Partner. None of these allegations has any basis in fact or law.

1. The Pension Plan

Paragraph 19 of the complaint falsely alleges that from the inception of the Partnership until 1988, Messrs. DeFrancis and Jacobs "used partnership funds to pay themselves significant amounts as deferred compensation" and that "[t]hese pension contributions were not authorized by or disclosed by [sic] the Plaintiffs, not anticipated by the Private Placement Memorandum and were in strict violation of the Agreement of Limited Partnership."[19/]

19/ The plaintiffs' interrogatory response on this issue does not provide any basis for the allegations of the complaint. See Interrogatory Responses of Burton Solomon and Wilma

In fact, the Freestate Racing Association, Inc. Defined Benefit Pension Plan, which was established in 1982, was fully authorized by the relevant documents, and its establishment and funding were plainly reported in the Partnership's financial reports. For example, Note F to the Audited Financial Statements Dated December 31, 1982, stated that the plan was adopted on April 1, 1982, to cover all full-time employees, that pension expenses for the first year were approximately $97,000, and that under the Partnership Agreement, the Partnership was obligated to reimburse the General Partner for all expenses incurred. See Financial Statements. A similar note was included in the Partnership's audited financial statement for each of the years through 1987, when Note D also disclosed that the Pension Plan was being terminated and that no pension expense was incurred in 1987. Id.

The defined benefit pension plan was established by the General Partner for the benefit of all of the full-time employees of the raceway, not just for Messrs. DeFrancis and Jacobs. Jacobs Aff. ¶ 14. The plan was never used for the officers of the General Partner "to pay themselves." Id.; cf. Complaint ¶ 19. In 1988, when the racing assets were sold to Mark Vogel and the plan was terminated, twenty-seven employees, including Messrs. DeFrancis and Jacobs, received distributions from the plan, but those distributions had to be rolled over into other retirement funds to retain their favorable tax status. Jacobs Aff. ¶ 14.

Roumel, No. 8.

As was plainly set forth in the PPM and the Partnership Agreement, the Partnership was obligated to reimburse the General Partner corporation for "all expenses incurred in connection with the operation of the Racetrack and the Partnership's business including salaries paid to all employees and officers." PPM at 22. The limitation on this reimbursement provision was that the General Partner would not be reimbursed "for salaries and directors fees paid to Messrs. DeFrancis, Jacobs or Davis, and any other persons hereafter elected to replace them as officers or any additional directors, in an amount that is greater as to any fiscal year of the Partnership than 3 1/2% of Operating Revenue." Id.

The contributions made to the pension plan clearly were not "salaries" -- the term "salary" is defined in Webster's Third New International Dictionary as "fixed compensation paid regularly (as by the year, quarter, month, or week) for services." Although a pension plan may be part of a benefit package, a contribution to it is not a salary, since it is not "paid" to the recipient and it is also not "fixed." Thus, the contributions to the pension plan were unaffected by the 3.5% limitation on "salaries," and were fully reimbursable by the Partnership. Therefore, as a matter of law, the plaintiffs cannot base any recovery on the pension plan.

2. The Alleged Fictional Employees

The complaint alleges that Messrs. DeFrancis and Jacobs "paid salaries to individuals not actually employed by the

limited partnership." Complaint ¶ 20.[20/] According to the plaintiffs' interrogatory responses, this vague allegation relates to two individuals, Ms. Lynda O'Dea and Ms. Carole Randolph. E.g., Interrogatory Responses of Wilma Roumel, No. 9. As was clearly shown in the Freestate Defendants' interrogatory responses and at the deposition of Andrew Eastwick, these claims are unfounded.

Ms. O'Dea was a full-time employee of Freestate Raceway and paid a salary. See Eastwick Dep. at 58-59; Jacobs Aff. ¶ 15. There is no evidence suggesting that Ms. Randolph was ever an employee of Freestate Raceway, or that she was ever paid any salary by the Partnership or the General Partner. See Eastwick Dep. at 60-61; Jacobs Aff. ¶ 15. She in fact performed limited services for the Partnership as an independent contractor, including designing uniforms for the "Freestate Fillies" and in assisting the Partnership in locating employees to fill those positions, for which she was paid a limited fee. Jacobs Aff. ¶ 15.

Although the plaintiffs have had access to the raceway's records since November 1991, and were asked in interrogatories to identify any fictional employees, the plaintiffs have never even suggested that any other employee of the raceway was fictional. Thus, it is clear that the so-called fictional employee claims are spurious and without merit.

3. The Severance Payments and Bonuses

[20/] In fact, Messrs. DeFrancis and Jacobs did not pay salaries to anyone; all salaries related to Freestate Raceway were paid by the Partnership or the General Partner.

The complaint alleges that a July 17, 1988 financial statement reported that $279,000 in severance pay was paid by the General Partner to terminated employees when the Partnership stopped operating the raceway, Complaint ¶ 21, and that the General Partner "authorized payment of an additional $250,000 in 'Employee Bonuses' in fiscal year 1989, more than one full year after the limited partnership terminated its employees and sold the racetrack," Complaint ¶ 22. These factual allegations are essentially accurate but do not entitle the plaintiffs to any recovery.[21/]

As previously shown, according to the PPM and the Partnership Agreement, the General Partner was entitled to reimbursement for its expenses, including salaries. Moreover, the limited partners specifically approved the severance payments in advance. The May 20, 1988, letter describing the proposed Vogel transaction to the limited partners when their approval of the transaction was solicited stated:

> It is anticipated that, in addition to paying normal operating expenses of the Partnership through [May 20, 1988] (including officers' salaries for a portion of the current year), the Partnership will pay bonuses aggregating approximately $300,000 to various persons (other than the Stockholders) who have made significant contributions to the Partnership's success.

Letter of May 20, 1988, at 7. Each of the limited partners, including the plaintiffs, specifically approved the sale as outlined in the letter. Jacobs Aff. ¶ 3. As reported in Note F

[21/] The plaintiffs' interrogatory responses on this issue state only that the severance payments were made. See, e.g., Interrogatory Responses of Burton Solomon and Wilma Roumel, No. 10.

to the financial statements prepared July 17, 1988, the amount actually paid was $279,000, rather than the higher amount that had been specifically authorized. See Financial Statements.

The August 1, 1989, letter describing the proposed Cafritz transaction to the limited partners stated "the Partnership will pay bonuses totalling $250,000 to certain former employees of the Partnership who played material roles in its success." Letter of August 1, 1989, at 5. Again, each of the limited partners specifically approved this transaction before the bonus payments were made. Jacobs Aff. ¶ 3.

None of the severance payments and bonuses was paid to Messrs. DeFrancis or Jacobs. Rather, they were paid to long-time Raceway personnel, who had devoted skill and dedication to the enterprise and contributed to its success. Jacobs Aff. ¶ 16. These payments were well justified, fully authorized by the PPM and the Partnership Agreement, fully disclosed in advance to the plaintiffs, and approved in writing by the plaintiffs (except Solomon, who cannot complain of them). Therefore, it is inconceivable that any legal recovery by the plaintiffs could be based on them.

4. Compensation to the Officers of the General Partner

The complaint alleges in various paragraphs, including paragraph 29, that the Freestate Defendants "establish[ed] and [paid] additional compensation for the officers of the corporate General Partner not anticipated by the Private Placement Memorandum or allowable under the Agreement of the Limited Partnership." It is unclear whether this allegation should be

understood to refer to anything other than the pension plan and severance and bonus payments already discussed. Even if it should be read separately, it completely lacks substance. The salaries of the officers of the General Partner were clearly reported on the annual financial statements, with the highest salary being Mr. DeFrancis' combined salary of $115,000 in 1987. See Financial Statements. After six months of discovery by the Freestate Defendants, the plaintiffs still have not pointed to any alleged, unauthorized additional compensation.

C. Miscellaneous Claims

Finally, the complaint includes various bizarre factual references. No legal claim could be based on any of these remaining allegations. While this memorandum will not address every incorrect reference and typographical error in the complaint, the following summary shows that there is no merit to the plaintiffs' claims.

First, the complaint recites the publicly reported "Mutuel Play" receipts and gross receipts for 1983 and 1984 and notes that the gross receipts figures are smaller than the mutuel play figures. Complaint at ¶¶ 17-18. However, as was clearly shown by the financial statements for those years, "gross receipts" is calculated simply by subtracting from mutuel play the amount of funds returned to the public as winnings. See Financial Statements. The Freestate Defendants are at a loss to determine why the complaint even recites these numbers.

Second, the complaint alleges, in paragraph 29 for example, that the Freestate Defendants "engag[ed] in various

financial transactions which resulted in a significant tax burden being unduly imposed upon the Plaintiffs." After six months of discovery, the Freestate Defendants cannot imagine what this claim refers to, other than possibly to the accounting treatment of the management fees previously discussed.[22/] The PPM clearly disclosed that the tax effects of investment in the Partnership were unknown and that management decisions would be made in the sole discretion of the General Partner. E.g., PPM at 5, 13.

Finally, the complaint alleges that the Freestate Defendants "fail[ed] to act in good faith," "fail[ed] to disclose material information regarding financial transactions of the Limited Partnership to the Plaintiffs" and "in other ways fail[ed] to abide by the fiduciary duty owed the Plaintiffs." E.g., Complaint ¶ 29. There is not a shred of evidence to substantiate these vague allegations, and the Freestate Defendants should not be required to continue to participate in this burdensome litigation.[23/]

[22/] The plaintiffs' interrogatory response on this issue is incomprehensible. See Interrogatory Responses of Burton Solomon and Wilma Roumel, No. 5.

[23/] Moreover, it is well-settled law in Maryland that the corporate veil may not be pierced in order to assert a claim against a shareholder, officer or director of a corporation. "The general rule is that shareholders are not held liable for debts or obligations of the corporation except where it is necessary to prevent fraud or enforce a paramount equity," and agents of a corporation are individually liable only if they deliberately use a corporation to make a contract with the intent to defraud. Damazo v. Wahby, 259 Md. 627, 633, 270 A.2d 814, 817 (Md. 1970), appeal after remand, 271 Md. 101, 314 A.2d 100 (1974). Plaintiffs' vague allegations of fraud do not contain the requisite specificity for the corporate veil to be pierced. See Colandrea v. Colandrea, 42 Md. App. 421, 430, 401 A.2d 480, 484-85 (1979) (enumerating the five elements of fraud, as to

CONCLUSION

Given the absolute lack of evidence even suggesting any wrongdoing by the Freestate Defendants, it is unnecessary to address individually the legal elements of the causes of action enumerated by the complaint. As has been shown, the relevant transactions were conducted fairly and in full compliance with the authorizing documents, such as the Private Placement Memorandum, to which the plaintiffs assented, and no breach of any duty occurred. In view of the lack of any genuine dispute as to any material fact, summary judgment should be entered in favor of the Freestate Defendants. King v. Bankerd, 303 Md. 98, 492 A.2d 608 (1985); Hurt v. Stillman & Dolan, Inc., 35 Md. App. 644, 371 A.2d 1137 (1977).

More than a year has passed since the plaintiffs filed their complaint and the Freestate Defendants accepted service of process. In that time, plaintiffs have neither presented a shred of evidence of liability nor cooperated in discovery in a fashion permitting early trial of the case. The individual Freestate

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which "clear and convincing proof" must be presented, for the corporate veil to be pierced).

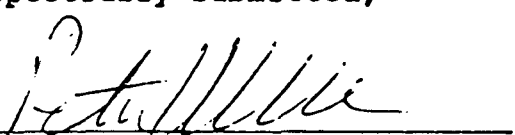
Defendant Freestate Racing Association, Inc. was the sole general partner of the Partnership from its inception through the sale of that corporation to Vogel in 1988. Contemporaneous with that sale, Southfield Realty Corporation, Inc. became the sole general partner of the Partnership. Frank J. DeFrancis and Martin Jacobs were at all times relevant to the complaint officers and directors of the corporate general partners. All of the alleged acts complained of by plaintiffs were performed by Messrs. DeFrancis and Jacobs in their capacity as officers. Plaintiffs cannot, therefore, successfully maintain this suit against either the estate of Mr. DeFrancis, who died in August 1989, or Mr. Jacobs. See Damazo, supra.

Defendants are offended by the allegations made in the complaint and anxious to clear their names, and the representatives of the Estate of Frank J. DeFrancis would like to conclude this lawsuit to permit final administration of the Estate. Moreover, the public interest favors clearing the docket of this meritless suit.

For the foregoing reasons, the Freestate Defendants respectfully request that the Court order the entry of summary judgment in favor of the Freestate Defendants on all counts of the complaint against them, award attorneys' fees and expenses to the Freestate Defendants under their counterclaim against plaintiffs for indemnity, and order such other relief as the Court may deem proper.

Dated: May 19, 1992

Respectfully submitted,

By: 
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IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

JOSEPH L. ELY, et al., Plaintiffs, v. FREESTATE RACING ASSOCIATION, INC., et al., Defendants.	)	Case No. 91CA-17037

REPLY MEMORANDUM IN SUPPORT OF
THE FREESTATE DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

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The plaintiffs' opposition (the "Opposition") to the Freestate Defendants' motion for summary judgment (the "Motion") attempts to avoid summary judgment by reciting many (but not all) of the plaintiffs' original conclusory assertions and by adding a few irrelevant misstatements. Because the plaintiffs have failed to demonstrate that there is a genuine dispute as to any material fact, the Freestate Defendants are entitled to judgment as a matter of law.[1/]

The Opposition's many legal citations are intended to show only that a fiduciary duty is owed by a partner. The Freestate Defendants have never disputed this basic proposition of hornbook law. Instead, they have demonstrated that there is no evidence of any breach of a fiduciary obligation in this case. Nothing in the plaintiffs' opposition shows either an issue of material fact or a breach of a fiduciary obligation.

At the outset, it is useful to reiterate the Freestate Defendants' position, as explained in detail in the Motion and below. The Partnership was funded through a private placement of securities. In the process of making their investment, the plaintiffs certified that they were "sophisticated investors" and that they had reviewed the governing documents, which carefully enumerated the conditions to which their investment would be

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1/ For some reason that is not apparent, plaintiffs have seen fit to comment on the on-going discovery proceedings. With regard to discovery, the Freestate Defendants note that the documents produced to the plaintiffs were first made available to them in the fall of 1991, and that the plaintiffs first attempted to schedule review of those documents in June, 1992.

subject.[2/] Moreover, various letters and financial statements were sent to the limited partners during the course of the operation of the Freestate Raceway which advised them of all significant events. Each of the circumstances of which the plaintiffs now complain was described in the documents provided to the plaintiffs. The Freestate Defendants' Motion for Summary Judgment is based upon certain key documents which demonstrate that the plaintiffs have no basis for their complaint:

(1) The Private Placement Memorandum (Exhibit 1)[3/] shows that:

(a) The limited partners would contribute capital to the Partnership; income and profits from the Partnership were to be divided between the general partner and the limited partners, with 57.5% to go to the corporate general partner. PPM at 30-31.

(b) The corporate general partner would earn "substantial compensation," including a cumulative annual management fee of 7% of operating revenues. PPM at 8, 21-22.

(c) The Partnership would reimburse the corporate general partner for all of its expenses, including salaries paid to its officers and employees. PPM at 22.

(2) The annual Audited Financial Statements (Exhibits 17-26) show that:

(a) Revenues steadily increased and were disclosed to the limited partners each year.

2/ The Opposition incorrectly implies that because the Partnership was funded through a private placement, the plaintiffs were entitled to proceed without reviewing the documents and agreements governing the operation of the Partnership.

3/ Exhibit numbers refer to the exhibits to the Affidavit of Martin Jacobs, which were submitted to the Court with the Motion.

(b) A defined benefit pension plan was established in 1982 and terminated in 1987. E.g., Note F to 1982 Statements. (Exhibit 19).

(c) Ms. Lynda O'Dea served as Treasurer of the corporate general partner, beginning in 1984. E.g., page F-15 of 1984 Statements. (Exhibit 21).

(3) The Letter of August 8, 1986 (Exhibit 9) shows that:

(a) The limited partners were informed that the Partnership owed the corporate general partner more than $1.6 million "on account of management fees and cash distributions accumulated but not paid during the six years 1980 through 1985" and that these amounts "[were] cumulative and [would have to be] paid to the General Partner at some appropriate time or times in the future." Letter of August 8, 1986, at 3.

(4) The Letter of December 24, 1986 (Exhibit 10) shows that:

(a) Long before a subsequent transaction with Mark Vogel to sell the racing assets was even considered, each of the limited partners was given the opportunity to attempt to sell his or her partnership interest, although only plaintiff Solomon decided to sell.

(5) The Letter of May 20, 1988 (Exhibit 11) shows that:

(a) When the opportunity to sell the raceway's racing assets to Mark Vogel arose, the proposed transaction was described in detail to each of the limited partners, who consented to the transaction before it occurred.

(b) The limited partners were told that the general partner would "derive the full benefit" of $2.7 million in accumulated management fees and distributions then owed to it "in the allocation of monies . . . shown in the attached detailed calculations." Letter of May 20, 1988, at 4, 9.

(c) The limited partners were told that the Partnership would pay bonuses "aggregating approximately $300,000 to various persons (other than the Stockholders) who have made significant contributions to the Partnership's success." Letter of May 20, 1988, at 7.

(d) The limited partners were told that for the Vogel transaction to be completed, they would have to waive "any and all claims of the Partnership and the Limited

Partners against [Freestate Racing Association, Inc.]." Letter of May 20, 1988, at 9.

(e) The plaintiffs (and all the other limited partners) specifically waived and released the Freestate Defendants from any claims that they might otherwise have had against them by agreeing to "[t]he waiver by the Limited Partners of any and all claims against the Original General Partner while serving as general partner of the Partnership." Consent of Limited Partners of Freestate Racing Assoc. Limited Partnership, ¶ 4, attached to Letter of May 20, 1988.

(6) The Letter of August 1, 1989 (Exhibit 14) shows that:

(a) When the opportunity to sell the raceway's real estate to the Cafritz Group arose, the proposed transaction was described in detail to each of the limited partners, who consented to the transaction before it occurred.

(b) The limited partners were told that the Partnership would pay from the proceeds of the sale to the Cafritz Group bonuses "totalling $250,000 to certain former employees of the Partnership who played material roles in its success." Letter of August 1, 1989, at 5.

Thus, the plaintiffs were informed of -- and approved in advance -- the transactions of which they now complain.

I. The Claims of the Plaintiffs (except Solomon) are Barred by the Releases Given by Them

The Motion showed that the six plaintiffs who were limited partners at the time of the sale to Vogel have specifically released any claims that they might have had against the Freestate Defendants. The release is in the "Consent of Limited Partners of Freestate Racing Assoc. Limited Partnership" attached to the Letter of May 20, 1988. Each limited partner consented to "[t]he waiver by the Limited Partners of any and all claims against the Original General Partner arising from any actions taken or failures to act by the Original General Partner while

serving as general partner of the Partnership." Consent of Limited Partners ¶ 4, attached to Letter of May 20, 1988.

Plaintiffs contend that the release has no effect on the current dispute because, they argue, it was intended only to effectuate the sale to Mark Vogel. This argument is plainly false, since the language quoted above could only be construed as a release of the Original General Partner [Freestate Racing Association, Inc.] by the Limited Partners. Moreover, the cover letter forwarding the document to the limited partners and explaining the proposed transaction stated that they would be agreeing to "[T]he waiver of any and all claims of the Partnership and the Limited Partners against the Corporation, which is required as a condition of the Buyer's purchase of the Corporation." Letter of May 20, 1988, at 9.

Plaintiffs also argue that the release is ineffective because it should not be applied to claims arising after the release was signed. Plaintiffs specifically address the payment of accumulated management fees, which they claim they learned of only after signing the release. This argument is absurd, since the May 20, 1988 letter, which forwarded the release to the plaintiffs for their signatures, contained clear text and a financial calculation sheet, both showing that an amount equal to the accumulated fees would be paid when the proceeds of the Vogel transaction were distributed. See Letter of May 20, 1988 at 4 ("The accumulated unpaid Annual Management Fee and cash distributions now aggregate . . . a total of $2,735,025. . . . [T]he General Partner will in fact derive the full benefit of the

funds owed to it in the allocation of monies . . . as shown in the attached detailed calculations."); id. at 9 (chart showing "Total Property to be Received by General Partner: Accrued Management Fee: $2,310,045; Accrued Distributions: $425,000; etc.).

Each of the other points as to which the plaintiffs now complain, including the defined benefit pension plan and the employee severance bonus payments, is without merit[4/] and was reported to the plaintiffs before they executed the release. Thus, the release is binding on each of the plaintiffs except Solomon.

II. Even If the Claims Were Not Barred by the Releases, They Are Completely Unfounded As a Matter of Law

A. The Claims Relating to Management Fees Are Unfounded

The Motion showed that management fees paid to the General Partner were calculated according to the formula -- 7% of Operating Revenue -- clearly stated in the Private Placement Memorandum, which was endorsed by each limited partner prior to his or her purchase of an interest in the Partnership. The Motion also showed that the Private Placement Memorandum made no representation that any particular tax treatment would be used and that the Partnership utilized proper tax and accounting treatments for the management fees; the plaintiffs have now

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4/ Although Ms. Lynda O'Dea's personal life may not have been the subject of formal reports to the limited partners, her full-time efforts managing the raceway fully entitled her to compensation. As shown below, the $3 million covenant payment was shared with all the plaintiffs, rather than received solely by the Freestate Defendants.

abandoned any argument relating to the tax treatment of the accumulated management fees.

The plaintiffs now claim that the Freestate Defendants promised to one of them, Ely, that the Freestate Defendants would never take payment of the accumulated fees.[5/] These claims are spurious. The August 1986 letter to all limited partners referred to the accumulated, unpaid fees and indicated that they would have to be paid. The plaintiffs' assertions that statements were made to the contrary to plaintiff Ely are (aside from the fact that they are clear fiction) inconsistent with the clear statements, in writing, which formed the basis of notice to the plaintiffs and the predicate for the agreement to the distribution as outlined. See Letter of May 20, 1988.

The Opposition purposefully misquotes a document containing representations made by Mr. Jacobs in 1989. The Opposition twice quotes (at pages 11 and 24) a statement made in a March 1989 letter from Martin Jacobs to Reznick, Fedder & Silverman, an accounting firm that performed an audit of the Partnership's operations in 1988. As is shown by the plaintiffs' own Exhibit 12 to their Opposition, Mr. Jacobs hand-corrected every page of the document before signing it, and Mr. Les Kanis, the engagement partner at Reznick, Fedder & Silverman, initialed the top of each page of the document. Paragraph 11 of the letter simply states that cumulative management fees, over and above the $150,000 due for the first six and one-half months of 1988, "have

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5/ Curiously, only plaintiff Ely claims that such statements were made to him.

been waived by the general partner or otherwise provided for and have no effect on the aforesaid period." The underlined phrase, which the plaintiffs misleadingly failed to quote, clearly appears in Mr. Jacobs' handwriting.[6/]

Thus, although the plaintiffs place great reliance on a supposed written assurance that the management fees would never be paid, the statement -- which could not have induced any reliance by the plaintiffs, since it was never released to the plaintiffs and was made in 1989, after the fees were paid to the General Partner -- clearly states the contrary.

Plaintiff Ely claims that Messrs. DeFrancis and Jacobs promised him that the fees would not be paid. These claims are false but irrelevant for the Court's deliberations on the Motion for Summary Judgment. These oral statements, even if made, could not override the written Private Placement Memorandum and the Partnership Agreement, to which every partner agreed; nor could such statements, even if made, vary the clearly inconsistent written statements in the letter of May 20, 1988, which formed the basis for the consent to the transaction signed by Mr. Ely, who is a member of the bar. Furthermore, Ely gave no consideration to support any supposed offer by Messrs. DeFrancis or Jacobs to forgo the fees, and Ely could not have been fraudulently induced to do anything by the alleged statements, since he took

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[6/] The cumulative management fees were "otherwise provided for" by the accounting that took place at the time of the Vogel transaction, under which an amount equal to the management fees due to the General Partner was paid out of the "pot" of funds made available by that transaction.

no action to his detriment in reliance on the alleged statements.[7/]

B. The Claims Relating to Compensation Are Unfounded

1. The Pension Plan

The Motion showed that the Partnership's defined benefit pension plan was fully authorized by the relevant documents and was fully reported on the Partnership's audited financial statements, copies of which were provided to each of the limited partners in each year. (Exhibits 17-26).

As was plainly set forth in the Private Placement Memorandum and the Partnership Agreement, the Partnership was obligated to reimburse the General Partner corporation for "all expenses incurred in connection with the operation of the Racetrack and the Partnership's business including salaries paid to all employees and officers." PPM at 22. The only significant limitation on this reimbursement provision was that the General Partner would not be reimbursed "for salaries and directors fees paid to Messrs. DeFrancis, Jacobs or Davis, and any other persons hereafter elected to replace them as officers or any additional directors, in an amount that is greater as to any fiscal year of the Partnership than 3 1/2% of Operating Revenue." Id. The contributions made to the pension plan, however, clearly were not "salaries." Thus, the contributions to the pension plan were

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7/ Although the plaintiffs would place significance on the fact that the audited financial statements of the partnership did not mention the accumulated fees, there was no reason for this treatment, since only accrued and deducted expenses needed to be shown.

unaffected by the 3.5% limitation on "salaries," and were fully reimbursable by the Partnership.

The plaintiffs cite a partnership agreement provision stating that "no salaries or compensation, other than as expressly set forth in this Agreement shall be paid to any partner..." Partnership Agreement § 7.10. Setting aside the fact that Messrs. DeFrancis and Jacobs were not "partners" (they were instead officers of the corporate general partner), this provision does not bar the normal reimbursement of the corporate general partner by the Partnership for ordinary and necessary employee-related expenses, such as pensions, workers' compensation, health insurance, travel and entertainment allowances, and other personnel-related expenses, none of which was expressly discussed in the Private Placement Memorandum. Messrs. DeFrancis and Jacobs were the principal officers and employees of the General Partner and devoted substantial time to the operation of Freestate Raceway, and the defined benefit pension plan was entirely appropriate.

2. The Alleged Fictional Employees

The plaintiffs have abandoned their claims regarding Carole Randolph and all other alleged fictional employees, other than, perhaps, Lynda O'Dea. The Motion showed that Ms. O'Dea was a full-time employee of Freestate Raceway and was also at times an officer of its General Partner. See Eastwick Dep. at 58-59; Jacobs Aff. ¶ 15. As such, she was treated as an employee and paid a salary. The Opposition describes her as Mr. DeFrancis'

girlfriend, as if such a status should oblige her to work gratis, but the Opposition makes no real allegation of fraud.

3. The Severance Payments and Bonuses

The Motion showed that the General Partner was entitled to reimbursement for its expenses, including salaries, and that the plaintiffs specifically approved in advance the employee severance payments of which they now complain. Moreover, the Motion showed that none of the severance payments and bonuses was paid to Messrs. DeFrancis or Jacobs. In the Opposition, Plaintiffs have added nothing to support their arguments. Thus, it is inconceivable that any legal recovery by the plaintiffs could be based on the severance payments.

4. Compensation to the Officers of the General Partner

The Motion noted that the complaint alleges in various paragraphs, including paragraph 29, that the Freestate Defendants "establish[ed] and [paid] additional compensation for the officers of the corporate General Partner not anticipated by the Private Placement Memorandum or allowable under the Agreement of the Limited Partnership" and that it was unclear whether this allegation should be understood to refer to anything other than the pension plan and severance and bonus payments already discussed.

The Opposition adds nothing to these claims, except to make a spurious reference to a $3 million covenant not to compete, the proceeds of which Messrs. DeFrancis and Jacobs shared with all of the partners. The Opposition incorrectly asserts that Messrs. DeFrancis and Jacobs unfairly diverted from

the Partnership the proceeds of their personal covenant not to compete in the harness racing industry with Mark Vogel. Although the covenant was personal to Messrs. DeFrancis and Jacobs, they put the value of this covenant into the "pot" of funds to be accounted for and divided with the limited partners. Jacobs Aff. ¶ 7. Both Mr. DeFrancis and Mr. Jacobs were active participants in the racing business and hence legitimately the object of a "non-compete" agreement. The plaintiffs, who were not active participants in the business, could not possibly have been viewed by anyone as worthy of a "non-compete" agreement. However, although Messrs. DeFrancis and Jacobs would have been entitled to retain the $3 million paid to them for the covenant, they shared the funds with the limited partners.[8/]

Finally, plaintiffs base some vague allegation of fraud on their claim that Messrs. DeFrancis and Jacobs received a total of $15.9 million from the Partnership. This calculation is plainly false, as the $3 million related to the covenant not-to-compete went instead to the Partnership proceeds. The other components of the plaintiffs' calculations are undocumented and unsupported. The Freestate Defendants, however, will not trouble the Court with extensive mathematical analysis, since none of the plaintiffs' assertions has any merit, regardless of dollar value.

8/ There can be no genuine issue of material fact surrounding the plaintiffs' current misstatements regarding the proceeds from the covenant. The proceeds from the covenant were shared with the limited partners. And since Messrs. DeFrancis and Jacobs would have been entitled to retain the proceeds if they had chosen to, this issue cannot form the basis of any claim whatsoever.

Moreover, even assuming for purposes of argument that Messrs. DeFrancis and Jacobs received $13 million from the Partnership, this number, standing alone, provides no evidence of any breach of fiduciary duty. The six plaintiffs (other than Solomon) received virtually a 10-fold return on their investments. The $350,000 they invested[2/] resulted in a return on investment to them of approximately $3.5 million, while the other former limited partners, who chose not to join the suit, invested $475,000 and received a $4.75 million return. In sum, then, the former limited partners have received a total of $8.25 million form their passive investment in the partnership.

As was plainly set forth in the Private Placement Memorandum and the Partnership Agreement, and thereby agreed to by all the parties, the basic allocation of income, cash flow, and proceeds from the sale of assets of the Partnership was set up to occur on a 57.5%/42.5% basis, with 57.5% to go to the corporate general partner after initial capital contributions and management fees were accounted for. PPM at 30-31. Thus, if the limited partners received $8.25 million, one would expect the General Partner to have received a much larger sum. The plaintiffs' many citations to the large dollars involved in these transactions should not obscure the fact that there is no evidence of any breach of any duty by the Freestate Defendants.

2/ The Opposition incorrectly states that the plaintiffs invested a total of $850,000 in the Partnership. In fact, the seven plaintiffs invested a total of only $375,000 in the Partnership. The vast majority of the purchasers of limited partnership interests -- fourteen other individuals, who originally invested a total of $475,000 -- chose not to participate with the plaintiffs in the instant lawsuit.

III. Plaintiff Solomon's Claim Relating to the Sale of His Partnership Interest is Unfounded

In the Motion, the Freestate Defendants showed that Solomon's claims -- that he was induced to sell his interest, that he sold to someone secretly acting on behalf of Messrs. DeFrancis and Jacobs, and that the defendants failed to disclose in a timely fashion the negotiations with Mark Vogel -- are completely unfounded. The plaintiffs have now abandoned their allegations relating to the timing of the Vogel negotiations and their allegation that someone secretly purchased Solomon's share acting on behalf of Messrs. DeFrancis and Jacobs.

Instead, the plaintiffs have shifted their tack and allege that Mr. Jacobs made various fraudulent misstatements to Solomon in April 1986. (The plaintiffs' counsel apparently have only recently become aware of Mr. Solomon's letter of August 1986, in which he stated that he had told Mr. Jacobs in April 1986 that he wished to sell his interest.) The plaintiffs claim that the April 1986 statements, in combination with statements made in the 1986 letters addressed to all partners, induced Solomon to sell.

The plaintiffs have submitted, in support of their Opposition, affidavits from Ely and Solomon which presumably are designed to show a dispute of material fact. But these affidavits, which set forth allegations which were not previously disclosed in discovery, completely fail to contradict the material facts relied upon by the Freestate Defendants and thus fail to show the existence of a genuine controversy as to any material fact. Moreover, Ely's and Solomon's claims regarding

statements made to them by Messrs. DeFrancis and Jacobs are inconsistent and implausible, as well as simply irrelevant. The plaintiffs would have the Court believe that Messrs. DeFrancis and Jacobs, as part of some strange and bizarre conspiracy, devoted their energies to persuading Solomon to sell his partnership interest, while simultaneously energetically inducing Ely not to sell his interest. These inconsistent actions would have been irrational, since a limited partner's sale of his interest to a third party would not have affected and did not affect the financial interests of Messrs. DeFrancis and Jacobs.

In any event, the assertions are irrelevant. Solomon claims that Mr. Jacobs fraudulently induced him to sell by telling Solomon that Mr. Jacobs' opinion of the investment was that it was not worth much. Solomon admits, however, that he originally suggested selling his interest, and that he continued to press the notion with the Freestate Defendants throughout 1986. See Opposition at 4. Thus, his claims regarding statements made to him are irrelevant and cannot serve as the basis of any claim against the Freestate Defendants.[10/]

[10/] In a section entitled "Miscellaneous Claims", the Motion noted that the complaint includes various bizarre allegations. Because the Opposition failed to address these points, they have been abandoned.

The Motion noted the following unsupported points: (1) the complaint recited the publicly reported "Mutuel Play" receipts and gross receipts for 1983 and 1984, Complaint at ¶¶ 17-18; (2) the complaint alleged that the Freestate Defendants "engag[ed] in various financial transactions which resulted in a significant tax burden being unduly imposed upon the Plaintiffs"; and (3) the complaint alleged that the Freestate Defendants "fail[ed] to act in good faith," "fail[ed] to disclose material information regarding financial transactions of the Limited Partnership to the

CONCLUSION

As has been shown, the relevant transactions were conducted fairly and in full compliance with the authorizing documents, such as the Private Placement Memorandum, to which the plaintiffs assented, and no breach of any duty occurred. In view of the lack of any genuine dispute as to any material fact, summary judgment should be entered in favor of the Freestate Defendants.

Dated: July 14, 1992

Respectfully submitted,

By: Peter L. Winik
Peter L. Winik

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(Counsel for Defendants Freestate Racing Association, Inc., Southfield Realty Corp., Inc., Joseph A. DeFrancis and Alec P. Courtelis as the personal representatives of the Estate of Frank J. DeFrancis, and Martin Jacobs)

Plaintiffs" and "in other ways fail[ed] to abide by the fiduciary duty owed the Plaintiffs," E.g., Complaint ¶ 29. It is now clear that plaintiffs have no support for these vague allegations.

CERTIFICATE OF SERVICE

I, Susan L. Beesley, hereby certify that on this 14th day of July, 1992, I mailed copies of the foregoing Reply Memorandum in Support of the Freestate Defendants' Motion for Summary Judgment, to each of the following:

Joel D. Davis
Inmate No. 26907-037
Federal Correctional Institution
P.O. Box 1000
Lorretto, Pennsylvania 15940

David Bulitt, Esq.
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1200 19th Street, N.W.
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(Counsel for defendant Ernst & Young)

Susan L. Beesley

ALL-STATE LEGAL SUPPLY CO 222-0510 ED 1*

FT STATE RACING ASSOC. LIMIT PARTNERSHIP
P.O. BOX 130
LAUREL, MARYLAND 20707

March 8, 1989

Rasnick Fedder & Silverman
Certified Public Accountants
A Professional Corporation
4520 East West Highway
Suite 300
Bethesda, Maryland 20814

Gentlemen:

In connection with your audit of our balance sheet as of July 17, 1988 and the related statements of operations, partners' equity and cash flows for the year then ended, we confirm, to the best of our knowledge and belief, the following representations made to you during your audit, pursuant to the terms of your engagement letter dated ~~February 21~~ March 2, 1989.

1. We are responsible for the fair presentation of financial position, results of operations, and cash flows in conformity with generally accepted accounting principles as presented in the financial statements and the accompanying notes.

2. We have made to you all -

   a. Financial records and related data.

3. There have been no -

   a. Irregularities involving management or employees who have significant roles in the systems of internal accounting control.

   b. Irregularities involving other employees that could have a material effect on the financial statements.

   c. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the financial statements.

4. We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.

5. The following have been properly recorded or disclosed in the financial statements:

a. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances balances and line-of-credit or similar arrangements.

b. Agreements to repurchase assets previously sold.

c. Related party transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements, and guarantees.

6. There are no -

a. Violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency.

b. Other material liabilities or gain or loss contingencies that are required to be accrued or disclosed by Statements of Financial Accounting Standards No. 5.

7. There are no unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards No. 5.

8. There are no material transactions that have not been properly recorded in the accounting records underlying the aforementioned financial statements.

9. The partnership has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any assets been pledged except as disclosed in the notes to the financial statements.

10. We have complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.

11. Management fees due to the general partner for the period January 1, 1988 through July 17, 1988 are $150,000. Any and all additional cumulative fees for this period and prior years for which the partnership may be held liable, pursuant to Article 7.07 of the Agreement of Limited Partnership, have been waived by the general partner for otherwise provided for and have no effect on the aforesaid period.

12. All material cash transactions subsequent to July 17, 1988, specifically, partnership distributions, severance pay, officers salaries and management fees, have been properly reflected in the aforementioned financial statements.

13. All events occurring subsequent to the balance sheet date requiring adjustments to, or disclosure in, have been properly recorded, or disclosed in the financial statements.

14. The adjusting journal entries for the period ended July 17, 1988, which have been proposed by you, are approved by us and will be recorded on the books of the partnership.

15. ~~Pursuant to~~ Under paragraph 14b of the Concession Agreement, dated April 19, 1982, between Freestate Racing Association, Inc. (the Corporation) and Harry M. Stevens, Inc., the partnership and the Corporation are not liable, individually or collectively, for capital improvement advances at July 17, 1988.

Martin Jacobs

Martin Jacobs,
Vice President,
~~Freestate Racing Association, Inc.~~
General Partner of: Freestate
Racing Assoc. Limited Partnership

Sandfield Realty Corporation,
Inc.

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

cc M. Jacobs MZ141
.5(p)

LOUIS P. GUIDA

March 23, 1990

FEDERAL EXPRESS - Standard Air

Mr. Joseph DeFrancis
Laurel Racetrack
Route 1 and Route 198
Laurel, MD 20707

Dear Joe:

It has been about two weeks since our telephone conversation and I have relayed to all of my partners that the issue of phantom income has been resolved for 1989 and in all likelihood we will not have any phantom income in 1990. If we do, we will receive a cash distribution to handle that phantom income assuming that a cash distribution does not compromise Laurel Racetrack's operating budget. You're an attorney and I am not, but I think that what I just stated was in essence, our conversation. If I am wrong in that regard I would appreciate your correcting me.

The other major issue of discussion was that in the event of a hypothetical sale, what would the actual percentage breakdown be as to Laurel vs. Pimlico. During our telephone conversation, I clearly indicated to you that this had been a subject of conversation many times in the past, with Marty Jacobs, your dad and the Manfuso brothers all having somewhat the same but varying opinions. For example, everyone seemed to agree that the real estate at Laurel and Bowie was substantially more valuable than the real estate at Pimlico but that the Preakness being at Pimlico added substantial value to Pimlico. At no time could we ever get your group to cohesively agree on the apportionment of gross sale proceeds, if and when a sale ever took place.

I explained at that time, as I recently explained to you over the telephone, that it was unfair, and frankly, un-business like to leave us *hanging* until an actual sale was made and then to determine the breakdown. The reason for that is quite obvious. Your group owns a greater percentage of Pimlico than it owns in Laurel, so there is an inherent conflict of interest. I am sure that you will agree with that! All my group has ever asked for is fair play and a clear understanding of the apportionment of any potential sale. I am sure that you will agree we have every right to know, and my request is not only reasonable but logical. I cannot understand why we cannot receive your group's opinion in that regard. Frankly, it is a cause of great concern to my group but especially to me. The reason is simple. The conflict of interest situation is truly the issue, and I feel somewhat offended by that. When I first invested in Laurel Racetrack, it was for one reason and for one reason only --- my great respect, affection and belief in Frank DeFrancis. At that time there was no Pimlico, so the situation of a split in the event of a sale was not an issue.

When Pimlico came about, your dad invited me to join with him in that investment. I respectfully declined because of the experiences and difficulties that were occurring between my group and the DeFrancis Group relevant to Laurel. Your dad at that time

was very forthright and told me that he thought it was a great investment and invited me to invest with him personally *without* my group. As much as I wanted to be a part of Pimlico I could not do that. He understood and I am sure you do too. I went in with this group of people and I owe them my loyalty and fiduciary responsibility. Consequently, I had to decline the Pimlico investment. Now, I guess I am asking you to play SOLOMON which is to make a fair and just offer in the event of a sale of both racetracks (Bowie being part of Laurel). If that offer is fair and equitable, my group will readily accept it. If we think that it's unfair, we will ask you (as any businessman would) to please document your rationale.

Joe, unfortunately the contents of this letter have been repeated many times in the past, in our numerous telephone calls with Marty Jacobs and also other members of your group, but we never seem to get an answer ! I am sure that if you look at the situation objectively, and try to put yourself in our place, you would also recognize our sheer sense of frustration in not being able to get a straight answer. I hope that this communication plus my telephone call with you a few weeks ago will not go unanswered. I believe our request is very rational, logical and reasonable. I have a responsibility to answer these questions to my business associates who are part of the Laurel/Guida Group which invested in Laurel Raceway.

May I please hear from you in this regard soon?

As always with kindest personal regards ---

Sincerely,

Louis P. Guida

LPG:mb

Enclosure

cc: Mr. Thomas Manfuso
Mr. Robert Manfuso

P.S. I subscribe to a press clipping service, and a reading of the attached article clearly indicates that Laurel and Pimlico are not for sale. *I can only assume from our various conversations that this article is erroneous.* It is only natural for me to be concerned, especially in view of our many conversations and meetings, to read something as strong as the statement they alleged you made in this article.

As you know, I have 21 years of experience on Wall Street, but please understand I am not trying to play economist. However, over those 21 years, I have developed what I believe is a good feel for the financial markets, and a large network of some very influential analysts and economists. There is a very strong feeling that this country is heading into a deflationary cycle. I

am of the belief that interest rates are going to go back up *temporarily* (because of a liquidity crisis) to the 9.25% to the 10% area, possibly, even higher if things get out of control. Ultimately, I think rates are going to come down sharply! My major concern is a liquidity crisis and a deflationary atmosphere. I wanted to give you the benefit of my thoughts and experience. As you know nothing in life is guaranteed, however, if some of the things I envision occur, the sale of any asset, including Laurel and Pimlico will become that much more difficult. Consequently, I offer these thoughts to you because of your stated desire to maximize the value of Laurel and Pimlico. Careful consideration must be given to factors which affect the entire economy which would have a direct effect upon the sale price of Laurel and Pimlico. I am also of the opinion that real estate values (except in certain areas) have *topped out* throughout the entire country.

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

JOHN A. MANFUSO, JR.

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301)986-0525

June 20, 1990

Joseph A. DeFrancis, President
Laurel Racing Association, Inc.
P. O. Box 130
Laurel, MD 20725

Dear Joe:

Thank you for confirming the meeting date and, if I don't see your before then, I look forward to seeing you at 10:00 A.M. on Monday.

Regarding comments on your proposed Guida letter, I have two to offer.

Page 5, paragraph 6; I would eliminate the last four lines starting with "Marty", and ending with "advisors". I don't find those comments helpful or necessary.

Page 6, end of first paragraph; I would add an additional line something to the effect, "possibly we can discuss this further at our meeting". I suggest this because I see no advantage in closing the door on purchasing their interest if it can be done at a realistic discounted price.

Sincerely,

Tommy

John A. Manfuso, Jr.

JAM/eta

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

MI141
.3(p)

LRG ENTERPRISES

August 1, 1990

Joseph DeFrancis
Laurel Racetrack
Route 1 & Route 198
Laurel, MD 20707

Dear Joe,

I have been wading through a mountain of paperwork since my return from Europe, therefore, I hope you'll forgive my tardiness in responding to your most recent letter. Naturally, copies of your letter have been distributed among all my partners and a meeting is to be held soon with John Rizzo in attendance both as a partner and as counsel for our group and a more detailed response may be coming at that time. However, I wanted to give you my thoughts to clarify the letter writing contest that has been going on between us.

1 - My group had the only risk (uncollateralized) investment in Laurel. There's no discussion on that point. The documents and records will clearly indicate that.

2 - I gave an interview to the Baltimore Sun and various other newspapers in the Maryland area about our involvement in Laurel Racetrack and at your father's request, I retracted many of those statements. One of those reporters has recently been calling me to ask me questions about Laurel and I have never returned his calls. There are conflicting reports in the newspaper as to the value of Frank DeFrancis' Estate and figures have been reported in the area of a total valuation of $12 million and it has also been reported in the press that there are claims of approximately $10 million against that estate by the Freestate Partners. In that regard, I am concerned, based upon previous estimates supplied to us, as to the value of Laurel Racetrack because the valuation reported in the newspaper relevant to your father's estate seemed to indicate a much lower number than we believe the actual value to be. I, therefore, am respectfully requesting that you supply me with the methodology used for valuation purposes which you will be using for estate tax purposes since we both know that valuation must be accurate. Consequently, I feel that we are entitled to know that number and the basis under which you arrived at that number, because something filed with the Federal Government must be accurate and

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not subject to conjecture. An appraisal of that nature must be based upon hard facts and, consequently, it is my feeling that we are entitled to know for our own purposes, your valuation Laurel Racetrack and I can think of nothing more impartial than figures used for estate tax purposes in filing a Federal Return.

3 - While I'm not sure what will come out of our eventual partners meeting, I must tell you that serious consideration is being given to hiring a Maryland Law Firm to become involved with us and they may be instructed to request a major accounting firm to go (at the convenience of the corporation) to inspect Laurel's books to be certain that no conflicts exist and that our interest is being protected accordingly. In addition, we will ask them to reaffirm your valuation for estate tax purposes. This request, if and when made, would be a normal request of any shareholder in any corporation and your prompt consideration of such a request, if made, would sincerely be appreciated.

4 - Finally, you indicated that you would provide us with an estimate of how the potential break up value of a combined sale of Laurel and Pimlico would be applied. There has been more than ample time to respond to this request.

As I indicated, I wanted to get this letter off to you as soon as possible. The information contained in this letter is solely my thoughts. Certain questions have been raised relevant to the most recent financial statement received by my group. I anticipate that my group will be shortly providing a further inquiry relevant to the financial statements. In the meantime I would appreciate your response to the request contained herein.

Sincerely,

Louis P. Gulda

Louis P. Gulda
LPG/lw

cc: Marty Jacobs
cc: Bob Manfuso
cc: Tom Manfuso

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS

9401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

August 14, 1990

Mr. Joseph A. DeFrancis
Laurel Racing Assoc., Inc.
Laurel Race Track
Race Track Road & Route 198
Laurel, Maryland 20707

Dear Joe:

Since you were not at the monthly meeting on August 3rd, Bob and I thought it would be advisable to report to you on some of the matters that were discussed with Marty, as follows:

1) We are most concerned about the Mango employment contract not being concluded. In view of the fact that Jim is so important to the operations of the tracks, that issue should be given highest priority.

2) Linda O'Dea's status was discussed. A consultant's agreement may be appropriate in lieu of the employment agreement, so long as the economics make sense.

3) Lou Guida's letter of August 1, 1990 should of course be replied to without delay. The Guida group should have complete access to the books and records. Bob and I do feel strongly that we should attempt to negotiate the purchase of the Guida interest through Laurel Racing Assoc., Inc. You will recall in lieu of our obtaining an independent appraisal, you suggested we wait for the estate appraisal to be concluded. It would be very helpful to use the estate appraisal as a guideline for pricing.

This basically covers the important issues we discussed.

I will be out of town the latter part of August. In order to maintain the continuity of our meetings, I would suggest we meet on Tuesday, September 4. If this is not convenient, Bob will be available to meet with you and Marty on Monday, August 27.

Sincerely,

John A. Manfuso, Jr.

cc:Martin Jacobs
Robert Manfuso

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

August 21, 1990

Mr. Joseph A. DeFrancis
Laurel Race Course
Laurel Racing Assoc., Inc.
P. O. Box 130
Laurel, Maryland 20707

Dear Joe:

Bob and I certainly appreciate your response to my letter of August 14 and were especially pleased to receive the draft of Jim Mango's agreement.

From our perspective the only comment would be to clarify paragraph 6, entitled "Confidential Data; Termination Obligations". We assume this would not apply to the Directors or more specifically to Bob or myself, for we certainly feel that at no time should secret or confidential information be withheld from us. I am sure you concur in this regard. If not, please let us know.

While we feel the "Covenant Not to Compete" may be to restrictive, this certainly is a matter that should be decided between you and Jim Mango.

We look forward to receiving a draft of your response to Guida. Since I will be away from Thursday of this week, until Wednesday of next week, if the draft is not received prior to Thursday, please do not anticipate a comment on the draft until Thursday or Friday of next week.

Finally the September date for our next meeting at Laurel at 10:00 a.m. is convenient for Bob and myself and we have scheduled accordingly.

Congratulations on a most successful Frank DeFrancis Dash.

Sincerely,

John A. Manfuso, Jr.

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS
8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815
(301) 986-0585

August 22, 1990

Mr. Joseph A. DeFrancis
Laurel Race Course
Laurel Racing Assoc., Inc.
P. O. Box 130
Laurel, Maryland 20707

Dear Joe:

Thank you for forwarding the draft response to Guidu and we are pleased that you can "get the letter out this week."

Continual discussion regarding personal exposure incurred when investing in the Laurel project is really academic since none of us now have money at risk.

Obviously we agree that the Guida group should have access to all financial information and any other significant contracts into which Laurel Racing Association should enter.

The majority of the letter deals in an area where neither Bob nor I are informed or involved, and of course, therefore we have no comments.

I hope these comments will be helpful.

Sincerely,

John A. Manfuso, Jr.

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

N.T 141
.5(P)

LPG ENTERPRISES

September 13, 1990

Mr. Joseph DeFrancis
Racetrack Road
Route 198
Laurel, Maryland 20707

Dear Mr. DeFrancis:

Representatives of the Guida Group met this week and we are hereby making the following formal request.

We have engaged the firm of Laventhal & Horwath to do an audit of the books and records of Laurel Race Track. We would like to make that audit as soon as possible, but in no event later than 30 days. We would appreciate a convenient date from you in response to this letter within the next 10 days. That audit is to be an examination of not only the books and records, but also all employment agreements, all severance agreements and any and all buy/sell agreements of any kind or nature.

If the audit turns up any discrepancies, they will have to be dealt with on an individual basis. Upon completion of that audit, we will make an offer to you to purchase the Guida Group's interest and at the same time make an offer to purchase your personal interest in Laurel, thereby giving you the flexibility of buying our interest or selling your interest to us. Needless to say, you have the right to reject both, but we have the right to make this offer.

We are also exploring the value of Plimico and may at the same time make an offer to purchase your interest in that facility.

We would very much appreciate your immediate response as we are anxious to proceed with the audit and as I indicated previously in this letter, assuming there are no discrepancies in the audit we have been advised that it should be completed within approximately 60 days from commencement. We will be providing to you a formal buy/sell offer.

Cordially,

Louis P. Guida

LPG:msm

cc: Marty Jacobs
Tom Manfusco
Bob Manfusco

100 Franklin Corner Road • Lawrenceville, NJ 08648 • 609/896-7700, FAX 609/896-9583

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

September 19, 1990

Mr. Joseph A. DeFrancis
Laurel Racing Assoc., Inc.
Laurel Race Track
Race Track Road & Route 198
Laurel, Maryland 20707

Dear Joe:

Since I will be leaving this friday and will not return until November 10 I just wanted to take a second to confirm the items discussed during our meeting on the 10th of September.

We all agreed that it was of paramount importance to complete the employment contract with Jim Mango. I would hope that you would expedite this, especially since the Guida Group has indicated an interest in reviewing these contracts..

It is also my understanding that Mike Sanders is negotiating an employment contract with Linda and we will have an opportunity to review the contract before it is finalized.

We discussed the potential lottery for the Triple Crown and I do appreciate your keeping me informed when you have additional information in this regard.

Since there appears to be an unusual amount of legal problems, all legal bills should be clearly defined as to the entity being represented.

We also discussed our concern as it relates to Harry M Stevens and their performance as our caterer. We would appreciate the opportunity to review their numbers at our next meeting. Of course, please keep us informed of any changes in this area if they should occur.

Finally, I would greatly appreciate your taking the necessary steps to refund those payments made by the Maryland Jockey Club charged by Marty for his trip to Texas. I am sure this is merely an oversight because we had agreed that neither Pimlico nor Laurel would be responsible for any charges incurred in pursuing participation in a Texas race track.

Bob, of course, will be available during my absence and always speaks on my behalf. His schedule is rather hectic in October and he has suggested the following dates for our monthly owners meeting: Monday, October 1, anytime during the day; Friday, October 5, in the morning; Monday, October 8, anytime during the day. Please call Marge to confirm a mutually convenient date and time.

Best of luck with the International. I hope it is a dynamite success.

Sincerely,

John A. Manfuso, Jr.

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

MI169
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September 28, 1990

MEMORANDUM

To: Robert T. Manfuso

From: Martin Jacobs MJ

Attached is the draft of the proposed response to Lou Guida's latest letter. As we discussed, I would appreciate your letting me have any comments you may have before you leave today. We would like to send the letter to Guida out today.

Attachment

DRAFT

[LAUREL LETTERHEAD]

September 27, 1990

Mr. Louis P. Guida
LPG Enterprises
100 Franklin Corner Road
Lawrenceville, NJ 08646

Dear Lou:

I have received your letter of September 13, 1990 in which you make a "formal request" on behalf of the Guida Group to audit the books and records of "Laurel Race Track." (I assume you mean "Laurel Racing Association Limited Partnership," referred to below as the "Partnership"). As you may know, under Maryland law, a limited partner is entitled to inspect the books and records of his partnership, and we intend to accommodate your request.

As an initial matter, however, we are very troubled by the statement in your letter that you have already "engaged" Laventhol & Horwath to perform the audit. As you know, in 1989 Laventhol was retained by Pimlico to perform services for Pimlico. In the course of performing those services, Laventhol was provided with information that was proprietary and highly confidential. The Guida Group, as the limited partner of the Partnership, is not authorized to have direct or indirect access to that information. Under this circumstance, and in

light of your Group's expression of interest in Pimlico, we view Laventhol's involvement as a conflict of interest to which we object and intend to so notify them.

In addition, we are currently in a fee dispute with Laventhol which may well end up in court. Obviously, the information made available to Laventhol in the course of your "audit" would be far greater than the information which they would be entitled to receive via discovery in litigation over the disputed fee. Allowing Laventhol to review the broad scope of materials described in your September 13 letter would also waive the Partnership's attorney-client privilege and Maryland's statutory accountant-client privilege.

Accordingly, we simply cannot permit Laventhol to perform your audit. Please let us know when you have selected another firm.

It will be necessary to coordinate the timing of your audit with other pressing operational demands. First, as you may know, various tax returns of the Partnership are currently being examined by the Internal Revenue Service. This examination, which has been conducted with various degrees of

intensity, over the last several months, is now in high gear. The examining agents are placing significant demands on our personnel who, at present, would be unable to devote any significant time to your auditors' requests. Second, as you know, Laurel's International Turf Festival is scheduled for October 20 and 21. Preparations are already consuming great amounts of everyone's time, and the demands will increase from now until the Festival is over. Finally, as you also know, Laurel's prime fall/winter meeting opened September 20.

In sum, this is an extraordinarily busy and important time for us: the fall meeting is one of the keys to Laurel's annual financial success; the International Turf Festival should produce the largest two-day handle of the meeting; and a successful conclusion of the IRS audit could have a major financial impact. I know you share our desire to achieve the best results possible on all fronts. I also know you have no intention of having your audit detract from our efforts and impair Laurel's performance.

Consequently, it would be very useful to us in planning how to accommodate your request if you could be more specific about what you wish to do. Specifying relevant "books

and records" you wish to have made available would be a good first step. Perhaps some of the material you wish to examine is not in use on a day-to-day basis and is not needed by the IRS. If such is the case, we could make that available first. Otherwise, we will have to figure out some way to coordinate competing demands.

Your letter further states that, upon completion of your audit, you will make an offer to purchase my personal interest in Laurel, and possibly Pimlico, or to sell the Guida Group's interest in Laurel to me. As I have made clear to you both in our meeting last fall and in our prior correspondence, my objective is to maximize the value of our racing interests so that everyone involved may receive the best return. I do not believe that the sale of my interest in Laurel (or Pimlico) or my purchase of the Guida Group's interest in Laurel will facilitate the accomplishment of that objective. Therefore, I am not now interested in pursuing either alternative.

Please respond at your convenience.

Very truly yours,

Joseph A. De Francis

cc: Mr. Robert T. Manfuso
Mr. John A. Manfuso, Jr.
Mr. Martin Jacobs

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS
9401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

October 8, 1990

MEMORANDUM

TO: JOE DE FRANCIS
MARTY JACOBS

FROM: ROBERT T. MANFUSO

RE: JOE'S RESPONSE TO GUIDA'S LETTER OF SEPTEMBER 13.

When Marty asked me to comment on the final draft of Joe's response to Lou Guida's letter of September 13, my initial reaction was that Joe's letter was at best non-responsive and at worst confrontational.

In the interim, I have had the opportunity to review the letter in detail and at the same time to track down brother, Tom, in New Zealand and discuss my concerns with him.

While we recognize that several of the issues addressed are between the Guida Group and the De Francis Group, both of us see this dialogue between Joe and Lou Guida leading down a potentially hazardous path for our tracks. This road will inevitably lead us to major confrontation and the strong possibility of extensive litigation at extreme cost between not just Guida and DeFrancis, but also Guida and Laurel Racing Association.

We have expressed on several occasions our opinion that the Guida Group should have easy access to any and all of the books, records, contracts, or other agreements that relate to their involvement with our tracks. I suggested to Marty that he might want to send Guida our tentative employment agreement with Jim Mango, as well as copies of the stockholders agreement between Joe, Tom and myself. Marty expressed a concern that information in our stockholders agreement was proprietary in nature. Frankly, I know of nothing in those agreements that I would be embarrassed to share with Lou Guida. What will be perceived as delaying tactics will only cause our partners to think you have something to hide.

Joe wrote in his letter that he has no interest in purchasing the Guida Group's interest in Laurel Racing Association. However, both Tom and I have stated on several occasions that Laurel Racing Association should attempt to negotiate the purchase of the Guida interest. As a matter of fact Tommy

wrote to Joe on August 14, expressing his opinion in this regard. Such purchase would eliminate potential confrontation, as well as the obvious conflict of interest that will exist so long as there are different ownerships at Laurel and Pimlico.

As substantial equity owners in both tracks, we must express our concern as to the rapid deterioration in your relationship with the Guida Group. We urge you to be more responsive and less frustrating to his inquiries and at the very least pursue in good faith the option of Laurel Racing Association purchasing the Guida Group's interest in Laurel. Why lead us into a situation that might only be described as a lawyer's delight and an owner's nightmare.

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

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LPG ENTERPRISES

OCT [illegible] 1990

October 11, 1990

Mr. Joe DeFrancis
Laurel Racing Associates, Inc.
Racetrack Road & Route 198
Laurel, MD 20725

Dear Joe:

I have reviewed your most recent correspondence with certain of my partners.

Until your most recent correspondence, we were unaware of any fee dispute with respect to the Laventhol firm. Please immediately advise as to the details of that dispute so we may make a determination regarding the continued use of Laventhol. If, after review of the situation, we determine it is inappropriate to proceed with Laventhol we will retain other experts. I should note that it is our initial judgment that the fact that you may be in some kind of fee dispute with Laventhol does not automatically disqualify the use of Laventhol by our Group with respect to further work on the matter.

On the subject of the specific documentation to be reviewed, please be advised that we are going to leave the specific listing of documents for the auditors doing the review. As previously indicated we will be seeking an audit to determine the propriety of past procedures, the current financial status of the enterprise and also to assist us in our due diligence in reaching certain conclusions regarding valuation and sale.

Notwithstanding your current position, we will be providing you with a statement of the Guida Group's position regarding selling its interest and regarding buying your interest in Laurel and possibly Plimico. To the extent that we cannot enter into an agreement, it is our intention to pursue a sale of our interest. We have reviewed the matter and find no prohibition under the documents of our actions in this regard. We believe that if we cannot enter into a satisfactory transaction with you, we have the right to disclose to the public our position regarding valuation of the track in connection with our efforts to sell our interests.

I would appreciate a rapid response to this correspondence. You have announced on various occasions your business goal to maximize the value of the race track to the benefit of all partners. However, I sense from the press articles which I have recently read, a growing dissatisfaction in Maryland. This fact, combined with the general uncertain state of the economy, leads me to conclude that time is of the essence and there is absolutely no benefit in delaying my Group's analysis of the entire situation.

100 Franklin Corner Road • Lawrenceville, NJ 08648 • 609/896-7700, FAX 609/896-9583

Last, but not least is the continued sense on our part that your letters are non responsive and skirt the real issues and unfortunately appear to be leading your group and my group into an adversarial position.

Sincerely,

Louis P. Guida

LPG:msm

cc: Marty Jacobs
Bob Manfusco
Tom Manfusco

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

October 23, 1990

Mr. Lou Guida
LPG Enterprises
100 Franklin Corner Road
Lawrenceville, N. J. 08648

Dear Lou:

I am in receipt of a copy of your most recent correspondence to Joe DeFrancis dated October 11.

In the past both my brother Tom and I have restrained from commenting on your continuing dialog with Joe. However, we must express our concern as to the apparent deterioration in the relationship between the Guida Group and our Race Tracks.

My memorandum to Joe and Marty dated October 8, expresses both this concern and reiterates our view that your Group should have access to any and all books, records, contracts, or other agreements that relates to your involvement in the tracks. Further, we have suggested on several occasions that a reasonable solution to any problem, real or perceived, might be for the Laurel Racing Association to negotiate the purchase of the Guida Group's interest. Enclosed is a copy of this memorandum for your perusal.

While Tom is out of the country and will not return until November 12, I am in touch with him from time to time. We both wanted to let you know that we will extend our best efforts to avoid the development of an adversarial position between your group and our tracks.

With kindest regards.

Sincerely,

Bob

ROBERT T. MANFUSO

cc: Joe DeFrancis
Marty Jacobs

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

October 23, 1990

TO: JOE DEFRANCIS
MARTY JACOBS

FROM: ROBERT T. MANFUSO

RE: OWNERS MEETING, TUESDAY, OCTOBER 9, 1990

Since Tommy is out of town I thought it best to jot down the items of substance that we discussed and my understanding of the conclusions we reached at our recent "owners meeting".

Joe had two important items that he wished to discuss:

1) Barry Weisbord's series of handicap races for older horses. We discussed the significance of the program and in particular the fact that the Maryland Jockey Club might be out of pocket our simulcast revenue on the Pimlico Special. It was agreed that, if for no other reason than the importance of our relationship with ABC, we must support the series. We also agreed that the Pimlico Special would be Maryland's race in the series. We left it that Joe should negotiate the best deal possible.

2) Joe informed me that the MTHA might withhold their approval of the International simulcast as a means of expressing their ongoing objection to reducint the dollars generated through a variety of fees for the Turf Festival Races by subtracting the Matchmaker expenses. Marty and I recalled that we had battled this issue with the Horsemen's organization for three years and won. He further recalled that the issue was put to rest at a meeting he attended with the MTHA Board in May of this year. We concluded that the question of deducting Matchmaker expenses is non-negotiable.

Areas that Itouched on included:

1) Linda's agreement: I understood that it was being finalized and would be available for my reivew by the middle of International Week.

2) Jimmy's contract was in the process of being retyped to reflect a few changes that he had requested. It was my hope that this contract would be "signed, sealed and delivered" before the Internationl.

3) The IRS Audit was discussed. Marty said that they are probing into just about any area that one could imagine. He also said that it was his sense they were hoping to wrap up the audit by the end of the year; however, the audit might extend a few months into 1991. We, of course, need to be informed of any significant issues that might have any serious impact on our operations, cash flow, or corporate policies.

4) Joe mentioned there have been no new developments in regard to the Triple Crown Lottery.

4) I once again mentioned my concern as to the performance of Harry M. Stevens. I understand that the quality of food and service have improved in the dining rooms, but the quality of food and service at the concession stands still need a lot of work.

6) I mentioned to Marty Izzy Cohen's offer to tile the restroom facilities in the track kitchen and Marty said he would follow through on this offer.

7) I presented copies of my memorandum dated October 8, in which I set out for the record both Tom's and my concern as to our relationship with Guida and his group. I don't recall any specific conclusion, other than we would revisit the issue as soon as I had returned from Bermuda.

If your recollactions are different than mine, please let me know.

Since our meeting, I have received a copy of Lou Guida's recent correspondence to Joe. Once again, I must reiterate that in my opinion, it is in the track's very best interest that we provide easy access to any and all information that Guida or his group requests and, as we discussed, pursue the option of Laurel Racing Association purchasing the Guida Group's interest. For your information enclosed is a copy of my letter to Lou Guida in response to his recent correspondence.

Since Tommy will be returning around the 12th of November, may I suggest we schedule our next meeting on November 14, 15, or 16. Please call Marge at the Chevy Chase Office to confirm a mutually convenient date and time.

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

MT169
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THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20707

November 6, 1990

BY FEDERAL EXPRESS
Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Manfuso Brothers
8401 Connecticut Avenue
Chevy Chase, MD 20815

Dear Tommy and Bob:

Shortly after Frank's untimely death, the three of us had extended conversations about Laurel and Pimlico, the management of the business, and our respective roles in future operations. At your request, we negotiated and executed a shareholders' agreement which outlined your continuing role as officers and directors, and contained provisions regarding payments to shareholders and other matters. To my surprise, almost immediately after execution of that agreement, you announced your intention to resign as officers and to receive your payment as shareholders.

When you retired and received your payment, we agreed that it would be unwise for the Maryland Jockey Club to make the same payment to me, but when I suggested that my deferred payment should bear interest, you disagreed. In that meeting, Tommy stated that from the outset of the negotiations he had expected I would be unable to receive my payment at the same time as you even though the shareholders agreement so provided.

Now you have unilaterally written to Lou Guida in connection with discussions that have been in process for some time regarding the position of the Guida Group as a limited partner in Laurel Racing Association Limited Partnership. This action cannot be reconciled with your fiduciary duties as directors of our corporations. Even though you are shareholders, as directors you owe a fiduciary duty to the corporations which supersedes your own personal interests as owners. As directors, you were obligated to keep our discussions confidential. Not only did you not do so, but apparently each of you has had independent conversations with Lou Guida on this very subject. The corporations' policies

cannot possibly be effective if you, who are directors, freely communicate our deliberations to someone you yourselves describe as a potential adversary. Therefore, please provide me with a detailed written statement of all your conversations with Lou Guida or any other member or representative of the Guida Group on this subject.

It is difficult to express how disappointed I am by your action and the extent to which my confidence in you and your willingness to cooperate in the guidance of the business of the tracks have been undermined. I believe I have done everything that could have been expected and more to keep you fully informed and involved. In particular, I have kept you currently apprised of every communication between myself or Marty and Lou Guida, and have sought and incorporated your comments and suggestions into every letter that I have sent to Lou Guida.

I have no desire to cause a confrontation with Lou Guida. If you will review the correspondence, you will see that I have, in fact, offered to provide everything he has requested from Laurel. As far as I know, there are no issues "between the Guida Group and the De Francis Group". The Guida Group, as limited partner, wishes to inspect the books and records of Laurel Racing Association Limited Partnership and perhaps make an offer to buy my interest or sell its interest. They are entitled to review the books and records, and they can make whatever offers to me that they consider appropriate. I do not know why either of the above should lead to the confrontation or litigation you describe in your memo of October 8.

As for Laurel purchasing the Guida Group's interest, as we discussed on October 9 and as you well know, unless the shareholders are willing to incur personal liability for indebtedness, Laurel Racing Assoc., Inc. would be unable to purchase that interest. I personally do not wish to incur such a liability. If you personally wish to acquire their interest, please feel free to do so. In fact, Marty has told me he would be interested in joining with you in any such purchase.

It has always been my primary objective to maximize the value of our business for everyone. This goal can best be accomplished if we work together in a cooperative fashion.

Conflicts between us can only be counterproductive. I have sought in every way to avoid them with you and hope you will do likewise in the future.

Sincerely,

Joseph A. De Francis

cc: Mr. Martin Jacobs

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

LOUIS P. GUIDA ENTERPRISES
100 Franklin Corner Road, Lawrenceville, New Jersey 08648

TELECOPIER TRANSMITTAL SHEET

TO: Bob and Tommy Manfuso

Telephone #: (301) 986-0525

Telecopier #: (301) 986-4576

FROM: Louis P. Guida

Telephone #: (609) 896-7700

Telecopier #: (609) 896-9583

NUMBER OF PAGES INCLUDING TRANSMITTAL SHEET: 2

DATE: November 6, 1990

SUBJECT: LAUREL

Dear Bob and Tommy:

Thank you for the copy of the memorandum that you sent to Joe DeFrancis and Marty Jacobs regarding their attitude towards the Guida Group and their lack of response in complying with our numerous requests and especially their attitude toward our document requests. We, like you, want to avoid litigation and the relationship between our group and the DeFrancis Group becoming hostile, but frankly, that may be inevitable. However, I did want to thank both of you for your efforts in attempting to prevent something like that from occurring. Perhaps you could be helpful to us and your actions may avoid an immediate litigation relevant to document requests. I would certainly appreciate copies of any agreements between yourself and any of the other entities involving Laurel Racetrack regarding your separation from responsibility and your current compensation and any buy/sell agreements that may exist. Additionally, if there are any other documents which you believe relate to your relationship with any of the other entities regarding Laurel Racetrack I would appreciate receiving a copy of those agreements. I would also appreciate it if you would be kind enough to forward to me all documents and letters in your possession that you feel we as partners should be entitled to.

11. 06. 90 10:39AM GUIDAENTERPRISES P01

I would very much like to meet with both of you if you are agreeable, because it is my present intention to make a written offer for Joe DeFrancis' interest in both Laurel and Pimlico before the end of this year, and that offer may include the entire 50% interest of Laurel that is not owned by me and my associates and 100% of the interest in Pimlico. Based on the lack of cooperation from Joe DeFrancis, I have no other choice than to make this offer based upon public information which we are currently gathering. This offer will be made by me and it will be a firm offer to purchase. I am attempting to be very candid with you as I have tried to be with Joe DeFrancis and Marty Jacobs, but to no avail. I would sincerely appreciate your response and if possible the documents herein requested and the possibility of a sit down meeting. Hopefully, you will be receptive to all of the suggestions because we no longer intend to sit in a *holding pattern.* It is very obvious to me and certain of my associates that Joe DeFrancis and Marty Jacobs are planning a stalling tactic to suit their own purposes and as far as I am concerned, that goes either way.

Sincerely,

Louis P. Guida

cc: John Rizzo, Esq.
Joseph Grano

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

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MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

November 19, 1990

Mr. Joe DeFrancis
Laurel Racing Association
P. O. Box 130
Route 198
Laurel, MD 20725

Dear Joe:

As Bob notified you in his letter of November 7th, we are replying in detail to the pertinent items in your letter of November 6th.

Late last August, a few days after your father's death, we met at Laurel to discuss the future direction of Pimlico and Laurel. At this meeting, you informed us that you now controlled the voting stock of both Laurel Racing Assocation, Inc., and Pimlico Racing Association, Inc., and that it was your intent to assume your father's role as President and Chief Executive Officer of both tracks.

Since you lacked any broad-based experience in management of race tracks as complex as ours, or, for that matter, any other significant corporate entity, we were not confident or comfortable with your decision and so stated. Quite frankly, our feelings have not changed in this regard.

You will recall that at the time there was no stockholder agreement relative to Pimlico. In order to avoid public confrontation and the obvious potential of extensive litigation, we negotiated a stockholders agreement that addressed our concerns as well as yours. The important issues of the agreement were covered in an outline of proposed agreement as agreed to in September, 1989, which was formalized in the Stockholders Agreement as of October 1, 1989. Agreement on the terms outlined was critical to the public ammouncement of your intentions prior to Maryland Million Day.

Your father often alluded to the Corporate family as his "tribe", and, when interviewing a new key employee, would say that, "you either like the tribe or you don't". After six months of day-to-day operations under your direction, we concluded, for a variety of reasons, that we no longer wanted to be associated with your tribe. As concerned owners and as responsible executives, we made sure that you went through your first Preakness with flying colors and, as a matter of fact, enjoyed a record-setting Pimlico Spring Meet.

In June, we met with both you, Dick Watkins and our respective counsel to discuss the closing of important matters under our Stockholders Agreement. Your suggestion that "we agreed it would be unwise for Maryland Jockey Club to make payments" to you, is simply not true. Actually, Bob urged you to take the payment because we would never agree to pay interest on the deferred payment. Tommy explained that your current compensation was equal to that of your father's and additional payments would not be in the best interest of the Corporation and Partnership.

The discussion of fiduciary duties reminds us that, although we have, on numerous occasions, stressed the importance by way of both written and verbal requests, the Mango contract has not been signed. As far back as June, we urged that this contract be completed without further delay. The importance of Mango to the continued successful operation of both tracks is obviously paramount and should be respected as such by management. We also want to remind you that our Stockholders Agreement provides for the Corporations entering into employment agreements with Jacobs, O'Dea and Mango as fulltime employees upon specific terms and conditions. The delay in consummating these employment agreements is totally unreasonable. Any changes to the terms or conditions of the employment agreements must meet with our approval and any proposed changes should be submitted to us for review and comments. As Chief Executive Officer, you must exercise your fiduciary obligations of trust and confidence to the Partnership without a desire to obtain a personal benefit or benefit for some person other than the Partnership or Corporations.

Your suggestion of a possible conflict of interest is totally unfounded, but did alert us to an additional possible conflict. The number of hats Marty and his firm are wearing may well produce conflicting influences and loyalties. It would seem to us that the possibility of litigation between the minority stockholders and the majority stockholders and the limited partners and the general partner could place Marty and his firm in an awkward position. We must explore this area further to permit a clean understanding of the propriety of a continued relationship between Ginsburg, Feldman and Bress and the tracks. Possibly replacing the Ginsburg firm would be the most prudent course.

For the record, we do not share your view that we have been kept fully informed as to those developments that are critical to the continued vitality of our race tracks. As a matter of fact, we have learned about several critical developments through newspaper reports, as well as other sources, and not through communications from your office.

You have received a copy of Guida's November 6th memo to the Manfuso's. Hopefully, you now have a more realistic understanding of our concern for a "confrontation or litigation" as Bob described in his memo of October 8th. Once again, we urge you to comply with the suggestions outlined in his memo. To continue to misread the obvious frustrations of the Guida Group has not and will not be in the best interest of Laurel Racing Association or the Partnership.

We have, on numerous occasions, stressed the importance of discussing with the Guida Group possible purchase of their interest. To our knowledge, to date, we have yet to show them the courtesy of discussing this issue. Your assumption regarding personal liability does not reflect our opinion and, unless you have information unknown to us, may be inaccurate and certainly not finite. Your opinion in this regard should not preclude pursuing a possible solution.

Obviously, the Guida Group considers your responses a "stalling tactic", most likely because of possible conflicts. We do not have a conflict, and the Guida Group correctly believes that as partners and directors, the Manfuso's are functioning in good faith and in the best interest of Laurel Racing Association and the Partnership.

We will continue to make every effort to avoid litigation and improve the relationship with the Guida Group. We are confident, under the circumstances, that this is the best way to "maximize the value of our business for everyone".

Sincerely,

John A. Manfuso, Jr.

Robert T. Manfuso

JAM/RTM/eta

By Federal Express

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20707

November 28, 1990

VIA TELECOPIER
Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Dear Tom and Bob:

This is to inform you that on Monday, Lou Guida returned my telephone call of last week. He expressed a desire to meet with me alone, and without lawyers or accountants, to discuss his status as a partner in Laurel. I told him that I would welcome such a meeting, and he indicated that he would telephone me in early December to arrange a mutually convenient date. I apologize for not informing you of this yesterday, but I was under the false impression that Tommy was out of town, and did not realize that both of you were at the track.

Sincerely,

Joseph A. De Francis

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

CONFIDENTIAL

PIMLICO RACING ASSOCIATION, INC.
THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC.
LAUREL RACING ASSOC., INC.

* * *

MINUTES OF JOINT MEETING
OF BOARD OF DIRECTORS
NOVEMBER 21, 1990

* * *

A joint meeting of the Board of Directors of Pimlico Racing Association, Inc., The Maryland Jockey Club of Baltimore City, Inc. and Laurel Racing Assoc., Inc. (the "Corporations") was held following due notice at Laurel Race Course on November 21, 1990. The following Directors were present: Joseph A. De Francis, John A. Manfuso, Jr., Robert T. Manfuso and Martin Jacobs. Joseph A. De Francis served as chairman of the meeting and Martin Jacobs served as secretary of the meeting. The meeting was called to order at 10:25 a.m.

1. Employment Agreement with James P. Mango. Mr. De Francis stated the first order of business is consideration of the proposed Employment Agreement with James P. Mango, copies of which were circulated among the Directors prior to the meeting. Mr. J. Manfuso stated that the document is acceptable to both him and Mr. R. Manfuso, with the exception that the paragraph on confidentiality should be clarified so as not to prevent communications between Mr. Mango and the Directors of the Corporation. Following discussion, it was the consensus of the meeting to insert the words "(except to the Board of

project and training center away from the racetracks and thereby reduce the number of horses stabled at Laurel and Pimlico. Mr. De Francis intends to have a comprehensive study made of the subject.

12. Food Service. Mr. De Francis stated that we will shortly have the first 10-months figures on Laurel and Pimlico from Harry M. Stevens. Brian Handleman had advised Mr. De Francis that we were doing much better at Pimlico and slightly worse at Laurel. Mr. De Francis stated that the door has been kept open for discussions with the food service firm handling Calder Race Course and also with Fine Host with whom we have had discussions previously.

13. Relationship with the Guida Group. Mr. De Francis noted he had received a copy of Mr. R. Manfuso's November 6 letter to Mr. Guida and requested a report on the status of the matters. Mr. De Francis asked what communications the Manfusos have had with the Guida Group. Mr. De Francis reported that Mr. Guida has not responded to the last letter Mr. De Francis sent him advising that they could commence their audit once they selected an accountant.

Mr. R. Manfuso stated he had not talked to Guida since that communication. Mr. J. Manfuso stated he does not feel obligated to report on any conversations he has with Guida. His desire is to avoid litigation with Guida. He does not

think the situation has been handled well and feels we should sit down with Guida and see if we can at least find out what can or cannot be done. If there is a way to buy Guida out, without taking on personal exposure, he is in favor of it.

Mr. De Francis stated that he disagrees that the Manfusos can have discussions with Guida regarding the Corporations' relations with Guida without disclosing them. He stated that he does not understand how the Manfusos as Directors could expect Mr. De Francis as President to form an effective strategy where they then have discussions with Guida about that strategy. Mr. J. Manfuso then asked to be told what he should not discuss with Guida. Mr. J. Manfuso stated he has no commitment or obligation to report his conversations to Mr. De Francis and if there is anything specific Mr. De Francis objects to his telling Guida, advise him what it is and why he objects. Mr. De Francis said that any discussions, deliberations, strategies or plans with respect to the Corporations' relationships with Guida are confidential. Mr. R. Manfuso said he feels we should figure how to buy Guida out rather than be argumentative in correspondence with him. He feels perhaps there is some way to buy Guida out that does not involve much cash. Mr. De Francis said that, given the cash position of Laurel, he does not see how we could commence discussions with Guida for a buy-out. Mr. J. Manfuso then said

that Pimlico has the money and we could borrow money from it in order to buy Guida out. Mr. J. Manfuso feels the fact that Mr. De Francis has not been willing to sit down and talk with Guida about a buy-out, which has been detrimental to our best interests.

Mr. J. Manfuso then said that Mr. De Francis should put in writing what discussions Mr. Manfuso has had with Guida that have been confidential so that he can have it reviewed by his counsel. Mr. Jacobs then asked whether Mr. J. Manfuso feels he can telephone Guida and tell him about all the discussions at this meeting of the Board of Directors. Mr. J. Manfuso stated he does not know what we have done today that would be detrimental to the best interests of Laurel if told by him to Guida. Mr. De Francis then stated if Mr. J. Manfuso wants a written memorandum as to his fiduciary responsibilities and duties, he would be happy to provide it to him. Mr. J. Manfuso stated he did not need such a memorandum and wants to know specifically what the Manfusos did that violated their fiduciary responsibility. Mr. De Francis then said that, since he does not know the specific disclosures made by the Manfusos, he cannot possibly say what disclosures were confidential. Mr. J. Manfuso then asked that that be put in writing so he can have his own lawyer advise him. Mr. J. Manfuso stated that

Guida is a partner and there are very few things that he does not feel he should not know.

Mr. R. Manfuso then said to Mr. De Francis perhaps he is ignoring his fiduciary responsibilities by not exploring the possibility of a buy-out to the "nth degree". Mr. De Francis stated he has no fiduciary responsibility to buy somebody out. Mr. J. Manfuso then described a conversation he had with Mr. Joseph Grano of the Guida Group after the Manfusos retirement as officers. Mr. J. Manfuso then said he believes the Guida Group just wants to be bought out.

Mr. De Francis pointed out that each time he has responded to a concern Guida has raised, he then puts that aside and raises a new concern; thus, concerns that have been addressed are ignored and the subject then changed. Mr. De Francis reviewed the various issues that had been raised by Guida, how they had been responded to, and then how those responses were then ignored by Guida and a new subject raised. Mr. R. Manfuso reiterated we had not gotten into any discussion as to how to deal with Guida on a buy-out. Mr. De Francis said that, given the status of the economy, it would be unwise for us to leverage our position and use our cash to the point where we could find ourselves unable to service debt in order to buy out Guida. In response to a question by Mr. R. Manfuso, Mr. Jacobs stated that Laurel has about $3.4 million in cash after paying

Pimlico and the purse account and Bred fund; we need about $3 million for operating capital so there are no extra funds. Maryland Jockey Club has about $5 million, net of special payments ultimately due to the De Francis interests and Mr. Jacobs, including about $1.5 million owed to it by Laurel. Mr. J. Manfuso then suggested that Mr. De Francis sit down with Guida and explain his fear about a cash buy-out with the recession and our cash position. Mr. J. Manfuso then stated that once Mr. De Francis has gone to the "nth degree" in trying to satisfy Guida in buying him out and does not succeed, then he agrees there is no choice but to fight and Mr. Manfuso will support him totally. Mr. De Francis stated he would telephone Guida that afternoon to arrange a meeting between them to discuss matters, along the lines outlined today on the subject of a potential buy-out, with disclosure about financial ability and the impact of the recession. All Directors agreed on this course of action

14. Internal Revenue Service Audits. Mr. R. Manfuso asked for a report on the status of the IRS audits. Mr. Jacobs stated that there are a large number of significant issues raised by the IRS on Laurel, Bowie and Pimlico. Mr. Jacobs stated that he fears major disallowances by the IRS. Mr. Jacobs believes the audits are likely to continue for an extended period. Mr. Jacobs stated he is concerned about the

ALL-STATE LEGAL SUPPLY CO.. 1-800-222-0510 ED 11-1C

January 3, 1991

MEMORANDUM OF MEETING

A meeting among Joseph A. De Francis, John A. Manfuso, Jr., Robert T. Manfuso and Martin Jacobs was held at Laurel Race Course on January 3, 1991 at 10:00 a.m. to discuss the Guida Group.

Joe De Francis reported on the meeting that he and Alec Courtelis recently had with Lou Guida and Joe Grano. Joe summarized the following points that were made by Guida and Grano during that meeting:

1. At some point, the Guida Group wants out of Laurel. They would not want us to be able to sell our interests in the General Partner with them continuing to be locked in. They would like to be able to get out in about two years.

2. They want a 5% per annum return on their money. Presumably, this means 5% on their original cash investment of approximately $3.7 million.

3. They are concerned about phantom income and want cash distributions from Laurel to cover any phantom income.

4. They would like to reach agreement now on an allocation of proceeds between Laurel and Pimlico in the event both tracks are sold. They feel the gross proceeds should be split 50/50 between the two tracks.

5. They would, if possible, like agreement now on a price at which we would buy them out at some later point in time.

After discussion, the consensus of the meeting was that the points below should be presented to Guida at a personal meeting. Joe asked if Tommy would like to join him at such meeting. Tommy was amenable so long as that is acceptable to Guida. The following are the points to be presented:

1. We will not sell the General Partner, or our interests in it, without giving the Guida Group the opportunity to sell their Partnership interest as well. Likewise, the Guida Group will not sell without giving us the opportunity to

purchase their interest or requiring the buyer to buy us out as well.

2. Laurel will pay the Guida Group a 5% per annum return on the money originally invested (approximately $3.7 million) so long as our lender approves it from year to year. The payment would be treated as a credit against the Guida Group's Promotional Fee.

3. Laurel will distribute cash to the Guida Group to the extent needed by them to pay federal income tax on any phantom income, subject to any necessary lender consent from year to year.

4. The Guida Group would agree not to challenge any of the actions taken by us to date, including allocations of expenses and racing dates between Laurel and Pimlico. This agreement would also apply to the future as well, so that there are no further renegotiations, challenges, etc.

M.J.
Martin Jacobs

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS
5401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

VIA TELECOPIER

MEMORANDUM

TO: JOSEPH A. DE FRANCIS

FROM: TOM AND BOB MANFUSO

DATE: JANUARY 14, 1991

RE: YOUR FAX OF 1/14/91

Paragraphs 1 and 2 of the Agreement between Joseph A. Grano and you does not meet with our approval.

We will only agree to the 50/50 allocation if the Guida Group is immediately given the right to sell on our behalf within the next six-month period of time the assets of Pimlico and Laurel with liquidation distribution to the owners in accordance with equity ownership immediately after the sale is closed.

Our legal counsel advises us against authorizing the use of cash flow from Pimlico to subsidize payments to the Guida Group. Therefore, we do not agree with this commitment.

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-1C

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

February 15, 1991

Mr. Joseph A. DeFrancis
Laurel Racing Association, Inc.
P. O. Box 130
Laurel, MD 20707-0130

Dear Joe:

After our Board of Directors Meeting Wednesday afternoon, I visited with a Representative of the Legislature who advised me that there was a bill submitted for Twilight Racing. During our meeting you discussed Legislative Action and were anxious for Bob's opinion on the various bills that were pending. You never mentioned the Twilight Racing Bill which should have been discussed. Please note that your letter of November 6 states, "I believe I have done everything that could have been expected and more to keep you fully informed and involved."

In view of our ownership, positions as Co-Chairmen of the Boards and the extent of our hands on experience, it is not only essential, but good business judgment to discuss items such as this. Since you have written that we are kept informed, please advise why we were not informed on this bill.

I might also take this opportunity to review other important matters that were discussed at the Directors' Meeting.

Bob and I oppose the purchase of the Guida interest with Laurel or Pimlico funds. We consider this a "major matter" as outlined in our stockholders agreement dated October 1, 1989. In your November 6 letters you wrote, "regarding the proposed acquisition by Laurel Racing Association, Inc., of the Guida Group's interest in Laurel not-withstanding Bob and Tommy Manfuso's suggestion, that such purchase might be a solution, it does not appear to be in Laurel's best interest to make such a purchase", and, "as for Laurel purchasing the Guida Group's interest as we discussed on October 9, and as you well know unless the shareholders are willing to incur personal liability for indebtedness, Laurel Racing Association, Inc., would be unable to purchase that interest." Bob and I now agree with you. We oppose the purchase of the Guida interest with Laurel or Pimlico funds.

While discussing the Guida Group, I should also remind you that his offer to buy your interest for Eight Million Dollars ($8,000,000) is subject to the piggy-back clause, as well as the first right of refusal clause in the Stockholders agreement of October 1, 1989.

If the tracks can be sold for Eighty Million Dollars ($80,000,000), Bob and I support the effort. Bob and I would urge you to pursue Guida's offer to sell the tracks for at least Eighty Million Dollars ($80,000,000). We agree with Guida that the value of our asset today will not appreciate, but rather depreciate in the next few years.

In the spring, or at least the first six months of 1989, we paid sizeable funds to Laventhol & Horwath to provide "Appraisals of Market Value of Owner's Interest in Laurel Race Course, Pimlico Race Course and Bowie Training Facility." I don't have an immediate recollection, or copy of these appraisals. Therefore, please forward a copy of the appraisals generated by the expenditure of these funds as soon as possible, but in no case later than March 1, 1991.

As you know another matter of concern has been the abusive use of Corporate American Express cards by certain of the Laurel Officers. Let me remind you that you gave me assurances that all charges would be appropriately documented and those that were not appropriate charges to the race tracks would be personally assumed. In addition you assured me that the Corporate American Express cards would be cancelled.

After reading what I consider the "Sandra Cuneo response to Bob's memo", I am more concerned about Pimlico's advancement of funds to the Preakness Celebration. Please remember that you assured our Boards that the Maryland Jockey Club would not be exposed to more than $100,000 for Preakness Celebration.

Prior to closing, please refer to the last paragraph of the above mentioned memo. If I had adhered to this request my ability to control improper expenditures would have been significantly restricted. For example, the improper payment to the Senatorial Trust (or whatever they call it now), would never have been exposed. When you save $25,000 it is obviously not "needless wasting our staff's valuable time and energy". Obviously our responsibilities as Co-Chairmen of the Boards and our intersts as owners include the prudent and proper expenditure of race track funds. In addition there have been several other incidents that confirm the need for my review of corporate expenditures. Staff time to supply me with corporate information is minimal and your suggestion that it would interfere with their day to day duties is ludicrous.

Your expeditious response to the comments I have made would be appreciated.

Sincerely yours,

JOHN A. MANFUSO, JR.

cc:Robert T. Manfuso
Martin Jacobs
Karin Van Dyke

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-2C

LOUIS P. GUIDA

February 19, 1991

Federal Express - Airbill #6721322812

PERSONAL AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

Mr. Joseph DeFrancis
Laurel Race Course
Racetrack Road & Route 198
Laurel, MD 20725

RE: LAUREL - AUDIT BY THE LIMITED PARTNER

Dear Joe:

This letter is being written to you on behalf of the Laurel Guida Group, the sole limited partner of the Laurel Racing Association Limited Partnership. The Laurel Guida Group has designated and retained Arthur Andersen and Company, partner in charge Mr. Edmund Autuori, Hartford, Connecticut Office, to represent the interests of the Laurel Guida Group in connection with an audit of the books and records of the limited partnership. We request that the audit team be allowed to commence its audit no later than March 18, 1991. We request that there be made available to the audit team the full and complete books of the partnership showing all receipts and expenditures, assets and liabilities, profits and losses and all other records which have been maintained by the partnership for recording the partnership's business and affairs. We also request that there be made available such other records as the audit team may designate. Kindly advise as to the first available date when the audit may begin. I would appreciate hearing from you within ten days from the date of this letter.

Very truly yours,

Louis P. Guida

LPG:bes

100 Franklin Corner Road • Lawrenceville, New Jersey 08648 • (609) 896-7700

LOUIS P. GUIDA

February 19, 1991

Federal Express - Airbill #6721322812

PERSONAL AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

Mr. Joseph DeFrancis
Laurel Race Course
Racetrack Road & Route 198
Laurel, MD 20725

Dear Joe:

As you know, in my letter dated February 8, 1991, I made an unconditional offer to purchase the stock of Laurel Racing Association, Inc., as described in that letter of February 8, 1991. You advised me on several occasions that my offer was unacceptable and further indicated that you felt the value of your stock as well as both racetracks (Laurel and Pimlico) would be substantially higher than today's price if and when OTB was approved for the state of Maryland.

On Monday, February 18, 1991, at approximately 1:30 p.m., you called my office in Vero Beach, Florida and formally rejected my purchase offer as described in my letter of February 8, 1991. I have, therefore, decided to increase my offer to purchase the stock described in my letter of February 8, 1991, to $9,500,000 payable on the basis of 20% down and 20% per year until paid at the prime rate of interest readjusted each anniversary date. This offer is also unconditional and is only subject to certain due diligence prior to the closing to confirm that there has been no material financial change in the status of the corporation of Laurel Racetrack from the period of December 20, 1990, to the date of closing. Consequently, it should be clearly understood that everything contained in this letter is more fully described to you in my letter of February 8, 1991, except this offer is $1,500,000 higher and is payable over a period of time rather than payment in full as described in my letter of February 8, 1991. You are to advise me on or before February 27, 1991, as to whether this new offer is now acceptable, and if it is, closing will be scheduled for April 15, 1991.

Sincerely,

Louis P. Guida

2/19/91
Date

ACCEPTED BY:

Name

Date

LPG:bes

MANFUSO BROTHERS

7401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

February 22, 1991

MEMORANDUM

TO: MARTY JACOBS

FROM: BOB MANFUSO

I have attempted unsuccessfully to reach you by telephone and must now leave the office.

As you know, the February 20, 1991 letter that you faxed to me from Joe to Guida is incomplete. Guida read the letter to me and there were references that were important to me and Tom, which we wish to review. Tom and I insist that we see the entire letter without censorship. Since it is on Maryland Jockey Club stationery, if there are any personal comments, it makes no difference. We must see the entire letter so that we understand where Guida is coming from. Please let me have the complete letter by return fax.

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-2C

LOUIS P. GUIDA

February 19, 1991

Federal Express - Airbill #6721322812

PERSONAL AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

Mr. Joseph DeFrancis
Laurel Race Course
Racetrack Road & Route 198
Laurel, MD 20725

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Sincerely,

Louis P. Guida

2/19/91
Date

ACCEPTED BY: _____
Name

_____
Date

LPG:bes

100 Franklin Corner Road • Lawrenceville, New Jersey 08648 • (609) 896-7700

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-2C

MANFUSO BROTHERS

7401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

February 22, 1991

MEMORANDUM

TO: MARTY JACOBS

FROM: BOB MANFUSO

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ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-2C

LPG
ENTERPRISES

February 25, 1991

PERSONAL AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

VIA FEDERAL EXPRESS - #9888046022
Mr. Joseph A. De Francis
Laurel Race Course
P.O. Box 130
Laurel, Maryland 20725

Dear Joe:

I am in receipt of your Federal Express letter dated February 20, 1991. Let me answer each of the points addressed in your letter:

1) I reject your accusation and particularly your choice of the word "tactics". Please point with specificitiey to the particular article or articles to which you are referring. You have been in the limelight and publicity for many, many months and you know that many things printed or quoted in the press are inaccurate. In any event, forward to me the articles to which you are referring and if there is anything incorrect in those articles, then we will certainly rectify them. Your letter is too broad and self-serving.

2) You are a very polished and sophisticated attorney. As you indicated in our meeting in Washington, "You know your way around the courtroom". I have no other choice but to draw the conclusion from your letter that it represents a paper trail for future litigation. Let me address that subject right now:

I, and everyone in my group, have always handled themselves in a forthright fashion and in all of my discussions with you, I was straightforward and candid. You, on the other hand, as well as some of your advisors, would say one thing one day and change it to something else the next day. Therefore, let me make my position very clear that if any additional self-serving letters are forthcoming in an attempt to set up a paper trail, we will respond to those letters accordingly. It is my belief that your letter of February 20, 1991 was written for the purpose of intimidating me, and if that was the reason behind that letter, you and your advisors have vastly miscalculated my resolve! I am suggesting that we continue the lines of communication between us in a forthright and businesslike manner and perhaps we can resolve the differences that exist. On the other hand, if you feel that the cost of litigation with all the depositions, paperwork, research and a host of witnesses that go along with any litigation are in your best interest, then I suggest you move in that direction without further delay.

3) As far as your alleged allegations regarding legislative council and a prominent legislator, I would certainly appreciate the names of those individuals because I feel I have a right as a substantial investor in Laurel to discuss with them any actions they think I have taken that are injurious to racing in Maryland. Neither I, nor anyone connected with my group, have done anything in any way which is inappropriate or unlawful. This is still America and I have

the right as any American does to pursue capitalistic opportunities which include the buying and/or selling of any business or asset. I categorically reject the notion that my potential ownership of a racetrack in Maryland is harmful.

Last, but not least, your letter of February 20, 1991 fails to respond to my request for an audit of the books which, we all know, we have every right to this audit. You have indicated in the past that if I gave you a framework of dates, you would quickly respond with an acceptable date. I have given you a framework of dates and hope that you will respond in a prompt fashion and cooperate with us in expediting this audit. I might also add that the ongoing audit that is presently taking place at Laurel Racetrack, by the Internal Revenue Service relevant to the possibility of some tax disallowances, are going to fall upon the responsibility of management because our review of the facts seem to indicate that management took a very aggressive position; one that was not prudent to believe would be accepted by the taxing authorities. I am stating my position now so that you will know we are not going to accept phantom income, recapture or penalties for actions which we believe were inappropriately taken by management. If those burdens were placed upon us, then we will have no other choice but take whatever steps, including resorting to legal action, if that becomes necessary to protect our position.

In closing, once again, let me repeat that I and those I represent are seeking nothing more than fair treatment and that decision now rests with you. We intend to aggressively protect our rights and I assure you our commitment in that regard will not waiver nor will we be intimidated. We are hopeful that our differences can be resolved amicably and that the lines of communication between you and I will be kept open. However, if you choose to have an attorney, including but not limited to Martin Jacobs to answer all further correspondence and communication, then that is certainly your prerogative. However, if that is the path you choose, I am sure that it will ultimately lead to the courthouse steps.

Very truly yours,

Louis P. Guida

LPG:gd

TEL:1-301-986-4576

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

FACSIMILE COVER LETTER

DATE 2-26-91

TO: Joe DeFrancis

FAX NUMBER: 1-301-792-4877

FROM: Bob Manfuso

REFERENCE:

TOTAL NUMBER OF PAGES INCLUDING COVER LETTER 2

MANFUSO FAX NUMBER: 301/986-4576

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-2C

MANFUSO BROTHERS

8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

February 26, 1990

Mr. Joe DeFrancis
Laurel Race Course
Laurel, Maryland

Dear Joe:

I tried to reach you this morning, but unfortunately you were out of your office.

The purpose of my call was to ask you to send me an uncensored copy of your February 20, letter to Lou Guida. Originally, I thought it appropriate to request the letter from Marty and did so. Unfortunately, it appears that I have put him in the middle and I don't want to do this.

As I have written to Marty there are portions of the letter that are important to Tom and I and which we wish to review. Please let us not have a repeat of the tape situation.

Since I will be out of town, fax or mail a copy of the letter to me at my Chevy Chase office.

Sincerely,

ROBERT T. MANFUSO

VIA TELECOPIER

ALL-STATE LEGAL SUPPLY CO.. 1-800-222-0510 ED 11-2C

LPG
ENTERPRISES

March 13, 1991

PERSONAL AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

VIA FEDERAL EXPRESS
Mr. Joseph A. De Francis
Laurel Race Course
Racetrack Road & Route 198
Laurel, Maryland 20725

Dear Joe:

This letter is written in response to your letter of March 1, 1991. I apologize for the delay in responding to your correspondence. However, since the receipt of your correspondence, my Group has been in the process of various background communication and analysis with representatives of Arthur Andersen & Co. to determine the most appropriate way to proceed in order to reduce the time and expense for all parties relevant to this matter. Based primarily upon advice from Arthur Andersen, it appears that the most expeditious way to proceed would be to have representatives of Arthur Andersen meet with representatives of Ernst & Young and also meet with representatives of Watkins, Meegan, Drury & Company in order to review work papers and other related documents pertaining to audits and compilation of financial information for Southern Maryland Agricultural Association, Maryland Thoroughbred Purse Account, Inc., Race Track Payroll Account, Inc., and Laurel Racing Association Limited Partnership. Although I do not agree with your conclusion that the agreement dated April 30, 1987 bars a review and inspection of information and documents existing prior thereto, we are prepared to begin our analysis with all information and documents created post May 1, 1987.

With respect to the actual procedures and timing of the site inspection, I believe that those procedures are better left to the representatives of Arthur Andersen handling this matter to be determined on or before the actual on site audit begins.

Kindly advise me as soon as possible as to the names of the appropriate representatives of the Ernst & Young firm and Watkins firm with whom representatives of Arthur Andersen can communicate.

Very truly yours,

Louis P. Guida

Louis P. Guida

LPG:gd

100 Franklin Corner Road • Lawrenceville, NJ 08648 • 609/896-7700, FAX 609/896-9583

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-2C

LAUREL

April 11, 1991

VIA TELECOPIER AND FEDERAL EXPRESS

Mr. Louis P. Guida
LPG Enterprises
100 Franklin Corner Road
Lawrenceville, NJ 08648

Dear Lou:

When we spoke the week before last, you expressed the concerns of your Group in three principal areas: cash distributions, phantom income, and inability to liquidate your Group's partnership interest. As promised then, I am enclosing the outline of a proposal to deal with those concerns. This proposal is conditioned on the attorneys' ability to develop an ironclad agreement to guarantee lasting peace.

Please let me know if the enclosed proposal is acceptable. As I told you on the phone, with the Preakness fast approaching, I do not intend to engage in protracted negotiations. I have given this proposal very serious thought and attention, and firmly believe that it fairly addresses all outstanding issues and can allow us to resolve our differences in an amicable manner. Obviously, the proposal is made without prejudice to our legal position.

I look forward to hearing from you.

Sincerely,

Joseph A. De Francis

Enclosure

cc: Mr. Joseph J. Grano, Jr.
(with enclosures)

bcc: Martin Jacobs
Alec Courtelis
McGee Grigsby
Dick Watkins

OUTLINE OF PROPOSED TERMS

A. Cash Distributions. The Partnership will make the following cash distributions to the Limited Partner, each of which shall be a credit against the Limited Partner's Promotional Fee:

1. An annual payment equal to 5% of the Limited Partner's original cash investment in the Partnership, i.e., $183,700.

2. An amount equal to the applicable federal income tax, determined at today's highest incremental individual rate, payable by the members of the Limited Partner on the Limited Partner's share of taxable income reported on the Partnership's federal information return in any taxable year, commencing with 1991, in excess of the Limited Partner's negative capital account at the beginning of that year. For this purpose, "negative capital account" means the capital account balance at the beginning of the year as shown on the Limited Partner's Schedule K-1, exclusive of any amount included

therein that is attributable to the Grandstand deduction adjustment referred to in subparagraph 3 below.

3. An amount equal to the applicable federal income tax, determined at the highest incremental individual rate applicable for the year when the deduction was taken, payable by the members of the Limited Partner on the Limited Partner's share of any deductions previously taken resulting from the write-off of the Grandstand at Bowie Race Course that are disallowed, including any interest and penalties that are payable.

All cash distributions under this Paragraph A are subject to any necessary bank consents and the viability of ongoing operations. The rights stated in this Paragraph A shall cease and have no further effect as of the effective date of any sale of the Limited Partnership Interest and do not apply to any transaction under Paragraph C below.

B. Releases and Covenants Not to Sue. The Limited Partner (and its owners and affiliates), and the General Partner (and its owners and affiliates, including Pimlico) and the Partnership, shall enter into (1) mutual releases of any

and all actions, events, occurrences, etc. from any causes whatsoever, and (2) covenants not to sue, seek to renegotiate or to take any other action against the others. The releases and covenants shall be as broad and encompassing as possible and shall be prospective as well as retrospective, except for breach of the documents encompassing the terms of this proposal. In the event of breach by a party of the releases or covenants, in addition to its other rights the other party may, at its option, declare all or any part of this Agreement of no further force or effect and recover liquidated damages and attorneys' fees.

C. Purchase of Limited Partner's Interest. At any time after June 1, 1995, the Limited Partner may "put" its entire Partnership Interest to the Partnership on the following basis:

1. The purchase price shall be the market value of the entire interest as determined by appraisal under the following procedure:

   a. The Partnership shall have an appraisal performed by a recognized appraiser of its choosing having substantial experience in appraising racetracks.

b. If the Limited Partner is not satisfied with the fairness of the price under subparagraph a, it shall have an appraisal performed by a recognized appraiser of its choosing having substantial experience in appraising racetracks.

c. If the Partnership is not satisfied with the fairness of the price under subparagraph b, the parties shall mutually select a "big six" national accounting firm to determine market value, taking into account the appraisals under subparagraphs a and b and such other data as it deems appropriate.

2. The purchase price shall be payable as follows:

a. 20% in cash within 60 days after the purchase price has been finally determined.

b. The balance in five equal annual installments together with interest on the unpaid balance at 8% per annum.

3. If the Limited Partner does not "put" its Partnership Interest under this Paragraph C on or before July 1, 1995, then at any time thereafter the Partnership may "call" the Partnership Interest on the same terms, conditions and procedures as are specified above.

4. The Partnership's obligation to purchase the Partnership Interest of the Limited Partner may be assigned to the General Partner or any of its stockholders or affiliates.

D. Sale to Third-Party. If an offer from an unrelated third-party for the purchase of substantially all the assets of the Partnership, or of all the Partnership Interests (Limited and General), is hereafter received that the General Partner determines to be acceptable, then the Limited Partner (and, if necessary, the Partners therein) agrees to approve and consent to the sale to such party.

E. Documentation. The above terms are subject to final documentation acceptable to all parties. The terms of this proposal and the final documentation are strictly confidential and shall not be disclosed by the parties or their representatives.

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-2C

LOUIS P. GUIDA

May 23, 1991

PERSONAL AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

VIA FEDERAL EXPRESS
Mr. Joseph DeFrancis
Laurel Race Course
Racetrack Road & Route 198
Laurel, Maryland 20725

RE: Laurel

Dear Mr. DeFrancis:

I have withheld communicating with you further relevant to the prior dialogue in view of my understanding of your involvement in the Preakness as you expressed to me on various occasions.

I want you to be aware that the Laurel-Guida Group is presently in the process of retaining Maryland counsel to protect our investment. Once counsel has been retained, the communications will proceed through our legal and accounting advisors. It is still our intention to audit all books and records relevant to our investment.

Previous settlement dialogues have been unsatisfactory. Each time we have appeared to make progress, we have been confronted with either a delay or a change in position. The course of conduct has been unsatisfactory. I trust you understand the need of my group to protect its interests.

Sincerely,

Louis P. Guida

LPG:gd

100 Franklin Corner Road • Lawrenceville, New Jersey 08648 • (609) 896-7700

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-2C

THE MARYLAND JOCKEY CLUB

P.O. BOX 130
LAUREL, MARYLAND 20725

March 12, 1992

VIA FACSIMILE

Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Manfuso Brothers Investments
Suite 1010
8401 Connecticut Avenue
Chevy Chase, MD 20815

Dear Tommy and Bob:

I am writing to reply to your separate letters to Marty Jacobs and me, both dated March 9, 1992.

Let me first state how disappointed and angry I am at the tone of these two letters. Despite our differences of opinion in regard to the running of Laurel and Pimlico, and our obvious differences in management style and communication technique, I always hoped that deep down you maintained a small reservoir of goodwill and good faith that you would call on in fulfilling your fiduciary duties as directors. It is now clear to me from your latest maneuvers that any interest you should have in the continued success of our operations has been pushed aside in your headlong rush to fulfill your own personal agenda.

With regard to your letter to me concerning Senate Bill 392, you complain that I have not advised you as shareholders and directors of Laurel Racing Association and the Maryland Jockey Club of my "strategy on off-track betting" or my "position on [Senate Bill 392]." Nothing could be further from the truth. My strategy as to off-track betting and my position on this Bill are a matter of public record and knowledge. As you both know, the Maryland Horse Coalition, consisting of representatives of every major group in the thoroughbred and standardbred industries, has been working on this mater since last summer. Both of you are intimately involved in the racing industry and are as knowledgeable about my position on off-track betting and this bill as anyone could possibly be. Any confusion, misunderstanding or question that you might have had concerning my position on any specific issue could easily have been communicated to me long ago.

I am sorry that you are "shocked" that the harness industry may receive more favorable treatment under the proposed legislation than the thoroughbred industry. Please rest assured that this is not of my doing. I did not propose the amendment which resulted in this potentially more favorable treatment and have always worked to the best of my ability to secure the most favorable treatment possible for the thoroughbred industry. I simply don't control the Legislature.

I find your allegation, couched in terms of a concern, that I may have committed to an agreement with some unidentified other interests, which in your opinion would not benefit Laurel or Pimlico, totally without merit, outrageous and slanderous. I have always worked with the best interests of both Laurel and Pimlico as my only goal and have made no commitments, either formal or informal, which in the opinion of management adversely impact either track in any fashion. Further, it is obvious to me from your actions and correspondence that because you have a greater financial interest in Pimlico than in Laurel that you are putting your personal financial interest ahead of your fiduciary duty to act in the interest of both Laurel and Pimlico.

It is good that you "recognize that due to the State's current fiscal crisis, the Racing Industry will have to provide a mechanism for additional funding to the State if OTB Legislation is to pass." If, as your letter implies, you have suggestions for alternatives to fund additional revenue for the State, I urge you not to keep them a secret and to provide me with details at the earliest possible date. As always, I stand ready to meet with you at any time to discuss any positive suggestions you may have.

To conclude my comments in regard to your letter to me, let me just say that I find its tone, content and purpose absolutely offensive. Off-track betting is important to the continued financial health and viability of both Laurel and Pimlico. While the present legislation may not be perfect, it has the widespread support of the racing industry and other interested groups, although we would all like to see the tax amendment modified. In the future, please limit your correspondence with me to legitimate suggestions concerning subjects over which I have control.

Your letter to Marty Jacobs of March 9th also contains outrageous factual distortions, absolute misstatements of fact, and ad hominem attacks that are totally inappropriate for persons having a fiduciary duty to the corporations. The 1990 annual reports, copies of which were provided to the Maryland Racing

Commission, stockholders and lending institutions, are not "materially inaccurate" and do "provide full disclosure." They were appropriately prepared, were audited by Ernst & Young and are consistent with generally accepted accounting principles. We have reviewed your outrageous allegations and positions with Ernst & Young, and they and we stand by the 1990 statements.

Both of you served as officers, directors and employees of Laurel and Pimlico from the time of their acquisition until your retirement in mid-1990. You were both intimately involved in major decision making and had access at all times to all books, records and other information. You both had check signing authority until your resignation and Tommy, in fact, signed virtually all expense checks. You well know the various business practices and procedures that had been developed and have been carried forward. Since your retirement, Tommy has requested and been provided copies of check registers on a regular basis. Several months ago you also hired an accountant to review financial records for you. He was given complete access to records and personnel.

If your positions or allegations are based on a report from the accountant you hired, I would appreciate being provided a complete copy of his report or reports, the engagement letter spelling out his responsibilities and all correspondence between you or your attorney(s) and him.

The principal conclusion we draw from your letter is that you wish to do harm to the Laurel Guida Group which is the limited partner in Laurel. It would seem that you continue to place your greater personal financial interest in Pimlico ahead of your fiduciary responsibility as directors of both Pimlico and Laurel.

Turning to the numbered paragraphs of your letter:

1 and 2. As you know, intertrack wagering began in 1988. Primarily because the Laurel Guida Group has an interest in Laurel but not in Pimlico, Frank De Francis, you and Marty at that time decided to develop fair and reasonable methods for decisions related to intertrack wagering, transfers of racing days, facilities use, allocations of expenses and related matters. There was a considerable amount of learning that went into these subjects during the years after intertrack wagering began because of the overriding desire to be fair to all concerned. You were involved with Frank, Dick Watkins, Frank Trigeiro and Marty in discussions from time to time on these subjects. Over the course of the past several months, the accountant you hired, Mark Reynolds, spent many

hours with Ernst & Young, Dick Watkins and Frank Trigeiro reviewing in detail various calculations relating to prior years. While the subject is complicated, I understood that your accountant felt the calculations were fairly made. You apparently have now decided to adopt a different approach.

Management cannot be unfair in its approach to racing dates and intertrack wagering and claim it had to do so because "racing dates were assigned by the Maryland Racing Commission," as your letter suggests. The tracks were awarded in each year those dates that were applied for by Pimlico and Laurel. The Commission did not magically decide what those dates would be. In reviewing this subject in August, 1990, it became obvious that Laurel had not been treated fairly for 1990. During the period February 1 through 16, 1990, days that had been run traditionally at Laurel, by Laurel, were in fact run at Laurel but were treated as Pimlico days. Relying on the 1984 Racing Schedule Agreement, Pimlico initially paid Laurel for those days (which were traditionally Laurel's and were run at Laurel Race Course) in an amount equal to one-third of the Revenue from Racing plus the facility use fee. Upon further analysis, however, this was determined to be unfair and an adjustment was made to give Laurel an additional $114,448, equal to the remaining balance of the net income from those days after crediting Pimlico for the intertrack fee of $149,500. This adjustment was fully appropriate.

The treatment of the adjustment relating to 1989, made in 1990, was also appropriate. As you well know, we were all concerned that treatments developed in 1988 when intertrack wagering began would appear fair in retrospect. Management decided in 1990 that, given all the factors involved, it would have been unfair to Laurel to record an adjustment to 1988. Thus, the matter was not "forgotten" but was properly treated.

3. Our accounting staff did not agree with three items included in the "audit difference." Any adjustments resulting from these items will be reflected in the 1991 financials, if appropriate.

4. The allocation of expenses was fairly and equitably made. A considerable part of the expense is general overhead that each track would have in any event in order to conduct its own business. In addition, and as you well know, considerable extra time is devoted to the Preakness by marketing and other personnel while Laurel is running. Moreover, since Laurel is effectively the

headquarters for both tracks, a share of many of its expenses must properly be allocated to Pimlico.

5. I am advised there were no loans to officers as of December 31, 1990. American Express charges are recorded as a receivable from the officer or employee involved until an expense report is submitted, at which time the business portion is charged to the appropriate entity and any personal portion is to be paid. Also included at that date as a receivable was a contribution questioned by Tommy which I determined to pay personally rather than argue about it. No disclosure of the details of these items was required in the financials.

6. We assume you are referring to administrative salaries. These items have been treated consistently and appropriately since inception with your full knowledge and concurrence.

7. Your statement is incorrect. Each entity is allocated and charged its appropriate share of legal fees. Fees of Fedder & Garten and Latham & Watkins were all charged to Pimlico, as had been agreed between you and Frank, since it was not appropriate to have the Laurel Guida Group bear any portion of the fees for the stockholders agreement. You also misconstrued McGee Grigsby's letter. My understanding is that, for timekeeping purposes, Latham & Watkins records all time devoted to matters benefiting both tracks to their internal account entitled "Maryland Jockey Club." Bills rendered under this name are then paid half by each track. Bills rendered separately to Laurel or Pimlico are for work related only to that specific entity. I believe Frank Trigeiro explained this to your accountant.

8. The subject of severance pay has been discussed numerous times, both at meetings with you and also with your accountant. As has been explained before, we initially felt that it would be appropriate to charge the severance payments (which essentially are payments for your not working) equally to Laurel and Pimlico. Upon further consideration, we determined that to do so could have violated the fiduciary responsibility owned by Laurel Racing Assoc., Inc., as general partner of Laurel, to Laurel Guida Group, as limited partner. The initial letters to Ernst & Young and to Lou Guida set forth the initial view. Fortunately, detailed examination resulted in proper treatment. We find it of interest in this regard that you have never questioned the fact that the $2.5 million termination payment to you was made entirely by Pimlico. It seems that you share our view but, pursuant again to

your own personal agenda, and without due consideration to what is fair to Laurel, espouse another position on the severance pay.

9. Pimlico is located in the City of Baltimore and is also the home of the Preakness. As you know, it is much more dependent on the goodwill and support of the business community and public entities than is Laurel. Since it has these greater needs, there are more charities that it has supported. Contributions have been fairly allocated.

10. You have both been intimately involved in the business and affairs of Laurel and Pimlico since our acquisitions until your voluntary retirement in 1990. I am confident you know that various transactions are recorded a certain way during the year and, after detailed analysis, adjustments are made periodically as well as following the year end. Your opinion that there was a default and that adjustments were hidden is both unfounded and erroneous.

In conclusion, I want to remind each of you that you have legal and ethical obligations as stockholders and directors to act in the best interest of both corporations. The timing of your two letters, and the unprofessional and outrageous allegations contained therein, lead me to the conclusion that you are continuing your concerted campaign of harassment, intimidation and bullying with the goal being to force my resignation or to build a paper trail for some future litigation. I have told you in the past, and tell you again, that these tactics will not work and will not be tolerated. I intend to continue to fulfill my obligati[illegible] as an officer and director to the best of my ability. I f[illegible] assure you that your continued failure to meet your obligations to Laurel and Pimlico will not be countenanced. I once again urge you to put aside your petty, bullying tactics and to come forward with constructive, useful suggestions in regard to the management of the two tracks, if you have any.

Very truly yours,

Joseph A. De Francis
President and Chief Executive Officer

cc: Mr. Martin Jacobs
Richard W. Watkins, CPA
Cecil E. Flamer, CPA

THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20725

PLEASE DELIVER AS SOON AS POSSIBLE

DATE: 3/12/92

TO: Jim Gray

COMPANY: Goodell

FAX NO.: 783 4040

FROM: Martin Jacobs
Executive Vice President

FAX NO.: (410) 792-4877

DOCUMENTS:

COMMENTS:

NUMBER OF PAGES TRANSMITTED, INCLUDING COVER SHEET: 7

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OF COUNSEL
FREDERICK STEINMANN

ANDREW JAY GRAHAM *†
JAMES M. KRAMON *†
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JAMES P. ULWICK†‡
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SETH M. ROTENBERG

* ALSO ADMITTED IN NY
† ALSO ADMITTED IN DC
‡ ALSO ADMITTED IN NJ
○ ALSO ADMITTED IN CA

March 12, 1992

VIA FACSIMILE

McGee Grigsby, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505

Re: Pimlico and Laurel Racetracks

Dear Mr. Grigsby:

As I believe you are aware, my clients, Messrs. Manfuso, wrote to Mr. Martin Jacobs on March 9, 1992 and advised Mr. Jacobs of their belief that the 1990 Annual Reports of Pimlico and Laurel, prepared by Ernst & Young, contained material inaccuracies and did not provide full disclosure. Messrs. Manfuso reviewed ten such items in detail in their letter to Mr. Jacobs. For your immediate reference, I enclose a copy of that letter.

Thereafter, at their specific request, Messrs. Manfuso received draft Annual Reports for Pimlico and Laurel for 1991. Although the time which was afforded to Messrs. Manfuso to review the 1991 drafts was terribly short, Messrs. Manfuso and their accountant, Mark Reynolds, were able to review the 1991 drafts. In doing so, they concluded that the drafts of the 1991 Annual Reports also contained material inaccuracies and failed to make full disclosure. Accordingly, by letter of today to Mr. Jacobs, Messrs. Manfuso have requested that the 1991 Annual Reports not be finalized or provided to the Maryland Racing Commission, stockholders, lending institutions or any other parties. Messrs. Manfuso have requested the opportunity to review their concerns respecting the drafts with Messrs. Jacobs and DeFrancis and the opportunity for their accountant to review these serious matters with the auditors at Ernst & Young as well. I also enclose a copy of Messrs. Manfuso's letter of today to Mr. Jacobs.

As matters now stand, the issues which are before Pimlico and Laurel are terribly serious. Messrs. Manfuso are directors and, respectively, co-chairmen of the Boards of Directors of Pimlico and Laurel. As such, they have a clear

fiduciary obligation to utilize their best efforts to assure that the Annual Reports pertaining to Pimlico and Laurel are accurate, complete and otherwise in compliance with generally accepted accounting principles. It is the best belief of Messrs. Manfuso that this was not the case respecting the 1990 Annual Reports and that the present drafts of the 1991 Annual Reports are similarly defective.

As I am sure you know, Messrs. Manfuso have not come to these conclusions lightly. In fact, their accountant, who has substantial professional experience with racetrack audits, has been working for months to review and examine the records of Pimlico and Laurel with respect to these various matters. It is as a result of such work together with information possessed by Messrs. Manfuso that such conclusions have been reached.

Many months ago, specifically on May 31, 1991, I wrote to Mr. Jacobs and advised him of my clients' concern respecting the need of Pimlico and Laurel to have wholly independent legal counsel in various matters. I enclose a copy of my May 31, 1991 letter to Mr. Jacobs so indicating. Thereafter, I was advised by Donald DeVries that he and his partner had been engaged to represent Mr. Jacobs and that those attorneys were unable to understand precisely what specific interests might be the subject of my concerns regarding independent counsel. I believe that the current state of affairs makes fully clear this particular dimension of my concern. My clients, in their March 9, 1992 letter and in their letter of today to Mr. Jacobs concerning, respectively, the 1990 and 1991 Annual Reports of Pimlico and Laurel, have raised important questions respecting the propriety of various actions which have been and continue to be taken by the management of Pimlico and Laurel and the way in which those actions are being represented to third parties, including the State of Maryland, in the respective Annual Reports. Unfortunately, there is no way to characterize the concerns my clients have raised without recognizing that they are calling into question the conduct of Mr. Jacobs and Mr. DeFrancis with respect to the management of Pimlico and Laurel. These are obviously serious management issues in any event; however, insofar as they concern the correctness of the Annual Reports of Pimlico and Laurel that are provided to the State of Maryland, lending institutions, stockholders and others, there are other obvious legal implications involved. Against this background, it could not be clearer that Pimlico and Laurel are absolutely in need of legal counsel wholly independent in any way from Messrs. Jacobs and DeFrancis.

It is interesting that it was suggested by you at an early date that it would be inappropriate for legal counsel for Messrs. Manfuso to represent in any respect the interests of the

Guida Group of minority shareholders in Laurel as well as Messrs. Manfuso. I readily accepted that suggestion and proceeded accordingly. Having done so, I find it incomprehensible that you would disagree with what I have just suggested respecting the representation of Pimlico and Laurel and that of Messrs. Jacobs and DeFrancis. Surely it is the racetrack entities themselves, without the influence of any individual director, officer or stockholder, which must determine what action to take respecting these most serious issues pertaining to the Annual Reports. I am quite content to present the position of Messrs. Manfuso to any such independent legal counsel for his/her serious consideration. I hope and trust that Messrs. Jacobs and DeFrancis will permit you to do so on their behalves in the same fashion.

Messrs. Manfuso have specifically requested of Mr. Jacobs that the auditors for Pimlico and Laurel, Ernst & Young, be advised of the concerns they are raising. I assume that there is no question that such concerns, emanating from directors of the respective entities, should be brought, and hopefully have been brought, to the prompt attention of the auditors. With respect to the 1991 draft Annual Reports, it would obviously be most improper for the auditors not to be fully advised of the concerns of Messrs. Manfuso and have the opportunity to review those concerns with them and Mr. Reynolds. Thereafter, the auditors will certainly take such actions as they deem to be appropriate. I would appreciate receiving your immediate assurance that the auditors have been fully advised of the concerns Messrs. Manfuso have raised and, also, your determination respecting my request pertaining to the procurement of independent counsel for Pimlico and Laurel.

Since Mr. Reynolds' and my numerous requests for specific information regarding legal expenses of Pimlico and Laurel have been disregarded, we are proceeding upon the assumption that such information shall not be provided. If this assumption is incorrect, I would appreciate your prompt advice.

Sincerely,

James M. Kramon

JMK:jes

Enclosures

cc: Mr. John A. Manfuso, Jr. (w/encl.)
Mr. Robert T. Manfuso (w/encl.)
Donald L. DeVries, Jr., Esquire (w/encl.)

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED 11-2C

THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20725

March 18, 1992

VIA TELECOPIER

Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Manfuso Brothers, Inc.
8401 Connecticut Avenue
Chevy Chase, Maryland 20015

Dear Tom and Bob:

I am in receipt of a copy of Mr. James M. Kramon's letter of March 12 to McGee Grigsby. I believe that the recent letters from me and Marty Jacobs have addressed all of the points raised by you regarding the 1990 and 1991 audited financials for Pimlico and Laurel. I disagree strongly with Mr. Kramon's oft-repeated assertion that these issues are "terribly serious." Nevertheless, I think it would be appropriate for you and Mr. Kramon to make a presentation to the Boards of Directors of Laurel and Pimlico at the forthcoming Board meeting regarding your belief that Laurel and Pimlico should engage "independent legal counsel" to review this entire matter.

Please inform me at your earliest convenience how much time will be required for this presentation. If there are any materials which should be reviewed by the Directors in conjunction with the presentation, such as any report prepared by Mark Reynolds, I will need this material immediately to distribute to the other Directors. Finally, if there are any other agenda items which you wish to have considered at the meeting, please advise me of them promptly so that I may plan the agenda accordingly.

In response to Mr. Kramon's request for assurance that Ernst & Young have been fully advised of the issues that you have raised, please be advised that management provided Ernst & Young copies of your letters, promptly after their receipt, as well as copies of management's responses.

Very truly yours,

Joseph A. De Francis

cc: Mr. James Kramon
Mr. McGee Grigsby
Mr. James Gray
Mr. Martin Jacobs

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-2C

MANFUSO BROTHERS
8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815
(301) 986-0505

March 19, 1992

Mr. Joseph A. DeFrancis
President and Chief Executive Officer
Laurel Race Course
Post Office Box 130
Laurel, Maryland 20707-0130

Dear Joe:

It is difficult to believe that you have any doubt respecting why we believe that separate counsel should be engaged to represent Pimlico and Laurel.

In recent weeks, we and our attorney have indicated in copious correspondence that we believe that Pimlico and Laurel are being mismanaged. While we do not propose to review each of the various matters here, they include concerns respecting errors, omissions and material inaccuracies in both the 1990 and 1991 Annual Reports of Pimlico and Laurel (which Annual Reports have been provided to the Maryland Racing Commission, stockholders and lending institutions), concerns respecting the activities of you and Marty Jacobs in Texas and the attention you are affording or not affording to the proper management of Pimlico and Laurel, concerns regarding expenditures of monies of the businesses, largely undocumented, concerns regarding the position you are taking with respect to the matter of off-track betting, concerns regarding a variety of employment related issues, concerns over the manner in which legal counsel are being utilized by Pimlico and Laurel and other matters. In short, it is our opinion that your fiduciary and other obligations to these businesses, of which we are principal minority shareholders and co-directors, are being breached in myriad ways. We believe that there is no correct characterization for our concerns other than that they are "terribly serious" and, whatever may be the case, we believe that we have the right to have independent legal counsel for Pimlico and Laurel provide them with unbiased legal advice with respect to what actions should be taken in these matters. We do, indeed, plan to place on the record at the forthcoming Directors Meetings our positions respecting these matters.

We do not propose to accept your suggestion that the forthcoming meetings be utilized as a forum for legal arguments by our counsel. Should it prove unavoidable that such arguments be made, we will address them in the appropriate forum. Our hope is that you will accede to our repeated efforts to assure that Pimlico and Laurel are provided with full and adequate independent legal representation so that they may take appropriate actions in the face of these differences. If that occurs, it is possible that constructive steps may be taken to resolve some of these concerns; if not, we will be forced to consider other appropriate recourse.

Sincerely,

JOHN A. MANFUSO, JR.

ROBERT T. MANFUSO

VIA TELECOPIER

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0510 ED 11-2C

THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20725

March 25, 1992

VIA FACSIMILE

Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Manfuso Brothers Investments
Suite 1010
8401 Connecticut Avenue
Chevy Chase, MD 20815

Dear Tommy and Bob:

First let me thank you for your letter of March 23 which contained a list of specific agenda items that you feel are appropriate for discussion. While your letter indicates that these are in addition to items mentioned in your letters of March 19 and 20, the earlier letters contain nothing more than a hodgepodge of concerns, allegations and innuendo rather than specific agenda items. I would appreciate, therefore, if you would distill your March 19 and 20 letters into a useable agenda list and then reconcile that list with the items provided in your March 23 letter.

With regard to scheduling, I have been advised by our legislative counsel in Annapolis that we are at a crucial juncture in regard to the issue of off-track betting, and that it is very important that I be available all next week to go to Annapolis on very short notice to respond to any issues related to this important legislation. Consequently, I have cleared my calendar of all prior commitments for the week of March 30 and it will be necessary to postpone briefly the meetings of shareholders and directors from March 30 to April 13, 1992, starting at 1:00 p.m. in the Pimlico Race Course conference room. The shareholders meeting will be held first, to be followed by the directors meeting. I trust that this necessary rescheduling will not unduly inconvenience you and that it will give you any additional time you might need to finalize and clean up your list of proposed agenda items.

I am sorry that you have chosen not to accept my invitation for you and Mr. Kramon to make a presentation to the Boards of Directors of Laurel and Pimlico regarding your belief

that Laurel and Pimlico should engage "independent legal counsel." I believe that your failure to accept my invitation highlights what is your true agenda. As your letter of March 19 makes clear, your real complaint, no matter how dressed up or camouflaged to appear as a concern about breach of fiduciary duty, is that the tracks are being managed by me and not you. As I have repeatedly reminded you, as signatories to the October 1, 1989 Stockholders Agreement, you expressly confirmed that I, as President and CEO, was vested with full authority over operational and managerial decisions and policies and relations with the press, legislature and governmental authorities. Although you expressly confirmed this delegation of authority and received substantial consideration, you have, nonetheless, engaged in seemingly endless attacks on my management decisions and policies. Entirely too much time has had to be devoted to responding to your improper private and public criticisms. Let me remind you that, at the time of Frank's death, you were minority shareholders with little more than those rights accorded generally by law. As you are well aware, I entered into the Stockholders Agreement for the purpose and with the expectation of, to put it simply, having peace with you.

It is apparent to me that your latest rhetoric, which accuses me and Marty Jacobs of breaching fiduciary duties to Pimlico and Laurel, contravenes the spirit and seeks to circumvent the letter of the Stockholders Agreement. You and your counsel must now come forward with both factual and legal support for these allegations. Unless and until the Board of Directors is satisfied that there is a substantive factual and legal basis for any such allegations, there is no reason to even consider engaging independent counsel. Unfounded allegations advanced by you in furtherance of your own personal agenda do not justify the expenditure of money and time as well as the disruption of the track's business which would be necessitated by the hiring of independent counsel. Once again, if you have a factual or legal basis to support any allegation that Marty Jacobs or I have breached any fiduciary duty to the two tracks, please come forward and present it at the rescheduled Board of Directors meeting.

In a like vein, I have previously asked that you provide me with a complete copy of your accountant's report or reports, the engagement letter spelling out his responsibilities, and all correspondence between you or your attorneys and the accountant. Once again, the issue of whether something has been appropriately treated in the financial statements audited by a major firm of

independent certified public accountants is not an issue to be examined by independent counsel unless a factual basis has been advanced by an unbiased, independent expert to support such an examination. Concerns claimed to be "terribly serious," that are unsupported by facts or law, do not justify an expenditure of track time, money and personnel.

Your suggestion that Ernst & Young be requested to express in writing to you why they disagree with your correspondence relating to the 1990 statement is absurd and unacceptable. We are not going to spend time and effort having Ernst & Young defend their professional independent judgment from your alleged "concerns." If and when you are in a position to provide any specific, meaningful and unbiased criticism or questions from an expert accountant, we will consider the appropriate manner in which those items should be addressed by Ernst & Young.

Since I have no idea which of the detailed issues raised in your March 20 letter are to be abandoned and which are to be presented at the time of the Board meeting, I will not provide any further written response at this time. To the extent that any substantive factual or legal basis in support of these items is presented at the time of the Board meeting, I will provide an appropriate and accurate response and any further information that the Board feels may be necessary.

Finally, your withholding of factual information, the legal contentions of your counsel and your accountant's report from the Board of Directors so that they may be used in an "appropriate forum" or used at the time you are "forced to consider other appropriate recourse" is inappropriate and unacceptable. Your fiduciary duty to Laurel and Pimlico requires you to come forward with all facts known to you which suggest that Marty or I violated fiduciary duties to these two entities. Either you don't have any such factual information and are therefore unable to present it to the Board of Directors, or you have improperly determined that withholding such information advances your own personal interests. While I assume that your use of the words an "appropriate forum" is a not very well-veiled threat of litigation, I strongly suggest that you reexamine the Stockholders Agreement and fully consider your fiduciary duties to both entities, and that prior to making any libelous or

slanderous allegation of any kind against me or Marty Jacobs, you present the factual basis for those allegations to the Board of Directors.

Very truly yours,

Joseph A. De Francis
President and CEO

cc: Cecil E. Flamer, C.P.A.
Richard W. Watkins, C.P.A.
Mr. Martin Jacobs

THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20725

PLEASE DELIVER AS SOON AS POSSIBLE

DATE: 3/31/92

TO: Jim Gray

COMPANY: Goodell DeVries

FAX NO.: 7834040

FROM: Martin Jacobs
Executive Vice President

FAX NO.: (410) 792-4877

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COMMENTS:

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THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20725

March 25, 1992

VIA FACSIMILE

Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Manfuso Brothers Investments
Suite 1010
8401 Connecticut Avenue
Chevy Chase, MD 20815

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