92120052
CASE NO. _____

Part 1 of ____ Parts

In The Circuit Court for Baltimore City

CIVIL

DR 12-16-91

PART I
KAPLAN
SEE 2

{SPECIALLY ASSIGNED TO JUDGE H[redacted]

In the Matter of
ROBERT T. MANFUSO, ETAL VS JOSEPH A. DEFRANCIS, ETAL

1478
7851

other CASE NO. 92120052/CE 147851 PAGE 2 of ____

DATE	DOCKET ENTRIES	NO.
6-11-92	Pltffs motion to dismiss counter-claim of the Md. Jockey club of Delta City, Pimlico racing assoc, inc. + Laurel racing assoc., Inc. and count II of the counter-claim of De Francis and Jacobs, and/or motion for summary judgment	(8)
6-11-92	Pltffs' motion for ex-parte, interlocutory and permanent injunctive relief, memorandum of + of Pltffs	9
6-17-92	Plas' Opposition to Defts' Motions to Dismiss the Complaint insofar as it concerns Texas Racing Matters	10
6-19-92	Memorandum Opinion and Order that the Defts' Motion to Dismiss Plas' Request for Injunctive Relief Barring the Defts to any ventures in Texas is hereby Granted leave to the Plas to amend their complaint to comply with this opinion. (J. Mac Daniel) cbm	

Paid # 2 //

See //

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY OTHER CASE NO. 92120052/CE147851 PAGE 1 of ____

PARTIES	ATTORNEY(S)
ROBERT T. MANFUSO JOHN A. MANFUSO, JR. VS JOSEPH A. DEFRANCIS MARTIN JACOBS THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY PIMLICO RACING ASSOCIATION, INC. LAUREL RACING ASSOCIATION, INC.	JAMES P. ULWICK, ESQ. 911041 424788 James. E. Gray Linda S. Wolf 912627

DATE	DOCKET ENTRIES	NO.
4/29/92	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND EXHIBIT.	1
4/30/92	SUMMONSES ISSUED.	
"	Correspondence from Judge Kaplan to Counsel stating that the case is specially assigned to Judge Hollander	2
6-5-92	Appr of atty James E. Gray & Linda S. Wolf for defts Joseph A. Defrancis & Martin Jacobs, answer to complaint for declaratory relief requested in subparagraph a of count one	3
6-5-92	Defts / counter pltffs, Joseph A. DeFrancis & Martin Jacobs, files counterclaim against pltffs & exhibits fd.	4
6-5-92	Defts Joseph A. DeFrancis & Martin Jacobs, motion to dismiss and memorandum fd and affidavit.	5
6-25-92	Trig entry # 4	
6-5-92	Request for hearing	6
6-11-92	Defts motion to shorten time to respond to defts motion to dismiss pltffs injunctive relief claim regarding defts involvement in Texas Racing	7

CC-66 (1/83)

(10) CE-# 147851

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

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

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR EX PARTE, INTERLOCUTORY AND PERMANENT INJUNCTIVE RELIEF

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, hereby submit the following Memorandum in Opposition to Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief filed by Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively "the Manfusos" unless otherwise specified) and as reasons therefore state:

I. INTRODUCTION

For the reasons discussed in this Memorandum, this Court should deny the Plaintiffs' request for the extraordinary relief of an injunction. As set forth below, Plaintiffs have no right to either temporary or permanent injunctive relief. Their claims are founded on misconceptions of law and mischaracterizations of fact and cannot succeed on the merits.

Plaintiffs' Motion is styled one for ex parte, interlocutory and permanent injunctive relief. A permanent injunction, however, may only be granted after a final determination on the merits of the action. Md. Rule BB70(d);

see also NCAA v. Johns Hopkins University, 301 Md. 574, 483 A.2d 1272 (1984) ("the difference . . . between an interlocutory injunction and a permanent one is whether there has been a determination on the merits of the claim"). This Court has not ruled upon the pending Motion for Summary Judgment,[1] therefore, this matter is not ripe for permanent injunctive relief. Plaintiffs apparently recognize this since their proposed Order is not directed at permanent relief.

Plaintiffs' counsel agreed during a telephone scheduling conference with the Court and Defendants' counsel to delay the determination of their request for injunctive relief until an adversary hearing could take place. This agreement effectively nullifies any claim for ex parte relief, since by definition, an injunction issued after an adversary hearing is not ex parte. Md. Rule BB70(b) Therefore, the Plaintiffs' motion is essentially one for an interlocutory injunction[2] and the substantive issues involved in the motion will be addressed as such.

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[1] As will be seen below, the issues and claims involved in the Motion for Summary Judgment do not parallel the claims involved in Plaintiffs' Motion for Injunctive Relief.

[2] In any case, since the Plaintiffs have not made out even a case for interlocutory relief, they certainly cannot meet the more demanding requirements for an ex parte injunction. "An ex parte injunction shall not be granted unless it appears from specific facts shown by affidavit, or a verified pleading with or without supporting affidavit or sworn testimony, that immediate, substantial and irreparable injury will result to the applicant before an adversary hearing can be had." Rule BB72 (emphasis added). See also Village Books Inc. v. States Attorney for Prince George's County, 263 Md. 76, 282 A.2 126 (1971), vacated, 413 U.S. 911 (1973), reaff'd 269 Md. 748 (1973).

II. STATEMENT OF FACTS

De Francis and Jacobs incorporate by reference the Statement of Facts set forth on pages 2-9 of Defendant Corporations' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief, as if set forth in full herein.

III. LEGAL ARGUMENT

A. The Manfusos Have the Burden of Satisfying Each of the Four Elements Required for the Issuance of an Interlocutory Injunction

The appropriateness of granting an interlocutory injunction is determined by examining four factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest. Department of Transportation v. Armacost, 299 Md. 392, 404-05, 474 A.2d 191 (1984).

The burden of justifying the grant of an injunction is on the Manfusos, as the moving party. State Department of Health and Mental Hygiene v. Baltimore County, 281 Md. 548, 554, 383 A.2d 51 (1977); Nationwide Mutual Insurance Co. v. Hart, 73 Md.

App. 406, 410, 534 A.2d 999 (1988). The Maryland Court of Special Appeals has said that the moving party's "failure to show any one of the four factors is sufficient to preclude relief." Hart, 73 Md. App. at 411. The single most important factor, however, is the likelihood - or improbability - that the moving party will succeed on the merits. As the Court of Appeals said in Armacost, "it is well accepted that an interlocutory injunction should not be granted unless the party seeking it demonstrates a likelihood of success on the merits." 299 Md. at 405. In Armacost, the Court of Appeals concluded that the Plaintiffs had little chance of prevailing on the merits and thus vacated an interlocutory injunction, noting explicitly that it "need not, therefore, address the other [three] factors." Id.

The Plaintiffs seek to enjoin the Defendants from: (1) ending severance payments the Manfusos claim they are entitled to under the Stockholders Agreement; (2) denying them access to the executive offices at Laurel and Pimlico; (3) interfering with communication between the Manfusos and managerial employees concerning the business and operations of the racetracks; (4) requiring managerial employees of the racetracks to refrain from providing information concerning the business and operations of the racetracks directly to the Manfusos by instituting a procedure that all such requests for information be directed to the President or Executive Vice President; and (5) ending benefits to which the Manfusos claim

they have a contractual right, including the free use of two automobiles with cellular telephone service which is billed to the racetrack, office space, parking spaces, membership in the Jockey Club at Pimlico Racetrack and the Skysuite Members Club at Laurel Racetrack, box seats and signing privileges for food and drinks at both racetracks.

An analysis of these requests reveals that they are based on three groups of purported rights claimed by the Manfusos: a contractual right to severance pay under the Stockholders Agreement; contractual rights to the use of automobiles, box seats, dining room privileges and an office under the so-called Letter Agreement of April 27, 1990, which is really no more than a memorandum from the Manfusos to De Francis ("Manfuso Memo"); and the right to communicate at will directly with employees of the racetracks, rather than through senior management, that the Manfusos assert they are entitled to as either corporate directors or as parties to this litigation.[3]

As to the two groups of alleged contractual rights, the underlying merits clearly favor De Francis and Jacobs and, thus, the Manfusos are not entitled to an interlocutory injunction enforcing their alleged contractual rights. As to the Manfusos' direct access to employees, the Defendants have always believed and continue to believe that the Plaintiffs'

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[3] It is not clear from the Plaintiffs' Motion or Memorandum in Support thereof whether the Manfusos seek direct communication with track employees to allegedly fulfill their fiduciary duties or to gain information they think may help them in this litigation. See e.g., Plaintiff's Memo. at 5, 7.

entitlement to information as directors is subject to reasonable business constraints. Nevertheless, the Defendants are not blocking, or threatening to block, the Manfusos' right to information as directors in regard to the racetracks' business and, therefore, these claims are inappropriate for injunctive relief.

B. *The Manfusos Have no Right to* an Injunction Enforcing Severance Payments

The Manfusos note, correctly, that both sides in this dispute have asked the Court to determine whether the Manfusos have breached the Stockholders Agreement by bringing this suit. However, the Manfusos seem to imply, incorrectly, that despite their material breach of the Agreement, the Defendants are obligated to continue performance until the Court declares that the Manfusos are in breach. See Plaintiff's Memo. at 3. While this belief may be in keeping with the litigious tendency the Manfusos have demonstrated, there is no rule requiring a non-breaching party to continue performance after the other side has materially breached an agreement. "One party's material breach 'excuses' the other's non-performance in the sense that he may elect to treat the contract as terminated." Equitable Trust Co. v. G & M Construction Corp., 544 F.Supp. 736 (D. Md. 1982). See also Restatement (Second) of Contracts, Section 237. Where a breach of contract is such that further performance of the contract would "be different in substance" from that which was contracted for, the non-breaching party

cannot be expected to continue to perform. Dialist Company v. Pulford, 42 Md. App. 173, 399 A.2d 1374 (1979).

Indeed, even if the Manfusos' filing of this action is not held to be a breach, their failure to perform the express terms of the Standstill Provision discharges any duty of performance by De Francis and Jacobs. As stated in the Restatement (Second) of Contracts, §237, "it is a condition of each party's remaining duties to render performances to be exchanged under an exchange of promises that there be no uncured material failure by the other party to render any such performance due at an earlier time." A material failure of performance, including both defective performance and absence of performance, operates as the non-occurrence of a condition: it initially prevents counter-performance from coming due, and discharges the duty when the performance no longer can occur. Id. §240, comment a. This applies "without regard to whether or not the failure of performance is a breach. [It applies] for example, though the failure of performance is justified." Id.

Accordingly, the termination of performance under the Stockholders Agreement is justified in light of the Manfusos' failure to abide by the terms of the Standstill Provision. As set forth in Section C, infra., De Francis is and has always been free to terminate the gratuitous benefits described in the Manfuso Memo.

As set forth in the Defendants' Counter Claim, the Manfusos deliberately breached the express terms of the Stockholders' Agreement by filing this lawsuit against De Francis and Jacobs. The Stockholders' Agreement explicitly provides that "[w]ith the exception of litigation based on criminal activity or on a breach of the terms of this Agreement or documents executed pursuant thereto, the parties to this Agreement agree that, prior to October 1, 1993, they will not institute or join in any legal dispute or action against any party to this Agreement concerning the business or operation of Pimlico or Laurel." (Emphasis added). The Manfusos do not allege in the Complaint that there has been any criminal activity or breach of the Stockholder's Agreement by De Francis or Jacobs. Instead, the Complaint alleges that De Francis and Jacobs breached fiduciary duties owed to the corporations. See Complaint ¶¶1, 21, 29, 32, 45.[4] There could be no clearer example of institution of a "legal dispute or action against [a] party to [the] Agreement concerning the business or operation of Pimlico or Laurel" than the Manfusos' filing of this action.

The likelihood that the Defendants, not the Plaintiffs, will prevail in this action is reinforced by the Honorable H.

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[4] In spite of the Manfusos' post hoc attempt in their Motion to Dismiss and/or for Summary Judgment to characterize their Complaint as an action for breach of certain provisions in the Stockholders Agreement, there are no such allegations therein. A breach of fiduciary duty is not a claim for a breach of contract, but a common-law tort.

Kemp McDaniel's Order regarding the Manfusos' request for injunctive relief against the Defendants' involvement in Texas racing. While Judge McDaniel's Order was limited to the Texas issues, it is nevertheless significant that Judge McDaniel found that the Texas claim was a shareholders' derivative claim, and that the Manfusos lacked standing to bring it due to their failure to make a demand to the Boards of Laurel and Pimlico.

Judge McDaniel's finding that the Manfusos lacked standing to bring the Texas-related claims logically applies to all of the other corporate waste claims alleged in their Complaint. The finding that the Texas claim was a shareholders' claim mandates the conclusion that the Manfusos breached the Standstill Provision. In light of this ruling, it is absurd for the Manfusos to now demand enforced performance by way of injunction. They have failed to demonstrate that they are likely to prevail in the action under the Stockholders' Agreement. As such, these Defendants are under no obligation to continue performance until there is a judgment.[5]

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[5] The Plaintiffs' claim that they are protected by the severability provision of the Stockholders' Agreement deserves no more than a footnote. As even the Plaintiffs concede, see Plaintiff's Memo. at 4 n.1, Section XIID of the agreement only addresses what happens if a portion of the agreement is found to be unenforceable, not, as here, when it has been breached. Moreover, it is clear that a Court may not enforce portions of an agreement when other provisions(s) are found to be unenforceable if the unenforceable provision(s) are an essential part of the agreed exchange. Restatement (Second) of Contracts §184, comment (a). Where, as is the case here, the allegedly unenforceable provision is essential to the agreement, the entire agreement is unenforceable.

While the unlikelihood of Plaintiffs' success on the merits is dispositive of their Motion for an injunction forcing the continuation of severance payments, the other factors also preclude the granting of injunctive relief. The Manfusos cannot legitimately claim that the balance of convenience is in their favor, nor can they demonstrate that they would suffer irreparable injury unless the injunction is granted. The Plaintiffs are requesting specific performance of a promise to pay money. They concede in their Memorandum that, with the exception of their claims related to access to information, damages would compensate them for the Defendants' alleged wrongdoing. Plaintiffs' Memo. p. 6. Unless their claim is somehow that the Defendants have no money with which to satisfy a judgment, Plaintiffs cannot qualify for injunctive relief in this situation. See Rule BB76. In any event, if Defendants did not have the money to satisfy a judgment - and this is not the case - injunctive enforcement of a promise to pay money would be futile, and a court of equity does not issue futile decrees.

It is hard to escape the irony of the Manfusos claiming on one hand that corporate waste threatens an immediate and irreparable harm to their investment -- while seeking a mandatory injunction requiring the payment to them of $10,000 a month for not working![6] In any event, should the Court

[6] That irony is no doubt heightened by the fact that the money they seek would probably be used to finance this suit.

desire, the Defendants have no objection to depositing the monthly payments into a segregated account pending the outcome of the litigation.

C. The So-Called Letter Agreement of April 27, 1990 is Neither an Agreement Nor an Enforceable Contract

In their Memorandum, the Plaintiffs have not addressed their likelihood of success on the merits as to the Manfuso Memo, which they mischaracterize as a "Letter Agreement," except by reference to their Motion for Summary Judgment on whether the Stockholders' Agreement bars them from bringing this suit. However, the Plaintiffs' Motion for injunctive relief related to their claim that they are entitled to the free use of automobiles, car phones, office space and parking spaces, club memberships and dining privileges has no relation to any of the issues raised in the Motion for Summary Judgment. The Plaintiffs admit that their claim to these alleged rights is under the Manfuso Memo rather than the Stockholders' Agreement. Plaintiffs' Memo. p. 1. Since their claims under the Manfuso Memo are even more unfounded than their claims under the Stockholders' Agreement, it is no surprise they have chosen not to address their likelihood of success on the merits.

1. The Manfuso Memo Is Not Supported by Consideration

The memorandum of April 27, 1990, which on its face was drafted by the Manfusos, contains nothing but a series of

gratuitous undertakings by Joseph A. De Francis which inure solely to the benefit of the Manfusos. If construed as a binding contract, as urged by the Manfusos, the letter would require De Francis to continue providing fringe benefits, i.e., cars, boxes, dining room privileges and offices, to the Manfusos forever, regardless of the financial condition of the corporations, with no corresponding benefit to De Francis or the Corporations.

Strikingly absent from this "contract" is any promise of performance of any kind by the Manfusos. It is fundamental that in order for a contract to be binding, it must be supported by consideration. Beall v. Beall, 291 Md. 224, 229, 434 A.2d 1015 (1981); see also Broaddus v. First National Bank of Hagerstown, 161 Md. 116, 121-22, 155 A.2d 309 (1931) ("elementary principle" that a contract must be supported by consideration in the form of a benefit to the promisor or a detriment to the promisee). The Manfuso Memo is nothing but a series of gratuitous undertakings with no corresponding benefit to De Francis or the corporations and no detriment to the Manfusos. As a matter of law, it cannot constitute an enforceable contract.

2. The Manfuso Memo Contains No Term of Duration

The Manfuso Memo also contains no durational limit. (e.g. "present fringes to continue", etc.). Even ignoring the lack of consideration, the lack of a specified term of

performance renders the Manfuso Memo either unenforceable or terminable at will.

"The failure to agree on or even discuss an essential term [of a contract] indicates that the mutual assent required to make or modify a contract [is] lacking." L & L Corp. v. Ammendale Normal Institute, 248 Md. 380, 385, 236 A.2 734 (1968). As the Court of Appeals has said:

> no action will lie upon a contract, whether written or verbal, where such a contract is vague or uncertain in its essential terms. The parties must express themselves in such terms that it can be ascertained to a reasonable degree of certainty what they mean. If the agreement be so vague and indefinite that it is not possible to collect from it the intention of the parties, it is void because neither the court nor jury could make a contract for the parties. Such a contract cannot be enforced in equity nor sued upon in law. (emphasis added).

Robinson v. Gardiner, 196 Md. 213, 217, 76 A.2d 354 (1950).

Even if the Manfusos' Memo is construed to be an enforceable contract, the omission of a definite term of duration renders the "contract" terminable at the will of either party. Restatement (Second) of Contracts §33 comment (d); In re W. S. M. Enterprises, Inc., 102 Bankr. 461 (Bankr. D. Md. 1989) (citing Corbin on Contracts §96 (1963) and 1 Williston on Contracts §39 3rd ed. (1957).

In light of either the patent unenforceability of the Manfuso Memo or its being terminable at will, the Manfusos cannot meet their burden of demonstrating that they are likely to succeed in enforcing the continuation of the gratuitous

benefits they enjoyed thereunder. They are not, therefore, entitled to an interlocutory injunction requiring the corporations to continue providing these benefits.

Additionally, as set forth above, the Manfusos concede that, as regards their contractual claims, they cannot show any irreparable injury.[7] Their request for an injunction to enforce the continuation of the payments and benefits should be denied on this basis alone.

Regarding the Manfusos' argument that the public policy favoring the sanctity of contracts operates in their favor, it takes a particular type of gall to breach a contract and then argue that public policy nonetheless requires continued performance by the other side. De Francis and Jacobs might well argue that the Manfusos should have considered the sanctity of their contractual undertaking before they willfully disregarded the Standstill Provision in filing this action.

D. There is No Threatened Interference With the Manfusos' Access to Information

The Manfusos do not address the issue of their likelihood of success on the merits as to an injunction against any interference with communications between the Manfusos and

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[7] "While damages might compensate the Manfusos for some of the Defendants' wrongdoing, damages cannot provide redress for the harm that the Manfusos will suffer as a result of their inability to exercise [their] fiduciary duties . . ." Plaintiff's Memo. at 6.

employees at the racetracks.[8] The Manfusos request for this injunction is based solely upon a letter, dated June 5, 1992, from De Francis to the Manfusos. It must be noted initially that there is no evidence or claim by the Manfusos that this letter or its contents were made known to the employees of the track, unless by the Manfusos themselves.

The Manfusos suggest that this letter was aimed at blocking communications between them and employees of the racetracks. The letter was aimed not at blocking the flow of information to the Manfusos, but at assuring that such communications were made through proper channels. This is clear from the original letter which stated:

> In your continuing status as directors and shareholders, you are entitled to receive certain information concerning the business and operations of Laurel and Pimlico. Such information will be provided to you. During the course of the litigation which you have initiated, however, all requests for such information must be made in writing directly to me or, in my absence, to Marty Jacobs. We will respond appropriately.

(emphasis added).

The employees were not provided with a copy of this letter; rather, they were sent a Memorandum dated June 11, 1992. That memorandum instructed employees to direct any

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[8] As noted above, the Plaintiffs' Memorandum in Support of the Motion for Injunctive Relief only addresses their likelihood of success on the merits by reference to their Motion for Summary Judgment relating to their contractual rights under the Stockholders' Agreement.

questions or information requests by the Manfusos to De Francis or Jacobs.

> The Manfusos have been advised that any question they may have regarding the business or operations of Laurel and Pimlico are to be directed to me, or in my absence, to Marty Jacobs, and to no other person. They have been further advised that:
>
> . . .
>
> 2. For the duration of the litigation, the Manfusos are prohibited from discussing the business or operations of Laurel or Pimlico with any employee of the tracks. As an employee, you are not to discuss the business or operations of Laurel or Pimlico with either of the Manfusos.
>
> 3. As an employee, you are not to provide any information about the business or operations of Laurel or Pimlico to either of the Manfusos. The Manfusos have been advised not to request any such information from any employee.

See Exh. 1, attached hereto.

The Court expressed concerns at the June 11, 1992 scheduling conference that the June 5 letter might unduly inhibit racetrack employees from expressing concerns they might have regarding Management. As the court will recall, at that conference, De Francis and Jacobs specifically offered Plaintiffs' counsel an opportunity to draft a Memorandum to be sent to employees that would permit them to communicate any such concerns to a director or to the Manfusos. Counsel for the Manfusos declined that offer.

On June 25, 1992, De Francis sent a memorandum to employees advising those employees who might not wish to

communicate through De Francis or Jacobs, that they may take any concerns to the independent Director Father Joseph J. Sellinger, S.J., or even directly to the Manfusos. Exh. 2.

In weighing the merits of the Manfusos' claim for injunction to enforce their right of direct access to racetrack employees, it is helpful to review precisely what information the Manfusos are entitled to respectively, as shareholders and directors. Their right to information as shareholders is strictly circumscribed by statute. As stockholders of more than 5% of the outstanding stock in the corporation, the Manfusos are entitled to:

1. In person or by agent, on written request, inspect and copy during usual business hours the corporation's books of account and its stock ledgers;

2. Present to any officer or resident agent of the corporation a written request for a statement of its affairs; and

3. In the case of a corporation which does not maintain the original or a duplicate stock ledger at its principal office, present to any officer or resident agent of the corporation a written request for a list of its stockholders.

Md. Corp. & Assoc. §2513 (1985 Repl. Vol. & 1991 Supp.).

This comprehensive statutory scheme was intended to strike a delicate balance between a shareholder's right to inspect his company's records and management's need to conduct day to day business without undue interference. Caspari v. Louisiana Land and Exploration Co., 560 F. Supp. 855 (D. Md.) aff'd 707 F.2d 785 (4th Cir. 1983). Under this statutory scheme, the Manfusos (as shareholders) are compelled to do precisely what is

required by De Francis' June 5, 1992 letter, i.e., direct their requests for information through the proper channels so that the business of the racetracks is not disrupted.

As directors, the Manfusos enjoy somewhat broader rights of inspection of corporate books and records. These rights are not determined by statute, as there is no section of the Corporation Code which addresses a director's right of access to corporate information. Under common law the director's right of inspection extends to the books, papers, records, federal reports and other data of the corporation as to its assets, liabilities, contracts, operations and practices.

As a leading treatise on corporate law states, the inspection of corporate books and records can be denied to a director involved in litigation with the corporation where the director requests the inspection to conduct a "fishing" expedition or for some other purpose adverse to the interests of the corporation. Fletcher, Cyclopedia of Corporations, §2238. Moreover, a corporation has the right to impose reasonable restrictions upon a directors' access to corporate books and records. See, e.g., Gorton v. Dow, 282 N.Y.S.2d 841, 843 (1967) (although trustee of municipal corporation had right to inspect corporate records, some reasonable regulation upon right of access is indispensable to management of library).

As set forth in detail in these Defendants' Answer to the Manfusos' Complaint and in their Memorandum in Support of Motion to Dismiss Certain Claims for Declaratory Relief and all

Claims for Injunctive Relief, even prior to this litigation, the Manfusos were not deprived access to the corporate information identified in their Complaint. Similarly, the record amply demonstrates that, even after the institution of this action, the Defendants have taken appropriate steps to continue the flow of information to the Manfusos. See Exh. A to Plaintiffs' Memo, letter dated June 5, 1992 (Manfusos will be provided all information to which they are entitled regarding race-tracks); see also, Exh. 1 and Exh. 2 to this Memorandum.

An injunction should not issue if the acts sought to be enjoined have been discontinued or abandoned. Attorney General of Maryland v. Anne Arundel County School Bus Contractors Ass'n., 286 Md. 324, 327, 407 A.2d 749 (1979); State v. Ficker, 266 Md. 500, 507, 295 A.2d 231, 235 (1972); United Brotherhood of Carpenters v. United Slate, Tile and Composition Roofers, 181 Md. 280, 282, 29 A.2d 839, 840 (1943). As the United States District Court for the District of Maryland has said, "a suit for an injunction deals primarily, not with past violations, but with threatened future ones." Hirsch v. Green, 382 F.Supp. 187, 192 (D. Md. 1974) (citing Swift & Co. v. United States, 276 U.S. 311 (1928)). The necessary determination regarding the propriety of an injunction is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. Id. (citing United States v. W. T. Grant Co., 345 U.S. 629 (1953)). When the parties discontinue the acts of

which complaint is made, the questions become moot and injunctive relief should not then be granted. Id. The steps taken in the Memorandum dated June 26, 1992 renders this dispute moot and require the Court to deny the Manfusos' request for an injunction with respect to communications between racetrack employees and the Manfusos.

The Manfusos' insinuation that De Francis and Jacobs are interfering with potential witnesses is baseless and irresponsible.[9] Despite the Manfusos' mischaracterization, the original memorandum to employees did not have this aim. Even if it had such an effect, however, a corporate party in litigation is perfectly free to instruct employees not to voluntarily provide information to an opposing party. Since an attorney may give such an instruction to his client's employees;[10] the corporate client is, a fortiori, free to do so.[11]

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[9] Surely the Manfusos know that, given the availability of subpoenas for deposition or trial, De Francis could not block any track employee from giving testimony, even if he so desired.

[10] "A lawyer shall not . . . request a person other than a client to refrain from voluntarily giving relevant information to another party unless: (1) the person is a relative or an employee or other agent of a client . . .". Md. Rules of Professional Conduct Rule 3-4(f) (emphasis added).

[11] This Court should also rest assured that actions by De Francis and Jacobs in no way implicate the First Amendment, for the simple reason that none of the Defendants is a governmental entity. It is well settled that most rights secured by the Constitution are protected against infringements only by government or their agents. Stevens v. Morrison Knudsen Saudi Arabia Consortium, 576 F. Supp. 516, 520 (D. Md. 1983) aff'd per curiam 755 F.2d 375 (4th Cir. 1985) (citing Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156, 98 S. Ct. 1729, 1733, 56 L.Ed.2d 185

E. There is No Public Interest That Will be Served by Granting the Manfusos Requested Interlocutory Injunction

The Manfusos have the burden of demonstrating that, as a matter of law, the public interest will be served by the granting of their requested injunction. In that regard, they make three arguments that do nothing to advance their position:

1. That the public interest is served by requiring persons to adhere to the agreements they have voluntarily made;

2. That the public interest is served by facilitating a director's ability to exercise his or her fiduciary duties; and

3. That the public interest is served by preserving a potential witness's ability to speak openly and truthfully.

As stated above, the first asserted public interest is equally served by requiring the Manfusos to adhere to the agreements they have voluntarily made and redressing their material breach of the provisions of the Stockholders Agreement. It is disingenuous for the Manfusos to suggest that this Court should be cognizant of the public interest in enforcing voluntary contractual agreements when those agreements benefit the Manfusos, but not when the Manfusos are in flagrant disregard of their own voluntary undertakings. In short, if there is any public interest in protecting the expectations of the parties to the Stockholders Agreement, that public interest must weigh in favor of De Francis, Jacobs and

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(1978).

the Corporations who bargained for four years free of interference and litigation.

The second and third asserted benefits to the public, facilitating a director's exercise of his fiduciary duties and preserving access to potential witnesses, have not been restrained. Since there is no threatened injury to the Manfusos' ability to exercise their fiduciary duties or no undue restraint on their ability to communicate with racetrack employees, there can be no benefit to the public by granting the requested injunctive relief.

CONCLUSION

For the reasons stated above, the Manfusos have failed to meet any of the four required elements for the issuance of an interlocutory injunction. Wherefore, De Francis and Jacobs respectfully request this Court to deny the Manfusos' Motion for an Interlocutory Injunction.

James E. Gray

Linda S. Woolf
Goodell, DeVries, Leech & Gray
25 S. Charles Street
Suite 1900
Baltimore, Maryland 21201
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 1992, a copy of the aforegoing Memorandum in Opposition to Plaintiff's Motion for Ex Parte, Interlocutory and Injunctive Relief was hand-delivered to: James Ulwick, Esquire, 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

James E. Gray

THE MARYLAND JOCKEY CLUB

P.O. BOX 130
LAUREL, MARYLAND 20725

MEMORANDUM

June 11, 1992

TO: All Managerial Employees and Department Heads

FROM: Joseph A. De Francis
President and Chief Executive Officer

As you undoubtedly know, the Manfuso Brothers filed a lawsuit against Laurel and Pimlico shortly before the Preakness. They also sued Marty Jacobs and me, individually. Laurel, Pimlico, Marty and I have now answered their suit and have filed counterclaims against them.

I am personally very disappointed that the Manfusos elected to commence a lawsuit. From the time I first assumed management control, I have tried to work with the Manfusos. I have worked hard. You have worked hard. Instead of helping, the Manfusos announced their resignations in February 1990. Now they have decided to ensnarl Laurel and Pimlico in a lawsuit and we have to take the necessary steps to prevent it from hurting our business.

Although the lawsuit is totally without merit, our attorneys have advised us that certain procedures should be followed to help assure a prompt disposition of the case. Some of these procedures may involve you in the course of the performance of your job. The purpose of this memorandum is to advise you of the procedures we have implemented. Your cooperation will be appreciated and violation of these procedures will be grounds for disciplinary action.

The Manfusos have been advised that any questions they may have regarding the business or operations of Laurel or Pimlico are to be directed to me, or in my absence, to Marty Jacobs, and to no other person. They have been further advised that:

1. For the duration of the litigation, the Manfusos shall not have access to the executive offices including all departments (e.g., Racing Department, Mutuels Department, Accounting Department, etc.) at Laurel or Pimlico. If either of the Manfusos attempts to enter your office or department, please contact either me or Marty Jacobs immediately.

2. For the duration of the litigation, the Manfusos are prohibited from discussing the business or operations of Laurel or Pimlico with any employee of the tracks. As an employee, you are not to discuss the business or operations of Laurel or Pimlico with either of the Manfusos.

3. As an employee, you are not to provide any information about the business or operations of Laurel or Pimlico to either of the Manfusos. The Manfusos have been advised not to request any such information from any employee.

I want each of you to know that I sincerely regret this turn of events. I hope none of you will be inconvenienced or burdened by these procedures. They are designed to protect and preserve our business and the great tradition of Maryland racing of which we are all justifiably proud. If you have any questions, please do not hesitate to contact me directly.

THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20725

MEMORANDUM

June 26, 1992

TO: All Managerial Employees and Department Heads

FROM: Joseph A. De Francis
President and Chief Executive Officer

I provided you a memorandum dated June 11 which addressed communications with the Manfusos about the business and operations of Laurel or Pimlico while the litigation instituted by them is pending. The purpose of my request that all communications from the Manfusos regarding our business be directed through proper channels, to me or to Marty Jacobs, was to assure that our day-to-day business operations are not interrupted by requests for information from the Manfusos directed to individual employees. It was not my intent to deny them information to which they might be entitled or to suggest that any individual employee who so desired was forbidden to communicate with the Manfusos.

I have always taken the position that any activity on the part of Management which any employee feels is not in the best interests of our business or Maryland racing should be brought to my attention so that the concern may be addressed and, if necessary, corrected. I sincerely hope that every employee feels free to communicate to me or to Marty Jacobs any concerns related to the conduct of Management. If you feel uncomfortable in expressing such concern to us, please feel free to communicate with Father Joseph J. Sellinger, S.J., who is now a member of the Board of Directors of both Laurel and Pimlico and may be reached in writing at Loyola College, Evergreen Campus, Baltimore, MD 21210, or by telephone at (410) 323-1010, ext. 2202.

If you feel it inappropriate to communicate any concern you may have to either Management or Father Sellinger, you may feel free to call or write the Manfusos and communicate such concerns directly to them. Please be assured that no disciplinary action will be taken against you for any such communication.

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.,	*	IN THE
	*	CIRCUIT COURT
Plaintiffs		
vs.	*	FOR
JOSEPH A. De FRANCIS, et al.,	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE147851

* * * * * * * * *

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PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE COMPLAINT INSOFAR AS IT CONCERNS TEXAS RACING MATTERS

Plaintiffs Robert A. Manfuso and John T. Manfuso, Jr. ("the Manfusos"), by and through their attorneys, James P. Ulwick and Kramon & Graham, P.A., respond as follows to the defendants' motions to dismiss insofar as they concern the Manfusos' allegations about the involvement of defendants Martin Jacobs ("Jacobs") and Joseph A. De Francis ("De Francis") in personal ventures in the horseracing industry in the State of Texas:

I. THE LEGAL STANDARD APPLICABLE TO THE MOTIONS TO DISMISS

The defendants' motions to dismiss test the legal sufficiency of the complaint. Hence, in assessing the motions, the Court must consider the allegations in the complaint in the light most favorable to the Manfusos (Berman v. Karvounis, 308 Md. 259, 264, 518 A.2d 726, 728 (1987)) and must accept as true all well-pleaded material facts as well as any reasonable inferences that may be drawn therefrom. Flaherty v. Weinberg, 303 Md. 116, 135-36, 492 A.2d 618, 628 (1985); Black v. Fox Hills North Community Ass'n, 90 Md. App. 75, 79, 599 A.2d 1228, 1230 (1992). Moreover, to withstand the motions to dismiss,

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the Manfusos need only to have alleged facts that, if proved, would entitle them to relief. Flaherty v. Weinberg, 303 Md. at 136, 492 A.2d at 628; accord Conley v. Gibson, 355 U.S. 41, 45-46 (1957)(under Fed. R. Civ. P. 12(b)(6), a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief).

In addition, the Court must proceed with extreme caution in assessing the motions to dismiss the Manfusos' claims for declaratory relief: As the Court of Appeals has pointed out, "Legions of our cases hold that a demurrer, the type of motion to dismiss here involved, is rarely appropriate in a declaratory judgment action." Broadwater v. State, 303 Md. 461, 465, 494 A.2d 934, 936 (1985)(collecting authorities).[1]

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[1] In support of that proposition, the Court of Appeals cited the following cases: State v. Burning Tree Club, 301 Md. 9, 16-18, 481 A.2d 785, 788-89 (1984); City of Bowie v. Area Dev. Corp., 261 Md. 446, 456, 276 A.2d 90, 95 (1971); Borders v. Board of Education, 259 Md. 256, 258-59, 269 A.2d 570, 571 (1970); Balto. Import Car v. Md. Port Auth., 258 Md. 355, 338-39, 265 A.2d 866, 867-68 (1970); Merc. Safe Dep. & Tr. v. Reg. of Wills, 257 Md. 454, 459, 263 A.2d 543, 545-46 (1970); Kacur v. Employers Mut. Cas. Co. 253 Md. 500, 504 n. 2, 254 A.2d 156, 158 n. 2 (1969); Woodland Beach Ass'n v. Worley, 253 Md. 442, 447-48, 252 A.2d 827, 830 (1969); Causey v. Gray, 250 Md. 380, 391, 243 A.2d 575, 583-84 (1968); Garrett County v. Oakland, 249 Md. 400, 401-02, 240 A.2d 228, 229 (1968); Hunt v. Montgomery County, 248 Md. 403, 408-10, 237 A.2d 35, 37-39 (1968); Queen Anne's County v. Miles, 246 Md. 355, 362, 228 A.2d 450, 453 (1967); Myers v. Chief of Fire Bureau, 237 Md. 583, 591, 207 A.2d 467, 471 (1965); Kelley v. Davis, 233 Md. 494, 498, 197 A.2d 230, 231 (1964); Md. Committee v. Tawes, 228 Md. 412, 419-20 n. 4, 180 A.2d 656, 659 n. 4 (1962); Shapiro v. County Comm., 219 Md. 298, 302-03, 149 A.2d 396, 398-99 (1959). Since Broadwater, the court has reiterated that a demurrer or motion to dismiss is rarely appropriate in a declaratory judgment action: Boyds Civic Ass'n v. Montgomery County

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In fact, the Court of Appeals has held that, "generally, it is only when the declaration sought does not present a justiciable issue . . . that a demurrer would be appropriate." Woodland Beach Property Owners Ass'n, Inc. v. Worley, 253 Md. 442, 448, 252 A.2d 827, 830 (1969); see also Shapiro v. Board of County Comm'rs, 219 Md. 298, 302-03, 149 A.2d 396, 399 (1959)("[t]he test of the sufficiency of the bill is not whether it shows that the plaintiff is entitled to the declaration of rights or interest in accordance with his theory, but whether he is entitled to a declaration at all; so, even though the plaintiff may be on the losing side of the dispute, if he states the existence of a controversy which should be settled, he states a cause of suit").

These principles mandate the denial of the motions to dismiss.

II. THE COMPLAINT STATES A CLAIM FOR DECLARATORY RELIEF

Defendants De Francis and Jacobs contend that the Manfusos have no right to a declaration as to whether they may ask the Court to enjoin breaches of fiduciary duty or as to whether De Francis and Jacobs have in fact breached their fiduciary duties.[2] As support for their argument, De Francis and Jacobs

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Council, 309 Md. 683, 687 n. 2, 526 A.2d 598, 600 n. 2 (1987).

[2] On the other hand, the defendants do not appear to dispute that the Manfusos have the right to a declaration as to whether the standstill provision in the Stockholders Agreement bars them from bringing this suit. See, e.g., Memorandum of Law in Support of Motion [by De Francis and Jacobs] to Dismiss Certain Claims for Declaratory Relief and All Claims for

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cite § 3-406 of the Courts and Judicial Proceedings Article (1974, 1989 Repl. Vol.), which provides as follows:

> Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

According to De Francis and Jacobs, the question of whether they have breached their fiduciary duties and the question of whether the Court may enjoin them from breaching their fiduciary duties "have no relationship to the validity or construction of any provision, term or condition of the Stockholders Agreement, or to the rights and legal status of the parties thereunder." Memorandum of Law in Support of Motion [by De Francis and Jacobs] to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief, at 5.[3]

Injunctive Relief, at 5.

[3] The Court should question that premise at least to the extent that it concerns the Court's ability to entertain the Manfusos' request for a declaration concerning the availability of injunctive relief. Contrary to the defendants' suggestion (Memorandum of Law in Support of Motion [by De Francis and Jacobs] to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief, at 5), the Manfusos have not merely requested "that this court enter a declaration as to its own power to grant injunctive relief." Rather, the Manfusos have requested a declaration that, notwithstanding the standstill provision of the Stockholders Agreement, the Court may enjoin the defendants' wrongful conduct at the Manfusos' behest. A declaration of that nature

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Therefore, they conclude that the Court may not issue a declaration on those questions, because (according to their Memorandum) "a party may only seek declaratory relief when the issue in controversy depends on the construction or validity of some writing, i.e., a contract, statute, regulation, or similar document as described in § 3-406." Id. (emphasis added).

To the contrary, aside from § 3-406, the Declaratory Judgment Act contains many provisions authorizing courts to declare a party's rights. See, e.g., Md. Cts. & Jud. Proc. Code Ann. § 3-409 (authorizing courts, in their discretion, to grant a declaratory judgment if it will serve to terminate the uncertainty or controversy giving rise to the proceeding and if, among other things, an actual controversy exists and antagonistic claims are present); id. § 3-408 (authorizing the entry of declaratory judgments in matters relating to trusts and decedents' estates); id. § 3-408.1 (authorizing the entry of declaratory judgments in land patent proceedings).

Furthermore, in addition to these and other specific grants of authority, the general grant of jurisdiction in § 3-403(a) contains broad language empowering courts to "declare rights, status, and other legal relations" (emphasis added), thus authorizing a declaration as to whether the Manfusos have the right to an injunction barring the defendants from breaching their fiduciary duties and as to whether the

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has an obvious relationship to the validity or construction of the Stockholders Agreement and its provisions.

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defendants in fact have breached their fiduciary duties. Section 3-403(b) then goes on to state specifically that "the enumeration" of powers in § 3-406 and elsewhere "does not limit or restrict the exercise of the general powers conferred in subsection (a) in any proceeding where declaratory relief is sought and in which a judgment or decree will terminate the controversy or remove an uncertainty."

In short, the express language of the Declaratory Judgment Act refutes the defendants' contention that the Court can "only" declare the parties' rights in a case involving the construction of a written instrument.[4] Thus, the defendants' erroneous contentions notwithstanding, the Manfusos must merely allege the existence of a justiciable controversy in order to state a claim for declaratory relief under Maryland law. Woodland Beach Property Owners Ass'n, Inc. v. Worley, 253 Md. at 448, 252 A.2d at 830.

In the words of the Court of Appeals, "a controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." Hatt v. Anderson, 297

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[4] The defendants' contention also flies in the face of the cases where, as here, a litigant has requested a declaration that certain conduct constitutes a breach of fiduciary duty. See, e.g., Gaff v. FDIC, 828 F.2d 1145, 1146 (6th Cir. 1987); Healy v. Axelrod Constr. Co. Defined Benefit Plan and Trust, 787 F. Supp. 838, 844 (N.D. Ill. 1992); Boeing Co. v. Shrontz, 1992 WL 81228 (Del. Ch. 1992), at 5 (available on WESTLAW); Red Carpet Club of Panama City v. Southeast Banking Corp., 580 So.2d 780, 780 (Fla. App. 1991).

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Md. 42, 45-46, 464 A.2d 1076, 1078 (1983). In view of the Manfusos' complaint, as well as the answer, the counterclaim, and the various factual allegations appended to the motions to dismiss, the Court cannot but conclude that this case involves interested parties asserting adverse claims and demanding a legal decision upon a state of facts that has accrued. Therefore, as the Manfusos have alleged a justiciable controversy, the Court should deny the motions to dismiss the claims for declaratory relief.

III. THE MANFUSOS HAVE STANDING TO ASSERT THE CLAIMS CONCERNING TEXAS RACING MATTERS

All of the defendants have charged that the Manfusos lack standing to prosecute the claim concerning De Francis's and Jacobs's pursuit of their personal racing interests in Texas. In essence, the defendants characterize that claim as an action alleging corporate waste, which, they say, only the defendant corporations themselves may bring.

But even assuming arguendo that the Manfusos do not have the right as directors to bring suit on behalf of the corporations that they serve, they would have the right to bring suit if, in addition to the injury that the corporations suffered, they too suffered injury in their own right as a result of De Francis's and Jacobs's wrongful conduct. See, e.g., Waller v. Waller, 187 Md. 185, 192, 49 A.2d 449, 453 (1946)("Unquestionably a stockholder may bring suit in his own name to recover damages from an officer of a corporation for

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acts which are violations of a duty arising from contract or otherwise and owing directly from the officer to the injured stockholder, though such acts are also violations of duty owing to the corporation"); Moran v. Household Int'l, Inc., 490 A.2d 1059, 1070 (Del. Ch. 1985)(if a shareholder's complaint alleges a wrong involving a contractual right that exists independently from any right belonging to the corporation, the shareholder may proceed with the individual action).

In this case the complaint alleges injuries that the Manfusos individually have suffered as a result of the defendants' breach of the Stockholders Agreement. For example, pursuant to the Stockholders Agreement, Jacobs received a ten-year employment contract and a lavish salary, in return for which he promised to "devote substantially all of [his] time to [his] employment." Complaint, ¶ 18; id., ¶ 33. Yet, despite that promise, Jacobs has neglected his duties in Maryland, while expending many hours of time assisting The Lone Star Jockey Club ("Lone Star") in its efforts to obtain a license to own and operate a racetrack in Texas. See id., ¶ 27. As a consequence, Jacobs has breached his obligations to the Manfusos under the Stockholders' Agreement, thus harming the Manfusos individually.

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Additionally, the Stockholders Agreement provides that, James Mango ("Mango"), the key employee of Laurel and Pimlico,[5] would receive a ten-year employment contract as long as he devoted "substantially all of [his] time to [his] employment." Id., ¶ 28.[6] Yet, despite that undertaking, De Francis and Jacobs have required Mango to assist them in their efforts in Texas and have attempted to lure Mango to Texas by promising him an equity interest in their potentially lucrative business in that State, D/J Track Consultants. Id. The Court may reasonably infer that Mango, as the general manager of both Pimlico Racetrack and Laurel Racetrack (Complaint, ¶ 28), is the single individual upon whom the success and viability of the tracks depends. Hence, in attempting to induce Mango's breach of the Stockholders Agreement, De Francis and Jacobs have not only harmed the corporate defendants, but have also harmed the Manfusos individually.

In summary, as parties to the Stockholders Agreement, the Manfusos thereby acquired individual rights, including the right to expect that Jacobs and Mango would devote their best efforts to Maryland racing. Thus, in addition to the harm that

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[5] As used in this Opposition, "Laurel" means the defendant Laurel Racing Assoc., Inc., and "Pimlico" refers jointly to defendant The Maryland Jockey Club of Baltimore City and defendant Pimlico Racing Association, Inc.

[6] Mango subsequently did in fact enter into an employment contract, which required him to give "his best efforts and his full time and attention" to his duties to the racetracks in Maryland. Complaint, ¶ 28.

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De Francis and Jacobs have visited upon the corporations through their personal adventures in Texas, their actions, as alleged in the complaint, have also harmed the Manfusos individually. Accordingly, by virtue of the Stockholders Agreement, the Manfusos have standing in their own right to challenge De Francis's and Jacobs's attempts to profit for themselves in the Texas racing industry. Waller v. Waller, 187 Md. at 192, 49 A.2d at 453.

In any event, even if the Manfusos had not suffered damages in their own right, the defendants appear to concede that the Manfusos would have standing as shareholders to bring a derivative suit seeking redress for the harm that De Francis and Jacobs have visited upon the defendant corporations. See, e.g., Memorandum of Law in Support of Motion [by The Maryland Jockey Club of Baltimore City, Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.] to Dismiss Certain Claims for Declaratory Relief and All Injunctive Relief, at 12.

The Manfusos, moreover, have established that De Francis and Jacobs control the boards of directors of each of the defendant corporations. See Complaint, ¶¶ 3-4; id., ¶¶ 17-18; id., ¶ 21; id., ¶ 43. Under those circumstances, it would be futile for the Manfusos to demand that the boards of directors authorize the corporations to bring suit against De Francis and Jacobs. Parrish v. Maryland & Virginia Milk Producers Ass'n, 250 Md. 24, 83, 242 A.2d 512, 545 (1968), cert. denied, 404

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U.S. 940 (1971).[7] Therefore, contrary to the defendants' assertions,[8] the Manfusos may bring this case as a shareholders' derivative action, without first making demand upon the boards of directors. Id. at 83-84, 242 A.2d at 545.

In conclusion, the Manfusos plainly have standing individually through the Stockholders Agreement and derivatively as shareholders to bring this action challenging De Francis's and Jacobs's pursuit of their personal business ventures in Texas. For that reason, the Court should deny the motions to dismiss insofar as they concern the Manfusos' purported lack of standing.

IV. THE COMPLAINT STATES A CLAIM FOR INJUNCTIVE RELIEF

In moving to dismiss the Manfusos' claim for injunctive relief, De Francis and Jacobs seem not to understand the principles applicable under Md. R. 2-322(b)(2). When a defendant argues that a complaint fails to state a claim for injunctive relief, a court does not apply some higher level of scrutiny to the complaint than it would apply to a complaint requesting something other than injunctive relief. See, e.g.,

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[7] Indeed, "'the court would not permit [De Francis and Jacobs] to conduct litigation against themselves even if they were willing to do so.'" Id. at 84, 242 A.2d at 545 (quoting Caldwell v. Eubanks, 326 Mo. 185, 192, 30 S.W.2d 976, 979 (1930)).

[8] See, e.g., Memorandum of Law in Support of Motion [by The Maryland Jockey Club of Baltimore City, Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.] to Dismiss Certain Claims for Declaratory Relief and All Injunctive Relief, at 12-16.

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Mannings v. Board of Pub. Instruction of Hillsborough County, Florida, 277 F.2d 370, 372 (5th Cir. 1960)(a complaint for injunctive relief may not be dismissed for failure to state a claim "if under any theory of recovery a case can be made out by the proof"); Arvida Corp. v. City of Boca Raton, 59 F.R.D. 316, 323-24 (S.D. Fla. 1973)(quoting Cook & Nichol, Inc. v. The Plimsoll Club, 451 F.2d 505, 506 (5th Cir. 1971))(a court will not dismiss a claim for injunctive relief "unless it appears to a certainty that the plaintiff would not be entitled to recover under any state of facts which could be proved in support of his claim"). In general, however, De Francis and Jacobs have directed themselves not to the dispositive question of whether it appears beyond doubt that the Manfusos can prove no set of facts entitling them to injunctive relief (Conley v. Gibson, 355 U.S. at 45-46), but rather to the question of whether the Manfusos should ultimately prevail on the merits of their claim.

De Francis and Jacobs, for example, place a great deal of emphasis on Coster v. Department of Personnel, 36 Md. App. 523, 525, 373 A.2d 1287, 1289 (1977), in which the trial court dissolved a temporary injunction after a hearing on the merits of that issue.[9] If the Manfusos move for an interlocutory injunction barring De Francis and Jacobs from pursuing their Texas racing ventures, if the Court enters such an injunction,

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[9] The trial court had also convened a hearing before granting the temporary injunction. Id.

and if the defendants move to have that injunction dissolved, then and then only will Coster stand a chance of having anything to do with this case. Coster, however, has nothing to do with whether the Manfusos' complaint states a claim upon which relief can be granted.

De Francis and Jacobs also cite a number of cases in which courts have weighed the hardship to the defendant against the benefits to the plaintiff before making a decision on the merits as to whether to enter an injunction. Memorandum of Law in Support of Motion [by De Francis and Jacobs] to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief, at 29-30. Suffice it to say that the Court will only have to engage in that balancing exercise if and when the Manfusos move for an ex parte or interlocutory injunction barring De Francis and Jacobs from pursuing their Texas racing ventures. See, e.g., State Dep't of Health and Mental Hygiene v. Baltimore County, 281 Md. 548, 554, 383 A.2d 51, 55 (1977). Until then, the Court should focus on the allegations in the complaint viewed in the light most favorable to the Manfusos (Berman v. Karvounis, 308 Md. at 264, 518 A.2d at 728), not on De Francis's and Jacobs's self-serving assertions about the proof that they might adduce at an adversary hearing at some indeterminate point in the future.[10]

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[10] The Court may also discount the speculative "benefits" that, according to Jacobs's affidavit, Pimlico and Laurel will enjoy if Lone Star successfully obtains a license to own and operate a racetrack in Texas. Not only does Jacobs fail to quantify the amount of the purported "benefit" that

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Accepting the truth of all well-pleaded allegations in the complaint and the truth of all reasonable inferences from those allegations, the Court must conclude that the complaint alleges facts that, if proved, would entitle the Manfusos to injunctive relief. Flaherty v. Weinberg, 303 Md. at 136, 492 A.2d at 628. According to the complaint, while revenues from Pimlico and Laurel Racetracks have declined steeply, De Francis and Jacobs (who collectively earn over $1 million per year) have nevertheless devoted themselves to lucrative, personal opportunities in Texas, not to the Maryland businesses to which they owe contractual and fiduciary duties. Complaint, ¶¶ 24-27. Furthermore, De Francis and Jacobs have taken steps to steal Mango, the single person most responsible for the success of Pimlico and Laurel, and to make him an equity partner in their Texas ventures. Id., ¶¶ 28-29. Similarly, in the pursuit of the enormous profits that they expect to earn in Texas, De Francis and Jacobs either have disclosed or intend to disclose proprietary and confidential matters belonging solely to Pimlico and Laurel. Id., ¶ 30.

According to the defendants, the standstill agreement immunizes them from any objection to their misconduct until October 1993. By then, however, De Francis and Jacobs may well have succeeded in looting Pimlico and Laurel. Consequently,

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Pimlico and Laurel might enjoy in the event of Lone Star's success, but he also fails to show how any "benefit" would outweigh the harm to Pimlico and Laurel from his and De Francis's continued course of misconduct in Texas.

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unless the Manfusos can obtain an injunction enjoining the continued course of misconduct, waste, and self-dealing, the Manfusos face substantial and irreparable harm, namely, the complete and absolute destruction of their investment.[11]

To defeat the defendants' motion, the Manfusos need only to have alleged facts that, if proved, would entitle them to injunctive relief. Flaherty v. Weinberg, 303 Md. at 136, 492 A.2d at 628; cf. C.N. Robinson Lighting Supply Co. v. Board of Educ. of Howard County, 90 Md. App. 515, 523, 602 A.2d 195 (1992)(even highly imprecise allegations will state a claim for injunctive relief in this era of notice pleading).[12] If

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[11] The defendants have suggested that the Manfusos have an adequate remedy at law, presumably in the form of an action for damages. Nonetheless, the availability of a remedy at law no longer precludes the grant of injunctive relief. SECI, Inc. v. Chafitz, Inc., 63 Md. App. 719, 725, 493 A.2d 1100, 1103 (1985)(citing Md. R. BB 76). Thus, Rule BB 76 itself provides:

> A court shall not refuse to issue an injunction on the mere ground that the applicant has an adequate remedy in damages, unless the adverse party shall show to the court's satisfaction that he has property from which the damages can be made, or shall give a bond in such amount as may be determined by the court and with such surety as may be approved by the clerk, to answer all damages and costs that he may be adjudged to pay to the applicant, by reason of the alleged wrong.

De Francis and Jacobs themselves have called into question their present ability to compensate the Manfusos for the value of their interest in Pimlico and Laurel. See Counterclaim, ¶ 3; id., ¶ 56; id., ¶ 71. For that reason, the Court may well question the adequacy of any remedy that the Manfusos may have at all against De Francis and Jacobs.

[12] In view of the obligations that notice pleading places on the Manfusos, the Court should also disregard De Francis's and Jacobs's complaints about the alleged lack of "specific" allegations in the complaint. See, e.g., Memorandum

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proved, the foregoing facts would establish the substantial and irreparable harm entitling the Manfusos to an injunction barring De Francis and Jacobs from engaging in their personal business ventures in Texas. The Court, therefore, should deny the motion to dismiss insofar as it concerns the request to enjoin De Francis's and Jacobs's activities in Texas. Id.

V. CONCLUSION

For any or all of the foregoing reasons, the Court should deny the defendants' motions to dismiss.

Respectfully submitted,

James P. Ulwick

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of Law in Support of Motion [by De Francis and Jacobs] to Dismiss Certain Claims for Declaratory Relief and all Claims for Injunctive Relief, at 20. As Judge Lowe once wrote, "'the precise rubric' itself provides that a mere informal statement of a cause of action will suffice and that it shall be 'brief and concise and contain only such statements of fact as may be necessary to constitute a cause of action.'" General Fed. Constr., Inc. v. D.R. Thomas, Inc., 52 Md. App. 700, 705, 451 A.2d 1250 (1982)(quoting Md. R. 301 b, which is now Md. R. 2-303(b)).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this seventeenth day of June, 1992, I sent a copy of Plaintiffs' Opposition to Defendants' Motions to Dismiss the Complaint Insofar as It Concerns Texas Racing Matters by hand-delivery to:

James E. Gray, Esq.
Linda S. Woolf, Esq.
Goodell, DeVries, Leech & Gray
25 South Charles Street
Suite 1900
Baltimore, Maryland 21201;

and by first-class mail, postage prepaid, to:

Irwin Goldbloom, Esq.
McGee Grigsby, Esq.
Jennifer Archie, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505.

James P. Ulwick

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cc: Clerk Circuit Ct.

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JAMES M. KRAMON*†
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OF COUNSEL
FREDERICK STEINMANN

FILED
JUN 11 1992
CIRCUIT COURT FOR
BALTIMORE CITY

June 11, 1992

HAND-DELIVERED

The Honorable Ellen L. Hollander
Circuit Judge
Circuit Court for Baltimore City
Clarence M. Mitchell, Jr. Courthouse
100 N. Calvert Street
Baltimore, Maryland 21202

Re: Robert and John Manfuso v. DeFrancis, et al.
Case No. 92120052/CE147851

Dear Judge Hollander:

Enclosed please find two courtesy copies of:

1. Plaintiffs' Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief;

2. Memorandum of Law in Support of Plaintiffs' Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief;

3. Proposed Order; and

4. Motion to Dismiss Counter-Claim of The Maryland Jockey Club of Baltimore City, Pimlico Racing Association, Inc. and Laurel Racing Association, Inc. and Count II of the Counter-Claim of DeFrancis and Jacobs, and/or Motion for Summary Judgment.

As Mr. Gray said yesterday in his letter to Your Honor, I have no objection to advancing any portion of the currently pending Motions to Dismiss, consistent with Your Honor's schedule. On behalf of the plaintiffs, however, I would ask that

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our Motion for Injunctive Relief be heard at the earliest possible time. We will be prepared to discuss this issue, with Your Honor's permission, at the three o'clock chambers conference.

Very truly yours,

James P. Ulwick

JPU:sms

Enclosures

cc: James E. Gray, Esquire
(via hand-delivery)

McGee Grigsby, Esquire
(via facsimile - letter only,
enclosures to be sent via
overnight delivery)

Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

06:sms:06/11/92:01
14:a:\Hollandr.Jud

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
	*	CIRCUIT COURT
Plaintiffs		
vs.	*	FOR
JOSEPH A. DeFRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE147851

* * * * * * * * *

MOTION TO DISMISS COUNTER-CLAIM OF THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, PIMLICO RACING ASSOCIATION, INC. AND LAUREL RACING ASSOCIATION, INC., AND COUNT II OF THE COUNTER-CLAIM OF DeFRANCIS AND JACOBS, AND/OR MOTION FOR SUMMARY JUDGMENT

Plaintiffs, John A. Manfuso, Jr. and Robert T. Manfuso, hereby request this Court to dismiss the Counter-Claim filed by defendants, The Maryland Jockey Club of Baltimore City, Pimlico Racing Association, Inc. and Laurel Racing Association, Inc. Plaintiffs also request this Court to dismiss Count II of the Counter-Claim of defendants, Joseph A. DeFrancis and Martin Jacobs. Alternatively, plaintiffs request this Court to grant summary judgment in their favor with respect to those Counts. The grounds for this motion are stated below:

I. INTRODUCTION

Plaintiffs, Robert T. Manfuso and John A. Manfuso, Jr., are owners and directors of Laurel Racing Association, Inc. and Pimlico Racing Association, Inc. As outlined in the Complaint filed in this Court, the remaining ownership interests in the defendant corporations are held by the Estate of Frank J. DeFrancis and Martin Jacobs. On October 1, 1989, the Manfusos, Jacobs, the Estate of Frank J. DeFrancis, Joseph DeFrancis, The Maryland Jockey Club of Baltimore City, Pimlico Racing

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Association, Inc. and Laurel Racing Association, Inc. entered into a Stockholders' Agreement. The Stockholders' Agreement is attached as Exhibit A to plaintiffs' Complaint.

Both plaintiffs were officers and directors of Laurel Racing Association, Inc. (hereinafter "Laurel"), and Pimlico Racing Association, Inc. (hereinafter "Pimlico"). After the negotiation of the Stockholders' Agreement, plaintiffs continued to serve as directors to both corporations, and in addition John A. Manfuso, Jr. became Co-Chairman of the Board of Pimlico and Robert T. Manfuso became Co-Chairman of the Board of Laurel. Joseph DeFrancis became the other Co-Chairman of the Boards of Laurel and Pimlico, and Jacobs continued as a director of both corporations.

Over the course of the next several years, the Manfusos observed actions by both DeFrancis and Jacobs which they viewed as breaches of DeFrancis' and Jacobs' fiduciary duties to the corporations. Recent actions by DeFrancis and Jacobs, particularly with respect to their attempts to lure a key employee of Pimlico and Laurel to a private venture, have compelled the Manfusos to seek the assistance of this Court. This action was filed specifically by the Manfusos to obtain a ruling by this Court on whether or not the "standstill provision" of the Stockholders' Agreement prevents the Manfusos from taking any steps to protect the corporations from abuse by DeFrancis and Jacobs. Should this Court determine that the

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Manfusos, as directors of Maryland corporations, cannot take any action to protect the corporations, the Manfusos will resign their positions as directors of the corporations, since they will then have the responsibilities of directors, but none of the rights. If, on the other hand, this Court decides that the standstill provision does not prevent the Manfusos, as directors of Pimlico and Laurel, from taking limited and appropriate steps to prevent abuses of the corporations, then the action may be set in for trial of the substantive allegations contained in the Complaint.

The Counter-Claims filed by the defendants each claim that the mere filing of a lawsuit by the Manfusos breached the Stockholders' Agreement and relieved each of the defendants from any further obligations of that Agreement. The defendants have each asked for a declaration of their own that the Stockholders' Agreement has been breached by the filing of this action. Further, Joseph DeFrancis has unilaterally made a decision that should be resolved by this Court--whether the Stockholders' Agreement has in fact been breached--and has ordered that all of the benefits given to the Manfusos under the Stockholders' Agreement are to be withdrawn, and that no further contact by any employee of either Laurel or Pimlico will be permitted with the Manfusos, upon pain of dismissal of such employee. This clear attempt to intimidate the employees of Pimlico and Laurel, and influence their future testimony, is

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yet another manifestation of Mr. DeFrancis' utter disregard for his fiduciary duties.

Plaintiffs will show in this motion that, as a matter of law, plaintiffs cannot have breached the Stockholders' Agreement by asking this Court to declare the parties' rights under that Agreement. For this reason, as well as all of the other reasons advanced below, plaintiffs ask this Court to dismiss the Counter-Claim of the corporations, and Count II of the Counter-Claim of DeFrancis and Jacobs, or, in the alternative, to grant summary judgment with respect to those Counts.

II. THE STANDSTILL PROVISION CANNOT APPLY TO A DECLARATORY JUDGMENT ACTION.

As stated above, the principal purpose of plaintiffs' Complaint is to obtain a declaration from this Court that the standstill provision of the Stockholders' Agreement does not prevent plaintiffs from asking this Court to restrain defendants from further abuses of the corporations. Since the Maryland Legislature has provided a specific procedure which allows parties to a contract to submit the document to the Court for interpretation, the mere filing of a declaratory judgment action cannot have breached the Stockholders' Agreement, as a matter of law.

The Declaratory Judgments Act was enacted in order to relieve parties of the common law rule that no declaration of rights may be judicially adjudged unless a right has been

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violated, and to render practical help in ending controversies. Davis v. State, 183 Md. 385, 388-89 (1944). The Maryland Legislature has made clear the purpose of the subtitle, and has announced that it shall be liberally construed and administered. Section 3-402 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland states:

> This subtitle is remedial. Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It shall be liberally construed and administered.

The right of a party to seek a declaration of his responsibilities under a contract has been stated in the broadest possible terms by the Legislature. Section 3-406, entitled "Power to Construe," states, in pertinent part:

> Any person interested under a...written contract...may have determined any question of construction or validity arising under the instrument ...and obtain a declaration of rights, status or other legal relations under it. (Emphasis supplied.)

The meaning of these statutes could not be more clear. Any party to a contract who has an actual controversy with regard to the rights, status or other legal relations arising under the contract, has the unfettered ability to present the contract to a Circuit Court for a declaration of his rights, status or other legal relations under the contract. The Manfusos, no less than any other person in Maryland, have a right to present the Stockholders' Agreement, and the

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standstill provision, to this Court for an interpretation of their rights, status or other legal relations under it.

As will be seen infra, the standstill provision of the Stockholders' Agreement is not absolute. It contains explicit exceptions which permit litigation in certain circumstances, some of which are present in this case. Plaintiffs also believe that there are implicit exceptions to the standstill provision--where the application of the standstill provision would assist defendants in breaching their fiduciary duties, or prevent plaintiffs from properly fulfilling their own fiduciary duties as directors of the corporations. Under these circumstances, plaintiffs have a legal right to request this Court for a ruling on the meaning of the provision.

Plaintiffs are owners and directors of several substantial corporations. They have invested millions of dollars of their own money and years of their time and effort to make the corporations successful and valuable entities. They now fear that the son of their former partner is abusing his position as President and Co-Chairman of the Boards of the corporations in a way that will drastically and irretrievably damage the corporations before the conclusion of the standstill period. As directors of these companies, plaintiffs believe they have a duty to take all steps possible to prevent further abuses of the corporation. If this Court should find that plaintiffs do have a right to proceed, notwithstanding the standstill

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provision, plaintiffs will press forward with this lawsuit and assemble the evidence necessary to prove their allegations. On the other hand, if this Court finds that the standstill provision prevents plaintiffs from seeking injunctive relief from this Court, plaintiffs will resign as directors and wait until October 1993 to seek the Court's assistance. Plaintiffs will resign because the application of the standstill provision will leave them with no ability to fulfill their duties as directors.

The important point for the purpose of the instant Motion, however, is that in neither circumstance--whether the Court agrees with the plaintiffs' interpretation of the standstill provision or not--can the presentation of this controversy to this Court in a request for a declaratory judgment, be deemed to be a breach of the Stockholders' Agreement. As a matter of law, Section 3-406 grants the right to "any person" to "have determined any question of construction or validity arising under the...contract." Section 3-406 does not except "standstill provisions" from this provision. Rather, the section permits <u>any</u> plaintiff to sue with respect to <u>any</u> provision relating to <u>any</u> contract. Since the Legislature has also specifically stated that the Declaratory Judgment Act is to "be liberally construed and administered," there can be no doubt that the mere presentation of this controversy to the

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Court for a ruling on the proper meaning of the standstill provision, does not breach the Stockholders' Agreement.

III. THE STOCKHOLDERS' AGREEMENT ITSELF CONTEMPLATES THAT A LAWSUIT IS AVAILABLE IN THE CIRCUMSTANCES PRESENTED HERE.

The standstill provision is contained in Paragraph 10 of the Stockholders' Agreement and states in pertinent part:

> With the exception of litigation based on criminal activity or on a breach of the terms of this Agreement or documents executed pursuant hereto, the parties to this Agreement agree that, prior to October 1, 1993, they will not institute or join in any legal dispute or action against any party to this Agreement concerning the business or operations of Pimlico or Laurel. If, after October 1, 1993 but prior to October 1, 1994, any party to this Agreement institutes or joins in any legal dispute or action against any other party to this Agreement concerning the business or operations of Pimlico or Laurel, the party against whom such dispute or action is brought agrees not to raise the statute of limitations as a defense to such action.

Thus, the parties agreed that the standstill provision would not apply to (1) litigation based on criminal activity; (2) litigation based on a breach of the terms of the Stockholders' Agreement; or (3) litigation based on a breach of the terms of documents executed pursuant to the Stockholders' Agreement. Since two of the exceptions noted above clearly apply to the action filed by the Manfusos, the standstill provision cannot and does not bar this Complaint.

The most egregious violations of defendants DeFrancis' and Jacobs' fiduciary duties listed in the Complaint, relate to the failure of DeFrancis and Jacobs to devote their time and energies to Pimlico and Laurel. Both DeFrancis and Jacobs have

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been provided with huge salaries to compensate them for their full time devotion to the corporations. DeFrancis is paid in excess of $700,000.00 per year, and Jacobs receives almost $400,000.00, neither sum of which includes benefits. The failure of DeFrancis and Jacobs to devote their full time and attention to the corporations, both of which have been on a sharply downward trend since the time that DeFrancis and Jacobs took over leadership roles, is a clear violation of the Stockholders' Agreement. Thus, exception number 2 above applies, and the standstill provision does not bar the Complaint.

The Stockholders' Agreement makes Joseph DeFrancis the President and Co-Chairman of the Boards of both corporations. As such, he owes fiduciary duties to the corporations and their stockholders. Parish v. Maryland and Virginia Milk Producers Association, 250 Md. 24 (1968). Because he has such a fiduciary relationship, he is not permitted to promote his personal interests at the expense of the stockholders. Levin v. Levin, 43 Md. App. 380 (1979). In breach of these duties, and while the Maryland corporations' performance was declining, DeFrancis devoted a substantial portion of his attention to private interests in Texas racetracks.[1] DeFrancis' breach of

[1]DeFrancis and Jacobs concede that they are involved in Texas racing interests, and stand to receive 50 percent of the management fees to be paid to the Lone Star Jockey Club, Ltd. Paragraph 107, Counter-Claim. Section 305.167(a)(3) on page IV-5 of the Application of the Lone Star Jockey Club, (attached as

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the duties granted to him as the Chief Executive Officer and Co-Chairman of the Boards of the corporations, is a clear breach of his duties under the Stockholders' Agreement, and consequently the standstill provision does not apply.

Jacobs' breach of the Stockholders' Agreement is even more blatant. Jacobs is required, by the Stockholders' Agreement itself, to devote "substantially all of [his] time to [his] employment." (Paragraph VII-A.1., page 19 of the Stockholders' Agreement). Thus, Jacobs is required by the Stockholders' Agreement itself to devote substantially all of his time to his employment for Pimlico and Laurel. A breach of this obligation clearly constitutes a breach of the Stockholders' Agreement, and suit is unquestionably not barred by the standstill provision.

Probably the single worst breach of the Agreement by Jacobs and DeFrancis is their attempt to divert the services of

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Exhibit A), provides that Joseph DeFrancis and Martin Jacobs "have contributed many man hours" towards the effort to permit Texas parimutuel legislation. "They have expended in excess of $100,000 in travel and other expenses, ... and have contributed their time in assisting the Applicant with this application." DeFrancis himself testified that "many hours" have been expended by Jacobs and he on Texas racing. (Testimony attached as Exhibit B). DeFrancis states he has spent whatever time is required, on this project.

One of the Lone Star leaders, Preston M. Carter, Jr., has been more explicit. In sworn testimony taken on May 21, 1992, Carter testified that his agreement with DeFrancis and Jacobs calls for one or the other of them to be in Texas full time once the Lone Star facility is opened. (Testimony of Preston Carter, Jr., pages 125-126, attached as Exhibit C).

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the tracks' key employee--James Mango--to their private interests in Texas. Mango is the general manager of both racetracks. DeFrancis and Jacobs concede in their Answer that Mango is a key employee. He was considered to be an important enough employee that the Stockholders' Agreement provided that he was to receive a ten-year employment contract. Mango in fact did receive such a contract, which is clearly a document executed pursuant to the Stockholders' Agreement.

The corporations' Employment Contract with Mango states that he is required to devote his "full time and attention" to his duties at the racetrack.[2] Nevertheless, Jacobs and DeFrancis have involved Mango in their private racetrack business in Texas. If successful, Jacobs and DeFrancis clearly intend to use Mango to run their private operation. There could be no clearer breach of DeFrancis' and Jacobs' fiduciary duties than this attempt to steal a key employee, from corporations which need him, for private interests.

It is therefore clear that the exceptions to the standstill provision are applicable to those portions of the Complaint discussed above, and defendants' claims that the mere filing of the Complaint by plaintiffs is a breach of the Stockholders' Agreement, are without merit.

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[2]Mango's Employment Contract is attached as Exhibit D.

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IV. THE STANDSTILL PROVISION CANNOT BE USED TO PREVENT THE MANFUSOS FROM EXERCISING THEIR FIDUCIARY DUTIES.

The Stockholders' Agreement makes both Robert Manfuso and John Manfuso directors of the two corporations. Indeed, each are Co-Chairmen of the Board of one of the corporations. Despite defendants' claim that these positions are "ceremonial," it is clear that Maryland law places heavy responsibilities on directors.

Directors must perform their duties as directors in good faith, in a manner reasonably believed to be in the best interest of the corporation, and with the care an ordinarily prudent person in a like position would use. Section 2-405.1(a), Corporation and Associations Article, Annotated Code of Maryland. Specifically, the by-laws of both corporations provide that the directors "shall have the entire charge, control and management of the corporation and its property and business and may exercise all or any of its powers...."

As directors, the Manfusos have the right and responsibility to insure that the corporations are properly directed and managed. In order to do so, however, they must be able to have access to information about the corporation. Clearly, no prudent director could properly perform his duties without sufficient access to information about the corporation's performance, business, liabilities and activities, to make reasonable business judgments.

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Despite the Manfusos' clear right to such information, DeFrancis and Jacobs have caused the corporations to refuse to provide necessary information to them. Specifically, DeFrancis and Jacobs have refused to allow the Manfusos access to information about legal fees being incurred by the corporations (Complaint, ¶ 33), and they have refused to allow access to information regarding the accounting practices of the corporations (Complaint, ¶ 34). Under these circumstances, the Manfusos have the right to compel the production of information to them. C.f., Rosenbloom v. Electric Motor Repair Company, 31 Md. App. 711, 718 (1976), (Officers of a corporation for which a receiver has been appointed may be compelled to produce corporate records to receiver.)

Since the Stockholders' Agreement confers upon the Manfusos the rights and responsibilities attendant to their positions as directors of the corporations, and since a responsible director must be permitted access to information necessary for the performance of his duties, the standstill provision cannot be deemed to be an impediment to this Complaint.

V. THE STANDSTILL PROVISION CANNOT PERMIT DeFRANCIS AND JACOBS TO REPEATEDLY BREACH THEIR FIDUCIARY DUTIES.

The Stockholders' Agreement is a contract. It is settled law in Maryland that a provision in a contract which is against public policy will not be enforced. As a general rule, where an agreement is founded upon legal consideration and consists

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of several promises, only some of which are illegal or against public policy, the promises which can be separated from the illegality are valid. State Farm Mutual Auto Insurance Company v. Nationwide Mutual Insurance Company, 307 Md. 631, 643 (1986). Thus, a contract may contain excessively restrictive promises which are unenforceable, but will not be invalidated in its entirety where its general purpose is lawful. See, Holloway v. Faw, Casson & Company, 78 Md. App. 205, 238 (1989), affirmed in part, reversed in part on other grounds, 319 Md. 324 (1990); Hebb v. Stump, Harvey & Cook, Inc., 25 Md. App. 478 (1975).

It is unquestionably against public policy to permit directors to breach their fiduciary duties to corporations. See Parish v. Maryland and Virginia Milk Producers Association, supra. This Court has the right to restrict the operation of the standstill provision to circumstances which do not protect and encourage breaches of fiduciary duties. State Farm Mutual Auto Insurance Company v. Nationwide Mutual Insurance Company, supra. Thus, even if this Court should find that the standstill provision applies, notwithstanding the other arguments raised in this Motion, the Court should not enforce the provision against the Manfusos in this particular lawsuit, because to do so would violate public policy.

Moreover, DeFrancis, Jacobs and the corporations are estopped to raise the standstill provision under the

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circumstances presented by this case. An action for a declaratory judgment and injunction is an equitable action. Equity will not suffer a wrong without a remedy. Manning v. Potomac Electric Power Company, 230 Md. 415 (1963). Nor will equity aid counter-claimants such as DeFrancis and Jacobs in securing or protecting gains from their wrongdoing or in escaping the consequences of their wrongdoing. Niner v. Harson, 217 Md. 298 (1958).

In short, DeFrancis and Jacobs are estopped from raising the bar of the standstill provision to protect their abuses of the corporations. A court of equity cannot refuse to redress wrongs done to stockholders by actions of directors which operate to their own personal advantage, without any corresponding benefit to the corporation. Maryland Law Encyclopedia, Corporations §205, p. 291. Accordingly, the standstill provision cannot and does not serve to prevent the instant action.

Once again, the issue is not whether the Court should rule that plaintiffs are correct in the equitable arguments raised above. The question to be decided is whether plaintiffs breached the Stockholders' Agreement by the mere filing of this Complaint. At a minimum, plaintiffs have raised substantial questions which require the Court's attention. Plaintiffs have a right to a judicial determination of the impact of these equitable principles on the standstill provision. Accordingly,

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the filing of the Complaint cannot be deemed to constitute a violation of the Stockholders' Agreement, and the Counter-Claim of the Corporations, and Count II of the Counter-Claim of DeFrancis and Jacobs should be dismissed.

VI. CONCLUSION

For all of the reasons stated above, plaintiffs respectfully request that this Court dismiss the Counter-Claim of the corporate defendants, and Count II of the Counter-Claim of DeFrancis and Jacobs, or, in the alternative, grant plaintiffs summary judgment.

James P. Ulwick

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 1992, a copy of the foregoing Motion to Dismiss Counter-Claim of The Maryland Jockey Club of Baltimore City, Pimlico Racing Association, Inc. and Laurel Racing Association, Inc., and Count II of the Counter-Claim of DeFrancis and Jacobs, and/or Motion for Summary Judgment was hand-delivered to James E.

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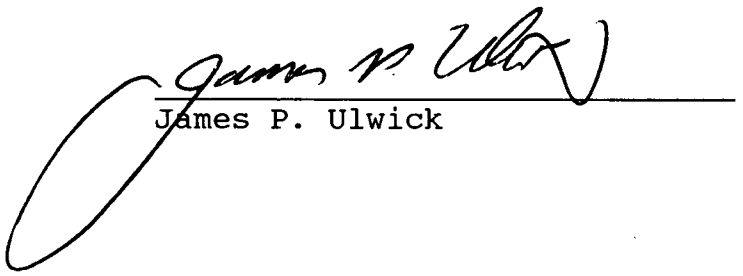
Gray, Esquire and Linda S. Woolf, Esquire, Goodell, DeVries, Leech & Gray, 25 S. Charles Street, Suite 1900, Baltimore, Maryland 21201, attorneys for defendants, DeFrancis and Jacobs; and mailed to Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, Latham & Watkins, 1001 Pennsylvania 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 P. Ulwick

LAW OFFICES
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Exhibit A

of operation of the racetrack and escalating to 6% over the remainder of the proposed 30-year term of the lease and (3) payments in lieu of property taxes in the amount of $300,000 per year, subject to escalation at five-year intervals based on the increase in the Consumer Price Index. At the end of the lease term, the Applicant will have the right to purchase the racetrack for a price to be negotiated at the time the lease is negotiated.

DLJ has committed to raise $30 million in subordinated debt and equity for the Applicant, subject to certain conditions. Please refer to Exhibit D to this Volume IV for the financing commitment from DLJ. Please refer also to Exhibit E for the financing proposal made by the Applicant to the City, to Exhibit F for the resolution passed by the City Council of the City approving the Applicant's financing proposal in form and concept and to Exhibit G for the financing letter from the partners of the Applicant.

(3) the basis for valuing non-cash contributions.

Noncash contributions to the Applicant, such as contract rights, architectural plans and drawings and other work in progress have been valued at their cost. In addition, although not recorded on the Applicant's books, Preston M. Carter, Jr., Joseph A. De Francis and Martin Jacobs have devoted significant efforts and incurred significant expenses for the benefit of the Texas horse racing industry.

Preston M. Carter, Jr. has worked within the Texas horse industry for the past 10 years to first pass the pari-mutuel law in the State of Texas and then to get the law amended to make it economically feasible to build a Class 1 racetrack in Texas. In this effort Carter has contributed cash in the amount of $125,000. As President of the Texas Horse Racing Association he was instrumental in raising over $1,500,000 in order to finance the horse industry's legislative efforts.

Joseph A. DeFrancis and Martin Jacobs have contributed many man hours towards the legislative effort to create and amend the Texas pari-mutuel bill. Mr. Jacobs served as an expert to Senator Ike Harris' staff in the drafting of the original law. They also contributed over $30,000 in cash, plus all their travel expenses in helping with the Texas legislative effort. They have also expended in excess of $100,000 in travel and other expenses, including a contribution of over $33,000 to the Texas Horse Racing Association, and have contributed their time in assisting the Applicant with this application.

Longley & Maxwell, L.L.P. has been retained to provide legal representation of the Applicant in connection with the Texas Racing Commission hearings in exchange for its 2% Class C limited partner's interest.

(b) The application documents must include documents from which the commission can conclude that financing for the racetrack is reasonably assured, such as a letter of commitment, and that the financing is conditioned only on conditions normal and customary to a sophisticated financing, such as acquisition of zoning variances, building permits, and other governmental approval.

Exhibit B

Exhibit B

TEXAS RACING COMISSION CAUSE NO. 91-R1-26

IN RE: APPLICATION FOR	§	BEFORE THE TEXAS
	§	
A PARI-MUTUAL CLASS 1	§	
	§	RACING COMMISSION
RACETRACK LICENSE IN THE	§	
	§	
DALLAS/TARRANT COUNTY AREA	§	AUSTIN, TEXAS (HORSE DIVISION)

TESTIMONY OF JOSEPH DE FRANCIS

IN SUPPORT OF THE APPLICATION OF LONE STAR JOCKEY CLUB, LTD.

Q. State your name, please.

A. Joseph A. De Francis.

Q. Mr. De Francis, where do you reside?

A. 124 West Lee Street, Baltimore, Maryland 21201.

Q. Can you briefly tell the hearing examiner what you primarily do for a living?

A. I'm President and Chief Executive Officer of Pimlico Racing Association, Inc. and Laurel Racing Assoc., Inc. and their affiliated entities. We use the trade name the "Maryland Jockey Club" in operating Pimlico Race Course in Baltimore, Maryland; Laurel Race Course in Laurel, Maryland; and the Bowie Race Course Training Center in Bowie, Maryland.

Q. Before we get into your background in racing, let me ask if you would briefly give us your educational background.

A. I graduated from Stanford University with an A.B. Degree in 1977. I then attended the Business and Law Schools of the University of California at Los Angeles (UCLA) in a joint degree program and graduated with both M.B.A. and J.D. degrees in 1982. I then joined the law firm of Latham & Watkins in Los Angeles, California, specializing in anti-trust and business law. In 1984, I transferred to the Latham & Watkins office in Washington, D.C., where I continued to practice law through approximately September,

1989. During my years with the Latham & Watkins firm, I worked on many major anti-trust matters, including the leveraged buy-out by Kohlberg, Kravis & Roberts (KKR) of RJR Nabisco. Following the death of my father, Frank J. De Francis, in August 1989, I began to devote my full time, attention and energies to running Laurel and Pimlico Race Courses, which I have now been doing for more than three years.

Q. Do you and the De Francis family own control of the two racetracks?

A. Yes. My family owns the controlling voting stock of both entities and there is vested in me full authority over all the operational and managerial decisions and policies of Pimlico and Laurel.

Q. Are you now or have you ever been married, Mr. De Francis?

A. No.

Q. When and how did you become interested in the horse racing business?

A. My interest began when I was very young and my father began taking me with him to racetracks to see his horses run. My father had an extremely hectic schedule and racing was his only form of relaxation. I found that the best way I could find to spend time with him was to go with him to the races, which we did at the tracks in Maryland and elsewhere in the Atlantic Seaboard area. In

fact, he trained me to be a fairly good handicapper of horses. As I grew older, my father was very involved, in addition to his law practice, in businesses that were large charterers of airline seats. I spent my summers and other portions of my time working in these businesses under him. As he put it, we were in the "fannies in the seats" business. He was a master at marketing and promotion and I received a steady diet of it. In 1980, as you know, he purchased the Maryland harness track that became known as Freestate Raceway. Although he spoke frequently with me about the track, from its acquisition in 1980, and about its operations and activities and its progress, I was not actively involved in it until 1984. When my father became Secretary of Economic and Community Development for the State of Maryland, at his request I moved back East in order to assist in its operations. It was at that time that I transferred to the Latham & Watkins office Washington, D.C. My role at Freestate Raceway was to assist Marty Jacobs, my father's close friend, attorney and partner, in running the track during my father's period of public service. Since both Marty and I were also practicing law at the time, we divided many of the duties between us. During that year, 1984, he and I also began negotiations for the purchase of Laurel Race Course, which culminated in December of that year.

With the return of my father to the racing business of Freestate Raceway and Laurel Race Course in December, 1984, I was able to return to the full-time practice of law, remaining at the Washington, D.C. office of Latham & Watkins. As you know, my dad suffered a severe heart attack in mid-1989. During the several months of hospitalization that followed, he and I spent a great deal of time together discussing the tracks and the possibilities that faced us. Following his death in August, 1989, and in accordance with his wishes, I assumed control of the Pimlico and Laurel tracks and gave up practicing law. For the more than three years since then, I have been working full time as President and Chief Executive Officer of Laurel and Pimlico.

Q. What responsibilities do you have at Pimlico and Laurel?

A. As the Chief Executive Officer, I have overall responsibility for all operations and other activities of Pimlico and Laurel and the Bowie Race Course Training Center. Thus, all the major areas of racetrack operation report to me, including our Executive Vice President, Marty Jacobs; our Vice President/Operations and General Manager, James P. Mango; our Vice President and Consultant, Lynda J. O'Dea; our First Vice Presidents for Finance, for Turf and Race Courses, and for Racing and Public Relations; and our marketing department. In

addition to this general supervision, I have been deeply involved in our marketing and promotion and major events programs. With the downturn in the economy over the past couple of years and the Persian Gulf War last year, followed by the full-blown recession, marketing and promotion have assumed even greater importance than previously. The Eastern part of the country has been particularly hard hit, as you may know, by the recession. We have also been adversely affected by the serious reduction in race horses resulting, among other factors, from the effects of the changes in the federal income tax laws and the increased number of racing days all along the Atlantic Seaboard. While we have experienced downturns in handle during the recent periods, we believe our marketing and related activities have prevented the more serious declines experienced at various other tracks. We are hopeful that, as the economy improves, our business will as well.

Q. Can you tell the hearing examiner a little bit about Laurel, it's size and the capacity and the type of people that frequent Laurel.

A. Laurel Race Course opened to the public in the year 1911. The facility is very large. The Clubhouse/Grandstand was built over periods starting in 1911. The combined buildings contain about 600,000 square feet of space. The

Clubhouse/Grandstand is completely enclosed with inside seating for about 8,000 people. The facility can accommodate about 20,000 people indoors. There is also a large apron with room for many thousands more. The Laurel property comprises about 360 acres of land with stalls to accommodate about 1,000 horses.

Q. Was it at the same time that Laurel was bought in 1984 that the De Francis group became interested in possibly purchasing Pimlico?

A. No. We did not have any inkling that the family that owned Pimlico had any interest in selling until about December, 1986. Pimlico was owned by the family of two brothers, Herman and Ben Cohen, who were about 91 and 87 years of age in 1986. Although both were in excellent health, Herman's son, who was active in the business, was seriously ill. In addition, the Tax Reform Act of 1986 was ending certain benefits available for a sale of stock in a business after December 31, 1986. We closed on the purchase of Pimlico on December 29, 1986.

Q. You've given us a little bit of the historical background of Laurel. What about Pimlico and its history?

A. Pimlico traces its roots to the Maryland Jockey Club, the oldest sporting organization in the United States of America, organized in 1743. Pimlico is the second oldest racetrack in the United States, built in the early 1870s.

The only older track in America is Saratoga. We have in our conference room at Pimlico Race Course an excerpt from George Washington's diary regarding his expenses for a day at the races at the Maryland Jockey Club in 1762. We also have a letter from President Andrew Jackson to Maryland Jockey Club in 1831 expressing thanks for a splendid day at the races. The Maryland Jockey Club has an incredible history. By the way, "The Maryland Jockey Club" is the trade name we use in association with both Laurel and Pimlico. Of course, Pimlico is best known for the Preakness®, the second jewel in the "Triple Crown of Racing." This year we will see the 117th running of the Preakness. It is the third Saturday in May, two weeks after the Kentucky Derby. It is followed by the Belmont Stakes three weeks later.

Q. When the De Francis group purchased Pimlico, did it continue its devotion to both live racing and top-notch facilities?

A. Yes. Although Pimlico did not have the kind of deferred maintenance that was experienced at Laurel, it still needed a considerable amount of work. One of the things that has been done over the years is the spending of enormous sums of money on improvement projects at our facilities. As reported to the Maryland legislature, we have spent more than $22,000,000 on improvements since the

acquisitions of Laurel in late 1984 and of Pimlico in late 1986.

Q. What sort of condition was Pimlico in when the De Francis group purchased it from the Cohen family? What changes, additions and improvements have been made?

A. Pimlico has more than 600,000 square feet of space in its Clubhouse/Grandstand facilities. Like Laurel, it is comprised of several connected buildings. The oldest part of the facility was built in the early 1870s and is made primarily of wood. It's an open-air grandstand and is used primarily on Preakness Day. Immediately adjacent is the grandstand, made primarily of steel and concrete. Next to that is the Clubhouse, also made primarily of steel and concrete. The facilities for patrons at Laurel and Pimlico are now fairly comparable and range from private membership dining rooms -- at Laurel, the "Sky Suite Members Club," and at Pimlico "The Jockey Club" -- to various seated dining rooms open to the general public. We have several other restaurants scattered throughout both facilities as well as numerous concession stands. We also have different grades of seating at both facilities, including various types and grades of box seats and suites. Pimlico has seating for about 18,000 patrons, with additional temporary seating on the apron. As you know, my father instituted several novel ideas at Laurel

and Pimlico that have been copied at other racetracks around the United States.

Q. Can you give us an idea of some of those?

A. In 1985, an area of about 18,000 square feet that was at the furthest corner of the Laurel Grandstand was converted into the "Sports Palace." It was the first of its kind ever at a racetrack. It has several interior large rooms that are very modern, very attractively furnished, with four projection TV's each producing a picture approximately 9 feet by 12 feet. The four screens are in two connected seated dining areas that accommodate a total of about 1,000 people. These TV's show the races as well as sporting events, such as football and baseball games. We've also got the sports tickertape to provide the sports fan all of the latest information on a moving electronic display. The Sports Palace also has four mini-theaters with large rear projection televisions as well as a battery of additional television monitors. We are able to show in each mini-theater a different sporting event as well as the races and related information. On a Sunday afternoon, for example, we'll show the races and the football games and maybe a baseball game, or tennis or golf. We receive these events via satellite downlink. We have found that sports fans can usually become racing fans, so we try to get people to come to the track to see

their favorite sporting event as well as the races. Laurel also developed the first computerized handicapping system ever provided to patrons free of extra charge at a United States racetrack. The system is user friendly and enables the user to weight the various handicapping factors as he or she deems appropriate. One of our concepts is that once the patron is in the Sports Palace, there's no extra charge for services except food and beverage and, of course, wagering. We introduced at the Sports Palace a "video library" containing VHS tapes of all races run in Maryland during the past year. The library is extensively used by serious handicappers who see the results of a race, either in the Racing Form or on the computer screen, and feel they'd like to see what happened to a particular horse in a race. The patron tells the attendant the race he or she would like to see and the race tape is shown on one of the video monitors reserved for that purpose.

Q. Do you have the same type of Sports Palace service at Pimlico?

A. The Sports Palace at Pimlico is located on the top floor of the Clubhouse. Its seating areas include 160 plush seats in an area that faces the track. Patrons at Pimlico may either be in the interior part of the Palace, or in the exterior seating area facing trackside. The other

amenities are similar to those at Laurel -- such as computerized handicapping, large screen projection TV's and video library.

Q. What other types of improvements were made at the tracks?

A. In the Laurel Clubhouse, for example, all of the "cages" that had enclosed mutuel tellers were ripped out and replaced by modern counter tops. A lot of tellers with seniority protection who had been on their job for 20-30 years felt they could act with impunity, insulting customers, not smiling and treating them rudely. Systems were instituted to reform or remove them. Removing the cages made them be less remote from patrons. Our tellers now wear uniforms, are well groomed, treat customers with respect and in a friendly manner. We also undertook extensive modernization and renovation projects in numerous other public areas of both tracks, as well as in the stable areas.

Q. Did removing the cages create security problems?

A. No. The counters are designed so that a patron would have a lot of difficulty reaching over to try to grab money. We also have an extensive amount of visible security. One of our beliefs in security is that undercover security in public areas is not nearly as important as having visible security. In fact, most of our security guards are equipped with walkie-talkies, so that if there is a

problem in any one area, we immediately know where. We have uniformed guards and off-duty police in uniform. We also have plain-clothes detectives, both police officers who are on or off duty, as well as our own security.

Q. How have Pimlico and Laurel, since the time the De Francis group purchased them, withstood the test of time with regard to competition from other forms of entertainment?

A. We have withstood competition from other forms of entertainment well. However, as I mentioned, we have in recent times felt the effects of the recession and the shortage of race horses that has been prevalent, particularly in the eastern part of the United States. That shortage has been caused by changes effected by the Tax Reform Act of 1986 as well as the increased number of racing days among the tracks in the East.

Q. Please relate that to the Dallas-Fort Worth area. Will we have the same kind of competitive things there? Will we have the same lack of horses?

A. The intense competition among racetracks for horses is not as strong in other parts of the country as it is in the East. If you think about the distance between Dallas/Fort Worth and Houston, it is about 250 miles. Between our Laurel track and the New York tracks, there is less than that distance but the tracks conducting thoroughbred racing include: Belmont, Aqueduct or Saratoga, depending

on which is running in New York; the Meadowlands, Garden State, Monmouth or Atlantic City, depending on which is running in New Jersey; Philadelphia Park or Penn National in Pennsylvania; Delaware Park in Delaware; and Laurel or Pimlico in Maryland. Thus, in about the same distance as between Dallas/Fort Worth and Houston, there are about a dozen racetracks, with competition among those that are running in the same periods for the same or similar types of horses. That competition is fierce. We do not believe Texas will experience the same intensity of competition for horses. We see Texas as a very important state for horse racing. There is a significant breeding industry in both thoroughbreds, quarterhorses and the other breeds in Texas. In the East, we don't have that interest in quarterhorses and other non-thoroughbreds. Part of our recent decrease in handle results from our having had to reduce the number of live races from ten to nine per weekday because we have not had the horses needed to fill the extra race.

Q. Do you feel you'll experience that same problem in Texas?

A. We are very hopeful that we will not. Economics has a way of outsmarting everybody. If purses are adequate, over time the necessary horses will come to Texas and we believe purses will certainly be adequate and horses will be attracted. Many of the breeders who are Texans, who

bought farms outside of Texas in order to take advantage of other state breeding programs, will come back to Texas. And, as noted above, there are quarterhorses and other breeds available for Texas racing.

Q. The application of Lone Star filed with the Commission further states that you and Marty Jacobs have broad and extensive experience in virtually all aspects of racetrack operations, including marketing, promotions, finance, pari-mutuels, security, admissions, parking and legal aspects and in initiating and producing major events and that you're capable of doing that elsewhere. Is that correct?

A. That is correct. By way of example, we have an event at Pimlico, the Preakness, which is the second leg of the Triple Crown. We have approximately 90,000 people in attendance at Pimlico, including those in the infield, on the day of the race, plus another 10,000 in attendance at our Laurel track watching the race via simulcast. We have about 800 pari-mutuel terminals operating on that day and literally thousands of employees. We have security that ranges from our own on-staff security to several hundred Baltimore City Police, both on-duty and off-duty, as well as National Guardsmen. We developed extensive procedures for dealing with this crowd control. It is a major, national event. We've developed a staff at the Maryland

Jockey Club who are experienced in this who have learned it during the course of their employment. Outstanding in this regard is our Vice President of Operations and General Manger, James P. Mango. We see our principal initial function in Texas, in the event the license is obtained, to put together a staff of hands-on, day-to-day operating people experienced in racing. One of the items submitted with Lone Star's application is an organizational chart and it shows the principal operating activities divided into a number of categories. The first, perhaps most important, is having a general manager who is in charge of the over-all facilities and the principal operating departments. That individual will also supervise the track superintendent who will be responsible for maintaining the track and being sure that the racing surfaces are safe and in first-class condition.

Q. Do you look at one of the primary responsibilities for Marty Jacobs and yourself being to locate and hire the general manager under which all these various functions will act?

A. Yes. Both Marty and I are on the Board of Directors of the Thoroughbred Racing Associations of North America, known as the TRA, which is the national organization to which major racetracks belong. In addition, I am a member of the TRA Executive Committee. We are well known by

people in the industry. We come into contact with and hear from people in the industry who would like to change their employment. We intend to do a very directed search and find the best qualified general manager. It takes a certain type of individual who has a very specific kind of hands-on experience as well an ability to deal with people. We think we will be successful in getting a first-class general manager. I don't mean to belittle any of the other positions. We also will have a vice-president of racing, who will basically be in charge of establishing the different races that we have, categorizing them, carding them, and having a staff of people under him. We will also have a vice-president for marketing and publicity. I have had extensive experience in marketing and publicity and my goal will be to find an outstanding man or woman capable of working with me to lead this activity. Lone Star also intends to conduct its own food and beverage operations. We will hire a vice-president for food and beverage operations who will have broad experience in food and beverages generally.

Q. Is that what you do with food service in Maryland?

A. While we currently utilize a nationally recognized racetrack caterer, we've identified several alternatives. We believe in providing the best quality food and service, with the greatest potential carry over benefit to the

business generally. When people come to the racetrack and eat a meal that's good, they believe it's the racetrack that did it. And if it's a bad meal, then they're certain it's the racetrack that did it. So our goal is to provide first quality food and beverage service in both concession stands and seated dining areas.

Q. So what you'll do is have a vice-president or some type of officer, directly in charge of food and beverage which will be a part of the Lone Star Jockey Club?

A. Yes, that's correct. In addition, he or she will be responsible for the gift shop operation. Patrons at professional sporting events like to buy souvenirs, such as t-shirts, jackets, racing paraphernalia and the like.

Q. What about financial matters? Are you going to have someone that will oversee specific financial matters?

A. Yes. We will apply racetrack accounting systems that we developed which will be under the financial vice president. He or she will also be responsible for preparing and tracking budgets. An element of great importance to the horsemen is the horsemen's bookkeeping function, to keep accurate track of their accounts. The horsemen will have several millions of dollars on deposit in a trust account maintained by the racetrack. The horsemen's bookkeeper will be directly under our chief financial officer to help assure integrity in those

accounts. Similarly the payroll and treasury functions will also be under the vice-president of finance.

Q. Have you ever had any dispute or any problem whatsoever in Maryland regarding horsemen's accounts you've spoken of?

A. No. Not only that, but we have done things that go beyond what is required. For example, we have an annual audit of the horsemen's account performed by a national firm of independent certified public accountants even though not required by Maryland law or the horsemen.

Q. Now obviously Lone Star is going to need some type of legal counsel with regard to compliance with the Texas Racing Act and the racing rules. Do you do that in Maryland?

A. Yes. At the Maryland tracks, Marty Jacobs perform the functions of general counsel and we use outside law firms to the extent necessary. In Texas, we will have house counsel on staff who is a member of the Texas bar, who will be familiar with the Texas racing statute and regulations, as well as other applicable laws and rules related to the environment, the physical plant and grounds, personnel and other matters to help ensure that we have complete legal compliance.

Q. Earlier you had mentioned the director of mutuels being under the general manager who you would obviously take a great deal of care in finding and recommending for this

position as well as some various other people. What would the director of mutuels do?

A. The mutuels operation is one of the most important at the racetrack. The mutuel tellers are the backbone of the entire wagering system. The director of mutuels is responsible first to locate and hire competent people. He or she will work closely with the general manager to find the many hundreds of mutuel tellers we will need. It is very much like operations at a bank, except instead of the 20 or 30 tellers one finds at a good sized bank, we're going to have 200 to 400 mutuel tellers or more depending on the particular race day. We will need to train people to handle money and to operate the totalizator equipment and deal with public. They must be carefully selected and well-trained. Our director of mutuels is going to be somebody having significant racetrack experience so their learning curve will not begin at zero.

Q. This indeed would probably be the nerve center and the life blood of the whole system of handling of money and dealing with patrons.

A. Yes. In addition to the tellers, the mutuel manger will also have responsibility for the people who handle money in the money rooms, including the head cashier and the supervisors and dealers who count and distribute money. He or she will be responsible to assure that the entire

operation related to selling pari-mutuel tickets, collecting the funds, depositing them and accounting for them are all handled properly.

Q. Will there be an individual responsible for the various buildings and other facilities, their condition and maintenance?

A. As shown on the organizational chart, we will have an assistant general manager responsible for facilities overall. There are many aspects to a racetrack facility. We've got the buildings themselves, which require constant care, upkeep and maintenance. An important function of the assistant general manager is to be sure the buildings are in tax condition and spotless. That person also will have under him or her grounds maintenance. We will have considerable landscaping as well as paved areas and we need to be sure their appearance is appropriate. Stable area maintenance is equally as important as public area maintenance. As you will note from the plans included in the application, the stable area is to one side of the property. The general cleanliness and physical condition of the stable area will also be under the assistant general manager of facilities. We will also have under him or her the purchasing department, which will order the multitude of items that are used in operations, such as lumber, plywood, drywall, paper products and all of the

other things that go into routine maintenance and repairs. I've left cleaning services for last, but it is certainly not least. We will spend several thousand dollars each racing day on making sure that our facility is spotless when the day begins and that it is kept clean and neat during the race day. We've prided ourselves at our Laurel and Pimlico racecourses on cleanliness of our facilities. This will also be a function under the assistant general manager.

Q. You stated earlier that one of your most important functions at the Maryland Jockey Club is in the area of marketing and promotion. Will your consulting service sot Lone Star include those activities as well?

A. Yes. Included on the organizational chart is the position of vice president - marketing and publicity. That person will have under him or her promotions, advertising, group sales, tourism and major events. Laurel and Pimlico have been known over the years as leaders in the field of marketing and promotion. My intention is at an early stage to find a heavily qualified experienced individual to fill this position of vice president. He or she must have extensive experience in marketing and promotion, particularly including background in entertainment or professional sports. We develop a detailed plan and strategy to introduce Lone Star Jockey Club to the

Dallas/Fort Worth marketplace. The plan will include promotional, marketing and public relations activities, using the television, radio and print media as well as direct mail. We have had excellent experience with these programs that were originally devised and developed by my father, Frank De Francis. They will be utilized as a base and modified to suit the particular needs of the Dallas/Fort Worth market. I intend to devote as much of my personal time and effort as is necessary in working to launch a successful initial marketing strategy and program, and to continue thereafter to attract and develop racing fans and other patrons to our facility.

Q. Another item on the chart is director of audio-visual. What do you anticipate that person will be doing for Lone Star?

A. We expect to be utilizing a considerable amount of audio-visual equipment. The production of quality television and sound is essential, in our view, to presenting a first-class entertainment program to our patron. Television is essential to showing people where the horses are at any particular time and, of course, goes hand in hand with the audio. We also hope to be able to sell our races to other racetracks, both within and outside of Texas. In order to do that, we must have fine quality television and audio signals to put up on the

satellite. We will be producing a quality program to be enjoyed by our patrons as well as patrons at simulcast facilities at other Texas tracks and elsewhere. People at those locations will not be seeing the horses live, so they need as much information as possible.

Q. Is the type of simulcasting that you're contemplating, will that in any way take away from the philosophy of Lone Star that live racing comes first?

A. Absolutely not. All of these activities are designed to augment live racing. Our principal goal is to conduct the maximum number of live racing days available to us, both thoroughbred and quarterhorse, giving due regard to the fact that there are other racetracks in Texas and that we will have a circuit with the other Class 1 tracks to the maximum extent possible. Our goal is to conduct live racing and have the emphasis on it with the greatest facilities, the best comforts and the finest accommodations for patrons. As an adjunct to that, we will produce quality audio-visual signals so that people watching our races at other facilities will be able to see them and hear the call of the races clearly. For example, we send the races being conducted at Laurel or Pimlico, whichever is operating live, on a daily basis via satellite to the other Maryland track that is not then conducting live racing. We also send entire race programs

via satellite on a daily basis to Nevada, Mexico and a number of Caribbean countries, and on selected days to New York OTB and Connecticut OTB. We also simulcast our major races as well as other stakes races to racing facilities all around the United States and Canada. The facilities in other jurisdictions that receive our races are not at all taking away from our live racing in Maryland. We would expect the same situation in Texas. These simulcasts generate significant revenue and serve to supplement purses at the racetrack and help the live program.

Q. What consideration will D/J Track Consultants receive for the work that you're proposing to do in Texas?

A. We will be receiving one-half of the management fee to be paid by Lone Star to the Management Company. That fee is to be calculated as a percentage of the revenue generated. The Management Company will retain the other half of the fee as its own compensation.

Q. Does the application of Lone Star contain a copy of that consulting contract?

A. Yes it does.

Q. Is your consulting group going to receive an equity interest in the Dallas/Fort Worth Class 1 Track?

A. Yes. As stated in the application, D/J Track Consultants, has an initial ten percent equity interest in the

applicant.

Q. Do you or Mr. Jacobs have any reluctance or qualms about associating yourself with Preston Carter, Jr. or James Musselman with regard to this endeavor?

A. None. We are counting on them heavily in day-to-day operations and management of the facility. They are both well experienced business people. Jim Musselman in particular is also an experienced operations man, having been intimately involved, we understand, in the running of an oil company that many had hundreds of millions of dollars of annual revenues. We see ourselves providing the specific expertise related to the racing business which will augment Jim's and Preston's experience and knowledge in operating businesses in general.

Q. If the license is not awarded to Lone Star, will you receive any compensation for any of the services you've performed for it?

A. No. We bear our own expenses and are working with Jim Musselman and Preston Carter because we very strongly believe that Texas deserves to have the finest facility. We believe that the proposal of Lone Star Jockey Club will meet that need and we will make major contributions to the effort.

Q. Is there any way that you can estimate the time that Mr. Jacobs and you have spent so far on your own with regard

to Lone Star's application?

A. I can't give you specific hours. I can tell you that many hours have gone into Texas racing starting as early as 1988. Many hours were put into it by my father and Marty Jacobs before Frank's death in August, 1989, and Marty and I have spent whatever time has been required since then.

Q. Given the fact that you are the principal owner, and Mr. Jacobs is also an owner, of the Pimlico and the Laurel racetracks in Maryland, do you see any possible conflicts that might result from your ownership of or having an ownership interest in the Texas track?

A. No. What's very interesting is that the distances that separate Texas and Maryland are so great that we should not generally be competitors for horses. In other words, we do not expect Maryland and Texas generally to compete for the same horses, although there might be some as Texas develops major stakes races. I expect the most likely competition for horses in Texas will be with racetracks in Oklahoma, Louisiana, Arkansas, California and New Mexico and possibly also with tracks in the mid-west. I do not believe it likely there will be competition for horses on a regular basis with tracks along the East Coast.

Q. Thank you Mr. De Francis, I have no further questions.

STATE OF FLORIDA §
§
COUNTY OF LEE §

Joseph De Francis, having first been duly sworn, deposes and says that he is the witness identified in the foregoing prepared testimony, that he has read said testimony and has personal knowledge of the contents thereof and that the facts set forth therein are true and correct.

Joseph De Francis
JOSEPH DE FRANCIS

Subscribed and sworn to before me this 26 day of March, 1992.

Notary Public, State of Florida
My Commission Expires Feb. 5, 1993
Bonded Thru Troy Fain Insurance Inc

Cathy Wilson
NOTARY PUBLIC

Exhibit C

NO. 91-41-26

IN RE: APPLICATIONS FOR	)	BEFORE THE HORSE
	)	
HORSE RACING TRACK	)	RACING SECTION OF THE
	)	
DALLAS/FORT WORTH, TEXAS	)	TEXAS RACING COMMISSION

DEPOSITION OF PRESTON M. CARTER, JR.

COPY

May 21, 1992

Austin, Texas

O'NEAL - PROBST ASSOCIATES, INC.
CERTIFIED COURT REPORTERS
1415 LOUISIANA STREET SUITE 1400
HOUSTON, TEXAS 77002
(713) 650-1434 FAX (713) 650-1438

A No.
Q Regarding the consulting agreement with DeFrancis and Jacobs --
A Yes.
Q -- and I'm assuming there have been somewhat lengthy discussions with them about what's going to be expected of them, at least on the front end --
A Right.
Q -- in terms of providing their time.

Have they actually stated to you that they expect -- or have you all discussed that you probably expect them to spend a majority of their working hours and days and months on this project on the front end and, if so, how long is this 100-percent dedication of waking hours by them going to be expected to last?

A Well, the business plan that we've developed with them is that all of our senior management people that we will hire will go and train at other race tracks six months prior to opening.
Q Their race tracks?
A Theirs or others. And then, once we open, they will spend whatever amount of time is necessary with us to make sure everything runs exactly right, Jimmy and I having no right to veto any

decision they make.

And the commitment is that one or both will spend whatever amount of time is necessary.

Q This six month --

A It's contemplated that one will be up there running their race track and the other one will be here or vice versa.

Q So they're not envisioning a period of time where they're both going to be here?

A No, just one. They've got business to take care of up there, too.

Q And the six-month period of time at the senior level, or executive level, whatever, management people are doing their training --

A Yes.

Q -- I'm assuming that Joe and Martin are not going to be tied up with that part?

A Well, these people will be with them, probably.

Q Probably at Laurel, Pimlico.

A Right.

Q On your -- within the May 18th materials that you sent to Dave Freeman is an updated, or whatever, ownership summary that lists a bunch of new limited partnership owners.

A Yes.

Q Now, what I would like to know is, what independent investigation Lone Star did or any of the Lone Star --

A Well, the first thing that happens, Jimmy and I know them both -- all personally. The second thing that happens, we have a man named Mr. Dinson with Southwest Securities that checks out all of our partners to make sure that they're fine.

Q He's with Southwest Securities?

A Yes.

Q And he checks them out to see if they're fine financially?

A Financially, morally, whatever, just a complete check.

Q So he's kind of your background-check person?

A Yes. And then the Department of Public Safety has checked all of these people because we have supplied them their names.

Q Let me be more specific, then. What background check have you done, or has somebody else done on your behalf, to give you a certain comfort level that these people can produce when it's time to produce, you know, these half million dollars?

A Right. Mr. Dinson with Southwest Securities, and then DPS checked them. Those are the two checks

THE STATE OF TEXAS:

I, TERRY B. RIGLER, the undersigned Certified Shorthand Reporter of the State of Texas, do hereby certify that the above and foregoing caption to this deposition correctly states the facts set forth herein; that the examination of the witness named in said caption was correctly reported in shorthand by me at the time and place and under the agreement set forth in said caption and has been transcribed from shorthand into typewriting under my supervision in the foregoing transcript; and that said transcript contains a correct record of the proceedings had at said time and place.

I further certify that I am neither attorney nor counsel for, related to, nor an employee of any of the parties to the action in which this testimony was taken. Further, I am not a relative or employee of any attorney of record in this cause, nor do I have a financial interest in the action.

Given under my hand and official seal of office this the 28th day of May, 1992.

Terry B. Rigler

Terry B. Rigler, CSR
Certificate No. 2745
Expiration: December 31, 1993

Exhibit D

LAUREL RACE COURSE
Laurel Racing Assoc., Inc.
(301) 725-0400 Fax (301) 792-4879

PIMLICO RACE COURSE
The Maryland Jockey Club of Baltimore City, Inc.
(301) 542-9400 Fax (301) 466-2523

THIS EMPLOYMENT AGREEMENT (the "Agreement"), dated as of January 1, 1990, between THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC. and LAUREL RACING ASSOC., INC. (collectively, "Employer"), and JAMES P. MANGO ("Employee").

RECITALS

WHEREAS, Employee is currently employed by Employer in the executive employee position of Vice President and General Manager; and

WHEREAS, Employer desires to obtain the continued service of Employee, and Employee wishes to remain in the employment of Employer.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Period of Employment. Employer employs Employee to render services to Employer in the position, on the terms, and with the duties and responsibilities described in Section 2 hereof commencing on the date of this Agreement and continuing for the period of ten (10) years through December 31, 1999 (the "Period of Employment").

2. Position, Duties and Responsibilities.

(a) Employee agrees to continue employment with Employer as Vice President and General Manager, or in such other position(s) as Employer shall at any time designate. Employee shall devote his best efforts and his full time and attention to the performance of the services as may be reasonably requested by Employer.

(b) So long as Employee continues his employment hereunder and Employer continues to be controlled by its current stockholders (the "Stockholders"), Employee shall also upon request of Employer serve as a member of the Board of Directors of each of the corporations comprising Employer (the "Board").

3. Salary, Bonuses and Other Benefits. In consideration of the services to be rendered hereunder, Employee shall be paid the following annual salary, bonuses and other benefits so long as Employee continues to be employed by Employer hereunder:

(a) Annual Salary. Employee shall receive an annual salary (the "Annual Salary") during each year of the Period of Employment payable in equal weekly installments. Employee's Annual Salary for the year January 1 through December 31, 1990 is One Hundred Seventy Five Thousand Dollars ($175,000). Employee's performance and Annual Salary shall be revie December of each year and may be increased by such

Employer shall determine. So long as Employee continues to devote substantially all of his time and attention to the performance of services substantially similar to those currently being performed by Employee (or such other services as may be reasonably designated by Employer), and so long as there is no material breach in performance of duties by Employee (which breach Employee will be given a reasonable opportunity to cure) Employee's Annual Salary will continue at the current rate (and may be increased by Employer from time to time), and there will be no reduction therein unless there is a pro rata reduction in the salaries paid to the Stockholders as a group. No such material breach shall be considered to occur through the change by Employer of the duties assigned to Employee.

(b) Annual Bonus. Employee shall receive an annual bonus during each year of the Period of Employment in an amount equal to the greater of (i) one-percent (1.00%) of the combined annual net income of Laurel Racing Association Limited Partnership and Pimlico Racing Association, Inc. (collectively, the "Racetracks") during their fiscal year ended during that year; or (ii) Fifteen Thousand Dollars ($15,000) (the "Minimum Annual Bonus"). The Minimum Annual Bonus shall be paid not later than December 31 in each year and any balance due shall be paid when the audited financial statements of the Racetracks

for that fiscal year have been completed and net income determined.

(c) Special Bonus Resulting from Recapitalization, Refinancing or Sale. In the event that, (i) while Employee continues to be employed under this Agreement, or (ii) within one (1) year of such time that Employer terminates this Agreement due to permanent disability of Employee under Section 4(d), or (iii) during the Severance Period as provided in Section 5(c), there is a refinancing or a recapitalization of the Racetracks, or a sale of all or substantially all of the ownership interests of the Stockholders in the Racetracks or a sale of all or substantially all of the assets of the Racetracks, and the Stockholders receive proceeds from such transaction, then Employee shall be paid a one-time special bonus (the "Special Bonus") by Employer in an amount equal to one-half percent (1/2%) of the net proceeds received by the Racetracks (or by their owners if their ownership interests rather than the underlying assets are sold) at consummation of the first to occur of such refinancing, recapitalization or sale. As used above, "net proceeds" means gross proceeds received less indebtedness paid and expenses associated with the transaction.

(d) Health Benefits. Employee shall receive health insurance benefits as are provided generally to the other managerial, non-union employees of Employer. A copy of the

Summary Plan Description currently in effect was previously provided to Employco.

(e) Pension Benefits. Employee shall receive pension benefits as are provided generally to the other managerial, non-union employees of Employer under the Maryland Race Track Employees Pension Fund. A copy of the Summary Plan Description currently in effect was previously provided to Employee.

(f) Automobile. Employee shall receive use of an automobile owned or leased and maintained by Employer. Employee shall have access to Employer's gas tanks for filling the vehicle and, if a gasoline credit card is provided by Employer to any of the Stockholders, shall also be provided such credit card.

(g) Meal Privileges. Employee shall be entitled to sign for and receive complimentary meal service from the concessionaire servicing the Racetracks.

(h) Reimbursement for Expenses. Employee shall be entitled to reimbursement from Employer for the reasonable out-of-pocket expenses incurred by him, with Employer's prior approval, for travel, entertainment and other business expenses. Reimbursement shall be made upon presentation by Employee of itemized accounts of such expenses.

(i) Vacation. Employee shall be entitled to paid vacation in accordance with the vacation policy established by Employer from time to time.

(j) Secretarial Service. Employer shall provide Employee with the services of a secretary at the racetracks.

4. Termination of Employment.

(a) For Cause Termination by Employer. Employer may terminate Employee's employment for cause as follows:

(i) Employee's employment may be terminated for cause if he commits a material act of dishonesty or fraud resulting in a direct financial loss to Employer, or if Employee commits and is indicted for or formally charged with a felony. Upon such termination, Employer shall be liable only to pay Employee his Annual Salary, at the then-current rate, through the end of the day upon which termination occurs.

(ii) Employee's employment may be terminated for cause if Employee habitually breaches, or habitually neglects, material duties he is required to perform by Employer, and does not cure such breach after being given a reasonable opportunity to do so. Upon such termination, Employer shall be liable only to pay Employee his Annual Salary, at the then-current rate, for a period of twelve (12) months from the date of such termination.

(b) At Will Termination by Employer. Employer may, at any time and upon giving ten (10) business days' notice to

Employee, terminate Employee's employment without cause (an "At Will Termination"). Upon an At Will Termination, Employer shall pay Employee an amount equal to thirty percent (30%) of the Annual Salary and Minimum Annual Bonus which Employee would have received in each of the years remaining in the Period of Employment, calculated on the basis of Employee's then-current Annual Salary and the Minimum Annual Bonus; provided, that such amount shall never be less than Employee's Annual Salary at the then-current rate and Minimum Annual Bonus for one (1) year. If, within one (1) year of an At Will Termination, Employer or the Stockholders enters into an agreement for a recapitalization, refinancing or sale which would have resulted in payment of a Special Bonus to Employee had he still been employed, such Special Bonus shall nevertheless be paid to Employee.

(c) Voluntary Termination by Employee. Employee may, upon giving thirty (30) days' prior notice to Employer, voluntarily terminate his employment. Upon such voluntary termination, Employer shall be liable only to pay Employee his Annual Salary through the end of the thirty (30)-day notice period, except as otherwise specifically provided in Section 5.

(d) Death or Disability.

(1) This Agreement shall terminate immediately upon Employee's death. In the event Employee shall become "permanently disabled," as hereinafter defined, Employer shall

have the right to terminate this Agreement as of a date not less than ten (10) days from the date of written notice to Employee or his personal representative, and Employer shall be liable to pay Employee his Annual Salary at the then-current rate, Minimum Annual Bonus and other benefits until payments begin under the disability insurance referred to in subparagraph (2) below. Employee shall be deemed to have become permanently disabled if, because of ill health, physical or mental disability or for other causes beyond his control he shall have been unable or unwilling or shall have failed to perform his duties hereunder for a cumulative total of twenty four (24) months in any period of thirty six (36) months, or if he shall have been unable or unwilling or shall have failed to perform his duties for a period of not less than eighteen (18) consecutive months.

(2) Employer shall obtain and maintain in force disability insurance coverage to provide Employee in the event of permanent disability, as defined in the insurance policy, with payments equal to sixty percent (60%) of the Annual Salary and Minimum Annual Bonus which Employee is entitled to receive at the time he becomes permanently disabled, which payments shall continue through age sixty-five (65) so long as he remains permanently disabled. Employee represents and warrants that he is in good health and has no disease or other physical or mental impairment which would prevent Employer from

obtaining standard disability insurance as described above. Once such disability insurance payments begin, this Agreement shall immediately terminate.

5. Sale of Business.

(a) In the event of the sale by the Stockholders of all or substantially all of their ownership interests in the Racetracks, or the sale of all or substantially all of the assets of the Racetracks, while such ownership interests are owned by the Stockholders (a "Sale of Business"), this Agreement shall survive such sale and shall continue to be binding on the entities comprising Employer if they are the surviving entities or, if they are not, on the entity or entities that succeed to their business (collectively, "Purchaser"). Notwithstanding the foregoing, Purchaser shall have the right not to agree to such survival, in which event Employer shall pay Employee an amount equal to thirty percent (30%) of the Annual Salary and Minimum Annual Bonus which Employee would have received in each of the years remaining in the Period of Employment, calculated on the basis of Employee's then-current Annual Salary and Minimum Annual Bonus, and this Agreement shall thereupon terminate. In either of the aforesaid events, Employee shall also be paid any Special Bonus that is due under this Agreement as a result of the Sale of Business, and the provisions of this Agreement with respect thereto shall no longer be applicable.

(b) If this Agreement survives a Sale of Business, then in addition to Employee's other rights, Employee shall have the right to terminate this Agreement on the second annual anniversary of the effective date of the Sale of Business and be paid by Purchaser as severance pay his Annual Salary at the then-current rate for one (1) year.

(c) If a Sale of Business does not occur on or before December 31, 1993, then for so long thereafter as Employee continues to be employed under this Agreement, the following provisions shall be applicable:

(i) Employee shall have the 3 year right to terminate this Agreement at any time upon six (6) months prior written notice and Employer shall continue to pay Employee as severance pay his Annual Salary and Minimum Annual Bonus at the then-current rate for the eighteen 25 30% (18) months (the "Severance Period") following such termination. The amount so payable shall in no event be greater than the Annual Salary and Minimum Annual Bonus payable to Employee under this Agreement during the remainder of the Period of Employment.

(ii) If a Sale of Business occurs during the Severance Period but Employee previously voluntarily terminated his employment under this Agreement, Employee shall be paid the Special Bonus notwithstanding that his employment hereunder terminated, and his right to receive any further severance payments under subparagraph (i) shall terminate.

6. Confidential Data; Termination Obligations. Employee shall not at any time during or after the term of this Agreement use for himself or others, or divulge to others any secret or confidential information, knowledge or data of Employer obtained by him as a result of his employment unless authorized in writing by Employer. However, Employee may use any and all general knowledge and skill learned by him during the course of his employment. Upon termination of Employee's employment, Employee shall be deemed to have resigned from all offices and directorships then held with Employer and shall, upon request, execute any confirmations thereof as may be reasonably requested by Employer.

7. Assignment. This Agreement is not assignable by either Employer or Employee except as otherwise provided in Section 5; provided, that nothing in this Agreement shall prevent either of the corporations comprising Employer or the Racetracks from being merged, consolidated, or sold, and the responsibilities of Employer under this Agreement shall be divided among such entities as they may determine.

8. Amendment. This Agreement or any term or provision hereof may be changed, waived, discharged, or terminated only by a written amendment signed by both Employer and Employee.

9. Entire Agreement. This Agreement is the entire agreement between the parties with respect to the employment of

Employee by Employer and supersedes any previous employment, bonus, severance or other arrangements.

10. Governing Law. The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

IN WITNESS THEREOF, the parties have duly executed this Agreement as of the day and year first stated above.

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

By: _____
Joseph A. De Francis
President

EMPLOYEE:

_____
James P. Mango

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
	*	CIRCUIT COURT
Plaintiffs		
vs.	*	FOR
JOSEPH A. DeFRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE147851

* * * * * * * * *

PLAINTIFFS' MOTION FOR EX PARTE, INTERLOCUTORY, AND PERMANENT INJUNCTIVE RELIEF

Pursuant to Maryland Rules BB70-80, plaintiffs, Robert T. Manfuso and John A. Manfuso, Jr., by and through their attorneys, James P. Ulwick and Kramon & Graham, P.A., move for ex parte, interlocutory, and permanent injunctive relief against defendants Joseph A. DeFrancis, the Maryland Jockey Club ("MJC"), Laurel Racing Association, Inc. ("Laurel"), and Pimlico Racing Association ("PRA"). The injunctive relief would prevent these defendants from:

A. depriving the plaintiffs of severance payments and other benefits payable to them or on their behalf pursuant to Section VI.2 of the Stockholders' Agreement;

B. depriving the plaintiffs of access to MJC's, Laurel's, or PRA's executive offices, including all departments thereof;

C. interfering in any way with any communications between the plaintiffs and any managerial employees of MJC, Laurel, or PRA concerning the business or operations of Laurel or PRA or both;

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
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20 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
(410) 752-6030

D. instructing managerial employees of MJC, Laurel, or PRA not to provide the plaintiffs with information concerning the business or operations of Laurel or PRA or both; and

E. depriving the plaintiffs of certain benefits to which they have a contractual right, including the use of two Chrysler automobiles that have been provided to the plaintiffs free of charge, office space and parking spaces at Laurel Racetrack and Pimlico Racetrack, membership in the Jockey Club at Pimlico Racetrack and the Skysuite Members' Club at Laurel Racetrack, boxes at Laurel Racetrack and Pimlico Racetrack, privileges for signing for food and beverages at Laurel Racetrack and Pimlico Racetrack, and the use of cellular telephone service in their personal automobiles.

The grounds for this motion are as follows:

1. On April 29, 1992, the plaintiffs filed this suit, requesting, among other things, a declaration that, under the Stockholders' Agreement, they had the right to bring a suit to remedy the breaches of fiduciary duty alleged in their complaint.

2. DeFrancis, MJC, Laurel, and PRA have filed a counterclaim requesting, among other things, a declaration that, under the Stockholders' Agreement, the plaintiffs do not have a right to bring a suit to remedy the breaches of fiduciary duty alleged in the complaint and that the filing of

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this suit constitutes a material breach of the Stockholders' Agreement.

3. On June 5, 1992, concurrently with the counterclaim, DeFrancis, as President and Chief Executive Officer of MJC, sent a letter to the plaintiffs, which is attached as Exhibit A.

4. DeFrancis's letter of June 5, 1992, asserts as a fact the conclusions that DeFrancis and several of his co-defendants have alleged in their counterclaim; namely, that, by filing the suit, the plaintiffs have materially breached the Stockholders' Agreement.

5. DeFrancis's letter of June 5, 1992, announces that, because of the plaintiffs' purported "breach" (the existence of which the Court has yet to declare), DeFrancis, as President and Chief Executive Officer of MJC, intends to deprive the plaintiffs of rights that they have acquired through the Stockholders' Agreement, through an additional agreement that DeFrancis made with the plaintiffs on behalf of MJC, and through the plaintiffs' status as directors of PRA and Laurel.

6. Specifically, DeFrancis's letter of June 5, 1992, announces that the severance payments and other benefits payable to the plaintiffs or on behalf of the plaintiffs pursuant to Section VI.2 of the Stockholders' Agreement shall cease immediately.

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7. Furthermore, DeFrancis's letter of June 5, 1992, announces that, despite the plaintiffs' rights and obligations as directors of Laurel and PRA, DeFrancis and MJC will not permit the plaintiffs to have access to the executive offices of Laurel and PRA, that DeFrancis and MJC will instruct all managerial employees that they will face dismissal if they engage in any communications with either plaintiff concerning the business or operations of Laurel or PRA, and that DeFrancis and MJC will instruct all managerial employees not to provide any information to the plaintiffs concerning the business or operations of Laurel or PRA or both.

8. Lastly, DeFrancis's letter of June 5, 1992, threatens the plaintiffs' continued enjoyment of various benefits to which they have a contractual right through a Letter Agreement that DeFrancis signed on behalf of MJC on or about April 29, 1990. The Letter Agreement, which is attached as Exhibit B, expressly provides for the continuation of those benefits, including company cars, boxes at Laurel and Pimlico Racetracks, dining room privileges at Laurel and Pimlico Racetracks, and office space. Now, through DeFrancis's letter of June 5, 1992, he and MJC have signalled their intention to renege on the Letter Agreement. DeFrancis and MJC apparently justify their conduct by pointing to the plaintiffs' purported "breach" of the Stockholders' Agreement, although the Court has yet to make any determination to that effect.

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10. Concurrently with this motion, the plaintiffs have moved for summary judgment on the issues of whether the plaintiffs have the right to bring suit to remedy breaches of fiduciary duty by the defendants or whether, by filing this suit, the plaintiffs have breached the Stockholders' Agreement.

11. Through their motion for summary judgment, the plaintiffs have requested an immediate ruling on the issue that both sides have raised in their pleadings, but that DeFrancis and MJC have nonetheless purported to resolve unilaterally.

12. The plaintiffs believe that, in enjoining DeFrancis, MJC, Laurel, and PRA in accordance with this motion, the Court would work no hardship upon any defendants. By contrast, it would work an enormous hardship on the plaintiffs if the Court were to permit DeFrancis, MJC, Laurel, or PRA to deprive the plaintiffs of their rights through the Stockholders' Agreement, through other agreements with DeFrancis and MJC, and through their status as directors, at least before the Court resolves the questions pending before it in the plaintiffs' motion for summary judgment.

WHEREFORE, the plaintiffs request that this Court:

(1) Enter an ex parte injunction barring defendants DeFrancis, MJC, Laurel, and PRA from:

A. depriving the plaintiffs of severance payments and other benefits payable to them or on their behalf pursuant to Section VI.2 of the Stockholders' Agreement;

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B. depriving the plaintiffs of access to MJC's, Laurel's, or PRA's executive offices, including all departments thereof;

C. interfering in any way with any communications between the plaintiffs and any managerial employees of MJC, Laurel, or PRA concerning the business or operations of Laurel or PRA or both;

D. instructing managerial employees of MJC, Laurel, or PRA not to provide the plaintiffs with information concerning the business or operations of Laurel or PRA or both;

E. depriving the plaintiffs of certain benefits to which they have a contractual right, including the use of two Chrysler automobiles that have been provided to the plaintiffs free of charge, office space and parking spaces at Laurel Racetrack and Pimlico Racetrack, membership in the Jockey Club at Pimlico Racetrack and the Skysuite Members' Club at Laurel Racetrack, boxes at Laurel Racetrack and Pimlico Racetrack, privileges for signing for food and beverages at Laurel Racetrack and Pimlico Racetrack, and the use of cellular telephone service in their personal automobiles.

2. Convene an evidentiary hearing at the earliest possible moment for the purpose of determining the plaintiffs' entitlement to an interlocutory injunction as requested herein;

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3. Convert the interlocutory injunction into a permanent injunction upon the entry of the final judgment in this case; and

4. Grant such other and further relief as may appear just, equitable, and proper.

Respectfully submitted,

James P. Ulwick

Kramon & Graham, P.A.
Sun Life Building
Charles Center
20 South Charles Street
Baltimore, Maryland 21201
(410) 752-6030

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(410) 752-6030

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VERIFICATION

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Robert T. Manfuso

John A. Manfuso, Jr.

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20 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 1992, a copy of the foregoing Plaintiffs' Motion for Ex Parte, Interlocutory, and Permanent Injunctive Relief, Memorandum of Law in support thereof and proposed Order was hand-delivered to James E. Gray, Esquire and Linda S. Woolf, Esquire, Goodell, DeVries, Leech & Gray, 25 S. Charles Street, Suite 1900, Baltimore, Maryland 21201, attorneys for defendants, DeFrancis and Jacobs; and mailed to Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, 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 P. Ulwick

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Exhibit A

THE MARYLAND JOCKEY CLUB
P.O. BOX 130
LAUREL, MARYLAND 20725

June 5, 1992

Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
8401 Connecticut Avenue
Suite 1010
Chevy Chase, MD 20815

Dear Messrs. Manfuso:

On behalf of Laurel and Pimlico Race Courses, and all of Maryland racing, I must say how disappointed I am that you have chosen to institute litigation in direct contravention of the single most important provision of the Stockholders' Agreement. After my father's death, I recognized immediately that the next few years would be very important to the success of our business. The hostility towards me that you demonstrated at that time made it abundantly clear that unless we agreed to avoid litigation you would, sooner or later, institute legal proceedings. From my prior experience as a lawyer, I knew full well how time consuming and distracting such litigation -- however meritless -- could be. I knew any such litigation would divert both financial resources and personal energy away from the important task of running our business, and I knew how employee morale and efficiency would be adversely affected by litigation among joint owners. It was also clear that any such litigation could only harm Maryland racing. With the Standstill Provision in the Stockholders' Agreement, I hoped to avoid all these negative consequences for at least four years.

Unfortunately, my hopes and my expectations that you would be bound by your word were misplaced. Notwithstanding our agreement, you have engaged in constant carping at me and Marty Jacobs, both publicly and privately, since the Stockholders' Agreement was signed. Your behavior has injured our business, damaged employee morale, reduced employee efficiency and harmed Maryland racing. Your filing of a lawsuit only fifteen days before the Preakness was outrageously irresponsible.

Your deliberate disregard of the Standstill Provision and continuing efforts to damage our business constitutes a flagrant and material breach of the Stockholders' Agreement. Accordingly, upon advice of counsel, management is implementing the following:

1. Laurel and Pimlico consider your actions to constitute a material breach of the Stockholders' Agreement and all future performance on their behalf of the Stockholders' Agreement is excused.

2. The severance payments and other benefits payable to you or on your behalf pursuant to Section VI.2 of the Stockholders' Agreement shall cease immediately.

3. You will no longer be permitted to have access to the executive offices, including all departments (e.g., racing department, mutuel department, accounting department, etc.), at Laurel or Pimlico and the security officers at both facilities have been so instructed.

4. All track managerial employees will be instructed that there are to be no communications with either of you concerning the business or operations of Laurel and/or Pimlico. Any employee having such communications will be subject to dismissal.

5. All track managerial employees will be instructed that no information concerning the business or operations of Laurel and/or Pimlico is to be provided to you by them.

6. In your continuing status as directors and shareholders, you are entitled to receive certain information concerning the business and operations of Laurel and Pimlico. Such information will be provided to you. During the course of the litigation which you have initiated, however, all requests for such information must be made in writing directly to me or, in my absence, to Marty Jacobs. We will respond appropriately.

In addition, your course of conduct is a gross abuse of the privileged status we have accorded you at Laurel and Pimlico. We have determined that to continue that status would be detrimental to the best interests of our business and Maryland racing. Consistent with this determination, we advise you as follows:

1. Effective immediately, you shall return the two Chrysler automobiles which have been provided to you

free of charge. If the cars and the keys are not returned to Pimlico by June 12, 1992, we will take the necessary action to recover those corporate vehicles.

2. You will no longer be provided office space or special parking space at Laurel or Pimlico. You will be given until June 12, 1992, to remove your personal belongings from the office space previously provided to you. By such date, all keys for the offices and buildings at Laurel and Pimlico shall be returned to the corporate offices at Laurel.

3. You will no longer be provided free membership in the Jockey Club at Pimlico or the Skysuite Members' Club at Laurel. You also will no longer be provided free boxes at Laurel or Pimlico. You are to contact the appropriate offices at Laurel or Pimlico if you wish to make the necessary arrangements for use of these facilities on a paying basis. Your privilege of signing for food and beverages at Laurel and Pimlico is also hereby terminated.

4. You will no longer be provided cellular telephone service, at the expense of Laurel or Pimlico, in your personal automobiles.

While I sincerely regret that you have elected to breach your agreement, you should not mistake this regret for a lack of resolve to protect and preserve the business founded by my father as well as the great traditions of Maryland racing.

Very truly yours,

Joseph A. De Francis
President and Chief
Executive Officer

Exhibit B

THE MARYLAND JOCKEY CLUB

P.O. BOX 130
LAUREL, MARYLAND 20707

MEMORANDUM

April 27, 1990

Dear Joe:

You have advised us on several occasions that the below listed items are acceptable and have promised to confirm this fact by providing a written memo of confirmation. We understand the pressures of the Preakness and the other matters you are occupied with, and are therefore providing this memo for you to confirm we have agreed to the following:

1. Present fringes to continue; i.e., cars, boxes, dining room privileges and an office.

2. No further investments in Texas racing.

3. Any future payments from either Pimlico or Laurel will be equitably and properly apportioned.

4. All future charitable contribtions should be clearly identified as being made by the entity making the actual contribution, followed by the name of the President, if so desired.

5. Monthly owners' meetings will be conducted, with an agenda to include monthly financial statements and information on anything of material nature or that should be brought to the owners' attention.

Please put this matter to rest by countersigning the enclosed copy of this letter and returning it to us.

Thank you for your cooperation.

Sincerely,

John A. Manfuso, Jr.

Robert T. Manfuso

Agreed:

Joseph A. De Francis
Dated: 4/29/90

LAUREL RACE COURSE
LAUREL RACING ASSOC., INC.
(301) 725-0400 FAX (301) 792-4877

PIMLICO RACE COURSE
THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC.
(301) 542-9400 FAX (301) 466-2521

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
	*	CIRCUIT COURT
Plaintiffs		
vs.	*	FOR
JOSEPH A. DeFRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE147851

* * * * * * * * *

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR EX PARTE,
INTERLOCUTORY, AND PERMANENT INJUNCTIVE RELIEF

Plaintiffs John A. Manfuso, Jr., and Robert T. Manfuso ("the Manfusos") have moved for an ex parte and interlocutory injunction barring defendants Joseph A. DeFrancis ("DeFrancis"), the Maryland Jockey Club ("MJC"), Laurel Racing Association, Inc. ("Laurel"), and Pimlico Racing Association ("PRA") from improperly: depriving the Manfusos of severance payments and other benefits payable pursuant to the Stockholders' Agreement; depriving the Manfusos of access to MJC's, Laurel's, or PRA's executive offices; interfering with communications between the Manfusos and managerial employees of MJC, Laurel, or PRA concerning the business or operations of Laurel or PRA or both; instructing managerial employees of MJC, Laurel, or PRA not to provide the Manfusos with information concerning the business or operations of Laurel or PRA or both; and depriving the Manfusos of certain benefits to which they have a contractual right pursuant to a Letter Agreement executed on or about April 29, 1990.

The purpose of any ex parte or interlocutory injunction is "'to maintain the status quo until the court has either

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addressed and resolved the merits of the controversy or otherwise determined that the claimant has no legal right to proceed.'" TJB, Inc. v. Arundel Bedding Corp., 63 Md. App. 186, 190-91, 492 A.2d 365 (1985)(quoting General Motors Corp. v. Miller Buick, Inc., 56 Md. App. 374, 386, 467 A.2d 1064 (1983), cert. denied, 299 Md. 136, 472 A.2d 999 (1984)); see also Harford County Educ. Ass'n v. Board of Educ. of Harford County, 281 Md. 574, 585, 380 A.2d 1041 (1977).

In assessing the Manfusos' entitlement to ex parte and interlocutory relief in this case, the Court should consider the following four factors:

(1) the likelihood of the Manfusos' success on the merits;

(2) the balance of convenience as between the parties;

(3) the possibility that the Manfusos may suffer irreparable injury absent an injunction, which may include a consideration of the necessity of maintaining the status quo; and

(4) where appropriate, the public interest.

State Dep't of Health and Mental Hygiene v. Baltimore County, 281 Md. 548, 554, 383 A.2d 51 (1977); accord Department of Transp. v. Armacost, 299 Md. 392, 404-05, 474 A.2d 191 (1984); Teferi v. Dupont Plaza Assocs., 77 Md. App. 566, 578, 551 A.2d 477 (1989); Nationwide Mut. Ins. Co. v. Hart, 73 Md. App. 406, 410, 534 A.2d 999 (1988); TJB, Inc. v. Arundel Bedding Corp., 63 Md. App. at 190.

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In this case each of the four factors weighs in favor of the grant of ex parte and interlocutory relief.

I. THE LIKELIHOOD OF SUCCESS ON THE MERITS

Among other things, the Manfusos' complaint asks for a judicial declaration that they have the right to bring this suit despite the so-called "Standstill Provision" in the Stockholders' Agreement. The defendants' counterclaim, on the other hand, asks for a declaration that the Manfusos have breached the Stockholders' Agreement by bringing this suit. Thus, both sides in this dispute have asked this Court to determine whether the Manfusos do or do not have the right to ask for a declaration of their rights.

Nevertheless, despite the defendants' request for a judicial determination of that question, they evidently have elected not to wait for the Court's decision. Instead, the defendants have purported to resolve the question for themselves by adjudging the Manfusos in "breach" and declaring an entitlement to various remedies for that "breach." The Manfusos, in turn, simply ask the Court to maintain the status quo and to enjoin the defendants from resorting to the remedies to which they have unilaterally claimed an entitlement, at least pending the Court's own determination of the issues that both parties have voluntarily put before it.

Concurrently with this request for injunctive relief, the Manfusos have moved for summary judgment on the question of whether they have the right to ask for a declaration of their

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rights or whether, in so doing, they have breached the Stockholders' Agreement. For the reasons stated in connection with that motion, the Manfusos submit that they have a clear right, and indeed a clear obligation, to bring this suit and to request a declaration of their rights.

The Manfusos' motion for summary judgment demonstrates, therefore, that the Manfusos are very likely to prevail on the merits of this litigation as a whole as well as on the decisive question in this request for injunctive relief: Whether, in view of the Stockholders' Agreement, they do or do not have the right to ask the Court to declare their rights. Accordingly, for the reasons stated in connection with that motion, the Manfusos have demonstrated their likelihood of success on the merits, the first and most important factor that the Court must consider in determining whether to grant injunctive relief.[1]

II. THE BALANCE OF CONVENIENCE

Under the circumstances of the present case, the balance of convenience plainly weighs in the Manfusos' favor. Should an injunction not issue, the defendants will succeed in expropriating the Manfusos' valuable rights under the Stockholders' Agreement and the Letter Agreement. Just as

---

[1]In addition, it is worth noting that the Stockholders' Agreement does not support defendants' claim that a breach of the standstill provision vitiates the entire contract. Section XII D provides that even if one portion of the Agreement is entirely unenforceable, the remaining provisions remain effective. Defendants' linkage of their contractual obligations to the Manfusos to the instant lawsuit is therefore entirely without basis.

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importantly, should an injunction not issue, the defendants will cripple the Manfusos' ability to discharge their obligations as directors by almost completely eliminating their access to information concerning the corporations to which they have fiduciary obligations under Maryland law. Similarly, because the defendants have in essence threatened to fire any track employee who so much as speaks with the Manfusos, the Manfusos and others will fall victim to the defendants' obvious and crude attempt at intimidation and coercion should an injunction not issue.

By contrast, the defendants stand to lose little or nothing to which they have any legitimate interest if the Court enjoins them from taking their announced steps. For example, after the Manfusos filed this suit, the defendants themselves delayed for more than five weeks before suddenly discovering and asserting their "rights." The defendants, moreover, have not offered and cannot offer any plausible justification for the unseemly haste with which they have now begun to act to enforce their asserted "rights": If the defendants in fact have the right to cancel their contractual obligations, to choke off the flow of information to the Manfusos (who remain, after all, directors of several of the defendant corporations), to intimidate potential witnesses from cooperating or even appearing to cooperate with the Manfusos, and to cast the Manfusos out of the corporations altogether, then the defendants can exercise those rights just

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as effectively in six weeks or two months after the Court has ruled on the Manfusos' motion for summary judgment.

Under these circumstances, the entry of an ex parte or interlocutory injunction will have absolutely no effect on the defendants' legitimate interests, while it will protect and preserve the Manfusos' important interests, including their ability to exercise their fiduciary obligations to the corporations. For these reasons, the balance of convenience weighs heavily in the Manfusos' favor on their request for injunctive relief.

III. IRREPARABLE INJURY

The Manfusos have an immediate need for the Court's protection. Unless the Court enjoins the defendants from acting in accordance with their announced intentions, the defendants will succeed in impairing the Manfusos' ability to exercise their fiduciary duties as directors of the corporations, in subverting the judicial process through their heavy-handed application of economic duress to potential witnesses, and in expropriating the Manfusos' valuable contractual rights.

While damages might compensate the Manfusos for some of the defendants' wrongdoing, damages cannot provide redress for the harm that the Manfusos will suffer as a result of their inability to exercise the fiduciary duties with which they are charged under Maryland law. Nor can damages compensate the Manfusos for the harm that they will certainly suffer if, at the

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outset of this potentially protracted piece of litigation, the defendants should succeed in forcing potential witnesses not to speak with and not to give testimony in any way favorable to the Manfusos.

Under these circumstances, the Manfusos clearly will suffer irreparable harm if they do not obtain the relief requested in their motion. Therefore, this third factor also weighs heavily in the Manfusos' favor.

IV. THE PUBLIC INTEREST

The public interest is always served by requiring persons to adhere to the agreements that they have voluntarily made, such as the Stockholders' Agreement and the Letter Agreement. Furthermore, it almost goes with saying that the public interest is served by facilitating, rather than frustrating, a director's ability to exercise his or her fiduciary duties. Likewise, the public interest is served by preserving a potential witness's ability to speak openly and truthfully.

The Manfusos' request would merely require the defendants to adhere to their agreements, to honor the Manfusos' rights and obligations as directors, and to permit potential witnesses to speak and to testify truthfully without fear of losing their jobs. Hence, it would serve the public interest for the Court to enter the injunctive relief that the Manfusos have requested in their motion.

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CONCLUSION

For any or all of the foregoing reasons, the Court should enter an ex parte and an interlocutory injunction in accordance with the plaintiffs' motion.

Respectfully submitted,

James P. Ulwick

Kramon & Graham, P.A.
Sun Life Building
Charles Center
20 South Charles Street
Baltimore, Maryland 21201
(410) 752-6030

Attorneys for Plaintiffs John A. Manfuso, Jr., and Robert T. Manfuso

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ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
Plaintiffs	*	CIRCUIT COURT
vs.	*	FOR
JOSEPH A. DeFRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE147851

* * * * * * * * *

ORDER GRANTING EX PARTE INJUNCTION

Upon consideration of Plaintiffs' Verified Motion for Ex Parte, Interlocutory, and Permanent Injunctive Relief and the accompanying Memorandum of Law, the Court finds pursuant to Md. R. BB72 that, absent an ex parte injunction, plaintiffs will suffer immediate, substantial, and irreparable injury before an adversary proceeding can be had.

The Court specifically finds that:

1. The plaintiffs have the right to severance payments and other benefits payable to them or on their behalf pursuant to Section VI.2 of the Stockholders' Agreement;

2. As directors of the Maryland Jockey Club ("MJC"), Laurel Racing Association, Inc. ("Laurel"), and Pimlico Racing Association ("PRA"), the plaintiffs have a right of access to MJC's, Laurel's, and PRA's executive offices, including all departments thereof;

3. As directors of MJC, LRA, and PRA, the plaintiffs have the right to communicate with managerial employees of MJC,

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Laurel, or PRA concerning the business or operations of Laurel or PRA or both;

4. As directors of MJC, LRA, and PRA, the plaintiffs have the right to receive information concerning the business or operations of Laurel or PRA or both from managerial employees of MJC, Laurel, or PRA; and

5. Pursuant to a Letter Agreement executed on or about April 29, 1990, the plaintiffs have a contractual right to certain benefits, including the use of two Chrysler automobiles that have been provided to the plaintiffs free of charge, office space and parking spaces at Laurel Racetrack and Pimlico Racetrack, membership in the Jockey Club at Pimlico Racetrack and the Skysuite Members' Club at Laurel Racetrack, boxes at Laurel Racetrack and Pimlico Racetrack, privileges for signing for food and beverages at Laurel Racetrack and Pimlico Racetrack, and the use of cellular telephone service in their personal automobiles.

The Court finds that the status quo will not be maintained unless the plaintiffs are granted the ex parte injunction for which they have moved. The Court further finds that plaintiffs are likely to suffer immediate, substantial, and irreparable harm unless defendants DeFrancis, MJC, Laurel, and PRA are so enjoined.

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Under the circumstances, ex parte relief is justified. It is, therefore, this ____ day of June, 1992, by the Circuit Court for Baltimore City, ORDERED:

(1) That defendants DeFrancis, MJC, PRA, and Laurel, their agents and employees, and any other persons in active concert or participation with them, be, and they hereby are, enjoined from:

A. depriving the plaintiffs of severance payments and other benefits payable to them or on their behalf pursuant to Section VI.2 of the Stockholders' Agreement;

B. depriving the plaintiffs of access to MJC's, Laurel's, or PRA's executive offices, including all departments thereof;

C. interfering in any way with any communications between the plaintiffs and any managerial employees of MJC, Laurel, or PRA concerning the business or operations of Laurel or PRA or both;

D. instructing managerial employees of MJC, Laurel, or PRA not to provide the plaintiffs with information concerning the business or operations of Laurel or PRA or both;

E. depriving the plaintiffs of certain benefits to which they have a contractual right, including the use of two Chrysler automobiles that have been provided to the plaintiffs free of charge, office space and parking spaces at Laurel Racetrack and Pimlico Racetrack, membership in the Jockey Club

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at Pimlico Racetrack and the Skysuite Members' Club at Laurel Racetrack, boxes at Laurel Racetrack and Pimlico Racetrack, privileges for signing for food and beverages at Laurel Racetrack and Pimlico Racetrack, and the use of cellular telephone service in their personal automobiles.

(2) That this ex parte injunction shall expire by its terms within ten (10) days from the date hereof unless extended for an additional ten (10) days for good cause shown to this Court, the term "good cause" to include any extension necessary to maintain this ex parte injunction in effect until the Court hears or decides the question of plaintiffs' entitlement to an interlocutory injunction;

(3) That the plaintiffs shall serve this ex parte injunction by delivering a copy of it as soon as practicable to counsel of record for defendants DeFrancis, MJC, Pimlico, and Laurel;

(4) That defendants DeFrancis, MJC, Pimlico, and Laurel shall have leave to move for a hearing to vacate this ex parte injunction on not more than two (2) days notice to the plaintiffs;

(5) That the plaintiffs shall either pay one thousand dollars ($1,000.00) into the registry of the Court in lieu of a bond or file a bond in the amount of one thousand dollars ($1,000.00), which shall be furnished by a surety approved by the Clerk of this Court, in either event in order to undertake

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to answer to defendants DeFrancis, MJC, Pimlico, and Laurel for any damages that they may sustain should the Court ultimately determine that this ex parte injunction should not have issued; and

(6) That on _____, 1992, at _____ _.m., the Court shall convene an evidentiary hearing on the subject of the plaintiffs' entitlement to an interlocutory injunction.

_____
Judge, Circuit Court for
Baltimore City

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

FILED
JUN 11 1992
CIRCUIT COURT FOR BALTIMORE CITY

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

MOTION TO SHORTEN TIME TO RESPOND TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' INJUNCTIVE RELIEF CLAIM REGARDING DEFENDANTS' INVOLVEMENT IN TEXAS RACING

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, pursuant to Maryland Rule 1-204, hereby move to shorten the Plaintiffs' time to respond to Defendants' Motion to Dismiss with regard to the Plaintiffs' first request for injunctive relief as contained in Subparagraph A of Count Two in the Plaintiffs' Complaint and as reasons therefore state:

1. At present, De Francis and Jacobs are assisting Lone Star Jockey Club, Ltd. ("Lone Star") with its application before the Texas Racing Commission so as to obtain a license to own and operate a racetrack in the Dallas/Ft. Worth, Texas market.

2. Hearings regarding applications for a racetrack license will begin on June 15, 1992; however, Lone Star's application will probably come on for a hearing on Monday, June 22.

3. On April 29, 1992, the Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. ("the Manfusos") filed in this

Court a Complaint for Declaratory and Injunctive Relief against De Francis, Jacobs, the Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico") and Laurel Racing Association, Inc. ("Laurel").

4. Under Subparagraph A of Count Two of the Plaintiffs' Complaint, the Manfusos have requested this Court to enjoin certain activities of De Francis and Jacobs in regard to assisting Lone Star in obtaining a license to own and operate a Texas racetrack.

5. In a written report submitted to the Texas Racing Commission, the Texas Department of Public Safety stated that the pendency of this litigation, regardless of its merit, could "impact on the continued viability of [Lone Star] as a candidate for licensing in Texas."

6. Although the Defendants have moved to dismiss the Plaintiffs' request for injunctive relief as it pertains to Texas racing, strict compliance with Maryland's time requirements for answering the Motion to Dismiss will mean that the claim for injunctive relief will still be pending as of June 22, 1992 and will substantially prejudice Lone Star's ability to obtain a license.

7. Thus, in order to resolve the Plaintiff's claim for injunctive relief as it pertains to Texas racing without prejudicing Lone Star's application, the Defendants request this Court to order that the Plaintiffs' respond to the Defendants' Motion to Dismiss as it pertains to Texas racing by June 12,

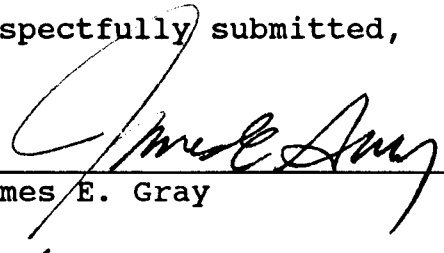
1992, and that this Court schedule a hearing on this single issue of the Motion to Dismiss prior to June 22, 1992.

8. The Plaintiffs should have no quarrel with the fairness of this request in that the Plaintiffs' attorney in an April 29, 1992 letter to the Honorable Joseph H. H. Kaplan asked that this case be specially assigned and that "the judge who will hear the matter direct that a speedy hearing be held."

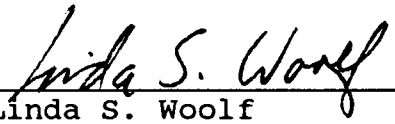
9. At the time this Motion is being filed, the Defendants have hand-delivered a copy to the Plaintiffs' attorney so they can respond by June 12.

WHEREFORE, Defendants Joseph A. De Francis and Martin Jacobs respectfully request that the Court grant their motion to shorten the Plaintiffs' time to respond to the Defendants' Motion to Dismiss Subparagraph A of the Plaintiffs' Complaint for Injunctive Relief and schedule a hearing on the Motion to Dismiss as to this one issue no later than June 22, 1992.

Respectfully submitted,



James E. Gray



Linda S. Woolf
Goodell, DeVries, Leech & Gray
25 S. Charles Street
Suite 1900
Baltimore, MD 21201
(410) 783-4000

Attorneys for Defendants
De Francis and Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 1992, a copy of the foregoing Motion to Shorten Time to Respond to Defendants' Motion to Dismiss Plaintiffs' Injunctive Relief Claim Regarding Defendants' Involvement in Texas Racing was hand delivered to James Ulwick, Esq., Kramon & Graham, Sun Life Building, Charles Center, 20 S. Charles Street, Baltimore, Maryland 21201, attorneys for Plaintiffs. A copy of the foregoing Motion was telecopied 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 Association, Inc.

James E. Gray

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

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

ORDER

Upon consideration of the Motion to Shorten Time filed on behalf of Joseph A. De Francis and Martin Jacobs, Defendants, it is this _____ day of June, 1992, hereby

ORDERED that the Defendants' Motion to Shorten Time is GRANTED. Accordingly, the Plaintiffs must respond to the Defendants' Motion to Dismiss as it pertains to Subparagraph A of Count Two of the Complaint by June 12, 1992. A hearing regarding the Defendants' Motion to Dismiss Subparagraph A of Count Two of the Complaint will take place prior to June 22, 1992.

_____

Ellen L. Hollander, Judge
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		

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

REQUEST FOR HEARING

Defendants, Joseph A. De Francis and Martin Jacobs, by and through their attorneys, James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, hereby request a hearing on their Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief.

James E. Gray

Linda S. Woolf
Goodell, DeVries, Leech & Gray
25 S. Charles Street
Suite 1900
Baltimore, Maryland 21201
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1992, a copy of the aforegoing Request for Hearing was mailed to: James Ulwick, Esquire, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201, Attorneys for Plaintiffs; 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

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

MOTION TO DISMISS CERTAIN CLAIMS FOR DECLARATORY RELIEF AND ALL CLAIMS FOR INJUNCTIVE RELIEF

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, hereby move to dismiss certain claims for Declaratory Relief and all claims for Injunctive Relief stated by Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively "the Manfusos" unless otherwise specified) and as reasons therefore state:

1. On April 29, 1992, the Manfusos filed in this Court a Complaint for Declaratory and Injunctive Relief against De Francis, Jacobs, The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico") and Laurel Racing Association, Inc. ("Laurel").

2. Within that Complaint, the Manfusos make three improper claims that are subject to dismissal by this Court. First, in "Count 1 - Declaratory Relief", they request the Court to enter a declaratory judgment as to two subjects that are not appropriate for declaratory relief. As set forth in these Defendants' Memorandum of Law in Support of Motion to Dismiss, which is incorporated herein as if set forth in full,

subparagraphs B and C of Plaintiffs' Request for Declaratory Relief must be dismissed since they are inappropriate subjects for declaratory judgments.

3. In "Count 2 - Injunctive Relief", the Manfusos ask this Court to grant injunctive relief that they, as individual Directors, have no right or authority to seek. Moreover, they do not provide this Court with the requisite factual allegations that could justify a reasonable conclusion that there exists any threat of immediate, substantial and irreparable injury for which there is no adequate remedy at law. As such, the Manfusos' requests for injunctive relief fail to meet the legal standard imposed by Maryland courts.

4. The Manfusos' requests for information are moot because they have either already received or have been advised they will receive all information to which they are entitled as Directors.

WHEREFORE, as more fully set forth in the Memorandum in Support of this Motion which is incorporated herein as if set forth in full, Defendants, Joseph A. De Francis and Martin Jacobs respectfully request that the Court dismiss subparagraphs B and C of Plaintiffs' claimed declaratory relief and all of Plaintiffs' claims for injunctive relief and that the Defendants be awarded their fees and costs for responding thereto along with any further relief deemed appropriate by this Court.

James E. Gray

Linda S. Woolf

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Baltimore, Maryland 21201
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1992, a copy of the aforegoing Motion to Dismiss was mailed to: James Ulwick, Esquire, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201, Attorneys for Plaintiffs; 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

James E. Gray

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

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

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS CERTAIN CLAIMS FOR DECLARATORY RELIEF AND ALL CLAIMS FOR INJUNCTIVE RELIEF

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 Certain Claims for Declaratory Relief and all Claims for Injunctive Relief stated by Robert T. Manfuso and John A. ("Tommy") Manfuso, Jr. (collectively the "Manfusos" unless otherwise specified):

I. INTRODUCTION

On April 29, 1992, the Manfusos filed a Complaint for Declaratory and Injunctive Relief against De Francis, Jacobs, The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico") and Laurel Racing Assoc., Inc. ("Laurel"). The Complaint's misstatements of fact, inaccurate characterizations as to motive and spurious allegations that De Francis and Jacobs have acted in various

ways to the detriment of Pimlico and Laurel[1] have been addressed in part by the Answer to Complaint for Declaratory Relief Requested in Subparagraph A of Count One ("Answer") filed herewith. Further, the Manfusos' true motivation in regard to the filing of their Complaint has been addressed by the Counterclaim filed herewith.

In this Motion to Dismiss and Supporting Memorandum, these defendants request this Court to dismiss the plaintiffs' second and third requests for declarations in Count One and all claims for injunctive relief in Count Two, for the following reasons:

A. The second and third declarations sought in "Count One - Declaratory Relief" seek declarations concerning subjects that do not come within the jurisdiction of Maryland's Declaratory Judgment Act;

B. All claims for injunctive relief must be dismissed because the Manfusos have no right to seek injunctive relief and their allegations of fact do not satisfy the applicable rigorous standards imposed by Maryland law.

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[1] The filing of the Complaint by the Manfusos only fifteen days before the Preakness Stakes violates the unambiguous terms of the Standstill Provision contained in a Stockholders Agreement entered into by all parties to this action as of October 1, 1989. The Standstill Provision provides that, absent certain circumstances which are not applicable here, "the parties to this agreement agree that, prior to October 1, 1993, they will not institute or join in any legal dispute or action against any party to this agreement concerning the business or operations of Pimlico or Laurel." As set forth in more detail in Counter-Plaintiffs' Counterclaim, which is filed herewith, the Standstill Provision was a primary benefit bargained for and received by De Francis and Jacobs under the Stockholders Agreement. The violation of the Standstill Provision by the Manfusos constitutes a highly material breach of the Stockholders Agreement, which is addressed in the Counterclaim.

1. The Manfusos, as individual directors, have no legally cognizable right to seek injunctive relief for corporate waste and, therefore, have no standing to request the injunctions sought in Subparagraphs A, B, E and F of Count II.

2. The Manfusos have not alleged facts that could justify any reasonable conclusion that there has been any actual or threatened injury to the Manfusos or to the corporations that is substantial, immediate and irreparable for which there is no readily available and adequate remedy at law; and

3. Even if the Manfusos' allegations are found to be sufficient, the benefit of injunctive relief to the Manfusos weighed against the harm to De Francis, Jacobs and the corporations compels the dismissal of the claims for injunctive relief in subparagraphs A, B, E and F of Count II.

Each of these grounds for dismissal is discussed in detail below.

II. LEGAL ARGUMENT

A. THE SECOND AND THIRD DECLARATIONS SOUGHT BY THE PLAINTIFFS ARE OUTSIDE THE JURISDICTION OF MARYLAND'S DECLARATORY JUDGMENT ACT

The Plaintiffs have alleged jurisdiction in this action pursuant to §3-403 of the Maryland Courts and Judicial Proceeding Code. See Complaint, paragraph 7. In Count One, they have requested this Court to issue the following three declarations:

A. The Stockholders' Agreement does not prevent the plaintiffs from seeking the court's assistance in remedying the breaches of duty as described above;

B. At the plaintiffs' behest, the Court may grant injunctive relief to address breaches of duty by the defendants; and

C. The matters alleged in the Complaint do in fact constitute breaches of duty by defendants Joseph A. De Francis and Martin Jacobs.

Maryland's Declaratory Judgment Act provides courts of record with the jurisdiction to "declare rights, status and other legal relations" under the following circumstances:

> [a]ny person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it. (Emphasis added.)

Md. Cts. and Jud. Proc. Code Ann. § 3-406 (1989 Repl. Vol.); See Layman v. Layman, 282 Md. 92, 95, 382 A.2d 584 (1978) (court may determine question arising under contract); Harpy v. Nationwide Mut. Fire Ins. Co., 76 Md. App. 474, 477, 545 A.2d 718 (1988) (Declaratory Judgment Act "gives the court jurisdiction to construe a written contract and declare the rights of the party under it"). Thus, a party may only seek declaratory relief when the issue in controversy depends on the construction or validity of some writing, i.e., a contract, statute, regulation, or similar document as described in §3-406.

The only instrument that is relied upon by the Manfusos is the Stockholders Agreement dated October 1, 1989. In their first requested declaration, the Manfusos request the Court to declare that the Standstill Provision does not preclude them from bringing the instant action before October 1, 1993. These Defendants maintain that the Standstill Provision is a valid and enforceable forbearance to sue provision which does bar the instant action at this time. In their Answer to Subparagraph A of Count I of the Complaint, which is filed herewith, these Defendants have opposed the Manfusos' request for a declaration to the contrary.

In their second and third requests for declaratory relief, the Manfusos seek declarations that have no relationship to the validity or construction of any provision, term or condition of the Stockholders Agreement, or to the rights and legal status of the parties thereunder. With respect to subparagraph B of the requested declarations, the Manfusos do not even suggest that they are requesting the court to construe or test the validity of any term or condition of the Stockholders Agreement. Instead, they seem to be requesting that this court enter a declaration as to its own power to grant injunctive relief. There is nothing in the Declaratory Judgment Act that would allow for such a declaration. Procedurally, it is incumbent upon the Manfusos to sufficiently plead and prove that they are entitled to injunctive relief under the rigorous standards applied by

Maryland courts in examining requests for this extraordinary remedy. The Plaintiffs' request that a declaratory judgment be entered to this effect is patently inappropriate and should be dismissed.

Similarly, with respect to subparagraph C, the Manfusos do not suggest that the declaration requested has any foundation in the Stockholders Agreement. Instead, they ask this court to "declare" that the matters alleged constitute breaches of duty by the Defendants. The Plaintiffs do not and cannot assert that the alleged breaches of duty are premised upon any term or condition of the Stockholders Agreement. Indeed, on their face, each of the allegations is premised upon a common-law fiduciary duty imposed upon officers of a corporation. As phrased, subparagraph C requests this Court to make a factual finding that De Francis and Jacobs have, in fact, breached such common law duties and to issue a declaration to that effect. Again, such a request is patently inappropriate under the Maryland Declaratory Judgment Act and the Manfusos' third request for a declaration must be dismissed.

B. ALL CLAIMS FOR INJUNCTIVE RELIEF MUST BE DISMISSED BECAUSE, ON THEIR FACE, THE MANFUSOS' ALLEGATIONS FAIL TO SATISFY THE APPLICABLE STANDARDS IMPOSED BY MARYLAND LAW

The Manfusos' requests for injunctive relief are premised upon the following seven areas of alleged "abuse" by De Francis and Jacobs: (1) that De Francis and Jacobs have diverted corporate resources to further their interest in a

potential thoroughbred racing venture in Texas; (2) that corporate credit cards have been used to charge certain personal expenditures (for which the Manfusos admit the corporations have already been reimbursed); (3) that De Francis authorized a corporate contribution which allegedly had no legitimate business purpose; (4) that assets and expenses have been improperly allocated between Pimlico and Laurel; (5) that allegedly misleading" financial statements were prepared by the racetracks' independent auditors;[2] (6) that the Manfusos have been refused certain backup data for legal fees paid by the corporations to outside counsel; and (7) that the Manfusos have not been allowed to speak to the racetracks' independent auditors concerning the auditors' accounting practices.

All of these allegations can be properly segregated into two types: (a) denial of access to information or (b) corporate waste. In demanding backup data from outside legal counsel and meetings with independent auditors, the Manfusos are seeking access to corporate information. All of the other claims relate to the alleged diversion or improper allocation of corporate resources or assets, i.e., corporate waste.

As shown below, the Manfusos, as individual directors, have no right to bring an action for corporate waste. Such claims must be asserted by the corporations themselves, acting by and through their entire board of

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[2] Despite making this allegation, the Complaint does not seek specific injunctive relief directed to this so-called abuse.

directors, or in a properly filed shareholders derivative suit. Absent an enforceable right to bring this claim, the Manfusos claims for injunctive relief to remedy or prevent alleged corporate waste must be dismissed.

With respect to access to corporate information, while the Manfusos may have the right, as individual directors, to have access to certain corporate books and records, all information related to legal fees to which they may be entitled has been previously provided or requested for their review, rendering this claim moot. Information to which they claim they are entitled from the independent auditors has either previously been provided or will be considered once reasonable conditions imposed by the Boards of Directors have been met by the Manfusos.

Finally, even accepting the validity of the Manfusos' allegations for the purposes of this Motion to Dismiss, they do not sufficiently state a claim for immediate, substantial and irreparable injury for which no adequate remedy exists at law and, therefore, they are patently inadequate when measured against the rigorous standards imposed by Maryland courts when examining a claim for injunctive relief.

1. THE MANFUSOS AS INDIVIDUAL DIRECTORS HAVE NO STANDING OR LEGALLY COGNIZABLE RIGHT TO SEEK INJUNCTIVE RELIEF

"The existence of some right, which will be irreparably injured, is a prerequisite to the extraordinary relief of an injunction." Anne Arundel County v. White Hall

Venture, 39 Md. App. 197, 201, 348 A.2d 780 (1978), (citing Mayor and City Council of Baltimore v. Employers' Ass'n of Md., 162 Md. 124, 159 A.2d 267 (1932)) (emphasis in original). Where the party seeking an injunction possesses no cognizable right that has been denied or adversely affected, it is an abuse of discretion to grant an injunction to remedy the injury claimed. Anne Arundel County, 39 Md. App. at 201.[3]

The Manfusos claim that they have a fiduciary duty as individual directors of Pimlico and Laurel which confers upon them "the right and responsibility" to bring this lawsuit so as to remedy alleged breaches of duty by Jacobs and De Francis. However, there is no Maryland law, statutory or decisional, that confers upon the Manfusos, as individual directors, any such authority or right. Maryland statutory and case law is in agreement that, absent a specific delegation of authority, all powers conferred upon directors, including the right to file legal actions, must be exercised by the board of directors acting as a whole and not by those directors individually.

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[3] In Anne Arundel County, the Court of Special Appeals determined that property owners possessed no legally cognizable right to a particular type of sewer service to their land and, accordingly, found that it was an abuse of discretion for a chancellor to grant a mandatory injunction prohibiting the county from constructing an eight inch diameter sewer main to the property owners' property and commanding it to remove the eight inch diameter main already constructed and replace it with at least a ten inch diameter main. The requested injunction was dissolved, in spite of a showing that the property owners had been injured in that they had relied upon representations made by the county, to their financial detriment, in constructing a ten inch sewer line to the edge of their property, and that the costs of making the two systems compatible was approximately 70% the market value of the land in question.

Thus, the Manfusos have no legally cognizable right as individual directors to maintain this action.

Section 2-401(b) of the Maryland Corporations and Associations Code specifically circumscribes the manner in which directors may exercise corporate powers, i.e., either by delegating those powers to officers or by exercising them "under authority of the board of directors." See Md. Corps. & Ass'ns Code Ann. § 2-401(b) (1985 Repl. Vol.). The statute does not permit directors to act individually in exercising the corporation's powers. As the Maryland Court of Appeals has stated:

> [A] director is not an officer who may act alone for the corporation without specific authority; he is a member of a board, and his personal identity is lost in the action of the board; he can only speak by his vote at its meetings. Unless specifically authorized by proper corporate authority he cannot bind or represent the corporation.

Jackson v. County Trust Co., 176 Md. 505, 509, 6 A.2d 380, 382 (1939) (citations omitted).[4] See also Bostetter v. Freestate Land Corp., 48 Md. App. 142, 151, 426 A.2d 404 (1981)(court

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[4] In Jackson, the issue was whether an affidavit attesting to the validity of a mortgage would be valid as against the mortgagee-corporation where the affidavit in question was executed by an individual director of the corporation. The court refused to enforce the affidavit, stating that "[a] single director of a corporation [as such] has no power to act in a representative capacity for the corporation . . . A director, therefore, unless personally directed so to do, is not authorized to make the affidavit." Jackson, 176 Md. at 509 (citations omitted).

held that individual directors' lack of authority prevented them from acting alone to bind corporation), modified, 292 Md. 570, 440 A.2d 380 (1982).

The Court of Appeals' analysis is in accord with the general rule that "in the absence of statutory authority, a single director acting as an individual cannot institute an action against a fellow director for any injury to the corporation; rather the Board of Directors must act as a body." Fletcher's Cyclopedia of the Law of Private Corporations §1275, at 586-87 (Rev. ed. 1980). See also, Restatement (Second) of Agency §140, comment b (2d ed. 1958) ("individual director . . . has no power of his own to act on the corporation's behalf, but only as one of the body of directors acting as a board).

Although Maryland's courts have not had occasion to address the issue of whether a single director may institute a lawsuit on behalf of a corporation against other directors, this issue has arisen in a recent case decided under Delaware law. In Moran v. Household Int'l, Inc., 490 A.2d 1059 (Del. Ch. 1985), Moran, a director and shareholder for Household International, Inc. ("Household"), brought suit individually in his capacity as director and derivatively as a shareholder against the remaining directors of Household's board in order to invalidate a preferred stock rights dividend plan which had been adopted by Household's board of directors. With respect to the claim as an individual director, Moran alleged that he had standing to maintain this suit as a director of Household

in order to protect the rights of Household's shareholders. The court rejected this argument, reasoning that Delaware law does not authorize individual actions by a director, but instead places all authority with the board of directors. Specifically, the court stated:

> Whatever may be the law in other states, there is no Delaware statute which authorizes an individual action by a director, qua director, to correct wrongs alleged to have been inflicted on shareholders. Nor can such a right be inferred from the language of §141 of the Delaware General Corporation Law (DGCL), which defines the powers and duties of directors.

Id. at 1071. The court held that any claims relating to shareholders' rights must be brought in a shareholder derivative suit, and must comply with Delaware's rules concerning demand upon the corporation. Id.[5]

Section 141 of the Delaware General Corporation Law is similar in pertinent part to Section 2-401(b) of Maryland's

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[5] In an effort to circumvent the contractual forbearance to sue that they agreed to in the Stockholders Agreement, the Manfusos have carefully couched their Complaint in terms of relief sought by directors. They admit, however, that they have brought this action to prevent "injury to the Manfusos as shareholders in Pimlico and Laurel." Complaint, paragraph 50. The Manfusos' Complaint is, in fact, no more than a shareholders derivative suit which even the Manfusos would agree is barred by the Standstill Provision. As set forth in the Motion to Dismiss Certain Claims for Declaratory Relief and Injunctive Relief filed by MJC, Pimlico and Laurel, Section III.C.1., which is incorporated herein as if set forth in full, the Manfusos have not complied with the well-established Maryland rule requiring exhaustion of intracorporate remedies. Accordingly, even absent the Standstill Provision, the Manfusos cannot maintain this poorly disguised derivative action.

Corporation Code. It allocates the authority to act on behalf of the corporation to the Board rather than to individual directors, stating that "[t]he business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors." Del. Code Ann. Title 8, §141(a) (1991). There is no statutory authority under Maryland or Delaware law allowing an individual director to maintain an action against other directors.[6]

The Manfusos have presented the issues raised in their Complaint to the Boards of Directors of Pimlico and Laurel. After consideration of the Manfusos' factually unsupported allegations, the Boards have either informed the Manfusos that the requested information would be forthcoming or that, in the Boards' reasonable business judgment, the requested action was unwarranted. See Exh. A, Jacobs Affidavit, paragraphs 23, 28-31.[7] In the absence of statutory

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[6] In fact, the only jurisdiction that appears to permit such an action is New York. Unlike Maryland and Delaware, New York's Business Corporation Law "expressly authorizes directors to sue other directors for misconduct." See Rapoport v. Schneider, 29 N.Y.2d 396, 400, 278 N.E. 2d 642, 328 N.Y.S.2d 431 (1972). Section 720 of the New York Business Corporation Law provides individual directors standing to pursue certain claims against other directors of the corporation. There is no similar provision under Maryland's Corporations Code.

[7] The Manfusos, as individual directors who dissent to actions by the Boards, can fully discharge their fiduciary obligations to the corporations by entering their dissent into the minutes of the meeting at which such action is taken and filing their written dissent with the secretary of the corporations. Md. Corps. and Assoc. Code Ann. §2-410 (1989 Repl. Vol.). Individual directors are neither required nor authorized to institute litigation against other directors or officers, contrary to the Manfusos' assertions in the Complaint.

authority granting a director the right to act alone on behalf of a corporation and, in light of the Court of Appeals' determination that a single director may not act to bind a corporation, this Court should find that the Manfusos have overstepped their authority as directors, and that they have no standing to maintain this action.

2. THE MANFUSOS HAVE NOT PLED SUFFICIENT FACTS TO WARRANT INJUNCTIVE RELIEF

The granting or denying of an injunction is a matter within the court's sound discretion which will not be disturbed on appeal absent a showing that discretion has been abused. Seci Inc. v. Chafitz, 63 Md.App. 719, 725, 493 A.2d 1100 (1985). The exercise of that sound discretion in issuing a mandatory injunction is to be exercised only with extreme caution. Anne Arundel County v. Whitehall Venture, 39 Md. App. 197, 200, 348 A.2d 780 (1978) (citing Baltimore and Philadelphia Steamboat Company v. Starr Methodist Protestant Church, 149 Md. 163, 130 A.2d 46 (1925)).

An injunction is an extraordinary remedy and should be granted only to prevent irreparable harm or the threat thereof. Campbell v. Mayor of Annapolis, 44 Md. App. 525, 536, 409 A.2d 1111 (1979), rev'd in part on other grounds, 289 Md. 300, 424 A.2d 738. An injunction is to be issued only where the intervention of equity is necessary to prevent an irreparable injury. Coster v. Department of Personnel, 36 Md. App. 523, 526, 373 A.2d 1287, 1289 (1977). "The very function of an injunction is to furnish preventive relief against

irreparable mischief or injury, and the remedy will not be awarded where it appears to the satisfaction of the court that the injury complained of is not of such character." Id. at 526, 373 A.2d at 1289 (emphasis added).

Courts applying Maryland law will not grant an injunction where the plaintiff has merely alleged that he will suffer irreparable damage. Instead, the plaintiff must plead sufficient facts to satisfy the court that irreparable injury will in fact occur. See Mayor of Salisbury v. Camden Sewer Co., 135 Md. 563, 572-73, 109 A. 191 (1920). Where those allegations demonstrate that the plaintiff has an adequate remedy at law, the action for injunction will be dismissed. See State v. Ficker, 266 Md. 500, 295 A.2d 231 (1972).

In Coster, the Court of Special Appeals upheld an Order dissolving a temporary injunction restraining the Maryland State Department of Personnel and the State Aviation Administration from terminating the employment of an employee at Baltimore-Washington International Airport. 36 Md. App. at 528. The employee had filed a Complaint seeking an injunction restraining the agencies from terminating his employment pending the outcome of a grievance procedure which he had previously brought against the Department of Personnel. Id. at 524. The agencies filed a Motion to Dissolve the Injunction contending that the Complaint did not contain sufficient facts to support the employee's claim of substantial, immediate and irreparable injury for which there was no adequate remedy at

law. Id. at 525. After a hearing on the matter, the lower court dissolved the injunction. Id.

In upholding that decision, the Court of Special Appeals reviewed the following standard for injunctive relief, which is instructive here:

> A court of equity reserves its injunctive process for the protection of property or other rights against actual or threatened injuries of a substantial character which cannot be adequately remedied in a court of law. That is to say, the jurisdiction or power to grant injunctive relief should be exercised only when intervention is essential to effectually protect property or other rights, of which equity will take cognizance, against irreparable injuries. The very function of an injunction is to furnish preventive relief against irreparable mischief or injury, and the remedy will not be awarded where it appears to the satisfaction of the court that the injury complained of is not of such character. Suitors may not resort to a court of equity to restrain acts, actual or threatened, merely because they are illegal or transcend constitutional powers, unless it is apparent that irremedial injury will result. The mere assertion that apprehended acts will inflict irreparable injury is not enough. The complaining party must allege and prove facts from which the court can reasonably infer that such would be the result.
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> As ordinarily understood, an injury is irreparable, within the law of injunctions, where it is of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice - in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, it cannot be readily,

> adequately, and completely compensated for with money.

36 Md.App. at 525-26.

The Coster court reasoned that the plaintiff's allegation of irreparable injury had no foundation because, if he was successful under his grievance procedure, he would be entitled to reinstatement to his position and full back pay for the entire period of separation. Under those circumstances, it concluded, his claims as stated in the Complaint were not appropriate for injunctive relief. 36 Md. App. at 527.

In their claim for injunctive relief, the Manfusos assert by way of conclusory allegations that actions taken by De Francis and Jacobs "pose a substantial threat of irreparable injury to the Manfusos as shareholders in Pimlico and Laurel". They do not, however, provide factual allegations that could reasonably support this conclusion, or from which the Court could reasonably infer that such would be the result. As shown below, in each instance, the claimed "injury" is illusory, poses no threat to the integrity or existence of Pimlico or Laurel or could be, if proven, readily, adequately and completely redressed by an action at law. The Manfusos have therefore failed to plead sufficient facts to support a claim for injunctive relief and all such claims must be dismissed.

a. TEXAS RACING

The Manfusos acknowledge that the exploration of the potential corporate opportunity presented by Texas racing began before Frank J. De Francis' death and before Joseph A. De

Francis assumed the responsibilities of President of Pimlico and Laurel. Complaint, paragraph 22. In fact, beginning in 1988, exploration of potential business opportunities presented by racing operations outside of Maryland were conducted jointly by Frank J. De Francis, Jacobs and other Pimlico employees. See Exhibit A, Jacobs Affidavit, paragraph 4. These efforts were undertaken initially for the benefit of Pimlico or its shareholders, with the knowledge and consent of the Manfusos. Id. These efforts were ratified and reaffirmed by all of the stockholders and directors of Pimlico after the death of Frank J. De Francis and were continued by Joseph De Francis as President and Chief Executive Officer of Pimlico. Id. at paragraph 5. After the Manfusos changed their minds and objected to further investment by Pimlico in the potential opportunity presented by Texas racing, De Francis agreed, in writing, that no further investments by Pimlico would be made in Texas racing. Id. at paragraph 6.[8]

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[8] The Stockholders Agreement executed by all parties to this litigation specifically allows each party to participate in any other business venture, of any kind whatsoever, with or without any other party to the Agreement. See Exhibit A to Plaintiffs' Complaint, paragraph 9.A. Having offered the corporate opportunity presented by Texas to Pimlico or its shareholders, and having had that opportunity rejected by the Manfusos, by law De Francis and Jacobs were free to continue to explore Texas racing individually.

The Manfusos, in their capacity as shareholders and directors agreed that the parties to the Stockholders Agreement had the right to participate in other business ventures, of any kind whatsoever. Before signing this Agreement, the Manfusos had the benefit of consulting with their personal counsel, who was partly responsible for drafting the Stockholders Agreement. See Exh. A, Jacobs Affidavit, paragraph 6. Presumably, they were

The Manfusos' allegations of diversion of resources to Texas can be summarized as follows: that De Francis has failed to reimburse Pimlico for a $33,000 wire transfer to the Texas Horse Racing Association which was made before the Manfusos demanded that no further corporate monies be invested in the Texas venture; that De Francis and Jacobs have spent time assisting Lone Star Jockey Club ("Lone Star") in its application for a license to own and operate a Texas racetrack and that this time has been taken away from Pimlico and Laurel; that De Francis and Jacobs have involved an employee of Pimlico and Laurel in the Texas venture and "intend to require" him to leave Pimlico and Laurel if the Lone Star application is successful; and that De Francis and Jacobs have or will disclose proprietary, confidential information of Pimlico and Laurel.[9]

Even assuming, solely for the purposes of this Motion to Dismiss, that these allegations have any basis in fact, they do not describe the type of immediate, substantial and irreparable injury for which there is no adequate legal remedy so as to warrant injunctive relief. The Manfusos have not and

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cognizant of their fiduciary duties to the corporations when they entered into this Agreement and, had they truly believed that participation in racing ventures in other states could injure Laurel or Pimlico, they would not have agreed to the specific reservation of rights to participate in such ventures.

[9] De Francis and Jacobs deny that any of the Manfusos' allegations in this regard are correct or accurate and respectfully refer this Court to Paragraphs 22 through 32 of their Answer and Exhibit A, Jacobs Affidavit paragraph 10-12.

cannot allege that any corporate funds have been expended on Texas racing since they rejected this business opportunity in April, 1990. In the unlikely event that they could prove any improper diversion of time, effort or confidential information from Laurel or Pimlico, the appropriate redress would be a properly filed timely action for diversion of corporate assets to recover damages in an amount easily calculated.

In the instant matter, the Manfusos have failed to allege any specific damage, financial or otherwise, which might be incurred by Pimlico or Laurel as a result of the efforts of De Francis and Jacobs in regard to Texas racing. Not only will the corporations not suffer any injury as the result of these activities, but they will in fact obtain benefits related to the involvement of De Francis and Jacobs in Texas racing. These benefits include potential simulcast wagering by patrons of the Texas racetrack on races run at Pimlico and Laurel as well as the enhancement of the reputations of the Maryland racetracks throughout the racing industry. See Exhibit A, Jacobs Affidavit, paragraph 13. Under these circumstances, the Manfusos have not made out a proper claim for injunctive relief and their request for an injunction in regard to Texas racing must be dismissed.

b. ALLEGED "LOAN ACCOUNTS"

The Manfusos' request for an injunction concerning "loan accounts" is premised upon the use of corporate credit cards by De Francis and Lynda O'Dea, ("O'Dea") an executive

employee of Laurel and MJC.[10] They allege that De Francis and O'Dea used corporate credit cards in the past to charge an unspecified amount of personal expenses.

The Manfusos specifically admit that all of these expenditures have been repaid to the corporations. Moreover, at a meeting of the Boards of Directors on April 13, 1992, they were informed by De Francis that all corporate credit cards have been eliminated with the exception of one card controlled by De Francis and used for business expenditures only. Exhibit A, Jacobs Affidavit, paragraph 23.

Given that the alleged expenditures have been repaid and that the Manfusos have not claimed that credit card abuse will occur in the future, this Court can not grant an injunction. As the Court in Campbell v. Mayor of Annapolis stated:

> [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.

44 Md. App. at 536-37. See also Hirsch v. Green, 382 F. Supp. 187, 192 (D. Md. 1974) ("When the parties discontinue the acts

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[10] De Francis and Jacobs deny that any of the Manfusos' allegations of fact in this regard are correct or accurate and respectfully refer this Court to Paragraph 32 of their Answer and Exhibit A, Jacobs Affidavit, paragraphs 23-24.

of which complaint is made, the questions become moot and injunctive relief should not then be granted").

The Manfusos' claim related to "loan accounts" is therefore reduced to a claim for interest on the money already reimbursed to the corporations. A calculation has been made of the interest that could have been earned on the amounts reimbursed to the corporations at the rate paid by their banks on their funds invested. The amount of any such interest is less than $2000. Exhibit A, Jacobs Affidavit, paragraph 24. Again, assuming solely for the purpose of this Motion that a factual basis exists for this claim, it can be readily redressed by a properly filed action to recover interest in the amount proven. Thus, the Manfusos' claim related to "loan accounts" is singularly inappropriate for injunctive relief and must be dismissed.

c. CHARITABLE CONTRIBUTIONS

The Manfusos allege that De Francis has authorized the expenditure of "significant" (but unspecified) amounts of corporate funds for matters having no business purpose. The only "fact" alleged by the Manfusos in support of this contention concerns a donation made on behalf of the corporations to the Florida Derby Gala. While the Manfusos allege, without support, that this contribution served no legitimate business purpose, it is clear that the promotion of

thoroughbred racing, in whatever location, works to the benefit of the racetracks owned by these corporations.[11]

More importantly, the Manfusos do not allege that this contribution or any future contribution that may be authorized, presents a threat of irreparable injury. Even if they are somehow able to demonstrate that a contribution made to the University of Florida College of Veterinary Medicine in connection with the Florida Derby Gala in December of 1990 should be recovered by the corporations, again, they have a ready remedy available at law in an amount easily calculated. Accordingly, their claim for injunctive relief in this regard must be dismissed.

d. ALLOCATION OF ASSETS BETWEEN PIMLICO AND LAUREL

The Manfusos' claims of irreparable harm related to the improper transfer of assets from Pimlico to Laurel must fail because, even assuming that any such allocation was improper, an adequate remedy at law exists for the redress of these alleged abuses.

The Manfusos' claims regarding allocation of assets between the racetracks are: (1) that, in 1990, 100% of the revenue from 13 racing days was transferred from Pimlico to Laurel; (2) that certain "adjustments" to Laurel's 1989

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[11] Moreover, the records of the corporation regarding the contribution made in connection with the Florida Derby Gala show that the contribution was sent directly to the University of Florida College of Veterinary Medicine, an institution which conducts scientific research beneficial to the thoroughbred industry. Exhibit A, Jacobs Affidavit, paragraph 25.

financial statement and Pimlico's 1988 financial statement were not properly recorded by the corporations' independent auditors; (3) that, in 1989 and 1990, charitable contributions were not allocated evenly between Pimlico and Laurel; (4) that the Manfusos' severance pay is charged only to Pimlico; and (5) that De Francis may have caused outside counsel's legal fees to be charged disproportionately to Pimlico.[12]

According to the Manfusos' allegations, all of the alleged improper allocations of assets and expenses between Pimlico and Laurel, with the exception of the severance payments, occurred between 1988 and 1990. It is inconceivable to suggest that these past actions currently present an immediate risk of substantial harm to Pimlico or Laurel. If they ever constituted an imminent risk of substantial and irreparable harm, the Manfusos certainly would have sought judicial intervention long before now.

The allocation of severance payments specified by the Stockholders Agreement to Pimlico rather than to both Laurel and Pimlico is a business decision governed by legal considerations. Management has determined, in its reasonable discretion, that the entity that owns Laurel Race Course, that has a limited partner, could not properly bear any of the payments made to the Manfusos. Exhibit A, Jacobs Affidavit,

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[12] De Francis and Jacobs deny that any of the Manfusos' allegations of fact are correct or accurate and respectfully refer this Court to Paragraphs 36 through 42 of their Answer and Exhibit A, Jacobs Affidavit, paragraphs 26-27.

paragraphs 26-27. Moreover, these payments have been made in the amount of $125,000 per year to each of the Manfusos since the effective date of the Manfusos' retirement in June of 1990. Id. at paragraph 26. The payment of these amounts does not pose a threat of irreparable injury to Pimlico, and if such a risk existed surely the Manfusos would forego these payments for not working so as to avoid such imminent and irreparable harm. If the Manfusos can ultimately demonstrate that the decision of management was for an improper purpose and violated the standard of reasonable business judgment, a proper timely action can be brought by Pimlico or its shareholders seeking to recover one-half of the amount paid together with interest.

Again, the claims related to the allocation of assets and expenses can be redressed by an action at law. As Manfusos have not stated any facts which would justify intervention by this court in management's business decisions by way of injunctive relief their claims must be dismissed.

e. ALLEGED DENIAL OF ACCESS TO INFORMATION REGARDING LEGAL FEES AND ACCOUNTING PRACTICES

The allegations of the Manfusos related to their failure to have access to information regarding legal fees and accounting practices are not only unsubstantiated by the facts but, even if true, are insufficient to support a claim for injunctive relief.[13]

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[13] De Francis and Jacobs deny that any of the Manfusos' allegations of fact in this regard are correct for accurate and respectfully refer this Court to Paragraphs 33 and 34 of their Answer and Exhibit A, Jacobs Affidavit, paragraphs 28-31.

Prior to the filing of the instant Complaint, Laurel and Pimlico had provided the Manfusos or their accountant with the records in their possession concerning payments of legal fees to outside counsel. Exhibit A, Jacobs Affidavit, paragraph 28. As such, they have satisfied their obligation to provide the Manfusos, as directors, access to the corporate books and records. However, De Francis and Jacobs caused the corporations to go beyond all legal requirements to satisfy the Manfusos' unprecedented demands. In a letter dated March 13, 1992, counsel for Laurel and Pimlico informed counsel for the Manfusos that outside counsel had been requested to provide the underlying computer billing printouts and that this information would be provided to the Manfusos' accountant. Exh. B. At a meeting of the Boards of Directors on April 13, 1992, the Manfusos were again informed that the corporations had requested that outside counsel provide them with the underlying computerized billing records relating to their legal fees and that this information would be provided when received. Exhibit A, Jacobs Affidavit, paragraph 28. This was known by the Manfusos and their counsel before this Complaint was filed. Their representations to the contrary are a blatant misstatement of fact.[14]

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[14] Notably, at the same meeting, John A. Manfuso, Jr. was asked to provide the corporations with the records related to fees paid by Pimlico to Fedder & Garten for services rendered to the Manfusos. Shortly after the Boards' meeting, a member of that firm contacted Jacobs to inquire as to what specific information was required. Jacobs requested the computerized billing records for services performed for the Manfusos and paid

The Manfusos can demonstrate no threat to the integrity and existence of Pimlico or Laurel related to the alleged failure to receive this documentation, and can not allege a substantial threat of irreparable injury to the Manfusos as shareholders allegedly caused by the failure to have access to this information.

With respect to accounting information, De Francis and Jacobs have given the Manfusos and their accountant access to all documents and records of the corporations, as well as the work papers of the independent auditors, Ernst & Young. Exhibit A, Jacobs Affidavit, paragraph 29. They have made Ernst & Young's principals and employees available for consultation and questioning by the Manfusos' accountant. Id. at paragraph 30. They have presented Ernst & Young with all of the Manfusos' correspondence expressing their concerns regarding the independent auditors' treatment of various items in the financial statements prepared for the racetracks, as well as Management's responses thereto. Id. In each instance, Ernst & Young has advised that the questioned item was treated in accordance with generally accepted accounting principles. Id.

Now the Manfusos demand that the Court issue an injunction ordering management to request Ernst & Young to confer directly with them or again with their accountant for

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for by Pimlico. To date, this information has not been received. Exhibit A, Jacobs Affidavit, paragraph 28.

some unspecified purpose in regard to issues they have refused to support either factually or legally before the Boards of Directors of Pimlico and Laurel.

On April 13, 1992, the Boards considered and rejected a resolution to this effect presented by the Manfusos. See Exhibit C, Exhibit A, Jacobs Affidavit, paragraph 31. The Boards requested that the Manfusos come forward with their accountant's report and present a factual basis for their alleged concerns so that the Boards might then appropriately consider and act upon their request. The Manfusos have failed to do so. Until the Manfusos comply with the Boards' request, their claim for injunctive relief is premature and should be denied.

The Manfusos have not and cannot allege that the independent auditor's failure to meet with them or their accountant presents a risk of immediate, substantial and irreparable harm to the corporations such as to justify this court's intervention in regard to a valid judgement made by the Boards of Directors. The ability to eliminate any perceived harm is solely within the control of the Manfusos; provide the Boards with the requested information. The Manfusos' request for a mandatory injunction ordering De Francis and Jacobs to request a meeting between Ernst & Young and the Manfusos or their accountants, which the Boards have previously determined is unwarranted, must be dismissed.

3. THE BENEFIT OF INJUNCTIVE RELIEF TO THE PLAINTIFFS WEIGHED AGAINST THE HARM TO DE FRANCIS, JACOBS AND THE CORPORATIONS COMPELS THE DISMISSAL OF THE CLAIMS FOR INJUNCTIVE RELIEF IN SUBPARAGRAPHS A, E & F

The Court of Appeals has cautioned that, in weighing the propriety of the issuance of an injunction, the court must take into consideration the relative convenience or inconvenience which would result to the parties from granting or refusing this relief. Baltimore & Philadelphia Steamboat Company v. Ministers and Trustees of Starr Methodist Protestant Church in Baltimore City, 149 Md. 163, 180, 130 A. 151 (1925). More recent decisions by Maryland courts have reaffirmed the doctrine of comparative hardship, balancing the benefit of injunction to the plaintiff against the inconvenience and damage to the defendant. Where the court finds that the benefit to the plaintiff is substantially less than the harm to the defendant, the court in its discretion may refuse to grant the injunction. See Beane v. McMullin, 265 Md. 585, 617, 291 A.2d 37 (1972), appeal after remand, 20 Md. App. 383, 315 A.2d 777 (1974); Dundalk Holding Company v. Easter, 215 Md. 549, 137 A.2d 667 (1958), cert. denied, 358 U.S. 821, reh'g denied, 358 U.S. 901 (1958). As the court in Bank v. Bank stated:

> [a]n injunction will not be granted if the . . . judgment is disproportionate to the relief which the plaintiff would derive from an injunction or to the hardship he would suffer if an injunction should be denied. This is true whether the purpose of an injunction is to restrain threatened tort or to compel affirmative reparation. In both, the court must delineate with practical precision the action which is to be prohibited or required, and must envisage the

> practicability of enforcement measures should the defendant refuse to comply.

180 Md. 254, 263, 23 A.2d 700 (1942).

The frivolous and factually unsupported claims of the Manfusos in regard to their requests for injunctive relief in Subparagraphs A, E and F must be dismissed under the doctrine of comparative hardship. This Court is required to balance the benefit of an injunction to the Manfusos against the inconvenience and damage to De Francis, Jacobs and ultimately to the corporations.

a. The claim for injunctive relief related to Texas racing would prohibit De Francis and Jacobs from pursuing a legitimate business interest with no corresponding benefit to the Maryland racetracks

Hearings before the Texas Racing Commission in regard to the application process are scheduled to commence on June 15, 1992. Exhibit A, Jacobs Affidavit, paragraph 15. The Lone Star application, which is filed with the Texas Racing Commission and is publicly available to the Manfusos, states that the ability of Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ") to raise subordinated debt and equity funds for Lone Star is conditioned upon the "continued and ongoing active involvement in the development and, ultimately, the operation of the racetrack by Joseph A. De Francis and Martin Jacobs." Id. at paragraph 15.

Robert T. Manfuso has appeared in Texas on behalf of Lone Star's competitor, Midpointe, and his written testimony

has been submitted on Midpointe's behalf in specific opposition to the material contained in the application of Lone Star. Id. at paragraph 17. This written testimony confirms that Robert T. Manfuso is aware of the contents of Lone Star's application. Id. at paragraph 18.

The investigative arm of the Texas Racing Commission, the Texas Department of Public Safety, generated a written report dated May 20, 1992 in connection with its investigation of the Lone Star application. That report includes a detailed description of the instant litigation. Id. at paragraph 20. In its report, the Texas Department of Public Safety has concluded that the filing of this litigation could "impact on the continued viability of [Lone Star] as a candidate for racing in Texas." Id. at paragraph 22. It has further informed the Texas Racing Commission that the injunctive relief sought by the Manfusos could jeopardize Lone Star's ability to obtain the required subordinated debt financial commitment from DLJ. Id.

If this Court were to grant the Manfusos' claim for injunctive relief with respect to Texas racing, Jacobs and De Francis would be barred from pursuing a legitimate business venture which they are entitled to pursue by law and under the Stockholders Agreement, and which will benefit Laurel and Pimlico. As reflected in the report of the Texas Department of Public Safety, the effect of any such injunctive relief would be to eliminate Loan Star from the list of competitors being

considered for the right to build a racetrack in the Dallas/Fort Worth, Texas area so as to directly benefit Midpointe, Robert T. Manfuso and Hollywood Park, its principal competitor. While granting injunctive relief would clearly damage Jacobs and De Francis, it would provide no benefit to the Maryland corporations. In fact, it would eliminate the potential benefits that the Maryland racetracks might obtain if the Lone Star application is successful.

De Francis and Jacobs have worked constantly and continuously to better Maryland racing by establishing off track-betting, etc. The Manfusos can set forth no facts or evidence to establish that barring De Francis and Jacobs from the pursuit of Texas racing will either increase the level of their efforts on behalf of Laurel and Pimlico or directly benefit Maryland racing in any other fashion. Thus, the doctrine of comparative hardship demands that the request for injunctive relief be dismissed.

b. Enforcement of the Manfusos' requested injunctions with regard to "waste" and the "transfer of assets" would be impractical and would work a hardship on the corporations

As to the Manfusos' request for injunctive relief under Subparagraphs E and F, Maryland law dictates against the granting of an injunction because enforcement of the Manfusos' vague requests would not only be impractical but would create a nightmarish situation for the corporations.

In Subparagraph E, the Manfusos have requested this Court to bar De Francis and Jacobs from wasting the assets of

Laurel, MJC, and Pimlico. If this Court granted such relief, any decision management makes in regard to the expenditure of even a single dollar of corporate funds will be subject to attack by the Manfusos as a violation of its overly-broad, vague and unenforceable claim for injunctive relief. The substantial harm visited on the corporations in regard to the expenditure of corporate assets in defending unwarranted attacks by the Manfusos as to alleged violations of an injunction would far outweigh any alleged benefit to either the corporations, or to the Manfusos individually.

The same analysis applies to Subparagraph F, in which the Manfusos have requested that this Court bar De Francis and Jacobs from "improperly" transferring assets of MJC or Pimlico to Laurel. If the Court grants this request, then every decision made by management which could be characterized by the Manfusos as an improper transfer of assets between the corporations will be subject to attack as a violation of the injunction. The waste of corporate assets in defending such actions certainly far outweighs any benefit to be derived by the Manfusos or the corporations from the granting of injunctive relief.

III. CONCLUSION

The Manfusos' second and third requested declarations must be dismissed because they do not come within the scope of the Maryland Declaratory Judgment Act. The allegations of abuse for which the Manfusos seek injunctive relief have been

made for a totally improper purpose. The so-called abuses, neither individually nor collectively, present a threat or risk of imminent, irreparable damage to the corporations for which there is no adequate remedy at law. Thus, the Manfusos have failed to allege facts sufficient to meet Maryland's rigorous legal standard for injunctive relief.

The Manfusos have no legal standing or cognizable right as directors which would justify this Court's interference in the Defendants' legitimate and proper operational and managerial control of these corporations. The Manfusos' transparent attempt to cobble together claims for relief which they can argue were not bargained away under the Stockholders Agreement should be rejected, and the above-described claims for declaratory and injunctive relief should be dismissed.

James E. Gray

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1992, a copy of the aforegoing Memorandum of Law in Support of Motion to Dismiss was mailed to: James Ulwick, Esquire, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201, Attorneys for Plaintiffs; 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

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT T. MANFUSO, and JOHN A. MANFUSO, JR., Plaintiffs vs. JOSEPH A. DEFRANCIS, MARTIN JACOBS, THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, PIMLICO RACING ASSOCIATION, INC. LAUREL RACING ASSOC., INC., Defendants	Civil Action No. 92120052 MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS CERTAIN CLAIMS FOR DECLARATORY RELIEF AND ALL INJUNCTIVE RELIEF

Defendants, The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico"), and Laurel Racing Assoc., Inc. ("Laurel") (sometimes collectively referred to as the "Corporations" or "Defendants"), by and through their attorneys, hereby submit this Memorandum of Law in Support of their Motion to Dismiss certain claims for declaratory relief and all claims for injunctive relief alleged by plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively the "Manfusos," unless otherwise specified). Specifically, defendants move to dismiss the second and third requests of Count 1 -- Declaratory Relief, and Count 2 -- Injunctive Relief.[1/]

1/ On June 5, 1992, defendants DeFrancis and Jacobs filed a Motion to Dismiss the same counts of this Complaint and Supporting Memorandum. The Corporations incorporate by reference and assert as additional grounds for their Motion to Dismiss the arguments raised in Defendants DeFrancis' and Jacobs' motion and supporting memorandum.

I.

INTRODUCTION

The Manfusos allege that they have instituted this action in order to have the Court declare that two officers and directors of the Corporations have "breached fiduciary and other duties to [the Corporations] and also to have the court declare that the Manfusos have the right and obligation to protect the Corporations from those breaches . . . [and] to obtain a permanent injunction barring Joseph DeFrancis and Jacobs from further breaches of their duties." Complaint ¶ 1. Upon scrutiny of the nature of the wrongs alleged, the complaint is nothing more than a shareholder derivative action brought by two directors/minority shareholders in the Corporations who lack standing to sue as individual Directors, and who, as shareholders, have failed to follow the procedural prerequisites to maintaining a derivative action under Maryland law.

II.

STATEMENT OF FACTS

As illustrated in Table I below, the Manfusos, Joseph DeFrancis and Martin Jacobs ("Jacobs") are each stockholders of Pimlico and Laurel.

TABLE I[2/]

Pimlico

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. DeFrancis	495	3,735	4,130
Joseph A. DeFrancis	55	415	470
Robert T. Manfuso	210	2,140	2,350
John A. Manfuso, Jr.	210	2,140	2,350
Martin Jacobs	30	570	600
	1,000	9,000	10,000

Laurel

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. DeFrancis	550	2,200	2,750
Robert Manfuso	350	1,525	1,875
John Manfuso	-0-	1,875	1,875
Martin Jacobs	-0-	1,000	1,000
	900	6,600	7,500

As a stockholder of Pimlico and as the co-personal representative of the Estate of Frank J. DeFrancis, Joseph DeFrancis controls a majority of the voting stock of Pimlico and Laurel. Joseph DeFrancis is the Co-Chairman of the Boards of Directors of Pimlico and Laurel, Complaint ¶ 17, and the President and Chief Executive Officer of both Corporations. Complaint ¶ 5. Martin Jacobs is a minority stockholder of Pimlico and Laurel, Director of Pimlico and Laurel, and the Executive Vice President, Treasurer and General Counsel of both Corporations. Complaint ¶ ¶ 6, 18. Robert T. Manfuso is a minority stockholder of both

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2/ See Answer ¶ 4. MJC and Pimlico collectively operate Pimlico Racecourse. Complaint ¶ 4.

corporations, Co-Chairman of the Board of Laurel, and a Director of Pimlico. Complaint ¶ ¶ 3, 4, 19. John A. Manfuso, Jr. is a minority stockholder of both corporations, Co-Chairman of the Board of Directors of Pimlico, and a Director of Laurel. Complaint ¶ ¶ 3, 4, 19. The Manfusos retired from their positions as officers of Pimlico and Laurel on February 24, 1990, effective May 31, 1990.

The complaint identifies seven alleged "abuses in the operation of Pimlico and Laurel" that were allegedly "uncovered" by the Manfusos. Complaint ¶ 21.[3/] The alleged "abuses" are as follows:

(1) the allegedly unauthorized diversion of corporate resources, including the time, attention and skill of Joseph DeFrancis, Jacobs and Corporate employee James Mango to the prosecution of an application for a license to own and operate a racetrack in Texas, Complaint ¶ ¶ 22-31;

(2) the failure of Joseph DeFrancis to repay the Corporations for the use of the Corporations' money for a "period of years" in connection with the use of corporate credit cards for certain personal expenses; (the complaint admits that the Corporations have been fully reimbursed in the amount of the personal charges), Complaint ¶ 32;

3/ The Corporations vigorously dispute the truth of the allegations asserted in the complaint, as set forth in their answer filed concurrently with this motion to dismiss and memorandum in support thereof. However, the Corporations contend in this motion that even if the allegations of the complaint were true, the complaint fails to state a cause of action for which this Court may grant relief.

(3) the failure to provide the Manfusos with "invoices, breakdowns, and descriptions of the legal fees paid to outside counsel by the Corporations", Complaint ¶ 33;

(4) an alleged unfair allocation of expenses pertaining to Laurel and to Pimlico, and an alleged failure to permit the Manfusos to speak to the independent auditors for Pimlico and Laurel on this subject, Complaint ¶ 34;

(5) the donation of $25,000 of corporate funds to the Florida Derby Gala which the Manfusos allege had no legitimate business purpose, Complaint ¶ 35;

(6) the allegedly improper transfer of revenue from certain racing days from Pimlico to Laurel, Complaint ¶ ¶ 36-42; and

(7) allegedly misleading statements about officers' compensation in the financial statements, Complaint ¶ 43.

The Manfusos assert that "as officers and directors" they "were and are required by Maryland law to ensure that the interests of the corporations are protected and that the officers and directors of the corporations place the best interests of the corporations ahead of their personal interests." Complaint ¶ 19. They claim that "as directors, [they] have the right and the responsibility" to "seek the Court's assistance to enjoin" the alleged breaches of fiduciary through their action for declaratory and injunctive relief. Complaint ¶ ¶ 46, 47.

However, the Manfusos are not entitled to declaratory or injunctive relief as to any of these alleged "abuses." The

allegations summarized in paragraphs (1), (2), (5), (6) and (7), as well as the first allegation of paragraph (3), are derivative in nature, and must be dismissed because the Manfusos lack standing to sue as directors, and have not made a proper demand on the Corporations as shareholders.

With respect to the second allegation of paragraph (3) and the allegation of paragraph (4), the Manfusos are seeking an injunction ordering DeFrancis and Jacobs to provide them with certain information regarding the Corporations. These requests must be dismissed because the Corporations have not in fact refused to provide the requested information, and injunctive relief is unnecessary and unjustified.

III.

DISCUSSION

A. The Alleged Instances of Corporate Waste and Abuse Identified in the Complaint Are Derivative in That Only the Corporations Would Suffer Injury If the Allegations Of Waste Were True

The complaint in this action is essentially a derivative suit by two Directors (who are also shareholders, but not officers) of the Corporations alleging that two other Directors (who are also shareholders and officers) have committed waste against the Corporations. Whether a cause of action is derivative or direct depends upon whether the alleged wrong and the alleged harm is being suffered by the corporation, or by individual stockholders. Where, as here, the alleged harms are

being suffered by the corporations, the claim by the stockholders is derivative. Waller v. Waller, 49 A.2d 449, 452 (Md. 1946) ("cause of action for injury to the property of the corporation or for impairment or destruction of its business is in the corporation").

Five of the seven alleged breaches of fiduciary duty constitute breaches which, if true, would directly harm only the Corporations, rather than the Manfusos as Directors or stockholders. If corporate resources wrongfully are being diverted to the pursuit of a license to operate a racetrack in Texas, then the Corporations are the entities being harmed, and any remedy ordered by a Court would be for the benefit of the Corporations directly, not its shareholders or Directors. The same is true with respect to the allegations that corporate officers have caused misleading financial statements to be prepared, have unfairly allocated expenses or racing revenues from one racetrack to the other, and have failed to reimburse the corporation for interest on the admittedly temporary use of the corporations' money to pay personal charges to corporate credit cards. Even if these alleged acts occurred and even if they constituted breaches of fiduciary duty, any recovery for such wrongs would flow to the Corporations, and not to the Manfusos.

In fact, the Complaint itself concedes that these alleged breaches of fiduciary duty by defendants Joseph DeFrancis and Jacobs have "inflicted damage upon Pimlico and Laurel" and not upon directly upon them as shareholders or Directors of the

Corporations. Complaint ¶ 45. The complaint makes no assertion that the alleged acts of corporate waste violated a fiduciary duty owed to the plaintiffs independent of the fiduciary duties owed to them along with every other shareholder. Nor does the complaint make any assertion that the wrongs injured the Manfusos distinct from any injury to Pimlico or Laurel. See Corwin v. Bresler, 741 F.2d 410, 415 (D.D.C. 1984). The Manfusos' complaints of improper management or mismanagement of the corporations' affairs are obviously acts that only injure them derivatively through dilution in the value of their stock, an injury equally applicable to all shareholders of Pimlico and Laurel. Bokat v. Getty Oil Co., 262 A.2d 246 (Del. 1970). Accordingly, as explained in further detail below, the Manfusos are required to bring their claims derivatively as shareholders, and to observe the procedural prerequisites to filing such an action.

B. As Directors, the Manfusos Lack Standing to Institute A Cause of Action Against Fellow Directors for Injuries to the Corporations

Under Maryland law, Directors lack standing to bring derivative suits alleging that breaches of fiduciary duty by other Directors or by officers have harmed the corporation. It is the settled rule that "in the absence of statutory authority, a single Director acting as an individual cannot institute an action against a fellow Director for any injury to the corporation; rather the board of Directors must act as a body."

3A Fletcher's Cyclopedia of the Law of Private Corporations § 1275, at 586-587 (Rev. ed. 1986)[4/].

Under the Maryland General Corporation Law, Directors may only act through the Board of Directors. See Md. Corps. & Assoc. Code § 2-401(b). Thus, individual corporate Directors such as the Manfusos have no power to bind the corporation, or to institute legal proceedings on behalf of the corporation, except when acting collectively as a Board of Directors. Jackson v. County Trust Co. of Maryland, 6 A.2d 380, 382 (Md. 1939) (Director's "personal identity is lost in the action of the board; he can only speak by his vote at its meetings. Unless specially authorized by proper corporate authority he cannot bind or represent the corporation."). Moreover, an individual Director lacks standing to act on his or her own, even if the Director owns a majority of the corporate stock. Cf. Abeles v. Adams Engineering Co., 165 A.2d 555, 567 (N.J. App. 1960), (president, Director and 80% stockholder lacked authority acting alone to bind the corporation), modified, 173 A.2d 246 (N.J. 1961). The Restatement 2d of Agency summarizes the general rule as follows:

> An individual Director, as such . . . has no power of his own to act on the corporation's behalf, but only as one of the body of Directors acting as a board. Even when he acts as a member of the board, he does not act as an agent of the corporation, but as one of the group which supervises the activities of the corporation.

4/ See New York Bus. Corp. Law § 720 (conferring standing upon directors to file derivative actions). Maryland has no such statute.

1 Restatement 2d Agency § 14C (2d ed. 1958). Although Maryland courts have not directly addressed this issue, Delaware courts, to which Maryland courts frequently look for guidance in interpreting the rights and obligations among Directors, shareholders and officers, have addressed this question. In Moran v. Household Intern, Inc., 490 A.2d 1059 (Del. Ch. 1985), the court expressly rejected a derivative suit filed by a Director and shareholder for Household International, Inc. on the grounds that the general prohibition against individual legal actions by Directors precludes Directors from suing derivatively. Claims relating to shareholders' derivative rights must be brought by shareholders in a derivative suit, after proper demand has been made upon the Board of Directors to institute legal action. Id. at 1091.

Such a rule makes sense under the statutory scheme regulating the government of corporations. The government of a corporation is divided between the Board of Directors and the stockholders in general meeting. In the case of Pimlico and Laurel, all powers of management -- with the exception of "major matters" defined in the Stockholders Agreement[5/] -- are vested in

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5/ The Stockholders Agreement identifies five "major matters" which trigger certain rights among the shareholders to control the decision making of the Boards of Directors with respect to these matters. These are: (1) the sale of all or substantially all assets of the Corporations or Laurel Racing Association Limited Partnership; (2) Refinancing, other than the modification of existing debt or the replacement of existing debt with a like amount and on terms no more onerous than at present; (3) additional financing; (4) merger and/or acquisition; and (5) purchase of substantial assets other than assets to be located at

the Boards of Directors and the officers of the Corporations. See Stockholders Agreement, Exhibit A to Complaint. Where an individual Director disagrees with the business judgments exercised by the Board of Directors acting as a body, the only potential harm he suffers is the possible exposure to suits for breaches of fiduciary duty if the Board of Director's business judgment is challenged. The remedy in such a situation is for the dissenting Director to announce his dissent at the Board of Director's meeting, be certain that his dissent is entered into the minutes of the meeting, and file his written dissent to the action with the secretary of the meeting before the meeting is adjourned. Alternatively, a dissenting Director within 24 hours after the meeting is adjourned may forward his written dissent by registered mail to the secretary of the meeting or the secretary of the corporation. Maryland Corp. & Assoc. Code § 2-410.[6/] The act of dissenting fully discharges the Director's fiduciary obligations, contrary to the assertions of the Complaint that the law somehow requires the Manfusos to bring suit to enjoin perceived breaches by other Directors. See Complaint ¶ ¶ 46, 47

Pimlico Race Course, Laurel Race Course, of Bowie Race Course.

6/ The Manfusos have exercised their right to dissent with respect to at least one of the "abuses" alleged in the complaint. Paragraph 43 of the complaint states that "as directors, the Manfusos sought to correct the financial statements, but were outvoted at a Board of Directors meeting by DeFrancis and Jacobs, and Directors under their control." Complaint ¶ 43.

(asserting that Maryland law requires them to file this suit to enjoin breaches of fiduciary duty by other Directors).

Absent any agreement to the contrary, to the extent that a Director may also be a shareholder of the corporation, his status as a shareholder enables him to sue derivatively after following the proper demand procedures. The Manfusos have no statutory or common law authority as Directors to sue derivatively.

C. The Manfusos Have Not Followed the Procedural Requirements for Instituting A Derivative Action Against the Corporation

The complaint must be dismissed because the plaintiffs have failed to plead sufficient facts, which if true, would excuse them from their obligation to formally request the Boards of Directors of Pimlico and Laurel to institute the pending action against DeFrancis and Jacobs. The Manfusos are not entitled to maintain a shareholder derivative action against the Corporations and DeFrancis and Jacobs unless and until they have taken the proper legal steps for the redress of the wrongs they intend to allege. Parish v. Maryland & Va. Milk Producers Ass'n, 242 A.2d 512, 544 (Md. 1968), aff'd on rehearing, 277 A.2d 19, (Md. 1971), cert. denied, 404 U.S. 940 (1971) (citing "well established" Maryland rule requiring exhaustion of intracorporate remedies prior to filing of derivative action). Under Maryland law, shareholders bringing a derivative action on behalf of a corporation must first make a proper demand upon the corporation

to itself institute the requested legal action. Waller v. Waller, 49 A.2d 449, 453 (Md. 1946); Eisler v. Eastern States Corp., 35 A.2d 118, 199-20 (Md. 1943).

The purpose of the demand requirement is to permit the Board of Directors to take its statutorily defined leading role in managing the corporation. Maryland Corp. and Assoc. Code, § 2-401. Maryland courts have placed the threshold decision as to whether a proposed suit for breaches of fiduciary duty is meritorious, or whether it would subject the corporation to harm, squarely in the hands of the board of Directors. A shareholders derivative action is the "equivalent of a suit by the shareholders to compel the corporation to sue," as well as "a suit by the corporation, asserted by the shareholders on its behalf, against those liable to it." Aronson v. Lewis, 473 A.2d 805, 811 (Del. 1984).

The courts have developed certain procedural prerequisites to the institution of derivative litigation in order to "limit the use of the device to situations in which, due to an unjustified failure of the corporation to act for itself, it [is] appropriate to permit a shareholder 'to institute and conduct a litigation which usually belongs to the corporation.'" Daily Income Fund v. Fox, 464 U.S. 523, 530 (1984). The demand must be directed to the board of directors as a whole, and not merely its chairman and/or general counsel. Greenspun v. Del E. Webb Corp., 634 F.2d 1204, 1209 (9th Cir. 1980). The demand must provide the Directors with information necessary for them to

assess whether an alleged wrong to the corporation has actually occurred and to determine whether to take steps to rectify it.

Here, the Complaint does not allege that the Manfusos have requested the Boards of Directors of the Corporations to file suit against DeFrancis or Jacobs for any the alleged instances of waste and mismanagement. Instead, the Complaint alleges in a conclusory manner that the Manfusos "demanded" that the Boards of Directors remedy the alleged abuses set forth in the Complaint, but fails to set forth any specific facts to support this conclusion. Instead, the Manfusos vaguely state that their "suggestions" and expressions of "concern" "have been largely ignored" by Joseph DeFrancis and Jacobs, Complaint ¶ 20, and that they have "demanded that the Boards remedy" the alleged "abuses," Complaint ¶ 21. Despite these vague and conclusory assertions, the Complaint does not identify a single action the Manfusos have taken to request the boards of Directors to institute legal action.

The first alleged "abuse" concerns the alleged unauthorized diversion of the Corporations' resources to the pursuit of an application to own and operate a racing enterprise in the state of Texas. The Manfusos request the court to enjoin DeFrancis and Jacobs from pursuing this endeavor. With respect to this obviously derivative claim, the Manfusos have not set forth a single fact excusing them from their obligation to request the Boards of Directors to file their alleged cause of action. The only reference to an attempt on their part to

satisfy the procedural prerequisites to instituting a derivative suit on this issue is a statement that "Joseph DeFrancis and Jacobs have failed and refused to refund monies expended by Pimlico and Laurel for Lone Star's benefit, despite demand by the Manfusos." Complaint ¶ 31 (emphasis added). This conclusory phrase is insufficient to satisfy the requirements for pleading a cause of action for a shareholders derivative claim.

The Complaint is similarly devoid of the requisite specific allegations regarding any demand that the Boards of Directors require Joseph DeFrancis to repay the Corporations for the temporary use of the Corporations' money to pay personal charges to corporate credit cards. The Complaint makes no reference to a demand by the Manfusos that this "abuse" be taken up by the Board, much less that the Boards of Directors consider this matter as the basis for a lawsuit against Joseph DeFrancis.

The allegations concerning the alleged improper transfer of assets from one corporation to the other also fails to set forth any specific facts excusing the Manfusos from making a proper demand upon the Pimlico Board of Directors to consider bringing a lawsuit for the alleged wrongdoing. The complaint only states that the Manfusos "objected" to the allegedly improper transfers. Complaint ¶ 36. Even if these allegations were true, merely objecting to the actions of the officers of the corporation does not excuse the Manfusos from their obligation to first request the Board of Pimlico to institute their desired legal action against Joseph DeFrancis and Jacobs.

The last allegation of alleged abuse accuses Joseph DeFrancis and Jacobs of causing misleading financial statements to be prepared for Pimlico and Laurel. This is the only allegation with respect to which the complaint alleges facts from which a court could conclude that the Manfusos' have even attempted to pursue the requisite intracorporate remedies prior to filing suit. Paragraph 43 of the complaint states that "as Directors, the Manfusos sought to correct the financial statements, but were outvoted at a Board of Directors meeting by DeFrancis and Jacobs, and Directors under their control." Complaint ¶ 43. Even so, the complaint fails to identify the date of the Board meeting, the resolution(s) in question, or the "Directors under their control." Without this information, the plaintiffs cannot be deemed to have pled sufficient facts to excuse their failure to request the Boards of Directors to institute legal action against DeFrancis and Jacobs for this alleged abuse to the Corporations. Furthermore, the Boards of Directors have properly considered the Manfusos' position that the financial statements are misleading, and in the exercise of their business judgment voted not to pursue their claims any further. See Affidavit of Martin Jacobs, Exhibit A to the Memorandum in Support of Motion to Dismiss filed June 5, 1992 on behalf of Defendants DeFrancis and Jacobs.

C. The Demands for Access to Corporate Information Should Be Dismissed

The complaint also contains two direct claims against the Defendants, both of which are requests that the Defendants provide the Manfusos with certain corporate information, to which presumably they contend they are entitled as Directors. The complaint must be dismissed as to these claims as well. The first request for information asks the court to enter an injunction "requiring DeFrancis and Jacobs to grant the Manfusos access to any information or documentation concerning legal fees charged to or paid by Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc." Complaint at 18-19. This request for relief should be dismissed because the Defendants have not refused to provide the requested information to the Manfusos. At the April 13, 1992 meeting of the Boards of Directors of Laurel and Pimlico, the Boards of Directors agreed to provide the Manfusos with the requested information about legal fees. See Jacobs Affidavit. There is no ground for granting injunctive relief where there is no dispute between the parties. Moreover, even if the allegation that the information was being wrongfully withheld were true, the Manfusos face no threat of irreparable injury from their alleged failure to receive information about legal bills. Plaintiffs have not and cannot plead any facts to support such an obviously spurious claim for injunctive relief.

Plaintiffs also request that the court enter an injunction "requiring Joseph DeFrancis and Martin Jacobs to

permit the plaintiffs and their agents to meet with the accountants for Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc." Complaint at 19. This claim must be dismissed for similar reasons. The Boards of Directors of Pimlico and Laurel have not refused to permit such a meeting between the Manfusos and the accountants for the racetracks. See Jacobs Affidavit. Rather, in the exercise of their business judgment, the Boards of Directors have taken the position that whether such access will be granted will be determined after the Manfusos provide the Boards of Directors with copies of their own accountants' report describing the accounting issues about which the Manfusos have raised questions, and the instructions given the accountant by the Manfusos or their counsel, and after they present to the Boards of Directors the factual basis of their concerns about the accounting practices of Pimlico and Laurel. Id. at 25. Further, this claim must be dismissed because the plaintiffs have set forth no facts in their Complaint from which it could reasonably be inferred that they will suffer irreparable injury if the requested injunction is not issued.

IV.

CONCLUSION

For the foregoing reasons, the defendant Corporations respectfully request that plaintiffs' complaint be dismissed for failure to state a claim upon which relief may be granted.

Dated: June 5, 1992

Respectfully Submitted,

By: _____

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Maryland Jockey Club of Baltimore City
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Pimlico Racing Association, Inc.

RULE 1-313 CERTIFICATION

Pursuant to Maryland Rule 1-313, I, Jennifer C. Archie, hereby certify that I am admitted to practice law in the State of Maryland.

_____

Jennifer C. Archie

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 1992, a copy of the foregoing Memorandum was mailed to: James Ulwick, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201; James Gray and Linda Woolf, Goodell, DeVries, Leech & Gray, 25 S. Charles Street, Suite 1900, Baltimore, Maryland 21201.

Jennifer C. Archie

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT T. MANFUSO, and JOHN A. MANFUSO, JR., Plaintiffs	
vs.	Civil Action No. 92120052
JOSEPH A. DEFRANCIS, MARTIN JACOBS, THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, PIMLICO RACING ASSOCIATION, INC., LAUREL RACING ASSOC., INC., Defendants	ANSWER OF THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, PIMLICO RACING ASSOCIATION, INC., LAUREL RACING ASSOC., INC.

Defendants, The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico") and Laurel Racing Assoc., Inc. ("Laurel") (sometimes collectively referred to hereinafter as the "Corporations" or "Defendants"), by their undersigned counsel, hereby answer the claim for declaratory relief contained in subpart (a) of Count 1 of the Complaint filed by Robert T. Manfuso and John A. Manfuso, Jr. (collectively referred to hereinafter as the "Manfusos") as follows:

1. The allegations contained in paragraph 1 of the complaint are descriptive and do not require answer but, to the extent they may be deemed allegations requiring answer, they are denied.

2. Except to the extent that the Corporations admit that the the Manfusos are shareholders of Pimlico and Laurel, the Corporations lack sufficient information to form a basis upon which to admit or deny the allegations of paragraph 2 of the Complaint, and on that basis deny said allegations.

3. The Corporations admit the allegations of paragraph 3 of the Complaint, except to the extent that the Laurel stock shown as owned of record by John Manfuso is owned of record by John A. Manfuso, Jr.

4. The Corporations admit the allegations of paragraph 4 of the Complaint, except that the stock ownership of Pimlico is as follows:

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. DeFrancis	495	3,735	4,230
Joseph A. DeFrancis	55	415	470
Robert T. Manfuso	210	2,140	2,140
John A. Manfuso, Jr.	210	2,140	2,140
Martin Jacobs	30	570	600
	1,000	9,000	10,000

The Corporations further assert that the stock shown owned by John Manfuso is owned of record by John A. Manfuso, Jr.

5. The Corporations admit the allegations of paragraph 5 of the complaint.

6. The Corporations admit the allegations of paragraph 6 of the complaint, except that Jacobs is the Executive Vice President, Treasurer and General Counsel of Laurel and Pimlico.

7. The Corporations admit the jurisdictional allegations of paragraph 7, but deny that plaintiffs are entitled to proceed under § 3-403 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

8. The Corporations admit the allegations of paragraph 8.

9. The Corporations deny the allegations of paragraph 9, except to the extent that they admit that in 1984 the thoroughbred racing industry was in a period of decline and that gross wagering and attendance revenues were less than the previous year.

10. The Corporations deny the allegations of paragraph 10 of the complaint, except to the extent that the Corporations admit that: Frank J. DeFrancis and the Manfusos were among the owners of Laurel Racing Association Limited Partnership when Laurel Race Course was purchased in December 1984 with the hope that it would be a profitable thoroughbred racing enterprise; that John A. Manfuso, Jr. assisted in the financing of that acquisition by providing a fully secured loan of $6.5 million, that Frank J. DeFrancis pledged approximately $1.8 million in securities and, that Robert T. and John A. Manfuso, Jr. jointly pledged an equal amount as security for payment of a promissory note to the seller, and that the secured loan was refinanced in July 1986 and the pledges were refinanced in full in October 1986, and since that time the Manfusos have not had funds invested in Laurel. The Corporations further admit that Jacobs provided legal advice and drafted documents memorializing the agreements pertaining to the ownership and operation of Laurel, that Frank J. DeFrancis served as the President of Laurel and had sole operational and managerial control of the Laurel racetrack, and that the Manfusos served as Vice Presidents of Laurel.

11. The Corporations deny the allegations of paragraph 11 of the complaint, except to the extent that they admit that in

December 1986 a corporation owned by the DeFrancis Family Partnership, the Manfusos and Jacobs purchased all of the outstanding capital stock of MJC, the entity that owned Pimlico, that Jacobs owned 6% of Pimlico; that Frank DeFrancis served as President of Pimlico and had sole operational and managerial control of the Pimlico racetrack; and that the Manfusos served as Vice Presidents of Pimlico.

12. The Corporations deny the allegations of paragraph 12 of the complaint, except to the extent that they admit that the financial success of the racetracks increased between 1986 and 1989, that racetrack attendance and gross wagering at each track increased between 1986 and 1989, and that Frank DeFrancis died in August 1989.

13. The Corporations deny the allegations of paragraph 13 of the complaint, except to the extent that they admit that Joseph DeFrancis worked as an attorney for the law firm of Latham & Watkins, and that he became one of the executors of Frank DeFrancis' Estate after his father's death, and answer further that Joseph DeFrancis had substantial involvement in the operation of the FreEstate racetrack, and that he was a part owner and director of Laurel and Pimlico prior to his father's death.

14. The Corporations deny the allegations of paragraph 14 of the complaint, except to the extent that they admit that pursuant to his father's wishes Joseph DeFrancis announced his intention to become the President and Chief Executive Officer of Pimlico and Laurel after the death of Frank DeFrancis, that his

salary and benefits for serving in these positions were commensurate with his assumption of his father's position, that the Manfusos opposed Joseph DeFrancis' becoming President of Pimlico and Laurel, that the Estate of Frank J. DeFrancis and Joseph DeFrancis controlled a majority of the voting stock of Pimlico and Laurel, that a memorandum of understanding was negotiated and signed by the Manfusos, and Joseph DeFrancis and Jacobs with the purpose of avoiding meddling, harassment or actual or threatened lawsuits by the Manfusos about the ownership and operation of Pimlico and Laurel, and that the memorandum of understanding set forth the basic terms of a stockholders agreement to be entered into by all stockholders of Pimlico and Laurel.

15. The Corporations admit that the effective date of the Stockholders Agreement among the Manfusos, Jacobs, the Estate of Frank DeFrancis, Joseph DeFrancis, MJC, Pimlico and Laurel is October 1, 1989, and that the Stockholders' Agreement is a contract within the meaning of § 3-406 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, but deny the remaining allegations of the first sentence of paragraph 15. The Corporations answer further that the parties signed the Stockholders Agreement on or about February 2, 1990. The Corporations admit that a true and accurate copy of the Stockholders Agreement is attached as Exhibit A to the complaint, and refer to the Stockholders Agreement for the terms and conditions of that Agreement.

16. The Corporations deny the allegations of paragraph 16 of the complaint, and refer to the Stockholders Agreement for the terms and conditions of that agreement.

17. The Corporations deny the allegations of paragraph 17 of the complaint, except to the extent that the Corporations admit that Joseph DeFrancis became President of Laurel and Pimlico after his father's death, and that he has functioned as the President and Chief Executive Officer of Laurel and Pimlico since shortly after that time, and as Co-Chairman of the Boards since on or about February 2, 1990. The Corporations refer to the Stockholders Agreement for the terms and conditions of that agreement, and to Maryland law for the definition of DeFrancis' duties as an officer and director of Pimlico and Laurel.

18. The Corporations deny the allegations of paragraph 18 of the complaint, except to the extent that the Corporations admit that Jacobs is an officer and director of Laurel and Pimlico, and that the Corporations admit that Jacobs is also general counsel of Pimlico and Laurel. The Corporations refer to the Stockholders Agreement for the terms and conditions of that agreement, and to Maryland law for the definition of Jacobs' duties as an officer and director of Pimlico and Laurel.

19. The Corporations deny the allegations of paragraph 19 of the complaint, except to the extent that the Corporations admit that the Manfusos served as Executive Vice Presidents of Laurel and Pimlico until retiring effective May 31, 1990, and that John A. Manfuso, Jr. served as Secretary of the Corporations. The Corporations refer to the Stockholders

Agreement for the terms and conditions of that agreement, and to Maryland law for the definition of the Manfusos' duties as former officers and current directors of Pimlico and Laurel.

20. The Corporations deny the allegations of paragraph 20 of the complaint, except to the extent that the Corporations admit that the Manfusos resigned their positions as officers of Pimlico and Laurel on February 24, 1990, twenty-two days after signing the Stockholders Agreement, thereby triggering the payment to them of $2.5 million in termination payments and annual severance payments to each of $125,000 pursuant to the Stockholders Agreement.

21. The Corporations deny the allegations of paragraph 21 of the complaint.

22. The Corporations admit the allegations of paragraph 22 of the complaint.

23. The Corporations deny the allegations of paragraph 23 of the complaint, except to the extent that they admit that after initially concurring in the expenditure by Pimlico of corporate funds on business opportunities outside Maryland, including the state of Texas, the Manfusos objected to an approximately $33,000.00 wire transfer from Pimlico to the Texas Horse Racing Association, that the Manfusos requested that no further monies from Pimlico or Laurel be invested in Texas racing, and that Joseph DeFrancis agreed to this request on April 27, 1990.

24. The Corporations deny the allegations of paragraph 24 of the complaint, except to the extent that they admit that as

President and Co-Chairman of the Boards of Pimlico and Laurel, Joseph DeFrancis has certain legal duties to devote time, skill and attention to the operations of Pimlico and Laurel, which duties are defined by Maryland law.

25. The Corporations admit the allegations of paragraph 25 of the complaint.

26. The Corporations deny the allegations of paragraph 26 of the complaint.

27. The Corporations deny the allegations of paragraph 27 of the complaint, except to the extent that the Corporations admit that Jacobs has traveled to Texas regarding the application of Lone Star Jockey Club for a license to own and operate a Texas racetrack. The Corporations further assert that all of Jacobs' trips to Texas since April 27, 1990 have not been been made in violation of his employment agreement embodied in Section VII.A. of the Stockholders Agreement.

28. The Corporations deny the allegations of paragraph 28 of the complaint, except to the extent that the Corporations admit that Mango is Vice President/Operations and the General Manager of Pimlico and Laurel, that he is one of a number of important employees of Pimlico and Laurel, and that he entered into an employment contract with Pimlico and Laurel effective as of January 1, 1990. The Corporations refer to the employment contract and the Stockholders Agreement for the terms and conditions of those agreements.

29. The Corporations deny the allegations of paragraph 29 of the complaint, except to the extent that they admit that

DeFrancis and Jacobs have offered an equity interest in D/J Track consultants to Mango, which entity is now called D/J/M Track Consultants, and that since April 27, 1990 Mango traveled to Texas on only one occasion, which trip was taken on his personal time and was not required by Joseph DeFrancis or Jacobs.

30. The Corporations deny the allegations of paragraph 30 of the complaint.

31. The Corporations deny the allegations of paragraph 31 of the complaint.

32. The Corporations deny the allegations of paragraph 32 of the complaint, except to the extent that they admit that Joseph DeFrancis and Lynda O'Dea used corporate credit cards to charge limited personal expenditures in addition to business expenditures, that Lynda O'Dea is an executive employee of Laurel and MJC, and that Lynda O'Dea and Joseph DeFrancis have repaid the corporations for all such expenditures.

33. The Corporations deny the allegations of paragraph 33 of the complaint.

34. The Corporations deny the allegations of paragraph 34 of the complaint.

35. The Corporations deny the allegations of paragraph 35 of the complaint, except to the extent that they admit that MJC donated $25,000.00 to the University of Florida School of Veterinary Medicine through the Florida Derby Gala.

36. The Corporations deny the allegations of paragraph 36 of the complaint, and refer to Maryland law for the definition

of the duties Joseph DeFrancis and Jacobs owe to the Corporations.

37. The Corporations deny the allegations of paragraph 37 of the complaint, except to the extent that the Corporations admit that at the joint request of Pimlico and Laurel the Maryland Racing Commission assigned 134 racing dates to Pimlico and 130 racing dates to Laurel in 1990, and that certain of Laurel's traditional racing days were run by Pimlico at Laurel.

38. The Corporations deny the allegations of paragraph 38 of the complaint as stated.

39. The Corporations deny the allegations of paragraph 39 of the complaint, except to the extent that they admit that certain salaries, telephone expenses and office supplies are shared equally by Pimlico and Laurel.

40. The Corporations deny the allegations of paragraph 40, except to the extent that the Corporations admit that in 1989 $130,000.00 in charitable contribution expenses were allocated to Laurel, that $124,000.00 in charitable contribution expenses were allocated to Pimlico in 1989, that $127,000.00 in charitable contribution expenses were allocated to Laurel in 1990, and that $215,000.00 in charitable contribution expenses were allocated to Pimlico in 1990.

41. The Corporations deny the allegations of paragraph 41 of the complaint, except to the extent that the Corporations admit that the Manfusos each receive severance payments of $10,416.67 per month ($125,000 total annual payment), that these payments have been charged to Pimlico, that a footnote in the

1989 financial statements written prior to the Manfusos' actual retirement states an initial intention to allocate these payments evenly between Pimlico and Laurel, and that similar statements were made in the two referenced letters. The Corporations refer to the Stockholders Agreement for the terms and conditions of that agreement.

42. The Corporations deny the allegations of paragraph 42 of the complaint.

43. The Corporations deny the allegations of paragraph 43 of the complaint, except to the extent that they admit that Pimlico and Laurel provide copies of financial statements to the Maryland Racing Commission and to their banks, and that the financial statements prepared by the independent auditors for each corporation list figures for "officers' salaries" and other categories.

44. The Corporations incorporate by reference their responses to paragraphs 1 through 43 of the complaint, as if fully set forth herein.

45. The Corporations deny the allegations of paragraph 45 of the complaint.

46. The Corporations deny the allegations of paragraph 46 of the complaint, and refer to the Stockholders Agreement dated as of October 1, 1989 and Maryland law for identification of the Manfusos' rights and responsibilities as directors of Pimlico and Laurel.

47. The Corporations deny the allegations of the first sentence of paragraph 47 of the complaint, except to the extent

that they admit that the Stockholders Agreement contains a standstill provision barring the Manfusos from instituting any legal action concerning the business or operations of Pimlico or Laurel prior to October 1, 1993, except for breaches of that agreement and criminal activity. The Corporations lack sufficient information to form a basis upon which to admit or deny the allegation in the second sentence of paragraph 47 about the Manfusos' beliefs, and on that basis deny the allegations of that sentence of paragraph 47 of the complaint.

48. The Corporations deny the allegations of paragraph 48 of the complaint.

WHEREFORE, defendants pray that subpart (a) of Count 1 of plaintiffs' alleged cause of action be dismissed in its entirety and that judgment be entered for defendants on all counts, together with an award to the defendants of their costs, disbursements and reasonable attorneys' fees and such other and further relief as the court in its discretion deems appropriate.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have no right or authority to bring an action as individual directors seeking either declaratory or injunctive relief for corporate waste.

THIRD AFFIRMATIVE DEFENSE

The second and third declarations sought in "Count One - Declaratory Relief" seek declarations concerning subjects that

do not come within the jurisdiction of Maryland's Declaratory Judgment Act and must, therefore, be dismissed.

FOURTH AFFIRMATIVE DEFENSE

The relief sought by the plaintiffs in their Complaint would inure to the benefit of the Corporations and, as such, must be sought by the Corporations' stockholders in a properly filed derivative suit. The plaintiffs have failed to comply with the procedural requirements prerequisite to bringing a proper derivative suit.

FIFTH AFFIRMATIVE DEFENSE

Defendants at all times acted in the best interests of Laurel and Pimlico. All actions complained of in plaintiffs' complaint were done in furtherance of a good faith business purpose and after exercise of bona fide business judgment by the officers and directors of Pimlico and Laurel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' remedy is barred by unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' requested relief is barred by fraud.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have an adequate remedy at law and therefore are not entitled to the equitable relief they seek.

NINTH AFFIRMATIVE DEFENSE

The contract under which Plaintiffs have sought relief is void for lack of consideration if interpreted in accordance with plaintiff's request for declaratory relief.

Dated: June 5, 1992

Respectfully Submitted,

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By: _____

Attorneys for Defendant
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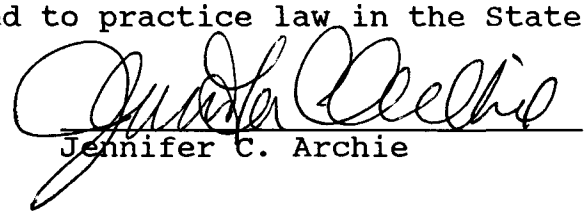
Laurel Racing Assoc., Inc.
Pimlico Racing Association,
Inc.

RULE 1-313 CERTIFICATION

Pursuant to Maryland Rule 1-313, I, Jennifer C. Archie, hereby certify that I am admitted to practice law in the State of Maryland.



Jennifer C. Archie

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 1992, a copy of the foregoing Answer to Complaint for Declaratory and Injunctive Relief was mailed to: James Ulwick, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201; James Gray and Linda Woolf, Goodell, DeVries, Leech & Gray, 25 S. Charles Street, Suite 1900, Baltimore, Maryland 21201.

Jennifer C. Archie

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT T. MANFUSO, and JOHN A. MANFUSO, JR., Plaintiffs vs. JOSEPH A. DEFRANCIS, MARTIN JACOBS, THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, PIMLICO RACING ASSOCIATION, INC. LAUREL RACING ASSOC., INC., Defendants	FILED JUN 5 1992 CIRCUIT COURT FOR BALTIMORE	Civil Action No. 92120052 MOTION TO DISMISS CERTAIN CLAIMS FOR DECLARATORY RELIEF AND ALL INJUNCTIVE RELIEF

Defendants The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico"), and Laurel Racing Association, Inc. ("Laurel") (sometimes collectively referred to as the "Corporations" or "Defendants"), by and through their attorneys, hereby move to dismiss certain claims for declaratory relief and all claims for injunctive relief alleged by plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively "The Manfusos," unless otherwise specified) pursuant to Maryland Rule of Civil Procedure 2-322. Specifically, defendants move to dismiss the second and third requests for declaratory relief, and Count 2 -- Injunctive Relief.

In subparagraphs B and C of Count 1 -- Declaratory Relief, plaintiffs ask this Court to declare that they are entitled to the injunctive relief sought in Count 2 of the complaint, and that the matters alleged in the complaint

constitute breaches of fiduciary duty by Joseph DeFrancis and Martin Jacobs, two officers and directors of the Corporations.

Count 2 seeks a permanent injunction: (1) barring DeFrancis and Jacobs from diverting resources, key employees, or confidential and proprietary information of the Corporations to any ventures in Texas or other ventures; (2) requiring DeFrancis and Jacobs to reimburse the Corporations for any future expenses on corporate loan accounts; (3) requiring DeFrancis and Jacobs to grant the plaintiffs access to any information or documentation concerning legal fees charged to or paid by the Corporations; (4) requiring DeFrancis and Jacobs to permit the plaintiffs and their agents to meet with the accountants for the Corporations; (5) barring DeFrancis and Jacobs from wasting the assets of the Corporations; and (6) barring DeFrancis and Jacobs from improperly transferring assets of MJC or Pimlico to Laurel.

The grounds for this motion, as set forth more fully in the accompanying memorandum, are:

(1) The alleged injuries that allegedly stem from the mismanagement or wrongful use of corporate property by DeFrancis and Jacobs as corporate officers are without question injuries to the Corporations, and not to the Manfusos as shareholders or directors of the Corporations. Any suit against DeFrancis and Jacobs should be brought by the corporation alleged to have suffered the injury in question.

(2) In their capacity as directors, the Manfusos have no standing to bring this derivative suit.

(3) To the extent that the Manfusos may allege that their status as shareholders confers standing to sue (they have not done so in the complaint), the Manfusos have failed to make a proper demand upon the corporations to bring these derivative claims; and

(4) The requests for injunctive relief permitting the Manfusos access to certain corporate information are not the appropriate subject of injunctive relief because the Corporations have not refused to provide the Manfusos with the requested information.

WHEREFORE, Defendants MJC, Pimlico and Laurel respectfully request that the Court dismiss subparagraphs B and C of Count 1 and all of Count 2 of the Complaint, and that defendants be awarded their fees and costs for responding thereto along with any further relief deemed appropriate by the Court.

Dated: June 5, 1992

Respectfully Submitted,

By: _____

LATHAM & WATKINS
Irwin Goldbloom
McGee Grigsby
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Washington, D.C. 20004

Attorneys for Defendants
Maryland Jockey Club of
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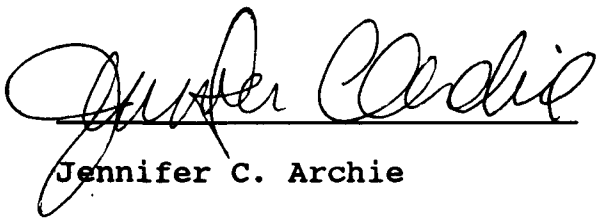
Laurel Racing Assoc.,
Inc.
Pimlico Racing Association,
Inc.

RULE 1-313 CERTIFICATION

Pursuant to Maryland Rule 1-313, I, Jennifer C. Archie, hereby certify that I am admitted to practice law in the State of Maryland.



Jennifer C. Archie

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 1992, a copy of the foregoing Motion to Dismiss was mailed to: James Ulwick, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201; James Gray and Linda Woolf, Goodell, DeVries, Leech & Gray, 25 S. Charles Street, Suite 1900, Baltimore, Maryland 21201.

Jennifer C. Archie

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT T. MANFUSO, and JOHN A. MANFUSO, JR., Plaintiffs vs. JOSEPH A. DEFRANCIS, MARTIN JACOBS, THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, PIMLICO RACING ASSOCIATION, INC. LAUREL RACING ASSOC., INC.,	Civil Action No. 92120052 COUNTERCLAIM OF THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, PIMLICO RACING ASSOCIATION, INC., LAUREL RACING ASSOC., INC.

Defendants The Maryland Jockey Club of Baltimore City, Inc. ("MJC"), Pimlico Racing Association, Inc. ("Pimlico") and Laurel Racing Assoc., Inc. ("Laurel") (sometimes collectively referred to hereinafter as the "Corporations"), by their undersigned counsel, hereby sue Robert T. Manfuso and John A. Manfuso, Jr. (sometimes collectively referred to hereinafter as the "Manfusos"), and for the counterclaim allege as follows:

COUNTERCLAIM FOR
BREACH OF CONTRACT AND DECLARATORY RELIEF

Defendant Corporations ("Counter-Plaintiffs") hereby assert the following counterclaims against each and every plaintiff ("Counter-Defendants" or "Manfusos") herein:

1. This is a civil action for common law breach of contract and declaratory relief. The Corporations request the Court to excuse the Corporations from all future performance under the Stockholders Agreement, to award monetary damages to

the Corporations for the consequential damages resulting from the Manfusos' intentional and material breach of the Stockholders Agreement.

2. Laurel Racing Assoc., Inc. is a Maryland corporation whose stockholders are as follows:

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. DeFrancis	550	2,200	2,750
Robert T. Manfuso	350	1,525	1,875
John A. Manfuso, Jr.	-0-	1,875	1,875
Martin Jacobs	-0-	1,000	1,000
	900	6,600	7,500

3. Pimlico Racing Association, Inc. is a Maryland corporation whose stockholders are as follows:

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. DeFrancis	495	3,735	4,230
Joseph DeFrancis	55	415	470
Robert T. Manfuso	210	2,140	2,140
John A. Manfuso, Jr.	210	2,140	2,140
Martin Jacobs	30	570	600
	1,000	9,000	10,000

4. Since August 1989, as co-personal representative of the Estate of Frank DeFrancis, Joseph DeFrancis continuously has controlled a majority of the voting stock of Laurel.

5. Since August 1989, as co-personal representative of the Estate of Frank DeFrancis and a stockholder, Joseph DeFrancis continuously has controlled a majority of the voting stock of Pimlico.

6. All of the stockholders of Pimlico and Laurel were parties to a Stockholders Agreement dated as of October 1, 1989.

A true and accurate copy of the Stockholders Agreement is attached as Exhibit A to the Complaint in this action and made a part hereof.

7. MJC, Laurel and Pimlico were also parties to the Stockholders Agreement.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

8. Counter-Plaintiffs re-allege the allegations of paragraphs 1-7 as if set forth in full in this paragraph.

9. Section X. of the Stockholders Agreement (hereinafter "Standstill Provision") provides in part that

> [w]ith the exception of litigation based on criminal activity or on a breach of the terms of this Agreement or documents executed pursuant hereto, the parties to this Agreement agree that, prior to October 1, 1993, they will not institute or join in any legal dispute or action against any party to this Agreement concerning the business or operations of Pimlico or Laurel. If, after October 1, 1993 but prior to October 1, 1994, any party to this Agreement institutes or joins in any legal action dispute or action against any other party to this Agreement concerning the business or operations of Pimlico or Laurel, the party against whom such dispute or action is brought agrees not to raise the statute of limitations as a defense to such action.

10. Under the Stockholders Agreement, the Manfusos received a number of rights and benefits, including without limitation, the right to termination payments of $1,250,000 each upon their retirement as officers of Pimlico and Laurel, the right to be elected to seats on the Board of Directors, and the right to receive monthly severance payments of $10,416.67 each after they ceased performing services as officers of Pimlico and Laurel. The Stockholders Agreement also included a buy/sell

provision which gave the Manfusos significant rights pursuant to which they could force DeFrancis and Jacobs to sell their stock in Laurel and Pimlico to the Manfusos, or compel DeFrancis to purchase the Manfusos' stock upon the occurrence of a "major matter" as defined in the Stockholders Agreement, or after October 1, 1993 at any time.

11. The Stockholders Agreement was signed by all parties on February 2, 1990. The parties agreed that October 1, 1989 would be the effective date of the Stockholders Agreement.

12. The Manfusos have received the benefit of the full performance of the Corporations' obligations under the Stockholders Agreement, including but not limited to the Corporations' full performance of the following obligations under the Stockholders Agreement: granting John A. Manfuso, Jr. the following positions and titles: Director and Co-Chairman of the Board of Pimlico; Director and Vice Chairman of the Board of Laurel; Executive Vice President of Pimlico; Executive Vice President of Laurel; Secretary of Pimlico; Secretary of Laurel; granting Robert T. Manfuso the following positions and titles: Director and Co-Chairman of the Board of Laurel; Director and Vice Chairman of the Board of Pimlico; Executive Vice President of Pimlico and Executive Vice President of Laurel; paying John A. Manfuso, Jr. $1,250,000 upon his voluntary retirement from his positions as an officer of Pimlico and of Laurel; paying Robert T. Manfuso $1,250,000 upon his voluntary retirement from his positions as an officer of Pimlico and of Laurel; making monthly

severance payments of $10,416.67 to Robert T. Manfuso beginning June 1, 1990 to the present; making monthly severance payments of $10,416.67 to John A. Manfuso, Jr. beginning June 1, 1990 to the present.

13. As holders of less than a majority of the voting stock of either Pimlico or Laurel, the Manfusos did not have the ability to elect themselves as directors or appoint themselves officers of Pimlico or Laurel, but for the provisions of the Stockholders Agreement granting them those rights.

14. As holders of less than a majority of the voting stock of either Pimlico or Laurel, the Manfusos did not have the ability to cause the Corporations to pay them a termination payment upon their retirement as officers of Pimlico and Laurel, but for the provisions of the Stockholders Agreement granting them those rights.

15. As holders of less than a majority of the voting stock of either Pimlico or Laurel, the Manfusos did not have the ability to cause the Corporations to have paid and to continue to pay them a monthly severance payment of $10,416.67 each after they ceased performing any services as officers of Pimlico and Laurel, but for the provisions of the Stockholders Agreement granting them those rights.

16. In consideration in part of the Corporations' assumption of the obligations described in paragraph 12 of this counter-claim, pursuant to the Stockholders Agreement, the Manfusos promised not to sue the Corporations prior to October 1,

1993 concerning the business and operations of Pimlico and Laurel. This Standstill Provision was the only consideration received by the Corporations from the Manfusos under the Stockholders Agreement.

17. On February 24, 1990, the Manfusos issued a press release announcing their intention to retire from their positions as officers of Pimlico and Laurel shortly after the running of the Preakness in May 1990. They informed the Corporations of their decision less than 48 hours prior to their issuance of the press release.

18. On April 29, 1992, the Manfusos instituted legal action against the Corporations concerning the business and operations of Pimlico and Laurel.

19. By instituting legal action concerning the business and operations of Pimlico or Laurel prior to October 1, 1993, the Manfusos intentionally and willfully breached the Stockholders Agreement. The institution of this legal action defeats the purpose of the Corporations' entering into the Agreement.

20. Until the institution of legal action by the Manfusos in material breach of the Stockholders Agreement, MJC, Pimlico and Laurel have at all times herein mentioned been ready, able and willing to perform the Stockholders Agreement on their part, and have duly performed all of the conditions of such Agreement on their part, but the Manfusos have failed and refused to perform their obligations.

21. As a result of the Manfusos' actions in violation of the Stockholders Agreement, the Manfusos have deprived MJC, Pimlico and Laurel of the primary consideration they were to receive from the Manfusos under the Stockholders Agreement.

SECOND CLAIM OF RELIEF

(Declaratory Judgment)

22. The Corporations reallege each and every allegation of paragraphs 1-21 of this Counterclaim as if set forth in full in this paragraph.

23. This is a count for Declaratory Judgment pursuant to § 3-406 of the Courts and Judicial Proceedings Article of the Annotated Code for Maryland for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

24. The Corporations allege that the Stand still Provision constitutes a valid promise by the Manfusos not to sue the Corporations concerning the business or operations of Pimlico and Laurel prior to October 1, 1993.

25. The Manfusos have instituted legal action against the Corporations concerning the business and operations of Pimlico and Laurel prior to October 1, 1993.

26. The Corporations allege that the Standstill Provision constitutes the primary consideration received by the Corporations from the Stockholders Agreement.

27. The Manfusos contend that their institution of legal action against the Corporations concerning the business and

operations of Pimlico and Laurel does not constitute a material breach of the terms of the Stockholders Agreement.

28. The Corporations contend that the Manfusos' institution of legal action against the Corporations concerning the business and operations of Pimlico and Laurel not only violates the terms of the Standstill Provision, but also constitutes a material breach of the Stockholders Agreement excusing the Corporations from all future performance under the Stockholders Agreement, and entitling the Corporations to compensatory damages for the Manfusos' breach of the Stockholders Agreement.

29. An actual controversy exists between the Manfusos and the Corporations as to whether a material breach of the Stockholders Agreement has occurred, and whether the Corporations are excused from future performance under the Stockholders Agreement.

RELIEF REQUESTED

WHEREFORE, the Corporations pray for judgment against the Counter-Defendants, jointly and severally, as follows:

(a) the Manfusos's interference with DeFrancis' operational and managerial control of Laurel and Pimlico and the filing of the Complaint constitute material breaches of the Stockholders Agreement;

(b) DeFrancis and Jacobs are excused from any and all future performance under the Stockholders Agreement;

(c) all consideration paid to the Manfusos under the Agreement along with interest thereon and costs to be repaid to Pimlico;

(d) Counter-plaintiffs be awarded ten million dollars ($10,000,000) compensatory damages along with interest thereon and costs;

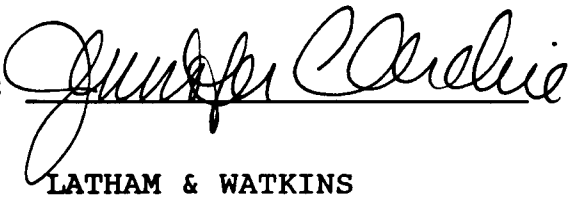
(e) Counter-plaintiffs be reimbursed for all attorney's fees and costs incurred in defending the Manfusos'

claims as well as the attorney's fees and costs incurred in bringing this Counterclaim; and

(f) Any further relief the Court deems appropriate.

Dated: June 5, 1992

Respectfully Submitted,

By: 

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Laurel Racing Assoc., Inc.
Pimlico Racing Association, Inc.

RULE 1-313 CERTIFICATION

Pursuant to Maryland Rule 1-313, I, Jennifer C. Archie, hereby certify that I am admitted to practice law in the State of Maryland.

Jennifer C. Archie

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 1992, a copy of the foregoing Counterclaim was mailed to: James Ulwick, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201; James Gray and Linda Woolf, Goodell, DeVries, Leech & Gray, 25 S. Charles Street, Suite 1900, Baltimore, Maryland 21201.

Jennifer C. Archie

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		

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

ORDER

Having considered the Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief and Memorandum of Law and Exhibits submitted in support thereof filed by Defendants, Joseph A. De Francis and Martin Jacobs, and the Opposition thereto by Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., it is this ____ day of _____, 1992 hereby ORDERED that Plaintiffs' requests for declaratory judgment, as stated in subparagraphs B and C of Count I and all of the Plaintiffs' claims for injunctive relief stated in Count II of the Complaint for Declaratory and Injunctive Relief are hereby DISMISSED.

_____
Judge

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 Martin Jacobs. I am over eighteen years of age and competent to testify. The following facts are true and correct and within my personal knowledge.

2. I am the Executive Vice President, Treasurer and General Counsel of Laurel Racing Assoc., Inc. ("Laurel"), Pimlico Racing Association, Inc. ("Pimlico") and The Maryland Jockey Club of Baltimore City, Inc. ("MJC").

3. Beginning in 1988, I worked with Frank J. De Francis in exploring potential business opportunities presented by racing in states outside of Maryland, including Texas, Massachusetts, Missouri and other states. Other Pimlico employees were involved as well. All of the stockholders of Pimlico understood that racing operations outside of Maryland could present a potential opportunity for the benefit of Pimlico or its shareholders.

4. After the death of Frank J. De Francis, these efforts to explore racing opportunities outside of Maryland continued and were approved by all of the stockholders and directors of Pimlico. Joseph A. De Francis ("De Francis"), who became President and Chief Executive Officer of Pimlico

following the death of Frank J. De Francis, joined in these efforts.

5. After the death of Frank J. De Francis, the Manfusos were opposed to Joseph A. De Francis becoming President and Chief Executive Officer of Laurel and Pimlico. They recognized that De Francis was entitled to assume these positions by virtue of the controlling majority interest in the voting stock of the corporations owned by the Estate of Frank J. De Francis and him. Nevertheless, because they recognized that their rights as minority stockholders were extremely limited, they demanded that all of the stockholders of Laurel and Pimlico enter into a Stockholders Agreement. Their demands were accompanied by personal hostility directed toward De Francis and me, threats of litigation and public disputes that would harm Laurel and Pimlico and threats of creating unrest and dissension among employees.

6. For the purpose of obtaining a period of peace during which De Francis could exercise the operational and managerial control over the racetracks to which he was entitled by virtue of the Estate's and his controlling majority interest in Laurel and Pimlico, pursue legislative initiatives and consolidate his position with the press and employees, De Francis, the Estate and I agreed to enter into a Stockholders Agreement with the Manfusos. The Manfusos were represented in connection with the negotiation and drafting of the Stockholders Agreement by Herbert Garten of the law firm of

Fedder & Garten. Mr. Garten and another attorney in that firm actively participated in negotiating and drafting the terms and conditions of that Agreement.

7. There have been no further investments by Pimlico in Texas racing since April 27, 1990 when De Francis, at the insistence of Robert T. Manfuso and John A. Manfuso, Jr. (the "Manfusos"), agreed there would be "no further investments in Texas racing."

8. Commencing after its rejection, as described in paragraph 5, De Francis and I personally pursued the potential opportunity presented by Texas racing. We agreed to assist in the application process of Lone Star Jockey Club, Ltd. ("Lone Star") to obtain a license from the Texas Racing Commission to develop, own and operate a Class 1 parimutuel horseracing facility in the Dallas/Fort Worth, Texas market. Our personal involvement in Texas racing is permitted by law and under the Stockholders Agreement dated as of October 1, 1989 and was known to the Manfusos.

9. De Francis and I formed a partnership, now known as D/J/M Track Consultants ("D/J/M"), which has an ownership interest in Lone Star. We have also agreed to perform various consulting services for Lone Star.

10. Since April 27, 1990, De Francis and I have paid all of our own expenses related to our activities in Texas.

11. There is no system, program or technique used at

Laurel or Pimlico of which I am aware that is proprietary or confidential. Neither De Francis nor I have disclosed, nor do we expect to disclose, any proprietary, confidential information belonging to Laurel or Pimlico to any other entity.

12. James P. Mango ("Mango") has joined De Francis and me in the entity now known as D/J/M Track Consultants. De Francis and I have not "required" Mango to travel to Texas to assist in the Lone Star application. We could not and will not "require" Mango to leave Laurel and Pimlico if Lone Star's application is successful.

13. If the Lone Star application is successful, it is anticipated that Pimlico and Laurel will benefit from our involvement in Texas racing. These benefits include the potential for simulcast wagering by patrons of the Texas racetracks on Pimlico and Laurel races, as well as the enhancement of the Maryland tracks' reputation in the national racing industry.

14. The terms of my employment agreement with Pimlico, Laurel and MJC are contained in paragraph VII of the Stockholders Agreement referred to above. Although I have devoted time to activities in Texas, my employment agreement does not prohibit me from doing so and I have foregone the normal increases in salary to which I was entitled for 1991 and 1992 under that agreement. I have also continued to devote to my duties at Pimlico and Laurel the time required for their performance in accordance with that agreement.

15. The application of Lone Star for a license to develop and own the Class 1 parimutuel horseracing facility in the Dallas/Fort Worth area is presently pending before the Texas Racing Commission. While there are three other applicants for the right to build the Class 1 racetrack in the Dallas/Fort Worth area, the principal and only significant competition to Lone Star's application is presented by Midpointe Racing, L.C. ("Midpointe"). Hearings before the Texas Racing Commission in regard to the application process are scheduled to commence on June 15, 1992.

16. Robert T. Manfuso is a Director and stockholder of the entity that owns and operates Hollywood Park racetrack. The application filed by Midpointe for the Dallas/Fort Worth license states that Hollywood Park and its Chairman, R. D. Hubbard, own almost 50% of the equity in Midpointe and are to perform substantial management services for Midpointe.

17. Robert T. Manfuso has appeared in Texas on behalf of Midpointe and his written testimony has been submitted on Midpointe's behalf in specific opposition to material contained in the application of Lone Star. I have been informed that Robert T. Manfuso is performing managerial duties for Hollywood Park racetrack in connection with the American Championship Racing Series and it is my belief that he intends to be actively involved in the management of the

Dallas/Fort Worth racetrack if Midpointe's application is

successful.

18. The application filed by Lone Star states that Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ") is assisting Lone Star to finance the development and operation of a horseracing facility in Texas should Lone Star be successful in obtaining the Dallas/Fort Worth license. The Lone Star application is filed with the Texas Racing Commission and is publicly available to Midpointe and the Manfusos. The written testimony submitted by Robert T. Manfuso confirms that he is aware of contents of the Lone Star application.

19. The Lone Star application includes a letter issued by DLJ stating its ability and intent to raise $30 million in subordinated debt and equity for Lone Star. The letter contains, as a condition, the "continued and ongoing active involvement in the development and, ultimately, the operation of the racetrack by Joseph A. De Francis and Martin Jacobs."

20. I have been provided with a written report made by the Texas Department of Public Safety to the Texas Racing Commission describing its investigation in connection with Lone Star's application. That report includes the following statements:

> Robert and John Manfuso, co-owners of the Maryland Jockey Club and Laurel Racing Association, Inc., have filed a lawsuit against JOSEPH DEFRANCIS, MARTIN JACOBS and the entities which comprise the Pimlico and Laurel racetracks. This lawsuit was filed on April 29, 1992 in the Circuit Court for Baltimore City, Maryland under Case Number

92 120052. This lawsuit alleges that profits from Maryland racetracks, controlled by DEFRANCIS, were utilized without authorization to finance a racing venture in Texas. The lawsuit also contends that James P. Mango violated his contractual agreement as General Manager of the Pimlico and Laurel racetracks through his involvement with D/J Track Consultants and LONE STAR JOCKEY CLUB, LTD. This lawsuit seeks declaratory and injunctive relief claiming the individual defendants breached various fiduciary and other obligations to the corporate defendants. The injunctive relief sought appears to seek the preclusion of defendants DEFRANCIS and JACOBS from participating in racing activities in Texas. At this time, a response from defendants DEFRANCIS and JACOBS has not been filed. (It should be noted that Robert Manfuso is a member of the Board of Directors of Hollywood Park. Hollywood Park is part of the Midpointe racing applicant that is also vying for the racetrack license in Dallas County.)

21. Prior to the filing of the Complaint in the instant lawsuit, a reasonable probability existed that Lone Star would be awarded the license to develop and operate the Class 1 racetrack in the Dallas/Fort Worth, Texas area; that Lone Star would receive the necessary financing to construct and operate this facility; and that De Francis, Mango and I, or an entity formed by us, would have an equity interest in Lone Star and would receive fees and benefits equal to 50% of the annual management fees payable by Lone Star as well as a portion of the development fee payable by Lone Star.

22. The Texas Department of Public Safety has concluded in its report to the Texas Racing Commission that this probability has been seriously impaired by the filing of

this litigation. The Department of Public Safety has stated in its report that the pendency of this litigation could "impact on the continued viability of [Lone Star] as a candidate for licensing in Texas." It has further informed the Texas Racing Commission that the injunctive relief sought could jeopardize Lone Star's ability to retain the subordinated debt financial commitment from DLJ. More specifically, the report states in its summary:

> The civil litigation filed in Baltimore, Maryland on April 29, 1992 and disclosed in this report has the potential to become a major issue. Should this issue remain unresolved it could impact on the continued viability of the applicant as a candidate for licensing in Texas. The injunctive relief sought by this lawsuit appears to seek the preclusion of defendants JOSEPH DE FRANCIS and MARTIN JACOBS from participating in racing activities in Texas. Should this injunctive relief be granted, the impact on the applicant's ability to retain the $20,000,000.00 in subordinated debt financial commitment of Donaldson, Lufkin and Jenrette could be jeopardized. This would also place the applicant in the position of losing the consultant services of D/J Track Consultants, i.e., JOSEPH DE FRANCIS and MARTIN JACOBS. The repercussions that this could have on the applicant's total financial package cannot be calculated.
>
> In conclusion, the possible ramifications of the pending civil litigation in Maryland necessitates a continued monitoring of the situation as it develops or until final resolution is reached. . . .

23. At a meeting of the Boards of Directors of Pimlico and Laurel on April 13, 1992, the Manfusos were informed by De Francis that all corporate American Express credit cards had been eliminated with the exception of one card

controlled by De Francis and used for business expenditures only.

24. I have had a calculation made of the interest that could have been earned at the applicable rates generally earned by Laurel and Pimlico on cash investments. Even though some reimbursements by De Francis and Lynda O'Dea were not coincident with the payment of the American Express bills by the corporations, the maximum cost to the corporations for the use of the money, at the rate of interest generally earned by the corporations, would be less than $2,000.

25. The corporate records regarding the donation made by Pimlico in connection with the Florida Derby Gala confirm that the Gala was held for the benefit of the University of Florida College of Veterinary Medicine, an institution that conducts scientific research beneficial to the thoroughbred industry. The contribution by Pimlico was sent directly to this institution.

26. The records of Pimlico reflect that the termination payments made to each of the Manfusos in the amount of $1,250,000 were paid by Pimlico. The records also reflect that all severance payments to the Manfusos since their retirement, at the rate of $125,000 per year to each of them, have been paid by Pimlico.

27. The allocation of the termination and severance payments to Pimlico, rather than to both Laurel and Pimlico, is a business decision governed by applicable legal

considerations. De Francis determined, in the exercise of his authority and discretion, that the entity that owns Laurel Race Course, which includes a limited partner, should not properly bear any of these payments made to the Manfusos, including the severance payments which were made to them for not working rather than for services.

28. Prior to the filing of the Manfusos' Complaint, Laurel and Pimlico had provided the Manfusos or their accountant, Mark Reynolds, with the records in their possession related to the payment of fees to outside legal counsel, including all statements and invoices in their possession for professional services. At a meeting of the Boards of Directors on April 13, 1992, the Manfusos were informed that Laurel and Pimlico had requested outside legal counsel to provide them with the underlying computerized billing records related to their legal fees and that this information would be provided to the Manfusos when it is received. At the same meeting, John A. Manfuso, Jr. was requested to arrange for Pimlico to be provided the computerized billing records related to fees paid by Pimlico to the law firm of Fedder & Garten for services performed for the Manfusos in connection with the Stockholders Agreement. Shortly after the Board meeting, a member of that firm called me to ask specifically what information he should provide and I told him Pimlico needed his computerized billing records for services performed for the Manfusos and paid for by Pimlico. As of this date, this information has not been

received.

29. Laurel and Pimlico have previously provided the Manfusos and their accountant with access to their accounting records. Much of this information had been routinely provided to John A. Manfuso, Jr. on a regular basis, including the computerized register of checks written on the general operating accounts of the racetracks. Laurel and Pimlico also previously authorized the firm of independent certified public accountants, Ernst & Young, that is the outside independent auditor for Laurel and Pimlico, to provide the Manfusos' accountant with access to their work papers on their audits of the financial statements of the racetracks.

30. Prior to the filing of the instant suit, Laurel and Pimlico had requested of Ernst & Young that its principals and employees meet with the Manfusos' accountant in regard to any questions he might have about their workpapers, and those meetings in fact took place. Laurel and Pimlico also provided Ernst & Young with copies of all of the correspondence received from the Manfusos expressing their concerns regarding the treatment of various items in the financial statements of the racetracks as well as copies of management's responses to that correspondence. Ernst & Young advised management that the treatment accorded to the questioned items in the financial statements complied with generally accepted accounting principles.

31. At its meeting on April 13, 1992, the Boards of

Directors of Pimlico and Laurel considered and rejected a resolution proposed by the Manfusos that Ernst & Young meet with them directly, or again with their personal accountant, in regard to unspecified issues that the Manfusos have refused to support factually or legally to the Boards of Directors. At that meeting, the Boards requested that the Manfusos present a copy of their accountants' report and related documents and present a factual basis for their alleged concerns so that the Board might then further consider and act upon their request. The Manfusos have failed to comply with this request to this date.

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

Martin Jacobs

Directors of Pimlico and Laurel considered and rejected a resolution proposed by the Manfusos that Ernst & Young meet with their personal accountant, in regard to unspecified issues that the Manfusos have refused to support factually or legally to the Boards of Directors. At that meeting, the Boards requested that the Manfusos present a copy of their accountants' report and related documents and present a factual basis for their alleged concerns so that the Board might then further consider and act upon their request. The Manfusos have failed to comply with this request to this date.

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

Martin Jacobs

PAUL R. WATKINS (1898-1973)
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March 13, 1992

James M. Kramon, Esq.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
20 South Charles Street
Baltimore, Maryland 21201

Dear Mr. Kramon:

My apologies for being a bit tardy in responding to your letter of February 24, 1992. I have been out of town, and, after returning, got a bit behind schedule.

Based on your letter, I assume Mr. Reynolds has reviewed the American Express records. Please let me know if there is anything further that he needs.

In response to your request for support for the charges for legal services paid by Laurel, Pimlico and/or the Maryland Jockey Club, my clients have requested Latham & Watkins and Ginsberg, Feldman & Brest to provide the standard computer printouts referred to in your letter for the purpose of making this material available to Mr. Reynolds. We would appreciate your asking your clients to make a similar request of Fedder and Garten. The material requested should be directed to the attention of Mr. Jacobs.

Also, with respect to legal charges, to the best of my knowledge, at no time has our firm performed legal work "for the benefit of Laurel and/or the benefit of both Pimlico and Laurel, at Pimlico's expense." Some time in early 1990, as a matter of internal accounting and record-keeping convenience for me, I asked Joe DeFrancis if it would be acceptable for Latham & Watkins to record all work that was for the joint benefit of Laurel and Pimlico on a single account. He consented and for this purpose, I selected the Maryland Jockey Club account as a collective billing vehicle.

Since a very substantial portion of the work our firm performs is for both entities, using the Maryland Jockey Club as the collective billing vehicle reduces the amount of time I am required to spend monitoring the time recording practices of the various attorneys working on the account. Using a single account also makes it unnecessary for the attorneys to split the time entries. There was never any intent that the joint charges be paid by a single entity. The arrangement was solely for my convenience.

From the time Joe DeFrancis and I agreed upon this practice to this date, the Maryland Jockey Club account has been so utilized. At first, nothing on the bills indicated the 50-50 allocation we had agreed upon, but sometime later, in order to avoid confusion at Laurel and Pimlico, we added two extra entries on the bills indicating the allocation.

In contrast, when work is performed that is not for the benefit of both entities, the time is charged separately to that entity on a separate internal account, and a separate bill is sent to that entity. Since your auditor has reviewed the billing statements I assume he will confirm that there have been three separate billing accounts: Maryland Jockey Club, Laurel and Pimlico.

In sum, while it is possible that some internal logging mistakes may have occurred (although I am not aware of any), we have always endeavored to charge each entity separately for work that was solely on behalf of that entity. The Maryland Jockey Club account has been used solely for work that was on behalf of both Laurel and Pimlico. (I am enclosing for your information a letter dated May 15, 1990 from me to Joe DeFrancis explaining this arrangement.)

I trust this provides the information you and Mr. Reynolds need.

Very truly yours,

McGee Grigsby
of LATHAM & WATKINS

Enclosure

MOTION BEFORE THE BOARD OF DIRECTORS
OF LAUREL RACING ASSOC., INC.

April 13, 1992

Motion made by Messrs. Manfuso

MOVED, that the auditors of the Corporation, Ernst & Young, be requested immediately to confer with Mark W. Reynolds, C.P.A., with respect to all purported discrepancies and omissions Mr. Reynolds has identified in the [1990 and/or 1991] Annual Report(s) of the Corporation,

AND, FURTHER MOVED, that the auditors be requested, immediately following such conferral, to report <u>in writing</u> to the Board of Directors of the Corporation their position regarding each respective item raised by Mr. Reynolds with respect to such Annual Report(s).

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

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

COUNTERCLAIM

Defendants and Counter-Plaintiffs, Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs") (collectively "Counter-Plaintiffs"), by their attorneys, James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, counterclaim against Robert T. Manfuso and John A. ("Tommy") Manfuso, Jr. (collectively the "Manfusos" unless otherwise specified) as follows:

THE NATURE OF AND REASONS FOR THE COUNTERCLAIMS

1. The Manfusos have filed a Complaint for Declaratory and Injunctive Relief against De Francis, Jacobs, The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico"), and Laurel Racing Assoc., Inc. ("Laurel"). The Complaint, containing misstatements of fact, inaccurate characterizations as to motive, and spurious allegations that De Francis and Jacobs have acted in various ways to the detriment of Pimlico and Laurel, seeks declaratory and injunctive relief barring De Francis and Jacobs from further alleged breaches of their fiduciary duties.

2. De Francis and Jacobs deny that they have breached their fiduciary duties to either Laurel or Pimlico and

have brought these Counterclaims because the Manfusos' true motivation in the filing of their Complaint is to advance their improper scheme to acquire the interests of De Francis and Jacobs in Laurel and Pimlico.

3. The Manfusos knew from various sources including the financial records of Laurel and Pimlico and public documents that their financial resources were substantially greater than those available to De Francis and Jacobs. The Manfusos also know that De Francis and Jacobs would be able to purchase the Manfusos' interests in Laurel and Pimlico only if they were able to refinance the racetracks' bank debt or secure substantial financing.

4. The Manfusos knew that, if they could obtain a buy/sell of stock agreement from De Francis and Jacobs, they could then place De Francis and Jacobs at a material disadvantage in regard to the exercise of that agreement. They could do so by damaging De Francis' and Jacobs' reputations and reducing the value of Laurel and Pimlico thereby preventing De Francis and Jacobs from securing the financing needed by them to purchase Laurel and Pimlico under the agreement. The Manfusos would then acquire the interests of De Francis and Jacobs in Laurel and Pimlico for less than their full value when the buy/sell agreement was triggered.

5. The Manfusos, therefore, conceived and implemented a scheme that included the following:

a. Fraudulently inducing De Francis and Jacobs to enter into a Stockholders Agreement (a copy of which was attached as Exhibit A to the Complaint and is incorporated herein by reference), including a Mandatory Buy/Sell of Stock provision ("Russian Roulette buy/sell") and a provision providing De Francis "full authority over operational and managerial decisions and policies" as to both the Laurel and Pimlico while having no intent to honor the provisions of that Agreement;

b. Obtaining the withdrawal of substantial funds from Pimlico under the Stockholders Agreement due to them upon their resignation as officers, while having no intention to honor their obligations under that Agreement;

c. Disparaging De Francis and Jacobs to elected officials, the press, employees of Laurel and Pimlico, horsemen, breeders, and the Maryland racing industry in general so as to damage their individual reputations and their financial ability to act as buyers under the "Russian Roulette buy/sell";

d. Harassing De Francis and Jacobs so as to divert their time and attention from the management and operation of Laurel and Pimlico and cause personal and corporate financial resources to be expended on meaningless disputes with the Manfusos rather than on the business of the racetracks;

e. Seeking to damage Laurel financially so that it would be in default in regard to financial covenants required by its lender so as to accelerate the time when the "Russian Roulette buy/sell" could be exercised and damage the financial ability of De Francis and Jacobs to act as buyers under the Agreement; and

f. Tortiously interfering with De Francis' and Jacobs' pursuit of racing interests in Texas so as to damage their individual reputations and their financial ability to act as buyers under the "Russian Roulette buy/sell".

6. The Manfusos recently recognized that their scheme is less likely to succeed because:

a. De Francis and Jacobs have been successful in their attempts to secure important legislation authorizing off-track betting;

b. a newly elected independent member of the Boards of Directors of Laurel and Pimlico considered the Manfusos' claims, agreed with management and joined the majority of Directors in finding no "so-called" abuses;

c. the efforts of De Francis and Jacobs in regard to Texas racing appear to be likely to succeed; and

d. the Manfusos' overall strategy of harassment, interference and disparagement has been less successful than they anticipated.

7. In furtherance of their efforts to impact the financial positions of Laurel and Pimlico and the reputations

of De Francis and Jacobs so as to preclude their being financially able to act as buyers under the "Russian Roulette buy/sell", the Manfusos filed their meritless Complaint fifteen days prior to the running of the Preakness Stakes in direct violation of the Standstill Provision. The Manfusos instituted this meritless Complaint at this time in order to divert favorable publicity away from the Preakness, exploit the presence of the racing press to secure coverage in regard to their spurious allegations, damage the reputations of De Francis and Jacobs and waste the time and financial resources of De Francis and Jacobs by requiring them to defend themselves in regard to allegations that the Manfusos know are without merit.

8. These Counterclaims are, therefore, asserted in an effort to secure redress in regard to the Manfusos' intentional and material breach of the Stockholders Agreement and their tortious and malicious conduct.

THE ACQUISITION, OWNERSHIP AND OPERATION OF LAUREL

9. In March of 1980, Frank J. De Francis contracted to purchase a bankrupt and decrepit harness racetrack then located in Laurel, Maryland. Thereafter, that harness racetrack was renamed Freestate Raceway ("Freestate").

10. Frank J. De Francis chose and assembled a management team, which included Jacobs, that turned Freestate into a successful racetrack and highly profitable venture. One of the reasons for the success and profitability of Freestate

was the testing, implementation and use of marketing and management programs and various systems by Frank J. De Francis, Jacobs and the other members of the management team assembled by Frank J. De Francis.

11. James P. Mango ("Mango") was hired by Frank J. De Francis as part of Freestate's management team in 1983. He had previously served as an economist with the Harness Tracks of America.

12. In 1983, Robert T. Manfuso, knowledgeable of Frank J. De Francis' business acumen and success related to Freestate, approached Frank J. De Francis and discussed with him and Jacobs the suggestion that Frank J. De Francis purchase Laurel Race Course from its then owners led by John Shapiro. Robert T. Manfuso also discussed with Frank J. De Francis his desire to participate in the purchase.

13. In early 1984, Frank J. De Francis was appointed Secretary of Economic and Community Development of the State of Maryland. His position prevented him from being involved in the day-to-day operations of Freestate. His son, Joseph A. De Francis, who had been practicing law in Los Angeles, California, returned to Maryland in March of 1984 and undertook an active role in the management and operation of Freestate.

14. In 1984, Robert T. Manfuso again approached Frank J. De Francis about the possible purchase of Laurel Race Course. Frank J. De Francis agreed to pursue the purchase of

Laurel Race Course only if he would have complete managerial, operational and voting control of the business.

15. The purchase of Laurel Race Course was successfully negotiated by Jacobs and Joseph A. De Francis with limited assistance from Robert T. Manfuso and closed on December 10, 1984.

16. A stockholders agreement among Frank J. De Francis, the Manfusos and Jacobs was entered into on October 9, 1984 and vested complete and total operational and managerial control of Laurel in Frank J. De Francis.

17. The Manfusos abided by the terms of the Laurel Stockholders Agreement and did not seek to interfere with Frank J. De Francis' exercise of complete operational and managerial control of Laurel.

18. The Manfusos' participation in the financing of the Laurel Race Course acquisition consisted of a fully secured loan by John A. Manfuso, Jr. of $6.5 million, with interest at 14% per annum, and a joint pledge by the Manfusos of approximately $1.8 million in securities as security for payment of a promissory note to the seller. Frank J. De Francis provided a matching pledge as security for the payment of the promissory note to the seller.

19. The secured loan was refinanced in July, 1986, and the pledges were refinanced in October, 1986. Since that time the Manfusos have had no funds invested in Laurel.

20. Laurel is a Maryland corporation whose stockholders are as follows:

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. De Francis	550	2,200	2,750
Robert T. Manfuso	350	1,525	1,875
John A. Manfuso, Jr.	-0-	1,875	1,875
Martin Jacobs	-0-	1,000	1,000
	900	6,600	7,500

21. Prior to the acquisition of Laurel, neither Robert T. Manfuso nor John A. Manfuso, Jr. had any personal experience in the management or operation of a racetrack. At the time of the acquisition, it was contemplated that John A. Manfuso, Jr. would not have significant managerial responsibilities at Laurel.

22. Shortly after the purchase of Laurel, John A. Manfuso, Jr.'s son was killed in an automobile accident. At his request Frank J. De Francis assigned him operating duties at Laurel. He became active in regard to the supervision of activities primarily related to the cleaning and maintenance of the physical plant. The ultimate responsibility for all operational and managerial decisions in regard to this aspect of the running of Laurel remained with Frank J. De Francis.

23. At the time of the acquisition, it was contemplated that Robert T. Manfuso would have circumscribed management responsibilities, primarily in regard to matters involving horsemen, as defined by Frank J. De Francis. The ultimate responsibility for all operational and managerial

decisions in regard to this aspect of the running of Laurel remained with Frank J. De Francis.

24. From approximately March, 1984 through and until the acquisition of Laurel in December, 1984, Joseph A. De Francis was active in the management of Freestate and was heavily involved in the negotiations relating to the acquisition of Laurel. Joseph A. De Francis was also active in regard to Laurel's efforts with respect to the legislative changes made to the Maryland Racing Law in 1985.

THE ACQUISITION, OWNERSHIP AND OPERATION OF PIMLICO

25. In October or November of 1986, John A. Manfuso, Jr. advised Frank J. De Francis that he thought Pimlico Race Course could be purchased. He advised Frank J. De Francis that, while the patriarchs of the Cohen family that owned Pimlico Race Course had reached an age where they no longer desired to be actively involved in the racetrack business, he believed they still had emotional attachments to the racetrack and wanted to see it sold to someone like Frank J. De Francis who would assure its success.

26. After an initial unsuccessful approach to the Cohen family by John A. Manfuso, Jr., Jacobs and Joseph A. De Francis spearheaded negotiations for the purchase of Pimlico Race Course.

27. The purchase of all of the outstanding capital stock of MJC, the entity that owned Pimlico Race Course, was

accomplished on December 29, 1986 by DMJ Racing Association, Inc. ("DMJ"), later renamed Pimlico Racing Association, Inc.

28. Frank J. De Francis did not need the Manfusos to buy Pimlico. The financial arrangements negotiated by Frank J. De Francis included a bank loan sufficient for the purchase to be fully secured by the assets of Pimlico without need for any additional investment.

29. Frank J. De Francis elected to allow the Manfusos to invest in Pimlico and to purchase stock in DMJ for the total investment of $2,500,000.

30. Prior to the purchase of the outstanding capital stock of MJC and prior to any investment by the Manfusos, Joseph A. De Francis was a Director and officer and also was a shareholder of DMJ through capital stock held by the De Francis Family Partnership. Following the formation of DMJ, 100% of the stock of that entity was owned by the De Francis Family Partnership, comprised of Frank J. De Francis and Joseph A. De Francis. Joseph A. De Francis owned 10% of that partnership.

31. Jacobs was already a Director, Treasurer and shareholder of DMJ prior to its purchase of Pimlico Race Course and prior to any investment by the Manfusos.

32. Frank J. De Francis elected to allow the Manfusos to invest in Pimlico only if he would have complete managerial, operational and voting control of the business. The Manfusos agreed. No stockholders agreement was entered into in regard to the purchase of Pimlico; however, Frank J. De

Francis had full and complete operational and managerial control of the racetrack by virtue of his control of more than a majority of the voting stock of Pimlico.

33. Pimlico is a Maryland corporation whose stockholders are as follows:

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. De Francis	495	3,735	4,230
Joseph A. De Francis	55	415	470
Robert T. Manfuso	210	2,140	2,350
John A. Manfuso, Jr.	210	2,140	2,350
Martin Jacobs	30	570	600
	1,000	9,000	10,000

34. The Manfusos assumed circumscribed responsibilities as defined by Frank J. De Francis similar to those that they were performing for Laurel.

35. The Manfusos recognized that Frank J. De Francis had full and complete operational and managerial control of Pimlico and did not seek to interfere with his exercise of that control.

THE DEATH OF FRANK J. DE FRANCIS AND JOSEPH A. DE FRANCIS' ASSUMPTION OF CONTROL

36. Frank J. De Francis suffered a heart attack in June, 1989 and died in August of that same year. Between the heart attack and Frank J. De Francis' ultimate death, Joseph A. De Francis devoted considerable attention to his medical condition and personal needs. The day-to-day running of Laurel and Pimlico was administered by Jacobs, Mango and the Manfusos.

37. The Manfusos relished the increased limelight

and attention paid to them as "managers" of the racetracks. They determined and believed that they would take over operational and managerial control of Laurel and Pimlico if Frank J. De Francis was unable to resume his active role.

38. Frank J. De Francis lacked confidence in the Manfusos' ability to operate Laurel and Pimlico. He had advised his son, Joseph A. De Francis, Jacobs and others that, if he should die, under no circumstances should the Manfusos be permitted to operate or manage the racetracks. He also expressed his hope and desire that Joseph A. De Francis succeed him as President and Chief Executive Officer of Laurel and Pimlico.

39. Prior to his father's death, Joseph A. De Francis was a director of Laurel and Pimlico, a part owner of Pimlico through the partnership with his father, had been actively involved in the negotiations for the purchase of both Laurel and Pimlico, had prior racetrack operational experience at Freestate, and spoke with his father regularly about the business and operations of the racetracks.

40. Following his father's death, Joseph A. De Francis informed the Manfusos of his intention to assume the presidency and operational control of Laurel and Pimlico. The Estate of Frank J. De Francis and Joseph A. DeFrancis together controlled more than a majority of the voting stock of both Laurel and Pimlico. They thus had the absolute right to elect

Joseph A. De Francis the President, Chief Executive Officer and Chairman of the Board of Laurel and Pimlico.

41. The Manfusos objected to De Francis' proposed assumption of the positions held by his father. They knew, however, that since the Estate and De Francis controlled more than a majority of the voting stock of both Laurel and Pimlico, they were unable to stop him. They, therefore, were personally hostile to De Francis, and to Jacobs because he supported De Francis, and threatened litigation and a public dispute that would harm Laurel and Pimlico. They did so in order to force De Francis to buy his peace with them by providing them with substantial rights and benefits to which they were not entitled under the Laurel Stockholders Agreement or as minority shareholders of either Laurel or Pimlico.

THE STOCKHOLDERS AGREEMENT

42. De Francis recognized that the Estate's and his control of a majority of the voting stock of Laurel and Pimlico gave him the right to assume the positions held by his father. He also realized that the Manfusos' personal hostility, threats of litigation and threats of a public dispute, no matter how meritless, would have an adverse economic impact on the business and ultimate value of Laurel and Pimlico. Any litigation with the Manfusos, even though without merit, would drain time, energy and financial resources from the businesses, would adversely impact employee morale and efficiency, and

would damage any chance of obtaining legislative approval for off-track betting.

43. The Manfusos' threats of litigation and public disputes made it absolutely imperative to De Francis that he be assured a reasonable period of time in which to exercise full operational and managerial control of Laurel and Pimlico without meddling, harassment or actual or threatened lawsuits by the Manfusos.

44. For the purpose of obtaining peace, preventing litigation or a public dispute that would adversely impact Laurel and Pimlico and protecting the public image of the racetracks and the Maryland racing industry, De Francis and Jacobs agreed to negotiate and sign a stockholders agreement with the Manfusos.

45. After extensive negotiations, the Stockholders Agreement was ultimately signed on or about February 2, 1990 effective as of October 1, 1989.

46. The primary benefit provided to De Francis and Jacobs under the Stockholders Agreement was a four year period during which De Francis could exercise full operational and managerial control of Laurel and Pimlico without meddling, harassment or actual or threatened lawsuits by the Manfusos. This four year period of peace was provided by a Standstill Provision by which the Manfusos agreed to forego all litigation related to the "business or operations of Pimlico or Laurel" until October 1, 1993 and an express recognition by the

Manfusos that the ownership of the majority of the voting stock of Laurel and Pimlico by the Estate and De Francis gave De Francis full and complete operational and managerial control.

47. The benefits conferred upon the Manfusos under the Stockholders Agreement were numerous and substantial and were not available to them under the Laurel Stockholders Agreement or as minority holders of voting stock of Laurel or Pimlico:

a. the Stockholders Agreement gave the Manfusos the right to continue, at their option, as officers and directors of Laurel and Pimlico absent a breach of their obligations under the Agreement.

b. the Stockholders Agreement gave each of the Manfusos the right to a $1,250,000 lump sum termination payment upon their resignation as officers of the corporations, an amount equal to their total investment in Pimlico.

c. the Stockholders Agreement gave each of the Manfusos the right upon retirement to receive severance payments totalling $125,000 per year until October 1, 1993.

d. the Stockholders Agreed included a "Russian Roulette buy/sell" provision which gave the Manfusos significant rights and pursuant to which they could force De Francis and Jacobs to sell their stock in Laurel and Pimlico to the Manfusos, or compel De Francis and Jacobs to purchase the Manfusos' stock, upon the occurrence of a "major matter" as

defined in the Stockholders Agreement, or at any time after October 1, 1993.

48. Of major importance to the Manfusos, and granted by De Francis, was the provision of the Stockholders Agreement naming one of the Manfusos as Co-Chairman of the Board of Laurel and the other as Co-Chairman of the Board of Pimlico. These positions, primarily ceremonial, convey the sole benefit of allowing such person to co-chair meetings of the Board of Directors.

THE MANFUSOS' CAMPAIGN OF DISPARAGEMENT, HARASSMENT AND INTIMIDATION

49. On February 24, 1990, just twenty-two days after the signing of the Stockholders Agreement, the Manfusos issued a press release announcing their retirement from management to be effective shortly after the 1990 Preakness Stakes.

50. The Manfusos informed De Francis and Jacobs of their decision to retire less than forty-eight hours prior to their issuing their press release. De Francis and Jacobs were completely surprised by this information as the Manfusos had never given any prior indication to De Francis or Jacobs that they had any thoughts of retiring.

51. The Manfusos did not believe that Pimlico's lender would permit the $2,500,000 termination payment required to be made to them under the Stockholders Agreement. They fully expected that, if they retired, the lenders' refusal to permit that payment would place De Francis and the corporations in default under the Stockholders Agreement. A default would

permit the Manfusos to seek immediate legal redress and may also have permitted them to trigger the "Russian Roulette buy/sell".

52. The Manfusos also did not believe that Pimlico's lender would permit the payments to De Francis and Jacobs contemplated by the Stockholders Agreement upon the payment of the $2,500,000 to the Manfusos.

53. The Manfusos' resignations were effective May 31, 1990. Their respective termination payments of $1,250,000 each were made effective June 1, 1990 and effective at that time they each began receiving monthly severance payments of $10,416.67.

54. Promptly following their resignations, the Manfusos initiated a campaign to disparage, harass and intimidate management so as to deprive De Francis of his right under the Stockholders Agreement to exercise "full authority over operational and managerial decisions and policies, relations with the press, legislative and governmental authorities" as to Laurel and Pimlico. The ultimate purpose of this campaign was to further the Manfusos' scheme, described in paragraphs 1 through 7 above, to improperly gain control of Laurel and Pimlico.

55. In implementation of their scheme the Manfusos undertook the following activities:

a. they instituted a campaign to contest and challenge managerial and operational decisions of De Francis

and to belittle and discredit him with elected officials, members of the press, employees, horsemen, breeders and others;

b. they instituted a campaign of disparagement, harassment and intimidation related to the competency, integrity and professionalism of Jacobs in an effort to drive him from his positions as Executive Vice President, Treasurer and General Counsel of the corporations;

c. they instituted a campaign to interfere with management's relationships and ability to deal with third parties by advising various members of the racing industry that they would be returning in the near future as controlling stockholders and that De Francis' tenure as President and Chief Executive Officer would be short lived;

d. they instituted a campaign of improper communications, negotiation and coordinated activity with representatives of the limited partner in Laurel Race Course in direct violation of their fiduciary duties as directors of Laurel and Pimlico and in violation of the Stockholders Agreement;

e. they instituted a campaign designed to cause dissension, disharmony and decreased efficiency among the Laurel and Pimlico employees by attacking the competency of De Francis and Jacobs and that of any employee they deemed to have personal loyalty solely to De Francis or Jacobs, and by stating or intimating to employees and others that they would

ultimately oust De Francis and Jacobs and assume control of Laurel and Pimlico; and

f. they instituted a campaign of harassment of management by raising trivial and meaningless concerns regarding unimportant issues so as to divert the time and attention of management from important issues crucial to the financial survival of Laurel and Pimlico at a time when the economy and other factors outside the control of management had placed the entire racing industry in crisis.

THE MANFUSOS ATTEMPT TO PLACE LAUREL IN DEFAULT OF ITS FINANCIAL COVENANTS

56. In furtherance of their scheme described in paragraphs 1 through 7 above, the Manfusos sought to force Laurel into default in regard to financial covenants required under its bank loan. The Manfusos wanted Laurel to be in default for two reasons. First, a default would trigger a "major matter" under the Stockholders Agreement which would enable the Manfusos to exercise their rights under the "Russian Roulette buy/sell" provision of the Stockholders Agreement. Second, a default by Laurel would damage the reputations of De Francis and Jacobs, adversely impact efforts to obtain legislative approval for off-track betting, and adversely impact De Francis' and Jacobs' ability to secure the necessary financing to act as buyers under the "Russian Roulette buy/sell".

57. In furtherance of their attempts to implement their scheme to force Laurel into default in regard to financial covenants under its bank loan, the Manfusos:

a. sought to cause management to shift expenses from Pimlico to Laurel so as to increase Laurel's expenses and adversely impact Laurel's financial statements; and

b. sought to cause management to shift racing revenue from Laurel to Pimlico so as to decrease Laurel's income and adversely impact Laurel's financial statements.

58. In this regard, the Manfusos adopted a strategy of questioning allocations of expense or revenue between Laurel and Pimlico, including allocations which had been adopted prior to the death of Frank J. De Francis and with which the Manfusos had previously concurred. This was done in violation of their agreement that De Francis was to have full authority over all operational and managerial decisions in regard to Laurel and Pimlico.

59. The Manfusos demanded that they be entitled to have their personal accountant review Laurel's and Pimlico's financial records even though they personally had full and complete access to all such records. This review was not for the benefit of the Boards of Directors of the corporations but, rather, was for the Manfusos' sole and personal benefit.

60. Management of Laurel and Pimlico imposed reasonable conditions related to conflicts, confidentiality and

costs and made the financial records of Laurel and Pimlico available to the Manfusos' accountant.

61. The Manfusos adopted a further strategy of complaining about the amount and quality of information made available. They expanded their request for information to include a requirement that their personal accountant be given access to, and the ability to interview, personnel employed by Ernst & Young, the firm of independent certified public accountants that serves as the independent auditors of Laurel and Pimlico. They also requested that personnel employed by the racetracks' regular outside certified public accountants, Watkins, Meegan, Drury & Co. ("WMD&Co.") be made available to be interviewed by their accountant.

62. Management of Laurel and Pimlico imposed reasonable conditions related to conflicts, confidentiality and costs, provided or agreed to provide all requested information to the Manfusos' accountant, and made principals and employees of both Ernst & Young and WMD&Co. available to meet with and answer the questions of the Manfusos' accountant.

63. The Manfusos raised "concerns" related to the previously issued financial statements and drafts of the 1991 financial statements of Laurel and Pimlico. These "concerns" were raised primarily for the purpose of shifting Laurel income to Pimlico and Pimlico expenses to Laurel so as to worsen Laurel's financial position and place it in default as to financial covenants under its bank loan. The Manfusos also

sought to have management delay or withhold providing copies of the audited financial statements to the Maryland Racing Commission in direct violation of statutory requirements.

64. Management of Laurel and Pimlico communicated each and every one of the Manfusos' alleged concerns regarding previously issued financial statements and drafts of the 1991 financial statements to Ernst & Young. Ernst & Young reviewed, considered and rejected the positions taken by the Manfusos. The drafts of the 1991 financial statements, with minor modifications already made by management, and the previously issued financial statements were found by Ernst & Young to meet the requirements of generally accepted accounting principles. Management timely submitted the 1991 audited financial statements as required.

THE BOARDS OF DIRECTORS REJECT THE MANFUSOS' FACTUALLY UNSUBSTANTIATED CLAIMS

65. Management of Laurel and Pimlico repeatedly requested that the Manfusos offer factual and legal support for their claims related to alleged misleading financial statements, so-called abuses by management, and any other complaints that De Francis or Jacobs breached any fiduciary duty owed to Laurel or Pimlico.

66. Management invited the Manfusos to have their attorney and accountant appear before the Boards of Directors to present any and all available factual support for any of their allegations.

67. The Manfusos have steadfastly declined to come forward with any such factual support, and have declined all invitations to have their attorney or accountant appear before the Boards.

68. On April 13, 1992, the Manfusos presented to the Boards of Directors of Laurel and Pimlico, whose membership includes independent directors not controlled by De Francis or Jacobs, their claims of so-called abuses, as set forth in their Complaint. These claims were fully discussed and debated, and were found to be without merit or, in regard to requests for additional information, substantially complied with or inappropriate.

69. Dissatisfied with the Boards' actions, the Manfusos undertook to have a newly elected independent Director, Father Joseph A. Sellinger, S.J., removed from the Boards by appealing to his religious superior. The Manfusos' letter of April 27, 1992 to Father Edward Glynn and his reply to the Manfusos of April 28, 1992 are attached hereto as Exhibits A and B.

THE MANFUSOS FILE THEIR SPURIOUS LAWSUIT

70. The likelihood of success of the Manfusos' scheme to acquire the interests of De Francis and Jacobs in Laurel and Pimlico was substantially decreased by the following:

a. De Francis' successful efforts in obtaining legislative approval for off-track betting which enhanced the

financial position of Laurel and Pimlico and the reputations of both De Francis and Jacobs;

b. the failure of their efforts to place Laurel in default in regard to financial covenants under its bank loan;

c. the likelihood of Lone Star's success in obtaining the license to construct and operate a racetrack in Texas which would enhance the financial position and reputations of both De Francis and Jacobs; and

d. the addition of Father Joseph A. Sellinger, S.J. and Alec P. Courtelis to the Boards of Directors of Laurel and Pimlico.

71. The Manfusos are aware that, if they were to honor the Standstill Provision of the Stockholders Agreement, that by October 1, 1993 the financial positions and reputations of De Francis and Jacobs will likely be such that if the "Russian Roulette buy/sell" is triggered, De Francis and Jacobs will be able to act as buyers and the Manfusos will be thwarted in their attempt to force De Francis and Jacobs to sell their stock at a price less than its true value.

72. The Manfusos, therefore, deliberately and intentionally disregarded the Standstill Provision of the Stockholders Agreement and filed their Complaint eight days prior to the running of the Pimlico Special and fifteen days prior to the running of the 1992 Preakness Stakes, Pimlico's two most important races. The timing of the filing of the

Complaint was designed to deflect favorable press coverage away from the Pimlico Special and the Preakness Stakes and to gain publicity for the Manfusos in regard to their spurious allegations.

73. *The Manfusos have chosen to deliberately and* intentionally disregard the Standstill Provision of the Stockholders Agreement so that they can damage the reputations of De Francis and Jacobs and force them to divert their efforts and resources away from the operation of Laurel and Pimlico, away from the implementation of recently passed off-track betting legislation and away from their imminently successful efforts to be involved in Texas racing.

74. The Manfusos' Complaint has been filed solely for the purpose of furthering their scheme to improperly acquire the interests of De Francis and Jacobs in Laurel and Pimlico.

COUNT I

FRAUD IN THE INDUCEMENT

75. Counter-Plaintiffs reallege each and every allegation in Paragraph 1 through 74 of this Counterclaim as if set forth in full in this paragraph.

76. The Manfusos knew, prior to their execution of the Stockholders Agreement, they had no right to operational or managerial control of Laurel or Pimlico, no lawful way to interfere with De Francis in regard to operational or managerial decisions, and no way to reach their ultimate goal,

the acquisition of complete control and ownership of Laurel and Pimlico. Nevertheless, the Manfusos made continued threats of litigation.

77. In an effort to gain rights and eventual control of Laurel and Pimlico, the Manfusos conspired and agreed to induce De Francis and Jacobs to enter into the Stockholders Agreement on the premise that the Manfusos would be precluded from filing any legal actions against any other party to the Agreement relating to the "business or operations of Pimlico or Laurel" until October 1, 1993, and that they would acknowledge that De Francis had complete operational and managerial control of Laurel and Pimlico.

78. Based upon information and belief, the Manfusos never had an intent to honor the promises which they made under the Stockholders Agreement. As proof of their intent not to perform, the Manfusos engaged in the following conduct subsequent to the execution of the Stockholders Agreement:

a. Notwithstanding their prior insistence that the Stockholders Agreement include provisions guaranteeing their continued employment, almost immediately after the signing of the Stockholders Agreement, the Manfusos resigned as officers and employees of the corporations thus freeing themselves from any management duties which might interfere with their attacks on and harassment of De Francis and Jacobs and entitling them to collect $1,250,000 each and payments of $125,000 each per year for not working;

b. The Manfusos have interfered with the management and operation of Laurel and Pimlico and questioned business decisions made by De Francis and Jacobs without providing any legal or factual basis for their complaints; and

c. The Manfusos initiated legal action against De Francis and Jacobs within days of the 1992 Preakness Stakes.

79. The Manfusos' misrepresentations with respect to their future performance were motivated by actual malice, ill-will and spite toward De Francis and Jacobs. The purpose of the Manfusos' scheme was to place De Francis and Jacobs in a weakened financial position, so that the Manfusos might trigger the "Russian Roulette buy/sell" and state a price which is less than the fair value for De Francis and Jacobs' stock, but more than De Francis and Jacobs would then be able to pay or to finance. This, in turn, would force De Francis and Jacobs to sell their stock to the Manfusos at less than its fair value. The Manfusos thus planned to circumvent a critical element of the "Russian Roulette buy/sell" and assure that they would be the only ones able to acquire full and complete control and ownership of Laurel and Pimlico.

80. De Francis and Jacobs relied on the promises made by the Manfusos in executing the Stockholders Agreement and such reliance was reasonable.

81. In fact, but for the misrepresentations made by the Manfusos regarding their willingness to accord De Francis and Jacobs a period of peace during which De Francis would have

full and complete operational and managerial control of Laurel and Pimlico and freedom from harassment, interference and actual or threatened litigation, De Francis and Jacobs would not have entered into the Stockholders Agreement. Prior to the execution of the Stockholders Agreement, De Francis, by virtue of the Estate's and his controlling interest in both Laurel and Pimlico, could have terminated the employment of the Manfusos and prevented them from continuing as officers and/or directors. However, in light of the Manfusos' expressed willingness to be bound by the terms of the Stockholders Agreement, De Francis and Jacobs were willing to extend to the Manfusos rights that they would not have otherwise had.

82. The Manfusos' fraudulent inducement was the direct and proximate cause of De Francis and Jacobs entering into the Stockholders Agreement. De Francis and Jacobs made concessions to the Manfusos and changed their positions to their detriment. They have been injured with respect to their reputations in the racing and banking industries and have suffered a decrease in the value of their interests in Laurel and Pimlico as a result of the Manfusos' constant harassment and institution of litigation.

WHEREFORE, De Francis and Jacobs demand that the Manfusos' Complaint be dismissed with prejudice, that the Stockholders Agreement be rescinded and that judgment be entered in favor of De Francis and Jacobs in the amount of fifteen million dollars ($15,000,000) compensatory and thirty

million dollars ($30,000,000) punitive damages, along with interest thereon and costs.

COUNT II

REQUEST FOR DECLARATORY JUDGMENT AND CLAIM FOR DAMAGES FOR BREACHES OF THE STOCKHOLDERS AGREEMENT

83. Counter-Plaintiffs reallege each and every allegation in paragraph 1 through 82 of this Counterclaim as if set forth in full in this paragraph.

84. The Stockholders Agreement is a unanimous agreement negotiated and entered into by all of the stockholders of Laurel and Pimlico which was intended to and did regulate any and all aspects of the affairs of the corporations.

85. The Stockholders Agreement was entered into by all of the stockholders of Laurel and Pimlico and was the product of extensive negotiation.

86. The parties to the Stockholders Agreement owned all of the outstanding capital stock of Laurel and Pimlico, and were also directors of the corporations. Their roles as owners and directors are and were inseparable.

87. The parties to the Stockholders Agreement, as the only stockholders and directors of Laurel and Pimlico as of the effective date of the Agreement, agreed that, except in regard to breaches of the Agreement itself or criminal activity, they would not institute or join in any legal dispute or action against any party to the Stockholders Agreement

concerning the business or operations of Laurel or Pimlico, prior to October 1, 1993.

88. As stockholders and directors of Laurel and Pimlico, the Manfusos willingly entered into a valid agreement confirming De Francis' full authority over operational and managerial decisions and policies related to Laurel and Pimlico.

89. The Standstill Provision and the confirmation of De Francis' operational and managerial control are valid and enforceable agreements between all of the stockholders of a corporation under Maryland law.

90. The Manfusos were aware, at all times relevant to this litigation, that the Standstill Provision and the confirmation of De Francis' full and complete operational and managerial control of Pimlico and Laurel were the primary benefits and consideration bargained for by De Francis and Jacobs in entering into the Stockholders Agreement.

91. Notwithstanding this awareness, the Manfusos knowingly and intentionally undertook the activities set forth above and filed the instant Complaint in direct violation of the clear and unambiguous terms of the Stockholders Agreement.

92. The Manfusos' knowing and intentional institution of the activities set forth above and the filing of the instant Complaint against the other parties to the Stockholders Agreement constitute intentional and material breaches of the Manfusos' primary obligations thereunder.

93. The Manfusos' material breaches of the Stockholders Agreement are so substantial and fundamental that they defeat the very purpose of the parties' entering into the Agreement.

94. De Francis and Jacobs have fully performed their obligations under the Stockholders Agreement and have caused Pimlico to pay substantial amounts to the Manfusos pursuant to the Stockholders Agreement, including but not limited to a termination payment of $1,250,000 made to each of the Manfusos in June, 1990 and severance payments in excess of $125,000 per year since that date.

95. As a result of the Manfusos' material and willful breaches of the Standstill Provision and the agreement confirming De Francis' full authority over operational and managerial decisions and policies related to Laurel and Pimlico, De Francis and Jacobs have been denied the primary benefits for which they bargained under the Stockholders Agreement.

96. The Manfusos material and willful breaches of their obligations under the Stockholders Agreement have damaged De Francis' and Jacobs' reputations and the value of their interests in Laurel and Pimlico. The value of their interests in Laurel and Pimlico have been substantially reduced as a result of the unjust enrichment of the Manfusos by the payments made to them by Pimlico and as a result of their conduct as described above.

97. This Counterclaim is a timely response to the Manfusos' complained-of activities and their service of a Summons and Complaint for Declaratory and Injunctive Relief, by which the Manfusos breached the Stockholders Agreement.

WHEREFORE, Counter-Plaintiffs, Joseph A. De Francis and Martin Jacobs, request that this Court issue a Declaration that:

a. the filing of the Complaint and the Manfusos' interference with De Francis' operational and managerial control of Laurel and Pimlico constitute material breaches of the Stockholders Agreement;

b. De Francis and Jacobs are excused from any and all future performance under the Stockholders Agreement;

c. all consideration paid to the Manfusos under the Agreement along with interest thereon and costs be repaid to Pimlico;

d. Counter-plaintiffs be awarded ten million dollars ($10,000,000) compensatory damages along with interest thereon and costs;

e. Counter-Plaintiffs be reimbursed for all attorney's fees and costs incurred in defending the Manfusos' claims as well as the attorney's fees and costs incurred in bringing this Counterclaim; and

f. any further relief the Court deems appropriate.

COUNT III

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC INTERESTS

98. Counter-Plaintiffs reallege each and every allegation in paragraph 1 through 97 of this Counterclaim as if set forth in full in this paragraph.

99. In 1988, Frank J. De Francis recognized the benefit to Laurel and Pimlico of having ties to racing interests in other states. He commenced an effort to explore involvement in possible racing ventures in other states, including Massachusetts, Missouri and Texas, with the knowledge and consent of all stockholders and members of the Board of Directors of Pimlico. This effort involved Pimlico employees in addition to Frank J. De Francis, and was directed toward obtaining a potential business opportunity for the benefit of Pimlico or its stockholders.

100. Following Frank J. De Francis' death in August, 1989, this effort was reaffirmed by all of the stockholders and directors of Pimlico. This effort was continued by Joseph A. De Francis who was then President and Chief Executive Officer of Pimlico.

101. De Francis and Jacobs actively pursued potential involvement in Texas racing as an opportunity for Pimlico or its stockholders. The pursuit of this potential opportunity was with the knowledge and consent of all stockholders and directors of Pimlico, including the Manfusos.

102. In about November, 1989, De Francis, Jacobs and Mango made a trip to Texas, with the knowledge and consent of the Manfusos, to look at potential racetrack sites and to pursue possible participation in Texas racing with a proposed Texas partner.

103. In the spring of 1990, Pimlico made a payment of approximately $33,000.00 to the Texas Horse Racing Association, an organization of Texas horsemen and other persons interested in racing, in furtherance of the pursuit of a Texas racing opportunity for Pimlico or its stockholders. At all times up to and including the time of this payment, all of the stockholders and directors of Pimlico approved the expenditure of corporate funds on this as well as other potential opportunities outside the State of Maryland.

104. After the aforesaid payment had been made, the Manfusos expressed their personal desire to have no further involvement in this potential opportunity in Texas. They requested that Pimlico not pursue this potential opportunity any further. De Francis agreed in writing on April 27, 1990 that Pimlico would make "no further investments in Texas racing."

105. The Stockholders Agreement executed by all parties to this litigation specifically allows each party to participate in any other business venture, of any kind whatsoever, with or without any other party to the Agreement.

106. Having offered the opportunity presented by

Texas racing to Pimlico and its stockholders and having had that opportunity rejected by the Manfusos, De Francis and Jacobs elected to pursue involvement in Texas racing for their individual benefit.

107. De Francis and Jacobs, together with Mango, have formed a partnership now known as D/J/M Track Consultants for the purpose of obtaining an equity interest in Lone Star Jockey Club, Ltd. ("Lone Star"). If Lone Star's efforts to secure the license to construct and operate a Class 1 parimutuel horseracing facility in the Dallas/Fort Worth, Texas market are successful, De Francis, Jacobs and Mango, or an entity formed by them, are to receive consulting fees equal to fifty per cent (50%) of the management fees and a portion of the development fee to be paid by Lone Star.

108. The application of Lone Star for the sole license to develop and own a Class 1 racetrack in the Dallas/Forth Worth market is presently pending before the Texas Racing Commission. While there are other applicants for the right to build a racetrack in that market, the principal competition to Lone Star is believed to be presented by Midpointe Racing, L.C. ("Midpointe").

109. Robert T. Manfuso is a director and stockholder of the entity that owns and operates Hollywood Park racetrack. That entity and its chairman, R. D. Hubbard, own almost 50% of the equity in Midpointe and are to perform substantial management services for Midpointe.

110. Robert T. Manfuso has appeared in Texas on behalf of Midpointe and has submitted written testimony on Midpointe's behalf in opposition to the application of Lone Star.

111. Robert T. Manfuso is actively performing managerial duties for Hollywood Park racetrack in connection with the American Championship Racing Series, and, upon information and belief, intends to be actively involved in the management of the Dallas/Fort Worth racetrack if Midpointe's application is successful.

112. The Manfusos have sought to interfere with Lone Star's ability to obtain the Class 1 license for the Dallas/Fort Worth market and the relationship of De Francis and Jacobs with Lone Star by filing their frivolous and unjustified Complaint shortly prior to crucial hearings before the Texas Racing Commission which are scheduled to commence on June 15, 1992.

113. The Manfusos know that Donaldson, Lufkin and Jenrette Securities Corporation ("DLJ") has been involved in assisting Lone Star to finance the development and operation of a horse racing facility in the Dallas/Fort Worth market should Lone Star be successful in obtaining the license. The Manfusos are aware that DLJ has issued a letter included with Lone Star's license application, confirming DLJ's ability and intent to raise $30 million in subordinated debt and equity for Lone Star. The Manfusos are further aware that a condition placed

on this financing by DLJ is "the continued and ongoing active involvement in the development and, ultimately, the operation of the racetrack by Joseph A. De Francis and Martin Jacobs".

114. Absent the pendency of the Manfusos' Complaint, a reasonable probability exists that Lone Star will be awarded the license to develop and operate the Class 1 racetrack in the Dallas/Fort Worth, Texas area, that Lone Star will receive the necessary financing to construct and operate the facility and that De Francis and Jacobs will receive the fees and other benefits set forth in paragraph 107.

115. The Manfusos have acted maliciously and intentionally in filing this action for the purpose of adversely impacting Lone Star's application before the Texas Racing Commission with the specific purposes of financially harming De Francis and Jacobs and enhancing the likelihood of success of Midpointe in obtaining the license.

116. The Manfusos know that the pendency of their Complaint seeking injunctive relief potentially prohibiting or limiting the involvement of De Francis and Jacobs in Lone Star's application will prevent the fulfillment of the condition related to financing imposed by DLJ and will thereby adversely impact the Texas Racing Commission's assessment of the financial strength of Lone Star as a prospective holder of the proposed license.

117. The Manfusos know that involvement of De Francis and Jacobs in a successful Texas racing venture will

enhance their reputations in the horseracing and financial communities and will make it easier for De Francis and Jacobs to obtain financing necessary to purchase the Manfusos' stock in Laurel and Pimlico under the "Russian Roulette buy/sell". The Manfusos have, therefore, sought to limit the involvement of De Francis and Jacobs in Texas racing so as to damage their reputations, damage them financially and restrict their opportunities to obtain financing so as to preclude them from acting as buyers under the "Russian Roulette buy/sell".

118. De Francis and Jacobs have incurred actual harm or damage as a result of the Manfusos' interference in that the opportunity to have Lone Star's application seriously and fully considered by the Texas Racing Commission has been materially disadvantaged. In fact, the report of the Texas Department of Public Safety to the Executive Secretary of the Texas Racing Commission dated May 20, 1992 states in its summary:

> "The civil litigation filed in Baltimore, Maryland on April 29, 1992 and disclosed in this report has the potential to become a major issue. Should this issue remain unresolved, it could impact on the continued viability of the applicant as a candidate for licensing in Texas. The injunctive relief sought by this lawsuit appears to seek the preclusion of defendants JOSEPH DE FRANCIS and MARTIN JACOBS from participating in racing activities in Texas. Should this injunctive relief be granted, the impact on the applicant's ability to retain the $20,000,000.00 in subordinated debt financial commitment of Donaldson, Lufkin & Jenrette could be jeopardized. This would also place the applicant in the position of losing the consultant services of D/J Track Consultants, i.e., JOSEPH DE FRANCIS and MARTIN JACOBS. The repercussions that this could have on the

applicant's total financial package cannot be calculated.

In conclusion, the possible ramifications of the pending civil litigation in Maryland necessitates a continuing monitoring of the situation as it develops or until final resolution is reached."

119. The actions of the Manfusos are not privileged or justified by fact or law.

WHEREFORE, De Francis and Jacobs demand that the Manfusos' Complaint be dismissed with prejudice and that judgment be entered in favor of De Francis and Jacobs in the amount of fifteen million dollars ($15,000,000) compensatory and thirty million dollars ($30,000,000) punitive damages, along with interest and costs thereon.

James E. Gray

Linda S. Woolf
Goodell, DeVries, Leech & Gray
Suite 1900
25 S. Charles Street
Baltimore, Maryland 21201
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1992, a copy of the aforegoing Counterclaim was mailed to: James Ulwick, Esquire, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201,

Attorneys for Plaintiffs; 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

JOHN A. MANFUSO, JR.
8401 CONNECTICUT AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 986-0525

April 27, 1992

Father Edward Glynn
5704 Roland Avenue
Baltimore, MD 21210

Dear Father Glynn:

My brother and I are minority of Pimlico and Laurel Racetracks. We are involved in business disputes with the majority shareholders of those Racetracks. I do not write to involve you in any manner in these disputes and we believe that the interests of all parties will best be served by the proper pursuit of legal and business channels appropriate to attempts at resolution.

The occasion for this letter is the conduct of Father Joseph A. Sellinger with respect to these disputes. Our concern arises because, without prior advice to my brother and me, Father Sellinger appeared at the respective Boards of Directors meetings of Pimlico and Laurel on April 13, 1992, after being elected to those boards by the majority shareholders. At these meeting, apparently without knowledge of the facts, or legal advice, Father Sellinger took positions in favor of those maintained by the majority shareholders. Although the positions taken by Father Sellinger were, in our judgment flatly incorrect as matters of business and law, I emphasize once again that it is not to express my and my brother's positions in these regards that I write to you.

The concern for which we seek you assistance is that we believe it is entirely inappropriate for Father Sellinger, or any such senior and publicly recognized and respected member of our Church, to enter disputes such as these. From my and my brother's points of view as Roman Catholics, it is profoundly disquieting to have the positions of our adversaries in business and legal matters assumed by Father Sellinger. Such actions on his part restrict us from taking issue with our fellow Board members with respect to these various matters, since to do so would now require us to take

business and legal positions calling into question the judgments of Father Sellinger. In addition, we believe that the Church and the Jesuit Order specifically are ill-served by such involvement. There is, very simply, no reason whatsoever why Father Sellinger should be serving on the Boards of Directors of racetracks and no reason why he should undertake to do so at the request of partisans in business and legal disputes within such entities. This is particularly so since these disputes raise serious questions of the appropriateness of particular business and legal conduct. These are secular matters and should not concern an individual of the status of Father Sellinger.

As is customary at such meetings, tape recordings of the remarks of the various participants were made. My brother and I are satisfied that were you to listen to these recordings, you would, even without knowing the intricacies of the various disputes, be eminently satisifed that Father Sellinger has assumed a partisan business and legal position in favor of the majority shareholders and adverse to my brother and me.

I wish to reemphasize, however, that it is our position that Father Sellinger's presence on the Boards of Directors of racetracks is inappropriate in any event and his assumption of partisan positions in these particular disputes exacerbates such impropriety.

I thank you kindly for your consideration of this matter.

Sincerely,

John A. Manfuso, Jr.

John A. Manfuso, Jr.

THE MARYLAND PROVINCE OF THE SOCIETY OF JESUS

Office of the Provincial

April 28, 1992

Mr. John A. Manfuso, Jr.
8401 Connecticut Avenue
Chevy Chase, Maryland 20815

Dear Mr. Manfuso,

I write in response to your April 27, 1992, letter regarding Father Joseph A. Sellinger, S.J.

It is a practice across the United States for boards of directors of various types of businesses and government entities to invite presidents of higher education institutions to serve on the boards. They do so obviously out of respect for these persons and their wisdom and experience. Many of these presidents are priests.

Presidents who are priests have served on boards of banks and regional port authorities. In fact one such president chairs a regional port authority.

I am certain that it was out of respect for his person, wisdom and experience that Father Sellinger was elected to the Boards of Directors of Pimlico and Laurel Racetracks.

That differences of opinion regarding business and legal issues exist among the directors of a board is common. Boards where there exist only unanimity of opinions and no different judgments would be unusual.

Father Sellinger's responsibility as a member of any of the many boards he has served on and still serves on is to say what he thinks not what he is told to say.

Sincerely,

Edward Glynn, S.J.
Provincial

cc:
Joseph A. Sellinger, S.J.

5704 ROLAND AVENUE • BALTIMORE, MARYLAND 21210

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

ANSWER TO COMPLAINT FOR DECLARATORY RELIEF REQUESTED IN SUBPARAGRAPH A OF COUNT ONE

Defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by their attorneys, James E. Gray, Linda S. Woolf, and Goodell, DeVries, Leech & Gray, hereby Answer the claim for declaratory relief contained in subparagraph A of Count One of the Complaint for Declaratory and Injunctive Relief ("Complaint") filed by Robert T. Manfuso and John A. ("Tommy") Manfuso, Jr. (collectively the "Manfusos" unless otherwise specified), as follows:

ANSWER

THE NATURE OF THE ACTION

1. Paragraph 1 of the Complaint is a description of the relief sought by the Manfusos to which the Defendants have responded in part by a Motion to Dismiss which has been filed herewith. De Francis and Jacobs neither admit nor deny the allegations in paragraph 1 except to state specifically (a) that the Manfusos are not entitled to the relief sought; (b) that they have not breached their fiduciary duties; and (c) that the Manfusos have brought this action to interfere improperly with the managerial and operational decisions of these Defendants, to discredit De Francis and Jacobs so as to

advance the Manfusos' improper scheme to acquire the interests of De Francis and Jacobs in Pimlico and Laurel by placing De Francis and Jacobs at a material disadvantage regarding the exercise of the "Russian Roulette buy/sell" provision of the Stockholders Agreement, to detract from the financial and marketing benefit to be derived from the Preakness Stakes and to tortiously interfere with the appropriate and lawful activities of these Defendants related to Texas racing.

THE PARTIES

2. De Francis and Jacobs admit the allegations of paragraph 2 concerning the citizenship and place of business of the Manfusos and their status as shareholders of Pimlico Racing Association, Inc. ("Pimlico") and Laurel Racing Assoc., Inc. ("Laurel"). De Francis and Jacobs do not have sufficient information to admit or deny the allegation that each of the Manfusos has individually been "involved in the racing industry" for over 20 years, but state affirmatively that neither of the Manfusos had any experience in the management and operation of a racetrack prior to their participation in the acquisition of Laurel Race Course on December 10, 1984.

3. De Francis and Jacobs admit the allegations of paragraph 3, except that the shares of Laurel shown as owned by "John Manfuso" are owned by Plaintiff John A. Manfuso, Jr.

4. De Francis and Jacobs admit the allegations of paragraph 4, except that: (a) the Estate of Frank J. De Francis owns 495 Class A shares and 3,735 Class B shares, or a

total of 4,230 shares; (b) Joseph A. De Francis owns 55 Class A shares and 415 Class B shares, or a total of 470 shares; and (c) the shares of Pimlico shown as owned by "John Manfuso" are owned by Plaintiff John A. Manfuso, Jr.

5. De Francis and Jacobs admit the allegations of paragraph 5.

6. De Francis and Jacobs admit the allegations of paragraph 6, except that Jacobs is the Executive Vice President, Treasurer and General Counsel of Laurel and Pimlico.

JURISDICTION AND VENUE

7. De Francis and Jacobs admit the jurisdictional allegations of paragraph 7. De Francis and Jacobs specifically deny that the Manfusos are entitled to proceed under §3-403 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

8. De Francis and Jacobs admit the allegations of paragraph 8 concerning venue.

BACKGROUND FACTS

9. De Francis and Jacobs admit the allegation in paragraph 9 that, in 1984, the thoroughbred racing industry was in a period of decline and that wagering and attendance were less than in 1983. They deny that racetracks were being closed in 1984.

10. De Francis and Jacobs deny the allegations in paragraph 10, as stated. They assert that in 1983, Robert T. Manfuso and Frank J. De Francis discussed a possible joint

effort to acquire Laurel Race Course. Frank J. De Francis had developed a superb reputation as a track operator in the horse racing industry, both in Maryland and elsewhere, because of his having taken a bankrupt, decrepit harness racetrack, Freestate Raceway ("Freestate"), to national acclaim in just four years. Frank J. De Francis told Manfuso that he would be interested in the acquisition of Laurel Race Course only if he, Frank J. De Francis, would have complete managerial, operational and voting control of the business. Manfuso agreed and it was on this basis that efforts to acquire Laurel Race Course were undertaken.

Prior to the acquisition of Laurel in December 1984, neither Robert T. Manfuso nor John A. Manfuso, Jr. had any personal experience in the management or operation of a racetrack, and had never held any position at any racetrack. At the time of the acquisition it was contemplated that John A. Manfuso, Jr. would not have significant managerial responsibilities and that Robert T. Manfuso would have circumscribed responsibilities, primarily related to horsemen, as defined by Frank J. De Francis. Frank J. De Francis assigned the primary day-to-day managerial responsibilities for the operation of Laurel to the principal participants in the management team that he had put together at Freestate: himself, Jacobs, James P. Mango ("Mango") and Lynda O'Dea ("O'Dea"), as well as to Laurel's then general manager, Kenneth A. Schertle. Shortly after Laurel's acquisition, a son of John

A. Manfuso, Jr. was killed in an automobile accident, and he asked Frank J. De Francis to assign operating duties to him. Frank J. De Francis agreed.

The Manfusos' participation in the financing of the Laurel Race Course acquisition consisted of a fully secured loan by John A. Manfuso, Jr. of $6.5 million, with interest at 14% per annum and a joint pledge by the Manfusos of approximately $1.8 million in securities as security for payment of a promissory note to the seller. Frank J. De Francis provided a matching pledge of security for the payment of the promissory note to the seller. The secured loan was refinanced in July, 1986, and the pledges were refinanced in full in October, 1986. Since that time the Manfusos have had no funds invested in Laurel.

11. De Francis and Jacobs deny the allegations of paragraph 11, as stated. In December, 1986, Pimlico, a corporation owned by the De Francis Family Partnership (comprised of Frank J. De Francis and Joseph A. De Francis), the Manfusos and Jacobs, purchased all of the outstanding capital stock of The Maryland Jockey Club of Baltimore City, Inc., the entity which owned Pimlico Race Course. As was the case with the Laurel acquisition, the managerial, operational and voting control of the business was vested exclusively in Frank J. De Francis.

12. De Francis and Jacobs deny the allegations of paragraph 12, as stated. They admit that racetrack attendance

and gross wagering increased in the period from 1986 to 1989 and that Frank J. De Francis died in August, 1989.

13. De Francis and Jacobs deny the allegations of the first two sentences of paragraph 13 as stated. They state that, prior to the death of Frank J. De Francis, Joseph A. De Francis, an attorney with Latham & Watkins, was a Director and officer of Laurel and Pimlico, spoke with his father regularly about the business and operations of Laurel and Pimlico, was a part owner of Pimlico through his partnership with Frank J. De Francis, and had substantial racetrack operational experience with Freestate.

14. De Francis and Jacobs deny the allegations of paragraph 14, as stated. Prior to his death, Frank J. De Francis told Joseph A. De Francis, Jacobs and others that if he should die, under no circumstances should the Manfusos be permitted to assume operational or managerial control of the racetracks. Frank J. De Francis lacked confidence in the Manfusos' ability to perform these functions. He also expressed his desire that Joseph A. De Francis succeed him and assume the presidency of the racetracks and their operational and managerial control. The Estate of Frank J. De Francis controlled more than a majority of the voting stock of both racetracks and, pursuant to his father's wishes, Joseph A. De Francis announced his intention to become President and Chief Executive Officer and Chairman of the Board of both Pimlico and Laurel. De Francis was to receive salary and benefits

commensurate with those positions. The Manfusos objected to De Francis' assumption of those positions because they wanted those positions for themselves. In order to assure a reasonable period of time to exercise full operational and managerial control of Laurel and Pimlico without meddling, harassment or actual or threatened lawsuits by the Manfusos, De Francis negotiated with the Manfusos a memorandum of understanding in early October, 1989, which set forth the basic terms now contained in the Stockholders Agreement dated as of October 1, 1989. The Stockholders Agreement was executed on February 2, 1990. Of major importance to the Manfusos, and granted by De Francis, was the naming of one of the Manfusos as Co-Chairman of the Board of Pimlico and the other as Co-Chairman of the Board of Laurel. These positions, primarily ceremonial, convey the sole benefit of allowing such person to co-chair meetings of the Boards of Directors.

15. De Francis and Jacobs deny the allegations of paragraph 15, as stated. The Manfusos are contractually precluded, prior to October 1, 1993, from seeking a declaration regarding the Stockholders Agreement under §3-406 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, and their filing of this action is a material breach of that Agreement.

16. De Francis and Jacobs admit the allegations of paragraph 16 with the qualification that paragraph 16 does not set forth in full the rights and obligations undertaken by the

parties to the Stockholders Agreement. The Agreement conferred upon the Manfusos significant rights and substantial benefits that they did not have as minority shareholders. In return, the primary benefit that the Agreement conferred upon De Francis was the ability to exercise full operational and managerial control over Laurel and Pimlico free from actual or threatened interference, harassment or lawsuits by the Manfusos.

17. De Francis and Jacobs admit the allegations of paragraph 17 concerning the status of De Francis as an officer and director of Laurel and Pimlico, but deny that he assumed the positions of President and Chief Executive Officer as the result of the Stockholders Agreement. The remaining allegations of paragraph 17 are legal conclusions which are not required to be admitted or denied.

18. De Francis and Jacobs admit the allegations of paragraph 18 concerning the status of Jacobs as an officer and director of Laurel and Pimlico, but deny that he assumed these positions as the result of the Stockholders Agreement. They also deny that the allegations concerning Jacobs' employment contract fairly or fully set forth the terms thereof. The remaining allegations of paragraph 18 are legal conclusions which are not required to be admitted or denied.

19. De Francis and Jacobs admit the allegations of paragraph 19 concerning the status of the Manfusos as officers and directors of Laurel and Pimlico, but deny that, except for

the position of Co-Chairman of the Board, they obtained that status as the result of the Stockholders Agreement. They admit that the Stockholders Agreement conferred upon the Manfusos the right to continue in these positions absent a breach of their obligations under the Agreement. The remaining allegations of paragraph 19 are legal conclusions which are not required to be admitted or denied.

20. De Francis and Jacobs admit the allegation of paragraph 20 that the Manfusos announced their resignations as officers of Pimlico and Laurel on February 24, 1990, twenty-two (22) days after they executed the Stockholders Agreement, to be effective after the 1990 Preakness Stakes. De Francis and Jacobs specifically deny that the Manfusos' resignations as officers came after numerous disputes with De Francis and Jacobs. The Manfusos were each entitled under the Stockholders Agreement to a $1,250,000 lump sum termination payment along with continuing severance payments totalling more than $125,000 each per year until October 1, 1993. The lump sum termination payments were made in June, 1990 and the severance payments began at that same time. De Francis and Jacobs deny the remaining allegations of paragraph 20, and specifically deny that the Manfusos have attempted to fulfill their fiduciary duties to both Pimlico and Laurel. While the Manfusos have offered a minimal number of suggestions, most of which have been without value, they have in furtherance of their own individual financial and other agendas, continuously and

improperly interfered with the running of the racetracks. Their goal has been to divert management's time and attention from the operation of the racetracks and to discredit management so as to implement the improper scheme referred to in Paragraph 1 above.

SPECIFIC ALLEGATIONS OF SO-CALLED ABUSES

21. De Francis and Jacobs deny the allegations of paragraph 21. De Francis and Jacobs have been forthright and open in regard to the operation of the Laurel and Pimlico. Since the signing of the Stockholders Agreement, the Manfusos, who specifically agreed in that Agreement that De Francis had "full authority over operational and managerial decisions and policies" related to the racetracks, have continuously made unsupported allegations of so-called "abuses" committed by management in order to divert management's time and attention from their operation of the racetracks. Their goal has been to further advance their own individual financial and other agendas, including the improper scheme referred to in Paragraph 1 above. In an effort to respond reasonably and appropriately to these complaints, De Francis and Jacobs have repeatedly requested that the Manfusos offer factual and legal support for these alleged abuses, or for any allegation that they breached any fiduciary duty owed to the racetracks. They have invited the Manfusos to have their attorney and accountant appear before the Boards to present any and all available factual support for their allegations. The Manfusos have steadfastly

declined to come forward with any such factual support and have declined all invitations to have their attorney or accountant appear before the Boards. On April 13, 1992, the Manfusos were afforded a full and fair factual hearing before the Boards of Directors whose membership includes independent directors not controlled by De Francis or Jacobs. At that time the Boards of Pimlico and Laurel considered and rejected the Manfusos' unfounded allegations of so-called "abuses" and specifically rejected certain resolutions offered by the Manfusos. Dissatisfied with the Boards' actions, the Manfusos undertook to have a newly elected independent director, Father Joseph A. Sellinger, S.J., removed from the Boards by appealing to his religious superior. When this effort failed, they filed this spurious Complaint.

THE ALLEGED DIVERSION OF RESOURCES TO TEXAS

22. De Francis and Jacobs deny the allegations of paragraph 22, with the qualification that Jacobs did make trips to Texas in furtherance of the effort begun in 1988 by Frank J. De Francis. This effort was commenced and undertaken with the knowledge and consent of all stockholders and members of the Board of Directors of Pimlico, involved Pimlico employees in addition to Frank J. De Francis and Jacobs, and was directed toward obtaining a potential corporate opportunity for the benefit of Pimlico or its owners. This effort was reaffirmed by all of the stockholders and directors of Pimlico after the

death of Frank J. De Francis and was continued by Joseph A. De Francis as President and Chief Executive Officer of Pimlico.

23. De Francis and Jacobs deny the allegations of paragraph 23. The referenced payment was made to the Texas Horse Racing Association, an organization of Texas horsemen and other persons interested in racing. The pursuit of this potential corporate opportunity was made with the knowledge and consent of all stockholders and directors of Pimlico, including the Manfusos. In fact, in November, 1989, Joseph A. De Francis, Jacobs and Mango made a trip to Texas, with the knowledge and consent of the Manfusos, to look at potential racetrack sites and to pursue the possible participation with a proposed partner in Texas. At all times prior to the spring of 1990, all of the stockholders and directors of Pimlico approved the expenditure of corporate funds on this as well as other potential corporate opportunities outside the State of Maryland. De Francis and Jacobs admit the allegation that in the spring of 1990, the Manfusos expressed the desire that Pimlico reject this potential corporate opportunity and that De Francis agreed in April, 1990 that Pimlico would make "no further investments in Texas racing."

24. De Francis and Jacobs admit the allegation of paragraph 24 that De Francis, as President of Laurel and Pimlico, is required to devote time, attention and skill to advancing the best interests of both Laurel and Pimlico. De Francis and Jacobs deny that De Francis' leadership has

resulted in any decline in the performance of Laurel or Pimlico, deny that any private interest they may have in Texas racing is inconsistent with the best interests of Laurel or Pimlico, and state that their potential involvement in Texas racing would positively benefit Laurel and Pimlico.

25. De Francis and Jacobs admit the allegations of paragraph 25 that they have agreed to assist in the application process of Lone Star Jockey Club, Ltd. ("Lone Star") to obtain a license to own and operate a racetrack in the Dallas/Fort Worth, Texas market. Their involvement in Texas racing is permitted by law and the Stockholders Agreement and was known to the Manfusos at all relevant times. De Francis and Jacobs admit that they will perform various consulting services and that a partnership, now known as D/J/M Track Consultants ("D/J/M"), will receive an ownership interest in the entity which will own the racetrack if the Lone Star application is successful.

26. De Francis and Jacobs deny the allegations of paragraph 26, and further state that the Manfusos have made such allegations for the principal purpose of removing Lone Star from the field of applicants competing for the right to build and own a horse racetrack in the Dallas/Fort Worth market so as to advance the position of the entity believed to be Lone Star's principal competitor, Midpointe Racing, L.C. ("Midpointe"). The Manfusos have also made such allegations to advance their improper scheme described in Paragraph 1 above to

preclude De Francis and Jacobs from receiving the recognition of their management capabilities and prestige that would result from the award of the Dallas/Fort Worth franchise to Lone Star. Robert T. Manfuso is a director and stockholder of the entity that owns and operates Hollywood Park racetrack. That entity and its chairman, R. D. Hubbard, own almost 50% of the equity in Midpointe and are to perform substantial management services for Midpointe. Robert T. Manfuso has appeared on behalf of Midpointe in Texas and has submitted testimony on Midpointe's behalf in specific opposition to the application of Lone Star. Robert T. Manfuso is also actively performing other managerial duties for Hollywood Park in connection with the American Championship Racing Series, and, upon information and belief, intends to be actively involved in the management of the Dallas/Fort Worth racetrack if Midpointe's application is successful. Finally, De Francis and Jacobs assert that they have spent many more hours responding to spurious allegations and complaints made by the Manfusos then they have spent in pursuing any interest in Texas racing.

27. De Francis and Jacobs deny the allegations of paragraph 27, particularly the allegation that Jacobs has traveled to Texas on Laurel's and Pimlico's time, except to admit that he did so on Pimlico's time prior to April 27, 1990.

28. De Francis and Jacobs admit the allegations of paragraph 28 to the extent they concern Mango's status as Vice-President and General Manager of Laurel and Pimlico and as a

key employee, but deny that he is "the" key employee of the racetracks. They deny that the remaining allegations of paragraph 28 fairly or fully set forth the terms and conditions of Mango's employment contract.

29. De Francis and Jacobs deny the allegations of paragraph 29. De Francis and Jacobs assert that Mango first became involved in the Texas venture through his working with Frank J. De Francis and Jacobs when Frank J. De Francis first determined to pursue the opportunity on behalf of Pimlico or its shareholders. In recognition of his contributions to the Texas venture and his past contributions to the racetracks' business, Frank J. De Francis promised Mango that if the Texas application were successful, Mango could participate as an equity owner. De Francis reaffirmed the promise of Frank J. De Francis and confirmed that, because of that past promise as well as Mango's continuing contributions to the business of the Maryland racetracks, Mango could participate in the Texas venture as an equity owner. De Francis has required that any efforts expended by Mango on behalf of Lone Star be made on his own time and that they not conflict with any duties or obligations that he owes to Laurel or Pimlico. In fact, since the Manfusos' insistence that Pimlico reject the opportunity of pursuing Texas racing, Mango has made a single overnight trip to Texas on his own time. Finally, De Francis and Jacobs deny that they intend to or could require Mango to leave Laurel and Pimlico if Lone Star's application is successful.

30. De Francis and Jacobs deny the allegations of paragraph 30 that any efforts by the Manfusos resulted in the setting up of successful management systems, marketing programs or techniques or any proprietary or technical systems which constitute assets of Laurel or Pimlico. The systems used by Laurel and Pimlico were primarily developed and set up by Frank J. De Francis, were proven in operation by his management team at Freestate, are not confidential or proprietary in nature, and are not the property of either the Manfusos or Laurel or Pimlico.

31. De Francis and Jacobs deny the allegations of paragraph 31. All expenditures by Pimlico were authorized and no funds of Laurel or Pimlico have been expended for the benefit of Lone Star.

SO-CALLED LOAN ACCOUNTS

32. De Francis and Jacobs deny the allegations of paragraph 32, as stated. After Frank J. De Francis' death, it was agreed by De Francis, the Manfusos and Jacobs that they, as well as O'Dea and Mango, would obtain corporate American Express cards for the purpose of simplifying accounting for business expenses. It was understood that those credit cards could on occasion be used to charge personal expenditures so long as those personal expenditures were reimbursed to the corporations. De Francis and O'Dea used the corporate American Express cards to charge limited personal expenditures in addition to business expenditures, and have reimbursed the

corporations completely for all such personal expenditures. Even though some reimbursements were not coincident with the payment of the American Express bills by the corporations, the maximum cost to the corporations for the use of the money, at the rate of interest generally earned by the corporations, would be less than $2,000. In any event, as the Manfusos were advised at the April 13, 1992 Board meeting, all corporate American Express credit cards have been eliminated, with the exception of one card used and controlled by De Francis for business expenditures only.

ACCESS TO INFORMATION--LEGAL FEES

33. De Francis and Jacobs deny the allegations in paragraph 33 as stated, except to admit that the Manfusos have requested "invoices, breakdowns and descriptions of the legal fees paid to outside counsel by the corporations". The Manfusos and their accountant, Mark W. Reynolds of Gross, Mendelsohn & Weiler, P.A., have been provided with all information and documentation in the possession of Laurel and Pimlico related to expenditures for legal fees. Further, Mr. Reynolds has been given full and complete access to the working papers of Ernst & Young, the firm of independent certified public accountants that is the independent auditor for Laurel and Pimlico, and has met with and questioned principals and employees of Ernst & Young. The only thing that the Manfusos have not been provided are the computer time records of the outside law firms, which are in the possession of those law

firms. The Manfusos and their attorneys were notified in writing prior to the filing of this Complaint that those records had been requested from the law firms and would be provided upon receipt. John A. Manfuso, Jr. agreed to request identical data from the law firm of Fedder & Garten which represented the Manfusos and whose fees in connection with the Stockholders Agreement were paid by Pimlico, and to provide those data to Pimlico. The Manfusos' allegation that this information has been refused constitutes an intentional misstatement of fact.

ALLEGED DENIAL OF ACCESS TO INFORMATION--ACCOUNTING PRACTICES

34. De Francis and Jacobs deny the allegations of paragraph 34 that Pimlico has been caused to bear certain expenses pertaining to Laurel or that the allocation of expenses between the two tracks is improper. The allocation of expenses has been explained to the Manfusos and their accountant by management both orally and in writing. The Manfusos' accountant has been given full and complete access to all records pertaining to the allocation of such expenses and has met and conferred on this subject with Ernst & Young, the independent auditors for Laurel and Pimlico. The independent auditors have been provided with all correspondence from the Manfusos related to their alleged concerns, have thoroughly reviewed their allegations and have rejected their contentions. The Boards of Directors of Laurel and Pimlico have determined that, particularly since the independent auditors have

considered and rejected the Manfusos' contentions, no further investigation is appropriate unless and until the Manfusos provide factual support for their allegations. The Boards have requested the Manfusos' accountant's report, the instructions given the accountant, and all relevant correspondence between the accountant and the Manfusos or their attorneys. The Manfusos have steadfastly refused to provide the report, the instructions or the requested correspondence. Upon information and belief, the Manfusos have not attempted direct contact with the independent auditors, either oral or written, because they know the publication of these allegations outside the protection of the judicial process could subject them to liability for slander or libel.

ALLEGED WASTE

35. De Francis and Jacobs deny the allegations of paragraph 35, as stated. The single example provided by the Manfusos is a December 1990 contribution made in connection with the Florida Derby Gala which was a charitable event held for the specific benefit of a recognized institution of veterinary medicine conducting scientific research into equine diseases. De Francis and Jacobs further deny the allegation that this expenditure, or any other expenditure authorized by De Francis, served no legitimate business purpose.

THE ALLEGED IMPROPER TRANSFER OF ASSETS FROM PIMLICO TO LAUREL

36. De Francis and Jacobs deny the allegations of paragraph 36. All decisions related to the allocation of

racing days, racing revenues, expenses, contributions, severance payments and legal fees have been reviewed by and explained to the Manfusos and their accountant, have been reviewed, considered and accepted by Ernst & Young, the independent auditors, were made for valid business reasons based on the best business judgment of management, and were for the benefit of both Laurel and Pimlico.

37. De Francis and Jacobs admit the allegation of paragraph 37 that, in 1990, the Maryland Racing Commission assigned 134 racing dates to Pimlico and 130 racing dates to Laurel and that certain of Laurel's traditional racing dates were run by Pimlico at Laurel. De Francis and Jacobs deny the remaining allegations of paragraph 37 and state that the normal profit (not revenue) from those racing dates was paid to Laurel. Management, with the advice and guidance of independent accountants, considered it unreasonable for Pimlico to benefit from racing dates traditionally assigned to Laurel under an arms-length agreement entered into between Laurel and Pimlico when the latter entity was controlled by its former owners ("The 1984 Racing Schedule Agreement"). Pimlico did receive, for those days which were run at Laurel, the appropriate fee for use of its intertrack facility and one third of the revenue from racing for a total net compensation of $382,994.

38. De Francis and Jacobs deny the allegations of paragraph 38, as stated. All decisions concerning the

materiality of adjustments for the purposes of financial statements of Laurel and Pimlico were made by management after consultation with and approval by the outside accounting firm of Watkins, Meegan, Drury & Co. ("WMD&Co."). De Francis and Jacobs deny that an error occurred in the 1988 financial statement and that any such error was never recorded or corrected, "presumably because correcting the error would have benefitted Pimlico to Laurel's detriment". A calculation was done that showed Laurel would have owed Pimlico $44,516.00 if the correct racing days run by each track were compensated under the one third of revenue racing formula originally adopted by The 1984 Racing Schedule Agreement. However, after consultation with the corporations' chief financial officer and the outside accounting firm of WMD&Co., management determined that payment of this compensation would unfairly benefit Pimlico to Laurel's detriment. De Francis and Jacobs further assert that Ernst & Young, the independent auditors, have again reviewed these treatments at the Manfusos' request and continue to agree that the treatment in the audited financial statements conforms to generally accepted accounting principles.

39. De Francis and Jacobs deny the allegations of paragraph 39. The allocation of expenses between Laurel and Pimlico has been an evolutionary process since the acquisition of Pimlico Race Course. These decisions were made by management after consultation with the corporations' chief financial officer and the outside accounting firm of WMD&Co.

40. De Francis and Jacobs admit the allegations of paragraph 40 concerning the amount of contributions made by each corporation. They deny that this allocation is in any way improper. As was explained to the Manfusos in writing on March 12, 1992, Pimlico supports more charities because it is located in the city of Baltimore and is the home of the Preakness Stakes. As such, it is more dependent on the goodwill and support of the business community and public entities than is Laurel.

41. De Francis and Jacobs admit the allegation of paragraph 41 that the Stockholders Agreement provides that the Manfusos receive $250,000 per year in severance pay for not working and that these payments have been charged to Pimlico. De Francis and Jacobs deny the remaining allegations of paragraph 41. The Stockholders Agreement does not provide which entity is to make these payments. The statements referenced in paragraph 41 were made within a month of the Manfusos' announcement of their resignation. This initial view was changed after analysis disclosed that an allocation to Laurel of a portion of the payments to the Manfusos for not working would have been improper.

42. De Francis and Jacobs deny the allegation of paragraph 42 and assert that the Manfusos have no factual basis for this allegation.

ALLEGED MISLEADING FINANCIAL STATEMENTS

43. De Francis and Jacobs deny the allegations of paragraph 43, as stated. Laurel and Pimlico provide copies of financial statements issued to Laurel and Pimlico to the Maryland Racing Commission and to their banks. All compensation and other payments are reflected in the financial statements, there are no loans to officers of any material amount and the $300,000 in income was properly reflected in the financial statement for fiscal year 1991. The Manfusos' factually unfounded accusations concerning these financial statements were reviewed and rejected by the corporations' independent auditors as well as by the Boards of Directors of Laurel and Pimlico. De Francis and Jacobs specifically deny that Father Joseph A. Sellinger, S.J., a respected University President and a member of the Board of each track, who voted against motions proposed by the Manfusos in this regard, is under the control of De Francis or Jacobs.

COUNT ONE - DECLARATORY RELIEF

44. De Francis and Jacobs incorporate their responses to paragraphs 1-43 in response to paragraph 44.

45. De Francis and Jacobs deny the allegations of paragraph 45.

46. De Francis and Jacobs deny the allegations of paragraph 46, as stated. While the Manfusos may have certain responsibilities as Directors of Laurel and Pimlico, the manner in which they have sought relief is inappropriate and the

relief they are seeking would inure only to their benefit as shareholders. When they executed the Stockholders Agreement, they bargained away, for substantial consideration, the right to make these claims at this time. Their institution of this action was and is an intentional and material breach of the Stockholders Agreement. De Francis and Jacobs specifically deny that they have committed any breaches of duty or caused any damage to Laurel or Pimlico as alleged by the Manfusos.

47. De Francis and Jacobs deny the allegations of paragraph 47 as stated. They assert that the Standstill Provision in the unanimous Stockholders Agreement entered into by the Manfusos effective as of October 1, 1989 is a valid and enforceable contract term that unambiguously precludes all parties from instituting any action against any other party to the agreement concerning the business or operations of Laurel or Pimlico prior to October 1, 1993. De Francis and Jacobs assert that the filing of this action by the Manfusos is an intentional and material breach of the Stockholders Agreement.

48. De Francis and Jacobs deny paragraph 48 as stated. The only controversy that exists between the parties to this action arises from the Manfusos intentional and material breach of the terms of the unanimous Stockholders Agreement dated as of October 1, 1989.

WHEREFORE, De Francis and Jacobs request the Court to dismiss the Manfusos' request for declaratory relief in

subparagraph A and to award the Defendants their fees and costs incurred in responding thereto.

FIRST AFFIRMATIVE DEFENSE

49. Plaintiffs have failed to state a cause of action or claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

50. The Plaintiffs have no right or authority to bring an action as individual directors seeking either declaratory or injunctive relief for corporate waste.

THIRD AFFIRMATIVE DEFENSE

51. The Plaintiffs, as individual directors, do not possess a legally cognizable right that can be enforced by either declaratory or injunctive relief.

FOURTH AFFIRMATIVE DEFENSE

52. The relief sought by the Plaintiffs in their Complaint would inure to the benefit of the corporations and, as such, must be sought by the corporations' stockholders in a properly filed derivative suit. The Plaintiffs have failed to comply with the procedural requirements prerequisite to bringing a proper derivative suit.

FIFTH AFFIRMATIVE DEFENSE

53. The second and third declarations sought in "Count One - Declaratory Relief" seek declarations concerning subjects that do not come within the jurisdiction of Maryland's Declaratory Judgment Act and must, therefore, be dismissed.

SIXTH AFFIRMATIVE DEFENSE

54. De Francis and Jacobs have at all times acted in the best interests of both Laurel and Pimlico and all actions complained of in Plaintiffs' Complaint were undertaken in furtherance of a good faith business purpose and in the exercise of their bona fide business judgment.

SEVENTH AFFIRMATIVE DEFENSE

55. Plaintiffs' requested relief is barred by fraud.

EIGHTH AFFIRMATIVE DEFENSE

56. Plaintiffs' requested relief is barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

57. The contract under which Plaintiffs have sought relief, if interpreted as urged by the Plaintiffs, is void for lack of consideration.

TENTH AFFIRMATIVE DEFENSE

58. Plaintiffs have an adequate remedy at law and therefore are not entitled to declaratory or injunctive relief.

ELEVENTH AFFIRMATIVE DEFENSE

59. Defendants reserve the right to raise additional affirmative defenses based upon discovery that may be taken in this matter.

James E. Gray

Linda S. Woolf
Goodell, DeVries, Leech & Gray
25 S. Charles Street
Suite 1900
Baltimore, Maryland 21201
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1992, a copy of the aforegoing Answer to Complaint for Declaratory and Injunctive Relief was mailed to: James Ulwick, Esquire, Kramon & Graham, Sun Life Building, Charles Center, 20 South Charles Street, Baltimore, Maryland 21201, Attorneys for Plaintiffs; 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

CIRCUIT COURT FOR BALTIMORE CITY
SAUNDRA E. BANKS, CLERK
111 N. CALVERT ST. - ROOM 462
BALTIMORE, MD. 21202

WRIT OF SUMMONS CASE NUMBER 92120052 CE147851

STATE OF MARYLAND, COUNTY TO WIT: PRIVATE PROCESS

TO: LAUREL RACING ASSOC., INC.
S/O MARTIN JACOBS, R/A
RT. 198 & RACETRACK RD.
LAUREL MD 20707

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY

ROBERT T. AMFUSO, ETAL
8401 CONNECTICUT AVE-STE. 1010 CHEVYCHASE MD 20815

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU.
WITNESS THE HONORABLE CHIEF JUDGE OF THE EIGHTH JUDICIAL CIRCUIT OF MARYLAND.

DATE ISSUED 04/30/92

Saundra E. Banks
CLERK
Clerk
Circuit Court for Balto. City

TO THE PERSON SUMMONED:

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.

2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGEMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF(S) RETURN.

PERSON SERVED_____ TIME _____ DATE _____

PERSON SERVED_____ TIME _____ DATE _____

NON EST(REASON) _____

FEE $_____ SHERIFF_____

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CIRCUIT COURT FOR BALTIMORE CITY
SAUNDRA E. BANKS, CLERK
111 N. CALVERT ST. - ROOM 462
BALTIMORE, MD. 21202

WRIT OF SUMMONS CASE NUMBER 92120052 CE147851

STATE OF MARYLAND, COUNTY TO WIT: PRIVATE PROCESS

TO:

MARTIN JACOBS
RT. 198 & RACETRACK RD.
LAUREL MD 20707

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY

ROBERT T. AMFUSO, ETAL
8401 CONNECTICUT AVE-STE. 1010 CHEVYCHASE MD 20815

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU.
WITNESS THE HONORABLE CHIEF JUDGE OF THE EIGHTH JUDICIAL CIRCUIT OF MARYLAND.

DATE ISSUED 04/30/92

Saundra E. Banks
CLERK
Clerk
Circuit Court for Balto. City

CIRCUIT COURT FOR BALTIMORE CITY 1983

TO THE PERSON SUMMONED:

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CIRCUIT COURT FOR BALTIMORE CITY
SAUNDRA E. BANKS, CLERK
111 N. CALVERT ST. - ROOM 462
BALTIMORE, MD. 21202

WRIT OF SUMMONS CASE NUMBER 92120052 CE147851

STATE OF MARYLAND, COUNTY TO WIT: PRIVATE PROCESS

TO:

JOSEPH A. DEFRANCIS
RT. 198 & RACETRACK RD.
LAUREL MD 20707

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY

ROBERT T. AMFUSO, ETAL
8401 CONNECTICUT AVE-STE. 1010 CHEVYCHASE MD 20815

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Saundra E. Banks

Clerk CLERK
Circuit Court for Balto. City

CIRCUIT COURT FOR BALTIMORE CITY 1983

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CIRCUIT COURT FOR BALTIMORE CITY
SAUNDRA E. BANKS, CLERK
111 N. CALVERT ST. - ROOM 462
BALTIMORE, MD. 21202

WRIT OF SUMMONS CASE NUMBER 92120052 CE147851

STATE OF MARYLAND, COUNTY TO WIT: PRIVATE PROCESS

TO: MARYLAND JOCKEY CLUB OF BALTO.CITY
S/O MARTIN JACOBS, R/A
RT. 198 & RACETRACK RD.
LAUREL MD 20707

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY

ROBERT T. AMFUSO, ETAL
8401 CONNECTICUT AVE-STE. 1010 CHEVYCHASE MD 20815

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU.
WITNESS THE HONORABLE CHIEF JUDGE OF THE EIGHTH JUDICIAL CIRCUIT OF MARYLAND.

Saundra E. Banks

Clerk
Circuit Court for Balto. City

CIRCUIT COURT FOR BALTIMORE CITY 1983

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CIRCUIT COURT FOR BALTIMORE CITY
SAUNDRA E. BANKS, CLERK
111 N. CALVERT ST. - ROOM 462
BALTIMORE, MD. 21202

WRIT OF SUMMONS CASE NUMBER 92120052 CE147851

STATE OF MARYLAND, COUNTY TO WIT: PRIVATE PROCESS

TO: PIMLICO RACING ASSOCIATION, INC.
S/O MARTIN JACOBS, R/A
RT. 198 & RACETRACK RD.
LAUREL MD 20707

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY

ROBERT T. AMFUSO, ETAL
8401 CONNECTICUT AVE-STE. 1010 CHEVYCHASE MD 20815

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU.
WITNESS THE HONORABLE CHIEF JUDGE OF THE EIGHTH JUDICIAL CIRCUIT OF MARYLAND.

DATE ISSUED 04/30/92

Saundra E. Banks
CLERK
Clerk
Circuit Court for Balto. City

CIRCUIT COURT FOR BALTIMORE CITY 1986

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Circuit Court
for
Baltimore City

111 North Calvert Street
Baltimore, Maryland 21202

Joseph H. H. Kaplan
Administrative Judge

396-5080
City Deaf TTY 396-4930

April 30, 1992

(2)

James P. Ulwick, Esquire
Kramon & Graham, P.A.
20 S. Charles Street
Baltimore, MD 21201

Mr. Martin Jacobs
Mr. Joseph A. DeFrancis
Rt. 198 & Racetrack Road
Laurel, MD 20707

Re: Robert T. Manfuso and John A. Manfuso, Jr.
v. Joseph A. DeFrancis, et al.
Case No. 92120052/CE147851

Dear Messrs. Ulwick, Jacobs and DeFrancis:

I am in receipt of Mr. Ulwick's letter to me of April 29, 1992, requesting special assignment of the above captioned case. I have considered this request and have designated this case a protracted matter and have assigned the same to Judge Ellen L. Hollander.

Inasmuch as Judge Hollander will hear all future proceedings, she will also determine whether a speedy hearing is necessary. A copy of Mr. Ulwick's letter has been forwarded to Judge Hollander for her information and consideration.

Sincerely yours,

Joseph H. H. Kaplan
Administrative Judge

kak
cc: Judge David Ross, JICC
Judge Ellen L. Hollander
Robert J. Ignatowski
Marc Noren

FILED

APR 29 1992

CIRCUIT COURT FOR BALTIMORE CITY

ROBERT T. MANFUSO Suite 1010 8401 Connecticut Avenue Chevy Chase, Maryland 20815	*	IN THE
	*	CIRCUIT COURT
	*	FOR
and		
	*	BALTIMORE CITY
JOHN A. MANFUSO, JR. Suite 1010 8401 Connecticut Avenue Chevy Chase, Maryland 20815	*	Case No.
Plaintiffs	*	92120052
vs.	*	
JOSEPH A. DeFRANCIS Route 198 and Racetrack Road Laurel, Maryland 20707	*	
MARTIN JACOBS Route 198 and Racetrack Road Laurel, Maryland 20707	*	
THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY Pimlico Racecourse Baltimore, Maryland 21215	*	
SERVE ON: Martin Jacobs, Resident Agent Route 198 and Racetrack Road Laurel, Maryland 20707	*	
PIMLICO RACING ASSOCIATION, INC. Pimlico Racecourse Baltimore, Maryland 21215	*	
SERVE ON: Martin Jacobs, Resident Agent Route 198 and Racetrack Road Laurel, Maryland 20707	*	
and	*	
LAUREL RACING ASSOC., INC. Route 198 and Racetrack Road Laurel, Maryland 20707	*	
	*	

3:54PM 04/29/92 002#2487 A ###

CE #0021200
#0000052

CIVIL	$80.00
LIBRA	$10.00
**TTL	$90.00
CHECK	$90.00
CHNG	$0.00

P.P. all pick up call when ready

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20 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
(410) 752-6030

SERVE ON:
Martin Jacobs, Resident Agent
Route 198 and Racetrack Road
Laurel, Maryland 20707

Defendants

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

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively "the Manfusos"), by and through their attorneys, James P. Ulwick and Kramon & Graham, P.A., hereby sue Joseph DeFrancis, Martin Jacobs ("Jacobs"), The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("PRA"), and Laurel Racing Assoc., Inc. ("Laurel"). For cause, the Manfusos state:

I. THE NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief. The Manfusos have brought this action in order to have the Court declare that Joseph DeFrancis and Jacobs have breached fiduciary and other duties to MJC, PRA, and Laurel and also to have the Court declare that the Manfusos have the right and obligation to protect MJC, PRA, and Laurel from those breaches. In addition, the Manfusos have brought the action in order to obtain a permanent injunction barring Joseph DeFrancis and Jacobs from further breaches of their duties.

II. THE PARTIES

2. The Manfusos are Maryland citizens whose principal place of business is Suite 1010, 8401 Connecticut Avenue, Chevy

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Chase, Maryland 20815. The Manfusos are shareholders of PRA and Laurel and have been involved in the racing industry for over twenty years.

3. Laurel is a Maryland corporation with its principal place of business at Route 198 and Racetrack Road, Laurel, Maryland 20707. Laurel operates Laurel Racecourse. The stock ownership of Laurel is:

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. DeFrancis	550	2,200	2,750
Robert Manfuso	350	1,525	1,875
John Manfuso	-0-	1,875	1,875
Jacobs	-0-	1,000	1,000
	900	6,600	7,500

4. MJC and PRA are Maryland corporations with their principal place of business at Pimlico Racecourse, Baltimore, Maryland 21215. MJC and PRA (collectively, "Pimlico") operate Pimlico Racecourse. The stock ownership of PRA is:

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. DeFrancis	550	4,150	4,700
Robert Manfuso	210	2,140	2,350
John Manfuso	210	2,140	2,350
Jacobs	30	570	600
	1,000	9,000	10,000

5. Joseph DeFrancis is a Maryland citizen whose principal place of business is Route 198 and Racetrack Road, Laurel, Maryland 20707. Joseph DeFrancis is the President of both

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Laurel and Pimlico; he is an attorney and the son of Frank J. DeFrancis.

6. Jacobs is a Maryland citizen whose principal place of business is Route 198 and Racetrack Road, Laurel, Maryland 20707. Jacobs owns 6% of PRA and a 13.33% of Laurel. Jacobs is an attorney and the Vice President of both Pimlico and Laurel. He also functions as the General Counsel of Laurel and Pimlico.

III. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to § 1-501 and § 3-403 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland; the Court has personal jurisdiction over the defendants because they are, variously, Maryland corporations and Maryland domiciliaries.

8. Under § 6-201(a) of the Courts and Judicial Proceedings Article, venue is proper in this Court because all of the defendants carry on a regular business in Baltimore City.

IV. BACKGROUND FACTS

9. In 1984, the Maryland thoroughbred racing industry was in a period of decline. Racing revenues were small, racetracks were being closed, and track attendance was dwindling.

10. In December 1984, Frank J. DeFrancis and the Manfusos agreed to purchase Laurel, to rejuvenate it, and to endeavor in every way to make thoroughbred racing an attractive and profitable enterprise in Maryland. The Manfusos committed millions of dollars of their own money to ensure Laurel's

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success. The operating duties of Laurel were divided between the Manfusos and Frank J. DeFrancis. Martin Jacobs negotiated the contracts, provided legal advice, and became an owner as well. Frank J. DeFrancis served as the President of Laurel, and the Manfusos served as Vice Presidents.

11. In December 1986, Frank J. DeFrancis and the Manfusos purchased Pimlico, and each allocated three percent of their ownership to Martin Jacobs. The same management team was used to operate Pimlico as was used to operate Laurel.

12. By 1989, Pimlico and Laurel were extremely successful. Racetrack attendance had dramatically increased, and the value of the tracks had likewise increased. In August 1989, however, Frank J. DeFrancis died.

13. Until the death of Frank J. DeFrancis, Joseph DeFrancis had had minimal involvement in the operation of the tracks. Joseph DeFrancis had in fact been working as an attorney for the law firm of Latham & Watkins. After his father's death, Joseph DeFrancis became one of the executors of his father's estate.

14. Joseph DeFrancis insisted on assuming his father's position as President of Pimlico and Laurel, as well as his father's salary and benefits. The Manfusos objected, pointing out that Joseph DeFrancis had no experience in thoroughbred racing, nor any experience that would qualify him to manage such large enterprises. Moreover, the compensation package which

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Joseph DeFrancis insisted on receiving totaled approximately $700,000.00 per year--a vast overpayment for an executive of his abilities. The estate of Frank J. DeFrancis, represented by Joseph DeFrancis, controlled a majority of the voting stock of both racetracks. To avoid a lengthy legal battle over the management and control of the racetracks, a letter of understanding was negotiated and signed by the Manfusos and Joseph DeFrancis. The letter of understanding set forth the basic terms of a stockholders' agreement to be entered into by the parties.

15. On or about October 1, 1989, the Manfusos, Jacobs, the estate of Frank J. DeFrancis, Joseph DeFrancis, MJC, PRA, and Laurel entered into the Stockholders' Agreement. The Stockholders' Agreement is a contract within the meaning of §3-406 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland. A true and correct copy of the Stockholders' Agreement is attached as Exhibit A to this Complaint, and incorporated herein.

16. The Stockholders' Agreement sets forth the agreements between the parties on numerous issues. For example, the Stockholders' Agreement provides the terms under which any stockholder can attempt to sell his stock, and it establishes a put/call mechanism to allow either the Manfusos or DeFrancis and Jacobs to purchase the stock of the other side at a time in the future. The Stockholders' Agreement also calls for a

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"standstill" period in which the parties cannot sue one another, with specified exceptions.

17. Pursuant to the Stockholders' Agreement, Joseph DeFrancis became President of Laurel and Pimlico. As such, Joseph DeFrancis' duties have included functioning as the Chief Executive Officer and as Co-Chairman of the Boards of Laurel and Pimlico. As an officer and as a director, Joseph DeFrancis was and is required by Maryland law to ensure that the interests of the corporations are protected and that the officers and directors of the corporations place the best interests of the corporations ahead of their own personal interests.

18. Pursuant to the Stockholders' Agreement, Jacobs became Executive Vice President, Treasurer, and Director of Laurel and Pimlico. Also pursuant to the Stockholders' Agreement, Jacobs received a ten-year employment contract, in return for which he promised to "devote substantially all of [his] time to [his] employment." In addition to his obligations by virtue of his employment contract, Jacobs, as an officer and as a director of Pimlico and Laurel, was and is required by Maryland law to ensure that the interests of the corporations are protected and that the officers and directors of the corporations place the best interests of the corporations ahead of their own personal interests.

19. Pursuant to the Stockholders' Agreement, the Manfusos became Executive Vice Presidents of Laurel and Pimlico, with

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John A. Manfuso, Jr., serving as Secretary for the corporations. Also pursuant to the Stockholders' Agreement, the Manfusos remained on the Boards of both Laurel and Pimlico, with John A. Manfuso, Jr., becoming Co-Chairman of the Board of Pimlico and Robert T. Manfuso becoming Co-Chairman of the Board of Laurel. As officers and directors of Pimlico and Laurel, the Manfusos were and are required by Maryland law to ensure that the interests of the corporations are protected and that the officers and directors of the corporations place the best interests of the corporations ahead of their personal interests.

20. Since the parties executed the Stockholders' Agreement, the Manfusos have attempted to fulfill their fiduciary duties to Pimlico and Laurel by offering numerous suggestions and expressing their concerns about the operation of the racetracks. Notwithstanding the Manfusos' best efforts to provide useful information and advice to Joseph DeFrancis and Jacobs, their comments have been largely ignored. The Manfusos resigned their positions as officers of Pimlico and Laurel on June 1, 1990, after numerous disputes with DeFrancis and Jacobs.

V. SPECIFIC ALLEGATIONS OF ABUSES

21. The Manfusos have uncovered the following abuses in the operation of Pimlico and Laurel. The Manfusos have demanded that the Boards remedy these abuses. Despite their fiduciary duty to do so, Joseph DeFrancis and Jacobs have failed and

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refused to take any steps to protect Pimlico and Laurel from the abuses related below.

A. THE DIVERSION OF RESOURCES TO TEXAS

22. Shortly before Frank J. DeFrancis' death, Jacobs began to travel to Texas to assist in an effort to change Texas law to benefit the thoroughbred racing industry. Pimlico paid Jacobs' expenses in travelling to Texas.

23. In April, 1990, John A. Manfuso, Jr. uncovered a $33,000.00 wire transfer from Pimlico to a Texas lobbying organization. The Manfusos objected to this waste of corporate funds, and insisted that no further monies be diverted from the Maryland racetracks to Texas ventures. Joseph DeFrancis promised that no further funds would be expended by Pimlico and Laurel on Texas horse racing.

24. As President and Chairman of the Board of Pimlico and Laurel, Joseph DeFrancis is required to devote his time, attention and skill to advancing the best interests of those corporations. Under his leadership, however, the performance of the racetracks has drastically declined. Despite Pimlico's and Laurel's decreasing performance, DeFrancis has devoted an increasing amount of time to attempt to further his and Jacob's private interests in Texas horse racing.

25. Lone Star Jockey Club ("Lone Star") has applied to obtain a license to own and operate a Texas racetrack. DeFrancis and Jacobs have agreed to assist Lone Star's

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application. They have formed D/J Track Consultants, which is to receive one-half of the management fee Lone Star will pay to its management company. They will also receive an ownership interest in the racetrack if the application is successful.

26. In breach of his duties to Pimlico and Laurel, DeFrancis has devoted many hours to D/J Track Consultants and Lone Star.

27. In breach of his duties to Pimlico and Laurel, including his duty to devote substantially all of his time to his responsibilities at Pimlico and Laurel, Jacobs has expended many hours of time in assisting Lone Star on behalf of D/J Track Consultants. Jacobs has traveled frequently to Texas on Pimlico's and Laurel's time, to assist in this effort.

28. James Mango is a Vice-President of MJC and Laurel and the General Manager of both racetracks. He is the key employee of Pimlico and Laurel. The Stockholders' Agreement provides that Mango was to receive a ten-year employment contract as long as he devoted "substantially all of [his] time to [his] employment." On January 1, 1990, MJC and Laurel entered into an employment contract with Mango. Under his employment contract, Mango was required to provide "his best efforts and his full time and attention" to his duties to the racetracks.

29. In violation of their fiduciary duties to Pimlico and Laurel, Joseph DeFrancis and Jacobs have offered Mango an equity interest in D/J Track Consultants and have announced that their

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entity will now be known as D/J/M Track Consultants. DeFrancis and Jacobs have also required Mango to travel to Texas to assist the Lone Star application. Mango has spent Pimlico's and Laurel's time in these efforts. Upon information and belief, Joseph DeFrancis and Jacobs intend to require Mango to leave Pimlico and Laurel in the event that the Lone Star application is successful.

30. The successful operation of Laurel and Pimlico, brought about through the efforts of the Manfusos and Frank J. DeFrancis, involved setting up numerous management systems, the installation of marketing programs and techniques, and the use of other technical and proprietary matters, all of which constitute assets of Pimlico and Laurel. Upon information and belief, Jacobs and Joseph DeFrancis have disclosed or will disclose to Lone Star proprietary, confidential matters belonging to Pimlico and Laurel without either entity receiving fair or adequate consideration therefor.

31. Joseph DeFrancis and Jacobs have failed and refused to refund monies expended by Pimlico and Laurel for Lone Star's benefit, despite demand by the Manfusos.

B. LOAN ACCOUNTS

32. Since Joseph DeFrancis became President of Laurel and Pimlico, he has used his corporate credit card to charge numerous personal expenditures. He has also permitted Linda O'Dea, an executive employee of Laurel and MJC, to charge

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personal expenses to Laurel and Pimlico. Notwithstanding the fact that DeFrancis was paid over $700,000.00, and O'Dea over $150,000.00, and in breach of their fiduciary duties to the corporations, neither repaid those expenditures for a period of years. Although Joseph DeFrancis and O'Dea recently repaid the expenditures after repeated demands by the Manfusos, neither has reimbursed the corporations for their use of this money. Moreover, Joseph DeFrancis has established no system to ensure that such abuses do not occur again in the future.

C. ACCESS TO INFORMATION -- LEGAL FEES

33. Although Pimlico and Laurel jointly pay Jacobs almost $400,000.00 per year to serve as General Counsel, Treasurer, and Vice President of the corporations, and to devote his full time and best efforts thereto, Pimlico and Laurel still pay in excess of $276,000.00 in legal fees to outside counsel. The Manfusos, as Directors of the corporations, have repeatedly requested the invoices, breakdowns, and descriptions of the legal fees paid to outside counsel by the corporations, purportedly for corporate purposes. Despite their clear obligation and fiduciary duty to provide such information to the Manfusos, Joseph DeFrancis and Jacobs have failed and refused to do so.

D. ACCESS TO INFORMATION -- ACCOUNTING PRACTICES

34. Joseph DeFrancis and Jacobs have caused Pimlico to bear certain expenses pertaining to Laurel. The Manfusos believe that this practice is improper and that it decreases

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Pimlico's income to Pimlico's detriment. Consequently, the Manfusos have requested to speak to the independent auditors for Pimlico and Laurel. Although the Manfusos are Directors of both Pimlico and Laurel, Joseph DeFrancis and Jacobs have refused to permit the independent auditors to meet with the Manfusos, or their agents.

E. WASTE

35. Despite the Manfusos' objections, Joseph DeFrancis has authorized the expenditure of significant amounts of corporate funds for matters having no business purpose. For example, Joseph DeFrancis caused the corporations to donate $25,000.00 of their funds to the Florida Derby Gala. The Florida Derby Gala was conducted by the wife of Alec Courtelis, the co-executor of the estate of Frank J. DeFrancis. This contribution served absolutely no legitimate business purpose.

F. THE IMPROPER TRANSFER OF ASSETS FROM PIMLICO TO LAUREL

36. Although Joseph DeFrancis and Jacobs owe fiduciary duties to Pimlico as officers and directors, they have transferred valuable assets from Pimlico to Laurel, without fair or adequate consideration, over the Manfusos' objections.

37. For example, during 1990, Joseph DeFrancis and Jacobs caused Pimlico to transfer to Laurel 100% of the revenue from thirteen racing days running from February 1, 1990, through February 16, 1990. The Maryland Racing Commission assigned 134 racing days to Pimlico and 130 racing days to Laurel; however,

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because of the actions of Joseph DeFrancis and Jacobs, Pimlico received income for only 121 racing days, while Laurel received income for 143 racing days.

38. In 1989, an error occurred in the calculation of the amount of certain fees that Laurel had charged to Pimlico. Correcting the error benefitted Laurel by increasing the charge to Pimlico by $137,053.93. With the auditors' concurrence, Joseph DeFrancis and Jacobs decided that the adjustment was immaterial to Laurel's 1990 financial statement. Consequently, the auditors recorded the adjustment in Laurel's 1990 financial statement, not in a restated financial statement for 1989. By contrast, a similar error occurred in the previous year, 1988; however, the 1988 error would have benefitted Pimlico by reducing the charge to Pimlico by $44,516.00. The 1988 error was also considered immaterial, but it was never recorded anywhere in Laurel's books, presumably because correcting the error would have benefitted Pimlico to Laurel's detriment.

39. Joseph DeFrancis and Jacobs have directed that many expenses, such as officer's salaries, administrative salaries, telephone expenses, office supplies, etc., be allocated evenly between Pimlico and Laurel. That method of allocation benefits Laurel to Pimlico's detriment because Laurel has many more racing days than Pimlico.

40. In 1989, $130,000.00 in contribution expenses were allocated to Laurel, while $124,000.00 were allocated to

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Pimlico. In 1990, however, only $127,000.00 in contribution expenses were allocated to Laurel, while $215,000.00 were allocated to Pimlico. This gross discrepancy in the allocation of contribution expenses does not comport with Joseph DeFrancis' and Jacobs' actions in purportedly dividing other expenses "evenly" between Pimlico and Laurel.

41. Pursuant to the Stockholders' Agreement, the Manfusos are to receive specified amounts in severance pay. Joseph DeFrancis and Jacobs have caused the Manfusos' severance payments to be charged exclusively to Pimlico. Joseph DeFrancis and Jacobs have done so, moreover, notwithstanding that the 1989 financial statement for Pimlico and Laurel indicates that the payments should be evenly allocated between the two, notwithstanding that Jacobs confirmed the principle of equal allocation in a letter to the corporations' auditors dated March 13, 1990, and notwithstanding that Joseph DeFrancis also confirmed the principle of equal allocation in a letter to Louis P. Guida dated June 21, 1990.

42. Upon information and belief, Joseph DeFrancis has caused outside counsel's legal fees to be disproportionately borne by Pimlico.

G. MISLEADING FINANCIAL STATEMENTS

43. PRA and Laurel are required to issue financial statements to the Maryland Racing Commission, as well as to PRA and Laurel's senior lender. DeFrancis and Jacobs have caused

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financial statements to be prepared for PRA and Laurel which are misleading. Although the financial statements list figures for "officers' salaries," these figures do not include substantial management fees received by DeFrancis and Jacobs. Loans to officers of material amounts are also not listed. Racing revenues were artificially inflated for fiscal year 1991, since approximately $300,000.00 in income received as a result of a developer's default on a contract to purchase land adjacent to Bowie Racecourse was included in racing revenue and not separately listed. As Directors, the Manfusos sought to correct the financial statements, but were outvoted at a Board of Directors meeting by DeFrancis and Jacobs, and Directors under their control.

VI: COUNT ONE -- DECLARATORY RELIEF

44. The Manfusos reallege each and every allegation in paragraphs 1 through 43 of this Complaint as if those allegations appeared in full in this paragraph.

45. Joseph DeFrancis and Jacobs have breached fiduciary and other duties to Pimlico and Laurel and have thereby inflicted damage upon Pimlico and Laurel.

46. As directors, the Manfusos have the right and the responsibility to prevent Joseph DeFrancis and Jacobs from breaching their duties and from damaging Pimlico and Laurel.

47. Nevertheless, Joseph DeFrancis and Jacobs claim that the "standstill" provision of the Stockholders' Agreement

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prevents the Manfusos from seeking the Court's assistance to enjoin the breaches of duty alleged in this Complaint. The Manfusos, on the other hand, believe that the Stockholders' Agreement neither does nor legally can prevent them from exercising their fiduciary duties as directors to remedy the breaches of duty by others.

48. An actual controversy exists between the parties, because the abuses will continue unchecked unless the Court permits the Manfusos to remedy the breaches of duty through this action.

WHEREFORE, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., request the Court to declare that:

A. The Stockholders' Agreement does not prevent the plaintiffs from seeking the Court's assistance in remedying the breaches of duty as described above;

B. That, at the plaintiffs' behest, the Court may grant injunctive relief to redress breaches of duty by the defendants; and

C. That the matters alleged in this Complaint do in fact constitute breaches of duty by defendants Joseph DeFrancis and Martin Jacobs.

VII. COUNT TWO -- INJUNCTIVE RELIEF

49. The Manfusos reallege each and every allegation in paragraphs 1 through 48 of this Complaint as if those allegations appeared in full in this paragraph.

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50. The breaches of duty alleged in this Complaint threaten the integrity and the existence of Pimlico and Laurel. Consequently, those abuses pose a substantial threat of irreparable injury to the Manfusos as shareholders in Pimlico and Laurel.

51. The Manfusos have no adequate remedy at law to redress the injury that they will suffer unless the Court permanently enjoins Joseph DeFrancis and Jacobs from engaging in the breaches of duty abuses alleged in the Complaint.

WHEREFORE, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., request the Court to enter a permanent injunction:

A. Barring Joseph DeFrancis and Martin Jacobs from diverting the resources, key employees, or confidential and proprietary information of Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc., to any ventures in Texas or to any other ventures;

B. Requiring Joseph DeFrancis to take all necessary steps to obtain refunds to reimburse Laurel Racing Assoc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc. within thirty days for any expenses that he or other officers may incur in the future on corporate loan accounts;

C. Requiring Joseph DeFrancis and Martin Jacobs to grant the plaintiffs access to any information or documentation

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concerning legal fees charged to or paid by Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc.;

D. Requiring Joseph DeFrancis and Martin Jacobs to permit the plaintiffs and their agents to meet with the accountants for Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc.;

E. Barring Joseph DeFrancis and Martin Jacobs from wasting the assets of Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc.; and

F. Barring Joseph DeFrancis and Martin Jacobs from improperly transferring assets of The Maryland Jockey Club of Baltimore City, or Pimlico Racing Association, Inc., to Laurel Racing Assoc., Inc.

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STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (the "Agreement") is dated as of October 1, 1989, by and among THE ESTATE OF FRANK J. DeFRANCIS (the "Estate"), JOSEPH A. DeFRANCIS ("Joseph DeFrancis"), JOHN A. MANFUSO, JR. ("John Manfuso"), ROBERT T. MANFUSO ("Robert Manfuso"), MARTIN JACOBS ("Jacobs"), PIMLICO RACING ASSOCIATION, INC. ("Pimlico"), THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC., also known as The Maryland Jockey Club of Baltimore City ("Maryland Jockey Club"), and LAUREL RACING ASSOC., INC. ("Laurel"), (the Maryland Jockey Club, Pimlico, and Laurel are sometimes hereinafter collectively referred to as the "Corporations" and sometimes individually referred to as "Corporation", and John Manfuso and Robert Manfuso are sometimes hereinafter collectively referred to as the "Manfusos").

W I T N E S S E T H:

WHEREAS, the authorized and issued stock of the Corporations is comprised of voting and non-voting stock (collectively, the "Stock"); and

WHEREAS, Frank J. DeFrancis owned a controlling interest in the voting Stock of the Corporations; and

WHEREAS, the Stock owned by Frank J. DeFrancis is now held by the Estate; and

WHEREAS, Joseph DeFrancis is the designated successor-in-interest to the controlling interest in the Stock of the Corporations formerly owned by Frank J. DeFrancis and now held by

the Estate (the Estate and Joseph DeFrancis are hereinafter collectively hereafter referred to as "DeFrancis"); and

WHEREAS, Joseph De Francis is the owner of shares of Stock of Pimlico by virtue of his interest in the De Francis Family Partnership which terminated by operation of law upon the death of Frank J. De Francis and thereupon his interest passed directly to him; and

WHEREAS, the Manfusos and Jacobs are the owners of certain of the shares of Stock; and

WHEREAS, all of the authorized and issued Stock of Pimlico and Laurel is owned by the Stockholders (as hereinafter defined) in the following amounts:

Pimlico

Number of Shares of Capital Stock

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
DeFrancis	550	4,150	4,700
Robert Manfuso	210	2,140	2,350
John Manfuso	210	2,140	2,350
Jacobs	30	570	600
	1,000	9,000	10,000

Laurel

Number of Shares of Capital Stock

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
DeFrancis	550	2,200	2,750
Robert Manfuso	350	1,525	1,875
John Manfuso	-0-	1,875	1,875
Jacobs	-0-	1,000	1,000
	900	6,600	7,500

WHEREAS, the Corporations are engaged, directly or indirectly, in the business of horse racing in the State of Maryland through the operation of racing facilities at Laurel and Pimlico Race Courses and training facilities at Bowie Race Course (hereinafter collectively referred to as the "Racing Facilities"); and

WHEREAS, DeFrancis, John Manfuso, Robert Manfuso, and Jacobs (hereinafter collectively referred to as the "Stockholders") wish to provide for the continued orderly operation of the Corporations and the Racing Facilities.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in this Agreement, the parties desiring to be legally bound hereto agree as follows:

I. MANDATORY BUY/SELL OF STOCK

A. In the event that Joseph DeFrancis dies or becomes permanently incapacitated within four years of October 1, 1989 (the "Four-Year Anniversary"), the estate of Joseph DeFrancis will consult with John Manfuso and Robert Manfuso regarding the choice of a successor to Joseph DeFrancis as President, Chief Executive Officer, and Co-Chairman of the Board of the Corporations. If the estate of Joseph DeFrancis is unable to agree with at least one of the Manfusos as to such successor within twelve months of the death or permanent incapacity of Joseph DeFrancis, then the estate of Joseph DeFrancis, on the one hand, or the Manfusos, on the other, may invoke the mandatory buy/sell provisions as set forth in Section I-D below. The provisions of this Section I-A are personal to John Manfuso and

Robert Manfuso and shall not survive their death or the transfer of all or substantially all of the Stock owned by either of the Manfusos to any party. For example, if Joseph DeFrancis dies or becomes permanently incapacitated, his estate must confer with the Manfusos regarding a successor, but the estate of Joseph DeFrancis shall have no obligation to confer with the estates of either Manfuso.

B. In the event that Joseph DeFrancis determines to take affirmative action to effectuate any Major Matter (as defined in Section XI hereinbelow) and both John Manfuso and Robert Manfuso disagree with such action, then after giving written notice, Joseph DeFrancis, on the one hand, or the Manfusos, on the other, may invoke the mandatory buy/sell provisions as set forth in Section I-D below.

C. At any time after the Four-Year Anniversary, Joseph DeFrancis, on the one hand, or the Manfusos, on the other, may invoke the mandatory buy/sell provisions as set forth in Section I-D below.

D. Upon the occurrence of the events described in Sections I-A, I-B, or I-C above, the Stockholders may invoke and put into effect a mandatory buy/sell of the Stock on the following terms:

1. DeFrancis and Jacobs (the "DeFrancis Group") or John Manfuso and Robert Manfuso (the "Manfuso Group") may by written notice tender ("Original Tender") all of its Stock to the Corporations for any price as stated in such notice (the "Transfer Price"); provided, however, that (a) only DeFrancis can

initiate such a tender for the DeFrancis Group, but once such a tender is made, all of the Stock of DeFrancis and Jacobs must and shall be tendered, and (b) either John Manfuso or Robert Manfuso can initiate such a tender for the Manfuso Group, but once such a tender is made, all of the Stock of both Manfusos must and shall be tendered; and provided further that all of the Stock now owned by the DeFrancis Group or the Manfuso Group is included in these mandatory buy/sell provisions and is subject to the provisions of this Section I-D, regardless of the subsequent ownership of such Stock, except that if any of the Stock of any of the Stockholders is sold to an unrelated third party, these mandatory buy/sell provisions shall not apply to such Stock.

2. (a) Upon the receipt of the Original Tender of the Stock, the Corporations, within sixty (60) days of the receipt of such tender, must determine whether they will purchase the Stock of the tendering Group at the Transfer Price. In making the determination pursuant to this Section I-D(2)(a) whether the Corporations will purchase the Stock of the tendering Group, the Stockholders in the tendering Group shall vote their Stock in accordance with the wishes of the Stockholders in the non-tendering Group. If any of the Corporations shall not have sufficient surplus to permit it lawfully to purchase all of its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3), then all of the Stockholders, including the Estate, shall promptly vote their respective shares of Stock in each Corporation to cause each Corporation, if required, to reduce its capital or to take such other steps as

may be appropriate or necessary to enable each Corporation lawfully to purchase and pay for its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3). However, no Stockholder shall be obligated or required to contribute any personal funds in connection with any such action or steps.

(b) If the Corporations determine that they will not purchase the Stock of the tendering Group, then such Stock shall then be immediately thereafter tendered to the non-tendering Group. The non-tendering Group must, within ninety (90) days of the Original Tender to the Corporations, either, at its option, (i) purchase the Stock of the tendering Group at the Transfer Price, or (ii) offer to sell all of its Stock to the Corporations at the Transfer Price. In the event that the non-tendering Group elects to sell its own Stock to the Corporations at the Transfer Price, the Corporations must determine within one hundred and twenty (120) days of the Original Tender to the Corporation whether they will purchase the Stock of the non-tendering Group at the Transfer Price. In making the determination pursuant to this Section I-D(2)(b) whether the Corporations will purchase the Stock of the non-tendering Group, the Stockholders in the non-tendering Group shall vote their Stock in accordance with the wishes of the Stockholders in the tendering Group. If any of the Corporations shall not have sufficient surplus to permit it lawfully to purchase all of its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3), then all of the Stockholders, including the Estate, shall promptly

vote their respective shares of Stock in each Corporation to cause each Corporation, if required, to reduce its capital or to take such other steps as may be appropriate or necessary to enable each Corporation lawfully to purchase and pay for its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3). However, no Stockholder shall be obligated or required to contribute any personal funds in connection with any such action or steps. If the Corporations determine that they will not purchase the Stock of the non-tendering Group, then the tendering Group shall be obligated to purchase at the Transfer Price such Stock or any part thereof unpurchased by the Corporations not later than one hundred and twenty (120) days after the Original Tender to the Corporation.

3. Such sale of Stock by either the tendering or non-tendering Group shall be effected on the following terms:

(a) The purchasing party must pay 20% of the price of such Stock in immediately available funds.

(b) The purchasing party shall pay the remaining 80% of the purchase price of such Stock in five equal annual installments; provided, however, that the purchasing party shall have the right, at any time, to accelerate payment for the remaining portion of the Stock. In addition, the purchasing party shall execute a Promissory Note in a form substantially similar to Exhibit 1 hereto evidencing the obligation for payment of the remaining 80% of the purchase price of such Stock, which Note shall bear interest on the unpaid

balance of the Stock at the prime rate of interest established, and as modified from time to time, by First National Bank of Maryland, payable quarterly with interest calculated at the aforesaid established rate as it exists ten (10) days before the due date of any interest payment. Regardless whether the Corporations or the DeFrancis Group or the Manfuso Group purchases the Stock, the Promissory Note shall be secured by a pledge of the Stock and shall provide for the personal liability of all Stockholders not in the selling party and for the personal liability of the spouse, if any, of each of such Stockholders, which liability shall be assumed solely in proportion to the relative Stock ownership of such Stockholders calculated after the purchase of such Stock.

(c) The purchasing party will use best efforts to have the Stockholders of the selling party removed from and absolved of any personal liability for the debts of the Corporations. If personal liability of the Stockholders of the selling party is not so removed, the purchasing party shall indemnify Stock-holders of the selling party for such personal liability.

(d) The closing of the sale of Stock hereunder shall take place within one hundred and twenty (120) days from the date of mailing the written notice of the Original Tender provided for under

Section I-D(1) at the executive offices of Laurel Race Track, Laurel Race Track Road and Route 198, Laurel, Maryland 20707 (the "Laurel Offices").

(e) In the event of the sale of all or substantially all of the Stock of the Corporations by the purchasing party to any unrelated third party, or upon the sale of all or substantially all of the assets of the Corporations to any party unrelated to the purchasing party, the unpaid balance of such Promissory Note together with the accrued interest thereon shall be immediately due and payable.

II. STOCK PURCHASE AS A RESULT OF DEATH OR PERMANENT INCAPACITY

A. Upon the death or permanent incapacity of Joseph DeFrancis, his legal representative or his estate shall have the right, at his or its discretion, to "put" the Stock owned by the DeFrancis Group to the Corporations on the terms provided in this Section II; upon the death or permanent incapacity of either John Manfuso or Robert Manfuso, either John Manfuso or Robert Manfuso, or the estate of either Manfuso, or the legal representative of either Manfuso, shall have the right, at his or its discretion, to "put" the Stock owned by the Manfuso Group to the Corporations on the terms provided in this Section II; provided, however, that (a) only the legal representative or estate of Joseph DeFrancis may decide whether to put the Stock owned by the DeFrancis Group, but once such a put is made, all of the Stock of DeFrancis and Jacobs must and shall be put, and (b) either John Manfuso or

Robert Manfuso (or the legal representative or estate of either) may decide whether to put the Stock owned by the Manfuso Group, but once such a put is made, all of the Stock of both Manfusos must and shall be put.

B. Such a put by either the DeFrancis Group or the Manfuso Group shall be executed on the following terms:

1. The purchase price for the Stock shall be determined by establishing the average of the "net cash flow" for Pimlico (on a consolidated basis with the Maryland Jockey Club) and Laurel (taking into account 50% of the "net cash flow" of Laurel Racing Association Limited Partnership) for the three years immediately preceding the "put." For purposes of this Agreement, "net cash flow" shall mean income before income taxes, per audited annual financial statements for the three previous annual periods, exclusive of extraordinary income and extraordinary costs (including improvements and betterments) and expenses, less provision for income taxes at corporate rates computed without net operating loss carryovers, to which (a) shall be added depreciation, and (b) shall be subtracted principal payments on indebtedness and cash payments on such extraordinary costs (including improvements and betterments) and such extraordinary expenses, amortized over three years. The average "net cash flow" shall be determined by adding "net cash flow" for each of the three years immediately preceding the put and dividing by 3, and the average "net cash flow" number so derived shall then be multiplied by 5, which product shall be the "net cash flow product". To or from this net cash flow product

shall then be (x) added any extraordinary income for the three years, net of income taxes at corporate rates computed without net operating loss carryovers, to the extent not distributed, and (y) subtracted any deductions which may occur pursuant to Section III-B and Section VI-A (4) of this Agreement. The resulting total shall be the "valuation total".

2. The purchase price for the Stock which is "put" shall be determined by multiplying the "valuation total" by the percentage that the Stock which is put represents of the total of all the Stock. For example, if the Manfuso Group "puts" Stock representing 40% of the total of all the Stock, and the "valuation total" is $30,000,000, then the purchase price for the Stock "put" by the Manfuso Group shall be (.40) x ($30,000,000) = $12,000,000.

3. The "put" option as described in this Section II must be exercised, on the one hand, by Joseph DeFrancis (or his estate or legal representative) within ninety (90) days of the death or permanent incapacity of Joseph DeFrancis, and on the other hand, by John Manfuso or Robert Manfuso (or the estate or legal representative of either) within ninety (90) days of the death or permanent incapacity of John Manfuso or Robert Manfuso. If the "put" option is not so exercised within ninety (90) days, it shall expire; provided, however, that if the "put" right for one Manfuso is not so exercised within ninety (90) days, the "put" right for the other Manfuso shall not thereby be extinguished.

4. Payment for the Stock "put" to the Corporation pursuant to this Section II shall be made in cash within one hundred eighty (180) days of the exercise of the "put" option.

5. If the Corporation declines to purchase the Stock which is "put" pursuant to this Section II, then the remaining Stockholders must purchase such Stock on a pro rata basis in accordance with the terms of this Section II.

6. Any "put" pursuant to this Section II by either the DeFrancis Group or the Manfuso Group must and shall include all of the Stock of such Group. The right to purchase, pursuant to a "put", all of the Stock of the DeFrancis Group or the Manfuso Group shall apply to all the Stock now owned by DeFrancis, John Manfuso and Robert Manfuso, and shall be binding upon subsequent owners of such Stock, with the exception of Stock which is transferred to an unrelated third party, which Stock shall not be included in any such put. Thus, for example, if Joseph DeFrancis transfers a portion of his Stock to a Related Party (as hereinafter defined) and, upon the death of Joseph DeFrancis, the estate of Joseph DeFrancis "puts" the Stock it holds pursuant to this Section II, the Manfuso Group shall have the right to purchase the Stock owned by such Related Party. Likewise, if the Manfusos transfer a portion of their Stock to a Related Party, and, upon the death of one of the Manfusos, the estate of such Manfuso "puts" the Stock it holds pursuant to this Section II, the DeFrancis Group shall have the right to purchase all of the Stock now owned by both Manfusos including the Stock owned by such Related Party.

7. The closing of the said "put" Stock to be purchased by the remaining Stockholders hereunder shall take place sixty (60) days from the date the Corporation declines to purchase the Stock which is "put" pursuant to this Section II at the Laurel Offices.

III. BENEFIT PAYABLE UPON DEATH OR PERMANENT INCAPACITY

A. Upon the death or permanent incapacity of any of Joseph DeFrancis, John Manfuso, or Robert Manfuso, within sixty (60) days each of the Stockholders shall receive a benefit payment in the following amounts:

1. $2,500,000 to Joseph DeFrancis,
2. $1,250,000 to John Manfuso,
3. $1,250,000 to Robert Manfuso,
4. $300,000 to Jacobs.

B. If the "put" option described in Section II above is or has been exercised by a Stockholder or Stockholder's representative as a result of the death or permanent incapacity of Joseph DeFrancis, John Manfuso, or Robert Manfuso, the amount of the total benefit payment to all Stockholders (i.e., $5,300,000) shall be subtracted from the "net cash flow product" as described in Section II above in calculating the "valuation total" for the purchase price of the Stock which is "put".

IV. PIGGYBACK RIGHTS AND OBLIGATIONS

A. Joseph DeFrancis agrees that he will not, during his lifetime, sell any of the Stock owned by DeFrancis to any unrelated third party or the Corporations nor will any Stock owned by the Estate be sold by the Estate unless (a) DeFrancis

shall have obtained an agreement from the proposed purchaser granting John Manfuso, Robert Manfuso and Jacobs an option to sell or dispose of an equal percentage of the Stock owned by John Manfuso, Robert Manfuso and Jacobs at the same time and on the same terms and conditions as exist with respect to the proposed sale of the Stock owned by DeFrancis, and (b) John Manfuso and Robert Manfuso have been offered and have declined to exercise their rights of first refusal as provided in Section V of this Agreement.

B. If Joseph DeFrancis obtains such an agreement as described in Section IV-A hereof for the sale of his own Stock as well as the Stock owned by John Manfuso, Robert Manfuso and Jacobs, and if Joseph DeFrancis sells all or substantially all of the Stock owned by DeFrancis pursuant to such an agreement, then John Manfuso, Robert Manfuso and Jacobs must also sell under the agreement an equal aggregate percentage of the Stock which they own. If, however, Joseph DeFrancis sells less than substantially all of the Stock owned by DeFrancis pursuant to such an agreement, then John Manfuso, Robert Manfuso and Jacobs shall have the right, but not the obligation, to sell an identical aggregate percentage of the Stock which they own.

C. The provisions of this Section IV shall also apply to any Stock owned by any party which is a Related Party to any of the Stockholders.

V. RIGHT OF FIRST REFUSAL

A. In the event that any Stockholder receives an offer that he is willing to accept for the purchase of his Stock

by an unrelated third party, the other Stockholders shall have a right of first refusal to purchase such Stock on the same terms and conditions as offered by the third party; provided, however, that any Stockholder purchasing Stock under this Section V-A may elect to pay the purchase price in installments and on the terms as set forth above in Section I-D(3)(a), (b), (c) and (d).

B. The right of first refusal described in Section V-A above shall not apply to a sale or other transfer by any party to a Related Party.

C. The rights and obligations of this Section V shall attach to the Stock now owned by each of the Stockholders, and shall be binding upon any subsequent owner of such Stock; provided, however, that any Stock transferred to an unrelated third party after being offered to other Stockholders pursuant to the provisions of this Section V shall no longer be subject to the provisions of this Section V.

VI. EMPLOYMENT AGREEMENTS WITH JOHN MANFUSO AND ROBERT MANFUSO

A. The Corporations shall execute Employment Agreements with John Manfuso and Robert Manfuso on the following terms:

1. John Manfuso and Robert Manfuso shall each receive his current salary and other benefits so long as each continues to devote substantially all of his normal working time to his employment (as in the past) with the Corporations and continues to perform duties substantially similar to those currently being performed.

2. John Manfuso and Robert Manfuso shall each be employed by the Corporations and shall be permitted, without interference from the Corporations, to continue to perform the duties assigned to him by the Corporations. So long as John Manfuso and Robert Manfuso continue to perform duties substantially similar to those currently being performed and continue to devote substantially all of their working time to their employment (as in the past) with the Corporations, and so long as there is no material breach in performance of duties by John Manfuso and Robert Manfuso (which breach John Manfuso or Robert Manfuso will be given a reasonable opportunity to cure), there will be no reduction in the salaries or other benefits of John Manfuso or Robert Manfuso unless there is a pro rata reduction applicable to the Manfusos and Joseph DeFrancis. No such material breach by John Manfuso or Robert Manfuso shall be considered to occur through the reduction by the Corporations of the duties assigned to John Manfuso or Robert Manfuso.

3. In the event that total compensation payments to Joseph DeFrancis and members of his family are equal to the total compensation payments to both of the Manfusos, the Manfusos' compensation payments shall be increased on a pro rata basis in an amount equal to any further increases in the compensation payable to Joseph DeFrancis and members of his family. In the event that either John Manfuso or Robert Manfuso is no longer actively employed, such pro rata increase shall only apply if the total compensation payable to Joseph DeFrancis and members of his

family is equal to twice the amount of compensation payable to whichever Manfuso is still actively employed.

4. Either John Manfuso or Robert Manfuso, or both, may terminate his employment at any time. Upon the termination of the employment of John Manfuso or Robert Manfuso for any reason, the Manfuso whose employment is terminated shall receive a termination payment of $1,250,000. If termination occurs prior to the Four-Year Anniversary, the terminating employee shall also be entitled to receive severance payments of $10,416.67 per month for each month remaining in the forty-eight month period commencing with the execution of this Agreement and shall be entitled to continued health insurance premium payments for each month remaining in such forty-eight month period. In the event of such termination, the terminating employee (either John Manfuso, Robert Manfuso, or both) shall not be entitled to benefits payable upon death or incapacity as provided in Section III-A above. In the event either John Manfuso or Robert Manfuso terminates his employment and receives aforesaid termination payment, special payments shall be paid of $1,250,000 to DeFrancis and $150,000 to Jacobs, and the benefits payable to DeFrancis and Jacobs upon death or incapacity as set forth in Section III-A above shall be reduced by such amounts. In the event that termination payments are made pursuant to this Section VI-A(4), the amounts of such termination payments shall be subtracted from the "net cash flow product" as described in Section II above in calculating the "valuation total" for the purchase price of the Stock which is "put".

5. If, after the termination of active employment by either Manfuso, the total annual direct or indirect compensation payments to DeFrancis and the members of his family become equal to the highest annual total compensation payments which were payable to the Manfusos prior to the termination of employment of either Manfuso, any subsequent increase in compensation to DeFrancis and the members of his family, as a group, shall not exceed nine percent (9%) per annum.

6. The employment of John Manfuso or Robert Manfuso, or both, may be terminated for cause at any time, but such termination shall in no way affect the right of John Manfuso or Robert Manfuso to receive the termination payment as provided in this Section VI.

7. The Employment Agreements shall not survive the sale or other disposition of all or substantially all the Stock by the Stockholders or all or substantially all the assets of the Corporations. The Employment Agreement of either of the Manfusos shall not survive the sale or other disposition by him of all or substantially all of his Stock.

8. Each Employment Agreement shall terminate upon the respective death or permanent incapacity of John Manfuso and Robert Manfuso.

9. The Employment Agreements shall not guarantee future increases in salaries or benefits based upon the profitability of the Corporations or any other contingency.

B. All of the provisions of this Section VI, (including the provisions providing for payments) shall be in

full force and effect from and after the date of this agreement and shall constitute an employment agreement for each of the Manfusos until such time as substitute employment agreements shall be mutually agreed to and executed.

VII. EMPLOYMENT AGREEMENTS FOR JACOBS, O'DEA, AND MANGO

A. The Corporations shall execute Employment Agreements with Jacobs, Lynda J. O'Dea ("O'Dea"), and James P. Mango ("Mango") on the following terms:

1. Employee shall receive his/her current salary with normal increases as long as Employee continues to devote substantially all of his/her time to his/her employment and continues to perform duties substantially similar to those currently being performed. In the case of Jacobs, such salary shall include the amounts currently being paid to Ginsburg, Feldman and Bress Chartered for Jacobs' services but shall not include amounts paid to Ginsburg, Feldman and Bress Chartered for any other reason.

2. As long as Employee continues to devote substantially all of his/her time to his/her employment and continues to perform duties substantially similar to those currently being performed, and so long as there is no material breach in performance of duties by Employee (which breach Employee will be given a reasonable opportunity to cure), there will be no reduction in salary unless there is a pro rata reduction in the salaries paid to Joseph DeFrancis and to the Manfusos. No such material breach shall be considered to occur through the reduction by the Corporations of the duties assigned to Employee.

3. The Employment Agreements shall have ten (10) year terms, and shall not guarantee future increases in salaries or benefits based upon the profitability of the Corporations or any other contingency.

4. The employment of the Employees may be terminated for cause at any time.

5. The Employment Agreements with O'Dea and Mango may be terminated without cause at any time upon payment by the Corporations to the terminated Employee of an amount equal to thirty percent (30%) of the amounts which the Employee would have received in each of the years remaining in the ten-year term.

6. The Employment Agreements with Jacobs, O'Dea, and Mango will survive the sale of all or substantially all of the Stock or all or substantially all the assets of the Corporations. If the purchaser of the Stock or the assets does not agree to continue Employees' employment for the remainder of the ten-year term, the Corporations agree to pay such Employees thirty percent (30%) of the amounts which the Employees would have received in each of the years remaining in the ten-year terms.

VIII. POSITIONS AND TITLES

Joseph DeFrancis, John Manfuso, Robert Manfuso, and Jacobs shall have the following positions and titles:

A. Pimlico

1. Joseph DeFrancis: Director and Co-Chairman of the Board; President and Chief Executive Officer. The duties of DeFrancis shall be the same as previously undertaken by Frank J. DeFrancis, including full authority over operational and managerial decisions and policies, relations

		with the press, legislature and governmental authorities.
2.	John Manfuso:	Director and Co-Chairman of the Board; Executive Vice-President and Secretary.
3.	Robert Manfuso:	Director and Vice-Chairman of the Board; Executive Vice-President.
4.	Jacobs:	Director and Executive Vice-President and Treasurer.

B. Laurel

1.	Joseph DeFrancis:	Director and Co-Chairman of the Board; President and Chief Executive Officer. The duties of DeFrancis shall be the same as previously undertaken by Frank J. DeFrancis, including full authority over operational and managerial decisions and policies, relations with the press, legislative and governmental authorities.
2.	John Manfuso:	Director and Vice-Chairman of the Board; Executive Vice-President and Secretary.
3.	Robert Manfuso:	Director and Co-Chairman of the Board; Executive Vice President.
4.	Jacobs:	Director and Executive Vice-President and Treasurer.

C. Directorships.

As long as each of John Manfuso and Robert Manfuso shall own all or substantially all of the shares of Stock that he now owns and shall be wiling and able to serve, he shall continue to be elected a Director of each of the Corporations and, in addition, each shall be appointed to the position of Co-Chairman of the Board of Directors that he now occupies. If either of the Manfusos commits a material act of dishonesty, fraud, misrepresentation or other act of moral turpitude, or if he is

unable to serve due to permanent incapacity, he may be removed from such Boards of Directors but he shall in such event have the right to designate an individual (or successor to such individual) reasonably acceptable to Joseph De Francis in each case to replace him on such Boards of Directors. The provisions of this Paragraph C shall be applicable regardless of any contrary provisions of the Articles of Incorporation, By-Laws or minutes of shareholders or directors of the Corporation.

IX. RIGHTS AND OBLIGATIONS

A. Other Ventures. No party to this Agreement shall have any right or obligation to participate in any other business venture, of any kind whatsoever, with any other party to this Agreement; provided, however, that nothing in this Agreement shall preclude any party to this Agreement from entering into any business venture with any other party to this Agreement. The provisions of this Section IX-A shall attach to the Stock now owned by DeFrancis, John Manfuso, Robert Manfuso, and Jacobs and shall be binding upon any subsequent owner of such stock.

B. Survival. Except as otherwise expressly provided herein, no rights established pursuant to this Agreement shall survive the sale or other disposition of all or substantially all of the Stock owned by DeFrancis to unrelated parties or the sale or other disposition of all or substantially all of the Stock owned by John and Robert Manfuso to unrelated parties or the sale of all or substantially all of the assets of the Corporations to unrelated parties. As long as partial sales of Stock by DeFrancis, John Manfuso, and Robert Manfuso do not contravene the

provisions of this Agreement (including without limitation this Section IX-B), the rights and obligations established pursuant to this Agreement shall remain in effect.

C. Transferability. Any and all transfers of the Stock must include a written agreement, reasonably satisfactory to the other Stockholders, signed by the transferee of such Stock and expressly acknowledging that the transferee is acquiring the Stock subject to this Agreement and stating that the transferee will abide and be bound by the provisions of this Agreement. All shares of the Stock shall be appropriately legended to this Stockholders Agreement. Any transfer of the Stock that does not comply with this Section IX-C shall be null and void and of no effect.

X. STANDSTILL PROVISION

With the exception of litigation based on criminal activity or on a breach of the terms of this Agreement or documents executed pursuant hereto, the parties to this Agreement agree that, prior to October 1, 1993, they will not institute or join in any legal dispute or action against any party to this Agreement concerning the business or operations of Pimlico or Laurel. If, after October 1, 1993 but prior to October 1, 1994, any party to this Agreement institutes or joins in any legal dispute or action against any other party to this Agreement concerning the business or operations of Pimlico or Laurel, the party against whom such dispute or action is brought agrees not to raise the statute of limitations as a defense to such action. The provisions of this Section X shall attach to the Stock now

owned by the Stockholders and shall be binding upon any subsequent owner of such Stock.

XI. MAJOR MATTERS

A. DeFrancis shall keep the Manfusos currently informed about and apprised of all Major Matters. For purposes of this Agreement, "Major Matters" shall mean:

1. The sale of all or substantially all assets of the Corporations or Laurel Racing Association Limited Partnership;

2. Refinancing, other than the modification of existing debt or the replacement of existing debt with a like amount and on terms no more onerous than at present;

3. Additional financing;

4. Merger and/or acquisition; and

5. Purchase of substantial assets other than assets to be located at Pimlico Race Course, Laurel Race Course, or Bowie Race Course.

B. In the event that DeFrancis determines to take affirmative action to effectuate any Major Matter and both of the Manfusos disagree with such action, then the DeFrancis Group or the Manfuso Group may exercise the Mandatory Buy/Sell provisions as set forth in Section I hereof. The rights of John Manfuso and Robert Manfuso under this Section XI shall apply only to John Manfuso and Robert Manfuso (and, in the event of the death of either of them, to the personal representatives of their respective estates), and shall not be transferable to any other party.

XII. MISCELLANEOUS

A. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Family Members" shall mean parents, siblings, descendants, and spouses.

"Permanent Incapacity" shall mean the continuous and uninterrupted inability of a party to perform his duties described in Section VIII of this Agreement for a period of ninety (90) days or longer without a reasonable possibility of recovery.

"Related Parties" of a person shall mean that person, any entity controlled by such a person, any trust created by or for the benefit of such person, the estate of such person, such person's Family Members, entities controlled by such person's Family Members, and trusts for the benefit of such Family Members.

"Substantially all" of the Stock of a Stockholder shall mean eighty percent (80%) or more of any class of Stock owned by such Stockholder, including Stock owned by the Estate.

"Substantially all" of the assets of a Corporation shall mean 80% or more of the assets of such Corporation, which assets shall include racing rights (including Preakness rights) and real estate utilized in the operations of any of the race tracks.

B. Complete Agreement. This Agreement is the complete agreement among the parties and is the sole governing instrument concerning the subject matter. This Agreement

supersedes all prior agreements and understandings among the parties, written or oral, which may have related to the subject matter hereof in any way, including without limitation the Laurel Shareholders' Agreement.

C. Waiver. A party's failure at any time to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of each party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

D. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under the applicable law or rule in any jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegality and unenforceability in such jurisdiction, without invalidating the remainder of this Agreement in such jurisdiction or any provision hereof in any other jurisdiction.

E. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same Agreement.

F. Governing Law. This Agreement will be governed by and construed and enforced in accordance with the laws (but not the laws relating to choice or conflicts of laws) of the State of Maryland.

C. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

H. Notices. All notices, requests, demands and other communications under or in connection with this Agreement shall be in writing, and (a) if to the ESTATE OF FRANK J. DeFRANCIS, shall be addressed to:

Estate of Frank J. DeFrancis
c/o Joseph A. DeFrancis, Personal Representative
Laurel Race Course
Laurel Racetrack Road & Route 198
Laurel, Maryland 20725

Estate of Frank J. DeFrancis
c/o Alec P. Courtelis, Personal Representative
701 Brickell Avenue
Suite 1400
Miami, Florida 33131-2822

with a copy to:

Michael I. Sanders, P.C.
Ginsburg, Feldman & Bress Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

(b) if to JOSEPH A. DeFRANCIS, shall be addressed to:

Joseph A. DeFrancis
Apartment 606
2501 Calvert Street, N.W.
Washington, D.C. 20036

with a copy to:

McGee Grigsby, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

(c) if to JOHN A. MANFUSO, JR., shall be addressed to:

John A. Manfuso, Jr.
8401 Connecticut Avenue
Chevy Chase, Maryland 20815

with a copy to:

Herbert S. Garten, Esquire and
Sheldon G. Dagurt, Esquire
Fedder and Garten Professional Association
36 South Charles Street
Suite 2300
Baltimore, Maryland 21201,

(d) if to ROBERT T. MANFUSO, shall be addressed to:

Robert T. Manfuso
8401 Connecticut Avenue
Chevy Chase, Maryland 20815

with a copy to:

Herbert S. Garten, Esquire and
Sheldon C. Dagurt, Esquire
at the address provided above,

(e) if to MARTIN JACOBS, shall be addressed to:

Martin Jacobs
710 Belgrade Road
Silver Spring, Maryland 20902,

(f) if to THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC., PIMLICO RACING ASSOCIATION, INC., or to LAUREL RACING ASSOC., INC., shall be addressed to:

Joseph A. DeFrancis
Laurel Race Course
Laurel Racetrack Road & Route 198
Laurel, Maryland 20725

with a copy to:

McGee Grigsby, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004.

All such notices, requests, demands or communications, shall be mailed, postage prepaid, certified mail, return receipt requested or delivered personally, and shall be sufficient and effective when delivered to or received at the address so specified. Any party may change the address at which it is to receive notice by like written notice to the other.

I. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors, personal representatives, heirs and assigns.

J. Voting of Stock. Each of the Stockholders shall vote his shares of Stock in compliance and consistent with the requirements of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[Signature Pages Follow]

THE ESTATE OF FRANK J. DeFRANCIS

By: Joseph A. DeFrancis (SEAL)
Title: Executor

By: Alee P. Courtelis (SEAL)
Title: Executor

Joseph A. DeFrancis (SEAL)

John A. Manfuso, Jr. (SEAL)

Robert T. Manfuso (SEAL)

Martin Jacobs (SEAL)

THE MARYLAND JOCKEY CLUB OF
BALTIMORE CITY, INC.

By: Joseph A. DeFrancis (SEAL)
Title: President

PIMLICO RACING ASSOCIATION, INC.

By: Joseph A. DeFrancis (SEAL)
Title: President

LAUREL RACING ASSOC., INC.

By: Joseph A. DeFrancis (SEAL)
Title: President

ANDREW JAY GRAHAM *†
JAMES M. KRAMON *†
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR†
JAMES P. ULWICK†‡
PHILIP M. ANDREWS
GERTRUDE C. BARTEL†
MARILYN HOPE FISHER*o
MAX HIGGINS LAUTEN†
KATHLEEN A. BIRRANE
KEVIN F. ARTHUR
ARON U. RASKAS†
SETH M. ROTENBERG

* ALSO ADMITTED IN NY
† ALSO ADMITTED IN DC
‡ ALSO ADMITTED IN NJ
o ALSO ADMITTED IN CA

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
20 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
(410) 752-6030
FACSIMILE
(410) 539-1269

BEL AIR OFFICE:
THE EMMORTON PROFESSIONAL BUILDING
2107 LAUREL BUSH ROAD
BEL AIR, MARYLAND 21015
(410) 515-0040
(410) 569-0299
FACSIMILE
(410) 569-0298

OF COUNSEL
FREDERICK STEINMANN

April 29, 1992

HAND-DELIVERED

Clerk
Circuit Court for Baltimore City
Courthouse East
111 N. Calvert Street
Baltimore, Maryland 21202

Re: Robert T. Manfuso and John A. Manfuso, Jr.
vs. Joseph A. DeFrancis, et al.

Dear Clerk:

Enclosed for filing please find an original and one copy of Complaint for Declaratory and Injunctive Relief. Also enclosed is a check payable to the Clerk in the amount of $90.00, in payment of the filing fee.

Please return a date-stamped copy of the Complaint to the messenger and call this office when the summonses have been issued. The summonses will be served by private process.

Thank you for your assistance in this matter.

Very truly yours,

James P. Ulwick

James P. Ulwick

JPU:sms

Enclosures

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ANDREW JAY GRAHAM*†
JAMES M. KRAMON*†
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR†
JAMES P. ULWICK†‡
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KEVIN F. ARTHUR
ARON U. RASKAS†
SETH M. ROTENBERG

* ALSO ADMITTED IN NY
† ALSO ADMITTED IN DC
‡ ALSO ADMITTED IN NJ
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(410) 569-0298

OF COUNSEL
FREDERICK STEINMANN

April 29, 1992

VIA HAND-DELIVERY

The Honorable Joseph H. H. Kaplan
Administrative Judge
Circuit Court for Baltimore City
Courthouse East
111 N. Calvert Street
Baltimore, Maryland 21202

Re: Robert T. Manfuso and John A. Manfuso, Jr.
vs. Joseph A. DeFrancis, et al.

Dear Judge Kaplan:

Enclosed please find a copy of a new action which I have filed on behalf of the plaintiffs today. As Your Honor can see, this action seeks a declaratory judgment pursuant to Section 3-401 of the Courts & Judicial Proceedings Article, of the Annotated Code of Maryland. Pursuant to Section 3-409(e), "[a] court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar." On behalf of the plaintiffs, I respectfully request that you specially assign this matter and direct the judge who will hear the matter to order a speedy hearing and advance the matter on the calendar. The reasons for my request are stated below.

First, this matter involves the legal question of whether or not the various breaches of fiduciary duty alleged by the plaintiffs constitute appropriate grounds to avoid a "Standstill Agreement" previously entered into by the parties. Plaintiffs' overriding fear is that the nature of the abuses set forth in the Complaint are such that the business may be irreparably harmed before the conclusion of the standstill period.

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Second, since the Complaint requests declaratory and injunctive relief only, no jury trial is necessary. The primarily legal nature of the claims are therefore susceptible to an early hearing and resolution.

Third, the subject matter of the case--the operation of the racetracks at Pimlico and Laurel--is one of considerable public interest, and the early resolution of these matters would serve the public interest.

Finally, I believe that all of the matters set forth above constitute grounds for specially assigning the case to a judge who will be able to supervise the legal issues which undoubtedly will be raised in the case. For all of these reasons, we respectfully request that Your Honor specially assign the case, and that the judge who will hear the matter direct that a speedy hearing be held.

I will be happy to answer any questions that the Court may have.

Very truly yours,

James P. Ulwick

JPU:sms

Enclosure

cc: Clerk's Office

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1992

WADE VS BECKER Box 1997 Case No. 92051045 [MSA T2691-4635, OR/12/15/25]
File should be named msa_sc5458_82_150_
[full case number]-####

MANFUSO VS DEFRANCIS, ET. AL. Box 2097 Case No. 92120052 [MSA T2691-4735, OR/12/16/41]
File should be named msa_sc5458_82_150_
[full case number]-####

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