CASE NO. 92120052 CE 147 851

Part ____ of ____ Parts

In The Circuit Court for Baltimore City

CIVIL

Assigned To Judge Kaplan Part IV

In the Matter of

Robert T. Manfuso, Etal

VS.

Joseph A. DeFrancis Etal

12-16-92

ROBERT T. MANFUSO
et. al

Plaintiffs

v.

JOSEPH A. DEFRANCIS, et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* CASE NO.: 92120052/CE147851

* * * * *

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Maryland Rule 2-506(a)(2), all of the parties, by their undersigned counsel, hereby stipulate and agree that all claims and counterclaims in this case are dismissed with prejudice, and that each party bear their own costs and share equally in any open costs in this matter.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 1994, I sent a copy of this Stipulation of Dismissal With Prejudice by hand delivery to:

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Linda S. Woolf

(56)

ROBERT T. MANFUSO et. al	*	IN THE
	*	CIRCUIT COURT
Plaintiffs		
v.	*	FOR
JOSEPH A. DEFRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	CASE NO.: 92120052/CE147851

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Robert T. Manfuso, et al. Plaintiff(s) **vs.** Joseph A. De Francis, et al. Defendant(s)	IN THE CIRCUIT COURT FOR BALTIMORE CITY File Number: 92120052 CE147851

ORDER
DEFERRING DISMISSAL
UNDER RULE 2-507

Plaintiff's motion to defer dismissal having been heard and good cause having been shown, it is this 13th day of February, 1995, by the Circuit Court for Baltimore City,

ORDERED that entry of an order of dismissal is deferred until/for **One Year** and, if this case has not been finally disposed of by the deferred date, an order of dismissal shall be entered immediately.

Joseph H. H. Kaplan
Administrative Judge

3

CASE NUMBER 92120052 — CIRCUIT COURT FOR BALTIMORE CITY

MANFUSO VS DEFRANCIS, ETAL CE147851

DOCKET FOLIO

54

NOTIFICATION TO PARTIES OF CONTEMPLATED DISMISSAL

PURSUANT TO MARYLAND RULE 2-507 THIS PROCEEDING WILL BE *DISMISSED FOR LACK OF JURISDICTION OR PROSECUTION WITHOUT PREJUDICE *, 30 DAYS AFTER SERVICE OF THIS NOTICE, UNLESS PRIOR TO THAT TIME A WRITTEN MOTION SHOWING GOOD CAUSE TO DEFER THE ENTRY OF AN ORDER OF DISMISSAL IS FILED.

COSTS WILL BE ASSESSED IN ACCORDANCE WITH THE MARYLAND RULES.

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SAUNDRA E. BANKS, CLERK
CIRCUIT COURT FOR BALTIMORE CITY

DATE OF MAILING 1.3.95

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Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
JOSEPH A. De FRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE147851

* * * * * * * * *

PLAINTIFFS' SURREPLY REGARDING DEFENDANTS' MOTION TO DIRECT ENTRY OF PARTIAL FINAL JUDGMENT

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., by their undersigned attorneys, respectfully submit this surreply regarding the individual defendants' motion for the entry of partial final judgment on the Court's order of August 6, 1993:

I. INTRODUCTION

This surreply will respond briefly to three issues raised in the individual defendants' reply: (1) whether the August 6th order decided an entire claim within the meaning of Rule 2-602(b); (2) whether, through their three months of delay, defendants De Francis and Jacobs have failed to seek certification in a timely fashion, especially in light of their belated claims of reliance on settlement negotiations among the parties; and (3) whether, in the circumstances of this case, the Court can properly exercise its discretion to conclude that there is no just reason to delay the entry of final judgment on the order.

As to the first issue, in their initial motion and their reply, De Francis and Jacobs continually gloss over the

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subtleties involved in determining whether the August 6th order adjudicates an entire claim or less than an entire claim. From a careful review of the pertinent authorities and from the Court's own comment that the Manfusos' claims represent the "flip side"[1] of the individual defendants' unadjudicated counterclaims, it follows that the August 6th order decides less than an entire claim. Hence, the Court cannot certify its order as a final judgment.

As to the second issue, the record refutes the individual defendants' assertion that they delayed their request for certification pending the outcome of settlement negotiations. In fact, within a matter of days after the August 6th order, De Francis and his attorney had announced their unequivocal intention to appeal. Because De Francis and Jacobs did not move to perfect their appeal for another three months thereafter, they are, at a minimum, precluded from asserting that there is no just reason to delay the entry of final judgment on the August 6th order.

As to the third and final issue, Laurel racetrack will not meet its cash-flow requirements under its loan documents, thus placing Laurel in default and exposing the tracks to the threat of foreclosure. If the Russian Roulette goes forward as scheduled, the tracks will escape the dangers posed by Laurel's imminent default; if, however, the Court halts the operation of

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[1] Memorandum Opinion and Order (Aug. 6, 1993), at 15.

the Russian Roulette by certifying its order as a final judgment, then it will jeopardize the tracks, their shareholders and limited partners, the Maryland racing industry, and the public at large.

II. THE COURT CANNOT CERTIFY THE AUGUST 6TH ORDER BECAUSE IT HAS ADJUDICATED LESS THAN AN ENTIRE CLAIM

De Francis and Jacobs assert that the Manfusos "have not even attempted to address" what they call the "vast line of state and federal authority" supposedly supporting their attempt to certify the August 6th order. Defendants' Reply at 10. De Francis and Jacobs apparently have not read the Manfusos' response, including §§ II and IV thereof.

To reiterate, under Maryland law, if a counterclaim asks only that a court declare the negative of the relief requested in the complaint, then the counterclaim and the complaint consist of one claim for purposes of Rule 2-602(b). East v. Gilchrist, 293 Md. 453, 459-62 (1982). If, therefore, a court adjudicates an issue in a complaint without also adjudicating the reverse image of the complaint as presented in a counterclaim, then it has adjudicated less than one entire claim. Id. at 461-62. If, however, a court adjudicates less than an entire claim, then it may not certify the adjudicated issue for an immediate appeal. East v. Gilchrist, 293 Md. at 458.

In Count IV of their third amended complaint, the Manfusos requested a declaration that the Russian Roulette agreement

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remains in full force and effect notwithstanding their alleged fraud and breach of contract. De Francis and Jacobs have requested the reverse image of that relief in Counts I and II of the counterclaim: Those counts demand declarations that De Francis and Jacobs can rescind the Stockholders Agreement as a whole -- including the Russian Roulette agreement -- on account of the Manfusos' alleged fraud and breach.

In the August 6th order, the Court ruled in the Manfusos' favor on Count IV of their third amended complaint, declaring that the Russian Roulette agreement remains in full force and effect. In reaching its decision, the Court expressly recognized that the Manfusos' Count IV requested the exact opposite of the relief requested in Counts I and II of the individual defendants' counterclaim. At page 15 of its memorandum opinion, the Court stated:

> Plaintiffs merely assert in Count IV the flip side of what Defendants assert in the Counterclaim.

(Emphasis added.)

Nonetheless, neither in the August 6th order nor at any time thereafter has the Court adjudicated the issues presented in Counts I and II of the counterclaim.

Under these circumstances, East v. Gilchrist dictates the conclusion that the Court has adjudicated less than an entire claim. Count IV of the complaint and Counts I and II of the counterclaim present negative images of one another, but the Court has adjudicated only the issues raised in the complaint.

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Under East the Court will not have adjudicated an entire claim until it enters judgment on the unadjudicated issues in Counts I and II of the counterclaim. As the Court therefore has yet to adjudicate an entire claim, it lacks the power to certify the August 6th order as a final judgment under Rule 2-602(b).[2]

De Francis and Jacobs have inadvertently confirmed that East v. Gilchrist forbids the Court from certifying the August 6th order as final. Describing the trial court's error in East, De Francis and Jacobs state: "By deciding the claim [for damages in the complaint], the court effectively also decided the counterclaim, but simply did not enter judgment on it." Defendants' Reply at 11-12 n. 3. Elsewhere, however, De Francis and Jacobs have made the following concession: "While the Court's [August 6th] order purportedly decided only the Manfusos' claim, its effect was to rule on the declaratory relief requested by De Francis and Jacobs in their counterclaim." As in East v. Gilchrist, then, the Court has

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[2] It makes no difference that one count of the counterclaim incorporates a claim for damages as well as a request for declaratory relief. As the Court of Appeals said in East v. Gilchrist (293 Md. at 459): "Different legal theories for the same recovery, based on the same facts or transactions, do not create separate 'claims' for purposes of the rule." The Court continued: "[W]here different items of damages or different remedies are sought for the same cause of action, multiple claims are not presented." Id. The requests for declaratory relief and the defendants' request for damages arise out of the same facts or transactions, namely, the Manfusos' purported breach of the Stockholders Agreement; those varied remedies, therefore, still constitute one and only one claim. Id. Having adjudicated at most only a part of that claim, the Court cannot certify its ruling as final under Rule 2-602(b).

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effectively decided at least the counterclaims for declaratory relief, but has not entered judgment on them. Therefore, because the Court has yet to enter judgment against De Francis and Jacobs on those portions of their counterclaims, their own description of East leads to the unavoidable conclusion that the Court has entered judgment on less than an entire claim.

De Francis and Jacobs fault the Manfusos for purportedly failing to discuss the Supreme Court cases under Rule 54(b) of the Federal Rules. But the defendants' federal cases merely stand for the uncontroversial proposition that the presence of an unadjudicated counterclaim does not, as a matter of law, prevent certification under Rule 54(b). See, e.g., Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 4 (1980). Those cases do not hold that a court may certify an interlocutory order under Rule 54(b) even when, as in this case, the court has yet to adjudicate a counterclaim constituting the mirror image of the relief requested in the adjudicated portion of the complaint.

To the contrary, in such circumstances, the federal courts have uniformly held that the trial court has adjudicated less than an entire claim and that, as a consequence, it cannot properly certify its ruling as final under Rule 54(b). See, e.g., Automatic Liquid Packaging, Inc. v. Dominik, 852 F.2d 1036, 1038 (7th Cir. 1988)(Posner, J.)(where the counterclaim presents the "mirror image" of the complaint, the complaint and counterclaim consist of only one single claim for purposes of

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Rule 54(b)); see also Western Geophysical Co. of America, Inc. v. Bolt Assocs., Inc., 463 F.2d 101, 103 n. 2 (2d Cir. 1972)(Friendly, J.)(where an unadjudicated counterclaim remains after a ruling on a complaint, the court may certify its ruling as final under Rule 54(b) only if the counterclaim is in fact a counterclaim and not merely a defense to plaintiff's action). Indeed, in East v. Gilchrist, 293 Md. at 461, the Court of Appeals predicated its decision upon Judge Friendly's statements in the Western Geophysical case.

In summary, because the defendants' unadjudicated counterclaims present the mirror image of the issue in the complaint that the Court has decided, the Court has adjudicated less than an entire claim for purposes of Rule 2-602(b). Because the rule does not authorize the Court to certify such a ruling as final, the Court must deny the defendants' motion.

III THE DELAY IN REQUESTING CERTIFICATION MAKES A MOCKERY OF THE DEFENDANTS' ASSERTION THAT THERE IS NO JUST REASON TO DELAY THE ENTRY OF FINAL JUDGMENT

De Francis and Jacobs seek to excuse their three months of thumb-twiddling[3] by attributing their delay to the conduct of serious settlement negotiations. Defendants' Reply at 6-10. The defendants tie their prolonged inaction, at least in part, to their supposed belief that settlement discussions would

[3] Bank of New York v. Hoyt, 108 F.R.D. 184, 185 (D.R.I. 1985).

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resolve "all disputes" between the parties. Defendants' Reply at 8.[4]

The defendants' public statements put the lie to those assertions. In an article in The Sun on the day after the August 6th ruling (Exhibit A), the defendants' attorney was quoted as saying:

> [I]f the judge's decision yesterday is appealable, "we will appeal it. We are analyzing our options now."

(Emphasis added.)

In addition, on August 11, 1993, less than a week after the August 6th ruling, another article (Exhibit B) reported De Francis himself as having said that "he plans to appeal Hollander's decision." (Emphasis added.)

Thus, in the days immediately following the August 6th ruling, De Francis and Jacobs publicly announced their unequivocal intention to appeal. Yet if De Francis and Jacobs intended to appeal, then they should have appealed promptly. See Schaefer v. First Nat'l Bank of Lincolnwood, 465 F.2d 234, 236 (7th Cir. 1972). Having failed to proceed promptly in their request for certification, they can no longer legitimately

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[4] De Francis and Jacobs have presented the Court with only a fraction of the correspondence relating to issues of settlement. So that the Court will have a true and complete picture of the entire course of discussions, the Manfusos have attached as Exhibit D a number of additional pieces of correspondence on the subject of settlement.

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contend that there is no just reason to delay the entry of a final judgment within the meaning of Rule 2-602(b).[5]

In any event, nothing occurred in the settlement discussions to prevent De Francis and Jacobs from seeking certification under Rule 2-602(b). The Manfusos never led anyone to believe that they would acquiesce in the defendants' delay in seeking certification pending the outcome of the discussions. Nor did De Francis or Jacobs ever ask the Manfusos to agree not to challenge the timeliness of a Rule 2-602(b) motion in exchange for an agreement not to pursue such a motion during the pendency of the discussions.[6] Common sense dictates that De Francis and Jacobs should at least have made such a request if they wished to rely upon the settlement discussions as a justification for their three months of delay. The Manfusos therefore do not bear the blame for the defendants' neglect and delay.

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[5] De Francis and Jacobs attempt to confuse the issue of timeliness by contending that Schaefer condemned only the delay "between the appellate court dismissal for failure to obtain a Rule 54(b) determination and the obtaining of such an order." Defendants' Reply at 3 (emphasis in original). Schaefer was, in fact, very clear in its holding: "[A]s a general rule it is an abuse of discretion to grant a motion for a Rule 54(b) order when the motion is filed more than thirty days after the entry of the adjudication to which it relates." Schaefer, 465 F.2d at 236.

[6] The Court should note that De Francis and Jacobs are not beyond making such requests of the Manfusos. De Francis and Jacobs, for example, asked the Manfusos to join in the filing of a joint motion to direct the entry of a partial final judgment on the August 6th ruling. Defendants' Reply at 9. Of course, even that peculiar request did not come until October 13, 1993, more than two months after the August 6th order.

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Furthermore, according to the defendants' reply, the "good faith" settlement discussions took place in July of this year, almost a month before the August 6th order. By contrast, after the August 6th order, De Francis and Jacobs say that the Manfusos "appeared to inject a renewed hostility into the negotiations." Defendants' Reply at 7. If De Francis and Jacobs truly believe what they have said, then that dramatic change in the tone of the discussions should have alerted them to the unlikelihood of a full settlement and the consequent need to request certification of the August 6th order. Once again, therefore, the Manfusos do not bear the blame for the defendants' neglect and delay.[7]

Finally, De Francis and Jacobs attempt to excuse their delay by asserting that they had "no reason to expend additional time, money and judicial resources on filing a motion and pursuing an appeal" until the Manfusos had actually exercised

---

[7] While De Francis and Jacobs highlight their new-found willingness to settle all "disputes," they really mean that the Manfusos must pay them money to settle various "claims" that they have conjured out of thin air. In exchange for the payment of millions of dollars to which they have no cognizable legal right, De Francis and Jacobs have said that they will do what the Court has determined that they already have a legal obligation to do -- i.e., comply with the Russian Roulette.

If De Francis and Jacobs truly wanted a resolution of all claims, then they could have achieved it in July of 1992, when the Manfusos offered them $13 million -- $5 million more than the current bid under the Russian Roulette -- for their interest in the racetracks and for a release of all claims among the parties. If De Francis and Jacobs truly want a resolution of all claims now, then they can achieve it through the simple expedient of buying out the Manfusos for the $8.2 million that the Manfusos have stated under the Russian Roulette agreement.

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their rights under the Russian Roulette. Defendants' Reply at 8. The Court should reject that fatuous assertion.

It certainly came as no surprise to De Francis and Jacobs that the Manfusos exercised their rights under the Russian Roulette when they did. The Manfusos, after all, had previously given sworn affidavits attesting to their intention to tender their shares in accordance with the Russian Roulette on October 1, 1993.[8] In the weeks leading up to October 1, De Francis, Jacobs, and their attorneys had full knowledge that the Manfusos, their counsel, and other professionals assisting them were carrying out the due diligence necessary to prepare the Manfusos' bid under the Russian Roulette. Similarly, in the days leading up to October 1, a steady stream of newspaper articles -- most of which quoted De Francis and the Manfusos -- continually touted the impending battle for control of the tracks.

These circumstances yield only one logical conclusion: De Francis and Jacobs undeniably knew that the Manfusos would trigger the Russian Roulette, but purposefully delayed in seeking certification until after the Manfusos had done so. The reason for the purposeful delay is obvious: Before attempting to appeal the August 6th order, De Francis and Jacobs wanted to

---

[8] The Manfusos actually triggered the Russian Roulette by posting a certified letter on October 9, 1993. The Manfusos waited until that date in order not to interfere with the publicity for the Maryland Million, an important race day that was carded at Laurel earlier on that day.

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see the Manfusos' bid so that they could determine whether they had the financial wherewithal to meet the bid. The reason for the motion for certification is, therefore, equally obvious: De Francis and Jacobs appear unwilling to commit the financial wherewithal to retain control of the tracks under the Russian Roulette or else they have not succeeded in attracting outside financing to assist them in their bid. As a consequence, De Francis and Jacobs see an appeal as the only way to perpetuate their disastrous regime.

In these circumstances, far from there being no just reason to delay, delay would work nothing but injustice. Accordingly, Rule 2-602(b) requires the denial of the defendants' request for certification.[9]

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[9] In an appeal to the Court's sense of equity, De Francis and Jacobs suggest that they will lose any effective means of appealing the August 6th order unless they have the right to an immediate appeal. See, e.g., Defendants' Reply at 10. In making that argument, De Francis and Jacobs seem to invoke the premises of the collateral order doctrine, under which a party can appeal a seemingly interlocutory order if, among other things, the trial court has decided an important issue that is effectively unreviewable on appeal. See, e.g., Old Cedar Devo. Corp. v. Jack Parker Constr. Corp., 320 Md. 626, 629 (1990). De Francis and Jacobs might have attempted to appeal the August 6th order under the collateral order doctrine. But because a collateral order is a type of final judgment (see id.), De Francis and Jacobs were required to note any such appeal within the time period for noting an ordinary appeal from a final judgment. Weir v. Propst, 915 F.2d 283, 286 (7th Cir. 1990)(Posner, J.). Having failed to do so, they have only themselves to blame for their complaint that the August 6th order is unreviewable on appeal.

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IV. IN THE INTERESTS OF JUSTICE, THE COURT SHOULD NOT PERMIT AN APPEAL TO DISRUPT THE SCHEDULED OPERATION OF THE BUY/SELL

De Francis and Jacobs contend that they will suffer great hardship if the Court does not certify a final judgment pursuant to Rule 2-602(b). Defendants' Reply at 12. Certification, however, will visit an even greater hardship upon the racetracks and all of their shareholders.

As *demonstrated by the Affidavit of Mark Reynolds, C.P.A.*, C.F.E. (Exhibit C hereto), Laurel will not meet the cash-flow requirements under its loan obligations with its lender. Exhibit C, ¶ 6. If Laurel fails to meet those requirements, it will go into default on the loans. A default would place the tracks in jeopardy of foreclosure. Foreclosure, in turn, would have the deleterious effect of erasing all of the shareholders' equity in the tracks.

De Francis and Jacobs have shown themselves utterly incapable of preventing the tracks' continued decline and the very real prospect of default and foreclosure. For example, from January 1990 through September 1993, the tracks have suffered recurring losses totalling $6.7 million. Exhibit C, ¶ 5. Yet, by permitting an appeal, the Court will only ensure that, at least until the bank intervenes, the Manfusos' substantial investment will remain in the hands of De Francis and Jacobs, who have amply demonstrated their hostility towards the Manfusos throughout these proceedings.

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On the other hand, if the Court declines certification and permits the buy/sell to go forward, the tracks' lender undoubtedly will require the purchaser -- whether it be the De Francis group or the Manfuso group -- to produce a new financing arrangement.[10] If, however, the buy/sell does not go forward, it is doubtful that the tracks and the lender will arrive at a new, more beneficial financing arrangement. Any such arrangement would require cross-collateralization, which will not occur given the present disputes among the owners of the tracks. Therefore, until ownership is consolidated in one group or the other through the operation of the Russian Roulettte, the tracks cannot enjoy the benefits of a new financing arrangement.

Through such a new arrangement, the tracks can avoid the dire consequences of a default. Thus, only by permitting the completion of the Russian Roulette will the Court protect the tracks, their shareholders, and the racing industry from the prospect of default and foreclosure.

V. CERTIFICATION WILL ONLY PROLONG THIS DISPUTE, TO THE DETRIMENT OF THE PARTIES, THE PUBLIC, THE RACETRACKS, AND THE MARYLAND RACING INDUSTRY

De Francis's public statements have made it clear that the request for certification is a ploy to extract an unfavorable settlement from the Manfusos. De Francis and Jacobs should not

---

[10] As the Court knows, the Manfusos have already reached such an agreement, contingent upon their obtaining 100% of the tracks' stock through the Russian Roulette by February 7, 1994. Manfusos' Response to Motion to Direct Entry of Partial Final Judgment at 13.

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entertain any illusion that certification will effect a settlement. To the contrary, if the Court certifies the August 6th order as final, the Manfusos will have no choice but to withdraw their offer under the Russian Roulette.

The August 6th order provides for a prompt, orderly resolution of the dispute over the ownership of the tracks. An appeal of the order, with all of the attendant delay, would thwart the expeditious resolution of that dispute. Accordingly, in the interest of racetracks, their shareholders and limited partners, the racing industry, and the public at large, the Court should facilitate the termination of this dispute by denying the motion for certification.

VI. CONCLUSION

For the foregoing reasons and for the reasons contained in the response to the defendants' opening memorandum, the Court should deny the motion to certify the August 6th order as final.

Respectfully submitted,

Andrew Jay Graham

Kevin F. Arthur

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KFA:jas:12/3/93:4
f:jas:Manfuso\Surreply.JMT

Kramon & Graham, P.A.

Kramon & Graham, P.A.
Commerce Place
One South Street, Suite 2600
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(410) 752-6030

Attorneys for Plaintiffs

Dated: December 3, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 1993, I sent a copy of Plaintiffs Surreply Regarding Defendants' Motion to Direct Entry of Partial Final Judgment, by hand-delivery, to:

James E. Gray, Esquire
Linda S. Woolf, Esquire
Goodell, DeVries, Leech & Gray
Commerce Place
One South Street, 19th Floor
Baltimore, Maryland 21202;

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

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

Kevin F. Arthur

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KFA:jas:12/3/93:4
f:jas:Manfuso\Surreply.JMT

Exhibit A

THE EVENING SUN

Sports

TUESDAY,
AUGUST 10, 1993

HORSE RACING

Track buyout clause ruled valid

Manfusos could dump De Francis

By Ross Peddicord
Staff Writer

Less than two months before an Oct. 1 deadline, a Baltimore City Circuit Court judge ruled yesterday that a disputed "Russian roulette" clause in a stockholders agreement between the estranged partners of Pimlico and Laurel race courses is valid.

The decision could pave the way for Bob and Tom Manfuso, partners in Laurel/Pimlico, to buy out current track operator Joe De Francis and his family and Martin Jacobs, the track's executive vice president and chief counsel. Or the Manfusos could sell their shares to De Francis and Jacobs.

In her written order yesterday, Judge Ellen Hollander said that the court "declares that the 'Russian roulette' buy-sell provision is enforceable."

The partners have been struggling for control of the two tracks since Frank De Francis died in August 1989. In October of that year, the two sides signed a 30-page stockholders agreement.

According to that agreement, one side can offer its shares for sale at any price it wants after Oct. 1, 1993. The other side either must buy at that price or sell its shares. This is known as a "Russian roulette" provision, because the side that triggers the measure in an attempt to take over risks losing its share.

During testimony in the current proceeding, the Manfusos filed an affidavit saying that they "presently intend" to exercise their rights under the buy-sell provision on Oct. 1. The Manfusos could not be reached for comment last night, but their attorney, Andrew Jay Graham, said, "I'm pleased with the judge's decision, as are my clients, and we'll see where we go from here."

But Jim Gray, De Francis' attorney, said yesterday that the Manfusos "didn't say they 'unequivocally intend' to exercise the buy-sell option. By saying 'presently' they could change their minds tomorrow."

Gray said that he didn't know "what, if anything" will happen on Oct. 1. He said that if the judge's decision yesterday is appealable, "we will appeal it. We're analyzing our options now. From the practical point of view, I would say nothing is going to change in the management or control of the tracks."

The Manfusos first filed suit on April 29, 1992, in Baltimore City Circuit Court alleging that De Francis used profits from the tracks to finance a racing venture in Texas and that he used corporate credit cards for personal expenses.

De Francis said that once the Manfusos sued him, they breached the stockholders agreement, including the provision allowing the buyout. De Francis' counter-suit, stating that position, is not scheduled to be heard until March 1994.

Hollander dismissed most of the Manfusos' charges in June 1992.

"Two claims, very narrow issues, remain," Gray said. They relate to the involvement of Jacobs and vice president Jim Mango in the Lone Star Jockey Club, one of four groups attempting to secure a license to build a track in Dallas.

Under the terms of the 1989 stockholders agreement, the Manfusos each received a termination payment of $1.25 million — representing their original investments in Pimlico — upon retirement and are receiving severance payments of $125,000 a year through next month. De Francis said those severance payments are going into an escrow account until his counter-suit is resolved.

Exhibit B

De Francis has no plans to sell stock

Says court ruling doesn't let Manfusos force a buyout

By Ross Peddicord
Staff Writer

Is anyone ready to play Russian roulette — with racetracks?

Now that a Baltimore City Circuit Court judge has declared that a disputed buyout clause between the estranged partners of Pimlico and Laurel race courses is valid, is either side ready to trigger a deal to buy out the other?

Under a provision made four years ago in a stockholders agreement between majority owner Joe De Francis and his minority partners, Bob and Tom Manfuso, either side may offer its share for sale at any price after Oct. 1, 1993. The other side either must buy at that price or sell its shares. This is known as a "Russian roulette" provision, because the side that triggers the measure in an attempt to take over risks losing its share.

But there are some important features to the clause: Action is not mandatory; no one has to trigger a deal. Additionally, nothing in the agreement prohibits either side from bringing in new partners to buy the shares that are being liquidated.

De Francis said yesterday that he is standing firm in his position as controlling owner of the two tracks.

"I'm the decision maker," he said. "They [minority partners, the Manfusos] can trigger the deal by making an offer for my shares. But then it's my choice to respond. I have all the options. The only thing the Russian roulette clause does is allow them to set a price. I can match it if I feel it's reasonable. Or if it's unreasonable, I could decide to sell. But it's my choice."

Tom Manfuso said: "This is no ordinary buy-sell agreement. Once one party makes an offer, you then assume a certain exposure."

Yesterday, Manfuso said he and his brother are working up numbers in preparation for Oct. 1. By that, I mean we are sending someone in to try to understand the value of the tracks. We haven't been involved actively in their management since 1990, and a lot has changed since then.

"I think either side has to be ready to respond if someone wants to trigger the deal. I believe in being prepared. I can't imagine Joe De Francis will ever trigger [because he already controls the majority of the stock], but you can never say never. As of this stage, I can't say whether we will or not."

De Francis added yesterday that the Russian roulette clause has been "mis-characterized as a battle for control of the track. This is not a fight where you can force someone to sell through coercion. This simply means one side either has the ability to liquidate or to buy. If the Manfusos are the triggering party, then it is my option to buy their shares, or alternatively, to allow them to acquire my shares."

De Francis said yesterday he feels that Judge Ellen I. Hollander was wrong in deciding that the Russian roulette clause is valid after the Manfusos initiated lawsuits that he believes breached a standstill provision in the original stockholders agreement. He said he plans to appeal Hollander's decision.

De Francis, his sister, Karin Van Dyke, and Marty Jacobs, executive vice president and chief counsel for Pimlico/Laurel, own 53 percent of Pimlico's stock, 25 percent of Laurel's. He said the Manfusos own 47 percent of the equity in Pimlico, 25 percent of Laurel. The Guida group owns the other 50 percent equity in Laurel.

When De Francis' father, the late Frank De Francis, purchased the tracks in partnership with the Manfusos in the mid-1980s, they paid $30.5 million for Pimlico and $16 million for Laurel, borrowing $41 million that is still listed as debt.

■ De Francis said yesterday that he plans to appeal five citations for safety violations issued against the tracks by the Maryland Occupational Safety and Health Administration this week.

"We have an annual operating budget of $40 million, and we're talking about $30,000 in fines," De Francis said. "But obviously the safety of our employees is a high priority, and we're taking these charges seriously. We do plan to contest them."

Lenny Hale, vice president of racing at Pimlico/Laurel, said improvements have been made since the April 1 morning training accident when the horse, Fox Brush, was electrocuted at the auxiliary starting gate and his exercise rider injured. Hale said it is now standard policy to unplug and roll up a battery cable that charges the gate whenever the starting device is in use. He said that the United Starting Gate Co. is responsible for maintenance of the gate.

Pimlico

Thursday's entries
Post time 1 p.m.

1st—6,500, cl, 3YO, 6f.

Luigi's Ghost	117	Prvng A Poin	117	Strict Security	112
A T Lottery	117	Frgie's Spider	117	Slickem	113
Jve's Royalty	112	Smine	117	Mk's Curious	113
Rd Prospector	112			Brandt	117

2nd—10,500, cl, mdn 2YO, 4½f.

Tk The Flight	120	Jrdl's Champ	120	Hime's Heart	113
Gtor's Rocket	120	Fighting Cat	120	Ghostbucker	110
a-Loy's Fvorit	120	b-All Gale	120	Pulverizing	117
b-A Comfortin	120	Tre Freshman	120	Chiflonade	113
Feyte's Best	120	a-Rs Of Chrok	120		

a,b-Coupled.

3rd—6,200, cl, mdn 3YO up, 5½f.

a-Prnprd Prin	112	Perempt	117	Bedoin Tent	117
Steel Bars	117	Oquossoc	117	Mdrn Troubad	110
b-Synquis	113	Irish Racer	117	Emptor	117
b-Strid In Ston	117	Ignescent	117	Anynamestall	112
Dncng Sunshi	122	Pete Redue	117	Thrty Eight K	112
a-Lsty Bidder	117	T Love To M	108	Hot Story	113
Cachaca	117	Hibernate		a-Rond It Off	114
Prpl Highlight	117			a-Coupled.	

a,b-Coupled.

4th—14,500, cl, 3YO, 6f.

a-Apin Dr. Bl	108	Navy Tights	112	Twdldeedledee	112
Foulis Alicia	117	Busy Woman	117	Fzzy Corridor	113
Cde's Blossom	117	a-Riling Glory	113	Dncng Impres	117
Smart Code	117	Right On Key	117	Penut Nibbler	117

a-Coupled.

5th—14,500, cl, 3YO up, 6f.tf.

Clnt's Coming	112	Snort'In Dugie	113		
Strict Security	112	Admiral	113		
Slickem	113	St Jim's Mem	113		
Mk's Curious	113	Creative Act	117		
Brandt	117	Just George	117		
Hime's Heart	113				

6th—18,000, cl, 3YO up, 1 1-16mi.

Ghostbucker	110	Alexis's David	117		
Pulverizing	117	Well Informed	117		
Chiflonade	113	Girus Review	117		

7th-22,000, alc, 3YO up, 1⅛mi.tf.

Oscar Max	110	Dsh For Doty	117		
Moonstruck	117	Rethink	117		
Bedoin Tent	117	No Delay	112		
Mdrn Troubad	110	Neoptolemus	117		
Emptor	117	Jhn The Bold	117		

8th—16,500, alc, 3YO up, 6f.

Anynamestall	112	Hvn's A Drea	117		
Thrty Eight K	112	Sofuls	117		
Hot Story	122	a-Cozy Scene	107		
a-Rond It Off	114	Alan's Turn	117		

a-Coupled.

9th—6,500, cl, 3YO, 6f.

Twdldeedledee	112	La Tzigane	113		
Fzzy Corridor	113	Jst A Twinkll	117		
Dncng Impres	113	Justin's Lydia	117		
Penut Nibbler	117	Lady Popoff	117		

FOR THE RECORD

QUIZ ANSWER

Lenn Sakata.

FOOTBALL

Steve Fields, Stockton, Calif., 3,866. 15, (tie) Eric Forkel, Chatsworth, Calif., and Mike Shady, Ripon, Wis., 3,859. 17, Bob Learn Jr., Erie, Pa., 3,855. 18, Dave Smalley, Louisville, Ky., 3,847. 19, Eugene McCune, Munster, Ind., 1, Barry Gurney, West Hills, Calif., 4,237. 2, Marlin Hamil, Warner Robins, Ga., 4,045. 3, Vince Range, St. Louis, 4,025. 4, Darrel Curtis, Kent, Wash., 3,978. 5, Richard Beattie, Dearborn, Mich., 3,972. 6, Leo Kiesewetter, Norwalk, Ohio, 3,642, $550. 42, Asa Morris, Maryland Heights, Mo., 3,640, $545. 43, Robert Gibbs, Abilene, Texas, 3,631, $540. 44, John Handegard, Las Vegas, 3,619, $535. 45, Bob Brissette, Toledo, Ohio, 3,611, $530. 46, Wil Strickland, Port St. [illegible] 3,607, $525. 47, Robert

Exhibit C

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

* * * * * * * * *

AFFIDAVIT OF MARK W. REYNOLDS, C.P.A., C.F.E.

I, Mark W. Reynolds, am over eighteen years of age, am competent to testify, and have personal knowledge of the facts and other matters contained in this affidavit:

1. I am a Certified Public Accountant and Certified Fraud Examiner. Since 1989 I have been a stockholder in the accounting firm of Gross, Mendelsohn & Weiler, P.A.

2. I have been accepted as an expert in the field of accounting in the following courts: the Circuit Court for Baltimore County; the Circuit Court for Prince George's County; the Circuit Court for Howard County; the Circuit Court for Montgomery County; the United States District Court for the District of Maryland; and the Superior Court of New Jersey, Chancery Division.

3. I have evaluated the audited consolidated financial statements of Pimlico Racing Association, Inc. and its subsidiary, The Maryland Jockey Club of Baltimore City, Inc., from 1989 through 1992, and I have evaluated the audited financial statements of Laurel Racing Association Limited Partnership from 1989 through 1992. In addition, I have evaluated the internally-prepared financial statements of income

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and expenses of The Maryland Jockey Club of Baltimore City, Inc. and Laurel Racing Association Limited Partnership for the nine months ended September 30, 1993.

4. I have also read the loan documents pertaining to the loans from First National Bank of Maryland to the entities operating Pimlico and Laurel racetracks.

5. From January, 1990 through September, 1993 the entities operating Pimlico racetrack and Laurel racetrack have suffered recurring losses totalling $6.7 million.

6. Based on my reading of the loan documents and my evaluation of the financial statements, it is my opinion to a reasonable degree of probability in my field of expertise that Laurel Racing Association Limited Partnership will not meet the cash-flow requirements under its current loan obligations with its lender.

LAW OFFICES
RAMON & GRAHAM, P.A.
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MORE, MARYLAND 21202-4701
(410) 752 [illegible]

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

December 3, 1993
Date

Mark W. Reynolds
Mark W. Reynolds, C.P.A., C.F.E.

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Exhibit D

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OF COUNSEL
FREDERICK STEINMANN

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
LEE H. OGBURN
[illegible]FREY H. SCHERR
[illegible]CY E. GREGOR*
JAMES P. ULWICK*‡
PHILIP M. ANDREWS
GERTRUDE C. BARTEL*
MARILYN HOPE FISHER**
MAX HIGGINS LAUTEN*
KATHLEEN A. BIRRANE
KEVIN F. ARTHUR
ARON U. RASKAS*
SETH M. ROTENBERG
PERRY F. SEKUS
GEOFFREY H. GENTH*

*ALSO ADMITTED IN NY
*ALSO ADMITTED IN DC
‡ALSO ADMITTED IN NJ
*ALSO ADMITTED IN CA

July 29, 1993

James Gray, Esquire
Goodell, Devries, Leech & Gray
Commerce Place
One South Street, 20th Floor
Baltimore, Maryland 21202

RE: Manfuso v. De Francis

Dear Jim:

I wanted to set forth the position of my clients, John Manfuso, Jr. and Robert T. Manfuso, in regard to the various settlement procedures as well as my clients' present intentions. As you are aware the Manfusos have commenced a due diligence investigation for the purpose of formulating a value for Pimlico and Laurel. When they arrive at a realistic value, their intention is to offer to sell their stock to the De Francis group per the Russian roulette provision in the Stockholder's Agreement. It is my understanding that the De Francis group is willing to waive the October 1, 1993 commencement date for the exercise of the Russian roulette provision. If my clients do in fact make such an offer, they will seek its implementation through the offices of Judge Hollander whose assistance in settling this matter you have requested on prior occasions.

My clients remain fully committed to assisting Pimlico and Laurel in their pursuit of the Virginia opportunity in such manner as the boards may request of them. To the extent that resolution of the current litigation would assist in obtaining the Virginia opportunity, my clients have and will continue to entertain such proposals as you may suggest.

July 29, 1993
Regarding: Manfuso v. De Francis
Page Twp

Please feel free to contact me, should you have any questions concerning the contents of this letter.

Sincerely,

Andrew Jay Graham

AJG/jmw
cc: Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Herbert S. Garten, Esquire

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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FAX
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OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

August 3, 1993

VIA HAND DELIVERY

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21201

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

As you know, the Manfusos are proceeding with their due diligence in preparation for the exercise of the Russian Roulette provision of the Stockholders Agreement.

In that connection, we request that you confirm that the stockholders of Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc., are as indicated in the report of Ernst and Young to the Maryland Racing Commission dated December 31, 1992. Specifically, has there been any change in ownership since December 31, 1992, including transfers from the Estate to any of the DeFrancis family or anyone else. For your information, we are enclosing copies of pages A-19, A-20 and B-19 of the aforesaid report.

Best regards.

Very truly yours,

Herbert S. Garten

Andrew Jay Graham

HSG/klp
Enclosures

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WASHINGTON, D. C. 20007
470-7244

August 4, 1993

Herbert S. Garten, Esq.
Fedder and Garten
36 South Charles Street
2300 Charles Center South
Baltimore, MD 21201

Andrew J. Graham, Esq.
Kramon & Graham
Commerce Place
One South Street
Suite 2600
Baltimore, MD 21202

RE: Manfuso, et al v. De Francis, et al

Gentlemen:

It was my understanding that during the pendency of ongoing settlement discussions, it would not be necessary to continue to paper our respective files. I must, however, respond to your joint letter of August 3rd.

I want to make the following points absolutely clear:

1. The Shareholders Agreement is not in effect and we will not provide any information to the Manfusos related to "their due diligence in preparation for the exercise of the Russian Roulette provision of the Stockholders Agreement."

2. Even if the Shareholders Agreement was in effect, which it is not, it does not provide for the production of any information as part of any period of due diligence;

3. Any information that is provided to the Manfusos or their representatives is not being provided pursuant to the Shareholders Agreement, but is being provided solely for the purpose of expediting ongoing settlement discussions which may lead to an agreement to trigger a Russian roulette buy/sell procedure similar to that provided by the shareholders agreement;

4. Any information that is provided to the Manfusos or their representatives is solely for the purpose of expediting ongoing settlement discussions and is not to be provided to or shared with any third party for any reason.

If the Manfusos and their representatives are not prepared to treat information provided to them as confidential (i.e., as if they received this information as directors), please advise me immediately and no further information will be provided to your clients or their representatives.

Very truly yours,

James E. Gray

JEG/kav

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PROFESSIONAL ASSOCIATION
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OFFICE OF MORRIS FEDDER (1926-61)

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CABLE "FEDGAR"

August 4, 1993

VIA HAND DELIVERY

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21201

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

We have your letter of August 4, 1993, and hope that during this period of settlement discussions there will not be any problems with the Manfusos securing the information essential for their due diligence in preparation for the exercise of the Russian Roulette provision of the Stockholders Agreement.

With respect to paragraph 4 of your letter, the Manfusos fully understand their responsibilities as Directors of the Corporations and intend to abide by them; of course, as your clients are aware, certain of the information has and will be shared with their legal counsel, accountants, the representatives of the bank, and the Guida Group.

Very truly yours,

Herbert S. Garten

Andrew Jay Graham

HSG/klp

De Francis has no plans to sell stock

Says court ruling doesn't let Manfusos force a buyout

By Ross Peddicord
Staff Writer

Is anyone ready to play Russian roulette — with racetracks?

Now that a Baltimore City Circuit Court judge has declared that a disputed buyout clause between the estranged partners of Pimlico and Laurel race courses is valid, is either side ready to trigger a deal to buy out the other?

Under a provision made four years ago in a stockholders agreement between majority owner Joe De Francis and his minority partners, Bob and Tom Manfuso, either side may offer its share for sale at any price after Oct. 1, 1993. The other side either must buy at that price or sell its shares. This is known as a "Russian roulette" provision, because the side that triggers the measure in an attempt to take over risks losing its share.

But there are some important features to the clause: Action is not mandatory; no one has to trigger a deal. Additionally, nothing in the agreement prohibits either side from bringing in new partners to buy the shares that are being liquidated.

De Francis said yesterday that he is standing firm in his position as controlling owner of the two tracks.

"I'm the decision maker," he said. "They [minority partners, the Manfusos] can trigger the deal by making an offer for my shares. But then it's my choice to respond. I have all the options. The only thing the Russian roulette clause does is allow them to set a price. I can match it if I feel it's reasonable. Or if it's unreasonable, I could decide to sell. But it's my choice."

Tom Manfuso said: "This is no ordinary buy-sell agreement. Once one party makes an offer, you then assume a certain exposure."

Yesterday, Manfuso said he and his brother are "working up numbers in preparation for Oct. 1. By that, I mean we are sending someone in to try to understand the value of the tracks. We haven't been involved actively in their management since 1990, and a lot has changed since then.

"I think either side has to be ready to respond if someone wants to trigger the deal. I believe in being prepared. I can't imagine Joe De Francis will ever trigger [because he already controls the majority of the stock], but you can never say never. As of this stage, I can't say whether we will or not."

De Francis added yesterday that the Russian roulette clause has been "mis-characterized as a battle for control of the track. This is not a fight where you can force someone to sell through coercion. This simply means one side either has the ability to liquidate or to buy. If the Manfusos are the triggering party, then it is my option to buy their shares, or alternatively, to allow them to acquire my shares."

De Francis said yesterday he feels that Judge Ellen I. Hollander was wrong in deciding that the Russian roulette clause is valid after the Manfusos initiated lawsuits that he believes breached a standstill provision in the original stockholders agreement. He said he plans to appeal Hollander's decision.

De Francis, his sister, Karin Van Dyke, and Marty Jacobs, executive vice president and chief counsel for Pimlico/Laurel, own 53 percent of Pimlico's stock, 25 percent of Laurel's. He said the Manfusos own 47 percent of the equity in Pimlico, 25 percent of Laurel. The Guida group owns the other 50 percent equity in Laurel.

When De Francis' father, the late Frank De Francis, purchased the tracks in partnership with the Manfusos in the mid-1980s, they paid $30.5 million for Pimlico and $16 million for Laurel, borrowing $41 million that is still listed as debt.

■ De Francis said yesterday that he plans to appeal five citations for safety violations issued against the tracks by the Maryland Occupational Safety and Health Administration this week.

"We have an annual operating budget of $40 million, and we're talking about $30,000 in fines," De Francis said. "But obviously the safety of our employees is a high priority, and we're taking these charges seriously. We do plan to contest them."

Lenny Hale, vice president of racing at Pimlico/Laurel, said improvements have been made since the April 1 morning training accident when the horse, Fox Brush, was electrocuted at the auxiliary starting gate and his exercise rider injured. Hale said it is now standard policy to unplug and roll up a battery cable that charges the gate whenever the starting device is in use. He said that the United Starting Gate Co. is responsible for maintenance of the gate.

Pimlico

Thursday's entries
Post time 1 p.m.

1st—6,500, cl, 3YO, 6f.

Luigi's Ghost	117	Prvng A Poin	117	Strict Security	112
A T Lottery	117	Frgle's Spider	117	Slickem	113
Jve's Royalty	112	Smine	117	Mk's Curious	113
Rd Prospector	112			Brandt	117

2nd—10,500, cl, mdn 2YO, 4½f.

Tk The Flight	120	Jrdl's Champ	120	Hime's Heart	113
Gtor's Rocket	120	Fighting Cat	120	Ghostbucker	110
a-Loy's Fvorit	120	b-Alt Gale	120	Pulverizing	117
b-A Comfortin	120	Tre Freshman	120	Chiffonade	113
Feyle's Best	120	a-Ra Of Chrok	120	Oscar Max	110

a,b-Coupled.

3rd—6,200, cl, mdn 3YO up, 6½f.

a-Pmprd Prin	112	Perempt	117	Bedoin Tent	117
Steel Bars	117	Oquossoc	117	Mdm Troubad	110
b-Synquis	113	Irish Racer	117	Emptor	117
b-Stnd In Ston	117	Ignescent	117	Anynameatall	112
Dncng Sunshi	122	Pete Radue	117	Thrty Eight K	112
a-Lsty Bidder	117	T Love To M	108	Hot Story	113
Cachaca	117	Hibernate			
Prpl Highlight	117				

a,b-Coupled.

4th—14,500, cl, 3YO, 6f.

a-Apin Dr. Bl	108	Navy Tights	112	Twddeedledee	112
Fouls Alicia	117	Busy Woman	117	Fzzy Corridor	113
Cde's Blossom	117	a-Rling Glory	113	Dncng Impres	117
Smart Code	117	Right On Key	117	Panut Nibbler	117

a-Coupled.

5th—14,500, cl, 3YO up, 5f.tf.

Cint's Coming	112	Snort'in Dugie	113		
Strict Security	112	Admiral	113		
Slickem	113	Sl Jim's Mem	113		
Mk's Curious	113	Creative Act	117		
Brandt	117	Just George	117		
Hime's Heart	113				

6th—18,000, cl, 3YO up, 1 1-16mi.

Ghostbucker	110	Alexis's David	117		
Pulverizing	117	Well Informed	117		
Chiffonade	113	Girus Review	117		
7th-22,000, alc, 3YO up, 1⅛mi.tf.					
Oscar Max	110	Dsh For Doty	117		
Moonstruck	*117*	*Rethink*	*117*		
Bedoin Tent	117	No Delay	112		
Mdm Troubad	110	Neoptolemus	117		
Emptor	117	Jhn The Bold	117		

8th—16,500, alc, 3YO up, 6f.

Anynameatall	112	Hvn's A Drea	117		
Thrty Eight K	112	Sofuls	117		
Hot Story	122	a-Cozy Scene	107		
a-Rond It Off	114	Alan's Turn	117		

a-Coupled.

9th—6,500, cl, 3YO, 6f.

Twddeedledee	112	La Tzigane	113		
Fzzy Corridor	113	Jst A Twinkll	117		
Dncng Impres	117	Justin's Lydia	117		
Panut Nibbler	117	Lady Popoff	117		

FOR THE RECORD

QUIZ ANSWER

Lenn Sakata.

FOOTBALL

Steve Fields, Stockton, Calif., 3,666. 15. *(tie)* Eric Forkel, Chatsworth, Calif., and Mike Shady, Ripon, Wis., 3,859. 17. Bob Learn Jr., Erie, Pa., 3,655. 18. Dave Smalley, Louisville, Ky., 3,647.
19. Eugene McCune, Munster, Ind.,

1, Barry Gurney, West Hills, Calif., 4,237. 2, Martin Hamil, Warner Robins, Ga., 4,045. 3, Vince Range, St. Louis, 4,025. 4, Darrel Curtis, Kent, Wash., 3,976. 5, Richard Beattie, Dearborn, Mich., 3,972. 6, Leo Kiesewetter, Norton, Ohio, 3,642, $550. 42, Asa Morris, Maryland Heights, Mo., 3,640, $545. 43, Robert Gibbs, Abilene, Texas, 3,631, $540. 44, John Handegard, Las Vegas, 3,619, $535. 45, Bob Brissette, Toledo, Ohio, 3,611, $530. 46, Wil Strickland, Port St.

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OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

August 12, 1993

VIA HAND DELIVERY

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21201

Re: Manfuso et al., Plaintiffs v. DeFrancis et al., Defendants
In the Circuit Court for Baltimore City
Case No. 92120052/CE147851

Dear Jim:

This letter is intended to outline the major items we would propose to incorporate in the agreement ("Settlement Stipulation") to be entered into by all parties to the above action, Karin DeFrancis VanDyke, and the Estate of Frank DeFrancis.

The Settlement Stipulation would be in the form of a stipulation approved by Judge Hollander and would be subject to court supervision until the completion of the closing of the sale ("Closing Date") of all Pimlico and Laurel stock owned directly or beneficially by Robert T. Manfuso and John A. Manfuso, Jr. ("the Manfusos") or Joseph A. DeFrancis, the Estate of Frank DeFrancis, Martin Jacobs and Karin DeFrancis VanDyke ("the DeFrancis Group").

The following provisions would be incorporated in the Settlement Stipulation:

1. All litigation between the parties would cease, with mutual all-inclusive releases being executed by the Manfusos and the DeFrancis Group as of the Closing Date.

2. The Stockholders Agreement executed October 1, 1989 ("Stockholders Agreement") is to be acknowledged to be in full force and effect except as amended by paragraph 4 of this Stipulation Agreement.

3. All monies due the Manfusos on account of unpaid severance payments would be paid as of the Closing Date.

4. The so-called "Russian Roulette" buy/sell provision of Section I of the Stockholders Agreement would be amended as follows:

a. The "Four-Year Anniversary" referred to in Section I-A of the Stockholders Agreement shall be deemed to occur on September 1, 1993.

b. Section I-C of the Stockholders Agreement shall read as follows: "At any time on or after September 1, 1993, 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. Section I-D-3(d) of the Stockholders Agreement shall be amended so that it shall now read as follows: "The closing of the sale of Stock hereunder shall take place within twenty-two (22) 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")."

d. All dates and actions to be taken subsequent to September 1, 1993, in successive order and referred to in Section I-D-2, beginning on page 5, of the Stockholders Agreement should be advanced in time so that the parties required to respond shall do so within seven (7) calendar days from the date of the prior advanced date.

5. The Manfusos shall be entitled to complete their due diligence prior to August 20, 1993, with the full cooperation of the DeFrancis Group with any request for information being addressed to James E. Gray, Esquire, Goodell, DeVries, Leech & Gray, Suite 2000 Commerce Place, One South Street, Baltimore, Maryland 21201, and with full and complete, unimpeded, immediate access to all financial and corporate records.

6. If the Manfusos have not completed their due diligence on or before September 1, 1993, to their satisfaction and in their sole discretion for any reason elect not to invoke the Russian Roulette clause, the Settlement Stipulation would be of no further force and effect and the Stockholders Agreement as originally written shall remain in full force and effect.

The above proposal is made, of course, without prejudice to the rights of any party. Please let us have your comments above as promptly as possible.

Very truly yours,

Herbert S. Garten

Andrew Jay Graham

HSG/klp

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OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

August 19, 1993

VIA FACSIMILE and HAND DELIVERY

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

You raised a number of points concerning the proposed new Russian Roulette procedure which our clients and we have been discussing, and we conveyed those points to the Manfusos. As you know, Bobby has made himself available at all times to discuss any problems directly with Joe and had hoped that Joe would contact him in Saratoga last weekend. In any event, it is still clearly in both sides' best interest to resolve the dispute expeditiously, and we hope that both sides will act reasonably in our efforts to structure a new buy-out arrangement.

We can say preliminarily that a couple of the points that you raised yesterday are not and will not be acceptable. Our clients cannot agree unconditionally to pay $2.8 million, with or without interest, to your clients or to reach any particular bottom line with respect to Marty Jacobs' contract. These obligations are obligations of the corporations, and whoever ends up owning the corporations will act on these obligations. Secondly, while we understand that your clients have articulated some skepticism about whether our clients actually intend to ever trigger the Russian Roulette, and they have, accordingly, requested that our commitment to trigger it be unconditional, our clients will not accede to this position. The Manfusos will say, and we will confirm, that there is every intention to trigger the Russian Roulette, and we are sure that they will do so as soon as they have completed discussions with their lender concerning financial commitments which will come into play if the Manfusos purchase the tracks. However, our clients would be foolish to bind themselves absolutely to entering a process pursuant to which they may become the owners of the business when they have not completed their financial arrangements, when they have not completed and are not being permitted to complete their due diligence, and when they have

no way of knowing what your clients, or conceivably some third party, might do in the days prior to the triggering that would change the tracks' financial status. If your clients can work around these issues with us, we are sure that we can reach an agreement. To move this matter forward, we would recommend that your clients put in writing, as we have done previously, their proposal for the new Russian Roulette process. We will respond promptly.

Very truly yours,

Herbert S. Garten

Andrew Jay Graham

HSG/klp

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OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

August 26, 1993

VIA FACSIMILE

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

In response to your request, this will confirm the proposal I have made to you today in an effort to overcome the impasse that has occurred as a result of the Manfusos' not being able to complete their due diligence.

My proposal, made without prejudice, was as follows:

1. Authorize Sheldon Dagurt, Esquire, Robert Grochowski, C.P.A., and me to meet with Michael Sanders and other counsel at the Ginsburg firm who are familiar with matters involving the audit of Pimlico and Laurel by the Internal Revenue Service for years 1986 through 1991. At this conference, as I indicated to you during our meeting on Monday, August 23rd, we would expect to have complete access to all files and memoranda of the law firm dealing with this matter, as well as the full and complete cooperation of the members of the firm who have worked on the matter and, to the extent of their present knowledge, an assessment of the ultimate outcome of the matter.

2. Immediately after the Manfusos have had an opportunity to evaluate the exposure of Pimlico and Laurel for the tax years in question, the Manfusos agree to make an offer to sell all of their interest in Pimlico and Laurel at a stated price. The Manfusos would require a response from Messrs. DeFrancis and Jacobs within a period of three (3) days and an agreement of sale would be entered into during the period of ten (10) days from the date of the offer to sell. If a sale occurred, there would be a global settlement of all matters in

litigation and, as I indicated on the phone, the matters raised by you as a condition to the early triggering of the Russian Roulette clause would become moot.

I will be available at home tonight and will await your call regarding DeFrancis' acceptance or rejection of this proposal.

Very truly yours,

Herb

Herbert S. Garten

HSG/klp
cc: Andrew J. Graham, Esquire

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CABLE "FEDGAR"

OFFICE OF MORRIS FEDDER (1926-61)

August 27, 1993

VIA FACSIMILE

Michael I. Sanders, Esquire
Ginsburg, Feldman and Bress, Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Manfuso et al. v. DeFrancis et al.

Dear Mr. Sanders:

On behalf of John A. Manfuso, Jr., and Robert T. Manfuso, this is to request that you reconsider your decision regarding your availability to meet with me in connection with a review of all matters relative to the status of the audit of the Pimlico and Laurel racetrack entities covering the years 1986-1991.

Since receiving your telephone message of August 23, 1993, when you advised my secretary that you were "available but were ordered by Marty Jacobs and Joe DeFrancis not to meet until certain other legal things got worked out," I have endeavored to obtain authorization from James E. Gray, Esquire, for a meeting with you and other members of your firm involved in this matter. A copy of my letter to Mr. Gray of August 26, 1993, is enclosed for your information.

In considering this request, I suggest you review your firm's files, which will reveal that your firm represented the Manfusos individually at the time of the acquisition of Pimlico. The Manfusos were parties to the acquisition agreement and they have a direct and substantial interest in being acquainted with all of the facts and present status of the tax cases. We are particularly interested in knowing the effect of the Supreme Court case of Newark Morning Ledger Co. v. United States handed down April 20, 1993, on your evaluation of the ultimate outcome of the matter.

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION

Messrs. Dagurt, Grochowski and I are available to meet with you at your office on Monday afternoon, August 30, 1993, or Tuesday morning, August 31, 1993 (first preference), as early as possible. I would anticipate that our meeting would require no more than one to two hours and assume that you will supply us with copies of any documents that might assist us in assessing Pimlico and Laurel's exposure.

Your prompt response to this request will be appreciated since time is very much of the essence.

Sincerely,

Herbert S. Garten

HSG/klp
Enclosure

cc: James E. Gray, Esquire (via facsimile)
Robert Grochowski, C.P.A.
Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

GOODELL, DEVRIES, LEECH & GRAY
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JAMES E. GRAY
DIRECT DIAL NUMBER
410/783-4009

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470-7244

August 27, 1993

VIA FAX -- 659-0543 and FIRST CLASS MAIL

Herbert S. Garten, Esq.
Fedder and Garten
36 South Charles Street
2300 Charles Center South
Baltimore, MD 21201

RE: Manfuso, et al v. De Francis, et al

Dear Herb:

This is in reply to your letter of August 26th.

First, let me correct the first paragraph of your letter. We have not reached an impasse because the Manfusos have been unable to complete their "due diligence". We have reached an impasse because the Manfusos have backed off of their previously stated desire to trigger a buy/sell prior to October 1, 1993. The effect of this impasse has been exacerbated by the Manfusos' failure to address concerns and requirements that were placed on the table at our very first negotiating session. This is not an impasse of our making. It is an impasse that has been artificially created by the Manfusos in order to gain some perceived advantage.

In our recent conversation you advised that the only remaining item of due diligence that needed to be completed was a meeting with Mr. Sanders regarding the IRS audit. I asked you to confirm that position in your letter. Your letter's failure to address this topic causes me concern. Is the Sanders meeting the last information you allegedly need to complete your due diligence, or are we going to be faced with a further laundry list of "extremely important" information needed by the Manfusos.

The position of Joe De Francis and Marty Jacobs is as follows:

1. Your proposal is inadequate in that it is totally non-responsive to the concerns and issues reiterated by Joe De Francis at our last meeting;

2. As a result of the positions taken in your letters of August 12 and August 19, 1993, in our recent meeting, and in your letter proposal of August 26th, we have reached the conclusion that the Manfusos have absolutely no interest in exercising either a modified or even the original buy/sell, and probably have no real interest in settling our outstanding disputes;

3. Until such time as our requirements and concerns are addressed and we have assurances that the Manfusos actually intend to trigger a buy/sell, or otherwise meaningfully resolve our disputes, there will be no meeting, discussion or other communication with Michael Sanders concerning the Internal Revenue Service audit. Your blatant attempt to intimidate Mr. Sanders with an inaccurate recitation of "facts" will not succeed. Mr. Sanders is providing tax counsel to the entities, not to the Manfusos, and we have no intention of wasting his time or incurring additional legal fees on a useless exercise;

4. If and when the Manfusos in good faith address the issues that are on the table, we will be happy to resume discussions.

If the only commitment that the Manfusos are willing to make is that after they have evaluated the exposure of Pimlico and Laurel for the tax years in question they will make an offer to sell their interests at a stated price, then they have no reason to evaluate any alleged Internal Revenue Service exposure. Further, an offer by the Manfusos to sell at a stated price hardly constitutes a fair and equitable mechanism for the resolution of our disputes. The Manfusos can state any totally outrageous number that pops into their heads as long as they are not faced with the prospect of having to be purchasers at that same number. Such a "resolution" is meaningless and totally unacceptable.

I want to bring a separate and extremely important issue to your attention. We have now received confirmation that the Manfusos have undertaken a course of conduct in regard to Virginia that is entirely inconsistent with and in violation of their fiduciary duty to Laurel and Pimlico as directors. While the harm to the corporations that has already occurred from the Manfusos' activities may be irreversible, you should immediately advise your clients that any and all further efforts on their part with respect to the Virginia racetrack license, or any further activity on their part which impedes, harms or adversely

effects the competitive ability of Laurel and Pimlico to succeed in regard to Virginia, should be halted. While we intend to hold the Manfusos responsible, accountable and liable for all damages that have been incurred to date, they may be able to minimize their exposure by ceasing their improper activities.

We have done everything possible to convince you and your clients that we are sincere in regard to our desire to end our disputes and to secure for Maryland racing the opportunity which is presented by Virginia. The first two meetings that we had with Bobby Manfuso and Andy Graham led us to believe that at least they were sincere in regard to their assertion that they desired the same result. Everything that has happened since August 12, 1993 leads us to the conclusion that the Manfusos have no desire to trigger a buy/sell or otherwise resolve this dispute in an equitable manner, and have every intention of continuing their unwarranted and ill-advised efforts to damage the corporations and Messrs. De Francis and Jacobs. If the Manfusos truly desire to resolve our differences, then stop the game playing and get on with the negotiations.

Very truly yours,

James E. Gray

JEG/kav

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OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDCAR"

August 30, 1993

VIA FACSIMILE

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

In response to yours of August 27, 1993, we obviously have a difference of opinion as to what brought about the impasse, but there is no dispute that one exists.

My letter of August 26, 1993, was not intended to be a definitive agreement and was written in response to your request that I do you a "favor" and reduce to the letter the substance of our telephone conversation of that day. In re-reading my letter, I do not see the justification for the concern expressed in the third paragraph of your letter. As I stated on the telephone when we spoke on August 26th, and which I think can be clearly inferred from my letter, the only remaining item that has to be completed is our assessment of the tax exposure.

I spoke with Andy Graham this morning, and we both are of the opinion that we should take advantage of Judge Hollander's offer to make herself available should the need arise. The Judge's secretary advises that she would be available on Tuesday, September 7, 1993, or Wednesday, September 8, 1993, beginning at 4:30 p.m. Either of these dates is agreeable to Andy and me. What is your pleasure?

With respect to the allegations in your letter of August 27, 1993, regarding the Manfusos' "course of conduct in regard to Virginia," the Manfusos have done nothing "inconsistent with and in violation of their fiduciary duty to Laurel and Pimlico as directors." It is interesting to note that at our meeting in your office on Tuesday, August 24, 1993, Joe DeFrancis made no mention of any problems caused by the Manfusos when he gave his report on the current status of his dealings in Virginia. At one point, Bob Manfuso offered to speak,

on behalf of Joe DeFrancis, to one of the individuals involved in the application process but Joe said that it would be better if he did not, and that was the end of the discussion.

The Manfusos are moving forward in good faith and have expended substantial amounts of money in pursuing their due diligence. Your conclusion that they have "no desire to trigger a buy/sell or otherwise resolve this dispute in an equitable manner" is erroneous and without foundation.

Since speaking to you this morning, I have confirmed the availability of the Manfusos to attend the session with Judge Hollander on either Tuesday, September 7, 1993, or Wednesday, September 8, 1993, at 4:30 p.m. Please advise me as soon as possible as to which of the above two dates is agreeable to you.

Sincerely,

Herbert S. Garten

HSG/klp
cc: Andrew J. Graham, Esquire
McGee Grigsby, Esquire
Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

GOODELL, DEVRIES, LEECH & GRAY
ATTORNEYS AT LAW
COMMERCE PLACE
ONE SOUTH STREET, 20TH FLOOR
BALTIMORE, MARYLAND 21202

TELEPHONE (410) 783-4000

FACSIMILE (410) 783-4040

JAMES E. GRAY
DIRECT DIAL NUMBER
410/783-4009

2828 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20007
470-7244

August 31, 1993

VIA FAX -- 659-0543 and FIRST CLASS MAIL

Herbert S. Garten, Esq.
Fedder and Garten
36 South Charles Street
2300 Charles Center South
Baltimore, MD 21201

RE: Manfuso, et al v. De Francis, et al

Dear Herb:

I have spoken to Joe De Francis concerning the content of your August 30, 1993 letter. As always, Mr. De Francis is more than happy to discuss a full and complete resolution of our outstanding disputes either with or without Judge Hollander's participation. He is not, however, willing to spend his time, my time, and the Judge's time approaching a resolution of our disputes in a piecemeal manner. If your proposal is that we meet with Judge Hollander, disclose the nature and extent of our past discussions and the substance of our present positions and seek Judge Hollander's full and complete participation in an effort to resolve our disputes, then we will be available on Tuesday, September 7th at 4:30 p.m. If, on the other hand, the sole agenda item that you intend to present to Judge Hollander is your request to interview Mr. Sanders, then we have no desire to burden Judge Hollander with an issue on which we have made our position absolutely clear.

In short, until such time as we have a clear understanding and agreement as to the items to be placed on the agenda before Judge Hollander, we have no intention of agreeing to another meeting where we needlessly waste our clients' time and, far more importantly, Judge Hollander's time. If you want to discuss an agreed agenda, please feel free to give me a call.

Very truly yours,

James E. Gray

JEG/kav

cc: Andrew J. Graham, Esq.
McGee Grigsby, Esq.

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

36 SOUTH CHARLES STREET
2300 CHARLES CENTER SOUTH
BALTIMORE, MARYLAND 21201

AREA CODE 410
539-2800

FAX
410-659-0543

OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

September 3, 1993

VIA FACSIMILE and HAND DELIVERY

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

This will respond to your letters of August 31, 1993, and September 2, 1993.

Enclosed is letter of even date to Michael Sanders, which is self-explanatory.

We regret that you were unwilling to meet with Judge Hollander to discuss the right of the Manfusos to complete their due diligence by obtaining the necessary information regarding the tax exposure of Pimlico and Laurel for calendar years 1986-1991.

Joe DeFrancis, in prior meetings with you, Andy and Bob, has acknowledged that it was reasonable to allow the Manfusos their due diligence prior to triggering the Russian Roulette clause. The Manfusos have expended a great deal of time and expense in preparing and determining at what price, if at all, they would exercise their rights under the Stockholders Agreement. There is no justification to withhold any of the requested information from the Manfusos or to direct Michael Sanders not to meet with them. It is obvious that your clients are withholding information solely in an attempt to extract from the Manfusos new conditions, which you term "requirements," which were never agreed to and which the Manfusos have no obligation to accept.

Please consider this as a final, formal demand for access to the information previously requested. To reiterate, the Manfusos demand the right to inspect and copy all books, records, documents and memoranda, including any files and memoranda produced by corporate counsel or by management, its accountants or employees, and all I.R.S. documents relating to the Internal Revenue Service audit of Pimlico and Laurel for the years 1986 through 1991 and the appeals therefrom; the present status of the appeals, an assessment of the ultimate outcome of the audits, and the effect of the Newark Morning Ledger Co. case on

that assessment. The Manfusos are entitled to this information because they have statutory and common-law rights of inspection as directors and stockholders, and rights as a former client of present corporate counsel. In addition, they have these rights as a result of the regulatory, fiduciary and contractual obligations of the corporate officers and majority directors to provide such information to the Manfusos.

The information sought is essential to the Manfusos in determining what, if any, offer to make on or after October 1, 1993, pursuant to the Russian Roulette clause. If your clients refuse to cooperate, the Manfusos will be placed in a position where their final evaluation would have to be made without full knowledge of all facts. In such event, the Manfusos will hold responsible all parties liable for any losses sustained.

With respect to the Virginia opportunity, the Manfusos believe that securing a foothold in Virginia is of vital importance to Pimlico and Laurel, and Bob Manfuso, as offered at the conference in your office on August 24, 1993, remains willing to assist you in any way possible in the one area in which both our clients are in complete agreement. The Manfusos believe that the objectives of Laurel and Pimlico in securing a position in Virginia racing have a better chance of realization by cooperating with the Virginia Racing Associates and are disappointed that your clients have apparently not pursued this avenue. Be that as it may, the Manfusos continue to be willing to assist Joe DeFrancis in his efforts to secure a position for Pimlico and Laurel in Virginia racing.

Sincerely,

Herbert S. Garten

Andrew Jay Graham

HSG/klp
cc: Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Michael Sanders, Esquire

GOODELL, DEVRIES, LEECH & GRAY
ATTORNEYS AT LAW
COMMERCE PLACE
ONE SOUTH STREET, 20TH FLOOR
BALTIMORE, MARYLAND 21202

TELEPHONE (410) 783-4000

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JAMES E. GRAY
DIRECT DIAL NUMBER
410/783-4009

2828 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20007
470-7244

September 2, 1993

VIA FAX -- 659-0543 and FIRST CLASS MAIL

Herbert S. Garten, Esq.
Fedder and Garten
36 South Charles Street
2300 Charles Center South
Baltimore, MD 21201

RE: Manfuso, et al v. De Francis, et al

Dear Herb:

I have your letter to Mr. Sanders of September 1st and while its contentions are unworthy of comment, its inaccuracies deserve a response. First, Marty Jacobs and his firm did not represent John A. Manfuso, Jr. and Robert T. Manfuso on an individual basis. Second, even if they did, that fact is totally irrelevant to your request to meet with Mr. Sanders concerning the IRS audit. Mr. Sanders represents the corporate entities in regard to the IRS audit. He does not represent the Manfusos.

Since I have not had a reply to my letter of August 31st, I assume that you have no intention of requesting Judge Hollander's assistance in arriving at a full and complete resolution of all of our pending disputes. I can advise you that in light of the press of business, including the efforts that must be devoted to securing the Virginia opportunity for Maryland racing, Messrs. De Francis and Jacobs have scheduled other important matters for the afternoons of September 7th and 8th. If you want to take me up on my proposal that we prepare an agenda of items to submit to Judge Hollander, then we will have to secure alternate dates for a meeting with the Court.

Very truly yours,

James E. Gray

JEG/kav

cc: Andrew J. Graham, Esq.
McGee Grigsby, Esq.

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

36 SOUTH CHARLES STREET
2300 CHARLES CENTER SOUTH
BALTIMORE, MARYLAND 21201

AREA CODE 410
539-2800

FAX
410-659-0543

OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

September 3, 1993

VIA FACSIMILE
and
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael I. Sanders, Esquire
Ginsburg, Feldman and Bress, Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Manfuso et al. v. DeFrancis et al.

Dear Mr. Sanders:

We have been awaiting your reply to our letters of August 27 and September 1, 1993. Although we have received a letter dated September 2, 1993, from James E. Gray, copy of which is enclosed, we presume he writes on behalf of Martin Jacobs and Joseph DeFrancis and not on your behalf.

The Manfusos want to make absolutely certain that you are aware of the facts leading up to their request for information regarding the status of the tax audit for the Pimlico and Laurel Racetrack entities covering the years 1986-1991 and the attendant appeals.

Judge Ellen L. Hollander issued a Memorandum Opinion and Order dated August 6, 1993, declaring that the "Russian Roulette" buy-sell provision in the Stockholders Agreement entered into between the Manfusos, Pimlico, Laurel, DeFrancis and Jacobs, the Estate of Frank J. DeFrancis and the Maryland Jockey Club of Baltimore City, Inc., as of October 1, 1989 ("Agreement"), "is enforceable in accordance with the terms of the Agreement." The Agreement provides that the Russian Roulette clause may be triggered on or after October 1, 1993. The Manfusos, as part of their due diligence preparing for the Russian Roulette process, have learned of the existence of the subject tax audit and appeals, as well as amounts claimed by the Internal Revenue Service as being due by Pimlico. They have been furnished copies

of the Protests that your office prepared but have been prevented from obtaining other relevant information or meeting with you as a result of instructions received by you from Martin Jacobs and Joseph DeFrancis.

You may not be aware of the fact that counsel for Messrs. DeFrancis and Jacobs are willing to allow the Manfusos to obtain the information sought, providing the Manfusos agree to certain unacceptable "requirements," including cash payments in excess of $1 million to their former attorney and present adversary, your partner, Martin Jacobs.

None of the DeFrancis-Jacobs "requirements" are part of the Agreement, and the Manfusos refuse to be forced into new commitments by being deprived of information to which they are entitled. Instead, they demand to be allowed to complete their due diligence so that they may move forward as provided in the Agreement, be assured that they are fully apprised of the affairs of Pimlico and Laurel, and are operating on a level playing field.

As stated in our previous correspondence, the Manfusos believe that your firm represented them individually in a substantially related matter out of which the tax matters presently being handled by you arose. They expect you and your firm to fulfill their legal and ethical obligations and cooperate, and not allow one of your partners, who is in an adversarial position to them, to obstruct access to you, other members of your firm and to information that is relevant to their due diligence.

Please consider this a final, formal request to meet with you and other counsel at your firm who are familiar with matters involving the audit of Pimlico and Laurel by the Internal Revenue Services for the years 1986-1991 and the present status of the pending appeals. As indicated in our prior correspondence, we would expect to have complete access to all files and memoranda of your firm dealing with this matter, including any I.R.S. correspondence and documents, and an assessment of the ultimate outcome of the matter and the effect of the Newark Morning Ledger Co. case.

The information sought is essential to the Manfusos in determining the offer they may make on or after October 1, 1993. If you and your firm refuse to

cooperate with the Manfusos, they will be placed in a position where their final evaluation will have to be made without full knowledge of all the facts. In such event, the Manfusos will hold you accountable for any losses sustained.

We have done everything possible to obtain the cooperation of your partner and Mr. DeFrancis, but they are improperly insisting on a quid pro quo from the Manfusos that is neither warranted nor acceptable. The Manfusos are of the opinion that you are placing your partner's interests before theirs despite the fact that you have a duty to them arising out of your original representation of them and the fact that they are directors and substantial owners of Pimlico and Laurel. A copy of our letter to Mr. Gray of even date is enclosed. We urge you to reconsider your position and to respond to this letter promptly.

Sincerely,

Herbert S. Garten /TBS

Andrew Jay Graham /TBS

HSG/klp
Enclosure
cc: James E. Gray, Esquire
Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

September 9, 1993

VIA FACSIMILE and HAND DELIVERY

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

This is in reply to your letter of September 8, 1993. Frankly, your reply letter leads us to believe that engaging in further correspondence would be an exercise in futility, and to address each of the issues and facts referred in your letter of September 8, 1993, would also be an exercise in redundancy. We refer you to our letters of August 12, August 19, August 26, August 30 and September 3, 1993.

Your letter contains some wild and irresponsible accusations. The Manfusos are attempting to accomplish and address one single issue -- the completion of their due diligence in order that they may have all the facts necessary to exercise the Russian Roulette clause. The conditions that you have imposed upon a meeting with Judge Hollander have no relevance to the exercise of the Russian Roulette clause. As stated in our letter to you of August 19, 1993:

> Our clients cannot agree unconditionally to pay $2.8 million, with or without interest, to your clients or to reach any particular bottom line with respect to Marty Jacobs' contract. These obligations are obligations of the corporations, and whoever ends up owning the corporations will act on these obligations. Secondly, while we understand that your clients have articulated some skepticism about whether our clients actually intend to ever trigger the Russian Roulette, and they have, accordingly, requested that our commitment to trigger it be unconditional, our clients will not accede to this position. The Manfusos will say, and we will confirm, that there is every intention to trigger

> the Russian Roulette, and we are sure that they will do so as soon as they have completed discussions with their lender concerning financial commitments which will come into play if the Manfusos purchase the tracks. However, our clients would be foolish to bind themselves absolutely to entering a process pursuant to which they may become the owners of the business when they have not completed their financial arrangements, when they have not completed and are not being permitted to complete their due diligence, and when they have no way of knowing what your clients, or conceivably some third party, might do in the days prior to the triggering that would change the tracks' financial status.

While you acknowledge the Manfusos are entitled to certain information regarding the tax cases in their capacity as directors, your clients also know full well that the Manfusos are seeking this information as part of their due diligence in preparation for the triggering of the Russian Roulette clause. As such, they cannot be prevented from utilizing the information in any way that will assist them in their final determinations. If you are willing to allow the Manfusos to obtain the information for the purposes of completing their due diligence, we will arrange to move forward, notwithstanding your refusal to allow us to meet with Mr. Sanders, but we will not accede to the conditions set forth in the first paragraph on page 3 of your letter.

The Manfusos are entitled to the information sought, not only as directors but also as parties to the Stockholders Agreement as of October 1, 1989, under applicable Maryland and Federal Securities Laws, and pursuant to their common law and statutory rights as stockholders. There is also an implied duty of good faith incidental to any contract entered into in Maryland.

As we advised Michael Sanders in our letter of September 3, 1993:

> None of the DeFrancis-Jacobs 'requirements' are part of the Agreement, and the Manfusos refuse to be forced into new commitments by being deprived of information to which they are entitled. Instead, they demand to be allowed to complete their due diligence so that they may move forward as provided in the Agreement, be assured that they are fully apprised of the affairs of Pimlico and Laurel, and are operating on a level playing field.

With respect to Virginia racing, the Manfusos have never engaged in "meddling" and have no desire or intention to do so. Bob Manfuso's offer, as indicated in the last paragraph of our letter of September 3, 1993, was made solely because of the Manfusos' grave concern that the Virginia racing opportunity may be grossly mis-managed, with further damage to Pimlico and Laurel.

Our letter of September 3, 1993, was our "final, formal demand for access to the information previously requested." We consider your letter of September 8, 1993, to be a formal denial of our demand.

Sincerely,

Herbert S. Garten

Andrew Jay Graham

HSG/klp
cc: Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Michael Sanders, Esquire

MANFUSO BROTHERS

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

October 9, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Pimlico Racing Association, Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

Laurel Racing Assoc., Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

The Maryland Jockey Club of Baltimore City, Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

Re: Stockholders Agreement as of October 1, 1989

Gentlemen:

Reference is made to the Stockholders Agreement dated as of October 1, 1989 ("Agreement") by and between the Estate of Frank J. DeFrancis, Joseph A. DeFrancis, John A. Manfuso, Jr., Robert T. Manfuso, Martin Jacobs, Pimlico Racing Association, Inc. ("Pimlico"), The Maryland Jockey Club of Baltimore City, Inc., and Laurel Racing Assoc., Inc. ("Laurel"), and specifically to the provision thereof contained in Section I, titled "MANDATORY BUY/SELL OF STOCK," appearing on pages 3-9 of the Agreement.

Pursuant to the terms of the Agreement, including the provisions of Section I.C., more than four years having expired since the effective date of the Agreement, this letter shall constitute formal notice and written notice, as provided for in Section I.D.1 (page 4), that the undersigned hereby invoke the mandatory buy/sell provisions as set forth in Section I.D. In accordance therewith and by this letter, John A. Manfuso, Jr., and Robert T. Manfuso (the "Manfuso Group") hereby tender ("Original Tender") to Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc. (the "Corporations") all the "Manfuso Group Stock" as defined and identified below owned by them in Pimlico and Laurel for the

aggregate price of Eight Million Two Hundred Thousand Dollars ($8,200,000.00) (the "Transfer Price"). The Manfuso Group Stock comprises the following number of shares of stock of the Corporations:

	Pimlico	Laurel
Class A - Voting	420	350
Class B - Non-Voting	4,280	3,400

As you know, The Maryland Jockey Club of Baltimore City, Inc., is a wholly owned subsidiary of Pimlico and, as such, its Stock is not directly owned by the Manfuso Group or the DeFrancis Group, as hereinafter defined.

You are advised that the Agreement provides as follows:

1. Pursuant to Section I.D.2.(a), within sixty (60) days of the receipt of this Original Tender, the Corporations are required to determine whether they will purchase the Manfuso Group Stock being tendered by the Manfuso Group at the Transfer Price.

2. Pursuant to Section I.D.2.(b), if the Corporations determine they will not purchase the Manfuso Group Stock, then be advised that immediately thereafter the Manfuso Group Stock is hereby tendered to the Estate of Frank J. DeFrancis, Joseph A. DeFrancis and Martin Jacobs (the "DeFrancis Group").

3. Pursuant to Section I.D.2.(b), in the event the Corporations determine that they will not purchase the Manfuso Group Stock, the DeFrancis Group must, within ninety (90) days of the date of the Original Tender, either, at its option, (1) purchase the Manfuso Group Stock at the Transfer Price or (2) offer to sell all of the "DeFrancis Group Stock" as defined and identified below to the Corporations at the Transfer Price. The DeFrancis Group Stock comprises the following number of shares of stock of the Corporations:

	Pimlico	Laurel
Class A - Voting	580	550
Class B - Non-Voting	4,720	3,200

4. Pursuant to Section I.D.2.(b), in the event that the DeFrancis Group offers to sell the DeFrancis Group Stock to the Corporations at the Transfer Price, the Corporations must determine, within one hundred twenty (120) days of the Original Tender (this letter) to the Corporations, whether they will purchase the DeFrancis Group Stock at the Transfer Price. In such event, the DeFrancis Group is required to vote the DeFrancis Group Stock in accordance with the wishes of the Manfuso Group. This is to advise you that in such event, and immediately upon such event occurring and being so advised, the Manfuso Group will give you instructions as to their wishes.

5. If necessary, all parties must comply with the provisions of Section I.D.2.(b) (pages 6-7) of the Agreement, which reads as follows:

> 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).

6. As provided in Section I.D.3.(d) of the Agreement (page 8), closing of the sale of the Stock being purchased shall take place within one hundred twenty (120) days from the date of mailing this written notice.

7. As provided in Section I.D.3.(a) and (b) (page 7), the purchasing party must pay twenty percent (20%) of the price of such Stock in immediately available funds, and the remaining eighty percent (80%) shall be paid in five (5) equal annual installments evidenced by a Promissory Note. The Promissory Note is to be secured by a pledge of the Stock, as defined in the Agreement, and 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 purchasing stockholders, said personal liability to be pro rata to the Stock owned by each purchasing stockholder calculated after the purchase of such Stock.

8. We have selected Monday, January 31, 1994, as the date of closing to be held at the Executive Offices of Laurel Race Course, Laurel Race Track Road & Route 198, Laurel, Maryland, commencing at 10:00 a.m. Please confirm that the time of day is agreeable.

Notwithstanding anything hereinabove to the contrary, the terms of the Agreement shall control, and it is the intent of the Manfuso Group that this letter exercise its rights under the Agreement to either have the Manfuso Group Stock purchased at the Transfer Price of Eight Million Two Hundred Thousand Dollars ($8,200,000.00) or to purchase the DeFrancis Group Stock at the same Transfer Price of Eight Million Two Hundred Thousand Dollars ($8,200,000.00).

The date and mailing of this letter and written notice is October 9, 1993.

Very truly yours,

John A. Manfuso, Jr.

Robert P. Manfuso

cc: Estate of Frank J. DeFrancis
c/o Joseph A. DeFrancis, Personal Representative
Laurel Race Course
Laurel Race Track Road and 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

Michael I. Sanders, P.C.
Ginsburg, Feldman & Bress Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mr. Joseph A. DeFrancis
Apartment 606
2501 Calvert Street, N.W.
Washington, D.C. 20036

McGee Grigsby, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

Herbert S. Garten, Esquire, and
Sheldon G. Dagurt, Esquire
Fedder and Garten Professional Association
36 South Charles Street
Suite 2300
Baltimore, Maryland 21201

Mr. Martin Jacobs
710 Belgrade Road
Silver Spring, Maryland 20902

MANFUSO BROTHERS

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

October 18, 1993

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED and

VIA FEDERAL EXPRESS

Pimlico Racing Association, Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

Laurel Racing Assoc., Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

The Maryland Jockey Club of Baltimore City, Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

Re: Stockholders Agreement as of October 1, 1989

Gentlemen:

Reference is made to our letter of October 9, 1993, to Pimlico Racing Association, Inc., Laurel Racing Assoc., Inc., and The Maryland Jockey Club of Baltimore City, Inc.

We are interested in making certain there is a timely and smooth closing of the sale and purchase provided for under the Stockholders Agreement dated October 1, 1989. Since the Promissory Note referred to in the Stockholders Agreement as Exhibit No. 1 is not attached to our copy of the Agreement, we enclose a Promissory Note and Stock Pledge Agreement which contain customarily utilized provisions in transactions of this nature, including provisions contained in documents previously entered into by Pimlico and Laurel.

We stress the importance of moving forward expeditiously to finalize all closing matters contemplated under the Stockholders Agreement, including the confirmation of the date of closing. Whether we are the buyer or seller, we are ready to utilize the enclosed documents and close on Monday, January 31, 1994. We anticipate your cooperation in making certain that there is no delay in preparing for the closing and request that your comments be made available to Herbert Garten by October 25, 1993.

Very truly yours,

John A. Manfuso per HSG

John A. Manfuso, Jr.

Robert T. Manfuso per HSG

Robert T. Manfuso

Enclosures

cc: Estate of Frank J. DeFrancis
c/o Joseph A. DeFrancis, Personal Representative
Laurel Race Course
Laurel Race Track Road and 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

Michael I. Sanders, P.C.
Ginsburg, Feldman & Bress Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mr. Joseph A. DeFrancis
Apartment 606
2501 Calvert Street, N.W.
Washington, D.C. 20036

McGee Grigsby, Esquire
Latham & Watkins
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Herbert S. Garten, Esquire, and
Sheldon G. Dagurt, Esquire
Fedder and Garten Professional Association
36 South Charles Street
Suite 2300
Baltimore, Maryland 21201

Mr. Martin Jacobs
710 Belgrade Road
Silver Spring, Maryland 20902

ANDREW J. Y 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**
MAX HIGGINS LAUTEN*
KATHLEEN A. BIRRANE
KEVIN F. ARTHUR
ARON U. RASKAS*
SETH M. ROTENBERG
PERRY F. SEKUS
GEOFFREY H. GENTH*

*ALSO ADMITTED IN NY
*ALSO ADMITTED IN DC
‡ALSO ADMITTED IN NJ
*ALSO ADMITTED IN CA

LAW OFFICES
KRAMON & GRAHAM, P. A.
COMMERCE PLACE
ONE SOUTH STREET, SUITE 2600
BALTIMORE, MARYLAND 21202-3201
(410) 752-6030
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(410) 539-1269

WRITER'S DIRECT DIAL

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

FACSIMILE COVER LETTER

Transmission Date: 10/22/93 Client Name: Manfuso

Transmission Time: _____ Client Number: 91-225

PLEASE TRANSMIT THE FOLLOWING PAGES TO: COVER SHEET PLUS 6 PAGES

NAME	FACSIMILE NUMBER
John A. Manfuso, Jr.	301-986-4576
Herbert S. Garten	659-0543

FROM: Andrew Jay Graham MESSAGE: _____

If you do not receive all pages, please call back as soon as possible to (410) 752-6030; ask for Jane. Thank you.

HARD COPY TO FOLLOW: ____YES X NO

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
E H. OGBURN
FFREY H. SCHERR
NANCY E. GREGOR*
JAMES P. ULWICK**
PHILIP M. ANDREWS
GERTRUDE C. BARTEL*
MARILYN HOPE FISHER**
MAX HIGGINS LAUTEN*
KATHLEEN A. BIRRANE
KEVIN F. ARTHUR
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October 22, 1993

VIA FACSIMILE

Mr. John A. Manfuso
Manfuso Brothers
Suite 1010
8401 Connecticut Avenue
Chevy Chase, Maryland 20815

RE: Certification & Appealability

Dear Tommy:

Enclosed for your file is a copy of Kevin's memo of October 19 regarding certification and appealability.

Sincerely,

Andrew Jay Graham

AJG/jmw
Enclosure
cc: Herbert S. Garten, Esquire (w/encl.)

MEMORANDUM

DATE: October 19, 1993

TO: AJG

FROM: KFA

RE: Manfuso: Time for Requesting Certification Under Rule 2-602(b)

You have asked me to look into the existence of time limits for requesting certification of an interlocutory ruling under Md. R. 2-602(b).

No reported Maryland case discusses that issue, but some discussion does occur in a number of federal cases. Because Maryland courts may interpret the Maryland rule "in light of the federal body of law,"[1] we may use the federal decisions to attempt to establish deadlines for requesting certification.

In Schaefer v. First Nat'l Bank of Lincolnwood, 465 F.2d 234, 236 (7th Cir. 1972), the court held that "as a general rule it is an abuse of discretion for a district judge to grant a motion for a Rule 54(b) order when the motion is filed more than thirty days after the entry of the adjudication to which it relates." The court continued:

> There may be of course cases of extreme hardship where dilatoriness is not occasioned by neglect or carelessness in which the application of this general rule might be abrogated in the interest of justice. Those occasions ought, however, to be extremely rare.

Id.

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[1] P. Niemeyer & L. Schuett, Maryland Rules Commentary 451 (2d ed. 1992).

The Schaefer decision arose against the background of a highly unusual set of facts. The plaintiffs, the parties seeking certification, initially had appealed an interlocutory order without obtaining certification. Certain defendants moved to dismiss that appeal on the ground that it was interlocutory absent compliance with Rule 54(b). After the Seventh Circuit granted that motion, the plaintiffs delayed for three months before requesting certification under Rule 54(b). Another nine months passed before the trial court ruled on the request, granting certification. Id.

In view of the passage of more than a year from the dismissal of the initial appeal until the noting of the second appeal, the Seventh Circuit viewed the subsequent appeal as untimely. Given the passage of that much time, the court reasoned that the district court needed to provide a substantial factual justification for finding "no just reason for delay," but had failed to do so. Id. at 236. "More importantly," the court continued:

> We believe that validating the district court's Rule 54(b) determination here would derogate from the policy against piecemeal appeals while, at the same time and for no apparent good reason, placing Rule 54(b) appeals on a potentially more favorable procedural footing than obtains in appeals as of right from final judgments where no Rule 54(b) problem inheres.

Id.

Pointing out that, in virtually all instances, a party must appeal from the final judgment within sixty days of the judgment,

the court reasoned that "[t]he potential for abuse inherent in condoning [the plaintiffs'] delay would be great." Id. For that reason, the court adopted the general rule requiring parties to seek certification under Rule 54(b) within thirty days of the interlocutory order that they would appeal.

I have found only one case that comes close to following Schaefer: Cherokee Nation of Oklahoma v. United States, 23 Cl. Ct. 735 (1991). In that case the plaintiff had requested Rule 54(b) certification more than eight months after the interlocutory order that the plaintiff wished to appeal.[2] Citing Schaefer, the Claims Court stated: "Plaintiff's lack of diligence here supports this court's conclusion that there is no urgent need for an appeal of the dismissed claims." Id. at 739. The court appears not to have invoked Schaefer's general rule that a Rule 54(b) motion is untimely unless filed within thirty days of the interlocutory order that the moving party wishes to have considered on appeal.

At least one federal district court has rejected Schaefer's general rule. In Bank of New York v. Hoyt, 108 F.R.D. 184, 185 (D.R.I. 1985), the court "eschew[ed]" what it called the "inflexible criterion" of Schaefer. In support of its decision, the court reasoned that "Rule 54(b), unlike a myriad of other provisions in the Civil Rules, e.g., Fed. R. Civ. P. 59(b), 59(e), 72(a), 74(a), contains no express temporal restrictions."

---

[2] To be perfectly exact, the plaintiff had requested certification under the Claims Court's Rule 54(b), which is identical to Rule 54(b) of the Federal Rules.

Id. The court, however, did not regard the moving party's delay as insignificant:

> To be sure, the longer an aggrieved party waits after receiving notice of the court's ruling, the less likely it will be -- in the typical case -- that he can persuade the nisi prius court that there is, in the language of the rule, "no just reason for delay." (After all, such thumb-twiddling is itself some evidence that the disappointed suitor considered delay in seeking appellate review to be a tolerable circumstance.)

Id. at 185-86.

Thus, while it stressed that the "seasonableness" of a Rule 54(b) motion "should not be accorded talismanic importance," Hoyt would not wholly ignore a movant's delay. Id. at 186. Instead, under Hoyt, a trial court must consider the movant's delay in deciding whether "there is no just reason" to delay the entry of a final judgment.[3]

In summary, Schaefer holds that a party must move for certification within thirty days of the challenged order, because such a party should not stand in any better position than a person appealing from the final judgment on the merits. Schaefer

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[3] In at least two states with rules identical to Rule 54(b), the courts have also declined to follow Schaefer's 30-day general rule. In Williams v. City of North Las Vegas, 91 Nev. 622, 625, 541 P.2d 652, 654 (1975), the court called Schaefer "basically sound," but permitted an appeal to proceed even after an 18-month delay in requesting certification. In support of its decision, the court stressed, among other things, the absence of any "significant prejudice or inconvenience" to the appellee. Id. In addition, in Phillips v. United Serv. Auto. Ass'n, 91 N.M. 325, 332, 573 P.2d 680, 687 (1977)(Sutin, J., concurring), one judge interpreted Schaefer to mean that a delayed request for certification is untimely only where the delay stems from the appellant's neglect.

has hardly received overwhelming support from the cases; however, even in rejecting Schaefer, cases like Hoyt recognize that a litigant's delay has some bearing on the absence of any "just reason" to delay appellate review. Indeed, Hoyt seems to suggest that the longer the delay, the less likely it is that a party should succeed in persuading the court of the absence of any "just reason" to delay the entry of final judgment.

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

November 3, 1993

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED and

VIA FEDERAL EXPRESS

Pimlico Racing Association, Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

Laurel Racing Assoc., Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

The Maryland Jockey Club of Baltimore City, Inc.
Joseph A. DeFrancis
Laurel Race Course
Laurel Race Track Road & Route 198
Laurel, Maryland 20725

Re: Closing under 10/1/89 Stockholders Agreement

Gentlemen:

Reference is made to our letter of October 18, 1993, at which time we forwarded to you a Promissory Note and a Stock Pledge Agreement ("Documents") and requested that you make your comments available to Herbert S. Garten by October 25, 1993.

Almost one month has passed since we invoked the mandatory buy/sell provisions of the Stockholders Agreement. In our letter of October 18, 1993, we stressed the importance of moving forward expeditiously to finalize all closing matters and asked that you confirm the suggested closing date of January 31, 1994. We also stressed the importance of a timely and smooth closing of the sale or purchase provided for under the Stockholders Agreement. As of this date, neither Mr. Garten nor we have received any comments regarding the Documents although Joseph DeFrancis has indicated to the press his desire that this matter be promptly resolved.

The delay in responding to our request and in preparing for the closing results in Pimlico, Laurel and the undersigned incurring substantial additional expenses; these include Pimlico and Laurel having incurred and continuing to incur interest charges of approximately $70,000 per month that could be saved through a restructuring of the First National Bank loans. It should also be noted that this saving should have occurred long before now.

It is of utmost importance to all parties that the application for a Virginia license by Pimlico and Laurel presently being pursued not be jeopardized or adversely affected by a delay resulting from a question as to the status of ownership of Pimlico and Laurel. The 60-day and 90-day periods, referred to in the Stockholders Agreement, end on December 9, 1993, and January 8, 1994, respectively. Although we recognize the "DeFrancis Group" (the Estate of Frank DeFrancis, Joseph DeFrancis, and Martin Jacobs) has the right under the Stockholders Agreement to make its final decision in accordance with the terms of the Agreement, it is in all parties' best interest, and especially in the best interests of the Maryland racing industry, to resolve the ownership question without further delay. Because of the importance of this matter to the Maryland racing industry, we would be pleased to accommodate an accelerated closing date.

If you do not respond to our letter of October 18, 1993, by November 11, 1993, we will construe your failure to respond as an acceptance to the utilization of the Documents and to the scheduled closing of the transaction on January 31, 1994.

Very truly yours,

John A. Manfuso, Jr.

Robert T. Manfuso

cc: Estate of Frank J. DeFrancis
c/o Joseph A. DeFrancis, Personal Representative
Laurel Race Course
Laurel Race Track Road and 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

Michael I. Sanders, P.C.
Ginsburg, Feldman & Bress Chartered
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Mr. Joseph A. DeFrancis
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1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

Herbert S. Garten, Esquire, and
Sheldon G. Dagurt, Esquire
Fedder and Garten Professional Association
36 South Charles Street
Suite 2300
Baltimore, Maryland 21201

Mr. Martin Jacobs
508 Stonington Road
Silver Spring, Maryland 20902

IN THE MATTER OF	*	IN THE
THE ESTATE OF	*	ORPHANS' COURT
FRANK J. DE FRANCIS,	*	FOR HOWARD COUNTY, MD
DECEASED	*	ESTATE #17-7636-44

****

ORDER

Pending before this court is a Motion of the Estate of Frank J. DeFrancis For Protective Order, and Response of the Estate of Frank J. DeFrancis Seeking Dismissal of Contingent Claim Against Estate of Decedent, filed by Joseph A. DeFrancis and Alec P. Courtelis, Co-Personal Representatives of the Estate of Frank J. DeFrancis, by and through their attorney Ira T. Kasdan of Ginsburg, Feldman and Bress.

Upon consideration of the Motion for Protective Order of the Estate of Frank J. DeFrancis and upon consideration of response thereto,

1. The Court FINDS that the subpoena was properly served on counsel to the estate of Frank J. DeFrancis pursuant to Rule 1-321.

2. The Court ORDERS discovery including depositions, interrogatories and the production of documents be STAYED until after January 12th, 1994 when the DeFrancis group is due to determine whether to purchase/or sell the Stock which is subject to the stockholders' agreement. (The Court declines to STAY discovery pending resolution of the validity of the Stockholders' Agreement because that issue is outside the jurisdiction of the Orphans' Court)

3. In granting the Estate's request to STAY Discovery, the Court ORDERS that no distribution of the Stock be made without an Order of Court until such time as the contingent claim has been resolved.

4. It is FURTHER ORDERED that a partial account be filed within 10 days of the signing of this Order listing the Stock currently owned by the Estate and setting forth any distribution of Stock that has been made since the last accounting filed September 29, 1993.

5. The Court does hereby on this 16th day of November, 1993, RESCIND the Show Cause Order dated October 13, 1993, and the Show Cause hearing scheduled for December 1st, 1993, and schedules a hearing for January 26th, 1994 to hear the Contingent Claim and Petition for an Order for the Retention of Funds to Pay the Contingent Claim and any response thereto.

Rosemary M. Ford C.J.
ROSEMARY M. FORD, CJ

Charles M. Coles, Jr., A.J.
CHARLES M. COLES, JR., AJ

TRUE TEST COPY

Kay K. Hartleb

KAY K. HARTLEB
REGISTER OF WILLS
HOWARD COUNTY

GOODELL, DEVRIES, LEECH & GRAY
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2826 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20007
470-7244

November 18, 1993

VIA FAX - 659-0543

Herbert S. Garten, Esq.
Fedder and Garten
36 South Charles Street
2300 Charles Center South
Baltimore, MD 21201

RE: Manfuso, et al v. De Francis, et al

Dear Herb:

This is in reply to the letters that you prepared for the Manfusos' signatures dated October 18, 1993 and November 3, 1993 and Andy Graham's request that any settlement proposal be reduced to writing. This letter is directed to you and not to Andy Graham or your clients for several reasons. First, it is clear that your clients' letters have been authored by you and that you are responsible for orchestrating their strategy of offering an olive branch and then smashing the hand extended in acceptance. Second, I am tired of being personally and professionally embarrassed by having my efforts to deal with Andy in a reasonable manner rebuffed when your trench warfare tactics are substituted for his statesmanlike approach. Whether these tactics are being intentionally employed or not is immaterial. From now on we will deal with you directly and cut out the middle man.

Your letter of November 3rd contained a totally self-serving requirement that we respond by November 11th and a statement that the Manfusos would construe our failure to respond as an acceptance to the utilization of documents you proposed and to the scheduled closing of the transaction on January 31, 1994. Wrong. You and your clients can put anything you want to in a letter about how you will construe something, but that won't make it true.

As you know, our legal position is that the Stockholders Agreement of October 1, 1989 is void or voidable and we have filed a Motion to Certify the Judge's ruling as a final judgment so as to permit us to proceed with an appeal. Consequently, we would expect that Agreement to be followed only

as part of an overall settlement that would fully and completely "divorce" the Manfusos from the De Francis Group.

We are pleased that your clients have finally recognized the importance of the Virginia opportunity to Laurel and Pimlico. While your clients are now willing to make self-serving statements in correspondence concerning that opportunity, it is our information and understanding that they have done and are doing everything possible to undermine the ability of Laurel and Pimlico to obtain that opportunity if the De Francis Group is in control of the entities. We notified you of certain activities of your clients in this regard in our letter of August 27, 1993.

We have now received additional confirmation that the Manfusos have continued a course of conduct in regard to Virginia that is inconsistent with and in direct violation of the fiduciary duties they owed as directors to Laurel and Pimlico. We believe that your clients, while directors of Laurel and Pimlico, engaged in activities with competing applicants for the Virginia license that were designed to interfere with or frustrate the efforts of Laurel and Pimlico to obtain the license if the De Francis Group retained control. We also believe that the Manfusos finally resigned as directors on October 9th, after our August 27th letter put them on notice as to our contentions, so that they could continue their improper conduct in Virginia without having their activities properly labelled as a breach of their fiduciary duties. Their resignations came too late; the damage had already been done. Moreover, in the event Laurel and Pimlico do not obtain the Virginia license, we believe the Manfusos could be responsible for damages for intentional interference with prospective business advantages.

In addition to interfering with the Virginia opportunity, we believe that your clients have engaged in a concerted effort to interfere with the entities' relationship with the Guida Group. Press reports, if accurate, reflect that the Manfusos have kept Louis Guida informed about their intentions. These same press reports have contained inflammatory and threatening statements by Louis Guida regarding action he would take if the De Francis Group were the purchaser of the Manfusos' stock. We believe that Mr. Guida's attitude was created and his threats prompted by your clients' conduct.

We intend to pursue all available remedies against the Manfusos for their improper conduct related to the Virginia opportunity and the Guida Group and the damages that these activities have caused the Tracks. We will, however, withhold filing suit in regard to these matters to see if a full and complete settlement of our disputes can be reached. We advise

you, however, that our disputes must be resolved quickly and effectively or else we will act to protect the interests of the Tracks in regard to the Manfusos' inappropriate conduct.

Our Settlement Proposal is as follows:

1. If De Francis and Jacobs are the buyers of the Manfusos' stock, the purchase price will be $8,200,000 (or $970.42 per share for the 8,450 shares of stock to be acquired). If De Francis and Jacobs are the sellers, the purchase price will be $8,782,300, based on the $970.42 price per share for the 9,050 shares sold. We do not agree with the position of the Manfusos that the price to be paid for the greater number of shares owned by De Francis and Jacobs is the same as for the lesser number owned by the Manfusos.

2. If De Francis and Jacobs are the sellers, they will be paid by Pimlico not later than the closing date the sum of $2.8 million owed to them, as set forth in Section VI.A.4 of the Stockholders Agreement, plus the actual interest earned on those funds since the date the Manfusos received their $2.5 million under that Section.

3. If the Manfusos are the sellers, all monies due to the Manfusos on account of unpaid severance payments plus the actual interest earned on such funds will be paid not later than the closing date.

4. All of the parties will execute and deliver on the closing date mutual releases providing for the full settlement of any and all disputes between them. All claims, including without limitation, any right of the Manfusos to pursue any stockholders derivative actions or claims of corporate waste will be fully released by the mutual releases. With the exception of the obligation on the part of the purchaser to pay any deferred portion of the purchase price, the mutual releases shall be sufficiently broad to effect a complete and permanent "divorce" among the parties.

5. All pending litigation will be dismissed with prejudice not later than the closing date.

6. As you know, the form of promissory note(s) for the deferred portion of the purchase price, if any, was not attached to the Stockholders Agreement even though called for by that document. Given the relationships among the parties, the note(s) must provide: that there are no defenses to non-payment; that the note(s) will be accelerated and the entire balance will become due and owing if any payment is not made as provided therein; that all legal costs incurred to enforce the note will be paid by

the promissor; that liquidated damages for non-payment will be in a reasonable amount; that the commencement of any litigation of any kind or description to avoid payment will itself be considered a default; and, if litigation is brought, that the prevailing party shall be entitled to reimbursement of all legal fees, costs and expenses.

7. Mr. Jacobs' employment contract, which would survive any sale under the Stockholders' Agreement, will be bought out by the Manfusos if they are the successful purchasers for two-thirds of the amount which he would have received in each of the years remaining in the term of his agreement, payable in full on the closing date.

8. In accordance with the wishes previously expressed by your clients, in the event that De Francis and Jacobs are the purchasers, they will cause Laurel and Pimlico to extend to John A. Manfuso, Sr. lifelong rights for his boxes and dining club privileges at Laurel and Pimlico.

9. The parties will provide to each other on the closing date, written statements that they have examined the books and records of Laurel and Pimlico, that they are familiar with the Tracks' operations and that they are satisfied that the others were not involved in any breach of their fiduciary duties to the entities and were not guilty of any conduct that might be construed as unethical or illegal.

10. The selling parties will agree to use their reasonable best efforts to assist the purchasing parties in reaching a settlement with the Guida Group.

11. The selling parties will agree to cooperate in good faith with the purchasing parties to the extent necessary to effectuate the transaction. The selling parties will further agree not to interfere with, hinder or impede in any respect at any time the purchasing parties running of the business or the purchasing parties attempt to obtain the Virginia opportunity.

This letter constitutes an offer of settlement and in no way prejudices the positions of any member of the De Francis Group or the entities.

Very truly yours,

James E. Gray

JEG/kav
cc: Joseph A. De Francis
Martin Jacobs
Alec P. Courtelis

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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410-659-0543

CABLE "FEDGAR"

OFFICE OF MORRIS FEDDER (1926-61)

November 23, 1993

VIA FACSIMILE and HAND DELIVERY

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

This is in reply to your letter of November 18, 1993, with the exception of the ad hominem attacks made therein which are not worthy of a reply. Despite the statements made to the press subsequent to your letter that your clients intend to "resolve all disputes," it is apparent that they are really planning to create further disputes by threatening additional litigation and an appeal from Judge Hollander's decision.

Your letter purports to set forth a "settlement proposal," but in actuality the "settlement proposal" is merely an expanded rehash of past correspondence and discussions; it is not a "settlement proposal" and it offers no compromise at all. In the past, your clients raised several elements of the current "settlement proposal" as "requirements" before allowing the Manfusos to complete their due diligence. Now that the Manfusos have at least attempted to complete their due diligence and have triggered the Russian roulette, the current "settlement proposal" attempts to extract from the Manfusos those same "requirements" by threatening to take an appeal and institute further litigation. The Manfusos will not operate under threat of force, nor will they be coerced into making commitments by being deprived of those terms and conditions to which the Court has ruled they are entitled.

We are well aware of your clients' threats regarding Virginia racing, and our clients' response is set forth in our letters of August 30, 1993, and September 9, 1993. The Manfusos have also stressed the importance of moving forward with the application for a Virginia license in their letter to your clients dated November 3, 1993. There has been no reply to the suggestion in that letter that in connection with the Virginia opportunity it would be in "all parties' best interest, and especially in the best interests of the Maryland racing industry, to resolve the ownership question without further delay" and to provide for an accelerated closing date for that purpose.

The Manfusos' position on the Guida Group has likewise been addressed in the past. They continue to be concerned about the general partner's fiduciary responsibility to the limited partners of the Laurel Racing Association Limited Partnership. Any attempt to convert that concern to a claim against the Manfusos is ridiculous. Responsibility for any damage or deterioration in the relationship between your clients and the Guida Group rests squarely with your clients.

Finally, the Manfusos' position with respect to the threatened appeal is set forth in their Response to Motion to Direct Entry of Partial Final Judgment.

While your letter discusses several alleged "disputes," the real issue is not addressed; namely, whether your clients will cooperate in moving forward pursuant to the terms of the Stockholders Agreement and whether they will be the purchasers or sellers of stock under the terms of the Russian roulette. All of the "disputes" to which you refer could become moot in the event the DeFrancis Group becomes the purchaser. Moreover, most of the "disputes" that you itemize are beyond the scope of the Stockholders Agreement and are strictly corporate business matters. As such, the resolution of these matters is contingent upon the outcome of the Russian roulette process, among other things. Your clients' manufacture of alleged "disputes" by requiring a different sale or purchase price for the DeFrancis Group stock, a golden parachute for Mr. Jacobs which would expose the Corporations to an obligation in excess of $1.5 million, a payment of $2.8 million plus interest, and burdening the Corporations in other ways such as you suggest all fall in the category of revisions to the Stockholders Agreement, or have no basis whatever, and are intended only to frustrate the Russian roulette process.

In preparation for the closing, we previously provided the form Promissory Note to you on October 18, 1993. We believe many of the provisions you are now requesting are incorporated in the note. To the extent that the provisions you are requesting are not already incorporated in the note, we are reviewing those provisions and will respond shortly. We assume that the balance of the form Promissory Note and Stock Pledge Agreement previously provided are agreeable to you.

Our clients are ready, willing and able to proceed to closing under the terms and conditions of the Stockholders Agreement in accordance with Judge Hollander's ruling. They expect that your clients will meet their contractual obligations without further threats and veiled

attempts to delay the closing under the Stockholders Agreement. The offer under the Russian roulette provision is on the table, and we await a good-faith response to it and to our letters of October 18, 1993, and November 3, 1993.

Sincerely,

Herbert S. Garten

Andrew Jay Graham

HSG/klp
cc: Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
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CABLE "FEDGAR"

OFFICE OF MORRIS FEDDER (1926-61)

November 24, 1993

VIA FACSIMILE

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

As promised in our letter of November 23, 1993, the following is in response to the particular comments made by you in paragraphs 4 and 6 of your letter of November 18, 1993, bearing on the closing documents to be utilized by the parties.

Since the letter of October 9, 1993, was delivered pursuant to the terms of the Russian roulette clause, we have been awaiting your clients' commitment as to whether they will cooperate in moving forward pursuant to the terms of the Stockholders Agreement and whether they will be purchasers or sellers of stock under the terms of the Russian roulette. Unfortunately, your clients have not been forthcoming with that commitment. Since time was and is of the essence, the Manfusos provided a Promissory Note and Stock Pledge Agreement to you on October 18, 1993, which forms the Manfusos remain willing to utilize whether they are sellers or buyers.

The comments in paragraphs 4 and 6 of your letter of November 18, 1993, illustrate the urgent necessity of a decision by your clients as to whether they want to buy or sell if we are to accommodate your requests. In an attempt to do so and to assure that the Russian roulette process moves forward without delay, we take this opportunity to respond to your comments despite the fact that your clients remain non-committal respecting their decision to buy or sell.

As we have related to you on many occasions, all of the "disputes" referred to in your letter of November 18, 1993, would become moot in the event that the Manfusos are sellers under the Stockholders Agreement. In that event, the proposals made by you in connection with the mutual releases (paragraph 4) and the Promissory Note (paragraph 6) are agreeable.

Naturally, the terms of the mutual releases and Promissory Note suggested by you in paragraphs 4 and 6 would be different in the event that the Manfusos are buyers under the Stockholders Agreement because the Manfusos are no longer directors and have not been privy to the same information as your clients and may, as buyers, be assuming responsibility for matters of which they have not been made aware.

In the event the Manfusos are buyers, the additional terms and conditions suggested by you in paragraph 6 with respect to the Promissory Note are agreeable, but there should be protection for the Manfusos in the event of any material liabilities of the Corporations, not in the ordinary course of business, known or unknown as of the date of closing and not disclosed to the Manfusos (a "non-disclosed liability"). Thus, the "no defenses to non-payment" clause and the "commencement of any litigation of any kind ... [to] be considered a default" clause both should be qualified. The qualification should be that there are no defenses to non-payment except defenses based upon the existence of a non-disclosed liability. Similarly, litigation shall be considered a default except litigation arising out of a non-disclosed liability.

There should be similar protection for the Manfusos with respect to the suggestions made by you in paragraph 4, in the event the Manfusos are buyers. Thus, the mutual releases should provide for the full settlement of any and all disputes and all claims except any claims arising out of a non-disclosed liability. Otherwise, the mutual releases shall be "sufficiently broad" as you suggest, "with the exception of the obligation on the part of the purchaser to pay any deferred portion of the purchase price."

We are ready to proceed to closing using the documents previously furnished you. However, in an attempt to accommodate your concerns with respect to the mutual releases and Promissory Note, we are willing to amend the documents as set forth above. We hope that the vituperative tone of your most recent correspondence as well as recent statements made to the press are not a further indication of your clients' intent to frustrate the Russian roulette process no matter how reasonable we are. Certainly, it is in all parties' and the public's best interest that we comply in good faith with the Russian roulette process as previously agreed and as ordered by the Court.

Sincerely,

Herbert S. Garten

Andrew Jay Graham

HSG/klp
cc: Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

GOODELL, DEVRIES, LEECH & GRAY
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WASHINGTON, D. C. 20007
470-7244

December 2, 1993

VIA FAX - 659-0543

Herbert S. Garten, Esq.
Fedder and Garten
36 South Charles Street
2300 Charles Center South
Baltimore, MD 21201

RE: Manfuso, et al v. De Francis, et al

Dear Herb:

We have told you, Andy Graham and your clients, both in face-to-face meetings and in writing, what our position is in regard to the buy/sell provision on so many different occasions and in such clear language that it cannot possibly be misunderstood or misconstrued by you. My clients are willing to abide by the buy/sell provision without further legal challenge if, and only if, that mechanism is employed as part of an overall settlement of all of the disputes and issues between the parties. To claim that we have "not been forthcoming" with a commitment as to whether we will cooperate in moving forward pursuant to the terms of the buy/sell provision is nonsense.

Your position, expressed in writing and in newspaper accounts, is that the only resolution acceptable to your clients is the exercise of the buy/sell provision and a settlement of the litigation if they are the sellers, but not if they are the buyers. That is not an acceptable solution to my clients. Until such time as you and your clients recognize, that there are issues that go beyond the buy/sell provision which must be addressed, there can be no resolution short of that brought about by continued litigation.

Your letter of November 24th states that you are replying to comments made in paragraphs 4 and 6 of my letter of November 18th. You claim that you promised such comment in your letter of November 23rd. I have read and re-read your letter of November 23rd, and the only alleged "promise" was to review the requested provisions regarding the notes securing the unpaid balance of the purchase price. Nowhere in your letter did you raise any issue or comment, much less a "promise", in regard to paragraph 6. I assume, therefore, that this alleged response is

because you and the Manfusos have suddenly perceived that you can gain some benefit in regard to discussions of the release language.

As for your willingness to amend the documents, no thanks. Your clients chose to resign when they did, and the fact that they may not have been privy to the same information as my clients is a matter of their own choosing. I would never, under any set of circumstances, allow any client to enter into a mutual release or to execute or accept promissory notes which leave open the possibility of litigation related to a "non-disclosed liability". That term is meaningless and nothing more than an engraved invitation for the Manfusos to find a way not to honor their obligations under either the mutual release or the promissory note.

While your proposed amendment is totally unacceptable, we are willing to discuss, as part of an overall settlement of all disputes and issues, more restrictive language that may address legitimate concerns. That is, we are willing to discuss categories of so-called "non-disclosed" liabilities which might be exempted by the release language and the promissory notes. If there are some specific types or categories of liabilities which concern you and your clients, we would be willing to consider amendments which address those specific concerns.

My clients and I find your failure to address paragraph 11 of our settlement proposal particularly troublesome. I would assume that if the Manfusos are the purchasers that they would want the cooperation of De Francis and Jacobs to the extent necessary to effectuate the transaction; and, more importantly, they would want an agreement that De Francis and Jacobs would not interfere with, hinder or impede the Manfusos' ability to run the business or to obtain the Virginia opportunity. If your clients truly do believe that it is in the best interest of the Maryland racing industry for the purchasing party to secure the Virginia opportunity, then they should agree that the selling party will not interfere with, hinder or impede in any respect at any time the purchasing party's running of the business or the purchasing party's attempt to obtain the Virginia opportunity.

Very truly yours,

James E. Gray

JEG/kav
cc: Joseph A. De Francis
Martin Jacobs
Alec P. Courtelis

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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OFFICE OF MORRIS FEDDER (1926-61)

CABLE "FEDGAR"

December 3, 1993

VIA FACSIMILE

James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
Suite 2000 Commerce Place
One South Street
Baltimore, Maryland 21202

Re: Manfuso et al. v. DeFrancis et al.

Dear Jim:

This is to acknowledge receipt of your letter of December 2, 1993. As you know, Andy Graham is co-counsel of record in this matter. Please, therefore, make certain that all future correspondence is also directed to him.

It is clear from your letter that your clients are unwilling to declare whether they are buyers or sellers, and that they are attempting to drag out this matter by continuing to raise unrelated corporate issues in a transparent attempt to delay the closing under the Russian roulette provisions of the Stockholders Agreement. Your renewed threat of continued litigation and raising these issues that are not part of the Russian roulette process will not cause the Manfusos to delay or stop from moving forward with the Russian roulette process.

On numerous occasions, and as stated in our letter to you of August 19, 1993, and again on September 9, 1993, we apprised you that your requirements regarding the $2.8 million payout and the Martin Jacobs' contract "are obligations of the Corporations, and whoever ends up owning the Corporations will act on these obligations." Your continuing demands regarding these items and also in raising additional issues such as a difference in price to be paid for the DeFrancis Group stock vis-a-vis the Manfuso Group stock, signal that there is no basis for further discussions or correspondence regarding this matter.

We confirmed to you in our letters of November 23 and 24, 1993, that the Manfusos are agreeable to all the proposals made by you in connection with the mutual releases and the promissory note if they are sellers.

We question your motives in continuing to raise the Virginia matter. Our letters of August 30, 1993, September 3, 1993, September 9, 1993, and November 23, 1993, adequately address this issue. We have advised you on numerous occasions of the importance

of moving forward with the Virginia opportunity and refer you to the third paragraph of our letter of November 23, 1993. We note that we continue to receive no reply to the suggestion that it would be in all parties' best interests, especially in the best interest of the Maryland racing industry, to provide for an accelerated closing date.

A letter is not intended to contain all the provisions of an agreement. We have no problem with a standard provision assuring cooperation between the parties regardless of who is the buyer or seller. Quite frankly, our clients, if buyers, have not focused on the need for such a provision. Whether they receive cooperation of DeFrancis and Jacobs is of little concern to them. The request made in the second sentence of paragraph 11 of your letter of November 18, 1993, is so broad that it would only lead to additional litigation. Even though there is no requirement under the Shareholders Agreement that they agree to any limitations on their future activities, in Virginia or elsewhere, the Manfusos are willing to state they have no intention of pursuing a Virginia license for themselves or anyone else should they be sellers, but they will not agree to the broad and open-ended limitations suggested by you.

Your obsession with the word "promise" is baffling. The reason why we addressed the request contained in paragraphs 4 and 6 of your letter of November 18, 1993, as we said we would in our letter of November 23, 1993, is that these requests were clearly interrelated. We are confident that a mutually agreeable definition of "non-disclosed liability" can be reached. Again, there was no intention that the language expressed in the letter of September 9, 1993, would be all-encompassing. We were just conveying the concept of what would be necessary to be included in the Promissory Note and release in the event the Manfusos were buyers.

As we previously advised you, all these unrelated corporate issues would be moot if your clients are the buyer. If your clients are not in a position to buy, please say so and stop the charade.

Sincerely,

Herbert S. Garten

Andrew Jay Graham

HSG/klp
cc: Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

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‡ALSO ADMITTED IN NJ
*ALSO ADMITTED IN CA

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December 3, 1993

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
93 DEC -6 AM 9:00
CIVIL DIVISION

HAND DELIVERY

The Honorable Ellen L. Hollander
Circuit Court for Baltimore City
Room 408
100 N. Calvert Street
Baltimore, Maryland 21202

RE: Manfuso v. De Francis

Dear Judge Hollander:

As you know, on Friday afternoon we filed Plaintiffs' Surreply Regarding Defendants' Motion to Direct Entry of Partial Final Judgment. Included by mistake in the packet of correspondence designated Exhibit D was an internal memorandum from counsel to client dated October 22, 1993. The mistake was caught before copies were delivered to opposing counsel. We respectfully request permission to remove from Your Honor's copy and from the copy filed with the clerk the above-described memorandum.

Very truly yours,

Andrew Jay Graham

AJG/jmw
cc: Clerk's Office
Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso
Herbert S. Garten, Esquire
James E. Gray, Esquire
McGee Grigsby, Esquire

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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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