CASE NO. 92120052

Part ____ of ____ Parts

In The Circuit Court for Baltimore City

CIVIL

PROTRACTED to JUDGE KAPLAN

Part III

SEE 4

In the Matter of

MANFUSO

VS.

DE FRANCIS, ET AL

12-16-91

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(51) DB

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

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

DEFENDANTS DE FRANCIS AND JACOBS' REPLY TO THE MANFUSOS' RESPONSE TO MOTION TO DIRECT ENTRY OF PARTIAL FINAL JUDGMENT

I. INTRODUCTION

In a snide and mean-spirited response, the Manfusos and their counsel seek to halt a legitimate and good faith effort by De Francis and Jacobs to protect and preserve any meaningful right to appeal a decision by this Court which they contend is erroneous. The eighteen page response devotes substantial rhetoric to specious arguments that the motion is untimely, to fanciful allegations of bad faith on the part of De Francis and Jacobs, and to carping about expense to the Manfusos which would have been incurred even if this motion had been filed the day following the Court's Order. The Manfusos devote only three pages of their response to addressing the legal issues which this Court has been called upon to decide. Sheared of its rhetoric, the response fails to adequately address the true legal issues, and this Court must conclude that the Motion to Direct Entry of Partial Final Judgment should be granted.

II. THE MOTION IS NOT UNTIMELY.

Section III of the Manfusos' response incorrectly and intentionally mischaracterizes the Defendants' Motion as an "appeal". The Manfusos and their counsel apparently hope that, by placing an incorrect label on the motion, this Court will somehow be fooled into believing that the time limitations established by the Maryland Rules of Procedure for appeals govern the filing of this motion. The Defendants trust that the Court will not be so easily mislead.

The issue of untimeliness is laid to rest by the Manfusos' own response. As pointed out on page 4 of their response, "Rule 2-602(b) contains no express deadline for requesting the entry of partial final judgment . . . ". Nor does any other Maryland Rule. The motion can hardly be untimely when no deadline is established by the Rules. The motion is timely and no amount of convoluted analysis can change that fact.

Nevertheless, the Manfusos and their counsel go on for approximately four pages in a vain attempt to convince this Court to establish a deadline for the filing of a Rule 2-602 Motion when the Rules Committee and the Maryland Rules of Procedure established no such deadline. The Manfusos and their counsel argue that Rule 2-602(b) is analogous to Federal Rule of Civil Procedure 54(b). Federal Rule 54(b) does not establish any time limit for requesting the entry of final

judgment when an order disposes of less than the entire action. See Fed. R. Civ. P. 54(b).

Having found no deadline for requesting the entry of a partial final judgment in either the Maryland or the Federal Rules themselves, the Manfusos attempt to conjure up a deadline from a 1972 case from the 7th Circuit and from a Court of Claims case. Schaefer v. First National Bank of Lincolnwood, 465 F.2d 234 (7th Cir. 1972), involved two parties who initially appealed their dismissal from a class action without first seeking a Rule 54(b) determination from the trial court that there was no just reason for delay. Id. at 235. Because of that shortfall, the Circuit Court dismissed the appeal. Three months after the appellate ruling the party sought a Rule 54(b) determination, but then allowed the trial court to delay a ruling on that request for more than a year. The delay condemned in Schaefer, thus, was not a delay between the trial court's interlocutory order and the seeking of a Rule 54(b) determination, but that between the appellate court dismissal for failure to obtain a Rule 54(b) determination and the obtaining of such an order.

The other case cited by the Manfusos, Cherokee Nation of Oklahoma v. United States, 23 Cl. Ct. 735 (1991), involved an attempt to obtain Rule 54(b) certification of the dismissal of a complaint where the motion to direct entry of final judgment was filed simultaneously with an amended complaint. Id. at 736. In the interim, the plaintiff had filed an

intervening amended complaint that "in blatant disregard of the October 29, 1990 Order, realleged virtually every issue set forth in its original complaint" which was dismissed by the original order. Id. The court held that the Plaintiff was not entitled to Rule 54(b) certification because it had not alleged that any hardship or injustice would result if it could not obtain immediate appellate review. Id. at 738. The proposition for which the Manfusos cite the case was added in dicta. See Id. at 739.

These very cases, however, have been rejected by the authority cited by the Manfusos. Noting the "rather bizarre facts" in Schaefer, the Court in Bank of New York v. Hoyt, 108 F.R.D. 184, 185 (D.R.I. 1985), cited by the Manfusos at p. 8, rejected the proposition that as a general rule a trial court should not grant a motion for a Rule 54(b) order when filed more than thirty days after the original order. Id. at 185 ("This court eschews any such inflexible criterion."). The court noted 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. Noting that the time a party sought to obtain Rule 54(b) certification "should not be accorded talismanic importance," the court held that "in the absence of a fixed time limit for taking action, it seems prudent for the court to assess the timeliness of such an initiative on a case-by-case basis." Id. at 186.

The construction that the Manfusos attempt to place on Rule 54(b), and by implication on Maryland Rule 2-602, has been rejected by the learned treatises. For instance, in 6 Moore, et al, Moore's Federal Practice ¶54.41[1] at 54-258 (1993), the authors note that the rules governing entry of final judgment of an entire action "have no application to judgments under Rule 54(b)." Noting that a decision of the court disposing of less than the entire action will appear on the docket sheet but remain interlocutory until the ultimate judgment in the action, the authors add that "there is nothing in Rule 54(b) that indicates that the entry of such an order in any way limits the authority of the court to direct entry of judgment at a later time when it is advised that there is no longer any just reason for delay." Id. Indeed, as the authors add, "this discretion in 'timing' the entry of judgment seems to be necessary to the concept of the district court as 'dispatcher'". Id. See also 10 Wright, et al, Federal Practice & Procedure §2654 at 39 (1970) (noting that the time for appeal begins to run from the entry of a Rule 54(b) order); id. at §2661 at 128 ("once there has been a Rule 54(b) certification and a final judgment has been entered, the time for appeal begins to run.").

The Manfusos attempt to confuse the issue by their argument that Maryland Rule 8-202(a) requires notice of appeal to be filed within thirty days after entry of the order from which appeal is taken. See Manfusos' Memo at 5. Because Rule

8-202(a) begins the thirty day period after entry of the "judgment or order," it is clear that in a Rule 2-602 situation, the time for filing a notice of appeal does not begin until entry of the Rule 2-602 judgment. A notice of appeal before the trial court makes an express determination pursuant to Rule 2-602(b) would be premature!

The discussion by the Manfusos and their counsel of the exclusive method of securing appellate review is meaningless, inapposite and expressly designed to mislead this Court into believing that the motion is somehow an appeal. The motion is not an appeal. It is a Rule 2-602 motion requesting that this Court exercise its discretion and enter a partial final judgment so that these Defendants may exercise their right to appeal. Nothing could be clearer, and the efforts to recharacterize the motion as an appeal should be rejected.

The Manfusos and their counsel next attempt to prejudice this Court in its review of this very simple issue by claiming that De Francis and Jacobs delayed filing this Motion for some ulterior purpose or motive.[1] The Manfusos and their counsel know, because they were part of the process, that the alleged "delay" was occasioned by De Francis and Jacobs

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[1] In fact, in a footnote on page 7, the Manfusos' counsel apparently suggests that the delay was for the purpose of frustrating the Manfusos' attempt to obtain rightful redress and that this alleged frustration constitutes a breach of the Maryland Rules of Professional Conduct. If the Manfusos and their counsel truly believe that this ridiculous position is supported by the facts, then they should present it to the proper forum for resolution where it can be replied to by counsel in a meaningful way and summarily dismissed as meritless.

instituting and pursuing every reasonable and appropriate opportunity to fully and completely settle all of the disputes between the parties.[2] Prior to the Court's ruling and at the specific request of Mr. De Francis, he and his undersigned counsel met with Robert Manfuso and one of his counsel, Andrew Graham, on two occasions in an attempt to arrive at a full and complete resolution of the parties' disputes. These meetings took place on July 8 and 9, 1993. These first two meetings led De Francis to believe that Robert Manfuso and Mr. Graham sincerely desired to end all disputes between the parties.

Following the Court's ruling of August 6th, settlement negotiations continued, albeit with a different cast of characters and with a different emphasis. Mr. Herbert Garten substituted for Mr. Graham at a settlement conference held on August 12, 1993, and thereafter appeared to inject a renewed hostility into the negotiations. Areas of previous agreement with respect to the exercise of the buy/sell provision by the Manfusos prior to October 1, 1993 and other matters evaporated and the Manfusos' commitment to trigger the buy/sell provision suddenly became conditional. While the Manfusos' public posture was that they intended to exercise the buy/sell, their private posture, now expressed in

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[2] The Manfusos and their counsel know that the implementation of the buy/sell provision will not resolve all disputes between the parties. It is disingenuous for the Manfusos to suggest in their response that the Court's decision does not resolve all of the disputes between the parties, and to then assign fault to De Francis and Jacobs for an alleged delay caused by their efforts to resolve all disputes.

correspondence to De Francis and Jacobs, was that they wanted the right to conduct due diligence and to then exercise the buy/sell provision only at their sole option and discretion. This position, contrary to their public posturing, was expressed in correspondence to De Francis, Jacobs and their counsel by Mr. Garten in a letter dated August 12, 1993. Attached as Exhibit A.

Despite the change in the Manfusos' position, De Francis and Jacobs continued to explore every possibility in regard to settlement. In fact, De Francis and Jacobs attempted to convince the Manfusos to agree to submit all issues related to settlement to this Court for mediation. This offer to submit a full agenda of all open issues to the Court for mediation and guidance was rejected.

The reasons for not filing a Motion to Direct the Entry of a Partial Final Judgment sooner are obvious. First, until such time as the Manfusos actually exercised the buy/sell provision of the Stockholders' Agreement, there was no reason to expend additional time, money and judicial resources on filing a motion and pursuing an appeal. Second, two meetings with the Manfusos and their counsel suggested that further settlement discussions might bring an end to <u>all</u> disputes between the parties. Unfortunately, despite repeated efforts by De Francis and Jacobs, further settlement discussions proved fruitless, and the Manfusos triggered the buy/sell provision by letter dated October 9, 1993.

The Manfusos and their counsel complain about the fact that once they triggered the buy/sell provision by their October 9th letter, that De Francis and Jacobs further delayed the filing of their motion. What the Manfusos and their counsel failed to tell the Court is that following the receipt of the Manfusos' October 9th letter, De Francis and Jacobs, through their undersigned counsel, again approached the Manfusos' counsel regarding settlement. They reiterated their position that the buy/sell provision was not in full force and effect and that they would only consent to its utilization as part of an overall settlement of all issues. If the Manfusos' disagreed with this concept, counsel for De Francis and Jacobs specifically requested that the Manfusos and their counsel join in the filing of a joint motion to direct the entry of a partial final judgment so that this issue could be presented to the Court on an expedited basis. The Manfusos, through their counsel, declined to seek a joint and expeditious resolution of this issue. Instead, they expressed an interest in settling all issues, but declined any further meetings and requested a written settlement proposal. They then elected to file a spurious and inappropriate action against the De Francis Estate primarily to publicize the purchase price set forth in their October 9th letter.

Instead of "thumb twiddling", De Francis and Jacobs made good faith, although to date unsuccessful, efforts to settle all of their disputes with the Manfusos. In fact, they

provided the Manfusos with a written settlement proposal dated November 18, 1993. Attached as Exhibit B. That proposal was rejected out of hand by the Manfusos by letter telecopied to undersigned counsel at 5:30 p.m. on November 23, 1993. Attached as Exhibit C. No counter proposal of any kind was made by the Manfusos.

Having acted in good faith and in conformity with the Maryland Rules, De Francis and Jacobs should not now be penalized for missing a deadline which does not exist.

III. THE COURT'S AUGUST 8, 1993 ORDER IS PROPERLY CERTIFIABLE UNDER RULE 2-602.

The Manfusos have not even attempted to address the vast line of state and federal authority that De Francis and Jacobs cited in their original memorandum for the proposition that the Court may and should certify a final judgment on Count IV of the Manfusos' Complaint under Maryland Rule 2-602(b). As those cases establish, a failure to permit an appeal now would "deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding." Scheve v. McPherson, 44 Md. App. 398, 403 (1979). As noted in the original memorandum of De Francis and Jacobs, the Manfusos' claim for a declaratory judgment and De Francis and Jacobs' claim for contract damages involve separate rights to recovery and therefore constitute separate claims. See Biro v. Schombert, 285 Md. 290, 294 (1979). As noted in the original memorandum, a claim involves the right to enforce a remedy and where multiple claims would permit separate, i.e.,

not mutually exclusive, recoveries, there are multiple claims that can be separately enforced or certified for appeal. Diener Enterprises v. Miller, 266 Md. 551, 556 (1972); Rieser v. Baltimore & Ohio RR Company, 224 F.2d 198 (2nd Cir. 1955), cert. denied, 350 U.S. 1006 (1956).

Nor have the Manfusos attempted to discuss United States Supreme Court authority holding that under Rule 54(b) of the Federal Rules, which the Manfusos acknowledge to be the equivalent of Maryland Rule 2-602(b), this Court's grant of summary judgment on Count IV of the Manfusos' Complaint constitutes a separate claim that can be certified as a final judgment, notwithstanding the non-adjudication of remaining counterclaims. See Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 4 (1980)(holding that judgment on a contract claim was properly certified for appeal under Rule 54(b), despite a counterclaim remaining to be adjudicated); Sears Roebuck & Co. v. Mackey, 351 U.S. 427 (1956); Cold Metal Process Co. v. United Engineering & Foundry Co., 351 U.S. 445, 446 (1956)(holding that a certified judgment on a claim was appealable despite an undecided counterclaim arising in part from the same transaction).[3]

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[3] The two cases the Manfusos cite, Washington Suburban Sanitary Commission v. Frankel, 302 Md. 301 (1985) and East v. Gilchrist, 293 Md. 453 (1982), have already been cited in De Francis and Jacobs' original Memorandum and distinguished in relation to the proposition asserted by the Manfusos. In Frankel, the trial court held on the claim that the WSSC was obliged to pay compensation but did not decide, on the counterclaims, how much was due in damages. The ruling, therefore, was not final. In East, the court effectively held on

This case involves a situation where great hardship will be visited on De Francis and Jacobs should the Court not certify a final judgment pursuant to Rule 2-602. The Court's ruling on declaratory relief did not decide the independent damages claim. These claims are neither mutually exclusive nor mutually dependant; and, theoretically, the Court could still decide in favor of De Francis and Jacobs on the damages claim despite its ruling against De Francis and Jacobs on the declaratory claim. The claims thus involve separate rights to relief and the motion should be granted.

IV. ANY MEANINGFUL EXERCISE OF DISCRETION COMPELS THIS COURT TO GRANT THE PENDING MOTION.

In an eight page rehash of their mischaracterization of both the facts and the motives of De Francis and Jacobs, the Manfusos and their counsel seek to avoid the only obvious conclusion to be reached based upon the actual facts and the applicable law. The Manfusos seek to avoid the inevitable by (a) suggesting that their expenditure of $150,000 is somehow meaningful to this issue, (b) misstating De Francis' position as to what would benefit Maryland racing, and (c) characterizing the granting of the motion as giving De Francis and Jacobs an unfair advantage.

The Manfusos and their counsel make a specific claim that with the knowledge and assistance of De Francis and

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the claim that no damages were due but did not dismiss counterclaims seeking damages. By deciding the claim, the court effectively also decided the counterclaim, but simply did not enter judgment on it.

Jacobs, they pursued due diligence to implement the buy/sell provision at a cost of $150,000. They claim that they had a reasonable belief that De Francis and Jacobs would comply with the buy/sell provision because they had agreed to it, because the court had declared the agreement in effect, because De Francis and Jacobs did nothing to contest the Court's declaration, and because De Francis and Jacobs cooperated in their due diligence.

The Manfusos and their counsel are deliberately seeking to mislead this Court because they know that De Francis and Jacobs have consistently and constantly taken the position that the buy/sell provision was not in full force and effect and that despite the Court's ruling, any cooperation provided by them to the Manfusos in regard to due diligence was only for the purposes of trying to settle all disputes between the parties. De Francis and Jacobs, through their undersigned counsel, notified the Manfusos and their counsel of their positions that the buy/sell provision was not in full force and effect, that the Manfusos in any event were not entitled to due diligence under the buy/sell provision, and that they were only cooperating with the Manfusos in an attempt to reach a resolution of all outstanding disputes. These positions were set forth in letters dated August 4, August 27, August 31, September 2, September 8 and September 21, 1993. Attached collectively as Exhibit D. For the Manfusos and their counsel to now claim that they had a "reasonable belief" that De

Francis and Jacobs would comply with the buy/sell provision because they cooperated in the Manfusos' due diligence is a deliberate misstatement of fact.[4]

The Manfusos and their counsel attempt to turn De Francis' position that all outstanding disputes should be settled for the benefit of Maryland racing into an acknowledgment that the only way to accomplish that result is to enforce and implement the buy/sell provision of the Stockholders Agreement. This argument, ludicrous on its face in light of the numerous other disputes between the parties, establishes the bad faith of both the Manfusos and their counsel. Mr. De Francis has always taken the position that (1) he would not "settle for half a resolution" and that "[t]his thing has got to end, and it's got to end completely" (Washington Post, November 13, 1993), attached as Exhibit E; (2) "My whole idea is to settle this dispute with them once and for all, no matter who ends up owning the tracks" (Baltimore Sun, date unknown, attached as Exhibit F; (3) "he seeks a permanent end to his personal, professional and legal disputes

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[4] The Manfusos raise as an issue alleged harm or damage resulting from any delay in their closing on a renegotiated loan with First National Bank. Like many of the other issues raised by the Manfusos, this is nothing more than a red herring. The existing loan with First National Bank provides that no one, including the Manfusos, can replace De Francis as the controlling owner of the entities without the bank's express approval. The Manfusos had no obligation to renegotiate any loan terms and the fact that they have chosen to do so and to couple the renegotiation with obtaining the bank's approval in regard to ownership is immaterial to the present dispute. The Manfusos can easily seek an extension of the closing date; and, if this Motion is granted, may seek to renegotiate the loan at a later date.

with the Manfusos. . . [and] that a settlement of track ownership is insufficient if he and the Manfusos continue to sue one another" (Washington Post, November 20, 1993), attached as Exhibit G; and (4) that what he is "trying to do is get all of these issues completely resolved" (Baltimore Sun, 11/20/93), attached as Exhibit H.

De Francis' desire for a full and complete settlement is not unreasonable. The Manfusos, in either an attempt to dissuade De Francis from being the purchaser or to continue their personal vendetta against him if he is ultimately the sole owner of the two entities, have made every effort to incite and induce the Guida Group into threatening and actually pursuing litigation against De Francis if he is ultimately the successful purchaser. As reported in the November 1, 1993 Baltimore Sun, attached as Exhibit I, Guida has taken the position that if De Francis is the successful purchaser and does not buy out the Guida interests, "he is going to be in another adversarial relationship with a partner, me against De Francis, and I will hire a battery of attorneys to cover all four corners of my interests." In addition, the article reports that Guida had been told by Tom Manfuso that if the Manfuso Brothers gained control of the tracks, then "my limited 'non voting' partner status will be changed to a general 'voting' partnership, and I will put an infusion of capital into the business."

The Manfusos have obviously offered Guida a carrot so that he will threaten the use of a stick in order to dissuade De Francis from being the purchaser. Messrs. De Francis and Jacobs, not willing to leave the Guida issue unresolved, have unsuccessfully sought the Manfusos' cooperation in resolving the Guida interests as part of an overall settlement of their disputes.

It is obvious on its face that the implementation of the buy/sell agreement, no matter who is the successful purchaser, will not put an end to the vendetta that the Manfusos have instituted against De Francis. If De Francis is the successful purchaser under the buy/sell agreement, he still faces the Manfusos' claims relating to the period when they were owners, their contingent claim against his father's estate, and their continued meddling in his relationship with the Guida Group. If De Francis is the seller, the Manfusos may still pursue their shareholders derivative claims against De Francis and Jacobs, their claims for alleged mismanagement of the corporations allegedly causing a deflation in the value of the entities, their claims against Jacobs for alleged breach of his employment agreement arising from his participation in Texas, and their claims against De Francis and Jacobs for allegedly inducing James Mango to breach his employment agreement. Moreover, since the Manfusos need only pay 20% of the purchase price in cash, they could withhold payment of the

deferred portion of the purchase price, payable over five years, to force a favorable resolution of these claims.

The only way to avoid further litigation between the parties, and to ensure that the Virginia application can go forward without a "black eye", is to fully resolve all disputes between the parties. This is the result that De Francis believes is necessary for Maryland racing and has sought throughout this litigation.

The Manfusos' characterization of the buy/sell agreement as the only fair way to resolve the issue of ownership is laughable. De Francis and Jacobs have sought, unsuccessfully, to convince this Court that the Manfusos entered into a scheme to reach the precise result that now threatens to prejudice the rights of De Francis and Jacobs if an appeal is not permitted. De Francis and Jacobs sought a period of time during which their management efforts would be unchallenged by the Manfusos and during which they could establish a sufficient and successful track record to permit them to compete on a level playing field in regard to the exercise of the buy/sell provision. The Manfusos initiated a campaign of harassment, intimidation, threats of litigation and actual litigation designed to impede and prevent De Francis from securing a financial position that would permit him to successfully contend under the buy/sell agreement as a purchaser. De Francis and Jacobs have, both in pleadings and in discussions with this Court, pointed out that the Manfusos'

obvious scheme was to damage the financial position of De Francis, Jacobs and the entities to the point that they could not be the purchaser under the buy/sell agreement. The Manfusos could then quote a purchase price less than the full and actual value of the tracks and thereby secure the entities at a bargain basement price.

That is precisely what the Manfusos have done. They have provided a purchase price in their October 9th letter that has been estimated by the Guida Group to be $2,000,000 less than the actual value of the stock and which, according to one reporter, is a modest sum when compared with the cost of opening even a small new track. Washington Post Article, November 20, 1993, attached as Exhibit J. They made this offer because they believe that their three year campaign of harassment, disparagement, intimidation, litigation and the attendant publicity and expense have made it difficult if not impossible for De Francis to be the purchaser. Since the buy/sell provision does not fully and completely settle all of their various disputes, what investor, bank or other source of financial support would want to buy into a situation where the continuation of litigation is likely? In fact, Tom Manfuso boasted of the success of this scheme when he told a reporter "There's no question, in my opinion, that he [De Francis] isn't willing to sell and isn't able to buy." See Exhibit E.

Contrary to seeking an unfair and improper advantage, De Francis and Jacobs seek what they bargained for under the

Shareholders' Agreement. This is the right they seek to protect by this Motion. If this Court does not grant the pending motion, then the Manfusos' scheme stands a substantial chance of success. That is an unfair and improper advantage which this Court should not permit the Manfusos to obtain by their improper conduct.

V. CONCLUSION

De Francis and Jacobs have an absolute right to seek appellate review of this Court's decision that the buy/sell provision is enforceable. The only question is when they may exercise their right to appellate review. To require that this decision can only be reviewed after all issues raised in the litigation between the parties have been resolved means that any appeal would have to be taken after closing on the stock purchase of stock. Appellate review after that point in time is meaningless. The transaction cannot be undone and the parties cannot be restored to their pre-closing positions. Only certification under Rule 2-602 would preserve the rights of De Francis and Jacobs to a meaningful appellate review of this Court's decision. The Court should grant the Motion.

James E. Gray

Linda S. Woolf

Goodell, DeVries, Leech & Gray
One South Street
20th Floor
Baltimore, Maryland 21202
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 1993, a copy of the aforegoing Defendants De Francis and Jacobs' Reply to the Manfusos' Response to Motion to Direct Entry of Partial Final Judgment was mailed to: Andrew Jay Graham, Esq., Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, MD 21202, and Herbert S. Garten, Esq., Fedder and Garten, 36 South Charles Street, 2300 Charles Center South, Baltimore, MD 21201 attorneys for Plaintiffs; and McGee Grigsby, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, Attorneys for Defendants, Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc., and Laurel Racing Association, Inc.

James E. Gray

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CABLE "FEDGAR"

FILE

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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November 18, 1993

VIA FAX - 659-0543

Herbert S. Garten, Esq.
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36 South Charles Street
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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

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

115

FEDDER AND GARTEN
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ATTORNEYS AT LAW

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FAX
410-659-0543

OFFICE OF MORRIS FEDDER (1926-61)

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COMPANY: _____

OFFICE PHONE: _____

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FROM:

NAME: Hubert D. Garten

COMPANY: Fedder and Garten Professional Association

OFFICE PHONE: (410) 539-2800

FAX NUMBER: (410) 659-0543

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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.

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION

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

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August 4, 1993

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36 South Charles Street
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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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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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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.

bcc: Joseph A. De Francis
Martin Jacobs

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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.

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JAMES E. GRAY
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September 8, 1993

VIA FAX

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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

Dear Herb and Andy:

This will respond to your letter of September 3, 1993.

Your characterization of our position in regard to meeting with Judge Hollander is inaccurate, incomplete and a gross distortion of our position which was previously provided to you in writing. We are happy to meet with Judge Hollander, but not to discuss your single issue in a factual vacuum. We will be happy to participate in a meeting before Judge Hollander where all of the current issues in dispute are discussed. If you are agreeable to such a meeting, please let me know, and I will prepare a draft agenda.

I find your position that Joe De Francis has acknowledged the Manfusos' right to complete due diligence prior to triggering the Russian roulette clause to be both self-serving and disingenuous. We have never acknowledged that the Manfusos have any right to due diligence under the buy/sell provision. We permitted the Manfusos to conduct due diligence as a sign of our good faith and to facilitate settlement discussions. We also permitted your due diligence activities because Bob Manfuso represented that the due diligence would be limited, of short duration and non-disruptive to the continuing management of the corporate entities. Our actions demonstrate our good faith. In return, we are faced with your totally inappropriate use of

statements made during settlement discussions to attempt to obtain advantages and rights to which the Manfusos are not entitled. Such tactics are hardly conducive to open, honest and frank settlement discussions.

The key statement in your letter is that the Manfusos are doing due diligence to determine "at what price, if at all, they would exercise their rights under the Stockholders Agreement." It was the Manfusos' original position that they would trigger the buy/sell. When they reneged on that commitment, we advised you that unless and until there was a mechanism by which all of our disputes would be settled that we had no intention of continuing to participate in any of the Manfusos' due diligence efforts. Instead of responding with either suggestions or counter-proposals for the termination of our disputes, you have attempted to use our settlement discussions as a club to obtain information under false pretenses.

Once again, you have attempted to mischaracterize our position in regard to "requirements". The only requirement is that the Manfusos address the issues we have placed on the table. The Manfusos, despite posturing, have not addressed the issues. It is inconceivable to me that the Manfusos can agree in writing at one point in time that Messrs. De Francis and Jacobs will be paid the $2.8 million that they are owed, albeit without interest, and then turn around and refuse to address that issue in any fashion. None of the "requirements" are new or different from those that were communicated to Bob Manfuso at our first meeting. If the Manfusos were not going to address those issues, they should have been candid enough to tell us that at the first meeting, and we would not have wasted all the time we have in fruitless discussions.

I understand your present demand, unlike your prior verbal and written positions, to consist of several parts. The first is you want the right to inspect and copy books, records, documents and memoranda, including counsel's files, related to the Internal Revenue Service audit of Pimlico and Laurel. You then appear to be demanding that you have a meeting with counsel for the entities to discuss the present status of the appeals, their assessment of the ultimate outcome of the audits, and the effect of the Newark Morning Ledger Co. case. For the very first time, you are taking the position that the Manfusos are entitled to this information because they have statutory and common law rights of inspection as directors and stockholders. You have previously insisted that the Manfusos were entitled to this information only as part of their due diligence in determining whether to exercise a buy/sell.

While we have no doubt that your clients have no right of inspection as stockholders, and dispute your position that the Manfusos have any rights as alleged former clients of the present counsel for the tax audit, your clients do have limited rights as directors. They do not, however, have any rights in excess of those available to all directors. We will allow the Manfusos, as directors, to inspect "books, records, documents and memoranda, including any files and memorandum produced by corporate counsel or by management, its accountants or employees, and all IRS documents related to the Internal Revenue Service audit of Pimlico and Laurel for the years 1986 through 1991 and the appeals therefrom". We remind you and the Manfusos, however, that they are receiving this material as directors, may only use the material for the benefit of discharging their duties to the corporations as directors, have a fiduciary duty to the corporations in regard to the receipt of this material, and may not use it for any other purpose. They may not divulge this information to any other person or entity for any purpose.

We will not permit the Manfusos as directors, or in any other capacity, to interview or meet with counsel to the entities to determine their assessment of the ultimate outcome of the audits or the effect of the Newark Morning Ledger Co. case. Judge Hollander has in a similar context previously ruled that the Manfusos, as directors, have no right to a meeting with the corporate entities' accountants. This decision applies equally to any meeting with the corporate entities' attorneys.

We reject your position that any regulatory, fiduciary or contractual obligation of the corporate officers requires us to provide any information to the Manfusos related to the IRS audit. If you have a specific regulatory or contractual obligation in mind, perhaps you would be so kind as to share it with me.

If and when Joe De Francis believes he needs the Manfusos' assistance in regard to Virginia, I am sure that he will communicate that fact to Bob Manfuso. In the meantime, please advise your clients that if they feel compelled to meddle in regard to the Virginia opportunity, that they should confine their meddling to having you write us letters. They should not continue to contact the Virginia Racing Associates or any other potential applicant in regard to the Virginia opportunity.

Very truly yours,

James E. Gray

JEG/kav
cc: McGee Grigsby, Esq.
Michael I. Sanders, Esq.

bcc: Joseph A. De Francis
Martin Jacobs

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470-7244

September 21, 1993

HAND-DELIVERED

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

Herbert S. Garten, Esquire
Fedder & Garten
36 South Charles Street
2300 Charles Center South
Baltimore, Maryland 21201

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

Dear Messrs. Garten & Graham:

This letter will respond to your September 14 letter to Michael Sanders, which was copied to me.

The purpose of your September 14 letter to Mr. Sanders escapes me. The entities have authorized Mr. Sanders to provide you with a copy of his memorandum to the Pimlico and Laurel Boards of Directors analyzing the audit issues, once that memorandum is completed. The entities had previously made available or offered to make available to you the records you requested relating to the audit. Nonetheless, you persist in warning Mr. Sanders that the Manfusos may persist in their unjustified demand to meet with him.

Let me reiterate, so that there will be no misunderstanding. We vehemently disagree that the Manfusos are entitled to the requested information as stockholders, as purported former clients of Ginsburg, Feldman and Bress, or as a result of "regulatory, fiduciary, or contractual obligations of the corporate officers and majority directors." I presume that if you had any authority for the Manfusos' alleged entitlement to information in these various capacities, you would have provided that authority to us.

To avoid continuing argument and letter writing, the following will be done: Mr. Sanders' memorandum and records concerning the audit will be provided to the Manfusos subject to the applicable confidentiality obligations attaching to such information. If, after completing their review of the memorandum, which will provide the Manfusos with all of the information Ginsburg, Feldman and Bress has concerning the audit, the Manfusos still perceive that a meeting with Mr. Sanders will further some appropriate purpose, they should renew their request for a meeting to Mr. DeFrancis who will then facilitate a meeting between Mr. Sanders and the Manfusos.

Very truly yours,

James E. Gray

JEG/dmt
cc: Michael I. Sanders, Esquire
Martin Jacobs, Esquire
Joseph A. DeFrancis, Esquire

De Francis, Jacobs File New Action

Partial Final Judgment Sought in Challenge to Buy-Sell Agreement

By Vinnie Perrone
Washington Post Staff Writer

Racing executives Joe De Francis and Martin Jacobs have taken legal action that could forestall, or even threaten, the transfer of ownership stock in Laurel and Pimlico as prescribed by their shareholders' agreement with estranged partners Tom and Bob Manfuso.

In papers filed this week, De Francis and Jacobs asked the Baltimore City Circuit Court to render a partial final judgment on the court's Aug. 6 ruling that enforced the Russian Roulette provision of the stockholders' agreement. If De Francis and Jacobs are to appeal that decision in court—and again challenge the viability of their buy-sell agreement with the Manfusos—they first must obtain final judgment on the Aug. 6 decision by Judge Ellen L. Hollander.

That decision is not considered final because a number of other claims remain unresolved in the litigation between De Francis and the Manfusos. Those are scheduled to be heard in March.

Because the Manfusos activated the Russian Roulette provision last month by offering to sell all their shares in Laurel and Pimlico, De Francis and Jacobs argue that the opportunity to appeal Hollander's ruling "will be irretrievably lost" if they're forced to wait until the March hearings. Under the stockholders' agreement, De Francis and Jacobs must respond to the Manfusos' offer by early January.

In triggering the Russian Roulette clause in a letter dated Oct. 9, the Manfusos offered to sell their stock to the De Francis group for $8.2 million. If the De Francis group rejects that offer, it must sell its shares to the Manfusos for $8.2 million.

De Francis said again yesterday that he seeks "a complete and final resolution" of his legal and personal dispute with the Manfusos. He said his recent court action does not contradict that claim because the question of track ownership would not be completely resolved through Russian Roulette as long as other litigation is pending.

"I have absolutely no desire or intention to do anything that would prolong this needlessly," De Francis said. "But one thing I am not willing to do is settle for half a resolution. This thing has got to end, and it's got to end completely."

He declined to comment on his plans regarding Russian Roulette.

The Manfuso camp viewed the latest round of legal action as little more than a delay tactic. "I've said all along, our major interest was in resolving this problem . . . and to establish a clear understanding of ownership," Tom Manfuso said. "We are willing to sell immediately and willing to buy immediately. There's no question, in my opinion, that he [De Francis] isn't willing to sell and isn't able to buy."

Andrew Jay Graham, a lawyer for the Manfusos, said: "Frankly, I thought from Mr. De Francis's public comments that he thought a prompt resolution of this matter was important to the tracks, the Maryland racing industry and the public. He now is indicating that he wants to frustrate the Russian Roulette . . ."

According to Graham, the Manfusos have 15 days to respond to the latest filing and likely will ask for a hearing.

Court approval of the latest request by De Francis and Jacobs would free them to appeal the enforcement of the stockholders' agreement and, in particular, the Russian Roulette clause. Under that scenario, the stock transfer could be delayed indefinitely or even invalidated.

In triggering Russian Roulette, the Manfusos asked for a Jan. 31 settlement. De Francis and Jacobs have until Jan. 10 to decide whether they'll buy or sell.

4th Outlet Picked

Laurel and Pimlico officials have settled on a fourth off-track betting outlet, at the Riverboat Restaurant in Colonial Beach, Va. Because the restaurant is built on a pier above the Potomac River, it's considered a Maryland location. . . .

The commission has approved the 1994 dates requested by state tracks. Laurel: Jan. 1-March 28; June 14-Aug. 8; Oct. 4-Dec. 31. Pimlico: March 29-June 13; Aug. 9-26; Sept. 8-Oct. 3. Rosecroft: Jan. 1-Dec. 31. Delmarva: April 1-Sept. 15. Timonium: Aug. 27-Sept. 5. Fair Hill: May 30, Oct. 30 and two dates to be announced. Marlboro: Two days, TBA.

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

HORSE RACING

Charles Town

Sunday's results
1st—2,000, cl, 3YO up, 4½f.
Ashokan Moon (Rozas) 5.40 3.40 3.20
Dana Dancer (Dupuy) 3.60 3.00
Boldly True (Bradshaw) 4.20
Time :52 1-5. Scratched—Bligh's Blessing, Four Punch. $5
Quinella (3-10) paid $27.00.
2nd—1,900, cl, 3-5YO, 4½f.
Wicked Fantasy 3.80 3.20 2.80
Here Comesthe Host (Charley) 6.20 4.80
Autumn Patrol (Youngs) 6.20
Time :54. Arroyave rode winner. Scratched—Cuddle Caper, Flashing Lady, Petuxent Moon, Pride Of Wakefield, T J's New Hope.
Daily Double (10-3) paid $9.40.
Consolation Double (10-3) paid $5.20.
Exacta (9-3) paid $17.00.
Trifecta (9-3-6) paid $78.80.
3rd—2,900, cl, mdn 2YO, 7f.
Charming Justin (Bourne) 4.80 3.40 2.80
Needleman (Millan) 6.00 3.60
Gettin' Rougher (Quezada) 3.40
Time 1:30 2-5. Scratched—Awesometicity, Fourteenkaratcharm, Rocks Strike, S. S. Slippers.
Exacta (3-2) paid $32.20.
Trifecta (3-2-10) paid $84.80.
4th—2,800, cl, 3YO up, 6½f.
Look Out Below 10.20 4.20 3.40
Halo Round My Head (Dupuis) 3.60 4.20
Smart 'N Proud (Bourne) 12.60
Time 1:21 1-5. Barnett rode winner.
Exacta (7-6) paid $26.40.
5th—2,900, cl, mdn 3-5YO, 4½f.
Spring Alone (Barnett) 4.20 3.20 2.80
Dove Kie (Quezada) 4.00 4.20
Pentina (Arroyave) 5.20
Time :53. Scratched—Concorde's Host.
Exacta (6-9) paid $16.40.
6th—3,100, cl, 3YO up, 1 1-16mi.
Miss J.B.L. (Dupuis) 8.00 5.60 2.60
Ares Docket (Barnett) 6.40 2.80
Ceresa Darling (Dupuy) 2.60
Time 1:49 2-5. Scratched—Finisfield, Floating Island, Gold Times, Lucky Brat, Sheik's Star.
Daily Double (8-9) paid $20.20.
Exacta (9-10) paid $32.00.
Trifecta (9-10-4) paid $83.80.
7th—2,000, cl, 3YO up, 7f.
Bob Balfe (Quezada) 12.20 8.00 4.20
Chic Weed (Muino) 6.00 3.60
Stef's Own (Delgado) 4.00
Time 1:28 1-5. Scratched—Gusting, Jimbo Gator, Mad Spree, Swift Buster.
Exacta (7-2) paid $62.80.
Trifecta (7-2-3) paid $220.00.
8th—4,700, cl, 3YO up, 1 1-16mi.
Once Over (Graffagnini) 12.80 6.60 5.40
Cavsached (Barnett) 4.20 4.60
Avatense (Charlay) 7.60
Time 1:46 2-5.
Exacta (4-3) paid $54.60.
9th—2,100, cl, 3YO up, 1 1-16mi.
Bet Long (Barnett) 4.00 3.20 2.80
Cheerful Sky (Kroigol) 9.20 6.00
John's Irish Rose (Graffagnini) 4.60
Time 1:47 4-5. Scratched—Janet Planet, Marked Sheik.
Exacta (9-5) paid $28.40.
Jackpot (9-5-4-10) paid $2,365.80.
Att: 2,102. Handle: $226,048.

Penn National

Monday's entries
Post time 7:30 p.m.
1st—3,500, cl, mdn 3-5YO, 6f.
Demon Hooch 112 Coyote Don
Awaji 116 Superdan
Cims Magic 109 Benjamin Boy
Uncle Ira 122 Jn R's Rachel
Wstern Nickie 119 Cavity
2nd—3,900, cl, 3YO up, 1 1-16mi.
Dr She Blows 113 Holli Course
Frderick High 112 Triple Beat
Fast Hawk 110 Golden Be
Crv E Canela 116 Ellie's Mazel
Foxie Painter 116 Cleaning Lady
Go Again Girl 113 Time Warp
Okay Charlett 116
3rd—2,900, cl, 3YO u, 5½f.
Katies Jewel 119 La Carr
Isl Kid You N 119 Bite of Gold
Anna Isabel 119 Hot L.Z.
Shackalnite 119
4th—2,900, cl, 3YO up, 6f.
Naughty Mac 120 Pint Diploma
N Sped Limit 113 Fileds Champ
Sergeant C. 113 Eri of Gemini
Dugway 113 His Smile
Grand Design 120 Dmncks Nd N
Mister Ten 120 Gnpwdr Falls
Cunt Cupcake 120 Lucky Albert
Mcmick 120 Srengeil Gold
Up the Street 120 Made to Rule
5th—5,600, cl, 3YO up, 1mi.70Yds.
Fatefastcanbe 112 Mdm's Choice
Oncng Kyreen 115 a-Dordo Flyer
Ms. Shivery 115 Deputed Boore
Lyl Secretary 117 a-Litl Pigeon
a-Coupled.
6th—2,900, cl, 3YO up, 5½f.
Audacious Bo 122 Abysmal
Scottish Plaid 114 Wages
Geldermen 117 Sam Dagger
Z. B. Dreami 117 Dark Prince
Ione's Dream 117 Stolen Trust
Hv'n Second 117 Drol 'n' Bold
Rjab's Comet 114 Vyager Flight
Creeks Last 119 Long Rifle
Tnd For Hol 117 King's Code
7th—4,900, cl, 3YO up, 1mi.70Yds.
Mordicus 116 Fneral March
Wh's the Win 119 Pocstone
Jomer Alpha 117 Tom Fitz
Tuff Lad 114 Clarification
Joses' A Bear 114 Shifty Red
8th—4,500, cl, 3YO up, 6f.
Alan K. 120 Village Native
Hay Bear 118 On Cool Dude
Blue Apollo 117 Furlong
Dzzing Danzig 116 Irish Chill
Obligu by Fait 113 Ryon's King
9th—3,100, cl, 3YO up, 1mi.70Yds.
Fnr Ambianc 118 Mst Approach
Irish Proud 116 Decal
2nd—4,700, cl, 3YO up, 6f.
Driver O' Gold (Cline) 9.00 4.40 3.80
Sense Of Iron (Ilisecu) 3.00 2.60
R. D.'s Magic (Hastie) 5.00
Time 1:12 3-5.
Daily Double (6-5) paid $32.40.
Exacta (5-2) paid $29.60.
Trifecta (5-2-1) paid $183.40.
3rd—3,200, cl, 3YO up, 1mi.70Yds.
Jackie Darling (Fuentes) 7.00 4.20 2.80
No Time For War (Vives) 4.40 3.00
Granny Ice (Rennie) 3.40
Time 1:47 1-5. Scratched—Toes Out Bad.
Exacta (2-3) paid $32.80.
4th—3,900, cl, 3YO up, 1 1-16mi.
Pointe De Vise 6.00 3.80 2.80
On The Sunnyside (Canary) 3.80 3.00
Lamhi's Best (Fuentes) 3.80
Time 1:47 1-5. Salvaggio rode winner.
Exacta (7-1) paid $17.40.
5th—3,400, cl, 3YO up, 5½f.
Survey (Canary) 8.40 5.80 3.80
High Berger (EJones) 28.00 15.20
Mechanical Swinger (Potts) 6.20
Time 1:06.
Exacta (4-11) paid $416.80.
1st Half Twin Trifecta (4-11-5) paid $610.20.
Pick-3 (2-7-4) paid $179.80.
6th—6,200, clo, 3YO up, 6f.
Livid Lass (Canary) 4.40 2.80 2.40
Profile (Douglas) 3.60 4.00
Scher's Roll (Potts) 6.80
Time 1:11 4-5. Scratched—Big Game Hunter.
Exacta (4-7) paid $16.40.
7th—3,000, cl, 3YO up, 6f.
Believe The Boy (Munar) 12.20 7.20 4.20
Bee Master (Ilisecu) 10.20 6.60
dh-Accelerant (Salvaggio) 3.60
dh-Alden's Tribute (Marvin) 3.20
Time 1:11 1-5. dh-Dead Heat for 3rd.
Exacta (5-4) paid $61.40.
Trifecta (5-4-2) paid $116.80.
Trifecta (5-4-7) paid $233.40.
2nd Half Twin Trifecta no winner. Carry-over $3,644.00.
8th—4,900, cl, 3YO up, 1mi.70Yds.
Spring Out (Salvaggio) 7.60 4.40 2.80
Bright Red (Canary) 5.80 3.60
Loader (Marvin) 3.40
Time 1:44 1-5.
Exacta (9-8) paid $30.00.
Trifecta (9-8-2) paid $85.20.
9th—100,000, 2YO, 1 1-16mi.
The Hawthorne Juvenile
Galaxy (Sellers) 6.60 3.80 2.80
dq-Come On Fip (Rezo) 6.80 4.40
Seminole Wind (Sibille) 9.40
Time 1:48 1-5. Scratched—Shallmar's Book. dq-Disqualified from 1st to 2nd

De Francis: I'll drop suit if Manfusos will settle

By Ross Peddicord
Staff Writer

Laurel/Pimlico track operator Joe De Francis said yesterday he will drop an attempt to appeal the Russian roulette clause of a stockholders' agreement and all other litigation that he has filed against his estranged partners, Tom and Bob Manfuso, if they will end the legal and track ownership disputes that they have with him.

It is part of the settlement offer that he has made to the Manfusos in an attempt to hasten the resolution of the ownership feud that has raged between the camps and was heightened on Oct. 12, when he received the Manfusos' offer to sell him their shares in Laurel and Pimlico for $8.2 million.

If the Manfusos are not inclined to agree with De Francis' settlement offer, "it contradicts the primary argument of their effort to block my move in the first step of the appeal process," De Francis said. "Their response [filed last Friday] claims that the court cannot make a final judgment on this one issue [the validity of the Russian roulette clause] because there are still a whole bunch of other claims to be resolved. That's exactly what I want to do — resolve all of those other claims."

De Francis accused the Manfusos of stalling the Russian roulette process if they do not come to an agreement on the legal disputes.

"It is like buying a house that has liens against it," he said. "You settle the liens before you buy the house. The Russian roulette provision is nothing more than a monetary consideration. That can be addressed when the legal disputes are resolved."

De Francis added that he had no idea if the Manfusos have "a hidden agenda" if they refuse to settle the legal claims.

"My whole idea is to settle this dispute with them once and for all, no matter who ends up owning the tracks," he said.

Tom Manfuso said last night that he had just received the letter that details De Francis' settlement proposal and hasn't had an opportunity to study it fully.

"What we are doing is abiding by the judge's ruling that the Russian roulette is enforceable. We are complying with those requirements," Manfuso said. "I don't think any additional situations are necessary. It's as simple as that. We are ready to sell to him tomorrow, and we are also ready to buy from him tomorrow. . . . It seems to me the situation can very quickly be solved."

TENNIS

Graf routs Sanchez for Virginia Slims title

From Wire Reports

NEW YORK — Steffi Graf, her power game putting a punctuation mark on the year, completed her best season in four years yesterday by winning the Virginia

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

Manfusos Try to Block Appeal of Roulette Clause

Laurel-Pimlico Ownership Dispute Continues

11/24/93

By Vinnie Perrone
Washington Post Staff Writer

Bob and Tom Manfuso, the co-owners of Laurel and Pimlico, have asked a Baltimore City Circuit Court not to grant a claim by majority owner Joe De Francis that would allow De Francis to appeal the crucial Russian roulette clause of their shareholders' agreement.

An appeal by De Francis and partner Martin Jacobs could delay the impending track ownership change, now scheduled for early 1994.

In their filing yesterday, the Manfusos contend that De Francis and Jacobs should not be allowed to contest an Aug. 6 judgment—which enforced the validity of Russian roulette—while other legal issues between them are unresolved. The Manfusos also assert that De Francis and Jacobs failed to contest the ruling within 30 days, the amount of time generally allowed for appeals.

Neither the De Francis group nor the Manfusos have requested a hearing on the matter. The court apparently can render an opinion without a hearing.

If the court concurs with the Manfusos, then De Francis and Jacobs would have to respond to the Manfusos' existing stock tender by Jan. 10, 1994. If the court rules otherwise and issues partial final judgment on its Aug. 6 ruling, De Francis and Jacobs would be clear to contest the enforceability of the shareholders' agreement and the Russian roulette at the appellate level. That could delay the track ownership transfer for months.

The Manfusos triggered the Russian roulette mechanism last month, offering to sell all their racetrack stock to De Francis and Jacobs for $8.2 million. If De Francis and Jacobs reject the offer, they must sell all their shares in Laurel and Pimlico for the same price. Russian roulette thus provides that one side will gain absolute control of Laurel and Pimlico.

De Francis has said that he seeks a permanent end to his personal, professional and legal disputes with the Manfusos, adding that a settlement of track ownership is insufficient if he and the Manfusos continue to sue one another. The Manfusos have said that the completion of Russian roulette should end all legal quarrels.

"Joe De Francis has acknowledged that the dispute should be resolved," said Andrew Jay Graham, a lawyer for the Manfusos. "My clients have presented a perfect opportunity to put his words into effect."

In their latest action, the Manfusos reported they spent $150,000 in due diligence before effectuating Russian roulette. They also negotiated a refinancing of the $40 million in track-related debt with First National Bank of Maryland—contingent on their acquiring the tracks—and scheduled settlement for Feb. 7.

Petitioning the court, the Manfusos said the move toward an appeal by De Francis and Jacobs "represents their latest desperate attempt to buy time" to gain financial backing and assess the prospects of racing in Virginia.

Jury Out on Compromise

De Francis and his top executives reached no conclusion yesterday on an offer by thoroughbred horsemen to contribute 2 percent of handle toward operating expenses of intertrack wagering with Rosecroft Raceway. De Francis had sought 3 percent.

He said track officials want to continue the 7-month-old project, but not if it continues to be a net-loss proposition for Pimlico and Laurel. . . .

At a meeting Thursday, Timonium's board of directors agreed to operate another 10-day meeting in 1994 following a financially disappointing meet this year. General Manager Max Mosner said the track will pursue legislation for common-pool simulcasting.

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

De Francis offers settlement plan to Manfusos

Proposal reportedly seeks to speed buyout decision

By Ross Peddicord
Staff Writer

Laurel/Pimlico operator Joe De Francis has sent a settlement proposal to his estranged partners, Tom and Bob Manfuso, designed to resolve all disputes between the parties and pave the way for resolution of the Russian roulette agreement.

But the proposal does not say whether De Francis will buy out the Manfusos' interest in Laurel and Pimlico, according to a source familiar with the document.

Herb Garten, attorney for the Manfusos, acknowledged last night that he had received a detailed letter. "It did contain a proposal. . . and introduces other matters that have nothing to do with the Russian roulette or the contract which we have submitted to them. We are studying it [the letter] and are reviewing it carefully," Garten said.

RACING, from 1C

De Francis declined to comment about the letter.

The latest proposal comes after stepped-up legal maneuverings the past couple of weeks between the camps.

In a legal document filed yesterday in Baltimore City Circuit Court, the Manfusos acknowledged that they have negotiated the restatement of the approximately $40 million in existing loans that the tracks have with First National Bank and have set Feb. 7, 1994, as a closing date — if they buy out De Francis.

About two weeks ago, the Manfusos moved to freeze the assets of the estate of Frank De Francis in the Orphans' Court for Howard County in order to guarantee that the De Francis stock in Laurel and Pimlico would be covered by the estate's assets.

The court upheld the Manfusos' contingency claim, but delayed holding any hearings on the matter until after Jan. 12, 1994, the date when De Francis must decide if he will buy the Manfusos' stock in the racetracks for $8.2 million or sell the tracks to them at the same price.

Last week De Francis filed a motion in Baltimore City Circuit Court asking Judge Ellen Hollander to certify as a partial final judgment the ruling she made in August that validated the Russian roulette clause, which allows one partner to buy out the other.

If Hollander certifies the provision, which was just one claim in part of a larger suit filed by the Manfusos against De Francis in June, then De Francis can appeal her ruling and possibly delay his decision to buy out or sell to his estranged partners by the Jan. 12 deadline set in the Russian roulette agreement.

Yesterday, the Manfusos filed a response to De Francis' motion, saying that De Francis' attempt to appeal Hollander's ruling is "untimely" and nothing more than an attempt "to afford them [De Francis and his partner Martin Jacobs] an open-ended option to buy the tracks while they continue their thus far unsuccessful efforts to assemble financing and assess the corporations likely prospects [to build a track] in Virginia."

With less than two months before the Jan. 12 deadline, De Francis has not indicated whether or not he has the necessary funds to purchase the Manfusos' interests.

If Hollander doesn't certify the ruling, then De Francis said yesterday, he can seek "non-traditional" ways to file an appeal.

"I'm not seeking delays," De Francis said. "What I'm trying to do is to get all of these issues completely resolved. There is still litigation hanging out there involving Manfuso suits against me and a suit by me against them [scheduled to be heard in March]. If I put up $8.2 million to buy out the Manfusos, I don't want to be sued by them. And conversely, if I'm paid $8.2 million by them, I want the money free and clear without the threat of suits attached to it."

No movement on Rosecroft

De Francis had a lengthy meeting with his senior staff members yesterday, but has not decided whether or not he will accept a horsemen's offer to contribute 2 percent of their share of the handle to help defray costs of the afternoon thoroughbred simulcast operation at Rosecroft Raceway.

He had wanted the horsemen to kick in 3 percent.

"What we are doing is trying to analyze ways to improve the economic situation [at that facility] and in other areas," De Francis said. "I'm looking for ways to make Rosecroft work, and not to stop it."

THE BALTIMORE SUN
NOVEMBER 20, 1993

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

HORSE RACING

Laurel charts

$00-All).
Fth 378; 5th 189; 6th

It	Fin	Trainer	Odds
d	1hd	Regan	7.80
2	2½	Glazier	4.80
½	3-3½	Skinner	1.80
2	4-1¼	Capuano	5.40
½	6-3½	Boyer	80.80
-3	5-2½	Gino	6.10
-4	7-21	Boniface	8.90
-8	8-17	Lewis	26.90
9	9	Beall	15.50
5.			

IG; 7-A LAUGHING DEVIL

Trained by Regan Scott T.

Farms; Dorothy M Skinner; ward Warfield; Mrs Lewis

8,500-13,500).
c 4th 630; 5th 315; 6th

Str	Fin	Trainer	Odds
2½	1-1¼	Lihrary	1.30
1-5	2-6½	Alcedo	2.30
1½	3-2½	Alfano	3.50
5-2	4-1½	Lewis	12.50
Ind	5-3½	Bernier	9.40
8-6	8-10	Jones	17.80
7	7	Moorrack	27.20

Jestern Stinger.

$.40 2.80; 6-BEAUSTARK

Aerbury King T. Bred by De-

Rivermere Stables; Chester Esecta (1-4) paid $71.80.

($18,500- 16,500).
5; 4th 630; 5th 315; 6th

Str	Fin	Trainer	Odds
1-1½	1½	Patterson	3.40
3-6	2-1½	Motion	4.80
2-3	3-6½	Nicholson	5.80
5-4	4nk	Johnson	20.80
4½	5-6½	Magill	7.50
6-6	9-16¾	Saltzman	2.30
1-2½	7-2	Smith	4.80
8	8	Scott	21.10

Bugle Charge, Dq—Shelter

$.80 $.00; 1-DO-SHELTER

Motion H Graham. Bred by

Lawton; Mary M Gertler; Paul Raymond W Zagowitz. Esecta 2-1½.

$25,000-20,000).
95; 4th 670; 5th 435; 6th

Str	Fin	Trainer	Odds
2-2	1-1½	Friedman	7.30
1-4	2-1	Beall	14.60
3-3	3-2½	Delp	2.80

Winner-Dbb-G-Private Thoughts-Sue's Jet by Tri Jet. Trained by Abbott John Y. Bred by Stallion Gary (Fla).
OWNERS (in order of finish): Theodore B Sanford; S M S Corp; Ayres Fountain Spring Farm; William M Backer; Manfredo & Voss Contreras; Hall H Gleeson; James V Hardesty; Mrs F L Wylie Tuttle; Marathon Farms Inc; Ernest L Rosenberg; Thomas M Beach. Esecta (7-9) paid $36.60. Triple (1-8-12) paid $662.80. Middle Daily Double (8-9) paid $84.80.

8 —1 1/8m.; Off Turf; Purse $28,000; F&M; 3YO&up; Allow. Value to winner: 1st $1,400; 2nd 4,200; 3rd 2,200; 4th 1,200; 5th 600; 6th 400; 7th-10th 300.

Horse	Wt	PP	Jockey	ST	¼	½	¾	Str	Fin	Trainer	Odds
Kenwood Park	117	10	Salazar	Shd	7½	1-1½	1-1½	1-2	1-3	Merryman	3.20
Glassine	118	2	Pino	½	6-6	5-3	2-2	2-5	2-10½	Alexander	5.80
Pretty Paces	117	4	Castillo	2	7-1	7-4	5-2	3-3	3-3¾	Stillman	6.70
Silver K. T.	108	8	Cuthbert	15	10	8-4	6-1	4-1	4-9	Lupo	35.00
Rebelious Cat	117	3	Reynolds	hd	4-1½	4hd	4-2	5-2	5-8	Lihrary	14.40
Twice Said	122	5	Elliott	½	2-2½	2-1½	3-2½	6-6	6-10	Bowlin	2.80
Sam My Mogul	117	9	Prado	1½	5-1½	6-1	6-5	7-6	7-13	Tagg	4.00
Tan And Change	119	1	Turner	1	8hd	10	10	10	8-3¾	Bowman	22.10
No Fit Choice	117	7	Luzzi	3	9-2½	9-3	9-10	8-1	9-13	Glenwi	9.10
Irish Ivr	114	6	Jhnsn	1½	3-1	3-1	7-1	9-3	10	Albert	25.90

Off 3:47 p.m. Time :23 2/5; :47 4/5; 1:13 3/5; 1:41; 2:07 4/5. Scratched—Canvashed, Exotic Sea, Lady Baring, Shatta, Shelter Bay.

1-KENWOOD PARK 8.40 5.00 3.40; 4-GLASSINE 4.80 4.60; 6-PRETTY PACES 4.40.

Winner-Dbb F-At Naes-Danger Bearing by Rollicking. Trained by Merryman Ann W. Bred by Bender & Bender Partnership) (Md).
OWNERS (in order of finish): Seven Valleys Stable; Helen K Stoever; Elaine L Beaufond; Barbara A Lapp; Coastline Stables; Donald E Bender; Gerald A Nelson; Charles E Weller; Willam D Fossett; Helen M Kelly. Esecta (1-4) paid $52.80. Triple (1-4-6) paid $283.60.

9 —1 1/8m.; Dirt; Purse $50,000; F&M; 3YO&up; The Queen Isabella Stakes.
Value to winner: 1st $33,135; 2nd 11,045; 3rd 6,074.75; 4th 3,313.50; 5th 1,656.75.

Horse	Wt	PP	Jockey	ST	¼	½	¾	Str	Fin	Trainer	Odds
Starlight Surprise	115	9	Delgado	3	1-3	1-1½	1-1½	1-4	1-2¼	Rittle	20.20
Broad Gains	115	7	Seefeldt	6	8	6	6-1½	3-1½	2-1½	Small	6.10
Stem The Tide	115	3	Prado	2	2½	2nd	2-1½	2-1	3-2¼	Murphy	1.00
Part With Pride	115	4	Luzzi	7	6-2	5-2	5-1	4-2	4-1	Murphy	11.30
Just About Down	115	1	Hamilton	1	7-1	7-1	7-2½	5-2	5-5	Walters	34.50
D. Theatrical Gal	115	5	Reynolds	5	4hd	3-1	4-1	7-8	6hd	Ferguson	5.30
Ritchie Trail	122	2	Pino	4	5-1½	5-2	8hd	6-2	7-6½	Hadry	3.80
Breezy Mistress	115	8	Horton	4	3-1½	4hd	9	8	8	Jansen	48.50

Off 4:15 p.m. Time :24; :48 4/5; 1:13 3/5; 1:38; 1:51 4/5. Scratched—Imalikeyestep, Mrs. Highness, Tennis Lady.

5-STARLIGHT SURPRISE 42.40 11.40 4.40; 1-BROAD GAINS 6.20 3.20; 9-STEM THE TIDE 2.40.

Winner-Dbb F-Galladay-Bread Fruit by Restless Native. Trained by Rittle Roberta R. Bred by Vanderbilt Alfred G (Md).
OWNERS (in order of finish): B And D Stable; Robert E Meyerhoff; Christiana Stables; Paula E Parsons; Skinner J Walters; Four Rackers Stable; Mrs Dana Wilmot; Al Milano. Esecta (8-7) paid $247.20. Trifecta (8-1-6) paid $837.60. Pick 3 (8-1-4-1-1-6) 4 at 6 paid $66.80, carryover $3,406.20.

10 —6f.; Purse; $6,200; Open 3YO&up; Maiden; CL ($8,500-7,500). Value to winner: 1st $3,534; 2nd 1,502; 3rd 662; 4th 372; 5th 186; 6th 124; 7th-8th 100.

Horse	Wt	PP	Jockey	ST	¼	½	¾	Str	Fin	Trainer	Odds
Friendly Paces	112	6	Lozano	5	5-2	5½	2-2	1-7¾	Bernier		2.80
Allens Star	116	3	Pino	4	3-2	2-1½	3-1½	2-2¼	Casey		1.50
To Love To Much	116	1	Reynolds	1	4-3	4hd	4-6	5-2	Lihrary		5.30
Ridin Rascal	119	8	Hutton	3	1hd	1-4	1hd	4-1½	Green		3.20
Big George	115	2	Cline	6	6hd	6-2	6-3	5-1	Abel		36.30
Steel Bars	116	7	Forrest	7	8	8	8-1	6-4	Hughes		34.30
Sunny And Mellow	119	5	Ayarza	8	7-2	7hd	9	7-6½	Rosenfeld		48.10
M Bright	106	8	Brown	2	2-3	3-5	7-1	8	Clay		14.40

Off 4:44 p.m. Time :22 3/5; :47; 1:09; 1:13. Scratched—Chesapeake Bay, Pete Rachus.

6-FRIENDLY PACES 7.20 3.20 3.60; 4-ALLENS STAR 3.20 2.40; 2-TO LOVE TO MUCH 3.80.

Winner-Ch C-Dixieland Band-Pacific Fall Choice By Full Intent. Trained by Bernier Louis D Jr. Bred by Beauford Elaine L (Md).
OWNERS (in order of finish): Richard F Blue; Stephen R Ferguson; The Jim Stable; Joseph W Carter; Henry G Tinsley; Brasilia Stables; Ronald M Rosenblatt; William Steve Osborne. Esecta (9-4) paid $17.80. Triple (9-4-7) paid $41.80. Late Daily Double (9-6) paid $149.80.

11 —$3,800, 3YO up, 1 1-16mi.
Budweiser Breeders' Cup; (SIMULCAST FROM BEULAH [illegible];

(COURSE) 10.00 4.20 4.80; 7-MEDIUM COOL (BRUNO) 4.60

Guida says he can be bought

Minority owner would sell if Manfusos are forced out

By Ross Peddicord
Staff Writer

Another disgruntled partner in Laurel Race Course wants to sell his shares in the track.

Lou Guida, who owns about 7.5 percent of the equity, or non-voting stock, in Laurel, said yesterday that if operator Joe De Francis buys out his estranged partners, Tom and Bob Manfuso, "then he [De Francis] will also have the opportunity to buy me out at a reasonable price. If he doesn't, then he is going to be in another adversarial relationship with a partner, me against De Francis, and I will hire a battery of attorneys to cover all four corners of my interests."

Guida said he is "scared to death" that De Francis will buy out the Manfusos, "who have treated me warmly and kept me up to date about what has been going on at the track" while De Francis "has done everything he can to aggravate me since he took over after his father's death."

Guida said he thought that the Manfusos, who have offered to sell their shares in Laurel and Pimlico for $8.2 million to De Francis under a Russian Roulette provision in a stockholders agreement, set "a very low price and offered it at great terms [20 percent down, five years to pay as stipulated in the agreement]. They under-priced [their shares] by about $2 million. It's a fabulous deal for De Francis. I think they are just disgusted and want out. I think they are brokenhearted that Frank [De Francis] left them in the lurch."

Guida said he was a friend of the late Frank De Francis and got a group of his friends together to invest in Laurel in the mid-1980s. "We were the only ones that put up any venture capital, but no one anticipated anything ever happening to Frank. I still find it unbelievable that there was no written agreement between him and the Manfusos that would have ensured a smooth transition of the present management at that time. I think near his death he must have gotten nostalgic about his family and handed his empire over to Joe. Joe might have been a good lawyer, but he had no experience in managing two tracks the size of Laurel and Pimlico, and look what has happened."

Guida added that he has been told by Tom Manfuso that if the Manfuso brothers gain control of the tracks, then "my limited [non-voting] partner status will be changed to a general [voting] partnership and I will put an infusion of capital into the business."

Guida is part of the so-called Guida Group, which is composed of 15 New Jersey stockholders that own 50 percent of the equity in Laurel. Of the 15, there are four major stockholders, including Guida, who each own about 15 percent of the group's shares.

One of the major Guida partners has said that the group is neutral in the buy-out battle being waged between De Francis and the Manfusos. But Guida said "the majority feel the same way I do and back the Manfusos."

De Francis, he added, "has treated us like a necessary evil . . . an illegitimate child locked in a closet. He looked at our status as limited partners and treated us like third-class citizens."

Three years ago, Guida offered to buy out De Francis' interests in the tracks for $9.5 million, but it was rebuffed at the time by De Francis, who said the deal involved too many contingencies.

De Francis, who has not decided whether he will buy out the Manfusos, could not be reached last night for comment.

Starlight Surprise

Starlight Surprise, a 20-1 long shot, jumped out to the front and cruised to a 2¼-length victory over Broad Gainst in the $55,225 Queen Isabella Stakes.

Charles Town

Sunday's results
1st—2,100, cl, 3YO up, 4½f.
Miss Chertsey (Duputs) 8.20 4.80 2.80
Golden Blossom (Carney) 6.00 3.40
Rambling Brook (Barnes) 3.20
Time :53. Scratched—Look Out Below.
Quinella (1-2) paid $33.00.
2nd—2,500, cl, mdn 3-6YO, 7f.
Starlight Ring (Barnes) 6.00 3.40 2.60
Word Of Iron (Rivera) 4.00 2.60
Aidan's Illusion (Soto) 3.80
Time 1:32 2-5. Scratched—Dancin Caro.
Disco Sal, T J's New Hope, T.V.'s Enching.
Daily Double (2-6) paid $24.20.
Exacta (2-6) paid $27.40.
Trifecta (2-6-6) paid $95.80.
3rd—2,500, cl, mdn 3-6YO, 4½f.
Keen El Gato (Colon) 16.20 7.40 4.60
Looking Home (Miller) 6.00 3.80
Reclaim Forever (Delgado) 7.20
Time :53. Scratched—Gopasco, Peaceful Mi
8th—2,100, cl, 3YO up, 7f.
Hunter's Head (Bourne) 7.40 4.20 3.40
Sir Fiddle (Harris) 8.20 4.60
Brown Owl (Kaufenstell) 2.60
Time 1:27 2-5. Scratched—Better Land, Mr. N.U.B., Riche El Sage, Safeway R O, Virginia Wonder.
Daily Double (2-8) paid $14.60.
Consolation Double (2-9) paid $3.80.
Exacta (8-5) paid $46.80.
Trifecta (8-5-1) paid $79.80.
7th—2,000, cl, mdn 3-6YO, 6½f.
Blowing Sands (Quinn) 11.20 5.40 4.80
Orion Sag (Barnes) 4.20 3.20
Cocilan (Pindel) 8.40
Time 1:24. Scratched—Count On Bill, Crimson Venture, Meesers, Pronto Rac conte, Stand In Stone.
Exacta (7-9) paid $47.80.
Trifecta (9-8-1) paid $637.80.
9th—4,700, alw, 3YO, 7f.
Mr. Frank L (Barnes) 3.20 2.40 2.2

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THE WASHINGTON POST
HORSE RACING

ANDREW BEYER

10/20/93

As Owner Battle Goes On, Tracks Bleed

Horse racing is a game that thrives on inside information, but virtually nobody in Maryland knows what's happening in the sport's big event: the battle for control of the state's tracks. Even leaders of the industry can only guess whether Joe De Francis or the Manfuso brothers will wind up owning Laurel and Pimlico.

But it is at least possible to divine the intentions of the bitter rivals. De Francis desperately wants to remain the president of the two tracks. Tom and Bob Manfuso are quite willing to let De Francis buy them out so they can say "Good riddance!" to the whole mess. But it now appears very possible that neither side will get its wish.

The showdown began when the Manfusos activated the so-called Russian roulette provision of their agreement with De Francis, which forces one side to buy out the other's half-interest in the tracks. The brothers offered to buy out De Francis for $8.2 million. This forced De Francis either to accept the offer or buy out his partners for the same amount.

Because the tracks' long-term debt is $40 million, the Manfusos' essentially are making a $48 million offer for Laurel and Pimlico, which seems pretty modest compared with the cost of opening even a small new track nowadays. The parties interested in Virginia racing are planning to spend at least $50 million to construct a track there.

Here, for a lesser price, were two tracks on two big chunks of real estate, in an established racing market, and which were endowed with great potential because Maryland has one of the best off-track betting statutes in the country. Even though business has been declining in recent years, this was a fairly conservative valuation.

De Francis had feared that he would be a loser in Russian roulette because the Manfusos are so much wealthier than he. Yet with the $8.2 million bid, the brothers were not trying to overwhelm him with their financial strength. They were bidding what they think Laurel and Pimlico are worth in the current pessimistic climate. They were saying, tacitly: Joe, if you want these tracks, you can have them.

All De Francis had to do was to come up with 20 percent of the $8.2 million as a down payment and guarantee the balance. For any player in the big leagues of business, this ought to be chicken feed. When De Francis unveiled his plans for a $55 million Virginia racetrack at a press conference last month, and was asked how he would come up with the money, he shrugged off the problem, saying that he had an investment banking firm with "very sophisticated and unique methods of financing."

So finding 20 percent of $8.2 million should have been easy—especially for a persuasive man such as De Francis. But it hasn't been. He asked one of the country's most prominent racetrack owners for backing—and didn't get it. He reportedly has talked to various prominent Maryland businessmen looking for financial support—and has come up empty.

This is not shocking. No rational businessman could look at the financial performance of the Maryland tracks under De Francis's leadership and conclude that this was a prudent investment. Despite the boosts generated by off-track betting and intertrack betting, business at the state's tracks is still ominously bad. Even lifelong racegoers have trouble remembering a day when a Maryland thoroughbred track drew a crowd as low as the 2,813 at Laurel Wednesday.

In fact, if De Francis himself were making a purely rational business decision, he'd probably sell out to the Manfusos in a minute. He would collect millions of dollars, guarantee himself of being comfortable for life, walk away from a lot of headaches and go back to being a lawyer—a profession for which he is much better suited than he is racetrack management.

But De Francis surely is motivated by pride and ego as much as dollars and cents. (This has been part of his undoing as the president of Laurel and Pimlico; he insists on overreaching, getting involved in lofty plans for Texas racing and Virginia racing, instead of tending to his troubled interests at home.) He loves occupying the limelight and hobnobbing with the state's political and business leaders. And there is a sense of filial duty infusing his decisions too. His late father, Frank De Francis, wanted Joe to carry on his work at the tracks.

(One of the intriguing subplots of the Maryland racing drama is the role of Joe's sister, Karin Van Dyke. She is Frank De Francis's other heir, and she too has a considerable stake in the fate of the tracks. Wouldn't she rather take her money and run than leave a multimillion-dollar investment in the hands of her brother's management skills? Oh, to be a fly on the wall at the family parlays.)

The latest development in the De Francis-Manfuso battle came last week when De Francis made a legal move that probably was part of a challenge to the validity of the Russian roulette provision. Some may suspect that this is a tactic to buy himself more time, but De Francis said emphatically yesterday, "I have no desire to use legal maneuvering to stall off getting this resolved." What he wants to do, he said, is to make sure Russian roulette will bring about a "complete divorce" between the partners and won't be followed by any more litigation.

The prospect of a drawn-out legal fight is the worst possible scenario for the Maryland racing drama. The fight with the Manfusos already has sapped the resources of the tracks' management and left employees demoralized. Planning for the future is difficult at best. De Francis and his staff have invested considerable time and money in their bid for a racetrack in Virginia, but it is inconceivable that the Virginia Racing Commission would award the franchise to an applicant who might soon be out of a job.

With the economic condition of the Maryland tracks in such a perilous state, the owners of the tracks had better resolve their dispute, one way or another, as soon as possible and start tending to business. Regardless of the outcome, the "winner" of the fight for control of Laurel and Pimlico won't have much to celebrate.

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

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

REQUEST FOR HEARING

Defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by and through their attorneys, James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, request a hearing on their Motion to Direct Entry of Partial Final Judgment, Plaintiffs' Response thereto, and Defendants Reply to Plaintiffs' Response.

James E. Gray

Linda S. Woolf

Linda S. Woolf
Goodell, DeVries, Leech & Gray
Commerce Place
One South Street
Baltimore, Maryland 21202
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 1993 a copy of the aforegoing Request for Hearing was mailed to: Andrew Graham, Esquire, Kramon &

Graham, Commerce Plaza, One South Street, Suite 2600, Baltimore, Maryland 21202, Attorneys for Plaintiffs; Irwin Goldblum, Esq., McGee Grigsby, Esq., and Jennifer Archie, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, Attorneys for Defendants, The Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.

James E. Gray

1040-10-1

CIRCUIT COURT FOR BALTIMORE CITY

MEMORANDUM

CE

DATE: Dec. 28, 1993

TO: Marc Noren and Frank Sherry

FROM: Judge Joseph H. H. Kaplan, AJ

SUBJECT: Manfuso, et al. v. DeFrancis, et al.
Case Nº 92120052/CE147851

12/28/93

53

Dear Messrs. Noren and Sherry:

Anything that comes into the Clerk's Office for filing that deals in any way with the settlement reached on December 27, 1993, by and among the Estate of Frank J. DeFrancis, Joseph A. DeFrancis, John A. Manfuso, Jr., Robert T. Manfuso, Martin Jacobs, Karin Van Dyke, Pimlico Racing Association, Inc., The Maryland Jockey Club of Baltimore City, and Laurel Racing Association, Inc. is hereby assigned to me and the special assignment of the above referenced case to Judge Ellen L. Hollander is hereby withdrawn. Please notify me at once upon any such filing taking place.

Thanking you for your cooperation, I am

Sincerely yours,

Joseph H. H. Kaplan
Administrative Judge

JHHK/kak
cc: Judge Ellen M. Heller, JICC
Judge Ellen L. Hollander
James E. Gray, Esquire
Herbert S. Garten, Esquire
Andrew J. Graham, Esquire
James P. Ulwick, Esquire
Jennifer C. Archie, Esquire
Ira T. Kasdan, Esquire

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

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

MANFUSOS' RESPONSE TO MOTION
TO DIRECT ENTRY OF PARTIAL FINAL JUDGMENT

I. INTRODUCTION

In a well-reasoned Memorandum Opinion and Order dated August 6, 1993, the Court granted the Manfusos' Motion for Partial Summary Judgment on Count IV of their Third Amended Complaint. In so doing, the Court declared that the Russian roulette provision of the Shareholders Agreement remains in full force and effect. Some three months after the date of that ruling, De Francis and Jacobs have asked the Court to exercise its discretion to direct the entry of the partial final judgment on that ruling under Md. Rule 2-602(b). The Court should deny the motion and not permit the entry of a partial final judgment because the motion is untimely, because the order is unappealable under Rule 2-602(b), because it would be most detrimental to Pimlico and Laurel with possible severe economic consequences to the corporations and because it would be prejudicial and unjust to the Manfusos, the limited partners of Laurel Racing Association Limited Partnership and to all persons interested in Maryland racing.

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II. THE PRINCIPLES APPLICABLE TO THE ENTRY OF PARTIAL FINAL JUDGMENT UNDER RULE 2-602(b)

Generally, an appellate court cannot acquire subject matter jurisdiction absent an appeal from a final judgment or from one of the few interlocutory orders for which the General Assembly has provided a statutory right of immediate appeal. Planning Board of Howard County v. Mortimer, 310 Md. 639, 644 (1987). This jurisdictional requirement prevents piecemeal appeals and avoids the "confusion, delay and expense which would be caused by having two or more appeals in the same suit." Pearlstein v. MDIF, 79 Md. App. 41, 49 (1989) (quoting Carl Messenger Service, Inc. v. Jones, 72 Md. App. 1, 3 (1987)). Strong policy considerations support the rule against multiple, piecemeal appeals. Carl Messenger Service, Inc. v. Jones, 72 Md. App. at 3.

The drafters of Rule 2-602 modeled it after Rule 54(b) of the Federal Rules of Civil Procedure. Both the state rule and the federal rule respond to problems created under the modern system of pleading, which promotes multiple parties and multiple claims. Pearlstein v. MDIF, 79 Md. App. at 50. If a trial court permitted an appeal from every disposition of every claim against every party under the modern system of pleading, it would result in delay and disruption at the trial level and duplication and unnecessary burden at the appellate level. Id. Rule 2-602(b) and its federal counterpart avoid these problems by viewing an action involving multiple claims or multiple parties as a single judicial unit ordinarily requiring a

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complete disposition before a final judgment may be entered. Id.

The rules do provide for a limited exception, under which a trial court, in the proper exercise of its discretion, may manage a complex case by dispatching a narrow set of final orders for immediate appellate review. Id. The Court of Appeals has cautioned, however, that trial courts should exercise that discretion only in "the very infrequent harsh case." Diener Enterprises v. Miller, 266 Md. 551, 556 (1972).

A trial court may not use Rule 2-602(b) as a means of certifying discrete questions of law. Carl Messenger Service, Inc. v. Jones, 72 Md. App. at 4; compare 28 U.S.C. §1292(b). Rather, the trial court may direct the entry of a final judgment under the rule only as to an order that disposes of at least one but fewer than all the claims or parties in the litigation. Furthermore, a trial court may direct the entry of a partial final judgment under Rule 2-602(b) only if, within the circumscribed scope of its discretion, it expressly finds no just reason to delay an appeal as to the claims or parties involved. In exercising its "considered discretion" (Diener Enterprises v. Miller, 266 Md. at 555) a trial court should "balance the exigencies of the case" against Maryland's strong policy against piecemeal appeals. Id. at 556.

III. APPEAL IS UNTIMELY

De Francis and Jacobs delayed more than three months before requesting the entry of partial final judgment on the Order

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declaring that the Russian roulette provision remained in full force and effect. Notably, the defendants' delay included an entire month after the Manfusos had triggered the Russian roulette provision. That extraordinary delay mandates the denial of the Motion for the Entry of Partial Final Judgment.

Rule 2-602(b) contains no express deadline for requesting the entry of partial final judgment; however, the decisions under the analogous federal rule, which the Court of Appeals has termed "especially persuasive" (East v. Gilchrist, 239 Md. 453, 459 (1982)), require a party to move for the entry of partial final judgment within thirty days of the order that the party would appeal.

For example, 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.

The Schaefer court predicated its decision on its belief that appeals under Rule 54(b) should receive treatment no more and no less favorable than ordinary appeals from final

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judgments. Pointing out that, in virtually all instances, a party must appeal from the entry of a final judgment within, at most, sixty days of the date of the judgment, the court handed down its general rule requiring parties to seek certification under Rule 54(b) within thirty days of the interlocutory order that they would appeal. Id.; accord Cherokee Nation of Oklahoma v. United States, 23 Cl. Ct. 735, 739 (1991) (eight-month delay in seeking certification supported the conclusion that there was no urgent need for an appeal of the claims that the trial court had dismissed).

The exclusive method of securing appellate review is governed by Title 8, Chapter 200 of the Maryland Rules and Section 12-302(c)(3) of the Maryland Courts and Judicial Proceedings Code. The "only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202." (Emphasis added.) Rule 8-201(a). Rule 8-202(a) prescribes the time for filing a notice of appeal and provides that the notice shall be filed within thirty (30) days "after entry of the judgment or order from which the appeal is taken." (Emphasis added.) These provisions distinguish between the term "judgment," which is defined in Rule 1-202(m) and as contemplated by Rule 2-602, and the term "order." Clearly, the appeal process must be commenced within thirty (30) days of the entry of either a final judgment or an order.

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Reading the appellate rules in conjunction with Rule 2-602 indicates that the exclusive method of obtaining appellate review in this case would have been to file a timely notice of appeal in conjunction with a timely motion under Rule 2-602. See, e.g., Tidewater Insurance Associates v. Dryden Oil Co., 42 Md. App. 415, 401 A.2d 178 (1979). The defendants (would-be appellants) in this case have done neither. This Court's Memorandum and Order dated August 6, 1993, was entered on the same date as indicated by this Court's docket. See Rule 8-202(f). Therefore, under the rules, the time for seeking certification and noting an appeal expired on September 6, 1993.

What, in effect, the defendants are seeking to do is to extend indefinitely the time for taking an appeal by the simple expedient of calling an order interlocutory and sometime thereafter, at their own discretion, seeking certification as a final judgment. Presumably, the defendants in this case would then file a notice of appeal within thirty (30) days of such a certification. The rules do not contemplate such a procedure. In fact, the rules are designed and "shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay." (Emphasis added.) Md. Rule 1-201(a). From that perspective, the dilatory procedural tactics attempted to be employed by the defendants in

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this case are unwarranted and in contravention of the spirit of the Maryland Rules.[1]

In this case, De Francis and Jacobs delayed more than ninety days before belatedly requesting certification of the August 6, 1993 Order. The Court should not permit them to profit by the delay. Nor should the Court place them in a better position than ordinary litigants, who generally may no longer seek appellate review once thirty days have elapsed after the entry of a final judgment. Accordingly, the Court should deny the motion for certification, as De Francis and Jacobs have not sought certification in a timely fashion.

But even if the Court declines to impose a strict, thirty-day deadline for requesting certification under Rule 2-602(b), the Court must still find that De Francis's and Jacobs's three-month delay refutes any suggestion that "there is no just reason to delay" the entry of final judgment, within the meaning of the Rule. De Francis and Jacobs certainly knew of their right to request certification, because they and their lawyers publicly mused about the possibilities of an appeal almost from the date of the August 6 Order. But rather than take even the first step toward an appeal, De Francis and Jacobs engaged in three months of delay, while they apparently assessed their options,

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[1] See also Rule 3.2 of the Maryland Rules of Professional Conduct, and the Comment thereto ("Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged ... for the purpose of frustration an opposing party's attempt to obtain rightful redress or repose.")

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including their options under the Russian roulette provision. Three months of "thumb-twiddling" (Bank of NY v. Hoyt, 108 F.R.D. 184, 185-86 (D.R.I. 1985)) refute any suggestion that there is no just reason to delay the entry of final judgment at this juncture in the case.

If defendants believed that they should appeal this Court's Order, they should have attempted to take the requisite steps within thirty days. Instead, they chose as their strategy deliberate delay designed to forestall the resolution of the ownership issues in Pimlico and Laurel through the buy/sell mechanism to which they had contractually agreed. It should be noted that the defendants in their twenty-eight page Memorandum failed to even attempt to justify the delay in requesting a final judgment.

IV. THE COURT CANNOT DIRECT THE ENTRY OF PARTIAL FINAL JUDGMENT, BECAUSE THE AUGUST 6 ORDER DISPOSES OF LESS THAN THE ENTIRE CLAIM

De Francis and Jacobs have requested certification of the ruling entering summary judgment in the Manfusos' favor on Count IV of the Third Amended Complaint. That count alleged that the Manfusos had neither breached the Shareholders Agreement nor fraudulently induced De Francis or Jacobs to enter into the Agreement. The count further alleged that, even assuming that the Manfusos had breached the Agreement or somehow fraudulently induced De Francis or Jacobs to enter into it, the Russian roulette provision remained in effect because, among other things, De Francis and Jacobs had waived their right to

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challenge the provision or ratified the Manfusos' alleged wrongdoing.

The allegations of Count IV largely mirrored the allegations of Counts I and II of the defendants' Counterclaim. In Count I of the Counterclaim, De Francis and Jacobs asked that the Agreement be rescinded on account of the Manfusos' alleged fraud. In Count II of the Counterclaim, De Francis and Jacobs asked for damages and a declaration excusing them from all future performance under the Agreement (including performance under the Russian roulette provision) on account of the Manfusos' alleged breach. Thus, Count IV of the Third Amended Complaint and Counts I and II of the Counterclaim clearly involve the same facts and the same cause of action.

Under such circumstances, the Court of Appeals has made it clear that the Complaint and Counterclaim alike constitute only one, single claim for purposes of Rule 2-602(b). See e.g., East v. Gilchrist, 293 Md. at 461 (1982). In East v. Gilchrist, the plaintiffs sued for declaratory injunctive relief, mandamus, and damages, alleging the invalidity of a section of the county charter. The county counterclaimed, asserting the validity of the provision in question. After the trial court entered a ruling against the county on its counterclaim alone, the parties sought certification. The Court of Appeals, however, dismissed the appeal.

In reaching its decision, the court reasoned that the claims and counterclaims arose out of but one set of operative

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facts and thus constituted but one cause of action. East v. Gilchrist, 293 Md. at 460. The court continued:

> Declarations concerning the validity of [the charter provision] and the defendants' violation of the provision, mandamus and injunctive relief based upon the alleged violation, and damages caused by the alleged violation, are all multiple remedies for the violation of one legal right.

Id. Hence, the court concluded that the counterclaim and the plaintiffs' various requests for relief all constituted one claim. For that reason, the trial court could not properly grant certification after dismissing the counterclaim alone; the court could certify its ruling as final only after ruling on all aspects of the claim, i.e., by entering judgment on the plaintiffs' claims as well.

While De Francis and Jacobs would like to downplay these cases, Maryland appellate courts have repeatedly reaffirmed the ruling in East v. Gilchrist. For example, in Washington Suburban Sanitary Comm'n v. Frankel, 302 Md. 301, 307-08 (1985), the Court of Appeals dismissed an appeal under Rule 2-602 where the trial court had dismissed on the plaintiffs' claim for declaratory relief, but had not passed upon the defendants' right to money judgments under their counterclaims. In reaching its decision, the court specifically stated that the plaintiffs' claim for declaratory judgment and certain of the defendants' requests for monetary judgments "are one and the same claim for purposes of applying" the predecessor of Rule 2-602(b). Thus, because the trial court had not passed an order adjudicating an

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entire claim, the parties could not properly obtain certification.

Similarly, in this case, the Court has passed on the plaintiffs' request for declaratory relief, but has not obviated the possibility that the defendants, De Francis and Jacobs, might obtain monetary relief, at least on Count II of their Counterclaim. That unadjudicated Counterclaim not only mirrors the claim that the Manfusos have successfully asserted, but also represents merely another remedy arising out of the same cause of action. Therefore, the Manfusos' Count IV and the defendants' Counts I and II constitute but one single claim, of which the Court has adjudicated only a part. Because the Court therefore has not adjudicated an entire claim, De Francis and Jacobs may not avail themselves of Rule 2-602(b) to obtain immediate appellate review.

V. THE COURT SHOULD EXERCISE ITS DISCRETION TO DENY THE MOTION

The defendants' motion represents their latest desperate attempt to buy time and to avoid the effect of the agreement they made and signed some four years ago. Essentially, De Francis and Jacobs wish to achieve a one-sided and grossly unfair result because De Francis and Jacobs waited for more than a month after the Manfusos had triggered the Russian roulette to request the entry of a partial final judgment under Maryland Rule 2-602(b). They obviously want the Court to afford them an open-ended option to buy the tracks while they continue their thus far unsuccessful efforts to assemble financing and assess

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the corporations' likely prospects in Virginia. De Francis and Jacobs would thereby thwart the Russian roulette provision with its just and reciprocal rights and obligations on both sides. It is no accident that the defendants seek to appeal the Court's decision at the eleventh hour. If they are successful in obtaining the Court's blessing of their tactic, they will be pursuing an appeal so late in the game that it will undoubtedly have the effect of stalling the buy/sell provision and making the Manfusos' due diligence efforts and financing arrangements valueless.

With the defendants' knowledge and assistance, the Manfusos conducted a thorough and extensive due diligence assessment of the racetracks' value. The Manfusos in good faith expended approximately $150,000.00 in conducting their due diligence in the reasonable belief that De Francis and Jacobs would comply with the Agreement because (1) they had agreed to the Agreement, (2) the Court had declared that the Agreement remained in effect, (3) they did nothing to contest that declaration until more than three months after the Court issued it, and (4) they assisted in the due diligence being conducted by the Manfusos. If the Court permits an immediate appeal, then the Manfusos will lose not only their contractual right to escape from an unworkable ownership arrangement, but also the expenses that they incurred in preparing for and triggering the Russian roulette.

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It was necessary for the Manfusos, as part of their due diligence and in preparation for their possible acquisition of the De Francis group stock, to negotiate an amendment and restatement of the existing term loans, aggregating approximately $40 million, provided by First National Bank to Pimlico Racing Association, Inc. ("Pimlico"), and Laurel Racing Assoc., Inc. ("Laurel"). This amendment and restatement letter agreement provides for certain conditions precedent to closing with First National Bank, including evidence that the Manfusos own 100% of the stock of Pimlico and Laurel. Closing with First National is to take place by February 7, 1994. Any delay in closing under the Stockholders Agreement jeopardizes (1) closing with First National Bank or results in substantial extension fees; (2) Pimlico and Laurel having the opportunity to save at least $70,000 per month in interest costs; and (3) the ability and timetable of the Manfusos, if they are the purchasers, (a) to put into effect their business plan designed to bring about a turn-around in financial results of Pimlico and Laurel and (b) to have Pimlico and Laurel meet certain of the loan conditions and financial covenants provided for under the agreement.

In short, the defendants' Motion should be denied because of their delay and the attendant prejudice which the Manfusos would suffer if the requested relief were granted.

By declaring that the Russian roulette provisions remain in effect, the Court cleared the way for the resolution of an ongoing dispute with deleterious consequences for Maryland

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racing. To the extent that the Court considers the interests of the public and interested third parties in exercising its discretion, it is beyond dispute that such interests would be best served by a prompt resolution of the divided ownership problems which afflict the Pimlico and Laurel racetrack businesses. Indeed, Mr. De Francis himself stated publicly in the Washington Post on September 30, 1993 that "some type of mechanism to settle this" should be employed by the plaintiffs and the defendants in order to improve the chances of Pimlico and Laurel taking advantage of a valuable opportunity to build and operate a racetrack in Virginia. See Exhibit A. In the Washington Times on October 1, 1993 Mr. De Francis was quoted as saying "there are tremendous incentives for the two sides to settle. The big incentive is Virginia. If I wanted to posture and play hardball, I would keep pounding my fist on the table and saying 'Over my dead body,'[2] but there's too much at stake here. The fighting has hurt Maryland racing from the beginning, but it's sort of been a kick in the shins or poke in the eye. Now it threatens to strike a mortal blow if we miss out on the Virginia opportunity." See Exhibit C. Indeed, the Minutes of the October 13, 1993 Virginia Racing Commission meeting confirm its concerns about the ownership issue. The chairman raised the

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[2] See Exhibit B, an article in The Sun wherein De Francis earlier had taken a different position, refusing to abide by the Stockholders Agreement and allow the Manfusos to purchase his stock threatening that he would first "rot in hell."

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ownership problem in the following colloquy with defendant Jacobs:

> Chairman Shenefield asked Mr. Jacobs what might be the effect in Virginia of the invoking of the "Russian roulette clause" concerning the possible transfer of the ownership of the Maryland racetracks. Mr. Jacobs stated that the issue may be clarified in early January, quite likely before the hearings began.

See Exhibit D.

The Manfusos agree with De Francis to the extent that they too believe that a change from a divided ownership to an ownership consolidated under either the Manfusos or De Francis and Jacobs would be in the best interests of the racing industry and the Maryland public. The compliance in good faith by both sides with their Russian roulette agreement will accomplish that very result. Moreover, this would occur without prejudicing either side. De Francis acknowledges that the ownership dispute must be resolved in the interests of Maryland racing. He also stated on October 1, 1993 in an article appearing in The Sun that he was willing to consider "any reasonable solution" (see Exhibit E), and on October 2, 1993 in another Sun article that he would "pay a reasonable amount" to buy out the Manfusos. (See Exhibit F.) The fact of the matter is that the Manfusos, by triggering the Russian roulette and offering to sell their stock for an eminently reasonable price, have offered the defendants the perfect "reasonable solution" to the ownership conflict and the opportunity for De Francis and Jacobs to

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purchase the Manfusos' stock at a reasonable price.[3] The defendants' belated effort to obstruct the buy/sell process which they had previously publicly welcomed demonstrates that the right to appeal has not been requested in good faith, but rather is merely a delaying tactic which would, in effect, provide the defendants with an open-ended option to buy the Manfusos' stock at a set price.

What the defendants are trying to achieve is to have as long a period of time as possible to assess the likelihood of the Virginia opportunity coming to fruition, so that they can more accurately assess the tracks' value, and to arrange their financing which, to date, they have evidently been unable to accomplish. The Manfusos, of course, would have no reciprocal opportunities. In the meantime, the defendants would remain in control of the corporations which own the racetracks, while the Manfusos would have to stand by helplessly as the defendants pursue their own financial objectives and as the racetracks continue to deteriorate.[4]

The Russian roulette agreement was fair. It imposed reciprocal obligations on both sides and granted both sides reciprocal rights. If the Court were to grant the defendants'

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[3] The Buy/Sell provision requires a down payment of only 20% of the total price of $8.2 million with the balance payable over five years.

[4] On November 17, 1993, De Francis announced that Laurel lost $4.78 million for the first nine months of 1993--a result $2 million worse than for the same period in 1992. See Exhibit G.

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motion and allow a piecemeal appeal, it would, in effect, completely rewrite the Russian roulette provision in a way that would provide substantial advantages to the defendants and significantly prejudice the plaintiffs.

The defendants argue that if the Russian roulette provision were to go forward without them being permitted to appeal, they would suffer irreparable damage and lose the opportunity to own and control something which is unique, vis, the two racetracks. (Defendants' Memorandum p. 17) The defendants attempt to analogize the situation at bar to a real estate setting where realty is considered unique. First, this is not a real estate case. Second, and more importantly, the fact of the matter is that if the Court denies the defendants' motion, as it should, the defendants will not be deprived of the opportunity to own the tracks nor of anything else to which they are entitled. To the contrary, they can simply comply with the Russian roulette process and if they have the money, they will own the racetracks. The only possible prejudice affecting the defendants has nothing to do with the Manfusos. It appears that the defendants are simply unable to obtain the financing necessary to purchase the plaintiffs' stock. If this is so--and it appears to be the only circumstance that would explain the defendants' actions--it does not result from anything that the plaintiffs did or failed to do. If the defendants do not have the financial wherewithal with which to purchase the plaintiffs' stock, then they should sell their stock to the plaintiffs.

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As the defendants concede, a decision to certify a judgment is discretionary. (Defendants' Memorandum p. 7). All of the facts and circumstances of this case militate in favor of an exercise of the Court's discretion to deny the defendants' desperate effort to take a frivolous appeal solely for purposes of delay. As the defendants note at pp. 10-11 of their Memorandum, "the effect of the [the Court's] declaration has serious implications for the future of thoroughbred racing in Maryland." Indeed, the Court's declaratory judgment does have serious implications, but they are salutary ones, not prejudicial implications as the defendants imply. The Court's ruling will permit the resolution of a harmful and distracting dispute, the continuation of which will hurt Maryland racing and may indeed lead to the loss of the opportunity to improve the Maryland racing industry by taking advantage of the Virginia racetrack opportunity. Clearly, until the issue of ownership is resolved, the Virginia Racing Commission will not seriously consider allowing the Laurel and Pimlico entities to own and run a Virginia track. A divided ownership of Pimlico and Laurel will not even be able to operate the Maryland tracks effectively, much less operate the Maryland tracks together with a new Virginia racetrack business.

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Dated: November 19, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 1993, I sent a copy of the Manfusos' Response to 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 first-class mail, 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.

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Exhibit A

Friday's D-Day in Track Dispute

TRACK, From D1

1990, the Russian Roulette option has become a symbol of bitterness between the tracks' principal owners. It was inserted into the agreement as a way to solve the growing disputes between De Francis and the Manfusos. The problems became acute when Joe De Francis assumed control of Laurel and Pimlico following the August 1989 death of his father, Frank De Francis, who had led Laurel and Pimlico in an unprecedented resurgence with help from the Manfusos.

The Manfusos strongly objected to becoming subordinates to Joe De Francis, a successful antitrust lawyer at the time, saying they were better suited to run the tracks.

In the spring of 1990, the Manfusos unhappily withdrew from daily management, the Russian Roulette clause providing them an eventual opportunity to sell out or to wrest full control of Pimlico and Laurel.

"The intent of the clause is to protect the Manfusos as minority owners," said their lawyer, Herb Garten. "Otherwise, they would have been locked in forever."

The Russian Roulette provision also was designed to give Joe De Francis nearly four years in which to exercise control of Pimlico and Laurel "without meddling, harassment or actual or threatened lawsuits by the Manfusos."

But two years after the pact was signed, the Manfusos sued De Francis and Jacobs for alleged fiduciary irresponsibility related to their pursuit of a track in Texas, sparking a flurry of legal action.

Although the two sides don't own an equal number of shares in Pimlico—De Francis and Jacobs have 5,300 shares, the Manfusos 4,700—the transfer price would be the same for both, based solely on the offer of the side that triggers the Russian Roulette clause.

The possibility of a climactic faceoff between the track owners comes as De Francis stands on the edge of another critical development: the pursuit of a license to build and operate a racetrack in Virginia.

The deadline for applications is Friday, coincidentally, and De Francis has scheduled news conferences in Baltimore and Richmond that day to provide further details of his plans for a Williamsburg-area track that would operate on a cooperative basis with Laurel and Pimlico, creating a novel two-state circuit.

But at least five other groups seek a racetrack in the Old Dominion, including such formidable competitors as Churchill Downs Inc., the Louisville track that hosts the Kentucky Derby, and Virginia Racing Associates, led by former Rosecroft Raceway owner Bill Miller.

According to De Francis, a Virginia track in rival hands could cripple or destroy the Maryland racing industry by diverting its horses and customers, particularly if off-track betting is established in Northern Virginia. By the spring of 1994, the Virginia Racing Commission is expected to decide which group is best equipped to run a track. It will take another two years for racing to begin.

To preserve his chances of winning the Virginia license, De Francis must retain control of Pimlico and Laurel. As a result, he seeks a resolution with the Manfusos.

"No one can dispute that the continuation of this battle [with the Manfusos] is going to harm our chances in Virginia," De Francis said. "That provides a tremendous incentive for all of us to try to use some type of mechanism to settle this. To say the next six months are going to be the most crucial in the history of Maryland racing, in my mind, is not an overstatement."

Of his relationship with the Manfusos, De Francis said, "Obviously, the situation has deteriorated horribly. But if the Israelis and Palestinians can sign a peace treaty, I think that . . . we can come to some type of agreement. Far greater conflicts than ours have been settled."

But as Tom Manfuso reads it, the time for negotiating a settlement has come and gone. "All the sincere efforts made to resolve this matter have failed," he said. "I was always greatly disappointed that we were unable to do so."

A Baltimore City Circuit Court judge recently ruled that the Russian Roulette provision is enforceable despite legal attempts by De Francis and Jacobs to invalidate the stockholders' agreement. De Francis said he has not appealed the decision "to this point" in hopes of resolving the ownership rift for the good of the Virginia project.

When the Manfusos acquired Laurel for $16 million late in 1984, they willingly yielded managerial, operational and voting control to Frank De Francis, who had successfully transformed Freestate Raceway. Tom Manfuso contributed a fully secured loan of $6.5 million, and he and Bob jointly pledged $1.8 million in securities as collateral for the payment of a promissory note.

Pimlico / LAUREL

STOCK OWNERSHIP OF MARYLAND'S MILE TRACKS

LAUREL	Class A Shares (Voting)	Class B Shares (Non-voting)	Total
Frank De Francis Estate	550	2,200	2,750
Bob Manfuso	350	1,525	1,875
Tom Manfuso	—	1,875	1,875
Martin Jacobs	—	1,000	1,000
Totals	900	6,600	7,500
PIMLICO			
Frank De Francis Estate	550	4,150	4,700
Bob Manfuso	210	2,140	2,350
Tom Manfuso	210	2,140	2,350
Martin Jacobs	30	570	600
Totals	1,000	9,000	10,000

Such backing was not a problem. Tom Manfuso, 64, and his brother Bob, 56, joined Frank De Francis after serving as executives of Burton Parsons Pharmaceutical, a company their father, John Manfuso Sr., sold in 1979 for more than $100 million.

Laurel handled $84.7 million in wagers in 1985, the first year under De Francis-Manfuso management. In 1989, the track totaled $232 million in bets.

Among the hierarchy, Frank De Francis was president and chief executive officer, afforded voting control through a majority of Class A stock. Bob Manfuso was vice chairman and executive vice president, overseeing horsemen's relations. Tom Manfuso was vice president/secretary, concentrating on the physical plant, and Jacobs, now 53, treasurer/general counsel.

When Frank De Francis bought Pimlico for $30 million in 1986, the Manfusos contributed $2.5 million and again ceded authority to De Francis. Joe De Francis, then a successful antitrust lawyer, also became a Pimlico stockholder with a 4.7 percent stake.

The unraveling of upper management took place with the death of Frank De Francis, who had failed to recover from a heart attack in June 1989.

In withdrawing from active duties following the 1990 Preakness, the Manfusos remained on the board of directors but said their input was "largely ignored." Each received a $1.25 million termination payment equal to their investment in Pimlico.

De Francis, 38, says he couldn't have foreseen how quickly and completely his relationship with the Manfusos would erode.

"I think things unfolded in a vastly different manner than I had antipicated," De Francis said. "When I signed the agreement, I thought we would work together for the good of the corporation."

By the time the stockholders' agreement had taken effect, early in 1990, the tracks' executive wheels were already well out of alignment. The engine was still roaring—Pimlico's spring meeting that year set a Maryland record for average daily mutuel handle—but it too began to sputter as thoroughbred racing across the country fell into decline.

Wagering at Laurel and Pimlico dropped a hefty 14 percent from 1990—when it set a record at $435 million—to 1992. Only recently has it begun to show signs of recovery.

Industry analysts estimate the value of Pimlico and Laurel at $45 million to $60 million. The tracks, saddled with $40 million in long-term debt, have incurred net losses totaling $2.8 million since 1988, when they reported a net profit of more than $3 million in the last full year of the Frank De Francis-Manfuso-Jacobs era.

A limited partnership led by Lou Guida owns 50 percent of the equity in Laurel but has no stock or voting rights.

EXHIBIT A

Exhibit B

De Francis blasts Manfusos

Denies claims made in reported lawsuit

By Ross Peddicord
Staff Writer

Laurel-Pimlico track operator Joe De Francis minced few words yesterday in responding to a report that Tom and Bob Manfuso, his co-owners in the two tracks, have filed another suit against him in Baltimore City Circuit Court.

"This is a big pile of garbage and nothing more than harassment," De Francis said.

The *Washington Post* reported yesterday that the Manfusos have asked the court to make a declaratory judgment concerning the validity of a stockholders agreement that allows either side to buy the other out after Oct. 1. The paper also reported that the Manfusos, in the suit, charge De Francis and Martin Jacobs, a minority owner and the track's chief legal counsel, for condoning improper bookkeeping practices and are seeking more than $300,000 each in damages.

De Francis said he had no knowledge of the suit before it was reported.

"If indeed they [the Manfusos] did file suit, it was submitted late on a Friday afternoon and then they called the *Washington Post*," De Francis said. "How bush league."

He added: "I can unequivocally state that under no circumstances whatsoever will the Manfuso brothers ever get control of Laurel and Pimlico. There is no way, and I repeat, no way, that they can force me to sell to them, and I will rot in hell before I do."

The Manfusos filed a similar suit against De Francis and Jacobs last year, but it was dismissed by the court. De Francis counter-sued, saying that since the Manfusos had initially sued him, they had breached a stockholders agreement containing the buyout clause.

"That suit is not scheduled to be heard until March 1994," De Francis said.

The partners have been struggling for control of the two tracks since the late Frank De Francis died in August 1989. That is when Joe De Francis assumed his father's roles as president and chief operating officer. He, his family and Jacobs own the majority of voting stock in the two tracks.

Neither of the Manfusos could be reached yesterday for comment.

Cormorant's Flight wins

Cormorant's Flight won her second straight stakes victory yesterday at Laurel by defeating Bocamis by three lengths in the $60,000 Politely Stakes.

The 3-year-old filly previously won the Jameela Stakes on Jan. 30 by 9¾ lengths, but had a harder time holding on yesterday at the seven-furlong distance.

"She was rank early and I had a hard time getting her to relax," said jockey Mike Luzzi. "But when the other horses came to her [at the top of the stretch], she kept going. I was real pleased with the way she hit the ground and extended herself at the end."

Luzzi rode four winners yesterday, including victories in the first, fourth and 11th races.

NOTES: Maryland stallion Corridor Key sired his first stakes winner when Silver Key defeated Asset Impression Friday night in the $50,000-added Cherry Hill Mile at Garden State Park. . . . Mighty Game drew the attention of the Laurel fans yesterday when he broke his maiden in the seventh race, running six furlongs in 1 minute, 10 2/5 seconds.

EXHIBIT B

Exhibit C

The Washington Times ★ FRIDAY, OCTOBER 1, 1993 / PAGE B5

6 groups to submit applications to build first track in Virginia

By Rick Snider
SPECIAL TO THE WASHINGTON TIMES

Virginia has waited nearly five years since approving pari-mutuel racing for someone to apply to build a track. Today, six groups with widely different plans will submit applications that could finally bring racing to the state by 1995.

The contrasts in the proposals are staggering. Three groups are considering a suburban Richmond site, two are opting for Tidewater and one wants Northern Virginia. Several propose racing both thoroughbreds and harness with one also planning quarterhorses and Arabians.

All applications, which cost between $500,000 to $1 million to prepare, are due before the Virginia Racing Commission today, but can be amended through Jan. 3. Price said public hearings will be scheduled for January and February with a final decision expected in late March. Only one application will be approved.

Recent legislative changes allowing six off-track betting parlors and simulcasting have made Virginia an attractive site. National outfits like the Maryland Jockey Club, Churchill Downs and Raceway Park in Toledo, Ohio, are competing against three Virginia groups. There is no early favorite, but the winner will likely be the one with the strongest financing and overall racing program.

The six groups that will submit applications today:

• The Maryland Jockey Club, which controls Laurel and Pimlico race courses, is one of three groups that have selected New Kent, midway between Richmond and Williamsburg along Interstate 64, as a site. The Chesapeake Corp. has offered 365 acres free in hopes that a track would be the catalyst for economic growth.

• Arnold Stansley, who owns Raceway Park and Trinity Meadows in Dallas, also chose the New Kent site. His $36 million track seating 6,100 would race 75 dates for both thoroughbreds and harness.

• The Virginia Jockey Club's proposed Dominion Downs in Haymarket would have year-round racing with 205 thoroughbred dates and 55 harness dates. The $45 million track includes two turf courses and seats 5,000. The group is headed by real estate developer Jim Wilson, who also owns a track in Puerto Rico.

• Churchill Downs proposes a $56.5 million track in Virginia Beach with 60 dates for harness and 40 dates for thoroughbrds. It would race a summer thoroughbred meeting during a break in the Kentucky circuit.

• Dr. Jeffrey Taylor, a Covington, Va., dentist, plans a mixed meeting of thoroughbreds, harness, Arabians and quarterhorses at Virginia Downs in New Kent.

• Virginia Racing Associates picked Portsmouth. Led by horseman Bill Kant, the group plans a $50 million facility seating 6,000. It will race 125 dates annually featuring both thoroughbreds and harness.

Laurel/Pimlico president Joe De Francis said he is willing to close Maryland racing during the summer while operating Colonial Downs in Virginia to create a "Saratoga of the South" meeting. De Francis cited national foal crop reductions of 40 percent over the past five years as creating a horse shortage that will prove critical for both states unless he obtains the track license.

"Virginia presents an enormous opportunity on one hand, and a terrible threat on the other," he said. "We have the opportunity to double the fan base . . . without placing any additional demands on the number of horses. That will allow us to raise purses on a year-round level to those approaching New York."

However, De Francis must also worry about partners Tom and Bob Manfuso, who are considering triggering a "Russian Roulette" agreement that begins today. Under a 1989 stockholders agreement, either side can buy or sell its shares in Laurel and Pimlico to the other at a set price, and the Manfusos indicate they're considering doing so in coming weeks. De Francis said animosity between the two groups could jeopardize his chances in Virginia.

"There are tremendous incentives for the two sides to settle," he said. "The big incentive is Virginia.

"If I wanted to posture and play hardball, I would keep pounding my fist on the table and saying 'Over my dead body,' but there's too much at stake here. The fighting has hurt Maryland racing from the beginning, but it's sort of been a kick in the shins or poke in the eye. Now it threatens to strike a mortal blow if we miss out on the Virginia opportunity."

However, Tom Manfuso said Maryland's chances would be increased by settling who will control the tracks.

"I see no reason that it would be a significant harm to finish up litigation that resolves a dispute between owners," he said.

EXHIBIT C

Exhibit D

VIRGINIA RACING COMMISSION

MINUTES

OF

COMMISSION MEETING

OCTOBER 13, 1993

STATE CORPORATION COMMISSION
TYLER BUILDING
1300 EAST MAIN STREET
RICHMOND, VIRGINIA

Commission Members Present: John H. Shenefield, Chairman
Arthur W. Arundel
Daniel A. Hoffler
James E. Sheffield

Commission Staff Present: Donald R. Price, Executive Secretary
William H. Anderson, Policy Analyst

Attorney General's Office: Teresa C. Manning
Michael K. Jackson

At 9:35 a.m., the meeting to order was called to order by Chairman Shenefield.

Chairman Shenefield noted that there were two items on the agenda, a discussion of the procedures for informal fact-finding conferences and approval of a tentative schedule of meetings for the remainder of 1993 and all of 1994, as well as a discussion of the regulation pertaining to appeals of licensing decisions.

Mr. Hoffler moved that the minutes of the September 15, 1993 meeting be approved. The motion was seconded by Mr. Arundel. The motion was approved.

Chairman Shenefield recognized Mr. Price for the purpose of making the executive secretary's report.

Mr. Price reported that six applications for an unlimited license had been submitted to the Commission by the close of business on October 1, 1993. He noted that staff was beginning the

EXHIBIT D

hours of questioning by the Commissioners and one hour of cross-examination by other applicants. Each applicant would be allowed a half hour for summation.

Mr. Thomas indicated that he thought this procedure would be very workable with site visits, public hearings in the localities, and the informal fact-finding conferences for the applicants. However, he expressed concern over possible entanglements with the public hearings and informal fact-finding conferences while recognizing that there should be opportunity for public comment on the applications.

Chairman Shenefield asked Mr. Jacobs what might be the effect in Virginia of the invoking of the "Russian roulette clause" concerning the possible transfer of the ownership of the Maryland racetracks. Mr. Jacobs stated that the issue may be clarified in early January, quite likely before the hearings began.

Chairman Shenefield directed staff and counsel to develop a plan incorporating the ideas discussed during the meeting.

Mr. Hoffler congratulated Mr. Price for his efforts in advancing horse racing in Virginia to the point where the Commission had received six applications. Mr. Price acknowledged that he had received a great deal of assistance from staff, counsel, and participation by industry representatives.

Chairman Shenefield indicated that the Commission had promulgated regulations incorporating appeal procedures on licencing decisions which would be unduly cumbersome to the applicants. He suggested that the Commission either repeal the regulation or revise the regulation.

Chairman Shenefield moved that the Commission cause a Notice of Regulatory Action be published in The Virginia Register to repeal the provisions of VR 662-01-02 (2.24) which establish procedures for appeals of denial, fine, suspension of licenses and to replace them with regulations which incorporate the provisions of the Virginia Administrative Process Act regarding case decisions. The motion was seconded by Mr. Arundel. The motion was approved.

The Commission recessed at 11:40 a.m. At 12:00 p.m., the meeting was called back to order by Chairman Shenefield.

Chairman Shenefield noted that the Commissioners had copies

Exhibit E

EXHIBIT E

THE

LIGHT • FOR • ALL

FRIDAY, OCTOBER 1, 1993 • VOLUME 313, NUMBER 119 BALTIMORE, MARYLAND

State's racing feud nearing finish line

Buyout may settle track ownership

By Ian Johnson
and Ross Peddicord
Staff Writers

Any day now, one of them will pull the trigger.

They don't want to, but they agree that a duel is the only way. Better than more messy lawsuits. Better than publicly fighting while one of Maryland's institutions slowly deteriorates.

Click, and the feud is over.

The bullet will arrive in the form of a letter, probably from Tom Manfuso to Joe De Francis. It will offer Mr. De Francis the chance to buy Mr. Manfuso out of his stake in the tradition-laden Pimlico and Laurel racetracks. Buy me out for the amount I propose, Mr. Manfuso will write, or else I will buy you out for the same amount and become king of Maryland horse racing.

The action, which legally can take place any time starting today, would be a fittingly dramatic end to the bitter feud between Mr. De Francis, who controls both racetracks, and his co-investors, Tom Manfuso, 64, and his brother Bob, 56. The Manfusos and Mr. De Francis, 38, have been trading barbs and insults for four years, leaving the industry divided as it confronts some of the greatest challenges in its 250-year history.

The animosity reached its apex in May 1992, when the Manfusos filed suit against Mr. De Francis, alleging he had used track funds in his efforts to lobby for a track in Texas. Mr. De Francis responded by banning them from the executive offices at Laurel and Pimlico, taking away their company cars and declaring them "bitter enemies" who "make me sick to my stomach."

> *"It's obvious that you've got a situation where this couple has to be divorced."*
>
> **BOB MANFUSO**

After so many jabs, both sides agree, the showdown at least would put someone firmly in charge of Maryland's tracks.

"It's obvious that you've got a situation where this couple has to be divorced," said Bob Manfuso. "It would clear the air."

This kind of legal duel is called Russian Roulette — fitting not only because it eliminates one participant with brutal efficiency, but also because it's a high-stakes gamble.

The immediate risks are obvious: The winner of the duel will be saddled with the tracks' $41

See **RACING**, 14A, Col. 1

KIM HAIRSTON/STAFF PHOTO

Martin's William Ballhaus Jr.

Marti in Gle

By Ted Shelsby
and Kim Clark
Staff Writers

BETHESDA — M Corp. said yesterday Burnie plant with would be closed, as th becomes one of the peace in a corporatev tion.

The closing of th warfare plant here w company's decision t employees nationwide result of Pentagon bu

Death bef

Anti-Chinese slur creates dissension at Hopkins

Student

State's racing feud between De Francis and

RACING, from 1A

million debt and $2.5 million in losses over the past three years. In addition, the winner will have to buy out the other partner. Analysts are reluctant to put a price on the tracks because of their huge debt, but they could be worth $40 million.

Maybe more important is that the future owner will have to shoulder this crushing load while dealing with huge changes in the horse racing business. Fans soon may be able to call up races from around the country on their televisions and place bets in their living rooms, and the growth of casinos and riverboat gambling is drawing customers away from the tracks.

The industry's survival is more than an economic issue for Maryland. It has a sizable economic impact — state estimates suggest that $1 billion changes hands because of it every year and that it generates more than 10,000 full-time and part-time jobs — but horse racing is also one of the state's great traditions, as woven into Maryland's fabric as steamed crabs and sailing on the Chesapeake.

"There are multiple factions in the industry and some support De Francis or Manfuso and the division of support has hurt the industry," said Dr. Malcolm Commer, an equine specialist at the University of Maryland's Wye Research and Education Center. "There are so many hypotheticals that it's hard to know who would be better, but the main thing is that someone be in charge and have a vision for horse racing in this state."

Frank De Francis' legacy

The rancor between the Manfusos and Joe De Francis began with a death.

It was in July 1989 and Frank De Francis, 62, was dying from the effects of a massive heart attack. Mr. De Francis, a former Washington lawyer and lobbyist for the arms industry, was the czar of Maryland horse racing.

His successes had started in 1980, when he had bought the bankrupt harness race track in Laurel, which he renamed Freestate Raceway. Using his knack as a promoter and motivator, he helped revive the raceway, earning him the respect of Tom and Bob Manfuso, two businessmen who recently had sold their pharmaceutical company for $120 million.

In 1984, Bob Manfuso asked Frank De Francis if he would be interested in buying Laurel Race Course. Mr. De Francis agreed. The two then added Bob's brother, Tom, and Mr. De Francis' lawyer, Marty Jacobs.

With Frank De Francis controlling the voting stock, the four investors bought the track for $16 million. Frank De Francis ran the show, while Tom Manfuso headed maintenance and Bob became liaison to the horse owners and trainers.

Frank De Francis' climb to the top of Maryland's equine industry culminated in 1986, when the four partners bought Pimlico for $30.5 million.

But even as the partners were putting together their racing deals, problems were afoot. Changes in the 1986 tax law made owning a horse less profitable, and the number of racehorses available began to fall.

Faced with this growing chal-

HOW 'ROULETTE' WORKS

One side can buy the other out of its stake in the Laurel and Pimlico racetracks through a provision dubbed "Russian Roulette." Like the deadly pistol game, legal Russian Roulette exposes the instigator to a huge risk — in this case, being bought out and losing control of the tracks. But if successful, the instigator ends up in control of the tracks. Here's how it works:

☐ Starting Oct. 1, Mr. X can send Mr. Y a letter offering to sell his shares in the tracks.

☐ If Mr. X offers too little, Mr. Y will snap up the shares and end Mr. X's stake in the tracks. Mr. Y would win.

☐ Mr. X, however, could offer to sell at a high price. This would discourage Mr. Y from buying out Mr. X. Mr. Y probably would decline.

☐ But if Mr. Y declines Mr. X's offer, Mr. X is bound to buy out Mr. Y at the same price he had offered to sell his stake. So, if Mr. X had offered to sell at an unreasonably high price, he would discourage Mr. Y from buying him out, but would be saddled with having to buy out Mr. Y at the cripplingly high price.

For the horse tracks and horse racing in Maryland, this game could end with a winner so saddled with debt that he is unable to make the improvements necessary to get the industry back on its feet.

ROBERT K. HAMILTON/STAFF PHOTO

Bob (left) and Tom Manfuso are angry that Laurel and Pimlico have continued to suffer losses.

Built on $41 million of debt, the tracks had to make $4.5 million in interest payments each year.

By the time Mr. De Francis lay dying in a Miami hospital, the tracks were racking up losses of $335,000 for 1989. Still, the Frank De Francis years were dubbed the "Maryland Miracle," and the name stuck.

His father's wishes

Joe De Francis said that, before his father died, he had told Joe to run the tracks or sell them, but not to let the Manfuso brothers get hold of them. Joe, then a 34-year-old corporate attorney whose experience lay in organizing leveraged buyouts, decided to run the tracks.

"His son came to us at the time and said he was going to take over," said Tom Manfuso. "I said: 'We'll have to discuss this further, because I'm not supportive of someone without experience — either in managing a big operation like this or particularly in the horse business — of taking over.' "

Joe De Francis, however, had a commitment to his father.

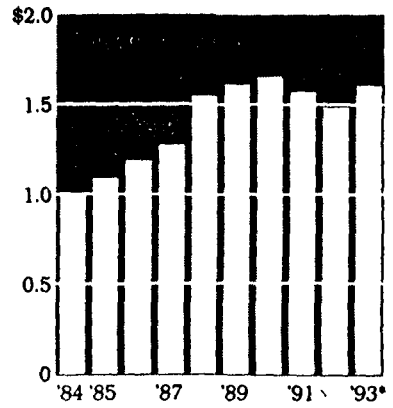
"He made it clear to me that I should operate them or sell. He didn't mind if I sold to the Manfusos, but he didn't want them to operate the tracks," Mr. De Francis said.

Unwilling to turn over the tracks to the Manfusos but also worried about lawsuits, Joe De Francis agreed to draw up a shareholders' agreement — with the Russian Roulette clause — to placate the Manfusos.

FADING IN THE STRETC

The average daily handle (total mon declined since 1990, although the fi improvement. Attendance has drop

AVERAGE HANDLE



* Based on figures through Aug. 26, 1993. Ha but attendance does not include off-track bet

Francis undisputed control of the tracks until Oct. 1, 1993. At any time after that, either side could trigger the clause, which gives the opponent 120 days to respond.

The Manfusos quit their jobs in 1990 to become a shadow track management in waiting, biding their time until today, when they can try to buy out Mr. De Francis.

Besides problems with management style, the two brothers say they are angry at the tracks' continuing losses.

EXHIBIT E

Manfusos may end with buyout

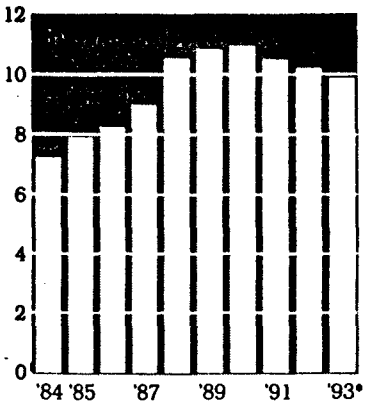
GENE SWEENEY JR./STAFF PHOTO

Joe De Francis has overseen Maryland racing at a time when the entire industry has gone through hard times.

CH

ney bet) at Maryland tracks has first eight months of 1993 show)ped since 1990.

AVERAGE ATTENDANCE



andle includes off-track betting and simulcasts, tting.

STAFF GRAPHIC

ky-dory and business were booming through the roof, I think you'd find that we'd be getting along better than we get along," Bob Manfuso said.

The tracks lost $850,000 in 1990, $860,000 in 1991 and $750,000 last year. Meanwhile, the handle has dropped from $436 million in 1990 to $376 million last year.

Deciding who is responsible for these losses has divided Maryland's horsemen into two camps, although few are willing to talk openly for fear of antagonizing the tracks' future owners.

One trainer not on the fence is Jerry Robb, a member of the board of directors of the Maryland Thoroughbred Horsemen's Association, which represents about 3,000 horse owners and trainers.

"If Joe wins this thing, there will be a party in the Sports Palace attended by all his friends," Mr. Robb said. "But if Bobby [Manfuso] wins it, they can hold the party in a phone booth."

Trainer John Alecci, however, would not celebrate a De Francis victory.

"In the long term, the game has got to be promoted to bring in younger fans," Mr. Alecci said, "and I don't see this management doing that. They haven't spent the money on marketing, and if they have, they haven't spent it effectively. I'm 35, and I look around here and don't see anyone my age."

Some say that Mr. De Francis inherited a mess made worse by national trends, such as the new tax laws and increased competition from other forms of gambling. Many others, however, support the Manfusos' view of Mr. De Francis as a well-meaning but poorly qualified manager who has fumbled his father's business.

For example, critics say that Mr. De Francis ensconces himself in an office only accessible by punching in a code. He rarely delegates or tells one manager what the other is doing. His public relations staff once learned of his appearance on a Baltimore talk show after the program was aired.

On top of that, the tracks have lacked the marketing flair that came naturally to Frank De Francis. Joe De Francis had no plans this year to market the 250th anniversary of the Maryland Jockey Club — the corporate name for Pimlico and the oldest sporting organization in the nation — until outsiders pointed out the public relations gold mine that the date presented. Still, the tracks have not publicized the milestone.

Another beef: the tracks' appearance. Mr. De Francis says that the tracks are in as good a condition today as when his father built the gaudy Sports Palaces in the 1980s, but many see them as dirty, rundown and out-of-date.

Take your pick

So who would be better at running the tracks, the Manfusos or Mr. De Francis?

Tom Martin, a research chemist and a frequent bettor, said: "I have a preference by default. I've seen what's happened since De Francis has run the show, and the quality of live racing is bad. Big bettors want to bet the Maryland product, but they're leaving the circuit."

But Vince Drecchio, a longtime horseplayer who owns several horses, said he is "not so sure the other people [Manfusos] would be better. I'm sort of satisfied. De Francis did give up his salary [$700,000 annually], and he has some people around him who are race men — Lenny Hale, John Mooney. For that reason, I'd rather see him in there."

In addition to hiring Mr. Mooney to improve the tracks' operations and appearance, Mr. De Francis has moved aggressively to expand simulcasting — importing other tracks' live races for betting at Pimlico and Laurel and exporting Laurel's and Pimlico's races to other states.

Since simulcasting started in May, handle is up 20 percent over the same period last year, although last year was a terrible year.

And Mr. De Francis hopes to expand his business into Virginia, which closes bids on a new track today. The plan is to create a summer circuit with a new track in Virginia, allowing Laurel and Pimlico to take off a few months a year.

The Manfusos say they support the bid to build a track in Virginia, but Tom Manfuso said the plans for Virginia were being sold as an cure-all for Maryland's problems. "It's nice to listen to, but talk doesn't cook any rice," he said.

The struggle has worn on both sides and made both accept that come today, or thereabouts, a letter will be sent out that will trigger the roulette.

As the person controlling the tracks, Mr. De Francis says he has no interest in sending out the notice. But he is also tired of the constant fighting, the accusations of incompetence and the thanklessness of the task.

"I'm willing to consider any reasonable solution," Mr. De Francis said. "It has hurt racing in Maryland for three years now."

For once, the two sides agree.

"I think you've got to finally end the differences, divorce the parties and let one party get in there and run these tracks," said Bob Manfuso. "And whoever it is, God bless them and good luck."

Staff writer Kent Baker contributed to this article.

EXHIBIT E

at Olan Dunnia eliminating 401 jobs

Exhibit F

Relief starter named for Laurel opener

Eric Blind will not be the starter for the races at the meet opener on Tuesday at Laurel.

John Mooney Jr., senior vice president and general manager at Pimlico/Laurel, said yesterday that "we will put a relief starter in his position during the Laurel meet. I haven't decided if it will be done temporarily or for a longer term."

Mooney said the move is being made "due to the stress the man is under in this position in a year-round capacity."

Blind, 56, said he considers himself fired and doesn't know what other capacity he will be working in at the track.

"He indicated he wanted to work on the ground [on the starting gate]," Mooney said, adding that he didn't think that is possible. "We are meeting to discuss what Eric is going to do."

Blind has been criticized at times for various incidents at the starting gate. A horse was electrocuted in a training-gate mishap at Pimlico on April 1.

— *Ross Peddicord*

Bob Pickering's Pimlico picks

BEST BET — (8th Simulcast) Peteski. This Canadian-bred Grade I stakes winner has been getting top figures lately while piling up victories. He goes for his fifth in a row in this $750,000 Super Derby, and if he runs his race the string will continue. The odds will be awfully short, but he's the perfect anchor for combination bets.

SUN LONG SHOT — (2nd) Lance. He got a good tightener under his girth here the other day in a 6-furlong sprint. This best efforts to date have been those over a route of ground and he gets a chance at a mile and one-sixteenth here. If you're looking for something with a price, this horse may fill the bill.

Charles Town

Saturday's entries
Post time 7 p.m.

1st—2,200, cl, 3YO up, 1 1-16mi.

Chattri	117	Gld And Lave
Prcus Fiestra	120	Dvlish Quaker
Wndw Shopin	113	English Castle
Mjestic Grace	117	Boola
Sheik's Star	116	Shl Be On Ti

2nd—2,100, cl, 3YO up, 4½f.

Vital Shock (Reeder)		5.40 4.00
Look I'm Flying (Glass)		3.80

Time 1:30 2-5. Scratched—Mad Lass.

Quinella (5-8) paid $42.50.

2nd—3,000, cl, 3YO up, 4½f.

Oh Oliver (Lewis)		21.00 7.20 4.60
Derrybeg (Barnett)		3.40 2.80
Bird's Surprise (Chalrey)		4.60

De Francis declines to pull buyout trigger

Pimlico/Laurel president Joe De Francis again said yesterday that he will not trigger the Russian Roulette clause of a stockholders agreement that he has with his minority partners, Tom and Bob Manfuso, that could lead him to sell or buy them out.

"Theoretically it is possible that the Manfusos could gain control of the tracks," De Francis said. "But it would only come after all judicial procedures were exhausted and if they offer to sell at an outrageous price. I won't pay any price unimaginable to buy them out. But I will pay a reasonable amount."

The Manfusos, who have said they will trigger the Russian Roulette clause, "on or about Oct. 1," did not do so yesterday. Their attorney, Herb Garten, said he anticipated no action over the weekend.

— *Ross Peddicord*

Skimble takes River Cities race

Associated Press

BOSSIER CITY, La. — Juddmonte Farms' Skimble stayed third until the far turn, then took the lead and went on to a driving, 1½-length victory in yesterday's Grade III $188,500 River Cities Budweiser Breeders' Cup at Louisiana Downs.

The race for nine 3-year-old and older fillies and mares over 1 1/16 miles on the Sawyer Turf Course opened the three-day Super Derby Festival of Racing.

Ridden by Pat Day, Skimble repelled a late bid by Irish Linnet to win in 1 minute, 41 3/5 seconds.

Delaware Park

Saturday's entries
Post time 1:15 p.m.

1st—3,200, cl, 3YO up, 6f.

Not So Cold	111	Fmilial Grace
Coral Key	114	Prspctr's Jew
Fifi La Tour	122	Woodcut
Rd The Boun	119	

2nd—3,400, cl, 3YO up, 1 1-16mi.

Mstrls' Whim	106	Jordan Pond
Bck Baybride	113	Musical Cloud
Evn's Silkpaj	113	Alycelloress
Magic Glow	108	Holly Times

3rd—3,400, 3YO up. 1mi.70Yds.

		rkey
		Partner
		re
		mo Wnder

2nd—3,200, cl, 3YO up, 5½f.

Sir Pelleas (Juarez)		7.40 4.80 3.20
Thunder Creek (Hansby)		5.00 3.40
Prospect's Promise (Escobar)		6.60

Time 1:06.

Daily Double (3-5) paid $167.20.

Exacta (5-7) paid $43.00.

3rd—3,600, alc, 3YO up, 1mi.

Keen Spirit (Sanchez)		3.60 3.20 2.40
Novators Artist (Rice)		10.80 4.60
Aluszyk (Juarez)		4.00

Time 1:51 4-5.

Exacta (2-3) paid $31.40.

Trifecta (2-3-11) paid $177.20.

4th—3,200, cl, 3YO up, 6f.

Run A.R.K. (Lee)		8.40 3.40 4.80

EXHIBIT F

Exhibit G

Intertrack Wagering Might Be in Jeopardy

By Vinnie Perrone
Washington Post Staff Writer

The future of intertrack wagering between Laurel/Pimlico and Rosecroft Raceway was shaken on two fronts last night following action at the monthly meeting of thoroughbred horsemen's representatives.

First, directors of the Maryland Thoroughbred Horsemen's Association and thoroughbred track officials agreed to alert Rosecroft and its horsemen today that intertrack wagering would be terminated effective Jan. 10 unless financial contracts are renegotiated.

But the MTHA board took additional action that, according to Laurel and Pimlico President Joe De Francis, brings more immediate threats to the seven-month-old arrangement. The board rejected De Francis's proposal that horsemen pay Laurel and Pimlico 3 percent of the afternoon handle at Rosecroft to help defray operating costs, voting to give no more than 2 percent.

A disheartened De Francis said he would meet with his senior executives today before deciding whether to accept the counter-proposal.

A track rejection of the horsemen's new offer would force Laurel and Pimlico to seek even greater concessions from Rosecroft, De Francis said.

Thoroughbred horsemen have incurred no costs in the intertrack wagering arrangement, in which Laurel or Pimlico simulcast their races to Rosecroft in the afternoon and Rosecroft transmits its races to the thoroughbred tracks at night. The venture apparently has been profitable for both industries, with Rosecroft particularly having benefited by recapturing the Baltimore market through Pimlico.

Appearing before the board, De Francis said a 3 percent horsemen's contribution would provide Laurel and Pimlico estimated annual revenue of $1.8 million. That, De Francis said, would give the tracks and their horsemen an estimated net profit of about $900,000 apiece.

Poor financial performance by Laurel and Pimlico over the first nine months of 1993 has exacerbated the need for horsemen's assistance, De Francis told the board.

He passed out unaudited balance sheets that showed a net loss for Laurel of $4.78 million for the period and a net profit of $548,697 for Pimlico. Each figure is about $2 million below 1992 results for the same period.

Through intertrack wagering and expanded simulcasting, Laurel and Pimlico have cut into monstrous purse overpayments, which now total about $2.5 million.

De Francis said he'd counted on a 3 percent horsemen's contribution in estimating a balanced purse account by January 1995.

But Richard Hoffberger, president of the MTHA, said the board appeared firm in its 2 percent ceiling.

"They're willing to close down [intertrack wagering] for anything more than 2 percent," he said. "They don't see it as terribly profitable."

Any of the principals of intertrack wagering—the tracks or horsemen of either side—can terminate the agreement on 15 days' notice. De Francis said he would consider that possibility in light of the board's 2 percent proposal.

SANTOS CHAVEZ
. . . four victories this month

'River' Runs Through It

Santos Chavez thinks Canton River would run better with blinkers, but the horse won't give his stable a chance to use them.

After his slate-gray 2-year-old rallied along the Laurel rail yesterday to make the $60,000 Rollicking Stakes his second stakes victory and fourth win in six starts, jockey Chavez said the three-quarter-length margin over Lt. Hill could have been larger if Canton River weren't so distracted toward the end.

"He did the same thing he did the last time, at Delaware Park," Chavez said. "He went the last sixteenth-mile looking around. He don't pay much attention to his business."

Canton River won the Delaware Park race too, making trainer Gene Weymouth reluctant to tamper with success. He earned $36,000 yesterday by going seven furlongs in 1 minute 24⅗ seconds. The gray gelding, a son of Waquoit, represents a third generation of stakes winners bred by owner Andrew Hobbs.

EXHIBIT G

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 JOHN A. MANFUSO, JR.

I, John A. Manfuso, Jr., 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. The copies of newspaper articles attached to the Manfusos' Response to Motion to Direct Entry of Partial Final Judgment ("the Manfusos' Response") are true and correct copies of articles which appeared either in The Sun, The Washington Post or The Washington Times on or about the dates indicated in the Manfusos' Response.

2. The factual statements contained in the Manfusos' Response at pages 10 and 11 concerning the expenses incurred by the Manfusos in conducting their due diligence assessment of the racetracks' value and the factual statements concerning the financing commitment from First National Bank are true and correct.

3. The copy of two pages of the Minutes of the Virginia Racing Commission meeting on October 13, 1993 were provided by the Virginia Racing Commission and, to the best of my knowledge and belief, are true and correct copies of the official minutes of the Virginia Racing Commission.

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

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

John A. Manfuso, Jr.

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November 10, 1993

Ms. Saundra E. Banks, Clerk
Circuit Court for Baltimore City
111 North Calvert Street
Room 462
Baltimore, Maryland 21202

Re: Robert T. Manfuso, et al. v. Joseph A. De Francis, et al.
Case No. 92120052/CE147851

Dear Ms. Banks:

Please find enclosed herewith for filing in the above-captioned matter the following documents:

(1) Motion to Direct Entry of a Partial Final Judgment;

(2) Memorandum in Support of Motion to Direct Entry of Partial Final Judgment; and

(3) a proposed Order.

Thank you for your attention to this matter.

Sincerely,

Linda S. Woolf

Linda S. Woolf

LSW/cks
Enclosures
cc: Andrew Jay Graham, Esquire (w/encls.)
Irwin Goldblum, Esquire (w/encls.)
McGee Grigsby, Esquire (w/encls.)
Jennifer Archie, Esquire (w/encls.)

49MD

ROBERT T. MANFUSO, et al., *

Plaintiffs

v.

JOSEPH A. DE FRANCIS, et al., *

Defendants *

IN THE CIRCUIT COURT FOR BALTIMORE CITY

92120052/CE147851

****

MOTION TO DIRECT ENTRY OF A PARTIAL FINAL JUDGMENT

Defendants and Counter Plaintiffs, Joseph A. De Francis and Martin Jacobs, by their attorneys James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, move this Court to direct the entry of a partial final judgment, pursuant to Maryland Rule 2-602(b), for reasons more fully discussed in the accompanying Memorandum.

WHEREFORE, Defendants, Joseph A. De Francis and Martin Jacobs respectfully request that the Court grant their motion and expressly determine in a written order that there is no just reason for delay, and direct the entry of a final judgment as to Count IV of the Third Amended Complaint and those portions of Counts I and II of the Counterclaim that seek declaratory relief.

Respectfully Submitted,

James E. Gray

James E. Gray

Linda S. Woolf

Linda S. Woolf

Goodell, DeVries, Leech & Gray
Commerce Place
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 1993, a copy of the foregoing Motion to Direct Entry of a Partial Final Judgment was hand-delivered to:

Andrew Jay Graham, Esquire
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Attorneys for Plaintiffs; and

was mailed first-class postage prepaid to:

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Baltimore City, Inc.,
Pimlico Racing Association, Inc., and
Laurel Racing Assoc., Inc.

James E. Gray
James E. Gray

ROBERT T. MANFUSO, et al.,	*	**IN THE**
Plaintiffs	*	**CIRCUIT COURT**
v.	*	**FOR**
JOSEPH A. DE FRANCIS, et al.,	*	**BALTIMORE CITY**
Defendants	*	**92120052/CE147851**

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MEMORANDUM IN SUPPORT OF MOTION TO DIRECT ENTRY OF PARTIAL FINAL JUDGMENT

Defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by their attorneys, James E. Gray, Linda S. Woolf, and Goodell, DeVries, Leech & Gray, offer this Memorandum In Support of the accompanying Motion to Direct Entry of a Partial Final Judgment.

INTRODUCTION

On August 6, 1993, this Court granted summary judgment to the Manfusos on Count IV of their Third Amended Complaint, declaring that De Francis and Jacobs could not prevent the Manfusos from triggering the buy-sell, or so-called Russian Roulette provision ("buy-sell"), of the Stockholders Agreement. The Court thus decided what it correctly characterized as the "central" claim in this litigation. Trial on the remaining claims in this action is scheduled for next March. Meanwhile, the Manfusos have attempted to trigger the buy-sell provision by letter dated October 9, 1993.[1] The response of De Francis and Jacobs is arguably due in January. If a final judgment on the

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[1] The "trigger" letter was not received by De Francis until October 12. Prior to that receipt, newspaper articles based on statements by the Manfusos had already appeared in the Washington Post (October 11) and the Baltimore Sun (October 12).

enforceability of the buy-sell provision is delayed until after resolution of this entire case, any meaningful opportunity to appeal the August 6, 1993 ruling will be irretrievably lost.

In this Motion, De Francis and Jacobs ask the Court to direct entry of a final judgment as to the Manfusos' claim for declaratory relief as to the enforceability of the buy-sell provision. With due respect to the Court's ruling, these Defendants believe that an immediate appeal on this, the key claim in this entire litigation, is essential to protect rights that cannot be preserved without appeal and the loss of which cannot be adequately compensated by an award of damages.

As the Court of Special Appeals has noted, the test for determining appealability is whether the judgment is "so final as to determine and conclude rights involved or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding." Scheve v. McPherson, 44 Md. App. 398, 403 (1979) (emphasis added). In the case at bar, De Francis and Jacobs will have no means of defending their rights in Laurel and Pimlico if they cannot immediately appeal the Court's grant of summary judgment on Count IV.

This is exactly the situation for which Maryland Rule 2-602(b) was written; this is a case whose procedural posture creates "hardship [and] unfairness which would justify discretionary departure from the usual rule establishing the time for appeal." Diener Enterprises v. Miller, 266 Md. 551, 555, 295

A.2d 470 (1972). This is an "infrequent harsh" instance where "the exigencies of the case [outweigh] the policy against piecemeal appeals." Id. at 556.

FACTS AND PROCEDURAL HISTORY

On March 5, 1993, the plaintiffs filed their Third Amended Complaint ("Complaint") in four counts seeking declaratory and injunctive relief and damages. Count One sought a declaration that De Francis and Jacobs had breached fiduciary and other duties and that the Manfusos could sue to remedy these breaches. The factual predicates of this claim were the alleged diversion of resources to Texas and irregular accounting practices relating to Laurel and Pimlico. Count Two sought injunctive relief relating to the same matters. Count Three sought damages for a breach of contract, relating to an alleged withholding of benefits to the Manfusos. These three counts, therefore, arose from the alleged activities of De Francis and Jacobs in Texas, and from benefits allegedly withheld from the Manfusos.

Count IV sought "to have the Court declare that De Francis and Jacobs cannot avoid their obligations under the Stockholders Agreement, including their obligations under the so-called 'Russian Roulette' provisions of that Agreement." Complaint at 2. The factual predicates of this claim were the Manfusos' denial of both a fraudulent inducement and certain material breaches alleged previously in De Francis's and Jacobs's counterclaim.[2]

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[2] The counterclaim was a response to the Manfusos' initial complaint, and sought declaratory and equitable relief and damages. Count I sought rescission of the Stockholders Agreement

In various rulings, this Court has dismissed the Manfusos' Counts II and III, and most of Count I. As noted above and discussed below, the Court granted summary judgment to the Manfusos on Count IV. The only claim of the Manfusos remaining for trial is a portion of Count I, asserting a claim entirely unrelated to the claim decided under Count IV.

In its Order, the Court declared that "the 'Russian Roulette' buy-sell provision is enforceable in accordance with the terms of the Agreement." Order of August 6, 1993, at 28-29. The Court reasoned that the remedies of rescission and excuse from future performance sought by De Francis and Jacobs were the only obstacles to the Manfusos' claim for declaratory relief in Count IV, and that if those remedies were unavailing, the Manfusos were entitled to their declaratory relief.

De Francis and Jacobs have asserted entirely different grounds for seeking 1) rescission and/or avoidance, and 2) excuse and/or discharge from future performance. They specifically sought rescission as a remedy for the alleged fraudulent inducement, which if proved would have rendered the Agreement voidable. They sought excuse from future performance as a remedy

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and damages on the grounds that the Manfusos had fraudulently induced De Francis's and Jacobs's assent to the Agreement. Count II sought damages and a declaration that De Francis and Jacobs were discharged from future performance under the Agreement because the Manfusos had materially breached it. Count III sought damages for tortious interference with prospective economic interests. None of De Francis's or Jacobs's counterclaims has been resolved, although the remedies of rescission and excuse from future performance sought in Counts I and II of the counterclaim are apparently no longer available under the Court's ruling on Count IV of the complaint.

for material breach, which if proved would not necessarily have undone the Agreement, but merely affected rights under it. The Court, however, examined rescission as a remedy for both fraudulent inducement and material breach, and found not only the right to rescission but also the relief of discharge waived by De Francis's and Jacobs's acts in supposed "ratification" of the contract.

Regarding the various contentions claimed to constitute a material breach of the Agreement, the Court ruled that the Manfusos' filing of the lawsuit was not a breach, and that the claimed interference with management and operations, even if amounting to a breach, was not sufficiently material to discharge De Francis's and Jacobs's duties of future performance. The Court based this ruling on its implicit finding that "it was the four year period of peace, embodied in the Standstill clause, which was of paramount importance" to De Francis and Jacobs. Order at 27-28. Because the Court understood the alleged breaches to relate solely to that particular portion of the Agreement detailing directors' rights and duties, and not that particular portion providing for freedom from litigation -- and because the Court understood the desire for peace to be embodied solely in the Standstill clause -- the Court in effect ruled, somewhat inexplicably, that interference with management and operation of the racetracks was not a material obstacle to their peaceful operation.

In addition, the Court ruled that even if the Manfusos had

materially breached the contract, De Francis and Jacobs had "continued to act in such a way as to recognize or affirm the validity of the Agreement." Order at 28 (citing Lazorcak v. Feuerstein, 273 Md. 69, 76-78 (1974) and Hagan v. Dundore, 187 Md. 430, 441 (1947)). Relying on those cases and armed with its conclusion that "excuse from future performance is tantamount to rescission," Order at 15 n. 15, the Court apparently ruled that one party's continued performance under a contract -- a contract that includes multiple parties, such as the corporate organizations in this case, who are not alleged to have breached the contract in any way -- either "ratifies" the breach or "waives" the remedy of discharge from further performance. The Court thus treated rescission of a voidable contract identically with discharge following a material breach.

ARGUMENT

Maryland Rule 2-602(b) permits the Court to direct the entry of a final judgment as to one or more but fewer than all of the claims in an action "[i]f the court expressly determines in a written order that there is no just reason for delay." Absent such a certification, an order disposing of fewer than all the claims in a case is not a final judgment and is subject to revision by the Court. Md. Rule 2-602(a). As discussed below, the grant of summary judgment to the Manfusos on Count IV of their complaint disposes of "one or more" of the claims in this litigation, and there is "no just reason" to delay entry of final judgment on that claim.

I. The Manfusos' claim for declaratory relief as to the validity and enforceability of the buy-sell provision is an entire claim that has been finally decided.

Md. Rule 2-602 admits an exception to the ordinary rule providing for appeal only after determination of an entire case, by investing "in the trial judge discretionary authority to manage complex cases by acting as a 'dispatcher' of final orders." Planning Board v. Mortimer, 310 Md. 639, 647, 530 A.2d 1237 (1987) (citing Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 8 (1980) and Fed. R. Civ. P. 54(b), the federal counterpart of Md. R. 2-602). The rule allows the trial judge to "decide that early appellate decision of a particular point is of sufficient importance, or that delay will produce sufficient hardship or unfairness, to outweigh the general policy against piecemeal appeals." Id. at 648. Admittedly, the decision to certify a judgment is discretionary with the trial court, and there are situations in which a judgment may not be certified as final.[3]

Certifications under Rule 2-602 may be improper when the order certified as a final judgment has none of the characteristics of finality and is inherently interlocutory, such as the denial of a motion to dismiss. See, e.g., Planning Board, 310 Md. at 653-54. Certification may be also be improper where

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[3] Contrast this with the situation under Md. Code Ann. Cts. & Jud. Proc. §12-303, which makes certain specified interlocutory orders immediately appealable without certification under Rule 2-602.

an order disposes of less than a single claim. As the Court of Appeals has succinctly stated the test, "the threshold requirement for the invocation of Rule 2-602 is an order that but for multi-party or multi-claim circumstances, would be final in the traditional sense." Id. at 649.

A. A "claim" is a party's right to demand relief.

A key question, therefore, is what constitutes a "claim" and whether this Court's grant of Summary Judgment on Count IV of the Manfusos' Complaint disposed of "one or more but fewer than all" the claims in this action. The line between deciding one of several claims and deciding only part of a single claim is sometimes very obscure. 10 Charles A. Wright, et al., Federal Practice and Procedure §2657 at 11 (1993 Supp.). There is no generally accepted test that is used to determine whether one or more claims for relief are before the court. Id. § 2657 at 61 (1983). Because the predecessor of Rule 2-602 was derived from the Federal Rule, interpretations of Fed. R. Civ. P. 54(b) are especially persuasive in interpreting Md. Rule 2-602. Planning Board, 310 Md. at 644; Diener Enterprises v. Miller, 266 Md. 551, 554, 295 A.2d 470 (1972); Pearlstein v. Maryland Deposit Ins. Fund, 79 Md. App. 41, 50, 555 A.2d 528 (1989).

While the Court of Special Appeals has defined a claim as "the facts giving rise to a judicial action," Carl Messenger Service v. Jones, 72 Md. App. 1, 5, 527 A.2d 763 (1987) (citing Edmonds v. Lupton, 253 Md. 93, 100-01, 252 A.2d 71 (1969)), it is clear that a "claim" really involves the right to enforce a

remedy. Where multiple claims would permit separate recoveries, i.e., where the possible recoveries are not mutually exclusive, there are multiple claims that can be separately enforced or certified for appeal.[4]

Clearly, therefore, as the cases and commentators have emphasized, it is a party's right to recover -- and the right to separately enforce a claim -- that determines the propriety of a separate appeal. In this case, the Manfusos have obtained a favorable ruling on the claim they brought relating to the validity of the buy-sell provision, as affected by their filing of the Declaratory Judgment action, and their alleged interference in the operation of Laurel and Pimlico. Still remaining in this action is their claim relating to an alleged breach of fiduciary and other duties by Jacobs. This claim is clearly a separate claim from the Manfusos' claim relating to the validity of the buy-sell provision, and it can clearly be

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[4] See Diener Enterprises, 266 Md. at 556 (citing Rieser v. Baltimore & Ohio R.R. Co., 224 F.2d 198 (2nd Cir. 1955), (cert. denied, 350 U.S. 1006 (1956)); see also Rieser, 224 F.2d at 199 ("The ultimate determination of multiplicity of claims must rest in every case on whether the underlying factual bases for recovery state a number of different claims which could have been separately enforced." (emphasis added)); Biro v. Schombert, 285 Md. 290, 294 (1979) (denying separate appealability of a single item of damage, but confirming that a survival action and a wrongful death action involved separate rights to recovery and were separate claims). Cf. Medical Mut. Liab. Ins. Soc. v. B. Dixon Evander & Assocs., 331 Md. 301, 628 A.2d 170, 173 (1993) ("When two counts are based upon the same facts, and merely represent different legal theories upon which the plaintiff can recover the same damages, the counts constitute a single claim."); East v. Gilchrist, 293 Md. 453, 459, 445 A.2d 343, 346 (1982) ("Different legal theories for the same recovery, based on the same facts or transaction, do not create separate 'claims' for purposes of the rule.").

separately enforced. See Diener Enterprises, 266 Md. at 556. This is not an instance of a single recovery sought under mutually exclusive legal theories.

B. The mere presence of a counterclaim does not bar appeal of the judgment on the Manfusos' claim.

The Manfusos may argue that, while their own claims in Counts I and IV are separable from each other, a decision on Counts I and II of the counterclaim involves some of the same facts as does Count IV. De Francis's and Jacobs's counterclaims relating to the buy-sell, however, involve two separate claims for relief. The first claim seeks a declaration that the defendants may avoid future performance under the Stockholders Agreement. While the Court's 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.

The second claim by De Francis and Jacobs relating to the buy-sell merely seeks damages. The Court has not ruled on the merits of this claim. This claim, however, involves a totally separate right to recovery from the claim for declaratory relief as to the availability of certain remedies. Because the Manfusos' claim is for declaratory relief as to the non-availability of certain remedies, the Court's grant of summary judgment is a final order not merely on a remedy but instead on the whole claim itself, i.e., for declaratory relief.

The declaration that the buy-sell provision is enforceable entails far more than the question of whether either party is entitled to damages. In this case, as the Court is aware, the

effect of the declaration has serious implications for the future of thoroughbred racing in Maryland.

In any event, courts have allowed certification of appeals of decided claims, even when counterclaims involving the same events remain undecided in the same action.

In their attempts to define a claim for purposes of Rule 2-602, Maryland courts have looked continually to the action of the federal courts. See, e.g., Planning Board, 310 Md. at 644-50; East, 293 Md. at 459-62; Diener, 266 Md. at 554-56. As noted in Wright, et al., Federal Practice and Procedure §2657 at 62, "the 1948 amendment of Rule 54(b) deleted the words 'transaction or occurrence' so that the rule now only refers to the presence of more than one 'claim for relief' and states that 'a claim, counterclaim, cross-claim, or third-party claim' may be viewed as a separable unit." See also Md. Rule 2-602(a) ("[A]n order ... that adjudicates fewer than all the claims in an action (whether raised by original claim, counterclaim, ...)"); 6 James W. Moore et al., Moore's Federal Practice, ¶54.35, at 54-228 (1993) ("[A]n order fully adjudicating a claim and accompanied by a Rule 54(b) determination and direction is final and appealable despite the fact that a counterclaim, either compulsory or permissive,[5] remains pending.").

Instead of a transaction-based rule, thus, what constitutes

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[5] Under the federal rules, a counterclaim is compulsory when it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Fed. R. Civ. P. 13 (a).

a claim is a right to recovery and since the plaintiff's and the defendant's rights to recovery may be separately enforced, a final order on one and not the other may be certified as a final judgment. As Professors Wright and Miller note,

> Applying this test, whenever more than one claimant requests relief or one or more plaintiffs seek relief against more than one defendant, regardless of the factual similarity of the claims, a final judgment may be entered under Rule 54(b) on one or more but fewer than all of the claims since each plaintiff could have enforced his claim or his rights as to each defendants separately. The same is true when a counterclaim is asserted in a single-plaintiff, single-defendant action. Thus, the distinction that was drawn under the original rule as to compulsory and permissive counterclaims no longer is valid.

Wright & Miller, Federal Practice & Procedure § 2657 at 65-67.

In Sears, Roebuck & Co. v. Mackey, 351 U.S. 427 (1956), the complaint contained one count for damages under the antitrust laws and other counts for recovery on common-law grounds. The antitrust count was dismissed by the trial court and certified as a final judgment under Rule 54(b). On appeal, the Supreme Court noted that that claim involved some of the same facts as did the two counts remaining to be tried, albeit on a different legal basis. 351 U.S. at 437 n. 9. Nevertheless, the Court held that "there is no doubt that each of the claims dismissed is a 'claim for relief' within the meaning of Rule 54(b), or that their dismissal constitutes a 'final decision' on individual claims." Id. at 436.

In Cold Metal Process Co. v. United Engineering & Foundry Co., 351 U.S. 445, 446 (1956), the Supreme Court held that a certified judgment on plaintiff's claim was appealable, even

though a counterclaim arising in part from the same transaction remained undecided. The Court upheld trial court certification under Rule 54(b) of a judgment that a patent licensing contract was valid and enforceable, and assessing amounts due under an accounting, despite an unadjudicated counterclaim seeking an injunction against the prosecution of infringement suits. Furthermore, the unresolved counterclaim also sought an accounting and set-off of royalties and payments allegedly due under the same agreement on which the trial court ruled on the claim.

As noted by Professors Wright and Miller, the Sears and Cold Metal decisions "repudiate the notion that a separate claim for purposes of Rule 54(b) is one that must be entirely distinct from all the other claims in the action and arise from a different occurrence or transaction." Federal Practice & Procedure §2657 at 63.

In Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 4 (1980), the Supreme Court held that judgment on a contract claim was properly certified for appeal under Rule 54(b) where the sole dispute in the claim itself was the interpretation of a release, and the facts underlying claims and counterclaims remaining in the action were in dispute. In this instance, De Francis's and Jacobs's counterclaims involve serious disputes of fact, but Count IV of the complaint was decided by the Court as a matter of law on a narrow basis. That claim is thus easily separable from what remains, and is properly certifiable for

appeal.

This principle has been applied repeatedly. For instance, in Johnson v. McDole, 526 F.2d 710 (5th Cir. 1976), the court held that a final judgment of a claim could have been certified under Fed. R. Civ. P. 54(b), though the merits of a "factually related" counterclaim had yet to be considered. In United States Golf Ass'n v. St. Andrews Systems, 749 F.2d 1028 (3rd Cir. 1984), the court upheld the certification and appealability under Rule 54(b) of summary judgment on a counterclaim for a declaratory judgment on the right to use a mathematical formula, although a claim in the complaint for an injunction against use of the formula remained undecided. See also Norris Manufacturing Co. v. R.E. Darling Co., 315 F.2d 633 (4th Cir. 1963) (holding that summary judgment on a claim was certifiable under Rule 54(b) despite the presence of an unadjudicated counterclaim); TMA Fund, Inc. v. Biever, 520 F.2d 639 (3rd Cir. 1975) (holding that judgment on a claim for money due on an agreement could have been certified for appeal despite an undecided counterclaim for a declaratory judgment to void the agreement for fraud and misrepresentation and to enjoin its enforcement).

While Maryland courts have occasionally barred appeal of a claim where a counterclaim based on the same facts is still pending, none of the reported cases involved either the procedural posture of this case or the great potential for irreparable harm. In general, the Maryland cases are not inconsistent with the federal practice. For instance, in Carl

Messenger Service v. Jones, 72 Md. App. 1, 527 A.2d 763 (1987), the court rejected an appeal of a property damage counterclaim where the personal injury claim was still pending. That case, however, involved nothing more than money damages claimed by both parties to an auto accident and did not involve "any 'hardship or unfairness which would justify discretionary departure from the usual rule establishing the time for appeal.'" 72 Md. App. at 6.

Similarly, in Washington Suburban Sanitary Comm'n v. Frankel, 302 Md. 301, 487 1.2d 651 (1985), the court held that there was no certifiable final judgment where the circuit court ruled in a declaratory judgment action that the WSSC was obliged to pay compensation to the owners of dominant lands benefitted by a covenant restricting the use of servient land condemned for public use, but did not decide several counterclaims for damages. 302 Md. at 305-06. Again, however, all that the declaratory claim sought was the right not to pay damages[6] whereas the counterclaim sought damages. See also East v. Gilchrist, 293 Md. at 459 (refusing to consider an appeal of a declaratory judgment that a charter amendment prohibiting a landfill in a residential zone was invalid where a claim remaining in the case sought

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[6] In fact, although the trial court ruling in Frankel was treated in effect as a declaration that WSSC was obliged to pay compensation, the actual ruling was the denial of a Motion to Exclude Consideration of a claim for damages. 302 Md. at 306 n.4. This had none of the elements of finality that are inherent in the grant of a Motion For Summary Judgment, as in this case.

damages and a declaration that the charter amendment was valid).[7]

II. There is no just reason for delay -- and great potential for injury.

This Court's August 6, 1993 Order disposes entirely of the plaintiffs' claim for declaratory relief as to the validity of the Russian Roulette provision in the Stockholders Agreement. The remaining claims of the plaintiffs seek monetary damages and entirely separable declaratory relief as to alleged breaches by one of the defendants.

The Court's authority to direct the entry of a final judgment that does not dispose of the entire action is discretionary; in this case, however, there is no just reason for delay and compelling reasons favor an expedient determination of this particular claim on appeal. The claim detailed in Count IV of the Complaint involves what the Court itself has recognized as of paramount importance. See Order at 12 ("[T]he Court cannot overlook that the buy-sell provision is central to the entire litigation. . .."); see also id. at 7 ("The Agreement which is

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[7] East is distinguishable from the case at bar because the trial court's ruling that the charter amendment was invalid -- and that the landfill was therefore not prohibited -- effectively also decided the damages claim in favor of the defendants. In the case at bar, this Court's ruling on the declaratory relief does not decide the damages claim: the claims are neither mutually exclusive nor mutally dependent. They thus involve separate rights to relief.

In view of East, however, should this Court see fit to certify a final judgment on Count IV of the Complaint--and should it consider De Francis's and Jacobs's "counterclaims" for declaratory relief to be instead a wrongfully designated "mere defense"--it should also rule finally on those portions of Counts I and II of the counterclaim that seek the same -- declaratory -- relief.

the subject of Count IV is also central to the entire dispute.").

If the buy-sell provision is indeed enforceable by the Manfusos, as the Court has ruled, the defendants will be forced to comply by January, 1994, before the date set for trial. This will result in irreparable harm to De Francis and Jacobs. They will either have to buy out the Manfusos and probably moot any appeal of the ruling on the provision's validity, or sell their stock to the Manfusos and give up control of the race tracks. Either way, the harm will have been done, and a belated appellate ruling in favor of De Francis and Jacobs will not unscramble the intervening damage. A favorable appellate ruling will be meaningless if there is nothing left of the tracks to return to De Francis and Jacobs, or if their financial position has been worsened as a cost of retaining control.

While the Court's grant of summary judgment[8] is not apparently an interlocutory order made statutorily subject to immediate appeal under Md. Code Ann. Cts. & Jud. Proc. §12-303, the unique posture of this case supports the policy reasons underlying those immediately appealable orders. For instance, the

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[8] It should be noted, of course, that the Court is free to dispose of claims before it on the narrowest ground available. Nevertheless, the Court's decision in this case to rule on the claim in Count IV of the Complaint on the basis of the relief sought in Counts I and II of the Counterclaim -- without deciding the counterclaim on its merits -- has helped place the defendants in the dilemma they face. This was not a result sought even by the Manfusos. See, e.g., Order at 14-15 ("In attempting to persuade this [C]ourt that they are entitled to prevail on the merits on Counts I and II, Plaintiffs clearly believe this will lead to success with regard to their Motion [for Summary Judgment on Count IV].").

Code permits appeal from an interlocutory order "entered with regard to the possession of property with which the action is concerned". Id. §12-303(1). On the facts of this case, the Court's grant of summary judgment on Count IV of the complaint clearly has a direct bearing on the possession of property with which the action is concerned, namely the race tracks. As this Court is aware, the Manfusos have already triggered the buy-sell provision forcing a choice with regard to not only possession but also title and control of the property.

The Code also permits immediate appeal from an order "for the sale, conveyance or delivery of real or personal property or the payment of money"). Id. §303(3)(v). The Court's grant of summary judgment on Count IV has precisely the effect of such an order. As the Court of Special Appeals has commented, "the common denominator of the exceptions [in §12-303] is the irreparable harm that maybe done to one party if he had to await final judgment before entering an appeal." Flower World of America, Inc. v. Whittington, 39 Md. App. 187, 192 (1978).

In the case at bar, the Court's grant of summary judgment on Count IV has had the effect of affirming the Manfusos' right to trigger the buy-sell provision and determine the right to own and possess the race tracks. Monetary damages will be inadequate relief if it is later determined that judgment on the claim relating to the validity of the buy-sell provision was erroneous. The only way to prevent this irreparable harm is to allow an immediate appeal.

CONCLUSION

For these reasons, these defendants respectfully request that the Court expressly determine that there is no just reason for delay, and grant the Motion to Direct the Entry of Final Judgment on the claim detailed in Count IV.

James E. Gray

James E. Gray

Linda S. Woolf

Linda S. Woolf

Goodell, DeVries, Leech & Gray

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Baltimore, Maryland 21202
(410) 783-4000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 1993, a copy of the foregoing Memorandum in Support of Motion to Direct Entry of Partial Final Judgment was hand-delivered to:

Andrew Jay Graham, Esquire
Kramon & Graham, P.A.
Commerce Place
One South Street, 26th Floor
Baltimore, Maryland 21202

Attorneys for Plaintiffs; and

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James E. Gray

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ROBERT T. MANFUSO, et al.,	*	**IN THE**
Plaintiffs	*	**CIRCUIT COURT**
v.	*	**FOR**
JOSEPH A. DE FRANCIS, et al.,	*	**BALTIMORE CITY**
Defendants	*	**92120052/CE147851**

****

PROPOSED ORDER

Upon consideration of the Motion To Direct Entry of Partial Final Judgment, along with the Memorandum In Support of the Motion and the opposition thereto, if any, it is this _____ day of _____, 1993, hereby

DETERMINED, that there is no just reason for delaying entry of final judgment as to the Plaintiffs' claim for declaratory relief as detailed in Count IV of the Third Amended Complaint, and those portions of the Counterclaim that seek declaratory relief as to the same matter, inasmuch as that claim relates solely to the enforceability of a buy-sell provision that is set, by its terms, to expire in January, 1994, before the date set for trial on the other claims in this case, and

ORDERED, that the Defendants' Motion is GRANTED, and the Clerk of the Circuit Court is hereby DIRECTED to enter a final judgment in favor of the plaintiffs on Count IV of the Third Amended Complaint and those portions of Counts I and II of the Counterclaim that seek declaratory relief.

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ELLEN LIPTON HOLLANDER, JUDGE
Circuit Court for Baltimore City

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

* * * * * * * * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

A. Background

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (the "Manfusos") have filed a Motion for Partial Summary Judgment as to Count IV of the Third Amended Complaint (the "Motion"). In response, Defendants Joseph A. DeFrancis ("DeFrancis") and Martin Jacobs ("Jacobs") (sometimes referred to as "the individual Defendants") filed a Motion to Strike Plaintiffs' Motion.[1] In addition, the individual Defendants filed a Motion to Dismiss certain claims in Counts I and II as well as Count IV of the Third Amended Complaint (the "Complaint"). On June 10, 1993, a hearing was held on all motions then pending.[2]

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1. The individual Defendants did not file a pleading formally styled as an opposition to Plaintiffs' Motion. However, after the hearing held on Plaintiffs' Motion, counsel for the individual Defendants submitted an Affidavit, pursuant to Rule 2-501(d), claiming that necessary discovery had not yet occurred sufficient to enable them to respond to Plaintiffs' Motion.

2. By Order dated 6/30/93, the court disposed of the individual Defendants' Motion to Dismiss Counts I and II of the latest Complaint. At the same time, the court also resolved Plaintiffs' Motion for Summary Judgment with respect to Count II of the Counterclaim filed by the corporate Defendants, and Plaintiffs' Motion to Strike Notice of Voluntary Dismissal of Count II of the corporate Defendants' Counterclaim.

B. Discussion

1. Defendants' Motion to Strike

Defendants' Motion to Strike is founded on Plaintiffs' unsuccessful challenge to Count II of the Counterclaim,[3] submitted by Plaintiffs in June, 1992. At that time, Plaintiffs filed a "Motion to Dismiss Count II of the Counterclaim of DeFrancis and Jacobs and/or Motion for Summary Judgment," which was ultimately denied. See Transcript of 9/23/92 and Order of 10/9/92. The issues raised by Plaintiffs in Count IV of the Complaint are indisputably similar to those raised by the individual Defendants in Count II of the Counterclaim.[4] Consequently, Defendants contend that this court has effectively already considered the Manfusos' Motion. Defendants further assert that the Motion constitutes an improper effort to force the court to revisit a matter on which it has already ruled.

Defendants' Motion to Strike hinges on their claim that, at the prior hearing, this court treated Plaintiffs' motion with respect to Count II as a motion for summary judgment, rather than as a motion to dismiss. Accordingly, the individual Defendants aver that this court found genuine disputes of material facts, which necessitate a trial and preclude summary

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3. In Count II of the Counterclaim, the individual Defendants allege, inter alia, that Plaintiffs' material breach of the Stockholders Agreement excuses Defendants from all future performance pursuant to the Stockholders Agreement. In Count IV of the Complaint, the Manfusos deny any breach and seek enforcement of the Stockholders Agreement.

4. Hereinafter, "Count I" and/or "Count II" shall refer to the individual Defendants' Counterclaim, and "Count IV" shall refer to the Third Amended Complaint.

judgment on Plaintiffs' Motion. But the fundamental premise of Defendants' Motion to Strike is erroneous.

As the record plainly demonstrates, this court did not consider the Manfusos' earlier motion on the basis of summary judgment standards. Rather, the court clearly resolved the motion as a motion to dismiss, and confined its analysis solely to the legal sufficiency of the Defendants' allegations in Count II. In this regard, the court was required to accept as true all well pleaded factual allegations, and held that the individual Defendants had articulated a claim upon which relief could be granted. In determining that the allegations were legally sufficient to withstand a motion to dismiss, no finding was made as to a genuine dispute of any material facts.

It is particularly noteworthy that, at the time Plaintiffs' motion as to Count II was heard, it was the individual Defendants who vigorously urged the court to consider Plaintiffs' motion only as a motion to dismiss, and to apply the standard of review governing such motions.[5] See "Opposition of DeFrancis and Jacobs to Motion to Dismiss and/or for Summary Judgment as to Count II of Their Counterclaim" at pp.6-9; 29. That is precisely what the court did.

In relevant part, the court said: "The plaintiffs did move to dismiss Count Two of the Counterclaim of the individual defendants and Count Three." See Transcript of oral opinion,

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5. The individual Defendants also suggested that the court should disregard the extrinsic material then offered by the Plaintiffs in support of their motion. See Opposition to Motion to Dismiss at p.7, n.4.; p.8.

9/23/92 at 3. The court further said: "In light of the nature of the allegations and in light of the standards of review which govern this Motion to Dismiss, I believe it is appropriate to deny plaintiffs Motion to Dismiss Count Two of the individual defendants' Counterclaim." (Emphasis added). Id.

In view of the foregoing, it is readily apparent that there is no basis to support the individual Defendants' Motion to Strike. Accordingly, Defendants' Motion to Strike is DENIED.

2. Defendants' Motion to Dismiss Count IV

Count IV is predicated on the Maryland Declaratory Judgment Act (the "Act"),[6] Md. Code Ann., Courts & Judicial Proceedings Article, Section 3-406.[7] It seeks a declaration as to the enforceability of the so-called "Russian Roulette" buy-sell provision of the Stockholders Agreement (the "Agreement").[8] Under that provision, with certain limited exceptions, the parties may buy out or be bought out, upon certain terms or conditions, on or after -- but not before -- October 1, 1993.[9] Plaintiffs also assert several grounds which, in their view, are

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6. Hereinafter, unless otherwise noted, all statutory references are to Code, Courts and Judicial Proceedings Article. Only the particular section will be specifically designated.

7. Section 3-406 authorizes the court to determine, inter alia, a question of validity of a contract or to declare rights or other legal relations under a contract.

8. The Agreement is appended to the Complaint and has been discussed, at length, by the parties and the court in various earlier proceedings.

9. The provision may be effectuated prior to October 1, 1993 only if DeFrancis dies, becomes permanently disabled, or a "major matter," as defined in the Agreement, occurs.

sufficient to summarily dispose of Counts I and II and permit the Court to grant Plaintiffs' Motion.[10]

Defendants vigorously oppose Plaintiffs' Motion and they essentially advance three contentions: 1) Plaintiffs have failed to allege a justiciable controversy as required by section 3-409 of the Act; 2) Plaintiffs' material breach of the Agreement excuses Defendants' future performance under the Agreement; 3) Defendants are entitled to rescission because Plaintiffs fraudulently induced Defendants to enter the Agreement.[11]

The question of justiciability is a threshold matter. It is axiomatic that the court may not decide a non-justiciable issue. Case law clearly teaches that the court is empowered to issue a declaratory decree only if there is a justiciable question.[12] Boyds Civic Ass'n. v. Montgomery County, 309 Md. 683 (1987); Hale v. Hale, 66 Md. App. 228 (1986); Rowe v. Chesapeake & Potomac Telephone Company, 65 Md. App. 527 (1985); Anne

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10. Plaintiffs suggest in their memoranda and in argument that the court should award summary judgment in favor of Plaintiffs with respect to Counts I and II of the Counterclaim. See, e.g., "Plaintiffs' Memorandum of Law in Support of Motion for Partial Summary Judgment on Count IV of the Third Amended Complaint for Declaratory and Injunctive Relief and for Damages," p.3, n.2. Discussion of Count IV necessarily entails an analysis of Counts I and II.

11. Defendants' second and third contentions are discussed, infra, at 15 et seq.

12. Maryland's Act is patterned on the federal statute. In his discussion regarding the Federal statute, Moore acknowledges that the issue as to whether a matter is an abstract question or a justiciable controversy arises most frequently in the context of declaratory judgment actions. This is because such actions are the ones which often involve anticipatory remedies. 6A Moore's Federal Practice, Section 57.11. (1993).

Arundel County v. Ebersberger, 62 Md. App. 360, 367-68 (1985). Thus, in Reyes v. Prince George's County, 281 Md. 279, 287-288 (1977), the Court emphatically stated that "a court has no right to make a determination in declaratory judgment cases in which no justiciable issue is presented." Similarly, what the Court said in Hatt v. Anderson, 297 Md. 42, 45 (1983) is also pertinent here: "[T]he existence of a justiciable controversy is an absolute prerequisite to the maintainence of a declaratory judgment action."

That a case is instituted pursuant to the Act does not vitiate the requirement for a justiciable controversy. As Chief Justice Stone stated in Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 461 (1945):

> The requirements for a justiciable case or controversy are no less strict in a declaratory judgment proceeding than in any other type of suit. (Citations omitted). It has long been considered practice not to decide abstract, hypothetical or contingent questions....(Citations omitted).

Notwithstanding the remedial nature of the Act, then, Section 3-409 mandates that the court may grant a declaratory judgment only if "[a]n actual controversy exists between contending parties...." A controversy is defined as justiciable "when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." Patuxent Co. v. Commissioners, 212 Md. 543, 548 (1957). Accord, Boyds, supra, 309 Md. at 690; Harford County v. Schultz, 280 Md. 77, 81 (1977).

While the definition of justiciability is easily stated, it is not always readily applied. As the Court noted in Boyds Civic Association, supra, 309 Md. at 691, "[e]specially in the context of a declaratory judgment action, ripeness can become an elusive concept." Indeed, there is no exact test to determine whether a dispute is sufficiently definite and concrete or too contingent, hypothetical and abstract. "[R]ipeness is a question of degree," Id. at 691, which necessarily turns on the facts of each particular case. Anne Arundel Co. v. Ebersberger, supra.

Resolution of the issue of justiciability, in the factual context of this case, is somewhat thorny. This is so, at least in part, because the parties are obviously engaged in an intense legal battle and the Agreement which is the subject of Count IV is also central to the entire dispute. Yet quick scrutiny of the "Russian Roulette" provision, standing alone, seemingly suggests that the matter may not be ripe for judicial determination. This is because, by its terms, the buy-sell cannot be activated until at least October 1, 1993. More importantly, the parties are not obligated to activate the buy-sell on that date. Plaintiffs claim, however, that they "presently intend" to exercise their rights under the buy-sell on October 1, 1993. See Affidavit of Robert Manfuso and Affidavit of John Manfuso, Jr. filed in support of the Plaintiffs' Motion.

In support of their contention that the issue is justiciable, Plaintiffs also argue that DeFrancis has publicly

repudiated the entire Agreement, including the Russian Roulette provision.[13] Moreover, Plaintiffs assert that their intentions, coupled with the nature of the litigation, clearly establish an actual controversy. Finally, Plaintiffs claim that the court has already obligated them to abide by the "Standstill" provision of the same Agreement, contained in Section X thereof, and therefore the court should also enforce the buy-sell provision set forth in Section I.C. of the Agreement.[14]

Review of some of the precedents discussing justiciability in declaratory judgment cases offers some guidance in resolving the issue of justiciability in the instant case.

In Hatt v. Anderson, supra, 297 Md. 42, a fireman sued to declare invalid a fire department regulation which prohibited criticism of superior officers. Hatt asserted that he was subject to the regulation and could be disciplined if he were found to have violated it. The court determined, however, that Hatt was merely speculating as to what might happen under the

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13. Given DeFrancis' allegations in the Counterclaim that the Defendants are excused from any obligation to abide by the Agreement, and that the Agreement is void, this court has little reason to doubt that DeFrancis made such statements.

14. With certain exceptions, the Standstill provision bars the Manfusos from bringing suit against the Defendants until October 1, 1993. Section X of the Agreement states, in pertinent part: "[P]rior to October 1, 1993, [the parties] will not institute or join in any legal dispute or action against any party to this Agreement concerning the business or operations of Pimlico or Laurel." It is readily apparent that, in contrast to the Russian Roulette provision, which is not operative until October 1, 1993, the Standstill provision covers the period from the date of the Agreement through October 1, 1993.

regulation if he were to violate it. His action was therefore deemed "too theoretical, too abstract and too speculative to form the basis for an action for declaratory relief under the Act." Id. at 47.

The case of Butler v. Liberty Mutual Insurance Co., 36 Md. App. 684 (1977) is instructive. There the plaintiff, who was injured in an automobile insured by Liberty Mutual, sued the driver of the car. When the insurance company denied coverage, the plaintiff instituted a declaratory judgment action to determine the liability of the insurer. The Court affirmed the dismissal of the case, on the basis that there was no actual controversy. Until the plaintiff recovered a judgment and the insurer actually refused to pay, the Court found there was no justiciable controversy.

In Anne Arundel County v. Ebersberger, supra, 62 Md. App. 360, four homeowners challenged a county ordinance which, if implemented, could obligate all property owners in the community to pay for reconstruction and maintenance of a community pool through a property tax assessment. In determining that there was no actual controversy, the Court noted that the ordinance did not obligate the district to renovate the pool. Instead, it merely authorized the work.

The Court concluded that there was no assurance that a budget containing an appropriation for the pool would ever be approved or that a special benefit tax to support the appropriation would ever be assessed. Because of the uncertainty, the Court determined that the question of the

validity of the ordinance would have to wait another day. Thus, the Court said:

> In a declaratory judgment proceeding, the court will not decide future rights in anticipation of an event which may never happen, but will wait until the event actually takes place, unless special circumstances appear which warrant an immediate decision.

Id. at 368.

Nevertheless, the Court indicated that an actual appropriation or tax assessment would not be required in order to sustain the litigation. Rather, the Court said that the appropriation or tax just had to be "substantially more certain," Id. at 371, than was shown in Ebersberger.

In Brown v. Trustees of M.E. Church, 181 Md. 80 (1942), remainderman, life tenants, and an executor sought a declaration of their rights under a will which contained conflicting provisions. The defense argued that the declaration was premature, because the life tenants were still alive. While recognizing that a declaration concerning the proceeds would have no effect until the termination of the life tenancy, the Court concluded that the issue was ripe for adjudication. The Court reasoned:

> [I]t is plain that the parties in the future will be the parties now before us....adjudication now will be conclusive and binding.

Id. at 88.

A declaratory judgment action was instituted by residents of a military reservation subject to federal jurisdiction in Tanner v. McKeldin, 202 Md. 569 (1953). The Plaintiffs

complained, inter alia, that they were obligated to pay State taxes but could not vote in State or Federal elections. Nor could they serve as notaries, because they were not considered residents of Maryland. Most of the complaints were found non-justiciable. In its later interpretation of the case, the Court's comment in Ebersberger regarding the notary issue is pertinent here:

> Absent an indication that the Governor intended to appoint them as notaries, their eligibility for such an office 'does not present a justiciable issue.'

Anne Arundel County v. Ebersberger, supra, 62 Md. App. at 368-369 (Emphasis added),(Citation omitted).

Careful reading of the aforementioned precedents establishes that absolute certainty regarding the activation of the buy-sell is not required to support justiciability. Quoting E. Borchard, Declaratory Judgments, 60 (2d ed. 1941), what the Court said in Boyds is noteworthy here:

> The imminence and practical certainty of the act or event in issue, or the intent, capacity, and power to perform, create justiciability as clearly as the completed act or event, and is generally easily distinguishable from remote, contingent, and uncertain events that may never happen and upon which it would be improper to pass as operative facts.

Id. at 692.

After more than a year of fierce battle regarding the Agreement, it is evident that in this case there is the same kind of practical certainty, intent, and capacity considered by the Court in Boyds as sufficient to support a finding of justiciability. Indeed, we are "well beyond the realm of matters 'future, contingent and uncertain.'" Id. at 697. Accordingly, Plaintiffs' present intent to trigger the buy-sell,

as expressed in their Affidavits, satisfies the requirements for justiciability. That no price has been stated by the Plaintiffs in their Affidavits is of no consequence.

In finding the Affidavits sufficient, the Court cannot overlook that the buy-sell provision is central to the entire litigation, in which the parties have been immersed for more than a year. Moreover, as in Brown, the parties now will be the same parties two months from now, when the buy-sell will be contractually ripe. Thus, the court surely has before it interested parties who assert adverse claims and who seek a legal decision based on facts which are virtually certain to accrue within the next several months.

A review of Defendants' own pleadings also leads the court to the inescapable determination that the issue of the buy-sell is justiciable. The defense pleadings readily dispel any notion of uncertainty with respect to the buy-sell clause; they are replete with allegations that virtually all of Plaintiffs' actions have been motivated by the desire to effectuate the buy-sell. Indeed, Defendants have attributed to Plaintiffs a course of conduct predicated on Plaintiffs' supposed overpowering desire to advance the buy-sell. Also woven throughout the pleadings is the claim that Plaintiffs have continually attempted to enhance their position with respect to the buy-sell, at the expense of Defendants, so that Plaintiffs might gain control of the tracks. See, e.g., Defendants' Reply in Further Support of Motion to Dismiss and Motion to Strike, at p. 7 ("[T]he Manfusos have recognized that the pendency of the

Counterclaim puts into abeyance the fulfillment of their scheme - wresting control of the Corporations from DeFrancis and Jacobs in October, 1993..."); Jacobs' Answer to Robert Manfuso's Interrogatory 1, at p.8 (Jacobs states, in pertinent part, that the Manfusos resigned as officers of the racetracks and immediately claimed the $2,500,000 termination payment due under the Agreement in an effort to precipitate a default or a "major matter," in order "to trigger the buy-sell provision"); Jacobs' Answer to Robert Manfuso's Interrogatory 2 at p.9 (Jacobs states that the Manfusos requested the termination payment "in furtherance of their plan to trigger the buy-sell provision"); Counterclaim, at paragraph 2 ("the Manfusos' true motivation in the filing of their Complaint is to advance their improper scheme to acquire the interests of DeFrancis and Jacobs in Laurel and Pimilico"); Counterclaim at Paragraph 5e and Jacobs' Answer to Robert Manfuso's Interrogatory 5 (Defendants allege that Plaintiffs wanted to "accelerate the time when the 'Russian roulette buy-sell' could be exercised").

The determination of justiciability is further buttressed by comparing Defendants' own prayers for relief with those of the Plaintiffs. Like Plaintiffs' Count IV, Count II is a declaratory judgment action. As part of their requested relief, Defendants seek a declaration that Plaintiffs have materially breached the Agreement and they ask to be excused from all future performance due under the Agreement. This would necessarily include the buy-sell clause. In Count IV, Plaintiffs seek a declaration enforcing the buy-sell provision, and they deny any breach or fraudulent inducement. Thus

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

In view of Defendants' own request for relief, it is rather disingenuous for them to argue that Plaintiffs' claim is not justiciable based on uncertainty or because the exact date of performance has not yet arrived, when they themselves seek to be excused from future performance. In short, Defendants have lodged an argument against justiciability which flies in the face of their own claims. The adage of "what is good for the goose, is good for the gander" is certainly apt here.

Finally, in reaching its conclusion as to justiciability, the court is also mindful of the salutary purpose of the Act. Section 3-402 provides that the Act is remedial and "[i]ts purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." The Act specifically provides that "[i]t shall be liberally construed and administered." Id.

For all of the foregoing reasons, the Court is convinced that the issue raised in Plaintiffs' Motion as to Count IV is justiciable. Accordingly, on this basis, Defendants' Motion to Dismiss Count IV is DENIED.

3. Plaintiffs' Motion

Having resolved the issue of justiciability as to Count IV in Plaintiffs' favor hardly resolves the more vexing questions presented by Count IV.

Preliminarily, Plaintiffs have asked the court to rule in their favor, on the merits, with respect to Counts I and II of the Counterclaim. See n.3 and n.10, supra. In attempting to

persuade the court that they are entitled to prevail on Counts I and II, Plaintiffs clearly believe this will lead to success with regard to their Motion. But the court is unable to resolve the merits of the Counterclaim at this time. Based on a review of the pleadings, including the answers to interrogatories appended to the pleadings, as well as prior testimony, and given the progress of discovery to date (See n.1, supra), this court cannot conclude that there are no genuine disputes of material fact with respect to the causes of action set forth in Counts I and II. Therefore, Plaintiffs' request for entry of summary judgment against DeFrancis and Jacobs on the merits of Counts I and II of the Counterclaim is hereby DENIED.

Nevertheless, the outcome of Plaintiffs' Motion as to Count IV does not necessarily turn on a resolution of the merits of the Counterclaim. Plaintiffs' Motion merely seeks a declaration that, on and after October 1, 1993, the Russian Roulette provision of the Agreement is enforceable. As previously stated, Defendants seek rescission of the Agreement in Count I because they claim Plaintiffs fraudulently induced them to enter the Agreement. Additionally, in Count II, they ask for compensatory damages and also claim they are excused from future performance under the Agreement because of Plaintiffs' material breaches.[15] Plaintiffs' Motion, then, may be resolved by a determination of whether Defendants are legally entitled to the remedies they seek.

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15. In the context of this case, excuse from future performance is tantamount to rescission.

If Defendants are not entitled to rescission or excuse from future performance, regardless of the ultimate outcome of the Counterclaim, it follows that the Russian Roulette provision remains in effect. Under that circumstance, Plaintiffs would be entitled to summary judgment on their Motion. See Seaboard Surety v. Kline, Inc., 91 Md. App. 236 (1992). Therefore, the question is whether, as a matter of law, the Defendants are entitled to rescission, as requested in Count I, or excuse from future performance, as requested in Count II. In analyzing the legal issues, the court has considered certain material, undisputed facts. The court has also assumed, arguendo, that other factual allegations contained in the Counterclaim and other defense pleadings are undisputed. [16]

Analysis necessarily begins with Defendants' Counterclaim. There Defendants assert, inter alia, that Plaintiffs devised a scheme to defraud them to enter the Agreement, without any intention of ever fulfilling the Agreement. The scheme supposedly is part of Plaintiffs' effort to wrest control of the tracks. They also allege that, in breach of the Agreement, Plaintiffs have engaged in a continuous campaign of harrassment, disparagement and intimidation designed to interfere with DeFrancis' contractual right to full operational and managerial

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16. Of course, the court could not enter summary judgment against a party where there are material facts in dispute. Here, in order to consider the legal issues generated by Plaintiffs' Motion, the court has assumed the accuracy of all of the Defendants' material allegations. For this reason, and in the context of this case, the court believes it has satisfied the requirements of Md. Rule 2-501. The court also notes that there is no motion to dismiss pending, through which the court could address the particular legal questions in issue here.

control.[17] They further claim that Plaintiffs' institution of suit violated the Standstill provision of the Agreement,[18] and that Plaintiffs' ongoing invidious conduct has denied Defendants the "period of peace," which was, for them, the primary benefit of the bargain.

In support of their claim that Plaintiffs fraudulently induced them to enter the Agreement, Defendants rely on the undisputed fact that on February 24, 1990, just 22 days after the Agreement was executed on February 2, 1990,[19] Plaintiffs announced their retirement from management, effective shortly after the May, 1990 Preakness.[20] It is also undisputed that the Agreement gave each Plaintiff the right to a $1.25 million lump sum termination payment upon resignation as officers of the corporations. The individual Defendants aver, inter alia, that Plaintiffs thought Pimlico's lender would not allow payment of the $2.5 million termination payment due to Plaintiffs

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17. Section VIII of the Agreement gives DeFrancis "full authority over operational and managerial decisions and policies...."

18. At least impliedly, if not expressly, the Court has rejected Plaintiffs' earlier argument that the Standstill provision violates public policy. Nevertheless, this court previously ruled that the "mere filing" of Plaintiffs' declaratory judgment action did not, in and of itself, violate the Standstill provision. Based on the court's ruling that the Plaintiffs did not breach the Agreement merely by asking the court to make a declaration pursuant to the Act, what remains of Defendants' contract claim is that Plaintiffs materially breached Section VIII based on their alleged campaign of intimidation, harrassment, interference and disparagement.

19. Although the Agreement was actually signed on February 2, 1990, it was effective as of October 1, 1989.

20. Plaintiffs' resignations were effective May 31, 1990.

under the Agreement. If the lenders refused to permit payment, then DeFrancis and the corporations would have been in breach of the Agreement. Alternatively, they would have needed new financing, which would precipitate a "major matter" under the Agreement. In either circumstance, the Plaintiffs could have triggered the buy-sell provision. See, e.g., Counterclaim, paragraph 51; Jacobs' Answer to Robert Manfuso's Interrogatory 1, p.8; Jacobs' Answer to Robert Manfuso's Interrogatory 2, p.10.

Defendants specifically allege that, "[p]romptly following their resignations" (Counterclaim, Paragraph 54), Plaintiffs initiated their campaign of intimidation, disparagement and interference with management in order to deprive DeFrancis of his right under the Agreement to exercise "full authority over operational and managerial decisions and policies..." Counterclaim, paragraph 54. See also, Jacobs' Answer to Robert Manfuso's Interrogatory 1, at p.8.

In Jacobs' Answer to Robert Manfuso's Interrogatory 3, he asserts that the instances of disparagement are too numerous to recount. However, as an example, he identified an incident on February 26, 1990 when a story appeared in the Washington Post concerning Plaintiffs' disagreement with DeFrancis' decision to pursue Arabian racing. He also refers to stories in the Baltimore Sun and the Washington Post in February, 1991, describing Plaintiffs' dissatisfaction with management decisions.

Jacobs' answers to interrogatories also shed light on the so called campaign of interference. In Jacobs' Answer to

Interrogatory 9, he claims the Manfusos have consistently challenged his performance as Executive Vice President, Treasurer and General Counsel. He refers to a letter of December 13, 1990 in which John Manfuso, Jr. questioned his judgment and behavior. Similarly, in a letter dated May 31, 1991, Plaintiffs' attorney wrote to Jacobs questioning "various legal decisions which had been made respecting the racetracks." See Jacobs' Answer to Interrogatory 9, p. 20.

In Answer to Interrogatory 11, Jacobs further asserts that the Manfusos' campaign of interference with management extended to the corporate employees. He refers to Plaintiffs' public opposition to managment's decision, in October, 1991, to lay off some track employees. He also claims that even after Plaintiffs retired from management, they continued inappropriately to maintain contact with track employees.

Defendants further allege that Plaintiffs attempted to force Laurel into default with respect to its financial obligations under its bank loan. If Laurel defaulted, that would have triggered a "major matter" under the Agreement, and accelerated the time when the buy-sell could be exercised. See Jacobs' Answer to Interrogatory 5; Counterclaim, paragraph 5(e).

Based on Defendants' own allegations, as set forth in the Counterclaim and Jacobs' Answers to Robert Manfuso's Interrogatories, as well as certain undisputed, material facts, the court believes, as a matter of law, that the Counterclaim does not support rescission of the Agreement or excuse from future performance. The reasons follow.

Rescission is an alternative remedy to an action for

damages, and is available where there has been either a material breach of contract or fraudulent inducement. 12 Williston on Contracts Section 1455 (3rd ed. 1970); Ellerin v. Fairfax Savings Association, 78 Md. App. 92, 108 (1989), after remand, 94 Md. App. 685 (1993); Plitt v. McMillan, 244 Md. 450, 454 (1966); Hoffman v. Seth, 207 Md. 234, 239 (1955). See also, 1 Williston on Contracts Section 1:20 (4th ed. 1990); "Ratification of contract voidable for duress," 77 ALR 2d 426, 428 (1961). Where a contracting party claims breach or fraudulent inducement, he/she has two courses available. He/she may affirm the existence of the contract and seek either specific performance or damages for breach. Alternatively, he/she may repudiate the contract and elect to rescind. Cutler v. Sugarman, Ltd., 88 Md. App. 567, 583 n.11 (1991); Lazorcak v. Feuerstein, 273 Md. 69, 75 (1974).

In Ellerin v. Fairfax Savings Association, supra, the Court explained the concept of rescission:

> Rescission amounts to an 'unmaking' of a contract. Rescission is a form of retroactive relief where all rights and responsibilities of parties toward each other are abrogated from the inception of the contract. (Citations omitted). 'Rescission' calls for the cancellation of the bargain and a return of the parties to the status quo. (Citations omitted). It is an equitable remedy designed to afford relief from contracts entered into through mistake, fraud or duress. (Citations omitted).

Id. at 108.[21]

While rescission is a well recognized remedy, it is

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21. In his treatise, Corbin acknowledges confusion as to the use of the term "rescission." 5A Corbin on Contracts Section 1237. He states that rescission actually refers to a mutual agreement by the parties to discharge or terminate rights and duties of a contract. 5A Corbin on Contracts Section 1236.

regarded as an extraordinary one. Cutler v. Sugarman Organization, Ltd., 88 Md. App. 567, 578 (1991); Ellerin, supra, 78 Md. App. at 109; Bartlett v. Department of Transporation, 40 Md. App. 47, 50 (1978). Where the claim is predicated on breach, it is well settled that an insubstantial failure of performance will not justify rescission. Rather, the breach must be material, virtually defeating the very object of the contract. Plitt v. McMillan, supra, 244 Md. at 454; Senick v. Lucas, 234 Md. 373, 377 (1964); Vincent v. Palmer, 179 Md. 365, 373 (1941); Ady v. Jenkins, 133 Md. 36, 38 (1918). In this regard, what the Court said in Senick v. Lucas, supra, 234 Md. at 377-378, is apposite here:

> Before partial failure of performance of one party will give the other the right of rescission, the act failed to be performed must go to the root of the contract, or the failure to perform the contract must be in respect to matters which would render the performance of the rest a thing different in substance from that which was contracted for. * * * When a covenant goes only to a part of the consideration of a contract, is incidental and subordinate to its main purpose, and its breach may be compensated in damages, such a breach does not warrant a rescission of the contract, but the injured party is still bound to perform his part of the agreement, and his only remedy for the breach consists of the damages he has suffered therefrom.
>
> By this rule, compensation in damages for slight breaches is substituted for the remedy afforded by rescission of the whole contract....A departure from this rule would result in permitting any deviation, no matter how minute or unimportant, to be made the basis for the rescission of the contract, and allowing the one so rescinding to obtain an unfair and unconscionable advantage by electing to rescind or retain the bargain, as self-interest might dictate. [Citation omitted].

The right to rescind has other limitations. There is no question but that the right may be waived when a party knowingly treats the contract as a continuing obligation. Ellerin, supra, 78 Md. App. at 109; Bagel Enterprises, Inc. v. Baskin & Sears,

56 Md. App. 184, 200-01 (1983), cert. denied, 299 Md. 136 (1984). See also, Restatement (Second) of Contracts, Section 380 (1981). Where a contract is ratified, the party may instead obtain compensatory damages for injuries incurred. Ellerin, supra, 78 Md. App. at 109.

As a further limitation, the law obligates a party who discovers facts which would justify rescission to act promptly to repudiate the transaction. Cutler v. Sugarman, supra, 88 Md. App. 578; Ellerin v. Fairfax Savings Association, supra, 78 Md. App. at 12; Bagel Enterprises, Inc. v. Baskin & Sears, supra. See also, Restatement (Second) of Contracts, Section 381; 12 Williston on Contracts Section 1460, (3rd ed. 1970). "Even in cases of fraud, this court has held that the election to rescind must be prompt." Kemp v. Wagner, 180 Md. 362, 367 (1942). And, as the Court said in Lazorcak v. Feuerstein, supra, 273 Md. at 75, the "failure to promptly and properly manifest [one's] determination to repudiate the contract presents a hurdle which [one cannot] surmount."

In this regard, it is the concept of a knowing choice which appears dispositive. What the Court said in Kemp v. Wagner, supra, 180 Md. at 366, is instructive here:

> All the authorities hold that such a choice must be exercised as soon as the party ascertains the facts, and is informed of the failure on the part of the other party. The reason for this is clear. Having then a knowledge of the facts, he is not deceived. If he is unwilling to take the benefits accrued or accruing under the contract, he has an opportunity to disavow it, get back what he has put out, and place himself in approximately the same position in which he would have been had no contract been made. It [sic] he does not do this, but continues receiving the benefits coming to him under the contract, he has affirmed the contract after knowing the facts. He may have been deceived in the first instance, but he is not deceived after he knows. Making his choice after he knows, he must abide by it.

In Kemp v. Wagner, the appellants sought the return of money paid under a contract of purchase for land. The purchasers had been told that the size of the tract was greater than what it actually was. Several years later, when the parties obtained information that the property did not contain the requisite number of acres, they continued to live on it. Subsequently, they sought to rescind the contract.

The Court noted that, upon learning of the breach, the purchaser had either the right to retain the contract and collect damages for the breach, or, alternatively, to rescind. However, he could not do both; he had to make his election. "The contract cannot be in effect, and at the same time rescinded. If in effect, he can get damages; if rescinded, he must return his benefits, and receive his expenditures." Id. at 365.

If the buyers wanted to rescind, the Court said they were obligated to act immediately, once they learned that they did not get that for which they bargained. On the contrary, armed with knowledge of relevant facts, the purchasers continued to occupy the property, and made no attempt to rescind the contract. Accordingly, they waived the right to rescind.

The case of Cutler v. Sugarman Organization, Ltd., supra, is also noteworthy. A discussion of some of the pertinent facts is helpful.

In August 1985, the Weinsteins entered into a contract for the sale of their 24 acre parcel to Sugarman, who was to

subdivide the property into residential lots. The contract required the property to be divided into four sections, with closing on the first section set to occur by August 1988. The contract further permitted Sugarman to assign his interests, under certain terms, with a right of first refusal to the sellers.

After the contract was signed, Sugarman began development of the property into separate, buildable lots. In 1987, Sugarman entered into an agreement to assign the contract of sale to a joint venture. Thereafter, the joint venture entered an agreement to sell its interest in the property to yet another entity. After the contract with the joint venture was executed, Sugarman notified the Weinsteins and asked them to execute a waiver of their right of first refusal. The Weinsteins executed the waiver in 1987.

In January 1988, the sellers discovered certain contract provisions between Sugarman and the joint venture, to which they objected. As a result, they refused to close unless they received more money.

In May 1988, Sugarman sued the sellers, seeking specific performance of the August 1985 contract. Then, in August 1988, the joint venture sued both Sugarman and the sellers. In September 1988, the parties reached an oral resolution. However, the entity which contracted with the joint venture refused to close, and therefore the original sellers refused to tender the deed.

On appeal, the Court said that the trial court correctly determined that the sellers had a right to rescind the August

1985 contract when they first learned that Sugarman improperly retained an option in his contract with the joint venture permitting him to repurchase some of the land for a nominal fee. The Court also upheld the trial court's decision that the original sellers, as a matter of law, waived their right to rescind the August 1985 contract, because they did not act promptly. Writing for the Court, Judge Bishop said:

> Regardless of the action giving rise to the right to rescind a contract, whether it be fraud or misrepresentation, the remedy of rescission must be exercised promptly upon discovery of the fraud or misrepresentation. (Citation omitted). This is so because 'rescission is considered to be a radical remedy; it therefore must be promptly asserted once a party discovers facts which justify it.' (Citation omitted).
>
> The right to rescind may be waived by not acting promptly on discovery of the facts from which it arises. (Citation omitted). The right to waive (sic) must be exercised within a reasonable time....rescission requires at a minimum that the party exercising the right to rescind notify the other party and demonstrate an unconditional willingness to return to the other party both the consideration that was given and any benefits received. (Citation omitted).

Id. at 578 (Emphasis added).

In reaching its conclusion, the Court considered that, upon discovery of the objectionable conduct, the sellers' attorney notified the purchaser's attorney that the sellers were prepared to file a complaint and seek recission. However, that complaint was not filed. Moreover, the sellers did not tender back the purchasers deposit under the contract or offer to pay him, in quantum meruit, for the work he had done to develop the property. The trial court thus correctly determined that the sellers ratified the original contract, after they knew of

the alleged misconduct, because they reached an agreement at the meeting in September 1988 to close pursuant to the August 1985 contract. As to these facts, the following discussion by the Court is pertinent:

> As of January 1988, the Weinsteins were well aware of the fact that Sugarman kept the option to purchase the seven acres....Based on the testimony of their attorney, the Weinsteins also were aware of their option to rescind the August 1985 contract at that time. Therefore, on September 20, 1988, when the Weinsteins met with Sugarman and the others, they were not operating under a deception as to the seven acres....The evidence presented at trial supports a finding that the requirements for waiver were met.

Id. at 581 (Emphasis added).

The lessons of both Kemp and Cutler apply here. In the case at bar, based on Defendants' own contentions, it is readily apparent that they had substantial knowledge of various salient facts within months after the Agreement was executed. For example, within weeks of the execution of the Agreement, Plaintiffs announced their resignations and demanded payment in the sum of $2.5 million, all of which, Defendants claim, was an integral part of their scheme to gain control of the tracks. Moreover, based on Defendants' own allegations, after execution of the Agreement, Plaintiffs promptly began their ongoing course of disparagement, harrassment and interference. Thus, based on their own allegations, Defendants had knowledge of Plaintiffs' alleged misconduct for a considerable time before they decided to file suit and seek rescission.

It is altogether improbable that Defendants were somehow induced to sleep on their rights or otherwise lulled into complacency. Defendants are hardly neophytes as to the legal

process. Whether or not DeFrancis is inexperienced with regard to the operation or management of the racetracks, he is gifted intellectually and is well schooled as an attorney. Jacobs is undoubtedly highly familiar with the operation of the tracks and is obviously a talented lawyer. Moreover, given the degree of animosity among the parties which, by Defendants' own assertions, necessitated the Agreement, one can only conclude that, however outrageous Plaintiffs' conduct may have been, Defendants knowingly made their choice; until they were sued, they chose to take no action to undo the Agreement.

The timing of the filing of the Counterclaim, then, is very significant. It was launched in June, 1992, clearly as a counterattack to Plaintiffs' suit. That it was filed more than two years after Defendants first learned of conduct which is an important part of their claim certainly bears on reasonableness. "[I]n determining whether a party acted within a reasonable time...the fact that a considerable period of time had elapsed...is significant." Restatement (Second) of Contracts, Section 381 (1981). Plaintiffs' suit understandably may have been the proverbial "straw that broke the camel's back." Nevertheless, based on the time which transpired since Defendants first became aware of Plaintiffs' alleged misconduct, this court believes, as a matter of law, that Defendants did not act promptly or within a reasonable time. Thus, they have waived the right to seek rescission as a remedy.

Insofar as Defendants' breach of contract claim is concerned, Defendants repeatedly assert that it was the four

year period of peace, embodied in the Standstill clause, which was of paramount importance to them. See, e.g., Counterclaim, paragraph 46. It follows that any breach by Plaintiffs of Section VIII would not warrant the "excuse from future performance" sought by Defendants. See Senick v. Lucas, supra, and cases cited therein.

It is also apparent that the Defendants have continued to act in such a way as to recognize or affirm the validity of the Agreement. See Lazorcak v. Feuerstein, supra, 273 Md. 76-78; Hagan v. Dundore, 187 Md. 430, 441 (1947). For example, both DeFrancis and Jacobs continue to accept the substantial salary benefits as set forth in the Agreement. Similarly, Defendants have attempted to enforce the Standstill provision against Plaintiffs, which would bar institution of a shareholders derivative action prior to October 1, 1993. In a letter dated January 27, 1993 from DeFrancis to the Manfuso (Plaintiffs' Exhibit D in support of the Motion), DeFrancis, without retracting his belief that by filing suit in the first place, Plaintiffs had already breached the Standstill provision, stated that he assumed Plaintiffs "would not file a stockholders derivative action until after expiration of the standstill period...."

For all these reasons, this court is of the view that the remedies of rescission or excuse from future performance are not available to Defendants as a matter of law. Accordingly pursuant to Maryland Rule 2-501, Plaintiffs' Motion as to Count IV is hereby GRANTED. The court further declares that the

"Russian-Roulette" buy-sell provision is enforceable in accordance with the terms of the Agreement.

It is so ORDERED, this 6th day of August, 1993.

Ellen L. Hollander

Judge Ellen L. Hollander

cc: Andrew J. Graham, Esquire
James Gray, Esquire
Herbert S. Garten, Esquire
McGee Grigsby, Esquire

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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

* * * * * * * * *

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNT IV OF THE THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES

Pursuant to Md. R. 2-501, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., by their undersigned attorneys, move for partial summary judgment on Count IV of their Third Amended Complaint for Declaratory and Injunctive Relief and for Damages. The grounds for this motion are:

(1) there is no genuine dispute of any material fact; and

(2) the plaintiffs are entitled to judgment as a matter of law on Count IV of their third amended complaint.

The grounds for this motion appear in detail in the accompanying Memorandum of Law.

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

Dated: March 5, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 1993, I sent a copy of Plaintiffs' Motion for Partial Summary Judgment on Count IV of the Third Amended Complaint for Declaratory and Injunctive Relief and for Damages and the accompanying Memorandum of Law by hand-delivery to:

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

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

Irwin Goldblum, Esquire
McGee Grigsby, Esquire
Jennifer Archie, Esquire
Latham & Watkins
Suite 1300
1001 Pennsylvania Avenue, N.W.
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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

* * * * * * * * *

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
ON COUNT IV OF THE THIRD AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES

In Count IV of their third amended complaint, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively, "the Manfusos"), request a declaration that on and after October 1, 1993, defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs") must fully comply with what are called for purposes of description or convenience the "Russian Roulette" provisions of the Pimlico-Laurel Stockholders Agreement.[1] The Manfusos have no choice but to request that declaration because of De Francis's numerous public and private statements indicating that he and Jacobs have no intention of complying with the Russian Roulette provisions. Third Amended Complaint, ¶¶ 53-54.

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[1] A copy of the Stockholders Agreement appears as Exhibit A to the third amended complaint. Under the Russian Roulette provisions, the Manfusos may either buy out or be bought out by De Francis and Jacobs upon certain terms or conditions on or after October 1, 1993. Likewise, under the Russian Roulette provisions, De Francis and Jacobs may either buy out or be bought out by the Manfusos upon certain terms or conditions on or after October 1, 1993. Third Amended Complaint, ¶ 51.

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Concurrently with the filing of their third amended complaint, the Manfusos have moved for partial summary judgment on Count IV. For the following reasons, the Court should enter partial summary judgment in the Manfusos' favor on that count.

I.

Md. R. 2-501(e) mandates the entry of summary judgment if "the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine dispute as to any material fact and the party in favor of whom judgment is entered is entitled to judgment as a matter of law." The courts have made it clear that "summary judgment [is] not a 'disfavored procedural shortcut'" (Seaboard Sur. Co. v. Richard F. Kline, Inc., 91 Md. App. 236, 244-45, 603 A.2d 1357, 1360 (1992), quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)), but a means "to prevent the necessity and expense of preparation for trial" when a trier of fact could not reasonably find for the non-moving party. See Whitcomb v. Horman, 244 Md. 431, 443, 224 A.2d 120, 126 (1966); see also Tri-State Properties, Inc. v. Middleman, 238 Md. 41, 47, 207 A.2d 499, 502 (1965)("the real and crucial purposes of summary judgment procedure" are "to avoid delays and unnecessary costs")

These considerations weigh heavily in favor of the entry of partial summary judgment in the Manfusos' favor on Count IV of

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the third amended complaint.[2]

II.

In attempting to escape from the Russian Roulette provisions, De Francis and Jacobs essentially have raised two arguments. First, they argue that the Stockholders Agreement as a whole is void because the Manfusos somehow fraudulently induced them to enter into the Agreement. Second, they argue, in effect, that they no longer need abide by the terms of the Stockholders Agreement because the Manfusos have allegedly breached the so-called "standstill provision" of the Agreement.

The undisputed facts in the record refute each of those arguments.

A.

It takes no small measure of disingenuousness for De Francis and Jacobs to cast themselves as the gullible victims of a plot through which the Manfusos fraudulently induced them into signing the Stockholders Agreement. As the Court has already heard at various preliminary hearings in this case, De Francis and Jacobs both are lawyers and highly sophisticated businessmen. See also Exhibit A (Affidavit of John A. Manfuso, Jr.), ¶ 1; Exhibit B (Affidavit of Robert T. Manfuso), ¶ 1. De

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[2] As explained below in footnotes 7 and 10, the defenses to Count IV of the third amended complaint are substantially identical to the affirmative claims set forth in Counts I and II of the defendants' counterclaim. Hence, if the Court enters partial summary judgment against the defendants on Count IV of the third amended complaint, then the Court should also enter partial summary judgment against the defendants on Counts I and II of their counterclaim.

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Francis and Jacobs, moreover, themselves have described the Stockholders Agreement not only as a "carefully crafted, lawyer-like document,"[3] but also as a "voluntary agreement made with advice of counsel."[4] The defendants' obviously high degree of sophistication, the role of attorneys as counsel and indeed as parties to the Stockholders Agreement, and the admittedly "voluntary" nature of that Agreement negate any reasonable basis for concluding that the Manfusos could somehow have fraudulently induced De Francis and Jacobs to enter into the Agreement.

Furthermore, to withstand summary judgment, De Francis and Jacobs must point to far more than merely a reasonable basis for their allegation of fraudulent inducement: Under Maryland law, De Francis and Jacobs must prove their claims of fraud by clear and convincing evidence. Everett v. Baltimore Gas & Elec. Co., 307 Md. 286, 300, 513 A.2d 882, 890 (1986).[5] Yet, despite having had an ample opportunity for discovery in the nine months

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[3] Opposition of De Francis and Jacobs to Motion to Dismiss and/or for Summary Judgment as to Count II of their Counterclaim, p. 15.

[4] Opposition of De Francis and Jacobs to Motion to Dismiss and/or for Summary Judgment as to Count II of their Counterclaim, p. 23 (emphasis added). The Manfusos' "fraud" presumably would vitiate the defendants' ability to give their voluntary consent to the terms of the Stockholders Agreement. Thus, the defendants cannot reconcile their concession concerning the "voluntary" agreement between the parties with their allegation that the Manfusos fraudulently induced them to enter into that supposedly "voluntary" agreement.

[5] That proposition would appear to hold true both insofar as the "fraud" constitutes an affirmative defense to the complaint and insofar as the "fraud" constitutes a ground for relief under the defendants' counterclaim.

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in which this case has been pending, the defendants have come forward with no evidence -- let alone the requisite clear and convincing evidence -- to support their allegations of fraudulent inducement.[6] Under those circumstances, the Court should enter partial summary judgment against them.

In any event, even if De Francis and Jacobs had some facts legally sufficient to support their allegation of fraudulent inducement, their theory, as pleaded in Count I of their counterclaim, proves far too much. In essence, based solely on the Manfusos' alleged breach of the Stockholders Agreement, De Francis and Jacobs would have the Court infer that the Manfusos never intended to abide by that Agreement. Based on that inference, De Francis and Jacobs then would have the Court infer that the Manfusos induced them to sign the Agreement by falsely representing that they (the Manfusos) would abide by the Agreement.

Such a theory arguably would allow any party to transform any routine breach of contract claim into a claim for fraud and punitive damages by simply alleging that the breach implies that the other side falsely represented that he or she would perform while intending not to perform. See Lipp v. Lipp, 158 Md. 207,

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[6] The Court should note that plaintiff Robert T. Manfuso has propounded interrogatories to De Francis to elicit the factual basis (if any) for the allegations of fraud. Exhibit E (Plaintiff Robert T. Manfuso's Interrogatories to Defendant Joseph A. De Francis), pp. 12-14. De Francis has not yet responded, but has instead requested an extension of time, which the plaintiffs informally granted.

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217, 148 A. 531 (1930)(if a person's mere refusal to perform a promise gave rise to an inference that the person made the promise with fraudulent intent, "every breach of contract would be sufficient to raise a prima facie presumption that the contract was conceived and executed in fraud"). Precisely because the law cannot countenance such an absurd result, the Court of Appeals has made it clear that a person's failure to perform a promise in and of itself can "never support an inference" that the person made the promise with fraudulent intent. Id. (emphasis added); see also Tufts v. Poore, 219 Md. 1, 10, 147 A.2d 717, 722 (1959)("[a] fraudulent pre-existing intent not to perform a promise when made cannot be inferred from the failure to perform the promise alone"); cf. Sims v. Ryland Group, Inc., 37 Md. App. 470, 474, 378 A.2d 1, 3 (1977)(allegation that defendant did not comply with terms of contract did not of itself support an allegation of fraud). Accordingly, De Francis's and Jacob's theory of fraudulent inducement must fail as a matter of law.

In summary, the allegation of fraudulent inducement finds no support either in the law or in the facts before the Court. Accordingly, the Court should reject that defense, enter partial summary judgment against the defendants on Count IV of the third amended complaint, and declare that the Russian Roulette

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provisions remain in full force and effect.[7]

B.

As originally crafted, the allegation of breach of contract turned almost exclusively on the contention that the Manfusos had breached the standstill provision of the Stockholders Agreement merely by coming before the Court and requesting a declaration concerning the meaning of the Shareholders Agreement.[8] That central part of the defendants' case no longer has any factual or legal foundation in light of the Court's ruling that the Manfusos did not breach the Stockholders Agreement merely by asking the Court to declare their rights thereunder. As the Court expressly held in its oral opinion delivered on September 23, 1992:

> [The Manfusos] have presented a detailed factual scenario and have asked the Court to look at those allegations in light of the standstill provision of the Stockholders Agreement: In asking the Court to make a declaration, I cannot find that action alone violates the Stockholders Agreement.

Exhibit C (Excerpt from the Proceedings in Manfuso, et al. v. De Francis, et al. on September 23, 1992).

Nor, however, do the defendants' remaining allegations

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[7] The defense of fraudulent inducement also appears as an affirmative claim in Count I of the counterclaim. Therefore, in addition to entering partial summary judgment against the defendants on Count IV of the Manfusos' third amended complaint, the Court should enter partial summary judgment against the defendants on Count I of their counterclaim.

[8] See, e.g., Memorandum of Law in Support of Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief, at 2 n. 1.

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establish any kind of breach by the Manfusos.

Stripped to their barest essentials, De Francis and Jacobs support their allegation of breach by alleging that the Manfusos engaged in a "campaign to harass, disparage and intimidate management."[9] De Francis and Jacobs ultimately must premise their allegation not on the standstill provision itself, but on § VIII of the Stockholders Agreement, which states that De Francis has "full authority over operational and managerial decisions and policies, [and] relations with the press, legislature and governmental authorities." See Counterclaim, ¶ 54.

Yet, De Francis's "full authority" in no way gives him exclusive authority over all of the corporations' affairs. To the contrary, for the entire time period involved in this action, Pimlico and Laurel have had boards of directors, which have certain statutory rights, duties, and powers with respect to the corporations. Md. Corps. & Ass'ns Code Ann. § 2-401(a) (1975, 1993 Repl. Vol.). Therefore, the defendants' allegations not only lack support in the Stockholders Agreement itself, but they also turn upon a false legal premise, namely, the premise that no one has any legal right to question or challenge any decision that De Francis might wish to make.

The defendants' allegations also turn on a false factual premise: the existence of the alleged "campaign" to "harass,

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[9] Counterclaim, ¶ 54.

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disparage, and intimidate management." As demonstrated by the Manfusos's affidavits (Exhibits A and B), they never undertook any such "campaign." Exhibit A, ¶ 2; Exhibit B, ¶ 2. Instead, as established by their affidavits, the Manfusos served as directors of Pimlico and Laurel for the entire time period covered by this action and as as officers of Pimlico and Laurel for part of the time period covered by this action. Exhibit A, ¶ 3; Exhibit B, ¶ 3. As such, the Manfusos have had fiduciary obligations of loyalty and care towards the corporations. Md. Corps. & Ass'ns Code Ann. § 2-405.1; J. Hanks, Jr., Maryland Corporation Law § 6.6[c] (Supp. 1991); H. Henn & J. Alexander, Laws of Corporations and Other Business Enterprises §§ 234-235 (3d ed. 1983); 19 W. Fletcher, Cyclopedia of the Law of Private Corporations § 3.13 (H. Golter ed., 1988 rev. vol.). The Manfusos neither could nor did forswear those fiduciary obligations by granting De Francis "full authority over operational and managerial decisions and policies, [and] relations with the press, legislature and governmental authorities." Nor did the Manfusos take any actions except in accordance with their honest, good faith belief about what their fiduciary duties required of them. Exhibit A, ¶ 4; Exhibit B, ¶ 4.

In short, the alleged "campaign to harass, disparage and intimidate management" amounts at most to a complaint about the Manfusos' honest efforts to exercise their fiduciary duties under Maryland law. As such, the Manfusos' alleged "campaign"

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could not plausibly constitute a breach of any portion of the Stockholders Agreement. Accordingly, the Court should reject the allegations of breach, enter partial summary judgment against the defendants on Count IV of the third amended complaint, and declare that the Russian Roulette provisions remain in full force and effect.[10]

Assuming, however, that De Francis and Jacobs could show some sort of breach by the Manfusos, the Court should reach the same result. For despite contending that the Stockholders Agreement has no force or effect, De Francis has not resigned from the positions that he acquired through the Agreement -- to the contrary, he and his family continue to accept nearly $1 million per year in salary and benefits from the racetracks, subject to certain limitations. Exhibit A, ¶ 5; Exhibit B, ¶ 5.[11] At same time, while also contending that the Stockholders Agreement has no force or effect, De Francis's ally and co-defendant, Jacobs, continues to receive approximately $400,000.00 per year in salary and benefits as executive vice-president and treasurer to the tracks -- positions that he too

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[10] The defense of breach also appears as an affirmative claim in Count II of the counterclaim. Therefore, in addition to entering partial summary judgment against the defendants on Count IV of the Manfusos' third amended complaint, the Court should enter partial summary judgment against the defendants on Count II of their counterclaim.

[11] Section VI.A.5. of the Stockholders Agreement limits De Francis and family to the highest annual compensation payments paid to the Manfusos before the termination of their employment, with subsequent increases in compensation not to exceed 9% per annum.

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acquired through the Stockholders Agreement. Exhibit A, ¶ 6; Exhibit B, ¶ 6.

The defendants' continued acceptance of those benefits, in the face of their knowledge of the Manfusos' alleged breach, constitutes a waiver or ratification of any such "breach." Lazorcak v. Feuerstein, 273 Md. 69, 76-78, 327 A.2d 477, 481-82 (1974); Hagan v. Dundore, 187 Md. 430, 441, 50 A.2d 570, 575-76 (1947); Kemp v. Weber, 180 Md. 362, 365-66, 24 A.2d 779, 780 (1942).[12] In either case, the Court can give no credence to the defense of breach of contract.

More uncontrovertible proof of waiver and ratification appears in a letter dated January 27, 1993, from De Francis to the Manfusos. On page 2 of the letter (Exhibit D), De Francis unambiguously suggests that, if the Manfusos instituted a shareholders derivative suit before October 1, 1993, then he would contend that the Manfusos had violated the standstill provision.[13] But by thus endorsing the continued validity of

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[12] The defendants' acceptance of those benefits, in the face of their alleged discovery of the Manfusos' "fraud," also constitutes a ratification of the Stockholders Agreement. See, e.g., Hoffman v. Seth, 207 Md. 234, 239, 114 A.2d 58, 60 (1955); see also W. Keeton et al., Prosser and Keeton on Torts § 110, at 769-70 (5th ed. 1984)("Any act amounting to affirmance of the transaction after the plaintiff has discovered the fraud will preclude the remedy of rescission").

[13] The paragraph in question provides in full as follows:

> Moreover, I assume your lawyers acted with authority when they wrote on December 2 to Messrs. Rosenberg and Hyman that you "will not take any action in contravention of Paragraph X ('Standstill Provision') of the Stockholders Agreement dated

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the standstill provision, De Francis appears willing to accept the continued validity of the Stockholders Agreement -- at least where it benefits him to do so. On the other hand, De Francis has no qualms about denying the validity of the Stockholders Agreement where the Agreement's continued validity threatens his interests -- e.g., where the Agreement, through the Russian Roulette provisions, sets into motion the procedures whereby the Manfusos can either buy out or be bought by De Francis and Jacobs, or vice versa, on or after October 1, 1993.

De Francis cannot have it both ways: the Stockholders Agreement either remains in full force and effect or some or all of the Agreement no longer remains in force. De Francis cannot escape the consequences of his equivocation on that issue, whether those consequences flow from a theory of ratification or waiver. By taking inconsistent positions on the continued validity of the Stockholders Agreement, De Francis has now abandoned any right to argue that the Manfusos' alleged breach has voided the Stockholders Agreement in its entirety.

> October 1, 1989." (As you know, we believe you have already breached the Stockholders Agreement by filing the litigation in the Circuit Court for Baltimore City.) Based on that, I assume that, were the Boards of Directors to deny your demand and decline to file the litigation you request, you would not file a stockholders derivative action until after expiration of the standstill period that was contained in that document. Consequently, the impression of urgency that your letter of December 23 seeks to create is no more than a smokescreen.

(Emphasis supplied.)

kfa:3/3/93.7
f:manfuso:mpsj

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But apart from the question of ratification or waiver, there is an additional ground for awarding partial summary judgment despite the Manfusos' alleged breach. In contending that they need not abide by the Russian Roulette provisions, De Francis and Jacobs contend that the numerous individual agreements in the Stockholders Agreement[14] are indivisible and inseparable such that the Manfusos' alleged breach of one necessarily causes the entire Agreement to collapse. That contention finds no support in the law.

The Stockholders Agreement contains an express severability clause (§ XII.D), which provides as follows:

> Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under the applicable law or rule in any jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegality and unenforceability in such jurisdiction, without invalidating the remainder of this

---

[14] In addition to the standstill provision (§ X) and the Russian Roulette provisions (§ I), the Stockholders Agreement contains agreements concerning: an elaborate put-call mechanism governing the disposition of stock in the event of the death or permanent incapacity of De Francis or either of the Manfusos (§ II); the benefits payable upon the death or permanent incapacity of De Francis, Jacobs, and either of the Manfusos (§ III); "piggyback" rights (§ IV) and rights of first refusal (§ V) in the event that one stockholder wishes to sell his stock to an unrelated third party; employment agreements between the corporations and the Manfusos (§ VI); employment agreements between the corporations and Jacobs, Lynda O'Dea, and James P. Mango (§ VII); the positions, titles, and responsibilities that the stockholders would have (§ VIII); and the stockholders' rights to participate in other business ventures with fellow stockholders (§ IX.A).

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> Agreement in such jurisdiction or any part hereof in any other jurisdiction.

The severability clause clearly means that, if the standstill provision were held unenforceable on account of public policy, then the balance of the agreement -- including the Russian Roulette provisions -- should nonetheless remain in full force and effect. Yet, if the parties intended the Stockholders Agreement to survive despite the unenforceability of the standstill provision, then the parties surely could not have intended a simple breach of the standstill provision to cause the entire Agreement to fall. To the contrary, the severability clause confirms the parties' intent that the Agreement should survive the breach of any one of its single provisions. See Brees v. Cramer, 322 Md. 214, 221, 586 A.2d 1284, 1288 (1991).

The remedy for any such "breach" is not to cancel the contract and cease performance, but to sue for damages, as the defendants have in fact done in Count II of their counterclaim. See id. Therefore, even if there were some factual basis to conclude that the Manfusos' have materially breached the standstill provision -- which there is not -- that "breach" would not release De Francis and Jacobs from their remaining obligations, including their obligations under the Russian Roulette provisions. For this additional reason, the Court should enter partial summary judgment against the defendants on Count IV of the third amended complaint and declare that the

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Russian Roulette provisions remain in full force and effect.

Finally, the Court should note that De Francis and Jacobs would, in effect, rescind the Stockholders Agreement, annulling their obligations thereunder, including their obligations under the Russian Roulette provisions. Under Maryland law, however, a person cannot resort to the remedy of rescission if damages would provide adequate compensation for the alleged breach. See, e.g., Ady v. Jenkins, 133 Md. 36, 38, 104 A. 178 (1918)("where the breach can well be compensated by damages -- the other party can not rescind for this reason"); see also Senick v. Lucas, 234 Md. 373, 377-78, 199 A.2d 375, 377 (1964); Vincent v. Palmer, 179 Md. 365, 373, 19 A.2d 183, 188-89 (1941); By demanding monetary compensation for the Manfusos' alleged breach, De Francis and Jacobs have conceded that damages represent an adequate remedy. As that concession divests De Francis and Jacobs of any right to rescission (Senick v. Lucas, 234 Md. at 377-78, 199 A.2d at 377), the Court should enter partial summary judgment against them and declare that the Russian Roulette provisions remain in full force and effect. Id.

In summary, the uncontradicted facts in the record establish that the Manfusos have breached no provision of the Stockholders Agreement. Furthermore, even if the defendants could point to some evidence suggesting that the Manfusos had materially breached the Agreement, the Russian Roulette provisions would remain in effect because the defendants have waived or ratified any such "breach," because the parties

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intended the Russian Roulette provisions to remain in force notwithstanding the breach of some other provision in the Stockholders Agreement, and because the defendants' admittedly adequate remedy in damages prevents them from availing themselves of the remedy of rescission.

For all of these reasons, therefore, the Court should enter partial summary judgment on Count IV of the third amended complaint.

Andrew Jay Graham

Kevin F. Arthur

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Baltimore, Maryland 21202
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Attorneys for Plaintiffs
Robert T. Manfuso and
John A. Manfuso, Jr.

Dated: March 5, 1993.

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ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

Exhibit A

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 JOHN A. MANFUSO, JR.

I, John A. Manfuso, Jr., 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. Martin Jacobs ("Jacobs") and Joseph A. De Francis ("De Francis") both hold themselves out as being highly sophisticated in business affairs. Jacobs is a certified public accountant and was formerly a partner in the law firm of Ginsberg, Feldman & Bress; De Francis was associated with the law firm of Latham & Watkins, where he claims to have worked on a number of complex and challenging business transactions.

2. De Francis and Jacobs allege that my brother, Robert T. Manfuso, and I engaged in a "campaign" to "harass, disparage, and intimidate management" at Pimlico and Laurel. That allegation is patently false. My brother and I never undertook any such "campaign."

3. My brother and I served as directors of Pimlico and Laurel for the entire time period covered by this action and as as officers of Pimlico and Laurel for part of the time period covered by this action. I have also served as co-chairman of

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the board of Pimlico for the entire time period covered by this action, while my brother has served as co-chairman of the board of Laurel for the same period.

4. During the period when my brother and I have served as officers and directors of Pimlico and Laurel, neither of us have taken any actions except in accordance with our honest, good faith belief about what our fiduciary duties required of us.

5. Despite contending that the Stockholders Agreement no longer has any force or effect, De Francis has not resigned from the positions that he acquired through the Agreement -- co-chairman of the board, president, and chief executive officer of Pimlico and Laurel; to the contrary, he and his family currently draw nearly $1 million per year in salary and benefits from the racetracks.

6. While also contending that the Stockholders Agreement has no force or effect, De Francis's ally and co-defendant, Jacobs, continues to receive approximately $400,000.00 per year in salary and benefits as director, executive vice-president, treasurer of Pimlico and Laurel -- positions that he acquired through the Stockholders Agreement.

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

John A. Manfuso, Jr.

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ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

Exhibit B

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 ROBERT T. MANFUSO

I, Robert T. Manfuso, 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. Martin Jacobs ("Jacobs") and Joseph A. De Francis ("De Francis") both hold themselves out as being highly sophisticated in business affairs. Jacobs is a certified public accountant and was formerly a partner in the law firm of Ginsberg, Feldman & Bress; De Francis was associated with the law firm of Latham & Watkins, where he claims to have worked on a number of complex and challenging business transactions.

2. De Francis and Jacobs allege that my brother, John A. Manfuso, Jr., and I engaged in a "campaign" to "harass, disparage, and intimidate management" at Pimlico and Laurel. That allegation is patently false. My brother and I never undertook any such "campaign."

3. My brother and I served as directors of Pimlico and Laurel for the entire time period covered by this action and as officers of Pimlico and Laurel for part of the time period covered by this action. I have also served as co-chairman of

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the board of Laurel for the entire time period covered by this action, while my brother has served as co-chairman of the board of Pimlico for the same period.

4. During the period when my brother and I have served as officers and directors of Pimlico and Laurel, neither of us have taken any actions except in accordance with our honest, good faith belief about what our fiduciary duties required of us.

5. Despite contending that the Stockholders Agreement no longer has any force or effect, De Francis has not resigned from the positions that he acquired through the Agreement -- director and co-chairman of the board, president, and chief executive officer of Pimlico and Laurel; to the contrary, he and his family currently draw nearly $1 million per year in salary and benefits from the racetracks.

6. While also contending that the Stockholders Agreement has no force or effect, De Francis's ally and co-defendant, Jacobs, continues to receive approximately $400,000.00 per year in salary and benefits as director, executive vice-president, and treasurer of Pimlico and Laurel -- positions that he acquired through the Stockholders Agreement.

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

Robert T. Manfuso

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Exhibit C

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

ROBERT MANFUSO, ET AL., * IN THE

PLAINTIFFS * CIRCUIT COURT

VS. * FOR

JOSEPH DEFRANCIS, ET AL. * BALTIMORE CITY

DEFENDANTS * CASE NO.92120052

* * * * * * * * *

SEPTEMBER 23, 1992

BEFORE:

THE HONORABLE ELLEN HOLLANDER, JUDGE

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

JAMES ULWICK, ESQUIRE.

HERBERT GARTEN, ESQUIRE

ANDREW GRAHAM, ESQUIRE

ON BEHALF OF THE DEFENDANTS:

JAMES GRAY, ESQUIRE

LINDA WOOLF, ESQUIRE

MCGEE GRIGSBY, ESQUIRE

KENNETH NORRIS

OFFICIAL COURT REPORTER

PLAINTIFFS WERE OVERINCLUSIVE AS TO WHAT WAS ASSERTED. PERHAPS IT COULD HAVE BEEN A MORE SIMPLY STATED QUESTION TO THE COURT. PERHAPS PLAINTIFFS DID NOT HAVE TO STATE SO FULLY THEIR ALLEGATIONS. PERHAPS THEY DID NOT NEED TO INCLUDE WHAT I CONSTRUE AS THE INJUNCTIVE REMEDY PORTION OF THE SUIT, WHICH IS A REQUEST SAYING TO THE COURT, IF YOU THINK WE CAN SUE, HERE IS THE REMEDY WE WOULD LIKE.

BUT THAT DOES NOT MEAN PLAINTIFFS WERE WRONG IN HAVING FILED FOR A DECLARATORY JUDGMENT. THERE IS CERTAINLY GREAT LATITUDE OF STYLE IN THE WAY IN WHICH ABLE COUNSEL PRACTICE. FRANKLY, FOR THE PLAINTIFFS TO HAVE SET FORTH FULLY THE MISCONDUCT THEY ALLEGE WAS THE PRUDENT COURSE, EVEN THOUGH IT MAY TURN OUT THAT THOSE CONTENTIONS ARE OTHERWISE BARRED BY THE PROVISIONS OF THE STANDSTILL AGREEMENT OR OTHERWISE ULTIMATELY PROVEN UNTRUE.

WITHOUT THE FACTUAL ALLEGATIONS, IT WOULD BE IMPOSSIBLE TO DETERMINE WHETHER SUIT IS BARRED BY THE STANDSTILL PROVISION.

IN SUM, PLAINTIFFS HAVE PRESENTED A DATAILED FACTUAL SCENARIO AND HAVE ASKED THE COURT TO LOOK AT THOSE ALLEGATIONS IN LIGHT OF THE STANDSTILL PROVISION OF THE STOCKHOLDERS AGREEMENT: IN ASKING THE COURT TO MAKE A DECLARATION, I CANNOT FIND THAT ACTION ALONE VIOLATES THE STOCKHOLDERS AGREEMENT.

BECAUSE THAT CLAIM IS THE THRUST OF COUNT ONE OF THE

Exhibit D

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

THE MARYLAND JOCKEY CLUB

P.O. BOX 130
LAUREL, MARYLAND 20725

January 27, 1993

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

Gentlemen:

I am writing regarding your letters of December 9, 23 and 28, 1992. Enclosed is a copy of the draft minutes of the meetings of the Shareholders and Boards of Directors held on November 23, 1992.

Also enclosed is a copy of the executed employment agreements with Brian Handleman and Brenda Handleman and the articles of incorporation and by-laws of Maryland Turf Caterers, Inc. (MTC). The capital stock of MTC is owned by Brian Handleman except for one share each owned by his wife and by Brenda. In accordance with Brian's employment agreement, Laurel and Pimlico have the right to acquire all of the capital stock of MTC, at their option. Brian reports to me, as President of the Corporations, and Brenda reports to him. The accounting services of the type that were previously performed by the Harry M. Stevens, Inc. home office are now performed for MTC by our Accounting Department, under the supervision of our Chief Financial Officer. The remaining accounting services are performed by MTC employees, as they were under the Stevens management.

The foregoing information and agreements are confidential business matters and are provided to you in your capacity as Directors of the Corporations. Accordingly, you and your attorneys should treat them with the utmost confidence.

Your self-serving letter of December 23, which was obviously written by your lawyers for posturing purposes related to the pending litigation, contains so many outrageous misstatements, mischaracterizations and distortions of the truth that it hardly merits a response, and I will not waste my time

addressing each such misstatement or distortion. Like the five page, single-spaced letter your lawyers wrote to Messrs. Rosenberg and Hyman on December 2, 1992, its clear purpose is to harass and to intimidate. The letter was nothing more than a thinly disguised threat to Messrs. Rosenberg and Hyman that they would be the next targets of your litigious inclinations. (I must say that your characterization in your December 23 letter of your December 2 letter as "cooperation" is so ludicrous that it gave me the best laugh I've had in weeks.)

I do feel it to be important, however, to clarify several things. First, your assertion that I have "adopted delay and procrastination as the methods of dealing with the 'legitimate' issues [you] have raised" is outrageous. When you first raised these issues -- which are neither "legitimate" nor "important" -- in correspondence almost one year ago, I promptly invited you, your lawyers and your accountant to present to the Boards of Directors of Pimlico and Laurel any evidence of the wrongdoing you described, including the report of your accountant relating to your conclusory allegations that our independently audited financial statements were false and misleading. In the intervening months, despite repeated opportunities, you have failed to present one shred of evidence to substantiate your totally unsupported, bald assertions that Marty Jacobs and I have engaged in impropriety and mismanagement. Instead, you continually demand "investigations" by the Boards while refusing to provide the most obvious first step in any such inquiry -- the report of your personal accountant.

Moreover, I assume your lawyers acted with authority when they wrote on December 2 to Messrs. Rosenberg and Hyman that you "will not take any action in contravention of Paragraph X ('Standstill Provision') of the Stockholders Agreement dated October 1, 1989." (As you know, we believe you have already breached the Stockholders Agreement by filing the litigation in the Circuit Court for Baltimore City.) Based on that, I assume that, were the Boards of Directors to deny your demand and decline to file the litigation you request, you would not file a stockholders derivative action until after expiration of the standstill period that was contained in that document. Consequently, the impression of urgency that your letter of December 23 seeks to create is no more than a smokescreen.

Nevertheless, I again invite you to provide the other directors with your accountant's report, and with any other evidence that you may possess that might support your heretofore

completely unsubstantiated allegations. Contrary to your assertion, I have no intention of preventing the Boards from acting upon the demands and issues raised in your letters of October 9 and October 23. It should be obvious, however, that it is impossible for the Boards to take any meaningful action unless and until they have before them all relevant facts, including your accountant's report, that you may possess.

Second, your demands for Board meetings to review "the issue of whether the tracks will be able to meet the bank's loan requirements, and a full discussion regarding the Pimlico and Laurel financial statements with the outside accountant present to answer questions" are inappropriate and seem to be yet another gambit in your continuing campaign to harass Marty Jacobs and me, and to divert our time and attention away from the important business challenges that are presently facing Pimlico and Laurel. As you know, this is a critical time for the racetracks' business. We face powerful new competition from the Maryland lottery's new Keno game, as well as from full-card, commingled interstate simulcasting at other tracks. The horse population has continued to decline.

To meet these challenges, we have, among other things, reorganized our management structure, and undertaken an aggressive campaign to revitalize our business by (a) becoming able to offer our fans full-card, commingled interstate simulcasting on races from Southern California, Florida and other top-quality, racing centers; (b) expanding the distribution of our product through intertrack wagering with Rosecroft and the development of an extensive off-track betting system in Maryland; and (c) fully exploring the opportunity presented by Virginia. This campaign has been and continues to be very time-consuming and demanding. It has involved, on an ongoing basis, extensive negotiations with various totalizator companies, the Maryland Thoroughbred Horsemen's Association, Colt Enterprises (owners of Rosecroft), Cloverleaf (standardbred horsemen's organization), Local 27 of the United Food and Commercial Workers Union, and tracks in California and Florida. In addition, legislation is needed, which we will be trying to get passed by the Maryland General Assembly on an emergency basis.

I know you are aware of the magnitude of the above-described campaign, both from information made available to you as directors and from extensive reports in the press. In light of this, your repeated requests for Board meetings, and your attempt to create the impression that an urgent need exists for

such meetings, are yet another facade to cover your true purpose of harassment.

You were provided copies of the unaudited financial statements of Laurel and Pimlico for the first nine months of 1992 shortly after they became available. Contrary to your assertion, and as you both well know, the quarterly financials are not -- and never have, in the almost nine years that we have been involved in this business, been -- available "within a matter of days" after the end of a quarter.

Based on our preliminary review, we believe that both Pimlico and Laurel will comply with their obligations under their respective loan agreements with First National Bank of Maryland, and we have so advised the Bank on an informal basis. There is no urgent need for an immediate board meeting.

I will set the next regular quarterly meeting of the Boards of Directors of Pimlico and Laurel in February or early March, when the draft audited financial statements for 1992 are available. A formal notice of meeting will be sent out by the Corporations' secretary after we have checked the availability of the Directors and after we are certain that the draft financials will be available so that they may be discussed at the meeting. At that meeting, the Boards can also act on those matters that were to be considered by the Special Committee and other appropriate matters to come before the meeting.

Sincerely,

Joseph A. De Francis
President and Chief
Executive Officer

Enclosures

cc: Mr. Martin Jacobs
Mr. Alec Courtelis
Ms. Karin Van Dyke
Father Joseph A. Sellinger

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

Exhibit E

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

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

PLAINTIFF ROBERT T. MANFUSO'S
INTERROGATORIES TO DEFENDANT JOSEPH A. DE FRANCIS

Plaintiff Robert T. Manfuso, by his undersigned attorneys, propounds these interrogatories, to which Joseph A. De Francis shall respond separately and fully, in writing and under oath, within thirty days of service.

INSTRUCTIONS

These instructions and the following definitions are to be read and interpreted in accordance with the definitions set forth hereinafter, and answers are to be furnished pursuant to the instructions set forth hereinafter. These instructions and definitions should be construed to require answers based upon the knowledge of, and documents and information available to, the responding party as well as his agents, representatives, and, unless privileged, attorneys. These instructions and definitions should also be construed to require answers based upon information and documents presently in the custody of any state or federal agency that the responding party has a right or privilege to examine or obtain upon request or demand.

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aM-2:interrog.man

INTERROGATORY NO. 14:

If you contend that your involvement, Jacobs's involvement, or Mango's involvement in Texas Racing will benefit Pimlico or Laurel, state all facts and identify all documents supporting that contention, including in your answer the identity of all persons having knowledge pertinent to the facts relating to your contention.

INTERROGATORY NO. 15:

State all facts and identify all documents supporting the allegations in paragraph 76 of your Counterclaim that the Manfusos knew, prior to their execution of the Stockholders Agreement, that they had no right to operational or managerial control of Laurel or Pimlico, no lawful way to "interfere" with De Francis in regard to operational or managerial decisions, and no way to reach their alleged ultimate goal of acquisition of complete control and ownership of Laurel and Pimlico, including in your answer the identity of all persons having knowledge relating to the factual basis of those allegations.

INTERROGATORY NO. 16:

State all facts and identify all documents supporting the allegation in paragraph 77 of your Counterclaim that, in an effort to gain rights and eventual control of Laurel and Pimlico, the Manfusos conspired and agreed to induce you and Jacobs to enter into the Stockholders Agreement, including in your answer the identity of all persons having knowledge relating to the factual basis of that allegation.

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INTERROGATORY NO. 17:

State all facts and identify all documents supporting the allegation in paragraph 78 of your Counterclaim that the Manfusos never had an intent to honor the promises that they made under the Stockholders Agreement, including in your answer the identity of all persons having knowledge relating to the factual basis of your allegation.

INTERROGATORY NO. 18:

State all facts and identify all documents supporting the allegation in paragraph 78(b) of your Counterclaim that the Manfusos have questioned business decisions made by you and Jacobs without providing any legal or factual basis for their complaints, including in your answer the identity of all persons having knowledge relating to the factual basis for your allegation.

INTERROGATORY NO. 19:

State all facts and identify all documents supporting the allegation in paragraph 79 of your Counterclaim that the Manfusos' alleged misrepresentations were motivated by actual malice, ill-will, and spite toward you and Jacobs, including in your answer the identity of all persons having knowledge relating to the factual basis of your allegation.

INTERROGATORY NO. 20:

State all facts and identify all documents supporting the allegation in paragraph 80 of your Counterclaim that you and Jacobs reasonably relied on the promises allegedly made by the

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Manfusos in executing the Stockholders Agreement, including in your answer the identity of all persons having knowledge relating to the factual basis of that allegation.

INTERROGATORY NO. 21:

State all facts and identify all documents supporting the allegation in paragraph 81 of your Counterclaim that, but for the alleged misrepresentations made by the Manfusos, you and Jacobs would not have entered into the Stockholders Agreement, including in your answer the identity of all persons having knowledge of the factual basis of that allegation.

INTERROGATORY NO. 22:

Give a full and complete account of any communication involving you and any person concerning the circumstances surrounding your decision and Jacobs' decision to enter into the Stockholders Agreement, including in your answer the identity of all documents constituting or relating to any such communication and the identity of all persons having knowledge of any such communication.

INTERROGATORY NO. 23:

State all facts and identify all documents supporting the allegation in paragraph 82 of your Counterclaim that you and Jacobs have been injured with respect to your (and his) reputations in the racing and banking industries and have suffered a decrease in the value of your (and his) interests in Laurel and Pimlico as a result of the Manfusos' alleged constant harassment and institution of litigation, including in your

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3048

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

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

THIRD AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF
AND FOR DAMAGES

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively "the Manfusos"), by their undersigned attorneys, hereby sue Joseph A. De Francis ("De Francis"), Martin Jacobs ("Jacobs"), The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("PRA"), and Laurel Racing Assoc., Inc. ("Laurel"). For cause, the Manfusos state:

I. THE NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief and for damages. The Manfusos have brought Count I of this action in order to have the Court declare that De Francis and Jacobs have breached duties to MJC, PRA, Laurel, and the Manfusos, and also to have the Court declare that the Manfusos have the right and obligation to protect MJC, PRA, Laurel, and themselves from those breaches. The Manfusos have brought Count II of this action in order to obtain a permanent injunction barring De Francis and Jacobs from further breaches of their duties. The Manfusos have brought Count III of this action in order to recover damages on account of the breach of the Stockholders Agreement among the Manfusos, Jacobs, the estate of

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Frank J. De Francis, De Francis, MJC, PRA, and Laurel. The Manfusos have brought Count IV of this action in order to have the Court declare that De Francis and Jacobs cannot avoid their obligations under the Stockholders Agreement, including their obligations under the so-called "Russian Roulette" provisions of that Agreement.

II. THE PARTIES

2. The Manfusos are Maryland citizens whose principal place of business is Suite 1010, 8401 Connecticut Avenue, Chevy Chase, Maryland 20815. The Manfusos are shareholders of PRA and Laurel and have been involved in the racing industry for over twenty years.

3. Laurel is a Maryland corporation with its principal place of business at Route 198 and Racetrack Road, Laurel, Maryland 20707. Laurel operates Laurel Racecourse. The stock ownership of Laurel is as follows:

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

4. MJC and PRA are Maryland corporations with their principal place of business at Pimlico Racecourse, Baltimore, Maryland 21215. MJC and PRA (collectively, "Pimlico") operate Pimlico Racecourse. The stock ownership of PRA is:

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Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
Estate of Frank J. De Francis	550	4,150	4,700
Robert Manfuso	210	2,140	2,350
John Manfuso, Jr.	210	2,140	2,350
Jacobs	30	570	600
	1,000	9,000	10,000

5. De Francis is a Maryland citizen whose principal place of business is Route 198 and Racetrack Road, Laurel, Maryland 20707. De Francis is the President of both Laurel and Pimlico; he is an attorney and the son of Frank J. De Francis.

6. Jacobs is a Maryland citizen whose principal place of business is Route 198 and Racetrack Road, Laurel, Maryland 20707. Jacobs owns 6% of PRA and a 13.33% of Laurel. Jacobs is an attorney and the Vice-President and Treasurer of both Pimlico and Laurel. He also functions as the General Counsel of Laurel and Pimlico.

III. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to § 1-501 and § 3-403 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland; the Court has personal jurisdiction over the defendants because they are, variously, Maryland corporations and Maryland domiciliaries.

8. Under § 6-201(a) of the Courts and Judicial Proceedings Article, venue is proper in this Court because all of the defendants carry on a regular business in Baltimore City.

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IV. BACKGROUND FACTS

9. In 1984, the Maryland thoroughbred racing industry was in a period of decline. Racing revenues were small, racetracks were being closed, and track attendance was dwindling.

10. In December 1984, Frank J. De Francis and the Manfusos agreed to purchase Laurel, to rejuvenate it, and to endeavor in every way to make thoroughbred racing a health and profitable enterprise in Maryland. The Manfusos committed millions of dollars of their own money to ensure Laurel's success. The operating duties of Laurel were divided between the Manfusos and Frank J. De Francis. Martin Jacobs negotiated the contracts, provided legal advice, and became an owner as well. Frank J. De Francis served as the President of Laurel, and the Manfusos served as Vice-Presidents.

11. In December 1986, Frank J. De Francis and the Manfusos purchased Pimlico, and each allocated three percent of their ownership to Martin Jacobs. The same management team was used to operate Pimlico as was used to operate Laurel.

12. By 1989, Pimlico and Laurel were extremely successful. Racetrack attendance and handle had dramatically increased, the value of the tracks had likewise increased, and the industry was healthy. In August 1989, however, Frank J. De Francis died.

13. Until the death of Frank J. De Francis, his son De Francis had had minimal involvement in the operation of the tracks. The younger De Francis had in fact been working as an

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attorney for the law firm of Latham & Watkins. After his father's death, De Francis became one of the executors of his father's estate.

14. De Francis insisted on assuming his father's position as President of Pimlico and Laurel, as well as his father's salaries and benefits. The Manfusos objected, pointing out that De Francis had inadequate, if any, experience in racetrack management, and no experience that would qualify him to manage such large enterprises. Moreover, the salaries that De Francis insisted on receiving totaled over $700,000.00 per year--a vast overpayment for an executive of his abilities.[1] The estate of Frank J. De Francis, represented by De Francis, controlled a majority of the voting stock of both racetracks. To avoid a lengthy legal battle over the management and control of the racetracks and a potential conflict with the lenders over Frank J. De Francis's replacement, a letter of understanding was negotiated and signed by the Manfusos and De Francis. The letter of understanding set forth the basic terms of a

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[1] The 1991 W-2 form disclosed De Francis's total salary from both tracks as $719,399.60. The corporations do not pay the Board of Directors' fees.

The New York State Advisory Commission on Racing in the 21st Century reported that Gerry McKeon, President of the New York Racing Association, Inc. ("NYRA"), earned a salary of $235,000.00 in 1991 -- 70% less than De Francis's salary for the same year. The total handle for the NYRA tracks in 1991 was $2,250,000,000.00; the total handle for Laurel and Pimlico for the same year, 1991, was $404,000,000.00 or 18% of the total NYRA handle.

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stockholders agreement to be entered into by the parties.

15. On or about October 1, 1989, the Manfusos, Jacobs, the estate of Frank J. De Francis, De Francis, MJC, PRA, and Laurel entered into the Stockholders Agreement. The Stockholders Agreement is a contract within the meaning of § 3-406 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland. A true and correct copy of the Stockholders Agreement is attached as Exhibit A to this complaint and incorporated herein.

16. The Stockholders Agreement sets forth the agreements between the parties on numerous issues. For example, the Stockholders Agreement provides the terms under which any stockholder can attempt to sell his stock, and it establishes a put/call mechanism to allow either the Manfusos or De Francis and Jacobs to purchase the stock of the other side at a time in the future. The Stockholders Agreement also calls for a "standstill" period in which the parties cannot sue one another, with specified exceptions.

17. Pursuant to the Stockholders Agreement, De Francis became President of Laurel and Pimlico. As such, De Francis's duties have included functioning as the Chief Executive Officer and as Co-Chairman of the Boards of Laurel and Pimlico. By virtue of the positions that he acquired through the Stockholders Agreement, De Francis was and is required by Maryland law to ensure that the interests of the corporations

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are protected and that the officers and directors of the corporations place the best interests of the corporations ahead of their own personal interests.

18. Pursuant to the Stockholders Agreement, Jacobs became Executive Vice-President, Treasurer, and Director of Laurel and Pimlico. Also pursuant to the Stockholders Agreement, Jacobs received a ten-year employment contract, in return for which he promised to "devote substantially all of [his] time to [his] employment." In addition to his obligations by virtue of his employment contract, Jacobs, by virtue of the positions that he acquired through the Stockholders Agreement, was and is required by Maryland law to ensure that the interests of the corporations are protected and that the officers and directors of the corporations place the best interests of the corporations ahead of their own personal interests. Through the Stockholders Agreement, Jacobs receives salaries of approximately $400,000.00 per year.[2]

19. Pursuant to the Stockholders Agreement, the Manfusos became Executive Vice-Presidents of Laurel and Pimlico, with John A. Manfuso, Jr., serving as Secretary for the corporations. Also pursuant to the Stockholders Agreement, the Manfusos

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[2] The 1991 W-2 form showed Jacobs's salary from both tracks as $389,739.88. The New York State Advisory Commission on Racing in the 21st Century reported that the 1991 salary of Martin L. Lieberman, NYRA's senior vice-president, secretary, and general counsel, totalled $148,720.00, 62% less than Jacobs's salary for the same year.

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remained on the Boards of both Laurel and Pimlico, with John A. Manfuso, Jr., becoming Co-Chairman of the Board of Pimlico and Robert T. Manfuso becoming Co-Chairman of the Board of Laurel. By virtue of the positions that they acquired through the Stockholders Agreement, the Manfusos were and are required by Maryland law to ensure that the interests of the corporations are protected and that the officers and directors of the corporations place the best interests of the corporations ahead of their personal interests.

20. Since the parties executed the Stockholders Agreement, the Manfusos have attempted to fulfill their fiduciary duties to Pimlico and Laurel by offering numerous suggestions and expressing their concerns about the operation of the racetracks. Notwithstanding the Manfusos' best efforts to provide useful information and advice to De Francis and Jacobs, their comments have been largely ignored. The Manfusos resigned their positions as officers of Pimlico and Laurel on June 1, 1990, after numerous disputes with De Francis and Jacobs.

V. SPECIFIC ALLEGATIONS OF ABUSES

21. The Manfusos have uncovered many abuses in the operation of Pimlico and Laurel. The Manfusos have demanded that the Boards remedy these abuses. Despite their duties to do so, De Francis and Jacobs have failed and refused to take any steps to protect Pimlico and Laurel from the abuses, including those related below.

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A. THE DIVERSION OF RESOURCES TO TEXAS

22. Shortly before Frank J. De Francis's death, Jacobs began to travel to Texas to assist in an effort to change Texas law to benefit the thoroughbred racing industry. Pimlico paid Jacobs's expenses in travelling to Texas.

23. In April 1990, John A. Manfuso, Jr., uncovered a $33,000.00 wire transfer from Pimlico to a Texas lobbying organization. The Manfusos objected to this waste of corporate funds and insisted that no further monies be diverted from the Maryland racetracks to Texas ventures. De Francis promised that no further funds would be expended by Pimlico and Laurel on Texas horse racing.

24. By virtue of the positions that he acquired through the Stockholders Agreement, De Francis is required to devote his time, attention and skill to advancing the best interests of those corporations. Under his leadership, however, the performance of the racetracks has drastically declined.[3] Despite Pimlico's and Laurel's decreasing performance, De Francis has devoted an increasing amount of time to attempting to further his and Jacobs's private interests in Texas horse racing.

25. Lone Star Jockey Club, Ltd. ("Lone Star"), has been

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[3] The total handle for Laurel and Pimlico in 1990 was $435,874,022.00; the total handle for Laurel and Pimlico in 1992 was $375,582,714.00, a $60,000,000.00 or nearly 14% decline from 1990.

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granted a license to own and operate a Texas racetrack. De Francis and Jacobs have assisted Lone Star's application. They have formed D/J Track Consultants, which is to receive one-half (1/2) of the management fee Lone Star will pay to its management company. They have also received an ownership interest in the racetrack.

26. In breach of his duties to Pimlico and Laurel, including the duties appurtenant to the positions that he acquired through the Stockholders Agreement, De Francis has devoted many hours to D/J Track Consultants and Lone Star.

27. In breach of his duties to Pimlico and Laurel, including his duty under the Stockholders Agreement and his employment contract to devote substantially all of his time to his responsibilities at Pimlico and Laurel, Jacobs has expended many hours of time in assisting Lone Star on behalf of D/J Track Consultants. Jacobs has traveled frequently to Texas on Pimlico's and Laurel's time to assist in this effort.

28. James Mango is a Vice-President of MJC and Laurel and the General Manager of both racetracks. He is the key employee of Pimlico and Laurel. The Stockholders Agreement provides that Mango was to receive a ten-year employment contract as long as he devoted "substantially all of [his] time to [his] employment." On January 1, 1990, MJC and Laurel entered into an employment contract with Mango. Under his employment contract, Mango was required to provide "his best efforts and his full

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time and attention" to his duties to the racetracks.

29. In violation of their duties to Pimlico and Laurel, De Francis and Jacobs have given Mango an equity interest in D/J Track Consultants and have announced that their entity will now be known as D/J/M Track Consultants. De Francis and Jacobs have also requested or required that Mango travel to Texas to assist the Lone Star application. Mango has spent Pimlico's and Laurel's time in these efforts. Upon information and belief, De Francis and Jacobs encouraged Mango to leave Pimlico and Laurel when the Lone Star application was approved.

30. The successful operation of Laurel and Pimlico, brought about through the efforts of the Manfusos and Frank J. De Francis, involved setting up numerous management systems, the installation of marketing programs and techniques, and the use of other technical and proprietary matters, all of which constitute assets of Pimlico and Laurel. Upon information and belief, Jacobs and De Francis have disclosed or will disclose to Lone Star proprietary, confidential matters belonging to Pimlico and Laurel without either entity receiving fair or adequate consideration therefor.

31. De Francis and Jacobs have failed and refused to refund monies expended by Pimlico and Laurel for Lone Star's benefit, despite demand by the Manfusos.

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B. ACCESS TO INFORMATION -- ACCOUNTING PRACTICES

32. De Francis and Jacobs appear to have approved of various bookkeeping and accounting irregularities respecting the operations of Pimlico and Laurel, including adjustments that benefitted Laurel to Pimlico's detriment. For example:

(a) During 1990, De Francis and Jacobs caused Pimlico to transfer to Laurel 100% of the revenue from thirteen racing days running from February 1, 1990, through February 16, 1990. The Maryland Racing Commission assigned 134 racing days to Pimlico and 130 racing days to Laurel; however, because of the actions of De Francis and Jacobs, Pimlico received income for only 121 racing days, while Laurel received income for 143 racing days.

(b) In 1989, an error occurred in the calculation of the amount of certain fees that Laurel had charged to Pimlico. Correcting the error benefitted Laurel by increasing the charge to Pimlico by $137,053.93. With the auditors' concurrence, De Francis and Jacobs decided that the adjustment was immaterial to Laurel's 1990 financial statement. Consequently, the auditors recorded the adjustment in Laurel's 1990 financial statement, not in a restated financial statement for 1989. By contrast, a similar error occurred in the previous year, 1988; however, the 1988 error would

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have benefitted Pimlico by reducing the charge to Pimlico by $44,516.00. The 1988 error was also considered immaterial, but it was never recorded anywhere in Laurel's books, presumably because correcting the error would have benefitted Pimlico to Laurel's detriment.

(c) De Francis and Jacobs have directed that many expenses, such as officer's salaries, administrative salaries, telephone expenses, office supplies, etc., be allocated evenly between Pimlico and Laurel. That method of allocation benefits Laurel to Pimlico's detriment because Laurel has many more racing days than Pimlico.

(d) In 1989, $130,000.00 in contribution expenses was allocated to Laurel, while $124,000.00 was allocated to Pimlico. In 1990, however, only $127,000.00 in contribution expenses was allocated to Laurel, while $215,000.00 was allocated to Pimlico. This gross discrepancy in the allocation of contribution expenses does not comport with De Francis's and Jacobs's actions in purportedly dividing other expenses "evenly" between Pimlico and Laurel.

(e) Pursuant to the Stockholders Agreement, the Manfusos are to receive specified amounts in severance pay. De Francis and Jacobs have caused the Manfusos' severance

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payments to be charged exclusively to Pimlico. De Francis and Jacobs have done so, moreover, notwithstanding that the 1989 financial statement for Pimlico and Laurel indicates that the payments should be evenly allocated between the two, notwithstanding that Jacobs confirmed the principle of equal allocation in a letter to the corporations' auditors dated March 13, 1990, and notwithstanding that De Francis also confirmed the principle of equal allocation in a letter to Louis P. Guida dated June 21, 1990.

33. De Francis and Jacobs have also caused PRA and Laurel to issue misleading financial statements to the Maryland Racing Commission and to the racetracks' senior lender. Although the financial statements list figures for "officers' salaries," those figures make no mention of substantial additional compensation received by De Francis and Jacobs.[4] Nor do the financial statements list loans to officers in material amounts. The financial statements also artificially inflate racing revenues for fiscal year 1991, since approximately $300,000.00 in income received as a result of a developer's default on a contract to purchase land adjacent to Bowie Racecourse was included in racing revenue and not separately listed.

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[4] Those undisclosed items of compensation are lumped together with other employees' salaries and designated as "office salaries" in the financial statements.

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34. Because of their concern about the accounting and bookkeeping irregularities and the misleading financial statements, the Manfusos have requested to speak to the independent auditors for Pimlico and Laurel. Although the Manfusos are directors of both Pimlico and Laurel, De Francis and Jacobs have refused to permit the independent auditors to meet with the Manfusos or their agents.

VI. STANDING

35. As the Court has already established, the Manfusos have standing to bring this action by virtue of their status as parties to the Stockholders Agreement. Furthermore, the Manfusos submit that they have standing to bring some or all of this action by virtue of their status as directors of Pimlico and Laurel.

VII: COUNT ONE -- DECLARATORY RELIEF

36. The Manfusos reallege each and every allegation in paragraphs 1 through 35 of this complaint as if those allegations appeared in full in this paragraph.

37. De Francis and Jacobs have breached fiduciary and other duties and have thereby inflicted damage upon Pimlico and Laurel and upon the Manfusos.

38. The Manfusos have the right and the responsibility to prevent De Francis and Jacobs from breaching their duties and from damaging Pimlico, Laurel, and the Manfusos.

39. Nevertheless, De Francis and Jacobs claim that the

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"standstill" provision of the Stockholders Agreement prevents the Manfusos from seeking the Court's assistance to enjoin the breaches of duty alleged in this complaint. The Manfusos, on the other hand, believe that the Stockholders Agreement neither does nor legally can prevent them from acting to remedy the breaches of duty by others.

40. An actual controversy exists between the parties, because the abuses will continue unchecked unless the Court permits the Manfusos to remedy the breaches of duty through this action.

WHEREFORE, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., request that the Court:

(a) declare:

(1) that the Stockholders Agreement does not prevent the plaintiffs from seeking the Court's assistance in remedying the breaches of duty as described above;

(2) that, at the plaintiffs' behest, the Court may grant injunctive relief to redress breaches of duty by the defendants; and

(3) that the matters alleged in this complaint do in fact constitute breaches of duty by defendants Joseph A. De Francis and Martin Jacobs;

(b) order a speedy hearing of this action and advance it on the calendar in accordance with § 3-409 of the Courts and Judicial Proceedings Article; and

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(c) grant such other and further relief as may appear just and proper.

VIII. COUNT TWO -- INJUNCTIVE RELIEF

41. The Manfusos reallege each and every allegation in paragraphs 1 through 40 of this complaint as if those allegations appeared in full in this paragraph.

42. The breaches of duty alleged in this complaint threaten the integrity and the existence of Pimlico and Laurel. Consequently, those abuses pose a substantial threat of irreparable injury to the Manfusos as shareholders in Pimlico and Laurel and as parties to the Stockholders Agreement.

43. The Manfusos have no adequate remedy at law to redress the injury that they will suffer unless the Court permanently enjoins De Francis and Jacobs from engaging in the breaches of duty abuses alleged in the complaint.

WHEREFORE, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., request that the Court:

(a) enter a permanent injunction:

(1) barring defendants Joseph A. De Francis and Martin Jacobs from diverting the resources, key employees, or confidential and proprietary information of Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc.; and

(2) requiring defendants Joseph A. De Francis and

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Martin Jacobs to permit the plaintiffs and their agents to meet with the accountants for Laurel Racing Assoc., Inc., The Maryland Jockey Club of Baltimore City, and Pimlico Racing Association, Inc.; and

(b) grant such other and further relief as may appear just and proper.

IX. COUNT THREE -- BREACH OF CONTRACT

44. The Manfusos reallege each and every allegation in paragraphs 1 through 43 of this complaint as if those allegations appeared in full in this paragraph.

45. The Stockholders Agreement provided that the Manfusos were to serve as officers and employees of Pimlico and Laurel. Pursuant to the Stockholders Agreement, the Manfusos were to receive their current salary and other benefits so long as each continued to devote substantially all of his normal working time to his employment with Laurel and Pimlico (as in the past) and continued to perform duties substantially similar to those being performed at the time of the Stockholders Agreement.

46. The Stockholders Agreement also provided that the Manfusos could terminate their employment at any time and thereby each receive a termination payment of One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00),[5] monthly

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[5] The Manfusos contributed $2,500,000.00 for the purchase of Pimlico. Frank De Francis was credited with a $2,500,000.00 contribution for the purchase of Pimlico in lieu of a commission for securing a non-recourse loan. Under § IV.A.4. of the Stockholders Agreement, De Francis had the right

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severance payments of Ten Thousand Four Hundred Sixteen Dollars and Sixty-Seven Cents ($10,416.67) until October 1993, and continued health insurance premium payments until October 1993.

47. After the formulation of the Stockholders Agreement, the Manfusos elected to exercise their right to retire and terminate their employment with Laurel and Pimlico as of May 31, 1990.

48. The defendants, without right or justification, have purported unilaterally to withdraw various benefits to which the Manfusos have a contractual right under the Stockholders Agreement. In so doing, the defendants have materially breached the Stockholders Agreement.

49. As a result of the defendants' material breach of the Stockholders Agreement, the Manfusos have suffered and will suffer damages in the amount of at least Three Hundred Thirty-Three Thousand Three Hundred and Thirty-Three Dollars and Forty-Four Cents ($333,333.44).

WHEREFORE, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., request the Court to enter judgment against all of the defendants in the amount of at least Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Forty-Four Cents ($333,333.44), award them interest, the costs of this

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to receive a payment in the amount $2,500,000.00 when the Manfusos received their termination payments. Under the same provision of the Stockholders Agreement, Jacobs had the right to receive $300,000.00 when the Manfusos received their termination payments.

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action, and their attorneys' fees, and afford such other and further relief as may appear just and proper.

X. COUNT FOUR -- DECLARATORY RELIEF

50. The Manfusos reallege each and every allegation in paragraphs 1 through 49 of this complaint as if those allegations appeared in full in this paragraph.

51. Sections I.C and I.D. of the Stockholders Agreement constitute the so-called "Russian Roulette" provisions. Those provisions generally provide as follows:

(a) Under § I.C, on or after October 1, 1993, the Manfusos may tender their shares to the corporations at a price known as the "Transfer Price."

(b) Under § I.C, De Francis and Jacobs also may tender their shares to the corporations at the Transfer Price on or after October 1, 1993.

(c) Under § I.D.2(b), if the corporations decline to accept the tender, then the members of the non-tendering group must decide within another thirty (30) days whether to

(1) to purchase the stock of the tendering group at the Transfer Price or

(2) to tender their stock to the corporation at the Transfer Price.

(d) If the members of the non-tendering group elect to tender their stock to the corporations at the Transfer

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Price, then, under § I.D.2(b), the corporations will have another thirty (30) days to decide whether to accept the tender, with the non-tendering group being obliged to vote its shares in accordance with the wishes of the tendering group.

52. The Russian Roulette provisions have the effect of permitting the Manfusos either to buy out or be bought out by De Francis and Jacobs at the Transfer Price on or after October 1, 1993. The Russian Roulette provisions have the like effect of permitting De Francis and Jacobs either to buy out or be bought out by the Manfusos at the Transfer Price on or after October 1, 1993.

53. De Francis has made statements indicating that he intends to use this lawsuit as a pretext for delaying the date when the Russian Roulette provisions may take effect. Specifically, De Francis has stated privately that he intends to drag out this lawsuit as long as possible so that the Russian Roulette provisions cannot begin to take effect on October 1, 1993, per the terms of the Agreement. De Francis's strategy, if successful, conceivably could result in delaying the ultimate effect of the Russian Roulette provisions until well beyond the timing for closing contemplated by the Agreement, i.e., "one hundred twenty (120) days from the date of mailing the written notice of original tender."[6]

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[6] Stockholders Agreement, § I.D(2)(b).

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54. De Francis has made public statements indicating that he does not intend to abide by the Russian Roulette provisions. For example, in The Sun on Sunday, January 2, 1993, De Francis was quoted as saying, "There is no more Russian roulette deal." The Sun continued as follows:

> That's my legal position. The agreement I had with the Manfusos is null and void. Anybody waiting for something exciting to happen is going to be disappointed. Nothing is going to happen in October other than the Maryland Million and the Budweiser International.

55. Upon information and belief, Jacobs, like De Francis, intends to take the position that he need not abide by his obligations under the Russian Roulette provisions on or after October 1, 1993.

56. In support of their apparent position that they need not abide by the Russian Roulette provisions, De Francis and Jacobs contend that the Manfusos "fraudulently induced" them to sign the Stockholders Agreement and that the Manfusos have "breached" the Stockholders Agreement through the conduct alleged in Counts I and II of De Francis's and Jacobs's counterclaim.

57. Throughout these proceedings, the Manfusos have consistently and emphatically denied the plainly ludicrous allegation that they fraudulently induced De Francis and Jacobs to enter into the Stockholders Agreement. Throughout these proceedings, the Manfusos also have consistently and

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emphatically denied that they have in any way breached the Stockholders Agreement.

58. In any event, De Francis and Jacobs, through their own conduct, have ratified the Shareholders Agreement, waived the right to assert any claims of "breach" or "fraudulent inducement," or estopped themselves from asserting any such claims. The conduct in question includes the continued acceptance of a compensation package at a rate of approximately One Million Dollars ($1,000,000.00) annually for De Francis and members of the De Francis family, subject to certain limitations.[7] Furthermore, under the Stockholders Agreement, Jacobs has continued to accept a compensation package of over Four Hundred Thousand Dollars ($400,000.00) annually. Simply put, De Francis and Jacobs cannot accept enormous benefits such as these under the Stockholders Agreement while flaunting their obligations thereunder and (in De Francis's case) publicly stating that the Agreement is "null and void."

59. Under § 3-406 of the Courts and Judicial Proceedings Article, the Manfusos are persons interested under a contract,

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[7] As secretary of PRA and Laurel, De Francis's sister, Karin Van Dyke, receives $60,000.00 annually plus benefits; Robert Van Dyke, her husband and De Francis's brother-in-law, is reported to receive an annual salary of $100,000.00 plus various benefits.

Section VI.A.5. of the Stockholders Agreement limits De Francis and family to the highest annual compensation payments paid to the Manfusos before the termination of their employment, with subsequent increases in compensation not to exceed 9% per annum.

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namely, the Russian Roulette provisions of the Stockholders Agreement. Hence, under § 3-406, the Manfusos may have determined any question of construction of validity arising under those provisions, including the question of whether De Francis and Jacobs must comply with the Russian Roulette provisions on and after October 1, 1993.

WHEREFORE, plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., request that this Court:

(a) declare that defendants Joseph A. De Francis and Martin Jacobs must fully comply with §§ I.C. and I.D. of the Stockholders Agreement on and after October 1, 1993;

(b) order a speedy hearing of this action and advance it on the calendar in accordance with § 3-409(e) of the Courts and Judicial Proceedings Article; and

(c) grant such other and further relief as may appear just and proper.

Andrew Jay Graham

Kevin F. Arthur

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

Dated: March 5, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 1993, I sent a copy of Plaintiffs' Third Amended Complaint for Declaratory and Injunctive Relief and for Damages by hand-delivery to:

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

any by first-class mail, 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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Exhibit A

STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (the "Agreement") is dated as of October 1, 1989, by and among THE ESTATE OF FRANK J. DeFRANCIS (the "Estate"), JOSEPH A. DeFRANCIS ("Joseph DeFrancis"), JOHN A. MANFUSO, JR. ("John Manfuso"), ROBERT T. MANFUSO ("Robert Manfuso"), MARTIN JACOBS ("Jacobs"), PIMLICO RACING ASSOCIATION, INC. ("Pimlico"), THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC., also known as The Maryland Jockey Club of Baltimore City ("Maryland Jockey Club"), and LAUREL RACING ASSOC., INC. ("Laurel"), (the Maryland Jockey Club, Pimlico, and Laurel are sometimes hereinafter collectively referred to as the "Corporations" and sometimes individually referred to as "Corporation", and John Manfuso and Robert Manfuso are sometimes hereinafter collectively referred to as the "Manfusos").

W I T N E S S E T H:

WHEREAS, the authorized and issued stock of the Corporations is comprised of voting and non-voting stock (collectively, the "Stock"); and

WHEREAS, Frank J. DeFrancis owned a controlling interest in the voting Stock of the Corporations; and

WHEREAS, the Stock owned by Frank J. DeFrancis is now held by the Estate; and

WHEREAS, Joseph DeFrancis is the designated successor-in-interest to the controlling interest in the Stock of the Corporations formerly owned by Frank J. DeFrancis and now held by

the Estate (the Estate and Joseph DeFrancis are hereinafter collectively hereafter referred to as "DeFrancis"); and

WHEREAS, Joseph De Francis is the owner of shares of Stock of Pimlico by virtue of his interest in the De Francis Family Partnership which terminated by operation of law upon the death of Frank J. De Francis and thereupon his interest passed directly to him; and

WHEREAS, the Manfusos and Jacobs are the owners of certain of the shares of Stock; and

WHEREAS, all of the authorized and issued Stock of Pimlico and Laurel is owned by the Stockholders (as hereinafter defined) in the following amounts:

Pimlico

Number of Shares of Capital Stock

Stockholder	Class A (Voting)	Class B (Non-Voting)	Total
DeFrancis	550	4,150	4,700
Robert Manfuso	210	2,140	2,350
John Manfuso	210	2,140	2,350
Jacobs	30	570	600
	1,000	9,000	10,000

Laurel

Number of Shares of Capital Stock

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

WHEREAS, the Corporations are engaged, directly or indirectly, in the business of horse racing in the State of Maryland through the operation of racing facilities at Laurel and Pimlico Race Courses and training facilities at Bowie Race Course (hereinafter collectively referred to as the "Racing Facilities"); and

WHEREAS, DeFrancis, John Manfuso, Robert Manfuso, and Jacobs (hereinafter collectively referred to as the "Stockholders") wish to provide for the continued orderly operation of the Corporations and the Racing Facilities.

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

I. MANDATORY BUY/SELL OF STOCK

A. In the event that Joseph DeFrancis dies or becomes permanently incapacitated within four years of October 1, 1989 (the "Four-Year Anniversary"), the estate of Joseph DeFrancis will consult with John Manfuso and Robert Manfuso regarding the choice of a successor to Joseph DeFrancis as President, Chief Executive Officer, and Co-Chairman of the Board of the Corporations. If the estate of Joseph DeFrancis is unable to agree with at least one of the Manfusos as to such successor within twelve months of the death or permanent incapacity of Joseph DeFrancis, then the estate of Joseph DeFrancis, on the one hand, or the Manfusos, on the other, may invoke the mandatory buy/sell provisions as set forth in Section I-D below. The provisions of this Section I-A are personal to John Manfuso and

Robert Manfuso and shall not survive their death or the transfer of all or substantially all of the Stock owned by either of the Manfusos to any party. For example, if Joseph DeFrancis dies or becomes permanently incapacitated, his estate must confer with the Manfusos regarding a successor, but the estate of Joseph DeFrancis shall have no obligation to confer with the estates of either Manfuso.

B. In the event that Joseph DeFrancis determines to take affirmative action to effectuate any Major Matter (as defined in Section XI hereinbelow) and both John Manfuso and Robert Manfuso disagree with such action, then after giving written notice, Joseph DeFrancis, on the one hand, or the Manfusos, on the other, may invoke the mandatory buy/sell provisions as set forth in Section I-D below.

C. At any time after the Four-Year Anniversary, Joseph DeFrancis, on the one hand, or the Manfusos, on the other, may invoke the mandatory buy/sell provisions as set forth in Section I-D below.

D. Upon the occurrence of the events described in Sections I-A, I-B, or I-C above, the Stockholders may invoke and put into effect a mandatory buy/sell of the Stock on the following terms:

1. DeFrancis and Jacobs (the "DeFrancis Group") or John Manfuso and Robert Manfuso (the "Manfuso Group") may by written notice tender ("Original Tender") all of its Stock to the Corporations for any price as stated in such notice (the "Transfer Price"); provided, however, that (a) only DeFrancis can

initiate such a tender for the DeFrancis Group, but once such a tender is made, all of the Stock of DeFrancis and Jacobs must and shall be tendered, and (b) either John Manfuso or Robert Manfuso can initiate such a tender for the Manfuso Group, but once such a tender is made, all of the Stock of both Manfusos must and shall be tendered; and provided further that all of the Stock now owned by the DeFrancis Group or the Manfuso Group is included in these mandatory buy/sell provisions and is subject to the provisions of this Section I-D, regardless of the subsequent ownership of such Stock, except that if any of the Stock of any of the Stockholders is sold to an unrelated third party, these mandatory buy/sell provisions shall not apply to such Stock.

2. (a) Upon the receipt of the Original Tender of the Stock, the Corporations, within sixty (60) days of the receipt of such tender, must determine whether they will purchase the Stock of the tendering Group at the Transfer Price. In making the determination pursuant to this Section I-D(2)(a) whether the Corporations will purchase the Stock of the tendering Group, the Stockholders in the tendering Group shall vote their Stock in accordance with the wishes of the Stockholders in the non-tendering Group. If any of the Corporations shall not have sufficient surplus to permit it lawfully to purchase all of its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3), then all of the Stockholders, including the Estate, shall promptly vote their respective shares of Stock in each Corporation to cause each Corporation, if required, to reduce its capital or to take such other steps as

may be appropriate or necessary to enable each Corporation lawfully to purchase and pay for its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3). However, no Stockholder shall be obligated or required to contribute any personal funds in connection with any such action or steps.

(b) If the Corporations determine that they will not purchase the Stock of the tendering Group, then such Stock shall then be immediately thereafter tendered to the non-tendering Group. The non-tendering Group must, within ninety (90) days of the Original Tender to the Corporations, either, at its option, (i) purchase the Stock of the tendering Group at the Transfer Price, or (ii) offer to sell all of its Stock to the Corporations at the Transfer Price. In the event that the non-tendering Group elects to sell its own Stock to the Corporations at the Transfer Price, the Corporations must determine within one hundred and twenty (120) days of the Original Tender to the Corporation whether they will purchase the Stock of the non-tendering Group at the Transfer Price. In making the determination pursuant to this Section I-D(2)(b) whether the Corporations will purchase the Stock of the non-tendering Group, the Stockholders in the non-tendering Group shall vote their Stock in accordance with the wishes of the Stockholders in the tendering Group. If any of the Corporations shall not have sufficient surplus to permit it lawfully to purchase all of its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3), then all of the Stockholders, including the Estate, shall promptly

vote their respective shares of Stock in each Corporation to cause each Corporation, if required, to reduce its capital or to take such other steps as may be appropriate or necessary to enable each Corporation lawfully to purchase and pay for its respective Stock under the terms and conditions of this Section I-D(2) and Section I-D(3). However, no Stockholder shall be obligated or required to contribute any personal funds in connection with any such action or steps. If the Corporations determine that they will not purchase the Stock of the non-tendering Group, then the tendering Group shall be obligated to purchase at the Transfer Price such Stock or any part thereof unpurchased by the Corporations not later than one hundred and twenty (120) days after the Original Tender to the Corporation.

3. Such sale of Stock by either the tendering or non-tendering Group shall be effected on the following terms:

(a) The purchasing party must pay 20% of the price of such Stock in immediately available funds.

(b) The purchasing party shall pay the remaining 80% of the purchase price of such Stock in five equal annual installments; provided, however, that the purchasing party shall have the right, at any time, to accelerate payment for the remaining portion of the Stock. In addition, the purchasing party shall execute a Promissory Note in a form substantially similar to Exhibit 1 hereto evidencing the obligation for payment of the remaining 80% of the purchase price of such Stock, which Note shall bear interest on the unpaid

balance of the Stock at the prime rate of interest established, and as modified from time to time, by First National Bank of Maryland, payable quarterly with interest calculated at the aforesaid established rate as it exists ten (10) days before the due date of any interest payment. Regardless whether the Corporations or the DeFrancis Group or the Manfuso Group purchases the Stock, the Promissory Note shall be secured by a pledge of the Stock and shall provide for the personal liability of all Stockholders not in the selling party and for the personal liability of the spouse, if any, of each of such Stockholders, which liability shall be assumed solely in proportion to the relative Stock ownership of such Stockholders calculated after the purchase of such Stock.

(c) The purchasing party will use best efforts to have the Stockholders of the selling party removed from and absolved of any personal liability for the debts of the Corporations. If personal liability of the Stockholders of the selling party is not so removed, the purchasing party shall indemnify Stockholders of the selling party for such personal liability.

(d) The closing of the sale of Stock hereunder shall take place within one hundred and twenty (120) days from the date of mailing the written notice of the Original Tender provided for under

Section I-D(1) at the executive offices of Laurel Race Track, Laurel Race Track Road and Route 198, Laurel, Maryland 20707 (the "Laurel Offices").

(e) In the event of the sale of all or substantially all of the Stock of the Corporations by the purchasing party to any unrelated third party, or upon the sale of all or substantially all of the assets of the Corporations to any party unrelated to the purchasing party, the unpaid balance of such Promissory Note together with the accrued interest thereon shall be immediately due and payable.

II. STOCK PURCHASE AS A RESULT OF DEATH OR PERMANENT INCAPACITY

A. Upon the death or permanent incapacity of Joseph DeFrancis, his legal representative or his estate shall have the right, at his or its discretion, to "put" the Stock owned by the DeFrancis Group to the Corporations on the terms provided in this Section II; upon the death or permanent incapacity of either John Manfuso or Robert Manfuso, either John Manfuso or Robert Manfuso, or the estate of either Manfuso, or the legal representative of either Manfuso, shall have the right, at his or its discretion, to "put" the Stock owned by the Manfuso Group to the Corporations on the terms provided in this Section II; provided, however, that (a) only the legal representative or estate of Joseph DeFrancis may decide whether to put the Stock owned by the DeFrancis Group, but once such a put is made, all of the Stock of DeFrancis and Jacobs must and shall be put, and (b) either John Manfuso or

Robert Manfuso (or the legal representative or estate of either) may decide whether to put the Stock owned by the Manfuso Group, but once such a put is made, all of the Stock of both Manfusos must and shall be put.

B. Such a put by either the DeFrancis Group or the Manfuso Group shall be executed on the following terms:

1. The purchase price for the Stock shall be determined by establishing the average of the "net cash flow" for Pimlico (on a consolidated basis with the Maryland Jockey Club) and Laurel (taking into account 50% of the "net cash flow" of Laurel Racing Association Limited Partnership) for the three years immediately preceding the "put." For purposes of this Agreement, "net cash flow" shall mean income before income taxes, per audited annual financial statements for the three previous annual periods, exclusive of extraordinary income and extraordinary costs (including improvements and betterments) and expenses, less provision for income taxes at corporate rates computed without net operating loss carryovers, to which (a) shall be added depreciation, and (b) shall be subtracted principal payments on indebtedness and cash payments on such extraordinary costs (including improvements and betterments) and such extraordinary expenses, amortized over three years. The average "net cash flow" shall be determined by adding "net cash flow" for each of the three years immediately preceding the put and dividing by 3, and the average "net cash flow" number so derived shall then be multiplied by 5, which product shall be the "net cash flow product". To or from this net cash flow product

shall then be (x) added any extraordinary income for the three years, net of income taxes at corporate rates computed without net operating loss carryovers, to the extent not distributed, and (y) subtracted any deductions which may occur pursuant to Section III-B and Section VI-A (4) of this Agreement. The resulting total shall be the "valuation total".

2. The purchase price for the Stock which is "put" shall be determined by multiplying the "valuation total" by the percentage that the Stock which is put represents of the total of all the Stock. For example, if the Manfuso Group "puts" Stock representing 40% of the total of all the Stock, and the "valuation total" is $30,000,000, then the purchase price for the Stock "put" by the Manfuso Group shall be (.40) x ($30,000,000) = $12,000,000.

3. The "put" option as described in this Section II must be exercised, on the one hand, by Joseph DeFrancis (or his estate or legal representative) within ninety (90) days of the death or permanent incapacity of Joseph DeFrancis, and on the other hand, by John Manfuso or Robert Manfuso (or the estate or legal representative of either) within ninety (90) days of the death or permanent incapacity of John Manfuso or Robert Manfuso. If the "put" option is not so exercised within ninety (90) days, it shall expire; provided, however, that if the "put" right for one Manfuso is not so exercised within ninety (90) days, the "put" right for the other Manfuso shall not thereby be extinguished.

4. Payment for the Stock "put" to the Corporation pursuant to this Section II shall be made in cash within one hundred eighty (180) days of the exercise of the "put" option.

5. If the Corporation declines to purchase the Stock which is "put" pursuant to this Section II, then the remaining Stockholders must purchase such Stock on a pro rata basis in accordance with the terms of this Section II.

6. Any "put" pursuant to this Section II by either the DeFrancis Group or the Manfuso Group must and shall include all of the Stock of such Group. The right to purchase, pursuant to a "put", all of the Stock of the DeFrancis Group or the Manfuso Group shall apply to all the Stock now owned by DeFrancis, John Manfuso and Robert Manfuso, and shall be binding upon subsequent owners of such Stock, with the exception of Stock which is transferred to an unrelated third party, which Stock shall not be included in any such put. Thus, for example, if Joseph DeFrancis transfers a portion of his Stock to a Related Party (as hereinafter defined) and, upon the death of Joseph DeFrancis, the estate of Joseph DeFrancis "puts" the Stock it holds pursuant to this Section II, the Manfuso Group shall have the right to purchase the Stock owned by such Related Party. Likewise, if the Manfusos transfer a portion of their Stock to a Related Party, and, upon the death of one of the Manfusos, the estate of such Manfuso "puts" the Stock it holds pursuant to this Section II, the DeFrancis Group shall have the right to purchase all of the Stock now owned by both Manfusos including the Stock owned by such Related Party.

7. The closing of the said "put" Stock to be purchased by the remaining Stockholders hereunder shall take place sixty (60) days from the date the Corporation declines to purchase the Stock which is "put" pursuant to this Section II at the Laurel Offices.

III. BENEFIT PAYABLE UPON DEATH OR PERMANENT INCAPACITY

A. Upon the death or permanent incapacity of any of Joseph DeFrancis, John Manfuso, or Robert Manfuso, within sixty (60) days each of the Stockholders shall receive a benefit payment in the following amounts:

1. $2,500,000 to Joseph DeFrancis,
2. $1,250,000 to John Manfuso,
3. $1,250,000 to Robert Manfuso,
4. $300,000 to Jacobs.

B. If the "put" option described in Section II above is or has been exercised by a Stockholder or Stockholder's representative as a result of the death or permanent incapacity of Joseph DeFrancis, John Manfuso, or Robert Manfuso, the amount of the total benefit payment to all Stockholders (i.e., $5,300,000) shall be subtracted from the "net cash flow product" as described in Section II above in calculating the "valuation total" for the purchase price of the Stock which is "put".

IV. PIGGYBACK RIGHTS AND OBLIGATIONS

A. Joseph DeFrancis agrees that he will not, during his lifetime, sell any of the Stock owned by DeFrancis to any unrelated third party or the Corporations nor will any Stock owned by the Estate be sold by the Estate unless (a) DeFrancis

shall have obtained an agreement from the proposed purchaser granting John Manfuso, Robert Manfuso and Jacobs an option to sell or dispose of an equal percentage of the Stock owned by John Manfuso, Robert Manfuso and Jacobs at the same time and on the same terms and conditions as exist with respect to the proposed sale of the Stock owned by DeFrancis, and (b) John Manfuso and Robert Manfuso have been offered and have declined to exercise their rights of first refusal as provided in Section V of this Agreement.

B. If Joseph DeFrancis obtains such an agreement as described in Section IV-A hereof for the sale of his own Stock as well as the Stock owned by John Manfuso, Robert Manfuso and Jacobs, and if Joseph DeFrancis sells all or substantially all of the Stock owned by DeFrancis pursuant to such an agreement, then John Manfuso, Robert Manfuso and Jacobs must also sell under the agreement an equal aggregate percentage of the Stock which they own. If, however, Joseph DeFrancis sells less than substantially all of the Stock owned by DeFrancis pursuant to such an agreement, then John Manfuso, Robert Manfuso and Jacobs shall have the right, but not the obligation, to sell an identical aggregate percentage of the Stock which they own.

C. The provisions of this Section IV shall also apply to any Stock owned by any party which is a Related Party to any of the Stockholders.

V. RIGHT OF FIRST REFUSAL

A. In the event that any Stockholder receives an offer that he is willing to accept for the purchase of his Stock

by an unrelated third party, the other Stockholders shall have a right of first refusal to purchase such Stock on the same terms and conditions as offered by the third party; provided, however, that any Stockholder purchasing Stock under this Section V-A may elect to pay the purchase price in installments and on the terms as set forth above in Section I-D(3)(a), (b), (c) and (d).

B. The right of first refusal described in Section V-A above shall not apply to a sale or other transfer by any party to a Related Party.

C. The rights and obligations of this Section V shall attach to the Stock now owned by each of the Stockholders, and shall be binding upon any subsequent owner of such Stock; provided, however, that any Stock transferred to an unrelated third party after being offered to other Stockholders pursuant to the provisions of this Section V shall no longer be subject to the provisions of this Section V.

VI. EMPLOYMENT AGREEMENTS WITH JOHN MANFUSO AND ROBERT MANFUSO

A. The Corporations shall execute Employment Agreements with John Manfuso and Robert Manfuso on the following terms:

1. John Manfuso and Robert Manfuso shall each receive his current salary and other benefits so long as each continues to devote substantially all of his normal working time to his employment (as in the past) with the Corporations and continues to perform duties substantially similar to those currently being performed.

2. John Manfuso and Robert Manfuso shall each be employed by the Corporations and shall be permitted, without interference from the Corporations, to continue to perform the duties assigned to him by the Corporations. So long as John Manfuso and Robert Manfuso continue to perform duties substantially similar to those currently being performed and continue to devote substantially all of their working time to their employment (as in the past) with the Corporations, and so long as there is no material breach in performance of duties by John Manfuso and Robert Manfuso (which breach John Manfuso or Robert Manfuso will be given a reasonable opportunity to cure), there will be no reduction in the salaries or other benefits of John Manfuso or Robert Manfuso unless there is a pro rata reduction applicable to the Manfusos and Joseph DeFrancis. No such material breach by John Manfuso or Robert Manfuso shall be considered to occur through the reduction by the Corporations of the duties assigned to John Manfuso or Robert Manfuso.

3. In the event that total compensation payments to Joseph DeFrancis and members of his family are equal to the total compensation payments to both of the Manfusos, the Manfusos' compensation payments shall be increased on a pro rata basis in an amount equal to any further increases in the compensation payable to Joseph DeFrancis and members of his family. In the event that either John Manfuso or Robert Manfuso is no longer actively employed, such pro rata increase shall only apply if the total compensation payable to Joseph DeFrancis and members of his

family is equal to twice the amount of compensation payable to whichever Manfuso is still actively employed.

4. Either John Manfuso or Robert Manfuso, or both, may terminate his employment at any time. Upon the termination of the employment of John Manfuso or Robert Manfuso for any reason, the Manfuso whose employment is terminated shall receive a termination payment of $1,250,000. If termination occurs prior to the Four-Year Anniversary, the terminating employee shall also be entitled to receive severance payments of $10,416.67 per month for each month remaining in the forty-eight month period commencing with the execution of this Agreement and shall be entitled to continued health insurance premium payments for each month remaining in such forty-eight month period. In the event of such termination, the terminating employee (either John Manfuso, Robert Manfuso, or both) shall not be entitled to benefits payable upon death or incapacity as provided in Section III-A above. In the event either John Manfuso or Robert Manfuso terminates his employment and receives aforesaid termination payment, special payments shall be paid of $1,250,000 to DeFrancis and $150,000 to Jacobs, and the benefits payable to DeFrancis and Jacobs upon death or incapacity as set forth in Section III-A above shall be reduced by such amounts. In the event that termination payments are made pursuant to this Section VI-A(4), the amounts of such termination payments shall be subtracted from the "net cash flow product" as described in Section II above in calculating the "valuation total" for the purchase price of the Stock which is "put".

5. If, after the termination of active employment by either Manfuso, the total annual direct or indirect compensation payments to DeFrancis and the members of his family become equal to the highest annual total compensation payments which were payable to the Manfusos prior to the termination of employment of either Manfuso, any subsequent increase in compensation to DeFrancis and the members of his family, as a group, shall not exceed nine percent (9%) per annum.

6. The employment of John Manfuso or Robert Manfuso, or both, may be terminated for cause at any time, but such termination shall in no way affect the right of John Manfuso or Robert Manfuso to receive the termination payment as provided in this Section VI.

7. The Employment Agreements shall not survive the sale or other disposition of all or substantially all the Stock by the Stockholders or all or substantially all the assets of the Corporations. The Employment Agreement of either of the Manfusos shall not survive the sale or other disposition by him of all or substantially all of his Stock.

8. Each Employment Agreement shall terminate upon the respective death or permanent incapacity of John Manfuso and Robert Manfuso.

9. The Employment Agreements shall not guarantee future increases in salaries or benefits based upon the profitability of the Corporations or any other contingency.

B. All of the provisions of this Section VI, (including the provisions providing for payments) shall be in

full force and effect from and after the date of this agreement and shall constitute an employment agreement for each of the Manfusos until such time as substitute employment agreements shall be mutually agreed to and executed.

VII. EMPLOYMENT AGREEMENTS FOR JACOBS, O'DEA, AND MANGO

A. The Corporations shall execute Employment Agreements with Jacobs, Lynda J. O'Dea ("O'Dea"), and James P. Mango ("Mango") on the following terms:

1. Employee shall receive his/her current salary with normal increases as long as Employee continues to devote substantially all of his/her time to his/her employment and continues to perform duties substantially similar to those currently being performed. In the case of Jacobs, such salary shall include the amounts currently being paid to Ginsburg, Feldman and Bress Chartered for Jacobs' services but shall not include amounts paid to Ginsburg, Feldman and Bress Chartered for any other reason.

2. As long as Employee continues to devote substantially all of his/her time to his/her employment and continues to perform duties substantially similar to those currently being performed, and so long as there is no material breach in performance of duties by Employee (which breach Employee will be given a reasonable opportunity to cure), there will be no reduction in salary unless there is a pro rata reduction in the salaries paid to Joseph DeFrancis and to the Manfusos. No such material breach shall be considered to occur through the reduction by the Corporations of the duties assigned to Employee.

3. The Employment Agreements shall have ten (10) year terms, and shall not guarantee future increases in salaries or benefits based upon the profitability of the Corporations or any other contingency.

4. The employment of the Employees may be terminated for cause at any time.

5. The Employment Agreements with O'Dea and Mango may be terminated without cause at any time upon payment by the Corporations to the terminated Employee of an amount equal to thirty percent (30%) of the amounts which the Employee would have received in each of the years remaining in the ten-year term.

6. The Employment Agreements with Jacobs, O'Dea, and Mango will survive the sale of all or substantially all of the Stock or all or substantially all the assets of the Corporations. If the purchaser of the Stock or the assets does not agree to continue Employees' employment for the remainder of the ten-year term, the Corporations agree to pay such Employees thirty percent (30%) of the amounts which the Employees would have received in each of the years remaining in the ten-year terms.

VIII. POSITIONS AND TITLES

Joseph DeFrancis, John Manfuso, Robert Manfuso, and Jacobs shall have the following positions and titles:

A. Pimlico

1. Joseph DeFrancis: Director and Co-Chairman of the Board; President and Chief Executive Officer. The duties of DeFrancis shall be the same as previously undertaken by Frank J. DeFrancis, including full authority over operational and managerial decisions and policies, relations

		with the press, legislature and governmental authorities.
2.	John Manfuso:	Director and Co-Chairman of the Board; Executive Vice-President and Secretary.
3.	Robert Manfuso:	Director and Vice-Chairman of the Board; Executive Vice-President.
4.	Jacobs:	Director and Executive Vice-President and Treasurer.

B. Laurel

1.	Joseph DeFrancis:	Director and Co-Chairman of the Board; President and Chief Executive Officer. The duties of DeFrancis shall be the same as previously undertaken by Frank J. DeFrancis, including full authority over operational and managerial decisions and policies, relations with the press, legislative and governmental authorities.
2.	John Manfuso:	Director and Vice-Chairman of the Board; Executive Vice-President and Secretary.
3.	Robert Manfuso:	Director and Co-Chairman of the Board; Executive Vice President.
4.	Jacobs:	Director and Executive Vice-President and Treasurer.

C. Directorships.

As long as each of John Manfuso and Robert Manfuso shall own all or substantially all of the shares of Stock that he now owns and shall be wiling and able to serve, he shall continue to be elected a Director of each of the Corporations and, in addition, each shall be appointed to the position of Co-Chairman of the Board of Directors that he now occupies. If either of the Manfusos commits a material act of dishonesty, fraud, misrepresentation or other act of moral turpitude, or if he is

unable to serve due to permanent incapacity, he may be removed from such Boards of Directors but he shall in such event have the right to designate an individual (or successor to such individual) reasonably acceptable to Joseph De Francis in each case to replace him on such Boards of Directors. The provisions of this Paragraph C shall be applicable regardless of any contrary provisions of the Articles of Incorporation, By-Laws or minutes of shareholders or directors of the Corporation.

IX. RIGHTS AND OBLIGATIONS

A. Other Ventures. No party to this Agreement shall have any right or obligation to participate in any other business venture, of any kind whatsoever, with any other party to this Agreement; provided, however, that nothing in this Agreement shall preclude any party to this Agreement from entering into any business venture with any other party to this Agreement. The provisions of this Section IX-A shall attach to the Stock now owned by DeFrancis, John Manfuso, Robert Manfuso, and Jacobs and shall be binding upon any subsequent owner of such stock.

B. Survival. Except as otherwise expressly provided herein, no rights established pursuant to this Agreement shall survive the sale or other disposition of all or substantially all of the Stock owned by DeFrancis to unrelated parties or the sale or other disposition of all or substantially all of the Stock owned by John and Robert Manfuso to unrelated parties or the sale of all or substantially all of the assets of the Corporations to unrelated parties. As long as partial sales of Stock by DeFrancis, John Manfuso, and Robert Manfuso do not contravene the

provisions of this Agreement (including without limitation this Section IX-B), the rights and obligations established pursuant to this Agreement shall remain in effect.

C. Transferability. Any and all transfers of the Stock must include a written agreement, reasonably satisfactory to the other Stockholders, signed by the transferee of such Stock and expressly acknowledging that the transferee is acquiring the Stock subject to this Agreement and stating that the transferee will abide and be bound by the provisions of this Agreement. All shares of the Stock shall be appropriately legended to this Stockholders Agreement. Any transfer of the Stock that does not comply with this Section IX-C shall be null and void and of no effect.

X. STANDSTILL PROVISION

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

owned by the Stockholders and shall be binding upon any subsequent owner of such Stock.

XI. MAJOR MATTERS

A. DeFrancis shall keep the Manfusos currently informed about and apprised of all Major Matters. For purposes of this Agreement, "Major Matters" shall mean:

1. The sale of all or substantially all assets of the Corporations or Laurel Racing Association Limited Partnership;

2. Refinancing, other than the modification of existing debt or the replacement of existing debt with a like amount and on terms no more onerous than at present;

3. Additional financing;

4. Merger and/or acquisition; and

5. Purchase of substantial assets other than assets to be located at Pimlico Race Course, Laurel Race Course, or Bowie Race Course.

B. In the event that DeFrancis determines to take affirmative action to effectuate any Major Matter and both of the Manfusos disagree with such action, then the DeFrancis Group or the Manfuso Group may exercise the Mandatory Buy/Sell provisions as set forth in Section I hereof. The rights of John Manfuso and Robert Manfuso under this Section XI shall apply only to John Manfuso and Robert Manfuso (and, in the event of the death of either of them, to the personal representatives of their respective estates), and shall not be transferable to any other party.

XII. MISCELLANEOUS

A. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Family Members" shall mean parents, siblings, descendants, and spouses.

"Permanent Incapacity" shall mean the continuous and uninterrupted inability of a party to perform his duties described in Section VIII of this Agreement for a period of ninety (90) days or longer without a reasonable possibility of recovery.

"Related Parties" of a person shall mean that person, any entity controlled by such a person, any trust created by or for the benefit of such person, the estate of such person, such person's Family Members, entities controlled by such person's Family Members, and trusts for the benefit of such Family Members.

"Substantially all" of the Stock of a Stockholder shall mean eighty percent (80%) or more of any class of Stock owned by such Stockholder, including Stock owned by the Estate.

"Substantially all" of the assets of a Corporation shall mean 80% or more of the assets of such Corporation, which assets shall include racing rights (including Preakness rights) and real estate utilized in the operations of any of the race tracks.

B. Complete Agreement. This Agreement is the complete agreement among the parties and is the sole governing instrument concerning the subject matter. This Agreement

supersedes all prior agreements and understandings among the parties, written or oral, which may have related to the subject matter hereof in any way, including without limitation the Laurel Shareholders' Agreement.

C. Waiver. A party's failure at any time to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of each party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

D. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under the applicable law or rule in any jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegality and unenforceability in such jurisdiction, without invalidating the remainder of this Agreement in such jurisdiction or any provision hereof in any other jurisdiction.

E. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same Agreement.

F. Governing Law. This Agreement will be governed by and construed and enforced in accordance with the laws (but not the laws relating to choice or conflicts of laws) of the State of Maryland.

G. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

H. Notices. All notices, requests, demands and other communications under or in connection with this Agreement shall be in writing, and (a) if to the ESTATE OF FRANK J. DeFRANCIS, shall be addressed to:

Estate of Frank J. DeFrancis
c/o Joseph A. DeFrancis, Personal Representative
Laurel Race Course
Laurel Racetrack Road & Route 198
Laurel, Maryland 20725

Estate of Frank J. DeFrancis
c/o Alec P. Courtelis, Personal Representative
701 Brickell Avenue
Suite 1400
Miami, Florida 33131-2822

with a copy to:

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

(b) if to JOSEPH A. DeFRANCIS, shall be addressed to:

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

with a copy to:

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

(c) if to JOHN A. MANFUSO, JR., shall be addressed to:

John A. Manfuso, Jr.
8401 Connecticut Avenue
Chevy Chase, Maryland 20815

with a copy to:

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

(d) if to ROBERT T. MANFUSO, shall be addressed to:

Robert T. Manfuso
8401 Connecticut Avenue
Chevy Chase, Maryland 20815

with a copy to:

Herbert S. Garten, Esquire and
Sheldon C. Dagurt, Esquire
at the address provided above,

(e) if to MARTIN JACOBS, shall be addressed to:

Martin Jacobs
710 Belgrade Road
Silver Spring, Maryland 20902,

(f) if to THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC., PIMLICO RACING ASSOCIATION, INC., or to LAUREL RACING ASSOC., INC., shall be addressed to:

Joseph A. DeFrancis
Laurel Race Course
Laurel Racetrack Road & Route 198
Laurel, Maryland 20725

with a copy to:

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

All such notices, requests, demands or communications, shall be mailed, postage prepaid, certified mail, return receipt requested or delivered personally, and shall be sufficient and effective when delivered to or received at the address so specified. Any party may change the address at which it is to receive notice by like written notice to the other.

I. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors, personal representatives, heirs and assigns.

J. Voting of Stock. Each of the Stockholders shall vote his shares of Stock in compliance and consistent with the requirements of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[Signature Pages Follow]

THE ESTATE OF FRANK J. DeFRANCIS

By: Joseph A. DeFrancis (SEAL)
Title: Executor

By: Alec P. Courtelis (SEAL)
Title: Executor

(SEAL)
Joseph A. DeFrancis

(SEAL)
John A. Manfuso, Jr.

(SEAL)
Robert T. Manfuso

(SEAL)
Martin Jacobs

THE MARYLAND JOCKEY CLUB OF
BALTIMORE CITY, INC.

By: Joseph A. DeFrancis (SEAL)
Title: President

PIMLICO RACING ASSOCIATION, INC.

By: Joseph A. DeFrancis (SEAL)
Title: President

LAUREL RACING ASSOC., INC.

By: Joseph A. DeFrancis (SEAL)
Title: President

31 VR3

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY

ROBERT T. MANFUSO, et al.	*	IN THE
Plaintiffs	*	93 MAR CIRCUIT COURT
v.	*	FOR DIVISION
JOSEPH A. De FRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE147851

* * * * * * * * *

COUNTERDEFENDANTS' MOTION TO STRIKE
NOTICE OF VOLUNTARY DISMISSAL OF COUNT II OF COUNTERCLAIM

Counterdefendants Robert T. Manfuso and John A. Manfuso, Jr. ("the Manfusos"), by their undersigned attorneys, move to strike the "Notice of Voluntary Dismissal" filed by counterplaintiffs The Maryland Jockey Club of Baltimore City, Pimlico Racing Association, Inc. (collectively, "Pimlico"), and Laurel Racing Assoc., Inc. ("Laurel"). The grounds for this motion are as follows:

1. On or about January 15, 1993, Pimlico and Laurel filed a "Notice of Voluntary Dismissal," purporting to dismiss Count II of their counterclaim without prejudice; Count II is the only portion of the Pimlico-Laurel counterclaim that survived the Manfusos' motion to dismiss.

2. Under Md. R. 2-506(a), Pimlico and Laurel could dismiss Count II without the Manfusos' written consent only by filing a notice of dismissal before the Manfusos filed an answer or a motion for summary judgment.

3. On November 30, 1992, the Manfusos answered Count II of the Pimlico-Laurel counterclaim. In addition, on December 7,

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

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f:manfuso:ms-nvd

1992, the Manfusos moved for summary judgment on Count II of that counterclaim. Therefore, when Pimlico and Laurel filed their "Notice of Voluntary Dismissal" on or about January 15, 1993, they no longer had the right to dismiss their counterclaim without the Manfusos' written consent. Md. R. 2-506(a).

4. The Manfusos do not consent to the dismissal of the counterclaim without prejudice. Indeed, the attempted dismissal without prejudice amounts to nothing more than a device to forestall a ruling on the Manfusos' pending motion for summary judgment: Pimlico and Laurel did not file their "Notice of Voluntary Dismissal" until the expiration of the second extension of time for responding to the Manfusos' motion for summary judgment.

5. Under these circumstances, the Court should strike the unauthorized "Notice of Voluntary Dismissal" and enter summary judgment on Count II of the Pimlico-Laurel counterclaim in accordance with the Manfusos' unopposed motion.

Respectfully submitted,

Andrew Jay Graham

Andrew Jay Graham

Kevin F. Arthur

Kevin F. Arthur

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(410) 752-6030

kfa:3/4/93.3
f:manfuso:ms-nvd

Kramon & Graham, P.A.

Kramon & Graham, P.A.
Commerce Place
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030

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

Dated: March __, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 1993, I sent a copy of Counterdefendants' Motion to Strike Notice of Voluntary Dismissal of Count II of Counterclaim by hand-delivery to:

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

and by first-class mail, 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

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

kfa:3/4/93.3
f:manfuso:ms-nvd

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

* * * * * * * * *

ORDER

Upon consideration of Counterdefendants' Motion to Strike Notice of Voluntary Dismissal of Count II of Counterclaim, any opposition thereto, the record in this case, and the applicable law, it is this ___ day of _____, 1993, by the Circuit Court for Baltimore City,

ORDERED that the motion be, and it is hereby, GRANTED; and it is further

ORDERED that the "Notice of Voluntary Dismissal" of Count II of the counterclaim of counterdefendants The Maryland Jockey Club of Baltimore City, Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc., be, and it is hereby, STRICKEN.

_____
Ellen Lipton Hollander, Judge
Circuit Court for Baltimore City

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BALTIMORE, MARYLAND 21202-3201
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(410) 752-6030
FACSIMILE
(410) 539-1269

WRITER'S DIRECT DIAL

BEL AIR OFFICE:
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2107 LAUREL BUSH ROAD
BEL AIR, MARYLAND 21015
(410) 515-0040
(410) 569-0299
FACSIMILE
(410) 569-0298

OF COUNSEL
FREDERICK STEINMANN

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR+
JAMES P. ULWICK*‡
PHILIP M. ANDREWS
GERTRUDE C. BARTEL+
MARILYN HOPE FISHER**
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

March 5, 1993

HAND-DELIVERED
Clerk, Circuit Court for
Baltimore City
Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202

Re: Manfuso, et al. v. De Francis, et al.
Case No. 92120052/CE147851

Dear Mr. Clerk:

I have enclosed for filing in this case:

(1) Plaintiffs' Third Amended Complaint for Declaratory and Injunctive Relief and for Damages;

(2) Plaintiffs' Motion for Partial Summary Judgment on Count IV of the Third Amended Complaint for Declaratory and Injunctive Relief and for Damages, and the accompanying Memorandum of Law; and

(3) Plaintiffs' Motion to Strike Notice of Voluntary Dismissal.

I have also enclosed extra copies of each of those papers. I ask that you date-stamp the extra copies and return them to the messenger.

Thank you for your assistance.

Sincerely,

Kevin F. Arthur

Kevin F. Arthur

KFA/kfa
Enclosures

cc: The Honorable Ellen Lipton Hollander (w/ encls.)(hand-delivered)
Mr. John A. Manfuso, Jr. (w/ encls.)
Mr. Robert T. Manfuso (w/ encls.)
Herbert S. Garten, Esquire (w/ encls.)
James S. Gray, Esquire (w/ encls.)(hand-delivered)
McGee Grigsby, Esquire (w/ encls.)

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR+
JAMES P. ULWICK*‡
PHILIP M. ANDREWS
GERTRUDE C. BARTEL+
MARILYN HOPE FISHER**
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

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ONE SOUTH STREET, SUITE 2600
BALTIMORE, MARYLAND 21202-3201
(410) 752-6030
FACSIMILE
(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

47

July 2, 1993

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
93 JUL -2 PM 4:23
CIVIL DIVISION

HAND-DELIVERED
Clerk
Circuit Court for Baltimore City
Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202

RE: Robert T. Manfuso, et al. v.
Joseph A. De Francis, et al.
Case No. 92120052/CE147851

Dear Mr. Clerk:

I have enclosed for filing in this case the original and one copy of a Notice of Service for a Notice of Deposition Duces Tecum directed on Joe Peters.

Please date-stamp and return the extra copies to the messenger. Thank you for your consideration in this matter.

Sincerely,

Kevin F. Arthur

KFA/jas
Enclosures
cc: Mr. John A. Manfuso, Jr. (w/ encls.)
Mr. Robert T. Manfuso (w/ encls.)
Herbert S. Garten, Esquire (w/ encls.)
James E. Gray, Esquire (w/ encls.) (hand-delivered)
McGee Grigsby, Esquire (w/ encls.)
Mr. Joe Peters (w/ encls.) (via certified mail)

7

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

* * * * * * * * *

NOTICE OF SERVICE

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., by their undersigned attorneys, hereby certify that on this second day of July, 1993, they sent copies of:

(1) a Notice of Deposition Duces Tecum directed on Joe Peters; and

(2) this Notice of Service;

by hand-delivery to:

James E. Gray, Esquire
Linda S. Woolf, Esquire
Goodell, DeVries, Leech & Gray
Commerce Place
One South Street, 20th Floor
Baltimore, Maryland 21202;

and by first-class mail, 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.

Andrew Jay Graham by KFA
Andrew Jay Graham

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

KFA:jas:7/2/93:3
f:jas:Manfuso\peters.NOD

Kevin F. Arthur

Kevin F. Arthur

Kramon & Graham, P.A.

Kramon & Graham, P.A.
Commerce Place
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030

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

Dated: July 2, 1993.

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

KFA:jas:7/2/93:3
f:jas:Manfuso\peters.NOD

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR+
JAMES P. ULWICK*‡
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KEVIN F. ARTHUR
ARON U. RASKAS+
SETH M. ROTENBERG
PERRY F. SEKUS
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*ALSO ADMITTED IN NY
+ALSO ADMITTED IN DC
‡ALSO ADMITTED IN NJ
°ALSO ADMITTED IN CA

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WRITER'S DIRECT DIAL

BEL AIR OFFICE:
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(410) 515-0040
(410) 569-0299
FACSIMILE
(410) 569-0298

OF COUNSEL
FREDERICK STEINMANN

July 2, 1993

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
93 JUL -2 PM 4:22
CIVIL DIVISION

HAND-DELIVERED
Clerk
Circuit Court for Baltimore City
Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202

RE: Robert T. Manfuso, et al. v.
Joseph A. De Francis, et al.
Case No. 92120052/CE147851

Dear Mr. Clerk:

I have enclosed for filing in this case the original and one copy of a Notice of Service for a Notice of Deposition Duces Tecum directed on Alec Courtelis.

Please date-stamp and return the extra copies to the messenger. Thank you for your consideration in this matter.

Sincerely,

Kevin F. Arthur

KFA/jas
Enclosures
cc: Mr. John A. Manfuso, Jr. (w/ encls.)
Mr. Robert T. Manfuso (w/ encls.)
Herbert S. Garten, Esquire (w/ encls.)
James E. Gray, Esquire (w/ encls.) (hand-delivered)
McGee Grigsby, Esquire (w/ encls.)
Jane Moscowitz, Esquire (w/ encls.) (federal express)

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

* * * * * * * * *

NOTICE OF SERVICE

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., by their undersigned attorneys, hereby certify that on this second day of July, 1993, they sent copies of:

(1) a Notice of Deposition Duces Tecum directed on Alec Courtelis; and

(2) this Notice of Service;

by hand-delivery to:

James E. Gray, Esquire
Linda S. Woolf, Esquire
Goodell, DeVries, Leech & Gray
Commerce Place
One South Street, 20th Floor
Baltimore, Maryland 21202;

and by first-class mail, 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.

Andrew Jay Graham by
Andrew Jay Graham

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BALTIMORE, MARYLAND 21202-3201
(410) 752-6030

KFA:jas:7/2/93:2
f:Manfuso\court.NOD

Kevin F. Arthur

Kramon & Graham, P.A.
Commerce Place
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030

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

Dated: July 2, 1993.

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

KFA:jas:7/2/93:2
f:Manfuso\court.NOD

45

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

* * * * * * * * *

NOTICE OF SERVICE

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., by their undersigned attorneys, certify that on this 23rd day of June, 1993, they sent copies of:

(1) a Notice of Deposition Duces Tecum directed on James C. Musselman;

(2) a Notice of Deposition Duces Tecum directed on Preston M. Carter, Jr.; and

(3) this Notice of Service;

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 first-class mail, 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.

Andrew Jay Graham by KFA
Andrew Jay Graham

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

Kevin F. Arthur

Kevin F. Arthur

Kramon & Graham, P.A.

Kramon & Graham, P.A.
Commerce Place
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030

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

Dated: June 23, 1993.

LAW OFFICES
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COMMERCE PLACE
ONE SOUTH STREET, SUITE 2600
BALTIMORE, MARYLAND 21202-3201

(410) 752-6030

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

* * * * * * * * *

PLAINTIFFS' MOTION FOR APPOINTMENT
OF A COMMISSION TO TAKE OUT-OF-STATE DEPOSITION TESTIMONY

Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr., by their undersigned attorneys, move for the appointment of a commission to take the deposition testimony of out-of-state witnesses. The grounds for this motion are as follows:

1. Plaintiffs have determined that it is necessary to depose two out-of-state witnesses in this proceeding: James C. Musselman and Preston M. Carter, Jr. Both out-of-state witnesses reside in the state of Texas.

2. Plaintiffs have arranged to depose Messrs. Musselman and Carter beginning at 10:00 a.m. C.D.T. on August 2, 1993, and August 3, 1993, respectively, at the offices of Meadows, Owens, Collier, Reed & Collins, L.L.P., 3700 Nationsbank Plaza, 901 Main Street, Dallas, Texas 75202-3792.

3. A Texas court will compel Messrs. Musselman and Carter to appear and testify in a proceeding in this Court, provided that this Court has issued an appropriate mandate, writ, or commission. Tex. Civ. Prac. & Rem. Code Ann. § 20.002.

LAW OFFICES
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BALTIMORE, MARYLAND 21202-3201
(410) 752-6030

4. Accordingly, to facilitate the conduct of the depositions of Messrs. Musselman and Carter plaintiffs request the Court to appoint an appropriate commission.

Respectfully submitted,

Andrew Jay Graham by KFA

Andrew Jay Graham

Kevin F. Arthur

Kevin F. Arthur

Kramon & Graham, P.A.

Kramon & Graham, P.A.
One South Street
Commerce Place, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030

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

Dated: June 23, 1993.

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

KFA:jas:6/21/93:3
F:jas\MANFUSO\APPTCOMM.MOT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 1993, I sent a copy of Plaintiffs' Motion for Appointment of a Commission to Take Out-of-State Testimony by hand-delivery to:

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

and by first-class mail, 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

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

KFA:jas:6/21/93:3
F:jas\MANFUSO\APPTCOMM.MOT

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

* * * * * * * * * *

COMMISSION TO TAKE DEPOSITION TESTIMONY

The State of Maryland, Baltimore City, to Riggleman, Turk & Nelson, 16 South Calvert Street, Suite 507, Baltimore, Maryland 21202, Commission, named on the part of plaintiffs Robert T. Manfuso and John A. Manfuso, Jr.:

You have been appointed Commissioner before whom shall be taken the deposition testimony of:

James C. Musselman
Lone Star Jockey Club, Ltd.
100 Crescent Court
Dallas, Texas 75201; and

Preston M. Carter, Jr.
Lone Star Jockey Club, Ltd.
100 Crescent Court
Dallas, Texas 75201.

Those depositions will commence at 10:00 a.m. on August 2, 1993, and August 3, 1993, respectively, at the offices of Meadows, Owens, Collier, Reed & Collins, L.L.P., 3700 Nationsbank Plaza, 901 Main Street, Dallas, Texas 75202-3792. The depositions are to be taken before you upon oral examination for use in the case pending in the Circuit Court for Baltimore City, Case No. 92120052/CE147851.

LAW OFFICES
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COMMERCE PLACE
ONE SOUTH STREET, SUITE 2600
BALTIMORE, MARYLAND 21202-3201
(410) 752-6030

KFA:jas:6/21/93:3
F:jas\MANFUSO\APPTCOMM.MOT

Under this Commission, you shall, after having taken the attached oath: cause the witnesses named above to appear before you at the time and place set forth above or at such other time and place as the parties and you may set; cause those witnesses then and there before you to give their testimony upon oral examination by the attorneys for the parties to this action; reduce the testimony of those witnesses to writing; certify thereon that the witnesses were duly sworn by you and that the deposition transcript is a true record of the deposition given by those witnesses; securely seal the deposition transcripts, attaching thereto these presents, including the attached oath to be executed by you, in an envelope endorsed with the title of this action and marked, respectively, "Deposition of James C. Musselman" and "Deposition of Preston M. Carter, Jr."; and send those depositions with all speed possible, by certified mail, to:

Andrew Jay Graham, Esquire
Kramon & Graham, P.A.
One South Street
Commerce Place, Suite 2600
Baltimore, Maryland 21202;

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

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

LAW OFFICES
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ONE SOUTH STREET, SUITE 2600
BALTIMORE, MARYLAND 21202-3201
(410) 752-6030

KFA:jas:6/21/93:3
F:jas\MANFUSO\APPTCOMM.MOT

ISSUED PURSUANT TO THE ORDER, DATED _____, 1993, GRANTING PLAINTIFFS' MOTION FOR APPOINTMENT OF A COMMISSION TO TAKE OUT-OF-STATE DEPOSITION TESTIMONY, WHICH ORDER IS ATTACHED TO THIS COMMISSION.

OATH OF COMMISSIONER

I make oath that I shall, to the best of my ability, execute within the Commission faithfully and without partiality as between the parties.

_____
Commissioner

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

KFA:jas:6/21/93:3
F:jas\MANFUSO\APPTCOMM.MOT

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

* * * * * * * * *

ORDER APPOINTING COMMISSION TO TAKE
OUT-OF-STATE DEPOSITION TESTIMONY

Upon consideration of Plaintiffs' Motion For Appointment of a Commission to Take Out-of-State Deposition Testimony, any opposition thereto, the record in this case, and the applicable law, it is this _____ day of _____, 1993, by the Circuit Court for Baltimore City,

ORDERED that the firm of Riggleman, Turk & Nelson be, and it hereby is, appointed Commissioner to take the out-of-state depositions of James C. Musselman and Preston M. Carter, Jr.

_____
Ellen L. Hollander, Judge
Circuit Court for Baltimore City

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

KFA:jas:6/21/93:3
F:jas\MANFUSO\APPTCOMM.MOT

43UB

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	

* * * * * * * * *

NOTICE OF SERVICE

Plaintiffs John A. Manfuso, Jr., and Robert T. Manfuso, by their undersigned attorneys, certify that on this eighteenth day of June, 1993, they sent copies of:

(1) Notice of Deposition Duces Tecum directed on Martin Jacobs, and an attached Schedule of Documents to be Produced;

(2) Notice of Deposition Duces Tecum directed on Joseph A. De Francis, and an attached Schedule of Documents to be Produced; and

(3) this Notice of Service;

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 first-class mail, 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.

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

KFA:jas:6/18/93:1
f:manfuso\Notice.Ser

Andrew Jay Graham

Kevin F. Arthur

Kramon & Graham, P.A.
Commerce Place
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030

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

Dated: June 18, 1993.

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

KFA:jas:6/18/93:1
f:manfuso\Notice.Ser

(12)

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.

Plaintiffs

v.

JOSEPH A. DE FRANCIS, et al.

Defendants

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
93 JUN 11 PM 0:11
CIVIL DIVISION

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CASE NO.: 92120052/CE14785/

DEFENDANTS' RULE 2-501 AFFIDAVIT IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNT IV

Defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by and through their attorneys, James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, submit the attached Affidavit of James E. Gray, pursuant to Maryland Rule 2-501(d), in opposition to the Motion for Partial Summary Judgment as to Count IV of Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr.

James E. Gray

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 1993 a copy of the aforegoing Defendants' Rule 2-501 Affidavit in Opposition to Plaintiffs' Motion for Summary Judgment as to

Count IV was mailed to: Andrew Graham, Esquire, Kramon & Graham, Commerce Plaza, One South Street, Suite 2600, Baltimore, Maryland 21202, Attorneys for Plaintiffs; Irwin Goldblum, Esq., McGee Grigsby, Esq., and Jennifer Archie, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, Attorneys for Defendants, The Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.

James E. Gray

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

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

AFFIDAVIT

STATE OF MARYLAND :
:
COUNTY OF BALTIMORE :

My name is James E. Gray. I am over 18 years of age and competent to testify.

1. I am the lead attorney representing the individual Defendants, Joseph A. De Francis and Martin Jacobs, in the above-captioned action. In my role as lead counsel for these Defendants, I have primary responsibility for planning and taking the discovery in this case.

2. As counsel for De Francis and Jacobs, I noticed the depositions of Plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. to be taken in early June. These depositions were noticed, at least in part, to obtain evidence for potential use in opposition to the Manfusos' Motion for Partial Summary Judgment as to Count IV of the Third Amended Complaint.

3. Upon being served with these deposition notices, the Manfusos' counsel requested that the Manfusos' depositions be postponed until such time that all of the parties' depositions could be taken in the same 1-2 week period. The depositions of the Manfusos were postponed to July 12 and 13, 1993. I

currently plan to take those depositions on those dates.

4. The deposition notices directed to the Manfusos required them to produce documents at their depositions for inspection and copying. Pursuant to my agreement to postpone the depositions of the Manfusos, Mr. Graham agreed to make responsive documents available prior to their depositions. We were notified on June 7, 1993, by telecopy, that responsive documents were available at the offices of Kramon and Graham for inspection. We hope to inspect those documents during the week of June 14, 1993.

5. In addition to the depositions of the Manfusos, I intend to notice and take the depositions of numerous third-party fact witnesses, including, but not limited to, the following individuals:

Louis Guida

Joseph Grano

Mark Reynolds

Stephanie Lawson

Betty Shea Miller

Dr. Sandra Newman

Marge Rumrill

Individuals associated with the Virginia Racing Association

Individuals associated with Mid Pointe Racing, L.C.

It is anticipated that the depositions of these witnesses will identify additional fact witnesses whose depositions will be taken.

6. All of these fact witnesses are relevant to the facts which support Counts I and II of the Counter-Claim of De Francis and Jacobs and their Opposition to the Manfusos' Motion for Partial Summary Judgment. Until the factual testimony of these witnesses is developed, the facts essential to the Opposition of the Manfusos' Motion for Partial Summary Judgment as to Count IV cannot be fully set forth.

I SOLEMNLY AFFIRM under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

James E. Gray

I HEREBY CERTIFY that on this 11th day of June, 1993, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JAMES E. GRAY, and he made oath to, and acknowledged the aforegoing Affidavit to be true based on his own personal knowledge except as otherwise stated in the body of the Affidavit.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: 10/10/95

CIRCUIT COURT FOR BALTIMORE CITY DATE PRINTED 05/27/93

PRESIDING JUDGE ..... Hollander .....

COURTROOM CLERK .....

STENOGRAPHER ..... P. Rosado .....

ASSIGNMENT FOR THURSDAY JUNE 10, 1993 P20 9:30

CASE NUMBER - 92120052
CASE TITLE - MANFUSO VS DEFRANCIS, ETAL CE147851 CE
CATEGORY - OTHER GENERAL EQUITY
PROCEEDING - MOTION HEARING - GENERAL

GRAY, JAMES	DEFENSE ATTORNEY	783-406
WOOLF, LINDA S	DEFENSE ATTORNEY	783-400
ARCHIE, JENNIFER C	DEFENSE ATTORNEY	637-220
ULWICK, JAMES P	PLAINTIFF ATTORNEY	752-603
GRAHAM, ANDREW J	PLAINTIFF ATTORNEY	747-651
ARTHUR, KEVIN F	PLAINTIFF ATTORNEY	752-603

Motions hearing

TYPE OF PROCEEDING: (____ JURY) (____ NON-JURY) (____ OTHER)

DISPOSITION (CHECK ONE)

(____ SETTLED)	(____ CANNOT SETTLE)	(____ NEXT COURT DATE)
(____ VERDICT)	(____ REMANDED)	(____ NON PROS/DISMISSED)
(____ JUDGEMENT NISI)	(____ ORDER/DECREE SIGNED)	(____ OTHER) PLEASE EXPLAIN:
(____ JUDGEMENT ABSOLUTE)	(____ ORDER/DECREE TO BE SIGNED)	
(____ POSTPONED)	(____ MOTION GRANTED)	
(__✓__ SUB CURIA)	(____ MOTION DENIED)	

JUDGE SIGNATURE Allen Hollander DATE 6/10/93

CIRCUIT COURT FOR BALTIMORE CITY DATE PRINTED 05/27/

PRESIDING JUDGE ..... Hollander .....

COURTROOM CLERK .....

STENOGRAPHER ..... Arnold .....

ASSIGNMENT FOR THURSDAY JUNE 10, 1993 P20 9:30

CASE NUMBER - 92120052
CASE TITLE - MANFUSO VS DEFRANCIS, ETAL CE147851 CE
CATEGORY - OTHER GENERAL EQUITY
PROCEEDING - MOTION HEARING - GENERAL

GRAY, JAMES	DEFENSE ATTORNEY	783-4060
WOOLF, LINDA S	DEFENSE ATTORNEY	783-4000
ARCHIE, JENNIFER C	DEFENSE ATTORNEY	637-2200
ULWICK, JAMES P	PLAINTIFF ATTORNEY	752-6030
GRAHAM, ANDREW J	PLAINTIFF ATTORNEY	747-6515
ARTHUR, KEVIN F	PLAINTIFF ATTORNEY	752-6030

Motions hearing

TYPE OF PROCEEDING: (____ JURY) (____ NON-JURY) (____ OTHER)

DISPOSITION (CHECK ONE)

(____ SETTLED) (____ CANNOT SETTLE) (____ NEXT COURT DATE)

(____ VERDICT) (____ REMANDED) (____ NON PROS/DISMISSED)

(____ JUDGEMENT [illegible]) (____ ORDER/DECREE SI [illegible]) (____ OTHER) PLEASE EXPLAIN:

(____ JUDGEMENT ABSOLUTE) (____ ORDER/DECREE TO BE SIGNED)

(____ POSTPONED) (____ MOTION GRANTED)

(__✓__ SUB CURIA) (____ MOTION DENIED)

JUDGE SIGNATURE Allen Hollander DATE 6/10/93

CIRCUIT COURT FOR BALTIMORE CITY DATE PRINTED 05/27/

PRESIDING JUDGE .....

COURTROOM CLERK .....

STENOGRAPHER .....

ASSIGNMENT FOR THURSDAY JUNE 10, 1993 P20 9:30

CASE NUMBER - 92120052
CASE TITLE - MANFUSO VS DEFRANCIS, ETAL CE147851
CATEGORY - OTHER GENERAL EQUITY
PROCEEDING - MOTION HEARING - GENERAL

GRAY, JAMES	DEFENSE ATTORNEY	783-406
WOOLF, LINDA S	DEFENSE ATTORNEY	783-4
ARCHIE, JENNIFER C	DEFENSE ATTORNEY	637-2
ULWICK, JAMES	PLAINTIFF ATTORNEY	752-603
GRAHAM, ANDREW J	PLAINTIFF ATTORNEY	747-651
ARTHUR, KEVIN F	PLAINTIFF ATTORNEY	752-603

TYPE OF PROCEEDING: (____ JURY) (____ NON-JURY) (____ OTHER)

(CHECK ONE)

(____ SETTLED) (____ CANNOT SETTLE) (____ NEXT COURT DATE)

(____ VERDICT) (____ REMANDED) (____ NON PROS/DISMISSED)

(____ JUDGEMENT NISI) (____ ORDER/DECREE SIGNED) (____ OTHER)
PLEASE EXPLAIN:

(____ JUDGEMENT ABSOLUTE) (____ ORDER/DECREE TO BE SIGNED)

(____ POSTPONED) (____ MOTION GRANTED)

(____ SUB CURIA) (____ MOTION DENIED)

JUDGE SIGNATURE _____ DATE 6/10/12

CIRCUIT COURT FOR BALTIMORE CITY DATE PRINTED 05/27/

PRESIDING JUDGE .....

COURTROOM CLERK .....

STENOGRAPHER .....

ASSIGNMENT FOR THURSDAY JUNE 10, 1993 P20 9:30

CASE NUMBER - 92120052
CASE TITLE - MANFUSO VS DEFRANCIS, ETAL CE147951
CATEGORY - OTHER GENERAL EQUITY
PROCEEDING - MOTION HEARING - GENERAL

GRAY, JAMES	DEFENSE ATTORNEY	783-406
WOOLF, LINDA S	DEFENSE ATTORNEY	783-40
ARCHIE, JENNIFER C	DEFENSE ATTORNEY	637-2
ULWICK, JAMES P	PLAINTIFF ATTORNEY	752-603
GRAHAM, ANDREW J	PLAINTIFF ATTORNEY	747-6
ARTHUR, KEVIN F	PLAINTIFF ATTORNEY	752-6

TYPE OF PROCEEDING: (____ JURY) (____ NON-JURY) (____ OTHER)

(CHECK ONE)

(____ SETTLED) (____ CANNOT SETTLE) (____ NEXT COURT DATE)

(____ VERDICT) (____ REMANDED) (____ NON PROS/DISMISSED)

(____ JUDGEMENT) (____ ORDER/DEC) (____ OTHER)
PLEASE EXPLAIN:

(____ JUDGEMENT ABSOLUTE) (____ ORDER/DECREE IGNED)

(____ POSTPONED) (____ MOTION GRANTED)

(____) (____ MOTION DENIED)

JUDGE SIGNATURE _____ DATE 6/10/93

CIRCUIT COURT FOR BALTIMORE CITY DATE PRINTED 05/27/93

PRESIDING JUDGE ..... Hollander .....

COURTROOM CLERK .....

STENOGRAPHER ..... P. Rosado .....

ASSIGNMENT FOR THURSDAY JUNE 10, 1993 P20 9:30

CASE NUMBER - 92120052
CASE TITLE - MANFUSO VS DEFRANCIS, ETAL CE147851 CE
CATEGORY - OTHER GENERAL EQUITY
PROCEEDING - MOTION HEARING - GENERAL

GRAY, JAMES	DEFENSE ATTORNEY	783-4060
WOOLF, LINDA S	DEFENSE ATTORNEY	783-4000
ARCHIE, JENNIFER C	DEFENSE ATTORNEY	637-2200
ULWICK, JAMES P	PLAINTIFF ATTORNEY	752-6030
GRAHAM, ANDREW J	PLAINTIFF ATTORNEY	747-6515
ARTHUR, KEVIN F	PLAINTIFF ATTORNEY	752-6030

Motions hearing

TYPE OF PROCEEDING: (____ JURY) (____ NON-JURY) (____ OTHER)

DISPOSITION (CHECK ONE)

(____ SETTLED)	(____ CANNOT SETTLE)	(____ NEXT COURT DATE)
(____ VERDICT)	(____ REMANDED)	(____ NON PROS/DISMISSED)
(____ JUDGEMENT NISI)	(____ ORDER/DECREE SIGNED)	(____ OTHER) PLEASE EXPLAIN:
(____ JUDGEMENT ABSOLUTE)	(____ ORDER/DECREE TO BE SIGNED)	
(____ POSTPONED)	(____ MOTION GRANTED)	
(__✓__ SUB CURIA)	(____ MOTION DENIED)	

JUDGE SIGNATURE Allen Hollander DATE 6/10/93

CIRCUIT COURT FOR BALTIMORE CITY MSV534 DATE: 04/27/93
TERMINAL: V142 EVENT DATA TIME: 08:49

CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851
CATEGORY: OTHER
ORIG COURT: CE TRANSCRIPT PAGES: TERMINATION DATE: 04/20/94
STATUS: A CONSOLIDATED: LAST CHANGE: 04/22/93
STATUS DATE: 11/30/92 PROTRACTED:

DATE: CODE: EVENT TEXT
042992 FILE COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
042992 EXHIBIT. (1)
042992 PROP LOT NUMBER: BLOCK NUMBER:
043092 PROC DEF DEFRANCIS, JOSPRIVATE CREATED: 04/30/92 SERVED: / / .
043092 PROC DEF JACOBS, MARTINPRIVATE CREATED: 04/30/92 SERVED: / / .
043092 PROC DEF MARYLAND JOCKEPRIVATE CREATED: 04/30/92 SERVED: / / .
043092 PROC DEF PIMLICO RACINGPRIVATE CREATED: 04/30/92 SERVED: / / .
043092 PROC DEF LAUREL RACING PRIVATE CREATED: 04/30/92 SERVED: / / .
043092 PLEA CORRESPONDENCE FROM JUDGE KAPLAN TO COUNSEL STATING THAT
043092 THE CASE IS SPECIALLY ASSIGNED TO JUDGE HOLLANDER (2)
060592 ANSW APPR OF ATTY JAMES E. GRAY & LINDA S. WOOLF FOR DEFTS JOSEPH A.
060592 DEFRANCIS & MARTIN JACOBS, ANSWER TO COMPLAINT FOR DECLARATORY

PAGE 001
CIRCUIT COURT FOR BALTIMORE CITY MSV534 DATE: 04/27/93
TERMINAL: V142 EVENT DATA TIME: 08:49

CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851
CATEGORY: OTHER
ORIG COURT: CE TRANSCRIPT PAGES: TERMINATION DATE: 04/20/94
STATUS: A CONSOLIDATED: LAST CHANGE: 04/22/93
STATUS DATE: 11/30/92 PROTRACTED:

DATE: CODE: EVENT TEXT
060592 RELIEF REQUESTED IN SUBPARAGRAPH OF COUNT ONE(3)
060592 PLEA DEFTS/CONTER PLTFFS, JOSEPH A. DEFRANCIS & MARTIN JACOBS, FILES
060592 COUNTERCLAIM AGAINST PLTFFS & EXHIBITS FD(4)
060592 MOTN DEFTS, JOSEPH A DEFRANCIS & MARTIN JIACOBS, MOTION TO DISMISS AND
060592 MEMORANDUM FD AND EXHIBITS FD (5)
060592 PLEA REQUEST FOR HEARING(6)
061192 MOTN DEFTS MOTION TO SHORTEN TIME TO RESPOND TO DEFTS MOTION TO DISMIS
061192 PLTFFS INJUNCTIVE RELIEF CLAIM REGARDING DEFTS INVOLVEMENT IN
061192 TEXAS RACING (7)
061192 MOTN PLTFFS MOTION TO DISMISS CONTER-CLAIM OFTHE MD JOCKEY CLUB OF
061192 BALTO CITY, PIMILICO RACING ASSOC, INC. & LAUREL RACING ASSOC,
061192 INC. AND COUNT II OF THE COUNTER CLAIM OF DEFRANCIS AND JACOBS,

PAGE 002
CIRCUIT COURT FOR BALTIMORE CITY MSV534 DATE: 04/27/93
TERMINAL: V142 EVENT DATA TIME: 08:49

CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851
CATEGORY: OTHER
ORIG COURT: CE TRANSCRIPT PAGES: TERMINATION DATE: 04/20/94
STATUS: A CONSOLIDATED: LAST CHANGE: 04/22/93
STATUS DATE: 11/30/92 PROTRACTED:

DATE: CODE: EVENT TEXT
061192 AND /OR MOTION FOR SUMMARY JUDGMENT (8)
061192 MOTN PLTFFS MOTION FOR EX-PARTE, INTERLOCUTORY AND PERMANENT INJUNC-
061192 TIVE RELIEF, MEMORANDUM FD & EXHIBITS FD (9)
061892 CAL 09:30 400W MOTF CANC CANC CAN ADMINISTRATIVE 8800
061992 ORDR MEMORANDUM OPINION & ORDER THAT THE DEFTS MOTION TO DISMISS PLTFF
061992 REQUEST FOR INJUNCTIVE RELIEF BARRING THE DEFT TO ANY VENTURES
061992 IN TEXAS IS HEREBY "GRANTED" LEAVE TO THE PLTFFS TO AMEND THEIR
061992 COMPLAINT TO COMPLY WITH THIS OPINION. (J. MACDANIEL)
062692 PLEA DEFENDANTS MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION
062692 FOR EXPARTE, INTERLOCUTORY AND PERMANENT INJUNCTIVE RELIEF
062692 (10)
062992 PLEA DEFENDANT CORPORATIONS' MEMORANDUM OF POINTS AND AUTHORITIES

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CIRCUIT COURT FOR BALTIMORE CITY MSV534 DATE: 04/27/93
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CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851
CATEGORY: OTHER
ORIG COURT: CE TRANSCRIPT PAGES: TERMINATION DATE: 04/20/94
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STATUS DATE: 11/30/92 PROTRACTED:

DATE: CODE: EVENT TEXT
062992 IN OPPOSITION TO PLAINTIFFS' MOTION FOR EXPARTE, INTERLOCUTORY
062992 AND PERMANENT INJUNCTIVE RELIEF (11)
071592 PLEA DEFT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
071592 MOTION TO DISMISS COUNTER CLAIM OF THE MD JOCKEY CLUB OF
071592 BALTIMORE CITY, INC, PIMLICO RACING ASSOC., INC., AND LAUREL
071592 RACING ASSOC., INC AND OR FOR SUMMARY JUDGMENT FD (12)
071592 PLEA DEFTS (DEFRANCIS AND JACOBS) OPPOSITION TO MOTION TO DISMISS
071592 AND OR FOR SUMMARY JUDGMENT AS TO COUNT II OF THE COUNTERCLAIM(13
071592 PLEA PLA'S ANSWER TO COUNT I OF THE COUNTERCLAIM OF DEFT'S DEFRANCIS
071592 AND JACOBS FD (14)
071592 PLEA SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF 15
071592 PLEA PLA'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT AS TO COUNT III

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CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851

CATEGORY: OTHER
ORIG COURT: CE TRANSCRIPT PAGES: TERMINATION DATE: 04/20/94
STATUS: A CONSOLIDATED: LAST CHANGE: 04/22/93
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071592 OF THE COUNTERCLAIM OF DEFT (DEFRANCIS AND JACOBS) AND MEMORANDUM
071592 OF LAW IN SUPPORT THEREOF (16)
071592 PLEA PLA'S OPPOSITION TO DEFT'S MOTION TO DISMISS AND AFFIDAVIT OF
071592 JOHN MANFUSO JR IN SUPPORT THEREOF (17)
080692 MOTN MOTION TO DISMISS PLTFFS SECOND AMENDED COMPLAINT (15)
080792 MOTN DEFTS, MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT AS TO
080792 PLAINTIFFS' SECOND AMENDED COMPLAINT (12)
080792 PLEA DEFTS, OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS AND/OR
080792 FOR SUMMARY JUDGMENT AS TO COUNT III OF THEIR COUNTERCLAIM
080792 PLEA DEFTS, MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
080792 AND/OR FOR SUMMARY JUDGMENT AS TO PLAINTIFFS' SECOND AMENDED
080792 COMPLAINT (14)

CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851
CATEGORY: OTHER
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DATE: CODE: EVENT TEXT
080792 AND AFFIDAVIT ATTACHED (13)
081092 MEMO MEMORANDUM TO LARGE FOR FILE - SEE STORAGE AREA
081892 PLEA PLA'S MOTION FOR EXPARTE INTERLOCUTORY AND PERMANENT INJUNCTIVE
081892 RELIEF HEARD AND DENIED, ORDER TO BE FILED (J,HOLLANDER) (15)
082792 PLEA PLTFF'S OPPOSITION TO DEFTS' MOT. TO DISMISS OR FOR SUMMARY
082792 JUDGMENT AS TO THE 2ND AMENDED COMPLAINT, AND EXHIBITS FD. (16)
090292 ORDR ORDER OF COURT DATED 082892, THAT PLTFF'S MOTION FOR EXPARTE
090292 INTERLOCUTORY AND PERMANENT INJUNCTIVE RELIEF BE AND THE SAME
090292 HEREBY IS DENIED AND IT IS FURTHER ORDERED THAT WITHIN TWO WEEKS
090292 FROM THE DATE OF THIS ORDER PLTFFS' WILL MAKE AVAILABLE FOR
090292 RETURN TO PIMLICO RACING ASSOC. THE TWO CHRYSLER AUTOMOBILES THAT
090292 HAD BEEN PROVIDED FOR THE RACE TRACK. (HOLLANDER, J) (17)

CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851
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DATE: CODE: EVENT TEXT
090292 MEMO CASE SENT TO MASTER MARZETTA ON ENTRIES 14 & 15
091892 PLEA PLTFF'S REPLY TO DE FRANCIS'S AND JACOBS'S OPPOSITION TO
091892 PLTFF'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT AS TO COUNT
091892 III OF THE COUNTER CLAIM (18)
101492 ORDR ORDER OF COURT DATED 10-9-92 THAT THE MANFUSOS' MOTION TO DISMISS
101492 AND OR FOR SUMMARY JUDGMENT AS TO THE COUNTERCLAIM OF THE
101492 CORPORATIONS IS GRANTED, ETC (J,HOLLANDER) (19)
103092 ORDR SCHEDULING ORDER (HEARING 3-7-94) (J,HOLLANDER) (20)
113092 ANSW PLTFFS', ROBERT T. MANFUSO AND JOHN A. MANFUSO, ANS. TO COUNTS II
113092 AND III OF THE COUNTERCLAIM OF DEFTS., JOSEPH A. DE FRANCIS AND
113092 MARTIN JACOBS (21)
113092 ANSW PLTFFS ANSWER TO COUNT II OF COUNTERCLAIM FD. (22)

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ORIG COURT: CE TRANSCRIPT PAGES: TERMINATION DATE: 04/20/94
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DATE:	CODE:	EVENT TEXT
120792	MOTN	PLTFFS' MOTION FOR SUMMARY JUDGMENT ON COUNT II OF THE COUNTER
120792		CLAIM OF DEFTS THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY,
120792		PIMLICO RACING ASSOCIATION, INC., AND LAUREL RACING ASSOC.,
120792		INC. AND MEMORANDUM OF LAW IN SUPPORT OF PLTFFS' MOTION (23)
121592	PLEA	PLTFFS DISCOVERY NOTICE (24)
122992	MOTN	APPR OF ATTY JENNIFER C. ARCHIE FOR DEFTS MD JOCKEY CLUB OF BALTO
122992		LAUREL RACING ASSOC. INC. AND PIMLICO RACING ASSOC. INC, STIP-
122992		ULATED MOTION FOR EXTENSION OF TIME (25)
123192	MEMO	NO PROPOSED ORDER (J,FRIEDMAN)
011393	MOTN	DEFTS., MD. JOCKEY CLUB OF BALTO. CITY, PIMLICO RACING ASSOC.,
011393		INC., AND LAUREL RACING ASSOC., INC., STIPULATED MOT. FOR EX-
011393		TENSION OF TIME (26)

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CATEGORY: OTHER
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STATUS DATE: 11/30/92 PROTRACTED:

DATE:	CODE:	EVENT TEXT
011893	PLEA	PLTFFS DISCOVERY NOTICE FD.(27)
011893	ORDR	ORDERED THAT MOTION HAS NO FORM OF ORDER WITH IT, ETC (J,ROSS) 27
011893	PADI	DISMISSED WITHOUT PREJUDICE AS TO COUNT TWO OF THE COUNTERCLAIM
011893		OF DEFTS THE MD JOCKEY CLUB OF BALTO., PIMLICO RACING ASSOC.,
011893		AND LAUREL RACING ASSOC INC. ORDER FD.(28)
030593	MOTN	PLTFFS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON COUNT IV OF THE
030593		THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
030593		AND FOR DAMAGES, MEMORANDUM, AND EXHIBITS FD (29)
030593	PLEA	PLTFF'S THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
030593		RELIEF AND FOR DAMAGES AND EXHIBITS FD (30)
030593	MOTN	COUNTERDEFTS' MOTION TO STRIKE NOTICE OF VOLUNTARY DISMISSAL OF
030593		COUNT II OF COUNTERCLAIM (31)

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STATUS DATE: 11/30/92 PROTRACTED:

DATE:	CODE:	EVENT TEXT
032993	PLEA	DEFTS (DE FRANCIS & JACOBS) ANSW TO CERTAIN CLAIMS FOR
032993		DECLARATORY & INJUNCTIVE RELIEF STATED IN COUNTS I & II & TO
032993		COUNT 1II OF THE THIRD AMENDED COMPLAINT (32)
032993	MOTN	DEFTS (DE FRANCIS & JACOBS) MOTN TO DISMISS CERTAIN CLAIMS FOR
032993		DECLARATORY & INJUNCTIVE RELIEF IN COUNTS I & II & ALL CLAIMS IN
032993		COUNTS IV OF THE THIRD AMENDED COMPLAINT & MOTN TO STRIKE THE
032993		MOTN FOR PARTIAL SUMMARY JUDGMENT (33)
041493	PLEA	DEFTS DISCOVERY NOTICE FD.(34)
042093	MOTN	PLTFFS MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND RESPONSES
042093		TO REQUESTS FOR PRODUCTION OF DOCUMENTS, CERTIFICATE OF GOOD
042093		FAITH & EXHIBITS FD. (35)
042093	PLEA	PLTFFS RESPONSE TO DEFTS MOTION TO DISMISS AND TO DEFTS MOTION TO

CASE NUMBER: 92120052 MANFUSO VS DEFRANCIS, ETAL CE147851
CATEGORY: OTHER
ORIG COURT: CE TRANSCRIPT PAGES: TERMINATION DATE: 04/20/94
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DATE:	CODE:	EVENT TEXT
042093		STRIKE & EXHIBITS FD. (36)
051193	TRIG	ENTRY #35
042793	MEMO	CASE SENT TO MARZETTA ON ENTRIES 29,31,33 AND 36

(41) A.S.

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
JOSEPH A. DE FRANCIS, et al.	*	BALTIMORE CITY CE 147851
Defendants	*	CASE NO.: 92120052

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
1993 MAY -5 P 3:18
CIVIL DIVISION

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 1993, a copy of the aforegoing Notice of Deposition Duces Tecum for Robert T. Manfuso was ~~mailed~~ hand-delivered to: Andrew Graham, Esq., Kramon & Graham, Commerce Plaza, One South Street, Suite 2600, Baltimore, Maryland 21202, Attorneys for Plaintiffs; Irwin Goldblum, Esq., McGee Grigsby, Esq., and Jennifer Archie, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, Attorneys for Defendants, The Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.

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(410) 783-4000

(40) A.S.

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
		CIRCUIT COURT
Plaintiffs		FOR
v.		BALTIMORE CITY CE 147851
JOSEPH A. DE FRANCIS, et al.	*	CASE NO.: 92120052
Defendants		

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

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 1993, a copy of the aforegoing Notice of Deposition Duces Tecum for John A. Manfuso, Jr. was ~~mailed~~ hand-delivered to: Andrew Graham, Esq., Kramon & Graham, Commerce Plaza, One South Street, Suite 2600, Baltimore, Maryland 21202, Attorneys for Plaintiffs; Irwin Goldblum, Esq., McGee Grigsby, Esq., and Jennifer Archie, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, Attorneys for Defendants, The Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.

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(39)
A.S.

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.

Plaintiffs

v.

JOSEPH A. DE FRANCIS, et al.

Defendants

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BALTIMORE CITY
1993 MAY -5 P 3:18
CIVIL DIVISION

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

CE 147851

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 1993, a copy of Martin Jacob's Response to Plaintiff Robert T. Manfuso's First Set of Requests for Production of Documents were mailed, first class, postage prepaid, to Andrew J. Graham, Esquire, Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, Maryland 21202, attorneys for Plaintiffs; Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, attorneys for Defendants, the Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc. and Laurel Racing Association, Inc.

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Attorneys for Defendants
De Francis and Jacobs

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ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
v.	*	BALTIMORE CITY CE 14785/
JOSEPH A. DE FRANCIS, et al.	*	CASE NO.: 92120052
Defendants		

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

DEFENDANTS' REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS AND MOTION TO STRIKE

Defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by and through their attorneys, James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, submit the following Reply in Further Support of their Motion to Dismiss Certain Claims for Declaratory and Injunctive Relief in Counts I and II and all Claims in Count IV of the Third Amended Complaint and Motion to Strike the Manfusos' Motion for Partial Summary Judgment.

I. The Manfusos Did Not Allege Counts I and II "To Preserve The Record For Appeal"

The Manfusos acknowledge in their Response that the Third Amended Complaint contains numerous claims that the court has previously dismissed. In fact, Counts I and II of the Third Amended Complaint restate the identical claims for declaratory and injunctive relief which the court dismissed pursuant to its Order dated October 9, 1992. In a footnote in their Response, the Manfusos attempt to rationalize the re-filing of previously dismissed claims as an effort to preserve the record in the event of an appeal.

This strained explanation is patently transparent. As the Manfusos' able counsel are well aware, any interlocutory Order previously entered by a trial court is open to review by an appellate court unless an appeal has previously been taken from that Order and decided on the merits by the appellate court. Md. Rule 8-131(d) (1993). An appeal from a final judgment ordinarily brings up for appellate review all earlier orders in the case. B & K Rentals and Sales Co. v. Universal Leaf Tobacco Co., 319 Md. 127, 571 A.2d 1213 (1990). In particular, an action by a trial court granting a Motion to Dismiss as to some, but not all claims, without leave to amend, is reviewable upon appeal from the final judgment. See Harkins v. August, 251 Md. 108, 112, 246 A.2d 268 (1967). Even the most perfunctory legal research would have confirmed that the Manfusos did not need to re-allege Counts I and II to preserve their right to challenge the dismissal of those claims in the event of an appeal.

The Manfusos re-alleged Counts I and II for one reason -- to maximize the adverse publicity generated by their spurious claims of corporate waste and breaches of duty. Their purpose can be best gleaned from a review of the few additional allegations which appear in Counts I and II of the Third Amended Complaint. These focus almost exclusively on the precise amounts of compensation paid to De Francis and Jacobs in 1991. See Third Amended Complaint ¶ 14, n.1, ¶ 18, n.2. There is no claim for relief premised upon the salary packages

paid to De Francis and Jacobs. These allegations were included solely for the benefit of the press as demonstrated by the fact that, within a few hours of the filing of the Third Amended Complaint on Friday, March 5, 1993, De Francis was contacted by a reporter from the Washington Post questioning him about its contents and that, several days thereafter, the allegations concerning compensation were a banner headline in the Washington Post Sports section. See Exhibit A to Motion to Dismiss and Motion to Strike.

The Manfusos' explanation as to the reason for and timing of the filing of their Third Amended Complaint stretches the bounds of credibility and warrants no consideration by this court.

II. The Manfusos Have Failed To Provide The Court With Any Basis To Reconsider Its Prior Rulings As to Counts I And II

Notwithstanding their statement that they were merely "preserving the record for appeal," the Manfusos request this court to reconsider its dismissal of their legally defective and factually inaccurate claims in Counts I and II, and to permit them to pursue claims of breach of contract against De Francis and claims concerning access to the corporations' auditors. The Manfusos do not proffer any new legal authority or a single new fact as support for this belated and procedurally improper request for reconsideration. Instead, they rely upon their previously stated arguments, which were rejected by the court after considering literally hundreds of

pages of legal memoranda, days of testimony, and the oral argument of counsel.

As the Manfusos have failed to provide even the slightest basis for this request and have failed to move properly for reconsideration, this court should summarily grant the Defendants' Motion to Dismiss Counts I and II of the Third Amended Complaint, except insofar as those Counts relate to specific claims for breach of obligations related to the employment of Jacobs and James Mango as set forth in the Shareholders' Agreement or employment contracts.

III. Count IV Of The Third Amended Complaint Should Be Dismissed

The Manfusos have criticized De Francis and Jacobs for moving to dismiss Count IV and moving to strike the Motion for Partial Summary Judgment filed therewith. As demonstrated below, based upon the procedural posture of this action, both motions are fully justified and appropriate.

In Count IV of the Third Amended Complaint, the Manfusos seek a declaration that De Francis and Jacobs must comply with the Russian roulette buy/sell provision of the Stockholders' Agreement at any time on or after October 1, 1993. As in the case of Counts I and II, Count IV also seeks to circumvent a prior ruling of this court. In filing Count IV, the Manfusos are attempting to revisit, through the back door, this court's prior ruling that Count II of the Counterclaim is legally sufficient and factually driven.

Count II of De Francis' and Jacobs' Counterclaim, in pertinent part, requests a declaration that:

> a. The filing of the Complaint and the Manfusos interference with De Francis' operational or managerial control of Laurel and Pimlico constitute material breaches of the Stockholders' Agreement;
>
> b. De Francis and Jacobs are excused from any and all future performance under the Stockholders' Agreement;
>
> . . . .

On June 11, 1992, the Manfusos filed a "Motion to Dismiss Count II of the Counterclaim of De Francis and Jacobs and/or Motion for Summary Judgment," asking this court to dismiss Count II arguing that, as a matter of law, the Plaintiffs had not breached the Stockholders' Agreement.[1]

On July 21, 1992, this court heard oral argument on the Manfusos' Motion to Dismiss Count II and/or for Summary Judgment. On September 22, 1992, the court denied the

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[1] The Manfusos' argument that the court simply found that the allegations in Count II were sufficient to withstand a Motion to Dismiss is ludicrous. The Manfusos attached four exhibits to their Motion to Dismiss and/or for Summary Judgment, introducing matters extrinsic to the pleadings and effectively converting their motion into one for summary judgment pursuant to Maryland Rule 2-322(c). Likewise, the Opposition of De Francis and Jacobs to the Manfusos' Motion to Dismiss and/or for Summary Judgment attached extrinsic material. Argument of counsel was extensive and focused on many of the factual issues giving rise to the Counterclaim. The court never stated in its oral opinion that it was excluding the extrinsic matters presented by the parties from its analysis and, thus, the Manfusos' motion was "disposed of as provided in Rule 2-501." Md. Rule 2-322(c) (1993).

Plaintiffs' motion in an oral opinion which was subsequently incorporated into its written Order dated October 9, 1992.

After resolving the Plaintiffs' Motion to Dismiss and/or for Summary Judgment, along with the other Motions to Dismiss, the court scheduled a trial on the merits for the individual Defendants' Counterclaim. Pursuant to the court's Order, and by the agreement of counsel, trial is scheduled to commence on April 4, 1993.

The Manfusos never moved for reconsideration of the October 9, 1992 ruling denying their Motion to Dismiss or for Summary Judgment as to Count II. Not surprisingly in light of the trial date, discovery in this matter is just beginning. The Manfusos have propounded Interrogatories and a Request for Production to De Francis and Jacobs. Responses to that discovery have been served. The Plaintiffs have filed Notices of Deposition Duces Tecum upon each of the Manfusos requiring them to appear for deposition and to produce documents relevant to the Defendants' Counterclaim. Thus, the factual premises of the parties' contentions are just being disclosed in discovery.

The Manfusos acknowledge in their Response that Count IV of the Third Amended Complaint raises the very issue that lies at the heart of Count II of the Counterclaim, i.e., whether the Manfusos' several breaches of the Stockholders' Agreement are material and thereby discharge De Francis and Jacobs from further performance under that Agreement. In reality, Count IV and the Motion for Summary Judgment filed therewith are just

the latest attempt by the Manfusos to have that issue resolved without the benefit of discovery and prior to a hearing on the merits.[2] It has been brought now because the Manfusos have recognized that the pendency of the Counterclaim puts into abeyance the fulfillment of their scheme - wresting control of the corporations from De Francis and Jacobs in October 1993 after four years of sabotaging their every effort to establish themselves as a successful and efficient management team.

This court has recognized that De Francis and Jacobs have made valid and sufficient claims for breaches of the Stockholders Agreement. These claims must be allowed to proceed to trial, notwithstanding this latest effort to prevent the fact-finder from hearing details of the Manfusos' wrongful conduct. On its face, Count IV would require resolution of whether the Manfusos materially breached the Stockholders' Agreement prior to trial, because it seeks enforcement of the buy-sell provision in October 1993, six months before the scheduled trial date. As such, it is an inappropriate attempt to circumvent the court's October 9, 1992 ruling, without the benefit of a Motion for Reconsideration.

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[2] Indeed, the Manfusos acknowledge in footnote 8 of their Response, that their Motion for Summary Judgment as to Count IV of the Third Amended Complaint was tantamount to a Motion for Summary Judgment on Counts I and II of the Counterclaim.

IV. As Pled, Count IV Fails To Allege A Justiciable Controversy

The Manfusos suggestion that De Francis and Jacobs are responsible for delaying the progress of this case is baseless. In the year since they commenced this action, the Plaintiffs have filed one Amended Complaint after another, each stating legally insufficient claims and clumsily attempting to sidestep the prohibition on litigation set forth in the Standstill Provision of the Stockholders' Agreement.

Count IV of the Third Amended Complaint is the latest example of the Manfusos' defective pleadings. As pled, Count IV contained no allegations that the Manfusos would, in fact, trigger the Russian roulette buy-sell provision by tendering their stock to the corporations at a stated price. De Francis and Jacobs moved to dismiss Count IV, in part, on the grounds that it requested a declaratory judgment upon a statement of facts which had not yet arisen and which was future, contingent and uncertain. Defendants' Motion, at 20, (citing Boyds Civic Association v. Montgomery County Council, 309 Md. 683, 690, 526 A.2d 598 (1987). As set forth in the Defendants' Motion to Dismiss the Manfusos' request for a declaration had to be dismissed for the lack of a justiciable controversy. See Hatt v. Anderson, 297, 42, 45, 464 A.2d 1076, 1078 (1983); Anne Arundel County v. Ebersberger, 62 Md. App. 360, 49 A.2d 96 (1985).

The Manfusos have attempted to cure this defect in their pleading by attaching to their Response the Affidavits of John

A. Manfuso, Jr. and Robert T. Manfuso. Both Manfusos have attested that they "presently intend to tender [their] shares in Pimlico Racing Association, Inc. and Laurel Racing Association, Inc. to those corporations on October 1, 1993."

Assuming that the Manfusos can cure defects in their pleadings by submitting post hoc Affidavits, they still have not remedied the essential procedural defect in Count IV. As set forth above, Count IV requests a declaration which, if rendered, would render moot Count II of De Francis' and Jacobs' Counterclaim. The factual issues raised by the Counterclaim must be reserved for trial.

V. The Defendants' Motion To Strike Was An Appropriate Response To The Manfusos Improper Pleading And Motion For Summary Judgment

The Manfusos have criticized the Defendants' Motion to Strike their Motion for Partial Summary Judgment. However, in light of the Manfusos apparent refusal to accept the court's determination that the Counterclaim raises factual issues that must be tried, the Defendants' Motion to Strike was appropriate.

Maryland Rule 2-322(e) provides that "on motion made by a party before responding to a pleading . . ., the court may order any . . . improper . . . matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety." Md. Rule 2-322(e) (1993). The Manfusos' new Count IV and, necessarily, the Motion for Partial Summary Judgment as to

Count IV are procedurally improper and not in compliance with the Maryland Rules. As such, it is appropriate for De Francis and Jacobs to move to strike the Motion for Partial Summary Judgment prior to any response.

VI. The Manfusos' Request For The Entry of Partial Summary Judgment Is Without Basis

The Manfusos request this court to ignore the Defendants' Motion to Strike their Motion for Partial Summary Judgment and to enter summary judgment in their favor as to Count IV of the Third Amended Complaint and against De Francis and Jacobs as to Counts I and II of their Counterclaim. If the court has any doubts as to the scope of the factual issues which prevent entry of summary judgment on these issues, it need only review De Francis' and Jacobs' Answers to Interrogatories propounded to them by the Manfusos. See Exhibits 1 and 2, respectively. De Francis and Jacobs provide details therein concerning the Manfusos' campaign of harassment, intimidation, and interference in daily operational and managerial decisions which has persisted since the inception of the Stockholders' Agreement. The Manfusos' pervasive conduct in this regard has denied De Francis and Jacobs the essential period of peace and stability necessary to establish a successful management team.

Coupled with the institution of this litigation and the attendant unfavorable publicity intentionally generated thereby, the Manfusos campaign has denied De Francis and Jacobs the benefit for which they bargained in the Stockholders

Agreement. They are entitled to have the finder of fact determine the materiality of the Manfusos' breaches and whether any further performance is required of them under the agreement.

VII. CONCLUSION

For the reasons set forth above, this court should dismiss Count IV of the Manfusos' Third Amended Complaint and grant the Defendants' Motion to Strike the Manfusos' Motion for Partial Summary Judgment as to Count IV. Such rulings would preserve the status quo and allow the central factual issues before the court to proceed to trial.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 1993 a copy of the aforegoing Reply in Further Support of Motion to Dismiss and Motion to Strike was mailed to: Andrew Graham, Esquire, Kramon & Graham, Commerce Plaza, One South Street, Suite 2600, Baltimore, Maryland 21202, Attorneys for Plaintiffs; Irwin Goldblum, Esq., McGee Grigsby, Esq., and

Jennifer Archie, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, Attorneys for Defendants, The Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc.

James E. Gray

James E. Gray

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

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NOTICE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 1993, a copy of Martin Jacob's Answers to Interrogatories Propounded by Robert T. Manfuso were mailed, first class, postage prepaid, to Andrew J. Graham, Esquire, Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, Maryland 21202, attorneys for Plaintiffs; Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, attorneys for Defendants, the Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc. and Laurel Racing Association, Inc.

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

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ANSWERS TO INTERROGATORIES

Defendant Martin Jacobs ("Jacobs"), by his undersigned counsel, hereby responds to Plaintiff Robert T. Manfuso's Interrogatories as follows:

The information supplied in these Answers to Interrogatories is not based solely on the knowledge of the executing party, but includes the knowledge of the party, its agents, representatives, and attorneys, unless privileged.

The word usage and sentence structure is that of the attorney and does not purport to be the exact language of the executing party.

General Objections Applicable to Instructions, Definitions, and All Interrogatories

The following General Objections are incorporated by reference into Jacobs' Response to each Interrogatory propounded to him by Robert T. Manfuso, as well as the Instructions and Definitions thereto:

1. Jacobs objects to Robert T. Manfuso's Instructions, Definitions, and Interrogatories, and each of them, to the extent they purport to impose any obligations that are inconsistent with

or additional to those imposed by the Maryland Rules of Civil Procedure.

2. Jacobs objects to Robert T. Manfuso's Instructions, Definitions, and Interrogatories, and each of them, to the extent they seek information protected by any applicable privilege or the work product doctrine.

3. Jacobs objects to Robert T. Manfuso's Instructions, Definitions, and Interrogatories, and each of them, to the extent they seek confidential, proprietary or sensitive business or commercial information, including, without limitation, information relating to the involvement of D/J/M Track Consultants ("D/J/M") in Texas Racing, the assets, financial terms and conditions of D/J/M, or other information related to the efforts of Lone Star Jockey Club, Ltd. ("Lone Star") to obtain a Class I racing license from the Texas Horse Racing Commission. The decision of the Texas Horse Racing Commission to award Lone Star a Class I racing license has been appealed to the Texas State Court. Robert T. Manfuso holds an ownership interest, through his ownership of shares in Hollywood Park, in Midpointe Racing, L.C., Lone Star's principal competitor for that license and an appellant in the Texas court, which would be directly benefitted by the disclosure of such information. See, for example, Response No. 6. First, the basic financial terms and conditions of D/J/M's involvement in the efforts of Lone Star to obtain a Class I racing license and to construct and operate a thoroughbred horse racing facility in Texas are contained in

the application for a license submitted by Lone Star to the Texas Horse Racing Commission. That application is in the possession of Midpointe Racing, L.C. ("Midpointe") in which Robert T. Manfuso holds an ownership interest. Thus, the information sought by these Requests is in the possession of or available to the Plaintiffs.

Second, Midpointe is Lone Star's principal competitor in the efforts to obtain a Class I racing license in Texas. The decision of the Texas Horse Racing Commission to award Lone Star the license has been appealed to the Texas State Court. Midpointe would be directly benefitted by the disclosure of any additional information other than that which has been set forth in the license application.

Third, because the financial terms and conditions of D/J/M's involvement in Lone Star's efforts to obtain a Class I racing license have no bearing on any issue in this case, they do not satisfy the threshold requirement of relevance under Maryland Rule 2-402(a). Instead, these Interrogatories appear to be propounded only to obtain information that could provide Midpointe Racing, L.C. with an advantage in the Texas proceedings and are, therefore, patently improper.

4. Jacobs objects to Robert T. Manfuso's Instructions, Definitions, and Interrogatories, and each of them, to the extent that they exceed thirty (30) in number, including subparts, in contravention of Maryland Rule 2-421(a). In part, these Interrogatories are excessive in number because the Plaintiff has

improperly combined requests for Jacobs to identify documents in thirteen (13) of the sixteen (16) numbered Interrogatories. See General Objection 5, infra. Additionally, Plaintiff has improperly combined, in all sixteen (16) of the numbered Interrogatories, a request for Jacobs to identify all persons having knowledge relating to the subject matter of the Interrogatory. When these two categories of subparts are counted with the sixteen (16) substantive inquiries (and even before counting other miscellaneous subparts), the Interrogatories total fifty-nine (59) in number, rather than the thirty (30) allowed under Maryland Rule 2-421.

5. Jacobs objects to Robert T. Manfuso's Interrogatories, and each of them, to the extent they request Jacobs to identify all documents relating to the particular subject matter therein. First, as set forth above, the inclusion of these requests to identify documents causes the Interrogatories to exceed thirty (30) in number. Second, this Plaintiff has propounded a comprehensive document request to Jacobs which essentially tracks these Interrogatories and to which Jacobs will respond in accordance to Maryland Rule 2-422. Requiring Jacobs to include in his responses to these Interrogatories a description of contemporaneously produced documents is unduly burdensome and beyond the scope of discovery allowed under the Maryland Rules. Finally, to the extent the Interrogatories require Jacobs to identify those particular documents which he and his counsel believe to be relevant to a particular claim or defense, they

intrude upon the attorney-client privilege and work product doctrine, i.e., such information would necessarily disclose the mental impressions, conclusions, opinions, or other legal theories of counsel.

6. The objection that an Interrogatory "seeks the discovery of irrelevant information" means that the Interrogatory seeks information not germane to the controversy between these parties and is not reasonably calculated to lead to the discovery of admissible evidence.

7. The objection that an Interrogatory is "unduly burdensome and oppressive" means that the Interrogatory requires a search for information that is of little or no benefit to this action and that the value of its production is far outweighed by the burden of producing it, especially when the Plaintiffs are already in possession of the same or substantially similar information.

8. The objection that an Interrogatory is "overly broad" means that the Interrogatory elicits information which is irrelevant to this litigation.

9. The objection that an Interrogatory is "vague and ambiguous" means that this Defendant is unable to ascertain with certainty what information is requested.

10. Jacobs' Objections and Responses provided herein are based on information now known to Jacobs. Jacobs has not yet completed his discovery of the facts in this lawsuit nor prepared for trial and, therefore, reserves his right to amend, modify, or

supplement his objections and Responses if he learns of new information.

11. All Responses stated below are provided subject to and without waiving any of the Objections stated above. The fact that Jacobs chooses not to repeat each of the foregoing Objections for each specific Request shall not waive any of the above-stated objections.

RESPONSES AND OBJECTIONS

INTERROGATORY NO. 1: State all facts and identify all documents supporting the allegation in paragraph 5(a) of the Counterclaim that the Manfusos conceived and implemented a scheme that included "[f]raudulently inducing De Francis and [you] to enter into a Stockholders Agreement . . . while having no intent to honor the provisions of that Agreement," including your answer the identity of all persons having knowledge relating to any factual basis for that allegation.

OBJECTION: See General Objections Nos. 4 and 5.

RESPONSE: Following the death of Frank J. De Francis in August of 1990, the Manfusos clearly recognized that Joseph De Francis ("De Francis") had absolute authority to assume the positions of President and Chief Executive Officer of both Laurel and Pimlico by virtue of the fact that, together, De Francis and his father's estate owned the controlling interest in the voting stock of the corporations. Robert T. Manfuso acknowledged in written "Prefiled Rebuttal Testimony" submitted in opposition to Lone Star's license application to the Texas Racing Commission that De Francis assumed the positions of President and Chief Executive Officer by virtue of his "voting control inherited from his father." Moreover, the Manfusos recognized that under

Maryland law De Francis could exercise the same voting control in the selection of the Boards of Directors, as well as control the selection of personnel who worked for the racetracks. In short, the Manfusos realized that they were merely minority shareholders in the corporations without any right to influence the operational or managerial control of the racetracks.

Not satisfied with this minority position, the Manfusos began a campaign of personal hostility primarily toward De Francis, coupled with threats of litigation and public disputes that would harm Laurel and Pimlico and create unrest and dissention among employees. The Manfusos accompanied their threats of litigation and public disputes with demands that De Francis and Jacobs enter into a Stockholders Agreement.

As the incentive for De Francis and Jacobs to enter into this Stockholders Agreement, the Manfusos promised to abide by a Standstill Provision in which the Manfusos agreed not to institute litigation relating to the "business or operations of Pimlico or Laurel" until October 1, 1993. Additionally, they agreed that De Francis, as President and Chief Executive Officer, would have full authority over operational and managerial decisions and policies, relations with the press, legislative and governmental authorities." However, the Plaintiffs never intended to fulfill these promises. Instead, the Plaintiffs used these inducements as a means of having De Francis and Jacobs agree to a Russian roulette buy-sell clause whereby the Plaintiffs would be positioned to secure control of the

racetracks. Once the buy-sell agreement was in place, the Manfusos began interfering with De Francis' management of the racetracks. As early as the fall of 1989, for example, the Manfusos criticized (privately and publicly) De Francis' decision to pursue an Arabian racing project which had been initiated by Frank J. De Francis before his death. Their private and public criticism took place before, during and after the Arabian racing meet which was held from October 14, 1989 through November 12, 1989, just weeks after the terms of the Stockholders Agreement were agreed upon in principle.

On or about February 20, 1990, they announced their resignation as officers of the racetracks, without any advance notice to De Francis and Jacobs, and made the same announcement to the public at a press conference the next day. Upon resigning, the Manfusos immediately claimed a $2,500,000.00 termination payment under the Agreement. John A. Manfuso, Jr. stated shortly thereafter that he believed at that time that the corporations would have been unable to make that payment, which would have resulted in a breach of the Stockholders Agreement or, alternatively, a major matter, which would have enabled the Manfusos to trigger the buy-sell provision.

From that time to the present, the Manfusos have continued in their campaign of public and private harassment and interference in the day-to-day operations of the tracks in breach of their obligations under the Stockholders Agreement, which includes the filing of this lawsuit. See Responses 3 and 4,

infra. The only reasonable inference from the Manfusos' course of conduct is that they had no contemporaneous intent to fulfill their obligations under the Stockholders Agreement.

Persons who may have knowledge of this aspect of the Plaintiffs' scheme include the Plaintiffs and, circumstantially, De Francis and Jacobs.

INTERROGATORY NO. 2: State all facts and identify all documents supporting the allegation in paragraph 5(b) of the Counterclaim that the Manfusos conceived and implemented a scheme that included "[o]btaining the withdrawal of substantial funds from Pimlico under the Stockholders Agreement due to them upon their resignation as officers, while having no intention to honor their obligations under that Agreement," including in your answer the identity of all persons having knowledge relating to any factual basis for that allegation.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: See Response No. 1. In addition to the buy-sell provision, the Manfusos received numerous other benefits under the Stockholders Agreement to which they were not otherwise entitled as minority shareholders. Chief among these benefits was the grant of the right to each Plaintiff to receive a $1.25 million lump sum payment upon their resignation as officers of the corporations. Unbeknownst to De Francis and Jacobs, the Manfusos requested this benefit specifically in furtherance of their plan to trigger the buy-sell provision. Within twenty-two (22) days of the signing of the Stockholders Agreement, the Manfusos, without any advance notice to De Francis and Jacobs, announced their resignation as officers of the corporations and demanded the $2.5 million lump sum payment. According to statements made shortly thereafter by John A. Manfuso, Jr., the

Manfusos did not believe that Pimlico's lender would permit the payment of the $2.5 million termination payment. The Plaintiffs fully expected that the lender's refusal to permit that payment would either place De Francis and the corporations in breach of the Stockholders Agreement, or place De Francis and Jacobs in a position in which they would need new financing which would be a major matter. In either event, the Manfusos would have been in a position to trigger the buy-sell provision. However, Pimlico's lender approved the payment. Persons who may have knowledge of some facts and circumstances of this aspect of Plaintiffs' scheme include the Plaintiffs, De Francis and Jacobs.

INTERROGATORY NO. 3: State all facts and identify all documents supporting the allegation in paragraph 5(c) of the Counterclaim that the Manfusos conceived and implemented a scheme that included "[d]isparaging De Francis and [you] to elected officials, the press, employees of Laurel and Pimlico, horsemen, breeders, and the Maryland racing industry in general so as to damage [De Francis's and your] individual reputations and [De Francis's and your] financial ability to act as buyers under the "Russian Roulette buy/sell,'" including in your answer the identity of all persons having knowledge relating to any factual basis for that allegation.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: Subject to and without waiving these Objections, the instances of the Manfusos disparaging the abilities of De Francis and Jacobs to run the racetracks are too numerous to recount in detail. By way of example, as early as February 26, 1990, a story in the Washington Post reporting the Manfusos' decision to resign as officers from the track included references to the Manfusos' disagreement with Joseph A. De Francis' decision

to pursue Arabian racing. The story included quotes from the Manfusos, criticizing the Arabian racing project.

On February 19, 1991, in the midst of a controversy generated by the Guida Group's unsuccessful attempt to purchase the De Francis interest in Laurel, the Baltimore Sun ran a story in which Tom Manfuso was quoted as saying the Guida Group was uncomfortable with De Francis's management of the racetrack. Similarly, on February 20, 1991, the Washington Post ran a story describing the Manfusos' dissatisfaction with management decisions following their retirement in which Bob Manfuso was quoted as stating, "I thought the decision [to reschedule certain races] was lousy."

The Manfusos have disparaged the competence of De Francis and Jacobs to elected officials. By way of example, on an occasion when he was visiting the racetracks, Gov. William Donald Schaefer remarked to De Francis that John A. Manfuso, Jr. had complained to him about how poorly Maryland racing was doing. When the Governor reminded Manfuso that the racing industry was in a decline nationwide, in part because of general economic conditions, Manfuso stated that the downturn in Maryland racing was due to mismanagement.

The Manfusos have also disparaged the competence and integrity of De Francis and Jacobs to members of the racing industry. For example, on one occasion De Francis appeared as a speaker before the Board of Directors of the Maryland Thoroughbred Horsemen's Association to promote intertrack

simulcast of races at Laurel and Pimlico to Rosecroft Raceway. After De Francis left the meeting, Robert T. Manfuso made a speech which created the perception that De Francis' proposal would be detrimental to horsemen because they would not have any means of verifying the statistics provided by management of Laurel and Pimlico. Similarly, while De Francis and Jacobs were expending considerable efforts toward the implementation of off-track betting, the Manfusos created considerable confusion and fostered an atmosphere of distrust among horsemen concerning the amount they would be asked to contribute toward the implementation of off-track betting.

The Manfusos disparaged the competence and integrity of De Francis and Jacobs to Texas Racing officials in connection with their efforts to defeat the application of Lone Star to obtain a Class I racing license from the Texas Horse Racing Commission. Robert T. Manfuso submitted written "Prefiled Rebuttal Testimony" in which he stated that De Francis and Jacobs had little meaningful experience in operating a racetrack facility. Additionally, the Reply Brief of Midpointe contained information disparaging De Francis and Jacobs and concerning this litigation that could only have been provided to Midpointe's attorneys by the Manfusos.

Additionally, the Manfusos have disparaged the competence of Jacobs and De Francis to the Laurel Guida Group, the limited partner in Laurel Racing Association Limited Partnership.

Discovery recently commenced in this matter and Jacobs' investigation of the Manfusos' campaign of disparagement is continuing. He anticipates that this Response will be supplemented as additional facts are disclosed.

Persons who may have knowledge of some facts and circumstances of the Manfusos' conduct in this regard include the journalists who reported the Manfusos' criticisms and disparaging comments, members of the Maryland Thoroughbred Horsemen's Association and the Maryland Horsebreeders Association, members of the Laurel Guida Group, investigators of the Texas Department of Public Safety, Governor William Donald Schaefer, De Francis, Jacobs and the Plaintiffs.

INTERROGATORY NO. 4: State all facts and identify all documents supporting the allegation in paragraph 5(d) of the Counterclaim that the Manfusos conceived and implemented a scheme that included "harassing De Francis and [you] so as to divert [De Francis's and your] time and attention from the management and operation of Laurel and Pimlico and cause personal and corporate financial resources to be expended on meaningless disputes with the Manfusos rather than on the business of the racetracks," including in your answer the identity of all persons having knowledge relating to any factual basis for that allegation.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: Subject to and without waiving these Objections, Jacobs states that, following the death of Frank J. De Francis, the Manfusos began a campaign of personal hostility directed toward De Francis and Jacobs, coupled with threats of litigation and public disputes that would harm Laurel and Pimlico and create unrest and dissention among employees. Notwithstanding the status and rights held by De Francis by virtue of his control of the majority of voting stock in the corporations, and

notwithstanding their acknowledgement in the Stockholders Agreement that De Francis held full authority over operational and managerial decisions and policies, as well as relations with the press, legislature and governmental authorities, the Manfusos continuously questioned business and operational decisions made by De Francis without providing any legal or factual basis for their complaints. By way of example, the Manfusos have questioned the allocation of resources between Pimlico and Laurel; the allocation of racing days between Laurel and Pimlico; certain accounting practices of the corporations' accountants and outside auditors; management's dealings with an outside catering service; the corporations' contributions to charitable or non-profit organizations; management's dealings with Laurel's Limited Partner; management's dealings with the corporations' former marketing director; the handling of the Preakness Celebration; management's dealing with the legislature in connection with off-track betting, twilight racing and other issues; and management's decisions concerning the scheduling of particular races.

Because the Manfusos' continual harassment and interference in matters of this nature are too numerous to describe herein, Jacobs will rely for additional response to this Interrogatory upon his option to produce business records, pursuant to Md. Rule 2-421.

Persons who may have knowledge of the Manfusos' interference with the day-to-day operations of the racetracks include numerous employees of the tracks, De Francis, Jacobs, and the Plaintiffs.

INTERROGATORY NO. 5: State all facts and identify all documents supporting the allegation in paragraph 5(e) of the Counterclaim that they Manfusos conceived and implemented a scheme that included "[s]eeking to damage Laurel financially so that it would be in default in regard to financial covenants required by its lender so as to accelerate the time when the 'Russian Roulette buy/sell' could be exercised and damage the financial ability of De Francis and [you] to act as buyers under the Agreement," including in your answer the identity of all persons having knowledge relating to any factual basis for that allegation.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: See Response No. 2. Additionally, in written and verbal communications, the Manfusos continuously challenged the allocation of resources between Pimlico and Laurel claiming that an inappropriate amount of expense was being charged to Pimlico, as opposed to Laurel, and too much income was being attributed to Laurel, as opposed to Pimlico. In response to these challenges, De Francis and Jacobs have provided exhaustive explanations to the Manfusos concerning the allocation of resources and expenses between Laurel and Pimlico. The Manfusos' accountant, Mark Reynolds was provided with the same explanations in conversations with the independent auditors and outside and internal accountants for the corporations. Neither the Manfusos nor their accountant have provided a single fact, in writing or otherwise, to support the continuing allegations that the financial statements do not accurately reflect Laurel's and Pimlico's financial circumstances. The only possible reason for the Manfusos' continuing insistence that the financial statements be changed is to place Laurel in default of its loan obligations so

as to accelerate the time when the Russian roulette buy/sell could be exercised.

Persons who may have knowledge of the facts and circumstances concerning the Manfusos' scheme to damage Laurel financially include De Francis, the other directors of Laurel and Pimlico, Richard Watkins, Mark Reynolds, the Plaintiffs and Jacobs.

INTERROGATORY NO. 6: State all facts and identify all documents supporting the allegation in paragraph 5(f) of the Counterclaim that the Manfusos conceived and implemented a scheme that included "[t]ortiously interfering with De Francis' and [your] pursuit of racing interests in Texas so as to damage [De Francis's and your] individual reputations and [De Francis's and your] financial ability to act as buyers under the 'Russian Roulette buy/sell,'" including in your answer the identity of all persons having knowledge relating to any factual basis for that allegation.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: Subject to and without waiving these objections, in April 1991, the Manfusos demanded that Pimlico cease pursuing the corporate opportunity presented by Texas racing. Pursuant to the Manfusos' demands, De Francis agreed that there would be no further involvement on the part of Pimlico in Texas racing and that no additional corporate resources would be expended in this regard. However, De Francis and Jacobs determined that they would pursue the business opportunity presented by Texas racing personally, as they were expressly permitted to do under the Stockholders Agreement.

Notwithstanding their insistence that Pimlico forego the opportunity presented by Texas racing, Robert T. Manfuso became involved in Texas racing through his ownership interest in

Midpointe through Hollywood Park. Robert T. Manfuso became personally involved in efforts to defeat Lone Star's efforts to obtain a Class I racing license from the Texas Racing Commission. Robert T. Manfuso's written Prefiled Rebuttal Testimony was submitted by Midpointe to the Texas Racing Commission in opposition to the Lone Star application. In that written testimony, Manfuso disparaged the competence and integrity of De Francis and Jacobs, stating among other things that they had little meaningful experience in operating a racetrack facility. Additionally, Midpointe's Reply Brief contained misleading information about this litigation which could only have been provided by the Manfusos. Furthermore, the Manfusos provided Midpointe's attorneys with documents generated in the course of this litigation which were used as Exhibits in the Texas proceedings in opposition to Lone Star's application.

Additionally, because they believed that the participation of Mango was essential for Lone Star's success in the license application process, the Manfusos have attempted to obtain injunctions in this litigation to prevent such participation. These efforts were undertaken notwithstanding their knowledge that De Francis had clarified to Mango, in a letter dated April 8, 1992, that any involvement on his part in Texas racing must be pursued on his own time and that he must continue to devote substantially all of his time to the Maryland racetracks. The Manfusos provided a copy of De Francis' letter, which had been provided to them by De Francis, to Midpointe's attorneys who used

an enlargement of it as a poster sized exhibit in the Texas license application proceedings.

Persons who may have personal knowledge of the facts and circumstances surrounding the Manfusos tortious interference in Jacobs' and De Francis' pursuit of racing interests in Texas include Midpointe's Texas counsel, members of the press in Texas and Maryland, members of the Texas Department of Public Safety Investigatins, and the Plaintiffs.

INTERROGATORY NO. 7: State all facts and identify all documents supporting the allegation in paragraph 6(b) of the Counterclaim that "a newly elected independent member of the Board of Directors of Laurel and Pimlico considered the Manfusos' claims, agreed with management and joined the majority of Directors in finding no 'so-called' abuses," including in your answer the identity of all persons having knowledge relating to any factual basis for that allegation.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: Without waiving any objections, Jacobs maintains that, on April 13, 1992, Father Joseph Sellinger S.J. was elected to the Board of Directors of the corporations. On April 13, 1992, the corporations held a Board of Directors meeting. De Francis, Jacobs, the Manfusos, Karin Van Dyke, and Father Sellinger were in attendance. At this meeting, the Manfusos requested votes on the following resolutions: (1) to require the corporations' independent auditors, Ernst & Young, to meet with the Manfusos; (2) to require De Francis and Jacobs to reimburse the Maryland Jockey Club for all funds expended by the Maryland Jockey Club in pursuit of Texas Racing; and (3) to hire independent counsel to determine whether the corporations have properly allocated expenses between Laurel and Pimlico. The

Board denied each resolution by a vote of 4 to 2, with De Francis, Jacobs, Van Dyke, and Father Sellinger constituting the majority in each case.

INTERROGATORY NO. 8: State all facts and identify all documents supporting the allegations in paragraph 55(a) of the Counterclaim that, in implementation of their alleged scheme, the Manfusos "instituted a campaign to contest and challenge managerial and operational decisions of De Francis and to belittle and discredit him with elected officials, members of the press, employees, horsemen, breeders and others," including in your answer a full and complete account of the "managerial and operational decisions" that you contend the Manfusos challenged, the identity of all persons to whom you contend the Manfusos "belittle[d]" De Francis, and the identity of all persons having knowledge relating to any factual basis for the allegations in paragraph 55(a) of the Counterclaim.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: See Responses Nos. 3 and 4.

INTERROGATORY NO. 9: State all facts and identify all documents supporting the allegations in paragraph 55(b) of the Counterclaim that, in implementation of their alleged scheme, the Manfusos "instituted a campaign of disparagement, harassment and intimidation related to the competency, integrity and professionalism of [you] in an effort to drive [you] from [your] positions as Executive Vice President, Treasurer and General Counsel of the corporations," including in your answer a full and complete account of the manner in which you contend the Manfusos implemented their alleged "campaign of disparagement, harassment, and intimidation" and the identity of all persons having knowledge relating to any factual basis for the allegations in paragraph 55(b) of the Counterclaim.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: See Responses Nos. 3 and 4. Additionally, the Manfusos have frequently questioned Jacobs' performance of his duties as Executive Vice President, Treasurer and General Counsel of the corporation. In a letter dated December 13, 1990, John A. Manfuso, Jr. questioned Jacobs' "judgment and behavior" in connection with Jacobs' efforts to protect the confidentiality of

tape recordings of Board meetings. At a meeting among De Francis, Jacobs and the Manfusos, John A. Manfuso, Jr. stated that he had discussed Jacobs' decision not to provide him with duplicate tapes of the Boards meetings with unidentified "other lawyers" and that these other lawyers had agreed with Manfuso's assessment that Jacobs "was an asshole." This was consistent with John A. Manfuso's custom of shouting at Jacobs in the course of owners' or Board meetings. At one such meeting, Jacobs was prompted by John A. Manfuso, Jr.'s abusive behavior to ask if Manfuso was attempting to get him to resign, to which Manfuso responded affirmatively. In a letter dated May 31, 1991, counsel for the Manfusos wrote to Jacobs questioning "various legal decisions which had been made respecting the racetracks" and suggesting that Jacobs' alleged representation of De Francis and unspecified "interest aligned with him and his family" conflicted with his role as General Counsel to the corporations.

Persons who may have knowledge of the Manfusos' campaign of disparagement and intimidation directed towards Jacobs included Jacobs, De Francis, the Manfusos and the other directors of the corporations.

INTERROGATORY NO. 10: State all facts and identify all documents supporting the allegations in paragraph 55(c) of the Counterclaim that, in implementation of their alleged scheme, the Manfusos "instituted a campaign to interfere with management's relationships and ability to deal with third parties by advising various members of the racing industry that they would be returning in the near future as controlling stockholders and that De Francis' tenure as President and Chief Executive Officer would be short lived," including in your answer the identity of all "members of the racing industry" whom you contend the Manfusos advised that "they would be returning in the near future as controlling stockholders" or "that De Francis' tenure as

President and Chief Executive Officer would be short lived" and the identity of all persons having knowledge relating to any factual basis for the allegations in paragraph 55(c) of the Counterclaim.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: Subject to and without waiving these objections, see Response No. 3. The Manfusos high visibility campaign of disparagement of the competence and integrity of De Francis and Jacobs, culminating in the filing of this litigation and repeated filing of amended complaints realleging meritless and previously dismissed claims which were accompanied by contemporaneous press coverage which is believed to have been instigated by the Plaintiffs or someone acting on their behalf, has undermined the ability of management to gain the confidence of and establish the necessary relationships with third parties with whom they must deal in the course of operating the racetracks. For example, the public controversy generated by this litigation and, in particular, by the adverse publicity concerning the Russian Roulette buy-sell, impaired De Francis' negotiations with the President of United Food and Commercial Workers Local 27. As a direct result of the publicity generated by this litigation, this Union official questioned whether De Francis would remain in control of the corporations, leading to more difficult negotiations.

INTERROGATORY NO. 11: State all facts and identify all documents supporting the allegations in paragraph 55(e) of the Counterclaim that, in implementation of their alleged scheme, the Manfusos "instituted a campaign designed to cause dissension, disharmony and decreased efficiency among the Laurel and Pimlico employees by attacking the competency of De Francis and [you] and that of any employee they deemed to have personal loyalty solely

to De Francis or [you], and by stating or intimating to employees and others that they would ultimately oust De Francis and [you] and assume control of Laurel and Pimlico," including in your answer a full and complete account of the method by which you contend the Manfusos implemented that alleged campaign, the means by which you contend the Manfusos attached the competency of De Francis and you and that of any employee they deemed to have personal loyalty solely to De Francis or you, the identity of all persons to whom you contend the Manfusos stated or intimated that they would ultimately oust De Francis and you and assume control of Laurel and Pimlico, and the identity of all persons having knowledge relating to any factual basis for the allegations in paragraph 55(e) of the Counterclaim.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: Subject to and without waiving these objections, Jacobs states that the Manfusos' campaign of interfering with management's relationship with employees has been extensive, but subtle. For example, in October 1991, management made the difficult decision to lay off certain non-essential employees. The Manfusos were asked to support this decision of management. Instead, they publicly opposed the decision to lay off certain employees, including Stephanie Lawson, who formerly performed secretarial services for the Manfusos. It is believed that the Manfusos had recruited Ms. Lawson to provide them with information concerning the day-to-day minutiae involved in the operations of the tracks.

After their retirement, the Manfusos made a practice of visiting the accounting department and other operational centers of the racetracks, ostensibly for the purpose of reviewing information such as check registers and bills for disbursements. Their true purpose was to maintain frequent and direct contact with employees and to convey the message that they continued to

exercise control over various operations of the racetracks. As evidence of their true motivations, in the spring of 1992, De Francis issued a directive that all requests for information from the Manfusos be made directly to him. In the approximately one year since that time, the Manfusos have not requested a single item of the type of information they previously had requested and obtained on a regular basis from the accounting department.

Persons who may have knowledge of the Manfusos' conduct in this regard include Stephanie Lawson, Sandra Cuneo, members of the accounting department of Laurel and Pimlico, De Francis, Jacobs, and the Plaintiffs.

INTERROGATORY NO. 12: State all facts and identify all documents supporting the allegations in paragraph 55(f) of the Counterclaim that, in implementation of their alleged scheme, the Manfusos "instituted a campaign of harassment of management by raising trivial and meaningless concerns regarding unimportant issues so as to divert the time and attention of management from important issues crucial to the financial survival of Laurel and Pimlico at a time when the economy and other factors outside the control of management had placed the entire racing industry in crisis," including in your answer a full and complete account of the means by which you contend the Manfusos instituted that alleged "campaign of harassment of management" and the identity of all persons having knowledge relating to any factual basis for the allegations in paragraph 55(f) of the Counterclaim.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: See Responses Nos. 3, 4, 8 and 11. Jacobs maintains that the racing industry as a whole is in a state of crisis for many reasons including the following: (1) the decrease in the number of thoroughbred horses available to run at racetracks which has resulted in fewer races, fewer horses in races and reduced quality of racing; (2) the failure of racing to attract new fans to the sport and the expansion of other forms of

gambling (including, in Maryland, the institution of Keno by the lottery); and (3) the ongoing recession which has impaired revenues in retail, service and entertainment industries. Although these problems are outside the control of management, Jacobs believes that the multiple signal simulcasting, intertrack wagering with Rosecroft Raceway and other racetracks, coupled with off-track betting, may negate the decline and, in fact, create opportunities to increase revenues. However, De Francis' and Jacobs' ability to devote their time and attention to these projects has been substantially impaired by the Plaintiffs' conduct, including their wrongful interference in day-to-day managerial and operational decisions, their wrongful interference with relationships with employees and third parties and their institution of this litigation.

For persons who may have knowledge of the Manfusos' conduct in this regard, see Responses Nos. 3, 4, 8, and 11.

INTERROGATORY NO. 13: Provide a full and complete itemization of all damages that you claim in this action, including in your answer the identity of all persons having knowledge of your damages, and the identity of all documents constituting or relating to your computation of damages.

OBJECTIONS: See General Objections Nos. 4 and 5.

RESPONSE: Without waiving these objections, Jacobs states that, at this time, he has not completed an itemization of damages; however, he will supply Plaintiffs with an itemization when this task is accomplished.

INTERROGATORY NO. 14: Identify each person whom you expect to call as an expert witness at trial, and, for each person so identified, state the subject matter as to which the person is expected to testify, state the substance of the facts

and opinions as to which the person is expected to testify, provide a summary of the grounds for each opinion, provide an account of each occasion during the last five years when the person has given expert testimony, identify all persons having knowledge of the subject matter of this interrogatory, and identify all documents relating to the subject matter of this interrogatory, including, without intended limitation, any report prepared by the person, and all documents consulted or reviewed by the person.

OBJECTIONS: Jacobs objects to Interrogatory No. 14 on the grounds that it is overly broad, unduly burdensome, and oppressive, and seeks the discovery of irrelevant information.

RESPONSE: Without waiving these objections, Jacobs states that, at this time, he has not retained an expert which he expects to call as an expert witness at trial. However, if and when Jacobs does retain an expert witness to be used at trial, he will provide all related information discoverable under Maryland Rule 2-402(a).

INTERROGATORY NO. 15: Identify all persons who have given you a statement, within the meaning of Md. R. 2-402(b), relating to the subject matter of this litigation, including in your answer the identity of the present custodian of each statement.

OBJECTIONS: Jacobs objects to Interrogatory No. 15 as vague and ambiguous as framed. Md. R. 2-402(b) provides only for the discovery of the existence and contents of insurance agreements under which an insurer might be liable to satisfy part or all of a judgment entered in the subject litigation. In light of the scope of this subsection, Jacobs cannot ascertain what information is sought by Interrogatory No. 15.

RESPONSE:

INTERROGATORY NO. 16: Identify each person furnishing information for the answers to these interrogatories, and, with respect to each such person, state the number of the

interrogatory for which each such person furnished information and the substance of the information that he or she furnished.

OBJECTIONS:

RESPONSE: Other than the parties and counsel, no person has furnished information for the Answers to these Interrogatories.

I HEREBY DECLARE and AFFIRM under the penalties of perjury that the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information and belief.

Martin Jacobs

James E. Gray

Linda S. Woolf

Linda S. Woolf
Goodell, DeVries, Leech & Gray
25 S. Charles Street, Suite 1900
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Attorneys for Defendants
De Francis and Jacobs

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CIVIL DIVISION

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

CE 147851

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 1993, a copy of Martin Jacob's Answers to Interrogatories Propounded by Robert T. Manfuso were mailed, first class, postage prepaid, to Andrew J. Graham, Esquire, Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, Maryland 21202, attorneys for Plaintiffs; Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, attorneys for Defendants, the Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc. and Laurel Racing Association, Inc.

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Attorneys for Defendants
De Francis and Jacobs

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ROBERT T. MANFUSO, et al.	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR CIVIL DIVISION
JOSEPH A. De FRANCIS, et al.	*	BALTIMORE CITY
Defendants	*	Case No. 92120052/CE 147851

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

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS AND TO DEFENDANTS' MOTION TO STRIKE

Defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs") have moved to dismiss portions of the third amended complaint filed by plaintiffs Robert T. Manfuso and John A. Manfuso, Jr. (collectively, "the Manfusos"). In addition, De Francis and Jacobs have moved to strike the Manfusos' motion for partial summary judgment on Count IV of the third amended complaint. For the following reasons, the Manfusos, by their undersigned attorneys, submit that the Court should deny both motions:

I. THE COURT SHOULD DENY THE DEFENDANTS' MOTION TO DISMISS COUNT IV OF THE THIRD AMENDED COMPLAINT

Count IV of the third amended complaint asks the Court to declare that the so-called "Russian Roulette" provisions of the Pimlico-Laurel Stockholders Agreement remain in full force and effect. De Francis and Jacobs have moved to dismiss Count IV on the spurious ground that the Manfusos have somehow failed to allege the existence of a justiciable controversy.

According to the defendants, the Court has no assurance that any controversy will ever arise, because the Manfusos have not alleged in so many words that they intend to tender their

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shares on October 1, 1993. Motion to Dismiss, etc., at 22. That argument is typical of the word games that the defendants have repeatedly employed in their effort to avoid meeting the merits of the Manfusos' claims and defenses.

"[A] controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought." Hatt v. Anderson, 297 Md. 42, 45-46, 464 A.2d 1076, 1078 (1983). Having presided over this protracted case for nearly a year, having heard the parties' testimony at several hearings, and having read and considered the extensive arguments posed by counsel on all sides, the Court should have no doubt that such a controversy exists on the question of the validity of the Russian Roulette provisions.

De Francis has publicly stated that he does not intend to comply with the Russian Roulette provisions,[1] and he has stated privately that he intends to drag out this lawsuit as long as possible to delay the effective date of the Russian Roulette.[2]

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[1] Third Amended Complaint, ¶ 54 (quoting Ross Peddicord, De Francis Sees no Showdown, The Sun (Baltimore), Jan. 3, 1993, at 18D, col. 1). Compare Hatt v. Anderson, 297 Md. at 47, 464 A.2d at 1079, in which the Court of Appeals found no justiciable controversy where the defendant government official had never disputed, challenged, or contested any of the plaintiff's rights under the regulation in question. By contrast, in the present case De Francis could not have made it clearer that he disputes, challenges, and contests the Manfusos' rights under the Russian Roulette provisions and other provisions of the Shareholders Agreement.

[2] Third Amended Complaint, ¶ 53.

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De Francis and Jacobs have already caused the corporations to cease all performance under the Stockholders Agreement, thereby prompting the Manfusos' claim for damages in Count III of the third amended complaint. Moreover, in their prayer for relief in Count II of their counterclaim, De Francis and Jacobs have asked that they be excused from all future performance under the Stockholders Agreement, obviously including performance under Russian Roulette provisions.[3]

The purpose for the defendants' conduct is clear: Their counterclaim essentially admits that they will lose control of the corporations if the Russian Roulette provisions take effect.[4] Hence, to preserve their hold on the corporations, De

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[3] By requesting that they be excused from future performance, De Francis and Jacobs have requested that they be excused from performance the time for which has not yet arrived and which may in fact never arrive. De Francis and Jacobs cannot assert the viability of that claim for relief while simultaneously claiming that the Manfusos have failed to allege a justiciable controversy in Count IV of the third amended complaint. Nowhere, however, do De Francis or Jacobs attempt to explain the blatant inconsistency between the relief sought in their counterclaim for declaratory relief and their position on the third amended complaint.

In any event, by alleging that the Russian Roulette provisions remain in effect despite their alleged "breach," the Manfusos have simply presented the Court with a mirror image of Count II of the defendants' counterclaim, which requests a declaration that the Manfusos' "breach" frees the defendants from all future performance. Therefore, if the Court dismisses Count IV of the third amended complaint, then it should also dismiss the prayer for declaratory relief in Count II of the counterclaim.

[4] See, e.g., Counterclaim, ¶¶ 3-4. Indeed, the counterclaim accuses the Manfusos of having previously attempted to trigger the Russian Roulette by causing the corporations to repay the Manfusos' $2.5 million cash contributions (see ¶ 52)

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Francis and Jacobs have attempted to rescind the Russian Roulette provisions or to delay their effective date as long as possible; the Manfusos, on the other hand, have asked the Court to declare that the Russian Roulette provisions remain in effect so as to preserve the valuable rights that they obtained under the Stockholders Agreement. As one would be hard pressed to find a clearer case of a justiciable controversy, the Court should deny the motion to dismiss.

If, however, the Court has any residual doubt about whether the Manfusos will exercise their rights under the Russian Roulette provisions on October 1, 1993, then it should consider the Manfusos' affidavits, which are attached as Exhibits A and B. In those affidavits the Manfusos state that, in accordance with the Russian Roulette provisions, they presently intend to tender their shares to the corporations on October 1, 1993.[5]

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and by allegedly attempting to place Laurel in default of its financial covenants (¶ 56). Thus, the Court need not give any great credence to the defendants' sudden skepticism about whether the Manfusos will in fact exercise their rights under the Russian Roulette provisions on October 1, 1993.

[5] The Manfusos have previously signalled their interest in triggering the Russian Roulette provisions on October 1, 1993. During a hearing on the Manfusos' motion for an interlocutory injunction on July 2, 1992, plaintiff John A. Manfuso, Jr., was asked why the Stockholders Agreement bears the date of October 1, 1989, if the parties did not actually sign it until February 1990. He replied: "[E]ven though the tardiness of the attorney might have delayed the final signed document, the agreement was in place and I didn't want the Russian roulette clause if we needed to exercise it extend an additional five months because of the delay in putting together a final document." Exhibit C (Excerpts from the proceedings on July 2, 1992), p. 44.

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The record therefore discloses an actual, live controversy concerning the Manfusos' right to activate the Russian Roulette provisions on October 1, 1993. Accordingly, the Court should deny the motion to dismiss. Compare Hatt v. Anderson, 297 Md. at 46, 464 A.2d at 1079 (directing dismissal of complaint where the grounds for granting declaratory relief were not "apparent from the record"); Anne Arundel County v. Ebersberger, 62 Md. App. 360, 371, 489 A.2d 96, 101 (1985)(directing dismissal of complaint where the record before the court gave no assurance that a controversy would necessarily arise).[6]

---

[6] De Francis and Jacobs charge the Manfusos with having "timed the filing" of the third amended complaint "to generate as much adverse publicity and controversy as possible" through disclosures about the defendants' bloated salaries and their practice of disguising their true salaries through misleading reports to the regulators. Motion to Dismiss, etc., at 5. The Court should not allow itself to be misled by the defendants' mistatements.

The defendants' true salaries did not first become public with the filing of the third amended complaint; they became public nearly a year ago when the Manfusos filed their original complaint. See Complaint for Declaratory and Injunctive Relief (April 29, 1992), ¶ 14 ("the compensation package which Joseph De Francis insisted on receiving totaled approximately $700,000.00 per year--a vast overpayment for an executive of his abilities"); id., ¶ 33 ("Although Pimlico and Laurel jointly pay Jacobs almost $400,000.00 per year to serve as General Counsel, Treasurer, and Vice President of the corporations, and to devote his full time and best efforts thereto, Pimlico and Laurel still pay in excess of $276,000.00 in legal fees to outside counsel").

Nor does the defendants' approval of accounting irregularities bring any new issues into the case. Notwithstanding the defendants' unsupported assertions to the contrary (see, e.g., Motion to Dismiss, etc., at 6), the Manfusos have long protested the racetracks' practice of disguising a portion of executive salaries as office expenses. Furthermore, on December 15, 1992 -- 11 weeks before the filing

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II. THE COURT SHOULD DENY THE MOTION TO STRIKE THE MANFUSOS' MOTION FOR PARTIAL SUMMARY JUDGMENT

In moving for partial summary judgment on Count IV of their third amended complaint, the Manfusos have asked for a summary determination that the Russian Roulette provisions remain in full force and effect. As explained in the motion,[7] a ruling in the Manfusos' favor would also entail the entry of judgment against De Francis and Jacobs on their counterclaims for fraud and breach of contract.[8]

The Manfusos properly supported their motion with affidavits and citations to other matters of record. The Manfusos, moreover, asked the Court to consider the defendants' continuing failure to come forward with any evidence supporting

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of the third amended complaint -- the Executive Director of the Maryland Racing Commission wrote to the racetracks' auditors, asking why the Commission had been "mislead" [sic] if the reports contained false information about the defendants' salaries. Exhibit D (Letter from Kenneth A. Schertle to Ernst & Young). Similarly, on February 1, 1993 -- still more than a month before the filing of the third amended complaint -- the Executive Director wrote to Jacobs expressing concern on the same subject. Exhibit E (Letter from Kenneth A. Schertle to Martin Jacobs).

The validity of the Manfusos' criticisms is confirmed in the racetracks' decision to make a full and clear disclosure of officers' salaries in the 1992 financial statements.

[7] E.g., p. 7 n. 7; p. 10 n. 10.

[8] For that reason, the Court may treat the motion for partial summary judgment not only as a motion for summary judgment on Count IV of the third amended complaint, but also as a motion for summary judgment on Counts I and II of the counterclaim. Hence, the Court may proceed to rule on the Manfusos' motion for partial summary judgment even if it dismisses Count IV of the third amended complaint.

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the defenses against the enforcement of the Russian Roulette provision or the counterclaims for fraud and breach of contract. Yet, instead of responding by pointing up genuine disputes of material fact, De Francis and Jacobs have attempted to sidestep the substance of the Manfusos' motion by filing a "motion to strike."

The "motion to strike" proceeds from a false premise, namely, that the Court has already found a genuine dispute of material fact about whether the Manfusos have breached the Stockholders Agreement. Motion to Dismiss, etc., at 24, 25. To the contrary, in ruling on the Manfusos' motion to dismiss or for summary judgment as to Counts II and III of the counterclaim, the Court treated the motion as a motion to dismiss, restricted its analysis to the legal sufficiency of the allegations in the counterclaim, and held only that De Francis and Jacobs had stated claims upon which relief could be granted.[9]

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[9] Conspicuously absent from the defendants' motion is any identification of the disputed facts that the Court supposedly found. But even if the Court had found a dispute of fact as to whether the Manfusos had breached the Stockholders Agreement, that finding alone would not bar the entry of partial summary judgment on Count IV of the third amended complaint. In their motion for partial summary judgment, the Manfusos argued at length that, assuming arguendo that they have breached the Agreement, De Francis and Jacobs have ratified the breach or have waived the right to protest by continuing to accept the benefits that they secured for themselves only through the Agreement. Furthermore, the Manfusos have argued that, assuming arguendo that they have breached the Agreement, the breach would not give De Francis and Jacobs the right that they have asserted, namely, the right of recision. De Francis and Jacobs have offered the Court absolutely nothing to counter those

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The Court never suggested that it had looked beyond the bare allegations in the pleadings themselves, let alone that it had somehow found a genuine dispute of a material fact. Nor did the Court suggest that it intended to bar the Manfusos from ever moving for summary judgment, which they would otherwise have had the right to do "at any time." Md. R. 2-501(a). Indeed, the Court specifically described its ruling as the denial of the Manfusos' "motion to dismiss." Exhibit F (Excerpts from the proceedings on Sept. 23, 1992, p. 91).[10]

The motion to strike, in short, represents another example of the defendants' strategy of delay, through which they have avoided meeting the merits of the Manfusos's claims and defenses for nearly a year.[11] The defendants undoubtedly know that they

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arguments.

[10] The Court went on to contrast that ruling with the ruling by which it dismissed a similar count of the corporate defendants' counterclaim. Unlike De Francis and Jacobs, the corporate defendants alleged that the Manfusos had breached the Stockholders Agreement merely by filing this lawsuit. By contrast, De Francis and Jacobs alleged that the Manfusos had breached the Shareholders Agreement not merely by filing this lawsuit, but also by waging an alleged "campaign" of "harassment" and "intimidation." That technical distinction in pleading -- not any question of substance or proof -- led the Court to dismiss the corporate defendants' counterclaim while denying the motion to dismiss De Francis's and Jacobs's similar counterclaim. Exhibit C, pp. 93-94.

[11] Consistent with that strategy, De Francis failed to respond to routine discovery requests for four months despite at least three written requests for responses and despite several assurances that responses were forthcoming. The requests concerned basic matters such as the facts on which De Francis and Jacobs base their allegations of fraud, breach of contract, etc. Ultimately, De Francis provided incomplete and evasive responses only on April 14, 1993. Jacobs, for his part, has

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have no real hope of prevailing on their motion; they most likely expect simply to gain additional time after the motions hearing on June 10, 1993, in which to respond to the substance of the Manfusos' motion for partial summary judgment. If past events have any bearing on what the future holds in store, then the parties can expect yet another hearing, with the ultimate resolution of the Manfusos' motion delayed until some point after October 1, 1993, the date when the Russian Roulette provision is to take effect.

The Court should put a prompt end to the defendants' pattern of delay. The Manfusos have properly filed a motion for partial summary judgment, which they have properly supported by affidavit and other references to the record. Despite having had a reasonable opportunity to respond, De Francis and Jacobs have failed to discharge their burden of pointing out genuine disputes of material fact. See Seaboard Sur. Co. v. Richard F. Kline, Inc., 91 Md. App. 236, 243, 603 A.2d 1357, 1360 (1992). Under these circumstances, Md. R. 2-501 mandates the entry of partial summary judgment in accordance with the Manfusos' motion.[12]

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failed to respond to equally routine discovery requests for more than three months despite a like number of requests for responses and despite the same sort of assurances that responses were forthcoming. Hence, concurrently with this response, plaintiff Robert T. Manfuso has moved to compel answers to those discovery requests.

[12] De Francis and Jacobs have suggested that Count IV of the third amended complaint fails to state a claim essentially because the Manfusos have moved for summary judgment rather than

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III. THE COURT SHOULD RECONSIDER THE PRIOR RULINGS DISMISSING PORTIONS OF THE CLAIMS IN THE THIRD AMENDED COMPLAINT

The third amended complaint contains a number of claims that the Court has previously dismissed. De Francis and Jacobs assert that "the law of the case" bars the Manfusos from realleging those claims. Motion to Dismiss, etc., at 12. To the contrary, the law of the case generally applies only to the binding effect of an appellate court's legal rulings after the appellate court has remanded a case to the trial court. See, e.g., Wiggins v. State, 90 Md. App. 549, 557 n. 3, 602 A.2d 212, 216 n. 3 (1992), cert. denied, 327 Md. 80, 607 A.2d 922 (1993).

By contrast, a trial court generally may reconsider its own interlocutory orders at any time. See Quartertime Video & Vending Corp. v. Hanna, 321 Md. 59, 63, 580 A.2d 1073, 1074-75

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for reconsideration. Motion to Dismiss, etc., at 24. De Francis and Jacobs have cited no authority for that proposition, and the legal sufficiency of the Manfusos' claim cannot plausibly depend on trivial and technical matters such as the title of a motion. But even assuming that the defendants' argument had some merit, the Court can and should cure any purported deficiency simply by treating the motion for partial summary judgment as a motion for reconsideration.

The defendants' concern with procedural details is curious given their approach to the factual allegations contained in their motion. Pages 2 through 7 of the motion discuss the ills of the racing industry, the defendants' valiant attempts to save the industry, and the Manfusos' allegedly diabolical efforts to sabotage the defendants and their reputations. (The defendants, of course, have omitted any mention of their own responsibility for the plight of the industry, despite published reports placing the blame at their door. See, e.g., Andrew Beyer, Shake-Up Must Start at the Top, Wash. Post, Jan. 12, 1993, at E1.) Yet, in contravention of Md. R. 2-311(d), De Francis and Jacobs have failed to support those factual assertions by affidavit or otherwise.

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(1990)(an interlocutory order is subject to revision in the discretion of the trial court until such time as a final judgment is entered).[13] The Court therefore may reconsider its prior orders dismissing portions of the Manfusos' claims. Id.

For the reasons stated in the Manfusos' earlier papers[14] and in argument in open court, the Manfusos submit that the Court should reconsider those rulings, revise its prior decisions, and permit the Manfusos to pursue their claims of breach of contract[15] against De Francis and their claims concerning access to the corporations' auditors.[16]

IV. CONCLUSION

For the foregoing reasons, the Court should deny the motions to dismiss and to strike and enter summary judgment

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[13] This probably provides one reason why parties ordinarily cannot appeal from a trial court's interlocutory rulings. See, e.g., Old Cedar Dev. Corp. v. Jack Parker Constr. Corp., 320 Md. 626, 628, 579 A.2d 275, 276 (1990).

[14] See generally Plaintiffs Opposition to Defendants' Motions to Dismiss or for Summary Judgment as to the Second Amended Complaint (Aug. 27, 1992), at 10-15.

[15] Third Amended Complaint, ¶¶ 24, 26, 29, 30, 31.

[16] Third Amended Complaint, ¶¶ 32-34. If the Manfusos had amended their complaint without realleging the claims that the Court had dismissed, they might have left themselves open to the charge that they had abandoned the right to seek appellate review of the Court's prior rulings dismissing those claims. Thus, in a letter to the Court enclosing the third amended complaint, the Manfusos' counsel explained that the Manfusos had not reasserted those claims out of any disrespect for the Court's earlier rulings, but to ensure that they had preserved the record in the event of an appeal. De Francis and Jacobs completely miss that point in the course of their diatribe about the Manfusos' counsel's letter. Motion to Dismiss, etc., at 1-2.

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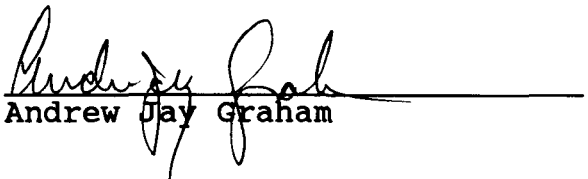
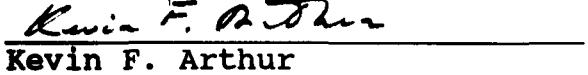
forthwith against the defendants on Count IV of the Manfusos' third amended complaint.

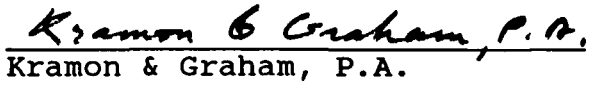
Respectfully submitted,



Andrew Jay Graham



Kevin F. Arthur



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

Dated: April 19, 1993.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April, 1993, I sent a copy of Plaintiffs' Response to Defendants' Motion to Dismiss and to Defendants' Motion to Strike by hand-delivery to:

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

and by first-class mail, 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.

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Exhibit A

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 JOHN A. MANFUSO, JR.

I, John A. Manfuso, Jr., 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. In accordance with the Stockholders Agreement among the Estate of Frank J. De Francis, Joseph A. De Francis, Martin Jacobs, Robert T. Manfuso, myself, Pimlico Racing Association, Inc., The Maryland Jockey Club of Baltimore City, Inc., and Laurel Racing Assoc., Inc., I presently intend to tender my shares in Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc., to those corporations on October 1, 1993.

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

John A. Manfuso, Jr.

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

kfa:4/15/93.2
f:kfa:manfuso:jm-aff.1

Exhibit B

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 ROBERT T. MANFUSO

I, Robert T. Manfuso, 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. In accordance with the Stockholders Agreement among the Estate of Frank J. De Francis, Joseph A. De Francis, Martin Jacobs, myself, John A. Manfuso, Jr., Pimlico Racing Association, Inc., The Maryland Jockey Club of Baltimore City, Inc., and Laurel Racing Assoc., Inc., I presently intend to tender my shares in Pimlico Racing Association, Inc., and Laurel Racing Assoc., Inc., to those corporations on October 1, 1993.

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

Robert T. Manfuso

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kfa:4/15/93.2
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Exhibit C

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

ROBERT T. MANFUSO and
JOHN A. MANFUSO, JR.,

Plaintiffs,

vs.

Case No.
92120052

JOSEPH A. DeFRANCIS,
MARTIN JACOBS, and
THE MARYLAND JOCKEY CLUB,

Defendants.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Interlocutory Injunction)

Baltimore, Maryland
Thursday, July 2, 1992

BEFORE: THE HONORABLE ELLEN LIPTON HOLLANDER

APPEARANCES:

On behalf of the Plaintiffs:

JAMES ULWICK, ESQ.
HERBERT S. GARTEN, ESQ.
KEVIN ARTHUR, ESQ.

On behalf of the Defendants:

JAMES E. GRAY, ESQ.
McGEE GRIGSBY, ESQ.
LINDA WOOLF, ESQ.
JENNIFER ARCHIE, ESQ.

Delores Hay
Official Court Reporter

our requirements that I be Chairman of the Board at Pimlico, and Herb said that that was not acceptable, would I accept co-Chairman of the Board. I said, well in order to move this thing along I would accept co-Chairman of the Board if he'll make my brother Bobby co-Chairman of the Board at Laurel. And it was understood at that time that all the major matters had been agreed upon.

Q. Then why is it that the document that was ultimately signed was not signed until February?

A. Well I can't respond to that. Why does it take you lawyers the length of time it takes to get things done. We certainly -- the document was in existence. We both made commitments and it proceeded along those lines.

Q. Why was the document then dated as of October 1; is that the reason?

A. Well, I -- even though the tardiness of the attorney might have delayed the final signed document, the agreement was in place and I didn't want the Russian roulette clause if we needed to exercise it extend an additional five months because of the delay in putting together a final document to be signed.

Q. Now did there come a time when you and your brother decided to resign as officers of Pimlico and Laurel?

A. Yes.

Q. And when was that?

Exhibit D

STATE OF MARYLAND
WILLIAM DONALD SCHAEFER
Governor

WILLIAM A. FOOLE, JR.
Secretary

KENNETH A. SCHERTLE
Executive Director

Department of Licensing and Regulation
MARYLAND RACING COMMISSION

10th Floor
501 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202-2272
(410) 333-6267

A Regulator Helping People

December 15, 1992

Ernst & Young
Mr. Cecil Flamer
One North Charles Street
Baltimore, Maryland 21201

Dear Mr. Flamer:

At the latest Commission meeting, December 9, 1992, a question was raised by the Commissioners in regard to the difference between the amounts listed for the salaries of the officers of Laurel and Pimlico in the lawsuit brought by the Manfuso brothers and the amounts listed for these same persons on the "Miscellaneous Data" page of the O.F.I. section of the annual reports for 1991 as submitted by your firm. Their question in effect was, "Are the amounts listed in the suit incorrect, or do the amounts listed on the aforementioned page of your report fail to represent the total payments to the officers as remuneration for their services, in any capacity, to the operating entity (nominally called the racetrack)?" If the latter is true, the Commissioners wish to know the correct amounts, and why they were so misled.

Sincerely,

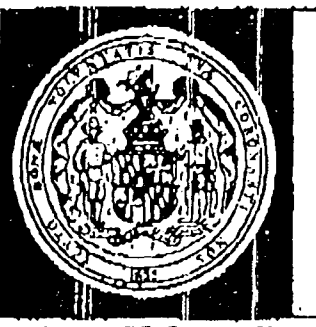
Kenneth A. Schertle
Executive Director

Exhibit E

STATE OF MARYLAND
WILLIAM DONALD SCHAEFER
Governor

WILLIAM A. POGUE, JR.
Secretary

KENNETH A. SCHERTLE
Executive Director



Department of Licensing and Regulation
MARYLAND RACING COMMISSION

10th Floor
501 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202-2272
(410) 333-6267

A Regulator Helping People

February 1, 1993

Martin Jacobs, Executive Vice President
Laurel Race Course
P.O. Box 130
Laurel, Maryland 20725

Pimlico Race Course
Hayward Avenue
Baltimore, Maryland 21215

Dear Mr. Jacobs:

The Commission, being concerned that numbers published elsewhere were different than those published in the latest audited financial statements of the licensees, directed that I, on its behalf, request this information directly from the licensee.

Please furnish to the Commission the names and the amount of compensation for all individuals employed by the licensees, whose compensation in either fiscal year 1991 or 1992 of the licensees exceeded $100,000. This information shall be furnished, in a manner that complies with §§11-313 through 11-315, of the Business Regulations Article, Annotated Code of Maryland.

Sincerely,

Kenneth A. Schertle
Executive Director

cc: John Mosner Jr.

Exhibit F

ROBERT MANFUSO, ET AL., * IN THE

PLAINTIFFS * CIRCUIT COURT

VS. * FOR

JOSEPH DEFRANCIS, ET AL. * BALTIMORE CITY

DEFENDANTS * CASE NO.92120052

* * * * * * * * *

SEPTEMBER 23, 1992

BEFORE:

THE HONORABLE ELLEN HOLLANDER, JUDGE

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

JAMES DIWICK, ESQUIRE.

HERBERT GARTEN, ESQUIRE

ANDREW GRAHAM, ESQUIRE

ON BEHALF OF THE DEFENDANTS:

JAMES GRAY, ESQUIRE

LINDA WOOLF, ESQUIRE

MCGEE GRIGSBY, ESQUIRE

KENNETH NORRIS

OFFICIAL COURT REPORTER

THE JOB OF THE APPELLATE COURTS AND THEY'LL HAVE PLENTY TO SAY IF IT GOES THAT FAR. I WOULD LIKE TO HAVE MY CHANCE TOO, BUT AGAIN, I FEEL IT IN YOUR INTERESTS TO GIVE YOU SOME RULINGS TODAY EVEN IF I CAN'T GO INTO GREAT DETAIL ORDINARILY AS TO WHY I REACHED THE VARIOUS CONCLUSIONS I'VE REACHED.

NUMBER ONE, I RESERVE MY RIGHT TO FILE A WRITTEN OPINION AT A LATER DATE AND NUMBER TWO, I RESERVE MY RIGHT TO EDIT TODAY'S ORAL OPINION THAT IF IT IS POORLY STATED, IF I FEEL IT MUST BE CORRECTED, IF NOT IN SUBSTANCE, IN FORM, I DO RESERVE TO RIGHT TO ADD APPROPRIATE AUTHORITY IN THE EVENT THAT THAT BECOMES SOMETHING THAT IS NECESSARY, IF I NEVER LIVE TO FILE A WRITTEN MEMORANDUM THAT I'M PRESENTLY CONTEMPLATING.

AS EVERYBODY IS FULLY AWARE, THERE ARE SEVERAL ISSUES PENDING BEFORE THE COURT IN CONNECTION WITH THE SECOND AMENDED COMPLAINT FOR DECLARATORY INJUNCTIVE RELIEF FILED BY THE MANFUSO BROTHERS AND IN RESPONSE TO THAT SECOND AMENDED COMPLAINT THE MOTION TO DISMISS, WHICH I HAVE REVIEWED FROM BOTH THE CORPORATE DEFENDANTS AND THE INDIVIDUAL DEFENDANTS. ALSO PRESENTLY BEFORE THE COURT IS THE MOTION TO DISMISS FILED BY THE PLAINTIFFS IN CONNECTION WITH THE COUNTERCLAIMS THAT HAVE BEEN FILED BY BOTH THE CORPORATE DEFENDANTS AND THE INDIVIDUAL DEFENDANTS.

I WOULD LIKE TO ADDRESS THE INDIVIDUAL DEFENDANTS' COUNTERCLAIM FIRST BECAUSE I THINK IT IS MOST EASILY RESOLVED.

THE PLAINTIFF HAS ANSWERED COUNT ONE OF THE

INDIVIDUAL DEFENDANTS' COUNTERCLAIM, SO THERE IS NO ISSUE AS TO THAT.

THE PLAINTIFFS HOWEVER DID MOVE TO DISMISS COUNT TWO OF THE COUNTERCLAIM OF THE INDIVIDUAL DEFENDANTS AND COUNT THREE.

ARGUMENT IN CONNECTION WITH THESE MOTIONS WAS HELD IN AUGUST, I THINK. I MAY BE WRONG BUT IF MEMORY SERVES ME CORRECTLY, I BELIEVE ONCE MR. GRAY HAD A CHANCE TO EXPLAIN TO THE PLAINTIFFS THE THRUST OF COUNT TWO OF HIS COUNTERCLAIM, IT SEEMED TO THE COURT THAT PLAINTIFFS CONCEDED THAT IN LIGHT OF THE STANDARD OF REVIEW IN CONNECTION WITH THE COUNTERCLAIM, IT PROPERLY WAS NOT APPROPRIATE TO DISMISS COUNT TWO.

COUNT TWO IS NOT SIMPLY A COUNT WHICH CLAIMS ABOUT THE FILING OF THE LAWSUIT ITSELF BUT ALSO INCLUDES NUMEROUS ALLEGATIONS AND ATTACKS ON THE PLAINTIFFS CONCERNING A SCHEME TO INTERFERE WITH THE BUSINESS AND OPERATIONS AND MANAGEMENT OF THE COMPANY.

I DON'T WANT TO AT THIS TIME, GIVEN THE HOUR, WHICH IS LATE, SPEND A GREAT DEAL OF TIME SPECIFICALLY READING INTO THE RECORD THOSE ALLEGATIONS, BUT I THINK WE ARE ALL FAMILIAR WITH THEM AND IN LIGHT OF THE NATURE OF THE ALLEGATIONS AND IN LIGHT OF THE STANDARDS OF REVIEW WHICH GOVERNS THIS MOTION, I BELIEVE IT IS APPROPRIATE TO DENY PLAINTIFFS' MOTION TO DISMISS COUNT TWO OF THE INDIVIDUAL DEFENDANTS' COUNTERCLAIM.

THE NEXT COUNT OF THE INDIVIDUAL DEFENDANTS'

COUNTERCLAIM CONCERNS THE TORT OF INTERFERENCE WITH RESPECT TO ECONOMIC ADVANTAGE AND IN THAT PARTICULAR MOTION TO DISMISS I BELIEVE THERE IS THE ISSUE OF WHETHER OR NOT TEXAS LAW GOVERNS THIS TORT. DEFENDANTS OF COURSE CONTEND THAT THAT IT IS GOVERNED BY TEXAS LAW AND THE PLAINTIFFS SEEM TO DISPUTE IT.

AT THE HEART OF THE MOTION TO DISMISS FILED BY THE PLAINTIFFS IS A CONTENTION THAT ESSENTIALLY IT WOULD BE PREMATURE TO PROCEED ON THIS PARTICULAR CLAIM AT THE PRESENT TIME BECAUSE AS AN ELEMENT OF THE TORT, PLAINTIFFS CLAIM THAT IT MUST FIRST BE DETERMINED THAT PLAINTIFFS' CLAIM WAS GROUNDLESS AND IN SUPPORT OF THAT, IF MEMORY SERVES ME CORRECTLY, PLAINTIFFS CITED A TENNESSEE CASE WHICH DOES, IN FACT, HAVE A VERY INTERESTING RULING AND SEEMS TO SUPPORT PLAINTIFFS' CLAIM THAT THIS SUIT AT THE PRESENT TIME IS PREMATURE.

NO MARYLAND CASE HAS BEEN DECIDED AND REALLY WE DIDN'T SPEND A GREAT DEAL OF TIME ON THIS PARTICULAR PORTION OF PLAINTIFFS' MOTION.

YES, I HAVE THIS PLEADING NOW AND PLAINTIFF IS RELYING ON NICKLES VERSUS MERRILL, LYNCH, PIERCE, FENNER AND SMITH, 706 F SUP. 1309, IN THE CASE OF THE MIDDLE DISTRICT OF TENNESSEE, 1989, AND I HAVE REVIEWED MR. GRAY'S -- THE ALLEGATIONS ASSERTED BY MR. GRAY IN COUNT THREE OF THE COUNTERCLAIM AND IT DOES APPEAR AT THE HEART OF COUNT THREE IS HIS CLAIM THAT THE UNDERLYING SUIT WAS GROUNDLESS.

HOWEVER HE DOES INCORPORATE BY REFERENCE, WHICH I MENTIONED YESTERDAY, ALL OF THE OTHER ALLEGATIONS HE'S MADE AND I BELIEVE THEY ARE ALSO PART OF THE SUIT.

WHEN I SAY THAT I INCLUDED IT IS BECAUSE THAT SUGGESTS TO ME THAT HIS CLAIM IS NOT ONLY THAT PLAINTIFFS' SUIT FOR DECLARATORY OR FOR INJUNCTIVE RELIEF IS GROUNDLESS BUT HE ALSO HAS IN THERE ALL THE CONDUCT THAT HE HAS MADE REFERENCE TO IN COUNTS ONE AND TWO.

IN ANY EVENT, I DON'T FIND ANY MARYLAND AUTHORITY, NONE HAS BEEN SHOWN TO ME, THAT REQUIRES I DISMISS COUNT THREE SOLELY ON THE GROUNDS THAT I HAVE NOT MADE A RULING ON THE MERITS OF PLAINTIFFS' SUIT.

SO ON THAT BASIS AT THE PRESENT TIME I'M NOT PREPARED TO DISMISS COUNT THREE AND THEREFORE THAT MOTION WILL ALSO BE DENIED.

IN CONNECTION WITH THE MOTION TO DISMISS FILED BY THE CORPORATE DEFENDANTS, WE HAVE HAD SOME DISCUSSIONS TODAY ABOUT THAT PARTICULAR MOTION, THAT PARTICULAR COUNTERCLAIM.

MR. GRIGSBY ON BEHALF OF THE CORPORATE DEFENDANTS HAS FILED A TWO COUNT COUNTERCLAIM AND I HAVE ATTEMPTED TO ASCERTAIN IN MY QUESTIONS TO HIM THE EXACT NATURE OF THE ALLEGATIONS IN THAT PARTICULAR COUNTERCLAIM. I AM TO UNDERSTAND THAT ESSENTIALLY HIS CLAIM ADDRESSES THE CONCERNS, THE ARGUMENT THAT BY HAVING FILED THE LAWSUIT, THE FIRST LAWSUIT, SECOND LAWSUIT OR THE THIRD LAWSUIT, KNOWN AS THE

SECOND AMENDED COMPLAINT, THAT THAT ACTION IN AND OF ITSELF HAS BREACHED ROMAN NUMERAL TEN OF THE STAND STILL PROVISION OF THE SHAREHOLDER'S AGREEMENT EXECUTED BY THE PARTIES IN FEBRUARY OF 1990.

I HAVE TAKEN INTO ACCOUNT AND CONSIDERED ALL OF THE ARGUMENTS ADDRESSED IN THE BRIEFS ON THIS PARTICULAR CONTENTION. I WILL NOTE FOR THE RECORD AS I HAVE ALREADY MENTIONED THAT THERE IS A SUBSTANTIAL DIFFERENCE BETWEEN THE ALLEGATIONS OF THE COUNTERCLAIM ASSERTED BY THE INDIVIDUAL DEFENDANTS AND THE ALLEGATIONS OF THE CORPORATE DEFENDANTS' BREACH OF CONTRACT CLAIM.

AGAIN, WHAT I'M REFERING TO HERE IS THAT MR. GRAY HAS ASSERTED, NOT ON THE CLAIM THAT PLAINTIFFS HAVE BREACHED BY FILING A DECLARATORY JUDGEMENT ACTION BUT ALSO THEY HAVE ENGAGED IN SPURIOUS CONDUCT DELIBERATELY DESIGNED TO IMPEED, INTERFERE WITH, OTHERWISE HARM THE CORPORATION.

THAT IS NOT IN CORPORATE DEFENDANT'S COUNTERCLAIM, SO I BELIEVE PRESENTED TO ME IS NOT A QUESTION OF WHETHER HAVING FILED AN ACTION FOR DECLARATORY JUDGEMENT FOR INJUNCTIVE REMEDY WHETHER OR NOT PLAINTIFFS HAVE REACHED THE STAND STILL PROVISION I HAVE DISCUSSED, AND THE ISSUE OF TIME DOES NOT MAKE ME REPEAT MY ANALYSIS OF THE STAND STILL PROVISION IN RULE TEN WHICH PROVIDES SEVERAL EXCEPTIONS TO WHAT IS OTHERWISE A BAR TO THE PARTIES OF THAT SHAREHOLDER'S AGREEMENT BRINGING ANY KIND OF LAWSUIT.

(35) DR

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

* * * * * * * * *

PLAINTIFF ROBERT T. MANFUSO'S MOTION
TO COMPEL ANSWERS TO INTERROGATORIES AND
RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Md. R. 2-432, plaintiff Robert T. Manfuso ("Manfuso"), by his undersigned attorneys, moves to compel responses to interrogatories and document requests propounded to defendant Martin Jacobs ("Jacobs"). The grounds for this motion are as follows:

On January 15, 1993, Manfuso propounded interrogatories and document requests to Jacobs. Jacobs has failed to respond to those discovery requests.

Even before Manfuso propounded discovery to Jacobs, Jacobs's co-defendant, Joseph A. De Francis ("De Francis"), had indicated that he would move for a protective order rather than respond to Manfuso's discovery. (Exhibit A.)[1] But after Manfuso's counsel wrote a letter (Exhibit B) refusing to acquiesce in De Francis's spurious objections, De Francis and Jacobs represented that they would respond to the discovery requests. Thus, in a letter dated January 26, 1993 (Exhibit C),

[1] Curiously, De Francis's objections came a mere two days before the due date for his answers.

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f:jas:Manfuso\Motion.Com

counsel for De Francis and Jacobs stated that she "hope[d] to be in a position to serve responses and objections to the first set of Interrogatories . . . in approximately two weeks."

Two weeks passed, but the responses to the discovery did not arrive. As a consequence, on February 12, 1993, counsel for Manfuso wrote to counsel for De Francis and Jacobs asking when he could expect to receive answers. (Exhibit D.) Counsel for De Francis and Jacobs did not respond until February 23, 1993. Even then, she could do a little more than to promise to provide answers "at the earliest possible time" and to thank opposing counsel for his "patience." (Exhibit E.)

On March 5, 1993, Manfuso and his brother, plaintiff John A. Manfuso, Jr., moved for summary judgment on Count IV of their Third Amended Complaint. Manfuso's supporting memorandum expressly noted De Francis's and Jacobs's failure to provide factual support for their defenses through signed, sworn answers to interrogatories. De Francis and Jacobs, however, still failed to provide their now long-overdue answers.

On March 11, 1993, counsel for Manfuso wrote again to counsel for De Francis and Jacobs. (Exhibit F.) The letter ended by requesting that De Francis and Jacobs "promptly" provide their answers to the discovery. Although De Francis finally provided incomplete and evasive responses more than a month later, Jacobs has not even provided a written response to the letter, let alone the discovery responses requested in that and other previous letters.

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These facts demonstrate a complete failure of discovery on Jacobs's part. Furthermore, these facts demonstrate that Jacobs will not discharge his discovery obligations unless and until compelled to do so by the Court. Accordingly, the Court should pass an order requiring immediate answers to the pending discovery requests. Md. R. 2-432(d)(1). In addition, the Court should award Manfuso the costs and expenses incurred in prosecuting this motion. Md. R. 2-433(c).

Respectfully submitted,

Andrew Jay Graham

Kevin F. Arthur

Kramon & Graham, P.A.

Kramon & Graham, P.A.
Commerce Place
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030

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

Dated: April 19, 1993.

LAW OFFICES
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ONE SOUTH STREET, SUITE 2600
BALTIMORE, MARYLAND 21202-3201
(410) 752-6030

KFA:jas:4/19/93:5
f:jas:Manfuso\Motion.Com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April, 1993, I sent a copy of Plaintiff Robert T. Manfuso's Motion to Compel Answers to Interrogatories and Requests for Production of Documents by hand-delivery to:

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

and by first-class mail, 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

Kevin F. Arthur

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

KFA:jas:4/19/93:5
f:jas:Manfuso\Motion.Com

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

* * * * * * * * *

CERTIFICATE OF GOOD FAITH EFFORTS
TO RESOLVE DISCOVERY DISPUTE

On behalf of Robert T. Manfuso, I have attempted to resolve the present discovery dispute through the letters attached as Exhibits D and F to Plaintiff Robert T. Manfuso's Motion to Compel Answers to Interrogatories and Requests for Production of Documents.

Andrew Jay Graham

Andrew Jay Graham

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

KFA:jas:4/19/93:4
f:jas:Manfuso\Motion.Com

Exhibit A

GOODELL, DEVRIES, LEECH & GRAY
ATTORNEYS AT LAW
SUITE 1900
25 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201

TELEPHONE 410/783-4000

WRITER'S DIRECT NUMBER

FACSIMILE 410/783-4040

SUITE 203
2828 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20007
470-7244

January 11, 1993

VIA FACSIMILE

Andrew J. Graham, Esquire
Kramon & Graham, P.A.
Commerce Place
1 South Street, Suite 2600
Baltimore, Maryland 21202-3201

RE: Manfuso, et al. v. De Francis, et al.
Case No.: 92120052/CE 147851

Dear Andy:

Now that the holidays have passed, I have had a chance to review in detail the Interrogatories and First Set of Requests for Production of Documents which Robert T. Manfuso served upon Joseph A. De Francis. Based on my review, it is clear to me that neither discovery request complies with the Maryland Discovery Rules. I have outlined below the deficiencies so that you can properly assess them and resubmit discovery requests which comply with the rules. I will then promptly respond to any and all appropriate requests. In this way, we can avoid any Motions for Protective Order which would certainly delay the course of this litigation.

First, several of the Interrogatories and Production of Document Requests ask for information irrelevant to this litigation. Specifically, Interrogatory No. 3 and Production of Documents Request No. 3 both ask for information regarding Mr. De Francis' involvement in Texas Racing. As clearly stated in Judge Hollander's October 9, 1992, Order, the Plaintiffs' only remaining claims involve a possible "breach of obligations related to the employment by the Corporations of Martin Jacobs and James Mango as set forth in the Shareholders' Agreement or employment contracts executed pursuant thereto." Judge Hollander specifically dismissed all other claims in Counts I and II of the Second Amended Complaint, which included those based on Mr. De Francis' personal involvement in Texas Racing. Thus, I request that you withdraw Interrogatory No.3 and Request for Production No. 3.

Second, 17 of the 30 numbered Interrogatories and Requests for Production of Documents, respectively, concern two issues: (1) Texas Racing and the effect of the participation in Texas Racing of Messrs. De Francis, Jacobs, and Mango on the affairs of the Corporations; and (2) the handle at Pimlico and Laurel.[1] As you well know, the Manfusos have asked the Boards of Directors of both Corporations to conduct a detailed investigation with respect to these issues.[2] As an officer and director of the Corporations, Mr. De Francis will provide any documents and information that the Boards request in regard to the investigation. Moreover, it is my understanding that the Boards will provide to your clients all documents produced during this investigation. Given that a procedure has been established, at your clients' request, to address the issues of Texas Racing and the handle at the racetracks, it appears that these requests merely duplicate the necessary investigation and compilation of material. I request that you withdraw those discovery requests concerning those issues. To the extent that the Boards' investigation, once completed, does not satisfy your clients' concerns, I will gladly respond to any relevant discovery request relating to the above issues at that time.

Third, those Interrogatories and Production of Document Requests asking for information regarding the financial terms and conditions of D/J/M's involvement in Texas Racing are irrelevant to this litigation.[3] Judge Hollander's Order dismissed any claims regarding D/J/M.

In addition to its lack of relevancy, I have strong reservations regarding the manner in which your clients would use any financial information produced. As I understand it, the award of the Class I Texas Racing license to Lone Star was appealed; first to the Texas Racing Commission and now to the Texas State Court. Given D/J/M's relationship to Lone Star and Mr. Robert Manfuso's relationship with Midpointe, I feel that I cannot disclose any such information regarding D/J/M to a competitor.

---

[1] Specifically, Nos. 1 through 14, and 24 through 26 of both Plaintiff's Interrogatories and Requests for Production of Documents deal with Texas Racing and/or handle.

[2] See October 23, 1992 correspondence from the Manfusos to the Boards of Directors for the Corporations and December 2, 1992 correspondence from Herb Garten and yourself to Henry Rosenberg, Jr. and Sigmond Hyman.

[3] See Nos. 10, 11, 13 of Mr. Manfuso's Interrogatories and Document Production Requests.

Finally, the Plaintiff has propounded Interrogatories which grossly exceed the numerical limit set forth under Maryland Rule 2-421. Pursuant to Rule 2-421, "a party may serve only one set of not more than 30 interrogatories to be answered by the same party." Your associate, Kevin Arthur, has apparently attempted to comply with this Rule by arbitrarily grouping his questions into 30 numbered paragraphs; however, Maryland law defines an interrogatory not by the numbers designated by an attorney, but by the substance of each question. Specifically, Maryland Rule 2-421 and the applicable Maryland discovery opinions hold that interrogatories, regardless of how they are arranged, combined, or grouped, and even though they may be subsidiary, incidental, or dependent upon other interrogatories, shall be counted separately. In applying this standard, I have conservatively counted more than 60 Interrogatories submitted on behalf of Mr. Manfuso. For this reason alone, I request that you withdraw the Interrogatories and redraft them to conform with Maryland Rule 2-421.

In the alternative, I am willing to recommend to my clients that they waive any claims regarding the numerical limit if you agree that the Interrogatories propounded by Mr. Robert Manfuso to Joseph De Francis will comprise all of the Interrogatories to be submitted by the Plaintiffs in this case. If you agree with this proposal, please let me know and I will raise the issue with Messrs. De Francis and Jacobs.

I have no desire to unnecessarily delay discovery or to impede your right to receive relevant information; however, in protecting my clients' rights to have discovery conducted in accord with the Maryland Rules of Civil Procedure, I will take all necessary steps, including the filing of a Motion for Protective Order. I sincerely hope that this will not be necessary and that you will redraft your discovery requests to conform with the Maryland Rules so that we can proceed with discovery.

I look forward to hearing from you regarding the substance of this letter.

Very truly yours,

James E. Gray

JEG/dmt

Exhibit B

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR+
JAMES P. ULWICK*‡
PHILIP M. ANDREWS
GERTRUDE C. BARTEL+
MARILYN HOPE FISHER*°
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

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OF COUNSEL
FREDERICK STEINMANN

January 15, 1993

BY TELECOPIER
James E. Gray, Esquire
Goodell, DeVries, Leech & Gray
25 S. Charles Street
Suite 1900
Baltimore, Maryland 21201

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

Dear Jim:

I have reviewed your letter of January 12, 1993, respecting discovery. I have the following comments:

First, you object to any discovery about Joe De Francis' involvement in Texas racing, claiming that that issue has no relevance in light of Judge Hollander's ruling. I disagree, especially given the breadth of the concept of relevance in the context of discovery. To give just a few examples, De Francis' involvement in Texas may bear on Jacobs' liability -- an issue legitimately remaining in the case -- if, for example, De Francis has devoted so much time and attention to Texas that Jacobs, in the exercise of his duties under the offices that he acquired through the Stockholders Agreement, should have objected. Furthermore, the extent of De Francis' involvement in Texas bears on his counterclaim alleging intentional interference with his prospective economic advantage in Texas. I believe, therefore, that my clients have a right to explore Mr. De Francis' involvement in Texas racing to the extent that it might relate to these and other issues in the case.

Second, you suggest that we should forego discovery on various matters because the Boards of Directors of Pimlico and Laurel may undertake an investigation of those issues. I, however, see no reason why my clients should give up their rights to obtain discovery now under the Maryland Rules merely because at some indeterminate point in the future they might receive some of the same information from another source.

Third, you object to discovery concerning the financial terms and conditions of D/J/M's involvement in Texas racing, stating that those issues are irrelevant to the litigation in light of Judge Hollander's ruling. Judge Hollander, however, did not eliminate issues relating to either Jacobs' or Mango's involvement in Texas racing. As both Jacobs and Mango have partnership interests in D/J/M, it would certainly appear that the financial terms and conditions of D/J/M's involvement in Texas racing fall well within the broad scope of relevance under the discovery rules. Furthermore, through their counterclaim for damages on account of alleged intentional interference with prospective economic advantage, your clients have clearly placed at issue the financial terms and conditions of D/J/M's involement in Texas. Hence, I believe that your clients are obliged to respond to questions on that subject.

Fourth, you express reservations about disclosing the financial terms and conditions of D/J/M's involvement in Texas racing, given the legal proceedings in progress in Texas. I believe that you and I could lay any such problem to rest by presenting an appropriate protective order for Judge Hollander to review and enter. Such an order certainly could provide for the punishment of contempt in the event that any person improperly disclosed protected information.

Fifth and finally, you assert that the interrogatories consist of more than thirty separate interrogatories, although you have not disclosed the methodology by which you reached that conclusion. Contrary to your suggestion, however, we did not arbitrarily group the questions into thirty separate interrogatories; rather, we propounded thirty separate interrogatories on thirty discrete subjects. As you yourself have successfully argued (for example, in the hearing loss coverage case), a single, numbered interrogatory consists of one and only one interrogatory provided that it encompasses a single subject matter. Because each of our interrogatories encompasses only a single subject matter, I cannot agree to redraft the interrogatories or not to propound any additional interrogatories. In fact, I have prepared an additional brief set of interrogatories to Jacobs, which I expect to send to you today or tomorrow.

While I would have liked to have heard your objections more than approximately two days before your responses were due, I accept your statement that you do not desire to unnecessarily delay discovery or impede my right to receive relevant information. In that regard, I believe that all of the parties

have an obligation to move forward expeditiously with discovery, especially given that the case has been pending for nearly nine months without any discovery at all having been completed. Thus, I believe that you should respond to the discovery requests, objecting where you deem it appropriate to do so.

Sincerely,

Andrew Jay Graham by kss

Andrew Jay Graham

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

Exhibit C

GOODELL, DEVRIES, LEECH & GRAY

ATTORNEYS AT LAW

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470-7244

LINDA S. WOOLF
DIRECT DIAL NUMBER
410/783-4011

January 26, 1993

TELECOPY

Andrew Graham, Esq.
Kramon & Graham
Commerce Plaza
One South Street
Suite 2600
Baltimore, Maryland 21202

Re: Manfuso v. DeFrancis

Dear Andy:

In Jim Gray's absence, I am responding to your letter dated January 15, 1993. Jim has been away from the office, and I have not had the opportunity to discuss your letter with him in any detail.

We regret that you and your clients have determined not to accept our proposals for informally resolving our disagreements as to the appropriate scope of discovery. Particularly with respect to the numerous discovery requests which duplicate the issues presented the Boards of Directors of Laurel and Pimlico, requiring formal discovery responses at this juncture creates a redundant and unnecessary drain on the resources of the corporations and its officers. We continue to believe that the most efficient and sensible course would be to allow the already requested investigation to be completed, to assess the results of the investigation and then to the proceed with formal discovery with respect to unresolved issues. Instead, at your insistence, we will file formal responses and objections to the discovery propounded to date, in which we will raise many of the same issues detailed in Jim Gray's January 11 letter. We reiterate, however, that our previous correspondence was intended to avoid an unnecessary motions practice, thereby saving lawyer time and client expense.

As we discussed in our telephone conversation on January 25, both Jim Gray and Martin Jacobs have been out of the country. We are in the process of preparing our responses and objections, but will require sufficient time to meet and review these responses after their return. We hope to be in a position to serve responses and objections to the first set of Interrogatories propounded by your clients in approximately two weeks. Please contact me upon receipt of this letter if for any reason this timetable is not acceptable to you.

Very truly yours,

Linda

Linda S. Woolf

LSW/mkw

cc: Joseph A. DeFrancis, Jr.
Martin Jacobs
James E. Gray
Mitchell A. Newhauser

Exhibit D

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR*
JAMES P. ULWICK*‡
PHILIP M. ANDREWS
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PERRY F. SEKUS
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OF COUNSEL
FREDERICK STEINMANN

February 12, 1993

Linda S. Woolf, Esquire
Goodell, Devries, Leech & Gray
Suite 1900
25 South Charles Street
Baltimore, Maryland 21201

RE: Manfuso v. De Francis, et al.

Dear Linda:

It has been two weeks since your letter of January 26 indicating that we would be receiving interrogatory answers in approximately two weeks. When can we expect the answers?

Sincerely,

Andrew Jay Graham

AJG/jmw
cc: Mr. John A. Manfuso, Jr.
Mr. Robert T. Manfuso

Exhibit E

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February 23, 1993

VIA FACSIMILE - (410) 539-1269

Andrew J. Graham, Esquire
Kramon & Graham, P.A.
Commerce Place
1 South Street, Suite 2600
Baltimore, Maryland 21202-3201

RE: Manfuso, et al, v. De Francis, et al.
Case No.: 92120052/CE 147851

Dear Andy:

This letter is in response to your recent correspondence concerning the outstanding discovery. Please be advised that we are meeting with our clients within the week and hope to finalize responses and objections to at least your first set of discovery requests. We will forward these responses and objections to you at the earliest possible time and appreciate your patience in this regard.

Very truly yours,

Linda

Linda S. Woolf

LSW/dmt

Exhibit F

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OF COUNSEL
FREDERICK STEINMANN

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

March 11, 1993

Linda S. Woolf, Esquire
Goodell, Devries, Leech & Gray
Suite 1900
25 South Charles Street
Baltimore, Maryland 21201

RE: Manfuso v. De Francis

Dear Linda:

We still have not received answers to the interrogatories which we filed on December 15, 1992 and January 15, 1993 addressed to Mr. De Francis and Mr. Jacobs, respectively. It is hard to believe that these interrogatories are so difficult to respond to. Please get us answers promptly.

Thank you.

Sincerely,

Andrew Jay Graham

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

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

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY
1993 APR 14 A 9:17
CIVIL DIVISION

CL 47851

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 1993, a copy of Joseph A. De Francis''s Responses and Objections to Interrogatories Propounded by Robert T. Manfuso and Response to Robert T. Manfuso's Request for Production of Documents was mailed, first class, postage prepaid, to Andrew J. Graham, Esquire, Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, Maryland 21202, attorneys for Plaintiffs; Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, attorneys for Defendants, the Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc. and Laurel Racing Association, Inc.

James E. Gray

James E. Gray

Linda S. Woolf

Linda S. Woolf
GOODELL, DeVRIES, LEECH & GRAY
25 S. Charles Street
Suite 1900
Baltimore, MD 21201
(410) 783-4000

Attorneys for Defendants
De Francis and Jacobs

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

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

MOTION TO DISMISS CERTAIN CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF IN COUNTS I AND II AND ALL CLAIMS IN COUNT IV OF THE THIRD AMENDED COMPLAINT AND MOTION TO STRIKE THE MANFUSOS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants, Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by and through their attorneys, James E. Gray, Linda S. Woolf, and Goodell, DeVries, Leech & Gray, hereby move to Dismiss Certain Claims for Declaratory and Injunctive Relief in Counts I and II and all claims in Count IV in the Third Amended Complaint and move to Strike the Manfusos' Motion for Partial Summary Judgment filed by Robert T. Manfuso and John A. ("Tommy") Manfuso, Jr. (collectively the "Manfusos") for the reasons stated in the accompanying Memorandum of Law which is incorporated herein as set forth in full.

Respectfully submitted,

James E. Gray

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

Attorneys for Defendants
De Francis and Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 1993, a copy of the foregoing Motion to Dismiss Certain Claims for Declaratory and Injunctive Relief in Counts I and II and All Claims in Count IV of the Third Amended Complaint and Motion to Strike the Manfusos' Motion for Partial Summary Judgment was hand delivered to: James Ulwick, Esquire, Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, MD 21202, attorneys for Plaintiffs; and mailed first class, postage prepaid, to Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, attorneys for Defendants, the Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc. and Laurel Racing Association, Inc.

James E. Gray

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

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS CERTAIN CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF IN COUNTS I AND II AND ALL CLAIMS IN COUNT IV OF THE THIRD AMENDED COMPLAINT AND MOTION TO STRIKE THE MANFUSOS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants, Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by and through their attorneys, James E. Gray, Linda S. Woolf and Goodell, DeVries, Leech & Gray, submit the following Memorandum of Law in support of their Motion to Dismiss Certain Claims for Declaratory and Injunctive Relief in Counts I and II and All Claims in Count IV of the Third Amended Complaint and Motion to Strike the Manfusos' Motion for Partial Summary Judgment filed by Robert T. Manfuso and John A. ("Tommy") Manfuso, Jr. (collectively the "Manfusos").

I. INTRODUCTION

In his cover letter to the Court, the Manfusos' counsel states that several claims alleged in the Third Amended Complaint may mirror claims that this Court has previously denied. Nevertheless, the Manfusos' counsel purports to justify the refiling of these claims in order to preserve the

record for appeal.[1] His statement to the Court that he has brought forth a fourth version of the complaint for purposes of appellate review is misleading and stretches the bounds of reason.

The Manfusos true purpose in filing the Third Amended Complaint becomes obvious when one examines what is transpiring today in the Maryland racing industry. Horse racing is in the midst of a severe decline on a nationwide basis. The Federal Tax Reform Act of 1986, and the severe economic recession which has gripped the nation since 1990, have dramatically reduced the number of horses available for racing and thus the quality of racing being offered by the nation's racetracks. Consequently, business has declined dramatically across the country, and Maryland has not been spared.

Faced with this situation, De Francis and Jacobs concluded that the two main hopes for salvation for Laurel and Pimlico were: (1) the importation into Maryland of the simulcast signal from every other major racing center throughout the country -- a process known as full-card, commingled pool simulcasting -- that would substantially increase the number of races that Maryland fans could wager on; and (2) the expansion of the distribution of thoroughbred racing throughout Maryland by the commencement of intertrack wagering at Rosecroft Raceway (the state's largest standardbred

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[1] The Manfusos' counsel never explains what issue has not been properly preserved for appeal, how the filing of the Third Amended Complaint cures the alleged defect or why he delayed from September 22, 1992 until March of 1993 his attempt to cure the alleged defect.

track) and the development of an extensive state-wide off-track betting network pursuant to the legislative authorization that was passed by the Maryland General Assembly in 1992.

De Francis and Jacobs knew -- as did the Manfusos -- that the accomplishment of these objectives would require an enormous amount of intense, time consuming effort involving complex negotiations with many diverse parties. They knew the following were essential ingredients:

- A new computer totalisator system that could efficiently process wagers coming from multiple locations had to be installed, necessitating extensive negotiations with the totalisator companies.

- Authorization to import the multiple simulcast signals had to be secured from the Maryland Thoroughbred Horsemen's Association and the Maryland Horse Breeder's Association, and a revenue sharing agreement for the proceeds from off-track betting and intertrack wagering at Rosecroft had to be negotiated with those parties.

- An intertrack agreement had to be negotiated with Colt Enterprises, Inc., the owners of Rosecroft.

- An agreement had to be secured from Cloverleaf, the organization representing standardbred owners, regarding authorization for multiple simulcast signals and revenue sharing.

- Agreements had to be negotiated with potential off-track betting locations.

• A new agreement with International Sound Corporation, the company that provided audio/video services to Laurel and Pimlico, had to be negotiated.

• Agreements with major racetracks throughout the country providing for the terms and prices under which they would make their simulcast signals available for wagering in Maryland had to be negotiated.

• A statute had to be passed by the Maryland General Assembly on an emergency basis, and signed by the Governor, allowing Laurel and Pimlico to implement full-card commingled pool simulcast wagering.

• Finally, substantial modifications to the existing Collective Bargaining Agreement between Laurel and Pimlico and United Food and Commercial Workers Union, Local 27, the Union representing the vast majority of the employees at Laurel and Pimlico, had to be negotiated with the Union leadership and ratified by the Union membership.

After more than six months of painstaking work on these projects by De Francis, Jacobs and others in senior management, Laurel and Pimlico stood on the threshold of this new age in Maryland racing, poised to implement the changes described above -- changes that might reverse the declines and losses of the last three years and restore prosperity to Maryland racing. The most significant hurdle remaining to be cleared was the ratification by the Union membership of the modifications that had been negotiated over the past six months

with the Union leadership. These modifications are substantial, and go to the very core of the Collective Bargaining Agreement, yet they are essential to the overall success of the program. Consequently, the Union vote is expected to be a very close one.

Knowing this, the Manfusos timed the filing of their Third Amended Complaint to generate as much adverse publicity and controversy as possible about the salaries earned by De Francis and Jacobs, thus, maximizing the likelihood of a backlash by Union membership and the likelihood of a negative vote on the contract modifications. The Manfusos' true purposes, and their manipulation of the press, are illustrated by the facts that (a) literally within a few hours of the filing of the Third Amended Complaint on Friday, March 5, De Francis received a call from a reporter from the Washington Post questioning him about the filing; and (b) several days thereafter De Francis' salary was a banner headline in the Washington Post Sports section. A copy of that story is attached as Exhibit A. It was followed the next day by another front-page sports section article about salaries.

The Manfusos, together with Frank De Francis, developed in 1984 the accounting practice of dividing compensation received by officers of the companies into "officers' salaries", which are separately listed on the corporations' financial statements, and non-officers' salaries, which are included in "office salaries" and are not separately

listed but are grouped together with other employees' salaries in the financial statements. This practice was continued throughout the entire time the Manfusos were officers of Pimlico or Laurel -- from 1984 through May 31, 1990 -- and during that entire period the compensation received by the Manfusos from Pimlico and Laurel was divided into "officers' salaries" and "office salaries" for financial statement reporting purposes, with their full knowledge and concurrence.

The Manfusos had known and consented to the salaries earned by De Francis and Jacobs for years, as well as the mechanism by which those salaries were reported on the financial statements. Indeed, each of the Manfusos received salaries at the same annual rate as Jacobs in 1989 and 1990. In attempting to create the impression that improprieties were taking place regarding salaries, the Manfusos are making a clear misrepresentation, which is only outdone by their assertions that this Third Amended Complaint is somehow a new cause of action and not just the reshuffling of old claims.

The Manfusos' filing of the Third Amended Complaint -- as with their filing of the initial Complaint shortly before the 1992 Preakness -- was made for the primary purpose of damaging the business of Laurel and Pimlico and hence the reputations of De Francis and Jacobs. Moreover, the Manfusos knew that De Francis and Jacobs were stretched to the limit attempting to implement the above-described programs, as well as continuing to investigate a very significant corporate

opportunity to develop a Maryland-Virginia racing circuit, and preparing for the 1993 Preakness, which is only weeks away. The Manfusos knew that, by forcing De Francis and Jacobs to devote time and energy to dealing with a Third Amended Complaint and the attendant publicity generated thereby, time and attention would have to be diverted from those critical projects and the likelihood would increase that De Francis and Jacobs would fail to effectuate these projects successfully.

II. PROCEDURAL BACKGROUND

On April 29, 1992, the Manfusos filed a Complaint for Declaratory and Injunctive Relief ("original Complaint") against De Francis, Jacobs, The Maryland Jockey Club of Baltimore City ("MJC"), Pimlico Racing Association, Inc. ("Pimlico"), and Laurel Racing Assoc., Inc. ("Laurel"). The original Complaint alleged that De Francis and Jacobs acted in various ways to the detriment of Laurel and Pimlico and contained a three-part count for declaratory relief and a six-part count for injunctive relief. De Francis and Jacobs responded to the spurious and unfounded allegations contained in the original Complaint by: (1) answering subparagraph (A) of the Manfusos' claim for declaratory relief; (2) moving to dismiss certain claims for declaratory relief and all claims for injunctive relief; and (3) filing a three-count Counterclaim asserting fraudulent inducement, material breach of the Stockholders Agreement and tortious interference.

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

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

On June 26, 1992, De Francis and Jacobs filed a Memorandum in Opposition to Plaintiffs' Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief with respect to benefits. Judge Ellen Lipton Hollander conducted several days of hearings on this motion starting on July 2, 1992. At that hearing, the Plaintiffs filed an Amended Complaint which deleted their injunctive relief claim as it pertained to Texas. The Amended Complaint added a third count seeking an interlocutory and permanent injunction in the nature of an Order requiring specific performance of alleged contractual obligations of De Francis, Jacobs, MJC, Laurel and Pimlico. These same alleged contractual obligations were the subject of their June 11, 1992 motion for injunctive relief.

On July 15, 1992, De Francis and Jacobs filed their Opposition to the Manfusos' Motion to Dismiss Count II of the Counterclaim. On that same date the Manfusos filed a Second Amended Complaint which reasserted their injunctive relief claim as it pertained to Texas Racing, a Memorandum in Opposition to De Francis' and Jacobs' Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief, a Motion to Dismiss Count III of De Francis' and Jacobs' Counterclaim and an Answer to Count I of the Counterclaim.

On August 7, 1992, De Francis and Jacobs filed a Motion to Dismiss and/or for Summary Judgment as to Plaintiffs' Second Amended Complaint and a Memorandum in Opposition to Plaintiff's Motion to Dismiss and/or for Summary Judgment as to Count III and the Defendants' Counterclaim.

On August 26, the Plaintiffs filed a Memorandum in Opposition to Defendants' Motion to Dismiss and/or for Summary Judgment as to the Second Amended Complaint.

On August 28, 1992, Judge Hollander issued an Order denying Plaintiffs' Motion for Ex Parte, Interlocutory and Permanent Injunctive Relief.

On September 18, 1992, Plaintiffs' filed a Memorandum in Reply to De Francis' and Jacobs' Opposition to Plaintiffs' Motion to Dismiss and/or for Summary Judgment as to Count III of the Counterclaim.

On September 22, 1992, this Court heard argument on De Francis' and Jacobs' Motion to Dismiss the Second Amended Complaint and the Manfusos' Motion to Dismiss Count III[2] of the Counterclaim. At the conclusion of this hearing, Judge Hollander issued a ruling with respect to these Motions and with respect to the Manfusos' Motion to Dismiss Count II of the Counterclaim, which was argued before this Court on July 21, 1992. Specifically, this Court[3]:

1. Denied Plaintiff's Motion to Dismiss and/or for Summary Judgment as to Counts II and III of the Defendants' Counterclaim;

2. Granted Summary Judgment in favor of De Francis, Jacobs and the corporate Defendants as to Count III of the Second Amended Complaint with respect to the claims for benefits outlined in the so-called letter agreement of April 27, 1990;

3. Granted De Francis' and Jacobs' Motion to Dismiss Count III of the Second Amended Complaint as it relates to the payment of severance payments, with leave to amend if brought as a breach of contract action pursuant to the Stockholders' Agreement;

4. Granted De Francis' and Jacobs' Motion to Dismiss the remaining claims in Counts I and II of the Second Amended Complaint for the following reasons:

   a. The Manfusos lack standing as individual directors to seek redress for the wrongs which they alleged;

---

[2] The Court had previously heard argument on the Manfusos' Motion to Dismiss Count III of the Counterclaim on July 21, 1992.

[3] Judge Hollander's ruling from the bench was incorporated into an Order submitted by counsel for all parties which this Court signed on October 9, 1992.

b. The Manfusos lack standing as shareholders to bring this action because they failed to make demand upon the corporations;

c. The Manfusos claim for injunctive relief to require the corporations' independent auditors to meet with them failed to state a claim under Maryland law; and

d. The Manfusos' claim against De Francis for breach of contract for participating in Texas Racing failed to state a claim under Maryland law because an alleged breach of fiduciary duty does not equate to a breach of contract action under the Stockholders' Agreement.

5. Denied De Francis' and Jacobs' Motion to Dismiss Counts I and II of the Second Amended Complaint only insofar as those Counts relate to specific claims for breach of obligations related to the employment of Jacobs and James Mango as set forth in the Shareholders' Agreement or employment contracts.

Following this Court's ruling on the several motions to dismiss and/or for summary judgment, Judge Hollander set this case in for trial for April of 1994. At trial, the trier of fact will decide whether the Manfusos materially breached the Stockholders Agreement by denying De Francis the consideration that he bargained for in entering into that Agreement.

III. ARGUMENT

Finally realizing that the trial will occur well past the date upon which the Russian roulette buy-sell provision first may be triggered, the Manfusos now see their fraudulent scheme to take over Laurel and Pimlico falling apart. In a last ditch effort to secure a ruling as to the viability of the buy-sell provision prior to a trial on the merits at which

their improper conduct will be proven, the Manfusos have filed a four-count Third Amended Complaint. The Third Amended Complaint asserts those claims which, if granted, could preserve the buy-sell provision and give credence to the Manfusos' oft-stated claims that they will oust De Francis from control of Laurel and Pimlico. However, the claims now asserted in Counts I and II of the Third Amended Complaint merely duplicate the claims which this Court dismissed on September 22, 1992. Thus, these claims are not only procedurally barred, based on the law of the case, but are subject to dismissal for the same reasons as set forth in De Francis and Jacobs' Motion to Dismiss and/or for Summary Judgment as to the Second Amended Complaint. The Manfusos lack standing as individual directors or shareholders to seek declaratory or injunctive relief to remedy the alleged abuses in Counts I and II; and the Manfusos have failed to plead sufficiently any claims for injunctive relief.

As for Count IV, the Manfusos seek a declaratory judgment enforcing the Russian roulette buy-sell provision of the Stockholders Agreement. This Count must be dismissed because the Manfusos have failed to allege sufficiently a justiciable controversy under § 3-409 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, and because this Court has already held that the issue of whether the buy-sell provision will ever be enforced shall be decided by the trier of fact in April of 1994. In any event,

the Manfusos' Motion for Partial Summary Judgment as to Count IV must be stricken since, in refusing to grant the Manfusos' Motion to Dismiss Count II of De Francis' and Jacobs' Counterclaim, the Court found that a material issue of fact existed as to whether the Manfusos breached the Stockholders Agreement, thereby voiding it -- the identical issue as is raised by Count IV of the Third Amended Complaint.

Given the similarity between the claims set forth in the original Complaint, the Second Amended Complaint and the Third Amended Complaint, this Motion to Dismiss will incorporate many of the legal arguments contained in the Memorandum in Support of the Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief ("Motion to Dismiss Original Complaint") and the Memorandum of Law in support of Motion to Dismiss and/or for Summary Judgment as to Plaintiffs' Second Amended Complaint.

A. The Manfusos Have Failed to State Claims for Declaratory and Injunctive Relief in Counts I and II.

In Counts I and II of the Third Amended Complaint, the Manfusos have once again sought declaratory and injunctive relief to prevent De Francis[4] from allegedly diverting

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[4] The Manfusos have also sought declaratory and/or injunctive relief to prevent Jacobs from diverting resources, employees, and property from the corporations. To the extent this relates to specific claims for breach of obligations related to the employment of Jacobs and James Mango, as set forth in the Shareholders Agreement or employment contracts, De Francis and Jacobs do not move to dismiss. As stated above, this Court found those allegations were sufficient to state a claim so as to require a factual determination at trial, which De Francis and

resources, employees, and proprietary information from the corporations and to require the Defendants to permit the Manfusos and their agents to meet with the corporations' accountants. Other than the meaningless deletion/addition of a few sentences, the allegations supporting the above requests mirror the allegations set forth in the original and Second Amended Complaints. For this reason, these claims must be once again dismissed.

1. The Manfusos are not entitled as a matter of law to speak with the independent auditors of the corporations.

The Plaintiffs, as part of their Second Amended Complaint, sought injunctive relief to require a meeting with the corporations' independent auditors. Defendants move to dismiss this claim. At the September 22, 1992 hearing, this Court gave the following response to this request:

> I have no knowledge of any authority that would require the corporate or individual Defendants to make the auditors available for a conference of any sort. It might be appropriate for other reasons but is certainly not an obligation the law recognizes and from the facts that have been alleged, taking all of them to be true, so that I believe under any circumstances, regardless of the outcome of the ultimate issue of implications of the standstill provision, Plaintiffs here have failed to state a claim and, therefore, that Order [sic] will be dismissed.

See Hearing Transcript of September 22, 1992, at pp. 99-100.

Jacobs are confident will be resolved in their favor. Unlike the Manfusos, the Defendants will not waste the Court's resources with duplicative arguments.

The Manfusos and their counsel were present at this hearing and surely have a copy of the transcript. Yet, they have deliberately ignored this Court's prior ruling and have failed to provide any additional allegations to support their identical request. Therefore, this Court must procedurally, and as a matter of law, dismiss the Plaintiffs' request to meet with the corporations' independent auditors.

2. The Manfusos lack standing as individual directors to seek redress for claims of abuse.

Just as in the previous complaints, the Manfusos allege that they have standing as individual directors to seek redress for the alleged abuses committed by the Defendants. However, Maryland law clearly holds that "a single director acting as an individual cannot institute an action against a fellow director for any injury to the corporation; rather, the Board of Directors must act as a body." Fletcher's Encyclopedia of the Law of Private Corporations, § 1275, at 586-87 (Rev. Ed. 1980). See also Jackson v. County Trust Co., 176 Md. 505, 509, 6 A.2d 380, 382 (1939) (holding that a director, unless specifically authorized by the corporation, cannot bind or represent the corporation). See generally Defendants' Motion to Dismiss Certain Claims for Declaratory Relief and All Claims for Injunctive Relief, at 8-14.

At the September 22, 1992 hearing, this Court issued the following ruling with respect to the Manfusos' standing as directors to seek relief:

> I believe there is no authority that would confer upon the Plaintiffs in their capacities as directors individually the right to seek redress of the wrongs that they have alleged. . . .
>
> Even if the Court were to rule that Section Ten of the Stand Still [sic] Provision does not bar Plaintiffs from bringing an action based on the allegations, still as individual directors they have no standing to assert the claims which they have alleged, false financial statements and the like. . . .
>
> I have read all of the briefs in evidence submitted at this time as well as earlier and I adopt and incorporate the arguments made by the Defendants regarding the right of individual directors or the lack of rights as the case may be of individual directors to pursue the claims which have been alleged here. . . .
>
> I think the Plaintiffs would agree that as individual directors, simply the right they have asserted in their individual capacity are not recognized under Maryland law. The board must act as a board.
>
> So as to any claim asserted in the capacity of Plaintiffs as individual directors, those claims will be dismissed.

See Hearing Transcript, at 100-101.

Thus, as a matter of law, the Manfusos may not maintain these identical claims in their capacity as directors.

3. The Manfusos lack standing as shareholders to maintain their claims in Counts I and II.

In their Third Amended Complaint, the Manfusos have not specifically alleged that they have standing to pursue these claims as shareholders. At least on this issue, the Manfusos concede the correctness of this Court's previous decision in

which it held that the Manfusos have no standing as shareholders because they failed to make demand upon the corporations.

4. The Manfusos fail to state a breach of contract claim against De Francis for allegedly diverting resources from the corporations.

As with the previous complaints, the Manfusos contend that De Francis became President of the racetracks solely because of the Stockholders Agreement -- a contention that is completely at odds with he Manfusos' own admission in Paragraph 14 of the Third Amended Complaint that "the Estate of Frank J. De Francis, represented by De Francis, controlled a majority of the voting stock of both racetracks." Based on a contention that they know to be inaccurate, the Manfusos maintain that any breach of fiduciary duty by De Francis as an officer of the corporations translates into a breach of contract because De Francis acquired the office solely by virtue of the Stockholders Agreement. See Third Amended Complaint at paragraph 17.

Moreover, regardless of the right under which De Francis claims the Presidencies of Laurel and Pimlico, this Court has refused to accept the ridiculous assertion that a breach of a fiduciary duty can be translated into a breach of contract claim. During the September 22, 1992 hearing, this Court concluded that, "on the allegations presented, the Manfusos failed to set forth a breach of contract action

against De Francis insofar as Texas Racing is concerned." See Hearing Transcript at 104. Since the allegations of the Third Amended Complaint are virtually identical to those in the Second Complaint regarding De Francis' duties to the corporation by virtue of the Stockholders Agreement, this Court must conclude that the Plaintiffs have once again failed to state a breach of contract action against De Francis.

5. The Manfusos have not pled sufficient facts to warrant injunctive relief.

As stated in Defendants' Motions to Dismiss both the original and Second Amended Complaints, courts applying Maryland law will not grant an injunction where the plaintiff has merely alleged that he will suffer irreparable damage. Instead, the plaintiff must plead sufficient facts to satisfy the court that irreparable injury will, in fact, occur. See Mayor of Salisbury v. Camden Sewer Co., 135 Md. 563, 572-73, 109 A. 191 (1920). Moreover, where those allegations demonstrate that the plaintiff has an adequate remedy at law, the action for injunction will be dismissed. See State v. Ficker, 266 Md. 500, 295 A.2d 231 (1972). See generally Defendants' Motion to Dismiss Original Complaint, at 14-29. Although this Third Amended Complaint represents the Manfusos' fourth attempt to allege adequately a claim for injunctive relief, they have failed once again to allege how any of the abuses have or will cause an irreparable injury. Moreover, all

their claimed abuses could be remedied by damages. Thus, this Court must dismiss these claims for injunctive relief.

B. Count IV Fails to State a Cause of Action.

1. The Manfusos may not maintain their request for declaratory relief because they have failed to allege a justiciable controversy.

In Count IV, the Manfusos seek a declaration requiring that De Francis and Jacobs comply with the Russian Roulette buy-sell provision of the Stockholders Agreement on or after October 1, 1993. The Manfusos, as parties to the Stockholders Agreement, rely on Section 3-406 of the Maryland Courts and Judicial Proceedings Article of the Maryland Code Annotated for the authority that this Court has the power to construe the continued viability of the buy-sell provision. However, the Plaintiffs' failure to allege the existence of a justiciable controversy under § 3-409 of the same article requires this Court to dismiss Count IV.

Pursuant to § 3-409, the Court may grant a declaratory judgment or decree so long as "it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if (1) [a]n actual controversy exists between contending parties." Maryland courts have consistently held that "the existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action." See e.g. Hatt v. Anderson, 297 Md. 42, 45, 464 A.2d 1076, 1078 (1983). A "justiciable controversy" has been

defined as where "there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." Hatt, 297 Md. at 45-46. To state it another way, the claim must be ripe for decision, "'for Maryland courts will not entertain a declaratory judgment proceeding upon a statement of facts which has not yet arisen, [or] upon a matter which is future, contingent, and uncertain.'" Boyds Civic Association. v. Montgomery County Council, 309 Md. 683, 690, 526 A.2d 598 (1987) (quoting Brown v. Trustees of M.E. Church, 181 Md. 80, 87, 28 A.2d 582, 586 (1942)).

In Hatt v. Anderson, the plaintiff, a firefighter, sought a declaration invalidating a county fire department regulation which prohibited criticism of superior officers on the ground that it violated the Constitution. Montgomery County moved to dismiss the complaint, arguing that the plaintiff had failed to allege a single occurrence where the regulation had chilled his free speech rights or would do so in the future. The trial court rejected the ripeness argument, but nevertheless found that the regulation comported with the Constitution. The plaintiff appealed and the Court of Appeals granted certiorari prior to the intermediate appellate court's review of the case.

The Court of Appeals vacated the trial court's decision and dismissed the complaint, holding that the

plaintiff had failed to state a justiciable controversy. In support, the court stated that

> There is no allegation that the regulation has been, or is threatened to be interpreted or applied by [the county] in any particular way. Nor does [plaintiff] assert that any of his claimed free speech rights are actually being disputed, challenged or contested by the Fire Administrator. There is no indication that [plaintiff] has been ordered to do, or not to do, anything under the regulation, either in his individual capacity as a firefighter, or as president of the county firefighters' association. At most, [plaintiff] speculates as to what might happen under the regulation if he criticizes his superior officers. . . . It is thus evident that the allegations of [plaintiff's] bill of complaint are simply too theoretical, too abstract and too speculative to form the basis for an action for declaratory relief under the Act.

In Anne Arundel County v. Ebersberger, 62 Md. App. 360, 49 A.2d 96 (1985), a group of homeowners brought a declaratory judgment action to invalidate a county ordinance which authorized their community association to renovate and provide maintenance for a swimming pool through the assessment of special taxes against their property. The Court of Appeals held that the action lacked ripeness. In reaching this decision, the Court referred to the fact that

> [T]he ordinance does not require the district to renovate the pool; it merely authorizes such work. . . . There is certainly no assurance, from the record now before us, that a budget containing an appropriation for the pool will ever be approved or that a special benefit tax to support such an appropriation will ever be levied.

> At least until the prospect of such an appropriation or such a tax becomes substantially more certain, the plaintiffs will have suffered no injury from the challenged ordinance, and its validity or invalidity is therefore of no practical consequence.

Ebersberger, 62 Md. App. at 371.

As in the above cases, the Manfusos would have this Court declare valid and enforceable a contract provision which has no certainty of ever being triggered. According to the Complaint, and the Stockholders Agreement, the buy-sell provision does not automatically take effect on October 1, 1993. Instead, the buy-sell provision takes effect only if the Manfusos or De Francis and Jacobs elect, on or at any time after October 1, 1993, to state a price at which they would be willing either to sell all their shares, or to buy all of the shares of the others. Absent from the Third Amended Complaint is any allegation that the Manfusos have offered their shares at a stated price.

Thus, even if the Court takes as true that De Francis will not abide by the buy-sell provision, no justiciable controversy exists since the Manfusos have not exercised their rights. Without a clear and unambiguous allegation that the buy-sell provision has been triggered, the Manfusos have failed to state a justiciable controversy. Instead, they request this Court to make a decision regarding a matter which is future, contingent and uncertain. For this reason, the Court must dismiss Count IV.

2. The Manfusos' request for declaratory judgment violates the Maryland Rules of Civil Procedure requiring dismissal of Count IV, or, in the alternative, the striking of Plaintiffs' Motion for Summary Judgment as to Count IV

Notwithstanding the Plaintiffs' failure to allege a justiciable controversy within the meaning of § 3-409, the Manfusos claim for declaratory judgment in Count IV violates the Maryland Rules of Civil Procedure. Since Frank De Francis' death, the Manfusos have attempted to place themselves in a position to take over the racetracks. By fraudulently inducing De Francis and Jacobs to enter into the Stockholders Agreement the Manfusos believed they had taken a major step forward in accomplishing this task.[5] The buy-sell provision, if enforceable, would give the Manfusos the ability to force a purchase by them of all De Francis' and Jacobs' stock as early as October 1, 1993. However, by engaging in the conduct described in Counts I and II of De Francis' and Jacobs' Counterclaims, the Manfusos have relieved De Francis and Jacobs of further compliance with the Stockholders Agreement.

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[5] The Manfusos have once again taken inconsistent positions. On the one hand they claim that De Francis and Jacobs are both "highly sophisticated businessmen" and that their "obvious high degree of sophistication" would "negate any reasonable basis for concluding that the Manfusos could somehow have fraudulently induced De Francis and Jacobs to enter into the Agreement." (Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment on Count IV of the Third Amended Complaint, at pp. 3-4.) Yet at Paragraph 14 of their Third Amended Complaint the Manfusos claim that they objected to De Francis assuming his father's position as President of the racetracks because he had "no experience that would qualify him to manage such large enterprises."

Within their legal rights and in an attempt to preserve the buy-sell provision, the Manfusos moved to dismiss and/or for summary judgment as to Count II of the Counter-Claim. However, this Court denied the Motion, holding that whether the Manfusos materially breached the Stockholders Agreement involved a disputed fact to be resolved by the trier of fact in April of 1994. In making this ruling, the Court determined that the validity of the buy-sell provision must be resolved at trial, thereby derailing the Manfusos' plan. If the Manfusos had a quarrel with the legal basis for the Court's decision, they should have moved for reconsideration. Instead, they did nothing.

Now, six months after this Court's ruling, the Manfusos request declaratory relief to enforce the buy-sell provision and have moved for Summary Judgment on an issue as to which the Court has already ruled a dispute of fact exists. The Manfusos now ask this Court to find that, as a matter of law, they did not materially breach the Stockholders Agreement. Simply put, the Manfusos hope to present to this Court through the back door an issue which has already been resolved against them. Given this previous decision by this Court, unchallenged by a motion for reconsideration, Count IV fails to state a claim upon which the Manfusos may seek relief. Thus, this Court must dismiss Count IV.

Even if this Court were somehow to hold that Count IV does state a claim, it must, nevertheless, strike the Manfusos'

Motion for Summary Judgment. Under Maryland law, a court may not grant summary judgment unless there is no genuine dispute of fact, and, as a matter of law, the subject claim has no merit. See Md. Rule 2-501. Applied to the present case, the Manfusos would have to establish that there exists no dispute of fact as to the validity and enforceability of the buy-sell provision and that, as a matter of law, the Defendants must comply. However, in denying the Manfusos' summary judgment motion as to Count II of Defendants' Counter-Claim, this Court held that a genuine dispute of fact existed as to whether the Manfusos materially breached the Stockholders Agreement, which necessarily creates a question of fact as to the validity of the buy-sell agreement. In fact, the Court has scheduled this issue for trial on the merits. Thus, procedurally, the Manfusos may not seek summary judgment as to Count IV and this Court must strike the Manfusos' Motion for Summary Judgment.

CONCLUSION

At a time when De Francis and Jacobs can least afford a distraction from the business and operations of Laurel and Pimlico, the Manfusos have filed a Third Amended Complaint containing claims which this Court denied six months ago. Although disguised as a pleading intended to preserve the record, the Third Amended Complaint was, in fact, intended to publicly embarrass and harass De Francis and Jacobs and to impede their continuing efforts to save Maryland racing. The Manfusos may have their day in court in April of 1994. Until

then, De Francis and Jacobs should not be required to relitigate either before this Court or in the press previously dismissed meritless claims.

WHEREFORE, De Francis and Jacobs respectfully request that this Court dismiss Counts I, II and IV of this Complaint.

Respectfully submitted,

James E. Gray

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Attorneys for Defendants
De Francis and Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 1993, a copy of the foregoing Memorandum of Law in Support of Motion to Dismiss Certain Claims for Declaratory and Injunctive Relief in Counts I and II and All Claims in Count IV in the Third Amended Complaint and Motion to Strike the Manfusos' Motion for Partial Summary Judgment was hand delivered to James Ulwick, Esquire, Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, MD 21202, attorneys for Plaintiffs; and mailed first class, postage prepaid to Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie,

Esquire, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, attorneys for Defendants, the Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc. and Laurel Racing Association, Inc.

James E. Gray

THE WASHINGTON POST - 3/11/93

In Racing's Troubled Times, De Francis's Salary Is $719,400

By Andrew Beyer
Washington Post Staff Writer

While business at Laurel and Pimlico has been declining sharply, Joe De Francis has been one of the highest-salaried racing executives in the United States. The president of the major two Maryland thoroughbred horse racing tracks collected pay of $719,399.60, plus benefits, in 1991.

Yet the annual financial statement that the privately owned tracks file with the Maryland Racing Commission listed De Francis's total salary for both tracks as $388,544. Such a disparity in reporting of track officers' income has been a regular practice in Maryland for years.

The chairman of the Maryland Racing Commission, John H. Mosner Jr., said yesterday race track officers are not required to file their salaries in their annual statement, but said De Francis was questioned by the commission about the disparity in the audit and Mosner was satisfied "no improprieties" had taken place.

"Where we're going to be concerned is if we see a real deterioration because of salaries and we have not seen that," Mosner said. "As long as the race tracks have a positive cash flow, we're satisfied."

The amount of De Francis's actual compensation was made public in a lawsuit filed Friday by Tom and Bob Manfuso, part-owners of the tracks, who have been engaged in a bitter legal battle with their partner.

Although the law suit concerns De Francis's general management, the Manfusos cited the comparison of De Francis's salary with that of New York Racing Association President Gerald McKeon, who earns $261,000 for running an operation whose gross business is more than double that of the Maryland tracks.

McKeon was recently criticized by New York Gov. Mario Cuomo, who called the high salaries of NYRA executives "absurd."

Martin Jacobs, vice president and general counsel of Laurel and Pimlico, also received a salary considerably higher than indicated on the financial statement to the racing commission. He earned $389,739.88 in 1991, according to the Manfuso's suit, although the statement given to the commission listed his salary at $250,000. Jacobs's counterpart at the New York Racing Association receives $177,000 annually.

On the comparison between the salaries of Maryland and NYRA executives, Mosner said New York racing was a "quasi-public corporation and De Francis and Jacobs are working for a privately owned corporation." Mosner said McKeon was "grossly" underpaid.

De Francis, 38, said this week that the salaries he and Jacobs receive are "not unreasonable given the size of the enterprise the value of what we contribute to the business. We earn every penny."

He said the discrepancies in the salary information filed with the racing commission resulted from ac-

See DE FRANCIS, D9, Col. 1

Tracks' De Francis Is Paid $719,400

DE FRANCIS, From D1

counting procedures that attribute a portion of track officers' income to general track expenditures. He also said that the statement to be filed with the commission this month would now include full compensation information for track executives.

De Francis, whose tracks have shown a steady decline in attendance and betting for the last three years, pointed out that he has never taken any dividends from the business. "With all that we have at risk," he said, "the only return we've ever received is the salary we've earned."

The discrepancy of track officers' salaries in the annual audit statement to the commission began when De Francis's late father, Frank, was operating Laurel and Pimlico in the mid-1980s, according to De Francis. Frank De Francis took a salary of nearly $700,000 a year, but he reportedly was concerned about the possible political and public relations ramifications of that figure.

So in the audited statement to the commission, some of the income of executives were shifted to items covering salaries and expenditures for the entire track operation but didn't specify who received what. The financial statement was audited by the accounting firm of Ernst and Young. A spokesman for the firm said he would have to know who did the audit before responding.

"The procedure for reporting salaries was set up by the Manfusos and my father, and we have continued the same policy," Joe De Francis said. "It's a technical accounting question."

When Frank De Francis died in 1989, his son took over the presidency of the two tracks and also assumed his father's salary. He and the Manfusos signed a stockholders agreement—now the subject of their ongoing legal battles.

According to the agreement, the Manfusos were allowed to receive $1.25 million each, equivalent to the money they had put up toward the purchase of Pimlico, and were each to receive more than $10,000 a month for four years. De Francis and Jacobs retained their salaries and were to get small annual increases.

If Maryland racing had continued to boom, the size of executive salaries might have been a non-issue. But business at Laurel and Pimlico has declined steadily.

In 1990, Joe De Francis's first full year at the helm, wagering at the two tracks totaled $435 million. In 1991, the sum fell to $403 million and last year it was $383 million.

The racing business in general has been hit hard by economic conditions and the shortage of horses that have affected the industry. De Francis's operation of the track has provoked criticism by the Manfusos, as well as some complaints from horsemen, fans and the media.

De Francis has responded to the downturn in business by imposing cutbacks and asking for sacrifices from people in many parts of the business. He wanted to shut down the Pimlico stable area where Baltimore-based horses train as a cost-cutting move, forcing trainers there to relocate to Laurel and Bowie. However, he chose not to make such a move when the horsemen protested.

Some employees have been denied raises and some have been laid off, including Vince Cincotta, the director of horsemen's relations; Doug Vair, host of the track's in-house television program; and secretaries in the executive offices.

De Francis hired a highly regarded publicity director, Damon Thayer, who left a job in Ohio to come to Maryland, but after four months De Francis cut his salary by 15 percent. Thayer since has left for a job at another track. De Francis said that there had "not been an undue number of layoffs," and he objected to suggestions that his own salary was unduly robust in view of his tracks' economic health.

Trainer Frannie Campitelli, who operates a large stable of horses at Pimlico, said horsemen are generally unconcerned with executives' salaries as long as their needs are met. But Phil Capuano, a horse owner and breeder, said: "This is the message: You have to suffer, but they're not willing to take a pay cut themselves. I can't see where they're [De Francis and Jacobs] sacrificing anything, and that upsets me."

Both De Francis and Jacobs said the Manfusos should have no complaint with the management salaries. Jacobs noted that his salary had originally been set at the same level as each of the Manfusos and said he could be making more outside of the racing business if he wished. De Francis pointed out their present salaries were part of the agreement that the Manfusos had signed—and that the Manfusos had made out handsomely under its terms too.

The Manfusos' latest salvo in the legal battle concerns the validity of that stockholders agreement, which includes a provision that allows one side to buy out the other in October 1993. However, the agreement required that neither side would sue the other during the four years of its duration, and De Francis maintains that the deal is void because the Manfusos sued him last year.

"All I got out of the stockholders agreement was the expectation of peace," De Francis said. "I have not gotten my share of the bargain."

The Manfusos say De Francis can't have it both ways and use the agreement to justify his and Jacobs's salaries. "If we don't have an agreement," said Bob Manfuso, "we have to question the benefits he is deriving from that agreement."

Staff writer Vinnie Perrone contributed to this report.

ROBERT T. MANFUSO and JOHN A. MANFUSO, JR.	*	**IN THE**
	*	**CIRCUIT COURT**
Plaintiffs	*	**FOR**
v.	*	**BALTIMORE CITY**
JOSEPH A. DE FRANCIS, et al.	*	**CASE NO.: 92120052 /CE14785/**
Defendants		

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

ANSWER TO CERTAIN CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF STATED IN COUNTS I AND II AND TO COUNT III OF THE THIRD AMENDED COMPLAINT

Defendants Joseph A. De Francis ("De Francis") and Martin Jacobs ("Jacobs"), by and through their attorneys, James E. Gray, Linda S. Woolf, and Goodell, DeVries, Leech & Gray, hereby Answer Certain Claims for Declaratory and Injunctive Relief Stated in Counts I and II and Claims for Breach of Contract stated in Count III of the Third Amended Complaint filed by Robert T. Manfuso and John A. ("Tommy") Manfuso, Jr. (collectively the "Manfusos", unless otherwise specified), and state as follows:

ANSWER

The Nature of the Action

1. With respect to Paragraphs 1-20 of the Third Amended Complaint ("Complaint"), De Francis and Jacobs reassert and incorporate their Answer to Paragraphs 1-20 of the original Complaint as if set forth in full herein.

2. With respect to Paragraph 21 of the Complaint, De Francis and Jacobs reassert and incorporate their Answer to Paragraph 21 of the original Complaint as if set forth in full herein. Additionally, Defendants state that this Court

dismissed the Manfusos' allegations regarding abuses as stated in the original, First and Second Amended Complaints on the ground that the Manfusos lacked standing.

3. With respect to Paragraphs 22-24 of the Complaint, De Francis and Jacobs reassert and incorporate their Answer to Paragraphs 22-24 of the original Complaint as if set forth in full herein.

4. De Francis and Jacobs admit the allegations of Paragraph 25 that Lone Star Jockey Club, Ltd. ("Lone Star") has been granted a license to own and operate a Texas racetrack; however, the Texas Racing Commission's decision to grant the license to Lone Star is presently under appeal in a State Court of Texas. De Francis and Jacobs admit that they assisted in Lone Star's application process to obtain a license to own and operate a racetrack in the Dallas/Ft. Worth, Texas market. Their involvement in Texas Racing is permitted by law and by the Stockholders Agreement and was known to the Manfusos at all relevant times. De Francis and Jacobs admit that they will perform various consulting services and that a partnership, now known as D/J/M Track Consultants ("D/J/M"), will have an ownership interest in the racetrack so long as the Texas State Court does not overturn the Texas Racing Commission's decision to award the license to Lone Star.

5. De Francis and Jacobs deny the allegations of Paragraph 26, and further state that the Manfusos have made such allegations for the principal purpose of having the Texas

State Court reverse the Texas Racing Commission's decision to award Lone Star a license to own and operate a racetrack in the Dallas/Ft. Worth market so as to advance the position of the entity believed to be Lone Star's principal competitor, Midpoint Racing, Ltd. ("Midpointe"). The Manfusos have also made such allegations to advance their improper scheme described in Paragraph 1 above to preclude De Francis and Jacobs from receiving the recognition of their management capabilities and prestige that would result from the award of the Dallas/Ft. Worth franchise to Lone Star. Robert T. Manfuso is a director and stockholder of the entity that owns and operates Hollywood Park Racetrack. That entity and its chairman, R.D. Hubbard, own almost fifty percent (50%) of the equity in Midpointe and are to perform substantial management services for Midpointe. Robert T. Manfuso has appeared on behalf of Midpointe in Texas and has submitted testimony on Midpointe's behalf, in specific opposition to the application of Lone Star. Robert T. Manfuso is also actively performing other managerial duties for Hollywood Park in connection with the American Championship Racing Series, and, upon information and belief, intends to be actively involved in the management of the Dallas/Ft. Worth race track if the Texas Court grants the appeal and awards Midpointe the license. Finally, De Francis and Jacobs assert that they have spent many more hours responding to spurious allegations and complaints made by the

Manfusos than they have spent in pursuing any interest in Texas Racing.

6. With respect to Paragraph 27 of the Complaint, De Francis and Jacobs reassert and incorporate their Answer to Paragraph 27 of the original Complaint as if set forth in full herein.

7. De Francis and Jacobs deny the allegations of Paragraph 28. Mango is presently Senior Vice President and General Manager of Laurel and Pimlico. Moreover, De Francis and Jacobs deny that Mango, although a key employee, is "the" key employee of the racetrack. They deny that the remaining allegations of Paragraph 28 fairly or fully set forth the terms and conditions of Mango's employment contract.

8. With respect to Paragraphs 29-32 of the Complaint, De Francis and Jacobs reassert and incorporate their Answer to Paragraphs 29-32, 36-41, and 43 of the original Complaint as if set forth in full herein.

9. De Francis and Jacobs deny the allegations of paragraph 33. The accounting practice of dividing compensation received by officers of the company into "officers salaries", which are separately listed on the corporations' financial statements, and non-officers salaries which are included in "office salaries" and are not separately listed but are grouped together with other employees salaries was instituted by the Manfusos together with Frank De Francis, in 1984, when they first acquired Laurel Race Course. This practice was continued

throughout the entire time the Manfusos were officers of Pimlico or Laurel -- from 1984 through May 31, 1990 -- and during that entire period the compensation received by them from Pimlico and Laurel was divided into "officers' salaries" and "office salaries" for financial statement reporting purposes, with the full knowledge and concurrence by the Manfusos.

10. De Francis and Jacobs admit Paragraph 34 to the extent that the Manfusos have repeatedly questioned the accounting practices of the corporation's accountants and outside auditors. In response to these questions, De Francis permitted the Manfusos and their accountant, Mark Reynolds, unfettered access to the financial statements and records of the corporations. The Manfusos' accountant has had several meetings with the corporations' outside auditor to review and raise questions about work papers and the financial statements. The Manfusos have been asked repeatedly, in writing and orally, to provide their accountant's report for review by the Board and to have their counsel make a presentation to the Board concerning any lingering concerns with respect to accounting practices. To this day, the Manfusos have refused this request. Moreover, this Court, on September 22, 1992, ruled that, as a matter of law, the Manfusos did not have the right to request a meeting with the independent auditors.

11. De Francis and Jacobs deny the allegations of Paragraph 35 as stated. Moreover, this Court has ruled that

the Manfusos have no standing as individual Directors to seek injunctive relief and have no standing as parties to the Stockholders Agreement, except as to those claims specifically referenced by the Court in Paragraph 6 of the October 9, 1992 Order.

12. Defendants incorporate their Answers to Paragraphs 1 through 35 in response to Paragraph 36.

13. De Francis and Jacobs deny the allegations of Paragraph 37.

14. De Francis and Jacobs deny the allegations of Paragraph 38.

15. With respect to Paragraphs 39-40 of the Complaint, De Francis and Jacobs reassert and incorporate their Answer to Paragraph 47-48 of the original Complaint as if set forth in full herein.

16. De Francis and Jacobs incorporate their Answers to Paragraphs 1 through 40 in response to Paragraph 41.

17. De Francis and Jacobs deny the allegations in Paragraph 42 of the Complaint.

18. De Francis and Jacobs deny the allegations in Paragraph 43 of the Complaint and deny that the Manfusos are entitled to any relief sought therein.

19. With respect to Paragraph 44 of the Complaint, De Francis and Jacobs reassert and incorporate their Answers to Paragraphs 1 through 43 in response to Paragraph 44.

20. De Francis and Jacobs deny the allegations of Paragraph 45. The Stockholders Agreement speaks for itself.

21. De Francis and Jacobs deny the allegations of Paragraph 46. The Stockholders Agreement speaks for itself.

22. De Francis and Jacobs admit the allegations of Paragraph 47 to the extent that the Manfusos elected to terminate their employment with Laurel and Pimlico effective as of May 31, 1990. However, De Francis and Jacobs state that the Manfusos announced their decision to terminate their employment on February 21, 1990, only twenty-one (21) days after the execution of the Stockholders Agreement and that their decision likely was made before the Stockholders Agreement was signed.

23. De Francis and Jacobs deny the allegations of Paragraph 48 and further assert that the Manfusos are the ones that have materially breached the Stockholders Agreement.

24. De Francis and Jacobs deny the allegations of Paragraph 49 and specifically deny that the Manfusos are entitled to the relief sought therein.

25. De Francis and Jacobs neither admit or deny the allegations of Paragraphs 50-59 since Count IV is subject to a Motion to Dismiss.

FIRST AFFIRMATIVE DEFENSE

26. Plaintiffs have failed to state a cause of action or claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

27. Plaintiffs have no right or authority to bring an action as directors or shareholders seeking either declaratory or injunctive relief for corporate waste.

THIRD AFFIRMATIVE DEFENSE

28. The Plaintiffs, as individual directors and shareholders, do not possess a legally cognizable right that can be enforced by either declaratory or injunctive relief.

FOURTH AFFIRMATIVE DEFENSE

29. The relief sought by the Plaintiffs in their Complaint would inure to the benefit of the corporations and, as such, must be sought by the corporations as stockholders in a properly filed derivative suit. Such derivative suit would first require that demand be made upon the corporation's Board of Directors and that the Directors refused the demand. Plaintiffs have finally brought demand upon the corporations and the Board of Directors will soon be addressing the allegations contained in the demand. Until such time as the Board issues a decision, the Plaintiffs have no standing to seek redress in the courts.

FIFTH AFFIRMATIVE DEFENSE

30. The Second and Third Declarations sought in Count I seek declarations concerning subjects that do not come within the jurisdiction of Maryland's Declaratory Judgment Act and must, therefore, be dismissed.

SIXTH AFFIRMATIVE DEFENSE

31. De Francis and Jacobs have at all times acted in the best interests of both Laurel and Pimlico when all actions complained of in Plaintiffs' Complaint were undertaken in furtherance of a good faith business purpose and in the exercise of their bona fide business judgment.

SEVENTH AFFIRMATIVE DEFENSE

32. Plaintiffs' requested relief is barred by fraud.

EIGHTH AFFIRMATIVE DEFENSE

33. Plaintiffs' requested relief is barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

34. The contract under which Plaintiffs have sought relief, if interpreted as urged by the Plaintiffs, is void for lack of consideration.

TENTH AFFIRMATIVE DEFENSE

35. Plaintiffs have an adequate remedy at law and, therefore, are not entitled to declaratory or injunctive relief.

ELEVENTH AFFIRMATIVE DEFENSE

36. Defendants reserve the right to raise additional affirmative defenses based upon discovery that may be taken in this matter.

WHEREFORE, Defendants Joseph A. De Francis and Martin Jacobs respectfully request that this Court dismiss all claims for declaratory and injunctive relief not previously dismissed by this Court's Order dated October 9, 1992 and the Request for

compensatory damages in Count III, and to award the Defendants their fees and costs incurred in responding thereto.

James E. Gray

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Attorneys for Defendants
De Francis and Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 1993, a copy of the foregoing Answer to Certain Claims for Declaratory and Injunctive Relief stated in Counts I and II and to Count III of the Third Amended Complaint was hand delivered to James Ulwick, Esquire, Kramon & Graham, Commerce Place, One South Street, Suite 2600, Baltimore, MD 21202, attorneys for Plaintiffs; and mailed, postage prepaid, to Irwin Goldblum, Esquire, McGee Grigsby, Esquire and Jennifer Archie, Esquire, Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Suite 1300, Washington, D.C. 20004-2505, attorneys for Defendants, the Maryland Jockey Club of Baltimore City, Inc., Pimlico Racing Association, Inc. and Laurel Racing Association, Inc.

James E. Gray

1992

WADE VS BECKER Box 1997 Case No. 92051045 [MSA T2691-4635, OR/12/15/25]
File should be named msa_sc5458_82_150_
[full case number]-####

MANFUSO VS DEFRANCIS, ET. AL. Box 2097 Case No. 92120052 [MSA T2691-4735, OR/12/16/41]
File should be named msa_sc5458_82_150_
[full case number]-####

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